



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1907, H.D. 2, S.D. 1, RELATING TO SEXUAL ASSAULT.

**BEFORE THE:**

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON WAYS AND MEANS

**DATE:** Monday, April 04, 2016

**TIME:** 9:15 a.m.

**LOCATION:** State Capitol, Room 211

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.** For more information, contact Lance Goto, Deputy Attorney General, at 586-1160.

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Chairs Keith-Agaran and Tokuda and Members of the Committees:

The Department of the Attorney General (the "Department") supports this bill, and recommends one amendment.

The purpose of this bill is to require all law enforcement agencies and departments charged with maintenance, storage, and preservation of sexual assault evidence collection kits to conduct an inventory of all kits they store and transmit a report of the number of untested sexual assault evidence kits they possess to the Department; and to require the Department to report to the Legislature on the number of untested sexual assault evidence kits being stored, along with other information about the analysis of the kits. The report would include a plan to reduce the number of untested kits, a prioritization system for the testing of the kits, plans for the development of a tracking system for the kits, plans for the development of a victim notification system in connection with the testing of the kits, anticipated costs, and an assessment of potential funding sources.

The Department recommends that the due date for the report to the Legislature, provided on page 1 of the bill, at line 17, be advanced from December 1, 2017, to January 1, 2017. The Department appreciates the concerns of the Legislature regarding the testing of the sexual assault evidence kits and believes that it should be able to complete the report by that date.

The Department respectfully requests that the Committees pass this bill with the recommended amendment.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR  
SENATE COMMITTEE ON JUDICIARY AND LABOR**

**THE HONORABLE JILL N. TOKUDA, CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS**

**Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawai'i**

April 4, 2016

**RE: H.B. 1907, H.D. 2, S.D. 1; RELATING TO SEXUAL ASSAULT.**

Chair Keith-Agaran, Chair Tokuda, Vice-Chair Shimabukuro, Vice-Chair Dela Cruz, members of the Senate Committee on Judiciary and Labor, and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”), supports H.B. 1907, H.D. 2, S.D. 1. However, to ensure timely action upon the issue of untested sexual assault evidence collection kits (“SAECK”), we ask that the deadline for the Department of the Attorney General’s (“AG”) comprehensive assessment and plan be moved up from December 1, 2017, to January 1, 2017.

H.B. 1907, H.D. 2, S.D. 1, would require the AG to formulate a comprehensive assessment and plan to effectively minimize the number of untested SAECK, which would utilize scarce funds and resources responsibly, and map an appropriately expanded system for victim notification and support. We anticipate this would be specifically tailored to Hawaii’s needs, taking into account the various systems for testing SAECK in all counties; the needs of stakeholders—including victims—in all counties; and lessons learned from other states, some of whose experiences are quite well-documented. Thus, the AG would not only report the number and nature of SAECK collected, but more importantly, would provide a complete assessment and plan centered around:

- What these numbers do and do not represent;
- To what extent any information gleaned from testing all untested SAECK could or could not be used for various purposes;

- Any potential benefits and/or problems that testing all untested SAECK could pose for victims;
- What has been done, what is being done, and what can and/or should be done, to minimize the number of untested SAECK, given all relevant considerations; and
- The anticipated costs to test all or certain categories of SAECK—including anticipated victim resources needed to facilitate this effort—and any potential funding sources.

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 strongly believe that a plan of action should not be implemented simply for the sake of acting, without an understanding of the relevant factors on a statewide basis.

Any mandate to immediately test all SAECK would severely discount the need to establish suitable infrastructure and resources beforehand, for those victims who stand to be intimately impacted by such mandate. For some victims, who had closed that chapter of their life and moved on, or for any number of other reasons, mandatory testing of all SAECK could be extremely traumatizing, particularly if there is insufficient planning to establish notification protocol, support services and counseling. Moreover, such blanket mandates would inevitably result in the inefficient use of scarce funding, time and resources, disregarding the current policies and procedures of all local stakeholders.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of H.B. 1907, H.D. 2, S.D. 1, with an amended deadline (on page 1, line 17) of January 1, 2017. Thank for you the opportunity to testify on this bill.

**Report Title:**

Sexual assault evidence collection kit; Reporting; Attorney General; Sexual Assault; Forensic Evidence

**Description:**

Requires the department of the attorney general to prepare a comprehensive assessment and plan regarding untested sexual assault evidence collection kits, including progress made to reduce the number of untested kits to date, and a multi-disciplinary approach to minimizing the number of untested kits moving forward.

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# A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

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

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

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

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

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

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

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

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

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

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

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

(vi) Expected outcomes from testing untested sexual assault evidence collection kits and testing new sexual assault evidence collection kits;

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

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

(viii) The expected cost of all projected plans and processes not yet in place, for testing untested sexual assault evidence collection kits and new sexual assault evidence collection kits;

(xi) An assessment of potential funding sources, including federal grants for which applications have been, will be or may be submitted;

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

(d) As used in this section:

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

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

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

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

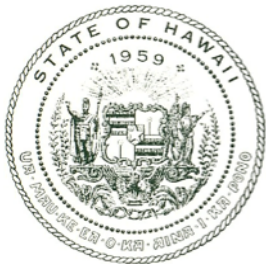
SECTION 2. New statutory material is underscored.

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

INTRODUCED BY: \_\_\_\_\_



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STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



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April 3, 2016

To: Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Members of the Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice Chair  
Members of the Senate Committee on Ways and Means

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

Re: Testimony in Support, HB 1907, HD2, SD1, Relating to Sexual Assault

The Commission supports HB 1907, HD1, SD1, 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.<sup>1</sup> 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, HD2, SD1.

<sup>1</sup> Bureau of Justice Statistics, An Analysis of Data on Rape and Sexual Assault

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, April 03, 2016 8:59 AM  
**To:** JDLTestimony  
**Cc:**  
**Subject:** \*Submitted testimony for HB1907 on Apr 4, 2016 09:15AM\*

**HB1907**

Submitted on: 4/3/2016

Testimony for JDL/WAM on Apr 4, 2016 09:15AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan J. Wurtzburg	American Association of University Women, Hawaii	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:** Friday, April 01, 2016 12:50 PM  
**To:** JDLTestimony  
**Cc:**  
**Subject:** \*Submitted testimony for HB1907 on Apr 4, 2016 09:15AM\*

**HB1907**

Submitted on: 4/1/2016

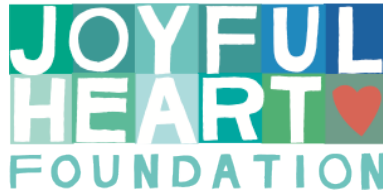
Testimony for JDL/WAM on Apr 4, 2016 09:15AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Betty Sestak	AAUW Windward	Support	No

Comments:

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April 3, 2016

TO: Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Members of the Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice Chair  
Members of the Senate Committee on Ways and Means

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 HB 1907, which would establish a sexual assault evidence kit testing program.

The Joyful Heart Foundation was founded in Kailua-Kona in 2004 and has grown across the country in service of our mission to heal, educate and empower survivors of sexual assault, domestic violence and child abuse and to shed light into the darkness around these issues. Since 2010, Joyful Heart has made the elimination of the national rape kit backlog our top advocacy priority. The stakes for our local community could not be higher; in Hawai'i, one in seven women have been raped.

**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 Honolulu Police Department has stated that 1,500 untested rape kits are in its inventory, going back ten years. There is no information about any untested kits prior to that time. The reality is that because most jurisdictions do not have formalized systems for tracking or counting rape kits, we cannot be sure of the total number of untested kits nationally or in Hawai'i. This lack of transparency and accountability means that untested kits potentially remain hidden in jurisdictions across our state and subsequently violent offenders remain free.

It is important to remember that most sexual assault survivors do not report the crime to the police. Those who do report do everything that society asks of them. They protect evidence by not washing, drinking anything, or combing their hair after an assault. They go through an invasive and uncomfortable medical and

forensic exam that can take four to six hours while parts of their body are photographed and swabbed for DNA. They do all this even though they often just want to go home and take a shower -- because they believe that the evidence from the crime will be handled carefully and be tested for DNA evidence. However, in too many cases, the evidence is not tested.

Unfortunately, more than with any other crime, law enforcement often disbelieves or even blames victims of sexual assault. Coupled with lack of knowledge about sex offender patterns and the potential of DNA evidence to validate crimes, rape kits 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.

The time to act is now, further delay risks adding to the backlog and letting offenders roam free. Joyful Heart stands with every survivor who has put faith in the criminal justice system to take what happened seriously and to do everything possible to apprehend dangerous criminals. Hawai'i can and must do better: we can get there together.

### **Testing Solves Crimes**

When jurisdictions test every kit, they help solve crimes and provide an opportunity for survivors to seek justice. Testing kits takes dangerous criminals off the streets and can also exonerate the wrongly convicted. Research has shown that many rapists are serial offenders – not just of sexual assault, but of a variety of crimes. A 2002 report by the Hawai'i Department of the Attorney General revealed that 1458 registered sex offenders in Hawai'i carried 18,237 criminal charges on their combined records. 33.8% were for violent sex offenses, 26.4% for other violent offenses and 39.8% for minor offenses.

Testing kits is crucial to keeping the men, women and children of Hawai'i safe. When Detroit committed to testing every single one of the city's untested rape kits, they took dangerous offenders off the streets and protected communities. To date, they have identified 729 potential serial rapists who have committed crimes in 40 states. Cleveland has identified 325 serial offenders to date. These criminals have committed a range of crimes such as petty larceny, domestic violence, child sexual abuse, burglary and homicide. And because it is likely that many predators never leave Hawai'i, the chances are high that serial rapists are victimizing in our state with impunity. Rape kits hold the identity of dangerous predators. Testing every rape kit helps apprehend serial offenders and therefore can prevent future sexual assaults and/or increase the rate of successful prosecutions.

### **The Time To Act Is Now**

There has been discussion in Hawai'i that we need to study a solution to the problem, review the existing backlog and/or take more time to understand what happened to create such a large number of untested kits. We must start testing now. As Dr. Rebecca Campbell, a researcher and expert on untested rape kits from Detroit says, "start with what you can manage." The reality is that no lab in the country can test 1,500 kits overnight. As with other communities, we can send our kits to be tested in batches. We can start testing now and still have time to plan development of an infra-structure to support survivors and respond to the DNA hits that are sure to occur.

Moreover, we do not have to do this alone – Cleveland, Detroit, Jacksonville, Memphis, Portland, and many others have already paved the way and charted a course through investigation and prosecution of their cases and victim notification. Lessons learned by Joyful Heart through our partnerships in these communities can help Hawai'i address all of the issues

that will surface. There are many communities that would be glad to help us as we make our way on this journey.

It is prudent to point out that Joyful Heart is a partner in the Bureau of Justice Assistance Sexual Assault Kit Initiative Training and Technical Assistance Project (BJA TTA). Our partners are the country's leading experts on addressing untested rape kits. These experts are a gold mine of information; we have access to them to help Hawai'i address this issue in the best way possible.

Waiting only gives rapists more time to cause harm to our communities. Let's start testing now. Joyful Heart stands ready to do whatever we can to raise funds and generate support for this important mission.

## **Resources**

Jurisdictions across the country often cite a lack of resources and personnel as the largest barriers 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.

Committing to testing every rape kit requires resources. That's why the Joyful Heart Foundation has worked with allies in the federal government to provide the necessary resources and research to fix this problem. The Bureau of Justice Assistance grant program and the National Institute of Justice are only two entities that have funds available now for local jurisdictions 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. Money is available to help test Hawai'i's backlogged kits; there is no reason to delay.

Private labs are also available to help with testing at a reduced rate. Bode Cellmark and Sorenson labs have given a rate from \$600-\$700 a kit to many communities with large numbers of untested kits (such as many of the communities we work with via our BJA TTA project). We are confident that Hawai'i can also access this rate. Moreover, many private labs employ a method of screening each kit that allows them to determine quickly if the kit contains DNA and not waste resources on a kit that will not yield a DNA profile.

We have heard the concerns about the ability to manage the cases that will result from testing. It is crucial to understand that 1,500 kits does not mean that there will be 1,500 cases to investigate or 1,500 survivors to contact. Not every kit will yield a useable profile or hit to a DNA record in CODIS. Not every survivor will want to engage in the criminal process. However, it is impossible to know which kits will identify an assailant, which is why testing each one is universally accepted best practice.

Other communities that have large numbers of kits – Detroit (a city that is bankrupt), Houston, Cleveland, Portland, Jacksonville, etc., have managed to meet the need. Cleveland and Houston, for instance, have created a system where one advocate (in the prosecutor's office and the police department respectively) acts as the central coordinating person for these cases who – among other duties - ensures the sensitive notification of victims, secures victim support and maintains their inclusion in the process. Law enforcement and non-profits doing this work around Hawai'i have the unequivocal support of the community here and we will not let them be overburdened; we will support their needs to do right by these survivors.

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. Survivors must receive support and assistance as they face this new path in their journey to healing. We must all allocate the resources—money, staff, time and technology—to make these reforms happen.

### **Impact on Survivors of Sexual Assault**

It is most important to remember that every single untested rape kit represents a survivor who has taken the courageous step of reporting the crime to the police. In Hawai'i, we have the knowhow to ensure that there is attention to notifying victims about the status of untested sexual assault kits with sensitivity and respect. Developing an infrastructure and garnering funding to support victims can be done while the initial batches of kits are tested.

Of course, being contacted years after an assault to be told that the perpetrator has finally been identified is challenging for many survivors. In jurisdictions across the country, advocates have reported that most survivors are shocked about the new action in their case. But many are eventually happy that the “system has not forgotten them” and that “justice is finally served.” In Detroit 55% of survivors contacted about the renewed action in their case were interested in hearing more about their case. Of those contacted, 29% had a positive reaction and close to 60% agreed to participate in the prosecution of the offender.

Joyful Heart's research on victim notification, which will be released on April 7, 2016, found that survivors want us to know that they are resilient, they do not want to be “coddled” and they believe that *the information about any action in their case belongs to them*. The survivors in our study asserted that when it comes to victim notification, they want to be treated with respect and to be given choice about what will happen next. That means that if they choose not to go forward with their case, then we provide them with resources and honor their wish and leave them alone. It is clear that survivors are at the heart of the decision to press a case.

We must send a powerful message to survivors that they—and their cases—matter by testing every rape kit. Notification in these cases can be done in a way that mitigates the harm. Joyful Heart is an expert on this issue and we are ready to provide training and to work on survivor-centered policies that ensure the well being of each survivor in an untested kit case.

We must send a message to perpetrators that they will be held accountable for their crimes. And we must demonstrate a commitment to survivors to do everything possible to bring healing and justice.

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.

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DATE: April 4, 2016

TO: The Honorable Gilbert Keith-Agaran, Chair  
The Honorable Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

The Honorable Jill Tokuda, Chair  
The Honorable Donovan Dela Cruz, Vice Chair  
Senate Committee on Ways and Means

FROM: The Maui Sexual Assault Center  
A Program of Child & Family Service

RE: Testimony in Support of H. B. 1907, H.D. 2, S.D. 1  
Relating to Sex Assault

Good morning Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz, and members of the Senate Committees on Judiciary and Labor and on Ways and Means:

The Maui Sexual Assault Center (MSAC) supports H.B. 1907 H.D. 2 S.D. 1. The MSAC is a representative of the Maui Sex Assault Response Team, a multidisciplinary team that ensures a victim-centered approach to investigation, prosecution and treatment of sexual assault in Maui County.

The dialogue that is taking place on the issue of the testing of sexual assault kits (SAKs) is extremely important. The MSAC works closely with sex assault victims, from forensic examination through treatment and is committed to ensuring timely, sensitive services. Accordingly, we advocate for the approach to this issue that places the needs of survivors at the forefront; indeed, it is our responsibility to empower victims by offering choices whenever possible. We fear the unintended consequence of mandating to test all SAKs, including the impact of insufficient planning of victim notification. This underscores the importance of thoughtful, responsible planning prior to taking action. The MSAC is advocating for informed action, based on the Detroit study, "Lessons Learned: Developing a SAK Testing Plan," the study advocates for planning by a multidisciplinary team that can together tackle the complex legal, psychological, and evidentiary issues. Representatives from police, prosecution, forensic sciences, medical/nursing, system-based advocacy, and community-based advocacy, ensure that diverse perspectives are considered.

In closing, the legislature has the opportunity to ensure that the SAK issue does not result in a mandate that ties the hands of the many disciplines that work to ensure positive outcomes for survivors; rather, the legislature can address the issue in a more conscientious way places the survivors' needs at center. For these reasons, the MSAC respectfully recommends the passage of H.B. 1907, H.D. 2, S.D. 1. Thank you for the opportunity to testify on this bill.



*Our Mission: Strengthening Families and Fostering the Healthy Development of Children*



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2016 4:39 PM  
**To:** JDLTestimony  
**Cc:**  
**Subject:** \*Submitted testimony for HB1907 on Apr 4, 2016 09:15AM\*

**HB1907**

Submitted on: 4/1/2016

Testimony for JDL/WAM on Apr 4, 2016 09:15AM in Conference Room 211

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

Comments:

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# THE SEX ABUSE TREATMENT CENTER

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

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Linda Jameson  
Michael P. Matsumoto  
Robert H. Pantell, MD  
Joshua A. Wisch

**DATE:** April 4, 2016

**TO:** The Honorable Gilbert Keith-Agaran, Chair  
The Honorable Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

The Honorable Jill Tokuda, Chair  
The Honorable Donovan Dela Cruz, Vice Chair  
Senate Committee on Ways and Means

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

**RE:** Testimony in Strong Support of H.B. 1907, H.D. 2, S.D. 1  
Relating to Sexual Assault

Good morning Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz, and members of the Senate Committees on Judiciary and Labor and on Ways and Means.

The Sex Abuse Treatment Center (SATC) has been providing direct services to Hawaii's survivors of sexual violence, their families, and our communities for 40 years. We are there for survivors in the acute crisis setting, and continue on the front line, providing care to those who experience sexual violence. We help them to heal, no matter how long it may take. We see survivors' pain, but—more importantly—we are first-hand witnesses to their strength, courage and recovery.

It is based on the weight and breadth of our experience, caring and advocating for survivors, and our close, generations-long relationships with Hawaii's many communities, that we Strongly Support H.B. 1907 H.D. 2 S.D.1.

The collection of the sexual assault kit (SAK) takes place at the time of the SATC acute forensic examination. It is the SATC physician forensic examiner and crisis worker who are engaged with the survivor, supporting them during the process of evidence collection. Therefore, the SATC has a vested interest in the effective and responsible management and testing of SAKs on behalf of the survivors we serve.

The current dialogue that is taking place on how SAKs should be tested is extremely important. However, during this conversation, it has become clear that a broad and immediate mandate to test all SAKs, new and untested, would result in unintended negative consequences. Many questions and concerns that must be addressed

before passing a law that binds Hawaii to a set, inflexible path remain unanswered and unresolved. A few examples:

1. It is unclear under what circumstances, how, and to what extent victims ought to be engaged with and receive notifications related to the testing of their kits.
2. A requirement that particular SAKs be tested can conflict with a survivor's choices and rights.
3. There are a number of instances when testing a SAK may not make sense, and Hawaii's approach should take them into account. A good understanding of these circumstances requires analysis of Hawaii's real life cases, which has not yet occurred.

In order to do right by survivors and the public at large, Hawaii cannot afford to adopt a "jump first, then think" plan of action. Policy decisions that are not well informed and grounded are at best ineffective, and at worst can be profoundly harmful.

Pilot projects funded by research grants from the National Institute of Justice that have engaged in the reduction of untested SAKs and increased testing of new SAKs can be instructive for Hawaii. One such project in Detroit, Michigan, took place over a period of 2 ½ years and yielded much information. Included for your review is a handout taken directly from the Detroit project, entitled "Lessons Learned: Developing a SAK Testing Plan."

The project's take-home lessons based on Detroit's experiences developing and evaluating a SAK testing plan are invaluable, as they can serve to guide Hawaii's process. The lessons highlighted are:

1. Bring everyone to the table
2. Discuss the purpose and utility of SAK testing
3. Test all SAKs vs. test some SAKs?
4. Funding & resource availability
5. What should we call it? (how does one prioritize)
6. Develop a process for selecting which SAKs will be tested
7. Determine the specific criteria for selecting SAKs
8. Considerations for Statute Of Limitations as selection criteria
9. Budget sufficient time and resources for selecting SAKs
10. Budget extra time for older kits
11. Track and share testing results
12. What happens after testing?
13. When testing results start coming in, expect the unexpected
14. Re-examine and refine testing policies and protocols
15. Consider whether legislative changes are necessary

The first take away message of the project's SAK testing plan is clear. "If the census was completed without the multidisciplinary team, then forming one for the testing phase is paramount. SAK testing raises complex legal, psychological, and evidentiary issues; representatives from police, prosecution, forensic sciences, medical/nursing, system-based advocacy, and community-based advocacy, help ensure that diverse perspectives are considered."

Consistent with the recommendations from the Detroit project, the approach described in H.B. 1907 H.D. 2 S.D. 1 is an order carrying the force of law that will require state and local agencies to come together to develop and implement a comprehensive plan of action to handle both new and untested SAKs in the State of Hawaii within an established timeframe. It is an opportunity to address the many unanswered questions and concerns of frontline practitioners and Hawaii's Legislature; to incorporate lessons learned from other jurisdictions that have undertaken the stepped-up testing of SAKs; and to expand the use of the Federal CODIS DNA database, implementing best practices that are specific to and tailored for Hawaii. Moreover, the policies and procedures that result from H.B. 1907 H.D. 2 S.D. 1 will be subject to both legislative and public scrutiny through a transparent reporting process.

The Detroit project's recommended final step involves the consideration of legislative change. "The process will very likely suggest legislative changes that might be necessary to remedy problems, including, but not limited to: requirements for mandatory kit submissions and timelines for submissions and testing; procedures for retaining kits before and after testing; procedures for handling kits if victims are unsure about possible involvement with the criminal justice system; and tracking mechanisms for identifying where a kit is in the process of submission/testing."

The need for recommended legislative changes may indeed be the outcome of Hawaii's process. However, in order to understand what changes are truly needed for our jurisdiction, the preceding steps reflected in the Detroit project should first be allowed to take place here in Hawaii with the expertise of our local frontline practitioners.

Therefore, the SATC respectfully recommends the passage of H.B. 1907 H.D. 2 S.D. 1.

# Lessons Learned: Developing a SAK Testing Plan

*The take-home lessons from the Detroit SAK ARP based on their experiences developing and evaluating a SAK testing plan.*

*“Where do you start? How do you eat an elephant? One bite at a time.”*

## 1. Bring everyone to the table



If a multidisciplinary team was formed to plan & execute the SAK census, then those same individuals/ organizations are well-positioned to guide the development of a testing plan. If the census was completed without the multidisciplinary team, then forming one for the testing phase is paramount. SAK testing raises complex legal, psychological, and evidentiary issues; representatives from police, prosecution, forensic sciences, medical/nursing, systems-based advocacy, and community-based advocacy, help ensure that diverse perspectives are considered.

## 2. Discuss the purpose & utility of SAK testing

Explore how different team members think about the purpose and value of SAK testing. It's likely that these opinions will be deeply-rooted in their profession & their discipline's roles & responsibilities to society. It is not necessary to come to complete agreement on all issues; the team may “agree to disagree” on some issues and still move forward.

### OPINIONS MIGHT INCLUDE:

- Testing is most useful in stranger assault cases.
- Testing is less useful in non-stranger cases because the identity of the assailant is already known.
- Testing can be useful in non-stranger cases to identify patterns of serial non-stranger assaults.
- Cases that are likely SOL-expired should not be tested to conserve limited testing resources.
- Cases that are likely SOL-expired should be tested in the event a CODIS hit links to a current case.

### 3. Test *all* SAKs vs. test *some* SAKs

The decision whether to test *all* SAKs or *some* SAKs will be influenced by both values (i.e., whether team members believe all kits should be tested, see above) and by practical matters (i.e., funds available to test SAKs). Testing all kits at once, often referred to as the “forklift” approach, is often not feasible. The “Start Small” recommendation can likely be helpful for communities in which testing of all kits is ideal but not practical.



### 4. Funding & resource availability

How many kits can be tested in the immediate future will be determined by current resource availability. However, developing a long-term testing plan—consistent with the jurisdiction’s ultimate decision regarding how many kits should be tested—is important if current resources are not commensurate with that aim. It is quite likely that jurisdictions will need to apply for grants (e.g., federal grants, such as NIJ’s DNA Backlog Reduction Grants; local/state foundation grants) and/or engage in fundraising to secure more resources for testing.

### 5. What should we call it?: Talking about language

Unless testing all kits, teams will have to decide which kits will be tested and in what general order. Here, language matters a great deal as words like, ‘prioritize,’ ‘triage,’ ‘select,’ ‘tier,’ ‘sample,’ etc. have different connotations. For example, the word ‘prioritize’ might imply that kits will be processed in a particular order that is based on their inherent value. Have an explicit conversation about these issues to avoid conflict later.

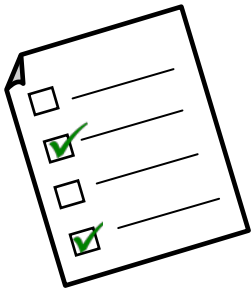
THESAURUS

DICTIONARY

### 6. Develop a process for selecting which SAKs will be tested

If it is not possible to send all SAKs for testing at once, then a process must be developed for selecting which kits will be tested and in what general order. Three main strategies include:

- Select SAKs randomly (this approach could be good when “starting small”)
- Select SAKs after a thorough review of all case material
- Select SAKs based on a shorter list of selection criteria (i.e., information readily available and accessible to speedy decision making), such as SOL expiration



## 7. Determine the specific criteria for selecting SAKs

Whether SAKs will be selected after a thorough case review or by shorter selection criteria, detailed decision rules must be created that specify the circumstances under which a SAK will be selected for testing.

## 8. Considerations for SOL as selection criteria

Statutes of limitations (SOLs) often vary as a function of the nature of the crime. As such, there could be multiple SOL-risk “cut-off” dates. The extent to which a jurisdiction can employ more sensitive criteria (e.g., if [this] and [that] then selection date is \_\_\_) or whether they will have to use a general across-the-board date (that should work for most cases) likely depends on the number of cases to be screened and the resources available for screening. It is also crucial to budget for the time that it will take to test the kit and to have the testing results reviewed/uploaded into CODIS, etc.



## 9. Budget sufficient time and resources for selecting SAKs

Starting small can help develop estimates of how long it will take to identify cases for selection; the time needed for this process will likely be based on the selection criteria. For perspective: The 1,600 SAKs tested in this research project were selected based on three criteria (adjudication status, victim-offender relationship, and statute of limitations) & it took approximately 2,958 staffing hours to review materials and determine case selection eligibility for these SAKs.

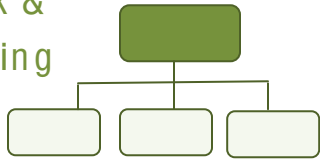


## 10. Budget extra time for older kits

Very old kits may require extra time to prepare for testing/shipping due to peeling labels, missing labels, re-sealing, re-packaging, etc. Forensic science staff may need extra time to review older kits and address any problems that need to be resolved before the laboratory can accept the kit for testing.

Refer back to the *Lessons Learned: Developing a Census* document for reminders on how to *Start Small, Touch It Once, Develop a Central Database, and Support Staff & Volunteers*. All of these lessons are also important for develop testing processes.

## 11. Track & share testing results



It is helpful to track the testing results and share those results with the full multidisciplinary team. Case-specific results may not be appropriate to share widely (e.g., “in case X, victim name Y, we found . . .”). However, aggregate data may be quite useful to the group to track CODIS hits and the nature of those hits (e.g., case-to-case serial offenders).

## 12. What happens after testing?

Devote appropriate attention to developing a plan for what happens after testing; starting small will likely help with this decision. The following are some key issues to consider:

- Who should be informed re: testing results?
- How will post-testing investigations be coordinated?
- How will case-to-case CODIS hits be handled?
- How will current caseloads be handled with these new/old cases being re-opened?
- Can a flexible process be developed to respond to highly time-sensitive cases?

## 13. When testing results start coming in, expect the unexpected

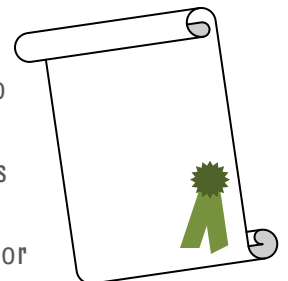
Given the dearth of empirical research on untested SAKs, it is difficult to know whether testing results are typical or atypical. It might be helpful for jurisdictions to connect with other communities who have tackled these issues to compare findings and strategize solutions.

## 14. Re-examine & refine testing policies & protocols

While reviewing existing SAK testing procedures may cause defensiveness at times, it is also possible that jurisdictions will want to make immediate changes to their testing policies. Regardless of the reaction, it is important to revisit the policies regularly as new information/insights will develop throughout the course of resolving the previously-untested SAKs. Take special care to revise selection criteria as needed as criteria may not be as clear-cut or easy to enforce as originally conceived.

## 15. Consider whether legislative changes are necessary

The process will very likely suggest legislative changes that might be necessary to remedy problems, including, but not limited to: requirements for mandatory kit submissions and timelines for submissions and testing; procedures for retaining kits before and after testing; procedures for handling kits if victims are unsure about possible involvement with the criminal justice system; and tracking mechanisms for identifying where a kit is in the process of submission/testing.





Date: April 3, 2016

To: The Honorable Gilbert S.C. Keith-Agaren, Chair  
The Honorable Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

The Honorable Jill N. Tokuda, Chair  
The Honorable Donovan M. Dela Cruz, Vice Chair  
Senate Committee on Ways and Means

From: Lorraine Davis, Chief Operating Officer  
YWCA of Hawaii Island

Re: Testimony Supporting the Intent of H.B. 1907, H.D. 2, S. D. 1  
Relating to Sexual Assault

Good morning, Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz, and members of the Senate Committee on Judiciary and Labor and the Senate Committee on Ways and Means.

The YWCA of Hawaii Island (YWCA) supports H.B. 1907, H.D. 2, S.D. 1.

The current dialogue that is taking place on the issue of the testing of sexual assault kits (SAKS) is extremely important to the work that we do and the victims of sexual assault that we serve. The collection of the SAK takes place at the time of the acute sex assault forensic examination (SAFE) performed by specially trained sex assault nurse examiners (SANEs). The SANE and a YWCA Sexual Assault Support Services (SASS) Advocate are engaged with the victim/survivor, assisting the individual during the process of forensic evidence collection. The YWCA SASS program has a vested interest in effective and responsible management of testing of the SAKs for the victims we serve.

The YWCA SASS program supports H.B. 1907, H.D. 2, S.D. 1. The YWCA SASS program believes it is imperative that SAKs be analyzed not only to aid in prosecution but to afford victims of sexual assault an opportunity to continue to heal and bring closure to the experience. In addressing Hawaii's untested SAKs, the YWCA SASS strongly supports the S.D.1 addition to H.B. 1907, H.D. 2 which enables careful and intentional planning of the testing while keeping victim impact front and center in their decision making process.

The YWCA of Hawaii Island respectfully requests your support on H.B. 1907, H.D. 2, S.D. 1. Thank you for your consideration.

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**WCA Hawai'i Island is dedicated to eliminating racism, empowering women,  
And promoting peace, justice, freedom, and dignity for all.**

**Board of Directors**

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# eliminating racism empowering women

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DATE: April 4, 2016

TO: The Honorable Gilbert Keith-Agaran, Chair  
The Honorable Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

The Honorable Jill Tokuda, Chair  
The Honorable Donovan Dela Cruz, Vice Chair  
Senate Committee on Ways and Means

FROM: Renae Hamilton, Executive Director  
YWCA of Kaua`i

RE: Testimony Supporting H.B. 1907 H.D.2 S.D. 1  
Relating to Sexual Assault

Good morning, Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz, and members of the Senate Committees on Judiciary and Labor and on Ways and Means. My name is Renae Hamilton and I am the Executive Director for the YWCA of Kaua`i.

The YWCA of Kaua`i strongly supports H.B. 1907 H.D. 2 S.D. 1 relating to Sexual Assault. The YWCA is the sole provider on Kaua`i for providing essential services related to sexual assault; crisis intervention, counseling treatment and prevention education. We answer over 100 crisis line calls every year and provide face to face crisis intervention services for an average of 75 women, men, and youth who have been victims of sexual assault.

The YWCA Crisis Counselors work closely with Kauai Police Department, Sexual Assault Nurse Examiners and the Office of the Prosecuting Attorney on cases when the victim has requested an acute forensic examination or when the victim has agreed to a forensic exam as part of a police investigation. The bill before you today addresses the testing of sexual assault kits (SAKS) and the process of having past SAKS tested. The YWCA of Kauai supports the goal of a unilateral mandate to test all SAKS, however, we support this bill which will ensure a careful, thoughtful process is developed first, especially in the area of victim notification. Without a victim centered approach in notification it can lead to victims being re-traumatized or having strong negative reactions as has happened in other states, we should incorporate the important lessons they learned relating to these issues.

In reviewing H.B. 1907 H.D. 2 S.D. 1, it clearly provides an opportunity for all parties; law enforcement, advocates, prosecutors, medical personnel to come together and design a victim centered process that will best meet the needs of victims and help keep our community safer. The Statewide Sexual Assault Response Team which includes law enforcement, advocates, prosecutors and medical personnel have a proven track record of being able to come to the table and find solutions that is victim centered, holds offenders accountable and keeps our communities safer. I'm confident, given the time, all vested parties can design the best process and plan for our state that will meet our mutual goals.

It is vital that neighbor island voices be included in this conversation and are represented at the table. This bill will ensure that all voices are heard and different perspectives are considered.



# eliminating racism empowering women

ywca

On behalf of the staff and Board of Directors, I urge the committee to pass H.B. 1907 H.D. 2 S.D. 1 as written.  
Thank you for this opportunity to testify.



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2016 3:31 PM  
**To:** JDLTestimony  
**Cc:**  
**Subject:** \*Submitted testimony for HB1907 on Apr 4, 2016 09:15AM\*

**HB1907**

Submitted on: 4/1/2016

Testimony for JDL/WAM on Apr 4, 2016 09:15AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ashley Gandiza	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:** Friday, April 01, 2016 5:19 PM  
**To:** JDLTestimony  
**Cc:**  
**Subject:** \*Submitted testimony for HB1907 on Apr 4, 2016 09:15AM\*

**HB1907**

Submitted on: 4/1/2016

Testimony for JDL/WAM on Apr 4, 2016 09:15AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mimi Beams	Individual	Support	No

Comments:

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**Keith Agaran3 - Ashlee**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, April 01, 2016 5:19 PM  
**To:** JDLEstimony  
**Cc:** mimibeams@gmail.com  
**Subject:** \*Submitted testimony for HB1907 on Apr 4, 2016 09:15AM\*

**HB1907**

Submitted on: 4/1/2016

Testimony for JDL/WAM on Apr 4, 2016 09:15AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mimi Beams	Individual	Support	No

Comments:

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Valli Kalei Kanuha, PhD, MSW  
2116 Hillcrest Street  
Honolulu, HI 96817

April 3, 2016

TO: Senator Gilbert S. C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Members of the Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice Chair  
Members of the Senate Committee on Ways and Means

FROM: Valli Kalei Kanuha, PhD, MSW

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

On March 31, three days ago, President Barack Obama proclaimed April 2016 as National Sexual Assault Awareness and Prevention Month. The President stated in his proclamation that the administration is *“taking action to eliminate sexual assault in every corner of our country,”* highlighting *“the National Sexual Assault Kit Initiative, a nationwide, community-based effort to end the backlog of untested rape kits -- instrumental tools used to collect evidence, prosecute perpetrators, and bring closure to victims in the aftermath of an assault”* (<https://www.whitehouse.gov/the-press-office/2016/03/31/presidential-proclamation-national-sexual-assault-awareness-and>).

Unwavering support from the offices of the President and Vice-President and the U.S. Department of Justice – National Institute of Justice, Bureau of Justice Assistance, Office on Violence Against Women and Office for Victims of Crime to national victim advocacy groups including RAINN (Rape, Abuse & Incest National Network), the nation's largest anti-sexual violence organization, The National Alliance to End Sexual Violence and the National Center for Victims of Crime attest to the current significance of national and local initiatives to end the rape kit backlog. As it has historically demonstrated with many social justice issues, the state of Hawaii is on the verge of joining cities around the country to act as a local leader in honoring rape survivors by testing rape evidence kits that have been collected, but languished untested for months and years in unknown numbers and locales.

My name is Valli Kalei Kanuha, Professor of Sociology and Women’s Studies at the University of Hawaii at Manoa, where I have been a tenured faculty member for nearly 20 years. For the past four decades, my primary research, policy and community work has focused on violence against women and children, particularly on domestic violence, sexual assault and child abuse in Native Hawaiian, Asian and other people of color populations, as well as in LGBTQ communities. I have

HB1907 Support Kanuha

been a clinician, consultant and researcher on gender violence for most of my career, and am considered a national expert on these issues.

Based on my 40 years of research and policy background in violence against women and children, I am writing to express very strong support for HB1907 to establish a sexual assault evidence kit testing program to include tracking, monitoring and reporting on Hawaii's existing rape kit backlog, testing of all untested kits and development of policies and procedures to address victim notification for old, current and future evidence kits. My testimony will focus on two points that have been raised by opponents of the original HB1907: the need to develop a planning process and the potential harm to victims in testing all backlogged kits.

#### Need to Develop A Planning Process

Over the past decade, there have been a number of legislative initiatives and investigative inquiries to simply discover whether or not Hawaii indeed had a backlog of untested rape kits. Since the issue was first raised locally, there has been resistance to addressing the problem, mainly by law enforcement, prosecutor's offices and sexual assault providers. There has been ample time to conduct an inventory of evidence kits, even if only those collected during a single or short time period, e.g., one or five years. But we are here again before the legislature, and again meeting resistance from the same institutions who are tasked with protecting the public, punishing those who commit serious crimes, and seeking justice for survivors.

In the past month, the HPD has estimated to legislators that they have a backlog of 1,500 untested kits. However, we do not know if this includes evidence from all sources (including the counties that forward their kits to HPD for testing) and sites (SATC, HPD crime lab or other storage facilities). More importantly, we do not know what other information HPD has collected in the process of estimating their backlog

1,500 cases are not an inordinate number to assess and catalogue when we consider Detroit had backlogs of 11,000, Memphis, over 12,000 and Cleveland, 4,000 cases, and most of those jurisdictions took only a few months to complete their inventories. Surely we in Hawaii should be able to manage an assessment of our local backlog which is only a fraction of the problem in other major U.S. cities, particularly when HPD has already begun their inventory. There is no need to wait another six or more months (December 2016 as proposed in amendments to HB1907) for local agencies and departments to report on the simple number and evidence collection date of backlogged kits.

Finally and most importantly, from jurisdictions across the country that have tested all of their backlogged cases we now have ample evidence of the following:

- Untested rape kits contain evidence that **always** identify a sub-group of serial criminals who have not only committed other sexual assaults, but additional serious offenses (<http://www.endthebacklog.org/>). David Lisak from the University of Massachusetts confirms that 60% of undetected rapists are serial offenders. In Hawaii, the Attorney General reported that in 2002, 1,458 registered sex offenders carried 18,237 criminal



charges on their combined records with over 60% for violent sex offenses and other violence.

- There is funding available from the Federal government, as well as other public and private sources to reduce the rape kit backlog in every U.S. jurisdiction. The efforts to make this funding available has come from victim advocates, as well as the bold leadership of local prosecutors, law enforcement and legislators from Detroit, New York City, Memphis, Texas, Washington, Florida, Georgia and other locales. Hawaii could join this significant national policy and justice work by shining the light on this problem in our local communities.
- While there is focus on the significance and reliability of DNA in solving crimes, rape evidence kits contain other evidence that may be critical in investigation and prosecution of cases, including information gathered in the treatment process that address the context in which the assaults occurred, including the type, severity and nature of threats and violence perpetrated by offenders. This becomes part of the profile of sex offenders in which can be used to type serial rapists. We only know the veracity of evidence contained in backlogged kits when each and every one is tested.
- Planning and assessment become part of any rape kit backlog “program,” in which the policies and procedures are determined as each jurisdiction first states their intent to address their backlogs. Due to the different locales around the country that have completed or are in the process of reducing their backlogs, we know that the majority of successful outcomes have been the result of multidisciplinary collaborations that include more than just law enforcement, prosecutors and sexual assault programs, but also researchers, health providers, other victim service organizations (including domestic violence and child abuse providers), legal advocates, public policymakers and always, the “true experts” - survivors and/or their family members or supporters.

In summary, we do not need more planning or more task forces to study the problem of backlogged rape evidence kits. Let us get on with it – others around the country have done so, and we have much data and exemplars from which is begin and complete our work in Hawaii.

#### Potential Harm to Victims/Survivors

Many of HB1907 opponents cite well-intentioned concerns about victims whose rape evidence kits will be tested through this initiative. Statements have suggested that testing of backlogged kits may unduly affect victims “who had closed that chapter of their life (sic) and moved on...now could be extremely traumatizing in a way that has not yet been accounted for” and have “unintended consequences and potential harms involving victims’ rights.” Other testimony cited the much-touted Detroit rape kit backlog report stating “the results of this study inform us tremendously as it shatters the assumption that all victims will want such action taken.” I would like to address a few points with regard to the argument that testing backlogged kits will re-traumatize survivors.

First and foremost, any sexual assault survivor who consents to the invasive, lengthy, embarrassing and painful evidence examination has already experienced the most significant and life-changing trauma they will ever know: the violation of their bodies, minds and spirits by sexual assailants. Therefore, the decision to undergo a medical evidentiary exam is often made during a time of crisis in one's identity and sense of personal safety. The research and clinical reports regarding survivor decision-making about and experience with rape evidence exams find that survivors usually consent to the invasive evidence gathering procedure because they hope, believe or expect that their offenders will be held to justice. Whether or not they agree to participate in the investigatory or prosecutorial process, survivors do a rape kit because they believe it is the right thing to do. And, that they believe the State and sexual assault advocates will aggressively investigate and pursue justice in their cases.

The "potential harm," "unintended consequences" and trauma do not occur in the testing of long-ignored evidence kits, but survivors discovering that the criminal-legal system did not follow-up on their cases in a timely, transparent and mutually cooperative manner. This is the harm about which we should all be appalled: we expect rape survivors to participate in the process of preserving and collecting evidence, but we do not expect that we should have to do anything with that evidence unless we believe survivors' stories of unwanted, unprovoked and unwarranted sexual violence ("most have had consensual sex," an official recently testified before a state legislative committee hearing), can make a "winnable" case, or think there is viable or useful evidence in the kits. The discretion employed by the criminal-legal system about whether to move ahead on rape cases is a major cause of trauma for survivors, not the testing of long-deemed, "poor" evidence kits. More importantly, would we be raising this issue of re-traumatizing victims if all kits were tested promptly and regularly to begin with? Clearly, the reservations of HB1907 opponents are based on their culpability for the backlog of untested kits, not necessarily on care and justice for survivors.

In their 2012 study of sexual assault survivors, SATC found that those who were more likely to report their cases to HPD had experienced "classic rape;" that is, the perpetrators were strangers, there was only one vs. multiple assailants, victims were sexually assaulted with an object or were forcibly sodomized or "if the assailant used a weapon, intimidation, physical force, threat or injured the victim." (p. 44). If these survivors who had the courage to report to the police ALSO completed a rape evidence kit, would these not be the "classic" rape cases in which all kits should be tested?

We must assume with a 1,500 case backlog in Honolulu, that some of these "typical" cases were not tested by HPD. What we know from other cities that have addressed their rape kit backlogs is that survivors wanted to be notified if their case was to be re-opened including in Houston, for "victims who had reported the crime a long time ago" (UT Institute on Domestic Violence and Sexual Assault, March 2015). While one local provider testified before the Hawaii Legislature that 16% of survivors in Detroit had "strong negative reactions," in fact "most survivors [64%] wanted a follow-up meeting with the investigators...and in the end, most [57%] also decided that they wanted to participate in the investigation and prosecution process." Most important, however "victims were less likely to react positively and to re-engage the

longer the period of time between the assault and the notification” (NIJ, p. viii). This finding is generally echoed across cities and counties that have addressed their rape kit backlogs; that is, survivors are not angry, dis-engaged or even re-traumatized by testing or being informed of their test results, but by the delay in timely testing and investigation of their cases. This speaks clearly to the need to not only test all backlogged cases, but to test them immediately and from this point forward.

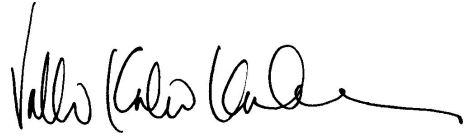
In a few days, the Joyful Heart Foundation, one of the national organizations leading the effort to reduce the rape kit backlog across the country and founded here in Kailua-Kona with offices in Honolulu, will be releasing a national research study on victim notification “best practices” based on surveys and interviews with survivors and professionals who advocate and serve them. This report, along with other national studies conducted specifically regarding victim notification will offer protocols, policies and practices that honor survivor experiences in addressing the rape kit backlog. Again, what we have discovered is that survivors around the country WANT to know what happened to their kits, they are disappointed, angry and dismayed that the criminal-legal system did not take seriously survivor cooperation in the evidence-gathering process, and they are finally relieved that justice is forthcoming. Prosecution of rapists is not the only resolution for victims, but it is knowing that they are finally believed and that the legal process is now transparent for them.

Finally, if the majority of victims who report to the police in Hawaii have experienced the most heinous assaults and violence, we must believe that testing their kits can also finally bring a sense of security and well-being. Many survivors of violent sexual assaults are threatened by assailants that they or their loved ones will never be free or safe again; that is, rapists commonly remind victims that they are known to their perpetrators, they will be watched from the assault forward, and they will face repeat and more severe violence if they report to authorities. To finally know that your assailant has been arrested and imprisoned, died, moved to another city - or reoffended or not identified – is all part of the healing process for survivors. We owe the testing of all backlogged kits to every survivor who “gave” this evidence to authorities, but we also owe this to the Hawaii community if these particularly violent offenders have not been apprehended and held accountable.

We should be cognizant of and sensitive towards all rape and sexual assault survivors as we consider testing rape evidence exams, whether backlogged or not. But, we do not need to be condescending or speak for them. The majority of sexual assault and victim’s rights organizations around the U.S. – including survivor groups – support universal testing of rape kits. They have spoken for themselves, and we must now listen.

Please pass HB1907 without haste. The backlog cannot wait another day, month or year. Hawaii, the time is now.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Valli Kalei Kanuha", with a long horizontal flourish extending to the right.

Valli Kalei Kanuha, PhD, MSW  
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University of Hawaii at Manoa