

REPORT TO THE BOARD OF SUPERVISORS

On The Meetings Of The

STAKEHOLDERS PANEL ON DNA TESTING

October 2008

Executive Summary

The County Executive Officer (CEO) recommends that a new high volume capability be added to the existing DNA testing facilities at the Sheriff's Forensic Science Services (FSS) lab. This expansion of DNA testing is intended to address the need for high volume testing of DNA evidence from property crimes as outlined by the District Attorney in previous presentations to the Board of Supervisors.

The CEO will work with the Sheriff and the District Attorney to jointly undertake the following ongoing responsibilities:

- The direct supervision of the director of the FSS laboratory;
- The interviewing, hiring and supervision of an individual to oversee the expansion and operation of the DNA portions of the FSS laboratory; and
- The oversight of all policies and protocols of the FSS laboratory that directly or indirectly impact the development of evidence to be used in court.

The recommended funding for this expansion of DNA testing will be from funds provided through the Sheriff including Prop 172, State Criminal Alien Assistance Program, and Federal DNA Capacity Enhancement Grants. In the event that revenue from these funds and the County General Fund are inadequate to meet the needs of expanded DNA testing, it may become necessary to institute user fees.

The new facilities should be located at the existing forensic lab in Santa Ana and should continue to receive the full logistical and organizational support of the Sheriff.

This organizational structure is designed to facilitate an improved level of cooperation and coordination among the law enforcement agencies of Orange County.

Board Directive

Agenda item number 53 at the June 3, 2008 meeting of the Board of Supervisors of the County of Orange was consideration of ASR 08-001365, a request from the District Attorney to approve a change in the reporting relationship of the DNA section of the Orange County Sheriff Department's Forensic Science Services (FSS) Unit to the Office of the District Attorney (DA). At the conclusion of their deliberations of this item, the

Board directed the “CEO to oversee the study of the project in cooperation with the DA, Sheriff and Public Defender as to this proposal and where best to locate the Lab and return to the Board with recommendations.”

The DNA Stakeholders Panel, as the participants are called, initially included the Public Defender, the District Attorney, the Sheriff and a representative of the CEO. Review of the meeting tape together with consideration of presentations made at the Board of Supervisors meeting led to inclusion of representatives from the Orange County Police Chiefs Association and the Orange County City Managers Association on the panel.

The CEO is charged with studying and recommending to the Board of Supervisors the organizational location of the DNA laboratory testing of crime evidence collected for all crimes in Orange County. This Board Directive applies to the existing DNA testing facilities in the Sheriff’s FSS Unit as well as the anticipated creation of a high-volume DNA testing lab to be created to expand the testing of evidence collected from property crimes.

Panel Meetings

The DNA Stakeholders Panel met eight times between July 2nd and September 18th with an unplanned four week break in August due to vacation schedules. Each meeting included a wide ranging discussion of the issues that have troubled the District Attorney and the Sheriff over DNA testing. While the subject matter was sensitive it is important to recognize that all parties came to these discussions with the clear intent to work together and all meetings were conducted with professionalism and openness. The meeting agendas were focused as follows:

- July 2nd - was an organizational meeting with a general discussion of the issues before the panel and a general plan for addressing them.
- July 16th - produced a set of goals for the high volume testing of DNA evidence from property crimes. A consensus was reached regarding the need for and value of including the District Attorney in pretesting review and analysis of cases in order to prioritize cases for testing; this ‘triage’ would focus limited resources on cases with the most value to the criminal justice system while speeding up turnaround times.
- July 24th - The District Attorney and the Sheriff each presented proposals for the size, structure and cost of their respective high volume DNA testing labs. The Sheriff’s proposal has evolved since this meeting and their latest proposal is reflected in this report.
- July 31st - the Public Defender (PD) presented their concerns regarding DNA testing, the oversight of that process and its use in the legal process.
- August 28th - was a presentation by the District Attorney of issues affecting their ability to work within the existing DNA testing structure.
- September 4th - the Sheriff responded to the concerns expressed earlier by the District Attorney.

- September 11th - the meeting was a review of the respective business proposals for DNA testing, a discussion of possible cost recovery and other issues as needed.
- September 18th - this final meeting included summary statements by the District Attorney, the Sheriff, the Public Defender, the representative from the OC Police Chief's Association and others.

A list of the individuals who participated in the meetings of the panel is included as Appendix A to this report.

General Findings

Background

DNA testing as a crime fighting tool has been referred to by the District Attorney and others as *'the greatest breakthrough since fingerprints.'* This reality has given urgency to the discussion in Orange County over a relatively new approach to the testing and use of DNA evidence.

The Orange County Sheriff's Department has done DNA testing for local law enforcement agencies since 1989. The majority of this testing has focused upon evidence taken from the scenes of violent crimes such as murder, violent assaults and sexual assaults. Recently, though, the District Attorney has been the driving force behind the idea of wider testing of DNA evidence from property crimes (robberies, breaking and entering, auto theft and the like). The results of these tests are then compared to various data bases of criminal DNA and the 'cold hits' (matches between the crime scene DNA and the DNA records of criminals in a data base) provide the basis for criminal prosecutions.

This innovative and expanded use of DNA testing demands a much higher capacity for evidence testing because of the much higher incidence of property crimes. This approach has the potential for a highly positive impact on public safety because of two significant factors, according to the District Attorney:

- A very high percentage of property crimes are perpetrated by a relatively small percentage of criminals, and
- Left unapprehended and incarcerated, these career criminals often graduate to violent crimes later in their careers.

The challenge is illustrated by the numbers. In 2006 there were approximately 44,000 property crimes reported in Orange County. Only approximately two percent of these cases could be tested due to capacity constraints. The following table shows the dramatic growth in demand for testing of DNA from property crimes since 2001 (source, OC Performance Auditor.)

<i>Type of Case</i>	<i>Approximate Number of Cases Submitted for Testing</i>						
	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>
Violent Crimes	455	405	405	480	420	490	560
Property Crimes	50	90	110	200	375	1030	1085

Since 2001 the volume of DNA testing for violent crimes has grown by 23% while the demand for testing of DNA evidence from property crimes has grown by 2,070%. All DNA evidence from violent crimes is tested for use in court while only a small fraction of the DNA evidence from property crimes can be tested at present due to capacity constraints.

Historical Timeline

A breakthrough in the analysis of DNA samples occurred in 1994 that allowed for valid analysis of much smaller evidence samples; this opened the door to expanded use of DNA as a crime fighting tool.

By 1997 the District Attorney became involved in a law enforcement program called TracKRS (Task Force aimed at catching Killers, Rapists and Sex Offenders) that allowed for the collection and analysis of blood samples from registered sex offenders. The involvement of District Attorney personnel included the development of protocols for the collection of DNA evidence to be used by all law enforcement agencies in the County. In addition, a District Attorney investigator had responsibility to collect samples, forward them to the Department of Justice (DOJ) laboratory for testing, and finally, uploading the results into the FBI’s Combined DNA Index System (CODIS) database.

This experience and the successes in criminal prosecution that it supported led the current District Attorney to work with others in the drafting and qualifying of Proposition 69 on the November 2004 ballot. Proposition 69 expanded the collection of DNA samples to include all convicted felons in specified high crime areas. It further provides that by 2009 DNA profiles shall be collected from all adult felons in California. This provides a valuable data base against which newly collected DNA evidence can be compared for ‘cold hits’ that may enable prosecutors to resolve difficult cases.

Orange County receives approximately \$1 million annually under Proposition 69. These funds currently are allocated by the local Proposition 69 Committee and are shared by the Sheriff and the Probation Department. The Office of the Performance Auditor was directed by the Second District Board Office, with the concurrence of the other Board Offices, to study the DNA lab expansion issue and issue a report to the Board on its findings. They studied this issue in January and February of this year performing a range of interviews with participants. Their report was distributed to all Panel participants and is quoted in italics in this section of the Panel report. The following is from the report on the ‘DNA Lab Expansion Issue’ as issued by the Performance Auditor.

Upon the passage of Proposition 69, the Sheriff, (without notice according to DA staff), no longer provided the DA with the offender samples that were dropped off by local police agencies at their facility, and instead used the Sheriff Crime Lab to perform the DNA analysis in-house. It is the assumption of DA staff that this was done due to Proposition 69 funds now made available by the state. This was one of the first actions that caused a strain in Sheriff-DA relations.

Since that time, the DA, in some misdemeanor plea cases, has obtained voluntary DNA samples and enlisted the services of a private crime lab in the United Kingdom, Forensic Sciences Services (FSS), to analyze offender DNA samples. The results are placed in a database created by FSS for the DA.

The Performance Auditor's report goes on to discuss the National Institute of Justice (NIJ) grant program and the problems encountered in its implementation.

In 2005, the federal government made available a National Institute of Justice (NIJ) grant to bring together local law enforcement agencies (i.e., Sheriff, District Attorney, Police, Probation) to focus on conducting DNA analysis of samples collected at volume property crime scenes such as burglary, car theft, and larceny. The hypothesis behind this emphasis on volume property crimes was that a small group of people commit most of the crime in the United States, and if DNA matches could be found in less violent crimes, these matches would result in arrests that would either prevent more significant crime by this same person at a future date, or DNA hits on small crimes would yield matches to more violent crimes already committed by the same individual. When local Orange County law enforcement convened to discuss the allocation of the NIJ grant and their respective roles in its implementation, differences of opinion emerged as to the DA's receipt of DNA lab reports. The DA believed they could be value-added in the early stages of the investigation, and thereby produce cost savings and a higher "hit rate" on DNA matches.

In discussions between the Sheriff and District Attorney staff leading up to the implementation of this NIJ grant, the Assistant District Attorney was told at a meeting in mid May of 2005 that their office would receive DNA lab reports from the Sheriff's lab. This commitment was not honored by the Sheriff because it was not consistent with their practices at that time. This was never communicated to the Assistant District Attorney and this breach further undermined the spirit of cooperation in their relationship.

This breakdown in communications and cooperation is described by the Performance Auditor in more detail.

. . . in 2005, the Sheriff, DA, and local law enforcement agencies met to work out the details of how our local NIJ pilot project would work and determine the respective roles of each local agency in the implementation of the project. At the outset, it was agreed that the Sheriff Crime Lab would collect and analyze DNA samples from South County volume property crime scenes. The DA proposed to:

Provide advice to crime scene investigators on which DNA samples would have the most probative value (determining who committed the crime)

Identify and take steps to address potential legal issues surrounding samples, and to assist in reaching conclusions about which cases are ready for court filing

Review the DNA lab report(s) and assist in determining which potential candidates should be interviewed, thereby reducing the number of unnecessary and unsettling interviews

As part of this process, the DA requested to receive the DNA lab report simultaneously with the local police agency that collected the crime scene evidence. This request was not consistent with current Sheriff's protocol of only providing the report to the local police agency that collected and submitted the DNA sample. In the current scenario, the police agency receives the lab report, does the necessary investigative work to develop the case, and then submits those cases deemed appropriate for court filing to the DA. The DA desired to be an active participant in this process up-front. A debate emerged over the reason(s) why the DA needed the report at the same time it was provided to police investigators. The Sheriff expressed concerns that early distribution of the report to the DA could lead to dual track investigations (i.e., by DA and local police agency), and asked that this request first be vetted with the local police agencies. The DA stated that each law enforcement agency adds specialized expertise which lends unique perspectives to the process and should be cooperatively involved from the outset.

This debate developed into a dispute which remains unresolved and has resulted in the Sheriff proceeding with volume property crime DNA collection and analysis without DA involvement. This instance caused additional strained relations between the Sheriff and DA.

It was during the planning for the NIJ program that the District Attorney finished refining their ideas regarding the review of cases prior to DNA testing. This process, a triage of the case, is at the heart of the District Attorney's proposal because it focuses the limited DNA testing resources on cases with the most value to law enforcement. By doing so, it avoids the waste of testing resources and produces valuable efficiencies for all parties to the legal process.

Due in part to the roadblocks they faced during the NIJ project, the District Attorney's office created a pilot project for the testing of DNA evidence from property crimes. They partnered with the cities of Santa Ana and Anaheim and are using an accredited crime lab, Serological Research Institute (SERI) located in northern California. This *SERI project* was begun in August of 2006 and is funded completely from the District Attorney's existing budget.

The Board of Supervisors approved the expenditure of the funds at the meeting of August 22, 2006 and the first two cases were uploaded in December of that year; both uploads produced cold hits. To date, the Santa Ana portion of the SERI project has produced the following results:

- 226 cases have been sent to SERI for testing (of these, 49 are still in testing);
- Of the 177 cases processed, 137 have CODIS profiles (44 cases are pending an upload);
- Of the 137 cases with CODIS profiles, 93 have been uploaded for comparison to the CODIS database;
- These 93 uploads have produced 52 cold hits (positive identification of a perpetrator);
- 42 of these cold hits have resulted in prosecutions being filed.

The results from Anaheim through August 11th are:

- 100 cases have been sent to SERI for testing (29 are still in process);
- Of the 71 cases processed, 49 are completed (22 are pending uploading);
- 30 cases have been uploaded producing 14 cold hits;
- A total of ten cases have been filed, 8 from cold hits and 2 using DNA evidence in support of the prosecution.

In January 2007 the Orange County Employees Association (OCEA) sent a letter to the District Attorney objecting to the SERI project. The basis of OCEA's objection was the potential loss of jobs at the existing FSS unit in the Sheriff's Department. OCEA subsequently filed a law suit against the District Attorney and others attempting to terminate the SERI project; the suit was dismissed.

The SERI lab, while fully accredited, was not cleared to upload case information to the CODIS database from the SERI project. Therefore the District Attorney was using an employee of the San Diego Police Department crime lab to do the uploads for them. This necessitated a brief (half hour) review of the case to insure quality plus the upload time for the technician doing the work. At some point late in January 2007 the San Diego Police Department lab manager called the District Attorney and indicated that they would no longer perform these uploads. This reversal of position was made after a conversation with the head of the Orange County Sheriff's FSS unit.

Eventually, the District Attorney was able to retain the assistance of the crime lab in Kern County to perform the uploads to CODIS and that is the arrangement currently in place. This episode further eroded the level of cooperation and communication between personnel in the offices of the District Attorney and Sheriff.

At the August 28th meeting of the DNA Stakeholders Panel the District Attorney made it clear that he would not work with the FSS unit in the Sheriff's Department due to a 'lack of trust.' That said, in the subsequent panel meeting of September 4th the District Attorney and the Sheriff agreed to meet and reconstitute a new oversight committee to replace the existing Forensic Science Advisory Council and that this committee would include the Public Defender on issues that did not hold the potential to impact court cases.

Sheriff and District Attorney DNA Lab Proposals

The proposal information below is based on a five-year outlook, FY 08-09 through FY 12-13. Appendix B of this report is a table comparing these two proposals.

District Attorney Proposal

The District Attorney's proposal for operation of the high volume DNA Lab is consistent with the information previously presented to the Board in their FY 2008-09 Budget Augmentation Request. The augmentation request called for the use of existing revenue sources (Fund 116 Narcotic Forfeiture & Seizure; Prop 64 Consumer Protection/Prosecution Funds 12H and 2AH; Southwest Border Prosecution Initiative; Prop 172) for the startup of the lab and ongoing operations. Startup costs for FY 08-09 and 09-10 were identified as \$4,250,000 total for development (design, construction, equipment purchases/testing) of a new lab to be located at the County's Data Center. Ongoing services and supplies costs were identified at \$200,000 per year; however, that amount has been revised to \$250,000 per year. The District Attorney proposed the use of eight existing vacant positions for initial staffing to operate the lab offset by Prop 172 revenue. The estimated cost for the eight positions, which are budgeted but not currently filled, in FY 09-10 is \$924,746. The DA's proposal assumes a July 2009 implementation date, processing of approximately 5,000 samples in the first year (FY 09-10) and eventually increasing to 20,000 samples per year thereafter. The proposed turnaround time for processing of the samples is two weeks. Although it is likely that additional staffing will be required to increase to the processing of 20,000 samples per year, no additional staffing requirement information was provided by the District Attorney. The triage process would be used to focus limited resources on cases with the most value to the criminal justice system while speeding up turnaround times.

Sheriff Proposal

The Sheriff's proposal for operation of the high volume DNA Lab calls for the use of existing revenue sources for the startup and ongoing operations of the lab (Prop 172; various grants; Fund 13P State Criminal Alien Assistance Program). Startup costs for FY 08-09 were identified as \$415,763 for the redesign of the existing lab to accommodate the high volume component. Ongoing services and supplies costs range from \$225,000 to \$400,000 per year. Sheriff also identified additional one-time equipment purchases and office reconfiguration costs of approximately \$360,000 over the next five years in order to increase the number of samples processed.

The Sheriff proposes use of eight existing filled lab positions for initial staffing to operate the high volume component with a May 2009 implementation date. The estimated cost for these positions, which are already budgeted and filled, in FY 09-10 is \$1,036,016. Currently, there are 23 positions assigned to the DNA lab. Eight of these positions will be dedicated exclusively to property crimes. According to the Sheriff's Department there will be no negative impact to the existing DNA lab as the purchase of the new high volume equipment and implementation of efficiencies within the unit will result in at least an equivalent, if not improved, level of service. Sheriff has indicated that with the

purchase of the new high-volume equipment and improved efficiencies, turnaround times for processing of DNA related to violent crimes should decrease. The Sheriff anticipates they can process approximately 16,800 property crime samples in the first year and eventually increase to 34,000 samples by FY 12-13 should the need arise. The current rate for the processing of DNA samples for property crimes is approximately 4,206 per year. The proposed turnaround time for processing of the samples is 30 days.

Sheriff has identified the use of existing vacant positions in future fiscal years (3 in FY10-11; 3 in FY11-12; 5 in FY12-13) as being required to increase the number of samples processed from 16,800 to 34,000 per year. The vacant positions would be allocated for this purpose as the need to increase the number of samples processed increases. The triage process, as previously defined by the District Attorney, would be used to focus limited resources on cases with the most value to the criminal justice system while speeding up turnaround times. The District Attorney would be an integral part of the triage process.

Finally, the Sheriff's proposal includes agreement for the use of an advisory board, co-chaired by the District Attorney and the Sheriff, for monitoring the performance of the high volume DNA lab including quality of service delivery, turnaround time issues, and recommendations for improvements. Further, during the purchase and validation of equipment process, Sheriff has identified District Attorney as taking the lead in developing protocols for triage and training of law enforcement personnel for DNA collection and prioritization. District Attorney would also take the lead in developing accountability protocols to ensure cases are acted upon after DNA analysis is complete and hits are identified.

Both departments' proposals commit to fund the startup and ongoing operation of the high volume DNA lab. The Sheriff's estimated cost for startup and services and supplies over the five-year period are \$3 million less than the District Attorney's proposal. Expanding the Sheriff's existing lab to include the high-volume component is more cost effective than constructing a new lab as proposed by the District Attorney. While the estimated cost of salaries and employee benefits is \$1.6 million less in the District Attorney's proposal over the five-year period, the District Attorney's proposal does not consider the need for position growth as does the Sheriff's proposal. While both departments' proposals begin with the use of eight positions, the Sheriff's proposal factors in the needed growth in positions to increase the number of samples processed over time. Position growth information was requested from the District Attorney's office but was not provided. Based on information gathered during the panel discussions, it does appear that the addition of positions above the eight identified by the District Attorney will be required to reach the processing of 20,000 samples. Considering that the District Attorney will need to add additional positions, position costs would be comparable to the Sheriff's proposal. Thus, expansion of the existing lab is more cost effective than constructing a new lab as start up costs are less expensive in the Sheriff's proposal.

The use of existing resources for this purpose during financially constrained times is critical and of concern. The District Attorney and Sheriff are both experiencing a decline

in Prop 172 revenues and the zeroing out of Fund 14B balances at the end of FY 08-09. Prop 172 revenue receipts were under budget by 6% in FY 07-08. Revenue receipts for Sheriff were under budget by \$15 million and by \$3.8 million for the District Attorney. The first three months of FY 08-09 reflect a similar pattern of falling short in Prop 172 revenue receipts. Costs associated with this project must be considered a high priority by whichever department has responsibility for funding the ongoing operations. Reprioritization within the department's existing budget will be required in order to fund the ongoing operations and possible expansion of the high volume DNA lab.

Comparison to Other Jurisdictions

California law requires the State of California to process forensic samples for local jurisdictions. The California Department of Justice operates 14 crime labs throughout the State for that purpose; forensic lab operations are an unmandated function for local government. Nevertheless, several cities and large counties operate their own crime labs; essentially all of them having been founded before the State established their crime labs. There are five police department operated crime labs in Los Angeles, San Diego, San Francisco, Long Beach and Oakland. Counting San Francisco as a city rather than a county, there are 12 county operated labs – Alameda, Contra Costa, Fresno, Kern, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Mateo, Santa Clara, and Ventura. Of the county operated labs, Kern, Santa Clara and Sacramento are operated by the District Attorney while the others are managed by the Sheriff.

The record in California clearly shows that either the District Attorney or the Sheriff can successfully manage a forensic lab operation. In the counties of Sacramento, Santa Clara and Kern, the DNA lab is supervised by the prosecutor. Elsewhere it typically falls under the supervision of the Sheriff. However, there are no instances in local government of a DNA lab operation separate from the main forensic crime lab. Nor has any city or county organized the forensics operations into multiple departments. While the State Bureau of Forensic Sciences (part of DOJ) does have a separate forensics lab in Berkeley, this occurred historically because of the significant over-demand for qualified DNA scientists and the recruiting advantage of setting up a lab in close proximity to the UC Berkeley program that produced many of the State's qualified entry level staff. Comparisons to other jurisdictions can infer two things:

- 1) Either the District Attorney or the Sheriff can be expected to operate a successful crime lab function.
- 2) Separation of the forensics function into two parts is probably not the ideal way to obtain optimal operational results.

Key Issues

The Panel discussions and a careful study of the record have identified key issues central to the operation of an effective forensic DNA testing capability in Orange County. The

recommendations to the Board of Supervisors are designed to address these issues in a balanced manner. The following key issues are discussed here:

- Cooperation and trust among law enforcement agencies,
- Turnaround times for DNA test results,
- The integrity of lab results,
- Costs associated with performing DNA testing,
- The number of forensic DNA labs in Orange County,
- Defining crime lab clients,
- Evidence Collection, and
- The Forensic Science Advisory Council.

Cooperation and Trust

The process of investigation, apprehension, trial and incarceration of criminals is necessarily a team effort demanding mutual trust and cooperation among a range of law enforcement agencies, especially the District Attorney and Sheriff. The panel meetings have made it clear that many aspects of the necessary cooperation and trust relating to the development and use of DNA evidence are absent in Orange County.

The Panel meetings included candid discussions and revealed a marked lack of trust between some participants related to past communications, management actions, and perceived acts of bad faith. This cycle must be halted and replaced with a determined effort to rebuild the working relationships necessary for effective law enforcement.

Initially, cooperation can begin to be restored using expanded guidelines, protocols and reporting standards for all parties designed to open communication among the parties at all levels. Information will be treated as available to all participants unless a finding is made that to do so would compromise the trial record or privacy issues. This approach is designed to maximize cooperation and reduce perceptions of institutional arrogance. With a more open level of communication, it is possible to avoid mistakes by having more individuals looking at a given case, thereby maximizing the expertise brought to the case. As this new open communication is implemented mutual trust will gradually be rebuilt.

This approach will be most clearly seen in the institution of the ‘triage’ process enabling representatives from the District Attorney to work with the investigating agency to review each case for suitability for DNA testing. This new cooperation will yield cost savings to law enforcement and the courts by proceeding only with cases deemed to be potentially valuable to the goal of public safety.

Turnaround Time

The issue of turnaround times for DNA lab results received much discussion. The time taken for a lab to receive and process DNA evidence and produce a result is a function of the resources that can be dedicated to the task. The most recent and applicable study with

which we are familiar was done in 2000-2001 by a task force for the California Attorney General; the results of that survey are shown in the table below. At that time, all labs were performing DNA tests almost exclusively on crimes against persons. Thus, at the time of the last statewide survey with which we are familiar, the Sheriff's crime lab was handling DNA testing more quickly than the average time for all crime labs within the state. It should be noted that in that same survey, the other states they surveyed (Virginia, Texas, New York, North Carolina, Illinois) had an even slower average turnaround time on DNA tests, averaging 114 working days.

Average Turnaround Times, DNA Evidence

<i>Jurisdiction</i>	<i>Turnaround Time</i>
Los Angeles County	294 days
CA Dept. of Justice	168.7 days
Statewide Average (17 labs)	74 days
Santa Clara County	60 days
Los Angeles PD	60 days
<i>Orange County Sheriff</i>	<i>50 days</i>
San Diego PD	42 days
San Diego County	35.4 days
Ventura County	14 days

Source: California Attorney General Task Force, survey done in 2000-2001.

In a survey conducted of Orange County law enforcement agencies it was found that most chiefs wanted DNA test results from violent crimes in 15 days with some accepting a 30 day turnaround. The same group expressed a willingness to wait 30 days for DNA evidence to be processed on robbery and burglary.

The panel discussions have produced some agreement that the reduction in turnaround time is important, but is not the highest priority. All parties agree that the quality and reliability of the result must not be sacrificed for speed of results. It is generally agreed that resources and organization should be prioritized so that lab results are produced as quickly as possible on the cases determined to be of importance using the triage process.

Integrity of Result

At the July 31st meeting of the panel the Public Defender made a strong case for incorporating procedures and science into the panel's recommendations that would assure the highest achievable quality of results from lab testing. All parties to the discussions agreed with the Public Defender and stressed that this would insure that the legal process is fair and decisive for all parties. This is accomplished by assuring that:

- The lab receive and maintain the highest accreditation possible from the appropriate governing authorities;
- The most current commercially viable science be employed in the testing process;

- External influences must be controlled and monitored as they impact the scientific testing process (particularly parties to the legal proceedings); and
- That the issues of human error and examiner bias be monitored and corrected by the most effective means possible.

There is no inherent conflict of interest associated with the office of the District Attorney operating a forensic lab if the points made here are given their proper weight.

Cost

In the current environment of shrinking revenues and cost constraints it is critical that cost issues be addressed while determining the optimal placement and function of a forensic DNA lab for Orange County. That reality will produce a lab operation that maximizes the quality and timeliness of results within the constraints of a limited budget.

The issue of charging users was discussed and all parties agreed that it would not be appropriate or beneficial to institute user charges at this time. The very real possibility of law enforcement agencies opting out because of costs would undermine the value of the volume testing of property crime evidence and would cast a shadow of doubt on any results. It is, though, advisable to monitor costs as well as results so that any future discussion of cost sharing would benefit from clear and accurate cost/benefit information.

The general points regarding cost considerations were:

- No new County of Orange General Funds are available for the establishment or operation of a high volume DNA evidence testing lab;
- Funds available from Proposition 172 are already committed to important projects and their future availability to support special projects will be severely limited;
- Both the Sheriff and the District Attorney have the ability to fund such a lab from existing funding sources that include outside monies from the State and Federal governments;
- The triage of cases by the District Attorney and the investigating agency is critical to maximizing the results from limited financial resources;
- No cost sharing with other law enforcement agencies will be implemented at this time, but may become necessary in the future to support this project.

Number of DNA Labs/One Lab or Two

A key issue that went unresolved during discussions among the panel members was that of how many labs, and how many DNA labs are optimal. The question comes down to

whether to incorporate the anticipated high volume DNA lab into the existing organizational structure at the Sheriff's FSS (the single lab option) or to set up a stand-alone high volume DNA lab physically and organizationally separate from the FSS operation (the two DNA lab option), or to combine all DNA testing operations into one lab and all other forensics testing in another (the two functional lab option).

The two DNA lab option better addresses the concerns of the District Attorney for more transparency and responsiveness in lab operations and it is potentially better suited to adapt new technologies and techniques because it represents a cleaner break with existing practices. The disadvantages are that accreditation will be slower (it may take six months to become accredited following operational status) and there is an inherent duplication of costs in infrastructure and administration of this option that drives up costs. In addition, with two separate labs, they will be forced to compete with each other for a very limited pool of trained scientists. This will raise personnel costs, create tensions between the labs and undermine cooperation between the labs.

The single lab option has quantifiable advantages:

- Utilizes existing physical and administrative infrastructure, saving money;
- Takes advantage of existing lab certification to speed up the start-up process;
- Avoids the issues associated with two labs competing for a small group of qualified employees;
- Starts with an existing base of trained technicians;
- Enhances the existing DNA testing capabilities by complementing them with new high volume equipment that can accommodate the ebb and flow of the workload between violent crimes and property crimes; and
- Allows new robotic equipment to be utilized for important crimes against persons, not solely for property crimes.

The single lab option has the potential of bringing with it the past record of problems with cooperation and communication. Without a change in oversight the single lab option does nothing to address the legitimate concerns of other law enforcement agencies who are demanding a say in lab operations (the District Attorney, the Public Defender and to a lesser degree local law enforcement) unless the organizational structure is significantly altered. The advantages of the single lab in the areas of cost, personnel, accreditation and efficiency outweigh the potential disadvantages.

The two functional lab option is an improvement over the two DNA lab option in that it combines the DNA scientists into a single unit. However, because DNA testing is a growing proportion of all forensics testing, it does not provide a solid growth path for migration of existing staff from older to new and emerging testing methods. For this reason, the County could still expect personnel to move from one lab to another, but probably only from the remaining Sheriff FSS operation to the new DNA organization.

Crime Lab Clients

There are two primary clients of the crime lab's service, whether it is DNA or other types of testing. One represents the use of their product to prove the guilt or innocence of someone accused of a crime. The second is the use of evidence to assist in identifying possible suspects. The "client" in the first of these is the attorneys involved in those cases that have gotten to the stage of prosecution. In general this is the prosecutor, but that office is also required to assure that the defense also has full access to results. The primary client for the second use of crime lab results is law enforcement investigative services (detectives) who must initially identify possible suspects. The timing of these uses is different, as are the types of cases where the evidence is most often used to identify versus to convict. DNA is one of the types of evidence that can be used to identify a probable offender who is not already known to police as a possible suspect.

Evidence Collection

The collection of DNA evidence is a sensitive and critical step in the process of developing results for use in trial. It is important that field personnel from each law enforcement agency be adequately trained in proper technique. If two separate DNA labs were to be established, it is possible that two different collection techniques would become necessary. This would drive up training times, costs, and the potential for errors that could compromise the trial record. During the meetings, it appeared that both the Sheriff and the District Attorney agreed that a single evidence collection process should be developed and deployed.

A single DNA lab with a single evidence collection procedure saves money, eases training for law enforcement and it increases the reliability of the ultimate lab result for use in the judicial process. A single forensic sciences lab simplifies this further as an investigator or attorney has a single point of contact for all inquiries regarding a given case.

Forensic Science Advisory Council

The Sheriff's Department founded the Forensic Science Advisory Council to foster cooperation among local law enforcement as issues surrounding DNA evidence became more complex and politically sensitive. The District Attorney, the Public Defender, Probation and the Board of Supervisors were all invited by the Sheriff to participate. The District Attorney declined to join the group because of concerns regarding the participation of the Public Defender and because they were excluded from the discussions leading up to the formation of this group.

Both the Sheriff and the District Attorney have agreed to meet to reconstitute a new oversight group for the FSS lab serving as co chairs. This agreement is key to the rebuilding of trust, cooperation and collaboration necessary to effectively support the criminal justice system. Both parties must treat this as a high priority in order to rebuild the cooperation necessary to the effective administration of justice in Orange County.

Common Goals for DNA Testing

Panel discussions produced commonly agreed upon goals for the testing of DNA evidence in Orange County. These are:

- The citizens of Orange County would benefit from the establishment of a high volume DNA lab focused on the analysis of evidence collected from property crime scenes.
- When established, this DNA lab should facilitate the testing of a significantly higher volume of crime scene evidence samples for comparison to national, State and local data bases of DNA samples collected on earlier crimes and from known criminals.
- A process of evidence triage must be developed and implemented using the expertise of the District Attorney's personnel and the investigators from the relevant local law enforcement agency to evaluate the value and potential for prosecution that may result from the testing of evidence from each case.
- This lab must employ the latest and best commercially available scientific practices to help insure results of the highest reliability and validity for the trial process.
- All processes related to this lab must be designed to eliminate operator error, examiner bias and interference from outside sources that might negatively impact the quality of the lab results.
- That this lab be established such that turnaround times are optimized without compromising the quality of the results.

Recommendations from the CEO

The CEO recommends that a new high volume capability be added to the existing DNA testing facilities at the Sheriff's FSS lab and that all of the forensic testing operations at the FSS lab be placed under the direct supervision of the Sheriff, the District Attorney and the County Executive Officer ("the cooperating department heads"). The FSS lab should be renamed OC Crime Lab (OCCL); this change is consistent with other recent actions of the Board of Supervisors in conjunction with the implementation of the County reorganization.

Supervision and Reporting

This new DNA testing capability, as well as all existing FSS laboratory functions, should be operated under the direct supervision of the District Attorney, the Sheriff and the County Executive Officer. If in the future funding is sought from new sources by way of

user fees, representatives from those entities may be consulted in the supervision of forensic laboratory operations.

These cooperating department heads shall act as the head of OC Crime Lab. They shall see that all forensic testing operations for the County of Orange are monitored as to the quality of the testing performed by the DNA labs, that turnaround times are tracked by surveying the law enforcement agencies using the lab services, and that costs of the various types of DNA testing are accurately recorded. They will also oversee all forensic lab functions within OC Crime Lab to insure continued quality of work and a renewed commitment to cooperation among law enforcement agencies. The cooperating department heads shall have the authority to make organizational changes to OC Crime Lab as they shall see fit.

The lab director of OC Crime Lab shall report to these department heads, who shall be jointly responsible for his annual review. They shall also have the responsibility to interview and select an individual to direct the construction and operation of all DNA testing activities in OC Crime Lab, including the new high volume DNA testing function.

All changes in lab policies and procedures shall be reviewed and approved by these cooperating department heads.

It is suggested that all of the supporting services required by the cooperating department heads for the proper operations of the Forensics Lab (human resources, information technology, budgeting and the like) continue to be provided by the Sheriff's Department as is currently the case.

Interagency Cooperation, Trust and Communications

The challenge of reestablishing the necessary environment of trust and cooperation that is critical to the effective administration of justice is as important as is the placement of the DNA testing function within the County of Orange operations. Specifically, this concern applies to the degraded state of trust and cooperation between the offices of the District Attorney and Sheriff regarding DNA testing. The following actions are strongly recommended for immediate implementation:

- The District Attorney and the Sheriff should each perform a detailed internal review of their own operations to review and report on past activities and policies regarding all aspects of DNA evidence. They each should review only their own operations and the reports must include proposals for making improvements to their own departments regarding communications, accommodation of the needs of law enforcement partners and improvement of support of court proceedings. The results of these two reviews should be shared with each other and the CEO for discussion, review and adoption of recommended changes.
- The cooperating department heads should attempt to include the Public Defender in their discussions, except: 1) when doing so would have an impact on ongoing

investigations; or 2) when inclusion would reveal information that the District Attorney has a right to keep confidential from the Public Defender.

- The cooperating department heads should exercise the authority to review and suggest revision to the procedures of the District Attorney and the Sheriff in the handling of DNA evidence, the prioritization of DNA or other cases, the reporting of DNA lab results, the sharing of DNA lab results, the review and revision of DNA lab practices and procedures, and the scientific capabilities and applications employed in the DNA labs.

The District Attorney and the Sheriff are encouraged to permit their respective staff to interact more freely with staff in other law enforcement agencies in the interest of information exchange and building positive lines of communication and interagency cooperation.

Location

This expansion should be located at 320 N. Flower Street adjacent to the existing lab area occupied by the existing DNA testing function within FSS. This location takes advantage of several synergies:

- It employs the existing infrastructure (plumbing, electrical and ventilation) at that site necessary for the installation of laboratory equipment;
- This enables DNA testing to maintain positive functional interaction with the existing forensic science testing capability within the Sheriff's operation;
- It permits employees of the existing DNA lab to back up the staff in the new lab when vacations, sick leave, training and legal testimony take them away from their lab duties;
- It makes it easier for the two lab systems to back one another up to accommodate work overflow and machine down time due to maintenance or repair; and
- It eliminates complications that arise when separate labs are forced to compete for a limited pool of qualified technical employees.

Funding

The funding for this new lab should be taken from funds as proposed by the Sheriff in the proposal submitted to this panel.

Expenditure	Funding Source
Ongoing Salaries & Employee Benefits	Prop 172/State Criminal Alien Assistance Program Fund 13P
Ongoing Services & Supplies/Equipment	State Criminal Alien Assistance Program Fund 13P
One-time Equipment/Facility Improvements:	
Minor electrical and cabinetry improvements (\$30K)	State Criminal Alien Assistance Program Fund 13P
Genetic Analyzer (\$95K)	State Criminal Alien Assistance Program Fund 13P
Qiagen Universal Liquid Handling System (\$148K)	2007 DNA Capacity Enhancement Grant
Quigan Symphony Extraction Robot (\$60K)	2008 DNA Capacity Enhancement Grant
Corbett Liquid Handling System (\$45K)	2008 DNA Capacity Enhancement Grant

Equipment and Staffing

The equipment and staffing plan for this new lab should be as proposed by the Sheriff as submitted to this panel. It must be noted that the District Attorney has plans in place for the equipping and staffing of this lab; but these plans were not submitted to the panel for examination and discussion, so it was not possible to incorporate these plans into the recommendations of this report. It is possible that the new DNA lab director will be able to combine the plans of the Sheriff and the District Attorney to create an approach superior to either existing proposal. The cooperating department heads should retain the authority to adjust the plans for the high volume DNA lab to accommodate new scientific applications, efficiencies, and unforeseen operational issues.

It shall remain the responsibility of the Sheriff to continue to provide all necessary support services to the forensics lab. The OC Crime Lab is organizationally a part of the Department of the Sheriff-Coroner.

The CEO is confident that with the appointment of a new Sheriff and the adoption of these recommendations by the Board of Supervisors a new era of cooperation and trust can be established that will enhance the development of DNA evidence in support of the administration of justice to the benefit of all.

October 21, 2008

APPENDIX A

DNA Stakeholders Panel Attendees

Sheriff's Department:

Sheriff Sandra Hutchens
J.B. Davis, Assistant Sheriff
Rick Dostal, Executive Director
Dean Gialamas, Director FSS
Tom Nasser, Assistant Director FSS

Office of the District Attorney

District Attorney Tony Rackauckas
Debbie Lloyd, Assistant District Attorney
Camille Hill, Deputy District Attorney
Jennifer Contini, Deputy District Attorney
Daneille Coye, Laboratory Director

Office of the Public Defender

Public Defender Deborah Kwast
Denise Gragg, Assistant Public Defender

Office of the CEO

Steve Dunivent, Deputy CEO
Mike Mount, Consultant
Michelle Aguirre, CEO/Budget
Kelly Channing, CEO/Legislative Affairs
Bruce Matthias, CEO/Legislative Affairs

Orange County Police Chiefs Association

Chief Paul Sorrell, Fountain Valley Police Department

Orange County City Managers Association

Homer Bludau, Newport Beach City Manager

Note: Not all individuals listed attended all meetings. This is not a complete list of all meeting attendees; certain individuals attended a single meeting to address a specific issue and may not be listed here.

APPENDIX B	Fiscal Year					5-Year Total
	08-09	09-10	10-11	11-12	12-13	
S&EB	(May/June S&EB)					
District Attorney	-	924,746	966,428	973,794	981,724	3,846,692
Sheriff-Coroner	152,896	1,036,016	1,420,610	1,430,460	1,440,858	5,480,840
S&S/Equipment						
District Attorney	2,750,000	1,500,000	250,000	250,000	250,000	5,000,000
Sheriff-Coroner	415,763	225,000	400,000	300,000	610,000	1,950,763
Total						
District Attorney	2,750,000	2,424,746	1,216,428	1,223,794	1,231,724	8,846,692
Sheriff-Coroner	568,659	1,261,016	1,820,610	1,730,460	2,050,858	7,431,603
						District Attorney
Positions	08-09	09-10	10-11	11-12	12-13	(All Years)
Forensic Scientist I						3
Forensic Scientist II						1
Forensic Scientist III	8	8	10	10	10	1
Sr. Forensic Scientist						1
Administrative Manager II						1
Forensic Technician						1
Data Entry Technician						
Legal Property Technician			1	1	1	
Total	8	8	11	11	11	8
	Use of 8 existing filled positions to reach 16,800 samples; use of an additional 3 vacant positions beginning 10-11 to reach 20,000 samples					Use of 8 existing vacant positions (initial staffing)

NOTES:

<i>Sheriff-Coroner</i>		<i>District Attorney</i>	
Assumes May 2009 implementation		Assumes July 2009 implementation	
16,800 samples in first year and increasing to 20,000 samples thereafter		5,000 samples in first year and increasing to 20,000 samples thereafter	
30 day turnaround for property crimes; violent crime turnaround will decrease as new equipment will improve efficiencies		2 week turnaround for property crimes	
100% Revenue Offset--Prop 172/Grants/State Criminal Alien Assistance Program		100% Revenue Offset--Prop 172/Fund 116 Narcotics Program/Southwest Border Prosecution/Prop 64 Consumer Protection	
8 existing filled lab positions to start; use of 3 vacant positions beginning FY 10-11 to reach 20,000 samples		8 existing vacant positions (initial staffing)	
Minor lab redesign/new office space		New lab at Data Center	

Appendix C

Office of the Sheriff – Active Grants

NIJ 2007 Backlog & Capacity Grant **Oct. 1, 2007 to Sept. 30, 2008**

Amount: \$397,427.00

2007 –DN-BX-K099 **451-84**

Application submitted 6/21/07 via GMS

Funds awarded September 4, 2007

Extension requested to 12/31/08 (sent on 7/30/08)

Extension to December 31, 2008 (approved on 8/5/08)

2007 Coverdell Block Grant **January 1, 2008 to December 31, 2008**

Amount: 115,593.00

CQ-07050300 **451-50**

Application submitted to OES January 28, 2008

Funds awarded on April 15, 2008

NIJ 2008 Backlog & Capacity Grant **October 1, 2008 to March 31, 2010**

Amount: \$508,212

2008-DN-BX-KO62 **451-??**

Application submitted to NIJ on May 15, 2008

Grant awarded September 11, 2008 (have 45 days to accept)

2008 Coverdell Block Grant **October 1, 2008 to September 30, 2009**

Amount: \$108,167

451-52

Application submitted 9/5/08

Office of the District Attorney

DNA Contracts related to the DNA High Throughput Lab (as of 10/16/08)

Vendor	Contract Dates	Contract Amount	Services	Contract #
Alexander & Hibbs	07/16/08 – 07/13/09	Not to exceed \$180,700	Architectural Services: Design DNA Lab at Data Center	N1000010095
Brian Wraxall	08/08/09- 07/31/08	Not to exceed \$50,000	DNA Lab Design	N1000010303
FSS	08/08/08- 09/30/09	Not to exceed \$48,000	DNA Lab Design	N1000010272