



MOTION SHEET

CITY COUNCIL of SALT LAKE CITY

TO: City Council Members

FROM: Ben Luedtke
Constituent Liaison / Public Policy Analyst

DATE: December 2, 2014 [UPDATED for the Formal Meeting](#)

RE: **Sexual Offense Evidence DNA Testing Ordinance**

Council Sponsor: **Kyle LaMalfa**

MOTION 1 – *to adopt and add completion dates to the proposed ordinance.*

I move that the Council adopt an ordinance enacting article V of Chapter 2.10, *Salt Lake City Code*, pertaining to DNA testing, with the following changes:

- a) That section 2.10.160 (A) include the [date of June 2nd, 2015](#) for the establishment of procedures regarding collection and testing of DNA evidence in sexual offenses occurring in the City, and
- b) that section 2.10.170 require implementation of testing procedures set forth in Section 2.10.160 [by the date of August 2nd, 2015](#).

MOTION 2 – *to not adopt the proposed ordinance*

I move that the Council not adopt an ordinance enacting article V of Chapter 2.10, *Salt Lake City Code*, pertaining to DNA testing.





COUNCIL STAFF REPORT

CITY COUNCIL of SALT LAKE CITY

TO: City Council Members

FROM: Ben Luedtke
Constituent Liaison/Public Policy Analyst

DATE: November 25, 2014

RE: **Improvements to Sexual Assault
Evidence Collection Kit Processing**

PROJECT TIMELINE:

Briefing: 4/15/14
Briefing: 9/16/14
Briefing: 10/21/14
Briefing: 11/25/14
Set Date: 11/25/14
Public Hearing: 12/2/14
Potential Action: 12/9/14

Council Sponsor: **Kyle LaMalfa**

ISSUE AT-A-GLANCE

The Council unanimously voted on October 21, 2014 to refine the draft ordinance to include that all Code R kits be cost-effectively processed at a level where DNA results are eligible for CODIS entry. The Salt Lake City Police Department (SLCPD) has begun submitting batches of Code R kits to the State Crime Lab. Batches sizes are limited to 25 kits and may be submitted twice per week. Also, the first batch of 30 Code R kits has been submitted to the NIJ-FBI national testing initiative. Early 2015 is the expected completion date for all Code R kits to be submitted for DNA analysis at this current submission rate of 50 Code R kits a week. The timeline is unknown for when SLCPD will receive DNA test results and when DNA profiles will be uploaded to CODIS.

This version of the draft ordinance (Attachment I) has been reviewed by the City Attorney's Office, the Council's legal counsel, and staff. The draft has been provided to SLCPD for their review and comment.

Goal of the briefing: *Discuss the draft ordinance regulating how the City processes DNA evidence from sexual offenses. The Council may want to request a public hearing on the ordinance.*

NEW INFORMATION – Ordinance Summary

Note: Explanations of ordinance sections are in blue and ordinance language is in RED.

Recitals (Whereas Clauses)

The recitals (p. 1 of the ordinance) are taken from the first seven value statements in the one-page policy document (Attachment II) approved by the Council via straw poll at the October 21, 2014 work session.

Section 2.10.160 B. (Definitions)

"B. For purposes of this article "testing DNA evidence" means an examination of available DNA evidence, developing a putative perpetrator DNA profile based on such evidence, and uploading the



profile to the Combined DNA Index System (CODIS) when the profile is qualified for inclusion in CODIS.”

This section clarifies that testing DNA evidence must be done in a manner to preserve eligibility for upload to CODIS.

- Putative perpetrator is an FBI term which means the DNA profile is probably from the offender. This is determined by comparing the victim’s, and other relevant persons’, DNA profiles with the evidence sample.

Section 2.10.160 C.1.a. (New Code R Kits)

“1. a. For every sexual offense occurring in the city on or after November 1, 2014, DNA samples identified by medical personnel which are provided to the police department shall be submitted by the department to a DNA testing program. In no circumstance may the department decline to advance DNA samples identified by medical personnel to a qualified lab for DNA testing. If testing is done by a lab without CODIS access, then within 30 (thirty) days after the department receives test results, the department shall submit such results to the state crime lab or another lab qualified to upload eligible DNA profiles to CODIS.”

- November 1, 2014 is when Salt Lake Sexual Assault Nurse Examiners (SANE) and the State Crime Lab implemented the U-Quick program.
- Sexual assault has been changed to sexual offense because a broader group of crimes can result in collection of a Code R kit. Using the more inclusive term “sexual offense” ensures all Code R kits, regardless of crime committed are covered by the ordinance.
- This section requires SLCPD to advance DNA samples to a qualified lab for analysis.
- The lab determines how many and which samples to test based on their professional judgment and protocols.
- This section is designed to provide flexibility so that sexual offense DNA evidence in possession or control of SLCPD can be processed through the U-Quick program.

Section 2.10.160 C.2. (Old Code R Kits)

“2. For every sexual offense occurring in the city before November 1, 2014, for which the police department has possession or control of an associated sexual offense evidence collection kit, DNA testing shall follow the procedure set forth in Subsection C.1 of this section. Such testing shall be completed within three (3) years after the implementation date set forth in Section 2.10.170 of this article.”

- This section differs from C.1.a. in two ways:
 1. Addresses Code R kits received by SLCPD before November 1, 2014.
 2. Sets three years after implementation as the completion date for all old, untested Code R kits to be processed.

Section 2.10.180 A. (Performance Measures)

“A. The department’s performance in meeting the requirements established by this article, including but not limited to the number of:

1. Sexual offenses reported;
2. Sexual offense evidence collection kits:
 - i. Received by the police department,
 - ii. Sent to a qualified lab, and
 - iii. Determined to be eligible and uploaded to CODIS;
3. Cases submitted to the district attorney for screening; and
4. Cases in which a victim declines to proceed with the legal process.”

- The legislative audit requested by the Council via straw poll could include these same performance measures. Doing so would yield baseline data. Future reports on these measures by SLCPD in the annual budget would allow the Council to compare performance overtime.
 - Note: Some sexual offenses do not result in DNA evidence. Thus, a gap between the number of reported sexual offenses and the number of Code R kits received by SLCPD is expected.

Section 2.10.180 B. (Amendments to Ordinance)

"B. Whether amendments to this article may be necessary to improve its effectiveness."

- This section requests SLCPD recommend amendments to the ordinance. For example, if the FBI replaced CODIS with another system then an amendment to change the ordinance to reflect this change could be recommended. This acts as a feedback mechanism to notify the Council of relevant changes in the criminal justice system that differ from the process outlined in the ordinance.

POLICY QUESTIONS

1. Does the draft ordinance strike the right balance between flexibility and specificity? The Council previously indicated DNA evidence should be tested from all Code R kits in a cost-effective manner.
2. Will the performance measures to be reported by SLCPD in the annual budget provide useful information to the Council? Does the Council want to add or remove measures?
3. The Council may wish to discuss the completion, implementation, and submission timeframes in the ordinance.
4. The Council may wish to discuss removing section 2.10.160 C.2. (Old Code R Kits) since SLCPD is currently in the process of submitting all old, untested Code R kits to the State Crime Lab for DNA analysis. The State Crime Lab set a submission limit of 50 Code R kits per week. Since this effort is still in progress, the Council could elect to leave this section in as a record of the Council's intent.

Note: Information below was previously provided to the Council

ADDITIONAL & BACKGROUND INFORMATION

U-Quick Program

Upcoming changes in how the State Crime Lab processes DNA evidence from Code R kits are expected to affect SLCPD's processing procedures. A pilot program called U-Quick is being implemented in Salt Lake County this fall. It's based on Rapid DNA Service (RADS) ¹, a California program that saw processing times improve 5 to 10 times faster and cut costs substantially. Sexual Assault Nurse Examiners (SANE) prepare the Code R kit per usual procedures. The SANE nurse identifies three best samples to yield DNA (evidence triage) and submits them to the State Crime Lab for testing. The full rape kit is stored by law enforcement in case prosecutors request more testing. The RADS program has successfully processed 91% of cases. Only 9% required testing the full kit.²

An in-house trial of U-Quick was conducted at the State Crime Lab in 2012 which found processing times decreased from 120 days to 25 days. The U-Quick process saves time and resources in four ways:

1. Only the three samples most likely to yield DNA are tested, rather than testing all samples in the Code R kit (some kits have over a dozen samples).
2. These three samples go straight to DNA analysis and skip preliminary serology testing (identification of sample type such as blood, saliva, semen, etc...).
3. Samples are automatically sent for DNA analysis before law enforcement reviews cases.
4. Forensic scientists no longer need to review entire chart of samples to determine best ones to analyze, nor do they need to log all the contents of each Code R kit.

DNA Lab Access to CODIS

Establishing an accredited DNA lab could be an expensive multi-year process. The FBI provides CODIS software for free to law enforcement associated laboratories that receive accreditation from the American Society of Crime Laboratory Directors (ASCLD). Only certain equipment is permissible for FBI standards (some machines can cost \$250,000), lead DNA analysts and technicians must have high levels of certification with commensurate salaries of \$100,000 or more, a detailed inventory system tracking evidence, procedures, and any corrective actions to fix mistakes must meet FBI standards. Lastly, the FBI routinely visits, runs proficiency testing, and audits labs with CODIS access for quality assurance.

¹ A useful overview of the RADS program can be found at Eva Steinberger et al., "No Rape Case Goes Unanalyzed: A Rapid Approach to Sexual Assault Evidence," *The Police Chief* 80 (September 2013): p. 52–54.

http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=3072&issue_id=92013

² Ibid

CODIS Eligibility (See Attachment VII for FBI's CODIS Fact Sheet)

A DNA profile obtained from evidence is not automatically entered into CODIS. Utah and the FBI each have separate criteria to ensure DNA profiles reach a level of confidence that the DNA belongs to an offender, and that it was properly handled and tested. The State is more flexible than the FBI. Some local jurisdictions (cities and counties) have established Local DNA Index Systems (LDIS). Each state has a State DNA Index System (SDIS) and the FBI maintains a National DNA Index System (NDIS). $NDIS + SDIS + LDIS = CODIS$.

While partnering with a private lab could expedite processing, the private lab must be certified by the FBI to enter data into CODIS (which comes with a budgetary impact). The Administration's proposed RFI for a public/private partnership could address this issue.

Analysis of Tiny DNA Samples

Some untested Code R kits had samples too small to test based on prior technology. Advances in DNA testing now mean some of these kits could be reliably tested while preserving a large enough sample for defense attorneys to use for independent testing during discovery.

SALT LAKE CITY ORDINANCE
No. ____ of 2014

(Enacting DNA Testing Requirements)

AN ORDINANCE ENACTING ARTICLE IV OF CHAPTER 2.10, *SALT LAKE CITY CODE*, PERTAINING TO DNA TESTING.

WHEREAS, sexual assault is a serious crime and Salt Lake City vigorously pursues justice for victims of all serious crimes; and

WHEREAS, budget and resource constraints are a reality, but timely testing of DNA evidence from all Code R kits serves a high public interest by working toward justice for victims and getting valuable DNA evidence into the Combined DNA Index System (CODIS); and

WHEREAS, DNA evidence from known suspects can have evidentiary value in other cases, so a high priority should be placed on maximizing efforts to get Code R kit test results entered into the appropriate DNA databases in a timely manner; and

WHEREAS, the statewide backlog of untested Code R kits affects multiple law enforcement agencies in Utah, which causes delays in testing DNA evidence; and

WHEREAS, testing DNA evidence is only part of the investigative process; and

WHEREAS, increasing the number of sexual offense investigations may increase demands on the City Police Department, City Prosecutor, County District Attorney and the court system; and

WHEREAS, all victims deserve closure and certainty that cases are pursued and that DNA evidence is actively processed and recorded; and

WHEREAS, in light of the foregoing it is proposed that Article IV of Chapter 2.10, *Salt Lake City Code*, be enacted to establish city procedures and requirements for DNA testing.

NOW, THEREFORE, be it ordained by the City Council of Salt Lake City, Utah:

SECTION 1: Article IV of Chapter 10, *Salt Lake City Code*, is enacted to read as follows:

Article IV. DNA Testing

2.10.160: DNA TESTING PROCEDURES:

A. By not later than _____, 20____, the chief of police or designee shall establish procedures regarding collection and testing of deoxyribonucleic acid (DNA) evidence in sexual offenses occurring in the city as set forth in Utah Code Title 76-5-401, et seq. of the Utah Code or its successor.

B. For purposes of this article “testing DNA evidence” means an examination of available DNA evidence, developing a putative perpetrator DNA profile based on such evidence, and uploading the profile to the Combined DNA Index System (CODIS) when the profile is qualified for inclusion in CODIS.

C. The procedures referenced in Subsection A of this section shall include the following:

1. a. For every sexual offense occurring in the city on or after November 1, 2014, DNA samples identified by medical personnel which are provided to the police department shall be submitted by the department to a DNA testing program. In no circumstance may the department decline to advance DNA samples identified by medical personnel to a qualified lab for DNA testing. If testing is done by a lab without CODIS access, then within thirty (30) days after the department receives test results, the department shall submit such results to the state crime lab or another lab qualified to upload eligible DNA profiles to CODIS.

b. For the purpose of this subsection a “DNA testing program” means a program that:

i. Trains personnel in testing forensic evidence from a victim identified by medical personnel based on the victim’s medical evaluation and history,

ii. Uses DNA testing processes that yield DNA profiles eligible for upload to CODIS as identified by the FBI Director’s Quality Assurance Standards, and

iii. Sends DNA test results to law enforcement with any putative perpetrator DNA profiles in a format eligible for CODIS upload.

2. For every sexual offense occurring in the city before November 1, 2014, for which the police department has possession or control of an associated sexual offense evidence collection kit, DNA testing shall follow the procedure set forth in Subsection C.1 of this section. Such testing shall be completed within three (3) years after the implementation date set forth in Section 2.10.170 of this article.

2.10.170: IMPLEMENTATION:

By no later than _____, 20____, the police department shall begin implementation of the testing procedures set forth in Section 2.10.160 of this article, subject to budget appropriations for this purpose.

2.10.180: ANNUAL REPORT:

Accompanying the Mayor's budget submission for the fiscal year beginning July 1, 2015 and continuing, the mayor shall report:

A. The police department's performance in meeting the requirements established by this article, including but not limited to the number of:

1. Sexual offenses reported;

2. Sexual offense evidence collection kits:

i. Received by the police department,

ii. Sent to a qualified lab, and

iii. Determined to be eligible and uploaded to CODIS;

3. Cases submitted to the district attorney for screening; and

4. Cases in which a victim declines to proceed with the legal process; and

B. Whether amendments to this article may be necessary to improve its effectiveness.

SECTION 2. This ordinance shall become effective on the date of its first publication.

Passed by the City Council of Salt Lake City, Utah this ____ day of _____, 2014.

CHAIRPERSON

ATTEST:

CITY RECORDER

Transmitted to Mayor on _____.

Mayor's Action: _____ Approved. _____ Vetoed.

MAYOR

CITY RECORDER

(SEAL)

Bill No. _____ of 2014.

Published: _____

APPROVED AS TO FORM

Date: _____

By: _____

Sexual Assault Evidence Collection Ordinance (legislative 11-26-14).doc