



Testimony
Before the Committee on the Judiciary,
U.S. Senate

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DNA EVIDENCE

Preliminary Observations on DOJ's DNA Capacity Enhancement and Backlog Reduction Grant Program

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GAO Highlights

Highlights of [GAO-18-651T](#), a testimony before the Committee on the Judiciary, U.S. Senate

Why GAO Did This Study

Many state and local crime labs have backlogs of requests for DNA analysis of crime scene evidence, as reported by grantees participating in DOJ's CEBR grant program. These backlogs can include sexual assault kits. Since 2011, DOJ's Office of Justice Programs—the primary grant-making arm of DOJ—has awarded nearly \$500 million to states and local jurisdictions through the CEBR grant program to help reduce DNA evidence awaiting analysis at crime labs. There have been concerns that these backlogs of unanalyzed evidence have enabled serial offenders to reoffend or have delayed justice.

This statement is based on preliminary observations and analyses from GAO's ongoing review of (1) the level of crime scene DNA evidence backlogs among CEBR grantees and the factors that contribute to such backlogs; (2) the extent to which DOJ has clearly defined goals for CEBR; and (3) the extent to which OJP has controls for CEBR related to federal conflicts of interest and lobbying requirements. To develop these preliminary findings, GAO reviewed CEBR grantee data from 2011-2016 (the latest data available) and studies relevant to the DNA backlog, visited selected labs, and interviewed DOJ officials, among others.

What GAO Recommends

GAO is not making recommendations in this testimony but will consider them, as appropriate, as it finalizes its work.

View [GAO-18-651T](#). For more information, contact Gretta L. Goodwin at (202) 512-8777 or GoodwinG@gao.gov.

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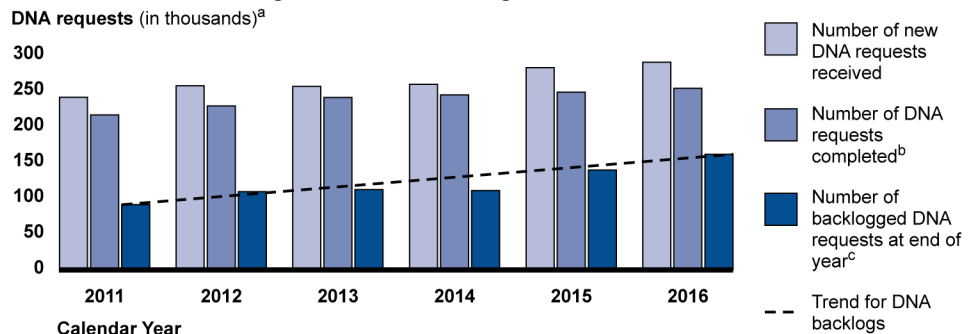
DNA EVIDENCE

Preliminary Observations on DOJ's DNA Capacity Enhancement and Backlog Reduction Grant Program

What GAO Found

GAO's preliminary analysis found that, among the Department of Justice's (DOJ) DNA Capacity Enhancement and Backlog Reduction Program (CEBR) grantees (state and local entities with forensic crime labs), the reported aggregated backlog of crime scene DNA analysis requests has increased by 77 percent from 2011-2016. The growth in this reported aggregate backlog is the result of labs receiving more requests than they were able to complete, although they were receiving and completing more requests, as shown in the figure below.

Preliminary Observations of Levels of Crime Scene DNA Analysis among DNA Capacity Enhancement and Backlog Reduction Grant Program Grantees



Source: GAO analysis of CEBR grant program data. | GAO-18-651T

^aBy "DNA requests" we mean requests for biology screening and/or DNA testing such that if a request requires one or both, it is counted once.

^bSome requests may be closed by administrative means rather than through analysis, such as when a suspect pleads guilty before the evidence is analyzed or when the victim declines to press charges. These requests are included in the number of requests received but are not included in the number of requests completed.

^cThe National Institute of Justice defines a "backlogged" request for crime scene DNA analysis as a request that has not been completed within 30 days of receipt in the laboratory. In the figure above, backlogs are bigger than the difference between the number of new requests and the number of requests completed because backlogs also include outstanding requests from previous years.

GAO's preliminary analysis also found that the National Institute of Justice (NIJ)—the component within DOJ's Office of Justice Programs (OJP) that is responsible for administering CEBR grants—has not defined CEBR program-wide goals in clear, specific, and measurable terms. Additionally, GAO's ongoing work identified statements in NIJ and CEBR program documentation that communicated program-wide goals, but the documentation did not consistently identify the same goals or cite the same number of goals. GAO continues to evaluate CEBR program goals and is in the process of evaluating related CEBR performance measures as part of its ongoing work.

GAO's preliminary analysis found that OJP has some controls to implement federal requirements associated with conflicts of interest and lobbying that apply to both OJP CEBR grant administrators as well as recipients of CEBR grant funding, but OJP has not fully established all appropriate controls related to lobbying.

Chairman Grassley, Ranking Member Feinstein, and Members of the Committee:

Thank you for the opportunity to discuss preliminary observations from our ongoing work on backlogs of DNA evidence.¹ In the criminal justice context, DNA analysis may be used to develop investigative leads, link an offender or victim to a crime scene, or confirm or disprove an account of a crime. Many state and local crime labs have backlogs of requests for DNA analysis of crime scene evidence, as reported by grantees participating in the Department of Justice's (DOJ) DNA Capacity Enhancement and Backlog Reduction grant program (CEBR).² These backlogs can include sexual assault kits (SAKs).³ There have been concerns that these backlogs of unanalyzed evidence have enabled serial offenders to reoffend or have delayed justice. In addition, questions have been raised about potential improper connections among those who profit from DNA testing and those who advocate for CEBR funding, such as private companies providing financial assistance to CEBR funding advocates.

Since 2011, DOJ has awarded nearly \$500 million to states and local jurisdictions through CEBR to help reduce DNA evidence awaiting analysis at crime labs. CEBR funds can be used to process DNA evidence collected from crime scenes or offenders.

My statement today is based on preliminary observations and analyses from our ongoing review for Senator Grassley of DNA evidence backlogs and the CEBR grant program. Specifically, I will address the following topics: (1) the level of crime scene DNA evidence backlogs among CEBR grantees and the factors that contribute to such backlogs;⁴ (2) the extent

¹DNA stands for deoxyribonucleic acid and is the genetic material present in the nucleus of cells.

²According to DOJ, a backlogged request for analysis of crime scene evidence is a request that has not been completed within 30 days of receipt in the laboratory.

³According to DOJ, a SAK is a package of materials used to collect and store biological evidence from a victim's or suspect's body by a medical professional in cases of alleged sexual assault. The contents of a SAK vary by jurisdiction but generally include swabs and collection envelopes for biological material.

⁴As used in this statement, "crime scene DNA evidence" refers to evidence from crime scenes, victims, and suspects collected by law enforcement or other responders after a crime. This differs from DNA samples collected from convicted offenders, arrestees, and others pursuant to law.

to which DOJ has clearly defined goals for CEBR; and (3) the extent to which DOJ's Office of Justice Programs (OJP)—the primary grant-making arm of DOJ—has controls for CEBR related to federal conflicts of interest and lobbying requirements.

As part of our ongoing work, we reviewed CEBR grantee data and studies relevant to the DNA backlog, we visited selected labs, and we interviewed DOJ officials, among others. To assess the backlog of DNA evidence among CEBR grantees, we collected yearly baseline performance data from CEBR grantees from 2011 through 2016. We selected 2011 to coincide with the year in which two grant programs were combined into what is now known as the CEBR grant program, and 2016 was the latest year for which grantee data were available. To assess the extent to which DOJ-compiled CEBR baseline data are reliable, we completed a number of data reliability steps, including discussing data entry issues with grantees and running logic tests on the data. Despite some limitations found with regards to validating and reporting requirements, after completing these steps, we determined that CEBR data were sufficiently reliable for the purposes of illustrating year-over-year aggregate trends among CEBR grantees.

Additionally, to identify factors that contribute to backlogs of unanalyzed DNA evidence at laboratories, we reviewed relevant studies and discussed factors with DNA evidence stakeholders, including DOJ officials, CEBR grantees, forensic crime laboratory directors, and relevant academics and practitioners. We summarized information from these sources to identify common factors, and we included illustrative examples of the types of factors we have identified to date in our statement. To assess the extent to which DOJ has clearly defined goals for CEBR, we are reviewing OJP CEBR documentation, including the most recent CEBR grant solicitation and CEBR program performance reports. We also discussed program goals with OJP officials. Finally, to assess the extent to which OJP has controls associated with federal conflicts of interest and lobbying requirements, we identified federal statutes and regulations governing conflicts of interest and lobbying. We are reviewing OJP documentation and statements from OJP officials to determine the extent to which OJP has controls in place consistent with those requirements.

This work is being conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit

objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

DNA Analysis of Crime Scene Evidence

Analysis of DNA evidence from crime scenes can help law enforcement link offenders or victims to crime scenes. After crimes occur, law enforcement submits physical evidence from crime scenes, victims, and suspects (hereafter referred to as “crime scene evidence”) to labs for analysis. Labs then perform “DNA analysis,” which, as used in this statement, refers to (1) biology screening (locating, screening, identifying, and characterizing blood and other biological stains and substances); and/or (2) DNA testing (identifying and comparing DNA profiles in biological samples).⁵ In order to compare the victim’s or offender’s DNA profile to the recovered crime scene DNA, the lab will need to have known biological samples available. Thus, samples are generally collected from victims and may also be collected from others—such as suspects, crime scene personnel, first responders, and consensual sexual partners (in cases of sexual assault).⁶

Matching DNA Profiles in the FBI’s Combined DNA Index System

Matching DNA profiles from unknown potential offenders to existing DNA profiles can help law enforcement develop investigative leads. If a case has no suspects to compare the DNA evidence to, the DNA profile of the unknown potential offender can be entered in the Federal Bureau of Investigation’s (FBI) Combined DNA Index System (CODIS), where it can

⁵We use this definition of “DNA analysis” because the CEBR program counts requests that undergo biology screening and/or DNA testing as one request (such that if a request requires one or both, it is counted once). A DNA profile is the genetic constitution of an individual at defined locations (also known as loci) in the DNA. Each person (except identical twins) has a unique DNA profile when used in the context of national level of the FBI’s Combined DNA Index System (CODIS), which now evaluates 20 specific DNA locations. We discuss CODIS later in this report.

⁶In practice, evidence often contains a mixture of DNA from more than one person. These mixtures can be challenging to analyze and interpret. Additionally, DNA analysis may result in “partial” profiles, which may occur when samples have low quantities of DNA or are exposed to extreme environmental conditions, among other things.

be compared to existing DNA profiles at the local, state, or national level.⁷ Labs can then compare unknown potential offender profiles to other profiles already in CODIS, including:

1. Profiles generated from evidence taken from other crime scenes and connected to other unknown potential offenders.
2. Profiles generated from samples taken from known convicted offenders, arrestees, and others as required by law (hereafter “offender samples”). According to DOJ, the federal government, all 50 states, the District of Columbia, and Puerto Rico have laws requiring the collection of DNA samples from individuals convicted of certain crimes; in addition, the federal government, over half of the states, and the District of Columbia have laws authorizing the collection of DNA from individuals arrested for certain crimes.⁸

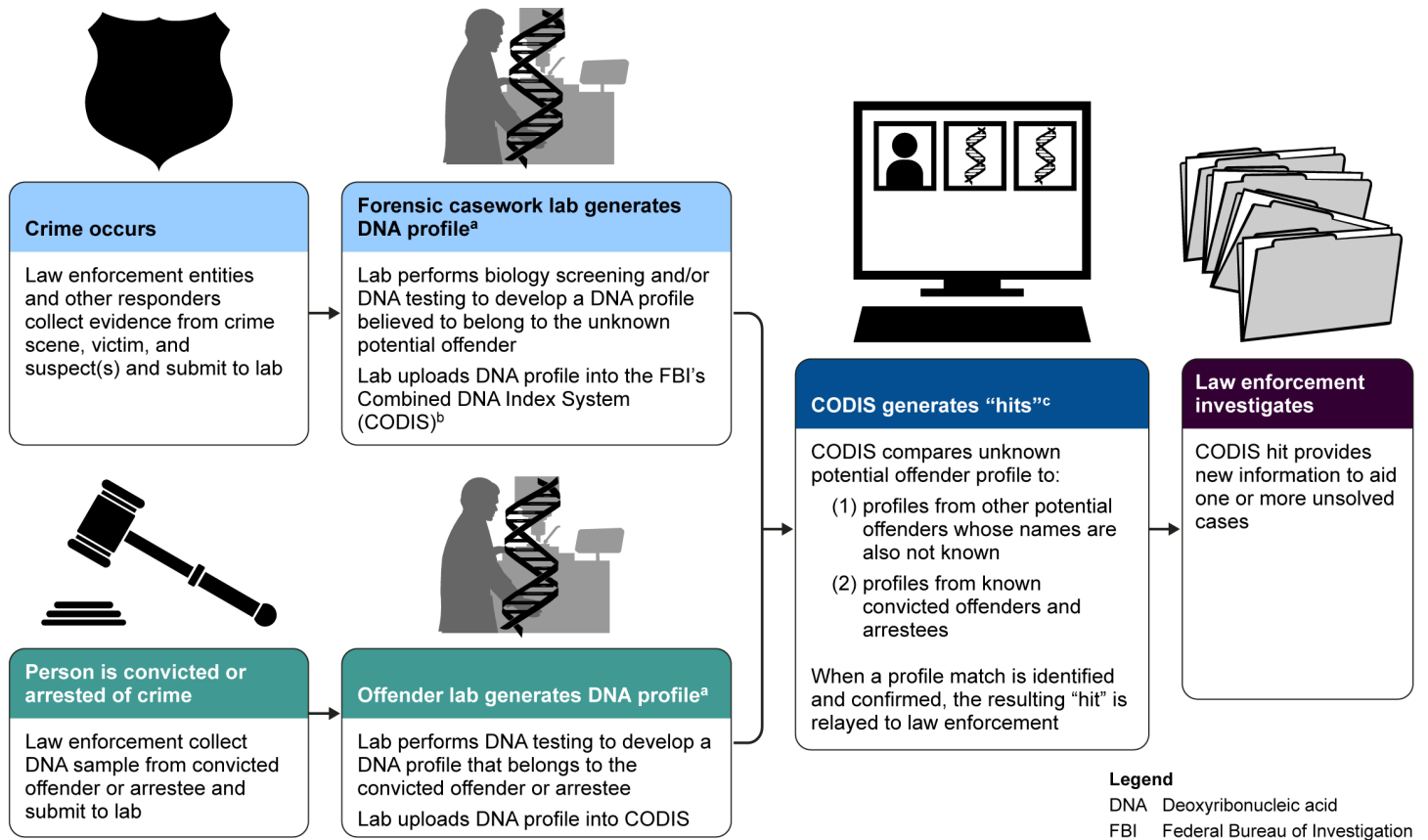
When an unknown potential offender’s profile matches another profile within CODIS, a “hit” or investigative lead may be developed and shared with law enforcement, as shown in figure 1 below.⁹

⁷CODIS is the generic term used to describe the FBI’s program of support for criminal justice DNA databases as well as the software used to run these databases. CODIS has multiple levels where DNA profiles can be stored and searched; the local level (for city and county DNA laboratories), state level and national level. As a result of processing evidence from crime scenes, only DNA profiles believed to belong to an unknown potential offender can be uploaded into CODIS. Thus, DNA collected from victims, suspects, first responders, and other known persons are processed for comparison and elimination purposes only and are not retained in CODIS.

⁸DNA samples may also be taken from non-U.S. person detainees and other categories of persons, as authorized by law.

⁹The FBI defines a hit as “A confirmed match that aids an investigation and one or more of the case(s) involved in the match are unsolved.”

Figure 1: How DNA Profiles Are Generated and Compared to Help Law Enforcement Develop Investigative Leads



Source: GAO analysis of DOJ information and a stakeholder interview; Art Explosion (clip art). | GAO-18-651T

^aWe use the term "forensic casework lab" to refer to labs that perform DNA analysis on evidence from crime scenes, victims, and suspects; we use the term "offender lab" to refer to labs that perform DNA analysis on samples taken from convicted offenders, arrestees, and other categories of persons as authorized by law; some labs do both.

^bCODIS is the generic term used to describe the FBI's program of support for criminal justice DNA databases as well as the software used to run these databases. Only federal, state, or local government labs can participate in CODIS. Government labs may outsource DNA analysis to private labs, but government labs must take or retain ownership of the DNA data for entry into CODIS.

^cThe FBI defines a hit as "a confirmed match that aids an investigation and one or more of the case(s) involved in the match are unsolved."

Only federal, state, or local government labs that meet the FBI's Quality Assurance Standards can participate in CODIS.¹⁰ As of January 1, 2018 there were 201 labs that participated in CODIS in the U.S. Of these, 143 performed just forensic casework DNA analysis, 4 performed just offender sample DNA analysis, and 54 performed both. According to the FBI, as of May 2018, the national level of CODIS contained over 16 million profiles generated from offender samples and over 850,000 profiles generated from crime scene evidence.¹¹ Also, the FBI reported that as of May 2018, CODIS had produced over 422,000 hits that aided more than 406,000 investigations.

DOJ's Capacity Enhancement and Backlog Reduction Grant Program

The CEBR grant program is administered by the National Institute of Justice (NIJ), a component within OJP. NIJ, the research arm of DOJ, is responsible for evaluating programs and policies that respond to crime, and providing and administering awards for DNA analysis and forensic activities, among other criminal justice activities. The CEBR grant program is funded by an appropriation "for a DNA analysis and capacity enhancement program and for other local, State, and Federal forensic activities."¹² The broad appropriations language enables NIJ to allocate funding for a variety of forensic programs at funding levels established by the agency; however, congressional reports accompanying the appropriation have directed that OJP make funding for DNA analysis and

¹⁰FBI, Quality Assurance Standards for Forensic DNA Testing Laboratories (September 1, 2011). FBI, Quality Assurance Standards for DNA Databasing Laboratories (September 1, 2011). Government labs may outsource DNA analysis to private labs, but government labs must take or retain ownership of the DNA data for entry into CODIS.

¹¹The national level of CODIS, called the National DNA Index System, contains DNA profiles contributed by federal, state, and local participating forensic labs.

¹²The appropriation language states that funds are "for a DNA analysis and capacity enhancement program and for other local, State, and Federal forensic activities, including the purposes authorized under section 2 of the DNA Analysis Backlog Elimination Act of 2000 (Public Law 106-546) (the Debbie Smith DNA Backlog Grant Program)." The purposes of the CEBR grant program are generally similar to the purposes of the Debbie Smith DNA Backlog Grant Program. There is no additional statutory authorization for the program.

capacity enhancement a priority.¹³ CEBR awards can be used to enhance capacity and reduce backlogs at government labs that analyze crime scene DNA evidence and/or process offender DNA samples. NIJ defines a “backlogged” request for analysis of crime scene evidence as a request that has not been completed within 30 days of receipt in the laboratory.

CEBR is a formula grant program that dates back to 2004.¹⁴ Grant awards are made non-competitively to states and units of local government based on a formula set by DOJ that allocates certain amounts to each state. This formula takes into account each state’s population and associated crime, and guarantees a minimum amount for eligible applicants from each state. CEBR has broad participation from states and local jurisdictions. For instance, in 2017 OJP awarded \$61 million in CEBR grants to 131 grantees in 49 states, the District of Columbia, and Puerto Rico.

¹³The Justice for All Reauthorization Act of 2016, Pub. L. No. 114-324, § 3(a), requires that not less than 75 percent of the funds made available under this appropriation be provided for grants for activities described under paragraphs (1), (2), and (3) of section 2(a) of the DNA Analysis Backlog Elimination Act of 2000. Those purposes include (1) To carry out, for inclusion in the Combined DNA Index System of the Federal Bureau of Investigation, DNA analyses of samples collected under applicable legal authority; (2) To carry out, for inclusion in such Combined DNA Index System, DNA analyses of samples from crime scenes, including samples from rape kits, samples from other sexual assault evidence, and samples taken in cases without an identified suspect; and (3) To increase the capacity of laboratories owned by the State or by units of local government to carry out DNA analysis of samples specified in the purposes above.

¹⁴In 2011, grant programs that separately funded labs that analyzed (1) crime scene DNA evidence, and (2) offender DNA samples, were combined into one grant program called the DNA Backlog Reduction Program. In 2014, this was renamed the DNA Capacity Enhancement and Backlog Reduction Program.

Preliminary Analysis of CEBR Data Show that the Backlog of Requests for Crime Scene DNA Analysis Is Increasing and Stakeholders Attribute This to Various Factors

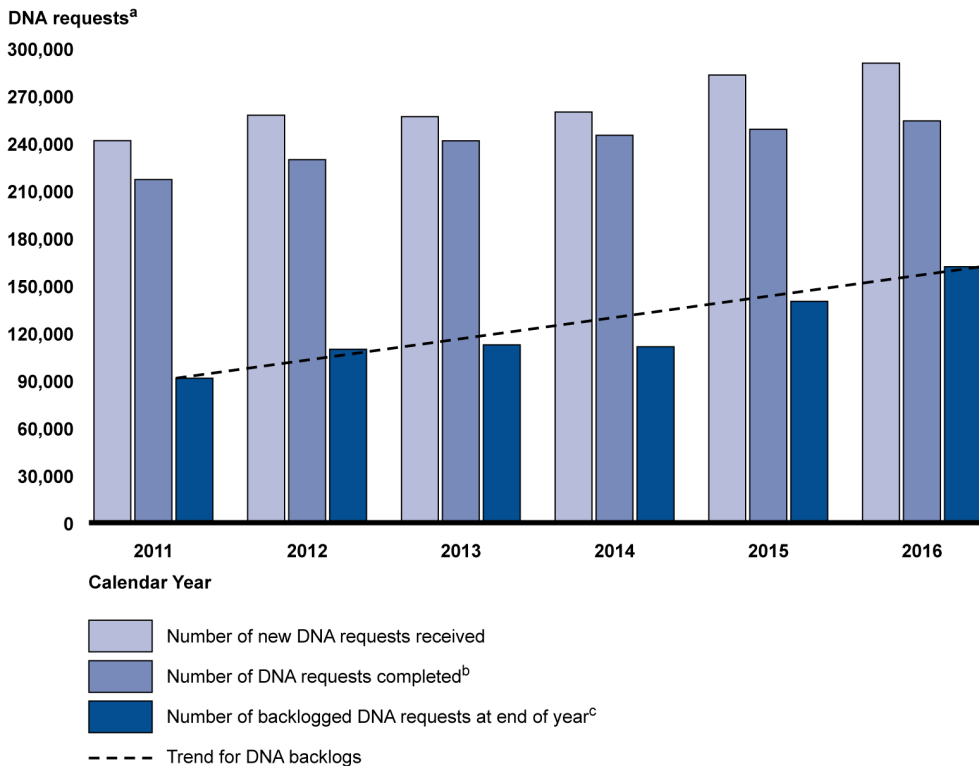
Our preliminary analysis of CEBR grant program data show that the backlog of requests for crime scene DNA analysis has increased by 77 percent from 2011 through 2016, and that demand for such DNA analysis has outpaced laboratory capacity. In our review, we identified numerous factors that have contributed to an increased demand for DNA analysis beyond laboratories' capacities, including scientific advancements in DNA analysis technology and state laws requiring testing of certain DNA evidence.

Preliminary Analysis of CEBR Data Show an Increasing Backlog for Crime Scene DNA Analysis at Laboratories among CEBR Grantees, though Backlogs Vary Among Individual Labs

We found that, among CEBR grantees, the reported aggregated backlog of requests for crime scene DNA analysis has increased by 77 percent from 2011 through 2016. As part of the grant application process, NIJ requires applicants for CEBR grants to provide data from all labs in their jurisdiction, even if certain labs will not be using CEBR funds. NIJ does this to assist in understanding nationwide trends in DNA analysis backlogs.¹⁵ The reported growth in the aggregate backlog among CEBR grantees is the result of labs receiving more requests than they were able to complete over time, as shown in the figure below.

¹⁵As of January 1, 2018, according to information provided by OJP, CEBR grantees represented 188 of the 197 laboratories that perform forensic casework DNA analysis in the U.S. and participate in CODIS. Although this information is for 2018, NIJ officials said that CEBR grantees have generally been representative of all labs in the U.S. that participated in CODIS in prior years as well. In addition, according to NIJ officials, NIJ collects data from CEBR grantees in years they did not apply for CEBR funding to keep the data consistent. We are continuing to assess the extent to which CEBR data are nationally representative for the years presented as part of our ongoing work.

Figure 2: Preliminary Observations of Requests for Crime Scene DNA Analysis, Requests Completed, and Backlogged Requests among DNA Capacity Enhancement and Backlog Reduction Grant Program Grantees



Source: GAO analysis of CEBR grant program data. | GAO-18-651T

^aBy “DNA requests” we mean requests for biology screening and/or DNA testing such that if a request requires one or both, it is counted once.

^bSome requests may be closed by administrative means rather than through analysis, such as when a suspect pleads guilty before the evidence is analyzed or when the victim declines to press charges. These requests are included in the number of requests received but are not included in the number of requests completed.

^cThe National Institute of Justice defines a “backlogged” request for crime scene DNA analysis as a request that has not been completed within 30 days of receipt in the laboratory. In the figure above, backlogs are bigger than the difference between the number of new requests and the number of requests completed because backlogs also include outstanding requests from previous years.

Although reported aggregate trends show an increase in the backlog among CEBR grantees, the data also reveal that this increase is not uniform across all labs. For example, among the 118 grantees for which we had data from 2011 through 2016, 30 grantees (25 percent) reported an overall decrease in the backlog. In addition, data from CEBR grantees show differences in the average time it takes to process requests (turnaround time) among grantees. Stakeholders also stated, and NIJ has

reported, that labs generally have shorter average turnaround times for requests associated with violent crimes than for requests associated with non-violent crimes—because labs generally prioritize requests associated with violent crimes.¹⁶ For our ongoing review, we continue to analyze CEBR data and data from other sources pertaining to this issue.

Various Factors, Such as Scientific Advancements, Have Increased Demand for DNA Analysis Beyond Laboratories' Capacities

Based on a review of a selection of studies and discussions with DNA evidence stakeholders, we identified the following factors that are reported to have contributed to an increased demand for crime scene DNA analysis beyond laboratories' capacities. As a result, these factors are believed to have helped contribute to increased backlogs:¹⁷

Scientific advancements

Recent scientific advancements have increased the quality of DNA analysis by allowing lab analysts to obtain DNA profiles from smaller amounts of biological evidence. This has increased the amount of evidence that is eligible to be analyzed and, as a result, has increased the demand for DNA testing.

Decreases in turnaround times

One DNA evidence stakeholder was able to produce preliminary data demonstrating that, as a general trend, labs that decreased their turnaround time saw corresponding increases in requests from law enforcement. Other DNA stakeholders, including NIJ, made similar observations.¹⁸

¹⁶DNA evidence stakeholders include DOJ officials, CEBR grantees, forensic crime laboratory directors, and relevant academics and practitioners.

¹⁷We identified and reviewed 22 government reports and academic journal articles about factors that contribute to backlogs of unanalyzed DNA evidence at labs and inventories of unanalyzed DNA evidence in law enforcement custody. Throughout the course of our audit, we also discussed factors that contribute to backlogs and/or inventories with stakeholders from 15 different entities, including CEBR grantees and the American Society of Crime Lab Directors, among others.

¹⁸In a market environment, if a price decreases, quantity demanded generally increases. State and local labs are generally funded by state or local appropriations and thus their services are “free” for submitting law enforcement agencies. In this context, turnaround time may be a substitute for price—and thus when turnaround time decreases, it can be expected that quantity demanded from law enforcement will increase in response. Further, laboratory capacity may be a substitute for supply.

Increased awareness among law enforcement and the public

Increased awareness among law enforcement officers of the value of DNA analysis in solving current and older cases has led to law enforcement agencies submitting more DNA evidence to labs for analysis. Further, NIJ and other stakeholder officials we interviewed stated that the volume of DNA profiles in CODIS has increased significantly over recent years. This, in turn, increased the usefulness of DNA evidence in testing suspect DNA profiles against a well-populated database of existing offenders. This usefulness has increased awareness among law enforcement personnel of CODIS, which contributes to increased demand for DNA analysis, thereby contributing to the backlog. Additionally, when deciding whether to submit DNA evidence for analysis, law enforcement and prosecutors may consider jurors' expectations that DNA analysis is presented.¹⁹

Recent legislation requiring Sexual Assault Kit (SAK) analysis

State legislation requiring SAK analysis has caused an increase in demand for DNA analysis. As of July 2018, we identified at least 25 states that have enacted laws requiring law enforcement to submit for testing SAKs that come into law enforcement possession.²⁰ Eleven of these states also required the submission for testing of previously untested SAKs. Twenty-one of these laws were passed in 2014 or later.

In addition to the factors that have contributed to increased demand, resource challenges and constraints on lab capacity are reported to have helped contribute to crime scene evidence backlogs. State and local labs generally receive appropriations from state or local governments and are subject to local funding priorities. Federal grants can help, but even combined federal and jurisdictional funding may not increase lab capacity enough to keep up with increases in demand. Additionally, these labs report facing lengthy hiring and training processes for forensic analysts,

¹⁹The literature and stakeholders commonly refer to this as the "CSI effect," which is named after a television program that features the use of DNA in solving criminal cases.

²⁰Legislation varies by state and may provide for the testing of SAKs or other evidence relating to sexual assault consistent with prioritization policies or other requirements, such as the sexual assault, be reported to law enforcement.

and often lose staff to private or federal labs which may offer higher pay, further limiting lab capacity for completing analysis.

Preliminary Results Show that DOJ Has Not Clearly Defined and Documented CEBR Grant Program Goals

DOJ's NIJ has not defined CEBR program-wide goals in clear, specific, and measurable terms.²¹ We identified statements in NIJ and CEBR program documentation that communicated program-wide goals, but the documentation did not consistently identify the same goals or cite the same number of goals. For example, a stated goal of improving the quality of DNA testing was included in only 2 of 4 NIJ documents we reviewed. In addition, NIJ officials verbally clarified that the CEBR program has two goals, (1) to increase laboratory capacity for DNA analysis, and (2) to reduce backlogs of DNA evidence awaiting analysis. These differences can be seen across goal statements outlined in various NIJ sources as shown in table 1 below.

Table 1: DNA Capacity Enhancement and Backlog Reduction Program (CEBR) Goals Listed in National Institute of Justice (NIJ) Documentation and NIJ Verbal Clarifications

Source	CEBR Goal(s)
Goals as stated in NIJ documentation	
CEBR grant solicitation (fiscal year 2018)	To assist eligible States and units of local government to increase laboratory capacity and reduce the number of samples awaiting analysis in both the casework and database sections. ^a
NIJ website (2018) ^b	To assist eligible states and units of local government to: <ul style="list-style-type: none"> • Process, record, screen and analyze forensic DNA and/or DNA database samples. • Increase the capacity of public forensic DNA and DNA database laboratories to process more DNA samples, thereby helping to reduce the number of forensic DNA and DNA database samples awaiting analysis.
NIJ report (2018) ^c	To improve the quality of testing and increase the efficiency of evidence processing in forensic DNA laboratories.
NIJ report (2017) ^d	To help increase the throughput of evidence processing at the nation's forensic DNA laboratories and improve the quality of testing.
NIJ verbal clarification of goals	
NIJ verbal explanation (2018)	The CEBR program has two goals: <ol style="list-style-type: none"> 1. Increase laboratory capacity for DNA analysis. 2. Reduce backlogs of DNA evidence awaiting analysis.

Source: GAO analysis of NIJ documentation and interview with NIJ officials. | GAO-18-651T

²¹Program-wide goals are different than goals for individual grants. The CEBR grant program allows grantees to create their own goals and objectives within the framework of overall program-wide goals.

^a"Sections" refers to areas within labs that perform different types of analysis; the "casework" section refers to the section that performs DNA analysis on evidence from crime scenes, victims, and suspects; the "database" section refers to the section that performs DNA analysis on samples collected from convicted offenders, arrestees, and others as authorized by law.

^bDOJ, OJP, NIJ, DNA Capacity Enhancement and Backlog Reduction Program, <https://www.nij.gov/topics/forensics/lab-operations/evidence-backlogs/Pages/backlog-reduction-program.aspx>. Accessed June 4, 2018.

^cDOJ, OJP, NIJ, Report Forensic Science Fiscal Year 2017 Funding for DNA Analysis, Capacity Enhancement, and Other Forensic Activities. (Washington D.C.: April 2018).

^dDOJ, OJP, NIJ, Report Forensic Science Fiscal Year 2016 Funding for DNA Analysis, Capacity Enhancement, and Other Forensic Activities. Washington D.C.: May 2017).

NIJ officials acknowledged that they do not have documentation that further defines the goals of the program in clear, specific, and measurable terms. These goals are specified as increasing laboratory capacity for DNA analysis and reducing backlogs of DNA evidence awaiting analysis. Officials provided an explanation as to what the goals mean. Specifically, officials stated that:

- Increasing lab capacity refers to increasing samples analyzed, reducing processing times, and increasing the number of DNA profiles uploaded into CODIS—all while either maintaining or increasing the quality of DNA analysis at labs.
- Reducing backlogs refers to reducing the number of backlogged requests awaiting analysis by more than the number of requests that become backlogged during the same timeframe. Officials stated that although they believe the goal of reducing the crime scene evidence backlog is unachievable in the foreseeable future, they have kept it as a program goal because each year it is included in the appropriation language that supports the program.

However, these clarifications and definitions are not available in CEBR documentation, which is an indication that NIJ may not be using clear,

specific, and measurable goals to guide program development or assess progress.²²

We continue to evaluate CEBR program goals and we are in the process of evaluating related CEBR performance measures as part of our ongoing work.

Preliminary Analysis Shows that OJP Has Established Controls for Conflicts of Interest Related to CEBR Grants, but Has Not Fully Established Controls Related to Lobbying

Our preliminary results show that OJP has controls to implement federal requirements associated with conflicts of interest and some controls related to lobbying that apply to both OJP CEBR grant administrators as well as recipients of grant funding; however, OJP has not fully established all appropriate controls related to lobbying.

²²In a 2013 report, we assessed the extent to which NIJ verified data on grant results submitted by grantees and measured outcomes of the DNA Backlog Reduction Program (now called the CEBR program). We found that NIJ did not have an approach to verify grantee performance data and that one of its performance measures included estimated rather than actual outcomes. As a result of recommendations we made in this report, which we have since closed as “implemented,” NIJ now has a process in place to validate selected performance measures and replaced one of its performance measures to better reflect increasing laboratory capacity. GAO, *Justice Grant Programs: DOJ Could Improve Decision-Making Documentation and Better Assess Results of DNA Backlog Reduction Program*. [GAO-13-605](#), (Washington, D.C: July 2013).

OJP Has Established Controls for Conflicts of Interest Related to CEBR Grants

We found that OJP has established controls to implement federal conflicts of interest requirements that apply to OJP employees administering CEBR grants and CEBR grantees. For example, federal law prohibits government employees from participating personally and substantially in particular government matters, such as the administration of federal grants, which could affect their financial interests.²³ We found that OJP has established an agency-wide ethics program and uses tools such as the DOJ Ethics Handbook and annual financial disclosure reports, among others, to help employees and their supervisors to determine whether they have potential conflicts of interest. See table 2 below for a list of the federal conflicts of interest requirements we identified, as well as our preliminary assessment of related OJP controls to ensure that the requirements are met.²⁴

²³Criminal conflict of interest statutes governing OJP employees who administer CEBR grants are codified at 18 U.S.C. Chapter 11. Although these statutes cover a variety of topics related to conflicts of interest, our review focuses on the participation of OJP employees in government actions that may conflict with their personal financial interests, as specifically provided in 18 U.S.C. § 208. We focus on acts affecting personal financial interests because related regulatory requirements cover a broad range of issues directly applicable to OJP employees who administer CEBR grants. These regulatory requirements are set forth in selected subparts of 5 C.F.R. pt. 2635 “Standards of Ethical Conduct for Employees of the Executive Branch.”

²⁴Because OJP administers CEBR as a formula grant program in which applicants are entitled to a specific amount of federal funds if they meet certain requirements, some risks associated with conflicts of interest that affect competitive grants, such as peer reviewer conflicts of interest, do not apply to CEBR.

Table 2: Preliminary Analysis of Office of Justice Programs (OJP) Controls to Ensure that OJP Employees and Grantees Meet Federal Requirements Related to Conflicts of Interest

Relevant statute or regulation	Select requirements for OJP employees and Capacity Enhancement and Backlog Reduction program grantees	Preliminary analysis of OJP controls to ensure that requirements are met
5 C.F.R. pt. 2638, "Executive Branch Ethics Program"	Agencies must carry out a government ethics education program. New employees must complete initial ethics training. Employees must complete annual ethics training.	●
5. C.F.R. pt. 2635, "Standards of Ethical Conduct for Employees of the Executive Branch"	Employees must not participate in matters likely to affect their financial interests or under circumstances that would cause a reasonable person to question their impartiality. Employees may not participate in particular matters that have a direct and predictable effect on the financial interests of persons with whom employees are seeking employment. Employees are not allowed to engage in outside employment or other outside activities that conflict with their official duties.	●
5 U.S.C. app. §§ 101-111, "Financial Disclosure Requirements of Federal Personnel" 5 C.F.R. pt. 2634, "Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture"	Senior-level employees must file public financial disclosure reports annually. Specified less senior employees must file confidential financial disclosure reports annually.	● ●
2 C.F.R. pt. 200, "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards"	Agencies must establish conflicts of interest policies for grants. Grantees must disclose in writing any conflicts of interest to the agency.	●

Legend: Control(s) fully established ●

Control(s) partially established ◐

Source: GAO analysis of conflicts of interest requirements and OJP information. | GAO-18-651T

OJP Has Some Controls for Lobbying as They Apply to Recipients of CEBR Grant Funds, but Has Not Fully Established All Appropriate Controls

We found that OJP has established some controls related to lobbying but has not fully established controls needed to meet applicable requirements. Specifically, federal law sets forth several requirements related to lobbying “certification” and “disclosure.”²⁵ Lobbying certification refers to agreeing not to use appropriated funds to lobby, and lobbying disclosure refers to disclosing lobbying activities with respect to the covered federal action paid for with nonappropriated funds. Federal regulation requires recipients of all federal awards over \$100,000 to file certification documents and disclosure forms (if applicable) with the next tier above, and to forward those same forms from the tier below if they issue subawards for \$100,000 or more.²⁶ In the case of CEBR grants, tiers include OJP, grantees, subgrantees, contractors under grantees and subgrantees, and subcontractors. Subawards include subgrants, contracts under grants or subgrants, and subcontracts.

We found that OJP had established controls to obtain lobbying certification documents and disclosure forms from grantees, but had not fully established controls to ensure grantees obtain these documents from tiers below them, see table 3 below.

²⁵28 C.F.R. pt. 69, “New Restrictions on Lobbying,” implements 31 U.S.C. § 1352, commonly referred to as the “Byrd Amendment.” 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. See also, 2 C.F.R. pt. 200, Appendix II(I) which contains similar requirements.

²⁶The required certification document is set forth in Appendix A to 28 C.F.R. pt. 69. The 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.

Table 3: Preliminary analysis of Office of Justice Programs (OJP) Controls to Ensure that Grant Award Recipients Meet Federal Requirements Related to Lobbying

Relevant federal statute or regulation	Select requirements for Capacity Enhancement and Backlog Reduction program (CEBR) grantees and others	Preliminary Analysis of OJP controls to ensure that requirements are met
31 U.S.C. § 1352 28 C.F.R. pt. 69, "New Restrictions on Lobbying"	OJP is to collect certification documents and disclosure forms ^a from CEBR grantees. ^b	●
	If grantees issue subawards ^c over \$100,000, OJP is to ensure grantees collect certification documents and disclosure forms from tiers ^d below them. OJP is to ensure that disclosure forms are forwarded from tier to tier until received by OJP.	◐

Legend: Control(s) fully established ●

Control(s) partially established ◐

Source: GAO analysis of 31 U.S.C. § 1353 and 28 C.F.R. pt. 69 as applicable to CEBR grantees and OJP information. | GAO-18-651T

^aDisclosure forms are only required by regulation if the award recipient or subrecipient used nonappropriated funds to lobby with respect to the CEBR grant. However, we found that OJP requires all CEBR grantees to submit a disclosure form when applying for a CEBR grant.

^bThis requirement is only applicable to federal awards over \$100,000. However, all CEBR grants are for at least \$150,000. Additional exceptions and requirements apply.

^cIn the case of CEBR grants, subawards include subgrants, contracts under grants or subgrants, and subcontracts.

^dIn the case of CEBR grants, tiers include OJP, grantees, subgrantees, contractors under grantees and subgrantees, and subcontractors; and subawards include subgrants, contracts under grants or subgrants, and subcontracts.

OJP has established mechanisms to ensure it obtains lobbying certification documents and disclosure forms from grantees. Specifically, according to OJP, it requires that grant applicants electronically agree to the certification document during the application process; if applicants do not agree to it, they cannot move on in the process. OJP also requires that applicants submit the lobbying disclosure form as part of the grant application process. Upon submission, a grant manager reviews the form for completeness and content and checks a box in an application review checklist.

However, OJP has only partially established a mechanism to ensure that, for subawards over \$100,000 (1) CEBR grantees obtain certification documents and disclosure forms, as applicable, from tiers below them, and (2) disclosure forms are forwarded from tier to tier until received by OJP. Specifically, OJP requires grant applicants to agree to the

certification document set forth in regulation.²⁷ This certification document, in turn, lists certification and disclosure requirements, and states that, “The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.” However, the certification document does not state in clear terms what the specific requirements of the regulation are or how they are to be carried out.

OJP attorneys responsible for overseeing their implementation were not aware of specific requirements in the regulation. For example, they were not aware that disclosure forms were required to be forwarded from tier to tier until received by OJP. Additionally, 3 of 4 CEBR grantees we spoke with were not aware of one or more of these requirements.

Lastly, we found that OJP does not provide guidance to grantees to ensure they understand the requirements nor does OJP follow-up with grantees to ensure they are implementing them. The statute requires that federal agencies “take such actions as are necessary to ensure that the [lobbying requirements] are vigorously implemented and enforced in [that] agency.”²⁸ 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.

Chairman Grassley, Ranking Member Feinstein, and Members of the Committee, this concludes my prepared statement. I would be pleased to respond to any questions that you may have at this time.

²⁷Appendix A to 28 C.F.R. pt. 69.

²⁸31 U.S.C. § 1352(f); see also 31 C.F.R. § 21.410.

GAO Contacts and Staff Acknowledgements

If you or your staff members have any questions about this testimony, please contact Gretta L. Goodwin, Director, Homeland Security and Justice at (202) 512-8777 or GoodwinG@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this testimony included Dawn Locke (Assistant Director), Adrian Pavia (Analyst-in-Charge), Stephanie Heiken, Jeff Jensen, Chuck Bausell, Daniel Bibeault, Pamela Davidson, Eric Hauswirth, Benjamin Licht, Samuel Portnow, Christine San, Rebecca Shea, Janet Temko-Blinder, and Khristi Wilkins.

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