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April 3, 2018

To: Senator Donovan M. Dela Cruz, Chair  
Senator Gilbert S.C. Keith-Agaran, Vice Chair  
Members of the Senate Committee on Ways and Means

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

### **Re: Testimony in Support, H.B. 2131 H.D. 1 S.D. 1, Relating to Sexual Assault**

Thank you for this opportunity to submit testimony in support of House Bill 2131, which continues the work of stakeholders in Hawai'i to ensure that rape kits are tested in an expeditious manner and offer a path to healing and justice for all sexual assault survivors.

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

Testing rape kits solves crimes and saves lives. By mandating the swift testing of every sexual assault kit, Hawai'i can send a powerful message to survivors that they—and their cases—matter. Testing every kit sends a message to perpetrators that they will be held accountable for their crimes, and demonstrates a commitment to survivors to bring healing and justice. It is also the pathway to a more effective criminal justice system and a safer community.

### **Testing Rape Kits Stops Serial Rapists**

In the last decade, communities across the country have discovered thousands of backlogged kits in storage and taken action. These jurisdictions have started testing their kits, submitting eligible DNA profiles into the national database (CODIS), and investigating and prosecuting resulting cases. So far, testing backlogged rape kits in just three cities—Cleveland, Detroit, and Memphis—has resulted in the identification of *over 1,300 suspected serial rapists*. These serial offenders have been connected to crimes across at least 40 states and Washington, D.C. Many of these offenders have been linked to other violent crimes, including domestic violence and homicide, as well as to non-violent crimes, including burglary and larceny.

Testing every kit is an approach that has been embraced by elected officials, law enforcement leaders, lab professionals, prosecutors, and advocates in jurisdictions across the country. Joyful Heart joins experts in calling for the mandatory submission and testing of every rape kit connected to a reported sexual assault. In 2017, the U.S. Department of Justice National Institute of Justice released *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, which includes 35 recommendations for victim-centered approaches for responding to sexual assault cases. For the first time, the federal government unambiguously declared that testing every rape kit connected to a reported crime is a best practice.

### **Testing Every Kit Saves Communities Money**

In 2016, the Begun Center for Violence Prevention Research and Education at Case Western Reserve University analyzed the cost of testing backlogged rape kits in Cuyahoga County, Ohio. Factoring in the cost of testing kits, investigating cases, and other related expenses, the study calculated the overall cost effectiveness of testing 4,347 unsubmitted kits. The study found testing all 4,347 kits produced a net savings of \$38.7 million.

Research is now confirming what cities and states around the country have already discovered: testing every rape kit and thoroughly investigating every reported rape is financially beneficial for communities. As more sexual assault cases are pursued, more offenders are apprehended, future crimes are averted, and communities save money.

### **Rape Kit Reform in Hawai'i**

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

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

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

H.B. 2131 H.D. 1 S.D. 1 includes testing, reporting, victims' rights, and tracking provisions that are essential to furthering this rape kit reform work in Hawai'i. The bill would convene a statewide Sexual Assault Response Team (SART), which must develop forensic examination and rape kit preservation guidelines for all facilities that perform such exams. It also mandates the swift submission and testing of all newly collected rape kits connected to a reported crime, and mandates annual statewide inventory reports of kits in storage at law enforcement agencies, medical facilities, laboratories, and rape crisis centers. Finally, the bill grants sexual assault survivors essential rights, including the right

to access information regarding the testing status or location of their rape kits, and mandates that stakeholders track all rape kits from collection to analysis.

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

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

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. H.B. 2131 H.D. 1 S.D. 1 requires medical facilities to notify law enforcement agencies within 24 hours, law enforcement agencies to pick up the kit within three business days, and submit a request for testing within 10 days. Laboratories must notify law enforcement within 14 days of the request if they accept the kit or ask it to be sent to a different laboratory. Kits must be tested within 180 days of arrival, on average, before July 1, 2023, and within 90 days of arrival, on average, after that date.

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

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

The reporting provisions of H.B. 2131 H.D. 1 S.D. 1 sustain this spirit of transparency and public accountability by requiring annual inventory reporting for all law enforcements agencies, medical facilities, laboratories, and rape crisis centers. These agencies must report key data—including the total number of rape kits in their custody, the status of these kits, the number of kits they have destroyed, and the reasons for which such kits were destroyed—to the Attorney General, who must compile and report these data publicly and to the legislature.

By requiring annual reporting, H.B. 2131 H.D. 1 S.D. 1 will ensure that all stakeholders, including survivors and the general public, can monitor the success of the implementation of the Malāma Kākou Project. Regular data collection and reporting allows us to track our progress, assess the impact of the policy changes and be held accountable for progress. Accountability shows the public and survivors that system stakeholders are committed to the pledge we have taken to improve rape kit handling procedures.

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

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

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

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

H.B. 2131 H.D. 1 S.D. 1 would grant survivors key rights to ensure that they have access to information about the status of their cases and of their kits, including:

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

Furthermore, H.B. 2131 H.D. 1 S.D. 1 directs each county to establish a tracking system for rape kits, which must include entities who receive custody of the kits and be accessible to victims anonymously. The bill requires participation in the tracking system from law enforcement agencies, laboratories, health care providers, and others in the chain of custody. A tracking system is effective when all participants in the medical and legal fields fully participate and regularly update crucial information within their jurisdiction. It is our understanding that the intention is to have a unified, electronic tracking system across the state, which we applaud.

H.B. 2131 H.D. 1 S.D. 1 requires the tracking system to provide a means of secure access to sexual assault survivors. As our research shows, giving survivors a choice about how and when to receive information about their kits can help counter the loss of self-determination and control at the core of the sexual assault experience. This provision is critical because it supports survivors' ability to access information about their kits in a secure and accessible manner.

### **Next Steps For Reform**

We are heartened by the leadership of Senator Thielen and Representative Ichiyama, many of their colleagues, and the members of the Women's Caucus, the Attorney General's Working Group, and the Hawai'i Sexual Assault Kit Initiative team, all of whom keep pressing forward on rape kit reform in Hawai'i. We encourage the Attorney General, members of the Act 207 Workgroup, and members of the legislature to continue engaging in dialogue, study, and action to ensure legislative reform brings about accountability, testing of all backlogged rape kits, and continued access to justice for survivors. We encourage the legislature to allocate sufficient funding not only to processing untested rape kits, but also to investigating leads, moving cases forward to prosecution, and engaging survivors in the criminal justice system.

The Hawai'i legislature has been tremendously supportive of rape kit reform, and we encourage continued assistance to local jurisdictions with implementing a survivor-centered approach to the rape kit handling process and survivor engagement. Doing so will ensure safer communities and create a path to healing and justice for survivors of sexual assault in Hawai'i.

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