

Department of Justice



STATEMENT FOR THE RECORD ON BEHALF OF THE U.S. DEPARTMENT OF JUSTICE

**BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE**

**ENSURING THE EFFECTIVE USE OF DNA EVIDENCE TO SOLVE
RAPE CASES NATIONWIDE**

DECEMBER 15, 2009

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Chairman Leahy, Senator Sessions, and Members of the Committee: The Department of Justice appreciates the opportunity to submit this statement to the Committee regarding untested forensic evidence and how it impacts effectively investigating and prosecuting rape and sexual assault cases.

Please be assured that the Department shares the Committee's concerns about untested forensic evidence and DNA in particular. The Department's Office of Justice Programs (OJP) and Office on Violence Against Women (OVW) have made this issue a key priority. A recent study funded by the OJP's National Institute of Justice (NIJ), *The 2007 Survey of Law Enforcement Forensic Evidence Processing*, showed that 14 percent of all unsolved homicides and 18 percent of unsolved rapes contained forensic evidence that was not submitted by law enforcement agencies to a crime laboratory for analysis.

As reported in the media, thousands of rape kits are untested and DNA backlogs in crime labs are causing delays in the criminal justice system. In order to effectively address this problem, we must first try to better understand what the backlog entails. For example, there is no industry-wide agreement defining what a backlogged forensic case is. NIJ defines a backlogged case as one that has not been tested 30 days after submission to the crime lab. However, many labs refer to any case in which the final report hasn't been submitted as a backlogged case. Using

that definition, the moment a new case was logged into the laboratory, it would become reported as part of the backlog.

Another key point is that the DNA backlog is not static; it is constantly changing. DNA evidence, including evidence from rape kits, is being submitted to crime labs and tested, but very often new DNA evidence is being submitted at a much faster rate. In other words, the laboratories are receiving new evidence to be tested at a faster rate than they are able to process. However, the reason for the increased submission of evidence is good news. Law enforcement officers are more aware of the power of DNA technology than in the past and are making more requests for testing than ever before. In addition, DNA testing requests have risen due to the retesting of older “cold cases” with DNA technologies, increased requests for post-conviction cases, and increasing submissions from property crime cases.

Research conducted by DOJ’s Office of Justice Program’s National Institute of Justice (NIJ) has shown that from 2005 to 2008, demand for DNA testing services has increased by over 260 percent. The good news is that from 2005 to 2008, crime laboratory capacity for DNA cases (as measured by cases completed) has increased by over 280 percent. While reported backlogs are increasing, they are increasing at a slower rate than the capacity. But until the capacity to work cases equals the new case requests, or supply equals demand, reported backlogs will continue to increase.

The Department has worked diligently with our state and local partners to support increased collection and testing of DNA evidence in rape kits. We are eager to work with Congress to determine the best ways to address issues raised by the backlog. In doing so, there are certain facts to keep in mind. Rape kits held at police agencies may include kits in cases when the victim has not decided whether to file a police report. In those circumstances,

submitting the rape kit to the crime lab for processing would not result in criminal charges being filed and the results would not be eligible for upload to the FBI’s Combined DNA Index System (CODIS). Also, if law enforcement agencies were to submit all untested rape kits immediately to their laboratories, it would likely result in a bottleneck that would cause severe delays, making the problems worse, not better. The Department therefore supports working with law enforcement and crime laboratories to help them prioritize kits that should be tested so that we are using the crime laboratories in the smartest way possible as we continue to work to build the capacity of the laboratories.

Before submitting evidence in sexual assault cases to crime laboratories, law enforcement officials should carefully review cases to see that they have all necessary information and samples to eliminate non-guilty parties who have had recent consensual intercourse with the victim. Without such “elimination” samples, any profiles obtained from the evidence cannot be entered into the FBI’s Combined DNA Index System (CODIS), where male profiles from these cases can be searched against profiles of convicted offenders and/or arrestees to determine if any matches occur.

Also, there may be other physical evidence, including DNA evidence that in some cases may be more valuable than evidence from a rape kit. For example, there may be victim’s clothing, bedding, and other objects which may also provide DNA evidence, or evidence other than DNA (hairs, fibers, soil, latent prints, etc.). Additionally, other direct and circumstantial evidence often is crucial in determining whether a case will be prosecuted. Sexual assault cases are very complex. Each one needs to be appropriately evaluated to determine the best approach to not only identify and prosecute the perpetrator, but to exonerate the innocent as well.

As previously noted, OJP and OVW are working with our federal, state, local, and tribal partners to improve DNA testing capacity and the effective use of DNA in rape and sexual assault cases. Through the DNA Initiative from 2004 to 2009, NIJ has provided over \$322 million for capacity enhancement purposes. Funding has been used for purposes such as new personnel, overtime for existing staff, supplies and materials needed to process cases beyond what their existing budgets will provide. Our long-term approach is to build the capacity of crime labs by providing funds to purchase high-speed instruments capable of processing multiple samples at the same time, automated robotic systems, and lab information management systems to manage the data generated more efficiently. Funds may also be used for hiring additional personnel and for validating newer, more efficient lab procedures and equipment.

Even with a backlog, thousands of cases have been solved using the CODIS system. As of June 30, 2009, the FBI reports that over seven million offender profiles and 272,000 forensic profiles have been uploaded to CODIS since its inception, resulting in over 93,000 hits and more than 91,000 investigations aided nationwide. The use of CODIS as an investigative tool not only provides investigators with leads to perpetrators, but also eliminates many suspects of crimes, allowing law enforcement officers to re-direct their investigations elsewhere. Faster identification of perpetrators using CODIS means they can be apprehended earlier, and ultimately victimization can be reduced.

The Department recognizes that at the core, the goal of improving forensic evidence is not just to hold offenders accountable, but to meet the needs of victims of sexual assault. OVW, OJP, and OJP's Office for Victim's of Crime (OVC) have long supported improved forensic evidence collection as part of a comprehensive approach to investigating and prosecuting rape and sexual assault cases, while also serving the victims of these horrible crimes. Since 1997,

OVC has worked to further the development of Sexual Assault Nurse Examiner (SANE) and multi-disciplinary Sexual Assault Response Team (SART) programs with its training and technical assistance, including the SANE Development and Operation Guide in 1999 and its National SART Training Conference, conducted every two years since 2001. The conference as well as other OVC funded supported training and technical assistance focus on a victim-centered response to all victims of sexual assault – including males, females and children. This training and technical assistance offers a holistic approach to victims' needs.

In 2004 the Attorney General released *A National Protocol for Sexual Assault Medical Forensic Examinations (Adults/Adolescents)* (the Protocol), which provides detailed guidelines for criminal justice and health care practitioners in responding to the immediate needs of sexual assault victims. OVW developed the Protocol after extensive consultation with national, State, tribal, and local experts in the field. It is currently reviewing the Protocol and considering how to update it to reflect recent developments in law and practice.

Since 2006, OVW has issued national training standards for sexual assault forensic examiners, started a project providing training and technical assistance to support communities implementing the SAFE Protocol, and, working with NIJ, developed guidance for health care professionals who work with sexual assault victims. OVW is now adapting the Protocol for Indian Country and developing new training and technical assistance for professionals who work with tribal sexual assault victims.

The years of effort are paying off: NIJ recently released the results from an SANE evaluation it funded. The evaluation revealed that guilty pleas and trial convictions in sexual assault cases increased when SANEs were involved with the case. Because SANEs are

specifically trained to work with victims, gather both DNA and non-DNA forensic evidence effectively, and testify in court, they can play a crucial role in sexual assault prosecutions.

As described above, the Protocol, national training standards, and other technical assistance supported by OVW have improved the way communities collect evidence and respond to victims of sexual assault. In addition, the Department has received positive feedback regarding training and technical assistance we offer to sexual assault service providers. It is possible that taking a similar approach of providing national training standards, technical assistance, and other guidance to crime labs and law enforcement entities could contribute to resolving the rape kit backlog.

All of our efforts are consistent with the Attorney General's and the Department's commitment to combat violence against women. The Department stands ready to work with Congress to improve the investigation and prosecution of rape and sexual assault cases nationwide, including addressing the rape kit backlog. We hope that together we can build on some of the efforts outlined in this testimony.

Thank you for the opportunity to submit this written statement for the record on behalf of the U.S. Department of Justice.