

Forensic Evidence Testing District Attorney's Office

Project Abstract:

The seriousness of the drug problem in the United States can hardly be overstated. Illegal or illicit drugs represent significant threats to public health, law enforcement, and national security. Prior to the onset of COVID-19, the total number of drug cases received by the Collin County District Attorney (DA) had increased by 11% in three years, with felony growth exceeding misdemeanors. When the DA applied for the first Forensic Evidence Testing Grant back in FY2019, there was a large backlog of both felony and misdemeanor marijuana cases. This backlog was caused by HB1325 which was passed by the legislature in 2019. This legislation changed the definition of marijuana from cannabis to cannabis that contains more than 0.3% tetrahydrocannabinol (THC). The DPS lab that conducts the testing of drugs in criminal cases in Collin County did not have the ability, at the time the legislation was passed, to conduct quantitative THC concentration testing, to determine THC levels. Likewise, at that time, there were no other public crime labs in Texas with the equipment and capability to perform quantitative analysis.

The result being that marijuana cases began to backlog at local law enforcement agencies and at the DA's Office. In an effort to reduce the backlog of outstanding and continue processing newly received marijuana cases, the Collin County DA, using the funds provided by the Forensic Evidence Testing Grant, arranged for seized cannabis samples to be tested at private, accredited laboratories in the region, prioritizing testing of felonies and older cases. The DA's Office was able to use the first and second Forensic Evidence Grants to reduce the backlog of marijuana cases in the office. The DA's Office is using the third Forensic Evidence Grant to further eliminate the backlog and continue testing new cases that are filed with this office. DPS labs have just recently acquired the equipment, procedures and proficiency to test the THC levels in certain cannabis samples. Due to limits on their capacity, DPS cannot test misdemeanor cases and certain types of cannabis samples, such as liquids. Due to these limitations, funds are still needed to test cannabis samples at private labs.

Prompt disposition of cases is beneficial for law enforcement and prosecution agencies, as well as for the defendants and all county residents. When any case is delayed, the criminal justice system is put on hold. Rehabilitative services that may be sought or received as part of a diversionary program or probationary requirements may be delayed, which could lead to increased addiction, additional crimes committed, or negative health outcomes. Additionally, since there is a known link between drug use and other criminal activity, prosecution and rehabilitation of defendants positively impacts every community and resident in Collin County.

Another problem facing the DA's Office, in its attempt to stop the destructive cycle of drug traffic in Collin County, is the policy of DPS labs to test only one drug/controlled substance that is found on an offender and to test that drug only until a minimum threshold is met for the required offense category. The problem created by this policy is that drug traffickers and dealers often appear as just users/possessors at sentencing. At sentencing, it may appear that the defendant only had one drug in his possession and the amount of the drug being barely within the particular felony category they are charged with. When in fact, the defendant might have as many as 10 different drugs on him and the amount of the drug(s) is actually at the top of the felony category for which they are charged. To resolve this problem, the DA's Office is seeking to use funds from this Forensic Evidence Testing Grant to test multiple drugs and the full amount of each drug on high level offenders. This would help differentiate between offenders who are users/possessors and those deserving increased punishment.

who are traffickers and dealers. Appropriately addressing drug traffickers and dealers will help curb the drug problem in Collin County.

Problem Statement:

The seriousness of the drug problem in the United States can hardly be overstated. Illicit drugs represent significant threats to public health, law enforcement, and national security. According to the 2019 National Drug Threat Assessment, drug-poisoning deaths are at their highest recorded level and are the leading cause of injury death in the US, outnumbering deaths by firearms, motor vehicle crashes, suicide, and homicide. The connection between drug abuse and crime is well researched and documented. Drug sales account for billions of dollars in illicit proceeds annually and result in criminal activity affecting public safety from the large criminal organizations who manufacture and transport narcotics to the end users who commit ancillary crimes, such as robbery, theft, burglary, or even homicide, in order to finance a “fix”.

The current state of the public DPS labs is that they do not have the capability to test misdemeanor cannabis/marijuana samples or cannabis samples in certain forms such as liquids to determine if they contain more than 0.3% tetrahydrocannabinol as required by HB 1325. DPS has not revealed any plans to increase the substances that it can currently test. Currently DPS labs do not have the capacity to test more than one drug/controlled substance found on an offender and they only test the amount of the drug necessary to prove a particular offense category. This often leaves the impression that an offender had a much smaller amount of an illegal substance in their possession than they actually possessed. This also leaves the impression that the offender only possessed 1 drug/controlled substance, when in fact they may have possessed multiple drugs for drug trafficking or dealing.

The DA has used these Forensic Evidence Testing Grants to reduce the backlog of marijuana cases caused by the new law and lack of testing facilities. In applying for this new Forensic Evidence Testing Grant, the DA endeavors to continue prosecuting marijuana cases received by this office and prevent creating another backlog of cases. Likewise, the DA endeavors to differentiate between offenders who are users/possessors in need of drug treatment and offenders who are profiting and trafficking in drugs/controlled substances. The prosecution of offenders who are dealers and traffickers will help curb the tide of drug traffic in Collin County. Funds are needed in both of these areas to test drugs/controlled substances and thereby decrease drug traffic and crime in Collin County.

Supporting Statement:

According to the annual Texas Department of Public Safety Crime in Texas Reports, the overall statewide index crime rate has decreased for the past three years. However, during the same period, arrests for drug abuse - sale and manufacturing, as well as possession - has increased. In 2015, the Texas drug possession rate was 426.3 per 100,000, which increased 6% to 452.2 per 100,000 in 2017. Over the same period, the number of illegal substance-related offenses investigated by the Collin County Sheriff's Office increased 72% (2015 = 205, 2017 = 353).

The Collin County DA has seen an 11% increase in drug cases received from law enforcement over this three year period (FY17 = 4,666; FY19 = 5,182). In FY17 misdemeanor drug cases (n = 2,797) exceeded felony cases (n = 1,869). However, felony drug cases (n = 2,666) increased by 43% in FY19, while

misdemeanor cases decreased by 10% (n = 2,516), resulting in more felony than misdemeanor cases. The DA used the first Forensic Evidence Testing Grant to reduce the 1,012 marijuana case backlog to just 283 felony and misdemeanor cases as of March 2020. By the time the DA received the second Forensic Evidence Testing Grant the backlog was back up to 849 cases. The DA's Office used the second grant to continue to work on this backlog and to test all current cases being filed with this office. The DA was able to use almost all of the requested funds from the second grant for this testing. The DA's Office is currently using the 3rd grant for the same purposes and expects to use most, if not all of the grant money awarded.

After the expiration of this grant, the DA estimates that in the next grant year it will receive on average 83 felony and misdemeanor marijuana cases per month for a total of approximately 1,000 new cases per year that will require quantitative THC testing. It is also estimated that the DA's Office will have approximately 400 pending cases at the time the new grant is awarded. The cost of testing these 1,400 cases at \$95 per test would be \$133,000. The amount of cases we receive will depend on the COVID-19 crisis, as our monthly caseload of marijuana cases was rising until the crisis and will likely go back up as we come out of the crisis.

The DA estimates that in order to test all the drugs found on high level dealers and drug traffickers, we would want to test multiple drugs in approximately 3 cases per month, with each case having approximately 3 different drugs/controlled substances. This would result in testing 108 additional substances during the next grant period (3 cases x 3 substances = 9 tests x 12 months = 108 additional tests). The cost of testing these 108 cases at \$120 per test would be \$12,960 in grant money.

In total, between testing THC levels in marijuana cases and testing multiple drugs/controlled substances in high level offender cases, the DA's office would be seeking to test 1,508 drug samples at the cost of \$145,960.

Therefore we are seeking funds in the amount of \$145,960.

Type of Testing	Monthly Samples	x 12 Months	Total Samples	Testing Cost	Total Cost
THC	116	x 12	1400	x \$95	\$133,000
Other Drugs	9	x 12	108	x \$120	\$ 12,960
Totals			1,508		\$145,960

Project Approach & Activities:

The new marijuana / hemp distinction changes how marijuana cases are handled. District Attorneys must now prove the THC concentration in seized cannabis to effectively prosecute cases since a defendant's claim that a substance is hemp casts too much reasonable doubt over criminal proceedings without it. In an effort to reduce the backlog and ensure swift resolution of outstanding and newly received marijuana cases, the Grand Jury Division of the Collin County DA will arrange for seized cannabis samples to be tested at private, accredited laboratories in the region. The Grand Jury Division will prioritize testing of felony cases before misdemeanors and older over newer cases. The Grand Jury Division will inform local law enforcement agencies that quantitative analysis is available and encourage them to send any cases they have been holding. The Grand Jury will also review all drug/controlled

substance cases to determine if multiple drugs should be tested in cases involving high level drug dealers and traffickers. The Grand Jury will select a limited number of these cases per month and arrange for the additional drug/controlled substance samples to be sent to a private accredited lab for testing.

Following laboratory results, which are expected to take no more than 45 days, Collin County DA staff will review each case to determine if an information will be filed (misdemeanors) or request an indictment from the Grand Jury (felonies). In approximately 10% of misdemeanor cases, qualified defendants choose to participate in the 6 – 12 month pre-trial diversion (PTD) program. When defendants successfully complete the PTD program, the case is dismissed. While the time to final disposition of a case can vary depending on PTD participation, time to hire an attorney, plea versus trial, and other factors, it is anticipated that most cases should be resolved within 8 months from intake. During the COVID-19 crisis, the time needed to resolve cases has increased to at least 12 months.

Capacity & Capabilities

The mission of the Collin County DA is to pursue justice and protect our community. The office employs 141 lawyers, investigators, and staff to fight and prosecute crime in a fearless, just, and ethical manner. This project will be a collaborative effort between the Grand Jury and Civil Divisions to ensure evidence samples are prioritized for analysis, test results are maintained, and case outcomes are recorded. The Collin County DA intends to utilize two private, accredited laboratories to perform quantitative THC analysis. Both laboratories are accredited by ANSI-ASQ National Accreditation Board (ANAB) to perform testing on seized drugs. One of them was founded 45 years ago, employs 18 PhD scientists and toxicologists and more than 200-trained laboratorians, and provides over 2,500 assays. The other has more than 35 years of service to private industries and governmental agencies and holds accreditations from four international ISO/IEC organizations, as well as state and federal licensures.

Performance Measures:

The goal of the project is to ensure swift resolution of all cases received by the Collin County DA through the elimination or drastic reduction of backlogged marijuana cases along with the maximum prosecution of drug traffickers. As such, the project proposes to submit 1508 drug/controlled substance samples to a private, accredited, laboratory for quantitative THC analysis. The Grand Jury Division of the District Attorney's Office will be responsible for creating an Excel spreadsheet of the current backlogged cases in which a substance is submitted to the lab with grant funds, separated between felonies and misdemeanors and will include the date the case was received. The Grand Jury Division will be responsible for submitting samples to laboratories and will add testing expenses to the spreadsheet. The Civil Division will assist the Grand Jury Division with data tracking and quarterly reporting. The Divisions will meet monthly to track results including, but not limited to, date samples submitted to laboratory, date results received from laboratory, outcome of analysis, and case disposition (dismissal, plea, conviction, etc.). Case information is collected and maintained in Odyssey, the County's end-to-end criminal justice software solution.

Target Group:

Cannabis samples seized by various local law enforcement agencies will be submitted by the Collin County DA's Office for quantitative THC analysis. Prompt disposition of cases is beneficial for law

enforcement and prosecution agencies, as well as for the defendants and all county residents. When any case is delayed, the criminal justice system is put on hold, and prosecution becomes more challenging. Rehabilitative services that may be sought or received as part of the pre-trial diversion program or probationary requirements may be delayed, which could lead to increased addiction, additional crimes committed or negative health outcomes. Additionally, since there is a known link between drug use and other criminal activity, prosecution and rehabilitation of defendants positively affects every community and resident in Collin County. Increased punishment for high-level drug dealers and traffickers will help differentiate between them and lower-level offenders needing rehabilitation, while doing much to curb the drug trade in Collin County from the top down.

Evidence-Based Practices:

According to the American Bar Association's "Criminal Justice Standards for the Prosecution Function" (4th edition), prosecutors - should act with diligence and promptness to investigate, litigate, and dispose of criminal charges, consistent with the interests of justice and with due regard for fairness, accuracy, and rights of the defendant, victims, and witnesses (Standard 3-1.9a), - should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice (Standard 3-4.3a), and - should not offer evidence that the prosecutor does not reasonably believe to be true, whether by documents, tangible evidence, or the testimony of witnesses (Standard 3-6.6a). Quantitative testing by accredited laboratories provides definitive, scientific evidence to support the appropriate prosecution of cases as noted above. Additionally, reducing the backlog of cases adheres to the promptness standard and moves cases toward final disposition, improving public safety and encouraging timely rehabilitation.