

JAN 20 2017

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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 state 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);
- 18 (D) The police have sufficient evidence that a crime  
19 did not occur (i.e., unfounded crimes); and



1 (E) The perpetrator has a DNA profile in CODIS, the  
2 FBI's combined DNA Index System, as a convicted  
3 felon;

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

14 (A) Category 1: Multiple suspects involved in the case;  
15 suspect is unknown; victim is a minor (under eighteen  
16 years old); suspected serial offender.

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18 (e.g., consent issue); complaint was withdrawn and  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



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

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

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

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

16 (1) Providing certain rights to survivors of sexual  
17 assault;

18 (2) Establishing mandatory requirements for the testing of  
19 kits in accordance with the malama kakou project  
20 guidelines;



1 (3) Requiring annual reporting by the department of the  
2 attorney general to the legislature of statistical  
3 data pertaining to sexual assault evidence collection  
4 kits; and

5 (4) Requiring additional reports by the department of the  
6 attorney general on the progress of implementing the  
7 malama kakou project guidelines.

8 SECTION 2. Chapter 801D, Hawaii Revised Statutes, is  
9 amended by adding a new section to part V to be appropriately  
10 designated and to read as follows:

11 "§801-D Sexual assault survivors' rights. (a) A  
12 sexual assault survivor has the following rights:

13 (1) The right not to be prevented from, or charged for,  
14 receiving a medical forensic examination;

15 (2) The right, subject to paragraph (5), to have a sexual  
16 assault evidence collection kit or its probative  
17 contents preserved, without charge, for the duration  
18 of the maximum applicable statute of limitations or  
19 twenty years, whichever is shorter;

20 (3) The right to be informed of any result of a sexual  
21 assault evidence collection kit, including a DNA



1 profile match, toxicology report, or other information  
2 collected as part of a medical forensic examination,  
3 provided that disclosure would not impede or  
4 compromise an ongoing investigation;

5 (4) The right to be informed, in writing, of policies  
6 governing the collection and preservation of a sexual  
7 assault evidence collection kit;

8 (5) The right, upon written request, to receive written  
9 notification from the appropriate official with  
10 custody not later than sixty days before the date of  
11 the intended destruction or disposal of a victim's  
12 sexual assault evidence collection kit; and, upon  
13 written request by the victim, to be allowed the  
14 further preservation of the kit or its probative  
15 contents; and

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

18 (b) The rights provided in subsection (a) shall apply to  
19 any sexual assault survivor who has undergone a medical forensic  
20 examination that produced a sexual assault evidence collection  
21 kit."



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

4 "§844D- Testing of sexual assault evidence collection  
5 kits; mandatory requirements. (a) Law enforcement agencies and  
6 departments charged with the testing of sexual assault evidence  
7 collection kits shall test all kits in accordance with the plans  
8 and procedures for the disposition of currently untested kits  
9 and new kits established by the department of the attorney  
10 general pursuant to section 884D-24.

11 (b) All kits that meet testing guidelines shall be  
12 submitted to an accredited lab for testing within ninety days  
13 after receipt by a law enforcement agency."

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

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





1           (b) By September 1, 2016, each law enforcement agency and  
2 department subject to subsection (a) shall compile, in writing,  
3 a report containing the number of untested sexual assault  
4 evidence collection kits in the possession of the agency or  
5 department and the date the sexual assault evidence collection  
6 kit was collected. The reports shall be transmitted to the  
7 department of the attorney general.

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

18           (1) An explanation of the processes that were used in the  
19 past to decide which sexual assault evidence  
20 collection kits were and were not tested;



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



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



1           (e) By July 1, 2018, all law enforcement agencies and  
2 departments shall complete the testing of all untested sexual  
3 assault evidence collection kits in accordance with criteria and  
4 policies established and reported by the department of the  
5 attorney general pursuant to subsection (c).

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

12           (1) The number of sexual assault evidence collection kits  
13 reported in the prior year to the police departments  
14 of all four counties;

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

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



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

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

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

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

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

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

20       SECTION 5. The department of the attorney general shall  
21       submit a report to the legislature no later than twenty days



1 prior to the convening of the regular session of 2018 that shall  
2 include:

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

16 SECTION 6. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 7. This Act shall take effect upon its approval.

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# S.B. NO. 506

**Report Title:**

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

**Description:**

Requires annual reporting to the legislature by the AG of statistical data pertaining to the testing of sexual assault evidence collection kits. Provides certain rights to sexual assault survivors. Institutes mandatory testing requirements in accordance with AG guidelines. Requires AG to report to 2018 legislature on the progress of implementing AG guidelines.

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

