

# **COST EFFECTIVE FORENSIC SERVICES IN SAN DIEGO COUNTY**

## ***SUMMARY***

In 1995, the San Diego County Grand Jury recommended the consolidation of the San Diego County Sheriff's Crime Laboratory and the San Diego City Police Department Crime Laboratory. In 1999, the Grand Jury, again, made this recommendation along with a recommendation to include the Office of the Medical Examiner in the merger. To date, this consolidation has not taken place, and for many reasons probably will not take place in the foreseeable future.

The 2003-04 Grand Jury chose not to focus on consolidation of these laboratories. Rather, due to the budget crisis affecting the County and City of San Diego, this Jury sought to identify ways these agencies could maximize scarce resources and better serve the community.

Potential cost savings might come from consolidation of toxicology testing for all three entities. The Grand Jury also explored the feasibility of implementing a fee-for-service provided by the San Diego County Sheriff's Crime Laboratory. The review of this potential cost saving measure appeared warranted in view of recent budgetary shortfalls. Lastly, additional savings may be realized by taking advantage of Assembly Bill 371 (Chapter 14, 2004 Statutes), legislation permitting certified phlebotomy technicians (CPTs) to draw blood for alcohol blood testing in DUI (Driving Under the Influence) cases. This eliminates the costly requirement of paying a registered nurse or doctor for this service.

## ***PURPOSE OF THE STUDY***

The purpose of this study was to examine the potential cost-effectiveness measures that may save money and better serve the community.

- Investigate the consolidation of the toxicology services of the Crime Laboratories and the Office of the Medical Examiner.
- The implementation of a fee-for-service by the Sheriff's Crime Laboratory.
- The utilization of Assembly Bill 371 (Chapter 14, 2004 Statutes).

## ***PROCEDURES EMPLOYED***

### **Site Visits:**

- San Diego County Sheriff's Crime Laboratory

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- City of San Diego Police Department Crime Laboratory
- San Diego County Office of the Medical Examiner

### **Interviews:**

- San Diego County Sheriff
- Director of Forensic Services, San Diego County Sheriff's Crime Laboratory
- Assistant Director, San Diego County Sheriff's Crime Laboratory
- Crime Laboratory Manager, City of San Diego Police Department
- Chief Medical Examiner, San Diego County
- Auditor and Controller Management, San Diego County
- Director, Crime Laboratory of Contra Costa County

### **Document Review:**

- *Consolidating Forensic Crime Laboratories and Needed Interim Steps*, 1994-95 San Diego County Grand Jury Report,
- *Consolidation of San Diego Region's Crime Laboratories*, 1998-99 Grand Jury Report,
- Assembly Bill 371 (La Suer) (Chapter 14, 2004 Statutes).
- Toxicology Contract: San Diego County Sheriff's Crime Laboratory and Pacific Toxicology Laboratory.
- Toxicology Contract: City of San Diego Police Department's Crime Laboratory and BioTox Laboratory.
- Toxicology Contract: City of San Diego Police Department's Crime Laboratory and the U.S. Department of Justice.
- Toxicology Contract: San Diego County Office of the Medical Examiner and San Bernardino County Crime Laboratory.
- Toxicology Statistics: Sheriff's Crime Lab, SDPD Lab, and Office of the Medical Examiner.
- Pie Charts Featuring San Diego County Sheriff's Crime Laboratory's Budget.

- San Diego County Office of the Medical Examiner's Proposal to the San Diego County Sheriff's Crime Lab re: Toxicology Services.
- Orange County Forensic Science Services Revenue Sources.
- Pie Chart Distribution of fees, fines, forfeitures revenue to major San Diego County services, FY 2003-04.
- Allocation listing of services and agencies and actual amount each received for FY 2003-04.

## **CONSOLIDATION OF TOXICOLOGY TESTING AS A COST SAVINGS MEASURE**

### ***DISCUSSION***

Toxicology testing is the laboratory testing of body fluids and tissues to detect the presence and concentrations of alcohol, drugs, poisons, and any other foreign substances. Results of toxicology testing assist law enforcement agencies in their investigation and prosecution of crimes. The Grand Jury found toxicology testing to be commonly employed by the Sheriff and City Crime Laboratories and the Office of the Medical Examiner. The Sheriff and City Crime Laboratories are responsible for the toxicology testing required by law enforcement agencies under their jurisdiction. The Medical Examiner uses toxicology testing to help establish the cause of death or what may have contributed to it.

Although not a focus of this report, the Grand Jury found toxicology testing to be required by the San Diego County Department of Probation and local federal law enforcement agencies in San Diego.

### **Toxicology Testing In The Sheriff and City Crime Laboratories:**

The Sheriff's and the City Crime Laboratories send their toxicology testing outside the county. The table below summarizes the activities of each facility.

The Sheriff's Laboratory contracts with the outside vendor Pacific Toxicology Laboratory (PacTox) in Woodland Hills, CA. If PacTox is unable to perform the required test, the sample is sent to National Medical Services (NMS) in Alameda, CA.

The City Laboratory contracts with two outside vendors for toxicology testing. BioTox Laboratories in Riverside, CA is their primary provider for routine and some specialized testing. The U.S. Department of Justice (DOJ) State Laboratory in Sacramento, CA is used for specialized testing not provided by BioTox Laboratories.

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<b>Facility</b>	<b>Outside Vendor With Which This Facility Contracts</b>	<b># Of Samples Sent Outside The County For Testing In 2002-03</b>	<b>Amount Spent For Toxicology Testing In 2002-03</b>
San Diego County Sheriff's Crime Laboratory	Pacific Toxicology (PacTox) Lab and	6,000 to PacTox	\$190,000 to PacTox
	National Medical Services (NMS)	126 to NMS	\$13,387 to NMS
City of San Diego	BioTox Laboratories a	8,025 to BioTox	\$171,499.40 to BioTox
Police Department Crime Laboratory	Dept. Of Justice (DOJ) State Laboratory	363 to DOJ	\$9,974.00 to DOJ

Contracting with laboratories outside the county requires shipment of samples to and from the facilities. Standard procedure is a one-day shipment to and one-day return. This delays the return of results that are often vital to criminal investigations for at least two days. The rapid receipt of evidentiary results can be requested through a RUSH request. A RUSH request is one where results are needed within 24 hours. This obviously increases the cost of the request.

Use of an outside contractor also requires the Sheriff and City Crime Laboratories to pay an additional fee for the court appearance of a toxicologist. Although not frequently required to testify, the fee for a contract toxicologist to testify is approximately \$500-1000 per day.

If toxicology testing were performed within the county, it would eliminate the two-day travel time of the test and reduce the need for RUSH requests. It may potentially eliminate the fee for court appearance of a County or City toxicologist. This may save a significant amount of time and money considering law enforcement is constantly working against investigative/ court deadlines and limited budgets.

**Toxicology Testing in the Office of the Medical Examiner:**

The Office of the Medical Examiner had approximately 1,978 cases of its own with a toxicology component in 2003. In addition, the Office of the Medical Examiner handled 935 cases for the San Bernardino County Coroner's Department in 2003. The Office of the Medical Examiner was paid \$177,267.00 by San Bernardino County Coroner's Department for this work.

Since the Office of the Medical Examiner performs its own toxicology testing and that of San Bernardino County, it is evident that this facility is equipped and staffed to do toxicology testing. They are not subjected to the required two-day travel time or the additional fees of RUSH requests or court appearances. This office is better able to control its reporting of results and any relevant deadlines associated with those results. It seems logical that this facility should be considered as the one to provide services for other county agencies.

The Grand Jury is aware of discussions between the County and San Diego City crime laboratories and the Office of the Medical Examiner regarding toxicology services. During these discussions, it was noted that a substantial financial investment would have to be undertaken to establish the Office of the Medical Examiner as the provider of toxicology services. Currently, the facility that houses the Medical Examiner's Toxicology Division is not physically large enough to accommodate such an increase in workload nor does it possess enough equipment or staff. The Grand Jury was informed that the Office of the Medical Examiner's price for doing toxicology testing for the Sheriff's Crime Laboratory would be more expensive than what the Sheriff is now paying to an outside contractor. However, once the initial financial investment is made to house, equip, and staff a county toxicology division/department, it would benefit the entire county and probably save money. The Sheriff and City Crime Labs, Office of the Medical Examiner, Probation Department, and local federal law enforcement agencies all require toxicology testing.

With the apparent requirement for toxicology testing within the county, it seems logical that agencies requiring such a service would collaboratively explore the feasibility of providing this service within the county. Such a collaborative effort and earnest exploration of an in-county toxicology service provider, may lead to a more cost-effective use of county resources (money and time) and better serve the community.

**Types of Toxicology Tests Performed By All Agencies:**

All three agencies use toxicology testing for the discovery of many of the same substances. Alcohol is the substance most commonly tested for, and is the most frequently identified. Other substances frequently tested for are drugs such as marijuana, tranquilizers, sleeping pills, and cocaine. Blood and urine are the most common body fluids tested.

Law enforcement agencies' use of toxicology is different from toxicology use in private industry. Most private industry testing results in negative findings, as when employers test potential employees for drug use. In law enforcement, however, the toxicology results are mostly positive. This positive finding requires additional testing to identify the specific drug that is present. This identification is more expensive and requires additional time to complete.

As stated above, all three agencies have similar testing requirements. The Sheriff's Crime Laboratory and the City's Crime Laboratory independently negotiate with

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contractors outside the county to accomplish their testing. The Office of the Medical Examiner independently contracts with another county to perform that county's testing.

There is a real cost in time and dollars to negotiate any contract. Therefore, multiple contracts for the same service within the county appear to be inherently more expensive and more time consuming. In addition, it is a recognized principle in toxicology testing that per sample (or unit) costs are reduced as the number of samples increases. This leads to more efficient use of facilities and staff.

If a county toxicology department were not to be developed in the near future, a more immediate approach might be to combine the Sheriff and City contracts for the same service into one contract. A rational solution might be to form a single group with representatives from all agencies to negotiate a master contract for tests commonly required by all. This could allow for one contract, one bid, and lower unit pricing.

### ***FACTS AND FINDINGS***

**Fact:** Toxicology testing is a service that is needed by many agencies in the county. The county lacks a single-facility to provide this vital service to multiple county agencies.

**Fact:** The Sheriff's Crime Laboratory requires approximately 6,100 samples to be tested per year. The SD City Police Crime Laboratory requires approximately 8,400 samples to be tested per year.

**Fact:** The Medical Examiner's Office performed approximately 1,978 of its own tests last year and received approximately 935 samples to test from the County of San Bernardino. It is evident this facility is equipped and staffed to perform toxicology testing.

**Finding:** The Grand Jury believes the Office of the Medical Examiner may be the facility to consider as the provider of toxicology testing for other county agencies. However, the existing Office of the Medical Examiner is not large enough nor is it equipped to handle such an increase in workload. A substantial financial investment would be required to establish this facility as a countywide provider of toxicology services.

**Fact:** There is a demonstrated need for toxicology testing within the County.

**Finding:** It seems logical that county agencies requiring toxicology testing should collectively explore the feasibility of providing this service within the County.

**Finding:** Such a collaborative effort and earnest exploration of an in-county toxicology service provider may lead to a more cost-effective use of county resources and better serve the community.

**Fact:** The Crime Laboratories and Medical Examiner's Office require similar toxicology testing. The Sheriff and City Crime Laboratories independently contract with

vendors outside the county for toxicology testing. The Medical Examiner's Office contracts with the County of San Bernardino to perform that county's testing.

**Fact:** Multiple contracts are being negotiated for essentially the same service. It is not cost effective to negotiate multiple contracts for the same service.

**Finding:** If a county toxicology department is not developed in the near future, a more immediate approach to multiple contracts for the same service is needed. A rational solution might be to form a single group with representatives from all agencies and negotiate one master contract. This could potentially save time and money in negotiations and unit pricing.

**Fact:** Sending evidence outside the county for toxicology testing imposes a delay for the return of results. Additional fees may be incurred for RUSH return of results and for court appearances by toxicologists who are not based in the county.

**Finding:** Crime laboratories constantly work with investigative and court imposed deadlines. Receiving evidentiary results in a timely manner is crucial to rapid crime solving.

### ***RECOMMENDATIONS***

**The Grand Jury recommends that the San Diego County Board of Supervisors and the San Diego City Council**

- 04-11-1** Evaluate the feasibility of consolidating the toxicology service requirements of all San Diego County agencies.
- 04-11-2** Consider the possibility of using the Office the Medical Examiner as the provider of toxicology services to the County and City of San Diego.
- 04-11-3** Evaluate the feasibility of developing and negotiating a master contract for toxicology services that cannot be performed in San Diego County.

### **DEVELOPMENT OF A FEE-FOR-SERVICE SCHEDULE**

#### ***DISCUSSION***

With the exception of the City of San Diego, the Sheriff's Crime Laboratory performs criminal laboratory testing for all law enforcement agencies within San Diego County. In addition to the testing of evidence from their own investigations in the unincorporated area and contract cities, they do testing for the remaining cities and some State agencies including the California Highway Patrol. Over half of all the Sheriff's Crime Laboratory work performed in 2002 was for incorporated jurisdictions.

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Proposals for Crime Labs to charge fees for service provided to user agencies have been controversial in the law enforcement and criminal justice fields. Proponents cite how user fees are being charged in Contra Costa and Santa Clara Counties. Opponents quickly point out how the agencies that rely on and need lab results are funded and supported by the same taxpayers that fund the San Diego County Sheriff's Department. Charging fees would be "robbing Peter to pay Paul." Others cite how inserting fees into criminal investigations could become a deterrent to effective investigations, be divisive or motivate cities to shift the financial burden to other agencies.

Charging fees-for-service has been a topic examined by previous Grand Juries when studying Crime Lab operations. One study recommended not to charge fees. The other recommended developing a system to charge them. We noted a 25% workload increase between 2000 and 2002, to 12,492 cases. Fee-for-service appears to be an attractive alternative to the lab's dependence on the County's scarce general fund resources each year.

After further examination, we concluded that the Crime Lab must be viewed just as any other regional service that is offered by the Sheriff to all law enforcement agencies in the county at no cost. As the Chief Law Enforcement Official in the County, the Sheriff offers regional core services including ASTREA helicopters, Search and Rescue Services, Bomb and Arson Team, Regional Training Academy and the County Jail system without regard to agency or municipal lines.

The importance of having the Sheriff's regional services and especially law enforcement agencies working together without regard to jurisdictional boundaries or obligations was illustrated well during the Firestorm of 2003. City departments from throughout the County reciprocated with what resources they had available.

### ***FACTS AND FINDINGS***

**Fact:** The Sheriff's Crime Laboratory performs criminal laboratory testing for all law enforcement agencies within San Diego County, with the exception of the City of San Diego, and does not charge fees for these services.

**Fact:** Charging fees-for-service has been a topic examined by previous Grand Juries when studying Crime Lab operations. One study recommended not charging fees, another recommended charging them.

**Finding:** The agencies that rely on and need lab results are funded and supported by the same taxpayers that fund the San Diego County Sheriff's Department.

**Finding:** Inserting fees into criminal investigations could become a deterrent to effective investigations, be divisive or motivate cities to shift the financial burden of laboratory tests to other agencies.

**Finding:** The Crime Lab should be viewed as any other regional service that is offered by the Sheriff to all law enforcement agencies in the county at no cost.



**Finding:** The importance of having the Sheriff's regional services and especially law enforcement agencies working together without regard to jurisdictional boundaries or obligations was illustrated well during the Firestorm of 2003.

### ***RECOMMENDATIONS***

**The Grand Jury recommends that the San Diego County Board of Supervisors:**

- 04-11-4** Continue the budget appropriations that have enabled the Sheriff to fully fund the operational needs of the Crime Lab so that services can be made available to law enforcement agencies throughout the county without charge.
- 04-11-5** Continue to provide sufficient revenue to the Sheriff so that the Crime Lab can continue to meet their increasing workload of cases while maintaining their national accreditation.

## **UTILIZATION OF ASSEMBLY BILL 371 (CHAPTER 14, 2004 STATUTES)**

### ***DISCUSSION***

The San Diego County Sheriff's Crime Laboratory provides an additional service to all law enforcement agencies, with the exception of the City of San Diego. The phlebotomy service, which is offered through a contract, provides on-call nurses who can draw blood samples for forensic examination from persons who are in custody.

The San Diego County's Sheriff's Crime Laboratory has had a phlebotomy service contract with American Forensic Nurses since 1999. The contract expires June 30, 2004. During the 2002-03 fiscal year, the contract represented 70% of the Crime Lab's contracted services budget and cost \$491,169.00. A substantial portion of this cost has been due to a state law that specifies that only registered nurses or doctors could perform this service.

Due to the efforts of the Sheriff, San Diego City Police Department's Crime Laboratory, District Attorney, and others, Assembly Bill 371 (Chapter 14, 2004 Statutes) has been enacted as an emergency statute. This new law enables phlebotomy services to be provided by other, less expensive, trained technicians. In February 2004, the Sheriff's Department obtained authorization from the Board of Supervisors to release a Request for Proposal for phlebotomy services that will enable the Sheriff's Crime Lab to take advantage of this new flexibility and potential cost savings. According to officials at the Sheriff's Lab, phlebotomy costs could be cut in half. The San Diego City Police Department's Crime Laboratory has also taken measures that will allow the City to fully benefit from Assembly Bill 371.

***FACTS AND FINDINGS***

**Fact:** The Sheriff's Crime Lab offers phlebotomy services to all law enforcement agencies in the County, with the exception of the City of San Diego.

**Fact:** Since 1999, the Sheriff's Lab has paid for these services through a contract with American Forensic Nurses. New legislation authorizes utilization of adequately trained persons who are not registered nurses or doctors, thereby reducing the cost of this service.

**Finding:** The Sheriff's Department is taking advantage of this cost savings opportunity by releasing a Request for Proposal so they can negotiate a new contract for the services.

***COMMENDATIONS***

The Grand Jury wishes to commend the San Diego County Sheriff's Crime Laboratory for receiving accreditation by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board this year.

The Grand Jury wishes to commend the San Diego City Police Department's Crime Laboratory for its continued accreditation since 1997.

The Grand Jury wishes to commend the San Diego County Sheriff's Crime Laboratory for their continued excellent work performance under constraints imposed during the recent renovation of their facility.

The Grand Jury wishes to commend the San Diego County Sheriff's Crime Department and the District Attorney for their work on getting Assembly Bill 371 passed and the timely release of a Request for Proposal by the Sheriff's Crime Department, which should save scarce tax dollars.

***REQUIREMENTS AND INSTRUCTIONS***

The California Penal Code §933 (c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b),(c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
  - (1) The respondent agrees with the finding.

- (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
  - (1) The recommendation has been implemented, with a summary regarding the implemented action.
  - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
  - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
  - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required by the date indicated:

<b><u>RESPONDING AGENCY</u></b>	<b><u>RECOMMENDATIONS</u></b>	<b><u>DATE</u></b>
<b>San Diego City Council</b>	<b>04-11-1 through 3</b>	<b>09/08/04</b>
<b>San Diego County Board of Supervisors</b>	<b>04-11-1 through 5</b>	<b>09/08/04</b>