

JAN 19 2018

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# A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that deoxyribonucleic  
2 acid (DNA) evidence is a powerful law enforcement tool that can  
3 identify unknown suspects, connect crimes to known perpetrators,  
4 and exonerate the innocent. The legislature further finds that  
5 establishing standard and efficient sexual assault evidence  
6 collection kit handling procedures and a statewide tracking  
7 system would ensure that victims of sexual assault receive  
8 accurate information that enables them to take steps to protect  
9 their rights, and prevent the misplacement of kits, delays in  
10 testing, and destruction of evidence.

11           It is the intent of the legislature that sexual assault  
12 evidence collection kits are tested in a timely manner to  
13 enhance public safety by protecting sexual assault survivors,  
14 exonerating the innocent, and holding offenders accountable.

15           The purpose of this Act is to address the manner in which  
16 sexual assault evidence collection kits are processed and



1 tracked and to ensure that victims of sexual assault are  
2 informed of their rights under the law.

3 SECTION 2. The Hawaii Revised Statutes is amended by  
4 adding a new chapter to title 38 to be appropriately designated  
5 and to read as follows:

6 "CHAPTER

7 SEXUAL ASSAULT EVIDENCE COLLECTION KITS

8 § -1 Definitions. As used in this chapter:

9 "Accredited and approved DNA laboratory" means a DNA  
10 laboratory that:

- 11 (1) Meets the requirements of section 844D-54; and  
12 (2) Conducts DNA analysis eligible for upload to the  
13 Combined DNA Index System, as approved by its state  
14 administrator.

15 "Combined DNA Index System" means the Federal Bureau of  
16 Investigation's program of support for criminal justice DNA  
17 databases as well as the software used to run these databases.

18 "Department" means the department of the attorney general.

19 "DNA" means deoxyribonucleic acid.

20 "DNA analysis" refers to the following process:



- 1           (1) The isolation of autosomal deoxyribonucleic acid (DNA)
- 2                   to develop DNA profiles that are eligible for entry
- 3                   into the Combined DNA Index System;
- 4           (2) The taking of DNA samples from evidence containing DNA
- 5                   from a known individual or DNA of unknown origin;
- 6           (3) The determination of the DNA test results; and
- 7           (4) Entry of resulting DNA profiles into the Combined DNA
- 8                   Index System.

9           "Law enforcement agency" means a police department, the  
10 office of a sheriff, the office of a county prosecuting  
11 attorney, or a federal, state, or local governmental body that  
12 enforces criminal laws and whose employees have statutory powers  
13 of arrest.

14           "Medical forensic examination" means an examination  
15 provided to a victim of a suspected sexual assault by a health  
16 care provider to address medical concerns resulting from the  
17 sexual assault and to collect and preserve evidence that may be  
18 used in a police investigation and any subsequent prosecution.

19           "Reported sexual assault evidence collection kit" or  
20 "reported kit" means a sexual assault evidence collection kit  
21 for a case in which:



1 (1) The victim reported a sexual offense to a law  
2 enforcement agency; or

3 (2) The victim reported a sexual offense to a law  
4 enforcement agency and a formal complaint was  
5 generated; the victim subsequently requested that the  
6 complaint be withdrawn; but now the victim has chosen  
7 to reinstate the complaint.

8 "Sexual assault evidence collection kit" means a kit that  
9 contains a human biological specimen or specimens collected by a  
10 health care provider during a medical forensic examination from  
11 the victim of a suspected sexually-oriented criminal offense.

12 "Status" refers to the location, date, and time that a  
13 sexual assault evidence collection kit is transferred within the  
14 chain of custody.

15 "Unreported sexual assault evidence collection kit" or  
16 "unreported kit" means a sexual assault evidence collection kit  
17 for a case in which:

18 (1) The victim chose not to report a sexual offense to a  
19 law enforcement agency; or

20 (2) The victim reported a sexual offense to a law  
21 enforcement agency and a formal complaint was



1 generated; but the complaint was subsequently  
2 withdrawn at the victim's request.

3 § -2 Hawaii sexual assault response team. (a) The  
4 department shall establish a Hawaii sexual assault response team  
5 that shall consist of members who are directly involved with the  
6 use, management, and testing of sexual assault evidence  
7 collection kits, or are involved with, communicate with, or  
8 otherwise support sexual assault victims, including but not  
9 limited to the respective police departments of each county,  
10 accredited and approved DNA laboratories, the respective  
11 prosecuting attorney departments of each county, and sexual  
12 assault service providers.

13 (b) The Hawaii sexual assault response team shall:

14 (1) Develop and regularly update a protocol for all  
15 medical forensic examinations in the State. The  
16 medical forensic examination protocol shall be used by  
17 all medical facilities, rape crisis centers, and any  
18 other facilities that perform medical forensic  
19 examinations;

20 (2) Develop and adopt a statewide standard data set,  
21 including status and location information that all



1            counties shall include in their respective sexual  
2            assault evidence collection kit tracking systems;

3            (3) Establish standard policies and procedures for any  
4            facility that performs medical forensic examinations  
5            and retains possession of sexual assault evidence  
6            collection kits under this chapter. The policies and  
7            procedures shall address proper preservation of kits,  
8            recordkeeping requirements, and chain of custody  
9            requirements; and

10           (4) Establish required disclosures that shall be made to  
11           any person undergoing a medical forensic examination,  
12           including but not limited to the length of time a kit  
13           may be stored or retained, the point at which a kit  
14           may be destroyed, and the person's ability to access  
15           the status of their kit through the appropriate county  
16           tracking system.

17           § -3 Annual statewide inventory and report of sexual  
18           assault evidence collection kits. Reports containing the  
19           following information shall be submitted to the department on an  
20           annual basis, in the manner directed by the department, by law  
21           enforcement agencies, medical facilities, rape crisis centers,



1 DNA laboratories, and any other facilities in the State that  
2 collect, receive, maintain, store, or preserve sexual assault  
3 evidence collection kits:

4 (1) The total number of all kits containing forensic  
5 samples;

6 (2) For each kit:

7 (A) The date of collection or receipt;

8 (B) Whether the kit's existence was reported to law  
9 enforcement; and

10 (C) The status of the kit, with respect to its  
11 handling by each of the following types of  
12 entities:

13 (i) For facilities performing medical forensic  
14 examinations, the date the kit was collected  
15 by the facility; and the date the facility  
16 reported the collected kit's existence to a  
17 law enforcement agency;

18 (ii) For law enforcement agencies, the date the  
19 kit was retrieved by a law enforcement  
20 agency from the facility that performed the  
21 medical forensic examination; the date a law



1 enforcement agency sent a request for  
2 testing to an accredited and approved DNA  
3 laboratory; and the date a law enforcement  
4 agency delivered the kit to the accredited  
5 and approved DNA laboratory; provided that  
6 for kits originating from another  
7 jurisdiction, the information to be reported  
8 shall include the date that a law  
9 enforcement agency in Hawaii notified a law  
10 enforcement agency in the other jurisdiction  
11 and the date the kit was retrieved, on  
12 behalf of the other jurisdiction, from the  
13 facility that performed the medical forensic  
14 examination; and

15 (iii) For accredited and approved DNA  
16 laboratories, the date the kit was received  
17 by the laboratory; the law enforcement  
18 agency from which the kit was received; the  
19 date a DNA analysis was performed on the  
20 kit; the date any resulting information from  
21 the kit was entered into the Combined DNA





1                   Index System; and all reasons a kit was not  
2                   tested or a DNA profile was not created;

3           (3) All reasons any kit was in an entity's possession for  
4           longer than the periods allowed under section     -5;  
5           and

6           (4) The total number of kits destroyed and reason for  
7           destruction of each.

8 The department shall compile the reported information into a  
9 summary report. The summary report shall be made available to  
10 the public on the department's website and shall be submitted to  
11 the legislature annually no later than twenty days prior to the  
12 convening of each regular session.

13           §   -4 Unreported sexual assault evidence collection kits.

14 (a) A victim who chooses not to file a police report at the  
15 time of undergoing a medical forensic examination:

16           (1) May request in writing that the unreported kit be held  
17           by the facility that performed the medical forensic  
18           examination; provided that if the victim does not so  
19           request, then the appropriate law enforcement agency  
20           shall take possession of the unreported kit pursuant  
21           to section     -5;



1           (2) Shall not be deemed to have waived the victim's right  
2           to report the crime and to have the victim's kit  
3           tested in the future; and

4           (3) Shall be informed of the date the victim's kit will be  
5           destroyed, in writing at the time of the examination.

6           (b) Agencies, organizations, and other entities in  
7 possession of unreported sexual assault evidence collection kits  
8 shall store the kits for a duration of twenty years.

9           § -5 Mandatory submission and testing requirements for  
10 sexual assault evidence collection kits. (a) An agency,  
11 organization, or other entity that collects a sexual assault  
12 evidence collection kit shall notify the appropriate law  
13 enforcement agency as soon as practicable after the kit's  
14 collection; provided that the notification shall be no later  
15 than twenty-four hours after the collection occurred.

16           (b) A notified law enforcement agency shall:

17           (1) Take possession of the sexual assault evidence  
18 collection kit from the agency, organization, or other  
19 entity that collected the kit within three business  
20 days of receiving notification;



- 1           (2)   Submit a written request for testing of the sexual  
2                    assault evidence collection kit to an accredited and  
3                    approved DNA laboratory within ten working days of  
4                    taking possession of the kit, unless the suspected  
5                    offender has been entered into the Combined DNA Index  
6                    System database; and
- 7           (3)   Within seven days of acceptance for testing by an  
8                    accredited and approved DNA laboratory, deliver the  
9                    kit to the laboratory for testing.
- 10          (c)   An accredited and approved DNA laboratory shall:
- 11          (1)   Notify a law enforcement agency that has submitted a  
12                   written request for testing, within fourteen days of  
13                   receiving the request, as to whether the laboratory  
14                   accepts the request or instead recommends providing  
15                   the sexual assault evidence collection kit to another  
16                   laboratory for testing;
- 17          (2)   Pursue DNA analysis of a sexual assault evidence  
18                   collection kit that was accepted from a law  
19                   enforcement agency to develop autosomal DNA profiles  
20                   that are eligible for entry into the Combined DNA  
21                   Index System; and



1           (3) Enter a DNA profile into the Combined DNA Index System  
2           database, provided that the testing of a sexual  
3           assault evidence collection kit resulted in a DNA  
4           profile; provided further that:

5           (i) Prior to July 1, 2023, the average completion  
6           rate for this analysis and classification shall  
7           not exceed one hundred eighty days; and

8           (ii) On or after July 1, 2023, the average completion  
9           rate for this analysis and classification shall  
10          not exceed ninety days.

11          (d) For cases in which no judgment of conviction has been  
12 entered, a law enforcement agency that is in possession of a  
13 reported sexual assault evidence collection kit shall retain the  
14 kit for a duration of fifty years, or until the expiration of  
15 the period of limitation for any prosecutable offense under  
16 section 701-108, whichever is longer. For cases in which a  
17 judgment of conviction has been entered, a law enforcement  
18 agency that is in possession of a reported sexual assault  
19 evidence collection kit shall retain the kit pursuant to the  
20 requirements of section 844D-126.



1 (e) A law enforcement agency's lack of compliance with any  
2 of the time requirements of this section shall not:

3 (1) Constitute grounds on which to challenge the validity  
4 of DNA evidence in any criminal or civil proceeding;

5 (2) Justify a court to exclude any evidence generated from  
6 a sexual assault evidence collection kit; or

7 (3) Provide a basis for a person who is accused or  
8 convicted of committing a crime against a victim to  
9 request that the person's case be dismissed or  
10 conviction be set aside.

11 (f) This section shall not establish a private cause of  
12 action or claim on the part of any individual, agency,  
13 organization, or other entity against any law enforcement agency  
14 or against any accredited and approved DNA laboratory.

15 (g) The requirements of this section concerning notice and  
16 transfer of a sexual assault evidence collection kit to a law  
17 enforcement agency, and a law enforcement agency's handling of  
18 the kit, shall not apply to:

19 (1) Cases that are under the primary jurisdiction of law  
20 enforcement agencies outside of the authority of the  
21 State; or



1           (2) Cases in which jurisdiction may be asserted by more  
2           than one law enforcement agency; provided that all  
3           reasonable efforts shall be made to determine  
4           jurisdiction as soon as practicable; provided further  
5           that if primary jurisdiction is determined to belong  
6           to a law enforcement agency under the authority of the  
7           State, then notice and transfer of a sexual assault  
8           evidence collection kit to the law enforcement agency,  
9           and the law enforcement agency's handling of the kit  
10          shall be in accordance with the requirements of this  
11          section as of the date on which jurisdiction was  
12          established with respect to the kit's collection.

13          § -6 Tracking system for sexual assault evidence  
14 collection kits. (a) No later than January 1, 2020, each  
15 county shall establish a tracking system for sexual assault  
16 evidence collection kits. At a minimum, each system shall:

17          (1) Track the status of sexual assault evidence collection  
18          kits from the specimen collection site throughout the  
19          criminal justice process, including but not limited to  
20          the initial collection, inventory, and storage by law  
21          enforcement agencies or accredited and approved DNA



1 laboratories, analysis at accredited and approved DNA  
2 laboratories, and storage or destruction after  
3 completion of analysis;

4 (2) Allow all entities that collect, receive, maintain,  
5 store, or preserve sexual assault evidence collection  
6 kits to continuously update the status and location of  
7 the kits;

8 (3) Allow victims of sexual assault to anonymously access  
9 the system and receive secure updates regarding the  
10 location and status of their respective sexual assault  
11 evidence collection kits; and

12 (4) Use electronic technology that allows continuous  
13 access by victims, entities that collect sexual  
14 assault evidence collection kits, law enforcement  
15 agencies, and accredited and approved DNA  
16 laboratories.

17 (b) Law enforcement agencies may contract with public or  
18 private entities, including private software and technology  
19 providers, for the creation, operation, or maintenance of a  
20 tracking system.



1 (c) All agencies, organizations, and other entities in the  
2 chain of custody of sexual assault evidence collection kits  
3 shall participate in the tracking system by updating the status  
4 and location of kits, as appropriate.

5 § -7 Victims' right to notification and other  
6 information. (a) A sexual assault victim has the right to  
7 receive a medical forensic examination, regardless of whether  
8 the victim chooses to report the assault to a law enforcement  
9 agency.

10 (b) Each law enforcement agency shall designate at least  
11 one person, who is trained in trauma and victim response, to  
12 receive all inquiries concerning sexual assault evidence  
13 collection kits and to serve as a liaison between the agency and  
14 victims.

15 (c) A sexual assault victim shall be provided with the  
16 contact information for the designated liaison or liaisons at  
17 the time that the victim's sexual assault evidence collection  
18 kit is collected.

19 (d) In advance of or during a medical forensic examination  
20 or law enforcement agency interview, medical professionals,  
21 victim advocates, law enforcement officers, or prosecutors shall





- 1 provide a sexual assault victim with a physical document  
2 developed by the Hawaii sexual assault response team that  
3 identifies the victim's rights under this chapter, including:
- 4 (1) Support from, and consultation with, a crisis worker  
5 at the time that a sexual assault evidence collection  
6 kit is collected;
  - 7 (2) Information about the current location, analysis date  
8 and status, and estimated disposal date of the  
9 victim's sexual assault evidence collection kit;
  - 10 (3) Notification when there is any major development, as  
11 defined in section 801D-2, in a case that the victim  
12 reported to a law enforcement agency, including  
13 whether the case has been closed or reopened;
  - 14 (4) Designation of a person of the victim's choosing to  
15 act as a recipient of the information provided under  
16 this subsection;
  - 17 (5) Information on how to report an offense to a law  
18 enforcement agency and how to request that the  
19 victim's sexual assault evidence collection kit be  
20 analyzed in the future, provided that the victim  
21 either chose not to report the offense at the time the



1 victim's kit was collected, or previously withdrew the  
 2 report but later chooses to reinstate the report; and  
 3 (6) Information about the availability of crime victim  
 4 compensation and other services for victims of sexual  
 5 assault, as appropriate."

6 SECTION 3. There is appropriated out of the general  
 7 revenues of the State of Hawaii the sum of \$135,000 or so much  
 8 thereof as may be necessary for fiscal year 2018-2019 for the  
 9 staffing, training, and travel expenses of the Hawaii sexual  
 10 assault response team.

11 The sum appropriated shall be expended by the department of  
 12 the attorney general for the purposes of this Act.

13 SECTION 4. This Act shall take effect on July 1, 2019.

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INTRODUCED BY:

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# S.B. NO. 2345

**Report Title:**

Sexual Assault; Evidence; DNA Testing; Hawaii Sexual Assault Response Team; Appropriation

**Description:**

Creates a Hawaii Sexual Assault Response Team to address the manner in which sexual assault evidence collection kits are processed and tracked, and to ensure that victims of sexual assault are informed of their rights under the law. Requires annual reports to the Attorney General on the status of sexual assault evidence collection kits and annual summary reports by the Attorney General to the legislature. Appropriates funds. Effective 7/1/19.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

