

# Summary and Recommendations

*If people in Los Angeles hear about this rape kit backlog, and it makes them not want to work with the police in reporting their rape, then this backlog of ours would be tragic.*

—MARTA MIYAKAWA, DETECTIVE, LOS ANGELES POLICE DEPARTMENT,  
COLD CASE ROBBERY AND HOMICIDE DIVISION<sup>1</sup>

<sup>1</sup> Human Rights Watch interview with Detective Marta Miyakawa,  
Los Angeles Police Department, Los Angeles, CA, August 11, 2008.



# TESTING JUSTICE

Photographs by Patricia Williams



The rape kit includes numerous envelopes potentially containing DNA evidence.

(right) A treatment center employee demonstrates how evidence is collected from a rape victim after an assault.

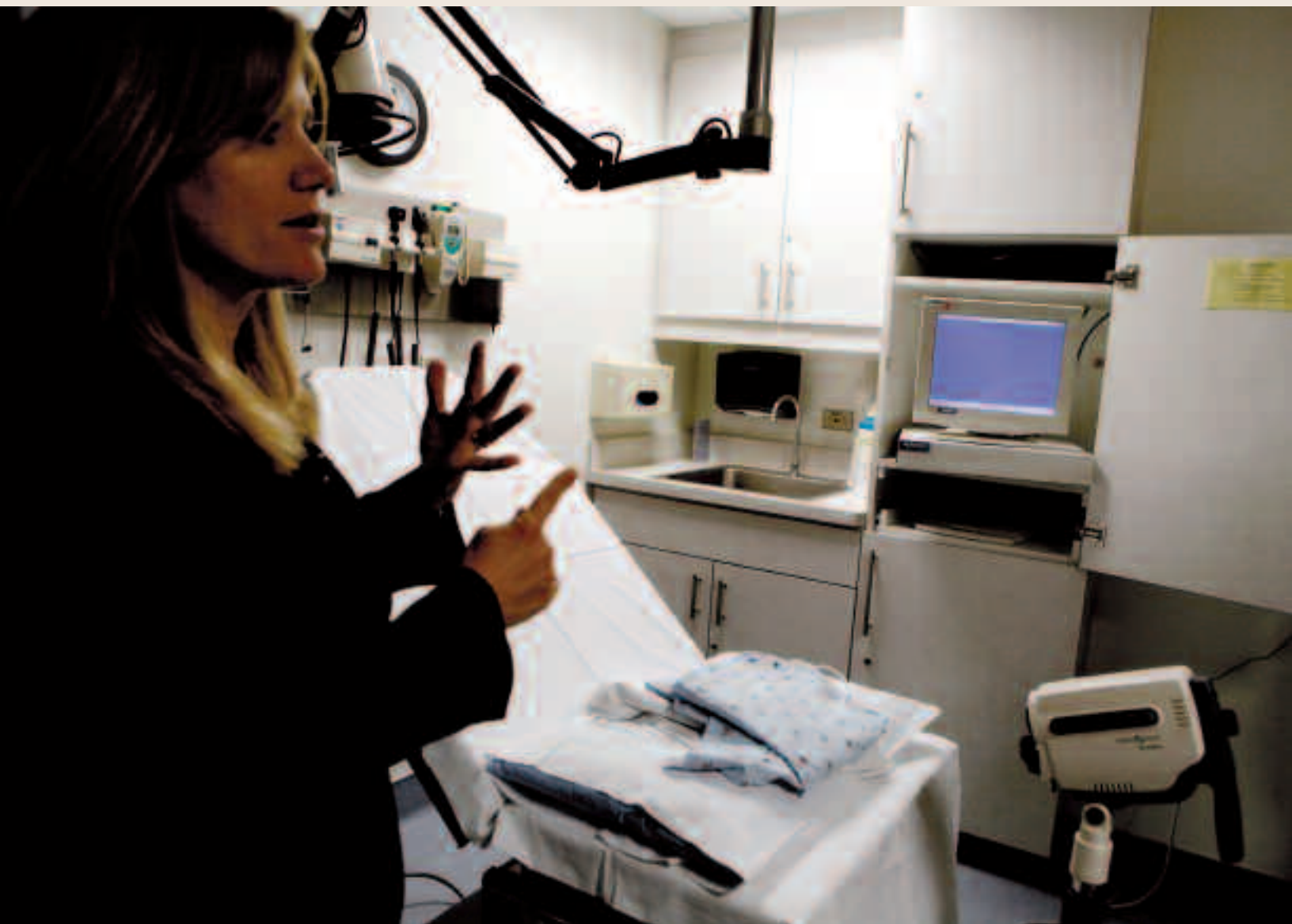
**Los Angeles County has the largest known rape kit backlog in the United States. At least 12,669 untested sexual assault kits (“rape kits”)—which potentially contain DNA and other evidence collected from rape victims’ bodies and clothes immediately after the crime—are sitting in police storage facilities in the Los Angeles Police Department, the Los Angeles County Sheriff’s Department, and 47 independent police departments in Los Angeles County. A smaller, but not inconsiderable, backlog resides at police crime labs. Testing a rape kit can identify the assailant, confirm a suspect’s contact with a victim, corroborate the victim’s account of the sexual assault, and exonerate innocent defendants. The untested rape kits in Los Angeles County represent lost justice for the victims who reported their rape to the police, and consented to the four-to-six hour rape kit collection process.**

The Police and Sheriff’s Departments are making progress in addressing their rape kit backlogs. But the time it took both agencies to acknowledge that untested rape kits sat in their storage facilities slowed their responses and may have delayed apprehending violent offenders. The Police Department, in particular, has struggled to expeditiously tackle its rape kit backlog, its efforts complicated by city politics, battles over crime lab funding, and changes in internal leadership over the issue. It is essential that county and city leaders, both within and outside of law enforcement, move quickly to test every rape kit in the county. Eliminating delays in rape kit testing is especially crucial to realizing justice for rape victims in California, where the 10-year statute of limitations (the maximum time period after a crime when a defendant may be prosecuted) for rape can be lifted if the

rape kit is tested within two years of the date of the crime and a DNA profile is found.

Rape is a crime that can affect its victims in physically and emotionally debilitating ways. The severity of the crime requires a vigilant police response when a rape is reported. As Gail Abarbanel, director of the Rape Treatment Center at Santa Monica-UCLA Medical Center, told Human Rights Watch, there are “tragic consequences of not opening rape kits in a timely way,” and “this is one of the cases that made us aware of [these consequences]”:

**Catherine was in her forties, living with her young son. She was awakened at midnight by a stranger who raped her, sodomized her, and forced her to orally copulate him—repeatedly. Thankfully, her child remained asleep. When it was over, the police brought her to the Rape**



Treatment Center. Like all rape victims, her body was one of the crime scenes. She consented to the collection of evidence.

The detective was told by the crime lab that it would take at least 8 months to analyze Catherine's rape kit. The detective said he knew from the "MO" in this crime that the rapist was a repeat offender. Eight months was too long to wait. He personally drove the kit to the state lab—where the kit still sat for months. When it was processed, they got a "cold hit." Catherine's rapist was identified. He was in the offender database.

During the months Catherine's kit sat on a shelf, unopened, the same rapist attacked at least two other victims—one was a child.

## SEXUAL VIOLENCE IN LOS ANGELES COUNTY

At least 1,474 individuals reported being raped in Los Angeles County in 2007, the last year for which Human Rights Watch could obtain complete data—an average of more than four rapes reported to the police every day. This number does not include sex crimes in which children are victims. Although Los Angeles is experiencing historically low crime rates, and reported rapes have decreased significantly in the past decade, arrest rates for rape have also declined from the late-1990s: fewer reported rapes lead to an arrest.

The low arrest rates for rape mean that a person who reports to law enforcement that she was raped has about a one in four chance of seeing someone arrested for the crime. The Los Angeles Police Department, which has law enforcement

jurisdiction over the City of Los Angeles, had a rape arrest rate of 25 percent of all reported cases in 2007, down from a high of 30 percent in 1999. The Los Angeles Sheriff's Department, which polices 40 of Los Angeles County's 88 cities, has seen its arrest rate decline from 33 percent of all reported rapes in 1999 to 28 percent in 2007.

Given the low arrest rates for reported rapes, it is imperative that law enforcement uses scientific investigative tools that can help solve these cases. The testing of rape kits can advance this goal. A rape kit contains DNA and other evidence from the rape victim's body and clothing. Test results from the kit can provide a DNA profile that can be compared to a known suspect's profile. Results can also be entered into local, state, and federal DNA databases to compare to individual and crime scene DNA evidence from other unsolved cases.

National studies have shown that cases in which a rape kit was collected, tested, and contained DNA evidence of the offender's contact with a victim were significantly more likely to move forward in the criminal justice system than cases in which there was no rape kit collected.



(above) A Los Angeles Sheriff's Department crime lab DNA analyst signs-out evidence at the lab's evidence storage facility from a sexual assault case, which includes a rape kit and a bag of the victim's clothing.

(right) Evidence from a rape case waits for testing at the Los Angeles Sheriff's Department crime laboratory.







Los Angeles Sheriff's Department property freezers, which store untested rape kits.





## UNTESTED RAPE KITS

The rape kit backlog in Los Angeles County comprises two distinct but related elements. The first exists in police evidence storage facilities, where rape kits are booked into evidence, but DNA analysis is not requested by a detective. The second backlog exists in police crime lab facilities where rape kits are submitted for testing, but are awaiting DNA analysis and have not been tested in a timely manner.

### *Police storage facilities*

As of February 2009 the estimated 12,669 untested rape kits in Los Angeles County's 88 cities comprised at least 5,193 in the Los Angeles Police Department's storage facility, 4,727 in the Los Angeles Sheriff's Department's storage facility, and at least 2,749 in storage facilities in the 47 cities in Los Angeles County that have their own police departments (but rely on the Sheriff's crime lab for rape kit testing).

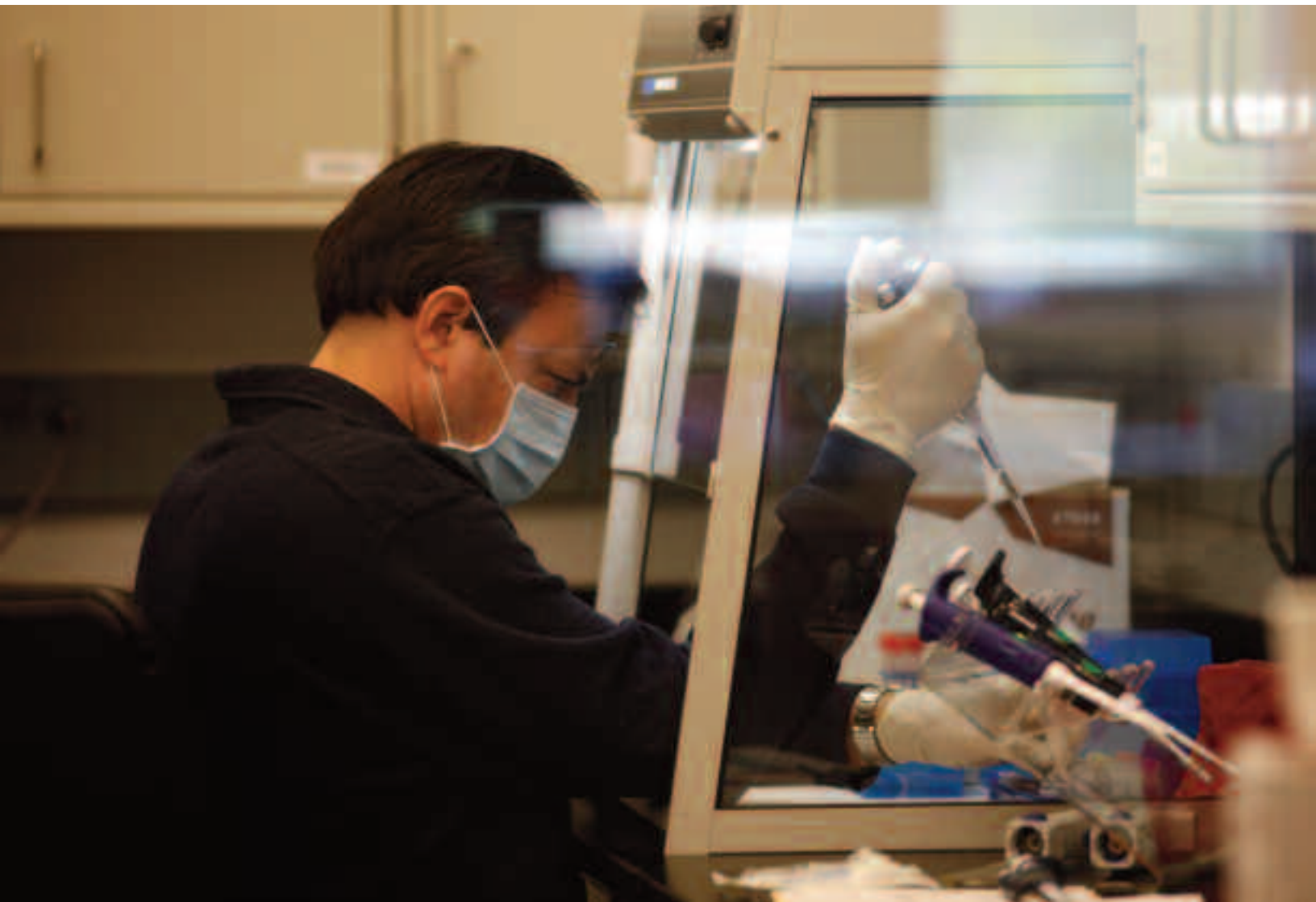
The issue of untested rape kits in police storage in Los Angeles became public in 2002. Yet it was not until November 2008 that the Sheriff's Department counted the untested rape kits in its storage facilities. As of February 2009, after pressure from Human Rights Watch and other advocacy groups, the Sheriff's Department has counted and catalogued its untested rape kits in more detail than any other police department in the United States of which Human Rights Watch is aware. Having thus far catalogued 70 percent of the 4,727 untested kits counted, officials were shocked to find that over 800 kits belonged to cases in which the suspect was not known to the victim; over 300 were more than 10 years old and therefore beyond the statute of limitations; and another 100 were within six months of that deadline. The Police Department first disclosed figures for the untested kits it held in 2007. Its latest figures, from an audit announced in February 2009, show 188 kits past the statute of limitations, and over 400 belonging to cases where no suspects were connected to the cases. Police Department Deputy Chief Charlie Beck told Human Rights Watch, "We are sobered by the untested kits in suspect-less cases. There is no excuse for us not to be testing those kits."

The large number of untested rape kits in Los Angeles County, and the delays between when the Police and Sheriff's Departments knew that there may be untested rape kits in their storage facilities and when they took serious steps to address the issue, make it especially important that the Police and Sheriff's Departments' current and ongoing responses to their rape kit backlogs are part of a comprehensive plan that is subject to monitoring and oversight. An important start is to enforce Police and Sheriff's Department policies, adopted in recent months, that require detectives to send every rape kit booked into evidence to their respective crime labs for testing.





Untested sexual assault evidence at the Los Angeles Sheriff's Department central evidence storage facility.



A lab employee works to replicate the DNA taken from a crime scene, to create a bigger sample to analyze.

### ***Crime labs***

A number of untested rape kits are located at the Sheriff's and Police Departments' crime laboratories, where testing delays frustrate investigations and postpone court cases. Through its research, Human Rights Watch has found that the county and city crime labs do not have the capacity to quickly analyze rape kits submitted for testing by detectives, nor do they have the capacity and personnel to test every booked rape kit. According to police and prosecutors who spoke with Human Rights Watch, it can take as long as 12 months from the time rape kit testing is requested until test results are received by the requesting law enforcement officer.

Enhancing the Police and Sheriff's Departments' crime lab capacity will require additional city and county resources. The Police and the Sheriff's Departments must advocate for these resources, and the County Board of Supervisors and City Council should approve the funding necessary to eliminate the rape kit backlog and delays in testing new kits. California is experiencing a significant financial crisis, but public safety policies that will help apprehend violent offenders and prevent future rapes are a necessary investment and a core government responsibility.

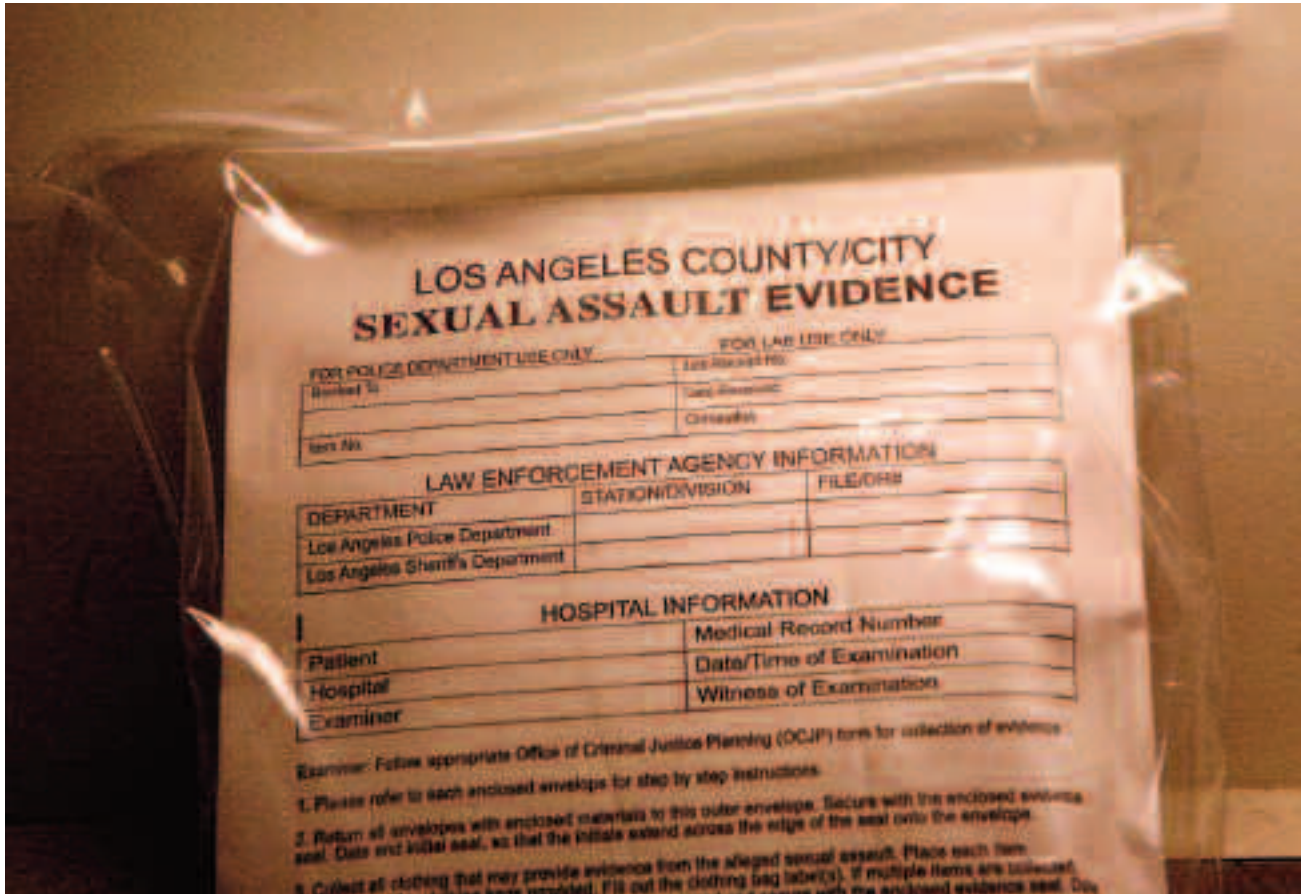
Significant resources will certainly be needed to resolve the rape kit backlog in Los Angeles. Achieving this goal will require not just political will to appropriate the necessary funding, but oversight to ensure that all funds and other resources available are used effectively and efficiently toward the testing of rape kits. An October 2008 audit of the Los Angeles city crime lab revealed that the number of untested



A crime lab analyst applies chemicals to extract the DNA from a swab that was in the rape kit.



Microscopic slides, with traces of semen taken from the victim's vaginal and anal area, are contained in one of the rape kit envelopes.



A rape kit photographed at the Santa Monica Rape-UCLA Treatment Center.

rape kits continued to grow in the years 2004 to 2008 despite nearly \$4 million in federal grant money made available for DNA backlog reduction during the same period. Human Rights Watch’s own review of federal DNA funding grant reports revealed that as of December 2007 the Police Department had not yet used all funds it had been awarded in 2004, and had used none of the available money from 2005 to 2007.<sup>2</sup>

## CONSEQUENCES OF UNTESTED KITS

Survivors of sexual assault who have reported their rape and consented to the extensive and invasive collection of a rape kit often are not informed by the authorities about the status of their rape kit or of their case. It was difficult for Human Rights Watch to find rape victims who knew that their rape kit was sitting untested in a police storage facility or crime lab in Los Angeles County. One reason may be the lack of information available to victims regarding the status of their rape kits. Under California law, the Police and Sheriff’s Departments must notify victims in stranger rape cases if their rape kits were not tested within two years of the crime. It is unclear whether the Sheriff’s and Police Departments have a

system in place to ensure compliance with this requirement, although the Sheriff’s Department has a policy requiring victim notification in accordance with California law. Rape treatment providers and advocates in the Los Angeles area could not recall ever hearing of a victim being informed about the testing status of her rape kit.

Many victims may assume their kit was tested. Gail Abarbanel, director of the Rape Treatment Center at Santa Monica-UCLA Medical Center, told Human Rights Watch, “The last time many rape victims see their rape kit it is in the hands of a police officer. The assumption is that if the police have the kit, it will be tested.” A sexual assault nurse examiner told Human Rights Watch, “My clients seem to assume that if they have not heard back from the police, it is not because testing was not done; it was because testing was done but there was no DNA in the kit. Not hearing from the police can contribute to the self-blame and doubt that victims are feeling about the rape.”

To understand the dynamics and effects of the rape kit backlog, Human Rights Watch spoke with rape treatment providers, sexual assault nurse examiners, and police officers

about cases in which rape kits were not tested in a timely manner, or not tested at all:

- A sexual assault nurse examiner told Human Rights Watch of treating a child who had been abducted and raped near a school bus stop. When the child described the attack, the details struck the provider as nearly identical to the story of another child who was abducted from the same bus stop and raped, and was treated at the same clinic three months prior. The provider wondered if the assailant could be the same man. When she contacted the police officer in charge of the investigation to inquire about the results of the rape kit test from the earlier case, he informed her that it was still waiting for testing at the crime lab, and might not be tested for another six months.
- An investigating officer told Human Rights Watch about a case he was working on in which a college student was raped as she tried to get into her car. The officer requested testing for the rape kit, but eight months after the request still had not received test results. Asked if he had inquired with the lab about the status of the case, he told Human Rights Watch, “You have to be careful about not getting on the lab’s bad side by bothering them, because you need them for your next case.”
- A rape treatment provider told Human Rights Watch about a victim who was raped at a party: “The police seemed to focus a lot of their attention on the fact the girl was drinking, and not as much on the fact of her physical injuries. She had tears inside her vagina, consistent with forced [penetration]. You could just sense that while they were interviewing the girl about the case, they were not going to be taking this case that far. I called them a few months later, at the girl’s request, to see if the kit was tested, and they told me they were going to wait and see whether to test it. I told my client, and she told me she didn’t want to be a part of the investigation anymore. She felt like the police didn’t believe her anyway.”
- A rape treatment provider told Human Rights Watch of seeing four sex workers come to her clinic in a nine-month period, all with similar descriptions of the man who raped them: “I worked for months to get the police to test these kits, to see if they could match the cases together. The same things that made these women vulnerable—their life on the streets—also made them suspect to the officer, and he was convinced these were simply cases where the sex worker didn’t get paid by her [customer], and they retaliated by reporting a rape. My response was, ‘They retaliated by submitting to the

lengthy rape kit collection process?’ I think sometimes the officers just don’t get rape.”

- A rape victims’ advocate had a client whose rape kit test results came back more than a year after the rape had occurred. When an investigating officer told the victim that the DNA profile in the kit matched an offender in the DNA database, the victim no longer wanted to participate in the case. The advocate told Human Rights Watch, “She couldn’t go back to the nightmare of her rape. I think that if the detective had been able to identify her rapist in the weeks and months after it happened, she would have been able to cooperate. But now she just wants to put it behind her.”

In New York City, which eliminated its rape kit backlog in 2003, law enforcement and crime lab officials created a system to ensure the testing of every booked rape kit. City officials created a policy that every booked rape kit would be sent to the laboratory and placed in a queue for DNA testing. The crime lab built up its DNA testing capacity so that every rape kit would be tested within 30-60 days of its collection. The crime lab created a multi-agency cold hit system: every time a DNA profile from a rape kit matches a profile in the DNA database, the crime lab, prosecutor’s office, and police department are simultaneously informed of the hit. To deal with the increase of investigative leads in rape cases due to DNA testing of every booked kit, the prosecutors and police created a special team to investigate rape kit DNA matches. Since 2003, New York has seen an increase in arrest and prosecution rates for rape.

International human rights law requires police to investigate reports of sexual violence and take steps to protect individuals from sexual assault. Public officials must move quickly and decisively to eliminate untested rape kits in Los Angeles County. Given the large number of untested kits, the rights of rape victims to access justice, the consequences of delayed or denied justice for rape victims, and the resources necessary to complete the task, resolving the way Los Angeles deals with booked rape kits will require the leadership not just of law enforcement, but of top elected officials in Los Angeles County and its constituent cities.

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<sup>2</sup> Fiscal Year 2004, Fiscal Year 2005, Fiscal Year 2006, and Fiscal Year 2007 Forensic Casework DNA Backlog Reduction Program Grant report overview for National Institute of Justice (NIJ), Los Angeles Police Department, unpublished document on file with Human Rights Watch. See also Memorandum from the Los Angeles Police Department (LAPD) and Los Angeles Sheriff’s Department (LASD) to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the LAPD and the LASD.

# METHODOLOGY

For this report, Human Rights Watch conducted 130 telephone or in-person interviews with: eight police officers, six chiefs of police or police executives, twelve crime lab personnel, eight crime lab directors or officials, ten sexual assault forensic nurses, five rape treatment providers, twenty-four elected officials from the cities and County, three victims of rape, one family member of a rape victim who has been affected by the rape kit backlog, thirteen rape victim advocates, nine state or city sexual assault organization directors or senior staff, fifteen national sexual assault or victim's rights organization directors or senior staff, three senior staff at the US Department of Justice Office of Justice Programs, five attorneys, four local newspaper reporters who have covered the issue of rape kit backlogs extensively, eight statisticians from state and city criminal justice statistics offices, and four senior staff at the ACLU of Southern California.

We conducted on-site visits to the Los Angeles Police Department and Los Angeles Sheriff's Department crime labs and evidence storage facilities.

We submitted requests under the California Public Records Act to the Police Department, the Sheriff's Department, and all 47 police departments of the cities in Los Angeles County with independent police departments. We requested rape reporting, arrest, prosecution, conviction, and dismissal rates, and documents pertaining to the collection, processing, and backlog of rape kits.

We read 52 academic studies on the prevalence and incidence of rape in the US, the factors that lead to low reporting, arrest, prosecution, and conviction rates for the crime of rape, and how rape kit evidence affects the likelihood that a case will move forward in the criminal justice system. We also read four studies about the civil liberties and civil rights implications of local, state, and national DNA databanks.

We gave the Los Angeles Police and Sheriff's Departments a copy of the report to review. This report is current as of March 2009.



# RECOMMENDATIONS

## TO THE LOS ANGELES POLICE DEPARTMENT AND THE LOS ANGELES SHERIFF'S DEPARTMENT

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- Create a Rape Kit Backlog Oversight Board to address the nature and scope of the rape kit backlog, which will:
  - Include representatives from public and private crime laboratories, criminalists, law enforcement, prosecutor's offices, public defenders and private defense lawyers, victims' and nongovernmental organization representatives, and judges;
  - Identify the nature and scope of current capacity problems, backlogs of unprocessed rape kit evidence, and systems issues that impede the utilization of DNA forensic technology to its full potential in sexual violence cases;
  - Make recommendations for eliminating current backlogs and preventing future backlogs of unprocessed rape kit evidence in local public laboratories;
  - Assess the impact of "cold hits" upon local investigative, prosecution, and defense resources; and
  - Report findings within six months of the board's creation, with updates every month thereafter.
- Enforce policy requiring every booked rape kit to be both sent to the crime lab and tested.
- Identify the crime lab personnel resources necessary to test every booked rape kit—both those in the current backlog and those booked in the future—in a timely manner.
- Identify the police department personnel resources necessary to pursue the investigative leads generated from testing every booked rape kit.
- Prioritize funding for the resources necessary to eliminate the rape kit backlog, test every future rape kit, and pursue investigative leads from rape kit testing.
- Implement a system to inform sexual violence victims of the status of their rape kit test, including:
  - Hiring a victims' advocate with expertise in conveying sensitive information to sexual assault victims; and
  - Creating a policy to require law enforcement to, within six months of collection of their rape kit, notify victims of its testing status.
- Preserve every booked rape kit until it is tested.
- Account for the number of untested rape kits destroyed in the past 10 years, and establish a victim notification system for those whose kits were destroyed before testing.

## TO THE LOS ANGELES COUNTY SHERIFF'S DEPARTMENT

- For untested rape kits in Los Angeles County's independent police departments' storage facilities, create a formal system to send those kits to the county crime lab for testing.
- Create a law enforcement unit tasked with investigating cold hit leads from the elimination of the rape kit backlog.
- Create a special sexual assault unit to handle all sex crimes investigations.

# RECOMMENDATIONS

## TO THE MAYOR OF LOS ANGELES

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- Prioritize funding for the testing of rape kits in the city budget.
- Require regular reporting from the Police Department on the status of the rape kit backlog.

## TO THE LOS ANGELES CITY COUNCIL

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- Hold full Council hearings on the scope and nature of the rape kit backlog.
- Approve funding in the city budget for the testing of rape kits.
- Require full Council regular reporting from the Police Department on the progress of eliminating the backlog.

## TO THE LOS ANGELES COUNTY BOARD OF SUPERVISORS

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- Continue to hold hearings on the nature and scope of the rape kit backlog, and require updates on progress in its elimination.
- Prioritize and approve funding in the county budget for the testing of rape kits.

## TO THE LOS ANGELES POLICE COMMISSION

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- Continue to hold hearings on the nature and scope of the rape kit backlog, and require updates on progress in its elimination.

## TO THE LOS ANGELES COUNTY AND CITY CRIME LABS

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- Create better evidence tracking systems:
  - Convert paper records to electronic records for easier tracking;
  - Establish a bar code tracking system that allows every piece of evidence to be scanned and tracked from the moment it is booked into evidence until testing is complete;
  - Create monthly reports on the number of rape kits tested each month, and the time it took for testing to be completed; and
  - Establish a system for simultaneous electronic notification of the crime lab, law enforcement, and prosecutors when a DNA profile matches a profile in CODIS (a “cold hit”).
- Address crime lab capacity concerns, including how to find the funding and space for the DNA analysts required to test every booked rape kit in a timely manner.
- Pursue increasing the use of private crime laboratories for rape kit testing.
- Prioritize federal DNA Casework and Backlog Reduction Grant Program funds for the testing of rape kits.

## TO THE LOS ANGELES COUNTY DISTRICT ATTORNEY

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- Implement a “cold hit” tracking program, which would track the outcomes of rape kit testing on rape investigations, arrests, charges, prosecutions, dismissals, convictions, and exonerations.
- Create a special unit tasked with pursuing prosecutions from investigative leads generated from the testing of the rape kit backlog.

## TO THE CALIFORNIA LEGISLATURE

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- Amend the Sexual Assault Victims’ DNA Bill of Rights, Penal Code section 680, so that:
  - It applies to all victims of sexual violence, whether or not the identity of the offender is in issue;
  - Law enforcement is required to inform all victims, within six months of the collection of the rape kit, of the testing status of the kit; and
  - Untested rape kits cannot be destroyed until they are tested.

## TO LOS ANGELES RAPE TREATMENT PROVIDERS (BOTH HOSPITALS AND CLINICS)

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- Provide anyone who is considering or has undergone rape kit collection with a pamphlet about the subsequent steps in the rape kit process, including expected timelines, responsible authorities, and information on how to follow the status of their rape kit, along with numbers of victims’ organizations that can help advocate on their behalf.

## TO THE CALIFORNIA DEPARTMENT OF JUSTICE

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- Require law enforcement agencies to report to the Department on the number of untested rape kits booked into police and crime lab storage facilities.
- Create data and technical support systems to assist local and state law enforcement with the tracking of cold hit evidence.