



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES

DATE: Thursday, February 11, 2016 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 329

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

Chair Morikawa and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and submits comments.

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:

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.

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.

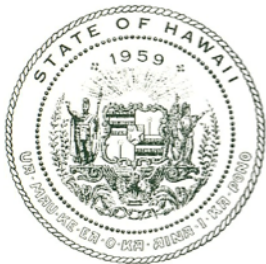
The provision is also not clear about the Department's responsibility to "ensure" that all of the kits that were collected prior to July 1, 2016, are analyzed and the results entered into state DNA database and data bank identification program and the Federal Bureau of Investigation Combined DNA Index System. 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.

We respectfully request that the Committee clarify the provisions that we have identified as being unclear as currently written.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

SHERRY CAMPAGNA
CYD HOFFELD
JUDY KERN
MARILYN LEE
AMY MONK
LISA ELLEN SMITH

Executive Director
Catherine Betts, JD

Email:
Catherine.a.betts@hawaii.gov
Visit us at:
humanservices.hawaii.gov
/hscsw/

235 S. Beretania #407
Honolulu, HI 96813
Phone: 808-586-5758
FAX: 808-586-5756

February 9, 2016

To: Representative Dee Morikawa, Chair
Representative Bertrand Kobayashi, Vice Chair
Members of the House Committee on Human Services

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

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

The Commission supports HB 1907, which would provide for expedited testing of all forensic sexual assault evidence kits and thorough reporting requirements for law enforcement agencies.

Across the country, there is a problem with law enforcement agencies not testing all “rape kits”, leading to a back log of crucially important evidence. Sexual assault evidence kits collect forensic evidence of a rape or sexual assault, including the perpetrator’s DNA. Kits often serve as a vital tool in successful prosecutions.

Once tested, an offender’s DNA can be matched with other offender samples in the FBI’s national database, thereby identifying offenders and linking crimes. Many rape kits sit on shelves, ignored or waiting to be tested. The vast majority of rapists are repeat and serial offenders—rape is not a singular crime that is only committed once and then never re-committed. Self-reports of convicted rape and sexual assault offenders serving time in state prisons indicate that two-thirds of offenders had victims under the age of 18, and nearly 4 in 10 imprisoned violent sex offenders said their victims were age 12 or younger.¹ Most are repeat offenders. In a recent study of college campus sexual assault, it was determined that 9 out of 10 men who commit sexual assaults on college campuses are serial rapists, with up to six victims. Additionally, 8% of university men commit the majority of college campus sexual assault. The numbers and statistics are staggering and frightening.

Victims deserve to have every rape kit tested and our community deserves to know how many rape kits go untested throughout the state. Additionally, they deserve to have comprehensive support services and legal advocacy should they choose to report to law enforcement. The Commission supports HB 1907 so long as other services for victims are not endangered due to the requirements found in the bill.

Thank you for this opportunity to testify in strong support of HB 1907.

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

Edward Thompson, III

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 09, 2016 9:51 AM
To: HUS testimony
Cc: laurie.field@ppvnh.org
Subject: *Submitted testimony for HB1907 on Feb 11, 2016 09:30AM*

HB1907

Submitted on: 2/9/2016

Testimony for HUS on Feb 11, 2016 09:30AM in Conference Room 329

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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

kobayashi2-Jessi

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 10, 2016 2:16 PM
To: HUS testimony
Cc: susan.wurtzburg@gmail.com
Subject: *Submitted testimony for HB1907 on Feb 11, 2016 09:30AM*

HB1907

Submitted on: 2/10/2016

Testimony for HUS on Feb 11, 2016 09:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



LATE

COMMITTEE ON HUMAN SERVICES
Rep. Dee Morikawa, Chair
Rep. Bertrand Kobayashi, Vice Chair

DATE: February 11, 2016
TIME: 9:30 a.m.
PLACE: Conference Room 329

STRONG SUPPORT FOR HB1907 relating to Sex Assault

Good afternoon Chair Morikawa, Vice Chair Kobayashi, and members. The Hawai'i Women's Coalition is in **strong support of HB 1907** which would provide for expedited testing of all forensic sexual assault evidence kits and thorough reporting requirements for law enforcement agencies

This is a simple common sense proposal. Once tested, an offender's DNA can be easily matched with other samples in the FBI's national database, thereby identifying offenders and linking their other possible crimes. Victims of this soul-stealing crime deserve to have their rape kits tested promptly. What is the point of putting a traumatized victim through the process of obtaining a rape kit if it's going to sit on the shelf for years? The argument that it's too expensive to do is hogwash. What is the cost of not testing? What is the cost of a victim's lost health lost earning power, lost dignity? What is the cost to society of leaving a serial offender on the street?

As noted by The Hawaii Commission on the Status of Women: "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. 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 Coalition is in strong support of this bill. Please pass the important bill out of committee.

Mahalo for the opportunity to testify,
Ann S. Freed Co-Chair, Hawai'i Women's Coalition
Contact: annsfreed@gmail.com Phone: 808-623-5676

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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

LATE

KIRK CALDWELL
MAYOR



LOUIS M. KEALOHA
CHIEF

MARIE A. McCAULEY
CARY OKIMOTO
DEPUTY CHIEFS

OUR REFERENCE **WK-WK**

February 11, 2016

The Honorable Dee Morikawa, Chair
and Members
Committee on Human Services
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Morikawa and Members:

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

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

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

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:

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

The total costs are approximately \$3,035,527 in 2016; \$765,600 in 2017; \$803,610 in 2018, and \$803,610 per year thereafter and are apportioned as follows:

- Under the current bargaining agreement, the proposed laboratory costs for eight analysts (two SR24C + six SR20C + 67.16% Fringe) are \$639,500 per year in 2016, \$662,000 in 2017, and \$700,000 per year thereafter;
- Administrative costs for software licensing and hardware for eight analysts are \$64,200 in 2016 and \$3,200 per year thereafter;
- Training costs for eight analysts are approximately \$5,140 in 2016 and \$20,600 per year thereafter;
- After implementation, the analysis of 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 backlogged and incoming sexual assault kits would be approximately \$80,000 per year.

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

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

Section 1, page 2, subdivision (3), lines 3 to 8:

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

Section 1, page 2, subparagraph (b):

"(b) The department, in consultation with the department of the attorney general, ~~[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 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 5, page 6, line 14:

"SECTION 5. This Act shall take effect on July 1, 2017, contingent upon the availability of sufficient resources for purposes of this Act ~~[upon its approval]~~."

The Honorable Dee Morikawa, Chair
and Members
Committee on Human Services
February 11, 2016
Page 4

The HPD recognizes that DNA information is a valuable tool in assisting with the investigative efforts for law enforcement. However, the passage of House Bill No. 1907 will require time and appropriations to create positions, hire and train personnel, cover analysis costs, and mitigate potential impacts to the entire criminal justice process.

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

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

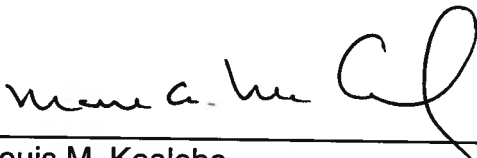
Thank you for the opportunity to testify.

Sincerely,

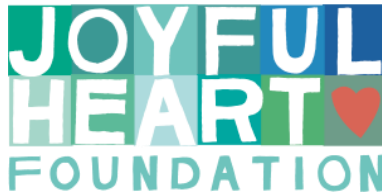


Wayne Kimoto, Director
Scientific Investigation Section

APPROVED:



for Louis M. Kealoha
Chief of Police



LATE

Board of Directors

Mariska Hargitay
Founder & President

Mark Alexander
Chair

Christina Norman
Vice-Chair

Sukey Novogratz
Secretary

Karen Polivka
Treasurer

Jessica Ambrose

Beth Armstrong

Durk Barnhill

Jenny Belushi

Shanna Brooks

Andrea Buchanan

Jill Eisenstadt-Chayet

Linda Fairstein

Peter Hermann

Danielle Herzlich

Mark Herzlich

Rachel Howald

Lynn Lally

Valli Kalei Kanuha PhD

Michael King

Andrea McTamoney

Rev Al Miles

Heather Mnuchin

Tom Nunan

Chauncey Parker

Stanley Schneider

Andrew Schwartzberg

Carrie Shumway

Noelle Wolf

Maile M Zambuto
National Chief
Executive Officer

Kata Issari
Executive Director,
Hawai'i Region

February 11, 2016

TO: Rep. Dee Morikawa, Chair
Rep. Bertrand Kobayashi, Vice Chair
Members of the House Committee on Human Services

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

RE: Testimony in Support, HB 1907, Relating to Sexual Assault

Thank you for this opportunity to testify in support of HB 1907, which would establish a sexual assault evidence kit tracking program.

About the Joyful Heart Foundation

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

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

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

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

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

The Rape Kit Backlog

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

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

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

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.

Mandating the testing of every sexual assault kit sends a powerful message to survivors that they—and their cases—matter. It sends a message to perpetrators that they will be held accountable for their crimes. It demonstrates a commitment to survivors to do everything possible to bring healing and justice. When jurisdictions test every kit, they solve crimes, bring answers and an opportunity for justice to survivors, exonerate the wrongly convicted and take dangerous criminals off the streets. Consider the experiences of Cleveland and Detroit. Through their backlog reduction programs, they have identified serial offenders who have been acting with impunity for years, and in some cases decades. Detroit has identified more than 650 serial rapists; Cleveland almost 300. Testing every rape kit is crucial to keeping the men, women and children of Hawai'i safe from dangerous predators.

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

mandating the Attorney General to ensure that all rape kits collected prior to July 1, 2016 are tested and entered into the DNA database.

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

On behalf of survivors across Hawai'i —many of whom have been re-traumatized by the experience of waiting for the investigation and prosecution of their case —I thank you for the attention you have paid to this issue and reiterate our support of HB 1907. Survivors deserve nothing less.