



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 1907, H.D. 1, RELATING TO SEXUAL ASSAULT.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 3, 2016

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (the Department) appreciates the intent of this bill, submits comments and concerns, and recommends that the Committee adopt the proposed House Draft 2 being offered by the Department of the Prosecuting Attorney, City and County of Honolulu.

The purpose of this bill is to do the following: (1) establish a sexual assault kit tracking program; (2) require a law enforcement agency to submit sexual assault kits obtained in connection to a criminal investigation to an authorized laboratory within ten days; (3) require the laboratory to complete the analysis within six months; (4) require that the laboratory results be uploaded to the state DNA database and data bank identification program and the Federal Bureau of Investigation Combined DNA Index System; (5) require each law enforcement agency that obtains a sexual assault kit in connection to a criminal investigation to report to the Department of the Attorney General annually on the number of sexual assault kits in its possession that have not been submitted to a laboratory for analysis; (6) require the Department of the Attorney General to make arrangements with one or more authorized laboratories to ensure that all sexual assault kits collected prior to July 1, 2016 are analyzed and that the results are entered into the state DNA database and data bank identification program and the Federal Bureau of Investigation Combined DNA Index System; (7) require that all sexual assault kits submitted for analysis be accompanied by a signed certification that the kit evidence is being submitted in connection with a prior or current criminal investigation; (8) require the expungement of any record uploaded to a database if it is determined that the record was not connected to a criminal

investigation; (9) and require the police department of each county, the department of public safety, and the division of conservation and resources enforcement to submit a report to the legislature prior to the convening of the regular session 2017 on the number of kits in its possession and progress on any backlog.

The Department submits comments and concerns regarding the following provision on page 2, line 19, to page 3, line 5:

The department of the attorney general shall make arrangements with one or more laboratories authorized to analyze crime scene samples under section 844D-51 to ensure that all sexual assault kits that were collected prior to July 1, 2016, and that are the subject of a criminal investigation are analyzed and that the results are entered into the state DNA database and data bank identification program and the Federal Bureau of Investigation Combined DNA Index System.

(emphasis added).

This provision is not clear whether the Department is being required to establish contractual and payment relationships with different laboratories, or just facilitate the relationships between the various law enforcement agencies and the laboratories. Different laboratories could be authorized to analyze the evidence in the sexual assault kits. It could be the Honolulu Police Department Crime Laboratory. But it also could be a private accredited laboratory on the mainland. The choice of laboratory could depend on cost, the type of processes and equipment needed for the analysis, the workload or backlog of cases at the laboratories, how quickly the results are needed by the law enforcement agencies, or individual preferences by the law enforcement agencies. The agencies would have to submit the sexual assault kits directly to the chosen laboratory.

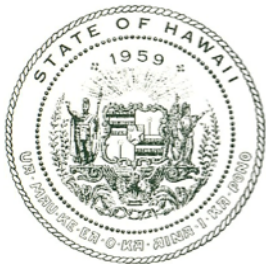
The provision is also not clear about the Department's responsibility to "ensure" that all of the kits that were collected prior to July 1, 2016, are analyzed. The Department does not possess or control any kits. It is not clear how many kits are being held by the various law enforcement agencies that are subject to this provision, including the kits that the law enforcement agencies and prosecutors determined would not need to be tested for identification purposes (e.g., identification was not an issue because the offender was known and did not contest the sexual contact). The Department may need an appropriation of funds to identify,

inventory, and track these kits, and possibly pay for the laboratory analysis of these kits. At this time, the Department does not know how much funding would be needed.

The Department is also uncertain about the accompanying provision that the Department "ensure" that the laboratory results are entered into the databases. Currently, the Honolulu Police Department uploads the results from all of the kits that are their own, or are referred to them by the other county agencies. But if another agency sends kits to a private laboratory, then it appears that the agency would have to be responsible for uploading those results to the databases.

Because of its concerns with this bill, the Department respectfully requests the Committee adopt the proposed House Draft 2 being offered by the Department of the Prosecuting Attorney, City and County of Honolulu, to address concerns about the testing of sexual assault kits. The proposed draft requires law enforcement agencies and departments to annually compile information on untested sexual assault collection kits and transmit the information to the Department of the Attorney General, which is then required to compile the information, prepare a report, and transmit that report to the Legislature. The report would provide a more detailed analysis of the problem, development of a sexual assault kit tracking system, other proposals to address the problem, and identification of resource and funding requirements.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

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March 2, 2016

To: Representative Karl Rhoads, Chair
Representative Joy San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Cathy Betts, Executive Director
Hawaii State Commission on the Status of Women

Re: Testimony in Support, HB 1907, HD1, Relating to Sexual Assault

The Commission supports HB 1907, HD1, which would provide for expedited testing of all forensic sexual assault evidence kits and thorough reporting requirements for law enforcement agencies. Sexual assault evidence kits collect forensic evidence of a rape or sexual assault, often times including the perpetrator's DNA. Kits often serve as a vital tool in successful prosecutions.

Once tested, an offender's DNA can be matched with other offender samples in the FBI's national database, thereby identifying offenders and linking crimes. Many rape kits sit on shelves, ignored or waiting to be tested. The vast majority of rapists are repeat and serial offenders—rape is not a singular crime that is only committed once and then never re-committed. Self-reports of convicted rape and sexual assault offenders serving time in state prisons indicate that two-thirds of offenders had victims under the age of 18, and nearly 4 in 10 imprisoned violent sex offenders said their victims were age 12 or younger.¹ Most are repeat offenders.

In a recent study of college campus sexual assault, it was determined that 9 out of 10 men who commit sexual assaults on college campuses are serial rapists, with up to six victims. Additionally, 8% of university men commit the majority of college campus sexual assault. The numbers and statistics are staggering and frightening. Additionally, rapists often commit multiple other crimes, not only sexual assaults. Thus, testing kits in a timely manner can serve to solve other crimes.

Our community deserves to know how many rape kits go untested throughout the state. While the Commission understands several stakeholders have been discussing the language in this bill to find a functional solution, we ask that you pass this measure for the conversation to continue. The Commission supports HB 1907, HD1.

¹ Bureau of Justice Statistics, An Analysis of Data on Rape and Sexual Assault

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i

March 3, 2016

RE: H.B. 1907, H.D. 1; RELATING TO SEXUAL ASSAULT.

Chair Rhoads, Vice Chair San Buenaventura and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following comments, supporting the intent of S.B. 2309, but asking that you insert the attached Proposed H.D. 2 instead.

While well-intended, we believe that H.B. 1907, H.D. 1, would impose sweeping changes without first understanding the issue that it is trying to address. In particular, we are very concerned that mandatory testing of all untested sexual assault evidence collection kits (“SAECK”) does not take into consideration the victims who stand to be intimately impacted by these mandates. For some victims, who had closed that chapter of their life & moved on, or for any number of other reasons, testing these SAECK without obtaining their approval to test it now, could be extremely traumatizing in a way that has not yet been accounted for. This is particularly true if sufficient forethought and planning has not been done to establish appropriate notification protocol, support services and counseling, and other relevant considerations.

Moreover, blanket mandatory testing—as presented in H.B. 1907, H.D. 1—does not appear to be based on a comprehensive understanding of the procedures or resources currently used to select and prioritize SAECK for testing, nor an understanding of what procedures surrounding SAECK would best meet the needs of victims, the criminal justice system, and ultimately public safety and welfare. While the Department understands and shares the Legislature’s concern about the number of untested SAECK and public safety—particularly given the problems that have surfaced in other states, surrounding untested SAECK—we believe that all of the propositions put forth in H.B. 1907, H.D. 1, are essentially guessing at solutions to a problem that is not yet understood.

Before any unilateral changes are made—and unknown amounts of funding, time and resources dedicated to carrying them out—we strongly urge the Legislature to gain a full

understanding of the issue first. We believe the best way to do this would be for the Department of the Attorney General to coordinate and compile a one-time comprehensive report, which would not only provide the current number of sexual assault evidence collection kits (“SAECK” or “kits”)—total and untested—but more importantly, would thoroughly explore and explain:

- What these numbers do and do not represent;
- To what extent any information gleaned from testing ALL untested kits could or could not be used for various purposes;
- Any potential benefits and/or problems that testing ALL untested kits could pose for victims;
- What has been done, and what can and/or should be done, to minimize the number of untested SAECK in the future, given all relevant considerations; and
- The anticipated costs to test all or certain categories of these kits—including anticipated support resources needed to facilitate this effort—and any potential funding sources.

In summary, we believe that a true understanding of the situation in Hawaii is absolutely necessary, before establishing any system-wide changes or mandates regarding SAECK, if the Legislature wishes to avoid unintended consequences and potential harms involving victims’ rights, constitutional rights, and diligent use of scarce funding and resources. Until the Legislature—and indeed the Attorney General and individual law enforcement agencies—have a full understanding of all relevant factors on a statewide basis, numbers alone have little or no meaning. In fact, without a true understanding of the complete picture, numbers alone may actually give rise to unfounded speculations, misdirected alarm, and ineffective (or worse, detrimental) action that may, in fact, unintentionally harm the very victims that we are trying to protect.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu recommends that the Committee adopt the Proposed H.D. 2 attached below, to appropriately address this issue in a more systematic and conscientious manner. Thank for you the opportunity to testify on this bill.

Report Title:

Evidence; Sexual Assault Kit Tracking Program

Description:

Requires the department of the attorney general to compile a comprehensive report regarding untested sexual assault evidence collection kits, including progress made to reduce the number of untested kits to date, and a multi-faceted approach to minimizing the number of untested kits in the future.

A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT EVIDENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

4 "§844D- Sexual assault evidence; reporting. (a) By December
5 1, 2016, all law enforcement agencies and departments charged
6 with the maintenance, storage, and preservation of sexual
7 assault evidence collection kits shall conduct an inventory of
8 all such kits being stored by the agency or department.

9 (b) By December 1, 2016, each law enforcement agency and
10 department shall compile, in writing, a report containing the
11 number of untested sexual assault evidence collection kits in
12 the possession of the agency or department and the date the
13 sexual assault evidence collection kit was collected. The report
14 shall be transmitted to the attorney general's office.

15 (c) By January 1, 2017, the department of the attorney
16 general shall prepare and transmit a report to the president of
17 the senate and the speaker of the house of representatives
18 containing the number of untested sexual assault evidence

1 collection kits being stored by each county, by each law
2 enforcement agency or department, and the date the untested kit
3 was collected. The report shall also provide information and
4 discussion concerning the following:

5 (i) An explanation of the processes that were used in the
6 past to decide which sexual assault evidence collection kits
7 were and were not tested;

8 (ii) Progress made to reduce the number of untested sexual
9 assault evidence collection kits;

10 (iii) A plan and expected timeframe for further reduction
11 of untested sexual assault evidence collection kits;

12 (iv) A plan for determining priority of untested sexual
13 assault evidence collection kits and new sexual assault evidence
14 collection kits for testing;

15 (v) Processes that have been adopted or will be adopted to
16 better track and inventory tested and untested sexual assault
17 evidence collection kits, including their locations;

18 (vi) Expected outcomes from testing of untested sexual
19 assault evidence collection kits and the testing of new sexual
20 assault evidence collection kits;

21 (vii) Victim notification, support services and other
22 resources that may become necessary in connection with testing

23

1 untested sexual assault evidence kits and new sexual
2 assault evidence collection kits; and

3 (viii) The expected cost of all projected plans and
4 processes for testing untested sexual assault evidence
5 collection kits and for testing new sexual assault evidence
6 collection kits;

7 (xi) An assessment of potential funding sources, including
8 federal grants;

9 (x) Potential areas for further legislative action or policy
10 changes.

11 (d) As used in this section:

12 "Forensic medical examination" means an examination
13 provided to the victim of a sexually-oriented criminal offense
14 by a health care provider for the purpose of gathering and
15 preserving evidence of a sexual assault.

16 "Sexual assault evidence collection kit" means a human
17 biological specimen or specimens collected by a health care
18 provider during a forensic medical examination from the victim
19 of a sexually-oriented criminal offense, and related to a
20 criminal investigation.

21 "Untested sexual assault evidence collection kit" means a
22 sexual assault evidence collection kit that has not been

23

1 submitted to a qualified laboratory for either a serology or DNA
2 test."

3 SECTION 2. New statutory material is underscored.

4 SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: _____

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

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LATE

TESTIMONY IN SUPPORT
HB 1907 – RELATING TO SEX ASSAULT

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Judiciary
March 3, 2016, 2:00 p.m., Conference Room 325

Chair Rhoads, Vice Chair San Buenaventura, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, **SUPPORTS** HB 1907, HD 1 as an HD 2 as proposed by the Department of the Prosecuting Attorney, City and County of Honolulu – Relating to Sex Assault.

As grounds therefore, we concur with the reasons as set forth in the written testimony submitted by the Department of the Prosecuting Attorney, County of Maui.

Accordingly, we **SUPPORT** HB 1907, with the amendments as proposed by the Honolulu Prosecutor. We request that your Committee **PASS** the Bill with said amendments.

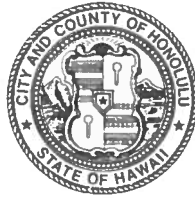
Thank you very much for the opportunity to provide testimony on this Bill.

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LOUIS M. KEALOHA
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CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE WK-WK

March 3, 2016

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

SUBJECT: House Bill No. 1907, H.D. 1, Relating to Sexual Assault

I am Forensic Laboratory Director Wayne Kimoto of the Scientific Investigation Section of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports the intent of House Bill No. 1907, H.D. 1, Relating to Sexual Assault.

However, the HPD has concerns that there are no provisions in House Bill No. 1907, H.D. 1, to fund the costs to hire, equip, and train new personnel. Also, there are no funding provisions to contract, process, analyze, or outsource the sexual assault evidence collected prior to July 1, 2016.

The HPD's crime laboratory faces a high demand for forensic analyses in investigations involving sexual assault, homicide, attempted murder, robbery, aggravated assault, vehicular homicide, and property crime. It also performs other ongoing duties, including the processing of deoxyribonucleic acid (DNA) samples for the state's offender database program pursuant to the procedures of the Federal Bureau of Investigation's Combined DNA Index System (CODIS). The crime laboratory's resources, including funding and staffing, are extremely limited. Without additional trained personnel and resources, the laboratory's ability to process any additional forensic evidence for investigations, trials, and offender databasing will be severely affected.

The Honorable Karl Rhoands, Chair
and Members
Committee on Judiciary
March 3, 2016
Page 2

There are no provisions in this bill to provide adequate preparation time to plan and implement a new program to address the new turnaround times for submission, certification requirement, and evaluation of the sexual assault kits submitted to the HPD's forensic laboratory for analysis.

The HPD has the following concerns regarding the amendments to Chapter 844D, Hawaii Revised Statutes (HRS), which are proposed in House Bill No. 1907, H.D. 1:

1. There are no provisions in this bill to fund the costs to hire, equip, and train new personnel. In addition, there are no provisions to process, analyze, or outsource the forensic evidence. The bill does not provide adequate planning and preparation time necessary to implement the proposed amendments to Chapter 844D.

The total costs are approximately \$3,035,527 in 2016; \$765,595 in 2017; \$803,605 in 2018, and \$803,610 per year thereafter and are apportioned as follows:

- Under the current bargaining agreement, the proposed laboratory costs for eight analysts (two SR24C + six SR20C + 67.16% Fringe) are \$639,487 per year in 2016, \$661,833 in 2017, and \$699,845 per year thereafter;
- Administrative costs for software licensing and hardware for eight analysts are \$64,200 in 2016 and \$3,200 per year thereafter;
- Training costs for eight analysts are approximately \$5,140 in 2016 and \$20,560 per year thereafter;
- After implementation, the analysis of approximately 1,500 untested sexual assault kits would be outsourced at a cost of approximately \$2,326,700 in 2016. Laboratory personnel would have to contract, administer, process, review, and upload all submissions and work products done by the outsourced laboratory; and
- Beginning in 2017, the annual analysis cost for supplies to process incoming sexual assault kits would be approximately \$80,000 per year.

2. Appropriations for House Bill No. 1907, H.D. 1, should be in place prior to an implementation date. The appropriations should not lapse at the end of the fiscal year for which the appropriations are made.
3. Eight laboratory analysts are required to address the amendments to Chapter 844D, HRS, proposed in House Bill No. 1907, H.D. 1. To hire and train new crime laboratory personnel is a time-consuming process that requires ten months to one year to complete. An additional year is required for the newly trained analyst to further his or her skills in performing complex casework analyses. Retaining qualified and experienced DNA analysts is also difficult because the private sector and other laboratories offer pay that is more competitive.

In addition, the following revisions to House Bill No. 1907, H.D. 1, are required:

Section 1, page 2, lines 3 through 8:

"(3) The results of all sexual assault kits submitted for analysis and analyzed shall be uploaded, pursuant to rules and internal operations established by the department and the procedures of the Federal Bureau of Investigation, to the state DNA database and data bank identification program and the Federal Bureau of Investigation Combined DNA Index System, respectively; and"

Section 1, page 2, subparagraph (b), lines 19 through 21; and page 3, lines 1 through 5:

"(b) The department in consultation with the department of the attorney general, shall make arrangements with one or more laboratories authorized to analyze crime scene samples under section 844D-51 to ensure that all sexual assault kits that were collected prior to July 1, 2016, and that are the subject of a criminal investigation are analyzed and that the results entered into the state DNA database and data bank identification program and the Federal Bureau of Investigation Combined DNA Index System in accordance with applicable rules and procedures."

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
March 3, 2016
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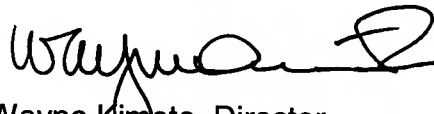
The HPD recognizes that DNA information is a valuable tool in assisting with the investigative efforts for law enforcement. However, the passage of House Bill No. 1907, H.D. 1, will require time and appropriations to create positions, hire and train personnel, cover analysis costs, and mitigate potential impacts to the entire criminal justice process.

With the current laboratory resources, the test-all policy proposed by the amendment to Chapter 844D would create further delays in the crime laboratory due to the increased workload and ultimately add to the backlog of all cases awaiting forensic DNA analysis.

The HPD supports the intent of House Bill No. 1907, H.D. 1, Relating to Sexual Assault, with cautious consideration of the concerns and addition of the proposed amendments stated in this testimony.

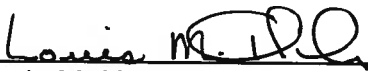
Thank you for the opportunity to testify.

Sincerely,



Wayne Kimoto, Director
Scientific Investigation Section

APPROVED:



Louis M. Kealoha
Chief of Police

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 29, 2016 3:38 PM
To: JUDtestimony
Cc: annsfreed@gmail.com
Subject: Submitted testimony for HB1907 on Mar 3, 2016 14:00PM

HB1907

Submitted on: 2/29/2016

Testimony for JUD on Mar 3, 2016 14:00PM in Conference Room 325

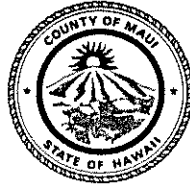
Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Hawaii Women's Coalition	Support	No

Comments: We are in strong support of this measure. The Coalition has long suspected that large numbers of rape kits have gone untested, thus letting serial rapists continue to prey upon women. Recent testimony has verified this but we find the number untested staggering and outrageous. Requiring reports to the legislature seems prudent. Please pass this bill. Mahalo, Ann S. Freed, Co-Chair Hawaii Women's Coalition

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ALAN M. ARAKAWA
Mayor



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Deputy Prosecuting Attorney
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TESTIMONY
ON
HB 1907, HD 1 - RELATING TO SEXUAL ASSAULT

March 3, 2016

The Honorable Karl Rhoads
Chair
The Honorable Joy A. San Buenaventura
Vice Chair
and Members
House Committee on Judiciary

Chair Rhoads, Vice Chair San Buenaventura and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS HB 1907, HD 1 AS AN HD 2 as proposed by the Department of the Prosecuting Attorney, City and County of Honolulu. The proposed HD 2 will require law enforcement agencies and departments to compile information on untested sexual assault evidence collection kits (SAECKs) and transmit the information to the Department of the Attorney General, and requires the Department of the Attorney General to transmit that information to the President of the Senate and Speaker of the House.

We believe that proposed procedure will give an accurate status of the number and location of all untested SAECKs. This will help the Legislature and all involved agencies to determine the best course of action to address the issue of untested SAECKs.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill with the amendments proposed by the Honolulu Department of the Prosecuting Attorney. We ask that the committee PASS HB 1907, HD 1 WITH THESE PROPOSED AMENDMENTS AS HD 2.

Thank you very much for the opportunity to provide testimony on this bill.

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LATE

OFFICE OF THE PROSECUTING ATTORNEY

TESTIMONY IN SUPPORT OF HOUSE BILL 1907, HD1

A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT

COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Thursday, March 3, 2016, 2:00 pm
State Capitol, Senate Conference Room 325

Honorable Chair Rhoads, Honorable Vice-Chair San Buenaventura, and Members of the Committee Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 1907, HD1.

This measure establishes the Sexual Assault Evidence Collection Kit (SAECK) Tracking Program.

The Office of the Prosecuting Attorney, County of Hawai'i supports HB1907, HD1 as an HD2 as proposed by the Department of the Prosecuting Attorney, City and County of Honolulu. We believe that the proposed procedure will give an accurate accounting of all untested SAECKs. This information will assist the Legislature and all involved agencies to determine the best strategy to address the issue of untested SAECKs.

Accordingly, the Office of the Prosecuting Attorney, County of Hawai'i supports the passage of House Bill No. 1907, HD1, with the amendments proposed by the Honolulu Department of the Prosecuting Attorney as an HD2. Thank you for the opportunity to testify on this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 02, 2016 10:02 AM
To: JUDtestimony
Cc: laurie.field@ppvnh.org
Subject: *Submitted testimony for HB1907 on Mar 3, 2016 14:00PM*

HB1907

Submitted on: 3/2/2016

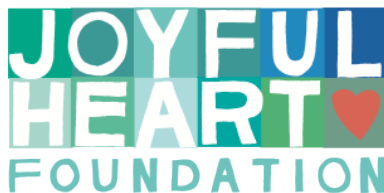
Testimony for JUD on Mar 3, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

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National Chief
Executive Officer

Kata Issari
Executive Director,
Hawai'i Region

March 2, 2016

TO: Rep. Karl Rhoads, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

FROM: Kata Issari
Executive Director, Hawai'i
Joyful Heart Foundation

RE: Testimony in Support, HB1907, Relating to Sexual Assault

Thank you for this opportunity to submit testimony in support of HB1907, which would establish a sexual assault evidence kit tracking program.

About the Joyful Heart Foundation

The Joyful Heart Foundation was founded in Kailua-Kona in 2004 by *Law & Order: Special Victim's Unit* actress and advocate, Mariska Hargitay. Since that time, Joyful Heart has worked locally and nationally to fulfill our mission to heal, educate and empower survivors of sexual assault, domestic violence and child abuse and to shed light into the darkness that surrounds these issues.

Over the last 11 years, Joyful Heart has grown from it's Hawai'i roots into a statewide and national organization that is paving the way for innovative approaches to treating trauma, igniting shifts in the way the public responds to sexual assault, domestic violence, and child abuse, while advancing policies and legislation at local, regional and federal levels to ensure justice for survivors.

Since 2010, Joyful Heart has made the elimination of the national rape kit backlog its a top advocacy priority. Our advocacy team, along with survivors, board members, researchers and advocates, is at the forefront of identifying backlogs in cities across the country; advocating for federal and regional funding to test backlogged kits and investigate cases; appealing for laws and policies to improve criminal justice responses to sexual violence; and working with jurisdictions to assist them in the development and implementation of survivor-centered policy reforms.

Our work advocating for comprehensive sexual assault evidence kit reform is driven by the ambitious goal of bringing the possibility of healing and increased access to justice to hundreds of thousands of survivors across the country. Through partnerships with federal, state and local government, non-profit organizations, law enforcement, advocates and survivors, we are working to bring attention, critical funding, and reforms to improve the criminal justice response to sexual assault.

The stakes could not be higher. In this country, one in three women experience physical or sexual abuse by an intimate partner in her lifetime, and one in four girls and one in six boys are sexually abused before the age of 18. In Hawai'i , one in seven women have been raped; that's 67,000 women.

The Rape Kit Backlog

DNA evidence can be a powerful tool to solve and prevent crime, yet the federal government estimates that there are hundreds of thousands of untested rape kits sitting in police and crime lab storage facilities across the country. The reality is that because most jurisdictions do not have systems for tracking or counting rape kits, we cannot be sure of the total number of untested kits. This lack of transparency and accountability means that thousands of backlogs remain hidden in jurisdictions across the country and violent offenders remain free.

What matters most is that every single untested rape kit represents a survivor who has taken the courageous step of reporting the crime to the police—a step that more than two-thirds of rape survivors never take. Yet when survivors report and have a rape kit conducted, they are doing everything society asks them to do. When a survivor does report an assault, he or she undergoes an exhaustive, invasive and often re-traumatizing forensic examination that can take four to six hours to complete.

Survivors and the public rightfully assume that the evidence from the crime will be handled carefully and be tested for DNA evidence. However, in too many cases, the decision is made not to test the evidence. Instead, all too often, rape kits end up in a police evidence room or storage facility and never make it to the crime lab. Each of these kits represents a lost opportunity to bring healing and justice to survivors of sexual assault and accountability for perpetrators.

Resources

Jurisdictions across the country often cite a lack of resources, and personnel as the largest barrier to processing more rape kits. Another—rarely acknowledged—cause of the national backlog is the unwillingness among many law enforcement agencies to prioritize and dedicate sufficient resources to sexual assault cases. More than with any other crime, law enforcement frequently disbelieve or even blame victims of sexual assault.

Clearly committing to testing every rape kit requires resources. That's why the Joyful Heart Foundation has worked with allies in the federal government for resources and research to fix this problem. For example, for the first time in 2014 President Obama requested and Congress approved dedicated grant funding through the U.S. Department of Justice to provide communities across the country with vital resources to develop and implement comprehensive, multi-disciplinary rape kit reform. These are funds to: test backlogged kits in police storage facilities that never made it to a crime lab; create multi-disciplinary teams to investigate and prosecute cases connected to a backlog; and address the need for victim notification and re-engagement with the criminal justice system.

Mandating the testing of every sexual assault kit sends a powerful message to survivors that they—and their cases—matter. It sends a message to perpetrators that they will be held accountable for their crimes. It demonstrates a commitment to survivors to do everything possible to bring healing and justice. When jurisdictions test every kit, they solve crimes, bring answers and an opportunity for justice to survivors, exonerate the wrongly convicted and take dangerous criminals off the streets. Consider the experiences of Cleveland and Detroit. Through their backlog reduction programs, they have identified serial offenders who have been acting

with impunity for years, and in some cases decades. Detroit has identified more than 650 serial rapists; Cleveland almost 300. Testing every rape kit is crucial to keeping the men, women and children of Hawai'i safe from dangerous predators.

With the passage of House Bill 1907, Hawai'i joins the growing list of states that are taking legislative action to end the backlog. This bill would create a tracking program that ensures that law enforcement sends rape kits are sent to the lab for testing within 10 days of collection, the lab analyzes the kit within six months of receiving it and enters the results into CODIS, and directs law enforcement agencies to conduct an annual report to the Attorney General about the number of untested kits in their custody. The bill also addressed the backlog of untested kits by mandating the Attorney General to ensure that all rape kits collected prior to July 1, 2016 are tested and entered into the DNA database.

Implementing a sexual assault evidence kit tracking and accountability program in Hawai'i will take a coordinated effort and deep commitment at all levels of our state. Sufficient funding must be dedicated to not only to processing untested rape kits, but also to investigate leads and move cases forward to prosecution. Law enforcement must keep track of every kit booked into evidence and process those kits in a timely way. They must allocate the resources—money, staff, time and technology—to make these reforms happen.

On behalf of survivors across Hawai'i —many of whom have been re-traumatized by the experience of waiting for the investigation and prosecution of their case —I thank you for the attention you have paid to this issue and reiterate our support of HB1907. Survivors deserve nothing less.



THE SEX ABUSE TREATMENT CENTER

LATE

A Program of Kapi'olani Medical Center for Women & Children

Executive Director
Adriana Ramelli

DATE: March 3, 2015

Advisory Board

TO: The Honorable Karl Rhoads, Chair
The Honorable San Buenaventura, Vice Chair
House Committee on Judiciary

President
Mimi Beams

Vice President
Peter Van Zile

FROM: The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

Joanne H. Arizumi

Mark J. Bennett

Andre Bisquera

Marilyn Carlsmith

Dawn Ching

RE: Testimony Supporting the Intent H.B. 1907 H.D. 1
Relating to Sexual Assault

Senator
Suzanne Chun Oakland

Good afternoon Chair Rhoads, Vice Chair San Buenaventura, and members of the House Committee on Judiciary.

Monica Cobb-Adams

Donne Dawson

Dennis Dunn

Councilmember
Carol Fukunaga

David I. Haverly

The Sex Abuse Treatment Center (SATC) supports the intent of H.B. 1907 H.D. 1 to ensure timely processing of new untested sexual assault kits (SAKs) and the reduction of Hawai'i's backlog. However, we strongly recommend that the Committee adopt the amendment proposed by the testimony of the Department of the Prosecuting Attorney, City and County of Honolulu.

Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Joshua A. Wisch

The dialogue that is taking place on the issue of the testing of sexual assault kits as a result of legislative attention is extremely important. However, how we move forward is key. Mandating the testing of all kits, new and backlogged, without a full understanding of its impact and without careful planning, can result in unintended negative consequences.

Following the Honolulu Police Department (HPD) Crime Lab's identification of the number of untested kits, the Department of the Attorney General, the Honolulu Prosecutor's Office, HPD, the HPD Crime Lab, and the SATC met to discuss needed actions. The experiences of pilot jurisdictions funded by research grants from the National Institute of Justice (NIJ) that have engaged in the reduction of untested kits were reviewed. One such pilot project that took place in Detroit, sought to:

1. Conduct a census of all SAKs in police property
2. Identify the factors that resulted in the high numbers of unsubmitted SAKs
3. Develop a plan for testing SAKs and evaluate the efficacy of the plan
4. Create a victim notification protocol and evaluate the efficacy of the protocol

The outcomes of the Detroit pilot project are instructive for Hawai'i. While there is much attention on backlogged kits finally being tested, what happened in the process for Detroit needs to be considered and folded into Hawai'i's efforts. For example, in the area of victim notification, the Detroit project found that 29% of survivors notified in

their population had strong positive reactions (e.g., happiness, relief), while 16% of the survivors notified had strong negative reactions (e.g., anger, refusal to talk to investigators). Most, 55%, did not exhibit strong emotional reactions – they were open to hearing what the investigators had to say, but were reserved and cautious. The results of this study inform us tremendously as it shatters the assumption that all victims want such action taken. It instead underscores the importance of thoughtful, responsible planning prior to taking action.

The aforementioned group has begun this important dialogue; areas of needed information have been identified so that Hawai'i can craft actions that have the best chances of succeeding, and that do not inadvertently harm survivors. The SATC respectfully recommends adoption of the Proposed H.D. 2 submitted for your consideration by the Honolulu Prosecuting Attorney as it would first yield a true understanding of the issue here in Hawai'i, and second, would enable lessons learned from pilot projects to be considered and effectively incorporated.

Thank you for this opportunity to testify.

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 29, 2016 7:14 PM
To: JUDtestimony
Cc: joyamarshall0416@gmail.com
Subject: *Submitted testimony for HB1907 on Mar 3, 2016 14:00PM*

HB1907

Submitted on: 2/29/2016

Testimony for JUD on Mar 3, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 29, 2016 5:38 PM
To: JUDtestimony
Cc: breaking-the-silence@hotmail.com
Subject: *Submitted testimony for HB1907 on Mar 3, 2016 14:00PM*

HB1907

Submitted on: 2/29/2016

Testimony for JUD on Mar 3, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

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