

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2009 NOV 18 PM 12:49

To: Office of the City Administrator
Attn: Dan Lindheim
From: Police Department
Date: December 1, 2009

Re: An Informational Report on the Status of Sexual Assault Evidence Kit Analysis and Backlog in the Oakland Police Department Criminalistics Laboratory

SUMMARY

As requested by the Rules and Legislation Committee, staff has prepared an informational report on the status of the forensic analysis of sexual assault evidence kits in the Oakland Police Department Crime Laboratory. The report describes historical efforts to test all kits in unsolved cases, the increase in demand for forensic biology services in general, and current efforts directed at the analysis of sexual assault evidence kits in open investigations. As of June 30, 2009, the laboratory had requests for the analysis of 294 sexual assault evidence kits in 235 open investigations. In addition, 489 sexual kits in 435 open cases occurring since October 1, 2003 (which have not been requested for analysis) have been cataloged. These kits have been enrolled in a special project known as the *Untested Sexual Assault Kit program*, discussed further in this report.

FISCAL IMPACT

This is an informational report; however, information addressing the use of grant and other funding sources to assist in clearing the Department's DNA backlog is presented in the Key Issues and Impacts section of this report.

BACKGROUND

The laboratory receives specific requests for analysis of sexual assault kits from investigators, referred to as *traditional case requests*. In addition, there are numerous sexual assault kits associated with open, unsolved cases that are not requested as a matter of routine. Since year 2000, various efforts and programs have been implemented to identify and test the backlog of untested kits in open, unsolved cases. These efforts have had considerable success in identifying serial crimes and potential perpetrators using available DNA databases.

The Cold Case Grant Program

For a five year period ending January 31, 2005, the Crime Laboratory received funding from the State of California, Governor's Office of Criminal Justice Planning under a statewide program entitled *The Cold Case Grant Program*. The goal of this program was to enable crime laboratories and the law enforcement agencies they serve to identify suspects associated with unsolved sexual assaults and sexual assault homicides with probative biological evidence,

Item: _____
Public Safety Comte.
December 1, 2009

conduct DNA testing on that evidence, and search DNA profiles obtained in the Combined DNA Index System (CODIS). CODIS is comprised of local, state and national DNA databases, and enables the comparison of DNA evidence profiles in an incident against the DNA profiles of convicted offenders and felony arrestees. It also enables comparison of case profiles against profiles from other cases (solved and unsolved) with the goal of establishing the serial nature of many of these crimes where it exists.

Sexual assault cases were eligible for enrollment in the Cold Case Grant Program if they met specific criteria, which include:

- The crime incident occurred on or after October 1, 1995 (note: this time limit did not apply to homicides);
- The case was unsolved with no known suspect;
- The case still had biological evidence available for analysis;
- The case was enrolled in the grant program by September 30, 2003 (grant enrollment deadline); and
- For homicide cases, the incident involved a sexual assault component.

KEY ISSUES AND IMPACTS

The OPD Crime Laboratory received cold case grant funding for two DNA analysts and one DNA technician who would work with a Forensic Biology Unit criminalist to conduct analysis on evidence in the eligible cases. Laboratory personnel inventoried the population of untested sexual assault kits; personnel from the Special Victims Unit (SVU) determined which of these kits were associated with cases that were Cold Hit Program eligible and Homicide Unit personnel identified which unsolved homicide cases were Cold Hit Program eligible. A total of 770 cases were reviewed and 560 cases were enrolled; 440 were sexual assault cases and 120 were homicides.

Over the course of approximately five years, staff tested the evidence in the kits as well as other evidence such as clothing and recovered biological material, then developed DNA profiles and submitted them to CODIS. As of the end of the Cold Hit Grant Program in January 2005, profiles from 302 cases (247 sexual assault cases and 55 homicide cases) were submitted to CODIS. As of the end of calendar year 2005, the overall hit rate¹ for these cases was 41%. These hits included the identification of 93 uniquely named offenders and 29 case-to-case links, demonstrating the recidivistic nature of this category of crime. A number of these case-to-case links* involve cases in other jurisdictions.

¹ "Hit Rate" is defined as that portion of all cases examined in which at least one suspect is identified. Multiple suspects may be identified in some portion of the cases examined. In "named" cases, investigators frequently request multiple suspects be examined.

Summary of Hit Rate as of Year End 2005 - COLD HIT GRANT PROGRAM

| Number of Cases in CODIS | Number of Named Offender Matches | Number of OPD Case-to-Case Only Linkages¹ | Number of Cases with Cross-Jurisdictional Links | Number of Cases Confirmed |
|---------------------------------|---|---|--|----------------------------------|
| Homicides: 55 | 20 | 3 | 0 | 7 |
| Sexual Assaults: 247 | 73 Uniquely Named Individuals) | 26 | 1 (to San Joaquin) 2 (Washington State) 3 (San Francisco) 1 (Florida) 1 (Fremont) 2 (Contra Costa) | 22 |
| Total : 302 | 93 | 29 | 10 | 29 |
| Hit Rate: 41% | 31% | 9.6% | | |

*Case-to-case linkages do not include those serial crimes that have ultimately been matched to a named offender. This number represents only those case-to-case links where the perpetrator is still unknown.

Many of these cases have gone on to result in successful prosecutions, some as capital cases. Some cases involve victims whose individual cases would have been difficult to prosecute independently if indeed charges were brought forward. However, when shown to be part of a series of assaults, individual case difficulties were overcome. Cold Hit Grant Program case profiles have continued to pay dividends in subsequent years with new hits. For example, in 2008, four additional hits to Cold Hit Grant Program cases were achieved in CODIS.

Increases in Laboratory Personnel

In 2006, City Council authorized by Resolution No. 79949 C.M.S., dated June 8, 2006, an increase in the Laboratory's Forensic Biology Unit as part of its mid-cycle budget adjustment. Three Criminalist II/DNA analyst positions were added to address the backlog of forensic biology cases, including untested sexual assault evidence kits. These positions were filled in 2006-2007; however, retirements and resignations occurred, resulting in vacancies and reassignments of laboratory personnel. Full staffing in the Forensic Biology Unit has been elusive. At present, of the 11 authorized positions in the Unit, two are vacant. Requests to fill these vacancies have been submitted to the City Administrator.

Item: _____
 Public Safety Comte.
 December 1, 2009

Increases in Traditional Forensic Biology Case Requests

Table 1 shows the pattern of submission of traditional forensic biology requests to the laboratory since the end of the Cold Hit Grant Program. These requests involve forensic biology examinations of all types, including sexual assault cases and kits. While most of these requests arise from homicides and sexual assaults, other felony assaults and a low number of property crimes contribute.

**Traditional Forensic Biology Unit Requests
Calendar Year 2005-2009**

Table 1 (All Sources)

| Calendar Year | Requests Received | Requests Completed | Rolling Backlog |
|----------------------|--------------------------|---------------------------|------------------------|
| 2005 | 263 | 222 | 233 |
| 2006 | 301 | 220 | 291 |
| 2007 | 282 | 226 | 331 |
| 2008 | 432 | 201 | 536 |
| 2009 (as of 6/30) | 300 | 211 | 625 |

As of June 30, 2009 (included above), the laboratory had requests for the analysis of 274 sexual assault evidence kits in 235 cases. More than half of these requests were received during 2009. The number of traditional requests is not static and will change as traditional requests for new cases cycle in, and completed requests cycle out.

The backlog of forensic biology requests of all types has increased each year. Increases appear to correlate with increases in SVU and Criminal Investigations Division (CID) investigative staffing. Special Victim and Child Exploitation investigators have increased in number from six in 2007 to 19 in 2009; Homicide and Felony Assault Unit investigators have increased by a number of five during the same period. These units are the primary sources of requests received by the Forensic Biology Unit. However, the increases are also a reflection of how analytical success leads to more demand for testing. The Lab's hit rate with CODIS is routinely on the order of 40-50%, which means 40-50% of the case profiles entered into CODIS result in an association between our case and an individual in the database or, are linked to evidence in other cases within or outside of our jurisdiction.

With improvements in technology, it is now possible to recover more information from less evidence, making more samples amenable to testing. Based on 2008 data, 76% of samples screened are sufficient to support a DNA analysis; a 5% increase over the previous year.

Item: _____
Public Safety Comte.
December 1, 2009

PROGRAM DESCRIPTION

Through the Cold Hit Grant Program, the Laboratory successfully tested all sexual assault evidence kits and other sexual assault evidence associated with unsolved sexual assault cases occurring between October 1, 1995 and September 30, 2003. However, since that time, untested sexual assault evidence kits have once again accumulated. Many represent cases for which no traditional laboratory request for analysis has been submitted.

The Untested Sexual Assault Kit Program

Beginning in late 2008, the Laboratory conducted a hard census of untested sexual assault kits that had accumulated in the Property and Evidence Unit since the end of the Cold Hit Grant Program. Again, staff worked with SVU personnel to determine which kits met criteria for enrollment in the *Untested Sexual Assault Kit Program* (hereafter “The Program”). There are several eligibility requirements for enrollment, which include:

- The untested kit had to be associated with an open case in the Oakland jurisdiction;
- The incident had to have occurred between October 1, 2003 and June 30, 2009; and
- No request for analysis of the kit was previously submitted to the laboratory as of June 30, 2009.

The Untested Sexual Assault Kit Program commenced July 1, 2009, as a new performance based budgeting initiative. Staff enrolled 489 kits in 433 incidents that met program requirements. The goal of the Program is to conduct an analysis of this finite group of kits throughout the period of fiscal year 2009-2011. This project will be accomplished by dedicating 3 FTE Forensic Biology Unit analysts to the task, limiting analysis to kit samples only, and employing a streamlined batch analysis approach. The plan is to complete the screening of 400 kits within the first year and the remaining 89 cases in the second year. Screening will identify those samples that are suitable for DNA typing tests. A portion of the samples typed will yield profiles that are suitable for searching in CODIS. Typing of samples determined by screening to be sufficient to support a DNA analysis and CODIS entry of eligible profiles will proceed over the life of the project, with the objective of completing all work by June 30, 2011.

The Table 2 shows the anticipated milestones in each fiscal year period.

Table 2

| Performance Measure | FY 09-10 Proposed | FY 10-11 Proposed |
|---|------------------------------|------------------------------|
| Reduce backlog of 489 untested sexual assault kits received between October 1, 2003 and June 30, 2009 | 40% (196 kits) | 100% (293 kits) |

Item: _____
Public Safety Comte.
December 1, 2009

Progress to date is shown in the Table 3.

Table 3 Progress Report 3rd Quarter 2009

| Quarter/Year | Kits Received | Kits in Progress | Kits Completed (Cancelled) | % Completed | Kit Backlog |
|-----------------------|----------------------|-------------------------|-----------------------------------|--------------------|--------------------|
| 3 rd /2009 | 57 | 37 | 17(3) | 4.1 | 432 |

From this first group of cases, three CODIS eligible profiles were entered into CODIS, resulting in three hits - two were to the same individual.

Completion of casework by this batch approach will not be linear; the Department's approach front loads the process with screening of 80% of the kits in the first year. As mentioned previously, screening will identify those samples containing evidence suitable for DNA analysis. While DNA analysis and CODIS searching will occur throughout the first year, it will represent the majority of the work conducted in the second year with the goal of completing all 489 kits. The kit will be counted as completed when a report is published.

DISABILITY AND SENIOR CITIZEN ACCESS

There are no Americans with Disabilities Act (ADA) or senior access issues contained in this report.

SUSTAINABLE OPPORTUNITIES

Social Equity: Analysis of physical evidence in sexual assault cases will assist the Police Department in conducting effective investigations of child abuse and sexual abuse, by identifying crimes of a serial nature, and ultimately by identifying perpetrators through the use of available DNA databases. Apprehending and prosecuting offenders will improve public safety and the welfare of women and children in the community while making the City safer.

Economic: With the reduction of child abuse and sexual assault cases, and the subsequent apprehension and prosecution of offenders, the physical atmosphere and the reputation of Oakland will improve, affording the City an opportunity for further financial growth.

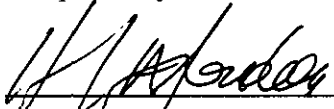
Environmental: There are no environmental concerns associated with this report.

Item: _____
Public Safety Comte.
December 1, 2009

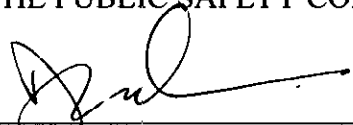
RECOMMENDATION

Staff recommends acceptance of this informational report.

Respectfully submitted,


FOR Anthony W. Batts
Chief of Police

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE:



Office of the City Administrator

Prepared By:

Mary M. Gibbons, Laboratory Manager
and
Jennifer S. Mihalovich, Supervisor,
Forensic Biology Unit
Criminalistics Division
Oakland Police Department

Item: _____
Public Safety Comte.
December 1, 2009