

LATE TESTIMONY

TO THE HOUSE COMMITTEE ON
JUDICIARY

TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION, 2012
MONDAY, April 2, 2012
2:15 P.M.

TESTIMONY ON HOUSE CONCURRENT RESOLUTION 99
RELATING TO DNA; DEOXYRIBONUCLEIC ACID; BACKLOG; RAPE KIT; SEXUAL
ASSAULT

TO: THE HONORABLE GILBERT KEITH-AGARAN, CHAIR,
AND TO THE HONORABLE KARL RHOADS, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

FROM: STATE REPRESENTATIVE CINDY EVANS.

I am in strong support of House Concurrent Resolution 99, relating to DNA; Deoxyribonucleic acid; backlog; rape kit; sexual activity.

DNA backlogs and Untested Sexual Assault Kits (known as SAK's or as rape kits) is not only a state issue but a national problem. Throughout the Unites States, cities have been reporting discovering thousands of untested rape kits and DNA samples. Some of the extreme cases were Los Angeles (10,000 discovered), Dallas (12,000 discovered), and Detroit (10,500 discovered). Hawaii is not immune to the backlog.

The Honolulu Police Department reported 243 rape cases in 2009. Honolulu spokeswoman Michelle Yu said, "Police solved 55 percent of those cases; leaving 109 unsolved". "Nationally, 41 percent of rape cases were solved that year according to the F.B.I. According to a "Civil Beat" investigation, barely half of Honolulu rape cases were solved in 2009, but 60-80 percent of rape kits collected that year never made it to the crime lab for analysis

One of the problems nationally, is that there is no uniform definition of what a D.N.A. or rape kit backlog is. Some laboratories consider a case backlogged if the DNA has not been analyzed after 90 days, others consider a case backlogged only if the DNA has not been analyzed and the final report sent to the agency that submitted the DNA, while The National Institute of Justice defines a backlogged case as one that has not been tested 30 days after it was submitted to the laboratory. Establishing a set definition of what a backlog would decrease the miscommunication that can occur between different agencies.

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The Honolulu crime lab as well as National Institute of Justice surveys have shown that the high costs of the testing is an issue to crime labs. The Debbie Smith Act of 2004, expanded eligible grantees to include local units of government and authorizes the appropriation of \$151,000,000 each year for fiscal years 2005 through 2009 to states and local units of government to conduct DNA analyses of backlogged DNA samples collected from victims, was a federal initiative in 2004 and reauthorized in 2008 to combat rape kit backlogs in State and County crime laboratories. In 2010, The Honolulu crime lab received \$148,000; to hire an additional staffer and sample testing specifically designed to reduce the rape kit backlog.

Although the financial cost is high for DNA testing as stated in the resolution, the cost on the victim psychological and emotionally is extreme. The rape kit itself is a very unpleasant experience and can be traumatizing by itself, but given the psychological trauma victims endured in their assault, to be "investigated" for sex assault is no small task for the victim. It is disheartening to know that women that stepped forward to pursue justice are not having their courage rewarded.

Behind every rape kit and DNA test is a human being, with every result it can bring closure and justice to a victim. Although there may be times where the testing is redundant or can be left with inconclusive material that may not be pertinent to a Police investigation, it can bring closure to a victim.



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March 30, 2012

COMMITTEE ON JUDICIARY

Rep. Gil Keith-Agaran, Chair
Rep. Karl Rhoads, Vice Chair
Monday, April 2, 2012
2:15 p.m.
Room 325

STRONG SUPPORT HCR 99 - TRACKING DNA RAPE KITS

Aloha Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee!

My name is Myles S. Breiner. I am a former Deputy Prosecuting Attorney, Past President of the Hawaii Association of Criminal Defense Lawyers ("HACDL"), and have for over 25 years practiced law in Hawaii and throughout the U.S. This testimony is respectfully offered on behalf of the 6,000 Hawai'i individuals living behind bars, here in Hawaii and on the mainland.

HCR 99 requests the Department of the Attorney General to create an efficient tracking method for DNA rape kits and reduce the time to process the results.

HACDL is in strong support of this resolution.

Over the years there have been several bills asking for DNA from all arrestees. The HACDL has opposed these bills not only because one of the rights enshrined in our Constitution is 'innocent until proven guilty', also because of the incredible backlog in testing the DNA in unprocessed rape kits.

This resolution asks for the attorney general to work in the county police departments to coordinate with other states and federal law enforcement to create an efficient tracking methods for DNA rape kits to reduce the time to process the results. Mr. Jardine, the first person exonerated by the Hawai'i Innocence Project, after serving 20 years in prison for a crime he did not commit was released because there was still one piece of evidence with DNA that was not his (all the rest of the evidence was destroyed and it took 5 years to get the only piece of evidence left tested for DNA).

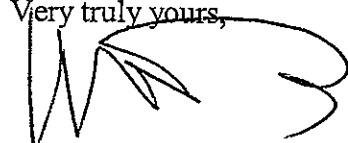
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Coordinating with the counties and other jurisdictions to develop efficient methods from tracking is important so innocent people are not wrongfully convicted and imprisoned.

The Attorney General already is responsible for finding funding for projects, so this would not be an additional burden to that office. In the interest of justice, Hawai'i must do all it can to minimize mistake and use existing evidence to convict those who have caused harm to others.

We urge passage of this resolution and thank the committee for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Myles S. Breiner'. The signature is stylized with a large, sweeping 'M' and a long, horizontal stroke that curves upwards at the end.

MYLES S. BREINER