



MEMORANDUM

TO: Mayor and Council Members

FROM: Rey Arellano, Assistant City Manager

DATE: February 21, 2019

SUBJECT: Update Regarding Activities to Address APD DNA Lab Audit Recommendations

The purpose of this memo is to provide an update on the progress being made in regard to the audit recommendations made by the Texas Forensic Science Commission. My last [memo](#) to Council “Subject: Update Regarding Activities to Address APD DNA Lab Audit Recommendations” was sent on August 17, 2018.

On August 30, 2018, Council subsequently approved on an amendment to the DNA interlocal agreement (ILA) with Travis County that added an additional one-year term that will end on September 30, 2019, plus three additional one year terms, subject to continued funding by the County and the City. Travis County Commissioners Court approved the amendment on September 11, 2018.

This memo contains the following sections:

- [Update](#) on Activities Related to the DNA Interlocal Agreement
 - [Professional Service Agreement \(PSA\) One](#): The “look back” and “look forward” scope of work
 - [PSA Two](#): Legal Materiality Case Review
 - [Status](#) of Expenditures Related to the ILA
- [Status](#) of the Sexual Assault Kit Backlog

Update on Activities Related to the DNA Interlocal Agreement

The ILA called for the development of two professional service agreements (PSA) to address two scopes of work:

PSA One: The City will enter into a PSA with expert consultants (consultants) who will address the findings of the Texas Forensic Science Commission's (TFSC) Final Audit Report/or Austin Police Department Forensic Services Division DNA Section (Audit Report). The consultants will assist with addressing the Audit Report recommendations as well as evaluating the impacts of the Audit Report findings to DNA evidence in criminal cases in Travis County. Additionally, under the terms of PSA One, the consultants will research and identify options and best practices for appropriate DNA lab testing services for the Austin-Travis County area going forward.

PSA Two: The County will enter into a PSA with the Capital Area Private Defender Service (CAPDS) to review the legal materiality of DNA evidence processed by the APD DNA Lab and used to secure convictions in Travis County courts. Further, under the terms of PSA Two, when necessary, CAPDS will provide post-conviction writ litigation services to defendants who were convicted of a crime based on DNA evidence that was material to the criminal case and that was processed by the APD DNA lab.

PSA One: The “look back” and “look forward” scope of work

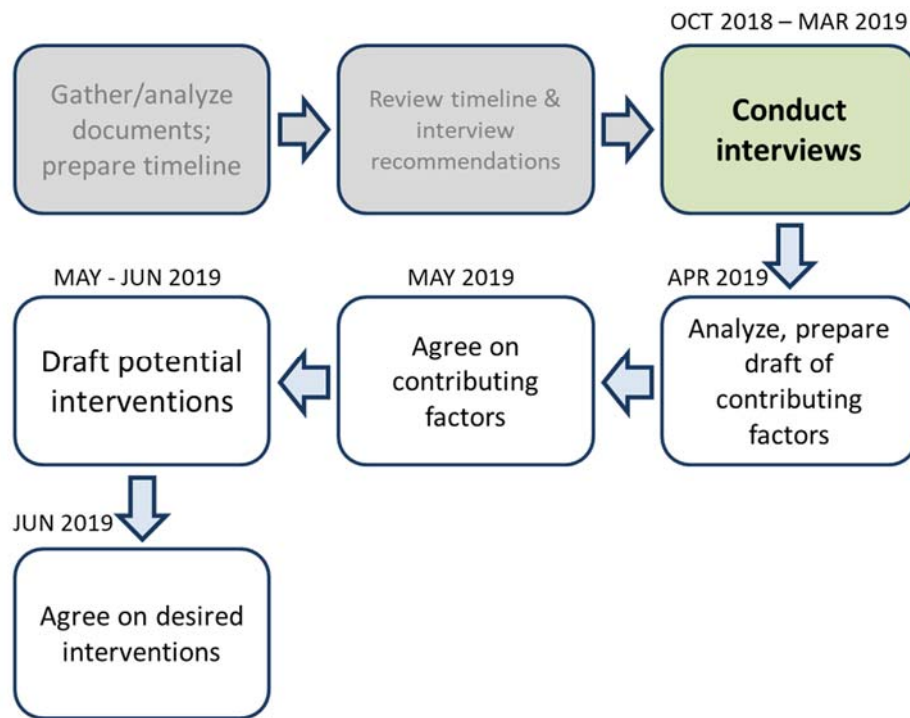
Part of this scope of work calls for “...evaluating the impacts of the Audit Report findings to DNA evidence in criminal cases in Travis County.” The update on this portion can be found in the following section on PSA Two related to the legal materiality reviews.

The remaining scope of work is being covered under a professional service contract with the University of Pennsylvania Law School’s Quattrone Center for the Fair Administration of Justice (“Quattrone”) to conduct a thorough assessment of the factors that led to issues in the Austin Police Department (APD) DNA Lab. This assessment will inform the “look forward” scope of work identified in the DNA ILA to research and identify options and best practices for appropriate DNA lab testing services for the Austin/Travis County area going forward.

John Hollway, Executive Director for the Quattrone Center provided a briefing to the DNA Working Group and the Advisory Panel on December 12, 2018. Initial interviews with relevant individuals involved in APD’s DNA lab commenced during the week of July 23, 2018. As Council is aware, the City and the County were named in a lawsuit, *Amy Smith, et al v. City of Austin, et al*, regarding the handling of sexual assault cases. The City and the County asked Quattrone to

briefly pause the interview process in late August to develop a protocol for documents and interviews that ensured compliance with court orders related to victim identities while allowing Quattrone to continue with its interviews.

Following the review of the implications of *Smith v. City* by City and County law departments, and taking into consideration the ability for Quattrone to reschedule their staff and subject matter experts, the interviews resumed in mid-October.



The status of interviews is:

	Completed	Remaining
Addressing the issues at the APD DNA lab	19 (8 declined)	18
Identifying options and best practices for appropriate DNA lab testing services for the Austin-Travis County	8	0

Quattrone is in the process of scheduling the remaining 18 interviews.

Since the December 12, 2018 meeting, Quattrone accomplished the following related to the “look forward” scope of work:

- Toured the Houston Forensic Science Center’s (HFSC) DNA laboratory.

- Attended an HFSC Board meeting.
- Interviewed the scientific and board leadership of the HFSC on best practices in a DNA lab.
- Gathered additional information from a number of leading DNA laboratories across the country with regard to metrics and measurement of quality within a DNA lab.

Following is the anticipated timeline for Quattrone’s scope of work:

January – March 2019	Complete remaining interviews
April 2019	Meet with Working Group and Advisory Panel to discuss contributing factors
May 2019	Meet with Working Group and Advisory Panel to discuss potential recommendations
June 2019	Meet with Working Group and Advisory Panel to confirm final recommendations

PSA Two: Legal Materiality Case Review

Under the DNA ILA, Travis County engaged the Capital Area Private Defender Service (CAPDS) to receive and address responses to Brady notices¹, conduct legal materiality reviews, request scientific reviews; and in necessary cases, write and litigate post-conviction writs on behalf of the defendants convicted in cases where DNA analysis was conducted by the APD DNA lab. The name of the team is the “Forensic Project.”

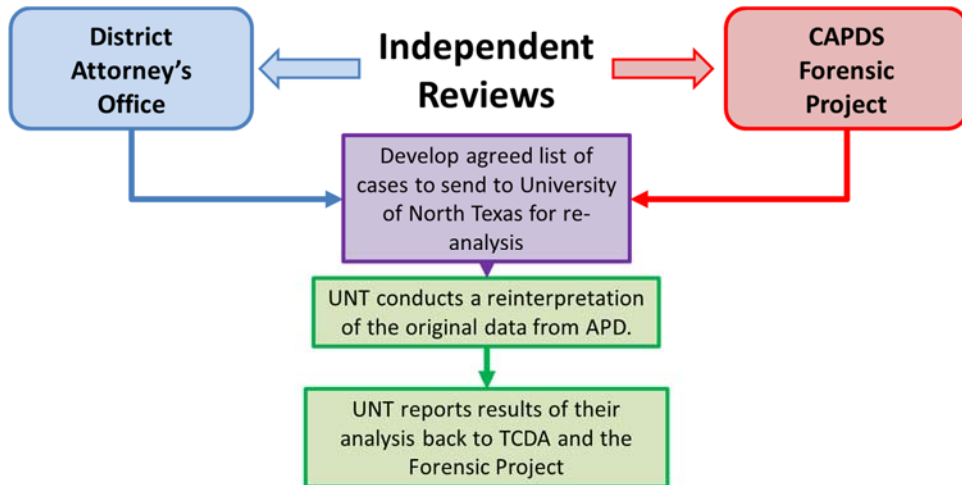
Staff continued to participate on the DNA Working Group and with the University of North Texas Health Science Center (UNT HSC) to conduct scientific reviews of APD cases identified through the legal materiality review process in order to assess the reliability of the DNA analysis conducted by APD lab staff during the period under review. This constitutes a portion of PSA One’s scope of work.

¹ “Brady notices” refers to notifications sent to individuals where exculpatory information arises that is material to the guilt or innocence or to the punishment of a defendant. The term comes from a 1963 U.S. Supreme Court case *Brady v. Maryland*.

Materiality Review Process

The Materiality Review process is conducted independently along two paths: one by the Travis County District Attorney’s Office (TCDA) and the other by the Forensic Project.

TCDA	Forensic Project
<ul style="list-style-type: none"> • Review includes all APD DNA cases (1,833 cases). • 884 cases have been reviewed. • 180 cases identified where DNA may have affected the outcome. 	<ul style="list-style-type: none"> • Review includes over 600 cases from clients requesting review. • ~50% of cases have undergone some level of materiality review. • In the early stages of litigation preparation as cases are developed for possible writs.



UNT HSC has completed 53 reports of 56 reviews requested by either the District Attorney’s Office or the Forensic Project team. This compares with the completed 36 reports of 42 reviews reported in my last memo. It is unknown at this time how many additional reviews will be needed.

Of the 53 cases reviewed, UNT HSC has not found any instance where the original report said that a person *could not be excluded* **and** the re-interpretation determines that the person *should have been excluded*. When taken with other evidence relevant to a case, this means there are no defendants who were found guilty based on a misidentification by incorrect DNA evidence.

The Forensic Project team is transitioning from primarily materiality review into writ litigation and investigation. In addition, the arrival of a new Project Director and the evolving type of case work has required a re-evaluation of the team's structure and processes. Case review status will be presented in future updates once the re-evaluation effort is completed.

The Forensic Project has filed writ applications in 7 cases. Note that even in those cases where TCDA and the Forensic Project agree that relief of some form should be granted, cases must go through the writ of habeas corpus process. This means that the Forensic Project must investigate *all* potential grounds for a writ – even issues not related to the DNA evidence – or else those potential grounds are waived. TCDA and the Forensic Project will be meeting to discuss next steps for these cases.

Status of Expenditures Related to the ILA

The City Council authorized expenditures of up to \$1,919,024 with the original DNA ILA. The total expended to date is \$454,733.75.

Under PSA One: expenditures to date are \$100,000 for services provided by Quattrone.

- Following the review of the implications of *Amy Smith, et al v. City of Austin, et al*, by City and County law departments and Quattrone's ability to reschedule their staff and subject matter experts, the interviews resumed in mid-October. As a result of the delay, the contract with Quattrone was extended from February 2019 to April 2019; and the contract was administratively increased by \$25,000 for a total value of \$425,000. Quattrone's projected timeline indicates completion in June 2019. A contract amendment to extend the performance period will be required; we do not expect an increase in contract expenditure.
- The interlocal agreement with the University of North Texas Health Science Center authorized expenditure in an amount not to exceed \$100,000. The agreement expires September 30, 2022. No invoices have been received for this interlocal agreement.

Under PSA Two, the County has expended \$809,467.49 through September 30, 2018. The City has paid \$354,733.75 in reimbursement to account for shared expenditures under both PSAs One and Two.

Status of Sexual Assault Kit Backlog

Background

Council has recently expressed an interest in the status of processing sexual assault kits. This section provides an update on the City's efforts to eliminate the backlog of sexual assault kits awaiting DNA analysis as well as keep up with current cases.

To address the backlog, APD applied for and received a grant from the District Attorney's Office of New York (DANY) and a federal grant for the Sexual Assault Kit Initiative (SAKI) to outsource backlogged sexual assault kits for DNA testing. Additionally, Council approved contracts with Bode Cellmark, Sorenson, and Signature Science as well as an interlocal agreement with the Texas Department of Public Safety (DPS) to establish and operate DNA analysis capability. The interlocal agreement established the Capitol Area Regional Laboratory (CAP Lab) that is managed by DPS using APD's lab facility. The CAP Lab and Signature Science agreements focus on processing all incoming sexual assault cases, while the Bode Cellmark and Sorenson contracts focused on elimination of SAK backlog.

DANY and SAKI grants update

The DANY and SAKI grants described above enabled the City to outsource a total of 2,665 kits for DNA testing. The DNA testing of these kits is complete and all kits and associated DNA reports have been returned to the CAP Lab, with approximately 35% yielding positive results. These DNA reports are also available to Austin Police Department (APD) Investigators who are reopening and beginning to work cases that correspond with kits that yielded positive results.

The next step is for DPS CAP Lab to provide the review of each DNA report necessary to determine eligibility and potential entry into the Combined DNA Index System (CODIS). To date, six grant cases have been reviewed for CODIS entry and there have been 2 CODIS hits to DANY grant cases. The City and the CAP Lab are in the process of developing a plan to expedite this technical review process. Department of Justice (DOJ) funding is available to support implementation of an expedited plan and we expect to publish this process and schedule through the SAKI project website (<http://austintexas.gov/department/austin-sexual-assault-kit-initiative-saki>).

While the DANY project concluded in September 2018, two federal SAKI awards will continue to support site coordination, forensic technical review services, victim and survivor counseling and outreach, investigative and prosecution services, and related research activities through September 30, 2021. The capacity of the Austin Police Department Victim Services Division to provide victim and survivor counseling and outreach has increased. Six counselors (4 City funded and 2 grant funded) are assigned to work within sex crimes investigative units and

thirteen counselors (11 City funded and 2 grant funded) are assigned to work with our 24/7 crisis team, with a significant portion of their time dedicated to assisting survivors of sexual assault, particularly through the forensic exam process.

Current caseload

With regard to new SAKs, the Austin Police Department currently submits all incoming SAKs to Signature Science at least every two weeks for DNA analysis. Signature Science is returning these DNA reports back to APD within approximately 60 days, when they are made available to investigators. Those kits that return positive results are prioritized for technical review by the CAP Lab for CODIS eligibility and entry.

cc: Spencer Cronk, City Manager
Executive Team
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