July 12, 2017

Mr. Jefferies and Mr. Arellano:

There has been a lot of attention lately, justifiably so, on the rape kit backlog and the issues with the DNA lab at the Austin Police Department. However, as leaders of the Austin/Travis County Sexual Assault Response and Resource Team (SARRT), our community’s coordinated response to sexual assault crimes, we are concerned that the attention on the backlog is missing or masking the bigger problem. The backlog is only a symptom. The disease is a system that condones rape and does not hold perpetrators, or itself, accountable.

According to the most recent study by the Institute on Domestic Violence and Sexual Assault (IDVSA), only about 9% of sexual assault victims report to law enforcement. Even so, law enforcement agencies in Travis County see approximately 900 reports of sexual assault a year. That means that each year, there are roughly 10,000 sexual assaults in Austin/Travis County. Even of the 9% reported to law enforcement, only a small portion are prosecuted and even fewer result in jail or prison sentences. Cases that are prosecuted can take two to three years to be resolved and that was before the APD lab closed last summer. The backlog that continues to grow as a result of the ongoing DNA issues will make the time it takes to get through the system even longer. Cases will get dismissed, victims will give up on a broken system, and rapists will continue to walk free.

The recent issues with the DNA lab exacerbate the investigatory process even further. The lack of transparency and urgency by APD are, quite frankly, unacceptable. Hearing the department describe the most recent issue with their refrigerator as a “learning experience” about the need to inform the stakeholders makes one wonder what was learned last fall when the department should have learned the same lesson.1 A piece of equipment was broken. APD did not notify stakeholders. That led to further distrust from the community and time wasted that could have been utilized to search for solutions. Instead, here we are months later with more malfunctioning equipment, still uninformed stakeholders, and a growing backlog.

It is also time for us to be transparent about what is in the backlog. Each of the thousands of kits waiting to be tested represents a survivor who was brave enough not only to report, but to subject him or herself to an invasive examination just hours after an unspeakable assault. Each kit represents a survivor’s hope for justice and need for safety. The kits are not “just for information” and to label them as such is disrespectful and misleading.2 APD has dedicated 3 full-time detectives to investigating the cases in the backlog as kits

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1 See Austin Public Safety Commission meeting minutes 12/5/2016
2 “The most important thing is (the mold) didn’t affect the disposition of these cases,” Moore said. “There’s a backlog, but that backlog is caused because these aren’t high enough priority to be fed into the capacity we currently have. It’s only for informational purposes; it’s not for prosecution.”

2 “We are confident at this point that this will not affect actual cases,” Moore told reporters after the briefing. She explained that while 849 kits in the East Austin evidence warehouse appeared to have mold on them, most of the 1,629 kits in the warehouse are from cases dating back to the 1990s and early 2000s and many of them are closed.”
are tested, not to simply “gather information,” but in the pursuit of prosecution. It is unfortunate that our District Attorney thinks otherwise and we urge her to treat this evidence with the gravity that it deserves moving forward.

It is also inaccurate to portray that most of the cases in the backlog have already been prosecuted. Even if a case has been prosecuted shouldn’t we want to know for sure whether the kit was exculpatory? Rather, the backlog contains cases that were closed because victims were not believed, were not supported, were told there was no reason to move forward, or were told nothing at all. The backlog also contains cases that remain open or suspended waiting for a suspect to be identified or a victim’s account to be corroborated. While there are certainly cases in the backlog in which victims decided it was no longer conducive to their own healing to continue with the lengthy and re-traumatizing legal process, there are also cases in which victims wanted desperately to seek justice, but were denied. There are cases of children who did not have the words to express what happened to them, but for whom the DNA would have told a clear and convincing story if given the chance. There are cases of victims who were discounted because of who they were, what they wore, or how much they had to drink. There are cases of victims who have been waiting for years for information about what is happening with their cases, having never been informed that the cases were suspended or closed. Perhaps most importantly, there are literally thousands of pieces of evidence that could lead to the identification and prosecution of thousands of rapists, if properly investigated and indicted.

In the meantime, the City and County have formed a work group to look more deeply at what went wrong and to explore possible solutions. However, although defense attorneys have a seat at the table, there is no one present at the work group to represent victims. While the District Attorney is a member of the work group, she does not represent victims. The District Attorney represents the state and our District Attorney’s comments reveal her posture toward victims whose kits are yet to be tested. Second, even if the District Attorney did represent victims, the vast majority of victims represented by the untested rape kits have cases that were never (and never will be) prosecuted and, therefore, they have no voice at the table. The bulk of the evidence needing DNA testing is from sexual assault cases, and yet there are no experts in sexual assault represented on the work group. If the City of Austin and Travis County want an accurate and thorough discussion of what went wrong and what direction to take next, it is crucial that victims be given a voice and that the experts who understand the process be given a seat at the table.

Austin/Travis County is lucky to have a robust and skilled SARRT. We are willing to have difficult conversations, have national and international experts and trainers at the table, and have representation from every discipline—prosecutors, victims’ attorneys, advocates, nurses, hospitals, victim services, and sworn law enforcement. We are successful at collaboration across disciplines. We’ve proven what we can do when we work together in a crisis, having come together just 2 years ago to overhaul the way sexual assault forensic exams were conducted in Austin/Travis County to make them more accessible and less traumatizing for survivors. We cannot, however, change the course of sexual assault response by ourselves. We need the support of the leadership of our respective agencies, of the City and the County, and of the community, in order to turn the tide. A beginning would be a seat at the table for SARRT at this work group as it formulates our community’s response not just to the current DNA crisis but to sexual assault. We understand that you are the leaders of the work group and have decision-making authority over who attends. We respectfully ask for a chance to meet with you to discuss adding a SARRT representative to the
work group. If you are not the decision-makers, we respectfully ask that you inform the SARRT about who has that authority. We would appreciate a response by Monday, July 24, 2017.

Sincerely,

Emily R LeBianc, LPC-S
Co-Chair, Austin/Travis County SARRT

Dana Nelson, JD
Co-Chair, Austin/Travis County SARRT

Cc: Mayor Steve Adler
    Judge Sarah Eckhardt
    Ora Houston
    Delia Garza
    Gregorio Casar
    Sabino Rentaria
    Ann Kitchen
    Jimmy Flannigan
    Leslie Pool
    Ellen Troxclair
    Kathie Tovo
    Alison Alter
    Elaine Hart
    Jeff Travillion
    Brigid Shea
    Gerald Daugherty
    Margaret Gomez
    Commission for Women