

To: Hawaii State Senate Committee on Judiciary  
Hearing Date/Time: Thursday, Feb. 1, 2018, 9:00 a.m.  
Place: Hawaii State Capitol, Rm. 016  
Re: Testimony of Planned Parenthood Votes Northwest and Hawaii in strong support of S.B. 2345, relating to Sexual Assault

Dear Chair Taniguchi and Members of the Committee,

Planned Parenthood Votes Northwest and Hawaii (“PPVNH”) writes in strong support of S.B. 2345.

PPVNH supports S.B. 2345 because it seeks to ensure that sexual assault survivors have timely and dignified access to rape kits and information about their rights and that law enforcement submit, track, and process completed kits within a set period time.

Unfortunately, we know that not only are a small percentage of sexual assault cases reported, but charges are filed in even a fewer portion of cases. Assault survivors face myriad obstacles in reporting and seeking justice, but perhaps one of the more troubling challenges they face is the simple availability of both sexual assault examination kits (rape kits) and their results. Many hospitals do not maintain a consistent stock of rape kits or staff adequately trained nurse examiners. While it is understandable that some hospitals, particularly those in rural or remote locations, may not have the capacity to hire sexual assault nurse examiners or the need to stockpile rape kits, it is essential that local hospitals and law enforcement develop policies and protocols to ensure all assault survivors can have physical evidence collected in a timely and dignified manner. Survivors must also be guaranteed that they will not be billed or charged for the kit or processing—an all too disturbing trend survivors face in this country.

On top of the challenges to accessing sexual assault exam kits in the first place, assault survivors are left waiting years for the results of the kits. The backlog exists at two levels: completed kits that are in police storage facilities but not forwarded to crime labs for analysis, and kits that are submitted to facilities but are awaiting testing. The injustice of this is unthinkable: predators are left on the street and survivors cannot get closure on vicious crimes. Very few states even track how many tests are untested, let alone how quickly they are submitted and processed.

S.B. 2345 will go far to address these issues and promote justice for survivors.

Thank you for this opportunity to testify in support of this important measure.

Sincerely,

Laurie Field  
Hawaii Legislative Director



January 30, 2018

To: Hawaii State Senate Committee on Judiciary  
Hearing Date/Time: Thursday, February 1, 2018 (9:00 am)  
Place: Hawaii State Capitol, Rm. 016  
Re: Testimony in support of SB2345

Dear Senator Brian T. Taniguchi (Chair), Senator Karl Rhoads (Vice Chair) and Members of the Committee,

I am grateful for this opportunity to testify in **strong support of S.B. 2345** relating to sexual assault, specifically to sexual assault evidence collection kits.

My testimony is on behalf of the approximately 400 members of the American Association of University Women (AAUW) in Hawaii, who list gender-based violence as an important current concern. My testimony is informed by many years of work in the field of domestic violence, and research conducted with survivors of intimate partner violence (IPV). It should be noted that typically IPV survivors also experience sexual assault. In addition, when I lived in New Zealand, I managed a 24-hour, 7-days/week domestic violence hotline, and I also trained hotline Advocates to respond skillfully and empathetically to survivors of violence. I provided extensive education to Advocates for Women, and also worked with police, courts, and other service agencies on behalf of survivors. In addition to working on the frontlines of gender-based violence in my advocacy positions, I also supported many university students in my classes, who were dealing with the after-effects of sexual assault.

Based on these experiences, I argue that passage of S.B. 2345 is important. Survivors of sexual assault need to know what has happened to their sexual assault evidence collection kits, and the processing of said kits needs to be streamlined in Hawaii while maintaining the evidentiary requirements necessary for successful prosecutions. Collection of evidence is a horrible process for an individual, typically a woman, and she undergoes it in the hope that a perpetrator may be stopped from attacking someone else. She does not permit this procedure so that evidence can languish on the shelves of a storage unit, become lost in the system, or be unusable if she wishes to encourage the police to prosecute at a later date.

In conclusion, passage of S.B. 2345 is an important bill to pass now, since it codifies how sexual assault evidence collection kits are processed in Hawaii.

Thank you for the opportunity to testify.

Sincerely

*Susan J. Wurtzburg*, Ph.D.

Policy Chair

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

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



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February 1, 2018

The Honorable Brian T. Taniguchi, Chair  
and Members  
Committee on Judiciary  
State Senate  
Hawaii State Capitol  
415 South Beretania Street, Room 016  
Honolulu, Hawaii 96813

Dear Chair Taniguchi and Members:

SUBJECT: Senate Bill No. 2345, 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. 2345, Relating to Sexual Assault, with the amendments proposed by the Attorney General.

Thank you for the opportunity to testify.

Sincerely,

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

Wayne Kimoto, Director  
Scientific Investigation Section

APPROVED:

A handwritten signature in black ink, appearing to read "Susan Ballard".  
Susan Ballard  
Chief of Police

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**Date:** February 1, 2018

**To:** The Honorable Brian Taniguchi, Chair  
The Honorable Karl Rhoads, Vice Chair  
Senate Committee on Judiciary

**From:** Justin Murakami, Policy Research Associate  
The Sex Abuse Treatment Center  
A Program of Kapi'olani Medical Center for Women & Children

**RE:** Testimony Supporting the Intent of S.B. 2345 with Amendments  
Relating to Sexual Assault

Good morning Chair Taniguchi, Vice Chair Rhoads, and members of the Senate Committee on Judiciary:

The Sex Abuse Treatment Center (SATC) supports the intent of S.B. 2345 with amendments.

SATC serves as a victim services and advocacy member of the Project Mālama Kākou multidisciplinary team brought together by the Department of the Attorney General in response to Act 207 (2016) for the purpose of creating and implementing a plan for the management and testing of old and new kits in the State of Hawai'i. With the Legislature's support, the Project has succeeded in submitting every eligible previously untested sexual assault kit for DNA testing.

The Project Mālama Kākou partners met extensively concerning S.B. 2345, and we defer to the amendments suggested by the Department of the Attorney General.

SATC further provides the following comments:

- On page 5 of the bill, the Hawai'i Sexual Assault Response Team (HSART) should be authorized to "have regularly scheduled meetings to strengthen the coordinated community response and level of quality care for victims of sexual assault."

Rather than limiting the program to conducting specific tasks centered on the medical forensic examination and sexual assault kits, this would allow HSART the flexibility to address a wider range of issues affecting the coordinated system response to sexual assault and conduct appropriate activities, such as coordinating professional trainings and multidisciplinary discussion of cases.

In addition, we note that the State of Hawai'i obtained a \$2 million federal Sexual Assault Kit Initiative Program grant from the U.S. Department of Justice. As part of the grant-funded activities, the Mālama Kākou multidisciplinary team

(whose members would also make up the bulk of HSART) have been engaged in many of the activities that the current language of S.B. 2345 would require HSART to take up, such as developing a standard data set and implementing county-based tracking systems.

- On page 6 – 8 of the bill, rather than mandating that inventory reports include detailed information for each kit (e.g. collection facility, collection date, current location, testing status), aggregate reporting of kits and limited information for kits that were not compliant with processing timeframes should be required.

Please note that the kits described in this inventory will comprise mostly of recent, active cases. Providing kit-specific detail in the manner required by the current language of S.B. 2345 would raise the possibility of victims—including those who have not made police reports—being identified, disclosing to the public that a particular victim had a sexual assault kit performed, and the current status of processing for a particular victim's kit. For example, in some counties, only one kit may be collected in one or two weeks; a perpetrator or the public could infer if a particular victim received a kit if detailed information for each kit were reported. We are concerned that this could endanger the victim.

Aggregate reporting of kits and providing limited information for kits that did not meet processing timeframes would avoid these problems, and provide a clearer point-in-time snapshot of the status of kits in Hawai'i, including ones that are not compliant with the proposed processing requirements of this bill.

- For unreported kits, addressed on pages 9 and 10 of the bill, we support giving the victim a choice of whether the kit should be stored with the police or with their county sexual assault program/center, and a retention period of 5 years for adults and 20 years for children which will be clearly communicated at the time a kit is collected.

We appreciate this opportunity to testify on this measure, and respectfully ask that the Legislature adopt the amendments proposed by the Department of the Attorney General.

TESTIMONY IN SUPPORT OF  
S.B. 2345 – RELATING TO SEXUAL ASSAULT

Senator Brain. T. Taniguchi, Chair  
Senator Karl Rhoads, Vice Chair  
Senate Committee on Judiciary  
February 1, 2018, 9:00 a.m., Conference Room 016

Dear Senator Taniguchi, Rhoads, and Members of the Committee:

I would like to thank the Committee for the opportunity to testify in SUPPORT of S.B. 2345. The bill will establish a sexual assault response team consisting of members only involved in the testing, use, and management of sexual assault evidence kits and with the victim. The bill also informs an inventory and report of sexual assault evidence collection kits as to ensure their processing and results reporting in a timely manner and overall standardization across state levels for the collection and processing of evidence kits. Finally, the bill establishes a tracking system implemented by the year 2020 which tracks the kits through the criminal justice system and informs the victims of their rights and services.

S.B. 2345 is being introduced at a crucial time in history. The issue of gender-based violence, including but not limited to sexual assault, has been the forefront of many grassroots movements finally catching the attention of the media, campaigners, and stakeholders with new force thanks to the many powerful campaigns; from the Say Her Name campaign to the #MeToo, to name a couple. The volume of the issue will continue to spread. This bill can act in tandem with the University of Hawai'i Climate Survey Report, polling 44,671 students at the university. The survey reported that only 1 in 6 or a mere 16.6% of UH Manoa students contacted on-campus resources to report the sexual assault. Taking into account the low reporting rate on-campus, once a student does report, how do we ensure their rights and services are processed accordingly and in a timely manner?

Likewise, the report detailed that sexual touching was 2.5 times more likely than sexual penetration. However, of those who experienced nonconsensual sexual penetration, 20.8% reported negative consequences, experiencing physical injuries such as bruising, an STD, and anal or vaginal injury from sexual contact. Moreover, if the results of the survey are weighted accordingly and fully considered, shouldn't the negative consequences of nonconsensual sexual contact of any degree experienced by the victim be fully validated and supported? The testing kit is the evidence-based, first defense to injustice. Intervention strategies may follow, yet the kit seems to be the first step towards ensuring victim justice in whatever form that may look like to them. S.B. 2345 secures into law that once an action has been taken by the victim, it will receive adequate attention in relation to serving the victim in a manner that suits their preferred methods of action while presenting itself promptly.

Translated to the off campus climate, the organization Hawai'i Says No More in relation to their campaign efforts has published on their website that over 500 victims receive services from domestic violence shelters daily. Comparatively, 1 in 7 women in Hawai'i has been raped sometime in her lifetime. The website claims that is 67,000 women. That is at least 67,000 women if access and ability allow, that can utilize the state resources and testing kit. As a woman, a feminist, advocate for women's rights and social equality, I concern myself with issues of violence that disrupt the well-being of my community and threaten their safety. This bill does not attempt to reinvent the wheel, yet simply ensures the wheel remains fully functional, secure, and accountable as it serves the criminal justice system and more directly victims and survivors.

Accordingly, I SUPPORT S.B. 2345. I respectfully urge your Committee to PASS this important bill. Thank you for the opportunity to provide testimony.

Sincerely,

Miranda Gallegos



32 West 22nd Street, 4<sup>th</sup> Floor  
New York, New York 10010  
(212) 475-2026  
joyfulheartfoundation.org

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February 1, 2018

To: Senator Brian T. Taniguchi, Chair  
Senator Karl Rhoads, Vice Chair  
Members of the Senate Committee on Judiciary

From: Ilse Knecht  
Director of Policy and Advocacy  
Joyful Heart Foundation

**Re: Testimony in Support, Senate Bill 2345, Relating to Sexual Assault**

Thank you for this opportunity to submit testimony in support of Senate Bill 2345, which continues the work of stakeholders in Hawai'i to ensure that rape kits are tested in an expeditious manner and offer a path to healing and justice for all sexual assault survivors.

I respectfully submit this testimony on behalf of the Joyful Heart Foundation, which was founded in Kailua-Kona in 2004, and has expanded across the country in service of our mission to transform society's response to sexual assault, domestic violence, and child abuse, support survivors' healing, and end this violence forever. Since 2010, Joyful Heart has made the elimination of the national rape kit backlog our top advocacy priority. The stakes for the local community could not be higher; in Hawai'i, one in seven women have been raped, and the aftermath of a sexual assault is traumatic. Any sexual assault survivor who consents to the invasive and lengthy examination does so with hope that it will lead to justice, and it is up to us to make sure every single rape kit connected to a reported crime is submitted to the laboratory and tested in a timely manner.

In 2016, Hawai'i passed Act 207, a critical first step toward rape kit reform. We applaud Senator Laura Thielen, Representative Linda Ichiyama, Majority Leader Belatti, the Hawai'i Women's Legislative Caucus, Attorney General Doug Chin, and members of the Hawai'i Sexual Assault Kit Initiative (SAKI) for their hard work and dedication to rape kit reform in Hawai'i. All have devoted significant time and energy to understanding the issue and exploring possible reforms. We are grateful for this effort.

Act 207 required a one-time inventory of untested rape kits in storage across Hawai'i, uncovering the extent of the backlog for the first time. The law mandated all law enforcement agencies and departments that maintain, store, or preserve rape kits to count and report the number of stored kits in their custody to the Department of the Attorney General. It also required the Attorney General to convene a workgroup to study and make recommendations regarding the handling of sexual assault kits across the state. Law enforcement agencies and departments were required to implement these recommendations; guidelines for the submission and testing of newly collected kits were to be implemented in 2017, and guidelines for the submission and testing of previously untested kits were slated for implementation in 2018.



The Act 207 Report, released in December 2016, identified a total of 2,240 rape kits in the custody of county police departments, 1,951 of which remained untested. Based on these findings, analysis of outcomes in other jurisdictions, and many months of discussions, the Act 207 Working Group developed the Malāma Kākou Project, a plan to reform existing policy and practice for the handling of rape kits across Hawai'i. In 2017, both chambers of the Hawai'i legislature adopted a concurrent resolution urging all law enforcement agencies to follow the Malāma Kākou Project guidelines for testing rape kits. The resolution also requested that the Attorney General conduct an annual statewide inventory of rape kits. Act 207 and HCR 133 were laudable steps toward comprehensive rape kit reform.

S.B. 2345 includes testing, reporting, victims' rights, and tracking provisions that are essential to furthering this rape kit reform work in Hawai'i. The bill would convene a statewide Sexual Assault Response Team (SART), which must develop forensic examination and rape kit preservation guidelines for all facilities that perform such exams. It also mandates the swift submission and testing of all newly collected rape kits connected to a reported crime, and mandates annual statewide inventory reports of kits in storage at law enforcement agencies, medical facilities, laboratories, and rape crisis centers. Finally, the bill grants sexual assault survivors essential rights, including the right to access information regarding the testing status or location of their rape kits, and mandates that stakeholders track all rape kits from collection to analysis.

### **Ensuring Swift Submission of Newly Collected Rape Kits**

DNA evidence is an invaluable investigative tool. When tested, rape kit evidence can identify an unknown assailant, reveal serial offenders, affirm a victim's story, discredit a suspect's version of the events, and exonerate the wrongly convicted. In 2016, Case Western Reserve University published an analysis of serial versus one-time offenders identified by testing previously unsubmitted rape kits in Cuyahoga County, Ohio. Their research showed that more than half of these sexual assaults were committed by serial rapists. When we test DNA evidence, we can establish patterns to find these dangerous serial offenders and take them off the streets. This is why we support the mandatory and swift submission and testing of every rape kit booked into evidence and connected to a reported sexual assault.

Expeditious testing of all untested sexual assault kit sends a powerful message to survivors that they—and their cases—matter. It sends a message to perpetrators that they will be held accountable for their crimes. It demonstrates a commitment to survivors to do everything possible to bring healing and justice. It is also the pathway to a more effective criminal justice system and safer communities across the country.

Last August, the U.S. Department of Justice National Institute of Justice released *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, which includes 35 recommendations for victim-centered approaches for responding to sexual assault cases. For the first time, the federal government unambiguously declared that testing every rape kit connected to a reported crime is a best practice. Testing all kits is victim-centered, trauma-informed, and promotes public safety. This approach has been embraced by elected officials, law enforcement leaders, lab professionals, prosecutors, and advocates in jurisdictions across the country.

By establishing uniform, statewide guidelines for the prompt submission of rape kits to the lab, we can ensure that all survivors in Hawai'i are offered a path to healing and justice. Explicit and short timelines encourage consistency, submission and testing compliance, and eliminate some of the discretionary decision-making that has governed the handling of rape kits in our state for so long. S.B. 2345 requires medical facilities to notify law enforcement agencies within 24 hours, law enforcement agencies to pick up the kit within 3 business days, and submit a request for testing within 10 days. Laboratories must notify law enforcement

within 14 days of the request if they accept the kit or ask it to be sent to a different laboratory. Kits must be tested within 180 days of arrival, on average, before July 1, 2023, and within 90 days of arrival, on average, after that date.

### **Promoting Ongoing Transparency and Accountability**

To fully resolve the backlog of untested rape kits in Hawai'i, we must both address the root causes of the problem and take steps to ensure a backlog does not reoccur. Joyful Heart is grateful to county law enforcement agencies, prosecutors, and legislators for their commitment to fulfilling the inventory required by Act 207. This audit revealed the true number of untested kits in the state and shed light on areas for improving rape kit processing.

The reporting provisions of Senate Bill 2345 sustain this spirit of transparency and public accountability by requiring annual inventory reporting for all law enforcements agencies, medical facilities, laboratories, and rape crisis centers. These agencies must report key data—including the total number of rape kits in their custody, the status of these kits, the number of kits they have destroyed, and the reasons for which such kits were destroyed—to the Attorney General, who must compile and report these data publicly and to the legislature.

By requiring annual reporting, S.B. 2345 will ensure that all stakeholders, including survivors and the general public, can monitor the success of the implementation of the Malāma Kākou Project. Regular data collection and reporting allows us to track our progress, assess the impact of the policy changes, and be held accountable for progress. Accountability shows the public and survivors that system stakeholders are committed to the pledge we have taken to improve rape kit handling procedures.

### **Survivors' Rights and Rape Kit Tracking**

As states and local jurisdictions work to process kits, they are faced with the question of how to re-engage survivors whose cases are often years— sometimes decades—old in a manner that is not re-traumatizing, can enhance the probability that a survivor will re-engage with the criminal justice system, and will increase the likelihood that a survivor will access the support services they need and deserve. Many of these communities and states are working to ensure survivors have a legally established right to be notified about the status of their kits. With passage of this bill, Hawai'i would join a growing list of states that are recognizing the importance of affording sexual assault survivors these vital rights.

In 2016, Joyful Heart released *Navigating Notification*, the result of a 3-year research project studying best practices for victim notification and re-engagement. In partnership with researcher Dr. Courtney Ahrens of California State University at Long Beach, we brought together the voices of more than 90 survivors, criminal justice, medical, academic, and advocacy professionals to establish survivor-centered, trauma-informed policies and protocols for victim notification.

One of the key findings of our research was that having access to information and being informed about the status of their case is critical to survivors' healing. The survivors in our study strongly asserted that information about their case “belongs” to them, and limiting access to such information is “unacceptable and misguided.” Survivors deserve all the information they need to determine their own involvement in the medical, legal, and healing processes.

S.B. 2345 would grant survivors key rights to ensure that they have access to information about the status of their cases and of their kits, including:

- The right to receive written information about kit collection and preservation guidelines;
- The right to have their kit preserved, regardless of whether they choose to file police reports;
- The right to a supportive crisis worker during forensic examinations;
- The right to information regarding the status, analysis, location, or intended destruction of their kits; and
- The right to be informed of major developments in their cases.

Furthermore, S.B. 2345 directs each county to establish a tracking system for rape kits, which must include entities that receive custody of the kits and must be accessible to victims anonymously. The bill requires participation in the tracking system from law enforcement agencies, laboratories, health care providers, and others in the chain of custody. A tracking system is effective when all participants in the medical and legal fields fully participate and regularly update crucial information within their jurisdiction. A rape kit tracking system can also provide status reports and help entities provide updates to the public, legislature, and other stakeholders. It is our understanding that the intention is to have a unified, electronic tracking system across the state, which we applaud.

S.B. 23451 requires the tracking system to provide a means of secure access to sexual assault survivors. As our research shows, giving survivors a choice about how and when to receive information about their kits can help counter the loss of self-determination and control at the core of the sexual assault experience. This provision is critical because it supports survivors' ability to access critical information about their kits in a secure and easily accessible manner.

### **Next Steps For Reform**

We are heartened by the leadership of Senator Thielen and Representative Ichiyama, many of their colleagues, and the members of the Women's Caucus, the Attorney General's Working Group, and the Hawai'i Sexual Assault Kit Initiative team, all of whom keep pressing forward on rape kit reform in Hawai'i. The Hawai'i legislature has been tremendously supportive of rape kit reform, and we encourage continued assistance to local jurisdictions with implementing a survivor-centered approach to the rape kit handling process and survivor engagement. Doing so will ensure safer communities and create a path to healing and justice for survivors of sexual assault in Hawai'i.

We encourage the Attorney General, members of the Act 207 Workgroup, and members of the legislature to continue engaging in dialogue, study, and action to ensure legislative reform brings about accountability, testing of all backlogged rape kits, and continued access to justice for survivors. We encourage the legislature to allocate sufficient funding not only to processing untested rape kits, but also to investigating leads, moving cases forward to prosecution, and engaging survivors in the criminal justice system, as well.

Joyful Heart is grateful to the committed stakeholders working to improve the handling of rape kits across Hawai'i. We are proud to support this bill, and look forward to continuing to advance evidence-informed reforms to fully address the issue going forward.



**SB-2345**

Submitted on: 1/27/2018 9:55:33 AM

Testimony for JDC on 2/1/2018 9:00:00 AM

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

Comments:

**SB-2345**

Submitted on: 1/27/2018 5:01:57 PM

Testimony for JDC on 2/1/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kaulana Dameg		Support	No

Comments:

**SB-2345**

Submitted on: 1/30/2018 1:38:25 AM

Testimony for JDC on 2/1/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan Jaworowski		Support	No

Comments:

I support the timely testing of sexual assault evidence collection kits.

**SB-2345**

Submitted on: 1/31/2018 11:27:33 AM

Testimony for JDC on 2/1/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Councilmember Yuki Lei Sugimura	Maui County Council	Support	No

Comments:





**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**  
S.B. NO. 2345, RELATING TO SEXUAL ASSAULT.

**LATE**

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Thursday, February 1, 2018      **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Russell A. Suzuki, First Deputy Attorney General, or  
Lance Goto, Deputy Attorney General.

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Chair Taniguchi and Members of the Committee:

The Department of the Attorney General ("the Department") appreciates the intent of this bill and recommends amendments as described in the attached draft.

The purpose of this bill is to create a Hawaii Sexual Assault Response Team to address the manner in which sexual assault evidence collection kits (SAKs) are processed and tracked, and to ensure that victims of sexual assault are informed of their rights under the law. The bill requires annual reports to the Department on the status of SAKs, and annual summary reports by the Department to the Legislature.

The Department has met with members of the Hawaii Sexual Assault Kit Initiative (Hawaii SAKI), including representatives from county police departments and prosecutor offices, the Sexual Abuse Treatment Center of Kapiolani Medical Center for Women & Children, and Child and Family Service-Maui Sexual Assault Center. After extended discussions, the group has a number of proposed amendments to the bill. Those amendments are represented in the attached draft.

The Department notes that the definition of an "accredited and approved DNA laboratory" may be an issue for the provisions setting reporting requirements and deadlines upon the laboratories. If the laboratories are private and located out of state, it may be difficult to get compliance with those requirements. Requiring them to meet specific deadlines may mean much higher costs for those services.

The Department considers the draft to be a work in progress and would appreciate the opportunity to continue working with the members of the Hawaii SAKI, the Committee, and representatives of the Women's Legislative Caucus to improve this important measure.

The Department appreciates this opportunity to testify and share the hard work of the Hawaii SAKI members.

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# A BILL FOR AN ACT

RELATING TO SEXUAL ASSAULT.

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

1           SECTION 1. The legislature finds that deoxyribonucleic  
2 acid (DNA) evidence is a powerful law enforcement tool that can  
3 identify unknown suspects, connect crimes to known perpetrators,  
4 and exonerate the innocent. The legislature further finds that  
5 establishing standard and efficient sexual assault evidence  
6 collection kit handling procedures and a statewide tracking  
7 system would ensure that victims of sexual assault receive  
8 accurate information that enables them to take steps to protect  
9 their rights, and prevent the misplacement of kits, delays in  
10 testing, and destruction of evidence.

11           It is the intent of the legislature that sexual assault  
12 evidence collection kits are tested in a timely manner to  
13 enhance public safety by protecting sexual assault survivors,  
14 exonerating the innocent, and holding offenders accountable.

15           The purpose of this Act is to address the manner in which  
16 sexual assault evidence collection kits are processed and  
17 tracked and to ensure that victims of sexual assault are  
18 informed of their rights under the law.

1 SECTION 2. The Hawaii Revised Statutes is amended by  
2 adding a new chapter to title 38 to be appropriately designated  
3 and to read as follows:

4 "CHAPTER

5 SEXUAL ASSAULT EVIDENCE COLLECTION KITS

6 § -1 Definitions. As used in this chapter:

7 "Accredited and approved DNA laboratory" means a DNA  
8 laboratory that:

9 (1) Meets the requirements of section 844D-54; and

10 (2) Conducts DNA analysis eligible for upload to  
11 the Combined DNA Index System, as approved by its state  
12 administrator.

13 "Combined DNA Index System" means the Federal Bureau of  
14 Investigation's program of support for criminal justice DNA  
15 databases as well as the software used to run these databases.

16 "Department" means the department of the attorney general.

17 "DNA" means deoxyribonucleic acid.

18 "DNA analysis" refers to the following process:

19 (1) The taking of DNA samples from evidence containing DNA  
20 from a known individual or DNA of unknown origin;

21 (2+) The isolation of autosomal deoxyribonucleic acid  
22 (DNA) to develop DNA profiles that are eligible for  
23 entry into the Combined DNA Index System; and

24 ~~(2) The taking of DNA samples from evidence containing DNA~~

1           ~~from a known individual or DNA of unknown origin;~~

2           (3) The determination of the DNA test results;~~and~~

3           ~~(4) Entry of resulting DNA profiles into the Combined DNA~~  
4           ~~Index System.~~

5           "Law enforcement agency" means a county police department,  
6 ~~the office of a sheriff, the office of a county prosecuting~~  
7 ~~attorney, or a federal, state, or local governmental body that~~  
8 ~~enforces criminal laws and whose employees have statutory powers~~  
9 ~~of arrest.~~

10           "Medical forensic examination" means an examination  
11 provided to a victim of a suspected sexual assault by a health  
12 care provider to address medical concerns resulting from the  
13 sexual assault and to collect and preserve evidence that may be  
14 used in a police investigation and any subsequent prosecution.

15           "Reported sexual assault evidence collection kit" or  
16 "reported kit" means a sexual assault evidence collection kit  
17 for a case in which:

18           (1) The victim reported a sexual offense to a law  
19           enforcement agency; or

20           (2) The victim reported a sexual offense to a law  
21           enforcement agency and a formal complaint was  
22           generated; the victim subsequently requested that the  
23           complaint be withdrawn; but now the victim has chosen  
24           to reinstate the complaint.

1 "Sexual assault evidence collection kit" means a kit that  
2 contains a human biological specimen or specimens collected by a  
3 health care provider during a medical forensic examination from  
4 the victim of a suspected ~~sexually-oriented-criminal~~ sexual  
5 offense.

6 "Status" refers to the location, date, and time that a  
7 sexual assault evidence collection kit is transferred within the  
8 chain of custody.

9 "Unreported sexual assault evidence collection kit" or  
10 "unreported kit" means a sexual assault evidence collection kit  
11 for a case in which:

- 12 (1) The victim chose not to report a sexual offense to a  
13 law enforcement agency; or
- 14 (2) The victim reported a sexual offense to a law  
15 enforcement agency and a formal complaint was  
16 generated; but the complaint was subsequently  
17 withdrawn at the victim's request.

18 § -2 **Hawaii sexual assault response ~~team~~ and training**  
19 program. (a) The department shall establish a Hawaii sexual  
20 assault response ~~team~~ and training program that shall consist of  
21 members who are directly involved with the use, management, and  
22 testing of sexual assault evidence collection kits, or are  
23 involved with, communicate with, or otherwise support sexual  
24 assault victims, including but not limited to the respective

1 | police departments of each county, ~~accredited and approved DNA~~  
2 | ~~laboratories, the State or county CODIS administrator, the~~  
3 | ~~respective prosecuting attorney departments of each county, and~~  
4 | ~~sexual assault service providers.~~

5 | (b) The Hawaii sexual assault response ~~team~~ and training  
6 | program shall have regularly scheduled meetings to strengthen  
7 | the coordinated community response and level of quality care for  
8 | victims of sexual assault.÷

9 | ~~—— (1) Develop and regularly update a protocol for all~~  
10 | ~~medical forensic examinations in the State. The medical~~  
11 | ~~forensic examination protocol shall be used by all medical~~  
12 | ~~facilities, rape crisis centers, and any other facilities that~~  
13 | ~~perform medical forensic examinations;~~

14 | ~~—— (2) Develop and adopt a statewide standard data set,~~  
15 | ~~including status and location information that all counties~~  
16 | ~~shall include in their respective sexual assault evidence~~  
17 | ~~collection kit tracking systems;~~

18 | ~~—— (3) Establish standard policies and procedures for any~~  
19 | ~~facility that performs medical forensic examinations and retains~~  
20 | ~~possession of sexual assault evidence collection kits under this~~  
21 | ~~chapter. The policies and procedures shall address proper~~  
22 | ~~preservation of kits, recordkeeping requirements, and chain of~~  
23 | ~~eustody requirements; and~~

~~(4) Establish required disclosures that shall be made to any person undergoing a medical forensic examination, including but not limited to the length of time a kit may be stored or retained, the point at which a kit may be destroyed, and the person's ability to access the status of their kit through the appropriate county tracking system.~~

**§ -3 Annual statewide inventory and report of sexual assault evidence collection kits.** ~~Reports containing the following information shall be submitted to the department on an annual basis, in the manner directed by the department, by law enforcement agencies, medical facilities, rape crisis centers, DNA laboratories, and any other facilities in the State that collect, receive, maintain, store, or preserve sexual assault evidence collection kits:~~

~~(1) The total number of all kits containing forensic samples;~~

The Department of the Attorney General shall prepare and submit an annual report to the President of the Senate and the Speaker of the House of Representatives no later than twenty days prior to the convening of each regular session, beginning with the Regular Session of 2019, detailing for the prior fiscal year:

(1) The number of sexual assault evidence collection kits collected in each county;



- 1 (2) The number of reported sexual assault evidence  
2 collection kits collected in each county;
- 3 (3) The number of reported sexual assault evidence  
4 collection kits that were submitted to an accredited and  
5 approved lab for analysis;
- 6 (4) Of the reported sexual assault evidence collection  
7 kits submitted to an accredited and approved lab for  
8 analysis, the number for which analysis has been completed;
- 9 (5) Of the reported sexual assault evidence collection  
10 kits submitted to an accredited and approved lab for  
11 analysis, the number of backlogged kits;
- 12 (6) The number of reported sexual assault evidence  
13 collection kits that were not submitted to an accredited  
14 and approved lab for analysis;
- 15 (7) Of the reported sexual assault evidence collection  
16 kits that were not submitted to an accredited and approved  
17 lab for analysis, the number for which 60 days or more have  
18 elapsed from the time of collection, and the reason that  
19 each such kit has not yet been submitted;
- 20 (8) The number of sexual assault evidence collection kits  
21 disposed of in each county, pursuant to Section -4;
- 22 (9) The number of sexual assault evidence collection kits  
23 disposed of in each county, for reasons not provided in  
24 Section -4, and the reason for disposal; and

1       ~~(2) For each kit:~~

2       ~~(A) The date of collection or receipt;~~

3       ~~(B) Whether the kit's existence was reported to law~~  
4               ~~enforcement; and~~

5       ~~(C) The status of the kit, with respect to its~~  
6               ~~handling by each of the following types of~~  
7               ~~entities:~~

8       ~~(i) For facilities performing medical forensic~~  
9               ~~examinations, the date the kit was collected~~  
10              ~~by the facility; and the date the facility~~  
11              ~~reported the collected kit's existence to a~~  
12              ~~law enforcement agency;~~

13       ~~(ii) For law enforcement agencies, the date the~~  
14              ~~kit was retrieved by a law enforcement~~  
15              ~~agency from the facility that performed the~~  
16              ~~medical forensic examination; the date a law~~  
17              ~~enforcement agency sent a request for~~  
18              ~~testing to an accredited and approved DNA~~  
19              ~~laboratory; and the date a law enforcement~~  
20              ~~agency delivered the kit to the accredited~~  
21              ~~and approved DNA laboratory; provided that~~  
22              ~~for kits originating from another~~  
23              ~~jurisdiction, the information to be reported~~  
24              ~~shall include the date that a law~~

1 enforcement agency in Hawaii notified a law  
2 enforcement agency in the other jurisdiction  
3 and the date the kit was retrieved, on  
4 behalf of the other jurisdiction, from the  
5 facility that performed the medical forensic  
6 examination; and

7 ~~(iii) For accredited and approved DNA~~

8 laboratories, the date the kit was received  
9 by the laboratory; the law enforcement  
10 agency from which the kit was received; the  
11 date a DNA analysis was performed on the  
12 kit; the date any resulting information from  
13 the kit was entered into the Combined DNA  
14 Index System; and all reasons a kit was not  
15 tested or a DNA profile was not created;

16 (310) All reasons any kit was in an entity's possession  
17 for longer than the periods allowed under  
18 section -5; and

19 ~~(4) The total number of kits destroyed and reason for~~  
20 ~~destruction of each.~~

21 ~~The department shall compile the reported information into a~~  
22 ~~summary report. The summary report shall also be made available~~  
23 ~~to the public on the department's website and shall be submitted~~

1 | ~~to the legislature annually no later than twenty days prior to~~  
2 | ~~the convening of each regular session.~~

3 |       §   -4   **Unreported sexual assault evidence collection**

4 | **kits.** (a) A victim who chooses not to file a police report at  
5 | the time of undergoing a medical forensic examination:

6 |       (1) May request in writing that the unreported kit be held  
7 | by the ~~facility that performed the medical forensic~~  
8 | ~~examination~~sexual assault program or center in that county;

9 | provided that if the victim does not so request, then the  
10 | appropriate law enforcement agency shall take possession of the  
11 | unreported kit pursuant to section   -5;

12 |       (2) Shall not be deemed to have waived the victim's right  
13 | to report the crime and to have the victim's kit tested in the  
14 | future; and

15 |       (3) Shall be informed of the date the victim's kit will be  
16 | ~~destroyed~~disposed, in writing at the time of the examination.

17 |       (b) Agencies, organizations, and other entities in  
18 | possession of unreported sexual assault evidence collection kits  
19 | shall store the kits for a ~~duration of twenty years~~five years if  
20 | the victim was 18 years of age or older at the time of incident,  
21 | and twenty years if the victim was under 18 years old at the  
22 | time of incident.

23 |       §   -5   **Mandatory submission and testing requirements for**

24 | reported **sexual assault evidence collection kits.** (a) An

1 | agency, ~~organization~~program, ~~center~~, or other entity that  
2 | collects a reported sexual assault evidence collection kit shall  
3 | notify the appropriate law enforcement agency as soon as  
4 | practicable after the kit's collection; provided that the  
5 | notification shall be no later than twenty-four hours after the  
6 | collection occurred.

7 | (b) A notified law enforcement agency shall:

8 | (1) Take possession of the reported sexual assault  
9 | evidence collection kit from the agency, ~~organization~~program,  
10 | center, or other entity that collected the kit within three  
11 | business days of receiving notification;

12 | (2) Submit a written request for testing of the reported  
13 | sexual assault evidence collection kit to an accredited and  
14 | approved DNA laboratory within ~~ten working~~ fifteen business days  
15 | of taking possession of the kit, ~~unless the suspected offender~~  
16 | ~~has been entered into the Combined DNA Index System database;~~

17 | and

18 | (3) Within ~~seven~~ ten business days of acceptance for  
19 | testing by an accredited and approved DNA laboratory, ~~deliver~~  
20 | submit the kit to the laboratory for testing.

21 | (c) An accredited and approved DNA laboratory shall:

22 | (1) Notify a law enforcement agency that has submitted a  
23 | written request for testing, within fourteen days of receiving  
24 | the request, as to whether the laboratory accepts the request or

1 instead recommends providing the sexual assault evidence  
2 collection kit to another laboratory for testing;

3 (2) Pursue DNA analysis of a sexual assault evidence  
4 collection kit that was accepted from a law enforcement agency  
5 to develop autosomal DNA profiles that are eligible for entry  
6 into the Combined DNA Index System; and

7 ~~(d)~~ The State CODIS Administrator or designee shall Enter  
8 enter a DNA profile into the Combined DNA Index System database,  
9 provided that the testing of a sexual assault evidence  
10 collection kit resulted in an eligible DNA profile; provided  
11 further that:

12 (i) Prior to July 1, 2023, the average completion  
13 rate for this analysis and classification shall  
14 not exceed one hundred eighty days; and

15 (ii) On or after July 1, 2023, the average completion  
16 rate for this analysis and classification shall  
17 not exceed ninety days.

18 (d) For cases in which no judgment of conviction has been  
19 entered, and there has been no acquittal, final dismissal, or  
20 negative results from a DNA analysis of the kit, a law  
21 enforcement agency that is in possession of a reported sexual  
22 assault evidence collection kit shall retain the kit for a  
23 ~~duration of fifty years,~~ or until the expiration of the period  
24 of limitation for any prosecutable offense under section 701-

1 108, whichever is longer. For cases in which a judgment of  
2 conviction has been entered, a law enforcement agency that is in  
3 possession of a reported sexual assault evidence collection kit  
4 shall retain the kit pursuant to the requirements of section  
5 844D-126.

6 (e) A law enforcement agency's lack of compliance with any  
7 of the time requirements of this section shall not:

8 (1) Constitute grounds on which to challenge the validity  
9 of DNA evidence in any criminal or civil proceeding;

10 (2) Justify a court to exclude any evidence generated from  
11 a sexual assault evidence collection kit; or

12 (3) Provide a basis for a person who is accused or  
13 convicted of committing a crime against a victim to request that  
14 the person's case be dismissed or conviction be set aside.

15 (f) This section shall not establish a private cause of  
16 action or claim on the part of any individual, agency,  
17 organization, or other entity against any law enforcement agency  
18 or against any accredited and approved DNA laboratory.

19 (g) The requirements of this section concerning notice and  
20 transfer of a sexual assault evidence collection kit to a law  
21 enforcement agency, and a law enforcement agency's handling of  
22 the kit, shall not apply to:

23 (1) Cases that are under the primary jurisdiction of law  
24 enforcement agencies outside of the authority of the State; or

1           (2) Cases in which jurisdiction may be asserted by more  
2 | than one ~~law enforcement~~ agency; provided that all reasonable  
3 | efforts shall be made to determine jurisdiction as soon as  
4 | practicable; provided further that if primary jurisdiction is  
5 | determined to belong to a law enforcement agency under the  
6 | authority of the State, then notice and transfer of a sexual  
7 | assault evidence collection kit to the law enforcement agency,  
8 | and the law enforcement agency's handling of the kit shall be in  
9 | accordance with the requirements of this section as of the date  
10 | on which jurisdiction was established with respect to the kit's  
11 | collection.

12           §   -6 **Tracking system for sexual assault evidence**

13 **collection kits.** (a) No later than January 1, 2020, each  
14 | county shall establish an electronic tracking system for sexual  
15 | assault evidence collection kits. At a minimum, each system  
16 | shall:

17           (1) Track the status of sexual assault evidence collection  
18 | kits from the specimen collection site ~~throughout the criminal~~  
19 | ~~justice process~~ to final storage or disposal, including but not  
20 | limited to the initial collection, inventory, and storage by law  
21 | enforcement agencies or accredited and approved DNA  
22 | laboratories, analysis at accredited and approved DNA  
23 | laboratories, and storage or ~~destruction~~ disposal after  
24 | completion of analysis;



1 | (2) Allow all entities, approved by the Department, that  
2 | collect, receive, maintain, store, or preserve sexual assault  
3 | evidence collection kits to ~~continuously~~ update the status and  
4 | location of the kits;

5 | (3) Allow victims of sexual assault to ~~anonymously~~ access  
6 | the system and ~~receive secure updates regarding~~ for the location  
7 | and status of their respective sexual assault evidence  
8 | collection kits; ~~and~~

9 | ~~(4) Use electronic technology that allows continuous~~  
10 | ~~access by victims, entities that collect sexual assault evidence~~  
11 | ~~collection kits, law enforcement agencies, and accredited and~~  
12 | ~~approved DNA laboratories.~~

13 | ~~(b) Law enforcement agencies may contract with public or~~  
14 | ~~private entities, including private software and technology~~  
15 | ~~providers, for the creation, operation, or maintenance of a~~  
16 | ~~tracking system.~~

17 | ~~(e)~~ (b) All agencies, organizations, and other entities  
18 | approved by the Department and in the chain of custody of sexual  
19 | assault evidence collection kits shall participate in the  
20 | tracking system by updating the status and location of kits, as  
21 | appropriate.

22 | § -7 **Victims' right to notification and other**  
23 | **information.** (a) A sexual assault victim has the right to  
24 | receive a medical forensic examination, regardless of whether

1 the victim chooses to report the assault to a law enforcement  
2 agency.

3 (b) Each law enforcement agency shall designate at least  
4 one person, who is trained in trauma and victim response, to  
5 receive all inquiries concerning sexual assault evidence  
6 collection kits and to serve as a liaison between the agency and  
7 victims.

8 (c) A sexual assault victim shall be provided with the  
9 contact information for the designated liaison or liaisons at  
10 the time that the victim's sexual assault evidence collection  
11 kit is collected.

12 (d) In advance of or during a medical forensic examination  
13 or law enforcement agency interview, medical professionals,  
14 victim advocates, law enforcement officers, or prosecutors shall  
15 provide a sexual assault victim with a physical document  
16 developed by the Hawaii sexual assault response ~~team~~ and  
17 training program that identifies the victim's rights under this  
18 chapter, including:

19 (1) Support from, and consultation with, a crisis worker  
20 at the time that a sexual assault evidence collection kit is  
21 collected, provided that sufficient funding is available ;

22 (2) Information about the current location, analysis date  
23 and status, and estimated disposal date of the victim's sexual  
24 assault evidence collection kit;

1 (3) Notification when there is any major development, as  
2 defined in section 801D-2, in a case that the victim reported to  
3 a law enforcement agency, including whether the case has been  
4 closed or reopened;

5 (4) Designation of a person of the victim's choosing to  
6 act as a recipient of the information provided under this  
7 subsection;

8 (5) Information on how to report an offense to a law  
9 enforcement agency and how to request that the victim's sexual  
10 assault evidence collection kit be analyzed in the future,  
11 provided that the victim either chose not to report the offense  
12 at the time the victim's kit was collected, or previously  
13 withdrew the report but later chooses to reinstate the report;  
14 and

15 (6) Information about the availability of crime victim  
16 compensation and other services for victims of sexual assault,  
17 as appropriate."

18 SECTION 3. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$135,000 or so much  
20 thereof as may be necessary for fiscal year 2018-2019 for the  
21 staffing, training, and travel expenses of the Hawaii sexual  
22 assault response ~~team~~ and training program.

23 The sum appropriated shall be expended by the department of  
24 the attorney general for the purposes of this Act.

1

SECTION 4. This Act shall take effect on July 1, 2019.

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

**LATE**

**SB-2345**

Submitted on: 1/31/2018 9:33:54 PM

Testimony for JDC on 2/1/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Amy Brinker		Support	No

Comments:

**SB-2345**

Submitted on: 2/1/2018 9:33:32 AM

Testimony for JDC on 2/1/2018 9:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carmen Golay		Support	No

Comments:

**SB-2345**

Submitted on: 2/1/2018 2:08:41 PM

Testimony for JDC on 2/1/2018 9:00:00 AM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments:

hscadv



**LATE**

HAWAII STATE COALITION AGAINST DOMESTIC VIOLENCE

Date: February 1, 2018

To: The Honorable Brian T. Taniguchi, Chair and Members  
Senate Committee on Judiciary  
Hawai'i State Capitol  
415 South Beretania Street, Room 016  
Honolulu, HI 96813

Re: Testimony Supporting Senate Bill 2345

Dear Chair Taniguchi and Members:

The Hawaii State Coalition Against Domestic Violence supports the intent of Senate Bill 2345, relating to Sexual Assault with the amendments.

Thank you for the opportunity to testify.

Sincerely,

Jina Rabago  
Program Manager