



LATE

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

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**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL, AND MILITARY AFFAIRS
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai'i**

March 17, 2016

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

Chair Nishihara, Vice Chair Espero and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”), supports the intent of H.B. 1907, H.D. 2, but asks that this Committee adopt the Proposed S.D. 1 attached, 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 H.B. 1907, H.D. 2, would impose sweeping changes without an understanding of the relevant issues or existing system (in Hawaii) that it is trying to address. In particular, we are very concerned that H.B. 1907, H.D. 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 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 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 H.B. 1907, H.D. 2—would disregard all of the current policies and procedures in place to select and prioritize SAECK for testing. 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 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, the Department of the Prosecuting Attorney of the City and County of Honolulu recommends that the Committee adopt the Proposed S.D. 1 attached below, to appropriately address this issue in a more systematic and conscientious manner. Thank for you the opportunity to testify on this bill.

Report Title:

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.

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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March 17, 2016

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

RE: Testimony in Support, HB1907, HD2 Relating to Sexual Assault Tracking Program

Thank you for the opportunity to provide testimony in support of HB1907, HD2. I am Professor of Sociology at the University of Hawai'i at Mānoa, and my primary research area which has spanned over 40 years here in Hawaii and across the continental U.S. is violence against women and girls.

As you already have heard, there are initiatives across the country for states and local jurisdictions to address their rape kit backlogs, which are those rape evidence kits that are untested but being held in police departments or crime lab facilities. Over the past decade of research and public policy work, we now believe there are very few jurisdictions across the country without backlogs.

There are many and complex reasons for this tragic problem. They include biases against those who are victimized by sexual violence, i.e., "blaming the victim" for these heinous crimes perpetrated against them. There are often resource issues – mainly inadequate funds and staffing – to test all forensic evidence in sexual assault cases. Also, criminal-legal entities sometimes do not have accurate research about the profiles of sex offenders when deciding whether to pursue criminal cases, including testing of rape evidence. For example, we know that many sexual predators are serial offenders, rape may occur during the commission of other petty misdemeanors including burglary or robbery, and more important, just because an offender has surrendered or been identified in one case does not preclude him from having sexually assaulted someone else before or after that case.

Testing kits does not only bring justice to sexual assault survivors, but the use of DNA has also proven effective in exonerating innocent persons who have been wrongly accused, prosecuted and convicted of sex crimes.

There has been testimony opposing this bill based on faulty understanding of the current research conducted on rape kit backlog programs around the country. For example, in their December 2015 final report to the National Institute of Justice (Detroit Sexual Assault Kit (SAK) Action Research Project (ARP), Final Report 248680), the city of Detroit reported that "most

survivors (64%) wanted a follow-up meeting with the investigators and an advocate to discuss options in more detail, and in the end, most (57%) also decided that they wanted to participate in the investigation and prosecution process” (NIJ, #248680, p. viii), regardless of their initial and understandably emotional response to being notified of their long-overdue kits finally being tested. In other focus groups with sexual assault survivors, their primary concern is being treated with respect and sensitivity with regard to notification of their test results, not that kits should not be tested. In fact, the Prosecutor of the City of Detroit along with researchers who conducted the Detroit-NIJ study conclude among their recommendations “policy change in the local police department to submit all SAKs for forensic testing” (NIJ, #248680, p. viii). Finally, there has been no mention of meaningful engagement of local survivors in the planning and implementation of a rape kit backlog tracking program in Hawaii. Instead of speaking for survivors, why not involve them and all stakeholders in solving this problem?

In addition, the Federal government has allocated over \$45 million that was signed into law by President Obama specifically to reduce the rape kit backlog around the country. Three days ago, the National Institute of Justice released a new funding initiative for local and state governmental entities to address their rape kit backlogs (FY2016 SAFE-ITR, OMB No. 1121-0329). There is funding available for us in Hawaii to resolve the problem of untested kits. With regard to future funding once a backlog has been eliminated, there are about 500 sexual assault survivors who seek treatment services in Honolulu. However, we can project that a proportion of these persons may not have consented to a rape evidence exam. But even if all of them have, that means HPD must secure funding for approximately 500 victims each year. Surely, we can find moneys to bring justice and security to these children and adults in our community, and to their families, friends and communities.

Finally, the city of Detroit even with its very serious fiscal and budget problems, were able to inventory all of their untested kits in just 15 weeks, during which they uncovered over 11,000 kits in storage. The HPD has currently estimated that they are holding 1,500 untested kits; more importantly, they had already estimated a backlog of 1,000 cases over ten years ago. There is no need to delay the process of evaluating and assessing the state of this problem in Honolulu or the state.

There can be no doubt that this initiative makes sense and more importantly, is clearly about justice and safety for victims and our communities. And now it is our turn here in Hawaii to join the rest of the country by making things right for local child and adult survivors of sexual violence. They have been waiting long enough.