



Department of Justice

**STATEMENT FOR THE RECORD FROM
OFFICE OF JUSTICE PROGRAMS**

BEFORE THE

**SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY
UNITED STATES HOUSE OF REPRESENTATIVES**

ENTITLED

**“RAPE KIT BACKLOGS: FAILING THE TEST OF PROVIDING JUSTICE TO
SEXUAL ASSAULT SURVIVORS”**

MAY 20, 2010

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Chairman Scott, Ranking Member Gohmert, and Members of the Subcommittee: The Department of Justice appreciates the opportunity to submit this statement to the Committee regarding the backlog of rape kits and untested forensic evidence and how it impacts effectively investigating and prosecuting rape and sexual assault cases.

Please be assured that the Department shares the Subcommittee’s concerns about untested forensic evidence, including rape kits, 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 and undoubtedly affecting the lives of victims. In order to truly 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 a part of the backlog.

Another key point is that the DNA backlog is not static, but 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.

According to the research, there has been tremendous growth in DNA testing between 2005 and 2008. The capacity of laboratories to complete cases grew at approximately the same rate as new cases were submitted. However, the number of new cases submitted grew a bit

faster. Hence, the backlog continues to grow in proportion to the increase in demand for services.

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. Some kits have no evidentiary value, while others include evidence collected from victims who no longer wish to pursue their cases. 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. Rather, the Department supports working with law enforcement and crime laboratories to help them identify and distinguish kits with evidentiary value that should be tested from those where testing will further no case-related purpose. In order to give victims the justice they deserve, we must use 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 elimination samples so that any profiles obtained from the evidence can be entered into the FBI's CODIS, where male profiles from these cases can be searched against profiles of convicted offenders and/or arrestees to determine if any matches occur.

Of note, while the DNA backlogs exist and are of concern, thousands of new cases are addressed and solved each year by the nation's crime laboratories, including the use of the newly expanded capacity of the CODIS system. The latest FBI reports are that over eight million offender profiles and 300,000 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.

Also, given the complex nature of sexual assault cases, 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. As such, the rape kit is not always the best means to identify a perpetrator. 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 and backlog reduction 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. Our short-term approach has been to provide overtime and supplies needed to work backlogged cases, as well as to outsource cases to private laboratories.

The Department's efforts to help states, local and tribal governments improve how the investigation of rape and sexual assault cases is not limited to DNA. OVW, OJP, and OJP's Office for Victims' 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 programs (SANE) and multi-disciplinary sexual assault response teams (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, and other OVC supported training and technical assistance, focuses 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 SAFE 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 SAFE Protocol after extensive consultation with national, State, tribal, and local experts in the field.

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. Since SANEs are specifically trained on gathering evidence effectively, their collection of both DNA and non-DNA forensic evidence likely led to the improved results.

Additionally, rape kit backlogs, the subject of this hearing, has been a particular focus at the Department. This month, OVW, in collaboration with OJP, held a roundtable discussion on rape kit backlogs and the impact of these backlogs on victims of sexual assault. The roundtable included victim advocates, prosecutors, law enforcement officials, crime lab analysts, and survivors of sexual assault. The day and a half discussion focused on the current state of

backlogs in the country, the obstacles to eliminating backlogs, how and when victims should be notified when their rape kit is sent to the crime lab, and promising approaches to reducing backlogs in this country. The information gleaned from this multidisciplinary discussion will help inform OVW and OJP's research agenda, as well as inform plans for training and technical assistance for backlog reduction.

In June, NIJ plans to release a new report entitled, *Making Sense of the DNA Backlogs—Myths vs. Reality*. This report provides an in-depth account of the backlog issues facing the country and how the Federal government is responding. It also clearly defines what constitutes a backlog and what factors are contributing to the growth in the number of backlogged cases. In addition, the report delves into the recent research findings on untested forensic evidence in police departments and why this evidence is not submitted by law enforcement agencies to crime labs. We hope this new publication will help enhance the understanding of backlog issues and serve as a resource for practitioners and policymakers alike.

All of our efforts are consistent with and stem from the Attorney General's and the Department's commitment to combat violence against women. As the Attorney General recently testified, 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.

This concludes the statement, Mr. Chairman. Thank you for the opportunity to submit this statement on behalf of the U.S. Department of Justice.