

TACKLING THE SAEK BACKLOG: THE NEW MEXICAN WAY

Samantha Rynas M.F.S., New Mexico Department of Public Safety Northern Forensic Laboratory

SamanthaA.Rynas@state.nm.us

Introduction:

The New Mexico Department of Public Safety Northern Forensic Laboratory (NM DPS NFL) in Santa Fe, NM is the state forensic lab. NFL is one of two labs in the state doing DNA analysis and is a fairly small lab, working about 1500 cases per year (300 SAEK cases per year) with 8-9 analysts. In New Mexico there are several laws related to Sexual assault crimes, the most prominent being “Katie’s Law” which expands the entry of profiles into the Combined DNA Index System (CODIS) to include felony arrestee’s. Similar laws have been instituted across the country. In addition to collection of arrestee DNA, a 2011 NM Statute states that “samples from biological material collected pursuant to a medical examination of a sexual assault victim shall be submitted by the investigating law enforcement agency to that agency’s servicing laboratory for DNA testing”, thus requiring agencies to submit untested SAEK’s to the laboratory (2011 New Mexico Statutes Chapter 30: Criminal Offenses

Article 9: Sexual Offenses, 30-9-1 through 30-9-20 Section 30-9-19: Sexual assault; submission of DNA samples by law enforcement and laboratories). This law has spurred the subsequent submission of the untested SAEK’s that are currently being submitted to the lab. Santa Fe Police Department was the first to submit a round of cases in 2014. The full scale of backlogged cases was discovered when a state audit in late 2015 revealed 5400 untested SAEK’s in the entire state, with 1500 being in NM DPS’s jurisdiction. Using the new Y-screening technique developed for the first batch of Santa Fe PD cases, we project a quicker and more efficient turnaround for the remaining backlogged cases. During the most recent legislative session the lab was able to work with the legislature obtaining a special appropriations for \$1.2 million to test the remaining backlogged SAEK’s. During the course of reviewing these results it became apparent that there are shortfalls that need to be addressed. The shortfalls were agency related in terms of assigning new officers to the cases as well as having full and current case information being reported to the lab.

First batch of backlog SAEK cases

In 2014 Santa Fe Police Department, the first state agency to submit backlogged kits, did an inventory of their freezers and found approximately 300 SAEK’s that had not been tested. Santa Fe PD’s cold case team decided to submit these kits in an effort to solve several older CSP/Homicides. While their effort did not manifest itself in solving those specific cold cases, their submission of these cases was a starting point to addressing the backlog issue. Having an additional 300 cases submitted in the span of a few months was fairly overwhelming for a small lab which on average puts out about 300 SAEK cases per year. The response was a review of how to improve processing and turnaround of these SAEK’s. A Y-screening method was subsequently developed and validated as a means to help shorten the time and lessen resource consumption for SAEK cases. In addition to Santa Fe PD cases, there were small batches of other Agency’s cases as well. The total number of older SAEK’s in the first batch submitted in 2014 was 411.

The new Y-Screening method utilized small cuttings of the tip of swabs for a quick Chelex® 100 extraction as a way to triage samples in kits prior to serological exam. Each kit scenario was reviewed prior to screening to be sure it qualified; cases with multiple offenders, consensual partners, male on male or possible female offenders were still processed using the standard method. Thresholds were established for returning to samples for re-examination. This threshold allowed for quicker reporting of negative or insufficient cases. In cases returning for standard serology processing the Y-screening

quantitation value could help to select the best samples in the kit or be used to judge how much sample should be taken on re-examination. In addition to utilizing Y-screening, our section decided to do a rotating assignment of one person per month to work only the backlogged SAEK cases. In a year and a half we were able to work through all of the 411 cases with a loss of two experienced staff and no additional funding.

As a means to better understand the scope of testing of these SAEK the first batch testing results was tracked. SAEK case results were reviewed for the following parameters:

- Quantification results as it related to male DNA (Zero, Insufficient, or Serological re-examination).
- If CODIS entry was made.
- What type of sample produced a CODIS result - broken down into four types of samples: orifice, body, secondary items (such as pubic hair combs/underwear), and clothing.
- If there was a CODIS hit and type of hit.
- Value of CODIS hit (did it associate a name to an unknown, did it match the suspect name, or was it a conviction match).

Results:

In a conversation with an officer who was submitting some of the backlogged SAEKs, he expressed that he did not know why they were bothering submitting the SAEK's and that it was just more work for the Lab. I explained some of our results to him and how many not only had results but were getting CODIS hits. He was surprised and had the impression these were all "unfounded" or negative cases. This personal anecdote underlined the bias in officers in discriminating cases based on narratives or victim demeanor.

Out of a total of 411 cases tracked, 166 (40%) of kits had a CODIS entry, and there were 48 CODIS hits (12%). As part of tracking the results, I reviewed the Lab case files of cases with CODIS hits. Of these cases, 14 hits had no listed suspect, and 21 cases had a listed suspect. The remaining 13 hits were "conviction matches", meaning there was a suspect standard already submitted for that individual and the source was already identified. In most of the 21 cases with a listed suspect, the name returned from CODIS matched the listed suspect in the case file. Only one name did not match the suspect listed, and on further review, the SANE paperwork listed two offenders but only one offender was listed in the case file. Next, any case with a CODIS hit was followed up on with the submitting agency for more information. The goal was to find out the impact of the DNA testing on the case status.

Questions to Agencies included:

- Current Case Status (re-opened/closed).
- Whom did CODIS match to?
- Was there any action on the judiciary side?
- Why the SAEK was not previously submitted?
- Was there follow up contact with the victim? If so was the victim co-operative?

While following up on these cases, the first issue that arose was the length of time since the case had been originally been worked and a lack of current investigators assigned to the case. Agencies still listed officers as the investigator even if the officer no longer worked in that department. Some responses to the follow up questions revealed that the lab results were not being documented in the case files due to the previously assigned investigators no longer working the case and no new investigators being assigned. Multiple cases were classified as being "insufficient" or "no lab report" which conflicted with the results at the lab. One Officer dismissed these inconsistencies stating: "If we received the results they never made it to records with a supplemental report. Most of those Officers/Detectives on those old

cases have since moved on as well.” On follow up with an agency for their protocol for assigning new officers to pick up a case, it was explained that officers are assigned when new information was obtained. This was found not to be the case in one example- after both a report identifying an unknown male profile and a CODIS letter identifying a lead for that unknown profile were sent the agency, there was no new officer assigned to the case 6 months after the CODIS letter was sent. During the follow up with this case, the agency had no apparent record of this report or CODIS letter on their end. These issues were seen in multiple Agencies and cases. This seems to be a significant problem that will need to be addressed as we test more of these cases, so we can be sure there is follow up on cases with probative results.

Santa Fe PD was the best suited to handle the SAEK backlog as they used their cold case unit to absorb the older SAEK cases. They followed up on all cases worked and attempted to contact as many victims as they could find. They are still currently looking for some victims.

As many others have reported, issues for prosecuting these older cases arose from the length of time since the assault. Victims either had passed away, or had moved on from the incident and did not want to go through with a trial. Some had health issues preventing a full testimony for trial. This resulted in few cases being able to be prosecuted. On the other hand there was an instance of one victim upon hearing that these kits were being tested actually contacted Agencies asking on the status of her kit. This shows these results are valuable to some and do help provide closure – even if there is no resulting conviction. During case review and follow up, no cases were found to indicate a possible wrongful conviction.

The Lab learned some lessons while working through the initial batch of SAEK’s. We have encountered duplicated submissions of kits. For example, a second SAEK or a suspect SAEK were submitted in cases with previous DNA results. There was one example where SAEK items not contained within the physical SAEK had been submitted previously and tested along with a suspect standard, resulting in a CODIS entry. As part of the backlogged SAEK project a SAEK was tested and subsequently had a CODIS hit to the evidence previously tested. The two cases were found to be the same case, however, in the more recent case the suspect was listed as unknown even though the case had essentially been solved 5 years prior. As part of evidence submission protocol, cases are checked using the agency case number to verify that it is the first submission for that particular case. This case slipped through the cracks due to a different format being used for the agency case number in the new submission. These are just a few examples of lack of review on the Agencies that make working these cases difficult. Considerable attention should be paid to case information to prevent duplicated results. Case information provided should be reviewed in multiple fields such as; case number, victim name, and offense date. For kits being tested in the future, agencies should be urged to review the case files to be sure that previously submitted items haven’t already yielded DNA results, as well as be sure to provide full and accurate case information to the lab when submitting cases.

Legislation and Current Status:

With recent nationwide press coverage and the push to address the backlog issue, NM officials decided to start acting on this matter. A task force, comprised of individuals from every facet of testing these kits, was created to understand the scope of the issue. Their first step was to perform an audit of all agencies’ untested SAEKs. This audit of the entire state revealed a backlog of 5400 kits. 1500 of these cases are within the Northern Forensic Lab’s jurisdiction. The task force will also be involved in training the officers on how to address these cases after they have obtained DNA results. This includes, how to work with the victim, as well as additional training on how to handle the new DNA results. New training will likely be implemented based on issues seen from the first batch of cases, including assigning new officers and case review for submission.

SAEK task force includes:

- DPS Cabinet Secretary,
- DPS Lab director,
- Albuquerque Police Department Lab Director,
- SANE program directors,
- Rape Crisis Directors,
- SANE Coordinators,
- And State Auditor.

In the most recent legislative session of 2016, three bills were introduced to give the NFL money to work these un-tested kits. All three were too restrictive on the timeline for getting the SAEK's testing completed. The bills only allowed 1-2 years to not only hire and train new employees but also to work through all the backlogged kits. The lab responded and requested additional time and money that was a more realistic outlook on how long it would take to work the cases. None of the three bills passed, which turned out to be the best outcome. Instead of passing a bill to grant money, the legislature granted the lab a Special Appropriations of 1.2 million dollars. The Special Appropriations is essentially a "No Strings Attached" sum of money for the lab to use as it sees fit. The money has been ear marked for: hiring of 3 additional term staff, remodel of the lab to accommodate additional staff, additional resources/ consumables for the increased staff and work load.

As of the new fiscal year, which started July 1, 2016 we started working these backlogged cases and are in the process of hiring additional staff. New tracking has been put in place to not only track SAEK results but also to track quantification and amplification reaction numbers for spending reports as a means for the lab to be transparent in the expenditure of the Special Appropriations money. Case results will continue to be tracked and reported to the SAEK Task Force as well.

Acknowledgments: Tracy Lujan, Michelle Graham

References:

[NM Stat § 30-9-19 \(1996 through 1st Sess 50th Legis\)](#)