



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2309, S.D. 1, RELATING TO SEXUAL ASSAULT.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Thursday, February 25, 2016 **TIME:** 1:00 p.m.

**LOCATION:** State Capitol, Room 211

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

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Chair Tokuda and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, submits comments and concerns, and recommends that the Committee use Senate Bill 2366 as the vehicle to address the concerns about the testing of sexual assault kits.

The purpose of this bill is to do the following: (1) require each county prosecutor to establish a sexual assault kit tracking program in its respective county; (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 prosecuting attorney of each county to submit a report to the legislature prior to the convening of the regular session 2017 on the sexual assault kit tracking program, the number of unprocessed kits, and the progress on the reduction of 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. 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.

Senate Bill 2366 was heard in a joint hearing by the Committees on Judiciary and Labor and Ways and Means on February 24, 2016. That bill 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 annually compile the information, prepare a report, and transmit that report to the Legislature. The report could provide a more detailed analysis of the problem, a proposal to address the problem, and identification of the resources and funding needed.

Because of its concerns with this bill, the Department respectfully requests the Committee defer this bill and use Senate Bill 2366 as the vehicle to address concerns about the testing of sexual assault kits.

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

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515



KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE JILL N. TOKUDA, CHAIR  
SENATE COMMITTEE ON WAYS AND MEANS  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawai`i**

February 25, 2016

**RE: S.B. 2309, S.D. 1; RELATING TO SEXUAL ASSAULT EVIDENCE.**

Chair Tokuda, Vice Chair Dela Cruz and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”), supports the intent of S.B. 2309, but asks that it be deferred while S.B. 2366 continues on as the vehicle to address this issue instead. For your information, the Department attached a Proposed S.D. 1 to its testimony regarding S.B. 2366, which we believe is the most appropriate “next step” to approaching this problem. Unfortunately, that Proposed S.D. 1 (attached below for your reference) was not submitted in time to be considered for decision-making on S.B. 2366, but we have been encouraged to submit it as a Proposed H.D. 1 instead, if/when S.B. 2366 is heard by its respective House committees.

While well-intended, we believe that S.B. 2309, S.D. 1, would impose sweeping changes without first understanding the issue that it is trying to address; we are particularly concerned that **the potential benefit and/or harm to victims has not been fully considered**. Before any unilateral changes are made—and unknown amounts of funding, time and resources dedicated to carrying them out—we strongly urge the Legislature to gain a full understanding of the issue first. We believe the best way to do this would be for the Department of the Attorney General to coordinate and compile a one-time comprehensive report, which not only provides current numbers for all sexual assault evidence collection kits (“SAECK” or “kits”)—total and untested—but more importantly, thoroughly explores and explains:

- What these numbers do and do not represent;
- To what extent any information gleaned from testing ALL untested kits could or could not be used for various purposes;
- Any potential benefits and/or problems that testing ALL untested kits could pose for victims;

- What has been done, and what can and/or should be done, to minimize the number of untested SAECK in the future, given all relevant considerations; and
- The anticipated costs to test all or certain categories of these kits—including anticipated support resources needed to facilitate this effort—and any potential funding sources.

Generally, it appears that the purpose of S.B. 2309, S.D. 1, is to reduce the number of untested SAECK kits and increase public safety. While the Department understands and shares the Legislature’s concern—particularly given the problems that have surfaced in other states, surrounding this very issue—we believe that all of the propositions put forth in this bill are essentially guessing at solutions for a problem that is not yet understood. As such, we believe that a true and complete understanding of the situation is absolutely necessary before moving forward with any type of system wide changes or mandates, if the Legislature wishes to avoid unintended consequences and potential harm 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 of relevant factors on a statewide basis, the 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 supports the intent of S.B. 2309, but recommends that it be deferred indefinitely, allowing S.B. 2366 to move forward as the appropriate vehicle to address this matter. 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 law enforcement agencies and departments to compile information on untested sexual assault **evidence** collection kits and transmit the information to the department of the attorney general. Requires the department of the attorney general to transmit that information to the president of the senate and the speaker of the house.

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# A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT EVIDENCE.

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

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

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

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

1           (c) By January 1, 2017, ~~and annually thereafter,~~ the  
2 department of the attorney general shall prepare and transmit a  
3 report to the president of the senate and the speaker of the  
4 house of representatives containing the number of untested  
5 sexual assault evidence collection kits that are related to a  
6 criminal investigation being stored by each county, by each law  
7 enforcement agency or department, and the date the untested kit  
8 was collected. The report shall also provide information and  
9 discussion concerning the following:

10           (i) Progress made to reduce the number of untested sexual  
11 assault evidence collection kits;

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

14           (iii) A plan for determining priority of untested sexual  
15 assault evidence collection kits and new sexual  
16 assault evidence collection kits for testing;

17           (iv) The expected cost for testing untested sexual assault  
18 evidence collection kits and for testing new sexual  
19 assault evidence collection kits;

20           (v) An assessment of potential funding sources, including  
21 federal grants;

22           (vi) Expected outcomes from testing of untested sexual  
23 assault evidence collection kits and the testing of  
24 new sexual assault evidence collection kits;



1 (vii) Additional factors for consideration, including other  
2 resources that may become necessary in connection with  
3 testing untested sexual assault evidence kits and new  
4 sexual assault evidence collection kits; and  
5 (viii) Potential areas for further legislative action or  
6 policy changes.

7 (d) As used in this section:

8 "Forensic medical examination" means an examination provided to  
9 the victim of a sexually-oriented criminal offense by a health  
10 care provider for the purpose of gathering and preserving  
11 evidence of a sexual assault—~~for use in a court of law.~~

12 "Sexual assault evidence collection kit" means a human  
13 biological specimen or specimens collected by a health care  
14 provider during a forensic medical examination from the victim  
15 of a sexually-oriented criminal offense.

16 "Untested sexual assault evidence collection kit" means a sexual  
17 assault evidence collection kit that has not been submitted to a  
18 qualified laboratory for either a serology or DNA test."

19 SECTION 2. New statutory material is underscored.

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

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

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [dperry@kauai.gov](mailto:dperry@kauai.gov)  
**Subject:** Submitted testimony for SB2309 on Feb 25, 2016 13:00PM  
**Date:** Wednesday, February 24, 2016 4:08:13 PM

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**SB2309**

Submitted on: 2/24/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chief of Police Darryl Perry	Kauai Police Department	Support	No

Comments: While the intent of SB2309 is supported, I am requesting that SB2366 be adopted as a means to address this important issue.

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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POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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



KIRK CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

MARIE A. McCAULEY  
CARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE WK-WK

February 25, 2016

The Honorable Jill N. Tokuda, Chair  
and Members  
Committee on Ways and Means  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Tokuda and Members:

SUBJECT: Senate Bill No. 2309, S.D. 1, Relating to Sexual Assault

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

The HPD has grave concerns regarding the costs involved to address the proposed amendments to Chapter 844D, Hawaii Revised Statutes (HRS), to hire, equip, and train new personnel. In addition, there are no funding provisions to contract, process, analyze, or outsource the sexual assault evidence collected prior to July 1, 2016.

The HPD requests the Committee defer Senate Bill No. 2309, S.D. 1, Relating to Sexual Assault.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Kimoto".

Wayne Kimoto, Director  
Scientific Investigation Section

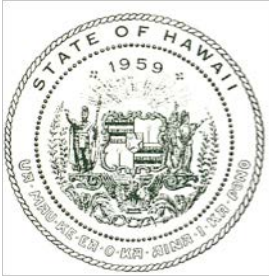
APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoha".  

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Louis M. Kealoha  
Chief of Police

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

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 24, 2016

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

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

Re: Testimony in Support, SB 2309, SD1, Relating to Sexual Assault

The Commission supports SB 2309, SD1, which would provide for expedited testing of all forensic sexual assault evidence kits and thorough reporting requirements for law enforcement agencies.

There is a problem across the country 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.<sup>1</sup> Most are repeat offenders. In a recent study of college campus sexual assault, it was determined that 9 out of 10 men who commit sexual assaults on college campuses are serial rapists, with up to six victims. Additionally, 8% of university men commit the majority of college campus sexual assault. The numbers and statistics are staggering and frightening.

While law enforcement agencies may argue that costs expended on forensic sexual assault evidence kits could be spent on other victims of crime, rape is a crime perpetrated by repeat offenders. If we can expend the funds to protect future victims---it is worth it. Victims deserve to have every rape kit tested and our community deserves to know how many rape kits go untested throughout the state.

Thank you for this opportunity to testify in strong support of SB 2309, SD1.

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

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WAM Testimony](#)  
**Cc:** [laurie.field@ppvnh.org](mailto:laurie.field@ppvnh.org)  
**Subject:** \*Submitted testimony for SB2309 on Feb 25, 2016 13:00PM\*  
**Date:** Tuesday, February 23, 2016 5:33:01 PM

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**SB2309**

Submitted on: 2/23/2016

Testimony for WAM on Feb 25, 2016 13:00PM in Conference Room 211

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

**Comments:**

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