



## Privacy Advisory Commission

March 2, 2023

5:00 PM

Oakland City Hall

Hearing Room 1

1 Frank H. Ogawa Plaza, 1<sup>st</sup> Floor

### ***Regular Meeting Agenda***

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**Commission Members:** *District 1 Representative: Reem Suleiman, District 2 Representative: Chloe Brown, District 3 Representative: Brian Hofer, Chair, District 4 Representative: Lou Katz, Vice Chair District 5 Representative: Omar De La Cruz, District 6 Representative: Gina Tomlinson, District 7 Representative: Robert Oliver, Council At-Large Representative: Henry Gage III Mayoral Representative: Jessica Leavitt*

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Members of the public can view the meeting live on KTOP or on the City's website at <https://www.oaklandca.gov/topics/ktop-tv-10>.

Comment in advance. To send your comment directly to the Privacy Commission and staff BEFORE the meeting starts, please send your comment, along with your full name and agenda item number you are commenting on, to Felicia Verdin at [fverdina@oaklandca.gov](mailto:fverdina@oaklandca.gov). Please note that eComment submissions close one (1) hour before posted meeting time. All submitted public comment will be provided to the Privacy Commission prior to the meeting.

*Each person wishing to speak on items must fill out and submit a speaker's card to staff prior to the meeting. Members of the public can address the Privacy Advisory Commission in-person and shall state their names and the organization they are representing, if any.*

1. Call to Order, determination of quorum
2. Review and approval of the draft January 5 meeting minutes
3. Open Forum/Public Comment
4. Federal Task Force Ordinance – OPD – NESS ATF MOU
  - a. Review and take possible action on the proposed Resolution and MOU between the Oakland Police Department and Bureau of Alcohol Tobacco and Firearms & Explosives for enhanced data access to the National Integrated Ballistic Information Network through use of NIBIN Enforcement Support System (NESS)

5. Chair Status Update – Old Business – informational discussion only – no action will be taken
  - a. Cash Payment Ordinance
  - b. Rent Registry
  - c. Illegal Dumping Cameras (ad hoc status)
  - d. Retreat



## Privacy Advisory Commission

January 5, 2023

5:00 PM

### *Meeting Minutes*

**Members:** *District 1 Representative: Reem Suleiman, District 2 Representative: Chloe Brown, District 3 Representative: Brian Hofer, Chair, District 4 Representative: Lou Katz, Vice Chair District 5 Representative: Omar De La Cruz, District 6 Representative: Gina Tomlinson, District 7 Representative: Robert Oliver, Council At-Large Representative: Henry Gage III Mayoral Representative: Jessica Leavitt*

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- Call to Order and determination of quorum.

In attendance: Omar De La Cruz, Jessie Leavitt, Robert Oliver, Lou Katz, Chloe Brown, Reem Suleiman

There was a quorum for this meeting.

- Adopt a Renewal Resolution regarding AB 361 establishing certain findings justifying the ongoing need for virtual meetings

This item was approved unanimously.

- Review and approval of the draft November 3 and December 1 meeting minutes

November minutes

Commissioner Katz moved to approve the November minutes and seconded by Commissioner Oliver, there were no objections or abstentions.

December 1 minutes

Commissioner Katz moved to approve the minutes and seconded by Commissioner Oliver, there were no objections or absentions.

- Open Forum/Public Comment:

Assata Olugbala

- Federal Task Force Transparency Ordinance – OPD – United States Marshal Service (USMS)
  - Review and take possible action on the draft memoranda of understanding (MOU) with federal partners

Deputy Chief Drennon Lindsey deferred to Lieutenant Scott Bezner to present on this item.

These items should be familiar to commissioners as they originally appeared in the November meeting packet. The Drug Enforcement Agency (DEA) MOU was given a favorable recommendation in November. The Privacy Commission ad-hoc met to review the USMS Taskforce and ATF MOU's.

In addition to the MOU, an addendum was included to address a policy on body worn cameras. This MOU is very similar to the language of the language in the ATF MOU. The USMS taskforce did accept the language that was proposed. Lt. Bezner indicated that changes to the document include the addition of OPD officers are allowed to wear their OPD issued body worn cameras during operations with the USMS.

Public Comment –

Assata Olugbala addressed the content of the MOU and stressed that it is extremely important that the cameras stay on at times. She mentioned the stop data and the impact on the African American community.

Lou Katz indicated that OPD can utilize body worn cameras as described in OPD policy.

Commissioner Brown had a questions about language in the document that states the recordings will be provided to the USMS. She also requested information data retention. Lt. Bezner indicated that the footage would be given temporary access to review it. The data will remain on OPD servers. The data is permanently housed in OPD.

Commissioner Suleiman requested information on the additional terms that were highlight in red on the final page. She had a requested about whether or not the City Attorney's Office reviewed the document. She requested clarification on the language "unless otherwise required by law." Lt. Bezner stated that the City Attorney's Office recommended this language and stated that taskforce members would need to refer back to OPD laws and regulations and/or California law.

Commissioner Oliver indicated that a lot of the language or tenure of this sounds like they own the footage. Other than thought he did not have any other concerns regarding the language in the document.

Commissioner Katz moved to approved that documents are forwarded to the Public Safety committee of the Oakland City Council. The motion was seconded by Commissioner Oliver.

Roll call

D1 yes

D2 yes

D3 absent

D4 yes

D5 yes

D6 absent

D7 yes

at large - absent

Mayoral yes

The item was approved by the Commission.



\_\_\_\_\_  
City Attorney's Office

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR OR DESIGNEE, ON BEHALF OF THE OAKLAND POLICE DEPARTMENT (OPD), TO ENTER INTO A MEMORANDUM OF UNDERSTANDING (MOU) WITH THE BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES (ATF) FOR ENHANCED DATA ACCESS TO THE NATIONAL INTEGRATED BALLISTIC INFORMATION NETWORK (NIBIN) THROUGH USE OF NIBIN ENFORCEMENT SUPPORT SYSTEM (NESS) SOFTWARE**

**WHEREAS**, the OPD Criminalistics Division has been using NIBIN for approximately 28 years; and

**WHEREAS**, NIBIN was created to assist laboratories in connecting crime scenes at which cartridge cases or gun evidence was left; and

**WHEREAS**, NESS is an enhancement to the current NIBIN database; and

**WHEREAS**, The City Attorney has reviewed and approved the MOU as to form and legality and copies have been introduced with the Agenda Report; and

**WHEREAS**, The Crime Lab has successfully engaged in similar MOU with DOJ entities for databases such as the combined DNA Index System (CODIS) under resolution 84787; and

**WHEREAS**, The Crime Lab has presented the issue to Public Safety; and

**WHEREAS**, staff recommends that the City Council make a finding and a determination that it is in the best interests of the City to authorize the City Administrator, or designee, to enter into an MOU with the ATF; therefore, be it

**RESOLVED:** That the City Council does hereby authorize the City Administrator or designee to enter into an MOU with the ATF; and be it

**FURTHER RESOLVED:** that the City Administrator or designee is hereby authorized to complete all required negotiations, certifications, assurances and documentation required to accept, modify, extend and/or amend the MOU; and be it

**FURTHER RESOLVED:** that Crime Lab personnel will be designated as points of contact, have the authority to serve in this capacity, add users as needed and enlist the assistance of the City Administrator should changes to the MOU be required within the Administrator's specified scope, without returning to City Council.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES -

NOES -

ABSENT -

ABSTENTION -

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council  
of the City of Oakland, California



# AGENDA REPORT

**TO:** G. Harold Duffey,  
Interim City Administrator

**FROM:** Darren Allison, Acting Chief,  
Oakland Police Department

**SUBJECT:** OPD MOU with ATF for National  
Integrated Ballistic Information  
Network Enforcement Support System  
Software Use

**DATE:** January 30, 2023

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City Administrator Approval

Date:

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## **RECOMMENDATION**

**Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator Or Designee, On Behalf Of The City Of Oakland Through The Oakland Police Department (OPD) To Enter into a Memorandum of Understanding (MOU) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for Enhanced Data Access to the National Integrated Ballistic Information Network (NIBIN) through use of NIBIN Enforcement Support System (NESS) software.**

## **EXECUTIVE SUMMARY**

OPD Crime Lab uses ATF's NIBIN to assist investigators in connecting guns to crime scenes with evidence left in a location; however, extracting data from NIBIN for gun tracing and intelligence gathering is limited and labor-intensive. An enhanced software package known as NESS will allow the Crime Lab to extract regional data from NIBIN more easily. The software not only helps the Crime Lab to streamline processes, but it also produces connectivity among various cases more efficiently and with more fidelity than current methods. An agreement with ATF is required for law enforcement agencies to use NESS. An MOU between OPD and ATF gives the Crime Lab access to the software. The use of NESS is in line with the City of Oakland's unanimous declaration to make gun violence prevention a top law enforcement priority.

## **BACKGROUND AND LEGISLATIVE HISTORY**

In October of 2020, the Oakland City Council passed resolution 88340 declaring that gun violence prevention to be the top law enforcement priority. This resolution spells out that "means such as shell casing tracing" be used in addition to other strategies.

Gun crimes - homicides, non-fatal shootings, robberies, and aggravated assault -

Public Safety Committee  
February 27, 2023



occur too often in the City of Oakland. In 2022<sup>1</sup>, Oakland residents and visitors experienced the following citywide levels of homicides, aggravated assaults and robberies:

- 120 homicides;
- 3,177 aggravated assaults (including 456 assaults with a firearm and 158 shootings related to an occupied home or vehicle);
- 2,653 robberies (including 1,095 involving a firearm).

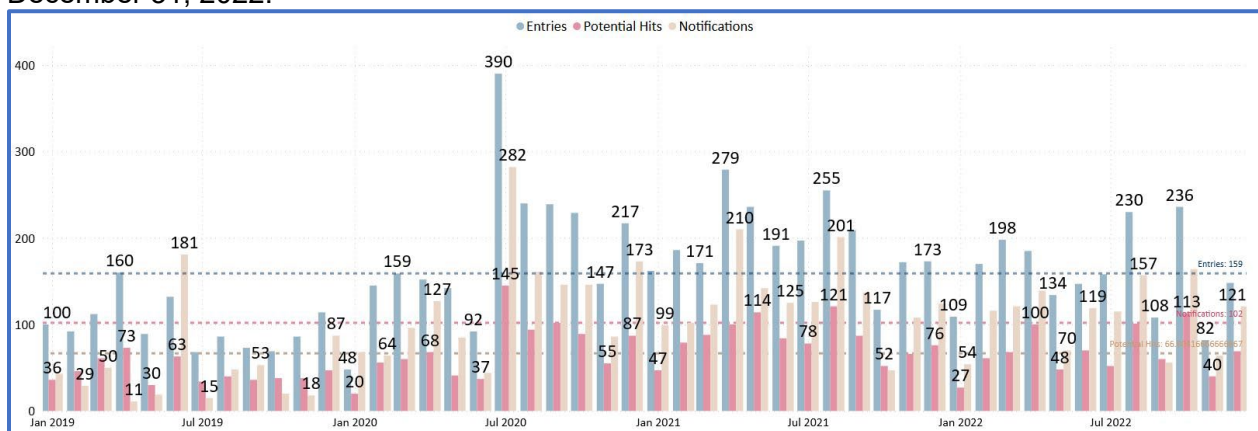
OPD is committed to using all available resources to combat and prevent violent gun crimes. To accomplish this goal, OPD utilizes intentional strategies, technology, partnerships, data analysis and policy; indeed, the Crime Lab has been using NIBIN for approximately 28 years. This report focusses on technology, partnerships and data analysis that would be enhanced if NESS is adopted to augment NIBIN.

### **ANALYSIS AND POLICY ALTERNATIVES**

The role of the OPD Criminalistics Crime Laboratory (“Crime Lab”) in the department’s crime fighting strategy focusses on analysis of evidence left at crime scenes where gun discharges occurred. This section addresses operational contributions to the NIBIN database by use of Integrated Ballistic Identification System (IBIS), caseload, staffing and need for NESS.

**Figure 1** illustrates the IBIS entries conducted from 2019-2022. Since the start of the March 2020 when the COVID-19 Countywide Shelter in Place Order occurred, the graph reflects OPD’s response to the extreme increases the city has seen in gun violence shortly after this time which manifest in greatly increased firearms evidence analysis. Note sustained increase in caseload since July 2020.

**Figure 1:** IBIS acquisitions, potential hits and notifications made from January 1, 2019 to December 31, 2022.

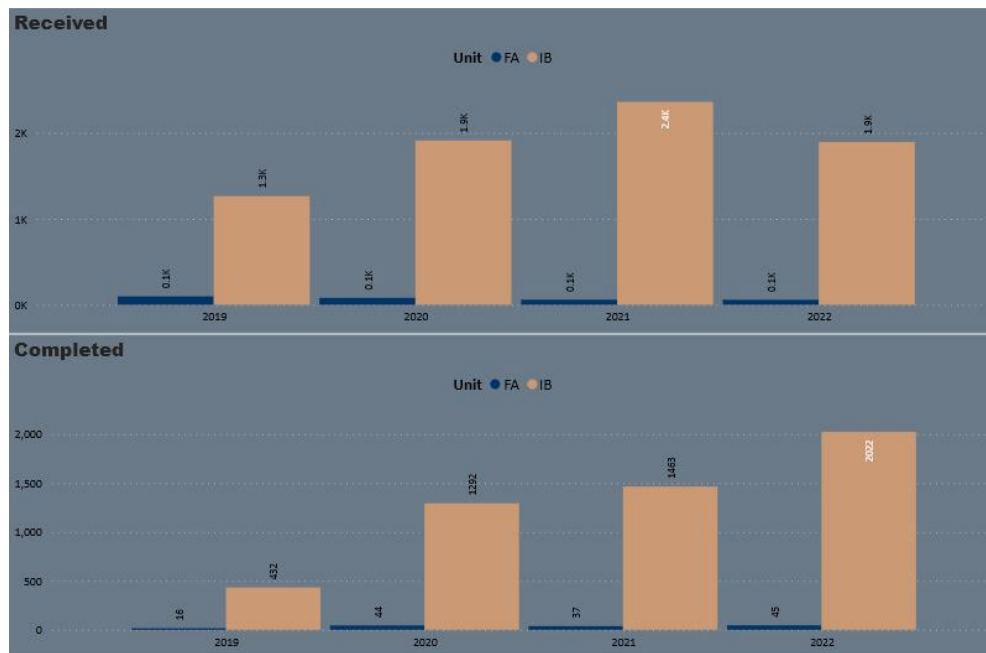


<sup>1</sup> End of Year Crime Report 2022

In 2019, the average IBIS request rate was 89 per month (completely pre-pandemic) and in 2020 it was 159 per month (inclusive of the beginning of the pandemic). Since then, it peaked at 197 per month in 2021 and decreased to 157 per month in 2022, still representing 1.75 times pre-pandemic levels of IBIS entries. This has occurred without any staff increases<sup>2</sup>.

The output of the Firearms Unit is uniquely impressive. Although crime rose, throughput doubled to address the increase in caseload as shown in **Figure 2**.

**Figure 2:** Firearms Unit Requests and Firearms Caseload (completions) 2019 to 2022



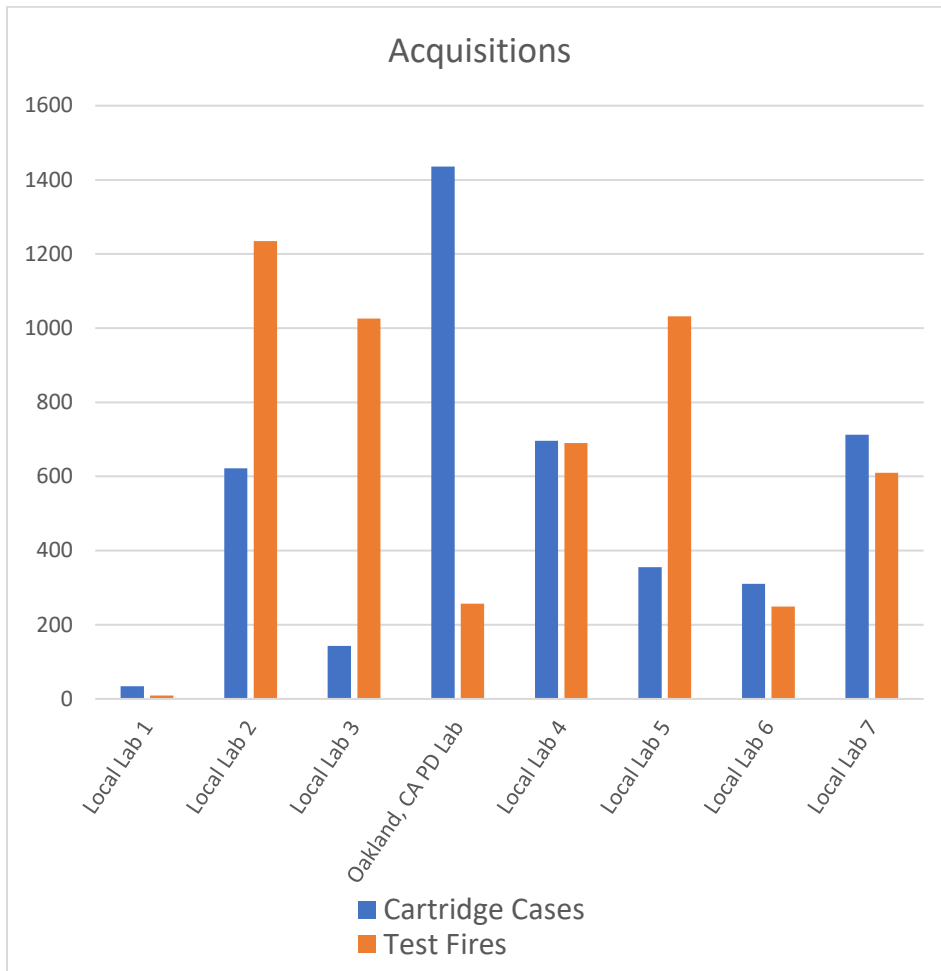
This large and increasing caseload trend is supported by comparing the number of acquisitions to other local laboratories from the NIBIN data which are sent out in monthly reports by the ATF which is visually represented in **Figure 3**.

OPD's outsized percentage of actionable intelligence, known as an investigative lead, is shown as pie chart in **Figure 4** in comparison to seven outside agencies.

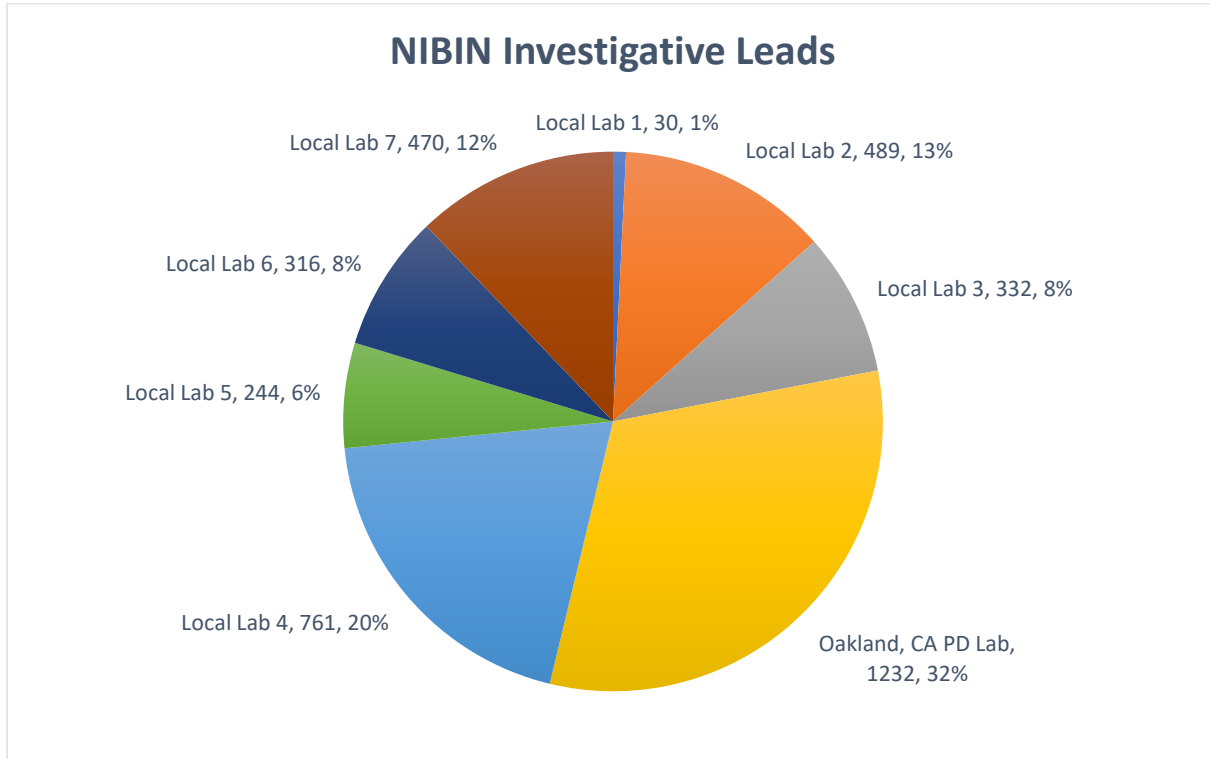
The turn-around time for this work is presented in average number of days in **Figure 5**. OPD compares favorably to the same outside agency cohort.

<sup>2</sup> Alameda County Grand Jury Report 2012, pp. 35-48

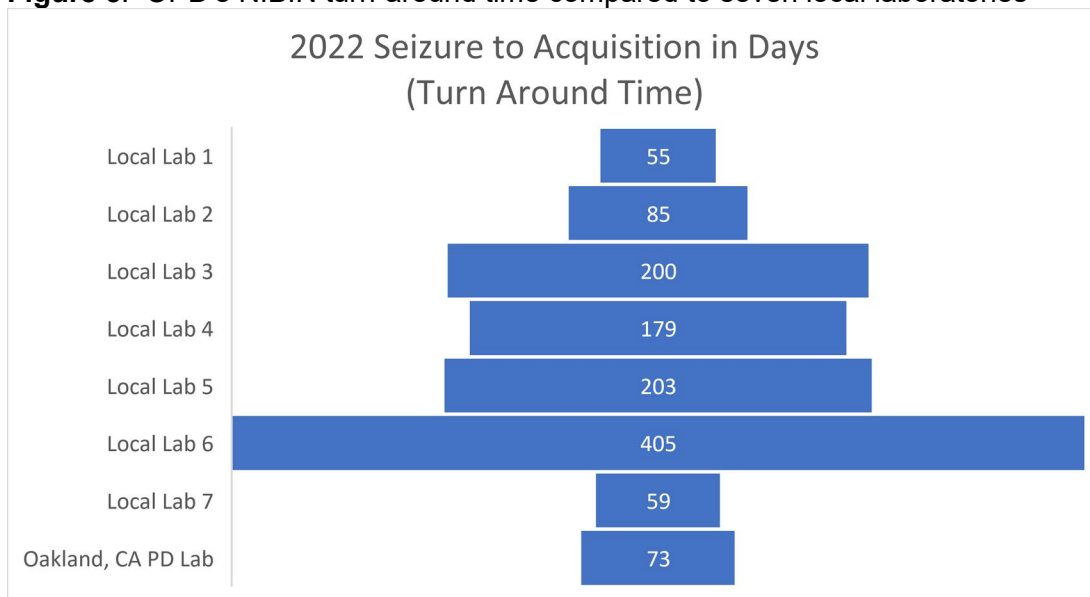
**Figure 3:** OPD compared to seven local laboratories for NIBIN acquisitions (data only available through October 2022 for this graph).



**Figure 4:** OPD compared to seven local laboratories for NIBIN investigative leads generated (data only available through October 2022; higher than single case to case hits in Table 1 due to NIBIN artifact).



**Figure 5:** OPD's NIBIN turn-around time compared to seven local laboratories



To further contextualize the rise in Firearms Unit caseload, **Table 1** below identifies the magnitude of workload increase from 2019 to present. Firearms Unit staff have been working tirelessly to address violent gun crime; this unit would benefit from some assistance to address the enormous increase in workload. The NESS tool would streamline some processes.

**Table 1: 2019-2022 Laboratory Analysis Caseload and Productivity**

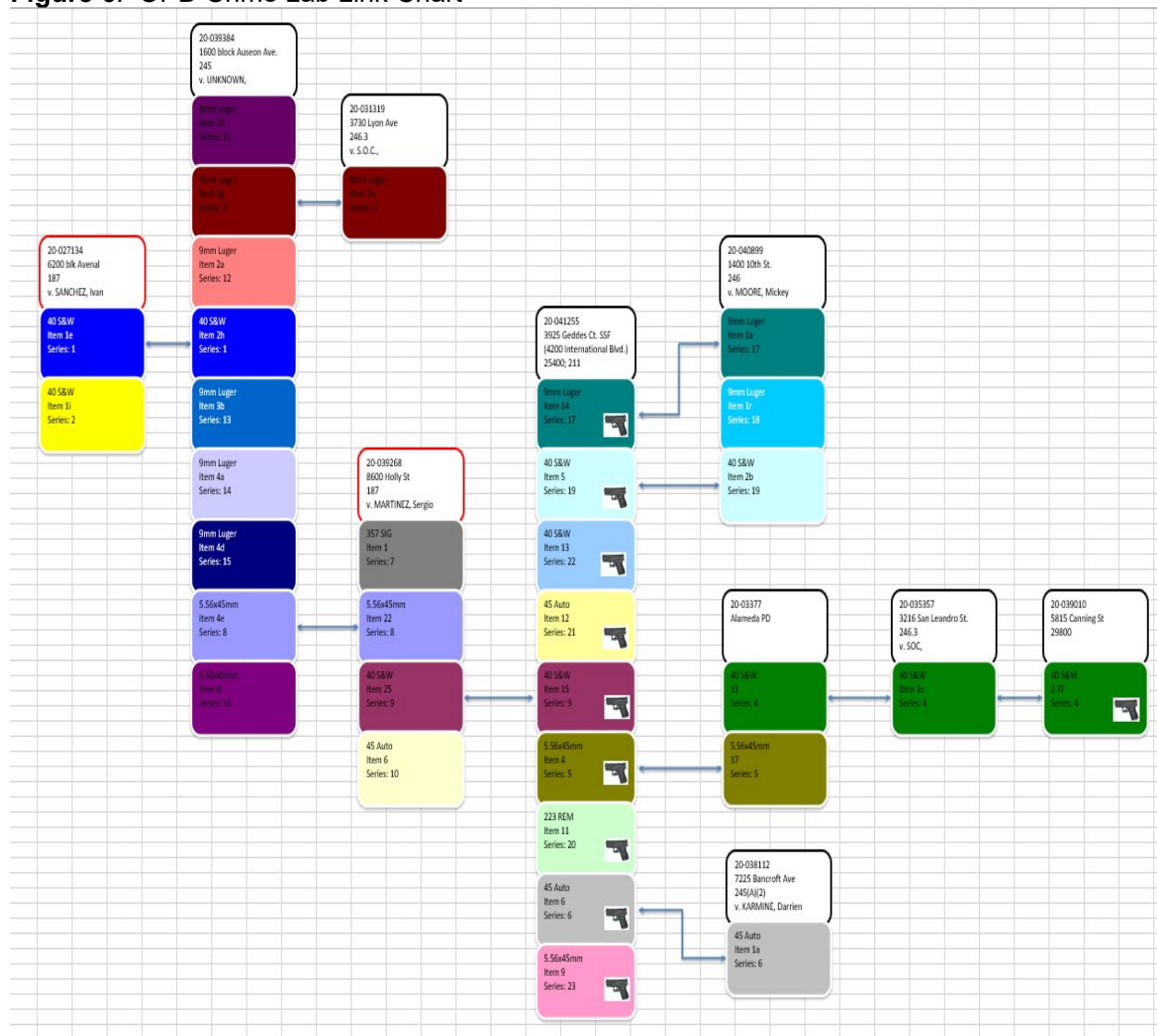
	2019	2020	2021	2022
IBIS Acquisitions	1,703	2,279	2,376	1,945
Investigative leads	732	850	980	809
Requests received	1,370	1,985	2,401	1,375
Requests completed	946	1,443	1,999	2,022
Confirmed hits	29	18	19	8

The NIBIN database provides information on the guns themselves - whether they were used in other crimes or are connected to other events. Because NIBIN contains information on the guns and the events (crime scenes) and associates each scene connected to the guns, as opposed to purchasing information, the NIBIN system tends to provide data about local (Oakland and primarily Bay Area) crime events.

Additionally, NIBIN is networked to other Northern California Crime Lab terminals operated by the ATF. This local data offers strong opportunities to develop greater intelligence about local gun tracing and social crime networks. This is only possible if data are easily retrievable from NIBIN. The data in this report were extracted from NIBIN with difficulty. Each graph either required a specialty search, download of data, export to a software program and data manipulation in NIBIN, or a manual entry of data from monthly ATF reports. This slows all data analysis, including interconnectivity. NESS would allow access to this in a more user-friendly software environment.

As demonstrated in previous reports to City Council, link charts are an effective graphical tool to report complicated IBIS associations to law enforcement investigators. Based on the number of shootings in Oakland, these charts such as **Figure 6** below, can become exponentially complicated due to multiple associations between guns. The in-house system developed by the laboratory works well for guns with a small number of associations, but it reaches capacity for complicated link charts. The laboratory was in discussions with the Department's database provider to engineer an enterprise solution to Crime Lab's in-house developed link chart system, however, it became cumbersome to link the laboratory system with the database, thus an alternative such as access to NESS is being sought instead.

**Figure 6: OPD Crime Lab Link Chart**



Crime scenes are represented by white rectangles at the top of a column. Similarly, colored rectangles underneath represent the use of the same gun at multiple scenes through IBIS links with cartridge cases. The gun icon indicates a case in which the actual gun was recovered, and test fired to make a connection.

Link charts for Oakland cases hitting to Oakland cases or Oakland to outside agencies are faithfully recorded in the laboratory database and provides the initial structure to the link charts shown. For outside jurisdiction cases hitting to Oakland, there is a gap in the link charts.

NESS would provide an alternative to enhance the comprehensiveness of all interconnectivity shown in link charts by ensuring fidelity of the data by including outside agency to Oakland hits.

**FISCAL IMPACT**

There are no costs associated with entering into the MOU. The NESS software would be provided free of charge to the recipient agency. Efficiencies gained by using NESS would provide a benefit to the City of Oakland given current spending.

**PUBLIC OUTREACH / INTEREST**

No public outreach was required in the development of this report and resolution beyond standard City Council meeting noticing requirements.

**COORDINATION**

This report and legislation have been reviewed by the Office of the City Attorney.

**SUSTAINABLE OPPORTUNITIES**

***Economic:*** There are no economic opportunities associated with this report.

***Environmental:*** There are no environmental opportunities associated with this report.

***Race and Equity:*** The activities completed with use of NESS software will better position OPD's Crime Lab to maintain high quality services and improve data gathering for violent gun crimes; better Crime Lab services will benefit Oakland residents and visitors through more robust investigations that support crime victims and public safety.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff Recommends That The City Council Adopt A Resolution Authorizing The City Administrator Or Designee, on Behalf of the City Of Oakland Through the Oakland Police Department (OPD) to Enter into a Memorandum of Understanding (MOU) with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for Enhanced Data Access to the National Integrated Ballistic Information Network (NIBIN) through use of NIBIN Enforcement Support System (NESS) software.

For questions concerning this report, please contact Sandra Sachs, OPD Criminalistics Laboratory Manager, at 510-238-2108.

Respectfully submitted



Darren Allison  
Acting Chief of Police  
Oakland Police Department

Reviewed by:  
Drennon Lindsey, Deputy Chief  
OPD, Bureau of Investigation

Tracey Jones, Manager  
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