

TESTING SEXUAL ASSAULT KITS IN COLD CASES AND FOLLOW-UP INVESTIGATIONS: PRACTICES USED IN AGENCIES IN THE UNITED STATES

A Report to the Houston, TX Sexual Assault Kit Action-Research Working Group

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PROJECT OVERVIEW

In 2011, the National Institute of Justice funded the Houston Police Department to form a multidisciplinary team to study the problem of sexual assault kits (SAK) that were collected but never submitted to a crime lab for screening and testing. The Houston Action-Research Project sought to understand the factors that produced the volume of unsubmitted SAKs, the way forensic evidence is used during criminal investigations and prosecutions of sexual assaults, and what stakeholders should expect when large numbers of previously unsubmitted SAKs get tested. The project adopted a holistic approach and considered the broader issue of responses, beyond testing the kits, to sexual assaults in the community.

Houston's Action-Research Project Working Group includes representatives from the following organizations:

- Houston Forensic Science Center ¹
- Harris County District Attorney's Office
- Harris Health System
- Houston Area Women's Center
- Houston Police Department Sex Crimes Investigative Units
- Memorial Hermann Health System
- Sam Houston State University – Department of Criminal Justice and Criminology
- University of Texas at Austin – Institute on Domestic Violence and Sexual Assault

The group has been working collaboratively and collecting data that has allowed for an understanding of multiple aspects of the local response system. The organizations that have been working on this project have also been implementing and evaluating reforms that are meant to improve the response to sexual assaults. Action research entails an iterative process in which research evidence informs responses and for this reason the project has generated multiple research reports. This is one of a number of reports and presentations that will be released to help other jurisdictions learn from our experiences as they seek to better understand and improve their own practices.

Learn more about the project at www.houstonsakresearch.org

¹ During the course of the project the crime lab was re-organized so that, in April 2014, the crime lab was no longer part of the Houston Police Department.

BACKGROUND

The purpose of this report is to share information about practices being used in law enforcement agencies to test unsubmitted sexual assault kits and to investigate cold sexual assault cases. The Action-Research working group may consider whether the lessons learned and strategies used in these sites can inform decisions being made about aspects of the current project in Houston. The information presented below was collected through systematic searches of journal articles, research reports, on-line content, direct correspondence with individuals working in the agencies described below, and information obtained during the May 2011 cluster meeting sponsored by the National Institute of Justice (NIJ).

COLD CASE UNITS

LOS ANGELES COUNTY SHERIFF'S CRIME LAB

In 2008, the Los Angeles County Sheriff's Department (LASD) reported that over 6,000 sexual assault kits were found in evidence storage (Office on Violence Against Women, 2010; Wells, 2011). Of these sexual assault kits, over 4,300 were untested. To address this problem, the LASD obtained grant money from the National Institute of Justice (NIJ) and Proposition 69 (the California DNA Initiative) to reduce the number of untested kits. LASD's first step in combating the backlog was to reform their testing policy (Office on Violence Against Women, 2010). Prior policies allowed detectives and crime lab supervisors to determine whether a kit should be tested. In 2009, the LASD changed their policy to one of comprehensive testing, mandating that all sexual assault kits will be tested (Human Rights Watch, 2009).

When the LASD adopted a mandatory testing policy they also began using a triage approach to establish kit testing priorities (Human Rights Watch, 2009). LASD's triage approach was "based on probative value" (Wells, 2011). Cases approaching the statute of limitations were given highest priority, followed by stranger cases, and acquaintance rape cases were lowest. To expedite sexual assault kit processing, the LASD outsourced 4,763 kits to crime labs for testing, including the California State Crime lab and Marshall University. Eleven analysts were hired by the LASD biology section to oversee the distribution of sexual assault kits to external crime labs (Office on Violence Against Women, 2010).

After prioritizing and outsourcing sexual assault kits, the LASD began examining 400 cases per month. These efforts reduced the volume of untested kits from 6,000 to approximately 1,000 (Office on Violence Against Women, 2010). As of August 3, 2011, 2,906 of the 4,763 outsourced kits screened positive for the presence of biological material and 1,683 cases contained evidence that was uploaded to CODIS. As of May 2011, LASD generated 483 CODIS hits, with two hits resulting in new prosecutions

of sexual assault offenders. Through the triage approach, LASD was able to reduce the time it takes for testing and receiving results to 60 days (Wells, 2011). Correspondence with personnel at the LASD crime lab did not produce information about investigative practices to follow-up on CODIS hits.

NEW YORK COUNTY DISTRICT ATTORNEY'S OFFICE

The New York Police Department (NYPD) identified an accumulation of 17,000 untested sexual assault kits in 1999 (Office on Violence Against Women, 2010; Wells, 2011). Subsequent to the identification of the untested sexual kits, the NYPD implemented a policy of comprehensive testing. Once the mandatory testing policy was implemented, the NYPD outsourced testing to private labs (Human Rights Watch, 2009; Office on Violence Against Women, 2010) and hired additional crime lab personnel to screen and test kits. Private labs were used until 2003 when the volume of untested sexual assault kits was eliminated (Human Rights Watch, 2009; Office on Violence Against Women, 2010).

Currently the New York City Office of the Chief Medical Examiner (NYC OCME) tests all sexual assault kits (Human Rights Watch, 2009; Office on Violence Against Women, 2010). The NYC OCME sustains control over the stream of sexual assault kits by keeping “constant communication with other parties involved with collecting and transporting evidence and investigating and prosecuting sexual assault” (Office on Violence Against Women, 2010, p. 19). The kits are initially screened by NYPD for seminal fluid before sending kits to the crime lab (Human Rights Watch, 2009; Office on Violence Against Women, 2010).

Since successfully eliminating the backlog of untested sexual assault kits in 2003, the NYPD and the NYC OCME have maintained control over sexual assault kit processing. While it is expensive to test all sexual assault kits, the mandatory testing policy has proven to be fruitful. As of May 2011, testing “older” sexual assault kits has generated 1,329 “CODIS eligible profiles” resulting in 1,050 CODIS hits (Wells, 2011). Before instituting the mandatory sexual assault kit testing policy the NYPD had an arrest rate of 40 percent in sexual assault cases (Human Rights Watch, 2009). After 2003, arrest rates improved significantly and the NYPD now boasts a 70 percent arrest rate for sexual assault (Human Rights Watch, 2009; Office on Violence Against Women, 2010; Wells, 2011). It is significant to note that prosecutors play an important role in opening and pursuing leads in cold sexual assault cases after kit testing and that the NYPD utilizes two full-time investigators who work cold sexual assault cases (Wells, 2011).

PHOENIX POLICE DEPARTMENT

As of 2000, the Phoenix Police Department (PPD) had a backlog of 1,700 untested sexual assault kits. In response, the PPD developed a cold case investigation unit with federal grant funding (Office

on Violence Against Women, 2010). This followed on the heels of the Claude Dean Hall case. Hall was a serial offender who committed several sexual assaults in Arizona and Florida. In 1998, DNA evidence was used to solve two cold case sexual assaults committed by Hall. The PPD speculated that they could solve more unresolved cases by using DNA evidence found in sexual assault kits and, thus formed a cold case team to use forensic analysis (Markey, 2003; Phoenix Police Department, 2011a).

The cold case unit is located in a victim advocacy building outside of the PPD. The unit began using a triage approach to investigate backlogged cases (Markey, 2003). There are two phases used in determining which cold cases will be investigated: (1) identifying, reviewing, and investigating cases to decide which cases have usable DNA evidence and (2) using CODIS hits that link suspects to victims. Using this approach, the PPD cold case unit discovered 150 DNA matches in CODIS. The process used to rank the cases by solvability entails “the reevaluation of all evidence (still in property), initial victim interviews, and all witness interviews” (Markey, 2003, p. 4). In addition a crime analyst, using a database of information, identifies cases that believed to contain enough evidence to reopen and begin prosecution proceedings (PPD, 2011a).

The cold case unit currently includes four full-time detectives and two prosecutors from the District Attorney’s Office (Office on Violence Against Women, 2010). These prosecutors are specifically assigned to investigate cold sexual assault cases and receive specialized training on issues unique to this crime, including the use of DNA evidence, victim testimonies, and informing juries about the unique nature of sex crimes (PPD, 2011a; Markey, 2003; Office on Violence Against Women, 2010). This feature, in which prosecutors are closely involved in opening cold cases, is consistent with the New York model described above.

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The PPD’s cold case unit uses a team approach meshing investigators, prosecutors, and SANE nurses into one unit. The unit meets regularly and cross trains to ensure that all members have a more comprehensive understanding of the team members’ different roles and responsibilities. Prosecutors train detectives and SANE nurses about courtroom procedures, nurses explain how the sexual assault examination is completed, and detectives describe the investigatory process. The cold case unit streamlines the sexual assault kit evidence testing process by requiring forensic nurse examiners to screen for evidence before sending it to the crime lab. The forensic nurses identify cases that have

semen or blood, allowing the kit to skip the screening process in the lab and proceed directly to the analysis stage in the lab (PPD, 2011a).

The cold case sex crime unit appears productive. PPD has been able to review 2,352 cold cases over the past decade. They submitted 1,055 kits for analysis, including 810 cases that contained usable DNA. Of these 810 cases, 255 have been solved using DNA linked to new suspects and 123 cases have been linked to previous offenders. Since 2000, there have been approximately 300 to 400 PPD cases with CODIS hits (Office on Violence Against Women, 2010; PPD, 2011b).

DENVER POLICE DEPARTMENT

The Denver Police Department (DPD) and Denver District Attorney's Office created a cold case unit in 2004 (Cracking Cold Cases, 2011). The unit was created to address a backlog of untested DNA evidence in murders, property crimes, and sexual assaults. Originally, Denver's cold case unit received federal funding to support its work (Davis, Jensen, & Kitchens, 2012; Denver District Attorney's Office, n.d.). Initially District Attorney Mitch Morrissey assigned one DPD detective to work in the unit full-time but the unit now includes nine full-time detectives (Cracking Cold Cases, n.d.). Similar to the New York and Phoenix strategies, the District Attorney's Office works closely with DPD on cold case investigations. For example, when a CODIS hit occurs police investigators work with prosecuting attorneys to determine whether a defendant's claim of consensual sexual contact can be overcome (Davis et al., 2012). The team also includes victim advocates to aid in contacting victims, providing updated information about their cases, and responding to victim concerns or apprehension about criminal justice system processes. Investigators, crime lab staff, and prosecutors all participate in training on what makes a case prosecutable. Based on their study of cold case units across the United States and in-depth study of four units, Davis and colleagues (2012, p. 41) concluded that "cooperation between police and prosecutors can improve both the efficiency and effectiveness of cold-case investigations."

The team also includes victim advocates to aid in contacting victims, providing updated information about their cases, and responding to victim concerns or apprehension about criminal justice system processes.

Denver's cold case unit investigates all cold case sexual assaults. The unit's main objective was to eliminate the 4,200 cold case sexual assault and homicide files dating back to the 1980s (Davis et al., 2012). Usable DNA has been found in 1,200 untested DNA evidence kits, including 200 sexual assaults (Davis et al., 2012). When the cold case unit receives a DNA kit, it is initially screened to establish whether the kit contains usable DNA evidence. If DNA is found, the kit is sent to the crime lab and processed. When DNA evidence is found and a profile is developed, the profile is uploaded

into a database and compared with DNA samples from “all people arrested on suspicion of a felony” in Colorado (Cracking Cold Cases, 2011, p. 20). As of 2011, the cold case unit has solved two sexual assaults using the statewide database (Cracking Cold Cases, 2011).

The DPD cold sexual assault case unit was featured in a recently completed NIJ study (Davis, et al, 2012). Researchers collected case-level information about 105 sexual assaults with CODIS hits that resulted from a federal grant. A main purpose was to identify characteristics of these investigations and identify factors related to arrest, prosecution, and conviction outcomes. This research revealed a number of findings about these cold case investigations in Denver.

Interestingly, DNA evidence was discovered and tested during the *initial* investigations in about half of these CODIS hit cases. Thus, the remaining cases in this sample were re-opened for investigation because untested evidence existed (Davis, et al., 2012, p. 30). The most common cold case investigative activities included testing DNA evidence, re-interviewing witnesses, and, as expected, identifying a suspect or developing a new theory.

Case processing data were available for 97 of the 105 CODIS-hit sexual assaults in Denver. The findings showed that about 60 percent of the cases resulted in arrests and court filings. In other words, cases were not advanced about 40 percent of the time. The study showed that the reasons cases frequently were not advanced is because the CODIS hit did not identify a suspect and because victims and witnesses were either not cooperative or were determined to be unreliable (Davis, et al., 2012, p. 38). Victim cooperation and credibility were found to be important predictors of convictions (Davis, et al., 2012, Table 3.15). When charges were filed, convictions resulted 93 percent of the time. The sentences that followed convictions were lengthy, with over half resulting in sentences of 25 years or longer.

COLD CASE UNITS IN THE UNITED STATES

A component of the Davis et al. (2012) study entailed a nationwide survey of law enforcement agencies to learn more about the existence and structure of cold case units (not limited to cold case sexual assault units). They observe that cold case unit structures and functions vary and that current knowledge does not provide a clear understanding about the utility or efficiency of these units. Through an analysis of 1,051 surveys and site visits to four agencies that actively work cold cases, the study identified three mechanisms that can lead to cold case investigations. The second mechanism is most relevant to the Action-Research project in Houston: testing for the presence of DNA in cold cases can lead to cold case investigations.

The researchers conclude that this mechanism may not be costly, but “the rate of success from indiscriminate DNA testing of large numbers of cases is likely to be well below 50 percent” (Davis,

et al., 2012, p. xiii). Sexual assaults are the fourth most commonly investigated cold cases, behind homicides, missing persons, and burglaries (Davis, et al., 2012).

Through their national survey Davis et al. (2012) found that 18 percent of agencies with 100 or more sworn officers utilize dedicated cold case units. Over half of these units are funded through grants and other supplemental funding sources. Cold cases are most commonly assigned to the original investigators or are assigned to investigators as part of their normal case load (Davies, et al., 2012). The HPD adult sex crimes units assign cold cases to the original investigator or, when those individuals are no longer in the unit, to an investigator as part of their typical workload. The HPD juvenile sex crimes unit assigns cold cases to investigators who have demonstrated success in working these cases.

RECOMMENDATIONS AND HOUSTON POLICE DEPARTMENT RESPONSES

Two recommendations follow from the review of existing literature on sexual assault cold-case investigations and prosecutions and the way sexual assault kit testing is part of these processes. As described below, HPD is already engaged in a process of screening evidence in previously unsubmitted sexual assault kits and then reviewing their associated criminal cases to determine what can be done with these cases. Thus, the two recommendations listed below can be considered as part of ongoing efforts rather than entirely new undertakings. In addition, the Action-Research project intends to develop sets of responses to the problem of unsubmitted sexual assaults. The project working group should consider these recommendations as it designs responses.

CASE FOLLOW-UP PROTOCOLS

The HPD crime lab is currently engaged in a process of screening and testing sexual assault kits that were not submitted for testing during the initial investigation. The lab is screening evidence for the presence of biological evidence and, if biological evidence is detected, sending evidence to external labs for additional testing. Following screening, criminal investigators are “supplementing” case files with additional information based on screening and testing results. In a very broad sense, all case files are being re-examined following forensic screening. This process was launched in early 2012 and represents efforts to systematically follow-up on testing results. This work entails time-consuming and labor-intensive tasks. At this point it is not clear whether protocols have been developed that would aid in:

- Determining whether biological evidence that is detected at the point of screening will receive additional testing.

- Deciding the circumstances under which sexual cases would be “re-activated” and resources would be directed toward additional investigative and prosecutorial work.
- Determining how these cases will be assigned to investigators and prosecutors for investigative work. For instance, will specially designated investigators be given the task of working cold cases or will these be distributed to investigators as part of their “normal” case load? Will a set of specially designated prosecutors work with sex crime investigators on these cold cases? What procedures will exist to facilitate cold case work in the context of existing workloads?
- Assessing when and the extent to which the Harris County District Attorney’s Office (HCDAO) will become involved in the case. A seemingly critical element of the DPD cold sexual assault case work entails close collaboration with prosecutors early in the process of determining whether a cold case will be pursued. The NYPD and PPD strategies also include close collaborations with prosecutors.
- Determining whether and what role exists for victim advocates.
- Determining how the results of the HPD case review process will be used to inform policies future decision making.

If consideration has not yet been given to the development of formal or informal protocols for these significant decisions and procedures, decision makers should consider developing such protocols. In addition, the Action-Research project working group should consider whether it will be important to develop specific protocols that entail the elements listed above as part of its proposed response strategy to the problem of unsubmitted sexual assault kits.

➔ **Houston Police Department Response**

Members of the multi-disciplinary project group, including several HPD personnel, held a conference call in July 2012 with members of the Denver Police Department (DPD) Cold Case Unit to learn about the DPD model, including strengths and weaknesses. In late 2013 HPD created specially designated CODIS hit squads that are tasked with reviewing cases with CODIS hits and, when warranted, contacting victims and conducting follow-up investigations in these cases. One squad examines cases that involved adult victims and the other examines cases that involved victims who were juveniles at the time of the original crime.

CASE MONITORING

Davis et al. (2012) found that the practice of measuring and monitoring cold case investigations and outcomes is generally neglected. Consideration should be given to the development of a system to *measure* and *monitor* the results of cold case processes. The *measuring* component ensures information is available for *monitoring*. In order to measure these processes and outcomes it will be necessary to create an information system that would pull together existing sources of information

from the crime lab, investigative units, and the HCDAO. This electronic source of information would capture information about the following:

- DNA screening and testing results
- Investigation processes, such as whether cases were “reactivated” and the amount of time investigators devoted to these investigations
- Clearance and arrest outcomes in cases that were “re-activated”
- Court filings and convictions

When equipped with efficient access to the above information, the HPD crime lab, investigators, and the HCDAO will be in a position to understand the results of their work to screen and test sexual assault kits and the outcomes of case processing, including the resources devoted to these endeavors and the results. This information represents a feedback loop that individuals and agencies can use to modify and improve their procedures. In addition, the act of measuring processes and outcomes encourages agencies and individuals to more closely examine their assumptions about DNA screening and testing, investigations, and prosecutions in cold cases and to carefully consider goals and objectives. The measurement and monitoring process itself can help establish objectives and clarify metrics of success.

➔ **Houston Police Department Response**

HPD developed a Case Management System in which assignments to investigators are measured and monitored. This system monitors the case by tracking the investigator assigned to the case via the HPD incident number. In addition to the Case Management System, CODIS cases are also tracked using a CODIS database. Each CODIS hit is entered into the database, allowing for the documentation of how the case was originally cleared and the results of any follow-up investigation conducted by a CODIS Squad investigator.

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