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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. (a) The legislature finds that Act 207,  
2 Session Laws of Hawaii 2016, required all law enforcement  
3 agencies and departments charged with the maintenance, storage,  
4 and preservation of sexual assault evidence collection kits to  
5 conduct an inventory of all stored kits and report to the  
6 department of the attorney general. The results of that  
7 inventory from all four county police departments show that  
8 since 1992, there are 2,240 sexual assault evidence collection  
9 kits in the possession of county police departments. As of June  
10 30, 2016, only 289 kits have been tested, leaving 1,951 kits  
11 that have not been tested.

12           Act 207 also required the department of the attorney  
13 general to report to the legislature on plans and procedures for  
14 the disposition of these 1,951 kits as well as new kits, and  
15 other related information. In fiscal year 2016-2017, the  
16 legislature appropriated \$500,000 to the department of the  
17 attorney general for the testing of at least five hundred sexual



1 assault evidence collection kits and for associated victim  
2 support services.

3 (b) The department of the attorney general, as directed  
4 under Act 207, convened a working group to develop statewide  
5 standards and practices for the testing of sexual assault  
6 evidence collection kits. The working group met over a six-  
7 month period and developed the malama kakou project. "Malama  
8 kakou" means "care for all of us; we care." The malama kakou  
9 project is a statewide plan to:

- 10 (1) Test untested sexual assault evidence collection kits  
11 and new sexual assault evidence collection kits;  
12 (2) Identify the criteria for testing sexual assault  
13 evidence collection kits and the priority of testing;  
14 (3) Provide active outreach and public notification to  
15 ensure that information and services are provided to  
16 impacted survivors; and  
17 (4) Establish a tracking system for sexual assault  
18 evidence collection kits.

19 (c) The working group outlined a plan to reform the  
20 testing of sexual assault evidence collection kits in Hawaii,  
21 which included establishing guidelines to determine whether a



1 kit should be tested, a priority order for kits that are to be  
2 tested, and a process for police departments to follow in  
3 implementing the defined criteria and priorities. The  
4 guidelines are as follows:

5 (1) Criteria. The working group determined that not all  
6 sexual assault evidence collection kits in police  
7 possession should be tested. Kits that do not need to  
8 be tested may include the following cases:

9 (A) Unreported cases where the victim chose not to  
10 file a complaint;

11 (B) Adult victims who officially withdrew their  
12 sexual assault complaint;

13 (C) Minor victims whose parent or guardian withdrew  
14 the sexual assault complaint (the police and  
15 prosecutor have discretion to pursue testing of  
16 the sexual assault evidence collection kit if  
17 they believe a minor was harmed); and

18 (D) The police have sufficient evidence that a crime  
19 did not occur, such as unfounded crimes.

20 (2) Priority. First in priority to be tested are the  
21 sexual assault evidence collection kits that the Kauai



1 police department screened for the Y-chromosome with  
2 an accredited but not approved private laboratory, and  
3 the suspect is unknown, or if known, the suspect's  
4 profile is not in the Combined DNA Index System  
5 (CODIS). Thereafter, priority for testing sexual  
6 assault evidence collection kits would be by category,  
7 with priority afforded to category 1, then category 2,  
8 and last, category 3. Kits may be moved to a higher  
9 category as needed.

10 (A) Category 1: Multiple suspects involved in the  
11 case; suspect is unknown; victim is a minor  
12 (under eighteen years old); suspected serial  
13 offender.

14 (B) Category 2: Suspect is known but is not in CODIS  
15 (e.g., consent issue); complaint was withdrawn  
16 and later reinstated by the victim.

17 (C) Category 3: All other, including deceased  
18 suspect and inferred withdrawal (police unable to  
19 reach victim; no official victim withdrawal on  
20 file).



1           (3) Process. The police departments will use data from  
2           their respective sexual assault evidence collection  
3           kit inventory to identify the kits related to the  
4           defined criteria and priorities.

5           The legislature intends that the county police departments  
6           comply with the guidelines established in the report by the  
7           attorney general. The legislature further intends that police  
8           departments should use the guidelines as a minimum basis for  
9           testing kits that meet the criteria for testing and that the  
10          guidelines should not be interpreted to test fewer kits.

11          (d) The purpose of this Act is to continue the purpose and  
12          goals of Act 207 by:

13          (1) Providing certain rights to survivors of sexual  
14          assault;

15          (2) Establishing mandatory requirements for the testing of  
16          kits in accordance with the malama kakou project  
17          guidelines;

18          (3) Requiring annual reporting by the department of the  
19          attorney general to the legislature of statistical  
20          data pertaining to sexual assault evidence collection  
21          kits; and



1 (4) Requiring additional reports by the department of the  
2 attorney general on the progress of implementing the  
3 malama kakou project guidelines.

4 SECTION 2. Chapter 801D, Hawaii Revised Statutes, is  
5 amended by adding a new section to be appropriately designated  
6 and to read as follows:

7 "§801D- Sexual assault survivors' rights. (a) A sexual  
8 assault survivor has the following rights:

- 9 (1) The right not to be prevented from, or charged for,  
10 receiving a medical forensic examination;
- 11 (2) The right, subject to paragraph (5), to have a sexual  
12 assault evidence collection kit or its probative  
13 contents preserved, without charge, for the duration  
14 of the maximum applicable statute of limitations or  
15 twenty years, whichever is shorter;
- 16 (3) The right to be informed, upon request, of any result  
17 of a sexual assault evidence collection kit, including  
18 a DNA profile match, toxicology report, or other  
19 information collected as part of a medical forensic  
20 examination, provided that disclosure would not impede  
21 or compromise an ongoing investigation;



1       (4) The right to be informed, in writing, of policies or  
2       laws that govern the collection and preservation of a  
3       sexual assault evidence collection kit;

4       (5) The right, upon written request, to receive written  
5       notification from the appropriate official with  
6       custody no later than sixty days before the date of  
7       the intended destruction or disposal of a victim's  
8       sexual assault evidence collection kit; and, upon  
9       written request by the victim, to be allowed the  
10       further preservation of the kit or its probative  
11       contents; and

12       (6) The right to be informed in writing of the rights set  
13       forth in this section.

14       (b) The rights provided in subsection (a) shall apply to  
15       any sexual assault survivor who has undergone a medical forensic  
16       examination that produced a sexual assault evidence collection  
17       kit on or after the enactment of Act       , Session Laws of Hawaii  
18       2017."

19       SECTION 3. Chapter 844D, Hawaii Revised Statutes, is  
20       amended by adding a new section to part II to be appropriately  
21       designated and to read as follows:



1           "§844D-    Testing of sexual assault evidence collection  
2 kits; mandatory requirements. (a) Law enforcement agencies and  
3 departments charged with the testing of sexual assault evidence  
4 collection kits shall test all kits in accordance with the plans  
5 and procedures for the disposition of currently untested kits  
6 and new kits established by the department of the attorney  
7 general pursuant to section 844D-24.  
8           (b) All kits that meet testing guidelines shall be  
9 submitted to an accredited laboratory for testing within  
10 days after receipt by a law enforcement agency."

11           SECTION 4. Section 844D-24, Hawaii Revised Statutes, is  
12 amended to read as follows:

13           "~~§~~844D-24 **Sexual assault evidence; reporting.** (a)  
14 By September 1, 2016, all law enforcement agencies and  
15 departments charged with the maintenance, storage, and  
16 preservation of sexual assault evidence collection kits shall  
17 conduct an inventory of all such kits being stored by the agency  
18 or department.

19           (b) By September 1, 2016, each law enforcement agency and  
20 department subject to subsection (a) shall compile, in writing,  
21 a report containing the number of untested sexual assault





1 evidence collection kits in the possession of the agency or  
2 department and the date the sexual assault evidence collection  
3 kit was collected. The reports shall be transmitted to the  
4 department of the attorney general.

5 (c) By December 1, 2016, the department of the attorney  
6 general shall prepare and transmit a report to the president of  
7 the senate and the speaker of the house of representatives  
8 containing the number of untested sexual assault evidence  
9 collection kits currently being stored by each county, law  
10 enforcement agency, or department and the date each untested kit  
11 was originally collected. The department of the attorney  
12 general shall involve community stakeholders in drafting the  
13 report, including representatives from each county. The report  
14 shall also provide the following information:

- 15 (1) An explanation of the processes that were used in the  
16 past to decide which sexual assault evidence  
17 collection kits were and were not tested;
- 18 (2) Progress made to reduce the number of untested sexual  
19 assault evidence collection kits to date;



- 1           (3) A plan and expected time frame for further reduction  
2           in the number of untested sexual assault evidence  
3           collection kits;
- 4           (4) A plan for determining priority of untested sexual  
5           assault evidence collection kits and new sexual  
6           assault evidence collection kits for testing;
- 7           (5) Processes that have been adopted or will be adopted to  
8           better track and inventory tested and untested sexual  
9           assault evidence collection kits, including their  
10          locations;
- 11          (6) Expected outcomes from testing untested sexual assault  
12          evidence collection kits and testing new sexual  
13          assault evidence collection kits;
- 14          (7) The criteria and process to determine which untested  
15          sexual assault evidence collection kits will be tested  
16          and the criteria and process for testing to be applied  
17          to all new sexual assault evidence collection kits;
- 18          (8) The sites and locations of the testing of the untested  
19          sexual assault evidence collection kits and testing of  
20          new sexual assault evidence collection kits;



- 1           (9) Victim notification, support services, and other  
2           resources that may become necessary in connection with  
3           testing untested sexual assault evidence collection  
4           kits and new sexual assault evidence collection kits;
- 5           (10) The expected cost of all projected plans and processes  
6           not yet in place for testing untested sexual assault  
7           evidence collection kits and new sexual assault  
8           evidence collection kits;
- 9           (11) An assessment of potential funding sources, including  
10          federal grants for which applications have been, will  
11          be, or may be submitted; and
- 12          (12) Potential areas for further legislative action or  
13          policy changes.
- 14          (d) Beginning July 1, 2017, all law enforcement agencies  
15          and departments shall submit new sexual assault evidence  
16          collection kits for testing in accordance with the criteria and  
17          policies established and reported by the department of the  
18          attorney general pursuant to subsection (c).
- 19          (e) By July 1, 2018, all law enforcement agencies and  
20          departments shall complete the testing of all untested sexual  
21          assault evidence collection kits in accordance with criteria and



1 policies established and reported by the department of the  
2 attorney general pursuant to subsection (c).

3 (f) Beginning with the 2018 regular session, the  
4 department of the attorney general shall prepare and transmit an  
5 annual report to the president of the senate and the speaker of  
6 the house of representatives no later than twenty days prior to  
7 the convening of each regular session. The report shall  
8 contain:

9 (1) The number of sexual assault evidence collection kits  
10 reported in the prior year to the police departments  
11 of all four counties;

12 (2) The total number of sexual assault evidence collection  
13 kits collected in the prior year in each county;

14 (3) The number of sexual assault evidence collection kits  
15 tested in the prior year by each county, law  
16 enforcement agency, or department;

17 (4) The number of sexual assault evidence collection kits  
18 not tested in the prior year by each county, law  
19 enforcement agency, or department; and



1        (5) The number of sexual assault evidence collection kits  
2        destroyed in the prior year by each county, law  
3        enforcement agency, or department.

4        [~~f~~] (g) As used in this section:

5        "Forensic medical examination" means an examination  
6 provided to the victim of a suspected sexually-oriented criminal  
7 offense by a health care provider for the purpose of gathering  
8 and preserving evidence of a suspected sexual assault.

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

13        "Untested sexual assault evidence collection kit" means a  
14 sexual assault evidence collection kit that has not been  
15 submitted to a qualified laboratory for either a serology or DNA  
16 test."

17        SECTION 5. The department of the attorney general shall  
18 submit a report to the legislature no later than twenty days  
19 prior to the convening of the regular session of 2018 that shall  
20 include:



- 1           (1) The guidelines, policies, and procedures that have
- 2                    been adopted by each police department regarding
- 3                    sexual assault evidence collection kits;
- 4           (2) All policies or procedures regarding sexual assault
- 5                    evidence collection kits adopted by the department of
- 6                    the attorney general;
- 7           (3) The resources that may be needed to allow the timely
- 8                    implementation of the recommendations and guidelines
- 9                    by the department of attorney general; and
- 10          (4) Information on the expenditure of any grant moneys by
- 11                    each county police department, each county, or the
- 12                    department of the attorney general related to sexual
- 13                    assault evidence collection kits.

14           SECTION 6. Statutory material to be repealed is bracketed  
15 and stricken. New statutory material is underscored.

16           SECTION 7. This Act shall take effect on July 1, 2050.



**Report Title:**

Sexual Assault Evidence Collection Kits; Reporting; Attorney General; Sexual Assault; Forensic Evidence

**Description:**

Provides certain rights to sexual assault survivors with regards to the testing of sexual assault evidence collection kits. Requires the Attorney General to provide the Legislature with an initial report prior to the 2018 Regular Session on law enforcement's progress to implement the guidelines for mandatory testing requirements. Thereafter, AG to provide the Legislature with annual reports of statistical data pertaining to the testing. (HB668 HD1)

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

