



# AGENDA REPORT

**TO:** Edward D. Reiskin  
City Administrator

**FROM:** LeRonne L. Armstrong  
Chief of Police, Oakland  
Police Department

**SUBJECT:** OPD Crime Lab DNA Instrumentation  
Use Policy Update

**DATE:** October 11, 2022

City Administrator Approval 

Date: Oct 19, 2022

## **RECOMMENDATION**

**Staff Recommends That City Council Adopt A Resolution Approving Updates To 1) The Oakland Police Department (OPD) Criminalistics Laboratory (Crime Lab) DNA Instrumentation And Analysis Software Biometric Technology Surveillance Use Policy; 2) The OPD Crime Lab's Surveillance Impact Report For Its Use Of DNA Instrumentation Analysis And Software and 3) Accept the 2021 Biometric DNA Analysis Technology Annual Report.**

## **EXECUTIVE SUMMARY**

The Oakland Police Department (OPD) requests the approval of updates to the OPD Criminalistics Laboratory (Crime Lab) for DNA Instrumentation and Analysis. The technology is considered biometric technology according to the City's Surveillance Technology Ordinance; all policy changes require City Council approval. The City Council approved the original Use Policy and Impact report after the City's Privacy Advisory Commission voted to recommend the documents on October 1, 2020.

The Crime Lab requested minor updates to the policy and the Privacy Advisory Commission (PAC) also requested minor changes to ensure that the Crime Lab does not use biological evidence from victims for separate investigations beyond the investigation for which biological evidence is gathered. The PAC voted unanimously on July 7, 2022, to approve the revisions to the Use Policy (**Attachment A**) and Impact Report (**Attachment B**). The Crime Lab also submitted a 2021 Annual Report (**Attachment C**).

## **BACKGROUND / LEGISLATIVE HISTORY**

The Oakland Police Department (OPD) Criminalistics Laboratory's (Crime Lab) Forensic Biology / DNA (Deoxyribonucleic Acid<sup>1</sup>) Unit utilizes specialized DNA collection and analysis instrumentation and software to perform forensic DNA testing. This is a biometric analysis which produces potentially sensitive information. During the lengthy and complicated process to obtain a DNA profile from evidence or a reference sample, numerous steps may be necessary

<sup>1</sup> <https://www.genome.gov/genetics-glossary/Deoxyribonucleic-Acid>

including, but not limited to: digestion, extraction, quantitation, normalization / amplification, typing, interpretation, and database upload. OPD does not use forensic DNA analysis to surveil residents of Oakland; indeed, samples are only eligible to upload to Combined DNA Index System (CODIS) when the evidentiary item from which a profile is obtained has an extant and articulable nexus to a crime.

### ***DNA Instrumentation and Oakland's Privacy Regulations***

The Surveillance Technology Ordinance No.13489 C.M.S., adopted by the City Council on May 15, 2018 adds Chapter 9.64 to the Oakland Municipal Code (O.M.C.), and covers policy areas related to surveillance technology. The O.M.C. 9.64 "surveillance technology" definition<sup>2</sup> refers to "biometric identification hardware" as follows:

*"Surveillance Technology" means any software, electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect, retain, analyze, process, or share audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of surveillance technology include, but is not limited to the following: cell site simulators (Stingrays); automatic license plate readers; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems; body-worn cameras; social media analytics software; gait analysis software; video cameras that record audio or video, and transmit or can be remotely accessed. It also includes software designed to monitor social media services or forecast criminal activity or criminality, **biometric identification hardware** or software.*

O.M.C. 9.64.030.1.C requires City Council approval for new and existing surveillance technology. Additionally, O.M.C. Section 9.64.020.1 requires that, "Prior to seeking City Council approval for existing city surveillance technology under Section 9.64.030, city staff shall submit a Surveillance Impact report and Surveillance Use Policy to the PAC for its review at a regularly noticed meeting. The surveillance impact report and surveillance use policy must address the specific subject matter specified for such reports as defined under 9.64.010."

OPD staff developed a Use Policy and Impact Report for review by the PAC and City Council. The Use Policy covers the following required categories:

- Technology Description;
- Authorized Use;
- Use Restrictions;

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<sup>2</sup> "Surveillance Technology" means any software, electronic device, system utilizing an electronic device, or similar technological tool used, designed, or primarily intended to collect, retain, analyze, process, or share audio, electronic, visual, location, thermal, olfactory, biometric, or similar information specifically associated with, or capable of being associated with, any individual or group. Examples of surveillance technology include, but is not limited to the following: cell site simulators (Stingrays); automatic license plate readers; gunshot detectors (ShotSpotter); facial recognition software; thermal imaging systems; body-worn cameras; social media analytics software; gait analysis software; video cameras that record audio or video, and transmit or can be remotely accessed. It also includes software designed to monitor social media services or forecast criminal activity or criminality, biometric identification hardware or software.

- Data Access;
- Data Collection and Retention, and Security;
- Monitoring and Reporting; and
- System Training

The Impact Report covered the following required categories:

- Information describing the system and how it works;
- Purpose of the technology;
- Locations where, and situations in which the technology may be used;
- Privacy Impact of the technology;
- Mitigations to prevent privacy impacts;
- Data Types and Sources.

During several meetings in 2020, the PAC reviewed drafts of the OPD Crime Lab DNA Instrumentation and Analysis Software Biometric Technology Surveillance Use Policy and Impact Report. This process allowed staff and the PAC commissioners to address concerns about how the technology is used and how data is protected. Later at its October 1, 2020 meeting, the PAC voted unanimously to recommend City Council adoption of the Use Policy and Impact Report.

On December 1, 2020, after review by the PAC, the City Council approved the OPD Crime Lab DNA Instrumentation and Analysis Software Biometric Technology Surveillance Use Policy (SUP) and associated Surveillance Impact Report (SIR) via adoption of Resolution No. 88388 C.M.S. The Council-adopted resolution also states that, “the benefits to the community of the surveillance technology outweigh the costs (cost benefit determination); that the proposal will safeguard civil liberties and civil rights, and that, no alternative with a lesser economic cost or impact on civil rights or civil liberties would be as effective.”

## **ANALYSIS AND POLICY ALTERNATIVES**

OPD Crime Lab staff in 2022 needed to update the DNA Instrumentation and Analysis Software Biometric Technology Use Policy (see **Attachment A**) for two main reasons:

1. Updates and changes to the instrumentation detailed in the original use policy; and
2. Concerns raised by PAC Commissioners that biological data, collected by the Crime Lab as part of normal evidentiary analysis procedures, may use the biological samples for other investigations not connected to the original investigation<sup>3</sup>.

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<sup>3</sup> OPD Crime Lab procedures already mitigate against any possibility of using a victim’s biological evidence from the investigation of one crime to be used as a comparison to evidence from other criminal investigations. PAC Commissioners raised concern about this possibility for OPD’s use of DNA evidence based on news articles related to the San Francisco Police Department use of biological evidence: <https://www.sfchronicle.com/sf/article/S-F-approves-measure-to-prevent-police-from-17091891.php> . However, OPD has not used evidence in this way. Nevertheless, the updated use policy explicitly prohibits use of victim profiles in QC databases.

The purpose of DNA Instrumentation and Analysis Software Biometric Technology by the OPD Crime Lab has not changed. The changes to technical instrumentation include the following technologies:

- Digestion / Extraction
- DNA Quantitation
- DNA Normalization / Amplification – STR (autosomal and Y)
- DNA Typing – STR (autosomal and Y)
- DNA Interpretation – STR (autosomal and Y)

The Use Policy (**Attachment A**) also explains updates to the Authorized Use section (pages 3-4) to specify and clarify eligible DNA profiles for use in quality assurance activities and updates the Data Collection section (page 4) to specifically exclude use of victim DNA profiles in QC databases.

The Impact Report (**Attachment B**) was updated only in the Fiscal Cost Section to reflect equipment changes/updates as well as associated pricing changes.

PAC commissioners voted unanimously to recommend the changes outlined in the July 7, 2022 meeting to recommend the updates to the Impact Report (**Attachment A**) and Use Policy (**Attachment B**). City staff recommends approving the updates to the OPD Crime Lab DNA Instrumentation and Analysis Software Biometric Technology Use Policy.

Adoption of this resolution advances Oakland's citywide priority of responsive, trustworthy government as public has a significant interest in ensuring that the OPD Crime Lab can effectively process evidence; successfully processed evidence helps OPD with investigations that bring leads to effective criminal prosecutions. The public safety for all Oakland residents and visitors is enhanced through greater OPD investigative capacity

### **FISCAL IMPACT**

There is no fiscal impact associated with approval of this Impact Report and Use Policy.

### **PUBLIC OUTREACH / INTEREST**

The PAC reviewed the OPD Criminalistics Laboratory DNA Instrumentation And Analysis Software Biometric Technology Use Policy (**Attachment A**) and Surveillance Impact Report (**Attachment B**) at publicly noticed meetings on October 1, 2020 and updates to these documents and the 2021 Annual Report (**Attachment C**) on July 7, 2022. This report also complies with standard legislative noticing requirements.

### **COORDINATION**

This report and accompanying resolution were reviewed by the Office of the City Attorney

### **SUSTAINABLE OPPORTUNITIES**

**Economic:** There is no economic impact associated with this report.

**Environmental:** There are no environmental issues associated with this report.

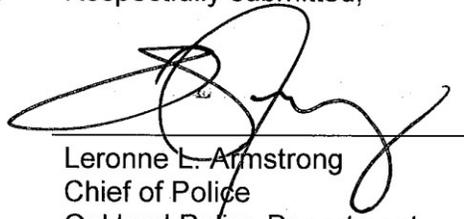
**Race and Social Equity:** The public has a significant interest in ensuring that the OPD Crime Lab can effectively process evidence; successfully processed evidence helps OPD with investigations that bring leads to effective criminal prosecutions. The public safety for all Oakland residents and visitors is enhanced through greater OPD investigative capacity.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That City Council Adopt A Resolution Approving Updates To 1) The Oakland Police Department (OPD) Criminalistics Laboratory (Crime Lab) DNA Instrumentation And Analysis Software Biometric Technology Surveillance Use Policy; 2) The OPD Crime Lab's Surveillance Impact Report For Its Use Of DNA Instrumentation Analysis And Software and 3) Accept the 2021 Biometric DNA Analysis Technology Annual Report

For questions regarding this report, please contact Dr. Sandra Sachs, Crime Lab Manager at [ssachs@oaklandca.gov](mailto:ssachs@oaklandca.gov).

Respectfully submitted,



Leronne L. Armstrong  
Chief of Police  
Oakland Police Department

Reviewed by:  
Drennon Lindsey, Deputy Chief of Police  
OPD, Bureau of Investigation (BOI)

Dr. Sandra Sachs, Criminalistics Laboratory Mgr.  
OPD Criminalistics Laboratory

Tracey Jones, Police Services Manager  
OPD, Research, Planning and Technology Section

Prepared by:  
Bruce Stoffmacher, Legislation and Policy Manager  
OPD, Research, Planning and Technology Section

**Attachments (3)**

**A:** OPD Crime Lab DNA Instrumentation And Analysis Software Biometric Technology Use Policy

**B:** OPD Crime Lab DNA Instrumentation And Analysis Software Surveillance Impact Report

**C:** 2021 Annual Report for Biometric DNA Analysis Technology