

City of Memphis

Sexual Assault Kit (SAK)

Backlog Report

By:
Veronica F. Coleman-Davis
Contract # 31111
June 16, 2014

City of Memphis Sexual Assault Kit (SAK) Backlog Report

Summary:

1. Reviewed news related articles on the history of sexual assault kits and interviewed media executive at WREG.
2. Visited Old Allen Station and Harvester SAK storage locations.
3. Interviewed Memphis Police Director and several members of the command staff, sex crimes squad officers, the Sheriff and several sheriff deputies. Interviewed advocacy leaders, forensic analyst, governmental officials, and media.
4. Interviewed representatives from a cross section of agencies, including advocacy groups who are participating in developing solutions to address the backlog and prevent future backlogs in the Cross Functional Team (CFT) meetings.
5. Interviewed the District Attorney and Deputy DA who have both tried sex crimes cases and have staff participating in the CFT and weekly law enforcement meetings.
6. Attended several Cross Functional Taskforce (CFT) meetings and one weekly law enforcement SAK meeting.
7. Reviewed documents that provided historical and current perspectives on the backlog including review of other cities problems with backlogs.
8. Sex Crimes squad is currently understaffed and will be severely understaffed when the DNA testing processes of backlogged cases are completed and suspects identified.
9. The City continues to seek funding sources for the testing of the backlog and the construction of a permanent SAKs storage facility.

City of Memphis Sexual Assault Kit (SAK) Backlog Report

WREG began investigating Memphis' rape kit backlog and published a series of stories starting in 2010 documenting some of the system failures in taking adequate steps to address the backlog. However, backlogs of sexual assault kits, or SAKS, are not unique to Memphis. Cities across the U.S. have, and are, working on rape kit backlogs that accrued over long periods of time. The earliest Memphis SAK found was from March 1985 and over the past 29 years there have been multiple administrations of elected officials, Police Directors, Sheriffs and advocacy groups involved in the process of collecting evidence in sexual assault cases. This report does not affix blame because in my investigation I did not find that anyone involved with sexual assault kits willfully or maliciously conspired to deny due process. I discovered no malice, wanton disregard or conspiracies to ignore established policies, procedures or standard practices in place during this time. Rather, I found that there was a general and collective failure to understand the importance of DNA testing as was reflected in common practices in place locally and nationwide.

At the start of this review it had been determined that there were 12,164 Sexual Assault Kits, or rape kits as they are commonly called, that were untested and stored in the property rooms at 201 Poplar, Old Allen Station and Harvester. This problem did not develop overnight and there were multiple factors that led to the backlog including changes in the statutes of limitation for criminal prosecutions in 1989. For example, a 1995 District Attorney General memo¹ noted that the statute of limitations on prosecutions prior to November 1, 1989 was 6 years. It was therefore determined that if a crime happened before November 1, 1989 and was 6 years old, it could never be prosecuted (unless the punishment carried death penalty). After November 1, 1989 the legislature established a 15 year statute of limitations for Aggravated Rape, 8 year statute of limitations for Rape/Aggravated Sexual Battery and 2 year statute of limitation for Sexual Battery/Statutory Rape. Notwithstanding the 1995 memo, this administration has determined that all sexual assault kits will be tested because of the likelihood that many offenders are serial rapists and victims may find some solace in the fact that the perpetrator is known even if that victim's case is past the statute of limitations.

¹ District Attorney General memo 3/1/1995 re: Length of time to keep rape kits, records and evidence in unsolved, uncharged and unindicted sex crimes cases.

Findings

Challenges to clearing the backlog

Historically, some believed that if rape cases were not being prosecuted then the police department did not need to investigate or send the kits for testing. Until recently the media did not write about the problem nor did the Crime Commission take an interest in the issue when brought to its attention. Yet, ironically the Crime Commission had published research that suggested "Memphis was the rape capital" of the nation. While this is no longer the case, it is important to have a broader understanding of the nature and history of the problem.

Police investigations of a sexual assault includes, among other things, visiting the scene of the incident, talking with victim and witnesses and collecting physical evidence of the assault. Aside from a confession, the most important evidence is semen or other body fluids that can be tested to determine the DNA of an assailant. After a physical examination of the victim, the victim's body fluids are placed in an evidence kit and given to Uniformed Patrol Officers who take it to the property room along with other physical evidence and enter the kit number into the Property Room System. For years, standard practice was geared toward prosecutorial needs for each individual case. Each SAK was evaluated to determine if testing was needed to assist in the prosecution of a case. Therefore, in cases where the victim knew the suspect or the suspect admitted the crime, SAKs were not routinely tested.

Current protocol now requires that evidence from all criminal complaints involving sex crimes be sent for testing. The Memphis Police Department (MPD) now escorts the victim to the Rape Crisis Center where a nurse examines the victim and collects body fluids that may have DNA in it. Evidence from that examination is placed in a Sexual Assault Kit, tagged with an identification number and sent to Cellmark forensic lab for testing.

The MPD originally requested Tennessee Bureau of Investigation (TBI) to test all of the backlogged kits but TBI lab had limited capacity and is not staffed to immediately test thousands of cases. As one person stated, they would need 25 scientists to expedite the process and currently there are only three TBI staff qualified to do the DNA testing. As a result a private lab, Cellmark is testing the SAKs. Testing thousands of cases will take years and some predict that it will take up to 5 years to clear the backlog. The Shelby County Sheriff's Department stores their

rape kits in the MPD property room. They have a smaller backlog of approximately 500 cases and they have also contracted with Cellmark to test their backlog.

The testing process is multilayered and certain standards must be met to ensure accuracy. Serology testing has already been completed on a total of 2226 backlog cases and they are now undergoing DNA analysis. The results of the tests lead to a unique profile that identifies each person. In order for the profiles to be registered in the system database they must come through TBI and that database is now organized to allow them to keep up with the progress of SAKs testing. Once the profile is determined, it is then entered into FBI's national database called the Combined DNA Index System or CODIS. There already have been hits on suspects who have previously been charged with sexual assaults.

The MPD currently plans to send the evidence on every new case to Cellmark within 96 hours after the exam for "serology" screening. Any exceptions will be the victim's choice, not law enforcement's.

Database (s)

Over the years there have been different databases used to record case information regarding the sexual assault kits. The electronic data systems for management of case files changed multiple times over the years from Spillman to VisionAir to the current system Inform RMS. The different systems added to the challenge of counting and recording backlogged SAKs. From 2000 to present SAKs taken to the Harvester location were entered into the property room inventory file. Information was stored on the VisionAir electronic database by MPD Report # and cross-referenced with MSARC#, TBI# or other cross-reference that was needed for identification. MSARC also sent its database information of cases from 1994 to 2013 to MPD in order match cases with the stored kits.

In 1997 MPD hired criminalist Hyun Kim and assigned him to work with Memphis Sexual Assault Resource Center (MSARC).² He was responsible for the physical movement of the SAK to and from TBI to maintain the chain of custody of evidence. He also accepted lab reports from TBI for distribution. Mr. Kim kept all SAKs at Rape Crisis Center from all jurisdictions and MSARC had its own record keeping system. When Mr. Kim passed away no

² Currently known as Rape Crisis Center

documentation could be found on anything he did during his tenure. The kits were ultimately removed from MSARC and placed in Old Allen Station. SAKs at the Old Allen Station were not in a computerized system.

MPD began to address the backlog problem in earnest in May 2013. They created a DNA Squad that included non-enforcement status personnel to help count the kits. It took three months to count all of the kits. They kept a spread sheet of the kits and organized them by MPD Incident Report number and MSARC number. They recognized that in the past 30 years the statute of limitations had changed multiple times and the backlogged cases had to be prioritized based upon those closest to their statute of limitations date.

Victim Centered Approach

When a victim is brought to Rape Crisis Center (RCC)³ the staff explains the process and make certain that the victim has a place to stay. They do a follow up with the victim within 72 hours of the exam and accompany the victim at all court appearances. RCC has recently taken over the responsibility for examining child victims who used to be referred to LeBonheur. When there is a DNA CODIS hit a MPD officer and a RCC counselor/advocate visits with the victim to notify them of the match and begin to prepare them for their involvement in the prosecution if they are willing to go forward.

Changes over the years at the Rape Crisis center included changes in location, staffing and tracking cases after the victim left Rape Crisis.⁴ Currently, Rape Crisis Center is housed in the Crime Victim's Center. The RCC has been criticized by advocates for the combined locations of domestic violence and sexual assault on the belief that there is a basic distinction between domestic violence and rape. Domestic violence occurs among domestic partners i.e. people known to the victim and often the persons with whom they choose to live. The vast majority of rape victims are raped by a stranger and the personal violation and mental humiliation from this type of assault cannot be compared to domestic violence and requires different mental health skill sets.

³ Formerly known as Memphis Sexual Assault Center (MSARC), then Shelby County Sexual Assault Center (SCSAC) and now recently returned to its original name Rape Crisis Center which remains under Shelby County government.

⁴ One interesting note, in 2009 RCC was also assigned the responsibility of overseeing the dog pound.

Over the years advocates have noted that RCC is understaffed for the 24 hour responsibilities they shoulder. That concern persists today including the fact that current staff does not include a mental health specialist. Additionally, there is no line item budget for Rape Crisis and the space allocated for victim exams is very small. Notwithstanding the criticism, Rape Crisis Center is still the most experienced center for sexual assault examinations. The County may want to take a look at Detroit's Rape Crisis centers. Detroit, for example, has 3 Rape Crisis Centers all independent from government.

The MPD used to take sexual assault victims to 201 Poplar for a statement before taking them to the Rape Crisis Center. The MPD has now modified its protocol to include getting basic information from the victim at the scene of the crime, transport victim to RCC where every effort will be made to get the victim's full statement. MPD will also assign a Law Enforcement Liaison to be with the victim to provide any needed services.

The MPD created the Sexual Assault Response Team (SART) that is more victim focused and made sure that the victim received the attention they deserved. The advocacy groups strongly recommend that they restart SART meetings for case reviews. Currently there are weekly meetings that include MPD, the DA's office and RCC. Some have suggested that advocates should have training in handling victims of sexual assault and that Police Reserve officers should be recruited as advocates. As of February 25, 2014 RCC and MPD, TBI and AG's staff have had training together on protocol for handling sexual assault cases and evidence.

MPD officers in sex crimes have now completed training regarding sexual assault and victim focused investigations. The training included policy and procedures for the Uniform Patrol officers and standard operating procedures for the Sex Crimes Bureau. It has been suggested that nationally recognized experts do the training for sex crimes to enhance interest in the squad. Additionally, MPD is hosting community meetings to let the community know about the systemic changes in progress and receiving community input.

Tracking cases and staffing:

In 2013 MPD put together a small group which included officers representing sex crimes, TBI forensic specialist, a prosecutor and an advocate who meet weekly to focus on cases closest to the statute of limitations.

It is expected that the numbers of cases will grow exponentially with the testing of the backlogged cases. MPD Sex Crimes Squad has not been fully staffed for awhile and with the advent of thousands of new cases they will need a full complement of officers and support staff to locate the victims and suspects and prepare reports for the District Attorney's office to consider for prosecution.

The bid system presents challenges in obtaining officers that are trained and interested in sex crimes. Promotion is generally the important factor which results in turnover in staffing the squad, sometimes with officers that are not necessarily interested in sex crimes. Notwithstanding those challenges MPD has created a DNA Unit whose purpose is to inventory the Sexual Assault Kits (SAKs) in MPD possession, properly organize and tag all SAKs, create and maintain processes for analyzing all SAKs not previously analyzed, and submit cases for prosecution where possible. Additionally, the DNA Unit maintains a Hotline for victims to contact MPD and discuss their case in a confidential and professional manner. The Hotline number is 901-636-3438.

The District Attorney's Special Crime Victims Unit handles child abuse and all rape cases. They recommend a forklift approach of sending all kits for testing. Currently the DA is indicting DNA profiles to toll the statute of limitations. Every Criminal Court has a victim-witness coordinator from the DA's office and their vertical prosecution unit keeps MPD involved at all stages of the prosecution.

Child victims and their parents are sent to the Child Advocacy Center if requested. The Child Protective Investigative Team (CPIT) does forensic interviews and will call DCS if child is possibly the victim of abuse. The MPD is located at the Center and Center staff has regular meetings with law enforcement, including FBI and Juvenile Court. The Center does counseling with the child victim from the beginning through prosecution which can be a three year process. MPD goes out with advocates and testing kits.

Funding:

It is anticipated that testing of all backlogged cases will run between five and seven million dollars. Currently several potential funders have committed their resources to the project. The Plough Foundation has promised a \$750,000 in challenge grants. A funding request

for two million dollars has been sent to TBI and the State legislature. And, recently the White House announced that:

“the administration’s FY2015 Budget provides \$35 million for a new grant program to inventory and test rape kits, develop “cold case” units to pursue new investigative leads and support victims throughout the process. The grant will also be used to develop evidence-tracking systems, train law enforcement on sexual assault investigation, and conduct research on outcomes in sexual assault cases.”

Although the City unsuccessfully sought funding from the State of Tennessee in 2014, Mayor Wharton is committed to applying again for state financial assistance. It is also expected that Memphis will apply and receive some funding from the Federal Government.

Conclusion:

Memphis has now embarked on a multifaceted approach to ensure that the backlog is reduced to zero and at the same time work all current cases to conclusion. Mayor Wharton brought Joyful Heart Foundation in to use their expertise in assisting victims and engaging community involvement in addressing the issue. They are assisting in training law enforcement and advocates on victim notification and will conduct Heal the Healer Training this summer.

On 31 January 2014 a Sexual Assault Kit (SAK) Cross-functional team (CFT) was established by Mayor A C Wharton, Jr. to receive input and suggestions from a broad cross section of people who, are or have been, involved with sexual assault victims and cases. The CFT includes representatives from the Mayor’s Office, the District Attorney’s Office, Memphis City Council, Victim Advocacy Agencies, the CAO’s Office, Division of Police Services, Finance Division, Legal Division, and Joyful Heart Foundation. They are working to ensure that the work and many aspects of reform are coordinated and continue to move forward.

The Memphis Police Department and the District Attorney General have agreed upon a new process for all new sexual assault cases. Under the new process, all SAKs associated with a crime will be submitted for serology and DNA. A District Attorney’s authorization letter will be signed and submitted with the SAK when it is turned over to Cellmark. This will be a one step process instead of the old two step process.

SAKs currently stored at Old Allen Station and 201 Poplar Ave. property rooms will ultimately be stored at the Harvester location. Harvester storage space, when built out, will have the capacity to store up to 60,000 kits and also be climate controlled. The price tag is approximately one million dollars.

Additionally, Sex Crimes Adult and DNA Squad Restructure Outline and Plan are currently preparing for 700 cold case investigations, 350 CODIS hits and 230 indictments. If this is the level of investigations on the immediate horizon then the City should consider alternatives to the bid system for Sex Crimes. Caseloads are already high and burn out is and will be a problem. While there is legislation currently proposed to address the staffing needs to address the SAK backlog, there is no guarantee it will pass.

Progress will continue to be made through the work of the Cross Functional Team, MPD, Shelby County Sheriff's Department and the Joyful Heart Foundation. The Commercial Appeal has recently noted that "MPD is making strides in the rape kit backlog".(4/17/14) It is clear that there is a concerted effort to reduce the backlog to zero and to make certain that policies and procedures are in place to ensure we will never find ourselves in this position again.

Respectfully submitted,


Veronica F. Coleman-Davis

INTERVIEWS (alphabetical order):

Amy P. Weirich, District Attorney General
Anna M. Whalley, Administrator, Shelby County Crime Victims Services
Beth Hyman, Lieutenant, MPD OCU PSN
Bill Oldham, Shelby County Sheriff
Bill Powell, Shelby County Criminal Justice Coordinator
Bruce Moore, News Director WREG-TV
Danielle Paez, Victim Advocacy Coordinator Child Advocacy Center
Deborah M. Clubb, Executive Director Memphis Area Women's Council
Don Crowe, Major, MPD Sex Crime Bureau
Donna C. Nelson, SA/FS, TBI Crime Lab Regional Supervisor
Dottie Jones, Director, Shelby County Division of Community Services
E. Winslow "Buddy" Chapman
James Harvey, Deputy Chief, MPD Investigative Services Division of Police Services
Jenifer Nichols, Chief Prosecutor Special Crime Victims Unit, SC DA's Office
L. Deborah Williamson, LMSW, Manager, Shelby County Crime Victims Center
Larry T. Vertrees, Lieutenant, Detective Division, Domestic Violence/Sex Crimes
Wilton Cleveland, Lieutenant, MPD Internet Crimes Against Children
Quita O. Knowlton, Sergeant, MPD Sex Crimes Bureau
Ricci Hellman, citizen
Rowena Adams, Dep. Chief MPD
S. Cody Wilkerson, Lieutenant MPD Sex Crimes Bureau
Scott Wright, Captain, SCSD Shelby County Sheriff's Office
Steven Crouch, Chief Inspector Shelby County Sheriff's Office
Susanna Parkinson, Former employee Rape Crisis Center
Toney C. Armstrong, Director Division of Police Services