



DISMISSALS DUE TO DELAY OF ANALYSIS OF EVIDENCE

SUBMITTED TO THE NORTH CAROLINA GENERAL ASSEMBLY
JUSTICE & PUBLIC SAFETY OVERSIGHT COMMITTEE
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NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS
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Section 18A.9 of the Appropriations Act of 2015 mandated that “Whenever a criminal case is dismissed as a direct result of a delay in analysis of evidence by the State Crime Laboratory, the district attorney for the district in which the case was dismissed shall report that dismissal and the facts surrounding it to the Conference of District Attorneys. The Conference of District Attorneys shall compile any such reports of dismissals and, in coordination with the State Crime laboratory, shall report them quarterly starting October 30, 2015, to the chairs of the House of Representatives and the Senate Appropriations Committees on Justice and Public Safety and to the chairs of the Joint Legislative Oversight Committee on Justice and Public Safety.”

FORENSIC ANALYSIS

Throughout the last several years, the State Crime Lab has had to overcome a number of challenges that have delayed their delivery of services. These challenges have come from multiple sources: inadequate funding, noncompetitive pay, changes and challenges in forensic science, changes in case law and changes in technology. The results have been delay in case analysis; some delays as long as two or three years. While the State Crime Lab has made great strides to address these changes and challenges, and improvements are being realized, the delays have had a negative effect on processing criminal cases.

The largest volume of cases sent to the State Crime Lab involve drug chemistry and toxicology (DWI and drug crimes). Because of their volume, these cases are the most susceptible to delay. Last year our courts disposed of over 223,000 DWI and drug case filings. Of course not all of these go to the State Crime Lab. Most DWI’s involve breath analysis which is conducted locally through law enforcement agencies. But those cases that require blood analysis must be addressed by a lab. In 2015 there were over 16,500 blood draws in DWI cases. The State Crime Lab received and processed 11,562 of those blood toxicology cases (not all cases were analyzed). Additionally, the General Assembly appropriated funds for alternative testing resources to assist the State Crime Lab in reducing the backlog in this area. To date, 22 of 44 prosecutorial districts have agreed to outsourcing and the State Crime Lab has outsourced over 2,000 cases for analysis. District Attorneys have secured another 782 cases analyzed through hospital contracts.

Drug chemistry is the other high volume area where a backlog and delay has impacted court proceedings. Many times the strength of the court case for these crimes is solely reliant on the lab analysis. Last year the State Crime Lab processed 26,492 drug chemistry cases. In addition, local labs

have been established in a number of districts to assist in analysis on a variety of case disciplines. Most of these local labs began with testing on drug chemistry but some have focused on other areas.

District	Lab	Testing
3A	Funded by Pitt County and grants	Testing on Drugs and blood alcohol
5	City of Wilmington – Serves 18 LEO agencies in the region under MOUs.	Testing on Drugs and blood alcohol
10	Raleigh/Wake City County Bureau of Identification	Fingerprint analysis & comparison Footwear analysis & comparison Solid Dose Drug Chemistry analysis DWI Blood Alcohol/Blood Drug analysis Digital Evidence examination Facial Recognition comparison
12	City / County Lab (operated by NMS)	Testing on drugs and blood alcohol
21	City of Winston-Salem Lab	Testing on drugs and blood alcohol
22A	Iredell County Sheriff's Lab (CLOSING)	Testing on Drugs and blood alcohol
26	City of Charlotte Lab	DNA, drugs, fingerprints, firearms, computer forensics, handwriting, computer forensics and chemistry.

COURTS PROCESSING

Despite these areas of assistance, District Attorneys have continuously been challenged to seek justice in a timely manner, keep an ever-growing docket moving and process cases that have been languishing because of lack of analyzed evidence. Cases are often continued numerous times over one to two years because of delay of lab analysis. When such significant delays occur, resulting in multiple continuances, judges have regularly denied further continuance requests. This forces prosecutors with the choice of trying the case without the lab analysis or dismissing the case outright if they have no other evidence. In some cases, ADAs have taken voluntary dismissals on cases with the hope of re-filing charges after lab analysis is complete. However, the risk is that the statute of limitations could run out before the analysis is obtained.

For drug possession and drug trafficking cases, there are many anecdotal reports that prosecutors have pled these cases to significantly lesser charges, often resolving cases with a plea to probation. This is not an available option for DWI cases.

Last year there were anecdotal reports of increases in cases being found not guilty at the close of the State's evidence. The Conference of District Attorneys requested prosecutors to report the number of dismissals due to delay in lab analysis. Response was received from 18 districts with widely varying degrees of information, each case having a unique set of circumstances. The reported cases were compared and tracked by the State Crime Lab.

Depending upon the case type, additional evidence, and how far in the process the case had proceeded, the following reflect general categories of responses:

- Cases tried without lab results, subsequently found guilty,
- Cases tried with lab results, subsequently found not guilty,
- Cases dismissed but will refile and State Crime Lab is continuing to work,
- Cases plead to a lesser crime/sentence,
- Cases dismissed but from an earlier time period,
- Cases dismissed after lab results had been obtained,
- Cases dismissed but not full disclosure of the circumstances or time period,
- Cases reported dismissed but State Crime Lab never received case requests.

We do not believe that we have a complete or consistent hard number to report to the General Assembly. There are over 600 prosecutors who manage an average caseload of 2,482 misdemeanors and felonies per year (plus 985 infractions each). Without conducting significantly more research into the myriad issues, effects and results of lab delays, neither the Conference of District Attorneys nor the State Crime Lab are confident in the specific numbers.

CONCLUSION

The backlog at the State Crime Lab was caused by multiple factors over several years. There is no quick fix nor a single solution to the problem. However, much progress has been made in addressing the backlog through multiple initiatives. Significant effort has been made in the past two years to encourage prosecutors and the State Crime Lab to develop new procedures and processes, improve communication and responsiveness in order to maximize resources.

The State Crime Lab has now automated the process whereby a prosecutor can notify the Lab when work can cease on certain case analysis. These "stopwork" notifications occur when cases are dismissed or disposed in some way before lab evidence has been analyzed. The level of the "stopwork" action

reflects the cases referenced above and many others. Between October 1st and December 31, 2015, there were 7,698 “stopwork” requests/actions on cases at the Lab.

The Conference of District Attorneys continues to train the over 600 prosecutors and 500 legal assistants on these new procedures and encourages District Attorneys to implement new processes in their case management.

Caseload cleanup initiatives, outsourcing, local labs and hospital contracts have all been applied and we are beginning to see progress. It is clear to both the State Crime Lab and District Attorneys that continued communication between prosecutor offices and the Lab is the best way to ensure that cases are analyzed and managed in the most effective manner. The Conference of District Attorneys and the State Crime Lab continue to look for innovative ways to process cases, automate communication and train constituents on best practices.

STATE CRIME LAB RESPONSE

The NC State Crime Laboratory works effectively with the Conference of District Attorneys to promote best practices among District Attorneys to make forensic analysis more efficient, including training and encouraging District Attorneys to:

- Notify the Lab when analysis is no longer needed in a case so that time and money are not spent working cases not needed by the Court. **35 of 44 Districts are fully participating at this time.**
- Establish agreements with Superior Court judges to allow Lab analysts serving as trial witnesses to testify quickly instead of waiting in court, minimizing the time forensic scientists spend away from active casework. **26 of 50 Superior Court Districts, representing 53 counties, are participating at this time.**
- Take advantage of outsourcing analysis of certain toxicology cases, available through Lab contracts with an approved vendor and paid for by state funds. **27 of 44 Districts are participating at this time.**

These practices enable the State Crime Lab to provide more timely forensic analysis and all judicial districts in the state are encouraged to adopt them.

Working with DAs to provide timely lab analysis

The State Crime Lab stands ready to work with District Attorneys in cases where judges are not willing to provide a continuance. For example, in one case a defendant was charged in December 2014, the Lab received the request for analysis in January 2015 but the Court refused to continue the case later in 2015. This District Attorney contacted the Lab, requested that analysis be rushed, and after the results the DA can refile charges if warranted. The Lab also has the capacity to rush analysis of evidence needed for certain impending court dates, with sufficient notice from the District Attorney.

DAs encouraged to prioritize cases and communicate with the Lab

Scientists with the State Crime Lab rely on District Attorneys to keep them informed about court dates and help them prioritize cases. The Lab tracks each case it receives, its current status, and when results are shared with investigators and prosecutors. District Attorneys who are informed that a case may be delayed at the State Crime Lab are encouraged to check with the Lab directly. For example, the Lab is aware of cases reported as dismissed due to delays in lab work months after the Lab had actually completed analysis and provided results.

Ongoing communication between individual District Attorneys' offices and the State Crime Lab ensures that Lab resources are used most wisely. For example, notifying the Lab that a case has been dismissed or resolved by plea allows the Lab to focus its efforts on analysis of cases that remain active. Lab management has been in contact with all District Attorneys' Offices that shared information for this report to determine if any of their cases need further analysis or have reached final disposal.

Blood drug cases require most complex type of toxicology analysis

Many DWI cases request blood drug combination analysis—testing of blood samples for multiple drugs—which takes substantially longer than simple blood alcohol analysis. The State Crime Lab has worked to speed blood drug analyses by adding toxicology to the existing Western Regional Crime Lab in Asheville, requesting and adding additional scientists to work cases, seeking legislation that would allow written toxicology testimony in District Court, encouraging districts to allow outsourcing of cases where appropriate, and improving salaries to retain qualified analysts. These measures mean State Crime Lab toxicologists will spend less time traveling to court and thus more time in the Lab, where they can focus on the most critical cases.

The State Crime Lab thanks the Conference of District Attorneys for its work on this report and looks forward to continuing to work with the Conference and its members on behalf of the North Carolina criminal justice system.