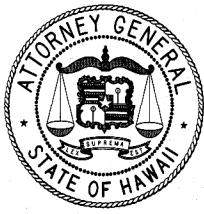




SB2309

Measure Title:	RELATING TO SEXUAL ASSAULT.
Report Title:	Evidence; Sexual Assault Kit Tracking Program
Description:	<p>Establishes the sexual assault kit tracking program. Requires a law enforcement agency to submit sexual assault kits obtained in connection to a criminal investigation to an authorized laboratory within 10 days, the laboratory to complete analysis within 6 months, and results to be uploaded to the state DNA database and data bank identification program and the Federal Bureau of Investigation Combined DNA Index System. Requires 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. Requires 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. Requires the legislative reports to be made available to the public.</p>
Companion:	HB1907
Package:	None
Current Referral:	PSM/JDL, WAM
Introducer(s):	L. THIELEN, BAKER, ESPERO, GREEN, INOUE, SHIMABUKURO, Ihara, Kidani, Riviere, Tokuda



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS, AND ON JUDICIARY AND LABOR

DATE: Wednesday, February 10, 2016 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 016

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

Chairs Nishihara and Keith-Agaran and Members of the Committees:

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.

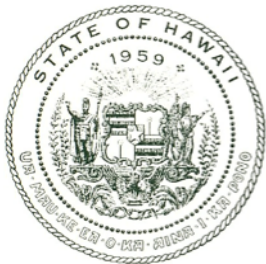
This provision is not clear whether the Department is being required to establish contractual and payment relationships with different laboratories, or just facilitate the relationships between the various law enforcement agencies and the laboratories. Different laboratories could be authorized to analyze 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:

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AMY MONK
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Honolulu, HI 96813
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February 9, 2016

To: Senator Clarence Nishihara, Chair
Senator Will Espero, Vice Chair
Members of the Senate Committee on Public Safety, Intergovernmental
and Military Affairs
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

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

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

The Commission supports SB 2309, 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.

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

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

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**

February 10, 2016

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chairs Nishihara and Keith-Agaran and Members:

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

However, the HPD has concerns that there are no provisions in Senate Bill No. 2309 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.

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety,
Intergovernmental, and Military Affairs
The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
February 10, 2016
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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:

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 \$3,268,000 in 2016; \$3,092,300 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 untested sexual assault kits would be outsourced at a cost of approximately \$2,559,200 per year for the first two years and \$1,710,000 in the third year. Laboratory personnel would have to contract, administer, process, review, and upload all submissions and work products done by the outsourced laboratory; and
 - Beginning in 2018, the annual analysis cost for supplies to process backlogged and incoming sexual assault kits would be approximately \$85,000 per year.
2. Appropriations for Senate Bill No. 2309 should be in place prior to an implementation date. The appropriations should not lapse at the end of the fiscal year for which the appropriations are made.

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety, Intergovernmental,
and Military Affairs
The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
February 10, 2016
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3. Eight laboratory analysts are required to address the amendments to Chapter 844D, HRS, proposed in Senate Bill No. 2309. 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 Senate Bill No. 2309 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 HPD recognizes that DNA information is a valuable tool in assisting with the investigative efforts for law enforcement. However, the passage of Senate Bill No. 2309 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.

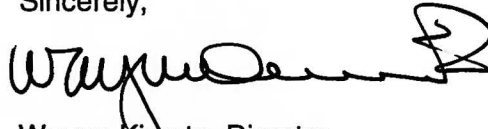
The Honorable Clarence K. Nishihara, Chair
and Members
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Committee on Judiciary and Labor
February 10, 2016
Page 4

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, 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:



Louis M. Kealoha
Chief of Police

From: mailinglist@capitol.hawaii.gov
To: [PSMTestimony](#)
Cc: laurie.field@ppvnh.org
Subject: *Submitted testimony for SB2309 on Feb 10, 2016 08:30AM*
Date: Tuesday, February 09, 2016 6:20:01 PM

SB2309

Submitted on: 2/9/2016

Testimony for PSM/JDL on Feb 10, 2016 08:30AM in Conference Room 016

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

Comments:

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

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Cc: digrazia001@gmail.com
Subject: Submitted testimony for SB2309 on Feb 10, 2016 08:30AM
Date: Thursday, February 04, 2016 1:50:32 PM

SB2309

Submitted on: 2/4/2016

Testimony for PSM/JDL on Feb 10, 2016 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
TOM DIGRAZIA	Individual	Support	No

Comments: Victims of sexual assault need more protection and support. SB 2309 will help to accomplish this goal.

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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Cc: lfreed@hawaii.rr.com
Subject: *Submitted testimony for SB2309 on Feb 10, 2016 08:30AM*
Date: Thursday, February 04, 2016 3:32:36 PM

SB2309

Submitted on: 2/4/2016

Testimony for PSM/JDL on Feb 10, 2016 08:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Freed	Individual	Support	No

Comments:

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Senator Clarence K. Nishihara, Chair
Committee on Public Safety, Intergovernmental, and Military Affairs

Senator Gilbert S.C. Keith-Agaran, Chair
Committee on Judiciary and Labor

SB2309 [Support]

Hearing: Wednesday, 2/10/16
8:30 AM Conference Room 016

Dear Committee on Public Safety, Intergovernmental, and Military Affairs & Committee on Judiciary and Labor,

My name is Andrea Birmingham. I am writing as a female constituent of Senate District 6, a parent, and University of Hawaii graduate student in support of SB2309: to amend Chapter 844D, Hawaii Revised Statutes, to add a new section instituting a sexual assault kit (SAK) tracking program.

The passing of this bill will improve the health and safety of Hawaii residents, support sexual assault victims in receiving justice, help to stop violent offenders from re-victimizing, and reduce the monetary cost to the system. Sexual assault survivors overwhelmingly suffer from depression, substance abuse, teen pregnancy, IPV, trafficking and suicide; according the US Bureau of Justice Statistics, rape has the highest annual victim cost.

In Hawaii, 1 in 7 women are raped, 1 in 10 female undergraduates at the University of Hawaii at Mānoa report being sexually assaulted, and the rates of child sexual abuse are even higher. Additionally, sexual assault is one of the most under-reported serious crimes. As of the writing of this testimony, the most recent aggravated sexual assault report from the UH campus, incidentally a serial assault, was on Thursday, February 4, 2016.

When victims come forward and agree to the use of a SAK, the timely and universal testing of SAKs is essential to survivor's justice and public safety. The National Institute of Justice's (NIJ) action research in 2011 reported on the staggering numbers of untested SAKs and the individual jurisdiction of investigators to submit such tests. They found as few as 2 in 10 are tested. For example, 1,500 SAKs were tested out of Detroit's 11,000 untested kits and yielded 127 DNA matches to serial violent sexual offenders.

Research by NIJ and others point to lack of oversight and written guidelines as the cause of such gross injustice. I applaud Hawaii for submitting legislation to enforce SAK testing and tracking, and hope that we will join the 19 states that have already enacted SAK reforms - especially comprehensive reform such as Michigan. Testing of sexual assault kits should not be an *investigator's* decision; it should be an *automatic* decision – please pass SB2309 and make this a reality.

Respectfully submitted,

Andrea Birmingham
Senate District 6