

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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



KEITH M. KANESHIRO
PROSECUTING ATTORNEY

CHRISTOPHER D.W. YOUNG
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL AND MILITARY AFFAIRS
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawai`i**

February 2, 2017

RE: S.B. 506; RELATING TO SEXUAL ASSAULT.

Chair Nishihara, Vice-Chair Wakai, members of the Senate Committee on Public Safety, Intergovernmental, and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony, supporting the intent but expressing concerns, about S.B. 506, with requested amendments.

This measure requires annual reporting to the Legislature by the Department of the Attorney General, State of Hawaii of statistical data pertaining to the testing of sexual assault evidence collection kits. It provides certain rights to sexual assault survivors. It also institutes mandatory testing requirements in accordance with Attorney General guidelines. Further, it requires the Attorney General to report to 2018 Legislature on the progress of implementing the adopted guidelines.

We support this bill, which implements the plan for handling kits as described in the Attorney General’s Report to the 2017 Legislature, and incorporates language that would align state law with the federal Survivors’ Bill of Rights Act of 2016. However, we ask that the Committee please consider of the following amendments:

On page 7 at lines 18 – 21, Section 2 of the bill states that “(b) The rights provided in subsection (a) shall apply to any sexual assault survivor who has undergone a medical forensic examination that produced a sexual assault evidence collection kit.” We recommend that this language be amended to clarify that the rights be applied prospectively, rather than being retroactive. We believe that this is necessary, as the enumerated rights imply specific policies and procedural requirements that were not in place in the past, and that are currently in the process of being developed and implemented. In addition to our general concern that rights are to be applied prospectively after agencies and police departments have had ample time to implement required procedures we are concerned about reference in Section 2 (4) regarding written “policies”, which

assumes policies already exist, creating liability for departments. It would be better if the law refers to existing laws relating to the preservation of DNA evidence.

On page 6 at lines 20 – 21, Section 2 of the bill states that survivors have “the right to be informed of any result of a sexual assault evidence collection kit . . .” We agree that survivors should have a right to information concerning the results of a sexual assault evidence collection kit. However, this should be at their discretion and control. This is especially true where such information may not be actionable, as reflected in the Report, meaning “information that re-opens or furthers a case in any jurisdiction that will require the victim’s involvement.” To preserve victim control and choice where active outreach is not warranted, survivors should instead be provided the right to information upon their request. We recommend ask that this language be amended to read that survivors have “the right to be informed, upon request, of any result of sexual assault evidence collection kit . . .”

We are also concerned about the reference “where the profile is already in CODIS”. This was intended for old kits where there was a prosecution. It doesn’t make sense as the reason not to test a new kit.

We also believe that the 90 day deadline to submit the kit to an accredited lab may not be realistic. While we would all love for this to happen, it is unlikely that this is possible at this time without funding to pay for these tests. In order for results to be uploaded to the Combined DNA Index System (CODIS), the laboratory must not only be accredited but also be approved by the state CODIS administrator. Grant funding and laboratory and police resources are currently focused on testing the identified sexual assault kits pursuant to Act 207 (2016). There is a critical need for further funding and resources if the Honolulu Police Department is expected to meet the 90 day deadline. Beyond funding, it’s also a capacity issue with regards to the 90 day period. Even if there’s money to fund it, if the private labs and SIS/HPD are so swamped that the 90 day deadline is unrealistic. It’s relatively clear at this point that even the FBI is having a difficult time keeping up with the current demands.

The Department of the Prosecuting Attorney of the City and County of Honolulu recommends that the Committee give seriousness consideration to amending this measure to address the concerns identified above. These are concerns that we believe are shared by County Police Departments, County Prosecutors, and our partners at the Sex Abuse Treatment Center and the other sexual assault programs statewide. With the amendments proposed we support moving this measure forward. Thank for you the opportunity to testify on this bill.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 506, RELATING TO SEXUAL ASSAULT.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Thursday, February 2, 2017 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 229

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

Chair Nishihara and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and submits comments and recommendations.

The purpose of this bill is to continue the purpose and goals of Act 207, Session Laws of Hawaii 2016, by establishing certain rights for survivors of sexual assault, establishing mandatory requirements for the testing of sexual assault evidence collection kits in accordance with the Malama Kakou Project guidelines, requiring annual reporting to the Legislature of statistical data pertaining to the kits, and requiring additional reports on the progress of implementing the Malama Kakou Project guidelines.

This bill follows the Report on Untested Sexual Assault Evidence Collection Kits Retained by County Police Departments, Plans and Procedures for the Disposition of Currently Untested Kits and New Kits, and Related Information prepared by the Act 207 (2016) Working Group, dated December 1, 2016, and submitted to the Legislature for the Regular Session of 2017. However, it does not include the Report's recommendation regarding a short-term plan to sustain sexual assault kit testing reform:

The recommendation is for FY 2018 funding to test new sexual assault kits that may not be covered by the National SAKI grant and the NIJ-FBI Sexual Assault Kit Partnership. Refer to Section N. of this report for the justification for Private Laboratory Testing Services in the amount of \$174,000 for 232 sexual assault kits at \$750 a kit.

The funding will be needed as the testing of new sexual assault kits will not be covered by the 2016 National Sexual Assault Kit Initiative (SAKI) grant.

The Department respectfully requests an amendment to the bill with the following appropriation provision:

There is appropriated out of the general revenues of the State of Hawaii the sum of \$174,000 or so much thereof as may be necessary for fiscal year 2017-2018 for purposes relating to the testing of new sexual assault evidence collection kits by the four county police departments that will not be covered by the 2016 National Sexual Assault Kit Initiative (SAKI) Grant; provided that the appropriation shall be expended by the department of the attorney general for purposes of the four county police departments.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 1, 2017 4:43 PM
To: PSMTestimony
Cc: lady.flach@gmail.com
Subject: *Submitted testimony for SB506 on Feb 2, 2017 13:15PM*

SB506

Submitted on: 2/1/2017

Testimony for PSM on Feb 2, 2017 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	Individual	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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We respectfully ask that this language be amended to clarify that the rights will apply to cases going forward, rather than being retroactively applicable. We believe that this is necessary, as the enumerated rights imply specific policies and procedural requirements that were not in place in the past, and that are currently in the process of being developed and implemented.

The amended language could read that “(b) The rights provided in subsection (a) shall apply to any sexual assault survivor who ~~has undergone~~ undergoes a medical forensic examination that produced a sexual assault evidence collection kit subsequent to [date].”

- On page 6 at lines 20 – 21, Section 2 of the bill states that survivors have “the right to be informed of any result of a sexual assault evidence collection kit . . .”

We agree that survivors should have a right to information concerning the results of a sexual assault evidence collection kit. However, this should be at their discretion and control. This is especially true where such information may not be actionable, as reflected the Report, meaning “information that re-opens or furthers a case in any jurisdiction that will require the victim’s involvement.”

To preserve victim control and choice where active outreach is not warranted, survivors should instead be provided the right to information upon their request.

We respectfully ask that this language be amended to read that survivors have “the right to be informed, upon request, of any result of sexual assault evidence collection kit . . .”

- On page 7 at lines 5 – 7, Section 2 of the bill states that survivors have “the right to be informed, in writing, of policies governing the collection and preservation of a sexual assault evidence collection kit.”

We agree that survivors should be informed of how kits will be collected and preserved, but would be concerned with the distribution of policy documents which can be technical. Rather, survivors should be provided written information in plain language that advises them, in a straightforward manner, of the medical forensic service they are about to receive and how their kit will be collected and preserved.

Therefore, we ask that this language be amended to read that survivors have “the right to be informed, in plain language writing, ~~of policies governing the collection and preservation of~~ about the medical forensic examination and how a sexual assault evidence collection kit is collected and preserved.”

- It is SATC’s understanding that funding is needed to allow for the testing of new kits in a manner that is consistent with the state plan presented in the Report, and to prevent an accumulation of new, untested kits from occurring. Discussion of this need is included on pages 32 – 33 and page 37 of the Report. Therefore we respectfully ask that the Committee please support the AG’s funding request for FY 2018.

We appreciate the Committee’s consideration of these comments.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 2, 2017 12:43 PM
To: PSMTestimony
Cc: mlopes@hscadv.org
Subject: Submitted testimony for SB506 on Feb 2, 2017 13:15PM

SB506

Submitted on: 2/2/2017

Testimony for PSM on Feb 2, 2017 13:15PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Marci Lopes	Hawaii State Coalition Against Domestic Violence	Support	No

Comments: We are in strong support of this bill.

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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245 N. Kukui Street, Suite 102A
Honolulu, Hawai'i 96817
(808) 531-3520
joyfulheartfoundation.org

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Maile M. Zambuto
Chief Executive Officer

February 2, 2017

TO: Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair
Members of the Senate Committee on Public Safety, Intergovernmental,
and Military Affairs

FROM: Maile Zambuto
Chief Executive Officer
Joyful Heart Foundation

RE: Testimony in Support, SB506, An Act Relating to Sexual Assault

Thank you for this opportunity to submit testimony in support of Senate Bill 506, which continues the work that all stakeholders in Hawai'i have engaged in 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 am testifying today 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 our 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, and evidence collection 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 2016, Hawai'i passed Act 207, a critical first step toward rape kit reform. We applaud Senator Laura Thielen (D, 25th District), Representative Linda Ichiyama (D, 32nd District), the Hawai'i Women's Legislative Caucus, Attorney General Doug Chin, and members of the Act 207 Working Group 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 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 would then have to implement these recommendations; guidelines for the submission and testing of newly collected kits would be implemented in 2017, and guidelines for the submission and testing of previously untested kits would be implemented 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. At least 1,951 of these kits remain 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 statewide, multidisciplinary plan to reform existing policy and practice for the handling of rape kits across Hawai'i. The Malāma Kākou Project offers a path forward for our state to implement the intent and spirit of Act 207, including criteria to govern testing of previously untested kits and a plan to create statewide rape kit tracking. While Joyful Heart was not a member of the Act 207 Working Group, we look forward to continuing to work closely with this group as our state moves to implement the Project.

Act 207 was a meaningful step forward towards rape kit reform. **Senate Bill 506 builds upon these reforms by strengthening rights for survivors, ensure that their rape kits are swiftly submitted for testing, and promoting long-term accountability in our state.**

Senate Bill 506 would provide victims with several notification rights, including the right to know about the status of their kit and the policies governing collection and preservation. This bill would also require that all kits falling within the Act 207 Report's testing criteria be submitted within 90 days of collection by law enforcement agencies. Lastly, the bill would require the Department of the Attorney General to annually submit to legislative leadership information about the total number of rape kits reported, unsubmitted, untested, and destroyed across all counties.

Enumerating Rights to Notification for Sexual Assault Survivors

As states and local jurisdictions with backlogs 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 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." Given our local values and connections, we are uniquely positioned in Hawai'i to ensure survivors' right to know the status of their rape kits and their cases. Survivors deserve all the information they need to determine their own involvement in the medical, legal, and healing processes.

Senate Bill 506 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 remain informed of testing status and results;
- The right to receive written information about kit collection and preservation guidelines;

- The right to be notified in advance of planned kit destruction;
- The right to have their kit preserved, free of charge, for the duration of the Statute of Limitations or 20 years; and be informed of all of these rights; and
- The right not to be prevented from obtaining, or charged for, receiving a medical forensic examination.

Taken together, these rights ensure that all sexual assault survivors can make decisions and obtain information about their cases. We commend the inclusion of these victims' rights provisions and commit to assisting in any way possible to implement these provisions.

Promoting Ongoing Transparency and Accountability

To fully resolve Hawai'i's backlog of untested rape kits, we must both address the root causes of the problem and take steps to ensure that the problem 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 506 sustain this spirit of transparency and public accountability by requiring that the Department of the Attorney General prepare an annual report about the number of kits reported to all four county police departments; the total number of kits collected in each county; and the number of kits tested, not tested, and destroyed by each county, law enforcement agency, or department.

By requiring a comprehensive annual report, Senate Bill 506 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 and assess the impact of the policy changes we make. In order to remain on this path toward comprehensive reform, we must be accountable for our progress. Ensuring that the system is transparent about rape kit processing is critical to true reform. Accountability shows the public and survivors that we are committed to the pledge we have taken to improve rape kit handling procedures.

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.

Expedient 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.

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.

Senate Bill 506 builds upon the Malāma Kākou Project by setting a timeline for newly collected kits that meet the Attorney General's testing guidelines be sent to the crime lab for testing.

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 and the Attorney General's Working Group, all of whom keep pressing forward on rape kit reform in Hawai'i. We encourage the Attorney General, members of the Act 207 Workgroup, and members of the legislature to continue engaging in dialogue and study to ensure legislative reform brings about accountability, streamlined timeframes, and continued access to justice for survivors. These reforms require appropriate resource allocation. We encourage the legislature to ensure that sufficient funding is dedicated 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.

The Hawai'i legislature has been tremendously supportive of rape kit reform and we hope to see continued attention to assisting local jurisdictions with implementing a comprehensive survivor-centered approach. Doing so will ensure safer communities and create a path to healing and justice for survivors of sexual assault in Hawai'i. Joyful Heart will continue to advocate for policies that are in the best interest of survivors. We look forward to serving as an ongoing resource for evidence-based strategies for reform, and working with the committed the legislators and stakeholders here today as we move forward with Senate Bill 506. Together, we can make real change.