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April 3, 2016

TO: Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair
Members of the Senate Committee on Ways and Means

FROM: Kata Issari
Executive Director, Hawai'i
Joyful Heart Foundation

RE: Testimony in Support, HB1907, Relating to Sexual Assault

Thank you for this opportunity to submit testimony in support of HB 1907, which would establish a sexual assault evidence kit testing program.

The Joyful Heart Foundation was founded in Kailua-Kona in 2004 and has grown across the country in service of our mission to heal, educate and empower survivors of sexual assault, domestic violence and child abuse and to shed light into the darkness around these issues. 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.

The Rape Kit Backlog

DNA evidence can be a powerful tool to solve and prevent crime, yet the federal government estimates that there are hundreds of thousands of untested rape kits sitting in police and crime lab storage facilities across the country. The Honolulu Police Department has stated that 1,500 untested rape kits are in its inventory, going back ten years. There is no information about any untested kits prior to that time. The reality is that because most jurisdictions do not have formalized systems for tracking or counting rape kits, we cannot be sure of the total number of untested kits nationally or in Hawai'i. This lack of transparency and accountability means that untested kits potentially remain hidden in jurisdictions across our state and subsequently violent offenders remain free.

It is important to remember that most sexual assault survivors do not report the crime to the police. Those who do report do everything that society asks of them. They protect evidence by not washing, drinking anything, or combing their hair after an assault. They go through an invasive and uncomfortable medical and

forensic exam that can take four to six hours while parts of their body are photographed and swabbed for DNA. They do all this even though they often just want to go home and take a shower -- because they believe that the evidence from the crime will be handled carefully and be tested for DNA evidence. However, in too many cases, the evidence is not tested.

Unfortunately, more than with any other crime, law enforcement often disbelieves or even blames victims of sexual assault. Coupled with lack of knowledge about sex offender patterns and the potential of DNA evidence to validate crimes, rape kits never make it to the crime lab. Each of these kits represents a lost opportunity to bring healing and justice to survivors of sexual assault and accountability for perpetrators.

The time to act is now, further delay risks adding to the backlog and letting offenders roam free. Joyful Heart stands with every survivor who has put faith in the criminal justice system to take what happened seriously and to do everything possible to apprehend dangerous criminals. Hawai'i can and must do better: we can get there together.

Testing Solves Crimes

When jurisdictions test every kit, they help solve crimes and provide an opportunity for survivors to seek justice. Testing kits takes dangerous criminals off the streets and can also exonerate the wrongly convicted. Research has shown that many rapists are serial offenders – not just of sexual assault, but of a variety of crimes. A 2002 report by the Hawai'i Department of the Attorney General revealed that 1458 registered sex offenders in Hawai'i carried 18,237 criminal charges on their combined records. 33.8% were for violent sex offenses, 26.4% for other violent offenses and 39.8% for minor offenses.

Testing kits is crucial to keeping the men, women and children of Hawai'i safe. When Detroit committed to testing every single one of the city's untested rape kits, they took dangerous offenders off the streets and protected communities. To date, they have identified 729 potential serial rapists who have committed crimes in 40 states. Cleveland has identified 325 serial offenders to date. These criminals have committed a range of crimes such as petty larceny, domestic violence, child sexual abuse, burglary and homicide. And because it is likely that many predators never leave Hawai'i, the chances are high that serial rapists are victimizing in our state with impunity. Rape kits hold the identity of dangerous predators. Testing every rape kit helps apprehend serial offenders and therefore can prevent future sexual assaults and/or increase the rate of successful prosecutions.

The Time To Act Is Now

There has been discussion in Hawai'i that we need to study a solution to the problem, review the existing backlog and/or take more time to understand what happened to create such a large number of untested kits. We must start testing now. As Dr. Rebecca Campbell, a researcher and expert on untested rape kits from Detroit says, "start with what you can manage." The reality is that no lab in the country can test 1,500 kits overnight. As with other communities, we can send our kits to be tested in batches. We can start testing now and still have time to plan development of an infra-structure to support survivors and respond to the DNA hits that are sure to occur.

Moreover, we do not have to do this alone – Cleveland, Detroit, Jacksonville, Memphis, Portland, and many others have already paved the way and charted a course through investigation and prosecution of their cases and victim notification. Lessons learned by Joyful Heart through our partnerships in these communities can help Hawai'i address all of the issues

that will surface. There are many communities that would be glad to help us as we make our way on this journey.

It is prudent to point out that Joyful Heart is a partner in the Bureau of Justice Assistance Sexual Assault Kit Initiative Training and Technical Assistance Project (BJA TTA). Our partners are the country's leading experts on addressing untested rape kits. These experts are a gold mine of information; we have access to them to help Hawai'i address this issue in the best way possible.

Waiting only gives rapists more time to cause harm to our communities. Let's start testing now. Joyful Heart stands ready to do whatever we can to raise funds and generate support for this important mission.

Resources

Jurisdictions across the country often cite a lack of resources and personnel as the largest barriers to processing more rape kits. Another—rarely acknowledged—cause of the national backlog is the unwillingness among many law enforcement agencies to prioritize and dedicate sufficient resources to sexual assault cases.

Committing to testing every rape kit requires resources. That's why the Joyful Heart Foundation has worked with allies in the federal government to provide the necessary resources and research to fix this problem. The Bureau of Justice Assistance grant program and the National Institute of Justice are only two entities that have funds available now for local jurisdictions to: test backlogged kits in police storage facilities that never made it to a crime lab; create multi-disciplinary teams to investigate and prosecute cases connected to a backlog; and address the need for victim notification and re-engagement with the criminal justice system. Money is available to help test Hawai'i's backlogged kits; there is no reason to delay.

Private labs are also available to help with testing at a reduced rate. Bode Cellmark and Sorenson labs have given a rate from \$600-\$700 a kit to many communities with large numbers of untested kits (such as many of the communities we work with via our BJA TTA project). We are confident that Hawai'i can also access this rate. Moreover, many private labs employ a method of screening each kit that allows them to determine quickly if the kit contains DNA and not waste resources on a kit that will not yield a DNA profile.

We have heard the concerns about the ability to manage the cases that will result from testing. It is crucial to understand that 1,500 kits does not mean that there will be 1,500 cases to investigate or 1,500 survivors to contact. Not every kit will yield a useable profile or hit to a DNA record in CODIS. Not every survivor will want to engage in the criminal process. However, it is impossible to know which kits will identify an assailant, which is why testing each one is universally accepted best practice.

Other communities that have large numbers of kits – Detroit (a city that is bankrupt), Houston, Cleveland, Portland, Jacksonville, etc., have managed to meet the need. Cleveland and Houston, for instance, have created a system where one advocate (in the prosecutor's office and the police department respectively) acts as the central coordinating person for these cases who – among other duties - ensures the sensitive notification of victims, secures victim support and maintains their inclusion in the process. Law enforcement and non-profits doing this work around Hawai'i have the unequivocal support of the community here and we will not let them be overburdened; we will support their needs to do right by these survivors.

Implementing a sexual assault evidence kit tracking and accountability program in Hawai'i will take a coordinated effort and deep commitment at all levels of our state. Sufficient funding must be dedicated to not only to processing untested rape kits, but also to investigate leads and move cases forward to prosecution. Law enforcement must keep track of every kit booked into evidence and process those kits in a timely way. Survivors must receive support and assistance as they face this new path in their journey to healing. We must all allocate the resources—money, staff, time and technology—to make these reforms happen.

Impact on Survivors of Sexual Assault

It is most important to remember that every single untested rape kit represents a survivor who has taken the courageous step of reporting the crime to the police. In Hawai'i, we have the knowhow to ensure that there is attention to notifying victims about the status of untested sexual assault kits with sensitivity and respect. Developing an infrastructure and garnering funding to support victims can be done while the initial batches of kits are tested.

Of course, being contacted years after an assault to be told that the perpetrator has finally been identified is challenging for many survivors. In jurisdictions across the country, advocates have reported that most survivors are shocked about the new action in their case. But many are eventually happy that the “system has not forgotten them” and that “justice is finally served.” In Detroit 55% of survivors contacted about the renewed action in their case were interested in hearing more about their case. Of those contacted, 29% had a positive reaction and close to 60% agreed to participate in the prosecution of the offender.

Joyful Heart's research on victim notification, which will be released on April 7, 2016, found that survivors want us to know that they are resilient, they do not want to be “coddled” and they believe that *the information about any action in their case belongs to them*. The survivors in our study asserted that when it comes to victim notification, they want to be treated with respect and to be given choice about what will happen next. That means that if they choose not to go forward with their case, then we provide them with resources and honor their wish and leave them alone. It is clear that survivors are at the heart of the decision to press a case.

We must send a powerful message to survivors that they—and their cases—matter by testing every rape kit. Notification in these cases can be done in a way that mitigates the harm. Joyful Heart is an expert on this issue and we are ready to provide training and to work on survivor-centered policies that ensure the well being of each survivor in an untested kit case.

We must send a message to perpetrators that they will be held accountable for their crimes. And we must demonstrate a commitment to survivors to do everything possible to bring healing and justice.

On behalf of survivors across Hawai'i—many of whom have been re-traumatized by the experience of waiting for the investigation and prosecution of their case—I thank you for the attention you have paid to this issue and reiterate our support of HB1907. Survivors deserve nothing less.

Valli Kalei Kanuha, PhD, MSW
2116 Hillcrest Street
Honolulu, HI 96817

April 3, 2016

TO: Senator Gilbert S. C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Members of the Senate Committee on Judiciary and Labor

Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair
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FROM: Valli Kalei Kanuha, PhD, MSW

RE: Testimony in Support, HB1907, Relating to Sexual Assault

On March 31, three days ago, President Barack Obama proclaimed April 2016 as National Sexual Assault Awareness and Prevention Month. The President stated in his proclamation that the administration is *"taking action to eliminate sexual assault in every corner of our country,"* highlighting *"the National Sexual Assault Kit Initiative, a nationwide, community-based effort to end the backlog of untested rape kits -- instrumental tools used to collect evidence, prosecute perpetrators, and bring closure to victims in the aftermath of an assault"* (<https://www.whitehouse.gov/the-press-office/2016/03/31/presidential-proclamation-national-sexual-assault-awareness-and>).

Unwavering support from the offices of the President and Vice-President and the U.S. Department of Justice – National Institute of Justice, Bureau of Justice Assistance, Office on Violence Against Women and Office for Victims of Crime to national victim advocacy groups including RAINN (Rape, Abuse & Incest National Network), the nation's largest anti-sexual violence organization, The National Alliance to End Sexual Violence and the National Center for Victims of Crime attest to the current significance of national and local initiatives to end the rape kit backlog. As it has historically demonstrated with many social justice issues, the state of Hawaii is on the verge of joining cities around the country to act as a local leader in honoring rape survivors by testing rape evidence kits that have been collected, but languished untested for months and years in unknown numbers and locales.

My name is Valli Kalei Kanuha, Professor of Sociology and Women's Studies at the University of Hawaii at Manoa, where I have been a tenured faculty member for nearly 20 years. For the past four decades, my primary research, policy and community work has focused on violence against women and children, particularly on domestic violence, sexual assault and child abuse in Native Hawaiian, Asian and other people of color populations, as well as in LGBTQ communities. I have

HB1907 Support Kanuha

been a clinician, consultant and researcher on gender violence for most of my career, and am considered a national expert on these issues.

Based on my 40 years of research and policy background in violence against women and children, I am writing to express very strong support for HB1907 to establish a sexual assault evidence kit testing program to include tracking, monitoring and reporting on Hawaii's existing rape kit backlog, testing of all untested kits and development of policies and procedures to address victim notification for old, current and future evidence kits. My testimony will focus on two points that have been raised by opponents of the original HB1907: the need to develop a planning process and the potential harm to victims in testing all backlogged kits.

Need to Develop A Planning Process

Over the past decade, there have been a number of legislative initiatives and investigative inquiries to simply discover whether or not Hawaii indeed had a backlog of untested rape kits. Since the issue was first raised locally, there has been resistance to addressing the problem, mainly by law enforcement, prosecutor's offices and sexual assault providers. There has been ample time to conduct an inventory of evidence kits, even if only those collected during a single or short time period, e.g., one or five years. But we are here again before the legislature, and again meeting resistance from the same institutions who are tasked with protecting the public, punishing those who commit serious crimes, and seeking justice for survivors.

In the past month, the HPD has estimated to legislators that they have a backlog of 1,500 untested kits. However, we do not know if this includes evidence from all sources (including the counties that forward their kits to HPD for testing) and sites (SATC, HPD crime lab or other storage facilities). More importantly, we do not know what other information HPD has collected in the process of estimating their backlog.

1,500 cases are not an inordinate number to assess and catalogue when we consider Detroit had backlogs of 11,000, Memphis, over 12,000 and Cleveland, 4,000 cases, and most of those jurisdictions took only a few months to complete their inventories. Surely we in Hawaii should be able to manage an assessment of our local backlog which is only a fraction of the problem in other major U.S. cities, particularly when HPD has already begun their inventory. There is no need to wait another six or more months (December 2016 as proposed in amendments to HB1907) for local agencies and departments to report on the simple number and evidence collection date of backlogged kits.

Finally and most importantly, from jurisdictions across the country that have tested all of their backlogged cases we now have ample evidence of the following:

- Untested rape kits contain evidence that **always** identify a sub-group of serial criminals who have not only committed other sexual assaults, but additional serious offenses (<http://www.endthebacklog.org/>). David Lisak from the University of Massachusetts confirms that 60% of undetected rapists are serial offenders. In Hawaii, the Attorney General reported that in 2002, 1,458 registered sex offenders carried 18,237 criminal

charges on their combined records with over 60% for violent sex offenses and other violence.

- There is funding available from the Federal government, as well as other public and private sources to reduce the rape kit backlog in every U.S. jurisdiction. The efforts to make this funding available has come from victim advocates, as well as the bold leadership of local prosecutors, law enforcement and legislators from Detroit, New York City, Memphis, Texas, Washington, Florida, Georgia and other locales. Hawaii could join this significant national policy and justice work by shining the light on this problem in our local communities.
- While there is focus on the significance and reliability of DNA in solving crimes, rape evidence kits contain other evidence that may be critical in investigation and prosecution of cases, including information gathered in the treatment process that address the context in which the assaults occurred, including the type, severity and nature of threats and violence perpetrated by offenders. This becomes part of the profile of sex offenders in which can be used to type serial rapists. We only know the veracity of evidence contained in backlogged kits when each and every one is tested.
- Planning and assessment become part of any rape kit backlog “program,” in which the policies and procedures are determined as each jurisdiction first states their intent to address their backlogs. Due to the different locales around the country that have completed or are in the process of reducing their backlogs, we know that the majority of successful outcomes have been the result of multidisciplinary collaborations that include more than just law enforcement, prosecutors and sexual assault programs, but also researchers, health providers, other victim service organizations (including domestic violence and child abuse providers), legal advocates, public policymakers and always, the “true experts” - survivors and/or their family members or supporters.

In summary, we do not need more planning or more task forces to study the problem of backlogged rape evidence kits. Let us get on with it – others around the country have done so, and we have much data and exemplars from which is to begin and complete our work in Hawaii.

Potential Harm to Victims/Survivors

Many of HB1907 opponents cite well-intentioned concerns about victims whose rape evidence kits will be tested through this initiative. Statements have suggested that testing of backlogged kits may unduly affect victims “who had closed that chapter of their life (sic) and moved on...now could be extremely traumatizing in a way that has not yet been accounted for” and have “unintended consequences and potential harms involving victims’ rights.” Other testimony cited the much-touted Detroit rape kit backlog report stating “the results of this study inform us tremendously as it shatters the assumption that all victims will want such action taken.” I would like to address a few points with regard to the argument that testing backlogged kits will re-traumatize survivors.

First and foremost, any sexual assault survivor who consents to the invasive, lengthy, embarrassing and painful evidence examination has already experienced the most significant and life-changing trauma they will ever know: the violation of their bodies, minds and spirits by sexual assailants. Therefore, the decision to undergo a medical evidentiary exam is often made during a time of crisis in one's identity and sense of personal safety. The research and clinical reports regarding survivor decision-making about and experience with rape evidence exams find that survivors usually consent to the invasive evidence gathering procedure because they hope, believe or expect that their offenders will be held to justice. Whether or not they agree to participate in the investigatory or prosecutorial process, survivors do a rape kit because they believe it is the right thing to do. And, that they believe the State and sexual assault advocates will aggressively investigate and pursue justice in their cases.

The "potential harm," "unintended consequences" and trauma do not occur in the testing of long-ignored evidence kits, but in survivors discovering that the criminal-legal system did not follow-up on their cases in a timely, transparent and mutually cooperative manner. This is the harm about which we should all be appalled: we expect rape survivors to participate in the process of preserving and collecting evidence, but we do not expect that we should have to do anything with that evidence unless we believe survivors' stories of unwanted, unprovoked and unwarranted sexual violence ("most have had consensual sex," an official recently testified before a state legislative committee), can make a "winnable" case, or think there is viable or useful evidence in the kits. The discretion employed by the criminal-legal system about whether to move ahead on rape cases is a major cause of trauma for survivors, not the testing of long-deemed, "poor" evidence kits. More importantly, would we be raising this issue of re-traumatizing victims if all kits were tested promptly and regularly to begin with? Clearly, the reservations of HB1907 opponents are based on their culpability for the backlog of untested kits, not necessarily on care and justice for survivors.

In their 2012 study of sexual assault survivors, SATC found that those who were more likely to report their cases to HPD had experienced "classic rape;" that is, the perpetrators were strangers, there was only one vs. multiple assailants, victims were sexually assaulted with an object or were forcibly sodomized or "if the assailant used a weapon, intimidation, physical force, threat or injured the victim." (p. 44). If these survivors who had the courage to report to the police ALSO completed a rape evidence kit, would these not be the "classic" rape cases in which all kits are tested?

We must assume with a 1,500 case backlog in Honolulu, that some of these "typical" cases were not tested by HPD. What we know from other cities that have addressed their rape kit backlogs is that survivors wanted to be notified if their case was to be re-opened including in Houston, for "victims who had reported the crime a long time ago" (UT Institute on Domestic Violence and Sexual Assault, March 2015). While one local provider testified before the Hawaii Legislature that 16% of survivors in Detroit had "strong negative reactions," in fact "most survivors [64%] wanted a follow-up meeting with the investigators...and in the end, most [57%] also decided that they wanted to participate in the investigation and prosecution process."

Most important, however “victims were less likely to react positively and to re-engage the longer the period of time between the assault and the notification” (NIJ, p. viii). This finding is generally echoed across cities and counties that have addressed their rape kit backlogs; that is, survivors are not angry, dis-engaged or even re-traumatized by testing or being informed of their test results, but by the delay in timely testing and investigation of their cases. This speaks clearly to the need to not only test all backlogged cases, but to test them immediately and from this point forward.

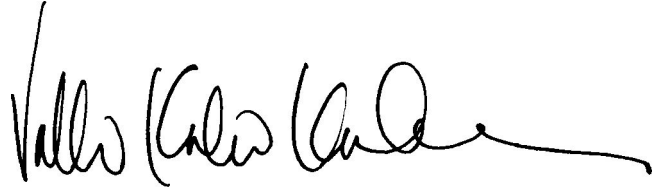
In a few days, the Joyful Heart Foundation, one of the national organizations leading the effort to reduce the rape kit backlog across the country and founded here in Kailua-Kona with offices in Honolulu, will be releasing a national research study on victim notification “best practices” based on surveys and interviews with survivors and professionals who advocate for and serve them. This report, along with other national studies conducted specifically regarding victim notification will offer protocols, policies and practices that honor survivor experiences in addressing the rape kit backlog. Again, what we have discovered is that survivors around the country WANT to know what happened to their kits, they are disappointed, angry and dismayed that the criminal-legal system did not take seriously survivor cooperation in the evidence-gathering process, and they are finally relieved that justice is forthcoming. Prosecution of rapists is not the only resolution for victims, but it is knowing that they are finally believed and that the legal process is now transparent for them.

Finally, if the majority of victims who report to the police in Hawaii have experienced the most heinous assaults and violence, we must believe that testing their kits can also finally bring a sense of security and well-being. Many survivors of violent sexual assaults are threatened by assailants that they or their loved ones will never be free or safe again; that is, rapists commonly remind victims that they are known to their perpetrators, they will be watched from the assault forward, and they will face repeat and more severe violence if they report to authorities. To finally know that your assailant has been arrested and imprisoned, died, moved to another city - or reoffended or not identified – is all part of the healing process for survivors. We owe the testing of all backlogged kits to every survivor who “gave” this evidence to authorities, but we also owe this to the Hawaii community if these particularly violent offenders have not been apprehended and held accountable.

We should be cognizant of and sensitive towards all rape and sexual assault survivors as we consider testing rape evidence kits, whether backlogged or not. But, we do not need to be condescending or speak for them. The majority of sexual assault and victim’s rights organizations around the U.S. – including survivor groups – support universal testing of rape kits. They have spoken for themselves, and we must now listen.

Please pass HB1907 without haste. The backlog cannot wait another day, month or year. Hawaii, the time is now.

Respectfully yours,

A handwritten signature in black ink, appearing to read 'Valli Kalei Kanuha', with a long horizontal flourish extending to the right.

Valli Kalei Kanuha, PhD, MSW
Professor of Sociology and Women's Studies
University of Hawaii at Manoa