



441 G St. N.W.  
Washington, DC 20548

August 14, 2018

Senator Charles E. Grassley

Chairman  
Committee on the Judiciary  
United States Senate

*Promoting Justice for Victims of Crime: Examining the Federal Investment in DNA Analysis – Responses to Posthearing Questions for the Record*

Dear Mr. Chairman:

On July 18, 2018, I testified before the Committee on the Judiciary's hearing on the federal investment in DNA analysis. This letter responds to the 12 questions for the record that you posed, along with the 2 questions for the record posed by Senator Hirono. The responses are based on work associated with my written testimony.<sup>1</sup> The questions and my responses are enclosed.

If you have any questions about this letter or need additional information, please contact me at (202) 512-8777 or [GoodwinG@gao.gov](mailto:GoodwinG@gao.gov).

Sincerely yours,

Gretta L. Goodwin  
Director, Homeland Security and Justice

Enclosure

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<sup>1</sup>See GAO, *DNA Evidence: Preliminary Observations on DOJ's DNA Capacity Enhancement and Backlog Reduction Grant Program*, [GAO-18-651T](#) (Washington, D.C.: July 18, 2018).

**Questions for the Record: Gretta L. Goodwin**  
**“Promoting Justice for Victims of Crime: Examining the Federal Investment in DNA**  
**Analysis”**  
**July 18, 2018**

**Questions from Senator Charles E. Grassley**

**1. Please suggest a statutory definition of DNA “backlog” that might be adopted by Congress for purposes of the DNA Capacity Enhancement and Backlog Reduction (“CEBR”) program.**

Policymakers contemplating creating a statutory definition may want to consider the following:

- There are two types of DNA evidence backlogs at labs: (1) “forensic casework” backlogs, which are associated with evidence from crime scenes, and (2) “offender sample” backlogs, which are associated with samples taken from convicted offenders, arrestees, and others, pursuant to law.
- The National Institute of Justice (NIJ) has separate definitions for both forensic casework and offender sample backlogs, and uses 30 days as its standard in both definitions.<sup>1</sup> DNA Capacity Enhancement and Backlog Reduction (CEBR) grant program grantees, which in 2017 included labs from 49 states, D.C., and Puerto Rico, have been reporting data using these definitions since 2011. As such, codifying new definitions for one or both of these types of backlogs may have a short-term impact on the ability of NIJ to assess trends over time.
- Policymakers may want to consult the broader DNA stakeholder community to obtain input, explore any incentives that may be created, and explore the potential for unintended consequences of how DNA evidence backlogs are defined.<sup>2</sup> GAO would be willing to assist in obtaining additional perspectives under a separate request.
- Backlogs are a measure of DNA analysis processing time. As such, it is important to provide specificity and clarity around (1) what “DNA analysis” consists of, and (2) what starts and ends the clock for processing or “turnaround” time.

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<sup>1</sup>NIJ defines a backlogged forensic casework request as a forensic biology/DNA request that has not been completed within 30 days of receipt in the lab; NIJ defines a backlogged DNA offender sample as a sample that has not been uploaded to the FBI’s Combined DNA Index System within 30 days of receipt in the lab.

<sup>2</sup>Such stakeholders may include, among others, NIJ, the American Society of Crime Lab Directors, the International Association of Chiefs of Police, relevant prosecuting attorneys associations, and representatives of Project FORESIGHT based out of West Virginia University.

- DNA analysis. To be consistent with NIJ’s current data collection efforts, we defined “DNA analysis” in our testimony as “biology screening (locating, screening, identifying, and characterizing blood and other biological stains and substances) and/or DNA testing (identifying and comparing DNA profiles in biological samples).”<sup>3</sup> However, project FORESIGHT, a laboratory data collection effort out of West Virginia University, collects separate turnaround times for biology screening and DNA testing. Individual labs may also structure their data collection in this way, as was the case with one lab we interviewed.
- Turnaround time. Policymakers may want to consider that using general terms like “receipt in the lab” for the start of the clock and “completed” for the end of the clock may result in differing interpretations among labs. For example, one lab may interpret “receipt in the lab” to be when the lab receives notification of the request from law enforcement, while another lab may consider it to be when the physical evidence enters the lab or when an analyst begins processing the request. Labs may come across similar issues with interpreting when a request is “completed.”
- Based on our ongoing work, it is our understanding that law enforcement officials and prosecutors who submit requests, and labs that process requests, currently expedite and/or prioritize requests based on various factors. These factors may include public safety concerns, the trial date of the associated case, whether or not there is a known suspect, or the nature of the crime (e.g. homicide, sexual assault, or property crime), among others. Therefore, policymakers may wish to consider allowing for different turnaround time standards for different types of requests.
- The CEBR program addresses backlogs of unanalyzed DNA evidence at labs and does not address inventories of unanalyzed DNA evidence in law enforcement custody.

**2. You testified that “clear, specific and measurable goals are the foundation on which any sound performance measurement system is based,” and you also noted that the Justice Department’s National Institute of Justice (NIJ) lacks these goals with respect to the CEBR program.**

- a. Are there additional metrics that would be useful for the Department of Justice (DOJ) to require of award recipients under this program, and is it advisable or necessary for Congress to enact legislation implementing such requirements?**

Based on prior GAO work and preliminary findings from our ongoing work, we have found that prior to revising CEBR performance measures or adding new ones, CEBR goals must be established in clear, specific, and measurable terms. Once such goals are established, NIJ would be better positioned to revise or add performance measures that align with the goals. In this way, the performance measures used would track progress toward the goals established, thereby providing meaningful information about the extent to which the CEBR program is meeting its goals.

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<sup>3</sup>Using this definition, a request is counted once whether it undergoes biology screening only, DNA testing only, or both.

GAO has established leading practices for setting goals and establishing successful performance measures. For instance, when setting goals, our leading practices suggest defining expected performance with succinct and concrete statements of expected results for subsequent comparison with actual results.<sup>4</sup> In addition, to establish performance goals that better articulate results, our leading practices suggest including intermediate goals to show progress toward intended results and explanatory information accompanying the goals.<sup>5</sup> Further, when establishing performance measures, our leading practices and prior work suggest ensuring measures have a measurable target and capture core program activities, among other things.<sup>6</sup>

In our ongoing work, we are continuing to evaluate the extent to which CEBR goals and performance measures meet standards for best practices and plan to make recommendations as needed. However, should Congress decide that it would like to address these matters through legislation, GAO is prepared to offer technical assistance.

**b. What are the potential negative consequences associated with having insufficient data to evaluate the effectiveness of this program?**

Based on our preliminary findings, we have found that without further defining CEBR program-wide goals in clear, specific, and measurable terms, NIJ may not be positioned to demonstrate, through associated performance measures, that CEBR funds are contributing to the intended goals. Specifically, without sufficient data, program managers, agency leaders, and Congress may not be able to make informed decisions about the program. Our work points to ways in which performance information should be used in decision making, including to identify problems and take corrective actions; develop strategy and allocate resources; recognize and reward performance; and identify and share effective approaches.<sup>7</sup>

**3. Please provide examples of clear, specific and measurable goals that might apply to CEBR.**

Prior GAO work provides attributes of clearly defined goals: These attributes include:

- Defining goals in specific terms so they are understood at all levels. This involves clearly defining what is to be achieved, who is to achieve it, how it will be achieved, and the time frames for achievement.<sup>8</sup>
- Defining expected performance with a succinct and concrete statement of expected results for subsequent comparison with actual results.<sup>9</sup>

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<sup>4</sup>GAO, *The Results Act: An Evaluator's Guide to Assessing Agency Annual Performance Plans*, GAO/GDD-10.1.20 (Washington, D.C.: April 1998), 15.

<sup>5</sup>GAO, *Agency Performance Plans: Examples of Practices that Can Improve Usefulness to Decisionmakers*, GAO/GDD/AIMD-99-69 (Washington, D.C.: February 26, 1999), 10.

<sup>6</sup>GAO/GDD-10.1.20 and GAO-03-143, *Tax Administration: IRS Needs to Further Refine Its Tax Filing Season Performance Measures*, (November 2002).

<sup>7</sup>GAO, *Managing for Results: Enhancing Agency Use of Performance Information for Management Decision Making*, GAO-05-927 (Washington, D.C.: September 9, 2005).

<sup>8</sup>GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (September 2014).

<sup>9</sup>GAO/GDD-10.1.20.

In addition, our leading practices provide attributes of measurable goals:<sup>10</sup> These attributes include:

- Performance goals that contain a quantifiable, numerical target level or other measurable value. When goals are not self-measuring, performance measures should translate those goals into concrete, observable conditions that determine what data to collect to learn whether progress was made towards achieving goals.
- The use of baseline or benchmark data to allow for the assessment of progress towards goals.
- Performance goals that state a particular target level of performance, either as an absolute value (for example, 20,000 served) or as a targeted level of improvement (10 percent increase over the previous year's level).

Another leading practice we have identified is the use of intermediate goals to help show progress when it may take years to see the results of longer-term goals.<sup>11</sup> We are continuing to evaluate the extent to which CEBR goals meet these criteria as part of our ongoing work and plan to make recommendations as needed.

**4. When will we know if CEBR has accomplished the program's current goals of capacity enhancement and backlog reduction? If it is not currently possible to ascertain the answer, what information is necessary to accomplish that?**

Preliminarily, we have found that NIJ has not defined the goals of capacity enhancement and backlog reduction in clear, specific, and measurable terms, which is an indication that NIJ may not be using clear, specific, and measurable goals to guide program development or assess progress.

If NIJ were to define program-wide goals for CEBR in clear, specific, and measurable terms, NIJ, Congress and others would be better positioned to assess progress toward meeting those goals. We are continuing to evaluate CEBR program goals and plan to make recommendations to NIJ as needed.

**5. You testified that DOJ has not implemented sufficient lobbying controls with respect to CEBR.**

- a. What are some possible adverse consequences of having insufficient lobbying controls?**

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<sup>10</sup>GAO/GDD-10.1.20.

<sup>11</sup>GAO/GDD/AIMD-99-69.

Based on our preliminary findings, the primary concern of only partially establishing lobbying controls is a lack of transparency. Specifically, DOJ's Office of Justice Programs (OJP), Congress, and others may not be aware that CEBR grantee contractors—which may include private labs or DNA equipment manufacturers, among others—may be lobbying for CEBR funding.<sup>12</sup> In accordance with federal law, such lobbying activities must be disclosed to the primary CEBR grantee and to OJP.<sup>13</sup> By fully implementing controls applicable to all related federal lobbying requirements, DOJ may be in a better position to ensure that federal disclosure requirements are being met. Moreover, DOJ may better ensure that lobbying activities are properly disclosed by entities seeking federal grants and contracts and that these disclosures are adequately considered when making awards.

**b. To what extent does the absence of such lobbying controls violate a specific federal law or regulation? Please explain.**

The purpose of a control is to ensure that the agency is aware of and may take action to ensure compliance with a specific statute or regulation. In this case, grantees, subgrantees, and contractors that fail to file or amend the disclosure form, if required, are subject to a civil penalty of \$10,000 to \$100,000 for each such failure.<sup>14</sup> Preliminarily, we found that without fully establishing controls related to all applicable federal lobbying requirements, DOJ may not be positioned to ensure that all applicable entities understand and comply with legal requirements associated with applicable federal lobbying laws.

**c. The concerns you voiced in your testimony echo similar concerns raised by GAO in a 2013 report on the same program. To what extent has DOJ adopted GAO's 2013 lobbying-related recommendations?**

In 2009, the DOJ Office of Inspector General (OIG) recommended that NIJ establish controls to ensure it obtains lobbying disclosure forms from (1) grantees, (2) subgrantees, and (3) contractors, and that the disclosures are considered when evaluating grant applications for an award.<sup>15</sup> While the OIG closed the recommendation as implemented in 2011, our preliminary observation is that NIJ established controls to obtain lobbying disclosure forms from grantees, but did not establish controls to ensure that grantees obtain lobbying disclosure forms from subgrantees and contractors, as appropriate, and forward them to OJP, as required.<sup>16</sup>

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<sup>12</sup>The lobbying disclosure requirements we discussed in our testimony, 31 U.S.C. § 1352, implemented by 28 C.F.R. pt. 69, pertain to entities that receive federal awards. Lobbying in the context of this statute refers to paying any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered federal actions. Additional exceptions to the prohibition and disclosure requirements apply. These requirements are different from lobbying registration and disclosure requirements set forth in the Lobbying Disclosure Act of 1995, as amended (codified at 2 U.S.C. §§ 1601 et seq.).

<sup>13</sup>A required disclosure form is set forth in appendix B to 28 C.F.R. pt. 69. Disclosure forms are only required if the recipient has used or plans to use nonappropriated funds to lobby with respect to the award. Additional exceptions to the prohibition and disclosure requirements apply.

<sup>14</sup>31 U.S.C. § 1352(c)(2).

<sup>15</sup>DOJ, Office of the Inspector General, Audit Report 09-38, *U.S. Department of Justice Audit of the National Institute of Justice's Practices for Awarding Grants and Contracts in Fiscal Years 2005 through 2007*, (September 2009).

<sup>16</sup>See 28 C.F.R. pt. 69.

- d. The media reported several years ago that lobbyists for DNA companies conducted a federally supported study on the existence of a DNA backlog, at NIJ's request. Why might a federal agency task a lobbyist (rather than a forensic scientist, public servant, or research institution) with completing such a study, and do you perceive a possible conflict of interest with this practice?**

As part of our review, we did not evaluate the details of this specific award; however, the DOJ OIG reviewed this award and discussed its findings in a 2009 report.<sup>17</sup> Thus, the OIG may be able to speak to this topic.

As part of our ongoing work, we are reviewing DOJ's controls for federal conflicts of interest requirements related to the CEBR program.

- e. What might Congress do to ensure that lobbying controls are implemented to resolve the concerns you voiced at the hearing?**

As part of our ongoing work, we will continue to monitor and assess OJP's compliance with statute and regulations related to grantee, subgrantee, and contractor lobbying disclosure requirements and make recommendations as appropriate.

Further, GAO is positioned to undertake work for Congress looking more fully at lobbying prohibitions and disclosure requirements under the federal law known as the Byrd Amendment.<sup>18</sup> Specifically, GAO could review the Office of Management and Budget's activities to implement this law and its regulations, some of which were never finalized.<sup>19</sup> The lack of understanding of these requirements may be present in other grant programs across the federal government.

- 6. In response to a question by Senator Feinstein, you suggested that DOJ does not have an accurate count of how many sexual assault evidence kits are in law enforcement custody. Please elaborate, and please explain how the lack of such information may adversely impact congressional and executive branch oversight efforts.**

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<sup>17</sup>Audit Report 09-38.

<sup>18</sup>31 U.S.C. § 1352.

<sup>19</sup>See, e.g., *Governmentwide Guidance for New Restrictions on Lobbying*, 57 Fed. Reg. 1772 (proposing changes to OMB's interim final guidance and OMB's clarification notice).

While the CEBR program discussed above collects data to account for DNA evidence at forensic laboratories, two DOJ programs specifically focus on unanalyzed sexual assault kits (SAK) in law enforcement possession. The federal government supports state and local efforts to count unanalyzed SAKs in law enforcement custody through (1) the National Sexual Assault Kit Initiative (SAKI),<sup>20</sup> administered by DOJ's Bureau of Justice Assistance, and (2) the Sexual Assault Forensic Evidence – Inventory, Tracking, and Reporting (SAFE-ITR)<sup>21</sup> a competitive grant program administered by NIJ. However, SAKI and SAFE-ITR have a limited reach when compared to the CEBR program. For instance, SAKI awarded just over \$34 million to 20 grantees in fiscal year 2017 and SAFE-ITR awarded \$1.87 million to 7 grantees in fiscal year 2017. This is in contrast to CEBR, which awarded about \$61 million to 131 grantees in fiscal year 2017. In our report, we plan to publish preliminary counts of unanalyzed SAKs in the jurisdictions that have received SAKI grant funding in fiscal years 2016 and 2017. We will not be presenting data from the SAFE-ITR program because the program only began issuing awards in fiscal year 2016 and, based on our preliminary review, grantees are only beginning the process of inventorying and tracking kits.

The scope of our ongoing review does not include the extent to which a lack of an accurate nationwide count of unanalyzed sexual assault evidence in law enforcement custody may adversely affect oversight efforts. However, we may be able to obtain feedback from DNA evidence stakeholders in this review on the effect that inventories of DNA evidence may have on future backlogs.

**7. Does DOJ have an accurate count of how many sexual assault evidence kits are in the custody of the nation's public laboratories? If not, how might DOJ obtain an accurate estimate of the number of such kits, and how might the unavailability of such information impact congressional and executive branch oversight efforts with respect to CEBR?**

Many labs are able to track requests associated with certain types of crime, including sexual assault. We plan to present data in our final report on the extent to which DOJ, through the Bureau of Justice Statistics (BJS), was able to obtain data on the number of requests associated with sexual assault in 2014. This information will be based on the most recent Census of Publicly Funded Forensic Crime Laboratories (conducted by BJS).

Please see our response to question 9b below, which addresses considerations policymakers may want to account for if the decision is made that DOJ should collect this information.

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<sup>20</sup>According to OJP officials, SAKI is authorized and funded by an appropriation “for a grant program for community-based sexual assault response reform.” See Consolidated Appropriations Act, 2017, Pub. L. No. 115-31, 131 Stat. 135, 204.

<sup>21</sup> According to OJP officials, the SAFE-ITR program for fiscal years 2016 and 2017 was authorized and funded by appropriations “for a grant program for community-based sexual assault response reform,” and “a DNA analysis and capacity enhancement program and...forensic activities.” See *id.* Program requirements for fiscal years 2016 and 2017 for the SAFE-ITR program are described in in NIJ's grant solicitations and are similar, but not identical, to requirements contained in the SAFER Act of 2013, Pub. L. No. 113-4, § 1002, 127 Stat. 54, 127 (amending 34 U.S.C. § 40701). For fiscal year 2018, DOJ is required by the Justice for All Reauthorization Act of 2016 to allocate a specified percentage of funds to the certain purposes of the SAFER Act of 2013. Pub. L. No. 114-324, § 3, 130 Stat. 1948, 1949.



However, NIJ does not collect data specific to SAKs from CEBR grantees. The scope of CEBR includes the processing of all DNA evidence, which includes but is not limited to SAKs.

**8. How can Congress use legislative avenues, including the use of financial incentives (or disincentives), to encourage law enforcement agencies to accurately account for the number of untested sexual assault kits?**

Policymakers considering the use of legislative avenues, including financial incentives, to encourage law enforcement agencies to count analyzed SAKs, may want to consider the following:

- OJP has two grant programs that address unanalyzed SAKs in law enforcement custody: SAKI and SAFE-ITR. These grant programs require law enforcement entities to agree to conduct inventories of SAKs as a condition of participation. However, these programs are competitive grants and thus participation is currently limited.
- The CEBR program is a formula grant program available to all states. However, the CEBR program addresses backlogs of unanalyzed DNA evidence at labs and does not address inventories of unanalyzed DNA evidence in law enforcement custody. CEBR grantees, which include one or more labs, are equipped to provide data related to DNA evidence at labs and may or may not be appropriately suited to obtain data on inventories in law enforcement custody. Rather, states, SAKI and/or SAFE-ITR grantees may be better suited to provide information about unanalyzed SAKs in law enforcement custody.
- As part of the Sexual Assault Forensic Evidence Reporting Act of 2013, the Attorney General is to make available to all states and units of local government a reporting form whereby they (states and local governments) may, at their sole discretion, submit reports to DOJ for publication that include information about sexual assault evidence in law enforcement custody.<sup>22</sup> According to OJP, the creation of such a form is still under discussion. We plan to follow-up with OJP to obtain more details for inclusion in our final report.
- Many states have passed laws requiring either one-time or annual inventories of unanalyzed SAKs in law enforcement custody. We are reviewing this as part of our ongoing work and plan to include additional information in our final report.
- Based on our ongoing work, we found that there are significant challenges to obtaining accurate counts of unanalyzed SAKs in law enforcement custody. For example, some DNA evidence stakeholders cited concerns with the resources needed to find and inventory SAKs. We are exploring these challenges as part of this work and plan to discuss them in our final report.

**9. To date, neither Congress nor NIJ has conditioned CEBR funding on grantees' conducting a statewide inventory of unanalyzed DNA samples in the custody of their public laboratories and law enforcement agencies.**

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<sup>22</sup>Pub. L. No. 113-4, 127 Stat. at 129-30 (codified at 34 U.S.C. § 40701(n)(4)(E)(ii)).

**a. Would such an approach provide the data Congress needs to ensure the effectiveness of this program?**

The CEBR program addresses backlogs of unanalyzed DNA evidence at labs and does not address inventories of unanalyzed DNA evidence in law enforcement custody. Thus, CEBR grantees are able to provide data related to backlogs at labs but the CEBR program may or may not be appropriately suited to obtain data on inventories in law enforcement custody. However, there may be some value in understanding inventories of DNA evidence in law enforcement custody as they may have an effect on future backlogs at laboratories.

**b. If we proceed with this course of action, what data (other than the location and quantity of unanalyzed DNA samples or sexual assault evidence collection kits) should States receiving CEBR funds provide?**

Sexual assault evidence at labs

Policymakers seeking to obtain information from CEBR grantees about unanalyzed sexual assault evidence at labs may want to consider:

- NIJ currently obtains data from CEBR grantees on “requests” for DNA analysis. Many labs are able to track requests associated with certain types of crime, including sexual assault.<sup>23</sup>
- NIJ does not currently require grantees to report data on the number or type of “items” included in each request.<sup>24</sup> Requests associated with sexual assault may include a SAK, which is counted as one “item” in a request, but the request may also contain other separate items, such as weapons, carpets, bedsheets, blankets, and clothing.
- In addition to obtaining data on the location and quantity of unanalyzed sexual assault evidence (as noted in the question), policymakers may also want to consider obtaining data on turnaround time to aid in understanding how quickly this evidence is being processed.
- Policymakers may want to consult CEBR grantee labs or other knowledgeable stakeholders to assess the extent to which changes to CEBR performance reporting requirements would require changes to IT systems or otherwise impose a burden on labs.<sup>25</sup>

SAKs in law enforcement possession

Policymakers seeking to obtain information about unanalyzed SAKs in law enforcement custody may want to consider:

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<sup>23</sup>As stated in our response to question 7, we plan to present data in our final report on the extent to which DOJ, through the Bureau of Justice Statistics (BJS), was able to obtain data from labs on the number of requests associated with sexual assault in 2014.

<sup>24</sup>Project FORESIGHT defines an “item” as “a single object for examination submitted to the laboratory.” Project FORESIGHT is a laboratory data collection effort based out of West Virginia University.

<sup>25</sup>Such stakeholders may include NIJ, the American Society of Crime Lab Directors, and Project FORESIGHT (a laboratory data collection effort out of West Virginia University).

- Leveraging SAKI and SAFE-ITR grant programs, and the findings of one-time or annual state-mandated inventories of unanalyzed SAKs (discussed in question 8).
- Also discussed in question 8, there are significant challenges to obtaining accurate counts of unanalyzed SAKs in law enforcement custody. We are exploring these challenges as part of our ongoing work and we plan to discuss them in our final report.

**10. You testified that we should assess whether CEBR is working as Congress intended before we make changes to the formula. What additional information would assist GAO in fully evaluating the effectiveness of this program?**

Preliminarily, we have found that NIJ has not defined the goals of capacity enhancement and backlog reduction in clear, specific, and measurable terms, which is a foundational step in measuring performance. We are continuing to evaluate CEBR program goals and plan to make recommendations to NIJ as needed.

**11. Would it be unduly burdensome to require States receiving formula grants under this program to collect and report additional information as a condition of receiving funds? To what extent is the collection of information routinely required of recipients under other Federal grant programs?**

As part of our ongoing review, we have not assessed the potential burden on CEBR grantees of collecting and reporting additional information. However, as we noted in our response to question 9, we believe CEBR grantees are likely better suited to collect data related to backlogs at labs—including data related to sexual assault evidence at labs; whereas states, SAKI grantees, and SAFE-ITR grantees may be better suited to collect data related to SAKs in law enforcement custody.

**12. Is there any other work that GAO can do to assist Congress in dealing with DNA backlog issues (including, but not limited to, sexual assault kit backlogs and untested inventories)?**

We have identified the following additional areas where GAO could assist Congress:

- After December 2019, it may be helpful for GAO to review the effectiveness of DOJ's SAKI grant program. The SAKI program allows law enforcement entities to inventory the existing numbers of unsubmitted SAKs in law enforcement custody, test these kits, and assign designated personnel to pursue new investigative leads and prosecutions, among other activities. However, the SAKI program is relatively new (awards were first issued in fiscal year 2016) and a contractor, Westat, is performing an evaluation that is due after the performance evaluation period ends in December 2019.
- The FBI's Combined DNA Index System (CODIS), as discussed in my statement, helps law enforcement to develop investigative leads. GAO could review how the FBI manages CODIS, including which profiles are uploaded by labs, how DNA matches, or "hits," are counted, and how investigative leads are used by law enforcement. This could provide Congress information on the extent to which individuals' privacy is protected in CODIS, the extent to which CODIS data are accurate, and the effectiveness of CODIS in assisting law enforcement.

- CEBR grantees are permitted to outsource part of the DNA analysis process to private labs. GAO could review the costs associated with performing DNA analysis in public labs versus outsourcing to private labs to help Congress better understand the various costs of performing DNA analysis with CEBR funds.

## Questions from Senator Mazie Hirono

- 1. In your written statement, you indicated that the demand for DNA analysis has increased and identified some challenges in meeting this demand, including limited resources and constraints on lab capacity. Given this increased demand for DNA testing overall, how should the testing of sexual assault kits be prioritized?**

Based on our ongoing work, it is our understanding that law enforcement officials and prosecutors who submit requests, and labs which process requests, currently expedite and/or prioritize requests based on various factors. These factors may include public safety concerns, the trial date of the associated case, whether or not there is a known suspect, or the nature of the crime (e.g. homicide, sexual assault, or property crime), among others.

Additionally, stakeholders we interviewed, including representatives at NIJ and the American Society of Crime Lab Directors, among others—said labs generally prioritize requests associated with violent crime (including sexual assault) ahead of those associated with less-violent crime. Lastly, regarding sexual assault specifically, representatives from the International Association of Chiefs of Police said law enforcement and labs generally prioritize requests where the victim did not know the identity of the alleged offender (i.e. stranger sexual assault) ahead of requests where the identity of the alleged offender is known.

- 2. DNA analysis has been playing an increasing role in criminal identification and prosecution. What recommendations do you have to help state and local jurisdictions meet this increased demand for DNA analysis?**

In August 2017, NIJ published a report titled “National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach,” which is based on findings of the Sexual Assault Forensic Evidence Reporting Act (SAFER) Working Group.<sup>26</sup> The report cites 35 recommendations, including a number of recommendations related to processing SAKs in the laboratory. As part of our ongoing work, we have not assessed to what extent NIJ determined the effectiveness of these best practices or the extent to which NIJ is evaluating whether jurisdictions are applying them as the document is relatively new, but GAO is prepared to conduct such work in a separate request.

In addition, we learned that NIJ has partnered with the FBI to develop a best practices guide for DNA laboratory efficiency based on the work of CEBR grantees that have increased their lab capacity. The working group, named the Scientific Working Group on DNA Analysis Methods had its first meeting on May 14, 2018. NIJ officials told us that they plan to publish a best practices report based on the working group’s findings in 2020.

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<sup>26</sup>The working group was convened to address the SAFER Act of 2013, which required the development and publication of protocols and practices appropriate for the accurate, timely, and effective collection and processing of DNA evidence in sexual assault cases. Pub. L. No. 113-4, § 1002, 127 Stat. at 130-31 (codified at 34 U.S.C. § 40701(o)(1)).