



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2366, RELATING TO SEXUAL ASSAULT EVIDENCE.

**BEFORE THE:**

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON WAYS AND MEANS

**DATE:** Wednesday, February 24, 2016 **TIME:** 10:00 a.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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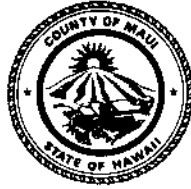
Chairs Keith-Agaran and Tokuda and Members of the Committees:

The Department of the Attorney General appreciates the concerns of the Legislature regarding untested sexual assault collection kits and does not oppose this bill.

The purpose of this bill is to require 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 President of the Senate and the Speaker of the House.

The Department has been informed of amendments being proposed by the Department of the Prosecuting Attorney, City and County of Honolulu (Honolulu Prosecutor), that would require the Department of the Attorney General to generate a more detailed report that includes information from the law enforcement agencies about the progress being made in reducing the number of untested sexual assault kits, plans for further reduction of those numbers, expected costs for the testing, and assessments of potential funding sources. We further understand that the Honolulu Prosecutor is in discussions with the other county law enforcement agencies (prosecutors and police) to coordinate providing to the Department all of the information it would need to compile this report if this bill is passed. To the extent all of the county law enforcement agencies can come to an agreement and provide the Department with all of the information it would need to complete the report envisioned by this bill, we support the bill and the Honolulu Prosecutor's proposed amendments.

ALAN M. ARAKAWA  
Mayor



# LATE TESTIMONY

JOHN D. KIM  
Acting Prosecuting Attorney

ROBERT D. RIVERA  
Acting First Deputy Prosecuting Attorney

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Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON  
SB 2366 - RELATING TO SEXUAL ASSAULT EVIDENCE

February 24, 2016

The Honorable Gilbert S.C. Keith-Agaran  
Chair  
The Honorable Maile S.L. Shimabukuro  
Vice Chair  
and Members  
Senate Committee on Judiciary and Labor

The Honorable Jill N. Tokuda  
Chair  
The Honorable Donovan M. Dela Cruz  
Vice Chair  
and Members  
Senate Committee on Ways and Means

Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz and Members of the Committees:

The Department of the Prosecuting Attorney, County of Maui, SUPPORTS SB 2366 IN AN SD 1 as proposed by the Department of the Prosecuting Attorney, City and County of Honolulu. The proposed SD 1 will require law enforcement agencies and departments to compile information on untested sexual assault evidence collection kits (SAECKs) and transmit the information to the Department of the Attorney General, and requires the Department of the Attorney General to transmit that information to the President of the Senate and Speaker of the House.

We believe that proposed procedure will give an accurate status of the number and location of all untested SAECKs. This will help the Legislature and all involved agencies to determine the best course of action to address the issue of untested SAECKs.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, SUPPORTS the passage of this bill with the amendments proposed by the Honolulu Department of the Prosecuting Attorney. We ask that the committees PASS SB 2366 WITH THESE PROPOSED AMENDMENTS.

Thank you very much for the opportunity to provide testimony on this bill.

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

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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY AND LABOR**

**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 24, 2016

**RE: S.B. 2366; RELATING TO SEXUAL ASSAULT EVIDENCE.**

Chair Keith-Agaran, Chair Tokuda, Vice Chair Shimabukuro, Vice Chair Dela Cruz, members of the Senate Committee on Judiciary and Labor, 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. 2366 and recommends a Proposed S.D. 1, which is attached hereto for your reference.

As written, S.B. 2366 would require law enforcement agencies and departments to provide annual statistics to Department of the Attorney General (“AG’s”), representing the total number of “sexual assault [evidence] collection kits” (“SAECK” or “kits”) in their possession, and the total number of those SAECK that remain “untested.” The AG’s would then have to compile and provide those numbers annually to the Legislature.

It appears that the purpose of S.B. 2366 is for the Legislature to gain a better understanding of how many SAECK are currently being stored but have not yet been tested—in the grand scheme of how many SAECK currently exist—as a basis to reduce the number of untested kits and increase public safety. While the Department understands the Legislature’s concern—particularly given the problems that have surfaced in other states, surrounding this very issue—we do not believe that a true understanding of the situation in Hawaii can be gained simply by looking at these two numbers. Moreover, we believe that a true and complete understanding of the situation is absolutely necessary before moving forward with any type of annual reporting, long-term programs or other system wide changes, if the Legislature wishes to avoid unintended consequences and potential harm involving victims’ rights, constitutional rights, and diligent use of scarce funding and resources.

In lieu of the reporting scheme currently proposed by S.B. 2366, the Department would urge the Committees to mandate a one-time comprehensive report—for now—which could still be coordinated and overseen by the AG's, and which would provide a reliable basis for the Legislature to assess the complete picture surrounding SAECK in Hawaii. In addition to providing the current (total and untested) number of SAECK, the proposed report could explain all of the relevant factors, not only regarding previously untested SAECK, but looking forward to future SAECK procedures. In particular, we believe the AG's report could address:

- 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.

Until the Legislature—and indeed the AG's and the the individual law enforcement agencies—have a full understanding of all of these factors on a statewide basis, the numbers alone have little or no meaning, and may actually give rise to unfounded speculations, misdirected alarm and/or ineffective (or worse, detrimental) action that may, in fact, unintentionally harm some of the victims that we intend 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. 2366, and recommends passage of the Proposed S.D. 1 attached for your review. 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: \_\_\_\_\_

**MITCHELL D. ROTH**  
PROSECUTING ATTORNEY

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



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## OFFICE OF THE PROSECUTING ATTORNEY

### TESTIMONY IN SUPPORT OF SENATE BILL 2366

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

#### COMMITTEE ON JUDICIARY AND LABOR

Sen. Gilbert S.C. Keith-Agaran, Chair  
Sen. Maile S.L. Shimabukuro, Vice Chair

#### COMMITTEE ON WAYS AND MEANS

Sen. Gilbert Jill N. Tokuda, Chair  
Sen. Donovan M. Dela Cruz, Vice Chair

Wednesday, February 24, 2016, 10:00 AM  
State Capitol, Conference Room 211

Honorable Chairs, Keith-Agaran and Tokuda, Honorable Vice-Chairs Shimabukuro and Dela Cruz, and members of the Committees on Judiciary and Labor, and Ways and Means, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 2366.

This measure requires law enforcement agencies and departments to compile information on untested sexual assault collection kits (SAECKs) and transmit that information to the Department of the Attorney General (AG). It also requires the AG to transmit that information to the President of the Senate and the Speaker of the House.

The Office of the Prosecuting Attorney, County of Hawai'i supports SB 2366 in an SD1 as proposed by the Department of the Prosecuting Attorney, City and County of Honolulu. We believe that the proposed procedure will give an accurate accounting of all untested SAECKs. This information will assist the Legislature and all involved agencies to determine the best strategy to address the issue of untested SAECKs.

For the foregoing reasons, the Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 2366, with the amendments proposed by the Honolulu Department of the Prosecuting Attorney. Thank you for the opportunity to testify on this matter.

# LATE TESTIMONY

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB2366 on Feb 24, 2016 10:00AM  
**Date:** Wednesday, February 24, 2016 8:40:42 AM

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## **SB2366**

Submitted on: 2/24/2016

Testimony for JDL/WAM on Feb 24, 2016 10:00AM in Conference Room 211

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Justin F. Kollar	County of Kauai Office of the Prosecuting Attorney	Support	No

Comments: Support the intent and join in the testimony of the Honolulu Prosecutor.

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

Do not reply to this email. This inbox is not monitored. For assistance please email [webmaster@capitol.hawaii.gov](mailto:webmaster@capitol.hawaii.gov)

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

MARIE A. McCAULEY  
CARY OKIMOTO  
DEPUTY CHIEFS

OUR REFERENCE WK-WK

February 24, 2016

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
Committee on Judiciary and Labor  
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 Chairs Keith-Agaran and Tokuda and Members:

SUBJECT: Senate Bill No. 2366, Relating to Sexual Assault Evidence

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. 2366, Relating to Sexual Assault Evidence.

On February 10, 2016, the HPD had announced that approximately 1,500 sexual assault kits were in police custody, and we are compiling and documenting information related to these sexual assault kits.

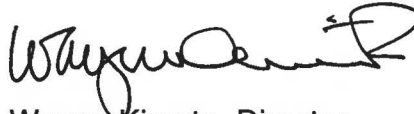
In addition, through a coordinated and multidisciplinary approach, the Department of the Attorney General, the Department of the Prosecuting Attorney, the Sex Abuse Treatment Center, and the HPD have met and are moving toward a strategy to develop systematic practices, procedures, and protocols to address these kits. This group will set timelines for processing untested sexual assault evidence kits; seek resources for the analysis of previously untested and future kits; and ensure that the outcomes are handled in a manner that is responsible and victim oriented.

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
Committee on Judiciary and Labor  
The Honorable Jill N. Tokuda, Chair  
and Members  
Committee on Ways and Means  
February 24, 2016  
Page 2

The HPD supports the passage of Senate Bill No. 2366 with the adoption of the amendments proposed by the Department of the Prosecuting Attorney. The proposed amendments will further the efforts started by the involved agencies and departments.

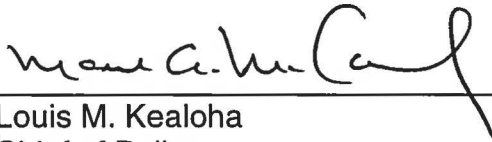
Thank you for the opportunity to testify.

Sincerely,



Wayne Kimoto, Director  
Scientific Investigation Section

APPROVED:



Louis M. Kealoha  
Chief of Police

**TESTIMONY OF THE HAWAII POLICE DEPARTMENT**

**SENATE BILL 2366**

**RELATING TO SEXUAL ASSAULT EVIDENCE**

**BEFORE THE COMMITTEE ON JUDICIARY AND LABOR**

**AND**

**BEFORE THE COMMITTEE ON WAYS AND MEANS**

**DATE : Wednesday, February 24, 2016**

**TIME : 10:00 A.M.**

**PLACE : Conference Room 211  
State Capitol  
415 South Beretania Street**

**PERSON TESTIFYING:**

**Police Chief Harry S. Kubojiri  
Hawaii Police Department  
County of Hawaii**

**(Written Testimony Only)**

William P. Kenoi  
Mayor



Harry S. Kubojiri  
Police Chief

Paul K. Ferreira  
Deputy Police Chief

## County of Hawai'i

### POLICE DEPARTMENT

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February 24, 2016

Senator Gilbert S.C. Keith-Agaran  
Chairperson and Committee Members  
Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair  
Chairperson and Committee Members  
Committee on Ways and Means  
415 South Beretania Street, Room 211  
Honolulu, Hawai'i 96813

**Re: SENATE BILL 2366 RELATING TO SEXUAL ASSAULT EVIDENCE**

Dear Senators Keith-Agaran and Tokuda:


The Hawai'i Police Department **supports the intent** of Senate Bill 2366, Relating to Sexual Assault Evidence, with recommendation that the committees adopt the amendments set forth by the testimony of the City and County of Honolulu, Office of the Prosecuting Attorney.

The measure as written seeks to require 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, and further requires the Department of the Attorney General to transmit that information to the Legislature, which we concur would be a "numbers only" report.

We are in total agreement that the proposed amendments by the Office of Prosecuting Attorney would in fact create a comprehensive and informative report compiled by Department of the Attorney General that would provide the Legislature with a complete understanding of the issue of the untested Sexual Assault Evidence Collection Kits in Hawaii.

Thank you for allowing the Hawai'i Police Department to provide testimony relating to Senate Bill 2366, and respectively urges the committees to adopt the proposed amendments to the measure.

Sincerely,

  
HARRY S. KUBOJIRI  
POLICE CHIEF



# LATE TESTIMONY



## POLICE DEPARTMENT COUNTY OF MAUI

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MAYOR

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YOUR REFERENCE

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TIVOLI S. FAAUMU  
CHIEF OF POLICE

DEAN M. RICKARD  
DEPUTY CHIEF OF POLICE

February 24, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair  
And Members of the Committee on Judiciary and Labor

The Honorable Jill N. Tokuda, Chair  
And Members of the Committee on Ways and Means

The Senate  
State Capitol  
Honolulu, Hawaii 96813

RE: Senate Bill No. 2366, RELATING TO SEXUAL ASSAULT EVIDENCE

Dear Chair Agaran and Chair Tokuda and Members of the Committees:

The Maui Police Department SUPPORTS the passing of S.B. No. 2366 in an SD 1 as proposed by the Department of the Prosecuting Attorney, City and County of Honolulu. The proposed SD 1 will require law enforcement agencies and departments to compile the information on untested sexual assault evidence collection kits (SAECK) and transmit the information to the Department of the Attorney General. It will require the Department of the Attorney General to transmit that information to the President of the Senate and Speaker of the House.

We believe the proposed procedure will give an accurate status of the number and location of all untested sexual assault evidence collection kits and thus help the Legislature and all involved agencies to determine the best course of action to address this issue. The Maui Police Department asks your committee to support passage of this bill with the amendments proposed by the Honolulu Department of the Prosecuting Attorney.

Thank you for the opportunity to testify.

Sincerely,

*A. D. Matsun*  
For TIVOLI S. FAAUMU  
Chief of Police





THE SEX ABUSE  
TREATMENT CENTER

A Program of Kapi'olani Medical Center for Women & Children

Executive Director  
Adriana Ramelli

DATE: February 24, 2015

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Michael P. Matsumoto

Robert H. Pantell, MD

Joshua A. Wisch

TO: The Honorable Gilbert Keith-Agaran, Chair  
The Honorable Maile Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

The Honorable Jill Tokuda, Chair  
The Honorable Donavan Dela Cruz, Vice Chair  
Senate Committee on Ways and Means

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

RE: Testimony Supporting the Intent of S.B. 2366  
Relating to Sexual Assault Evidence

Good morning Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz, and members of the Senate Committees on Judiciary and Labor and on Ways and Means.

The Sex Abuse Treatment Center (SATC) supports the intent of S.B. 2366, which requires law enforcement agencies and departments to compile information on untested sexual assault collection kits and transmit the information to the Department of the Attorney General, and further requires the Department of the Attorney General to transmit that information to the Legislature.

The SATC believes that untested sexual assault evidence collection kits should be submitted for DNA analysis. However, it is critically important that such testing and its outcomes are handled in a manner that is responsible and victim-centered.

The SATC believes that the experiences of other jurisdictions that have engaged in the reduction of untested kits are instructive. Pilot jurisdictions that were partially funded by research grants from the National Institutes of Justice (NIJ) found that careful review and planning must occur both before and during backlog reduction in order to successfully meet the goals of those efforts.

Careful review and planning are needed for various reasons. Chief amongst these is the potential for an unintended cascading effect that can negatively impact the criminal justice system, as reported by prosecutors in Houston and Detroit, two NIJ pilot jurisdictions. While it is critically important to test kits, it is as important to recognize the investigatory and prosecutorial processes that need to respond for justice to be served. The testing of all backlogged kits, without a thoughtful strategy to enable all systems to respond responsibly could inadvertently result in additional trauma for survivors.

Analysis of previously untested kits will also result in survivor notifications, and as noted in the Detroit study, a substantial portion of these notifications will likely have immediately harmful effects on victims (14%), while the long term negative emotional and psychological consequences of triggering prior trauma, no matter what the survivors' initial reaction, is unknown. Therefore, the process for survivor notifications and engagement must be carefully designed to limit such harm, and victim service providers must be prepared with adequate resources to help survivors.

As a Center that works directly with survivors of sexual assault, we understand trauma, as well as the impact of the criminal justice system on survivors. The dialogue that is taking place on this issue as a result of legislative attention is extremely positive. How we move forward is now the key.

We note that the Honolulu Police Department (HPD) and its Crime Lab, has identified the number of untested kits. In response, the Department of the Attorney General, the Honolulu Prosecutor's Office, HPD, the HPD Crime Lab, and the SATC met to discuss further actions. Recognizing the importance of a multidisciplinary, coordinated response that is victim-centered, this group will continue to collaborate in order to set timelines for the processing of untested kits; seek needed resources for the analysis of previously untested kits and future kits; and ensure that consideration of the survivors' needs are central in Hawai'i's strategy to address this issue.

To support this effort, rather than only requiring a limited annual report, it is SATC's recommendation that the committees adopt the amendments proposed by the testimony of the Department of the Prosecuting Attorney, City and County of Honolulu.

We respectfully urge you to support passage of S.B. 2366, with the proposed amendments. Thank you.