

**CITY OF OAKLAND**  
Memorandum

To: Chief Anthony Batts

From: Captain Anthony Toribio, Inspector General

Date: November 30, 2010

Subject: Criminalistics Division – Controlled Substances Audit

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On June 1, 2010, the Audit and Inspections Unit of the Office of Inspector General initiated an audit of controlled substance evidence stored in the Department's Criminalistics Division crime laboratory. Although the function of the Criminalistics Division (the Crime Lab) encompasses a vast amount of responsibilities and duties, for this audit, the audit team focused solely on the controlled substance evidence chain of custody, storage, and, when applicable, destruction records of controlled substances for 96 controlled substance cases inventoried between January 1, 2000 and June 15, 2010.

In addition, the audit team reviewed the Criminalistics Division's Laboratory Information Management System (LIMS), a computerized records management system, the Drug Analysis Unit standard operating procedures manual, and Departmental General Order H-3, *Depositing Property and Evidence*.



Anthony Toribio  
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# OAKLAND POLICE DEPARTMENT

## Office of Inspector General



CRIMINALISTICS DIVISION – CONTROLLED SUBSTANCES  
AUDIT

**OFFICE OF INSPECTOR GENERAL**  
Audit and Inspections Unit



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## **CURRENT PRACTICES**

### **Internal Controls**

The Department's Criminalistics Division (the Crime Lab) has received an accreditation from the Crime Laboratory Accreditation Program of the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB). As an accredited laboratory, the Crime Lab demonstrates that its management, operations, personnel, procedures, equipment, security, and other factors and procedures meet established standards. As part of the accreditation process, the ASCLD/LAB reviews the Department's Crime Lab procedures and process through audits of:

- each casework unit and procedures,
- security procedures,
- safety program, and
- quality assurance system review.

The Crime Lab has established internal controls that coincide with the standards set by its accrediting agency. The internal casework audit is one tool utilized by the Crime Lab to measure its procedures and processes against its own policies and those standards set by ASCLD/LAB. In addition, the casework audit is an essential element of the Crime Lab's quality assurance program and serves as an internal control mechanism.

With these internal audits, a Crime Lab analyst is assigned five cases to determine if all accreditation and internal requirements are being met. At a minimum, two cases for each assigned analyst conducting such an audit will track chain of custody, reagent testing, sealing, reporting, review, and all other applicable measures to determine if all said standards have been met. Audit findings and recommendations are submitted to the Crime Lab Manager for further research or actions, if needed.

### **Assignment of "D" Numbers**

For inventory control, all controlled substances received by the Crime Lab are assigned a number, referred to as a "D" number. These numbers are assigned by the Department's Vice Section in conjunction with the Crime Lab. Numbers are assigned in sequential order with no gaps in sequence. The assignment of "D" numbers is as follows.

- The Vice Section provides the Crime Lab with a list of controlled substance case reports with an assigned "D" number for each case.
- An evidence envelope submitted to the Crime Lab is assigned the same "D" number as its corresponding case listed on the "D" number list. If there are any discrepancies between the list and received evidence, the Vice Section is notified.
- In instances where cases are identified by means other than by the Vice Section, the Crime Lab assigns the "D" number and in turn, notifies the Vice Section.

The “D” number list is a running list for a calendar year, with the first number being the number one. At the beginning of a new year (i.e., January 1<sup>st</sup>), the sequence starts again with the number one.

### **Storage**

Controlled substances are stored in order by the assigned “D” number and are separated into analyzed and unanalyzed cases. Evidence storage envelopes and boxes are kept in a storage vault located in the Crime Lab. This storage vault is equipped with a key coded alarm system which can only be accessed by authorized Crime Lab staff.

Controlled substances that have been earmarked for destruction are separated from other evidence and are stored in an alarmed vault located in the basement of the Police Administration Building. These stored envelopes and boxes are also stored in order by “D” number.

### **Receipt of Evidence and Chain of Custody**

#### *Crime Lab*

Controlled substance evidence can be received by the Crime Lab

- from the locked evidence drop box,
- directly from an officer, or
- from the Department’s Property and Evidence Unit.

Once received by Crime Lab staff, the receiving staff person must record his/her signature, the time and date received, how the evidence was received, and whether the evidence was sealed or not sealed in an envelope. If the evidence is received in an unsealed condition, the package is sealed and marked “sealed upon receipt.”

The initial chain of custody begins with the receiving staff person and is recorded on the envelope. Controlled substance evidence can be released to a designated investigator, police officer or other person specified by a court order. These subsequent recordings of custody are documented on the back of the analysis report which is filed and maintained by the Crime Lab.

#### *Property and Evidence Unit*

When the Crime Lab is closed and the bulk evidence is too large to fit in the drop box, the evidence is submitted to the Property and Evidence Unit (PEU). The member completes a Property Record form and seals the evidence in an envelope or other packing material suitable for the evidence. If the PEU is closed, members are to place items into property lockers, located across from the PEU. Packaging is to be properly sealed according to Departmental General Order H-3, *Depositing Property and Evidence* (DGO H-3) and Training Bulletin IV-N (TB IV-N). If packaged evidence is too large to fit in the property lockers (e.g., large marijuana plants), the member is to refer to the posted list of PEU contacts to obtain the telephone number of assigned PEU personnel to request entry into the unit’s facility. Once authorized personnel provides the member with the

PEU entry code<sup>1</sup>, the large bulk evidence is left in the PEU office space, where it is secured until the next business day.

At the start of the next business day, PEU staff checks all property lockers to determine if any evidence had been submitted, and if a submission has occurred, staff verifies the packages are properly sealed. In instances in which a package is not sealed, the PEU staff seals it as stipulated in both DGO H-3 and TB IV-N.

Upon receiving the evidence packages, the PEU notifies Crime Lab staff that controlled substance evidence has been submitted to the unit and requests the Crime Lab staff to retrieve the evidence. Although DGO H-3 does not specify a timeframe in which the notification must occur, according to Crime Lab staff, with the high sensitivity of proper storage of controlled substances, notifications appear to be done in a timely manner, usually within 15 minutes of the Crime Lab's opening of business day. Retrievals are done promptly following notification.

### **Destruction**

Controlled substance evidence that is stored by the Crime Lab is eventually earmarked for destruction. Crime Lab staff works in conjunction with the Vice Section and the District Attorney's Office to identify those cases that are active and those that have been adjudicated. Controlled substance evidence related to adjudicated cases can be destroyed, while the articles of evidence from pending or active cases must be kept until such time the cases are settled.

There is no set time limit on how long evidence can be kept before being destroyed, but storage space is limited. The Crime Lab therefore requests, when practical, authorization for destruction of the controlled substance evidence to free up space. Requests to the District Attorney's Office for authorization to destroy unanalyzed evidence are made generally after one year of storage and after three years for analyzed cases. When cases have been cleared for destruction, the Vice Section charging officer is given a list with a draft court order and affidavit. Since destruction occurs only pursuant to a court order, the charging officer must request a judge to sign the order. Once the order has been signed, destruction forms are provided to the Crime Lab and the date of incineration is scheduled.

## **SCOPE AND POPULATION**

### **Audit Scope**

The scope of the audit was an assessment of controlled substance evidence identified by their coinciding "D" number to determine if the storage, chain of custody, and when applicable, the destruction records matched the data entered in the Crime Lab's Laboratory Information Management System (LIMS), a computerized records management system.

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<sup>1</sup> The entry code is a temporary code that is reset by the PEU supervisor after use by any member. The code can only be used for a set number of entries in a day. After the set number has been reached, the code expires and can no longer be used until it is reset.

**Audit Population and Sample**

The audit team reviewed the storage, chain of custody, and destruction records for 96 controlled substance cases identified by their “D” number for evidence inventoried between January 1, 2000 and June 15, 2010. This sample size was determined by conducting a one-tail test with a +/-4 percent error rate of the total population of 60,403 “D” number records for the audit period.

**METHODOLOGY**

The audit team reviewed the Criminalistics Laboratory Drug Analysis Unit standard operating procedures manual and interviewed the Crime Lab’s Manager and Criminalists. In addition, the audit team reviewed a random sample of inventoried controlled substance evidence to verify that entries reflected in the computerized records management system coincided with storage records, storage locations, and when applicable destruction documentation. In instances where the controlled substance evidence had been checked out by a court designated person (i.e., police officer or Deputy District Attorney investigator) as a court order, the Chain of Custody Record was also reviewed to verify proper recording of the transfer of evidence. With the assistance of a Criminalist, the audit team also conducted a visual inventory<sup>2</sup> of the stored controlled substance envelopes in the Crime Lab’s storage vault, and those articles of evidence which were identified for destruction and stored in a separate location.

**FINDINGS**

The audit team identified the storage locations and status (i.e., evidence awaiting destruction and analyzed and unanalyzed evidence still in progress or not earmarked for destruction) for all inventoried controlled substance evidence in the audit sample. All controlled substances identified by “D” numbers for the audit sample were accounted for and proper documentation for each was present.

Of the sample, there were 56 controlled substances evidence that had been destroyed prior to the audit. Supporting documentation including the destruction court order, affidavit, shipping document for transportation for incineration, and the Department of Justice List of Controlled Substance for Destruction was present for all destroyed controlled substances evidence.

There were 18 controlled substances evidence that had been earmarked for destruction. The audit team, with the assistance of Criminalists, confirmed the storage locations for each by visual inspection of the envelope. The audit team noted, while evidence was stored in an orderly fashion, the storage room did not provide adequate space for the amount of evidence stored. Boxes were stacked high making it difficult to retrieve

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<sup>2</sup> To abide by policy and proper procedures, no envelopes were opened during this audit nor handled by any member of the audit team. The audit team made notation of whether the envelope was present and if the correlating report document and “D” numbers were recorded on the envelopes. The contents of the envelopes were neither viewed nor confirmed.

evidence. Numerous times during the audit the Criminalists had to remove several boxes in order to reach specific evidence envelopes.

There were 19 controlled substances evidence that were either analyzed or unanalyzed, and were not earmarked for destruction, all of which presence was confirmed by way of a visual inspection. Of the 96 cases, there were three instances in which the evidence had been checked out to the court. The audit team was able to confirm this by reviewing the corresponding Chain of Custody Records and noting the date of the transfer of evidence and recipient signature.

During the audit, the PEU Supervisor reported that though rare, there are instances in which evidence packages that have been submitted to the PEU during closed business hours, have either not been sealed or not properly sealed by members. In such instances, PEU staff seals the package, and signs the seal noting that the package was not sealed upon receipt.

The Crime Lab staff reported that there have been instances when staff has reported to PEU to retrieve controlled substance evidence and has observed the packaging had not been sealed. When this occurs, the Crime Lab staff brings the problematic matter to the attention of the PEU staff and requests that PEU staff properly seal and initial the package.

When the Crime Lab receives wet marijuana plant materials, they are in unsealed condition. Along with other factors, the unsealed conditions occur to avoid decomposition, the potential destruction of evidence, and potential health hazards to staff from mold.

In addition to matters involving storage and chain of custody, the audit team noted the small space of the Crime Lab specific to the area where analysis of controlled substances is conducted. The space also serves as an area to dry out marijuana plants before an analysis is performed. On the days that the audit team performed its site visit, a strong smell of marijuana was observed; possibly the result of poor ventilation.

The Crime Lab has three full-time Criminalists whose primary function is to provide analysis of evidence and testimony as to their findings. With limited administrative support staff, the Criminalists have been tasked with the administrative duties of maintaining evidence tracking records, storage maintenance, document gathering, and other clerical duties associated with the destruction of evidence.

Also, the supervisor position in the Drug Analysis Unit has been vacant since the later part of September, 2009. This absence of a dedicated supervisor adds to potential and unforeseen risks. The supervisor responsibilities are a key component in the oversight of the Crime Lab operation, including the management of quality assurance measures and the important administrative work of the unit along with other various duties and responsibilities.

## RECOMMENDATIONS

- Allocate additional space for the storage of controlled substance evidence.
- Include in either DGO H-3 or the Property Section's standard operating procedure manual a specific timetable as to when notification of controlled substance retrieval from PEU to Crime Lab must occur.
- Provide members with update training on submitting (properly sealing) controlled substance evidence to the Crime Lab and the PEU.
- Increase Crime Lab support staff to assist with administrative duties.
- Dedicate a space specific to the drying mechanisms necessary for marijuana curing.
- Fill the unit supervisor position to enhance the critical oversight of the Crime Lab's sensitive operation.

## CONCLUSION

The periodic internal audits conducted by Crime Lab staff, adherence to the policy and procedures, clear documentation and record keeping, and a computerized records management system are all internal controls that have played a significant role in the Crime Lab's ability to run efficiently and meet standards set by the ASCLD/LAB. With a high volume of evidence received and stored by the Crime Lab, adequate storage, in particular the storage space for controlled substance evidence awaiting destruction, is a noted concern. Although storage is organized in such a way that staff is able to locate evidence, if a larger storage space is made available, retrieving evidence can be done more efficiently.

While it was not noted as a problem by the Crime Lab staff, providing a specific timetable of notification for evidence retrieval from the PEU is important. Having a specific timetable will ensure that evidence is not held in the PEU for an unreasonable amount of time and serves as a tool to increase accountability.

Both Crime Lab and PEU staff have reported instances of officers submitting unsealed controlled substance evidence. This is a concern because the risk of possibly jeopardizing the integrity of the evidence is heightened. Improperly sealed or unsealed packaging should not occur. Re-training officers on correct submissions of evidence and reinforcing such training with the importance of evidence integrity should remedy this problem.