



25 Broadway, 9th Floor
New York, New York 10004
(212) 475-2026
joyfulheartfoundation.org

Board of Directors:

Mariska Hargitay
Founder & President

Debbie Millman
Chair

Sukey Novogratz
Vice Chair

Lauran Bromley
Secretary

Jessica Ambrose

Beth Armstrong

Jenny Belushi

Cynthia Erivo

Linda Fairstein

Erica Fisher

Peter Hermann

Danielle Herzlich

Mark Herzlich

Valli Kalei Kanuha, Ph.D.

Andrea McTamane

Rev. Al Miles

Heather Mnuchin

Pamela Murphy

Tom Nunan

Chauncey Parker

Amanda Stephens

Noelle Wolf

Kym Worthy

April 18, 2019

TO: House State Affairs Committee

Representative Zach Fields, Co-Chair

Representative Jonathan Kreiss-Tomkins, Co-Chair

FROM: Lily Rocha

Associate Director of Policy & Advocacy

Joyful Heart Foundation

RE: Testimony in Support of Sponsor Substitute for House Bill 20, Version G

The Joyful Heart Foundation strongly supports Sponsor Substitute for House Bill 20, version G, which would establish rape kit submission and testing timeframes, among additional sexual assault reforms.

The Joyful Heart Foundation's mission is 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 rape kit backlog—hundreds of thousands of untested rape kits across the nation—our top priority. We work directly with survivors, stakeholders, and jurisdictions to achieve this goal. We have been instrumental in passing state-level rape kit reform legislation in several states including Arizona, California, Florida, Georgia, Hawai'i, Kentucky, Massachusetts, Nevada, New Mexico, New York, Texas, and Utah, and we have collaborated with local and state agencies to provide support during the implementation process. With this expertise and legislative track record, we respectfully submit testimony supporting SSHB 20, version G.

The Problem

Every 98 seconds, someone is sexually assaulted in the United States. In the immediate aftermath of a sexual assault, a victim may choose to undergo a medical forensic examination to collect evidence left behind during the assault. A doctor or nurse will conduct the four-to-six hour examination and preserve this evidence in what is commonly called a rape kit. Survivors who undergo this exhaustive and invasive forensic exam do so because they have been told this evidence could help law enforcement hold their offender accountable.

When tested, the DNA evidence from rape kits can be a powerful tool to solve and prevent crimes. DNA evidence can identify unknown assailants, link crimes together, and exonerate the wrongfully convicted. Too often, however, these rape kits languish untested for years—even decades—in storage facilities.

Why Testing Rape Kits Matters

Testing rape kits solves and prevents future crimes, and provides survivors with a path to justice and healing. Rape kits can yield DNA evidence that can be entered into local, state, and national DNA databases containing DNA from offenders. By testing every kit connected to a reported crime, more DNA profiles will be in these databases, potentially linking crimes and revealing serial rapists, who assault both acquaintances and strangers as recent research has shown. Even more, offenders who commit sexual assault often are engaged in other crimes such as burglary and homicide. DNA from rape kits can match DNA from other crime scenes and provide leads for investigators to follow. As more sexual assault cases are pursued, more offenders are apprehended, and future crimes are averted.

Joyful Heart joins experts in endorsing the federal government's best practice recommendation to submit every rape kit connected to a reported sexual assault to a crime lab for DNA analysis. 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. This approach has been embraced by elected officials, law enforcement leaders, lab professionals, prosecutors, and advocates in jurisdictions across the country.

By requiring every sexual assault kit to be submitted and tested, Alaska can send a powerful message to survivors that they—and their cases—matter. It demonstrates a commitment to survivors to bringing a path to healing and justice. Testing every kit sends a message to perpetrators that law enforcement will employ every available tool to apprehend and prosecute them. It is also the pathway to a more effective criminal justice system and safer communities across the country.

Testing rape kits also 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 and other related expenses, the study calculated the overall cost effectiveness of testing 4,347 unsubmitted kits and following through to prosecution whenever possible. The study found that Cuyahoga County **saved \$38.7 million** by testing 4,437 backlogged kits, investigating every case, prosecuting offenders, and preventing them from committing future crimes.

Previous Reforms in Alaska

Reform began in 2015, when then-Governor Bill Walker began a preliminary rape kit inventory. In 2017, Alaska enacted a law requiring the Department of Public Safety (DPS) to conduct a one-time statewide inventory of untested rape kits. The inventory report, released in November 2017, identified 3,484 unsubmitted kits in possession of law enforcement agencies statewide. The following year, a law requiring an annual inventory on untested rape kits yielded a November 2018 report indicating that the number of untested kits in the state fell to 2,568.

Funding has additionally been appropriated to tackle the backlog of untested rape kits. Legislators appropriated \$2.75 million in the 2018 state capital budget to process backlogged rape kits, marking the state's largest investment in the rape kit backlog. Federal funds had also been awarded in 2016. The U.S. Department of Justice Bureau of Justice Assistance (BJA) awarded the Alaska Department of Public Safety (DPS) \$1,090,450 to process nearly 1,000 pieces of evidence which included 707 rape kits, investigate and prosecute cases, and re-engage survivors. In 2017, BJA awarded DPS an additional \$443,727 to sustain this work.

Reforms in 2019 Legislation

SSHB20, version G would require law enforcement agencies to submit kits to a laboratory for DNA analysis within 30 days of receipt. The agency would ensure that the laboratory tests the submitted kit within one year of receipt and would also make a reasonable effort to notify the survivor that their kit has been tested within two weeks of testing. If an agency determines a kit is scientifically unviable, does not meet eligibility requirements for upload in the Combined DNA Index System (CODIS), or was collected from a survivor wishing to remain anonymous, the kit would be deemed as ineligible for testing. Additionally, this legislation would require DPS to include in their annual reports information regarding the number of kits determined ineligible for testing and the reasons the kits were determined to be ineligible.

The Joyful Heart Foundation strongly supports the necessary rape kit submission and testing timeframes. The lack of clear rape kit handling and testing processes has been one of the main contributing factors of the rape kit backlog. Establishing statewide policies about how rape kits should be handled, when they should be collected and submitted for analysis, when survivors should be notified of any testing results, and how kits should be stored and disposed will set standard operating procedures across the state. Standardization will remove biased individual decision-making on whether or not a kit should be tested, and rape kits will be handled uniformly, like evidence from any other crime. We recommend the legislature align these submission and testing timeframes to align with Joyful Heart's recommendations to submit kits to a lab within seven days of collecting a rape kit and test within 30 days of receipt.

We also strongly support exempting anonymous kits from testing. Survivors who do not want to engage with the criminal justice system must be respected. Should they decide to file a police report in the future, their kits must be tested within any statutory timeframes, but as swiftly as possible.

We urge the legislature to reconsider placing the burden of determining if a kit is viable for testing on law enforcement. This task is better suited for trained forensic scientists in an accredited crime lab. In Maryland, proposed legislation contained this clause, but legislators struck this language to ensure kits would be evaluated in laboratories. The Joyful Heart Foundation is also heartened to see that DPS would report on the number of kits determined ineligible for testing and the reasons for determining them ineligible. In some states, the practices leading law enforcement to close a case as unfounded (and consequently deem the associated kit ineligible for CODIS upload) have been plagued by bias and victim-blaming behavior. While Alaska practices may differ, obtaining information on the number of kits deemed ineligible from unfounded cases will help the legislature, survivors, and other stakeholders determine if more research or statutory changes are necessary.

The Road Ahead

Enacting SSHBO, version G, with the minor adjustments detailed, would send a message to survivors that Alaska is taking sexual assault crimes seriously and will improve current practices to ensure the criminal justice system is working as effectively as possible to bring them justice. We thank Representative Geran Tarr for her unwavering commitment to bring about comprehensive rape kit reform, as well as the Alaska advocates ensuring reforms are survivor centered and tailored to meet the unique needs of the state.

The Joyful Heart Foundation urges the House State Affairs Committee to vote favorably on SSHB20, version G. We look forward to working with you to enact comprehensive rape kit reform and provide a path to healing and justice for survivors throughout Alaska.

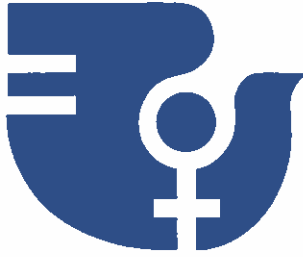
With Gratitude,

A handwritten signature in black ink, appearing to read 'Lily Rocha', with a stylized, flowing script.

Lily Rocha

Associate Director of Policy & Advocacy

Joyful Heart Foundation



Sha'a Ka Atyátx'i Noowú
DOVE COTTAGE
A Place of Peace

Aiding Women in Abuse and Rape Emergencies

"Serving Juneau and Nine Southeastern Communities"

P.O. Box 20809 • Juneau, Alaska 99802-0809

(907) 586-6623 (business)

(907) 586-2479 (fax)

(907) 586-1090 (crisis)

1-800-478-1090 (toll free in state)

E-mail: info@awareak.org

Website: www.awareak.org

April 18, 2019

Dear Representative Tarr,

I'm writing to express support for House Bill 20. Alaska's sexual crime rates are three times higher than the national average, and child sexual assault rates are six times the national average. Strengthening and clarifying our language around sexual assault moves Alaska closer to being able to prosecute these crimes which have tremendous negative impact on the victims, and work towards ending this pattern.

While Sexual Assault Kits have been backlogged for years with thousands of kits going untested and justice not being served, the legislature has worked to remedy this in past years, and this remedy is still in process. HB 20 seeks to create a realistic yet aggressive timeline for kits to be turned over to the crime lab, tested by the state, and then requires notification of the victim that testing has been completed. Victim notification helps lessen the heavy burden of not knowing the progress of a case and moves towards closure for victims. This bill also requires the yearly reporting of the backlog of sexual assault kits to include more detail about the numbers of kits that are going untested why those kits are not being tested.

At AWARE, we work with sexual assault survivors who generally assume that if they go through the process of having a sexual assault exam and kit, that that kit is being processed and in a timely way. This is a reasonable expectation for someone who has survived felony sexual assault, and HB 20 works to bring this reasonable expectation closer to reality.

Sincerely,

Saralyn Tabachnick, M.Ed., LPC
Executive Director



Alaska Women's Lobby

SSHB 20 – Rape Kit Reform, Definition of Consent, Sexual Assault of an Incapacitated Person March 2019

The Alaska Women's Lobby, with steering committees in Fairbanks and Juneau as well as members across the state, **supports SSHB 20** and appreciates Rep. Tarr's efforts to pass this important legislation.

The bill defines "consent" for the sexual assault statutes to mean words or overt actions indicating freely given agreement to engage in sexual penetration or sexual contact.

Currently, an offender must "know" a person is mentally incapable, incapacitated or unaware that a sex act is being committed for there to be certain charges brought as sex offenses. SSHB 20 adds "or reasonably should know" to the standard.

Further the bill requires all sexual assault examination kits be sent to the crime lab within 30 days of collection; be tested within one year; and that victims be notified by law enforcement within two weeks of receiving results that the kit has been tested. There are limited exceptions to the testing requirement including if the kit is collected from a person who wishes to remain anonymous.

Alaska leads the country in the rate of sexual assault offenses. Defining consent in statute and clarifying acts should not be committed when you reasonably know the other person cannot give consent strengthens tools to hold offenders accountable for their actions.

Adding timelines for sexual assault kit testing and victim notification of testing strengthens reform efforts started in 2014 to address criminal justice system failures in supporting victims of sexual assault.

Under a federal program called the Sexual Assault Kit Initiative (SAKI), money has been awarded to Alaska to test some of these kits. The Lobby endorses this Initiative and hopes that the Department of Public Safety along with the Governor's Office and the Alaska State Troopers can continue to seek federal funding for additional testing.

The federal monies are also being used to study and set into place best practices for the coordination between DPS and police departments across the state. These are positive steps in the right direction, and we endorse these approaches.