Department of Justice

STATEMENT OF

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COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

AT A HEARING ENTITLED

PROMOTING JUSTICE FOR VICTIMS OF CRIME: EXAMINING THE FEDERAL INVESTMENT IN DNA ANALYSIS

PRESENTED

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Chairman Grassley, Ranking Member Feinstein and Members of the Committee, thank you for this opportunity to discuss the ongoing commitment by the U.S. Department of Justice to support forensic laboratories in their efforts to increase capacity and decrease the backlogs of DNA evidence. My name is Gerry LaPorte, and I am the Director of the Office of Investigative and Forensic Sciences (OIFS) at the National Institute of Justice (NIJ) at the Department of Justice's Office of Justice Programs (OJP).

NIJ is dedicated to improving knowledge and understanding of crime and justice issues through targeted research and funding. NIJ supports the Department of Justice's three priorities on forensic science: (1) improve capacity; (2) increase coordination and collaboration with state, local, and tribal entities; and (3) advance the reliability and sensitivity of forensic science testing. We provide objective and independent knowledge and tools to inform the decision-making of the criminal justice community to reduce crime and advance justice, particularly at the state and local levels.

Within NIJ, the OIFS is the federal government's lead agency for forensic science research and development as well as for the administration of programs that facilitate training, improve laboratory efficiency and reduce backlogs. OIFS' mission is to improve the quality and practice of forensic science through innovative solutions that support research and development, testing and evaluation, technology, information exchange, and the development of training resources for the criminal justice community.

Today I will discuss the advances in forensic science brought about by the rapidly increasing use of DNA analysis in crime solving and other applications; the challenges brought about by these advances and successes; and the steps NIJ is taking to address the challenges, mitigate their adverse effects, and help forensic science and its practitioners become even more effective in ensuring a just and safe society for all Americans.

Forensic DNA analysis has played a crucial role in the investigation and resolution of thousands of crimes since the late 1980s. DNA helps identify perpetrators, clear suspects, and brings an opportunity for justice to victims. Advances in DNA analysis have strengthened our

criminal justice system's effectiveness well beyond what was ever imagined. Our forensic scientists can now analyze old, highly degraded, or otherwise previously unviable evidentiary samples, which would never have been possible without investments in research and innovation.

These efforts have produced enhanced technology and methodologies which are creating more demand for other types of evidence, such as DNA testing of shell casings. In fact, methodologies enabling the recovery of DNA from shell casings ejected from firearms is over 10 times more successful than it was just 10 years ago.

We use DNA analysis to help exonerate those who were wrongfully convicted, and to test previously unsubmitted sexual assault kits collected as far back as the 1970s. Today more states are enacting legislation to collect DNA from arrestees, which is also causing a steep increase in the requests for DNA analysis.

Another critical component that has contributed to the success of DNA testing is the creation and continued expansion of the FBI's Combined DNA Index System, or CODIS, which enables federal, state, and local forensic laboratories to exchange and compare DNA profiles electronically, thereby linking crimes to each other and to DNA from known sources such as convicted offenders and arrestees from states with offender/arrestee DNA sample collection laws.

CODIS expansion has enabled us to use DNA analysis for cold case investigations to identify human remains. An estimated 4,400 unidentified human remains are found every year, and investigations are unable to uncover the identity of approximately 1,000 of them. These numbers, and the pain and unanswered questions of the loved ones left behind, led NIJ in 2008 to develop NamUs, the first central location for data that help solve cases involving unidentified human remains. Since March 2018, when NamUs began to resubmit all of its fingerprints from unidentified persons cases to the FBI laboratory, where new technology along with enhanced processing protocols increases the likelihood of identification, nearly 200 identifications have been made.

But state and local forensic laboratories face persistent challenges related to the backlogs that result from this expanded DNA testing. The term "backlog" has a specific meaning and refers to evidence, such as a sexual assault kit, for example, already submitted to a laboratory that <u>has not been tested within 30 days of receipt</u>. But <u>unsubmitted</u> evidence is collected evidence that has <u>never</u> been submitted to a laboratory and therefore is not considered part of the laboratory backlog. Such evidence may not have been sent to a crime laboratory for a number of reasons: the case may have been adjudicated by plea bargain, the case may have been dismissed, the victim may have withdrawn the complaint, or the evidence collected may have been deemed nonprobative by investigators. Unsubmitted sexual assault kits and DNA backlogs are two distinct problems—they have vastly different causes and their solutions require different resources and strategies.

To bring justice to victims and help apprehend perpetrators, all sexual assault kits should, with the victim's consent, be submitted to a laboratory for testing. While the Department provides funding to address both the backlog of cases submitted to crime laboratories and the

challenge presented by unsubmitted sexual assault kits, my remarks today will focus on the backlog as it pertains to evidence that has been submitted to a laboratory from various crimes including homicides, sexual assaults, and other violent offenses.

A significant contributor to the rising backlog is what we call "capacity enhancement." Capacity enhancement refers to a laboratory's productivity – its ability to process more evidence as a result of improvements in efficiency and infrastructure. For example, if a lab can complete a case analysis in 15 days rather than 30 days, then the laboratory has successfully increased its capacity. Increased productivity should help reduce backlogs, but when the number of DNA cases submitted for analysis exceeds the number of DNA cases completed, backlogs increase, regardless of productivity. This dilemma is exactly what our performance metrics are showing. Specifically, from 2011 to 2016, the number of cases completed by labs rose significantly while the number of requests for DNA analysis increased at a slightly higher rate, so the increasing requests for DNA testing are outpacing increased productivity. Increasing capacity and efficiency means that more cases will be worked and investigators and prosecutors will receive results in a timely manner.

This Catch-22 situation comes from the successful outcomes from several federal grant programs which have made a significant contribution to clearing backlogs of forensic DNA evidence in crime laboratories. Between 2004 and 2011, for example, NIJ awarded approximately $542 million in DNA grants to state and local DNA laboratories. Over 220,000 backlogged forensic DNA cases and 2.1 million convicted offender/arrestee DNA database samples were funded through the various NIJ DNA grant programs offered. In addition, funds were used to increase the capacity of state and local DNA laboratories to work more cases and database samples by buying better laboratory equipment, improving automation, and hiring staff.

But until the capacity to work more DNA cases and DNA database samples equals the increasing demand for more DNA cases to be tested as well as the increasing state legislative requirements expanding the collection of DNA database samples from convicted offenders and arrestees — or until supply equals demand — the backlogs will continue to grow, and NIJ will continue to work to eliminate them.

Administering grants through NIJ's DNA Capacity Enhancement and Backlog Reduction (DNA CEBR) program has been one mechanism we use to increase the capacity of public forensic laboratories, thereby helping to reduce the backlog of DNA evidence. NIJ awards grants to states and units of local government for the nation's forensic DNA laboratories based on a formula derived from the applicable number of violent crimes, property crimes, and the state's population. Since the needs and resources of forensic laboratories vary between jurisdictions, NIJ allows states and units of local government some discretion on how to use their DNA CEBR grant.

DNA CEBR is a critical resource for forensic laboratories, law enforcement, and prosecutors. Since 2005, DNA CEBR grant recipients have completed over 860,000 cases resulting in 376,000 profiles uploaded to the FBI national database, CODIS.[1] In an article

[1] National Institute of Justice Report: Fiscal Year 2017 Funding for DNA Analysis, Capacity Enhancement, and Other Forensic Activities found at: https://www.ncjrs.gov/pdffiles1/nij/251445.pdf.

published in 2015, "The Effects of DNA Databases on Crime," the authors concluded that DNA databases exhibit returns to scale and that larger databases reduce crime rates. The author estimates that for each DNA profile uploaded to CODIS there is approximately 0.44 fewer offenses for a savings up to $20,000 for each case by preventing new crimes.[2]

In response to the ongoing need for long term, sustainable solutions, NIJ introduced a competitive grant program for Forensic DNA Laboratory Efficiency Improvement and Capacity Enhancement in fiscal year 2016. The central goal of the DNA competitive grant program is to help crime laboratories substantially increase their efficiency through a well-defined plan such as building and improving laboratory infrastructure or implementing new methods and technologies. Most importantly, the DNA competitive grants are for activities that address specific 'stress points' or bottlenecks in processing evidence, which require grant recipients to produce public reports that can inform the forensic science community about their effectiveness.

While the DNA CEBR and DNA competitive grants provide critical resources, we are also committed to a strategy that couples rigorous research and innovation with capacity enhancement and technical assistance. We would be remiss if we did not actively seek out new technologies, more efficient methods, and continued research to strengthen the quality of analysis and the interpretation of evidence. For example, NIJ supported the early development of Rapid DNA technology in 2009 and 2010. The Rapid DNA Act of 2017 was passed last year, and this would not have been possible without our earlier investments in Rapid DNA technology, along with the support and interest of this Committee. Since 2008, NIJ has provided more than $100 million per year in awards for DNA analysis and capacity enhancement and other forensic activities.

Finally, I am pleased to announce that NIJ and the Scientific Working Group on DNA Analysis Methods recently formed a working group for Best Practices for DNA Laboratory Efficiency Improvements. This working group is composed of approximately 25 representatives from various laboratories throughout the United States. The objective is to produce a best practices guide that will capture a combination of innovative and practical concepts, as well as incorporate proven practices and recommendations to increase laboratory productivity and capacity. We will be modelling this effort on our *Best Practices for Testing Sexual Assault Kits: A Multidisciplinary Approach*, which NIJ discussed before this Committee three weeks ago.

Thank you again for this opportunity to discuss this very important issue. I look forward to addressing your questions.

[2] Doleac, Jennifer L., The Effects of DNA Databases on Crime (August 1, 2016). Available at SSRN: https://ssrn.com/abstract=2556948. Available at: http://dx.doi.org/10.2139/ssrn.2556948.