



# **Testing Justice**

## **The Rape Kit Backlog in Los Angeles City and County**

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## I. Summary

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>

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

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

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]”<sup>2</sup>:

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

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<sup>2</sup> Human Rights Watch e-mail correspondence with Gail Abarbanel, director, Santa Monica UCLA Rape Treatment Center, March 12, 2009.

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.

## **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.

### *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 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>3</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."

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<sup>3</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.

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.

## II. 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 victims' 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.

### **III. Recommendations**

#### **To the Los Angeles Police Department and the Los Angeles Sheriff's Department**

- 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.

### **To the Mayor of Los Angeles**

- 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**

- 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**

- 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**

- 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**

- 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**

- 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**

- 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)**

- 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**

- 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.



## IV. Sexual Violence in Los Angeles County<sup>4</sup>

Rape is a crime with serious consequences, and it demands serious attention. The potential physical, social, and mental health consequences of rape for a survivor include genital and other injuries, sexually transmitted infections, unwanted pregnancy, post-traumatic stress disorder symptoms, anxiety, depression, lasting fears about personal safety, and other immediate and potentially long-term effects on her physical and psychological health and well-being. The experience and consequences of sexual assault are different for every survivor, and for some the consequences are profound and enduring.<sup>5</sup> One survivor told Human Rights Watch, “If you have not been raped, I think it is impossible to understand how traumatic it is. But to give people an idea, I tell them that my rape happened a decade ago, and I still don’t feel like myself. I am changed forever.”<sup>6</sup>

### Reported Rapes

At least 1,474 individuals reported being sexually assaulted in Los Angeles County in 2007, the last year for which Human Rights Watch has data for the entire county—an average of more than four rape reports made to the police every day.<sup>7</sup> These reported rape cases do not include sexual crimes committed against children. The Los Angeles area is currently experiencing an historic low in reported rapes, although it is important to note that rape is traditionally an underreported crime. Comprehensive academic studies estimate that reported rapes represent 10 to 20 percent of all rapes, and that one in every six women in the US will be the victim of a rape or an attempted rape in her lifetime.<sup>8</sup> According to Patricia Giggans, executive director of Peace Over Violence, an anti-violence group based in Los Angeles, “The clear consensus among government, academic, and public health experts on

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<sup>4</sup> Los Angeles County, which is geographically the size of the state of Connecticut and has a population of 10.3 million, includes the city of Los Angeles and 87 other cities.

<sup>5</sup> For a comprehensive list of symptoms, see, for example, Safe Horizon, “After Sexual Assault: A Recovery Guide for Survivors,” undated, [http://www.safehorizon.org/files/After\\_Sexual\\_Assault\\_Bklt.pdf](http://www.safehorizon.org/files/After_Sexual_Assault_Bklt.pdf) (accessed February 23, 2008).

<sup>6</sup> Human Rights Watch telephone interview with Jeanne O. (last name withheld), Los Angeles, CA, March 10, 2008.

<sup>7</sup> Los Angeles Police Department, “Crime and Arrest Yearly Statistics 2008,” unpublished document on file with Human Rights Watch; Human Rights Watch e-mail correspondence with Captain David Walters, Los Angeles Sheriff’s Department, Scientific Services Bureau, January 26, 2009.

<sup>8</sup> See, for example, Patricia Tjaden and Nancy Thoennes, National Institute of Justice & Centers for Disease Control & Prevention, “Extent, Nature, and Consequences of Rape Victimization: Findings From the National Violence Against Women Survey,” January 2006, <http://www.ncjrs.gov/pdffiles1/nij/210346.pdf> (accessed February 23, 2009).

sexual violence is that the majority of rapes go unreported. And of the small percentage that are reported, most are not likely to go very far in the criminal justice system.”<sup>9</sup>

## Arrest Rates

While reported rapes have decreased significantly in Los Angeles County in the past decade, arrest rates have also declined. The Los Angeles Sheriff’s Department, which contracts its policing services to 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 (the last year in which data were available to Human Rights Watch).

### Reported Forcible Rapes and Rape Arrests for the Los Angeles Sheriff’s Department<sup>10</sup>

Year	Reported Forcible Rapes	Arrests for Rape	Arrest Rate
1999	584	194	33%
2000	659	205	31%
2001	685	unavailable	unavailable
2002	728	204	28%
2003	631	213	34%
2004	626	178	28%
2005	619	191	31%
2006	656	170	26%
2007	607	169	28%
2008	unavailable	unavailable	unavailable

The Los Angeles Police Department, which has law enforcement jurisdiction over the city of Los Angeles, has seen reported rapes decline by more than one-third since 1997. The arrest rate for rape was 25 percent of reported cases in 2007, down from a high of 30 percent in 1999. Nonetheless, the 2007 arrest rate represents a marked increase from the previous years, and a hopeful sign that the trend is reversing.

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<sup>9</sup> Human Rights Watch interview with Patricia Giggins, executive director of Peace Over Violence, Los Angeles, CA, November 11, 2008.

<sup>10</sup> The reporting and arrest data include both adults and juveniles. Reporting and arrest data were obtained through public records requests to the Los Angeles Sheriff’s Department, and are on file with Human Rights Watch.

## Reported Forcible Rapes and Rape Arrests for the Los Angeles Police Department<sup>11</sup>

Year	Reported Forcible Rapes	Arrests for Rape	Arrest Rate
1997	1405	323	23%
1998	1338	378	28%
1999	1168	345	30%
2000	1342	308	23%
2001	1269	265	21%
2002	1218	234	19%
2003	1134	228	20%
2004	1088	197	18%
2005	947	160	17%
2006	920	190	21%
2007	867	221	25%
2008	786	unavailable	unavailable

In sum, over the past decade, the percentage of rapes reported to the Los Angeles County Sheriff and the Los Angeles Police Department that result in an arrest has declined. Currently, a person in the Los Angeles area who reports to law enforcement that she was raped has about a one in four chance of seeing someone arrested for the crime.

### Data Limitations

In general, the collection of rape statistics in California is not as rigorous or comprehensive as necessary to understand the problem of sexual violence. Los Angeles County and the City of Los Angeles both collect rape statistics in a way that may inflate the arrest rate.

The California Department of Justice (CDOJ), which collects crime data from every jurisdiction in the state, narrowly defines what constitutes “rape” for reporting purposes, confining it to crimes that fit the FBI Uniform Crime Report’s narrow common-law definition of rape (forcible rape which involves vaginal penetration by a penis),<sup>12</sup> and thus excluding a wide range of crimes that the California penal code defines as rape. At the same time, the CDOJ allows

<sup>11</sup> The reporting and arrest data include only data on adult crimes and arrests. Reporting and arrest data were obtained through public records requests to the Los Angeles Police Department and are on file with Human Rights Watch.

<sup>12</sup> See FBI Criminal Justice Information Services Division, “2006 Crime in the United States” webpage, section “Forcible Rape: Data Collection,” [http://www.fbi.gov/ucr/cius2006/offenses/violent\\_crime/forcible\\_rape.html](http://www.fbi.gov/ucr/cius2006/offenses/violent_crime/forcible_rape.html) (accessed February 6, 2009). For California Department of Justice crime data collection information, Human Rights Watch e-mail correspondence with chief crime statistician at the California Department of Justice, name not disclosed, Sacramento, CA, July 14, 2008.

police to count under the “rape” category arrests for *all* crimes that would constitute rape under the state penal code.<sup>13</sup> In addition, arrests for rape in a given year include cases in which rapes were reported in previous years, so that the arrest rate for a given year represents arrests in all rape cases, including but not limited to those reported that year. This can have the effect of inflating the arrest rate for rape that the Police and Sheriff’s Departments document in their yearly reports to the CDOJ.

It is important to note that while the CDOJ sets minimum standards for crime data collection, the nature and scope of data on rape still vary from jurisdiction to jurisdiction, including the Los Angeles Sheriff’s Department and the Los Angeles Police Department. According to a sexual assault data tracking expert who spoke with Human Rights Watch, “The lack of standardization among states or agencies regarding sexual assault data makes it difficult to compare data from jurisdiction to jurisdiction to see what state-based sexual violence policies may be working and what ones are not.”<sup>14</sup>

As far as Human Rights Watch can tell, no agency in Los Angeles County tracks the status, progress, and outcome of rape cases from the moment the rape is reported until the resolution of the case—making it very hard to get accurate data on the true rate of reported rapes that lead to an investigation, arrest, or other criminal justice outcome. In fact, numerous experts on sexual violence with whom Human Rights Watch spoke identified the lack of comprehensive case-tracking systems, including the tracking of forensic evidence like rape kits, as a key barrier to understanding what is happening with rape cases in the Los Angeles criminal justice system, and what effect rape kit collection and testing has on case outcomes. As Lance Gima, then-director of the California Bureau of Forensic Services, observed to Human Rights Watch, “The lack of comprehensive data on the criminal justice response to rape makes it appear that figuring out the criminal justice dynamics of rape cases [is] a low priority in California.”<sup>15</sup>

During the course of Human Rights Watch’s research into the rape kit backlog in Los Angeles, we heard stories of rape cases not leading to investigations, much less arrests. When Human Rights Watch asked a Los Angeles police officer whether all reported rape cases were

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<sup>13</sup> Human Rights Watch e-mail correspondence with chief crime statistician at the California Department of Justice, July 14, 2008.

<sup>14</sup> Human Rights Watch telephone interview with Lisa Walbot Wagner, project manager, Justice Research and Statistics Association, Washington, DC, April 8, 2008.

<sup>15</sup> Human Rights Watch telephone interview with Lance Gima, former director of the California Bureau of Forensic Services, Los Angeles, CA, March 14, 2008.

guaranteed to be investigated, he replied, “Well, if she got herself killed in addition to getting raped, and then it would be like a homicide, and that definitely would get investigated. Otherwise, I don’t know.”<sup>16</sup> Another officer who spoke about rape investigations to Human Rights Watch said, “Stranger rape cases are a priority. We investigate every reported case, but after a few years on the job, you get a sense of when the story that a crime occurred is credible, and when it isn’t worth pursuing.”<sup>17</sup>

As Sharon Shelton, a director of the Los Angeles YWCA’s rape crisis services, told Human Rights Watch, “We know that the likelihood of a case going to court [is] small, so we often downplay the criminal justice option to our clients. We don’t discourage them from pursuing it, but we don’t want them to pin their entire hopes on finding justice through the system.”<sup>18</sup>

## Role of Forensic Evidence in Rape Cases

National studies have shown that cases in which a rape kit was collected and contained DNA evidence of the offender were significantly more likely to move forward in the criminal justice system than cases in which there was no rape kit collected.<sup>19</sup> Studies have also found that forensic or physical evidence, such as the type of evidence stored in a rape kit, are important predictors of prosecutors’ decisions to bring charges in a case.<sup>20</sup> There is also emerging evidence that juries have come to expect DNA evidence in order to convict a defendant.<sup>21</sup> These findings point to the importance of rape kit collection—and testing—in moving cases forward through the criminal justice system.

In New York City, a policy of testing every rape kit booked into evidence appears to be having a positive effect on rape arrest, prosecution, and dismissal rates. Since the policy was implemented in 2001, rape arrests have risen to 70 percent of reported cases in 2007, up

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<sup>16</sup> Human Rights Watch telephone interview with Los Angeles Police Department officer, name withheld, Los Angeles, CA, April 21, 2008.

<sup>17</sup> Human Rights Watch telephone interview with Los Angeles Police Department officer, name withheld, Los Angeles, CA, February 3, 2009.

<sup>18</sup> Human Rights Watch interview with Sharon Shelton, project director, Los Angeles YWCA, Los Angeles, CA, May 5, 2008.

<sup>19</sup> See, for example, Megan Ann Alderden, University of Illinois at Chicago, “Processing of Sexual Assault Cases Through the Criminal Justice System,” 2008, unpublished dissertation on file with Human Rights Watch.

<sup>20</sup> See Dawn Beichner and Cassia Spohn, “Prosecutorial Charging Decisions in Sexual Assault Cases: Examining the Impact of a Specialized Prosecution Unit,” *Criminal Justice Policy Review*, Volume 16, Number 4, 2005, pp. 61-98; Cassia Spohn and David Holleran, “Prosecuting Sexual Assault: A comparison of charging decisions in sexual assault cases involving strangers, acquaintances, and intimate partners,” *Justice Quarterly*, Volume 18, 2004, pp. 651-688; and Kristen M. Williams, “Few convictions in rape cases: Empirical evidence concerning some alternative explanations,” *Journal of Criminal Justice*, Volume 9, 1981, pp. 29-39.

<sup>21</sup> Richard Willing, “CSI Effect Has Juries Wanting More Evidence,” *USA Today*, August 5, 2004.

from 30 percent in 1999.<sup>22</sup> While there are certainly other dynamics contributing to the high arrest rate for rape in New York, as one New York Police Department officer told Human Rights Watch, “Having the DNA [test results] from every rape kit I book has given me investigative leads I never would have expected. I take second looks at cases I would have dismissed, and I pass along more cases to the prosecutors. I used to think I didn’t need DNA to develop a case, but it has helped me solve more cases.”<sup>23</sup> (How New York eliminated its rape kit backlog is discussed at the end of Chapter VI.)

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<sup>22</sup> Crime data obtained through public records requests to the New York Department of Criminal Justice Statistics, unpublished documents on file with Human Rights Watch.

<sup>23</sup> Human Rights Watch interview with New York Police Department officer who investigates sex crimes, name withheld, New York, NY, April 24, 2008.

## V. Untested Rape Kits in Crime Laboratories

We can only do so much with the resources we have.

—Greg Matheson, Los Angeles Police Department Criminalistics Lab director, City of Los Angeles crime laboratory<sup>24</sup>

Even in the few cases of mine where the rape kit is tested, I have to prepare my clients to not expect testing results for many months.

—Rape treatment advocate in Los Angeles County<sup>25</sup>

DNA testing can be a powerful investigative tool in rape cases, given its capacity to connect individuals to rape evidence. Testing rape kit evidence can provide law enforcement with a DNA profile to identify an assailant, confirm the suspect's contact with a victim, corroborate the victim's account of the crime, exonerate innocent suspects, and tie crime scene evidence together. The failure to test rape kits can delay and prevent justice in rape cases. In California, timely rape kit testing is especially crucial to realizing justice for rape victims, as California law removes the 10-year statute of limitations for rape cases in which rape kits are tested within two years of the crime and a DNA profile is obtained from the rape kit's evidence.<sup>26</sup>

The rape kit backlog in Los Angeles County comprises two distinct but related elements. The first part of the backlog exists in police evidence storage facilities, involving rape kits booked into evidence but where testing of the kit is not requested by a detective. The second part of the backlog exists in police crime lab facilities where rape kits are submitted for testing, but are awaiting DNA analysis and are not tested in a timely manner. While both the Los Angeles Police Department and the Los Angeles Sheriff's Department have recently announced (in August and November 2008, respectively) that they have revised their policies to eliminate detective discretion and to require that every booked rape kit be submitted to the crime laboratory for testing, it is still important to examine the dynamics of the rape kit backlog both before and after these new policies were put in place, especially given the transitional status of the policies, which have not been fully implemented due to current Police and Sheriff's Departments resource capacities.

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<sup>24</sup> Human Rights Watch interview with Greg Matheson, director, Los Angeles Police Department Crime Laboratory, Los Angeles, CA, May 5, 2008.

<sup>25</sup> Human Rights Watch interview with rape treatment advocate, name withheld, Los Angeles, CA, April 16, 2008.

<sup>26</sup> Cal. Penal Code section 803 g (1), (A)-(B).

As will be discussed in Chapter VI, the majority of untested rape kits in Los Angeles County reside in police evidence storage facilities. But a number of untested rape kits are located at the Police Department and Sheriff's Department crime laboratories, where testing delays hold up investigations and prosecutions.

Through its research, Human Rights Watch has found that:

- the Los Angeles County and City crime labs do not have the capacity to quickly test rape kits submitted for testing by detectives;
- the labs do not have the capacity or the personnel to test every booked rape kit, as will be required if the Police and the Sheriff's Departments implement new policies; and
- rape kit testing, from the time it is requested until the requesting law enforcement officer receives the test results, can take as long as 12 months.

In order to permanently eliminate the rape kit backlog and test every booked rape kit in a timely manner, both city and county crime labs will require a significant increase in DNA analysts, expanded workspace for DNA testing, more efficient DNA testing methods and equipment, and a DNA evidence tracking system. DNA testing of rape kits is a complicated process,<sup>27</sup> but both the county and city crime labs can be more efficient in the way they process this critical evidence.

## The National Problem

There is no doubt that crime labs across the country are inundated with requests for DNA testing. The most recent federal Census of Publicly Funded Crime Laboratories—released in 2008 using data collected in 2005—shows that during 2005 public crime labs saw their DNA backlog double from the beginning to the end of the year, and that public crime labs across the country would need to increase their DNA analyst staff by 73 percent to keep up with DNA testing needs and requests.<sup>28</sup>

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<sup>27</sup> Human Rights Watch observed rape kit testing at both the Los Angeles County and City crime labs. Rape kit testing involves many stages and requires many hours of work over a period of days. The process includes screening the kit to determine whether DNA is present. If DNA is present on an item, technicians will extract the DNA from the sample, isolate the male and female DNA from one another, replicate the male sample, analyze the DNA to create a profile, and compare that profile to another DNA sample (for example, a known suspect's sample or other crime scene evidence).

<sup>28</sup> Matthew R. Durose, Office of Justice Programs, Department of Justice, "Census of Publicly Funded Crime Laboratories, 2005," July 2008, pp. 1-2.



Congress has recognized the problem of rape kit backlogs in crime laboratories. In 2004 Congress passed the Debbie Smith Act as part of the Justice for All Act.<sup>29</sup> The Debbie Smith Act established the Forensic DNA Casework and Backlog Reduction Grant Program, which provides federal funds for state and local law enforcement entities to test DNA evidence.<sup>30</sup> Both the Los Angeles City and County crime labs have been allocated substantial funding from the program, also known as the Forensic DNA Backlog Reduction Program. But it is not clear how much, if any, of the money was used to test rape kits. That the Police and Sheriff's Departments' rape kit backlogs remained constant or grew, despite millions of dollars in Debbie Smith Act funding, illustrates what is wrong with the current structure of the federal grant program to reduce rape kit backlogs in the US.

## How Rape Kit DNA Testing Works

DNA testing has improved exponentially since it was first used in 1989 to convict a defendant in a criminal trial.<sup>31</sup> As DNA testing has evolved, so has the way DNA evidence is collected from the body of a rape survivor.<sup>32</sup>

When a person is raped and reports to the police or hospital, she will be asked by the hospital staff or the police to consent to the collection of a rape kit, a process which can last between four and six hours.<sup>33</sup> Rape kit collection can occur in a hospital emergency room or at a designated rape treatment center.<sup>34</sup> Human Rights Watch observed a simulated collection of a rape kit at the Rape Treatment Center at Santa Monica-UCLA Medical Center, which is the largest rape treatment center in Los Angeles County.<sup>35</sup> After intake and counseling, which includes assessing and treating any critical care needs, the patient is

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<sup>29</sup> "The Justice for All Act," P.L. 108-405, Title II, the Debbie Smith Act, signed into law by President George W. Bush, October 30, 2004. Debbie Smith was a rape victim whose rape kit was affected by a DNA testing backlog in her home state of Virginia. Six years after her rape, her kit was tested and placed into the DNA database system, and matched an offender's profile. See, for example, Congresswoman Carolyn Maloney's DNA Legislation page: <http://maloney.house.gov/> (accessed January 21, 2009). The Debbie Smith Act was reauthorized by Congress in 2008. "The DNA Backlog Grant Program Debbie Smith Act Reauthorization Act," P.L. 110-360, signed into law by President Bush October 20, 2008.

<sup>30</sup> Ibid.

<sup>31</sup> For an overview of DNA testing technology and the criminal justice system, see, for example, David Lazer, ed., *DNA and the Criminal Justice System: The Technology of Justice* (Cambridge, Massachusetts: MIT Press, 2004).

<sup>32</sup> For an overview of how rape kit evidence collection has changed over the years, see, for example, "The Sexual Assault Nurse Examiner-Sexual Assault Response Team" website, <http://www.sane-sart.com> (accessed March 3, 2009).

<sup>33</sup> Human Rights Watch telephone interview with Jennifer Pierce-Week, president, International Association of Forensic Nurses, Arnold, MD, March 23, 2008. For more information on the collection of rape kits, see, for example, "The Sexual Assault Nurse Examiner-Sexual Assault Response Team" website, <http://www.sane-sart.com>.

<sup>34</sup> Ibid.

<sup>35</sup> Human Rights Watch interview and tour with Gail Abarbanel, director, Santa Monica UCLA Rape Treatment Center, Los Angeles, CA, May 6, 2008.

interviewed to obtain a history of the assault. Then, a nurse practitioner conducts the medical and forensic examination. The victim undresses while standing over a large sheet of paper, and anything that falls from the clothing or body that may provide links to a perpetrator or a crime scene (for example, hairs, debris, and carpet or clothing fibers) is collected and placed in the rape kit. A sexual assault nurse examines the victim on a gynecological table with stirrups. The nurse scans the body with an ultraviolet light to find what may be otherwise undetectable semen or saliva that might contain the assailant's DNA. The nurse then swabs every part of the victim's body that the ultraviolet light fluoresces. The victim is examined from "head to toe" to identify any physical injuries sustained during the assault, which can include scratches, bruises, bite marks, ligature marks, and burst blood vessels caused by strangulation. Every visible physical injury is photographed. A magnifying digital camera called a colposcope—which is noninvasive and can photograph inside body cavities without requiring insertion—is placed near the anal, vaginal, and oral cavities to record any lacerations or other injuries inside those areas. The nurse then collects other samples, such as fingernail scrapings, pubic hair combings, and urine and blood, placing each in separate envelopes or tubes. The swabs are labeled and sealed in containers with evidence tape. All of the evidence is then placed in a large white envelope—the rape kit.<sup>36</sup>

In Los Angeles County, a police officer from the Los Angeles Police Department or Los Angeles Sheriff's Department takes the rape kit from the hospital or treatment center and books it into police evidence.<sup>37</sup> Victims may assume or believe the kit is then sent to the crime lab for testing. In reality, many rape kits have remained in police evidence storage facilities years after they were collected and were never tested (see Chapter VI). Even when kits are submitted to the crime lab for testing, it can take many months for the crime lab to get the test results back to the requesting detective. By comparison, the New York City DNA lab, which tests every rape kit booked into evidence by the New York Police Department, generally produces a test result in 30 to 60 days from the time the kit is received at the laboratory.<sup>38</sup> It should also be noted that on the day Human Rights Watch toured the New York City DNA lab, we observed just one rape kit that had been booked into evidence and was waiting to be opened.<sup>39</sup>

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<sup>36</sup> Ibid.

<sup>37</sup> "Los Angeles Sheriff's Department Evidence Collection Protocol," LASD, 2007, unpublished document on file with Human Rights Watch; and "Los Angeles Police Department Evidence Collection Protocol," LAPD, 2007, unpublished document on file with Human Rights Watch.

<sup>38</sup> Human Rights Watch interview with Marie Samples, deputy director, DNA Division, New York City Office of the Medical Examiner's DNA Unit, New York, NY, March 6, 2008.

<sup>39</sup> Human Rights Watch tour of the New York City DNA Crime lab, March 6, 2008.

## Los Angeles Regional Crime Laboratory

In 2007 the Police Department and the Sheriff's Department together opened the Los Angeles Regional Crime Lab (formally named the Hertzberg-Davis Forensic Science Center), a new crime laboratory built to house the Police and Sheriff's Departments' crime labs and to accommodate the growing need for forensic services in Los Angeles County.<sup>40</sup> At the time of the lab's opening, the inadequate space of the Police and the Sheriff's Departments' former laboratory spaces was cited as a cause of DNA testing backlogs, including the rape kit backlog. According to the *Los Angeles Times*, "DNA cases submitted by detectives are backlogged because technicians have room to process only 18 cases a week."<sup>41</sup>

The Los Angeles Regional Crime Lab has been nationally recognized for its "innovative" and "collaborative" approach<sup>42</sup> to combining and sharing "as much as possible."<sup>43</sup> Yet according to interviews with crime lab personnel conducted by Human Rights Watch, the regional crime lab is essentially two crime laboratories located in one building: the Police and the Sheriff function separately from one another. This lack of collaboration may hinder the lab's effectiveness. As one crime lab official told Human Rights Watch, "There is basically an invisible tape that runs down the halls of the building, and the criminalists from [the Police Department] and [the Sheriff's Department] make sure to stay on their side of the lines. We don't work together, and we don't always get along."<sup>44</sup> Officially, crime lab officials from both labs point to collaboration in training DNA analysts, the sharing of testing supplies, and joint efforts to create a DNA Academy for research, training, and development.<sup>45</sup> In this report, we discuss the Sheriff's (County) and Police Departments' crime labs separately, in accordance with how they function in practice.

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<sup>40</sup> On the opening of the crime lab, see Stuart Pfeifer and Patrick McGreevy, "Case of the empty regional crime lab is no mystery," *Los Angeles Times*, May 12, 2007, <http://articles.latimes.com/2007/may/12/local/me-crimelab12> (accessed January 20, 2009). Before the new crime lab facilities opened, the 140 Los Angeles Police Department criminalists employed in 2007 used a workspace built to hold 30 criminalists. *Ibid.*

<sup>41</sup> *Ibid.*

<sup>42</sup> See, for example, Ken Mohr, "The Benefits of Partnership: How multiple agencies are coming together by pooling their resources, talents, and issues in order to create a comprehensive solution for the future," *Forensic Magazine*, August/September 2005, <http://www.forensicmag.com/articles.asp?pid=55> (accessed January 19, 2009).

<sup>43</sup> Human Rights Watch e-mail correspondence with Captain David Walters, Los Angeles Sheriff's Department, March 1, 2009.

<sup>44</sup> Human Rights Watch interview with a Sheriff's Department crime lab official, name withheld, Los Angeles, CA, May 6, 2008.

<sup>45</sup> Human Rights Watch separate interviews with Director Greg Matheson and Captain David Walters, May 5, 2008.

## Los Angeles County

The Los Angeles County crime lab, which is referred to as the Los Angeles Sheriff's Department Scientific Services Bureau, serves the unincorporated areas and cities of Los Angeles County, except for the city of Los Angeles.<sup>46</sup>

### *Untested rape kits*

The Los Angeles Sheriff's Department estimates it has tested 700 rape kits over the past four years,<sup>47</sup> but determining the average length of time it takes the Sheriff's Department to test a rape kit is difficult. Advocates say it may take up to a year to get results on the kits that are tested. As the Los Angeles Sheriff's Department stated in response to a public records request from Human Rights Watch for such data, "[Current evidence tracking systems] are antiquated and are, thus, limited in their ability to track items."<sup>48</sup>

The Sheriff's Department does have plans for "a \$3 million project ... to replace aging evidence tracking systems with a modern, state-of-the-art, integrated property and evidence, laboratory information management system ... [that will] use a single, shared database to track evidence from its collection, through testing and/or storage, all the way until its final disposition. It will also have the ability to track specific items such as sexual assault kits. The system will eventually include the results of all testing conducted on individual evidence items."<sup>49</sup> The Sheriff's Department estimates that it will have this system in place in September 2009.<sup>50</sup>

Prior to the Sheriff's Department's new policy of testing every booked rape kit, rape kit evidence was usually only tested when a detective requested testing and a supervisor in the crime lab agreed that the evidence merited testing. According to the Los Angeles Sheriff's Department, "If the investigator chooses to initiate a request for examination, they contact a supervisor in the Scientific Services Bureau's Biology Section. The facts of the case are discussed, and if both the investigator and supervisor agree, the evidence is accepted for analysis ... as a general rule, only those cases in which the evidence is of probative value are

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<sup>46</sup> Ibid. See also public records request response to Human Rights Watch from Los Angeles Sheriff's Department, July 3, 2008, unpublished document on file with Human Rights Watch.

<sup>47</sup> Los Angeles County Board of Supervisors hearing transcript, December 16, 2008, [http://file.lacounty.gov/bos/transcripts/12-16-08%20Board%20Meeting%20Transcripts%20\(C\).pdf](http://file.lacounty.gov/bos/transcripts/12-16-08%20Board%20Meeting%20Transcripts%20(C).pdf) (accessed March 13, 2009).

<sup>48</sup> Letter from the Sheriff's Department Headquarters to Human Rights Watch regarding public records request, July 3, 2008.

<sup>49</sup> Ibid.

<sup>50</sup> Letter from the Sheriff's Department Headquarters to the Los Angeles County Board of Supervisors, "Inventory and Tracking of Sexual Assault Kits," November 5, 2008, unpublished document on file with Human Rights Watch.

examined. For example, cases wherein the involved party is not in question are typically not processed.”<sup>51</sup>

The previous policy of detective and forensic analyst supervisor discretion was of concern to rape treatment providers and victims’ advocates in Los Angeles County. As one sexual assault nurse examiner commented, “While it is true that DNA evidence is most probative in cases where we need to figure out the identity of the perpetrator, it can also have great value in other kinds of cases. For example, if you test rape kits in cases where the identity of the alleged assailant is known, you can potentially match his DNA to rape kit evidence in other cases. Acquaintance rapists can be serial rapists. I have done a number of sexual assault exams on women who were raped by someone they knew, and given the details they described to me, I was pretty sure it was the same guy who committed each rape. But it is hard to get evidence tested in acquaintance rape cases, so their rape kits just sat there and who knows if I will see another victim of his come in for treatment.”<sup>52</sup> Another nurse examiner told Human Rights Watch about a case where she believed the crime lab talked a detective out of requesting a rape kit for testing. “It was not a stranger rape case, and, according to the detective, the crime lab felt that testing would not help much. I encouraged the detective to continue to press for testing, but he told me that he didn’t want to second-guess the crime lab, and then have it come back to hurt him when he needs the crime lab to test something else for him.”<sup>53</sup>

### **Prospective benefits of cold hit notification in the new evidence tracking system**

The Sheriff’s Department’s planned new evidence tracking system could ensure that cold hit results are passed along from the crime laboratory to multiple law enforcement personnel, including the appropriate investigating officers. Currently, the crime lab only informs the requesting officer of the test result.<sup>54</sup> Human Rights Watch spoke to an investigating officer with the Sheriff’s Department who told us of a case in which he was not notified about a cold hit until weeks after it happened: “Part of the problem was that I was on vacation when the lab got the hit, and since the investigating officer on the case is the only one who gets told about the cold hit, well, I was on vacation and so my partner, who was in charge of the case while I was away, didn’t know there had been this hit, and we sat on it for about three weeks

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<sup>51</sup> Letter from the Sheriff’s Department Headquarters to Human Rights Watch regarding public records request, July 3, 2008.

<sup>52</sup> Human Rights Watch interview with a sexual assault nurse examiner who works in Los Angeles County, name withheld, Los Angeles, CA, May 7, 2008.

<sup>53</sup> Human Rights Watch interview with a sexual assault nurse examiner who works in Los Angeles County, name withheld, Los Angeles, CA, August 11, 2008.

<sup>54</sup> Human Rights Watch interview with Captain David Walters, Los Angeles, CA, May 5, 2008.

before I got back and got the message that we had a hit to a guy in this rape case. It wasn't anybody's fault, it's just we need a better system to make sure cold hits get followed up on as quickly as possible."<sup>55</sup>

New York City eliminated its rape kit backlog. When this was accomplished, New York implemented a simultaneous cold hit notification system. When a DNA profile from a rape kit matches a DNA profile in the offender DNA database, electronic notification is automatically sent to the crime lab, sex crime prosecutors, and sex crime investigators.<sup>56</sup> As an assistant district attorney in Manhattan told Human Rights Watch, "The simultaneous notification gives more than one of us the opportunity to know about and assess the value of the cold hit."<sup>57</sup>

### *Delayed testing*

The Los Angeles Sheriff's Department did not disclose to Human Rights Watch the average time it takes to complete testing on rape kit evidence. Los Angeles County police officers related to Human Rights Watch conversations they have had with the crime lab in which they were told "not to expect any results back for six to nine months."<sup>58</sup>

By contrast, the Rape Treatment Center at Santa Monica-UCLA Medical Center and the California Bureau of Forensic Sciences are partnering in a "Fast Track Forensics" program, with a grant from the California Department of Justice, in which evidence samples in stranger rape cases (specially taken in addition to the usual rape kit collection) are sent to the state crime lab and test results are received in five days.<sup>59</sup> Gail Abarbanel, the director of the center, told Human Rights Watch of the benefits that prompt test results had in one case: "A man broke into a woman's home during the day and raped her. We collected evidence and sent the rape kit to the police crime lab. We also collected additional swabs from the places where we were most likely to find the offender's DNA on the victim. These swabs were 'fast tracked' and sent to the state crime lab for testing. They were analyzed within four days. A

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<sup>55</sup> Human Rights Watch telephone interview with Sheriff's Department investigating officer, name withheld, Los Angeles, CA, August 11, 2008.

<sup>56</sup> Human Rights Watch interview with Lisa Friel, assistant district attorney, Special Victims' Unit, Manhattan District Attorney's Office, New York, NY, July 13, 2008.

<sup>57</sup> Ibid.

<sup>58</sup> Human Rights Watch interview with Sheriff's Department investigators, names withheld, Los Angeles, CA, September 22, 2008.

<sup>59</sup> Human Rights Watch interview with Gail Abarbanel, director, Santa Monica UCLA Rape Treatment Center, Los Angeles, CA, March 12, 2009. The "Fast Track Forensics Program" is a collaboration between rape treatment centers that collect rape kits and the California Department of Justice.

DNA profile was found and uploaded into the offender database. It resulted in a cold hit on a paroled, registered sex offender. The police were notified and, that same day, they arrested him. This kind of turnaround was unheard of before we implemented the Fast Track Forensics grant program. This is a clear example of how rape kit evidence, if utilized, can lead to the arrest of dangerous repeat offenders currently on the street, as well prevent future victimizations. This is what should happen in all sexual assault cases.”<sup>60</sup>

According to Los Angeles County crime lab officials, rape kits requested for testing are placed in a queue and tested in the order they are received.<sup>61</sup> In certain cases, rape kits will be rushed for testing, for example, when the test is necessary to identify the perpetrator, or when a prosecutor needs the test results for a pending trial.<sup>62</sup> However, a Los Angeles County prosecutor told us that she has “had to twice delay trial for a girl raped by her stepfather, because the rape kit test results [were] not done yet after eight months at the lab.”<sup>63</sup>

As of December 2008 the Los Angeles County crime lab had 475 rape kits awaiting testing or transport for storage (meaning some of them may have been tested and were to be sent back to police storage).<sup>64</sup>

Although Human Rights Watch does not have official data on how long it can take to get a requested test on a rape kit completed, we gathered information on individual cases in interviews with county law enforcement and rape treatment providers. Their experiences with testing delays highlight the effect such delays can have on rape investigations:

- 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

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<sup>60</sup> Ibid.

<sup>61</sup> Human Rights Watch interview with Robert Taylor, assistant director, Los Angeles Sheriff’s Department Scientific Services Bureau, Los Angeles, CA, May 5, 2008.

<sup>62</sup> Human Rights Watch interview with Captain David Walters, May 5, 2008.

<sup>63</sup> Human Rights Watch interview with Los Angeles County prosecutor, name withheld, Los Angeles, CA, January 27, 2009.

<sup>64</sup> Letter from the Sheriff’s Department Headquarters to the Los Angeles County Board of Supervisors, “Sexual Assault Kit Audit Status Report,” December 16, 2008, unpublished document on file with Human Rights Watch.

still awaiting testing at the crime lab, and might not be tested for another six months.<sup>65</sup>

- A Los Angeles Sheriff's Department investigator told Human Rights Watch of requesting testing in a 2007 case in which a woman was raped by a man she met at a party. She did not know his name, and could not identify him. When the investigating officer consulted with the Sheriff's Department Scientific Sciences Bureau he was told that if he submitted the kit it could take eight months to test. Discouraged by the long wait, he decided not to submit the kit and to try to find other investigative leads instead. As of January 2009 the case was still unsolved and the rape kit has never been submitted for testing.<sup>66</sup>
- A Los Angeles Sheriff's Department investigator told Human Rights Watch of requesting testing in a case in which a sex worker was raped by a customer. The investigator thought he might be able to link the assailant's DNA obtained in the rape kit from this case to rape kit evidence from other cases involving sex workers. When the investigator consulted with crime lab staff, he felt that they discouraged him from pursuing the testing because they did not think it would have probative value as the identity of the perpetrator was not an issue in the original case, and the kit would have to start at the end of the line and could take months to process. "Because sometimes you gotta know when to use your chits [favors] and when to save them for another case," the investigator did not push the crime lab to take the kit for testing. The investigator dropped the case entirely "because prosecutors might worry about the jury's reaction to a prostitute's rape claim."<sup>67</sup>

### *Present resources*

As of February 2009 the Sheriff's Department DNA unit had twenty-one fully trained DNA examiners, eleven partially trained DNA examiners, five supervisors (four fully trained in DNA), three DNA examiners hired but awaiting training, two lab technicians, and one support staff.<sup>68</sup>

The Los Angeles Sheriff's Department Bureau of Forensic Services has publicly stated that it will require more DNA analysts to deal with the number of untested rape kits currently in its

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<sup>65</sup> Human Rights Watch interview with rape treatment provider in Los Angeles County, name withheld, Los Angeles, CA, March 16, 2008.

<sup>66</sup> Human Rights Watch interviews with Sheriff's Department investigator, name withheld, Los Angeles, CA, April 11, 2008, and January 26, 2009.

<sup>67</sup> Human Rights Watch interview with Sheriff's Department investigator, name withheld, Los Angeles, CA, June 23, 2008.

<sup>68</sup> Human Rights Watch e-mail correspondence with Robert Taylor, assistant director, Los Angeles Sheriff's Department Scientific Services Bureau, Los Angeles, CA, January 21, 2009.



storage facility and to accommodate the Los Angeles Sheriff's Department's revised policy to send every rape kit booked into evidence to the crime lab for testing.<sup>69</sup>

When Human Rights Watch asked the Scientific Services Bureau how many additional DNA analysts were needed to permanently eliminate the rape kit backlog, we were told that the bureau "is still putting together a backlog elimination plan that addresses that issue."<sup>70</sup> According to a crime lab official, "The problem is not going to be space to house these analysts, but it's going to be tough to find the resources for them. We will ask the county for more money, and the state, and the federal government, but we may not get all that we need to hire the analysts we need."<sup>71</sup>

### **Debbie Smith grant money**

A significant amount of money has already been made available to the Los Angeles County crime lab under the Debbie Smith Act (see above). Between 2004 and 2008 the crime lab was awarded \$4.9 million in federal grant funds to test DNA evidence.<sup>72</sup> Members of Congress have framed their support of the Debbie Smith grant program in terms of how it can help reduce rape kit backlogs specifically.<sup>73</sup> But states can use their grants to test any kind of DNA backlog. There is no requirement that any of the money be spent on rape kit testing, and there is no requirement that entities like the Los Angeles Sheriff's Department account for how much, if any, of the grant money was spent on rape kit testing.<sup>74</sup> An employee of the US Department of Justice (USDOJ) responsible for administering the grant program told Human Rights Watch that USDOJ lacks the resources necessary to "oversee the grant program" for "every individual grantee," or "for something as specific as tracking money spent on rape kit testing."<sup>75</sup>

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<sup>69</sup> Letter from the Sheriff's Department Headquarters to the Los Angeles County Board of Supervisors, "Inventory and Tracking of Sexual Assault Kits."

<sup>70</sup> Human Rights Watch e-mail correspondence with Captain David Walters, January 11, 2009.

<sup>71</sup> Human Rights Watch interview with Sheriff's Department crime lab official, name withheld, Los Angeles, CA, November 12, 2008.

<sup>72</sup> Memorandum from the LAPD and LASD to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the Los Angeles Police Department and the Los Angeles County Sheriff's Department, August 21, 2008, unpublished document on file with Human Rights Watch.

<sup>73</sup> See, for example, "The Debbie Smith Act: Congresswoman Maloney Fights to Reform DNA Evidence Collection to Lock Up Sexual Predators," Congresswoman Carolyn Maloney press release, March 4, 2003.

<sup>74</sup> P.L. 108-405, Title II, "The Debbie Smith Act"; for reporting requirements, see President's DNA Initiative, Forensic DNA Backlog Reduction Program, <http://www.dna.gov> (accessed March 3, 2009).

<sup>75</sup> Human Rights Watch interview with Department of Justice employee, name withheld, Washington, DC, July 23, 2008. See also Ben Protess and Joel Rubin, "As Rape Victims Wait, Money for DNA Testing Goes Unused," *Los Angeles Times*, November 9, 2008, <http://www.latimes.com/news/local/la-me-backlog9-2008nov09,0,5306091.story?page=1> (accessed January 22, 2009). A ProPublica investigation determined that of the \$474 million Congress provided to the Forensic DNA Backlog

A report from California Congressman Howard Berman indicates that as of August 2008 the Sheriff's Department had used less than half of the Debbie Smith grant money it had received in the prior four years.<sup>76</sup>

Debbie Smith grant reports from the Sheriff's Department to the Office of Justice Programs obtained by Human Rights Watch do not indicate whether the Sheriff's Department used any of the grant money to test rape kits.<sup>77</sup> When Human Rights Watch asked a Sheriff's Department crime lab official about how the Debbie Smith money was used, he stated that "we have all kinds of DNA backlogs. We are starting to explore DNA testing in property crimes cases. We have many DNA needs beyond rape kit testing."<sup>78</sup>

## City of Los Angeles

The City of Los Angeles crime lab serves the Los Angeles Police Department.

### *Untested rape kits*

Determining the number of rape kits that were sent to the Los Angeles Scientific Services Bureau for DNA testing before the new policy to test every booked rape kit was announced is difficult. Like the Sheriff's Department, the Police Department does not yet have a comprehensive evidence data tracking system that would record such activity.<sup>79</sup>

While the number of booked rape kits that the Police Department received before detective discretion was eliminated is not known to Human Rights Watch, the crime lab currently has testing pending in about 520 sexual assault cases in which detectives had requested DNA analysis.<sup>80</sup>

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Reduction Program from 2004 to 2008, about \$55 million is unaccounted for. *Ibid.*, and Human Rights Watch telephone interview with Ben Protes, ProPublica reporter, Washington, DC, November 7, 2008.

<sup>76</sup> Memorandum from the LAPD and LASD to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the Los Angeles Police Department and the Los Angeles County Sheriff's Department.

<sup>77</sup> Fiscal Year 2004, Fiscal Year 2005, Fiscal Year 2006, Fiscal Year 2007 Forensic Casework DNA Backlog Reduction Program Grant report overview for NIJ, Los Angeles Sheriff's Department, unpublished document on file with Human Rights Watch.

<sup>78</sup> Human Rights Watch interview with Sheriff's Department crime lab official, name withheld, Los Angeles, CA, October 13, 2008.

<sup>79</sup> Human Rights Watch interview with Director Greg Matheson, May 5, 2008.

<sup>80</sup> Joel Rubin and Richard Winton, "Plan to Cut Crime Lab Backlog Unveiled," *Los Angeles Times*, October 29, 2008; Human Rights Watch interview with Assistant Chief Sharon Papa, Los Angeles Police Department, September 21, 2008.

### *Delayed testing*

As far as Human Rights Watch can tell, the Police Department crime lab does not track the average time from receipt of a kit to completion of testing. According to one crime lab official, “This kind of information would require us to go back and look at every piece of paperwork for every kit requested for testing, and then go find the paperwork for when we got the results out to detectives. This is one reason why we need an electronic tracking system, so we could pull that kind of information up easily.”<sup>81</sup> Crime lab officials told Human Rights Watch that if a detective requests “a rush” on a rape kit, the lab could have test results within five days, “but that would mean every single DNA analyst dropping everything they are working on to get those test results out.”<sup>82</sup> Greg Matheson, Los Angeles Police Criminalistics Lab director, told Human Rights Watch, “Ideally, we want to see a 60-day turnaround on rape kit evidence, but we are not there yet.”<sup>83</sup>

Human Rights Watch spoke with Police Department investigating officers and rape treatment providers, and sexual assault nurse examiners who work with the Police Department, to get a sense of the length and nature of testing delays and the effect they have on rape cases:

- 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 he still had not received test results. Asked whether 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.”<sup>84</sup>
- 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 rape 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

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<sup>81</sup> Human Rights Watch interview with Police Department crime lab official, name withheld, Los Angeles, CA, September 4, 2008.

<sup>82</sup> *Ibid.*

<sup>83</sup> Human Rights Watch interview with Director Greg Matheson, May 5, 2008.

<sup>84</sup> Human Rights Watch interview with Police Department officer, name withheld, Los Angeles, CA, September 5, 2008.

happened, she would have been able to cooperate. But now she just wants to put it behind her.”<sup>85</sup>

- A sexual assault nurse examiner told Human Rights Watch that she has made calls to crime lab personnel to check on the status of a submitted rape kit. “When I inquire about stranger rape cases, they can usually give me a testing timeframe of a few months, but if I am inquiring about an acquaintance rape case, it is a very low priority even if it’s someone we think may be a serial acquaintance rapist, and there have been times when they can’t even estimate when the kit will be tested because they can’t give it priority.”<sup>86</sup>

### *Present resources*

According to one crime lab official, “We simply don’t have the resources to meet the testing demands of our police department.”<sup>87</sup> Another remarked, “We are helpless to test this backlog on our own. We cannot do it without more positions, and without outsourcing.”<sup>88</sup>

The crime lab currently has funding for 47 DNA analysts; of those, 31 are fully trained and 10 are in the process of being hired.<sup>89</sup> The Police Department’s Scientific Investigation Division estimates that it will need at least 22 additional DNA analysts<sup>90</sup> to deal with the number of untested rape kits in storage and to accommodate the Police Department’s revised policy to send every rape kit booked into police evidence storage to the crime lab for testing.<sup>91</sup> Police Crime Lab Commander Yvette Sanchez-Owens told Human Rights Watch that a fully trained criminalist can screen (check for the presence of DNA in) 72 rape kits a year, or perform a full DNA profiling on 60 cases per year.<sup>92</sup>

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<sup>85</sup> Human Rights Watch interview with a rape victim advocate who works in Los Angeles, name withheld, Los Angeles, CA, September 10, 2008.

<sup>86</sup> Human Rights Watch interview with a sexual assault nurse examiner who performs rape kit collection examinations for rape victims in Los Angeles, name withheld, Los Angeles, CA, May 7, 2008.

<sup>87</sup> Human Rights Watch interview with Police Department crime lab official, name withheld, Los Angeles, CA, August 16, 2008.

<sup>88</sup> Human Rights Watch interview with Police Department crime lab official, name withheld, Los Angeles, CA, July 11, 2008.

<sup>89</sup> Human Rights Watch e-mail correspondence with Charlie Beck, deputy chief, Los Angeles Police Department, January 22, 2009.

<sup>90</sup> Human Rights Watch e-mail correspondence with Deputy Chief Charlie Beck, March 12, 2009.

<sup>91</sup> Internal memorandum, Los Angeles Police Department, “Revised Evidence Collection Policy in Sexual Assault Cases,” August 1, 2008, unpublished document on file with Human Rights Watch.

<sup>92</sup> Human Rights Watch interview with Yvette Sanchez-Owens, LAPD crime lab commander, Los Angeles, CA, September 19, 2008.

Hiring an extra 26 DNA crime lab personnel will require additional funding of nearly \$1.6 million a year.<sup>93</sup> While the City Council recently provided funding for hiring 18 DNA crime lab staff,<sup>94</sup> there is uncertainty as to whether it will be able or willing to provide additional funding in its 2009-2010 budget. Laura Chick, the city controller of Los Angeles and a former city councilmember, spoke to Human Rights Watch about the City Council's hesitation to provide more funding to the Police: "[The Police] already receive more than 50 percent of the entire city's budget. The City Council may say, 'If you want this funding so badly, find it in your \$1.5 billion budget. Don't ask us for more money. We already give you enough.'"<sup>95</sup>

For the Los Angeles Police Department, finding the money necessary to fund these crime lab positions would require, in the words of Assistant Chief Sharon Papa, "difficult choices.... It could be a choice between giving our officers adequate radio equipment or adding more crime lab personnel. Both are important, and we need money for both things, and we don't have money for both things in our budget, which is why we need more support from City Council for these crime lab positions."<sup>96</sup>

Nevertheless, in addition to seeking additional City Council funding for crime lab positions the Los Angeles Police Department has pursued two other funding avenues—raising private money to outsource rape kits not previously requested for testing, and applying for Debbie Smith Act money.

### **Private donations for outsourcing**

In the summer of 2008 the Los Angeles Police Foundation, a non-profit fundraising arm of the Los Angeles Police Department, announced an ongoing fundraising initiative to raise private money to outsource rape kits to private laboratories for testing.<sup>97</sup> To date, the Foundation has raised almost \$1.7 million. As of January 2009, \$254,000 of the money has been used to outsource untested rape kits.<sup>98</sup> Los Angeles City Councilmember Jack Weiss donated \$350,000 from his city council office fund to the Police Department for DNA testing;

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<sup>93</sup> Ibid.

<sup>94</sup> Human Rights Watch interview with Los Angeles City Council staff member, name withheld, Los Angeles, CA, October 11, 2008.

<sup>95</sup> Human Rights Watch interview with Laura Chick, city controller of Los Angeles, Los Angeles, CA, October 9, 2008.

<sup>96</sup> Human Rights Watch interview with Assistant Chief Sharon Papa, Los Angeles Police Department, Los Angeles, CA, May 5, 2008.

<sup>97</sup> See the Los Angeles Police Foundation DNA Backlog Project, <http://ladnahelp.org/index.html> (accessed January 23, 2009).

<sup>98</sup> Human Rights Watch e-mail correspondence with Deputy Chief Charlie Beck, January 26, 2009.

as of January 2009, 99 kits have been outsourced to private crime labs for testing using Councilmember Weiss's donation.<sup>99</sup>

These private donations allow only for rape kit testing to be outsourced. One limitation to the use of private donations is that, under city regulations, the Los Angeles crime lab cannot use a non-permanent funding stream to hire government staff.<sup>100</sup>

### **Debbie Smith grant money**

An October 2008 audit of the Los Angeles city crime lab's use of federal Debbie Smith grant money revealed that the number of untested 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.<sup>101</sup> The audit also found that as a penalty for the Police Department's "poor planning and oversight" of the grant awards, the federal government reduced the fiscal year 2008 grant to Los Angeles by more than half, from an anticipated \$1 million to \$500,000.<sup>102</sup> The report also found that the Police Department has never made a formal budget request to the City Council to deal with the rape kit backlog.<sup>103</sup>

Human Rights Watch requested this audit report from Controller Chick after we found inconsistencies in the Police Department's public comments on its use of the backlog reduction funds and in the reports it submitted to the federal government on the use of the funds.<sup>104</sup> In April 2008, in response to a public records request, Human Rights Watch received federal DNA funding grant reports revealing 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>105</sup> During this time, the backlog of untested rape kits with the Police Department continued to grow. (Despite this, the US Department of Justice

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<sup>99</sup> Human Rights Watch telephone interview with Los Angeles City Council staff member, name withheld, Los Angeles, CA, January 26, 2009.

<sup>100</sup> Human Rights Watch interview with Councilmember Jack Weiss, Los Angeles City Council, Los Angeles, CA, May 5, 2008; Human Rights Watch interview with Councilmember Eric Garcetti, Los Angeles City Council, Los Angeles, CA, May 5, 2008; and Human Rights Watch Interview with Director Greg Matheson, May 5, 2008.

<sup>101</sup> City of Los Angeles Office of the Controller, "Audit of Forensic DNA Backlog Reduction Grant Program Awards," October 20, 2008, [http://www.lacity.org/ctr/audits/DNA\\_FinalReport\\_102008.pdf](http://www.lacity.org/ctr/audits/DNA_FinalReport_102008.pdf) (accessed January 25, 2009).

<sup>102</sup> *Ibid.*, p. 7.

<sup>103</sup> *Ibid.*

<sup>104</sup> Human Rights Watch telephone request to Controller Laura Chick, July 9, 2008.

<sup>105</sup> Fiscal Year 2004, Fiscal Year 2005, Fiscal Year 2006, and Fiscal Year 2007 Forensic Casework DNA Backlog Reduction Program Grant report overview for NIJ, Los Angeles Police Department, unpublished document on file with Human Rights Watch. See also Memorandum from the LAPD and LASD to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the Los Angeles Police Department and the Los Angeles County Sheriff's Department.

continued to award the Police Department the full funding it was eligible for under the grant program until 2008, when, as noted, it reduced its award by half.)<sup>106</sup>

When Human Rights Watch presented the grant reports to Police Department officials, they told us that “an accounting error” made it appear that the federal grant money had not been spent by the end of the reporting period, when in fact it had.<sup>107</sup> After the release of Controller’s Chick’s audit report, the Police Department acknowledged that as of October 2008 it still had \$2 million in unspent Debbie Smith funds.<sup>108</sup>

For its part, the US Department of Justice has said that it is aware of the Police Department’s problem and is “going to do what we can to assist them directly.”<sup>109</sup>

### **Limitations to outsourcing**

In a meeting with Human Rights Watch in May 2008, when asked why the Police Department had not yet outsourced all of its untested rape kits in police storage facilities, Assistant Chief Sharon Papa, then in charge of overseeing the department’s response to the backlog, told us, “We would like to outsource more kits, but private crime labs have told us they are at capacity to test kits.”<sup>110</sup> In August 2008, after an op-ed by Human Rights Watch on the rape kit backlog appeared in the *Los Angeles Times*, we were contacted by a principal at a private crime laboratory asking how that lab could offer its services to the Police Department.<sup>111</sup> Human Rights Watch gave the individual the contact information of the Police Department crime lab officials. In October 2008 Controller Laura Chick, in conducting her audit of the Police Department’s use of federal funds to test rape kits, was told by the Police Department that it was not outsourcing more rape kits because it could not find a private crime lab that had the capacity to test the number of kits in the backlog.<sup>112</sup> Human Rights Watch then e-mailed the private lab that had contacted us in August to find out whether it had been able to connect with the Police Department with its offer to test the kits in the backlog. The private lab informed Human Rights Watch that three phone calls placed to Police

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<sup>106</sup> Ibid.

<sup>107</sup> Human Rights Watch interview with Assistant Chief Sharon Papa, May 5, 2008.

<sup>108</sup> Proffess and Rubin, “As Rape Victims Wait, Money for DNA Testing Goes Unused,” *Los Angeles Times*.

<sup>109</sup> Ibid.

<sup>110</sup> Human Rights Watch interview with Assistant Chief Sharon Papa, May 5, 2008.

<sup>111</sup> Human Rights Watch e-mail correspondence with business manager of private crime laboratory in Los Angeles, name withheld, Los Angeles, CA, August 2, 2008.

<sup>112</sup> Human Rights Watch interview with Controller Laura Chick, November 12, 2008.

Department crime lab officials since August regarding the offer had gone unreturned.<sup>113</sup> In December 2008 the private lab official contacted Human Rights Watch to inform us that the Police Department had contacted him and told him that the Police Department “currently has no need for additional private lab contractors.”<sup>114</sup>

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<sup>113</sup> Human Rights Watch e-mail correspondence with business manager of private crime laboratory in Los Angeles, name withheld, Los Angeles, CA, November 12, 2008.

<sup>114</sup> E-mail correspondence between private crime lab official and Los Angeles Police Department crime lab official, December 4, 2008, unpublished document on file with Human Rights Watch.



## VI. Untested Rape Kits in Police Storage

It wasn't until we started to ask how many are in police storage that never made it to the crime lab in the first place, that we realized how many kits never got tested.

—Sexual assault nurse examiner who serves Los Angeles County<sup>115</sup>

I guess I would not be surprised if my rape kit was still not tested. The police officer who took my statement didn't seem to take my story that seriously. He waited hours to take me to a hospital to get a rape kit taken, and along the way he stopped to run personal errands. If it was up to this police officer to decide whether my kit is worth testing, I am betting that he decided my kit wasn't worth his time.

—Rape survivor in Los Angeles<sup>116</sup>

For years rape treatment advocates in Los Angeles County sensed that many rape kits law enforcement agents were collecting from victims were not being tested. And we now know that nearly 1,000 kits are currently in the Police and Sheriff's Departments' crime labs awaiting testing (as Chapter V describes). While this number is significant, it was not until rape kit advocates prevailed upon the Police and Sheriff's Departments to count the number of untested kits in police storage facilities—kits that had never been submitted for testing—that the enormous scope of the rape kit backlog in Los Angeles was disclosed.

Los Angeles County has the largest known rape kit backlog in the United States. As of January-February 2009 there were at least 12,669 untested rape kits in Los Angeles County's 88 cities: at least 5,193 in the Los Angeles Police Department storage facility, 4,727 in the Los Angeles Sheriff's Department 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 Department's crime lab for rape kit testing).

The Police Department first released to the public a count of untested rape kits in police storage in 2007,<sup>117</sup> and the figure of 5,193 is from a detailed audit in February 2009. Until

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<sup>115</sup> Human Rights Watch telephone interview with sexual assault nurse examiner, name withheld, Los Angeles, CA, May 7, 2008.

<sup>116</sup> Human Rights Watch interview with rape survivor, name withheld, Los Angeles, CA, February 11, 2009.

<sup>117</sup> Human Rights Watch interview with Councilmember Jack Weiss, May 6, 2008.

November 2008 the Sheriff's Department had not counted the untested rape kits in its storage facilities. As of March 2009, due to pressure from Human Rights Watch and other advocacy groups, it has counted and catalogued its untested rape kits in more detail (to Human Rights Watch's knowledge) than any other police department in the US.

Still, the large number of untested rape kits in Los Angeles County, and the delays between when the Police and the Sheriff's Departments were aware 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 the Sheriff's Departments' current responses to their rape kit backlog are part of a comprehensive, specific plan that is made known to the public and subject to monitoring and oversight.

## History

Rape treatment advocates and providers have long asked the Sheriff's and the Police Departments to count the number of untested kits in their storage facilities.<sup>118</sup> As one rape treatment provider in Los Angeles told Human Rights Watch, "We would tell [the police] that, based on the fact that most of us—the victims, the nurses who administered the rape kit collection, the advocates—never heard back from the police about test results, we thought there were a lot of rape kits that were never submitted for testing at the crime lab. But when we would ask them to go into the police storage to count the kits, the Police and the Sheriff would keep sending our queries to the crime lab, that would give us the number of untested kits in the crime lab."<sup>119</sup>

### *Los Angeles Police Department*

Although the untested rape kits in the Los Angeles Police Department storage facilities date back to at least the early 1990s,<sup>120</sup> the problem of untested rape kits did not become public until 2002, when the *Los Angeles Times* reported that the Police Department had destroyed 1,100 untested rape kits.<sup>121</sup> The story explained that the Police Department had destroyed the

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<sup>118</sup> Human Rights Watch telephone interviews with various sexual violence experts in Los Angeles put the date they first inquired about counting untested kits in police storage at around 2002, when news broke that the Los Angeles Police Department had destroyed untested rape kits. See also Tina Daunt and Steve Berry, "LAPD says evidence destroyed," *Los Angeles Times*, July 30, 2002, <http://articles.latimes.com/2002/jul/30/local/me-dna30> (accessed January 25, 2009).

<sup>119</sup> Human Rights Watch interview with rape treatment provider, name withheld, Los Angeles, CA, May 16, 2008.

<sup>120</sup> City of Los Angeles Office of the Controller, "Audit of Forensic DNA Backlog Reduction Grant Program Awards," [http://www.lacity.org/ctr/audits/DNA\\_FinalReport\\_102008.pdf](http://www.lacity.org/ctr/audits/DNA_FinalReport_102008.pdf) (accessed March 13, 2009), p. 8.

<sup>121</sup> Daunt and Berry, "LAPD Says Evidence Destroyed," *Los Angeles Times*. Assistant Chief Sharon Papa confirmed the details of the *Times* story in a May 5, 2008 interview with Human Rights Watch.

kits that were more than six years old because it mistakenly believed the statute of limitations for rape in California was six rather than ten years.<sup>122</sup>

“It was when we heard that untested rape kits from police storage were destroyed that we realized that untested rape kits had existed in police storage, that not every booked rape kit gets tested,” said Los Angeles City Councilmember Jack Weiss, the first and for five years only Councilmember involved in the issue of eliminating the rape kit backlog.<sup>123</sup> As a result of this news Councilmember Weiss proposed and the City Council passed an ordinance that prohibits the Police Department from destroying untested rape kits.<sup>124</sup>

From 2002 to 2008 Councilmember Weiss pushed for higher staffing levels in the DNA unit of the Police Department crime laboratory, with mixed results. Some positions were approved, but, in the words of a city council staffer, “It was slow going: Progress was made in fits and starts, in part because we had trouble getting the Police and the mayor to request more funding for DNA positions in the budget.”<sup>125</sup> During this time period, the Police Department received several million dollars in funding from the City Council<sup>126</sup> and (as noted in the previous chapter) \$4 million in funding from the federal government to reduce its DNA backlog,<sup>127</sup> but it is unclear how much, if any, of the money was used for rape kit testing. Finally, in May 2008 the City Council authorized the crime lab to hire 16 additional DNA analysts, but those positions were not funded until November 2008.<sup>128</sup>

Although news of the destruction of untested rape kits in 2002 made it clear that, in Councilmember Weiss’s words, “the rape kit backlog was not just what was in the crime lab queue waiting for testing, but also what was in police storage,” it took pressure from rape treatment providers over the next five years to convince the Police Department to release to the public a count of untested rape kits in police storage.<sup>129</sup> As one rape treatment advocate

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<sup>122</sup> Ibid.

<sup>123</sup> Human Rights Watch interview with Councilmember Jack Weiss, Los Angeles City Council, Los Angeles, CA, May 5, 2008.

<sup>124</sup> Human Rights Watch interview with Los Angeles City Council staff member, January 26, 2009.

<sup>125</sup> Human Rights Watch interview with Los Angeles City Council staff member, name withheld, Los Angeles, CA, May 6, 2008.

<sup>126</sup> Ibid.

<sup>127</sup> Memorandum from the LAPD and LASD to Congressman Howard Berman regarding his request for information on DNA, Forensic, and Cold Case grants awarded to the Los Angeles Police Department and the Los Angeles County Sheriff’s Department.

<sup>128</sup> Human Rights Watch interview with Los Angeles City Council staff member, January 26, 2009.

<sup>129</sup> Human Rights Watch interview with Councilmember Jack Weiss, May 6, 2008.

told Human Rights Watch, “They told us they didn’t think there would be much in there, but I felt like they counted those kits to placate us.”<sup>130</sup>

The number of untested rape kits that the Police Department has said are in police storage has changed a number of times over the past two years. In its first public disclosure, in January 2007, the Los Angeles Police Department announced that it had found approximately 5,000 untested rape kits in its storage units.<sup>131</sup> That number grew to 7,300 by July of 2008,<sup>132</sup> but with the February 2009 audit putting the number of untested rape kits in the region of 5,193, the Police Department contends that the 7,300 number represented an inaccurate count on its part.<sup>133</sup>

### *Los Angeles Sheriff’s Department*

After 2002, rape treatment providers had also persistently requested that the Los Angeles Sheriff’s Department count the number of kits in its storage facility. As one rape treatment provider told Human Rights Watch, “They would tell us they were certain there were no untested rape kits in their police storage facility, and would send us to their lab people to talk about any backlog questions we had.”<sup>134</sup> In May 2008 Human Rights Watch sent a public records request to the Los Angeles Sheriff’s Department requesting information on the number of untested rape kits in both its crime lab and storage facilities. In its July 2008 response to our request the Los Angeles Sheriff’s Department indicated that it did not have a count of the untested rape kits in storage, and that to produce such a count would be a “prohibitively time-consuming process to hand search these large evidence storage facilities.”<sup>135</sup>

Human Rights Watch contacted the Los Angeles County Board of Supervisors and requested that the Board ask the Sheriff’s Department for a count of untested rape kits in storage,<sup>136</sup>

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<sup>130</sup> Human Rights Watch interview with rape treatment advocate, name withheld, Los Angeles, CA, August 4, 2008.

<sup>131</sup> Henry Weinstein, “Slow Pace of DNA Processing Examined,” *Los Angeles Times*, January 11, 2007, <http://articles.latimes.com/2007/jan/11/local/me-evidence11> (accessed January 26, 2009).

<sup>132</sup> Report from the Los Angeles Police Department to the Los Angeles City Council Public Safety Committee, unpublished document on file with Human Rights Watch, July 2008.

<sup>133</sup> Report from the Los Angeles Police Department to the Los Angeles City Council Public Safety Committee, unpublished document on file with Human Rights Watch, January 2009.

<sup>134</sup> Human Rights Watch interview with rape treatment provider, name withheld, Los Angeles, CA, August 11, 2008.

<sup>135</sup> Letter from Los Angeles Sheriff’s Department to Human Rights Watch regarding public records request, July 3, 2008.

<sup>136</sup> Human Rights Watch telephone interview with Joel Sappell, Los Angeles County Board of Supervisors Chief of Policy, Los Angeles, CA, September 18, 2008.

which the Board did at its October 2008 meeting.<sup>137</sup> Supervisor Zev Yaroslavsky noted at that meeting, “The [Los Angeles Police Department] disputed the fact that they had a backlog of kits. They finally came to [their senses]—everybody had the understanding that they had backlogs. I have asked the same question of our Sheriff’s Department, and so far you have indicated, the Sheriff’s Department indicated that there is a really small number of untested kits.”<sup>138</sup> At the meeting, the Sheriff’s Department responded to Supervisor Yaroslavsky’s remarks by indicating that it had 20 untested kits in storage, but as the supervisor noted, “The way I understand it [according to your public records request response to Human Rights Watch], the way you guys have organized [rape kit] evidence is that the stuff ... is buried ... and it’s almost impossible to determine—that you couldn’t answer [to Human Rights Watch] the question of how much the backlog was, you would have to go through every case manually. In other correspondence you guys have said you only have a backlog of 20 in one unit and none that you are aware of in the other unit. And those two responses are contradictory.”<sup>139</sup> Robert Taylor, assistant director of the Sheriff’s crime lab, said at the meeting, “If rape kits are not brought into the lab, we do not know they are out there.”<sup>140</sup> Crime lab officials added, “What we call a backlog is the number of cases that have been requested to have DNA evidence or DNA testing done.”<sup>141</sup>

Also at the October 2008 meeting, the Sheriff’s Department revealed that in 2002 it received a state grant to test rape kits.<sup>142</sup> After “scouring” the Sheriff’s Department’s storage facility and contacting independent police departments in Los Angeles County for which the Sheriff’s Department’s crime lab provides rape kit testing services, the Sheriff’s Department reported they tested 980 rape kits.<sup>143</sup> This “scouring” led the Sheriff’s Department to be “fairly comfortable that as of 2002, we are fairly caught up, so to speak in terms of sexual assault kits.”<sup>144</sup> The Sheriff’s Department confirmed that since 2002, however, it had not gone through the storage facility to count rape kits.<sup>145</sup>

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<sup>137</sup> Los Angeles County Board of Supervisors hearing transcript, October 7, 2008, [http://file.lacounty.gov/bos/transcripts/10-07-08%20Board%20Meeting%20Transcript%20\(C\).pdf](http://file.lacounty.gov/bos/transcripts/10-07-08%20Board%20Meeting%20Transcript%20(C).pdf) (accessed January 27, 2009), p. 98.

<sup>138</sup> *Ibid.*

<sup>139</sup> *Ibid.*, p. 101.

<sup>140</sup> *Ibid.*, p. 107.

<sup>141</sup> *Ibid.*

<sup>142</sup> *Ibid.*, p. 120.

<sup>143</sup> *Ibid.*

<sup>144</sup> *Ibid.*

<sup>145</sup> *Ibid.*, p. 127.

By the November 2008 Board of Supervisors meeting, the Sheriff's Department had counted the rape kits in its main storage facility and found 5,635 kits, but said that "many of the kits, we think" had been tested but sent back to the facility for storage.<sup>146</sup> At the meeting, the Sheriff's Department announced a "three phase" plan to determine the nature and scope of the backlog. Phase I was a count of every sexual assault kit in the Sheriff's Department's storage facility, which had already been completed.<sup>147</sup> The Sheriff's Department also announced a new policy to test every rape kit booked into police storage. It said that the policy further required every booked rape kit to be sent to the crime lab.

However, the written document was a memo, not an official policy, and although the memo stated every rape kit should go to the crime lab, it did not explicitly require the crime lab to test every kit it received.<sup>148</sup> It also did not establish a system for prioritizing the processing of the kits sent to the lab. When Human Rights Watch raised concerns about this omission, we were told, "It's implied that we will test the kits. Why else would we have everyone send them to us?"<sup>149</sup>

Phase II was a count of how many rape kits in Sheriff's Department storage have not been tested.<sup>150</sup> At the December Board of Supervisors meeting, the Sheriff's Department revealed that at least 4,727 kits in storage had not been tested.<sup>151</sup> At that meeting the Sheriff's Department announced that Phase III of its plan involved, for each untested rape kit, going through the file of the criminal case connected to the kit to determine the nature and investigative status of the case.<sup>152</sup> By the end of January 2009 it had gathered status information on 70 percent of the cases in question (see below).

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<sup>146</sup> Los Angeles County Board of Supervisors hearing transcript, November 12, 2008, [http://file.lacounty.gov/bos/transcripts/11-12-08%20Board%20Meeting%20Transcripts%20\(C\).pdf](http://file.lacounty.gov/bos/transcripts/11-12-08%20Board%20Meeting%20Transcripts%20(C).pdf) (accessed January 27, 2009), p. 76. The Sheriff's Department has a directive requiring officers to notify rape victims of the status of their rape kit testing. See, "Los Angeles Sheriff's Department Field Operations Directive 05-07, Sexual Assault Victims' Bill of Rights" (the "Directive"), unpublished document on file with Human Rights Watch. The Sheriff's Department is currently conducting an audit to determine compliance with the Directive, and is also in the process of revising the Directive to require an annual review of compliance at all the Sheriff's Department's stations. Human Rights Watch e-mail correspondence with Captain David Walters, March 1, 2009.

<sup>147</sup> Los Angeles County Board of Supervisors hearing transcript, November 12, 2008, p. 76.

<sup>148</sup> Ibid.

<sup>149</sup> Human Rights Watch interview with Commander Earl Shields, Los Angeles Sheriff's Department, Los Angeles, CA, November 12, 2008.

<sup>150</sup> Los Angeles County Board of Supervisors hearing transcript, November 12, 2008, p. 88.

<sup>151</sup> Los Angeles County Board of Supervisors meeting transcript, December 16, 2008, p. 112.

<sup>152</sup> Ibid.

## Current Nature and Scope of the Rape Kit in Storage Backlog

Since Human Rights Watch began researching the rape kit backlog in Los Angeles County and the City of Los Angeles, the dynamics and reports of the scope of the problem have constantly shifted in both the Sheriff's and Police Departments. In a nine-month period, the Police Department's declared backlog expanded and then contracted, the City Council funded additional crime lab positions, the Police Department replaced the chief deputy in charge of eliminating the backlog,<sup>153</sup> the controller of Los Angeles audited the Police Department's use of federal funds, the federal government penalized the Police Department for not using its allocated federal funds by reducing its fiscal year 2009 grants by \$500,000, and Los Angeles Police Chief William Bratton announced the formation of a task force to eliminate the rape kit backlog.<sup>154</sup>

Given these shifting dynamics, Human Rights Watch acknowledges that some information in this section may be outdated by the time this report is published. Still, the information below represents, to the best of our knowledge, the status of the rape kit in storage backlogs in Los Angeles County as of February 2009.

### *Los Angeles Police Department*

In February 2009, the Los Angeles Police Department announced the results of the audit of its untested rape kits in storage facilities.<sup>155</sup> Of the 53,368 items of evidence in Police freezers related to all types of cases, 11,077 were Sexual Assault Evidence Kits.<sup>156</sup> Since a single "case" or victim can have more than one kit, there were 9,911 actual sexual assault cases. Of these 9,911 cases, the associated kits in 4,718 cases had already been tested. This leaves a total of 5,193 cases with untested kits.<sup>157</sup> Of these 5,193, there are 770 sexual assault cases that are ineligible for input into the DNA database, because the investigating detective determined that no crime actually occurred.<sup>158</sup> Subtracting these 770 ineligible cases leaves 4,423 untested cases eligible for the FBI's CODIS (Combined DNA Index System)

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<sup>153</sup> Human Rights Watch interview with Anthony Pacheco, president, Los Angeles Police Commission, Los Angeles, CA, November 11, 2008.

<sup>154</sup> Richard Winton, "200 sex assault cases pass prosecution deadline before LAPD tested DNA kits," Los Angeles Times, October 21, 2008, <http://articles.latimes.com/2008/oct/21/local/me-dna21> (accessed March 13, 2009).

<sup>155</sup> "LAPD Progress Report on Sexual Assault Evidence Kit Backlog," Los Angeles Police Department News Release, February 9, 2009. Between October 2008 and February 2009, 50 LAPD detectives dedicated a combined 2,000 hours to counting the kits in police storage facilities. *Ibid.*

<sup>156</sup> Human Rights Watch attendance, Los Angeles Police Department task force meeting, February 12, 2009.

<sup>157</sup> *Ibid.*

<sup>158</sup> *Ibid.*

database;<sup>159</sup> the Police Department has determined this number to be its “true backlog.”<sup>160</sup> Human Rights Watch considers any untested rape kit to constitute part of a backlog.

Of the Police Department’s untested kits, 403 belonged to cases where no suspects were connected to the cases,<sup>161</sup> while 188 untested kits belonged to rape cases that were older than 10 years, thus past the 10-year statute of limitations. The Police Department has not yet revealed the number of untested kits in its storage that are older than two years (as already noted, testing within two years and obtaining a DNA profile lifts the statute of limitations), or the number of stranger rape kits that are older than 10 years.<sup>162</sup> As 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.”<sup>163</sup>

The Police Department reports that its next step is to increase its outsource testing of rape kits to private crime labs across the country, for the purpose of reducing the backlog to zero by 2013.<sup>164</sup> This increase in outsourcing started in January 2009, with 490 kits sent to private laboratories.<sup>165</sup>

The Police Department has stated that the 4,423 cases that can be entered into the CODIS database, as well as all future cases, will be tested. A new evidence tracking database will, according to the Police Department, “ensure that all sexual assault victims are notified as required, and that no untested cases are allowed to exceed the statute of limitations.”<sup>166</sup>

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<sup>159</sup> The Combined DNA Index System (CODIS), the FBI’s national offender database with over 6.5 million entries, allows state and local authorities to electronically share and compare all DNA profiles available at local, state, and national levels for individuals convicted of crimes, unsolved crime scene evidence, and missing persons. Although DNA evidence is inarguably beneficial to criminal investigations, the retention of DNA profiles raises issues about individuals’ privacy and rights. DNA evidence can be erroneously matched, and samples can be cross-contaminated, mislabeled, or misinterpreted. With the passing of Proposition 69, the California DNA database now retains samples from all adults and juveniles convicted of a felony, as well as all adults arrested for any felony. Some believe that this undermines the “innocent until proved guilty” presumption of the criminal justice system and violates the privacy rights of individuals not yet convicted of a crime. Civil rights groups have also expressed concerns that the database is likely to disproportionately contain the DNA profiles of young African American and Latino men, who are disproportionately represented in the criminal justice system. Tania Simoncelli and Barry Steinhardt, “California’s Proposition 69: A Dangerous Precedent for Criminal DNA Databases,” *The Journal of Law, Medicine, and Ethics*, Volume 3, Number 2, Summer 2005, p. 286.

<sup>160</sup> Human Rights Watch attendance, Los Angeles Police Department task force meeting, February 12, 2009.

<sup>161</sup> *Ibid.*

<sup>162</sup> *Ibid.*

<sup>163</sup> Human Rights Watch interview with Deputy Chief Charlie Beck, Los Angeles, CA, February 12, 2009.

<sup>164</sup> *Ibid.*

<sup>165</sup> *Ibid.*

<sup>166</sup> *Ibid.*



### *Los Angeles Sheriff's Department*

In January 2009 the Sheriff's Department, as part of Phase III of its assessment of the nature and scope of its rape kit backlog, reported that it had been able to gather case status information on approximately 3,313 of the 4,727 untested kits in its storage facility.<sup>167</sup>

Prior to the cataloging of the untested rape kits a Sheriff's Department official told Human Rights Watch, "There should not be any cases of unidentified suspects that have not been tested. That is what we are hopeful we'll find. We are hopeful there will be zero."<sup>168</sup> In fact, of the 3,313 kits catalogued, 25 percent (815) belonged to cases in which the suspect was not known to the rape victim.<sup>169</sup> In addition, 311 of the 3,313 kits are beyond California's 10-year statute of limitations for rape; 106 are within six months of being 10 years old; and 261 kits are within six months of being two years old.<sup>170</sup>

Of the 311 kits that are more than 10 years old, 51 are from stranger rape cases. Of the 261 kits that are approaching the two-year deadline, 66 are from stranger rape cases.<sup>171</sup>

For crime lab officials interviewed by Human Rights Watch after the release of these numbers, the results seemed sobering. "We wanted to believe—we did believe—that we would not find untested kits involving stranger rapes, and we would not find kits that were past the 10-year mark. We thought we were testing every kit out there that needed to be tested, and we were wrong. Well, this is why we needed to make it the policy to test every booked rape kit."<sup>172</sup>

### *Cities with independent police departments*

Excluding Los Angeles, there are 47 cities in Los Angeles County that operate independent police departments.<sup>173</sup> Human Rights Watch's research reveals that at least 2,749 untested rape kits are sitting in their police storage facilities. This number is certainly an underestimate of the problem, given that of the cities that responded to our public records

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<sup>167</sup> Letter from the Los Angeles Sheriff's Department to the Board of Supervisors regarding sexual assault kits, January 27, 2009, unpublished document on file with Human Rights Watch.

<sup>168</sup> Human Rights Watch interview with crime lab official, Los Angeles Sheriff's Department, name withheld, Los Angeles, CA, November 12, 2008.

<sup>169</sup> Letter from the Los Angeles Sheriff's Department to the Board of Supervisors regarding sexual assault kits, January 27, 2009, unpublished document on file with Human Rights Watch.

<sup>170</sup> *Ibid.*

<sup>171</sup> *Ibid.*

<sup>172</sup> Human Rights Watch telephone interview with crime lab official, name withheld, Los Angeles, CA, January 27, 2009.

<sup>173</sup> Human Rights Watch sent public records requests to each city in Los Angeles County with an independent police department. The results of those responses are documented in the chart below.

requests, only 30 provided us with data regarding untested rape kits in police storage. Moreover, most of the rape kit data only go back to 1995, when many police departments upgraded their evidence tracking systems from a paper to an electronic system. In addition to untested rape kits in storage, Human Rights Watch found that at least 1,529 untested rape kits have been destroyed.

#### Data From Human Rights Watch Public Records Requests<sup>174</sup>

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
<b>Since 1980</b>						
Hermosa Beach <sup>175</sup>	39 (2000)	5 (2000)	65	47	U	U
Sierra Madre <sup>176</sup>	8 (1995)	1 (1995)	3	3	o	U
South Gate <sup>177</sup>	240	165	121	102	U	U
<b>Since 1982</b>						
South Pasadena <sup>178</sup>	33 (1994)	9 (1994)	7	3	o	4
<b>Since 1985</b>						
Palos Verdes <sup>179</sup>	12 (1995)	5 (1995)	12	3	2	7
<b>Since 1986</b>						
Gardena <sup>180</sup>	263 (1995)	80 (1995)	200	27	85	88

<sup>174</sup> For purposes of this chart, the number “o” indicates that the responding city actually searched and found no items responsive to the request; the letter “U” stands for “unknown,” and indicates any of the following possible scenarios, or any combination thereof: (1) the city did not provide us with responsive documents for the item in question; (2) the city did not maintain a separate record of the item in question; (3) obtaining the information would require searching each individual rape case file to determine what evidence was collected; (4) obtaining the information would require searching each individual property sheet to determine the disposition of the evidence; (5) the city determined it did not have adequate staff to search for the responsive documents; (6) the city did not maintain a uniform record keeping system and rape kits may be classified or identified in a variety of ways; (7) the city’s automated system did not allow for a search of this type; and/or (8) the city provided some information, but we were unable to interpret it in a meaningful way or get clarification from the city. Note, however, that the scenarios described above were also true for a number of the cities that did provide responsive documents.

<sup>175</sup> Letter from Deputy City Clerk Jackie Drasco, Hermosa Beach, to Human Rights Watch regarding public records request, December 5, 2008.

<sup>176</sup> Letter from Records Supervisor H. Hartunian, Sierra Madre Police Department, to Human Rights Watch regarding public records request, January 6, 2009.

<sup>177</sup> Letter from T. Matthew Hansen for City Attorney Raul Salinas, City of South Gate, to Human Rights Watch regarding public records request, December 19, 2008.

<sup>178</sup> Letter from Custodian of Records Sergeant Mike Neff, South Pasadena Police Department, to Human Rights Watch regarding public records request, December 15, 2008, clarified by telephone interviews with Sergeant Neff, January 5 and 6, 2009.

<sup>179</sup> Rape kit information: letter from Jim Menjou, assistant to the chief, Palos Verdes Estates Police Department, to Human Rights Watch regarding public records request, December 23, 2008; rape and arrest information: e-mail from Lead Service Officer Linda Williams, Palos Verdes Estates Police Department, to Human Rights Watch, February 10, 2009.

<sup>180</sup> Letter from Support Services Supervisor Betty King, Gardena Police Department, to Human Rights Watch regarding public records request, August 27, 2008.

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
<b>Since 1987</b>						
Pasadena <sup>181</sup>	281 (1998)	U	229	64	144	21
Manhattan Beach <sup>182</sup>	82 (1995)	21 (1995)	56	10	27	19
<b>Since 1989</b>						
Vernon <sup>183</sup>	21 (1996)	15 (1996)	13	3	6	U
<b>Since 1990</b>						
San Marino <sup>184</sup>	3	1	1	1	1	0
<b>Since 1991</b>						
Claremont <sup>185</sup>	114 (1995)	21 (1995)	55	15	4	39
<b>Since 1995</b>						
Alhambra <sup>186</sup>	174	39	75 (2002)	13 (2002)	0	U
Arcadia <sup>187</sup>	57 (1999)	17 (1999)	40 <sup>188</sup>	5	18	16
Baldwin Park <sup>189</sup>	137	58	42	42	0	U
Bell Gardens <sup>190</sup>	154	52	116	84	U	U
Beverly Hills <sup>191</sup>	96	31	U	1	U	34
Glendora <sup>192</sup>	64 (2000)	28 (2000)	51	27	1	23

<sup>181</sup> Letter from Records Administrator Karen Peterson, Pasadena Police Department, to Human Rights Watch regarding public records request, September 4, 2008, clarified by telephone interview with Alicia Patterson, January 5, 2009.

<sup>182</sup> E-mail from Support Services Technician Barbara Rosenberger, Manhattan Beach Police Department, to Human Rights Watch regarding public records request, January 2, clarified by telephone interview with Ms. Rosenberger, January 6, 2009.

<sup>183</sup> Rape kit information: letter from Records Manager Danita Robertson, Vernon Police Department, to Human Rights Watch regarding public records request, August 25, 2009; rape and arrest information: letter from Ms. Robertson to Human Rights Watch regarding public records request, August 11, 2008.

<sup>184</sup> Letter from Police Records Supervising Clerk Angelica Gonzales, San Marino Police Department, to Human Rights Watch regarding public records request, August 26, clarified by telephone interview with Ms. Gonzales, December 29, 2008.

<sup>185</sup> Letter from City Clerk Lynne E. Fryman, City of Claremont, to Human Rights Watch regarding public records request, August 29, 2008; confirmed by e-mail from Captain Stan Van Horn, Claremont Police Department, to Human Rights Watch, January 13, 2009.

<sup>186</sup> Rape kit information: site visit to Alhambra Police Department, January 28, 2008; manual review of evidence logs and property sheets from January 1, 2002, through January 31, 2007; and automated record search from February 1, 2007, through May 31, 2008; rape and arrest information: letter from Records Manager Alexandria Shamlian, Alhambra Police Department, to Human Rights Watch regarding public records request, August 14, 2008.

<sup>187</sup> Letter from Stephen P. Deitsch, Arcadia city attorney, to Human Rights Watch regarding public records request, August 28, 2008.

<sup>188</sup> One kit was “released to the San Bernardino County Sheriff’s Department in regards to a courtesy report.” Ibid.

<sup>189</sup> Letter from Records Supervisor Vivian Olivas, Baldwin Park Police Department, to Human Rights Watch regarding public records request, August 12, clarified by telephone interview with Ms. Olivas, December 17, 2008.

<sup>190</sup> Letter from Richard Lam, attorney for the Bell Gardens Police Department, to Human Rights Watch regarding public records request, September 10, 2008.

<sup>191</sup> Letter from Geoff Ward, Beverly Hills assistant city attorney, to Human Rights Watch regarding public records request, December 30, 2008. Rape kit information derived from our interpretation of a freezer evidence chart provided by the Beverly Hills Police Department in the letter. Follow-up phone calls to clarify rape kit data were not returned.

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
Hawthorne <sup>193</sup>	95	25	405 (1983)	173 (1996)	U	U
Huntington Park <sup>194</sup>	214	96	U	U	U	U
Inglewood <sup>195</sup>	604	192	U	44 ('01-'09) <sup>196</sup>	U	244 ('01-'09)
Long Beach <sup>197</sup>	1,732	532	1,911 (07/94)	51 (08/17/06)	831 (estimate)	1,072
Monrovia <sup>198</sup>	110	70	70	70	U	0
Pomona <sup>199</sup>	648	47 (2004)	213	37	37 (est.)	139
San Fernando <sup>200</sup>	76	35	U	11 (2001)	0 (2001)	24
San Gabriel <sup>201</sup>	54	5	42	3	9	33
Santa Fe Springs <sup>202</sup>	43	12	U	2	17	16
Santa Monica <sup>203</sup>	508	192	U	U	U	485 (1996) <sup>204</sup>

<sup>192</sup> Letter from Records Supervisor Kandi Tidwell, Glendora Police Department, to Human Rights Watch regarding public records request, December 11, 2008.

<sup>193</sup> Rape kit information: letter from Property Officer Holly Peck, Hawthorne Police Department, to Human Rights Watch regarding public records request, January 14, clarified in a telephone interview with Property Officer Denise Murphy, February 24, 2009; rape and arrest information: letter from Police Records Supervisor Connie Cooper, Hawthorne Police Department, to Human Rights Watch regarding public records request, January 27, 2009.

<sup>194</sup> Letter from Information Management Specialist Deborah J. Barker, Huntington Park Police Department, to Human Rights Watch regarding public records request, August 14, 2008.

<sup>195</sup> Letters from Kenneth Campos, Inglewood senior assistant city attorney, to Human Rights Watch regarding public records request, September 16, 2008, and January 28, 2009.

<sup>196</sup> The data provided by the Inglewood Police Department for “rape kits sent to the crime lab” is an estimate.

<sup>197</sup> Rape kit information: e-mail from Gary Anderson, Long Beach deputy city attorney, to Human Rights Watch regarding public records request, February 24, clarified by Human Rights Watch telephone interview with Lieutenant Alex Avila, Long Beach Police Department, February 24, 2009; rape and arrest information: letter from Belinda R. Mayes, Long Beach principal deputy city attorney, to Human Rights Watch regarding public records request, August 21, 2008.

<sup>198</sup> Letter from Police Services Supervisor Bonnie Flores, Monrovia Police Department, to Human Rights Watch regarding public records request, August 26, 2008, clarified by telephone interview with Ms. Flores, January 7, 2009.

<sup>199</sup> Letter from David King, Pomona deputy city attorney, Alvarez-Glassman & Colvin, to Human Rights Watch regarding public records request, August 28, clarified by telephone interview with Police Records Manager Judy Ramsey, Pomona Police Department, December 29, 2008.

<sup>200</sup> Letter from Lieutenant Robert Jacobs, San Fernando Police Department, to Human Rights Watch regarding public records request, August 18, clarified by telephone interview with Property Officer Maria Quinonez, San Fernando Police Department, December 24, 2008.

<sup>201</sup> Letter from Records Supervisor Marie Sy, San Gabriel Police Department, to Human Rights Watch regarding public records request, August 18, 2008.

<sup>202</sup> Letter from Whittier Police Department and Santa Fe Springs Police Services Custodian of Records Gloria Chavez to Human Rights Watch regarding public records request, January 13, 2009.

<sup>203</sup> Letter from Community Liaison Eugenia Jimenez, Santa Monica city attorney, to Human Rights Watch regarding public records request, September 4, 2008.

<sup>204</sup> Human Rights Watch telephone interview with Lieutenant Daniel Salerno, Santa Monica Police Department (SMPD), Los Angeles, CA, January 27, 2009. The SMPD was unable to determine how many of the stored kits have been tested. To find this

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
<b>Since 1996</b>						
El Monte <sup>205</sup>	402 (1995)	250(1995)	177	21	99	57
Redondo Beach <sup>206</sup>	359 (1980)	45 (1995)	127	18	75	34
Torrance <sup>207</sup>	280	78	U	8	0	48 (1985)
West Covina <sup>208</sup>	421	222	323	12	97	214
<b>Since 1997</b>						
El Segundo <sup>209</sup>	42	20	U	U	U	9
<b>Since 1998</b>						
Covina <sup>210</sup>	168 (1995)	U	38	2	14	24
<b>Since 1999</b>						
La Verne <sup>211</sup>	51	8	27	2	3	22
<b>Since 2001</b>						
Azusa <sup>212</sup>	107	25	U	U	U	U
Whittier <sup>213</sup>	100	32	33	9	22	2
<b>Since 2002</b>						
Downey <sup>214</sup>	290 (1995)	77 (1995)	135	26	5	U
Glendale <sup>215</sup>	230 (1995)	U	U	2	U	38

information would require a hand search of all 485 case reports. The SMPD reported that other rape kit information would be too burdensome to produce.

<sup>205</sup> Letter from Griselda Contreras, legal secretary of the El Monte City Attorney’s Office, to Human Rights Watch regarding public records request, December 15, clarified by telephone interview with Vera Latrell, December 17, 2008.

<sup>206</sup> Letter from Records Manager Jackie Bernal, Redondo Beach Police Department, to Human Rights Watch regarding public records request, August 28, 2008.

<sup>207</sup> Letter from Records Administrator Christy Witherspoon, Torrance Police Department, to Human Rights Watch regarding public records request, August 27, 2008.

<sup>208</sup> Letter from Records Supervisor Donna Aggers, West Covina Police Department, to Human Rights Watch regarding public records request, August 18, 2008, clarified by telephone interview with Ms. Aggers, January 5, 2009.

<sup>209</sup> Letter from Captain Max Phipps, El Segundo Police Department, to Human Rights Watch regarding public records request, August 12, 2008.

<sup>210</sup> Rape kit information: Letter from William J. Priest, Covina assistant city attorney, to Human Rights Watch regarding public records request, January 5, 2009; rape information: “Offenses Known to Law Enforcement, by State by City,” *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, <http://bjsdata.ojp.usdoj.gov/dataonline> (accessed March 16, 2009).

<sup>211</sup> Letter from Records Supervisor and Custodian of Records Ruth Mahlow, La Verne Police Department, to Human Rights Watch regarding public records request, December 17, confirmed by telephone interview with Ms. Mahlow, December 17, 2008.

<sup>212</sup> Letter from James R. Touchstone, Azusa city attorney, Best Best & Krieger LLP, to Human Rights Watch regarding public records request, September 22, 2008.

<sup>213</sup> Letter from Custodian of Records Gloria Chavez, Whittier Police Department, to Human Rights Watch regarding public records request, August 21, clarified by telephone interview with Ms. Chavez, December 29, 2008.

<sup>214</sup> Letters from William J. Priest, Downy assistant city attorney, to Human Rights Watch regarding public records request, August 29, 2008, and January 30, 2009.

City	Reported Rapes	Rape Arrests	Rape Kits Booked into Evidence	Rape Kits Sent to the Crime Lab	Destroyed Rape Kits	Untested Rape Kits Currently in Storage
Maywood/Cudahy <sup>216</sup>	66	21	39	39	0	11 (returned untested)
Montebello <sup>217</sup> (Nov. '02)	209	58	64	22	16	26
Signal Hill <sup>218</sup>	19	U	16(3/13/02-7/21/08)	0	0	U
<b>Date Unknown</b>						
Bell <sup>219</sup>	19 (12/01)	3 (05/03-12/11/06)	U	U	U	U
Irwindale <sup>220</sup>	17	11	6	6	6	0
Monterey Park <sup>221</sup>	69	30	118	79	10	U
<b>No Information</b>						
Burbank <sup>222</sup>	160 (1995)	--	--	--	--	--
Culver City <sup>223</sup>	74 (1995)	U	U	U	U	U
<b>Total</b>	<b>8785</b>	<b>2634</b>	<b>4830</b>	<b>1087</b>	<b>1529</b>	<b>2749</b>

<sup>215</sup> Rape kit information: letter from Glendale Police Department General Counsel Carmen O. Merino to Human Rights Watch regarding public records request, August 28, 2008, clarified by telephone interview, January 27, 2009; rape information: "Offenses Known to Law Enforcement, by State by City," *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, <http://bjsdata.ojp.usdoj.gov/dataonline> (accessed March 16, 2009).

<sup>216</sup> Facsimile from Senior Records Clerk June Montero, Maywood/Cudahy Police Department, to Human Rights Watch regarding public records request, February 26, clarified by telephone interview with Ms. Montero, February 26, 2009. Maywood and Cudahy are two cities that share a single police department.

<sup>217</sup> Rape kit information: letter from David King, Montebello deputy city attorney, Alvarez-Glassman & Colvin, to Human Rights Watch regarding public records request, January 16, 2009; rape and arrest information: letter from Records Supervisor Dia Cisneros, Montebello Police Department, to Human Rights Watch regarding public records request, August 20, 2008.

<sup>218</sup> Rape kit information: Human Rights Watch telephone interview with Property Clerk Gloria Munoz, Signal Hill Police Department, regarding public records request, February 2, 2009; rape information: "Offenses Known to Law Enforcement, by State by City," *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, <http://bjsdata.ojp.usdoj.gov/dataonline> (accessed March 16, 2009).

<sup>219</sup> Letters from Custodian of Records Esbeyda Pimental, Bell Police Department, to Human Rights Watch regarding public records request, August 13, 2008, and January 22, 2009, the latter stating "the Bell police Department has provided all relevant documents in the August 13, 2008 response and no other documents exist. Also, the law does not require the Bell Police Department to create records to satisfy the request. There are simply no additional records in existence containing the information you seek that have not already been provided."

<sup>220</sup> Letter from Robert Barnes, Irwindale Police Department, to Human Rights Watch regarding public records request, August 11, confirmed by telephone interview with Mr. Barnes, December 18, 2008.

<sup>221</sup> E-mail from Adrian Guerra, Monterey Park assistant city attorney, to Human Rights Watch regarding public records request, September 5, 2008.

<sup>222</sup> E-mails from Lusine Arutyunyan to Human Rights Watch regarding public records request, December 30, 2008, and January 21, 2009; e-mail from Juli Scott, Burbank city attorney, to Human Rights Watch regarding public records request, February 26, 2009. Request is being processed and information will be forthcoming. Rape information: "Offenses Known to Law Enforcement, by State by City," *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, <http://bjsdata.ojp.usdoj.gov/dataonline> (accessed March 16, 2009).

<sup>223</sup> Letter from Document Section Manager Lt. Chris Maddox, Culver City Police Department, to Human Rights Watch regarding public records request, October 3, 2008. Response letter included a chart of rape reports and arrests, but chart is indecipherable. Multiple telephone interview requests were made to clarify, and as of February 26, 2009, we are still awaiting a response. Rape information: "Offenses Known to Law Enforcement, by State by City," *Crime in the United States*, FBI, Uniform Crime Reports, prepared by the National Archive of Criminal Justice Data, <http://bjsdata.ojp.usdoj.gov/dataonline> (accessed March 16, 2009).

While the police departments of these 47 cities do not rely on the Sheriff's Department for policing duties, they do send rape kits to the Sheriff's Department's crime laboratory for testing.<sup>224</sup> Although the Sheriff's Department is developing a plan to test every rape kit booked into evidence through the Sheriff's Department staff, it has not yet determined how to address untested rape kits in police stations outside of the Sheriff's Department. One senior officer remarked to us, "There are going to be sovereignty issues. We can't demand that they send kits to us, but we can strongly encourage them and try to think of incentives for them to send us the kits. We had a state grant a couple years ago to test rape kits and we went to city police departments and told them to send us their untested rape kits, and it was like pulling teeth to get them to respond."<sup>225</sup> The Sheriff's Department is currently soliciting information on untested rape kits from independent police departments in the county.<sup>226</sup>

The failure of some police departments to provide information about rape kits is not limited to Human Rights Watch requests. A Sheriff's Department crime lab official told Human Rights Watch that recent requests from the Sheriff's Department to independent police departments for the number of untested rape kits in their storage facilities have "mostly gone unanswered. They don't respond to our request for information. They won't count the rape kits in their storage facility, even for us."<sup>227</sup>

## Consequences of Untested Kits in Police Storage

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 in Los Angeles County. One reason may be the lack of information available to victims regarding their rape kits.

Under California law the Police Department and the Sheriff's Department must notify victims in stranger rape cases if their rape kits were not tested within two years of collection. It is unclear whether the Police Department has a system in place to comply with this requirement. When Controller Laura Chick conducted an audit of the Police Department's use of federal DNA grant programs, exit interviews with Police Department officials indicated that they were unaware of the law's existence.<sup>228</sup> The Sheriff's Department appears not to

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<sup>224</sup> Human Rights Watch interview with Captain David Walters, Los Angeles, CA, October 29, 2008.

<sup>225</sup> Human Rights Watch telephone interview with Sheriff's Department crime lab official, name withheld, Los Angeles, CA, May 6, 2008.

<sup>226</sup> Human Rights Watch e-mail correspondence with Captain David Walters, March 1, 2009.

<sup>227</sup> Human Rights Watch telephone interview with Sheriff Department crime lab official, name withheld, Los Angeles, CA, January 26, 2009.

<sup>228</sup> Human Rights Watch interview with Controller Laura Chick, October 30, 2008.

have a system for compliance with the law. It has an internal directive dictating in what circumstances officers must notify rape victims,<sup>229</sup> but under questioning from the Los Angeles County Board of Supervisors in November 2008, the Sheriff's Department revealed that it could not determine whether any rape victims whose kits went untested had been notified of that fact.<sup>230</sup>

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. The mother of a rape victim in Los Angeles told Human Rights Watch about how difficult it was to get information about the status of her daughter's rape kit: "My daughter was raped by her supervisor, and we also thought he used a date rape drug. After she got the kit collected, after a few weeks, we called the police to get an update, to ask if the blood tests had shown the drug, but they didn't return our phone calls, and then when I got someone on the phone, they told us that they were waiting to decide whether to test the kit. I have called them once a week for eight months, and I still don't know whether her kit was submitted for testing or not. Mostly, I have only succeeded in annoying them."<sup>231</sup>

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."<sup>232</sup> 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."<sup>233</sup>

Based on their own reported numbers, the Police and Sheriff's Departments will have hundreds of victims who were raped by strangers and whose kits were not tested within two years of collection. To come into compliance with California law, the Police and the Sheriff's Departments will have to inform the victims of this fact. It will be a delicate task: As the nurse examiner quoted above commented, "Some rape victims may have already tried to move on from the rape. To hear from the police again, out of the blue two years after the rape,

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<sup>229</sup> Los Angeles County Board of Supervisors hearing transcript, October 7, 2008, p. 98.

<sup>230</sup> Los Angeles County Board of Supervisors hearing transcript, November 12, 2008, p. 88.

<sup>231</sup> Human Rights Watch telephone interview with mother of a rape victim, name withheld, Los Angeles, CA, October 13, 2008.

<sup>232</sup> Human Rights Watch interview with Gail Abarbanel, March 1, 2009.

<sup>233</sup> Human Rights Watch interview with sexual assault nurse examiner, name withheld, Los Angeles, CA, May 7, 2008.



may reintroduce the trauma for the victim. However the police decide to do this, they need to make sure they consult with rape victims' advocates on how to best give victims this kind of information."<sup>234</sup>

## Conversations with Professionals

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 submitted for testing:

- A police officer in the Los Angeles area described why he often does not submit rape kits for testing: "I am not going to submit a kit when we know who the alleged perpetrator is. I am also not going to submit a kit when I don't think the case is founded, where something about the victim's story just doesn't add up. As you know, some people report a rape to get back at their boyfriend, or to hide from their parents that they were having sex with their boyfriend, or all sorts of reasons. So, you don't just test every rape kit that comes to you."<sup>235</sup>
- 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."<sup>236</sup>
- A police officer in the Los Angeles area told Human Rights Watch, "Rape is a tough crime to investigate. And sometimes, you are not going to request the DNA testing unless you feel certain that a rape really did occur, and that testing the kit is going to help you further the investigation. Most rape cases are 'he said/she said,' and a rape kit isn't going to help you figure out who is telling the truth."<sup>237</sup>
- 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

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<sup>234</sup> Ibid.

<sup>235</sup> Human Rights Watch interview with Los Angeles area police officer, name withheld, Los Angeles, CA, July 13, 2008.

<sup>236</sup> Human Rights Watch interview with Los Angeles area sexual assault nurse examiner, name withheld, Los Angeles, CA, January 14, 2009.

<sup>237</sup> Human Rights Watch interview with Los Angeles area police officer, name withheld, Los Angeles, CA, November 12, 2008.

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.”<sup>238</sup>

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<sup>238</sup> Human Rights Watch interview with Los Angeles area rape treatment provider, name withheld, Los Angeles, CA, December 22, 2008.

## Elimination of the Rape Kit Backlog in New York<sup>239</sup>

In 1999 the New York Police Department (NYPD) discovered that it had a backlog of 16,000 untested rape kits in its storage facilities. Under the directive of then-Mayor Rudolph Giuliani and then-Police Chief Howard Safir, and with budgetary support from the New York City Council, the NYPD sent every untested kit to a private crime lab for testing with a goal of getting test results back from every kit by 2003. While the kits were at the private lab the NYPD, the New York City DNA Lab, and the Manhattan District Attorney's Office implemented policies to ensure that the rape kit backlog would remain eliminated. The NYPD was directed to send every new booked rape kit to the crime lab for testing; the crime lab hired additional DNA criminalists to keep up with the increased number of kits entering the testing queue; and the Manhattan District Attorney's Office established a specialized cold case unit, staffed by two senior attorneys, to investigate any leads from testing the backlogged kits. The crime lab also created a notification system for cold hits; when the DNA profile from a tested rape kit matches a profile in the DNA database an electronic system ensures that the crime lab, Police, and District Attorney's Office are all notified at the same time.

As of January 2009 the tested kits yielded 2,000 cold hits and 200 active investigations, arrests, or prosecutions. Testing the rape kit backlog also exonerated a wrongfully convicted defendant. While the DNA test results identified assailants in stranger rape cases, they also created leads in cases that police and prosecutors were not expecting. For example, prosecutors told Human Rights Watch of tying the same assailant to multiple acquaintance rape cases that might otherwise have been difficult to move through the criminal justice system: "We had an assailant who raped drug addicts coming to him to buy drugs. These are women who may be particularly vulnerable to rape because of their addictions or their socioeconomic status, but whose cases are hard to get a jury to believe. But when we could connect the same guy to a number of rapes, we could get a conviction."<sup>240</sup>

Since the rape kit testing was completed in 2003, the NYPD has seen its arrest rate for rape increase dramatically, from 40 percent to 70 percent of reported cases, and there are increased numbers of prosecutions and convictions for rape. New York City law enforcement officials admit that testing every booked rape kit takes a significant financial commitment, but "we had the political will to do it, and now, the policy is a no-brainer given all the rapes we have been able to solve and prosecute."<sup>241</sup>

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<sup>239</sup> Information in this text box from Human Rights Watch interviews with Marie Samples, assistant director, New York Office of the Medical Examiner DNA Unit, New York, NY, March 14, 2008; and with Lisa Friel, assistant district attorney, Special Victims' Unit, Manhattan District Attorney's Office and Martha Bashford, assistant district attorney, Cold Case Sex Crimes Unit, Manhattan District Attorney's Office, New York, NY, March 18, 2008.

<sup>240</sup> Human Rights Watch interview with Martha Bashford, New York, NY, March 18, 2008.

<sup>241</sup> Human Rights Watch interview with district attorney in sex crimes unit, name withheld, New York, NY, December 22, 2008.

## VII. Human Rights Law and Responses to Sexual Violence

[I]naction can be every bit as abusive of power as action ... oppression can result when a State undertakes a vital duty and then ignores it.<sup>242</sup>

—US Supreme Court Justice William Brennan

The rape kit backlog in Los Angeles County inhibits investigation of rape cases, bars rape victims from obtaining redress through the criminal justice system, prevents assailants from facing justice, and fails to protect future rape victim by failing, at a minimum, to provide deterrence. Human rights law imposes an obligation on states to take measures to protect all persons against human rights violations, including crimes of rape or other forms of sexual violence perpetrated by private actors, and also to provide a remedy where fundamental protections—such as those relating to the right to life and bodily integrity—have been violated. For this reason, failure to effectively investigate serious crimes such as murder and assault, including sexual violence, means that a state runs afoul of its obligations. In Los Angeles County the number of untested rape kits suggests a failure to systematically investigate reported sexual violence, in violation of human rights obligations.

Unfortunately, US law has not yet incorporated these human rights obligations in a way that offers enforceable protections for rape victims whose cases are reported but not investigated or where available evidence is not tested.<sup>243</sup>

### Sexual Violence as a Human Rights Violation

The United States is party to a number of international conventions that unequivocally acknowledge rape as a human rights abuse, and require the US to ensure the protection of its citizens from sexual assault and rape.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>244</sup> obligates states party to combat discrimination against women. The Committee on the

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<sup>242</sup> DeShaney v. Winnebago Cty. DSS, 489 U.S. 189 (1989) at 212, Brennan dissenting opinion.

<sup>243</sup> The US Supreme Court has twice refused to find that law enforcement agencies have a duty to prevent or investigate a specific crime, or to protect individuals from violence by private actors. The California Supreme Court has also held that law enforcement officials are not constitutionally obligated to protect the public from crime. California state laws are not clear regarding whether victims of crime can take action to enforce their rights, and if so, what remedies they can be given. See, Human Rights Watch, *Mixed Results: US Policy and International Standards on the Rights and Interests of Victims of Crime*, September 23, 2008, <http://www.hrw.org/en/node/75202/section/5>.

Elimination of Discrimination against Women, the treaty body that interprets and monitors compliance with CEDAW, has affirmed that violence against women is a form of discrimination against women, and that states party should have effective legal, preventive, and protective measures in place to provide justice for victims, hold offenders accountable, and protect society from future acts of sexual violence.<sup>245</sup> While the US has not ratified CEDAW and is therefore not a full party to the treaty, as a signatory since 1980 the US does undertake a number of legal obligations including, at a minimum, not to act in a way that would undermine the intent and purpose of the treaty.<sup>246</sup> The International Covenant on Civil and Political Rights (ICCPR) guarantees the right to bodily integrity and security under article 9.<sup>247</sup> Both the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“Convention against Torture”) and article 7 of the ICCPR guarantee the right to be free from torture and cruel, inhuman, or degrading treatment.<sup>248</sup> International tribunals and other bodies have established that rape is covered by these prohibitions on torture.<sup>249</sup>

The Inter-American Court system pays special attention to violence committed against women and children. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women prohibits violence against women and affirms a woman’s right to physical integrity and security. It further requires states party to act with “due diligence to prevent, investigate and impose penalties for violence against women.”<sup>250</sup> Since rape is a crime that is primarily committed against women, states party to the Convention have a special obligation to respond to and prevent rape and sexual assault. The United States is one of two American nations that have not ratified the Convention.

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<sup>244</sup> Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981. The US has not ratified CEDAW but became a signatory on July 17, 1980. The Los Angeles City Council, however, unanimously passed a city compliance ordinance in 2006: City Council Ordinance 06-0997, <http://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=06-0997> (accessed January 27, 2009).

<sup>245</sup> Committee on the Elimination of Discrimination against Women (CEDAW Committee), General Recommendation 19, Violence Against Women (Eleventh session, 1992), UN Doc. A/47/38, para. 24 (t). The CEDAW Committee authoritatively interprets and monitors state compliance with CEDAW.

<sup>246</sup> Vienna Convention on the Law of Treaties, adopted May 23, 1969, entered into force January 27, 1980, art. 18.

<sup>247</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976., art. 9.

<sup>248</sup> ICCPR, art. 7; and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

<sup>249</sup> See, for example, European Court of Human Rights (ECHR), *Aydin v. Turkey*, judgment of 25 September 1997, 25 EHRR 251, paras. 62-88; and ECHR, *Prosecutor v. Furundjija, ICTY*, judgment of 10 December 1998, Case No. IT-95-17/1-T, paras. 163-86.

<sup>250</sup> Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, adopted June 9, 1994, OAS/ser.L/II.2.27, CIM/doc.33/94, entered into force March 5, 1995, art. 7 (b).

## State Responsibility to Protect Against Sexual Violence by Private Actors

The United Nations Human Rights Committee (HRC) has made it clear that states party to the ICCPR and other conventions are in violation of their obligation under these treaties not only when state actors are responsible for the action, but also when the state fails to take necessary steps to prevent violations caused by private actors. The HRC's General Recommendation 31 to the ICCPR notes that states party must "take appropriate measures or ... exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."<sup>251</sup> The Committee Against Torture requires states party to prevent and protect victims from gender-based violence and rape by exercising due diligence in investigating, prosecuting, and punishing perpetrators—even private actors—of rape and sexual assault.<sup>252</sup> The Inter-American Court of Human Rights has also made clear that states are "obliged to organize the public authorities to guarantee persons subject to its jurisdiction the free and full exercise of human rights ... whether those responsible for the violations of those rights are members of the public authorities, private individuals, or groups."<sup>253</sup>

Additionally, CEDAW obliges states party to "take all legal and other measures that are necessary to provide effective protection of women against gender-based violence."<sup>254</sup>

These provisions make clear that the United States is bound to take all possible measures to prevent sexual assault and rape even when carried out by private actors.

## Duty to Prevent Rape, Investigate Sexual Violence, and Protect Victims

Human rights courts have repeatedly held governments responsible for authorities' inaction or lack of due diligence in response to a violation by private actors.<sup>255</sup>

For example, in *E. and Others v. United Kingdom*, the European Court of Human Rights (ECtHR) held the state responsible for the injury inflicted on six children who were physically

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<sup>251</sup> ICCPR, HRC, General Comment 31, *Nature of the general legal obligation on states parties to the Covenant* (hereinafter "General Comment 31"), ¶ 9, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004).

<sup>252</sup> UN Committee Against Torture (CAT), *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008. CAT/C/GC/2.

<sup>253</sup> Inter-American Court of Human Rights, Paniagua Morales et al., Judgment of March 8, 1998, Inter-Am.Ct.H.R., (Ser. C) No. 37 (1998), paras. 173-4.

<sup>254</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), *CEDAW General Recommendations Nos. 19 and 20, adopted at the Eleventh Session, 1992 (contained in Document A/47/38)*, 1992. A/47/38.

<sup>255</sup> See for example, Inter-American Court of Human Rights, Velásquez Rodríguez Case, Judgment of July 29, 1988, Inter-Am.Ct.H.R., (Ser. C) No. 4 (1988).

and sexually abused by their father for a period of up to 10 years. The court held that a failure to carry out a thorough investigation into what was a suspected situation in the house, which could have minimized the risk to the children, violated the state's obligation to protect them from inhuman and degrading treatment.<sup>256</sup>

The case law of human rights tribunals also affirms that the obligation to prevent violations includes the diligent and thorough investigation of reported rapes and assaults. The ECtHR through a long line of jurisprudence has made clear that the obligation under international law to protect the rights to life and bodily integrity entails the conduct of an effective official investigation when a violation of either occurs, so that the domestic laws that are intended to offer protection are effectively implemented. An effective investigation is one that is capable of leading to the identification and punishment of those responsible. The ECtHR has held that the authorities must have taken the reasonable steps available to them to secure the evidence concerning the incident, including forensic evidence. Any deficiency in the investigation that undermines its ability to establish the person or persons responsible will risk running afoul of the requirement to provide an effective remedy.<sup>257</sup>

Likewise, the Inter-American Court of Human Rights has long upheld the duty of states to take affirmative steps to prevent human rights violations. According to the Court, these steps include the obligation to investigate allegations of violations and to prosecute and punish the perpetrators of those violations.<sup>258</sup> The Court has made clear that responsibility for violations of human rights rests equally with the state as with the perpetrators when the state refrains from taking any measures to investigate crimes or prevent future violations.<sup>259</sup> Additionally, an investigation of alleged violations alone is not enough to clear the state of liability. Instead, it explains, any inquiry "must be undertaken in a serious manner and not as a mere formality preordained to be ineffective ... Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, making the State responsible on the international plane."<sup>260</sup>

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<sup>256</sup> ECtHR, *E. and Others v. the United Kingdom*, no. 33218/96, judgment of 26 November 2002, para. 103.

<sup>257</sup> For the Court's repeated findings on the obligation to investigate, see amongst others, *Kaya v. Turkey*, judgment of 19 February 1998, Reports of Judgments and Decisions 1998-I, p. 324; *Jordan v. the United Kingdom*, no. 24746/94, judgment of May 4, 2001; *Finucane v. the United Kingdom*, no. 29178/95, judgment of July 1 2003; *Isayeva v. Russia*, 57950/00, judgment of July 27, 2004; *Adali v. Turkey*, 38187/97, judgment March 31, 2005.

<sup>258</sup> Inter-American Court of Human Rights, Velásquez Rodríguez Case, p. 174.

<sup>259</sup> *Ibid.*, p. 173.

<sup>260</sup> *Ibid.*, p. 177.

## VIII. Conclusions

The number of untested rape kits in Los Angeles County points to larger concerns with the way the Los Angeles Police Department and Sheriff's Department handle rape kits and rape investigations more generally. For rape victims to have access to justice, policymakers and law enforcement officials in Los Angeles County will need to test every booked rape kit, but their responsibility does not end there. Law enforcement, in collaboration with rape treatment providers and with the support of elected officials, will need to create systems to ensure that every reported rape case is thoroughly investigated and, when appropriate, leads to the arrest of those responsible. As one rape treatment provider told Human Rights Watch, "We go through the motions of collecting the kit, and then it doesn't get tested. Either we stop collecting rape kits, or we test every rape kit. It's now standard procedure to encourage every rape victim to report the crime and get a rape kit collected. If we think it's unconscionable to discourage a rape victim from reporting and getting a rape kit collected, then it's unconscionable to have a rape kit backlog."<sup>261</sup>

The remedy will require a comprehensive plan that is made known to the public, compliance with existing laws, and swift and efficient action. This is a necessary part of core governmental obligations to protect victims of sexual violence and promote public safety.

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<sup>261</sup> Human Rights Watch interview with Sharon Shelton, May 5, 2008.



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