

**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. 2, RELATING TO SEXUAL ASSAULT.

**BEFORE THE:**

HOUSE COMMITTEE ON HUMAN SERVICES

**DATE:** Tuesday, March 15, 2016 **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 329

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

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Chair Morikawa 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 House 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) 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.

Because of its concerns with this bill, the Department respectfully requests that the Committee adopt the proposed House 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.

Thank you for the opportunity to testify.

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 DEE MORIKAWA, CHAIR  
HOUSE COMMITTEE ON HUMAN SERVICES  
Twenty-Eighth State Legislature  
Regular Session of 2016  
State of Hawai`i**

March 15, 2016

**RE: S.B. 2309, S.D. 2; RELATING TO SEXUAL ASSAULT.**

Chair Morikawa, Vice Chair Kobayashi and members of the House Committee on Human Services, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”), supports the intent of S.B. 2309, S.D. 2, but asks that this Committee adopt the Proposed H.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 S.B. 2309, S.D. 2, would impose sweeping changes without an understanding of the issue that it is trying to address. In particular, we are very concerned that mandatory testing of all untested sexual assault evidence collection kits (“SAECK”) does not 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 S.B. 2309, S.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 H.D. 1 attached below, to appropriately address this issue in a more systematic and conscientious manner. Thank you for 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 in the future.

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# A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

(d) As used in this section:

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

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

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

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

SECTION 2. New statutory material is underscored.

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

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

**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

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TESTIMONY REGARDING  
SB 2309 SD 2 – RELATING TO SEXUAL ASSAULT

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

House Committee on Human Services  
March 15, 2016, 9:00 a.m., Conference Room 329

Chair Morikawa, Vice Chair Kobayashi, and Members of the Committee:

The Office of the Prosecuting Attorney of the County of Kaua'i supports the intent of SB 2309, SD 2, but asks that this Committee adopt the Proposed H.D. 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 SB 2309, SD 2, would impose sweeping changes without an understanding of the issue that it is trying to address. In particular, we are very concerned that mandatory testing of all untested sexual assault evidence collection kits ("SAECK") does not 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 SB 2309, SD 2—would disregard all of the current policies and procedures in place to select and prioritize SAECK for testing. While the 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:

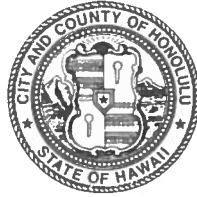
- What these numbers do and do not represent;
- To what extent any information gleaned from testing ALL untested kits could or could not be used for various purposes;
- Any potential benefits and/or problems that testing ALL untested kits could pose for victims;
- What has been done, what is being done, 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, the Office of the Prosecuting Attorney for the County of Kauaʻi recommends that the Committee adopt the Proposed H.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.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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



KIRK CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

MARIE A. McCAULEY  
CARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE WK-WK

March 15, 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: Senate Bill No. 2309, S.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 Senate Bill No. 2309, S.D. 2, Relating to Sexual Assault.

However, the HPD has concerns that there are no provisions in Senate Bill No. 2309, S.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 Dee Morikawa, Chair  
and Members  
Committee on Human Services  
March 15, 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 Senate Bill No. 2309, S.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 Senate Bill No. 2309, S.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.

3. The five laboratory analysts are required to address the amendments to Chapter 844D, HRS, proposed in Senate Bill No. 2309, S.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 Senate Bill No. 2309, S.D. 2, are required:

Section 1, page 2, lines 4 through 9:

"(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), lines 20 through 21; and page 3, lines 1 through 6:

"(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 14 through 19:

"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 were collected prior to July 1, 2016, and that are the subject of a criminal investigation are analyzed.~~"

The Honorable Dee Morikawa, Chair  
and Members  
Committee on Human Services  
March 15, 2016  
Page 4

The HPD recognizes that DNA information is a valuable tool in assisting with the investigative efforts for law enforcement. The passage of Senate Bill No. 2309, S.D. 2, will require appropriations to create positions, hire and train personnel, cover analysis costs, and mitigate potential impacts to the entire criminal justice process. It would also require a coordinated multidisciplinary response to implement appropriate notification protocols, support services, counseling, and other relevant considerations.

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 Senate Bill No. 2309, S.D. 2, Relating to Sexual Assault, with the proposed amendments stated in this testimony.

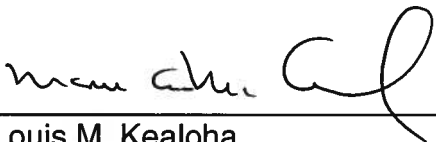
Thank you for the opportunity to testify.

Sincerely,



Wayne Kimoto, Director  
Scientific Investigation Section

APPROVED:



Louis M. Kealoha  
Chief of Police



**MITCHELL D. ROTH**  
PROSECUTING ATTORNEY

**DALE A. ROSS**  
FIRST DEPUTY  
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE  
HILO, HAWAII 96720  
PH: (808) 961-0466  
FAX: (808) 961-8908  
(808) 934-3403  
(808) 934-3503

WEST HAWAII UNIT  
81-980 HALEKI'I ST, SUITE 150  
KEALAKEKUA, HAWAII 96750  
PH: (808) 322-2552  
FAX: (808) 322-6584

## **OFFICE OF THE PROSECUTING ATTORNEY**

### TESTIMONY IN SUPPORT OF SENATE BILL 2309, SD2

#### A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT

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

Tuesday, March 15, 2016, 9:00 AM  
State Capitol, Conference Room 329

Honorable Chair, Morikawa, Honorable Vice-Chair Kobayashi, and members of the Committee on Human Services, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in regards to Senate Bill No. 2309, SD2.

This office supports the intent of SB2309, SD2, but asks that this Committee adopt the Proposed HD1, which is 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 SB 2309, SD 2, would impose sweeping changes without an understanding of the issue that it is trying to address. In particular, we are very concerned that mandatory testing of all untested sexual assault evidence collection kits ("SAECK") does not 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 SB 2309, SD 2—would disregard all of the current policies and procedures in place to select and prioritize SAECK for testing. While the 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.

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 the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai‘i recommends that the Committee adopt the Proposed HD1, which is attached to the written testimony submitted by the Department of the Prosecuting Attorney of the City and County of Honolulu, to appropriately address this issue in a more systematic and conscientious manner. Thank you for the opportunity to testify on this matter.



March 15, 2016

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

From: Jeanne Y. Ohta, Co-Chair

RE: SB 2309 SD2 Relating to Sexual Assault  
Hearing: Tuesday, March 15, 2016, 9:00 a.m., Room 329

POSITION: SUPPORT

The Hawai'i State Democratic Women's Caucus writes in support of SB 2309 SD2 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 and would like a process in place so that kits are not forgotten in a warehouse. 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.



**kobayashi2-Jessi**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 14, 2016 10:22 AM  
**To:** HUS testimony  
**Cc:** laurie.field@ppvnh.org  
**Subject:** \*Submitted testimony for SB2309 on Mar 15, 2016 09:00AM\*

**SB2309**

Submitted on: 3/14/2016

Testimony for HUS on Mar 15, 2016 09:00AM in Conference Room 329

<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:

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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Edward Thompson, III

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, March 14, 2016 2:52 PM  
To: HUS testimony  
Cc: susan.wurtzburg@gmail.com  
Subject: \*Submitted testimony for SB2309 on Mar 15, 2016 09:00AM\*

**SB2309**

Submitted on: 3/14/2016

Testimony for HUS on Mar 15, 2016 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan J. Wurtzburg	American Association of University Women, Hawaii	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Edward Thompson, III

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, March 14, 2016 3:02 PM  
To: HUS testimony  
Cc: annsfreed@gmail.com  
Subject: Submitted testimony for SB2309 on Mar 15, 2016 09:00AM

**SB2309**

Submitted on: 3/14/2016

Testimony for HUS on Mar 15, 2016 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ann S Freed	Hawaii Women's Coalition	Support	No

Comments: Aloha Chair Morikawa, Vice Chair Kobayashi and members. We are in strong support of this measure. That there are 1500 or more untested rape kits is scandalous and disrespectful of the victims who went through the process. Serial rapist are free to rape again as a result of this. Please pass this measure. 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*

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Robert H. Pantell, MD

Joshua A. Wisch

**DATE:** March 15, 2016

**TO:** The Honorable Dee Morikawa, Chair  
The Honorable Bertrand Kobayashi, Vice Chair  
House Committee on Human Services

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

**RE:** Testimony in Strong Support of S.B. 2309, S.D. 2  
Relating to Sexual Assault

Good morning Chair Morikawa, Vice Chair Kobayashi, and members of the House Committee on Human Services.

The Sex Abuse Treatment Center (SATC) supports the intent of S.B. 2309, S.D. 2, but strongly recommends that the Committee adopt the Proposed H.D. 1 as submitted by the Department of the Prosecuting Attorney of the City and County of Honolulu.

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. The problem is that the issue has been oversimplified.

While the SATC supports the intent of S.B. 2309, S.D. 2, the unilateral mandate to test all SAKs without the opportunity to first arrive at a thought through 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 H.D. 1 will do this. It will bring the Department of the Attorney General, the Honolulu Prosecutor's Office, the Honolulu Police Department Criminal Investigation Division and its Crime Lab, and the Sex Abuse Treatment Center (which represents both victim advocacy and forensic medical) together to look at the very issues outlined in the attachment of Detroit's learned lessons. The Proposed H.D. 1 will give the key players the opportunity to develop an effective and responsible action plan.

Interestingly, the project's 15<sup>th</sup> 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 H.D. 1 as submitted by the Department of the Prosecuting Attorney of the City and County of Honolulu.

FIGURE 6.2

# 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.

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



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



### 4. Funding & resource availability

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

### 5. What should we call it?:

Talking about language

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

**THESAURUS**

**DICTIONARY**

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

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

Three main strategies include:

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

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## 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.



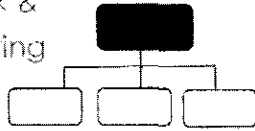
## 10. Budget extra time for older kits

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.

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## 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

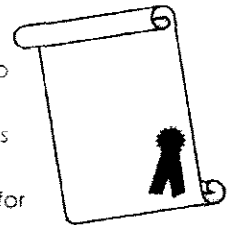
Given the dearth of empirical research on untested SAKs, it is difficult to know whether testing results are typical or atypical. It might be helpful for jurisdictions to connect with other communities who have tackled these issues to compare findings and strategize solutions.

## 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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**kobayashi2-Jessi**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Friday, March 11, 2016 12:49 PM  
**To:** HUS testimony  
**Cc:** eb2@hawaii.edu  
**Subject:** \*Submitted testimony for SB2309 on Mar 15, 2016 09:00AM\*

**SB2309**

Submitted on: 3/11/2016

Testimony for HUS on Mar 15, 2016 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
liz Brown	Individual	Support	No

Comments:

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

March 13, 2016

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

RE: Testimony in Support, SB2309 SD2 Relating to Sexual Assault Forensic Evidence Kit Tracking

Thank you for the opportunity to provide testimony in support of SB2309, SD2. 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. That is, we believe there are very few jurisdictions without backlogs because there are complex reasons that criminal justice entities have not placed a priority on "swift and certain" justice in these cases. 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. Finally, 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 just because an offender has been identified or surrendered in one case does not preclude him from having sexually assaulted someone else before or after that case. There is absolutely no reason NOT to test every rape evidence kit.

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.

Finally, 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. We must believe in this contentious political time that for a usually disagreeable Congress to pass this landmark legislation, there can be no doubt that this initiative makes sense and more importantly, is clearly about justice 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.



**kobayashi2-Jessi**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 14, 2016 11:00 AM  
**To:** HUS testimony  
**Cc:** breaking-the-silence@hotmail.com  
**Subject:** \*Submitted testimony for SB2309 on Mar 15, 2016 09:00AM\*

**SB2309**

Submitted on: 3/14/2016

Testimony for HUS on Mar 15, 2016 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

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Edward Thompson, III

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From: mailinglist@capitol.hawaii.gov  
Sent: Monday, March 14, 2016 12:13 PM  
To: HUS testimony  
Cc: dylanarm@hawaii.edu  
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**SB2309**

Submitted on: 3/14/2016

Testimony for HUS on Mar 15, 2016 09:00AM in Conference Room 329

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dylan Armstrong	Individual	Support	No

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