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FISCAL IMPACT REPORT

ORIGINAL DATE 2/3/2016
SPONSOR Stewart **LAST UPDATED** _____ **HB** _____

SHORT TITLE Study Backlog of Sexual Assault Exam Kits **SM** 50

ANALYST Rogers

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		
NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI	NFI	NFI	NFI

(Parenthesis () Indicate Expenditure Decreases)

Relates to HB 130, HB 131, HB 230, SB 17, SB 18, SB 158
 Duplicates HM 58

SOURCES OF INFORMATION

LFC Files

Responses Received From
 Office of the State Auditor (OSA)

Responses not Received From
 Department of Public Safety (DPS)

SUMMARY

Synopsis of Memorial

Senate Memorial 50 requests that the Department of Public Safety (DPS) and the Director of the Statewide Coalition to End Sexual Violence create a task force to study and report on the processing of backlogged sexual assault exam kits.

The task force would include the state auditor or auditor's designee, the attorney general or the attorney general's designee, the director of a rape crisis center that serves a community with a population of one hundred thousand or greater, the director of a rape crisis center that serves a community with a population of less than one hundred thousand, the director of a sexual assault nurse examiner program that serves a community with a population of one hundred thousand or greater, the director of a sexual assault nurse examiner program that serves a community with a population of less than one hundred thousand, the chief of the department of public safety's forensic laboratories bureau, the director of the Albuquerque police department's crime laboratory, and the statewide sexual assault nurse examiner coordinator.

The task force would be required meet at least twice a year for five years, beginning in 2016, and report annually to the interim legislative committee dealing with courts, corrections and justice issues and to the legislative health and human services committee with the task force's recommendations and updates on the progress made on processing backlogged sexual assault examination kits, contacts made by law enforcement and rape crisis center representatives with survivors whose sexual assault examination kits have been processed and where DNA evidence matches have been made in the DNA database, the adequacy of support services available to survivors who are affected by the processing of backlogged sexual assault examination kits, and any legislation the task force recommends for introduction.

FISCAL IMPLICATIONS

There is no appropriation contained in the memorial. The Office of the State Auditor (OSA) and DPS have already conducted a study of the number of untested kits statewide and are identifying best practices to prevent future backlogs. Parts of HM 58 may be duplicative of previous efforts.

There is a fiscal cost to clear the backlog of kits, however, which DPS has estimated at a cost of \$1,826.6 thousand over four years. There could also be costs associated with implementing new best practices or policies.

DPS states that the all of the bills proposed this year to address the backlog are matched with appropriations to support the DPS crime lab and the Department of Health's (DOH) sexual assault and rape crisis center efforts and contain proactive intent. DPS stated that the task force may not be the best use of agency resources, and may be unnecessary given the other bills already moving through the Legislature.

SIGNIFICANT ISSUES

Over the last half of 2015, DPS and OSA coordinated a statewide count of all the backlogged sexual assault evidence kits in New Mexico. According to a press release issued by the OSA dated December 18, 2015, the total number of untested kits is 5,406 including those kits housed at DPS.

Earlier in 2015, DPS sent letters to law enforcement agencies statewide asking for a tally of untested kits in their inventory. OSA followed up with the agencies that did not respond to DPS' attempts.

OSA stated in their letter that beginning in January, 2016, they will review internal controls at the different law enforcement agencies that may contribute to the backlog. The OSA will identify common issues and best practices to guide policymakers in efforts to prevent another backlog from happening.

DPS estimates there are 1,500 unprocessed rape kits located in evidence vaults at law enforcement agencies around the state. It will take the three DNA forensic scientists dedicated solely to addressing the backlog between four and five years to process the estimated 1,500 rape kits.

According to LFC files, the number of backlogged cases has grown 70 percent since FY10. In FY15, DPS completed an average 20 percent of all cases received within 30 days, which addresses current cases and not those in the backlog. In FY16, the department received \$170 thousand in the base and a \$205 thousand special appropriation to work on clearing the backlog of cases. For FY17, DPS requested \$615.5 thousand in general fund for two additional scientists and their associated overhead costs. The vacancy rate for forensic scientists is 30 percent and the turnover rate is 20 percent.

The laboratory facility in Santa Fe is at maximum capacity and would not be able to support new scientists and the equipment and tools they would need. Locating the scientists at the Las Cruces or Hobbs laboratories is not practical, as all DNA evidence is processed and stored in secured environments in Santa Fe.

DPS estimates that, based on productivity calculations, the backlog of 1,500 cases is expected to be cleared within a four to five year period, all dependent on time to remodel existing facility or leasing a building and hiring forensic scientists. Creating new scientist positions, recruiting and hiring are relatively straightforward, but could take between five to nine months because of the demand for forensic scientists.

According to the U.S. Bureau of Labor Statistics, the 2014 median income for a forensic scientist was \$55.4 thousand. New Mexico State government's payband midpoint for a forensic scientist I and II is \$54.4 thousand and \$61.4 thousand, respectively -- slightly below the 2014 median. DPS requested the State Personnel Office to include forensic scientists in the FY17 compensation request.

OTHER SUBSTANTIVE ISSUES

DPS points out that DOH was not included on the list of members on the proposed task force. Given the recognition in other proposed bills of its role in rape crisis services, their absence may need to be addressed.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to HB 130, HB 131, HB 230, SB 17, SB 18, SB 158 and duplicates HM 58.

TMR/jle



State of New Mexico
OFFICE OF THE STATE AUDITOR

For Immediate Release

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State Auditor Helps Complete Statewide Count of “Rape Kit” Backlog

Aims to bring transparency to statewide backlog, will provide best practices to policymakers

SANTA FE, NM – Today, the Office of the State Auditor announced the completion of the statewide count of untested Sexual Assault Evidence Kits (commonly known as “rape kits”). Having a complete and accurate number of untested rape kits in the state is a first step at reducing the backlog and arming policymakers with information needed to bring justice and closure to cases. With responses of all relevant law enforcement agencies collected, the total number of untested kits in New Mexico is 5,410.

“For the first time, our state is equipped with a complete tally of untested kits sitting in law enforcement inventories. Bringing transparency to the backlog is a first step towards fixing this issue, which is critical to survivors and our public safety,” stated State Auditor Tim Keller. “The Department of Public Safety, State Police, crime labs, local law enforcement and stakeholders did a great job beginning to uncover key information that can be used to address the backlog.”

Earlier this year, the Department of Public Safety (DPS) sent a series of letters to law enforcement agencies asking how many untested kits were stored in their inventories. The Office of the State Auditor (OSA) followed up with the agencies that did not respond to DPS’ multiple attempts.

“Our inventory of sexual assault kits in law enforcement evidence vaults around New Mexico is complete, thanks to our partners in law enforcement, the victim advocacy community, and the State Auditor’s Office,” stated Department of Public Safety Secretary Greg Fouratt. “As soon as reasonably possible, we need to resolve the backlog by testing the kits and entering their results into our nation’s criminal DNA database. Then we need to improve and streamline the process by which such kits are collected, submitted to the lab, and analyzed.”

As a next step beginning in January, the State Auditor will review internal controls that may be contributing to the backlog. The OSA will identify common issues and best practices to guide policymakers in efforts to prevent another backlog from happening.

The Office of the State Auditor helps government work better by providing transparency and accountability for government spending; informing policy choices; and tackling fraud, waste and abuse. OSA is an independently elected executive agency responsible for examining the use of public dollars in New Mexico.