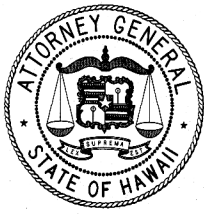




HB1907 HD2

Measure Title:	RELATING TO SEXUAL ASSAULT.
Report Title:	Evidence; Sexual Assault Kit Tracking Program
Description:	Establishes the Sexual Assault Kit Tracking Program in the Honolulu Police Department, including requirements for submission of kits for testing, reporting information to state and federal DNA databases, obtaining consent prior to testing, and admissibility of evidence in judicial proceedings. Requires reporting on program implementation and kit testing backlog. Makes appropriation to Department of the Attorney General. (HB1907 HD2)
Companion:	SB2309
Package:	None
Current Referral:	PSM/JDL, WAM
Introducer(s):	ICHIYAMA, BELATTI, EVANS, FUKUMOTO CHANG, C. LEE, LOPRESTI, LUKE, MIZUNO, MORIKAWA, THIELEN, DeCoite, Matsumoto, San Buenaventura



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS.

DATE: Thursday, March 17, 2016

TIME: 1:45 p.m.

LOCATION: State Capitol, Room 229

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

Chair Nishihara 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 Senate Draft 1 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 3, lines 5 to 12:

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.

(Emphases 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.

On page 6, at lines 6 to 7, the bill requires the Division of Conservation and Resources Enforcement to report its findings and recommendations regarding the sexual assault kit tracking program. The Department notes that this division does not investigate sexual assault cases nor maintain any sexual assault kits.

Because of its concerns with this bill, the Department respectfully requests the Committee adopt the proposed Senate Draft 1 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.



March 17, 2016

To: Senator Clarence Nishihara, Chair
Senator Will Espero, Vice Chair and
Members of the Committee on Public Safety, Intergovernmental, and Military Affairs

From: Jeanne Y. Ohta, Co-Chair

RE: HB 1907 HD2 Relating to Sexual Assault
Hearing: Thursday, March 17, 2016, 1:45 p.m., Room 229

POSITION: SUPPORT

The Hawai'i State Democratic Women's Caucus writes in support of HB 1907 HD2 Relating to Sex Assault which proposes a process of expedited testing of all sexual assault evidence kits and increased reporting requirements for law enforcement agencies.

For many years we have been concerned about the number of unprocessed sex assault evidence kits. Approximately a decade ago we were told that there were approximately 1,000 kits that had not been tested and that the cost to process them would be approximately \$1million and that the police department did not have the funds to process them. We have been told more recently that there was no backlog of unprocessed kits.

We would like to know the true status of the kits. Evidence obtained from survivors is precious. It is taken when they are most vulnerable with the hope that evidence gathered would help find and convict the perpetrator. Their brave efforts should not go to waste nor should the evidence be dismissed so easily. Sexual assault is a serious crime. Processing kits can help uncover serial rapists.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls. It is because of this mission, the Women's Caucus supports this important measure.

We ask that the committee pass the measure. Thank you for this opportunity to provide testimony.

Justin F. Kollar
Prosecuting Attorney

Jennifer S. Winn
First Deputy



Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White
Victim/Witness Program Director

OFFICE OF THE PROSECUTING ATTORNEY

County of Kaua'i, State of Hawai'i

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

TESTIMONY REGARDING HB 1907, HD 2 – RELATING TO SEXUAL ASSAULT

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

House Committee on Public Safety, Intergovernmental, and Military Affairs
February 17, 2016, 1:45 p.m., Conference Room 229

Chair Nishihara, Vice Chair Espero and Committee members:

The Office of the Prosecuting Attorney of the County of Kaua'i, supports the intent of HB 1907, HD 2, but asks that this Committee adopt the Proposed SD 1 attached to the written testimony submitted by the Department of the Prosecuting Attorney of the City and County of Honolulu, which would require the Department of the Attorney General to prepare a comprehensive assessment and plan to address all relevant issues.

While well-intended, we believe HB 1907, HD 2, would impose sweeping changes without an understanding of the ~~issue~~-relevant issues or existing system (in Hawaii) that it is trying to address. In particular, we are very concerned that HB 1907, HD 2, would require mandatory testing of all untested sexual assault evidence collection kits ("SAECK") without establishing the infrastructure or resources to notify and provide ongoing support for ~~does 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, a blanket mandate to test all SAECK—as presented in HB 1907, HD 2—would disregard all of the current policies and procedures in place to select and prioritize SAECK for testing. While our Office 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 understanding what will best meet the needs of victims, the criminal justice system, and ultimately public safety and welfare.

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 require the Department of the Attorney General (“AG”) to develop a comprehensive assessment and plan that would account for all of these factors. This would not only provide the current number of sexual assault evidence collection kits (“SAECK” or “kits”)—total and untested—but more importantly, would thoroughly explain and plan around:

- 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, what is being 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 SAECK—including anticipated victim resources needed to facilitate this effort—and any potential funding sources.

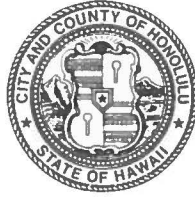
In summary, we believe that an accurate understanding of the considerations above is absolutely necessary, before establishing any system-wide changes or mandates regarding SAECK, if the Legislature wishes to avoid unintended consequences and potential harms involving victims’ rights, constitutional 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, our Office recommends that the Committee adopt the Proposed SD 1 as offered by the Honolulu Prosecutor, to

appropriately address this issue in a more systematic and conscientious manner. Thank for you the opportunity to testify on this bill.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



KIRK CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

MARIE A. McCAULEY
CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE WK-WK

March 17, 2016

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

SUBJECT: House Bill No. 1907, H.D. 2, 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. 2, Relating to Sexual Assault.

However, the HPD has concerns that there are no provisions in House Bill No. 1907, H.D. 2, to fund the costs to hire, equip, and train new personnel.

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. With the appropriated funding, the laboratory will be looking to expand resources to process existing untested and any additional sexual assault kit forensic evidence for investigations and adjudication.

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
March 17, 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. 2:

1. There are no provisions in this bill to fund the costs to hire, equip, and train new personnel. The bill does not provide adequate planning and preparation time necessary to implement the proposed amendments to Chapter 844D.

The total costs are approximately \$2,784,041 in 2016, \$513,619 in 2017, and \$540,335 per year thereafter and are apportioned as follows:

- Under the current bargaining agreement, the proposed laboratory costs for five analysts (two SR24C + three SR20C + 67.16% Fringe) are \$412,076 per year in 2016, \$426,479 in 2017, and \$445,485 per year thereafter;
 - Administrative costs for software licensing and hardware for five analysts are \$40,125 in 2016 and \$2,000 per year thereafter;
 - Training costs for five analysts are approximately \$5,140 in 2016 through 2017 then \$12,850 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. 2, 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.

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
March 17, 2016
Page 3

3. The five laboratory analysts are required to address the amendments to Chapter 844D, HRS, proposed in House Bill No. 1907, H.D. 2. 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 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. 2, 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;"

Section 1, page 3, subparagraph (b), lines 5 through 12:

"(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."

Section 4, page 6, lines 18 through 21, and page 7, lines 1 and 2:

"SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2016-2017 for the department of the attorney general to ensure that all sexual assault kits that are the subject of a criminal investigation ~~and collected prior to July 1, 2016,~~ are analyzed."

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
March 17, 2016
Page 4

The HPD recognizes that DNA information is a valuable tool in assisting with the investigative efforts for law enforcement. 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.

Because of its concerns with this bill, the HPD respectfully asks the Committee to insert the Proposed S.D. 1 being offered by the Department of the Prosecuting Attorney, City and County of Honolulu.

The HPD supports the intent of House Bill No. 1907, H.D. 2, Relating to Sexual Assault, with 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
To: [PSMTestimony](#)
Cc: laurie.field@ppvnh.org
Subject: *Submitted testimony for HB1907 on Mar 17, 2016 13:45PM*
Date: Monday, March 14, 2016 1:28:16 PM

HB1907

Submitted on: 3/14/2016

Testimony for PSM/JDL on Mar 17, 2016 13:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Planned Parenthood Votes Northwest and 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
To: [PSMTestimony](#)
Cc: annsreed@gmail.com
Subject: Submitted testimony for HB1907 on Mar 17, 2016 13:45PM
Date: Wednesday, March 16, 2016 1:55:18 PM

HB1907

Submitted on: 3/16/2016

Testimony for PSM on Mar 17, 2016 13:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S Freed	Hawaii Women's Coalition	Support	Yes

Comments: Aloha Chair Nishihara, Vice Chair Espero and members, As in our previous testimony, we are in strong support of this measure which would aid law enforcement. Most rapist are serial rapists. Testing all rape kits and entering them into local and national databases would help catch and stop these perpetrators of horrific human rights abuses. Mahalo, Ann S. Freed, Co-Chair, Hawaii Women's Coalition

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THE SEX ABUSE TREATMENT CENTER

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

Executive Director
Adriana Ramelli

Advisory Board

President
Mimi Beams

Vice President
Peter Van Zile

Joanne H. Arizumi
Mark J. Bennett
Andre Bisquera
Marilyn Carlsmith
Dawn Ching

DATE: March 17, 2016

TO: The Honorable Clarence Nishihara, Chair
The Honorable Will Espero, Vice Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

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

RE: Testimony Supporting the Intent of H.B. 1907 H.D. 2
Relating to Sexual Assault

Senator
Suzanne Chun Oakland
Monica Cobb-Adams

Good afternoon Chair Nishihara, Vice Chair Espero, and members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs.

Donne Dawson
Dennis Dunn

The Sex Abuse Treatment Center (SATC) supports the intent of H.B. 1907 H.D. 2, but strongly recommends that the Committee adopt the Proposed S.D. 1 as submitted by the Department of the Prosecuting Attorney of the City and County of Honolulu.

Councilmember
Carol Fukunaga

David I. Haverly

The current dialogue that is taking place on the issue of the testing of sexual assault kits (SAKs) is extremely important. The collection of the 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, assisting the individual during this process of evidence collection. Without a doubt, the SATC has a vested interest in effective and responsible management and testing of these SAKs for the victims we serve.

Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Joshua A. Wisch

While the SATC supports the intent of H.B. 1907 H.D. 2, the unilateral mandate to test all SAKs without the opportunity to first arrive at a thoughtful plan of action will result in unintended consequences in a number of areas, including insufficient planning of victim notification. For example, 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 will want such action taken. It instead underscores the importance of thoughtful, responsible planning prior to taking action. The SATC is not recommending a study be done; we are advocating for informed action, based on studies that have already been done.

The pilot projects funded by research grants from the National Institute of Justice that have engaged in the reduction of untested kits are instructive for Hawaii. One such project which took place 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 their experiences developing and evaluating a SAK testing plan is invaluable, as it 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?: Talking about language
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 unsure that diverse perspectives are considered.”

The Proposed S.D. 1 will do this by allowing the key players from across the state the opportunity to develop an effective and responsible action plan.

Interestingly, the project’s 15th take-home lesson 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 legislative change may indeed be the outcome of Hawaii’s process; however, in order to understand what changes are truly needed for our jurisdiction, the fourteen steps reflected in the attachment need to first take place.

For these reasons, the SATC respectfully recommends the Proposed S.D. 1 as submitted by the Department of the Prosecuting Attorney of the City and County of Honolulu.

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.

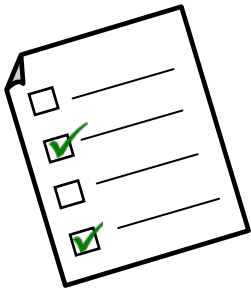
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DICTIONARY

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.

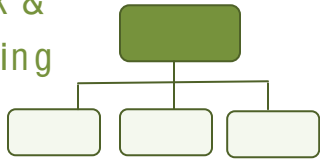


10. Budget extra time for older kits

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

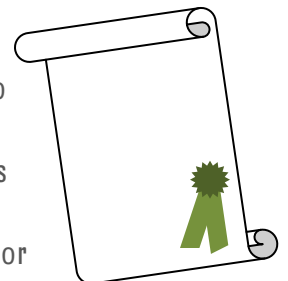
Given the dearth of empirical research on untested SAKs, it is difficult to know whether testing results are typical or atypical. It might be helpful for jurisdictions to connect with other communities who have tackled these issues to compare findings and strategize solutions.

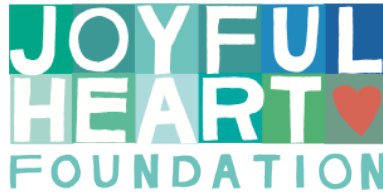
14. Re-examine & refine testing policies & protocols

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.





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Kata Issari
Executive Director,
Hawai'i Region

March 17, 2016

TO: Senator Clarence K. Nishihara, Chair
Senator Will Espero, Vice Chair
Members of the Senate Committee on Public Safety,
Intergovernmental, and Military Affairs

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 SB 2309, which would establish a sexual assault evidence kit tracking program.

The Joyful Heart Foundation was founded in Kailua-Kona in 2004 and since 2010, has made the elimination of the national rape kit backlog its a top advocacy priority. The stakes 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 estimates 1500 untested rape kits, going back ten years with no information about any untested kits prior to that time. 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 nationally or in Hawai'i. This lack of transparency and accountability means that untested kits potentially remain hidden in jurisdictions across our state 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.

The time to act is now, further delay risks adding to the backlog. Hawaii can and must do better. We stand with every survivor who has taken the courageous step of reporting the crime to the police and endured an invasive examination in search of DNA evidence left behind by the attacker. We stand with policymakers and advocates in Hawai'i who believe that reform is possible.

Testing Solves Crimes

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. A 2002 report by the Hawaii 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 every rape kit is crucial to keeping the men, women and children of Hawai'i safe from dangerous predators.

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 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. Federal funds are available now to 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.

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.

Greetings Committee Chair Nishihara, my name is Jessica Agonias and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation. This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

HB 1907

Greetings Committee Chair Nishihara, my name is John Figueroa and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years.

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This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

Greetings Committee Chair Nishihara, my name is Lorentina Te'i and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation.

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Greetings Committee Chair Nishihara, my name is Paulo O.J Paulo and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation. This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

Greetings Committee Chair Nishihara, my name is Robert Ford, and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation. This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

Greetings Committee Chair Nishihara, my name is Kenneth Clark and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation.

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Greetings Committee Chair Nishihara, my name is William Moore and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation. This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

Greetings Committee Chair Nishihara, my name is Andrew Burgess and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problem within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation. This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

Greetings Committee Chair Nishihara, my name is _____ and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation.

This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

Greetings Committee Chair Nishihara, my name is **Christina R Baduia** and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation.

This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

Greetings Committee Chair Nishihara, my name is Roy Lovell and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation.

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Greetings Committee Chair Nishihara, my name is Lucky.Lotu and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation.

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Greetings Committee Chair Nishihara, my name is Tim Baker and I am writing testimony to **SUPPORT** bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of these problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation.

This legislation is a critical oversight tool that should be passed. I therefore **support** the passage of this legislation.

From: mailinglist@capitol.hawaii.gov
To: [PSMTestimony](#)
Cc: leuluniuotineru@yahoo.com
Subject: Submitted testimony for HB1907 on Mar 17, 2016 13:45PM
Date: Tuesday, March 15, 2016 8:50:16 AM

HB1907

Submitted on: 3/15/2016

Testimony for PSM on Mar 17, 2016 13:45PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
leuluniu otineru	Individual	Support	No

Comments: Greetings Committee Chair Nishihara, my name is Leuluniu Otineru and I am writing testimony to SUPPORT bill HB1907-HD2 (Sexual Assault Kit Tracking Program). This bill is a critical step to reforming the state's criminal justice system. This bill will allow the state to finally begin to deal with the numerous sexual assault kits that have gone unprocessed for several years. Recently the media has been informing the public as to the size of this problems within the state. This legislation is key to ensuring that our streets are safe from sexual predators, or those who would not be caught if not for the new tracking that will take place with this legislation. This legislation is a critical oversight tool that should be passed. I therefore support the passage of this legislation.

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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