



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 668, RELATING TO SEXUAL ASSAULT.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 7, 2017 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

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

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Chair Nishimoto 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:

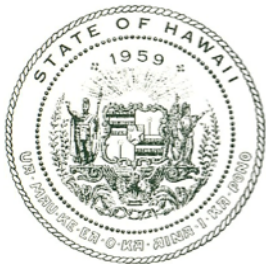
The recommendation is for FY 2018 funding to test new sexual assault kits that may not be covered by the National SAKI grant and the NIJ-FBI Sexual Assault Kit Partnership. Refer to Section N. of this report for the justification for Private Laboratory Testing Services in the amount of \$174,000 for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

HAWAII  
STATE  
COMMISSION  
ON THE  
STATUS  
OF  
WOMEN



Chair  
LESLIE WILKINS

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February 6, 2017

To: Representative Scott Nishimoto, Chair  
Representative Joy San Buenaventura, Vice Chair  
Members of the House Committee on Judiciary and Labor

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

Re: Testimony in Support, HB 668, Relating to Sexual Assault

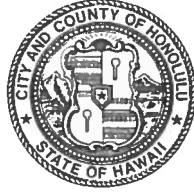
The Commission supports HB 668, which would codify the findings of the Attorney General's working group and the language of Act 207, Session Laws of Hawaii 2016.

The Commission supports the ongoing work being done by the various service providers and law enforcement across the state through the Malama Kakou project. HB 668 provides a streamlined procedure for testing sexual assault evidence kits and ensures that all counties follow the policies and procedures created through the Malama Kakou project. Further, the Commission supports the language creating a survivor "bill of rights", which is necessary to ensure that all survivors are treated with the dignity and respect they deserve. It is the Commission's position that we should not placate victims or provide them with information about their kits on a "need to know" basis. All survivors deserve to know the status of their kit, how their kits are preserved, and the timeline for testing and processing. The language in HB 668 strengthens the transparency and accountability necessary to this process.

The Commission supports HB 668. Thank you for your commitment to this issue and for this opportunity to testify in support.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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CARY OKIMOTO  
JERRY INOUE  
DEPUTY CHIEFS

OUR REFERENCE  
**WK-WK**

February 7, 2017

The Honorable Scott Y. Nishimoto, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street, Room 325  
Honolulu, Hawaii 96813

Dear Chair Nishimoto and Members:

**SUBJECT: House Bill No. 668, 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 would like to submit the following comments regarding the intent of House Bill No. 668, Relating to Sexual Assault:

1. The HPD's crime laboratory is the only accredited deoxyribonucleic acid (DNA) testing laboratory in Hawaii and is housed in the main HPD facility on Alapai Street. The crime laboratory does not have the available floor space for the long term storage of kits;
2. The sexual assault kits recovered by the HPD are currently stored at the HPD facility but not in the crime laboratory; and
3. Hawaii, Maui, and Kauai do not have a forensic DNA testing laboratory to routinely submit their kits for testing. The HPD's crime laboratory may not be able to accept their kits for DNA testing due to a lack of laboratory capacity. Accredited laboratories nationwide, including private laboratories, are currently operating at capacity to address untested kits nationally and may not accept the additional neighbor island kits.

The Honorable Scott Y. Nishimoto, Chair  
and Members  
Committee on Judiciary  
February 7, 2017  
Page 2

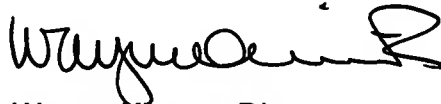
In lieu of submitting qualifying kits to the laboratory to initiate testing, we are recommending a written request for analysis be submitted. We recommend following revisions to House Bill No. 668:

Section 3, page 8, lines 11 through 13:

“(b) For all All kits that meet testing guidelines, the law enforcement agency shall be submitted submit a request for testing to an accredited lab for testing within ninety days after receipt by a law enforcement agency.”

Thank you for the opportunity to submit comments.

Sincerely,



Wayne Kimoto, Director  
Scientific Investigation Section

APPROVED:



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Cary N. Okimoto  
Acting Chief of Police

**Justin F. Kollar**  
Prosecuting Attorney

**Jennifer S. Winn**  
First Deputy



**Rebecca Vogt Like**  
Second Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

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TESTIMONY IN SUPPORT OF HOUSE BILL 668

A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT

COMMITTEE ON JUDICIARY

Rep. Scott Y. Nishimoto, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Tuesday, February 7, 2017, 2:00 P.M.  
State Capitol, Conference Room 325

Honorable Chair Nishimoto, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in support of House Bill No. 668.

This measure requires annual reporting to the Legislature by the Department of the Attorney General of data pertaining to the testing of sexual assault evidence kits, provides certain rights to sexual assault survivors, and institutes mandatory testing requirements in accordance with guidelines to be established.

Our Office appreciates the support of the Legislature in forwarding this important initiative and has several concerns as outlined in the testimony submitted by the Hawai'i County Prosecutor pertaining to funding and survivor notification and recommend amendments as set forth in that testimony.

The Office of the Prosecuting Attorney, County of Kaua'i supports the passage of House Bill No. 668. Thank you for the opportunity to testify on this matter.

**MITCHELL D. ROTH**  
PROSECUTING ATTORNEY

**DALE A. ROSS**  
FIRST DEPUTY  
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## **OFFICE OF THE PROSECUTING ATTORNEY**

TESTIMONY IN SUPPORT OF HOUSE BILL 668

A BILL FOR AN ACT RELATING TO SEXUAL ASSAULT

COMMITTEE ON JUDICIARY

Rep. Scott Y. Nishimoto, Chair

Rep. Joy A. San Buenaventura, Vice Chair

Tuesday, February 7, 2017, 2:00 P.M.  
State Capitol, Conference Room 325

Honorable Chair Nishimoto, Vice-Chair San Buenaventura, and Members of the Committee on Judiciary, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of House Bill No. 668, with noted concerns and suggested modifications.

This measure requires annual reporting to the Legislature by the Department of the Attorney General, State of Hawaii (AG) of statistical data pertaining to the testing of sexual assault evidence collection kits. Provides certain rights to sexual assault survivors. Institutes mandatory testing requirements in accordance with AG guidelines. Requires AG to report to 2018 Legislature on the progress of implementing AG guidelines.

First, we appreciate the support of the Legislature to get sexual assault kits tested in the State of Hawai'i. We have some concerns regarding this Bill as it is currently drafted. Our primary concern relates to the 90 day deadline to submit the kit to an accredited lab. While we would all love for this to happen, we believe it is unrealistic 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 need for further funding and resources to meet the 90 day deadline.

Our second concern relates to the sexual assault survivors' rights. We understand that the rights follow federal law, but given Hawai'i Supreme Court decisions expanding rights under Hawai'i law, we are concerned that any laws enacted here will not be applied retroactively to all survivors. Notification should be done in a victim-centered manner. The Malama Kakou project recommends that victims be notified only if test results are actionable. We believe that contacting victims may result in trauma if contact is only to inform them that kits are being destroyed, or that there are no actionable results. The Malama Kakou public service announcements will give victims an opportunity to ask for information, thus providing victims

with the opportunity to seek information, if they wish. We believe that this choice is very important for victims, as learned from other jurisdictions.

We urge the Legislature to modify the Bill's language so that it is clear that any rights are to be applied prospectively after agencies and police departments have had ample time to implement required procedures. We are also 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.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of House Bill No. 668. Thank you for the opportunity to testify on this matter.



**LATE**

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

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KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

CHRISTOPHER D.W. YOUNG  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-Ninth State Legislature**  
**Regular Session of 2017**  
**State of Hawai'i**

February 7, 2017

**RE: H.B. 668; RELATING TO SEXUAL ASSAULT.**

Chair Nishimoto, Vice-Chair San Buenaventura, members of the House Committee on Judiciary, 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 H.B. 668, 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.

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

- Page 7, lines 18 – 21, Section 2 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 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 the reference to written “policies” in Section 2, subsection (4); this seems to imply that policies already

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

- Page 6, lines 20 – 21, Section 2 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 . . .”
- Page 4, line 1, the criteria pertaining to “perpetrator has a DNA profile in CODIS,” was intended for old kits where there was a prosecution. This was not intended as a reason not to test a new kit.
- Page 8, line 12, Section 3. We believe that the 90-day deadline to submit the kit to an accredited lab may be unrealistic. While we would love for this to happen, it is unlikely that this is possible at this time, without significant 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 additional 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 is money to fund it, if the private labs and SIS/HPD are swamped, it will not be possible to meet the 90-day deadline consistently. It is 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 above, we support moving this measure forward. Thank you for the opportunity to testify on this bill.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 1:50 PM  
**To:** JUDtestimony  
**Cc:** laurie.field@ppvnh.org  
**Subject:** \*Submitted testimony for HB668 on Feb 7, 2017 14:00PM\*

**Categories:** Blue Category

**HB668**

Submitted on: 2/6/2017

Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

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

Comments:

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

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# THE SEX ABUSE TREATMENT CENTER

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

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Adriana Ramelli

*Advisory Board*

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Councilmember  
Carol Fukunaga

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Linda Jameson

Michael P. Matsumoto

Robert H. Pantell, MD

Joshua A. Wisch

Date: February 7, 2017

To: The Honorable Scott Y. Nishimoto, Chair  
The Honorable Joy San Buenaventura, Vice Chair  
House Committee on Judiciary

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

RE: Testimony in Support of H.B. 668 with Comments  
Relating to Sexual Assault

Good morning Chair Nishimoto, Vice Chair San Buenaventura, and members of the House Committee on Judiciary:

The Sex Abuse Treatment Center (SATC) supports H.B. 668, which requires annual reporting to the legislature by the Department of the Attorney General (AG) of statistical data pertaining to the testing of sexual assault evidence collection kits; provides certain rights to sexual assault survivors; institutes mandatory testing requirements in accordance with guidelines; and requires the AG to report to the 2018 Legislature on the progress of implementing guidelines.

Act 207 (2016) required the AG to work with stakeholders to inventory and account for sexual assault evidence collection kits already in police custody and to create and begin implementation of plans for handling both existing and new sexual assault evidence kits. Sexual Assault Centers, which provide statewide direct services to survivors of sexual violence, their loved ones, and communities, participated in these efforts, and will be involved in the delivery of survivor services related to the kits going forward.

We appreciate this bill, which implements the plan for handling kits as described in the AG's Report to the 2017 Legislature (the Report), 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 comments:

- 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 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.



**OFFICERS**

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[www.adaaction.org](http://www.adaaction.org)

February 6 , 2017

TO:            Honorable Chair Nishimoto and Members of Judiciary Committee

RE:            HB 668 Relating to Sexual Assault  
Support for hearing on Feb. 7

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 668 as the testing and preservation of evidence is crucial in ensuring that we are protecting the innocent and pursuing the guilty. At the Senate hearing for the companion bill it was revealed that 40% of rape kits are tossed out by police and 90% are untested. Sex Assaults kits need to be available and preserved for evidence.

Thank you for your consideration.

Sincerely,

John Bickel  
President



## Hawaii Women's Coalition

### **COMMITTEE ON JUDICIARY**

**Rep. Scott Y. Nishimoto, Chair**

**Rep. Joy A. San Buenaventura, Vice Chair**

DATE: Tuesday, February 7, 2017

TIME: 2:00 pm

PLACE: Conference Room 325

### **STRONG SUPPORT FOR HB668 that codifies the report to the legislature regarding the testing of rape kits and the collection of statistical evidence**

Aloha Chair Nishimoto, Vice Chair San Buenaventura and members

**The Coalition is in strong support** HB668. The lack of collection of data on reported rapes along with the mishandling of rape kits in our justice system has made headlines in the past year. We need to make sure that these kits are handled properly, tested when the victim does not object and put into the national data base so that serial rapist who cross state lines can be identified and stopped.

It is difficult enough for rape victims to come forward; it is adding insult to injury to mishandle their rape kits. Please pass this important bill out of committee.

Mahalo for the opportunity to testify,  
Ann S. Freed Co-Chair, Hawai'i Women's Coalition  
Contact: [annsreed@gmail.com](mailto:annsreed@gmail.com) Phone: 808-623-5676



February 7, 2017

To: Representative Scott Nishimoto, Chair  
Representative Joy San Buenaventura, Vice Chair and  
Members of the Committee on Judiciary

From: Jeanne Y. Ohta, Co-Chair

RE: HB 668 Relating to Sexual Assault  
Hearing: Tuesday, February 7, 2017, 2:00 p.m., Room 325

POSITION: Support

The Hawai'i State Democratic Women's Caucus writes in support of HB 668 Relating to Sexual Assault which would require reporting to the legislature on sexual assault evidence collection kits. The measure also requires mandatory testing of the evidence kits.

Evidence obtained from survivors is precious. It is taken when they are most vulnerable with the hope that evidence gathered would help find and convict the perpetrator. Their brave efforts should not go to waste nor should the evidence be dismissed so easily. Sexual assault is a serious crime. Processing kits can help uncover serial rapists.

It is unacceptable that the decision on which kits to test have been made by certain law enforcement officers. Other kits have been destroyed, and others have not been tested for decades. We believe that Hawaii should have a mandatory testing policy.

The Hawai'i State Democratic Women's Caucus is a catalyst for progressive, social, economic, and political change through action on critical issues facing Hawaii's women and girls.

We ask the committee to pass this measure and thank the committee for the opportunity to provide testimony.



# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Scott Nishimoto, Chair

Rep. Joy San Buenaventura, Vice Chair

Tuesday, February 7, 2017

2:00 am

Room 325

## HB 668 SUPPORT - SEX ASSAULT

Aloha Chair Nishimoto, Vice Chair San Buenaventura and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for two decades. This testimony is respectfully offered on behalf of the approximately 6,000 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that approximately 1,400 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

Community Alliance on Prisons supports HB 668 that requires annual reporting to the legislature by the AG of statistical data pertaining to the testing of sexual assault evidence collection kits; provides certain rights to sexual assault survivors; institutes mandatory testing requirements in accordance with AG guidelines and requires the AG to report to 2018 legislature on the progress of the implementation of the guidelines.

The testing and preservation of evidence is crucial in ensuring that we are protecting the innocent and pursuing the guilty. We were stunned at the Senate hearing for the companion bill that 40% of rape kits are thrown out and 90% are not even tested. A few years ago, in a similar hearing we were shocked a few sessions ago when we learned that only certain people decide which kits to test. This "discretion" could lead to arbitrary and capricious decisions by these people. That is not justice.

We support the rights of sex assault survivors to be informed as that is only just and fair. We also support the annual reporting to the legislature and hope the AG puts this information on the department website.

We urge the committee to pass this important measure.

Mahalo for this opportunity to testify.



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joyfulheartfoundation.org

**LATE**

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Chief Executive Officer

February 7, 2017

**TO:** Representative Scott Y. Nishimoto, Chair  
Representative Joy A. San Buenaventura, Vice Chair  
Members of the House Committee on Judiciary

**FROM:** Maile Zambuto  
Chief Executive Officer  
Joyful Heart Foundation

**RE:** Testimony in Support, HB668, An Act Relating to Sexual Assault

Thank you for this opportunity to submit testimony in support of House Bill 668, 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. **House Bill 668 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.**

House Bill 668 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.

House Bill 668 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 House Bill 668 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, House Bill 668 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.

House Bill 668 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 House Bill 668. Together, we can make real change.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 12:29 PM  
**To:** JUDtestimony  
**Cc:** shannonkona@gmail.com  
**Subject:** Submitted testimony for HB668 on Feb 7, 2017 14:00PM

**Categories:** Blue Category

**HB668**

Submitted on: 2/6/2017

Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Shannon Rudolph	Individual	Support	No

Comments: STRONGLY SUPPORT!

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**HB668**

Submitted on: 2/6/2017

Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Polk	Individual	Support	No

Comments: I urge support for this bill. I am appalled that police departments are collecting, but not testing, sexual assault evidence collection kits, even when the complaint has not been withdrawn. Are other crimes treated so casually, without analysis of evidence? I urge two amendments to this bill: Please add to the section on the rights of sexual assault victims, "The right to have any medical forensic evidence collected tested promptly." Please also change the time for testing kits in section 884D-(b) from "within ninety days" to "within one week of collection." I can see no reason why evidence of a crime should sit around un-analyzed for three months! Thank you for considering these amendments. I encourage passage of this bill.

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**HB668**

Submitted on: 2/5/2017

Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Teri Heede	Individual	Support	No

Comments:

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**HB668**

Submitted on: 2/3/2017

Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

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

Comments:

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**HB668**

Submitted on: 2/3/2017

Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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**HB668**

Submitted on: 2/6/2017  
Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Kristen Koba-Burdtd	Individual	Support	No

**Comments:**

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**Subject:** Submitted testimony for HB668 on Feb 7, 2017 14:00PM

**HB668**

Submitted on: 2/7/2017  
Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shirota	Individual	Support	No

Comments: Aloha, I am writing in strong support of this bill that requires annual reporting to the legislature by the Attorney General of statistical data pertaining to the testing of sexual assault evidence collection kits. In addition, this bill provides certain rights to sexual assault survivors, and institutes mandatory testing requirements in accordance with AG guidelines. Sexual assault continues to impact many members of our community, and disparately impacts girls and women. Unless you have been a victim of sexual assault or have worked with survivors, it is difficult for others to fully grasp the tremendous of courage it takes to report a sexual assault. The continued failure to institute mandatory testing guidelines is an affront to the courage of survivors and our "justice" system. The testing and preservation of evidence is crucial in ensuring that we are protecting the innocent and pursuing the guilty. (In Hawai`i, Alvin Jardine was falsely convicted of raping a woman and served over twenty years in prison for a crime that he did NOT committ). At the Senate hearing for the companion bill it was revealed that 40% of rape kits are tossed out by police and 90% are untested. What is the justification for this? Bias could play a big part in the decision to test or not, therefore, there needs to be publicly available protocols testing these kits or it lends itself to arbitrary and capricious decisionmaking on which kits to test. The reporting is important, especially in light of all the kits thrown out and/or not tested. Mandatory testing requirements will add to transparency and accountability. Please pass HB 668. Mahalo, Carrie Ann Shirota, JD

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