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DEPT. COMM. NO. 205

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December 26, 2019

The Honorable Ronald D. Kouchi
President of the Senate
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki
Speaker and Members of the House of
Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi and Speaker Saiki:

For your information and consideration, I am transmitting a copy of the Department of the Attorney General's Annual Statewide Inventory and Report of Sexual Assault Evidence Collection Kits as required by section 844 G-3, Hawaii Revised Statutes (HRS). In accordance with Section 93-16, HRS, I am also informing you that the report may be viewed electronically at <http://ag.hawaii.gov/publications/reports/reports-to-the-legislature/>.

If you have any questions or concerns, please feel free to call me at 586-1282.

Sincerely,

Clare E. Connors
Attorney General

Enclosure

State of Hawai'i
Department of the Attorney General



ANNUAL STATEWIDE INVENTORY AND REPORT OF
SEXUAL ASSAULT EVIDENCE COLLECTION KITS

Required by Section 844G-3,
Hawaii Revised Statutes

Submitted to
The Thirtieth State Legislature
Regular Session of 2020

A. Introduction

Act 113, Session Laws of Hawaii (SLH) 2018, added a new chapter, subsequently designated as chapter 844G by the Revisor of Statutes, to Title 38, Hawaii Revised Statutes (HRS), that directed the Department of the Attorney General to establish the Hawaii Sexual Assault Response and Training Program (HSART); required an annual statewide inventory and report of sexual assault evidence collection kits; provided for storage options of unreported sexual assault evidence collection kits; established mandatory submission and testing requirements for sexual assault evidence collection kits; required a tracking system for sexual assault evidence collection kits; and provided guidelines for a victim's right to notification and other information.

Section 844G-2(a), HRS, requires that the Department of the Attorney General (Department) establish HSART with members who are directly involved with the use, management, and testing of sexual assault evidence collection kits, or are involved with, communicate with, or otherwise support sexual assault victims. Section 844G-2(a) provides that the members should include, but not be limited to, the respective police departments of each county, the state or county Combined DNA Index System (CODIS) administrator, respective prosecuting attorney departments of each county, and sexual assault service providers.

Prior to Act 113, a federally funded HSART, managed by Kapiolani Medical Center for Women & Children, The Sex Abuse Treatment Center (SATC), operated during a fifteen year period from 1999 to 2014. Under SATC's leadership, HSART members adopted national standards in the development and use of a statewide sexual assault evidence collection kit. HSART members also collaboratively engaged in dialogue, coordinated training, achieved statewide standardization, identified and resolved problems, assessed effective practices, and provided victim-centered services. HSART, as established pursuant to section 844G-2(a), is intended to build on these activities and accomplishments, in addition to the work completed by the Act 207 (SLH 2016)¹ Working Group and the Annual Report Regarding Sexual Assault Evidence Collection Kits requested by House Concurrent Resolution No. 133, House Resolution No. 83, and Senate Resolution No. 44, S.D. 1 (adopted by the 2017 Legislature).

In addition to the Department, the members of HSART include:

Honolulu Police Department
Hawaii Police Department
Maui Police Department
Kauai Police Department
Department of the Prosecuting Attorney, City and County of Honolulu

¹ Act 207 "Report on Untested Sexual Assault Evidence Collection Kits Retained by County Police Departments. Plans and Procedures for the Disposition of Currently Untested Kits and New Kits, and Related Information" was submitted to the Twenty-Ninth State Legislature Regular Session of 2017 on December 1, 2016.

Office of the Prosecuting Attorney, Hawaii County
Department of the Prosecuting Attorney, Maui County
Office of the Prosecuting Attorney, Kauai County
Kapiolani Medical Center for Women & Children, The Sex Abuse Treatment Center
YWCA of Hawaii Island, Sexual Assault Support Services
Child and Family Service, Maui Sexual Assault Center
YWCA of Kauai, Sexual Assault Treatment Program
CODIS Administrator
Two Sexual Assault Forensic Examiners
Two Sexual Assault Nurse Examiners

The Department thanks the HSART members who have been instrumental in the development and completion of this report. The report will be available to the public on the Department's website in January 2020.

B. Annual Statewide Inventory and Report of Sexual Assault Evidence Collection Kits

The reporting period is for the fiscal year (FY) covering July 1, 2018 – June 30, 2019.

The data in this report reflects the status of Sexual Assault Evidence Collection Kits (SAKs) in the State of Hawaii as of the end-date of the reporting period, June 30, 2019, and is not a representation of the status of the kits at the time of the submission of this report. The HSART members worked to ensure that the data contained in this report is clearly defined and that relevant definitions are provided.

Definitions from Section 844G-1, HRS

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

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

"Department" means the department of the attorney general.

"DNA" means deoxyribonucleic acid.

"DNA analysis" refers to the following process:

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

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

- (1) The victim reported a sexual offense to a law enforcement agency; or
- (2) The victim reported a sexual offense to a law enforcement agency and a formal complaint was generated; the victim subsequently requested that the complaint be withdrawn; but the victim subsequently chose to reinstate the complaint.

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

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

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

- (1) The victim chose not to report a sexual offense to a law enforcement agency; or
- (2) The victim reported a sexual offense to a law enforcement agency and a formal complaint was generated; but the complaint was subsequently withdrawn at the victim's request.

Table A, Statewide Data of SAKs, by County, provides the data for the section 844G-3 annual report. Following each data element below is a clarification of the data as established by HSART members.

- (1) The number of sexual assault evidence collection kits collected in each county.
Which means SAKs collected for sexual assaults reported and not reported to law enforcement agencies.
- (2) The number of reported sexual assault evidence collection kits collected in each county.
Which means SAKs collected for sexual assaults reported to law enforcement agencies.
- (3) The number of unreported sexual assault evidence collection kits collected in each county.
Which means SAKs collected for sexual assaults not reported to law enforcement agencies.
- (4) The number of reported sexual assault evidence collection kits that were submitted to an accredited and approved DNA laboratory for analysis.
Which means the total number of SAKs submitted for DNA analysis during the reporting period, regardless of when the SAKs were collected or the testing

status of the SAKs (e.g., SAK is in process of testing or testing was completed). This number may include SAKs collected prior to the reporting period but submitted for DNA analysis during the reporting period.

“Submitted” means possession of the SAK has been relinquished by the agency for direct delivery to an accredited and approved DNA laboratory for DNA analysis.

For the Honolulu Police Department (HPD), when testing will be completed by the HPD Scientific Investigation Section (SIS) lab, “submitted” means when possession of the SAK is relinquished by the HPD evidence specialist and the SAK is placed into the HPD-SIS evidence vault.

- (5) Of the reported sexual assault evidence collection kits submitted² to an accredited and approved DNA laboratory for analysis, the number for which analysis has been completed.
Which means SAKs that have been returned to the submitting agency with DNA analysis results and reports, regardless of when they were submitted for DNA analysis. This may include SAKs submitted for DNA analysis prior to the reporting period for which results were returned during the reporting period.
- (6) The number of reported sexual assault evidence collection kits that were not submitted to an accredited and approved DNA laboratory for analysis.
Which means SAKs collected during the reporting period (as indicated in Item 2 of Table A), where a decision has been made to not submit the SAK for DNA analysis. Table B lists the justification, by county, as to why the SAKs were not submitted for analysis.
- (7) The number of sexual assault evidence collection kits disposed of in each county, pursuant to section 844G-4.
Which means SAKs for cases not reported to law enforcement agencies that have been disposed of.
- (8) The number of sexual assault evidence collection kits disposed of in each county, for reasons not provided in section 844G-4, and the reason for disposal.
Which means SAKs for cases reported to law enforcement agencies that have been disposed of. The reason for disposal will be listed in Item 8A of Table A.

² Definition of “Submitted” is provided in item 4.

- (9) All reasons any kit was in an entity's possession for longer than the periods allowed under section 844G-5.

Explanations for a sexual assault evidence collection kit being in an agency's possession longer than allowable time limits specified in section 844G-5.

Timeframes allowed under section 844G-5 – (entity in parentheses has responsibility for meeting timeframes)

- (A) *From kit collection to police notification (Sexual Assault Center responsible for collecting kit). Time: 24 hours*
- (B) *From notification to police to police taking possession (Police) reported or unreported but wants police to take custody. Time: 3 business days*
- (C) *From police taking possession to request testing to lab (Police). Time: 15 business days*
- (D) *From request date, notification to police to accept/reject (Lab). Time: 14 days*
- (E) *From acceptance by lab, submit for testing (Police). Time: 10 business days*
- (F) *Average completion rate for testing of the SAK (Lab) Prior to July 1, 2023 Time: 180 days*

Average completion rate for testing of the SAK (Lab) On/after July 1, 2023 Time: 90 days

Note: Testing of the SAK is considered completed when the testing results report is returned from the testing lab to the requesting law enforcement agency.

- (10) The number of new prosecutions initiated as a result of an actionable Combined DNA Index System hit on sexual assault evidence collection kits collected prior to July 1, 2016.
Which means the number of persons charged by a prosecutor's office, based on an actionable investigative development directly resulting from the DNA analysis of the SAK, for cases in which the SAK was collected prior to July 1, 2016.

“Actionable” is defined in the Act 207 Report to the Legislature (December 2016) as information that re-opens or furthers a case in any jurisdiction that will require the victim’s involvement.

TABLE A
Statewide Data of SAKS, by County
July 1, 2018 – June 30, 2019

Item	Number during the reporting period:	Hawaii County	City and County of Honolulu	Kauai County	Maui County	Total
1	Sexual assault evidence kits collected (reported and unreported)	41	209	23	46	319
2	Sexual assault evidence kits collected – reported to police	39	167	23	43	272
3	Sexual assault evidence kits collected – unreported to police	2	42	0	3	47
4	Sexual assault kits submitted for DNA analysis	40	165	23	42	270
5	Police reported sexual assault evidence kits that have completed DNA analysis	38	141	47	72	298
6	Police reported sexual assault evidence kits collected that have not been submitted for DNA analysis (See Table B below for justification)	3	2	0	1	6
7	Sexual assault evidence kits not reported to police that are disposed of during the reporting period	0	0	0	0	0
8	Sexual assault evidence kits reported to police that are disposed of during the reporting period	0	0	0	0	0
8A	Reasons for disposal	NA	NA	NA	NA	NA
9	Noncompliance with specified timelines (See Table C below for justification)	1	1	1	6	9
10	New prosecutions initiated resulting from actionable CODIS hits (SAK cases prior to July 1, 2016 only)	0	0	0	0	0

For clarification of the data in this table and relevant definitions, refer to pages 2-5 of this report.

TABLE B
Justification for Sexual Assault Evidence Collection Kits Not Submitted to an Accredited and Approved DNA Laboratory for Analysis, by County
July 1, 2018 – June 30, 2019

Justification	Hawaii County	City and County of Honolulu	Kauai County	Maui County	Total
Sexual assault complaint officially withdrawn	2	-	-	-	2
Case turned over to responsible jurisdiction	-	2	-	-	2
Case unfounded	1	-	-	1	2
Total	3	2	-	1	6

TABLE C
Justification for Noncompliance with Specified Timelines, by County
“Justification (# of sexual assault kits)”
July 1, 2018 – June 30, 2019

Timeline Item	Hawaii County	City and County of Honolulu	Kauai County	Maui County
Item 9-A (SANE/SAFE notification to police) (24 Hours)	NA	NA	NA	NA
Item 9-B (Police taking possession) (3 Business Days)	NA	NA	NA	NA
Item 9-C (Police Request to Lab for Testing) (15 Business Days)	NA	Honolulu Police Department	Kauai Police Department	Maui Police Department
		Submitted to evidence storage instead of directly to lab, per HPD protocol (1)	Legal clarification needed regarding mandated juvenile reporting requirements (1)	Unanticipated Staffing Difficulties (1)
Item 9-D (Lab Response to Police) (14 days)	NA	NA	NA	NA
Item 9-E (Police Evidence Submission to Lab) (10 Business Days)	Hawaii Police Department	NA	NA	Maui Police Department
	SAK sent to outsourced lab after difficulty obtaining a required suspect reference sample (1)			Unanticipated Staffing Difficulties (5)
Item 9-F (Lab Testing Completion) (180 Days)	NA	NA	NA	NA

Agencies that provided data for this report:

- Hawaii Police Department
- Honolulu Police Department
- Kauai Police Department
- Maui Police Department
- Department of the Prosecuting Attorney, City and County of Honolulu
- Office of the Prosecuting Attorney, Hawaii County
- Department of the Prosecuting Attorney, Maui County
- Office of the Prosecuting Attorney, Kauai County
- Kapiolani Medical Center for Women & Children, The Sex Abuse Treatment Center
- Child and Family Service, Maui Sexual Assault Center
- YWCA of Hawaii Island, Sexual Assault Support Services
- YWCA of Kauai, Sexual Assault Treatment Program