

PROJECT NARRATIVE

Description of the Issue:

Violent crime continues to be a problem in Erie County, New York, specifically the City of Buffalo. In 2019, UCR crime statistics show that there were 3,388 violent crimes in Erie County with 2,533 of those occurring in the City of Buffalo.¹ Unfortunately, there has been a significant increase in homicides and non-homicide shooting victims in Erie County in the first four months of 2021. Statistics obtained from the Erie Crime Analysis Center (ECAC), the local agency that tracks crime in Erie County, show a 78% increase in non-homicide shooting victims through the first 4 months of 2021 when compared to the same time period in 2020, from 51 to 91. Homicides have also increased by 28% over the same time period.

In addition to the increase in crime, our office has a recent backlog of 300 cases where a DNA specimen was entered into the Combined DNA Index System (CODIS), a national database of DNA profiles, by the Erie County Central Police Services Forensic Laboratory (CPS Lab) and a match was found. This backlog continues to grow as more matches are made but prosecutors are unable to keep up with volume of cases. In 2020, there were 142 databank hits and there have been 73 hits in the first 4 months of 2021. In 2018, there were only 72 databank hits.

Many of these cases will become cold cases without a more thorough investigation. Prosecutors and police have limited resources to investigate cases and will focus on cases where justice can

¹ <https://www.criminaljustice.ny.gov/crimnet/ojsa/indexcrimes/Erie.pdf>

be served for more victims. While this allows prosecutors to successfully prosecute more cases it leaves cases that require more in-depth investigation to remain unsolved. Unfortunately, this leaves victims and families often waiting years for justice to be served. It also allows criminals to remain on the streets to commit more crimes.

A 2002 study by the American Prosecutors Research Institute on prosecutor caseloads concluded that it is not possible to develop national standards on caseloads due to substantial variations across the country.² However, to illustrate the problem here in Erie County we will compare our office to a similarly sized county in New York State. The Erie County District Attorney's Office has the highest number of case arraignments in New York State outside of New York City at 19,350. However, staffing levels are not equally as high. Our office operates with 95 attorneys. In Westchester County they average 11,855 annual arraignments but have 126 attorneys.³ Our prosecutors need to do more with less resources and this is why we are requesting funding for the creation of a Forensic Evidence Prosecutor in a newly created Forensic Evidence Bureau.

The staffing problem identified above has been compounded by Criminal Justice Reform legislation in New York State which took effect in January of 2020. This new legislation had two major components: Discovery Reform and Bail Reform. Discovery reform has had one of the most significant changes to this office in our history. Prior to the reforms, case discovery was required on less than 2% of cases. With these changes, discovery is required on all cases

² [NDAA-APRI-How-Many-Cases.pdf \(imijustice.org\)](#)

³ <https://www.westchestergov.com/images/stories/budget/2021/2021proposedoperating.pdf>

within 30 days of arraignment. In addition, the definition of discoverable material was expanded to include materials in the sole possession of the police including law enforcement disciplinary records, as well as other materials. This has exponentially increased the workload for prosecutors, investigators, and support staff to a level that is unsustainable. Bail reform dramatically reduced the types of crimes for which a defendant may have bail set or be held. This has led to an increase in individuals reoffending. In just one illustration of this problem, a defendant, DW, was arrested and charged with a gun found on his person. Under the new bail guidelines, the defendant's bail was set extremely low and he posted. The defendant was arrested a short time later with another gun. He ran from the police and threw a gun during the chase. He was once again released on fairly low bail and was arrested a third time when he was in a house during the execution of a search warrant and another gun was found.

Project Design and Implementation:

DNA evidence has been a reliable and effective tool in solving violent crimes and prosecuting those responsible for many years. New advances have further enhanced law enforcement's abilities to solve and prosecute crimes. From familial DNA testing to forensic genealogy, these new tools have the potential to drastically reduce crime and bring justice to those who have long lost hope. These expansions and scientific developments in DNA testing have also given life to countless cold cases.

The barrier to deploying these new crime fighting tools has been a lack of resources. Our proposal creates a stand-alone Forensic Evidence Bureau with the initial hiring of an experienced Forensic Evidence Prosecutor to investigate and prosecute felonies of all levels, with a focus on

violent felonies, that involve complex forensic issues. This Bureau would be the first of its kind in New York State outside of New York City.

Additionally, with the advancements and potential use of familial DNA testing and forensic genealogy, it is imperative to have prosecutors trained in litigating potential issues. Currently, the only prosecutor with training and experience in these areas is assigned to our Tactical Prosecution Unit, a unit of four prosecutors who handle gun, gang and non-homicide shooting cases. The DA's Office opened 615 cases fitting that description in 2019 and 610 in 2020. This is significantly more cases than a bureau of 4 prosecutors can handle leaving little time to concentrate on forensic prosecutions. A Forensic Evidence Bureau would be responsible for prosecuting DNA cold cases, cases involving complex forensic issues, violent crimes with a significant forensic evidence component (i.e. home invasions and gun cases), and cases with a forensic evidence-based defense. There is currently a backlog of over 300 cold cases in which our office has received DNA match letters from either the NYS CODIS or our local DNA databank (LDIS).

With the recent significant increase in homicides and non-homicide shootings, it is important for the Forensic Evidence Bureau to be proactive in tackling this increase. Many shootings could be solved using DNA and ballistic comparison evidence which would allow the arrest and prosecution of offenders before any additional crimes are committed. Currently, due to the lack of a dedicated prosecutor, we are more reactive when we get DNA databank hits or NIBIN leads.

Our office would not be alone in our efforts. Erie County Central Police Services would be an invaluable asset in our proactive efforts. The vast majority of the DNA and ballistic analysis requests by our office and local law enforcement is conducted by the CPS Lab. The CPS Lab has been continually accredited by the New York State Division of Criminal Justice Services and the American National Standards Institute (ANSI) National Accreditation Board. The CPS Lab also has two CODIS administrators who work with the DNA databanks and liaison with our office. This open line of communication would assist our office and the CPS Lab in prioritizing violent crimes and provable cases. Our office would rely on the scientific knowledge of the forensic biologists, chemists and firearms examiners at the CPS Lab in investigating and prosecuting these cases. Also, we have the ability to work with the New York State Police Crime Lab for forensic testing. The Bureau would also be available to solicit or work with outside and private DNA companies as needed. This includes working with the FBI Crime Lab or private companies such as Parabon or Bode on forensic genealogy testing for which the DA's Office would pay for through existing agreements.

In addition to the CPS Lab, the proposed Forensic Evidence Bureau would work with ECAC. ECAC brings together crime analysts from multiple state and local criminal justice agencies to provide data and analysis of crime and crime trends in Erie County. ECAC collects information on crime in Erie County and will provide crime mapping, daily intelligence reports, crime packets on shootings, and other requested information. This Bureau would work with them to track crimes involving forensic evidence to develop patterns and leads to identify suspects.

Finally, our office will partner with local law enforcement agencies to investigate the backlog of 300 DNA cold cases. We will also assist with training on collecting and preserving evidence, so it will be admissible and impactful in Court and work with these agencies in prioritizing investigations. For instance, the Buffalo Police Department, the largest law enforcement agency with the majority of the violent crimes in Erie County, have dedicated cold case homicide and sexual crimes detectives as well as a specialized Crime Scene Unit with detectives trained in the collection and preservation of evidence, including forensic evidence. A dedicated bureau would work with this and other agencies to prioritize investigations and target certain areas or crimes in an effective manner.

The Forensic Evidence Bureau proposes to address the following objectives:

1. Cold Case/CODIS Hits. The Forensic Evidence Bureau would be responsible for the prosecution of local, state and federal DNA databank hits. These prosecutions would involve investigating the crime including securing all documents and files, as well as locating and interviewing witnesses and suspects. In 2020, there were 142 databank hits and as of April 2021 there have been 73 hits this year. In 2018, there were only 72 databank hits. The number of hits is expected to rise going forward as more known DNA samples are collected in the local and state DNA databases. The Bureau would not only resolve the backlog of 300 files, but stay current on future cases and proactively prioritize and investigate cases which may benefit from forensic testing. **OUTCOME: Number of Cold Case DNA databank cases prosecuted.**
2. Second chair DNA cases. The Forensic Evidence Prosecutor, and future members of the Bureau, would be available to second chair cases which contain a significant DNA component. These include cases with technical forensic issues and/or defense DNA

experts. **OUTCOME: In how many cases did a prosecutor from the Forensic Evidence Bureau act as a second chair.**

3. Familial DNA & Investigative Genetic Genealogy (IGG). A Forensic Evidence Bureau would stay current on familial DNA and IGG. Members of the bureau would be available to prosecute cases as they develop using these resources. **OUTCOME: Number of cases prosecuted using Familial or Genealogical DNA.**
4. Training & Education. A Forensic Evidence Bureau would be responsible for presenting office-wide CLEs on DNA and forensic evidence. This would include a yearly update on DNA advancements. Training will also be provided to new felony trial ADAs on legal and practical DNA issues. The DA's Office has presented a number of DNA and Forensic evidence CLEs over the past two years Topics including: CODIS hits, Familial DNA searches, DNA on Summation and Protective Orders, Gun Shot Residue, scientific attacks on DNA (including transference, allelic imbalance, allelic dropout and mixtures), and genealogical DNA. The DA's Office also held a mock trial for new CPS lab personnel. This mock trial had the dual purpose of training new lab personnel and demonstrating direct and cross examination of expert witnesses for our ADAs. **OUTCOME: Number of training events conducted by members of the Forensic Evidence Bureau.**
5. Litigate DNA issues. Numerous DNA and forensic evidence issues arise on a regular basis. For example, the defense bar began filing protective order motions to prevent buccal swabs our office obtains by way of order to show cause from being entered into the local DNA databank. We have prepared an answering affidavit and litigated the issue in numerous County and Supreme courts establishing local precedent. The rulings in our

favor have resulted in the denial of protective order motions by local judges on these cases. Lately there has been a rash of challenges on technical DNA issues including low-copy DNA, probabilistic genotyping and low-level touch DNA which we could also litigate. **OUTCOME: Number of office-wide work products developed involving forensic evidence.**

6. Conviction integrity. DNA evidence can be used to exonerate an individual who has previously been convicted of a crime. In some cases, DNA can prove innocence whether new DNA evidence is found or advances in DNA technology allows for previously collected samples to now be tested. The Forensic Evidence Bureau will work with prosecutors in the Appeals Bureau to assist with forensic evidence issues on a conviction integrity case. **OUTCOME: Number of conviction integrity cases worked on by Forensic Evidence Bureau prosecutors.**

7. Investigate cases where forensic evidence has been obtained but no CODIS match was found. Many law enforcement agencies collect forensic evidence at the scene of a crime but DNA testing did not find a match. In 2020, the Erie County Central Police Services (CPS) Forensic Laboratory completed an analysis in which 63 homicide, 186 sexual assault, 55 robbery and 29 assault cases were identified as having a collected specimen but no match in CODIS. These cases require a significant amount of investigation to develop new leads and suspects. Once new suspects have been identified, DNA from the suspect needs to be obtained and compared against the existing DNA profile to achieve a match. **OUTCOME: Number of new leads/suspects developed from investigating cases with no CODIS match.**

Our office has additional resources beyond the grant we would deploy to assist the proposed Forensic Evidence Bureau. Our office would assign a paralegal and a confidential criminal investigator to assist prosecutors in investigating and preparing for prosecutions. The paralegal would assist with ordering documents, collecting data, and working with the administration in preparing information for performance measure reporting. The investigator would assist police agencies with locating and interviewing witnesses and suspects. Finally, the DA's Office Chief of Technology has already created a digital databank to track the 300 cold cases.

Ultimately, the goal of the proposed Forensic Evidence Bureau would be to reduce crime rates through the successful investigation and prosecution of crimes involving DNA or forensic evidence. In many instances, especially with home burglaries, the offender has committed multiple offenses. Forensic evidence and DNA databanks allow us to identify and prosecute the suspects before they cause more harm. Ballistic testing, especially NIBIN leads, have allowed our office to link shootings to firearms recovered on individuals which would have otherwise gone unsolved.

Capabilities and Competencies:

Erie County is the largest county in Upstate New York with nearly 920,000 residents. Within Erie County is the 2nd largest city in New York State, Buffalo, with over 255,000 residents. The District Attorney is the chief law enforcement official representing the citizens of Erie County. The Erie County District Attorney's Office is responsible for the just prosecution of nearly every crime committed in Erie County. This includes the prosecution of misdemeanor cases in the city, town and village courts; felony cases in State Supreme Court and Erie County Court; and the

prosecution of misdemeanor and felony cases in several specialty courts. This office is also responsible for all post-conviction litigation in the state and federal appellate courts.

In addition to annually litigating approximately 35,000 criminal cases in over 60 different courts, the District Attorney presents cases to the Erie County Grand Jury and serves as its legal advisor. This office also provides legal advice and investigation support to all federal, state and county agencies charged with investigating criminal activity in Erie County. Victims of crime are supported by a bureau of advocates who will assist victims of any crime with services including advocacy, counseling, safety planning, and other services in a trauma-informed environment.

The DA's Office employs nearly 200 staff members, including 95 attorneys, in 15 bureaus and units. The office has a robust administrative unit that oversees grant management and statistical analysis. The Special Projects Coordinator, an MBA, handles adherence to grant requirements and provides oversight of grant personnel and will manage the project. He has over 12 years of grant management experience. The Chief Accountant, a former CPA, is responsible for grant fiscal monitoring as well as grant budget preparation. She has completed the DOJ Grants Financial Management training. The Chief of Administration is an MSW with many years of grants management and supervisory experience and provides oversight of the administrative staff while providing expert assistance in grant monitoring and grant preparation. The office currently administers 11 different grant programs totaling over \$3 million supporting more than 40 staff.

The County of Erie is the governmental unit that oversees the District Attorney's Office. The elected County Executive is responsible for overseeing an over \$1 billion budget and over 4,000 employees. The County uses SAP, a global enterprise resource planning (ERP) product, to manage all financial and personnel functions within Erie County. SAP allows for independent grant setup and monitoring to avoid co-mingling of funds.

The Erie County Central Police Services Forensic Laboratory conducts the vast majority of the DNA analysis on cases in Erie County. The Lab is accredited by the New York State Division of Criminal Justice Services and the American National Standards Institute (ANSI) National Accreditation Board and is audited by the FBI.

This project proposes the creation of the new position of Forensic Evidence Prosecutor who reports directly to the District Attorney. The prosecutor we have in mind to fill the position has been with the DA's Office for fifteen years and is currently assigned to our Tactical Prosecution Unit, a specialized unit responsible for investigating and prosecuting serious felony crimes including shootings, crimes involving firearms, crimes involving gangs or drugs, human trafficking, among other crimes identified by the District Attorney. This prosecutor has investigated and resolved nearly 200 cases involving DNA issues in his career. This prosecutor was named the DA's Office liaison to the Forensic Laboratory in 2017 and has attended numerous national trainings and conferences on DNA and forensic evidence collection and prosecution of cases involving DNA and forensic evidence. His resume is attached. The District

Attorney and his Executive Staff are fully supportive of the project in its concept and implementation.

Plan for Collecting Required Performance Measure Data

The Special Projects Coordinator will work with the Forensic Evidence Prosecutor to ensure that appropriate data is being collected to guide the success of the program. Data will be aggregated from a number of sources including our internal case management system, the Central Police Services Forensic Laboratory (CPS Lab), and the Erie Crime Analysis Center.

Data is a central component of this proposal. The Erie Crime Analysis Center compiles and analyzes all crime data in Erie County. Through our Crime Analyst, jointly assigned to the Center and our office, we can identify cases where DNA has been collected on a case and may be helpful in the prosecution. The CPS Lab uses the Crime Fighter BEAST (Bar-coded Evidence Analysis Statistical Tracking) Laboratory Information Management System by Porter Lee to track all DNA analysis. A built-in report module allows for easy data retrieval and case tracking.

The Special Projects Coordinator will oversee the program to ensure performance goals and outcomes are being met. Meetings between the Special Projects Coordinator and members of the Forensic Evidence Bureau will occur, at minimum, on a quarterly basis but more often as needed. These meetings will be held to discuss progress on performance measures and to discuss any issues in achieving the stated goals. Action plans will be developed to address any deficiencies so the outcomes remain on track.