

---

---

# 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 taking of DNA samples from evidence containing DNA
- 2                    from a known individual or DNA of unknown origin;
- 3           (2) The isolation of autosomal DNA to develop DNA
- 4                    profiles; and
- 5           (3) The determination of the DNA test results.

6           "Law enforcement agency" means a county police department.

7           "Medical forensic examination" means an examination

8 provided to a victim of a suspected sexual assault by a health

9 care provider to address medical concerns resulting from the

10 sexual assault and to collect and preserve evidence that may be

11 used in a police investigation and any subsequent prosecution.

12           "Reported sexual assault evidence collection kit" or

13 "reported kit" means a sexual assault evidence collection kit

14 for a case in which:

- 15           (1) The victim reported a sexual offense to a law
- 16                    enforcement agency; or
- 17           (2) The victim reported a sexual offense to a law
- 18                    enforcement agency and a formal complaint was
- 19                    generated; the victim subsequently requested that the
- 20                    complaint be withdrawn; but now the victim has chosen
- 21                    to reinstate the complaint.



1 "Sexual assault evidence collection kit" means a kit that  
2 contains a human biological specimen or specimens collected by a  
3 health care provider during a medical forensic examination from  
4 the victim of a suspected criminal sexual offense.

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

8 "Unreported sexual assault evidence collection kit" or  
9 "unreported kit" means a sexual assault evidence collection kit  
10 for a case in which:

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

13 (2) The victim reported a sexual offense to a law  
14 enforcement agency and a formal complaint was  
15 generated; but the complaint was subsequently  
16 withdrawn at the victim's request.

17 § -2 **Hawaii sexual assault response and training**  
18 **program.** (a) The department shall establish a Hawaii sexual  
19 assault response and training program that shall consist of  
20 members who are directly involved with the use, management, and  
21 testing of sexual assault evidence collection kits, or are



1 involved with, communicate with, or otherwise support sexual  
2 assault victims, including but not limited to the respective  
3 police departments of each county, the state or county Combined  
4 DNA Index System administrator, the respective prosecuting  
5 attorney departments of each county, and sexual assault service  
6 providers.

7 (b) The Hawaii sexual assault response and training  
8 program shall have regularly scheduled meetings to strengthen  
9 the coordinated community response and level of quality care for  
10 victims of sexual assault, and shall develop and maintain:

- 11 (1) Specific guidelines for all medical forensic  
12 examinations in the State, which shall be issued to  
13 all sex assault programs and centers, county  
14 contractors, and any other facilities that perform  
15 medical forensic examinations;
- 16 (2) Protocol for collection of forensic evidence included  
17 within a sexual assault evidence collection kit;
- 18 (3) A statewide standard data set, including status and  
19 location information that all counties shall include  
20 in their respective sexual assault evidence collection  
21 kit tracking systems;



1 (4) Policies and procedures for sex assault programs and  
2 centers, county contractors, and any other facilities  
3 that retain possession of sexual assault evidence  
4 collection kits under this chapter regarding proper  
5 preservation, transfer, tracking, and disposal of  
6 kits; and

7 (5) Required disclosures that shall be made to any person  
8 undergoing a medical forensic examination, including  
9 but not limited to the length of time a kit may be  
10 stored or retained, the point at which a kit may be  
11 disposed, and the person's ability to access the  
12 status of their kit through the appropriate county  
13 tracking system.

14 § -3 Annual statewide inventory and report of sexual  
15 assault evidence collection kits. The department shall prepare  
16 and submit an annual report to the president of the senate and  
17 speaker of the house of representatives no later than twenty  
18 days prior to the convening of each regular session, beginning  
19 with the regular session of 2019, detailing for the prior fiscal  
20 year:



- 1 (1) The number of sexual assault evidence collection kits  
2 collected in each county;
- 3 (2) The number of reported sexual assault evidence  
4 collection kits collected in each county;
- 5 (3) The number of unreported sexual assault evidence  
6 collection kits collected in each county;
- 7 (4) The number of reported sexual assault evidence  
8 collection kits that were submitted to an accredited  
9 and approved lab for analysis;
- 10 (5) Of the reported sexual assault evidence collection  
11 kits submitted to an accredited and approved lab for  
12 analysis, the number for which analysis has been  
13 completed;
- 14 (6) The number of reported sexual assault evidence  
15 collection kits that were not submitted to an  
16 accredited and approved lab for analysis;
- 17 (7) The number of sexual assault evidence collection kits  
18 disposed of in each county, pursuant to section -4;
- 19 (8) The number of sexual assault evidence collection kits  
20 disposed of in each county, for reasons not provided  
21 in section -4, and the reason for disposal; and



1 (9) All reasons any kit was in an entity's possession for  
2 longer than the periods allowed under section -5.  
3 The report shall also be made available to the public on the  
4 department's website.

5 § -4 Unreported sexual assault evidence collection kits.

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

8 (1) May request in writing that the unreported kit be held  
9 by the sexual assault program or center in that  
10 county; provided that if the victim does not so  
11 request, then the appropriate law enforcement agency  
12 shall take possession of the unreported kit pursuant  
13 to section -5;

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

17 (3) Shall be informed of the date the victim's kit will be  
18 disposed of, in writing at the time of the  
19 examination.

20 (b) Agencies, organizations, and other entities in  
21 possession of unreported sexual assault evidence collection kits





1 shall store the kits for at least five years if the victim was  
2 eighteen years of age or older at the time of incident, and at  
3 least twenty years if the victim was under eighteen years of age  
4 at the time of incident.

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

12       (b) A notified law enforcement agency shall:

13       (1) Take possession of the sexual assault evidence  
14 collection kit from the agency, program, center, or  
15 other entity that collected the kit within three  
16 business days of receiving notification, if it is  
17 either a reported sexual assault evidence collection  
18 kits or an unreported sexual assault evidence  
19 collection kit that the victim has not requested to be  
20 held by the sexual assault program or center in that  
21 county;



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



1 (d) The state Combined DNA Index System administrator or  
2 designee shall enter a DNA profile into the Combined DNA Index  
3 System database; provided that the testing of a sexual assault  
4 evidence collection kit resulted in an eligible DNA profile;  
5 provided further that:

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

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

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



1 (f) 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 (g) 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 (h) 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  
20 agencies outside of the authority of the State; or



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

18          (1) Track the status of sexual assault evidence collection  
19          kits from the specimen collection site to final  
20          storage or disposal, including but not limited to the  
21          initial collection, inventory, and storage by law



1 enforcement agencies or accredited and approved DNA  
2 laboratories; analysis at accredited and approved DNA  
3 laboratories; and storage or disposal after completion  
4 of analysis;

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

9 (3) Allow victims of sexual assault to access the system  
10 for the location and status of their respective sexual  
11 assault evidence collection kits.

12 (b) All agencies, organizations, and other entities  
13 approved by the department and in the chain of custody of sexual  
14 assault evidence collection kits shall participate in the  
15 tracking system by updating the status and location of kits, as  
16 appropriate. The department shall have access to all tracking  
17 systems statewide, at all times.

18 **§ -7 Victims' right to notification and other**  
19 **information.** (a) A sexual assault victim has the right to  
20 receive a medical forensic examination, regardless of whether



1 the victim chooses to report the assault to a law enforcement  
2 agency.

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

8 (c) A sexual assault victim shall be provided with the  
9 contact information for the designated liaison or liaisons at  
10 the time that the victim's sexual assault evidence collection  
11 kit is collected.

12 (d) In advance of or during a medical forensic examination  
13 or law enforcement agency interview, medical professionals,  
14 victim advocates, law enforcement officers, or prosecutors shall  
15 provide a sexual assault victim with a physical document  
16 developed by the Hawaii sexual assault response and training  
17 program that identifies the victim's rights under this chapter,  
18 including:

19 (1) Support from, and consultation with, a crisis worker  
20 at the time that a sexual assault evidence collection



- 1 kit is collected; provided that sufficient funding is  
2 available;
- 3 (2) Information about the current location, analysis date  
4 and status, and estimated disposal date of the  
5 victim's sexual assault evidence collection kit;
- 6 (3) Notification when there is any major development, as  
7 defined in section 801D-2, in a case that the victim  
8 reported to a law enforcement agency, including  
9 whether the case has been closed or reopened;
- 10 (4) Designation of a person of the victim's choosing to  
11 act as a recipient of the information provided under  
12 this subsection;
- 13 (5) Information on how to report an offense to a law  
14 enforcement agency and how to request that the  
15 victim's sexual assault evidence collection kit be  
16 analyzed in the future; provided that the victim  
17 either chose not to report the offense at the time the  
18 victim's kit was collected, or previously withdrew the  
19 report but later chooses to reinstate the report; and





1 (6) Information about the availability of crime victim  
2 compensation and other services for victims of sexual  
3 assault, as appropriate."

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

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

11 SECTION 4. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$ or so much  
13 thereof as may be necessary for fiscal year 2018-2019 for all  
14 costs related to testing sexual assault evidence collection  
15 kits. The sum appropriated shall be allocated as follows:

- 16 \$ to the city and county of Honolulu;
- 17 \$ to the county of Maui;
- 18 \$ to the county of Hawaii; and
- 19 \$ to the county of Kauai.

20 The sum appropriated shall be expended by the counties for  
21 the purposes of this Act.



**1** SECTION 5. This Act shall take effect on July 1, 2050.



**Report Title:**

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

**Description:**

Creates a Hawaii Sexual Assault Response and Training Program 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 by the Attorney General to the Senate President and Speaker of the House. Appropriates funds.  
(HB2131 HD1)

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

