

Sexual Assault Evidence Kits

Although Testing All Kits Could Benefit Sexual Assault Investigations, the Extent of the Benefits Is Unknown

Report 2014-109

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October 9, 2014

2014-109

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814


Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the California State Auditor (state auditor) presents this audit report concerning the processing and analysis of sexual assault evidence kits by local law enforcement agencies and their associated crime labs. These kits are collected as evidence in sexual assault investigations and may contain DNA evidence that can assist in the investigation of sexual assault cases. Our review focused on the Oakland Police Department, San Diego Police Department, Sacramento County Sheriff's Department, and the crime labs these agencies use, which in Sacramento is the crime lab managed by the Sacramento County District Attorney's office.

This report concludes that no federal or state law or regulation requires California law enforcement agencies to analyze all sexual assault evidence kits they collect or to track the number of kits they collect. We determined that, at the agencies we reviewed, the combined number of kits collected from 2011 through 2013 was about 1,900 kits, about 850 of which were analyzed by crime labs. Each agency we visited provided reasons why investigators might not request that a crime lab analyze the sexual assault evidence kit for a specific investigation. We reviewed a total of 45 cases across the three agencies in which investigators did not request analysis of sexual assault evidence kits and found that, when focused on specific investigations, the reasons provided by the agencies for not requesting analysis appeared reasonable. This is because, in each investigated case we reviewed, a request for analysis would have been unlikely to further the investigation of that case, meaning that the case had reached a conclusion that kit analysis would be unlikely to change. For example, in some cases investigators determined that no crime had occurred or, in others, were able to arrest the suspects or forward the cases to prosecutors without analysis of the kits. However, we did find that investigators rarely documented the reasons for their decisions about kit analysis in the case files we reviewed.

Some groups have argued that all sexual assault evidence kits should be analyzed regardless of the case circumstances. Proponents of this approach highlight the fact that DNA evidence in a kit could assist the investigation or prosecution of other cases through a network of DNA databases known as the Combined DNA Index System. However, the extent to which analyzing more kits would improve arrest and conviction rates is uncertain. Some jurisdictions report that they have obtained additional convictions as a result of analyzing previously unanalyzed kits. Nevertheless, it is problematic to extrapolate those results to California because information about the unanalyzed kits in those jurisdictions is limited. In response to this lack of information, we make several recommendations aimed at providing the Legislature with additional relevant information that will aid it as it considers whether legislation in this area would be beneficial.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

In the last few years, questions about why sexual assault evidence kits are not sent to crime labs for analysis have been raised at the state and national levels. For example, multiple news media outlets have covered stories about unanalyzed sexual assault evidence kits that exist across several jurisdictions in the country. Several major metropolitan areas, including Detroit, Michigan; Memphis, Tennessee; and Los Angeles County, have been the subject of national attention focused on the number of sexual assault evidence kits that law enforcement agencies in these jurisdictions did not send for analysis. In a May 2011 special report titled *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, the National Institute of Justice—the research arm of the federal Department of Justice—stated that untested sexual assault kit evidence is being discovered at law enforcement agencies across the country. While the report acknowledges that there may be legitimate reasons why a sexual assault evidence kit is not sent for analysis, it concludes that more information is needed about why agencies decide to send some kits but not others.

Victims of sexual assault can choose to provide the law enforcement agencies investigating their cases with biological evidence by undergoing a sexual assault examination. The evidence collected during this exam is stored in a sexual assault evidence kit, and local law enforcement keeps the kit as evidence in the investigation. The local law enforcement investigator (investigator) may request that a crime lab analyze the sexual assault evidence kit in hopes of finding the DNA profile for a suspect in the investigation. The lab can then upload the profile to the Combined DNA Index System (CODIS), a network of local, state, and federal databases that allows law enforcement agencies (agencies) to match DNA profiles against one another. Through this process, labs will sometimes obtain the name of a previously unknown suspect or match multiple cases where the suspect remains unknown. Therefore, analysis of sexual assault evidence kits can be instrumental in furthering the investigations of sexual assaults, especially if the analysis of this evidence occurs within two years of the date of the offense.¹ However, we identified no state or federal law that requires agencies to request analysis of every sexual assault evidence kit.² During our review of

¹ If biological evidence in a sexual assault case is analyzed for DNA type within two years of the date of the offense, but the name of the suspect is not known before the regular 10-year statute of limitations on sex crimes expires, state law gives investigating agencies one additional year from the time they conclusively identify the suspect to file charges.

² In September 2014, the governor signed legislation that will take effect January 1, 2015 that encourages but does not require local law enforcement agencies to analyze all sexual assault evidence kits they collect.

Audit Highlights . . .

Our review of the processing and analysis of sexual assault evidence kits highlighted the following:

- » *We did not identify any state or federal law that requires agencies to request analysis of every sexual assault evidence kit.*
- » *The three law enforcement agencies we reviewed and their associated crime labs analyzed varied proportions of the sexual assault evidence kits they collected from 2011 through 2013.*
 - *Of about 1,900 kits that the three agencies received during this period, nearly 850 were analyzed, almost 140 were still in progress at the labs, and about 910 kits remained unanalyzed.*
- » *The agencies allow their investigators to use their discretion in making decisions about whether to request a kit analysis based on the specific circumstances of the individual case in place of formal policies.*
- » *While we concluded for the cases we reviewed that the reasons an investigator did not request a kit analysis appeared reasonable, there may be potential benefits that analyzing a kit could provide to apparently unrelated sexual assault investigations through the use of the Combined DNA Index System (CODIS).*
- » *Although we did not identify any negative effects on the investigations of the 45 cases we reviewed in which the investigators did not request a kit analysis, investigators rarely documented the reasons they decided not to request an analysis.*

continued on next page . . .

- » *The California Department of Justice's Rapid DNA Service program could provide more information about the benefits of analyzing all sexual assault evidence kits.*
- » *While it is not known how often kit analysis in cases with unknown assailants would aid the investigations of these or other cases, we believe analyzing these kits is a prudent step regardless of most case circumstances because these cases involve unknown assailants and a kit analysis could result in a match in CODIS.*

three agencies—the Oakland Police Department, the San Diego Police Department, and the Sacramento County Sheriff's Department (Sacramento Sheriff)—we found that these agencies and their associated crime labs analyzed varied proportions of the sexual assault evidence kits they collected from 2011 through 2013, the period we reviewed for this audit. Of the combined total of about 1,900 kits that the three agencies received during this period, they analyzed nearly 850, and almost 140 were still in progress at the labs, leaving about 910 kits unanalyzed.

Investigators at the agencies we visited base their decisions about whether to request a kit analysis on the specific circumstances of an individual case. In place of formal policies, these agencies allow their investigators to use their discretion in making those decisions. Supervisors at each of the agencies we visited described the circumstances in which an investigator might not request a kit analysis. These circumstances include situations in which victims choose not to participate in the investigation of their case, which can sometimes make it difficult to continue the investigation, or when the key issue in an investigation is not about whether sexual activity occurred between two individuals, but rather whether it was consensual. When focused on the individual cases we reviewed, we found these explanations to be reasonable because it is unlikely that sexual assault evidence kit analysis would further the specific investigation when one or more of those circumstances are present, meaning that the investigation reached a conclusion that was unlikely to have been changed by kit analysis. However, our conclusion that these explanations appear reasonable does not consider the potential benefits that analyzing a kit could provide to apparently unrelated sexual assault investigations through the use of CODIS. Nonetheless, in California, adults arrested for specific felony offenses (arrestees) must provide DNA samples, which the California Department of Justice (Justice) then uploads to CODIS. Therefore, CODIS will already contain the DNA profiles of arrestees in sexual assault cases. As a result, unanalyzed sexual assault evidence kits in cases where law enforcement investigators are able to arrest a suspect for certain felony offenses do not negatively impact either the original case or any other investigation because the assailant's DNA profile will be available for matching to other unsolved cases despite the decision not to analyze the sexual assault evidence kit.

Across the agencies we visited, we reviewed 45 cases in which the investigators did not request a kit analysis. In our review, we did not identify any negative effects on the investigation of those cases that resulted from the decisions not to request analyses. Based on the files for each case we reviewed and discussions with investigative supervisors, the circumstances of the case made it unlikely that requesting kit analysis would have furthered the investigation.

However, we noted that investigators rarely documented the reasons they decided not to request an analysis—none of the 15 case files we reviewed at either the San Diego Police Department or the Sacramento Sheriff and only six of the 15 cases we reviewed from the Oakland Police Department contained such an explanation. Unanalyzed sexual assault evidence kits have become an issue of state and national discussion, and we believe that the public would benefit if investigators documented why they did not request a kit analysis. With documented reasons for the decisions, agencies would be able to clearly demonstrate to victims, policy makers, and other interested parties why they did not request such analyses. However, since January 2014, the Sacramento County District Attorney's (Sacramento District Attorney) crime lab has been analyzing all sexual assault evidence kits within the Sacramento Sheriff's jurisdiction, eliminating the need for the Sheriff's investigators to document their reasons for not requesting kit analysis.

Even though kit analysis can aid investigations of sexual assaults, the extent to which analyzing more sexual assault evidence kits than are currently being analyzed would improve arrest and conviction rates is uncertain, and additional information is required to determine the true benefit and cost to California of such a policy change. Although investigators at the agencies we visited stated that they make decisions about requesting kit analysis based on the circumstances of individual cases, some groups have argued that all kits should be analyzed regardless of case circumstances. Those who argue for this approach highlight the fact that the evidence in a kit could influence the outcome of other cases because agencies using CODIS can link a suspect in one case to multiple investigations if the suspect's DNA profile is already in CODIS. Proponents of expanded analysis also argue that victims who participate in an invasive examination should feel assured that the evidence they provide will be used to prosecute their attackers.

A state-run program has existed since 2011 that could provide more information about the benefits of analyzing all sexual assault evidence kits. According to the chief of Justice's Bureau of Forensic Services, Justice's Rapid DNA Service (RADS) program tests every sexual assault evidence kit that hospitals collect in the nine counties that the program serves. The primary goal of RADS is for analysts to obtain usable DNA profiles to upload into CODIS in order to find links to suspects or convicted felons in other cases. In addition, the program is designed to provide the results of this analysis no more than 30 days after the lab receives the kit. However, Justice does not currently know the investigative outcomes for the cases associated with those kits such as the number of arrests or convictions. Such information would be valuable as the Legislature considers whether to require an increase in the number of sexual

assault evidence kits analyzed in California. Additionally, no comprehensive information is currently available about the number of sexual assault evidence kits that local law enforcement agencies collect annually or how many of those kits are analyzed. Further, no comprehensive data exist about the reasons some sexual assault evidence kits in California are not analyzed. This information would also assist policy makers as they consider whether law enforcement agencies' current approaches in this area need to change.

As the Legislature considers the many issues involved in kit analysis, it could change the statewide approach to analyzing kits in one particular type of sexual assault case: cases with unknown assailants. While it is not known how often kit analysis would aid the investigations of these or other cases, because these cases involve unknown assailants and because a kit analysis could result in a match in CODIS, we believe that kit analysis for these sexual assault cases is a prudent step regardless of most case circumstances. Still, if the Legislature were to consider such a step, we believe that it should exempt some unknown assailant cases from such a mandate. For example, we believe that cases where victims specifically request that law enforcement not analyze their kits should be exempt from any required analysis.

Recommendations

To ensure that the reasons sexual assault evidence kits are not sent for analysis is clear, the Oakland Police Department and the San Diego Police Department should require investigators to document the reason they do not submit a request for kit analysis.

Justice should amend its agreements with the counties participating in the RADS program to require those counties to report case outcome information, such as arrests and convictions, for the sexual assault evidence kits Justice has analyzed under the program. Justice should then report annually to the Legislature about those case outcomes.

The Legislature should direct law enforcement agencies to report to Justice annually how many sexual assault evidence kits they collect and the number of kits they analyze each year. The Legislature should also direct law enforcement agencies to report annually to Justice their reasons for not analyzing sexual assault evidence kits. The Legislature should require an annual report from Justice that details this information.

The Legislature should require law enforcement agencies to submit sexual assault evidence kits to a crime lab for analysis in cases where the identity of the assailant is unknown, with some

limited exceptions, and it should require the labs to complete analysis of those sexual assault evidence kits within two years of the date of the associated offense.

Agency Comments

The Oakland Police Department, the San Diego Police Department, and Justice agreed with the recommendations we made to their agencies. The San Diego Police Department expressed concerns with our method for determining how many sexual assault evidence kits it processed and how long it took to process them. However, we used the best available information to reach our conclusions. The Sacramento District Attorney provided a response to the audit report that disputed our conclusions about how long its lab took to analyze sexual assault evidence kits; however, our conclusions are correct and we stand by them.

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Introduction

Background

Law enforcement agencies, including city police departments and county sheriff departments, investigate reports of sexual assault. While specific procedures for conducting these investigations vary by agency, a standard part of such investigations is the collection of evidence to assist law enforcement investigators (investigators) with identifying suspects and to aid district attorneys in prosecuting those suspects. In a sexual assault case, investigators collect various types of evidence when possible, such as victim testimony; physical evidence, such as items from the crime scene; and biological evidence. This biological evidence may contain a DNA profile from a suspect in the investigation.³ Although investigations of sexual assaults have many components, this audit focuses specifically on law enforcement agency and crime lab policies and practices related to biological evidence collected from a victim's body and stored in a sexual assault evidence kit.⁴ The specific content of a kit can vary by jurisdiction. However, a sexual assault evidence kit generally includes swabs from the victim's body that may yield a suspect's DNA profile, as well as other items that may help identify a suspect, such as blood and hair samples.⁵

Obtaining and Deciding to Analyze Sexual Assault Evidence Kits

Collecting and analyzing sexual assault evidence kits is a multistep process that involves several different entities, as shown in Figure 1 on the following page. When someone reports a sexual assault, local law enforcement sends an officer to meet with and take a statement from the victim. If the victim agrees to participate in a sexual assault examination, specially trained health care providers collect biological evidence from the victim's body and provide medical care to the victim as needed. As part of this examination, health care providers document the biological evidence collected from the victim's body or clothing.

Not all examinations collect biological evidence. For example, the exam may occur too long after the assault to yield any usable DNA evidence. State guidance suggests that victims' examinations should be completed within 72 hours of an assault to ensure the best opportunity for minimizing evidence loss or degradation,

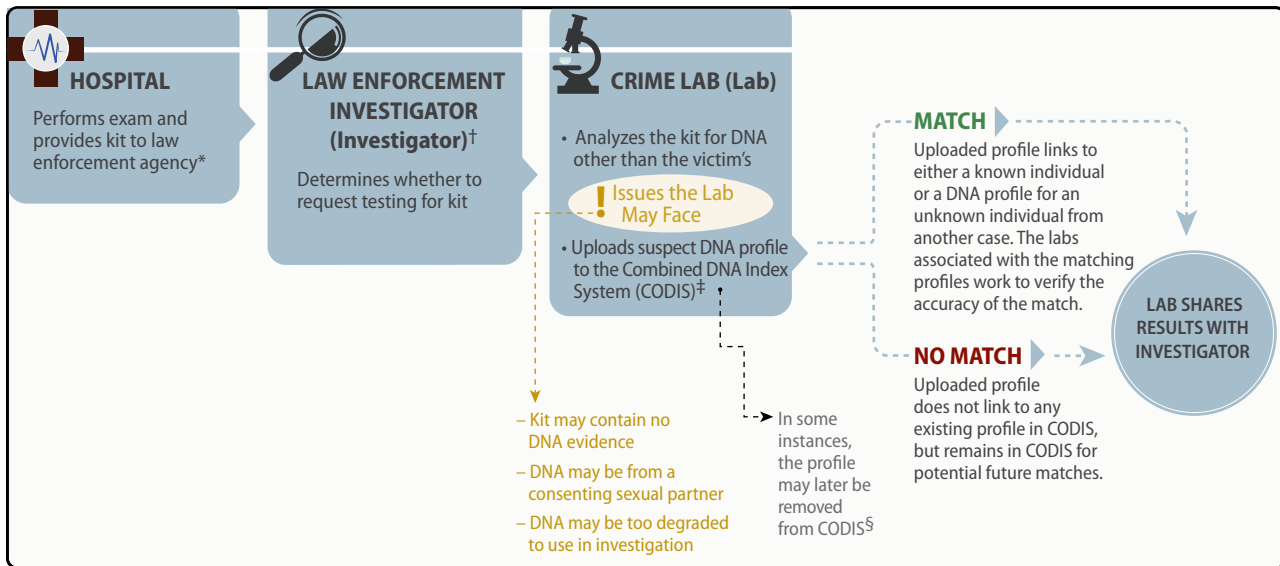
³ A DNA profile is specific descriptive information about an individual person's DNA.

⁴ These kits are commonly referred to as *rape kits*. We do not use that term in this report, as rape is not the only sex crime that would cause investigators to collect such a kit as evidence.

⁵ Law enforcement may also obtain sexual assault evidence kits from suspects in an investigation. These suspect kits and the evidence they contain are not the focus of this report.

but sometimes exams occur after this time frame. In other cases, the victim may decline to continue with an exam after it starts. Nevertheless, for all completed examinations, the sexual assault evidence kits are transferred to local law enforcement.

Figure 1
Collection and Analysis of a Sexual Assault Evidence Kit



Sources: California State Auditor's analysis of professional literature; interviews with staff from the Bureau of Forensic Services at the California Department of Justice; and interviews with law enforcement staff at Oakland and San Diego police departments, Sacramento County Sheriff's Department, and Sacramento County District Attorney's crime lab.

* Not all sexual assault exams result in a kit. If completed, the kit may contain biological evidence.

† Some jurisdictions test all kits they collect; law enforcement investigators are not involved in requesting kit analyses in these jurisdictions.

‡ CODIS is the Federal Bureau of Investigation's program of support and software for a network of local, state, and national databases with DNA profile information. Law enforcement agencies use CODIS to obtain the identity of unknown assailants.

§ If a DNA profile for an individual is uploaded but a court order overturns a conviction or dismisses the individual's arrest charge, federal law requires the individual's DNA profile be removed from CODIS.

However, investigators do not send all sexual assault evidence kits to a crime lab for analysis. A national survey of state and local law enforcement agencies (agencies) that the U.S. Department of Justice's National Institute of Justice (NIJ) conducted in 2009 asked the agencies to provide reasons why evidence in an investigation might not be forwarded to a crime lab for analysis. Some of the reasons responding agencies provided included: charges in a case may have been dropped, a suspect may have pled guilty before the decision to analyze the evidence had to be made, and investigators may not have identified a suspect in the case.⁶ The survey also revealed that agencies might not forward evidence for analysis if a prosecutor does

⁶ Although it appears counterintuitive to say that not having identified a suspect is a reason why evidence should not be analyzed, this was a common survey response. Subsequent to the survey, one NIJ publication noted that more research is necessary to determine the precise reasons why investigators would not send evidence for analysis in cases without an identified suspect.

not request that a kit be analyzed. In September 2014, the governor signed legislation, which will take effect January 1, 2015, that encourages but does not require local law enforcement agencies to analyze all sexual assault evidence kits they collect. This legislation also encourages these agencies to complete analyses within certain time frames.

Crime Labs Analyze Sexual Assault Evidence Kits to Find DNA Evidence

If a sexual assault evidence kit goes to a crime lab for analysis, the lab analysts process the kit to assist in the investigation. Typically, this means the analysts attempt to identify a suspect's DNA profile from the evidence in the kit. Lab analysts may employ different tests and techniques to analyze a sexual assault evidence kit. For example, a lab analyst may use a screening process to determine whether the kit contains male DNA before proceeding with additional testing.⁷ Alternatively, an analyst may immediately analyze the kit without any screening procedure. Several outcomes are possible after analysts complete the kit analysis. For example, the analysts may not find any DNA evidence. They may also find multiple DNA profiles in the kit, including DNA profiles from consensual sexual partners. Finally, the lab may identify a DNA profile it concludes belongs to a suspect in the investigation.

When a lab analyst obtains a suspect's DNA profile, the analyst can upload the profile to a network of databases known as the Combined DNA Index System (CODIS) in an attempt to discover the suspect's name. According to the Federal Bureau of Investigation (FBI), which manages it, CODIS is a support program designed to assist law enforcement by providing potential investigative information in cases where a DNA profile has been obtained but no suspect has been identified. Once lab personnel upload a profile, it becomes part of a regular matching process in CODIS. The text box shows some of the different profile types contained in CODIS. Every week the CODIS software searches all records in its databases, looking for matches of DNA profiles. If a match is found during this search, notifications are automatically forwarded to the labs involved in

Selected Types of DNA Profiles in the Combined DNA Index System

Forensic Profiles

DNA profiles developed from crime scene evidence such as semen or bloodstains.

Convicted Offender Profiles

DNA profiles of individuals convicted of qualifying state crimes.

Arrestee Profiles

DNA profiles of all individuals arrested as suspects in a criminal investigation. In California, state law requires the collection of DNA samples from all adults arrested for specific felony offenses. However, not all states require the collection of arrestee profiles.

Suspect Profiles

The DNA profiles of criminal suspects are allowed under California law to be included in the state DNA database that is part of the Combined DNA Index System (CODIS). These profiles are not accessible at the national level of CODIS and are purged every two years unless law enforcement presents justification for keeping them in CODIS.

Sources: California State Auditor's analysis of the Federal Bureau of Investigation's Web site, the National Forensic Science Technology Center DNA analyst training materials, and the California Penal Code, sections 295–297.

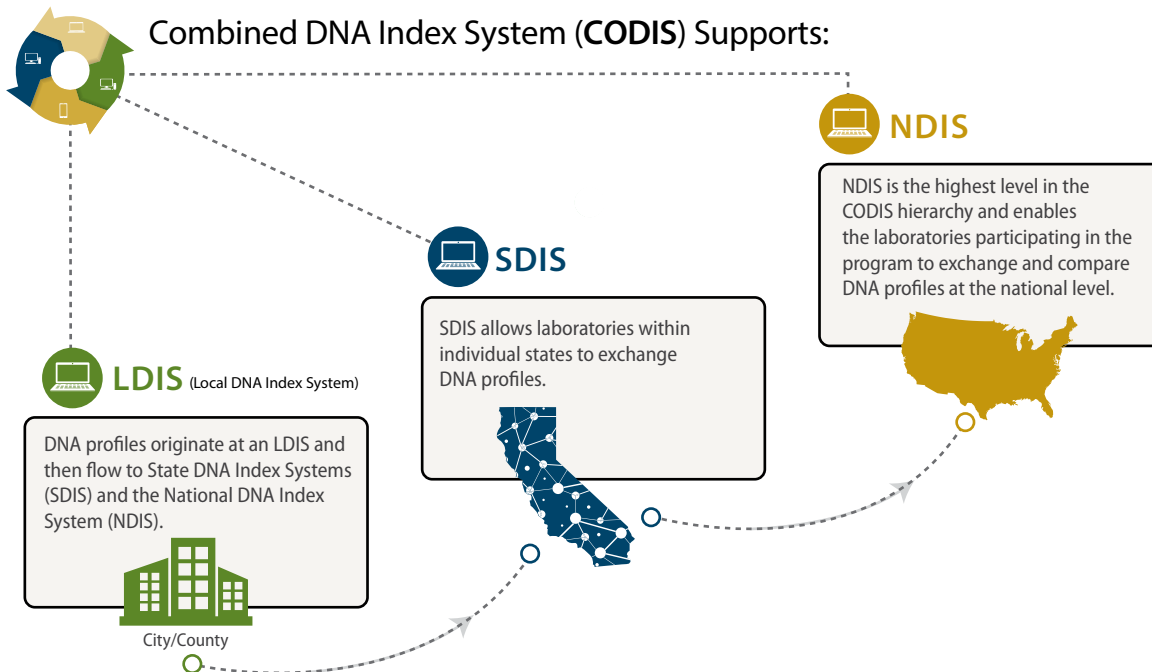
Note: CODIS contains other DNA profiles, such as profiles for missing persons or unidentified remains. We do not discuss those profile types in this report.

⁷ According to the U.S. Department of Justice's Office of Justice Programs data, 99 percent of sex offenders are men.

the DNA profile match. When labs receive notification of a match, they exchange data with the lab that uploaded the corresponding profile to verify the match. Upon confirmation of the match and if the match aids an investigation, a match becomes classified as a hit. A match may also be used to establish probable cause for a court order to obtain DNA from a suspect.

Each level of CODIS has different criteria that affect whether a profile can be included at that level. For example, federal requirements for the completeness of a DNA profile are more stringent than those for the California-level database, known as Cal-DNA. Thus, a crime lab in California may develop a DNA profile from a sexual assault evidence kit that can be included in the Cal-DNA level of CODIS but not included at the national level. Accordingly, this profile will be eligible for comparison to other profiles developed in California but not to profiles developed in other states. Figure 2 shows the levels of CODIS and the flow of DNA profile information.

Figure 2
Combined DNA Index System



Source: Federal Bureau of Investigation CODIS brochure.

Note: Each level of CODIS has different criteria that affect whether a profile can be included at that level. Accordingly, not all DNA profiles will progress all the way from an LDIS to the NDIS.

There are two categories of CODIS hits. *Offender* hits signify that the identity, or name, of a potential suspect has been established because the uploaded DNA profile matches the DNA profile of a known person. On the other hand, *forensic* hits signify that an uploaded DNA profile matches a DNA profile that was uploaded during another investigation, but the name of the individual associated with the profiles is unknown. Although the FBI collects data from labs regarding the frequency of CODIS hits, the FBI does not require labs to track conviction rates for investigations aided by information in CODIS. Therefore, there are no aggregate data that illustrate the effectiveness of CODIS in prosecuting suspects for crimes.

Scope and Methodology

The Joint Legislative Audit Committee (audit committee) directed the California State Auditor to review information related to the backlog of sexual assault evidence kits throughout California for the period of 2011 through 2013. Table 1 lists the objectives that the audit committee approved and the methods used to address those objectives. Our fieldwork incorporated work at three agencies, their associated crime labs, and the California Department of Justice. In addition, we asked 25 other California local law enforcement agencies to participate in a survey. The survey asked questions regarding those agencies' written policies, their crime labs, the unanalyzed sexual assault evidence kits they possess, and their costs associated with kit analysis.

Table 1
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed relevant laws and other background materials.
2 Within a selection of three to five counties, including at least one county that has initiated policies and practices to eliminate its sexual assault evidence kit backlog:	<ul style="list-style-type: none"> • Selected three local law enforcement agencies and their associated crime labs based on population, crime statistics, and geographic location: the Oakland Police Department, Sacramento County Sheriff's Department (Sacramento Sheriff), and the San Diego Police Department. The crime lab for the Sacramento Sheriff is the lab run by the Sacramento County District Attorney (Sacramento District Attorney) • Verified that the Oakland Police Department has participated in the Alameda County District Attorney's efforts to catalog and address unanalyzed sexual assault evidence kits in the county.
a. Determine how the processing and analyzing of sexual assault evidence kits is funded, whether by federal, state, or local money. Further, determine how much of the federal and state funds counties received for DNA evidence analysis was used to analyze sexual assault evidence kits.	<ul style="list-style-type: none"> • Conducted interviews to identify funding sources. • Reviewed relevant financial reports, grant records, and other related documents. • Asked relevant personnel at agencies we visited to provide their best estimates of their per-unit costs for sexual assault evidence kit analysis. • Asked surveyed agencies to provide their best estimates of their per-unit and total costs for sexual assault evidence kit analysis and in what amount they used local, state, and federal money to fund sexual assault evidence kit analysis. • We found that none of the three crime labs we visited tracked its spending to the level of funding spent on sexual assault evidence kit analysis. As such, we are unable to answer how much of the federal and state funds the labs used to analyze sexual assault evidence kits.

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AUDIT OBJECTIVE	METHOD
<p>b. Determine whether local law enforcement or the crime laboratory used by law enforcement had a backlog of unanalyzed sexual assault evidence kits and, to the extent possible, the reason for the backlog.</p>	<ul style="list-style-type: none"> • Reviewed professional literature to determine how to define the term <i>backlog</i>. • Conducted interviews to identify practices and procedures associated with sending sexual assault evidence kits to a crime lab for analysis. • Reviewed database information and other available information to develop an understanding of crime lab workloads and kit population sizes. • Using crime lab data, calculated the number of days labs took to analyze sexual assault evidence kits.
<p>c. Identify local law enforcement and crime laboratory policies and practices for prioritizing the analysis of sexual assault evidence kits. Determine the asserted reasons for those priorities and whether local law enforcement and crime laboratories follow their prioritization policies.</p>	<ul style="list-style-type: none"> • Reviewed manuals and other written materials to identify relevant policies. • Conducted interviews to identify prioritization practices, reasons why practices and policies are in place, and why agencies and labs did not appear to follow their practices and policies if applicable. • Examined 30 case records at each agency we visited to determine how lab and agency personnel prioritized sexual assault evidence kit analyses in these cases. Fifteen of these were cases in which investigators made no request for kit analysis and 15 were cases where investigators did request kit analysis. • Asked surveyed agencies whether they have written policies and procedures that explain how to prioritize sending sexual assault evidence kits to a crime lab for analysis. • Asked surveyed agencies whether they analyze all sexual assault evidence kits and, if not, why a kit might not be analyzed.
<p>d. Review local law enforcement and crime laboratory policies and procedures to determine whether they establish time frames for processing sexual assault evidence kits and whether law enforcement and the laboratories met those time frames.</p>	<ul style="list-style-type: none"> • Reviewed manuals and other written materials to identify relevant policies. • Conducted interviews to determine agency practices for how quickly to process a sexual assault evidence kit. • Examined the same case records identified under Objective 2(c) at each agency to determine the time frames within which agency personnel submitted sexual assault evidence kits for analysis and then how quickly labs analyzed kits. • Evaluated aggregate data to determine average agency times for processing sexual assault evidence kit analysis requests. • Asked surveyed agencies whether they maintained written policies and procedures specifying time lines for sending kits to a crime lab for analysis. • Asked surveyed agencies how long kit analyses took at their crime labs. • Our analysis of the time the crime labs we visited took to process sexual assault evidence kits focused only on kits <i>received into evidence</i> from 2011 through 2013. We were not able to analyze lab activity related to all kits <i>completed</i> during the three-year period for each lab we visited because of limitations in lab data at the San Diego Police Department and the Sacramento District Attorney's crime lab. Subsequent to the period we reviewed, those agencies have either already resolved or are resolving those data limitations. Because supporting data were available, we present information in our report about the total number of kits completed during the review period by the Oakland Police Department crime lab.
<p>e. Determine whether the timelines established by local law enforcement and crime laboratories ensure that analysis of the biological evidence in sexual assault evidence kits for DNA type occurs within two years from the date of the offense as set forth in California Penal Code, Section 803, or within 10 years from the date of the offense as set forth in California Penal Code, Section 801.1.</p>	<ul style="list-style-type: none"> • Reviewed 20 case files involving sexual assault evidence kit analysis at each agency we visited to determine whether the labs processed them within the statutory time frames. Ten cases we reviewed were to determine whether analysis was completed within two years, and 10 cases we reviewed were to determine whether analysis was completed within 10 years. • With the exception of one case from the Oakland Police Department, the agencies we reviewed completed analysis of kits from these cases within the statutory time frames. For the one case where a kit was not analyzed within two years of the date of the offense, we reviewed case notes and interviewed agency staff to determine why the kit was not analyzed by the statutory deadline. • Asked surveyed agencies how many kits they had sent to their labs for analysis that had yet to be completed and whether more than two years or more than 10 years had passed since the date of the offense.
<p>3 To the extent possible, recommend statutory or regulatory changes to help promptly clear any backlogs found and prevent further backlogs from forming.</p>	<ul style="list-style-type: none"> • Developed recommendations for statutory changes as noted in Chapter 2 of this report. • Reviewed professional studies of expanded testing programs and evaluated their scope, outcomes, and evaluators' conclusions regarding added investigatory benefits of testing previously untested sexual assault evidence kits.
<p>4 Review and assess any other issues that are significant to the audit.</p>	<ul style="list-style-type: none"> • Conducted interviews at the California Department of Justice (Justice) regarding its role in sexual assault evidence kit testing and information collection. • Reviewed background information regarding Justice's Rapid DNA Service program and discussed the program's outcomes with Justice.

Methods to Assess Data Reliability

In performing this audit, we relied on various electronic data files that we obtained from the entities listed in Table 2. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. Table 2 shows the results of this analysis.

Table 2
Methods to Assess Data Reliability

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
San Diego Police Department Lab Tracker database Data through June 26, 2014	<p>As of March 31, 2014, determine the number of sexual assault evidence kits analyzed by the San Diego Police Department's crime lab for the period from January 2011 through December 2013.</p> <p>Determine the range and median days to complete analysis of sexual assault evidence kits received by the San Diego Police Department's crime lab for the period from January 2011 through December 2013.</p> <p>Determine the number of sexual assault evidence kits that were analyzed at the San Diego Police Department's crime lab from January 1, 2011, through March 31, 2014.</p>	<ul style="list-style-type: none"> • We performed data-set verification procedures and electronic testing of key data elements and did not identify any significant issues. • We performed accuracy testing for a selection of 29 requests for laboratory analysis for cases containing a sexual assault evidence kit collected between January 1, 2011, and December 31, 2013, and found four errors in two key data fields within the first 20 items we selected for testing. • Due to the significance of the errors identified in our accuracy testing, we did not perform completeness testing. 	<p>Not sufficiently reliable for the purpose of this audit. Nevertheless, we present these data, as they represent the best available data source of this information.</p>
San Diego Police Department EvidenceOnQ database Data for the period from January 1, 2011, through December 31, 2013	<p>Determine the number of sexual assault evidence kits received by the San Diego Police Department for the period from January 2011 through December 2013.</p>	<ul style="list-style-type: none"> • We performed data-set verification procedures and electronic testing of key data elements and did not identify any errors. • We did not perform accuracy and completeness testing of the EvidenceOnQ data because this is a paperless system and hard-copy source documentation was not available for review. Alternatively, following U.S. Government Accountability Office (GAO) guidelines, we could have reviewed the adequacy of selected system controls that include general and application controls. However, we did not conduct these reviews because this audit is a one-time review of a local police department and we determined that it did not warrant the same level of resource investment as a state agency whose system produces data that may be used during numerous future audit engagements. 	<p>Undetermined reliability for the purpose of this audit. Nevertheless, we present these data, as they represent the best available data source of this information.</p>

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
<p>Sacramento County District Attorney's (Sacramento District Attorney) crime lab</p> <p>JusticeTrax database</p> <p>Data for the period from January 1, 2011, through June 30, 2014</p>	<p>As of March 31, 2014, determine the number of sexual assault evidence kits received and analyzed by the Sacramento District Attorney's crime lab for the period from January 2011 through December 2013.</p> <p>Determine the range and median days to complete analysis of sexual assault evidence kits received by the Sacramento District Attorney's crime lab for the period from January 2011 through December 2013.</p> <p>Determine the number of sexual assault evidence kits that were analyzed at the Sacramento District Attorney's crime lab from January 1, 2011, through March 31, 2014.</p>	<ul style="list-style-type: none"> We performed data-set verification procedures and electronic testing of key data elements and did not identify any significant issues. We did not perform accuracy and completeness testing of the JusticeTrax data because this is a paperless system and hard-copy source documentation was not available for review. Alternatively, following GAO guidelines, we could have reviewed the adequacy of selected system controls that include general and application controls. However, we did not conduct these reviews because this audit is a one-time review of a local district attorney crime lab and we determined that it did not warrant the same level of resource investment as a state agency whose system produces data that may be used during numerous future audit engagements. 	<p>Undetermined reliability for the purpose of this audit. Nevertheless, we present these data, as they represent the best available data source of this information.</p>
<p>Sacramento County Sheriff's Department (Sacramento Sheriff)</p> <p>InfoCenter_Prod database</p> <p>Data for the period from January 1, 2011, through December 31, 2013</p>	<p>Determine the number of sexual assault evidence kits received by the Sacramento Sheriff for the period from January 2011 through December 2013.</p> <p>Determine the number of sexual assault evidence kits received by the Sacramento Sheriff that were also entered into the Sacramento District Attorney's Justice Trax database.</p>	<ul style="list-style-type: none"> We performed data-set verification procedures and electronic testing of key data elements and did not identify any errors. We performed accuracy testing for a selection of 29 evidence submissions between January 1, 2011, and December 31, 2013, and found three errors in two key data fields within the first 14 items selected for testing. Due to the significance of the errors identified in our accuracy testing, we did not perform completeness testing. 	<p>Not sufficiently reliable for the purpose of this audit. Nevertheless, we present these data, as they represent the best available data source of this information.</p>
<p>Oakland Police Department</p> <p>Laboratory Information Management System</p> <p>Data for the period from January 1, 2011, through May 14, 2014</p>	<p>As of March 31, 2014, determine the number of sexual assault evidence kits received and analyzed by the Oakland Police Department's crime lab for the period from January 2011 through December 2013.</p> <p>Determine the range and median days to complete analysis of sexual assault evidence kits received by the Oakland Police Department's crime lab from January 2011 through December 2013.</p> <p>Determine the number of sexual assault evidence kits that were analyzed at the Oakland Police Department's crime lab from January 1, 2011, through March 31, 2014.</p>	<ul style="list-style-type: none"> We performed data-set verification procedures and electronic testing of key data elements and did not identify any errors. We performed accuracy testing for a selection of 29 requests for laboratory analysis that were completed, canceled, or in progress between January 1, 2011, and May 14, 2014, and found seven errors in four key data fields within the first 17 items we selected for testing. Due to the significance of the errors identified in our accuracy testing, we did not perform completeness testing. 	<p>Not sufficiently reliable for the purpose of this audit. Nevertheless, we present these data, as they represent the best available data source of this information.</p>

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
Oakland Police Department lab staff records of unrequested kits Data for the period from January 1, 2011, through December 31, 2013	As of December 31, 2013, determine the number of sexual assault evidence kits received by the Oakland Police Department for the period January 2011 through December 2013 where requests for kit analysis had not been made.	<ul style="list-style-type: none"> • We performed data-set verification procedures and found no errors. • We did not perform accuracy and completeness testing of the lab staff records because supporting documents for the records were stored in and among records of all property checked into evidence for all Oakland Police Department cases, not just those involving sexual assault evidence kits, making such testing cost-prohibitive. 	Undetermined reliability for the purpose of this audit. Nevertheless, we present these data, as they represent the best available data source of this information.

Sources: California State Auditor's analysis of various documents, interviews, and data obtained from the entities listed in this table.

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Chapter 1

DECISIONS NOT TO ANALYZE SEXUAL ASSAULT EVIDENCE KITS APPEAR REASONABLE FOR INDIVIDUAL CASES, BUT THE EFFECT OF THESE DECISIONS ON OTHER INVESTIGATIONS IS UNCERTAIN

Chapter Summary

The law enforcement agencies (agencies) we visited do not analyze all sexual assault evidence kits they receive as part of investigations. Investigative supervisors at the three agencies we visited—the Oakland Police Department, the San Diego Police Department, and the Sacramento County Sheriff’s Department (Sacramento Sheriff)—described the circumstances in which investigators at their agencies may decide not to request a kit analysis. When focused on the individual cases, we found the circumstances they described to be reasonable situations in which to not request an analysis because, when one or more of those circumstances was documented in a case file, kit analysis would be unlikely to further a specific investigation. Additionally, in California, adults arrested for specific felony offenses must provide DNA samples. Because of this, DNA profiles of those arrested for specific felony offenses (arrestees) in sexual assault cases will already be available to law enforcement. Therefore, unanalyzed sexual assault evidence kits in cases where a suspect is arrested for specific felony offenses do not negatively affect either the original case or other investigations.

However, while decisions not to analyze a kit may appear reasonable for an individual case, some unanalyzed kits could represent a missed opportunity to benefit other investigations through a DNA match. Moreover, we noted that the law enforcement investigators (investigators) rarely documented their reasons for deciding not to request analysis. We believe that these agencies and the public would benefit if the investigators were required to document why they do not send a kit to a crime lab for analysis. Finally, although some groups have argued for an expansion of sexual assault evidence kit testing, we found limited information about whether policies to analyze all sexual assault evidence kits would benefit the outcomes of sexual assault cases.

The Proportion of Sexual Assault Evidence Kits That Agencies Analyzed Varied

Investigators at the three agencies we visited are not required to request a crime lab analysis of all sexual assault evidence kits they collect, and they do not do so. We identified no state or federal law that requires that all sexual assault evidence kits be analyzed, nor did

we identify any state regulation specifying the circumstances in which a kit analysis should occur.⁸ Additionally, we located no requirement for agencies to track or report how many sexual assault evidence kits they analyze or choose not to analyze. Consequently, the total number of unanalyzed kits in California is unknown. Table 3 shows the number of kits received during our audit period, from 2011 through 2013, by each of the agencies we visited and the number of those kits that the agencies' crime labs analyzed. Overall, the agencies had analyzed between 31 percent and 47 percent of all kits they received.

Table 3
Status of Sexual Assault Evidence Kits Received From 2011 Through 2013

LAW ENFORCEMENT AGENCY	TOTAL KITS RECEIVED	TOTAL KITS ANALYZED FROM THE TOTAL KITS RECEIVED	KITS STILL IN PROGRESS AT THE CRIME LAB FROM THE TOTAL KITS RECEIVED	TOTAL KITS UNANALYZED FROM THE TOTAL KITS RECEIVED
Oakland Police Department Data as of March 31, 2014	563 (100%)	267 (47%)	134 (24%)	162 (29%)
San Diego Police Department Data as of December 31, 2013	1062* (100%)	495† (47%)	unknown‡	567 (53%)
Sacramento County Sheriff's Department (Sacramento Sheriff) Sacramento County District Attorney (Sacramento District Attorney) Data as of March 31, 2014	276 (100%)	85 (31%)	2 (1%)	189 (68%)

Sources: California State Auditor's analysis of evidence and crime lab records from the Oakland Police Department's Laboratory Information Management System, the Oakland Police Department's lab staff's records of kits with no request for analysis, the San Diego Police Department's EvidenceOnQ database, the Sacramento Sheriff's InfoCenter_Prod database, and the Sacramento District Attorney's crime lab's JusticeTrax database. See the *Methods to Assess Data Reliability* section beginning on page 13 in the Introduction to the report regarding the electronic data used in the table.

* The total number of sexual assault evidence kits for the San Diego Police Department is overstated because it includes kits for both suspects and victims in sexual assault cases. Suspect kits are not the focus of this audit. The data in the San Diego Police Department's EvidenceOnQ database does not always distinguish between these kits and therefore we could not determine the number of victim kits.

† The total number of sexual assault evidence kits analyzed for the San Diego Police Department does not equal the total number of sexual assault evidence kits completed as presented in Table 5 on page 37. This is because of limitations in the database the crime lab uses to record information about the evidence it processes that precluded us from identifying individual sexual assault evidence kits, and therefore we could only identify the number of cases that contain kits.

‡ Due to limitations in the San Diego Police Department's EvidenceOnQ database, we were unable to determine the number of kits in progress.

⁸ In September 2014, the governor signed legislation that will take effect January 1, 2015 and that encourages but does not require local law enforcement agencies to analyze all sexual assault evidence kits they collect.

Law Enforcement Agencies Base Decisions About Analyzing Sexual Assault Evidence Kits on the Circumstances of Individual Cases

Investigators at the agencies we visited base their decisions about whether to analyze sexual assault evidence kits on the circumstances of the individual cases they investigate. None of these agencies had detailed formal policies in place guiding these decisions; rather, each allowed its investigators to apply their judgment to the specific circumstances of each case. When considering the potential effect on each individual case, we found the explanations of circumstances in which investigators would be less likely to request a kit analysis to be reasonable for the cases we reviewed. This is because when one or more of these circumstances was present in the cases we reviewed, it appeared unlikely that kit analysis would have furthered their investigation of those cases, meaning that the investigation reached a conclusion that was unlikely to have been changed by kit analysis. As we explain below, this could include situations where investigators reached a final conclusion that no crime occurred, assembled sufficient evidence to arrest a suspect or to present the case to the district attorney for prosecution, could not continue the investigation because the victim chose not to participate, or where a suspect claimed that the sexual contact was consensual.

When asked about their practices for determining whether to analyze sexual assault evidence kits, investigative supervisors at the three agencies provided a range of circumstances that might lead an investigator to determine kit analysis is not necessary. At one end of that range, an investigator might not request kit analysis because the kit is no longer linked to a criminal investigation. Investigative supervisors at all three agencies explained they would not likely request kit analysis if the agency determined that no crime had occurred (the case was unfounded). For example, this could happen in a case where a victim later recants their account of the assault. In fact, if DNA profiles are obtained from sexual assault evidence kits associated with unfounded cases, the Federal Bureau of Investigation's Combined DNA Index System (CODIS) guidelines prohibit an agency from uploading those profiles.

Also, investigators may be able to assemble sufficient evidence in a case to arrest a suspect without analyzing the victim's sexual assault evidence kit. In some cases, including some we reviewed as part of this audit, this evidence includes direct confessions from suspects. In these cases, it is unlikely that the analysis of a sexual assault evidence kit would add any further benefit to the investigations. This is because in California, adults arrested for specific felony offenses must provide DNA samples. The chief of the Bureau of Forensic Services at the California Department of Justice stated that his bureau processes all such samples and uploads them

None of these agencies had detailed formal policies in place guiding these decisions; rather, each allowed its investigators to apply their judgment to the specific circumstances of each case.

to CODIS. Therefore, CODIS will already contain the DNA profiles of arrestees in sexual assault cases.⁹ As a result, unanalyzed sexual assault evidence kits in these cases do not negatively affect either the original case or any other investigation because the arrestee's DNA profile is available for matching to other unsolved cases despite the investigator's decision not to request kit analysis.

Other reasons for not requesting kit analysis are tied to the investigators' ability to pursue a case in certain circumstances. According to investigative supervisors at all three agencies, investigators may decide not to analyze kit evidence in cases where the victim cannot be located or the victim ceases to communicate with investigators during the course of the investigation. A lieutenant in the Oakland Police Department's Special Victims Section indicated that victim participation may be needed to establish that a crime took place, to identify a suspect, or to testify in court if the district attorney were to bring charges. For these reasons, the investigation of a case is greatly hindered, and in some cases cannot progress, without the active participation of the victim. A sergeant in the Sacramento Sheriff's Sexual Assault and Elder Abuse Bureau stated that investigators would most likely not request kit analysis in cases where the victim had not returned the investigator's phone calls. Further, a captain in the San Diego Police Department stated that investigators might not request analysis when a victim falls out of communication with the department but noted that an exception might be when the department feels the case is part of a series of crimes or when the assailant is a stranger. Investigative supervisors at these agencies also reported that investigators might not request kit analysis when a victim expressly requests that the case not be investigated further.

Finally, the evidence contained in sexual assault evidence kits would be unlikely to benefit investigations of sexual assault cases when a known suspect has admitted to sexual contact with the victim but maintained that the contact was consensual. The biological evidence in sexual assault evidence kits can help establish that sexual contact occurred and who was involved, but it cannot help determine whether that contact was consensual. Thus, investigative supervisors at all three agencies told us that investigators might not analyze kit evidence in cases where the fundamental question in the case is one of consent.

Investigative supervisors at all three agencies told us that investigators might not analyze kit evidence in cases where the fundamental question in the case is one of consent.

⁹ In the event that arrestees are not convicted of the felony offenses for which they were arrested, they may petition to have their DNA profiles removed from law enforcement databases. However, while their profiles are in CODIS, the system will match their profiles to those collected in connection with other crimes. The profiles of offenders convicted of felonies remain in CODIS.

Our Case Review Did Not Identify Negative Effects on Those Cases From Decisions Not to Request Analysis of Sexual Assault Evidence Kits

Law enforcement decisions not to request sexual assault evidence kit analysis in the individual cases we reviewed appeared reasonable because kit analysis would be unlikely to further the investigation of those cases. We reviewed specific cases at each agency in which investigators did not request analysis. Our review included 15 cases from each of the three agencies we visited with offenses that occurred from 2011 through 2013, for a total of 45 cases. In those cases, we did not identify any negative effects on the investigations as a result of decisions not to request analysis. We based our conclusions on the circumstances present in the individual cases we reviewed, as documented in the files for the 45 cases and as discussed with the investigative supervisors. As we discuss in the next section, we found that investigators rarely documented their reasons for deciding not to analyze sexual assault evidence kits. However, we considered the documented circumstances in these cases and determined that a request for kit analysis would not likely have furthered the investigation of any of these specific cases.

A variety of circumstances were present in the cases we reviewed that made it unlikely that the investigations would have been furthered had investigators requested analysis of the sexual assault evidence kits. The most common circumstance among the three agencies was that investigators were able to assemble sufficient evidence to either arrest a suspect or forward the case to prosecutors without kit analysis, which we observed in 15 of the 45 cases we reviewed. Another common circumstance was when the victim expressly requested that the case not be investigated further, which occurred in 11 cases. As noted earlier, investigative supervisors at all three agencies explained that the lack of victim participation can prevent or severely limit the investigation or prosecution of a case. Also common were issues of consent, which cannot be resolved by DNA analysis of sexual assault evidence kits; these were present in 10 of the cases we reviewed. Among the remaining cases, we found examples where investigators determined that no crime had occurred, instances in which the victim could not be located, and one case where the victim did not provide sufficient information about the alleged assault to support further investigation and an agency supervisor stated the investigator likely determined kit analysis would not further the case.

A variety of circumstances were present in the cases we reviewed that made it unlikely that the investigations would have been furthered had investigators requested analysis of the sexual assault evidence kits.

We found that investigators at the Oakland Police Department rarely complied with the department's informal practices for when to request analysis of sexual assault evidence kits.

We found that investigators at the Oakland Police Department rarely complied with the department's informal practices for when to request analysis of sexual assault evidence kits. According to the lieutenant in the department's Special Victims Section, the expected practice during the period we reviewed was for investigators to request kit analysis in all cases except those they determined to be unfounded. However, 13 of the 15 cases we reviewed where kits were not analyzed did not comply with that practice. In explaining the low level of compliance with the expected practice, the lieutenant stated that "unfounded" was considered a generic term at that time, which had the effect of giving a high level of discretion to investigators if they felt the circumstances of a case did not warrant requesting kit analysis. In 12 of these cases, the lack of compliance did not negatively affect the case because each case contained one or more circumstances described earlier where kit analysis would not likely have furthered the investigation.

However, in one instance at the Oakland Police Department, we found that the sexual assault evidence kit for the case was not analyzed because the case was never investigated, and therefore no investigative decision was ever made about whether an analysis was needed. The assault in this case occurred in November 2012. A supervisor in the Special Victims Section explained that the detective assigned to this case retired shortly after being assigned and the section did not reassign the case for investigation. When we brought this case to the department's attention in May 2014, the supervisor submitted the kit for analysis the following day. The Oakland Police Department completed its analysis for this case in July 2014, which revealed no DNA evidence was present in the sexual assault evidence kit.

In all 15 cases at the Sacramento Sheriff and all 15 cases at the San Diego Police Department, we found that investigators' decisions aligned with the agencies' descriptions of circumstances when investigators may decide not to request kit analysis. The actual circumstances of the cases where investigators at all three agencies decided not to request analysis were similar. Because the investigations of the cases we reviewed did not appear to be negatively affected by the lack of kit analysis, it is not clear from our review whether requiring law enforcement agencies to analyze all kits would benefit the investigations of individual sexual assault cases in which kits are not analyzed under current practices. However, this conclusion does not consider potential benefits that might be realized in apparently unrelated sexual assault cases when a DNA profile from kit analysis in one case matches a DNA profile from another case. We discuss this issue, among others, in the final section of this chapter.

Law Enforcement Agencies We Visited Rarely Document Their Reasons for Deciding Not to Analyze Sexual Assault Evidence Kits in Individual Cases

In 45 cases we reviewed in which investigators at the three agencies we visited did not request a kit analysis, the investigators rarely documented their decisions. As a result, we often could not determine with certainty why investigators decided that kit analysis was not needed. Among the 15 cases we reviewed at each of the three locations, we found no examples of this documentation at either the Sacramento Sheriff or the San Diego Police Department, and we found only six documented explanations at the Oakland Police Department. Investigative supervisors at both the Sacramento Sheriff and the San Diego Police Department indicated that their departments do not require investigators to document a decision not to analyze a sexual assault evidence kit. The lieutenant at the Oakland Police Department's Special Victims Section stated that, during the period covered by our review, the section expected such documentation from its investigators in certain circumstances, but that it was not a formal requirement at that time. Although we found very few of the 45 case files we reviewed included a documented explanation of the reason a kit analysis was not required, as we discuss in the previous section, we determined through case file review and discussions with the investigative supervisors that kit analysis would have been unlikely to further the investigation of those cases.

In the last few years, questions about why sexual assault evidence kits are not sent to crime labs for analysis have been raised at the state and national levels. For example, multiple news media outlets have covered stories about unanalyzed sexual assault evidence kits that exist across several jurisdictions in the country. Several major metropolitan areas, including Detroit, Michigan; Memphis, Tennessee; and Los Angeles County, have all been the subject of national attention focused on the number of sexual assault evidence kits that law enforcement agencies in these jurisdictions did not send for analysis. In a May 2011 special report titled *The Road Ahead: Unanalyzed Evidence in Sexual Assault Cases*, the National Institute of Justice (NIJ)—the research arm of the federal Department of Justice—stated that untested sexual assault kit evidence is being discovered at agencies across the country. While the report acknowledges that there may be legitimate reasons why a sexual assault evidence kit is not sent for analysis, it concludes that more information is needed about why agencies decide to send some kits but not others.

Documenting the reason why a kit analysis was not requested would benefit investigators and the public. We believe that requiring investigators to document their reasons for not

While the NIJ's report acknowledges that there may be legitimate reasons why a sexual assault evidence kit is not sent for analysis, it concludes that more information is needed about why agencies decide to send some kits but not others.

requesting kit analysis would assist agencies in responding to the public concern about unanalyzed kits. At the end of a 2012 research study funded by the NIJ, which examined unanalyzed sexual assault evidence kits in Los Angeles County, the authors of the study concluded that public concern about how kits went unanalyzed might have been averted had law enforcement agencies documented and tracked investigators' reasons for not analyzing certain kits. In addition to improving agencies' ability to explain why some kits are not tested, a change in practice would also create a record that investigators did not overlook sexual assault evidence kits. A summary of this information could then be available both to supervisors inside agencies and to external stakeholders. Without such documentation, agencies cannot demonstrate that their investigators considered a sexual assault evidence kit's potential value to an investigation. The author of another NIJ-funded study, which focused on untested sexual assault evidence kits in New Orleans, recommended that law enforcement tracking systems be improved to allow for "retention of decisions by investigators regarding why a [sexual assault evidence kit] is not being submitted to a crime laboratory for analysis." Doing so, the author concluded, would allow for internal review and would increase accountability to the public.

We believe that two of the agencies we visited would benefit from adopting policies that require investigators to document why they choose not to request a kit analysis.

For these reasons, we believe that two of the agencies we visited would benefit from adopting policies that require investigators to document why they choose not to request a kit analysis. Since we began our audit, according to the lieutenant in the Oakland Police Department's Special Victims Section, the department has drafted a policy that would require investigators to document the reasons why they chose not to send sexual assault evidence kits to the crime lab for analysis. The lieutenant stated that as of August 2014, the draft policy was still under review. A lieutenant in the San Diego Police Department's Sex Crimes Division stated that requiring investigators to document their reasons for not requesting a kit analysis was reasonable and would demonstrate that investigators had thought through their rationale before making a decision. The captain overseeing the Sex Crimes Division stated that the division's detectives will begin recording that information as part of completing their investigative reports. According to the sergeant of the Sexual Assault and Elder Abuse Bureau at the Sacramento Sheriff, since January 2013 his investigators are no longer responsible for transporting kits to the Sacramento County District Attorney's (Sacramento District Attorney) crime lab because, since that time, all kits in the Sacramento Sheriff's jurisdiction go to the crime lab directly from the hospital where victims receive their sexual assault exams. The Sacramento District Attorney's lab director also explained that in January 2014, her lab began processing all sexual assault evidence kits as soon as they were received at the lab. We confirmed the lab director's statement by reviewing evidence that indicated the lab is

conducting analyses in this manner. In effect, this change in practice at the Sacramento District Attorney's crime lab has eliminated the need for the Sacramento Sheriff investigators to decide whether a sexual assault evidence kit merits analysis. Because of this, the Sacramento Sheriff investigators would not need to document the reason they did not request an analysis.

It Is Uncertain Whether Analysis of Additional Kits Would Lead to Substantial Improvements in the Outcomes of Sexual Assault Cases

Although investigators at the agencies we visited stated that they make decisions about kit analysis based on the circumstances of individual cases, some groups have argued that all sexual assault evidence kits should be analyzed regardless of those circumstances. Proponents of expanded analysis argue that victims who participate in an invasive examination should feel assured that the evidence they provide will be used to prosecute their attackers. Those who argue for this approach also highlight the fact that the evidence in a kit could influence the outcome of other cases because agencies using CODIS can link a suspect in one case to multiple investigations if the suspect's DNA profile is already in CODIS.

However, we found only limited research regarding how much an analyze-all approach to sexual assault evidence kit analysis improves the outcomes of investigations. The research we found generally focused on the investigative outcomes, such as arrests and convictions, that result when agencies decide to analyze all of the sexual assault evidence kits in their possession that the agencies had not previously sent to a crime lab. Several local jurisdictions have undertaken this kind of effort in recent years. Varying degrees of outcome information are available for each location according to presentations by members of the law enforcement community and federally funded academic research studies. However, none of the information we reviewed provided clear details about how often the analysis of a kit in one case benefited the outcome of another case. Specifically, while the information presented about some jurisdictions was clear that the results were applicable only to the cases from which the kits originated, information about other jurisdictions did not clearly explain which investigations benefited from kit analysis.

In two locations, processing a large number of unanalyzed sexual assault evidence kits has resulted in some investigative benefits. Specifically, according to the chief of the Sex Crimes Unit at the New York County District Attorney's Office during a February 2013 presentation, in October 2000 local officials began overseeing the analysis of 3,490 previously collected and unanalyzed kits from Manhattan. These kits yielded about 1,300 DNA profiles

In two locations, processing a large number of unanalyzed sexual assault evidence kits has resulted in some investigative benefits.

that could be uploaded into CODIS. DNA profiles can be helpful to an investigation and might assist in obtaining a conviction. For example, from the approximately 1,300 new profiles that the New York County District Attorney's Office identified, it successfully obtained 49 offender convictions. In a May 2014 presentation, the Wayne County, Michigan, prosecutor stated that as of April 2014 her office had helped administer the analysis of 1,600 previously unanalyzed sexual assault evidence kits. From these kits, law enforcement officials obtained 339 CODIS hits to known individuals and 27 hits to other unsolved crimes with unknown assailants. Similar to obtaining a profile, CODIS hits could assist in securing convictions in sexual assault cases. A hit could identify a potential suspect or link two cases with unknown suspects, but a hit's benefit to an investigation depends on case circumstances. The Wayne County prosecutor reported that the CODIS hits from the previously unanalyzed kits had resulted in 10 convictions as of April 2014, and she noted that work in analyzing kits and investigating the resulting evidence is ongoing.

Beyond the results these two locations reported from analyzing previously untested sexual assault evidence kits, we found limited research on the benefits that expanding kit analysis can have on investigations of sexual assault.

Beyond the results these two locations reported from analyzing previously untested sexual assault evidence kits, we found limited research on the benefits that expanding kit analysis can have on investigations of sexual assault. A 2012 NIJ-funded study reviewed what happened after the Los Angeles Police Department and the Los Angeles County Sheriff's Department decided to analyze sexual assault evidence kits that investigators and prosecutors had previously determined did not need to be analyzed. Researchers compared the investigative outcomes for cases associated with 371 previously untested kits and cases associated with 371 kits tested under the new analyze-all policies. The study concluded that sending the previously unanalyzed sexual assault evidence kits to the lab for analysis resulted in no new arrests or convictions within the first six months of receiving the lab results. Therefore, for the sample of kits studied, the analyze-all approach did not change the outcomes of the associated cases at that point in time. However, we followed up with the Los Angeles Police Department for more recent information on the outcomes of their analysis of all the previously unanalyzed sexual assault evidence kits. The data the department provided show that, as of June 2014, its analysis of 6,132 previously untested sexual assault evidence kits has resulted in five convictions, three arrests, and three arrest warrants.

In two other studies we identified, researchers did not present data about the outcomes of sexual assault cases associated with previously unanalyzed kits, but rather they demonstrated how frequently the analysis of those kits could possibly assist an investigation. One study, performed by a NIJ researcher in May 2013, reviewed 830 previously unanalyzed sexual

assault evidence kits in the jurisdiction of the New Orleans Police Department. When those kits were analyzed, 10 percent had usable DNA profiles that resulted in CODIS hits. As mentioned earlier, the value of a hit to an individual case is relative to the circumstances of that case. A second study, published in April 2014 and conducted by researchers from Sam Houston State University, focused on 259 sexual assault evidence kits that were not submitted for analysis at the time the related cases were originally investigated. The study asked Houston Police Department investigators to consider whether the results of a review of those kits for foreign biological material would likely change the outcome of the related investigations. Investigators reported that they believed the new information would aid the investigation of cases associated with 3 percent of the kits in the study. Because the key metric for whether an investigation would be furthered was the investigators' judgment, this study demonstrates how the benefits of expanded testing can depend on both case circumstances and investigators' perceptions of those circumstances.

Based on the information we reviewed, it is unclear whether analyzing all sexual assault evidence kits in California would substantially improve the arrest and prosecution rates in sexual assault cases in the State. The examples from jurisdictions such as Manhattan, New York, and Wayne County, Michigan, show that investigative outcomes of certain cases can benefit from expanded analysis of large numbers of previously unanalyzed kits. In contrast to these examples, the only research study we identified that provided information about whether the outcomes of sexual assault investigations change after kit analysis was the study in Los Angeles County. The study concluded that none of the case outcomes changed because of kit analysis, although further information we obtained indicated that the Los Angeles Police Department obtained some new arrests and convictions as a result of kit analysis. In addition, it is problematic to extrapolate any of the results discussed above to California jurisdictions. This is because outcomes from analyzing previously unanalyzed kits are likely to vary depending on the reasons the kits went unanalyzed. The presentations from Manhattan and Wayne County did not note whether investigators considered analyzing the unanalyzed sexual assault evidence kits at the time of the original investigations. The Los Angeles County study specifically notes that investigators had decided at the time of the investigation that kits did not need to be analyzed because the investigators concluded that the cases would not be helped by kit analysis. If investigators have already made such determinations, we would expect there to be less benefit to analyzing kits than in cases where no decision about the kit's value to an investigation was ever made. Therefore, from the information we reviewed, it is difficult to determine what benefit California may realize from a change to an analyze-all approach to sexual assault evidence kits. We suggest

From the information we reviewed, it is difficult to determine what benefit California may realize from a change to an analyze-all approach to sexual assault evidence kits.

changes to state law in Chapter 2 that we believe would provide additional information regarding potential benefits from expanded testing of kits.

Recommendation

To ensure that sexual assault evidence kits are not overlooked and the reason why they are not sent for analysis is clear, by December 1, 2014, the Oakland Police Department and the San Diego Police Department should adopt a policy that requires investigators to document the reason they do not submit a request for sexual assault evidence kit analysis to a crime lab.

Chapter 2

CRIME LABS' FINITE RESOURCES AND VARIED RESPONSIBILITIES AFFECT HOW QUICKLY THEY ANALYZE SEXUAL ASSAULT EVIDENCE KITS

Chapter Summary

Although none of the three local law enforcement agencies (agencies) we reviewed maintain formal time frames for requesting and analyzing sexual assault evidence kits, investigators and lab analysts almost always processed the sexual assault evidence kits associated with cases we reviewed within key statutory time frames for prosecuting the cases. While the labs generally met these time frames, using the federal definition of backlogged evidence, we found that each crime lab we visited had backlogged sexual assault evidence kits during our review period. Federal funding is available to assist labs in reducing these backlogs, and each lab we visited receives this funding. In addition, the labs also receive state-directed funding that can be used to process sexual assault evidence kits. These state funds also finance the California Department of Justice's (Justice) Rapid DNA Service (RADS) program, which tests all sexual assault evidence kits collected in specific counties across the State. If these counties provided more information about the outcome of RADS cases to Justice, that information could inform the Legislature about the potential benefits of analyzing all sexual assault evidence kits in California.

Law Enforcement Investigators and Crime Labs Lack Formal Time Frames for Processing Sexual Assault Evidence Kits

State law establishes certain time frames within which agencies must prosecute offenders in sexual assault cases. While the agencies we reviewed did not maintain formal expectations for how quickly to request a kit analysis, we found that, with limited exceptions at the Oakland Police Department, requests for analysis were made in a timely fashion. Similarly, the crime labs that serve these agencies did not maintain formal policies about how quickly sexual assault evidence kits should have been analyzed during the period we reviewed, but in almost all of the cases we reviewed, the labs completed analysis of the sexual assault evidence kits within the key statutory time frames.

If biological evidence is analyzed for DNA type within two years of the date of the offense, but the name of the suspect is unknown before the 10-year statute of limitations expires, investigating agencies have an additional year from the time they conclusively identify a named suspect to file charges.

Law Enforcement Agencies Generally Made Requests for Sexual Assault Evidence Kit Analysis Within a Reasonable Amount of Time

State law establishes deadlines for prosecuting sexual assault cases but creates a special exception in cases where evidence is analyzed for DNA type within a certain amount of time. The statute of limitations in state law for prosecuting specific sex crimes is 10 years from the date of the offense or 10 years from the date a minor victim turns 18, whichever is longer. However, state law also provides an additional year to file charges in certain circumstances. If biological evidence in a sexual assault case is analyzed for DNA type within two years of the date of the offense, but the name of the suspect is not known before the regular 10-year statute of limitations expires, state law gives investigating agencies one additional year from the time they conclusively identify a named suspect to file charges. This provision of state law could benefit the prosecution of cases in which the identity of an assailant remains unknown for more than 10 years. Accordingly, it is important for agencies to analyze evidence for DNA type within this two-year period.

According to a supervisor at the Oakland Police Department's Special Victims Section, that department has an informal expectation that its investigators will request a sexual assault evidence kit analysis within one week of beginning an investigation. However, its investigators did not always make requests to the lab within this time frame. In fact, Oakland Police Department investigators only fulfilled this expectation in seven of 15 cases we examined. In one of the other eight cases, the investigator did not request a kit analysis until almost five months after opening the investigation. Despite the delayed request for analysis, the Oakland Police Department's crime lab analyzed this sexual assault evidence kit within two years of the date of the offense. However, in another of the eight cases, a delayed request meant that the department's crime lab did not finish its analysis of the associated sexual assault evidence kit within two years of the offense. The department assigned this case to an investigator in September 2011, but the supervisor told us that the investigator never started the investigation and changed units within the department a year after the case was assigned to him. Subsequently, investigators submitted a request for a sexual assault evidence kit analysis in March 2013. The lab completed its analysis of the kit in July 2014 and detected no foreign DNA—that is, DNA from another person. Because the analysis of the sexual assault evidence kit from this case produced no foreign DNA, even if it had completed the analysis within two years, the department would not have been able to extend the statute of limitations. However, the department could not have known the kit would not produce a DNA profile and therefore risked missing such an opportunity.

A delayed request for kit analysis caused the Oakland Police Department to miss the two-year window in one other case as well. We reviewed 10 additional cases to determine whether the department completed the requested analysis of sexual assault evidence kits within the first two years after the offenses. In one of those cases, the department did not meet this time frame. In that case, the department received an initial report regarding a sexual assault in March 2007 and an investigator did not submit an analysis request until February 2009, 23 months later. A supervisor in the Oakland Police Department's Special Victims Section explained that at the time of the initial report, the unit was understaffed and could not investigate the case right away. The department's lab subsequently uploaded a DNA profile from this kit to the Combined DNA Index System (CODIS) in August 2009, 29 months after the assault occurred. Because of the delay in this case from 2007, the Oakland Police Department will not be able to extend the statute of limitations as it might have been able to do if it had analyzed the kit for this case within two years of the date of the offense.

In both of the cases we discuss, the department might still be able to prosecute the offender if their identity is discovered within 10 years of the offense. Even if the offender's name is not discovered by that time, the department may be able to obtain a John Doe DNA warrant in the case from 2007 and therefore meet the statute of limitations. A John Doe DNA warrant may be filed when a suspect's name is not known, but the agency has obtained the suspect's unique DNA profile from evidence collected during the investigation. That profile is used in the arrest warrant as the unique identifier describing the defendant, instead of his or her name. If such a warrant is filed within 10 years of the date of the offense, it satisfies the statute of limitations, and the warrant can be amended later to add the suspect's name. According to the supervisor in the Oakland Police Department's Special Victims Section, to get such a warrant in the 2007 case the department needs to clarify certain information about the case, and the victim has not returned the department's telephone calls or letters regarding the case; therefore, the department has not sought to obtain a John Doe DNA warrant in that case. The department's difficulty in obtaining a warrant in this case highlights the importance of analyzing biological evidence within the first two years following a sexual assault.

Oakland Police Department lab personnel reported that in May 2014 the lab changed its practices related to how quickly it begins analysis of sexual assault evidence kits. According to its DNA technical leader, effective May 2014 the lab began analyzing kits as they are received into the department's property unit. The DNA technical leader reported that on a weekly basis the lab's staff retrieve all sexual assault evidence kits that the department's

The department's difficulty in obtaining a warrant in this case highlights the importance of analyzing biological evidence within the first two years following a sexual assault.

property unit has received in the past week. Once staff have collected the kits, the supervisor in the Special Victims Section communicates with the technical leader to advise the lab which kits should not be analyzed. According to the lab director, for the kits the lab will analyze, the current goal is to test the kits and upload corresponding profiles to CODIS within two weeks of receipt of the kits and to finalize the lab reports on the analyses within four weeks. However, the technical leader noted that this change in practice has not been formalized as a policy, but rather is the result of a verbal agreement with investigators. Still, if the lab is successful in following its new practice of completing analyses of all kits it analyzes within four weeks of receipt, it will eliminate the risk that any investigative delays in the Oakland Police Department will result in missed opportunities to extend the statute of limitations in those cases.

The San Diego Police Department and the Sacramento Sheriff generally appear to request analyses in a timely manner.

Neither the San Diego Police Department nor the Sacramento County Sheriff's Department (Sacramento Sheriff) maintain formal or informal time expectations for investigators to request sexual assault evidence kit analyses, but generally each appears to request analyses in a timely manner. San Diego Police Department investigators requested sexual assault evidence kit analyses within 30 days of opening investigations in all but one of the 15 cases we reviewed. The Sacramento Sheriff's investigators requested analyses within 30 days of opening investigations in 11 of the 15 cases we reviewed. Further, for none of the 30 requests for analysis by the two agencies did their labs take more than two years from the date of the offense to complete their analysis. As a result, these agencies met or are still able to meet the time requirements for extending the statute of limitations in all 30 cases.

Crime Labs We Visited Balance Requests to Analyze Sexual Assault Evidence Kits Against Their Other Workload

Similar to the investigators at the agencies we reviewed, their associated crime labs also lacked firm time frames for how quickly to analyze sexual assault evidence kits during the period we reviewed. According to the manager of the San Diego Police Department's crime lab, her lab works more efficiently without formal prioritization procedures because the department's investigators need flexibility to frequently reprioritize cases based on changing circumstances. The need for flexibility is also reflected in the lab operations and quality assurance manual for the crime lab at the Oakland Police Department, which instructs analysts to consider a variety of factors when they prioritize service requests, including the urgency of the case, the seriousness of the crime in question, and the perishable nature of evidence. The director of the Sacramento County District Attorney's

(Sacramento District Attorney) crime lab stated that there are no formal time frames associated with requests to analyze sexual assault evidence kits and that the lab prioritizes kit requests alongside the other demands on the lab’s DNA personnel. However, the lab director noted that the lab will process cases in which the perpetrator is a public safety risk right away and also considers whether the case has an upcoming court date. Under these approaches to managing lab workloads, Table 4 shows the range and median amount of time it took labs to process sexual assault evidence kits during the period we reviewed.

Table 4
Range and Median Days for Crime Labs to Complete Analysis of Sexual Assault Evidence Kits That Were Received From 2011 Through 2013 by Three Law Enforcement Agencies

YEAR	OAKLAND POLICE DEPARTMENT			SAN DIEGO POLICE DEPARTMENT			SACRAMENTO COUNTY DISTRICT ATTORNEY (SACRAMENTO DISTRICT ATTORNEY)		
	MINIMUM DAYS TO COMPLETE ANALYSIS OF A KIT	MAXIMUM DAYS TO COMPLETE ANALYSIS OF A KIT	MEDIAN DAYS TO COMPLETE ANALYSIS OF A KIT	MINIMUM DAYS TO COMPLETE ANALYSIS OF A KIT*	MAXIMUM DAYS TO COMPLETE ANALYSIS OF A KIT*	MEDIAN DAYS TO COMPLETE ANALYSIS OF A KIT*	MINIMUM DAYS TO COMPLETE ANALYSIS OF A KIT	MAXIMUM DAYS TO COMPLETE ANALYSIS OF A KIT	MEDIAN DAYS TO COMPLETE ANALYSIS OF A KIT
2011	12	259	112	3	241	71	44	162	75
2012	16	596	137	11	486	94	12	385	106
2013	17	1,082	391	2	595	90	19	316	76

Sources: California State Auditor’s analysis of evidence and crime lab records from the Oakland Police Department’s Laboratory Information Management System, the San Diego Police Department’s EvidenceOnQ database, the San Diego Police Department’s LabTracker database, and the Sacramento District Attorney’s crime lab’s JusticeTrax database. See the *Method to Assess Data Reliability* section beginning on page 13 in the Introduction to the report regarding the electronic data used in the table.

Note: Because of data limitations, our analysis focused only on kits received into evidence from 2011 through 2013 as described in Table 1 beginning on page 11.

* The data in this report regarding the length of time the San Diego Police Department’s crime lab took to process sexual assault evidence kits overstate the time taken by the lab for this purpose. This is because of limitations in the database the crime lab used to record information about evidence it processes that precluded us from identifying the specific dates on which the lab started and completed processing individual sexual assault evidence kits.

As the table indicates, each crime lab demonstrated a wide range of time frames in analyzing the sexual assault evidence kits it completed from 2011 through 2013. For example, the time frames for completing analysis for the sexual assault evidence kits the Oakland Police Department completed in 2013 varied from 17 days to 1,082 days with a median of 391 days. Supervisors at the crime labs provided various reasons why analysis of some kits may take longer than others. The DNA technical leader at the Oakland Police Department lab stated that demand for lab analyses exceeded capacity for much of the period we reviewed, partly as a result of unfilled scientist positions and mandatory furloughs of lab personnel. The director of the Sacramento District Attorney’s crime lab stated that in the instance of the kit in Table 4 that took the lab 316 days to process in 2013, the lab was waiting for a

biological sample from the suspect before beginning analysis. When the sample was never received, the lab proceeded with testing the kit nine months after receiving the request and finished the analysis approximately 45 days after that. The lab director offered a similar explanation for the case in 2012 that took 385 days. At the San Diego Police Department, because of data limitations we could only measure the crime lab's timeliness of processing sexual assault evidence kits by considering the length of time the lab took to analyze all the evidence it received for each case involving a sexual assault evidence kit. However, the lab manager noted that if investigators request that work on other cases take a higher priority, analysis of other evidence, including sexual assault evidence kits, may be delayed. In addition, she noted that the lab's overall processing of work requests may slow down when the lab temporarily loses staff.

Although the Oakland Police Department lab does not have formal timelines for analyzing sexual assault evidence kits, the lab's DNA technical leader stated that for the time period we reviewed the lab provided a "rush" designation for cases that investigators and lab personnel agreed were higher priority.¹⁰ However, the technical leader stated that the lab's prioritization policy did not define a time frame within which rush requests should or must be completed. Instead, in the cases we reviewed, we observed that investigators provided dates by which they needed lab results when they submitted rush requests. Out of the 15 cases we reviewed, five requests were marked as rush requests. However, the lab completed its analysis before the investigators' deadlines in only two of these cases. In the longest of the cases where the lab missed the deadline, it missed that deadline by 300 days. The DNA technical leader commented that this case was an outlier and that the analyst assigned to the request had a full workload of competing priorities and had worked the request as quickly as possible given other priorities and other circumstances, such as furlough days. Despite the delay, we noted that the analysis for this case was still completed within two years of the offense date, preserving the department's ability to prosecute this case in the future if it cannot identify the suspect within 10 years of the offense date.

Similarly, according to the lab director, the Sacramento District Attorney's crime lab had a priority designation that the lab staff took into account when they prioritized their workload. When Sacramento Sheriff's investigators submitted a request for analysis, they could indicate that they wanted lab results *as soon*

Out of the 15 cases we reviewed at the Oakland Police Department lab, five requests were marked as rush requests. However, the lab completed its analysis before the investigators' deadlines in only two of these cases.

¹⁰ As discussed previously in this chapter, the Oakland Police Department's crime lab reported adopting an informal practice in May 2014 to complete analysis of sexual assault evidence kits within four weeks of receiving them at the department. The DNA technical leader at the lab stated that the "rush" designation no longer applies, as the lab analyzes each kit as it is received.

as possible (ASAP). However, the ASAP designation, like the Oakland Police Department's rush designation, did not tie directly to a particular time frame for the lab to complete the analysis. Eight of the 15 cases we reviewed in which investigators requested kit analysis were cases with an ASAP request. In general, we saw that the average time to complete these requests was faster than the average time to complete the non-ASAP requests we reviewed. However, one ASAP request took the lab much longer to complete than the other ASAP requests. In this case, it took the lab more than 360 days to upload a DNA profile to CODIS. According to the lab director, the analysis request initially indicated a known suspect and it was common practice to request additional DNA samples from known suspects before conducting the analysis. However, according to the lab director, the lab had no record of any communication with investigators until nearly one year after the request was made, by which point investigators stated they could not locate the suspect. The lab then proceeded with the kit analysis. Still, this analysis was completed within two years of the date of the offense, preserving the ability to prosecute this case without requesting a John Doe DNA warrant if the name of the suspect is not discovered before the regular statute of limitations expires.

Unlike the other locations we visited, the San Diego Police Department's crime lab reported that it does not have a designation for expediting analysis of a sexual assault evidence kit. Instead, the lab manager stated that a DNA supervisor prioritizes analyses as needed by the severity of the crime and the usefulness of the evidence, as well as informal communication with department investigators about the urgency of the analysis. For example, in one case the investigator requested an expedited sexual assault evidence kit analysis because the deputy district attorney assigned to the case wanted to know the results before the arraignment of the suspect the following day. According to case documents, the lab analyst provided preliminary results of the kit screening that same day, and lab records indicate that the analyst completed the full kit analysis in 12 days.

Unlike the other locations we visited, the San Diego Police Department's crime lab reported that it does not have a designation for expediting analysis of a sexual assault evidence kit.

Sexual Assault Evidence Kits Are Frequently Backlogged at Crime Labs

According to a federal definition of *backlog*, all three crime labs we visited had sexual assault evidence kits backlogged at their lab during our review period. Once a certain amount of time passes after a crime lab receives both a request to analyze evidence and the actual evidence itself, the evidence is considered backlogged. Different crime labs have different definitions of a backlog. For example, the crime lab directors at both the San Diego Police Department and the Sacramento District Attorney reported that their labs consider evidence backlogged if a final report on

At the Oakland Police Department, most sexual assault evidence kits the lab analyzed during that period were part of a backlog at some point.

analysis is not finished within 30 days of the request arriving at the lab. Alternatively, the Oakland Police Department's crime lab director stated that evidence is part of her lab's backlog as soon as the lab receives a request for analysis. Moreover, the directors at all three labs noted that their labs may upload profiles from sexual assault evidence kits to CODIS prior to issuing the final lab report on the analysis. To standardize the discussion of backlogs at crime labs it funds, the U.S. Department of Justice's National Institute of Justice (NIJ) defines evidence as backlogged when a final report on its analysis has not been issued within 30 days of receipt of the evidence in a laboratory. We used this definition for reviewing the sexual assault evidence kit workloads at the three labs we visited, and under this definition all three labs had sexual assault evidence kits that were collected into evidence from 2011 through 2013 and were backlogged during the 39-month period we reviewed.

At the Oakland Police Department, most sexual assault evidence kits the lab analyzed during that period were part of a backlog at some point, and the analysis for very few was completed within 30 days, as shown in Table 5. According to the department's lab director, 30 days is a small amount of time to complete testing on a kit, and kits analyzed within this time frame generally are "rush" cases that represent extreme matters of public safety. The director also explained that during our review period, staff furloughs contributed to low lab capacity, which slowed case processing and compounded the backlog. Finally, the director explained that new incoming cases can change the lab's priorities. For example, kit analysis may be delayed if the lab receives evidence in another case that represents a greater public safety concern; an example of such a case could be one involving a violent serial offender. Our review of the Oakland Police Department's crime lab data showed that 134 sexual assault evidence kits for which analyses were requested between 2011 and 2013 were still backlogged as of March 31, 2014.

In addition, many more sexual assault evidence kits were part of the backlog at the Oakland lab during the period we reviewed. In Oakland, we were able to review information for kit analyses requested on or before December 31, 2013, which included requests that were received before the start of our audit period in 2011. Our examination showed that while the lab completed analyses on 716 kits during the 39-month period we reviewed, all but 13 took more than 30 days to complete, indicating that many more kits were at some point a part of the backlog. In addition to the reasons for the backlog already discussed, the crime lab director also pointed out that in 2011 the lab was working on an effort to analyze previously unrequested kits. It is possible that this effort contributed to accumulating a backlog as scientists focused on other cases.

Table 5
Number of Sexual Assault Evidence Kits Received From 2011 Through 2013 by Three Law Enforcement Agencies That Were Backlogged at Their Crime Labs From 2011 Through the First Quarter of 2014

YEAR	OAKLAND POLICE DEPARTMENT			SAN DIEGO POLICE DEPARTMENT			SACRAMENTO COUNTY DISTRICT ATTORNEY		
	KITS COMPLETED WITHIN 30 DAYS	KITS COMPLETED IN MORE THAN 30 DAYS	TOTAL KITS COMPLETED	KITS COMPLETED WITHIN 30 DAYS*	KITS COMPLETED IN MORE THAN 30 DAYS*	TOTAL KITS COMPLETED†	KITS COMPLETED WITHIN 30 DAYS	KITS COMPLETED IN MORE THAN 30 DAYS	TOTAL KITS COMPLETED
2011	3 (10%)	28 (90%)	31 (100%)	11 (15%)	64 (85%)	75 (100%)	0 (0%)	6 (100%)	6 (100%)
2012	2 (4%)	51 (96%)	53 (100%)	4 (3%)	130 (97%)	134 (100%)	4 (11%)	34 (89%)	38 (100%)
2013	1 (1%)	106 (99%)	107 (100%)	4 (2%)	165 (98%)	169 (100%)	2 (5%)	35 (95%)	37 (100%)
First Quarter – 2014	0 (0%)	76 (100%)	76 (100%)	0 (0%)	28 (100%)	28 (100%)	0 (0%)	4 (100%)	4 (100%)

Sources: California State Auditor’s analysis of data from the Oakland Police Department’s Laboratory Information Management System, the San Diego Police Department’s EvidenceOnQ database, the San Diego Police Department’s LabTracker database, and the Sacramento District Attorney’s crime lab’s JusticeTrax database. See the *Methods to Assess Data Reliability* section beginning on page 13 in the Introduction to the report regarding the electronic data used in the table.

Note: For the purposes of this table, a backlogged sexual assault evidence kit is a kit for which the labs did not publish a final report regarding their analysis within 30 days of receiving the kit, which is the definition adopted by the U.S. Department of Justice’s National Institute of Justice. Because of data limitations, our analysis focused only on kits received into evidence from 2011 through 2013 as described in Table 1 beginning on page 11.

* The data in this report regarding the length of time the San Diego Police Department’s crime lab took to process sexual assault evidence kits overstate the time taken by the lab for this purpose. This is because of limitations in the database the crime lab uses to record information about the evidence it processes that precluded us from identifying the specific dates on which the lab started and completed processing individual sexual assault evidence kits.

† The total number of sexual assault evidence kits for the San Diego Police Department is overstated because it includes sexual assault evidence kits for both suspects and victims in sexual assault cases. Suspect kits are not the focus of this audit. The data in the San Diego Police Department’s EvidenceOnQ database does not always distinguish between these kits, and therefore we could not determine the number of victim kits.

The San Diego Police Department’s lab completed testing within 30 days for a small portion of its cases involving sexual assault evidence kits. Because of data limitations, we were unable to determine the time this lab required to analyze individual sexual assault evidence kits. According to the lab manager, the sexual assault evidence kit is typically the first piece of evidence the lab tests for an investigation, and the lab’s turnaround times on work requests for evidence related to sex crimes is generally between 50 and 60 days. The lab’s sexual assault evidence kit analysis can be followed by other requests for analysis that may allow the lab to match a DNA profile found in the sexual assault evidence kit to other pieces of evidence the police collect during the investigation. An assistant chief at the department explained that he expects investigators to pursue collecting additional evidence throughout an investigation. As a result, the lab’s analysis of all evidence in a case can take longer to complete than the initial analysis of the sexual assault evidence kit.

The Sacramento District Attorney's lab was able to complete testing on very few sexual assault evidence kits within 30 days, indicating that most kits were at some point part of a backlog.

The Sacramento District Attorney's lab was able to complete testing on very few sexual assault evidence kits within 30 days, as shown in Table 5, indicating that most kits were at some point part of a backlog. According to the lab director, two key reasons may have delayed lab analyses. First, delays in communication from the law enforcement officer assigned to a case, especially in answering questions about the details or status of the case, may have delayed the lab's analysis; second, situations in which the lab was waiting to receive a DNA sample to use for comparison purposes in its analysis, such as from a consensual partner or from a potential suspect, could also have delayed analysis.

The information about backlogged sexual assault evidence kits at these labs demonstrates that the labs did not process most of their kits in fewer than 30 days. We noted the same condition for many of the law enforcement agencies we surveyed. Sixteen of the 18 survey respondents that tracked the time sexual assault evidence kits spent at their labs reported that the labs took longer than 30 days to analyze kits. Further, while not specific to sexual assault evidence kits, the NIJ has published reports on evidence backlogs at crime labs across the country. These reports, along with our survey results, indicate backlogs of sexual assault evidence kits are not unique to the labs we visited. For the full results of our survey of agencies, see the Appendix to this report.

Further, sexual assault evidence kits are not the only evidence that crime labs process that can end up backlogged. Labs are responsible for processing evidence from multiple types of investigations, and even within a sexual assault investigation, the sexual assault evidence kit may not be the only piece of evidence. As we discussed in the previous section, lab directors emphasized to us the importance of flexibility in prioritizing casework. If the labs we reviewed, at their current capacity, made an effort to ensure that sexual assault evidence kits were never backlogged, it is likely that the analysis of valuable evidence from other investigations would be delayed instead.

Crime Labs Use a Mix of Funding to Conduct DNA Analysis

All three labs we visited receive federal, state, and local funding that can be used to pay for the processing of sexual assault evidence kits. Local funding at these labs comes from the local governments and is available for a variety of purposes, including DNA analysis. Labs receive state-directed funding from the DNA Identification Fund, which is authorized by the DNA Fingerprint, Unsolved Crime and

Innocence Protection Act (Proposition 69).¹¹ According to state law, a portion of these funds is dedicated to DNA casework, which includes the analysis of sexual assault evidence kits but also includes DNA analysis of other sexual assault case evidence, DNA evidence from homicide cases, and DNA evidence from other types of law enforcement investigations. Finally, labs can receive funding from the Debbie Smith DNA Backlog Grant Program (backlog grant), a federally funded program. According to records the three labs provided, only between 2 percent and 13 percent of total lab spending for fiscal year 2010–11 through the middle of fiscal year 2013–14 was from backlog grant funding, and only between 1 percent and 4 percent of total spending was from Proposition 69 funding. Thus, the largest funding source for the labs was local.

Federal funding is available to local governments for a variety of purposes related to DNA analysis, including the specific purpose of reducing and eliminating DNA evidence backlogs at crime labs. As already noted, the NIJ defines *backlogged evidence* as evidence for which a lab has not published a final report within 30 days of receipt of the evidence. According to the grant reports that these labs submit to the NIJ every six months, the labs generally use the backlog grant funds to fund staff positions, cover overtime expenses, purchase equipment, and send staff to training. For example, the Oakland Police Department's crime lab used this funding to buy a digital microscope with photographic capabilities, which the lab stated in a grant status document will allow it to process DNA analysis requests more quickly and to process more requests. The lab also reported using backlog grant funding to send three criminalists to training so that the lab would meet education requirements necessary for it to continue uploading DNA profiles to CODIS. The director of the crime lab at the San Diego Police Department stated that her lab uses very little of its backlog grant funding to analyze sexual assault evidence kits. Rather, she said that the lab uses the funding to increase the efficiency of the whole DNA unit. Table 6 on the following page shows the amount of federal funding each agency we visited received and spent.

Funds generated by Proposition 69 also provide crime labs with funding for DNA analysis. Under Proposition 69, counties charge a fee of \$1 on every \$10 of fines or penalties collected as the result of criminal offenses. Part of this money is transferred to the State's DNA Identification Fund and may be used by Justice to support DNA testing in the State. Counties manage the remainder to fund a variety of local law enforcement agency activities, including the collection, storage, and analysis of

The director of the crime lab at the San Diego Police Department stated that her lab uses its backlog grant funding to increase the efficiency of the whole DNA unit.

¹¹ As we discuss later in this section, these funds are collected and managed by California counties. However, because the funds accrue to counties as a result of Proposition 69, a statewide proposition, we classify these funds as state funds.

DNA evidence. At the three labs we visited, according to lab officials and available financial records, Proposition 69 money funds staffing costs for the labs. In addition, according to the DNA technical leader at the Oakland lab, the department uses Proposition 69 funds for service contracts to maintain equipment used in a variety of casework. According to the director of the Sacramento District Attorney's crime lab, the analysts funded by Proposition 69 at her lab did not analyze sexual assault evidence kits during the audit period. However, the director stated that as part of the lab's effort to test all kits, which began in January 2014, those analysts now sometimes assist in processing kits. Notably, while the Sacramento District Attorney and the San Diego Police Department spent the entirety of their Proposition 69 funding each year during the period we reviewed, the Oakland Police Department spent only a fraction of what it received. The Oakland Police Department's lab director explained that spending less Proposition 69 funding than the lab receives is a deliberate decision so that the lab can cover costs associated with significant, nondiscretionary investments in the DNA program when they arise. The director said she believes it is more prudent in the long run to save the Proposition 69 money for expensive purchases, contracts, or personnel costs in the future than to use it for relatively inexpensive consumable supplies now.

Table 6
Federal and State Funding Received for Processing DNA Evidence at Three Crime Labs

FISCAL YEAR	OAKLAND POLICE DEPARTMENT		SAN DIEGO POLICE DEPARTMENT		SACRAMENTO COUNTY DISTRICT ATTORNEY (SACRAMENTO DISTRICT ATTORNEY)	
	RECEIVED	SPENT*	RECEIVED	SPENT	RECEIVED	SPENT
Federal Funding						
2010–11	\$372,000	\$466,000	\$284,000	\$344,000	\$435,000	\$507,000
2011–12	443,000	410,000	387,000	288,000	586,000	628,000
2012–13	408,000	441,000	357,000	172,000	540,000	742,000
First quarter–Second quarter 2013–14	427,000	266,000	326,000	194,000	481,000	219,000
State Funding						
2010–11	97,000	29,000	424,000	424,000	128,000	128,000
2011–12	131,000	44,000	377,000	377,000	133,000	133,000
2012–13	106,000	16,000	394,000	394,000	225,000	225,000
First quarter–Second quarter 2013–14	114,000	52,000	139,000	139,000	112,000	112,000

Sources: California State Auditor's analysis of financial and grant reports from the Oakland Police Department, the San Diego Police Department, and the Sacramento District Attorney.

* Federal funding spent can be more than funding received because federal backlog grant funds can be spent over a three-year period.

While the labs we visited use a mix of funding to complete DNA analysis, none of the labs knew exactly how much of each funding source they spend on analyzing sexual assault evidence

kits because none of the labs track spending down to the level of the type of evidence they analyze. According to the director at the Oakland Police Department lab, the lab does not have a means of separating out the costs of analyzing sexual assault evidence kits from the costs of analyzing other types of biological samples, and that breaking out costs in this way has not been a requirement in the lab's normal business practices. The director of the Sacramento District Attorney's lab stated that it is difficult to assess the amount of funding from specific sources that it spends on kit analysis because the lab can use different sources of funding to pay for different aspects of the analysis of a kit.

According to the lab staff, there is no fixed cost for analyzing a sexual assault evidence kit. For example, the director at the Oakland Police Department lab explained she could not provide a standard cost per kit because each case is unique and varied factors impact the amount of time needed to complete the analysis. When we asked each lab for an average cost per kit, the estimates we received ranged from about \$1,000 to \$1,700 per kit. However, the Oakland lab's estimate of \$1,000 was for supplies only, as the lab director was reluctant to estimate the cost of staff time due to the varied nature of each case. In response to our survey of 25 agencies in California, the four agencies who reported average costs per kit generally provided costs between \$1,000 and \$2,500 per kit.¹² The most common response to our survey question about costs per kit was from 20 of the survey respondents, who all stated they had no costs associated with sexual assault evidence kit analysis. All of these agencies used either Justice's crime labs or a government-owned lab outside of their agency.

The most common response to our survey question about costs per kit was from 20 of the survey respondents, who all stated they had no costs associated with the kit analysis because they use either Justice's crime labs or a government-owned lab outside of their agency.

Determining the Potential Benefits of Expanded Kit Testing Requires Additional Research

Without more information, it is not possible to determine the level of benefits that testing all sexual assault evidence kits could yield investigators and prosecutors in California or the cost of expanding testing to all sexual assault evidence kits statewide. One potential benefit of testing every kit is that additional DNA profiles would be in CODIS, which could allow investigators to identify previously unidentified suspects. As discussed in Chapter 1, research is limited concerning the extent of the benefits to sexual assault investigations from analyzing all kits. However, Justice already operates a program that could provide valuable information about an analyze-all-kits approach. Beyond that program, we believe the Legislature has

¹² One agency provided an average cost estimate more than two times greater than the estimates other agencies provided. This estimate was based on the costs the agency incurred to use an external lab for overflow cases. Thus, we did not include this cost estimate in this range.

We believe the Legislature has additional opportunities to address the lack of information so that decisions about expanding the number of sexual assault evidence kits that are analyzed are informed by data specific to California's agencies.

additional opportunities to address the lack of information so that decisions about expanding the number of sexual assault evidence kits that are analyzed are informed by data specific to California's agencies. Finally, the Legislature could require analysis of a specific set of kits to ensure that the kits in cases with unknown assailants are always analyzed.

The Department of Justice's Rapid DNA Service Program Could Provide Vital Information About the Effectiveness of Testing Every Sexual Assault Evidence Kit

A state-run program already exists that could provide more information about the benefits of analyzing all sexual assault evidence kits. According to the chief of Justice's Bureau of Forensic Services (bureau chief), Justice's RADS program tests every sexual assault evidence kit that hospitals collect in the nine counties that the program serves.¹³ The primary goal of RADS is for analysts to obtain usable DNA profiles to upload into CODIS in order to find links to suspects or convicted felons in other cases. In addition, the program is designed to provide the results of this analysis no more than 30 days after the lab receives the kit. While the number of counties Justice serves has grown in the three years since RADS' inception, the bureau chief indicated that it would be difficult to expand the RADS program at this time because Justice's labs are at maximum capacity and expanding beyond its current capacity would require additional funds for space, equipment, and labor. In fact, the RADS program was previously designed to provide results to law enforcement investigators within 15 days, but this was amended to the current 30 days after Justice added Alameda County to the program in May 2014.

According to the bureau chief, a key difference between the RADS program and how agencies process sexual assault evidence kits is in the role of investigators. For each case that uses RADS, hospital employees send up to three swabs from a victim's body directly to Justice's crime labs in a prepaid envelope. Sending these swabs directly to Justice removes the investigators from the decision about whether to analyze the evidence, and it distinguishes RADS from the processes we observed at the

¹³ According to the bureau chief, these nine counties are Alameda, Butte, Humboldt, Lake, Marin, Napa, Santa Barbara, Solano, and Sonoma. Justice analyzes up to three swabs from every sexual assault evidence kit collected in these counties. In contrast, other labs may analyze urine, blood, and other items as part of the analysis of a kit. Analysis for all RADS swabs occurs at Justice's Richmond lab except for cases from Santa Barbara County, which are handled at Justice's Santa Barbara lab.

agencies we visited.¹⁴ The bureau chief stated that if Justice's analysts obtain a DNA profile that is considered to be the perpetrator's from the swabs the hospital provided, they upload the DNA profile into CODIS to try to find a match. Justice then communicates CODIS results to investigators in the victim's jurisdiction and works with these investigators as requested to determine whether Justice should complete further analysis of the evidence.

While the RADS program ensures that at least a portion of every sexual assault evidence kit in nine counties is analyzed, it is unclear to what extent this test-all approach benefits investigators in these counties. According to Justice's bureau chief, the program analyzed samples from 467 kits from May 2011 to March 2014. Data the bureau chief provided show that Justice's analysts identified DNA profiles from about a third of these kits. In addition, about 68 of these profiles provided CODIS hits to known individuals. As we discuss in Chapter 1, a CODIS hit, may help an investigation and might lead to an improved outcome, such as an arrest or a conviction for the case. Although the statistics about the RADS program provide a surface-level look at the program, they do not provide information on the outcomes of the sexual assault cases associated with the CODIS hits.

The agreements between Justice and the counties that are part of the RADS program do not require the counties to inform Justice whether CODIS hits led to arrests or prosecutions. However, Justice could amend the agreements to help ensure that it receives this type of outcome information on the kits it analyzes. The bureau chief agreed this approach would be beneficial to Justice obtaining outcome data from counties, and stated that Justice could make these changes almost immediately. Justice would then be able to report to the Legislature about the investigative outcomes of the cases associated with sexual assault evidence kits it has analyzed under the RADS program, which would enrich the discussion within the Legislature about the potential benefits of analyzing all sexual assault evidence kits statewide.

The State Should Collect More Information About Sexual Assault Evidence Kits

As we discuss in Chapter 1, the total number of unanalyzed kits in California is unknown because there are no requirements for tracking or reporting this information. Justice's bureau chief

¹⁴ As we explain in Chapter 1, as of January 2014 all Sacramento Sheriff sexual assault evidence kits are sent directly from the hospital to the Sacramento District Attorney's lab, and the crime lab is analyzing all kits. Therefore, Sacramento Sheriff investigators are now removed from the decision to analyze a kit.

Although these local agencies currently do not submit information about sexual assault evidence kits to Justice, they are capable of providing this valuable information.

confirmed that Justice does not have data regarding how many sexual assault evidence kits are collected and analyzed in California each year. Further, according to the bureau chief, Justice cannot compel county law enforcement and district attorneys to report information about sexual assault cases, including information about the collection of sexual assault evidence kits. Although state law gives the attorney general direct supervision over county district attorneys and sheriffs, we identified no state law that expressly authorizes Justice to compel local law enforcement to provide these data.

Although these local agencies currently do not submit information about sexual assault evidence kits to Justice, they are capable of providing this valuable information. As we detail in the table beginning on page 52 in the Appendix of this report, 24 of the 25 law enforcement agencies we surveyed reported that they possess unanalyzed kits. Of these 24 agencies, 16 provided information about the number of kits they had; the combined total was about 3,300 unanalyzed kits as of May and June 2014, which is when they responded to the survey. One agency reported having approximately 720 unanalyzed kits. These responses demonstrate that agencies are capable of cataloging the number of kits they possess. Such data would be invaluable in any effort to estimate the cost of increasing the number of sexual assault evidence kits analyzed. For example, the average cost for the analysis of a sexual assault evidence kit based on information from the agencies we visited and surveyed was about \$1,500. Using this average cost, the cost to analyze the total number of unanalyzed kits reported by our surveyed agencies would be about \$5 million. However, the State and the Legislature cannot identify the full cost of requiring labs to analyze every kit without law enforcement agencies from across the State providing consistent data regarding their collection and analysis of kits.

In addition, as previously discussed, investigators at the agencies we reviewed rarely documented their reasons for not testing a sexual assault evidence kit in an individual case, even though such information would also be valuable. As we explain in Chapter 1, documenting why a kit will not be sent for analysis would benefit the agencies in defending their decisions and the public by increasing accountability for those decisions. In addition, if this information were available statewide, it could also benefit policy makers as they consider any proposed changes to the State's policy on testing sexual assault evidence kits. Specifically, comprehensive data on the reasons kits are not sent to crime labs would allow policy makers to weigh and review the rationales law enforcement provide and assess whether changes to policy are warranted. Without such data, policy makers are not fully informed about the reasons law enforcement agencies do not always send kits in California to crime labs for analysis.

Testing All Sexual Assault Evidence Kits in Cases Where the Assailant Is Unknown Could Provide Additional Benefits to Investigators

If agencies were to request analysis of all sexual assault evidence kits in cases with unknown assailants, the agencies might realize investigative benefits.¹⁵ One investigative value a sexual assault evidence kit holds is the potential to produce a DNA profile that could, if uploaded to CODIS, identify a suspect by name. It is clear that the sexual assault cases that would benefit the most from obtaining a suspect name are those cases with an unknown assailant. However, as we discuss in Chapter 1, investigator decisions about whether to analyze sexual assault evidence kits are related to specific case circumstances, such as whether a victim actively participates in an investigation. Therefore, during our review of specific cases, we observed that in some cases with unknown assailants, it appeared the investigators did not request analysis of sexual assault evidence kits because they believed some other factor made it unlikely that the outcome of the cases would change even with an analysis. Although this reasoning may make sense in the short term for an individual case, we believe analyzing the kit in cases with an unknown assailant could provide benefits that could extend beyond the individual cases.

Analyzing all kits in cases with unknown assailants would result in more DNA profiles in CODIS than would otherwise be the case. As previously stated in this report, in California, adults arrested or convicted for specific felony offenses must provide DNA samples, which Justice then uploads to CODIS. Additionally, the DNA profiles of suspects in criminal investigations may be uploaded to the State's DNA database. However, because unknown assailant cases by their very nature do not present these same opportunities for DNA collection, DNA profiles in these cases will only be uploaded to CODIS if a crime lab obtains them from evidence, such as a sexual assault evidence kit. Once uploaded, these DNA profiles can be matched to other profiles in CODIS, including any profiles uploaded in the future. Therefore, testing all kits in unknown assailant cases would increase the chance that matches will be made between DNA profiles in these cases and profiles from other sexual assault cases, thereby potentially furthering investigations of multiple sexual assault cases.

While we cannot be certain how often a change in practice for analyzing kits would improve the arrest or conviction rate in either the original case or others, uploading profiles from cases with unknown assailants, when compared to other cases, appears more

Testing all kits in unknown assailant cases would increase the chance that matches will be made between DNA profiles in these cases and profiles from other sexual assault cases, thereby potentially furthering investigations of multiple sexual assault cases.

¹⁵ We defined *unknown assailant cases* as cases in which the investigator does not know the identity of the suspect.

likely to benefit law enforcement investigations. In Chapter 1, we noted that we located only limited research regarding how much an analyze-all approach to sexual assault evidence kit analysis improves the arrest or conviction rates of investigations. However, the authors of some research we reviewed acknowledged the unique nature of unknown assailant cases. For example, authors of a 2002 research study argued that before DNA databases such as CODIS, there was some justification for not analyzing sexual assault evidence kits for cases without a clear suspect because DNA from a sexual assault evidence kit could only be compared to a known suspect's DNA to confirm matches. But with the availability of DNA databases, the authors argued that there is every reason to analyze DNA profiles in unknown assailant cases as these databases were created from public funds for this very purpose. Further, according to a Federal Bureau of Investigation (FBI) publication, CODIS is designed to assist law enforcement agencies by providing investigative information in cases where crime scene evidence has yielded a DNA profile but no suspect has been identified. Consequently, we believe it prudent for law enforcement to analyze kits from unknown assailant cases and upload all applicable profiles to CODIS to obtain whatever investigation information may be available.

We believe certain types of cases should be exempted from a requirement to analyze sexual assault evidence kits in unknown assailant cases, such as when the victims request that their kits not be analyzed.

However, we believe certain types of cases should be exempted from any requirement to analyze sexual assault evidence kits in unknown assailant cases. Specifically, to respect the preferences of victims, investigators should not be required to have labs analyze kits in sexual assault cases in which the victims request that their kits not be analyzed. Similarly, agencies should be exempted from such a requirement in cases in which investigators determine that no crime occurred (unfounded cases). As discussed in Chapter 1, DNA profiles must be associated with criminal acts to be uploaded into CODIS. Therefore, it would be unnecessary for labs to analyze kits from unfounded cases because even if the kits yielded DNA profiles, they could not be uploaded to CODIS.

It is not possible to know the total number of additional kits crime labs would need to analyze under this new requirement, but research in the criminal justice field indicates that the majority of sexual assaults are committed by someone the victim knows, making unknown assailant cases in the minority of sexual assault cases. In one 2010 study examining backlogs in Los Angeles County, researchers looked at 602 sexual assault incidents across five jurisdictions nationally and found that 79 percent of these incidents were committed by a family member, a friend, or an acquaintance. Other studies specifically examining populations of unanalyzed sexual assault evidence kits show that most of these kits are associated with known or identified assailants. A 2012 study of untested kits in Los Angeles County found

that non-strangers committed 65 percent of sexual assaults in the 1,948 cases examined. In another study, published in 2014, researchers reviewed a selection of unanalyzed kits at the Houston Police Department and found that almost 70 percent of the 259 unanalyzed kits in the study involved a suspect who was not a stranger.

Because a state requirement to analyze all sexual assault evidence kits in unknown assailant cases would increase workloads at crime labs in California, it would be important for the Legislature, should it enact such a law, to address how quickly agencies should process this evidence so that labs can appropriately prioritize workloads. As discussed earlier in this chapter, state law currently provides that if agencies analyze biological evidence within two years after a sexual offense occurs, the agencies can prosecute the case even if they do not learn the name of the assailant until after the 10-year statute of limitations expires. Therefore, a two-year time horizon on analyzing all kits in unknown assailant cases is the longest amount of time that policy makers could give to agencies before limitations to their ability to pursue those cases would come into effect.

The agencies we visited during our audit had varied reactions to a proposed legal requirement of this nature. According to a captain at the San Diego Police Department, if such a requirement were in place, the department's crime lab might have to occasionally shift its limited resources from working on relatively strong cases where prosecution depends on timely lab results to analyzing sexual assault evidence kits that are less likely to ultimately support a prosecution. The captain also noted that a firm deadline for analysis could create particular risks for the department and the public during periods when the crime lab must rapidly process large volumes of evidence on urgent cases, such as a case involving an unidentified violent serial offender. The lab director for the Oakland Police Department crime lab voiced concern about funding for this requirement and stated that this was likely to be a concern statewide. However, the lab director also affirmed that cases with unknown assailants were the most likely to benefit from additional kit analyses. The Sacramento District Attorney's lab director stated that this requirement would have little effect on her lab because, as of January 2014, it already analyzes all sexual assault evidence kits, including those from cases with unknown assailants. Similarly, the workloads of other crime labs that plan to analyze all kits, as recently enacted state legislation encourages them to do, would not be affected by a requirement to test kits in cases with unknown assailants.

Because of the data limitations already discussed, we do not know the precise number of kits that would be added to crime lab workloads if a state requirement to analyze all kits in unknown

A two-year horizon on analyzing all kits in unknown assailant cases is the longest amount of time that policy makers could give to agencies before limitations to their ability to pursue those cases would come into effect.

We estimate there may be between 1,500 and 2,200 annual unknown assailant cases, most of which would likely have an associated sexual assault evidence kit.

assailant cases were implemented or the precise cost of such a requirement. The research we reviewed indicates that 20 percent to 30 percent of sexual assault cases have unknown assailants. The most reliable crime data we could find related to sexual assaults is the FBI's Uniform Crime Report (UCR) data, which show that in 2012, California agencies reported 7,837 forcible rapes. Therefore, we estimate there may be between 1,500 and 2,200 annual unknown assailant cases, most of which would likely have an associated sexual assault evidence kit.¹⁶ As discussed earlier in this chapter, based on information from the agencies we visited and surveyed, the average cost per analysis of a sexual assault evidence kit was about \$1,500. Using these rough estimates, the estimated additional costs to California crime labs statewide to analyze all kits in unknown assailant cases would range from approximately \$2.25 million to \$3.3 million per year. However, this cost estimate does not account for any costs that an agency might incur to increase its crime lab capacity, if that was necessary to meet such a new requirement.

Our cost estimate is also likely to be influenced by factors that we are not able to quantify. For example, we do not know how many unknown assailant kits are already being sent to crime labs for analysis because this information is not currently tracked. We know from our review of three local agencies that some of these kits are already being sent for analysis each year. Further, we cannot quantify the number of times victims ask agencies not to investigate their cases or how often investigators determine no crime occurred. These factors and the frequency of their occurrence would all reduce our cost estimate. However, the UCR data we used to develop our estimate included only offenses that the FBI defines as *forcible rape*. This excludes a number of sexual offenses that still may result in a sexual assault evidence kit, such as unforced statutory rape or penetration with a foreign object.¹⁷ While this estimate of costs is not precise, it represents the best estimate we were able to develop from existing data.

Recommendations

To ensure that it maximizes the amount of time available for prosecuting sexual offenses, by December 1, 2014, the Oakland Police Department should formalize in a policy document

¹⁶ As discussed in the Introduction, victims must agree to a sexual assault examination and not all examinations result in the collection of evidence in a kit.

¹⁷ The FBI changed its definition of rape to be more inclusive for reporting purposes in 2012, taking effect for 2013. As of August 2014 only the first six months of the 2013 data had been collected by the FBI, and none of the California reporting counties had reported their numbers using the new definition.

its new practice of analyzing sexual assault evidence kits within two weeks of the department receiving the kits into evidence, and it should continue to implement that policy.

To report to the Legislature about the effectiveness of its RADS program and to better inform decisions about expanding the number of analyzed sexual assault evidence kits, Justice should amend its agreements with the counties participating in the RADS program to require those counties to report case outcome information, such as arrests and convictions for the sexual assault evidence kits Justice has analyzed under the program. Justice should then report annually to the Legislature about those case outcomes.

To establish more comprehensive information about sexual assault evidence kits, specifically the number of kits collected and the number of kits analyzed across the State, the Legislature should direct law enforcement agencies to report to Justice annually how many sexual assault evidence kits they collect and how many kits they analyze each year. The Legislature should also require an annual report from Justice that details this information.

To provide the Legislature and the public with more complete information about agency decisions not to analyze sexual assault evidence kits, the Legislature should direct agencies to report annually to Justice their reasons for not analyzing sexual assault evidence kits. The Legislature should require an annual report from Justice that details this information.

To ensure that agencies preserve the option to extend the statute of limitations in unknown assailant cases, the Legislature should require law enforcement agencies to submit sexual assault evidence kits to a crime lab for analysis in all cases where the identity of the assailant is unknown, and it should require the labs to complete analysis of those sexual assault evidence kits within two years of the date of the associated offense. The Legislature should exempt from this requirement all cases where victims specifically request that law enforcement not analyze their kit, as well as cases where investigators determine that no crime occurred.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Appendix

SURVEY RESPONSES FROM LAW ENFORCEMENT AGENCIES

The table beginning on the following page summarizes the responses to a questionnaire that we sent to 25 California law enforcement agencies (agencies) to learn how those agencies process and analyze sexual assault evidence kits. We selected these agencies based on population, geographic location in the State, and Federal Bureau of Investigation crime rate statistics. Because we selected our surveyed agencies in this manner, the results in the table are not projectable to the entire State. All 25 agencies completed the questionnaire, and their names are listed following the table. Although we surveyed a limited number of the agencies statewide, we believe the responses we received provide an important perspective on sexual assault evidence kit processing and analysis that complements the in-depth reviews discussed earlier in this report.

The questions we asked the law enforcement agencies covered a number of areas involving sexual assault evidence kits. Specifically, the questions on the questionnaire were about their written policies related to sexual assault evidence kits, the type of crime lab those agencies use, and the time those crime labs take to analyze kits. In addition, we asked how many unanalyzed kits the agencies possess and whether the statute of limitations for the cases associated with those kits had passed. We also asked agencies for the reasons they would not analyze a kit and for the costs associated with kit analysis.

Key Results From Responses Regarding Sexual Assault Evidence Kit Processing and Analysis

Of the 25 agencies we surveyed:

- Seventy-two percent had written policies and procedures addressing the processing of sexual assault evidence kits, although not all of these policies and procedures addressed when to send a kit for analysis.
- Eight percent reported that the time their crime lab takes to analyze sexual assault evidence kits is less than 30 days. The most common response about processing time for kits, made by 32 percent of the agencies, was 31 to 90 days. Twenty-eight percent of the agencies did not track the time their crime lab spends on analysis.

- Ninety-six percent of the agencies had sexual assault evidence kits they had not analyzed in their possession; 64 percent of the agencies were able to report the number of unanalyzed kits they possessed, which totaled 3,291 kits.
- Twenty-four percent of the agencies reported that they request lab analysis for each sexual assault evidence kit they receive.
- Eighty percent of the agencies reported that they incur no costs associated with sexual assault evidence kit analysis. These agencies reported that either a California Department of Justice (Justice) or other government lab processes their kits, with 64 percent of the agencies reporting they used a Justice crime lab.

Table
Survey Results From Law Enforcement Agencies

1. Does your agency have written policies and procedures addressing the processing of sexual assault evidence kits?

RESPONSE	TOTAL	PERCENTAGE
Yes	18	72%
No	7	28
Totals	25	100%

1a. If the answer to Question 1 was yes, please answer the following: Do these policies and procedures include rules that explain how to prioritize sending kits to a crime lab for testing?

RESPONSE	TOTAL	PERCENTAGE
Yes	9	50%
No	9	50
Totals	18	100%

1b. If the answer to Question 1 was yes, please answer the following: Do these policies and procedures specify timelines within which your agency should send some or all sexual assault evidence kits to a crime lab for testing?

RESPONSE	TOTAL	PERCENTAGE
Yes	12	67%
No	6	33
Totals	18	100%

2. Does your agency have a written agreement with a crime lab and/or policies or procedures that specify a time frame within which lab testing should be completed after the lab receives a sexual assault evidence kit?

RESPONSE	TOTAL	PERCENTAGE
Yes	3	12%
No	22	88
Totals	25	100%

3. Please indicate the average amount of time taken by the crime lab(s) your agency used during 2013 to test sexual assault evidence kits. If your agency's data related to this question do not distinguish between victim kits and suspect kits, and combines data about the two types of kits, please use the combined data in answering the question. If you use combined data to answer this question, please check this box [].
 (Seven agencies checked the box.)

RESPONSE	TOTAL	PERCENTAGE
< 30 days	2	8%
31–90 days	8	32
91–180 days	6	24
181 days–1 year	2	8
Do not track	7	28
Totals	25	100%

4. Does your agency request a crime lab test of all sexual assault evidence kits it receives?

RESPONSE	TOTAL	PERCENTAGE
Yes	6	24%
No	19	76
Totals	25	100%

- 4a. If the answer to Question 4 was *no*, please answer the following: What are the primary reasons your agency does not request a crime lab test of each sexual assault evidence kit it receives?

RESPONSE	TOTAL	PERCENTAGE
Victim declined to file a complaint	14	88%
DNA evidence was not needed to convict	8	50
Insufficient financial resources	0	0
Did not substantiate a crime occurred	15	94
Other	1	6
Total respondents	16	

Note: Agencies had the option of selecting more than one response to this question. Therefore, we did not sum the *Percentage* column for this question.

5. Does your agency possess sexual assault evidence kits for which it has not requested crime lab testing, regardless of the reason why your agency has not requested the testing?

RESPONSE	TOTAL	PERCENTAGE
Yes	24	96%
No	1	4
Totals	25	100%

continued on next page...

6. How many sexual assault evidence kits does your agency currently possess for which the agency has not requested crime lab testing, including those that your agency does not intend to send to the crime lab for testing? If your agency's data related to this question do not distinguish between victim kits and suspect kits, and combines data about the two types of kits, please use the combined data in answering the question. If you use combined data to answer this question, please check this box [].
(Twelve agencies checked the box.)

RESPONSE	TOTAL	PERCENTAGE
Agencies that reported a total number of untested kits	16	64%
Agencies who identified they possessed untested kits in question 5, but responded they did not know how many untested kits they possessed	7	28
Agencies who identified they possessed untested kits in question 5, and did not respond to question 6	2	8
Total respondents	25	100%

RESPONSE	TOTAL
Total untested kits reported	3,291
Average untested kits per reporting agency	208
Most kits per agency	723
Least kits per agency	0
Number of agencies with zero kits	1

7. Has your agency sent sexual assault evidence kits to the lab for requested testing that has yet to be conducted and more than two years have passed from the date of the offense? If your agency's data related to this question do not distinguish between victim kits and suspect kits, and combines data about the two types of kits, please use the combined data in answering the question. If you use combined data to answer this question, please check this box [].
(Four agencies checked the box.)

RESPONSE	TOTAL	PERCENTAGE
Yes	2	8%
No	23	92
Totals	25	100%

7a. If the answer to Question 7 was yes, please answer the following: How many of these kits still need to be tested?

AGENCY	TOTAL
San Francisco Police Department	30
San Jose Police Department	4
Total	34

Note: The San Francisco Police Department's data are for victim kits only, while the San Jose Police Department's data are a combination of data for victim kits and suspect kits.

7b. If the answer to Question 7 was yes, please answer the following: Why were these sexual assault evidence kits not tested within two years from the date of the offense?

AGENCY	RESPONSE
San Francisco Police Department	The processing of evidence from other crimes was determined to be a higher priority. The case was determined to be a low public safety risk.
San Jose Police Department	The processing of evidence from other crimes was determined to be a higher priority. The case investigation took longer than anticipated. Testing priorities set by the local district attorney and the crime lab.

8. Has your agency sent sexual assault evidence kits to the lab for requested testing that has yet to be conducted and more than 10 years have passed from the date of the offense?

RESPONSE	TOTAL	PERCENTAGE
Yes	1	4%
No	24	96
Total	25	100%

8a. If the answer for Question 8 was yes, please answer the following: How many of these kits still need to be tested?

AGENCY	TOTAL
San Francisco Police Department	30

8b. If the answer to Question 8 was yes, please answer the following: Why were these sexual assault evidence kits not tested within 10 years from the date of the offense?

RESPONSE
San Francisco Police Department responded that the processing of evidence from other crimes was determined to be a higher priority, and the cases involving untested kits were determined to be a low public safety risk.

9. Choose the option that best describes the primary crime lab your agency currently uses to analyze evidence in sexual assault evidence kits.

RESPONSE	TOTAL	PERCENTAGE
Lab internal to your agency	4	16%
California Department of Justice (Justice) lab	16	64
Other government lab	5	20
Total	25	100%

continued on next page...

10. Please indicate whether your agency currently uses any other crime labs to analyze evidence in sexual assault evidence kits.

RESPONSE	TOTAL	PERCENTAGE
Other government lab	1	4%
Private (nongovernment) lab	2	8
No other lab	22	88
Total respondents	25	100%

11. What was the average cost and range of costs to your agency to test a single sexual assault evidence kit in the last year?

RESPONSE	SAN FRANCISCO POLICE DEPARTMENT	SAN JOSE POLICE DEPARTMENT	CONTRA COSTA COUNTY SHERIFF
Average cost	\$1,500	\$1,000	\$2,500
Low cost	350	250	750
High cost	4,200	2,000	7,500

Note: Of the 25 responding agencies, 16 agencies reported using Justice labs and either reported no cost in question 11 or did not respond to question 11, and four agencies using other government labs reported no cost in question 11. One agency was unable to identify its costs and one reported costs associated with overflow cases processed by external labs.

12. Please indicate the factors that affect the costs for testing a sexual assault evidence kit.

RESPONSE	TOTAL	PERCENTAGE
Number of items in a kit to be tested	5	100%
Priority of kit	3	60
Type of testing required	5	100
Other	0	0
Total respondents	5	

Note: Agencies had the option of selecting more than one response to this question. Therefore, we did not sum the *Percentage* column for this question. Of the 25 responding agencies, 16 agencies reported that they use Justice labs that do not charge them, and four agencies using county labs reported having no costs because their crime labs are external and do not charge them.

12a. Generally, what is the most important factor affecting your agency's costs for testing sexual assault evidence kits?

RESPONSE
Agencies generally reported the number of items in a kit to be tested and the type of testing required as the most important factors affecting their costs.

13. Is your agency able to identify the total amount it spends for testing of sexual assault evidence kits?

RESPONSE	TOTAL	PERCENTAGE
Yes	0	0%
No	5	100
Total	5	100%

Note: All the respondents to question 11 that reported cost data responded "no" to question 13. Sixteen agencies reported using Justice labs and either reported no cost in question 11 or did not respond to question 11, and four agencies using other government labs reported no cost in question 11.

13a. If the answer to Question 13 was yes, please indicate the amount of federal, state, and local funding that your agency expended for testing sexual assault evidence kits in fiscal year 2012–13.

RESPONSE

There were no “yes” responses to Question 13.

Law enforcement agencies that participated in the survey

Anaheim Police Department

Chico Police Department*

Contra Costa County Sheriff

Davis Police Department*

Fresno County Sheriff

Kern County Sheriff

Long Beach Police Department

Madera Police Department*

Merced Police Department*

Modesto Police Department*

Napa Police Department*

Redding Police Department*

Riverside Police Department*

Roseville Police Department*

San Bernardino County Sheriff

San Francisco Police Department

San Jose Police Department

Santa Barbara County Sheriff*

Santa Cruz Police Department*

Santa Rosa Police Department*

Stockton Police Department*

Thousand Oaks Police Department

Vallejo Police Department*

Visalia Police Department*

Yuba City Police Department*

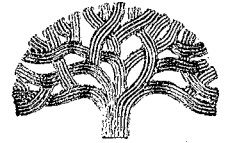
Source: California State Auditor’s analysis of survey responses from 25 law enforcement agencies.

Note: The 16 agencies with an asterisk above reported using Justice’s labs. The other agencies reported using internal labs or other government labs.

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October 2014

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September 22, 2014

Ms. Elaine M. Howle *
 California State Auditor
 621 Capitol Mall, Suite 1200
 Sacramento, CA 95814

Dear Ms. Howle,

The Oakland Police Department hereby provides response to the draft findings of the California State Auditor's report regarding testing of sexual assault kits. The Oakland Police Department appreciates the opportunity to respond to the findings and the recommendations concerning its crime laboratory and investigative policies.

The Oakland Police Department agrees with the recommendations of the audit with the following comments.

The audit noted investigators' reasons for not requesting analysis of sexual assault kits were valid. However, investigators rarely documented those reasons. We agree with the audit's recommendation and have implemented policy requiring investigators to document the reason(s) they did not request an analysis.

As regards the Crime Laboratory, the audit report indicates that, as of March 31, 2014, analysis was completed on 47% of victim kits received by the Department during the three year scope of the audit. It is worth mentioning that an additional 24% of kits were undergoing analysis as of that point in time. Therefore, a total of 71% of these victim kits received forensic analytical attention.

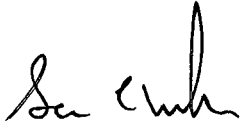
Our Crime Laboratory determined 274 requests for victim kits were either awaiting analysis or undergoing analysis as of December 31, 2013. These included the kits requested during the three year audit scope, as well as other kits beyond the audit scope. We are pleased to report this backlog has been eliminated. ①

The audit points out that, as of May 1, 2014, our crime laboratory analyzes victim kits as they are received into the Department with a routine turnaround time of four weeks. Newly received kits are acquired and analyzed in weekly batches. The auditor recommended that we formalize this practice and we have done so. The policy was formalized effective August 22, 2014. ②

* California State Auditor's comments appear on page 61.

The ability of the OPD Crime Laboratory to analyze sexual assault kits in real time is a consequence of many factors. These factors include additional staffing by filling vacancies, the welcome end to 20 days of mandatory furloughs per staff member per year for almost five years, and our investment in research and technology enhancements that have combined to speed the analysis of this important evidence.

We understand the importance of testing sexual assault kits and welcome the opportunity to improve our policy and procedures. The Oakland Police Department thanks the California State Auditor for its efforts in completing this audit.



Sean C. Whent
Chief of Police
Oakland Police Department

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE OAKLAND POLICE DEPARTMENT

To provide clarity and perspective, we are commenting on the Oakland Police Department's response to our audit. The numbers below correspond to the numbers we have placed in the margin of the department's response.

The Oakland Police Department presents information about the number of sexual assault evidence kits for which it had not completed analysis as of December 31, 2013, and indicates that, as of the date of its response to our audit, analysis of those kits had been completed. Because we did not review lab activity through September 2014, we cannot verify the accuracy of the department's claim.

Our report does not state that, as of May 2014, the Oakland Police Department lab analyzes all victim sexual assault evidence kits the department receives within four weeks. We report on page 32 the lab director's statement that it was the lab's goal to finalize lab reports on the analyses of kits within four weeks. However, we did not independently conclude that the lab was meeting its stated goal.

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②

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OFFICE OF THE
DISTRICT ATTORNEY
SACRAMENTO COUNTY

STEPHEN J. GRIPPI
Chief Deputy

JAN SCULLY
District Attorney

LORI GREENE
Assistant District Attorney

September 22, 2014

Elaine M. Howle, CPA *
State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: California State Audit – Rape Kit Backlog

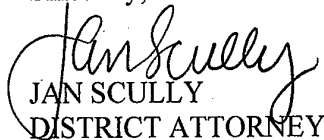
Dear Ms. Howle:

As the Sacramento District Attorney, the Laboratory of Forensic Services (Crime Lab) is under my direction and I was pleased your office chose to highlight our lab in your audit. Pursuant to Government Audit Standards, this cover letter and attachment provide our response to the audit. As you are aware, the Crime Lab is only one of four labs in the State of California under the direction of a District Attorney rather than a law enforcement agency. Prosecutors are held to the highest ethical standards and those high standards carry over to the lab under my direction.

I appreciate the hard work of the auditors. They were neither prosecutors nor scientists and did not appear to have a working knowledge of a crime lab and its functions prior to beginning the audit. Yet, they clearly endeavored to understand that our work is governed by the scientific standards of our accreditation, and how and why we function as we do.

I also want to take this opportunity to express my pride in the good work our Crime Lab does every day on behalf of Sacramento County. The fact that your audit did not result in any recommendations for improvement at our lab, is a testament of their commitment to excellence.

Sincerely,


JAN SCULLY
DISTRICT ATTORNEY

JS:cv

Attachment

Sacramento District Attorney

California State Audit – Rape Kit Backlog Audit Response

The Sacramento District Attorney Laboratory of Forensic Services (Crime Lab) is unique in that rape kits come directly to the lab from the hospital, cutting out the middle step of having a kit go to a law enforcement agency to be booked, and then later brought to the lab upon request.¹ This procedure allows rape kits in Sacramento County to be cataloged immediately and ensures that the kit is properly handled and stored at all stages of the proceedings. Although this audit focused only on rape kits involved in cases with the Sacramento Sheriff's Department (SSD), the Crime Lab provides forensic services to all law enforcement agencies in Sacramento County.

① During the audit period, the Crime Lab not only received 276 rape kits from SSD, but also received 418 additional kits from other agencies within the County. To date, out of 694 total rape kits received, all but 50 have been analyzed, including the 189 listed in the audit report as unanalyzed. In addition, if a forensic DNA profile of a suspect was obtained, that DNA profile has been uploaded into CODIS in all of the analyzed cases. Funding from the National Institute of Justice in regards to federal DNA backlog grants has allowed the Crime Lab to obtain additional personnel and the latest technology to analyze every rape kit received within the audit time period.

② The audit cites two cases where the analysis took over 300 days to complete. In both of these cases, the Crime Lab had made the original request to law enforcement for the reference sample well before the 300 days cited. Once it was determined law enforcement could not acquire the sample from the suspect, the Crime Lab completed the DNA analysis in approximately 45 days and uploaded the DNA profile into CODIS within the two year window as prescribed by statute. A round table discussion has been organized in October with top law enforcement officials in the County to discuss a best practices protocol for rape kit processing and analysis. The development of a countywide protocol will ensure rape kits are processed promptly while maximizing County resources.

③ The audit cites the range and median days to complete a rape kit analysis. However, had the extreme low and high numbers been removed to obtain a statistically valid measure of the median, the medians are as follows:

④

Sacramento County District Attorney	
	Median Days to Complete Analysis of Kit
2011	79
2012	77
2013	58

⑤ Beginning in January 2014, and prior to being notified in May 2014 of this audit, the Crime Lab Director began the process of analyzing all rape kits upon receipt by the lab. As a result, the time frame for completing analysis has been cut in half.

¹ In 2011-12, one hospital sent 113 rape kits to SSD instead of sending the kits directly to the Crime Lab. They have subsequently been sent to the Crime Lab.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE SACRAMENTO COUNTY DISTRICT ATTORNEY

To provide clarity and perspective, we are commenting on the Sacramento County District Attorney's (Sacramento District Attorney) response to our audit. The numbers below correspond to the numbers we have placed in the margin of the Sacramento District Attorney's response.

We cannot verify the Sacramento District Attorney's assertion that the 189 sexual assault evidence kits we report were unanalyzed as of March 31, 2014, have been analyzed as of the date of its response. Our report on page 18 concludes that, as of March 31, 2014, those kits had not been analyzed.

We disagree with the Sacramento District Attorney's method for calculating the time it took the crime lab to complete analysis on the sexual assault evidence kits in these cases. The Sacramento District Attorney asserts that DNA analysis on these two cases was completed in approximately 45 days. However, the Sacramento District Attorney's crime lab measures its time to complete these cases from the time at which it was determined that law enforcement could not acquire a reference sample from a suspect. The start date for our calculation of how long the lab took to complete analysis was the date that the lab logged the request for analysis in its database. We stand by this methodology.

It appears the Sacramento District Attorney is confusing median with mean. The median is the middle value in a series of values arranged from smallest to largest. It does not change if the highest and lowest values are excluded. In fact, we deliberately chose to use the median instead of other measures, such as a mean, because the median is not affected by outlier values such as the ones referred to by the Sacramento District Attorney in its response. Therefore, the information we report on page 33 about median days to complete analysis of a sexual assault evidence kit was not made invalid by including the least and highest number of days it took the lab to complete its analysis.

We cannot verify the information presented by the Sacramento District Attorney about the median days to complete analysis, as we do not know the methodology that the Sacramento District Attorney used to arrive at these values. Our report provides information on page 33 about the range and median number of days the lab took to complete analyses during our audit period.

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- ⑤ Although we reviewed evidence that indicated the Sacramento District Attorney's crime lab is analyzing all sexual assault evidence kits as they are received at the lab, we did not independently verify the lab's assertion that doing analyses in this manner has reduced the amount of time that analyses take by half.



THE CITY OF SAN DIEGO

IN REPLYING
PLEASE GIVE
OUR REF. NO.
1914030001

September 22, 2014

Elaine M. Howle, CPA *
State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle;

Attached is the San Diego Police Department's response to the 2014-109 Untested Rape Kit Backlogs draft audit report. Should you have any questions or require additional information, please contact Assistant Chief Terry Mc Manus at 619-531-2720.

Sincerely,

Shelley Zimmerman
Chief, San Diego Police Department



SAN DIEGO POLICE DEPARTMENT
CHIEF'S OFFICE
1401 BROADWAY, SAN DIEGO, CA 92101
PHONE: (619) 531-2777 • FAX: (619) 531-2530

* California State Auditor's comments begin on page 75.

San Diego Police Department's Response to the California State Auditor's Report on Sexual Assault Kits

Recommendation: to ensure that sexual assault evidence kits are not overlooked...By December 1, 2014, the San Diego Police Department should adopt a policy that requires investigators to document the reason they do not submit a request for sexual assault evidence kit analysis to a crime lab.

Agency Response

We concur. It is however, important to note that kits were not overlooked or forgotten. They, like other evidence in sexual assault cases, were subject to an investigative process to determine the value of pursuing forensic analysis within the context of the case itself. This thought process has not been documented electronically until now. Pursuant to the recommendation, and effective immediately, investigators assigned a sex crimes case will utilize the Department's evidence tracking system (FileOnQ) to document why kits are not analyzed. It is our expectation that kits will be tested unless the case meets one of the following criteria:

- NIR/Non-Investigative Report
- Crime Occurred in Another Jurisdiction
- Recant
- Unfounded
- VDP w/ Suspect ID (Unless there might be a cross-case hit)
- Other – indicate in notes why it was not tested

- ① The audit has focused on SART kits, specifically the number actually tested, the time needed to test the kits, and the number that have yet to be tested (backlog).
 ② Although these are important
 ③ measures when considering law enforcement response to sexual assault cases, the concentration on the SART kits alone is cause for some concern.

Additional Agency Response

The Department carefully reviewed the Audit Report's conclusions, including the methods and criteria used to collect and analyze data. Outlined below are the Department's concerns about some of the audit team's conclusions.

- ④ **Concern 1: Auditors used databases not suited for their purposes to report metrics on SART kits completed, turnaround times, and backlogs.**

At the initiation of the audit, it was conveyed to the audit team, and acknowledged by them, that the Department's laboratory case management system (CMS) does not track individual pieces of evidence, but rather tracks work requests. A work request can contain several pieces of evidence a detective would like analyzed for investigative purposes. For instance, a DNA work request might ask for a hat, knife, glass, and screwdriver recovered from a burglary scene to be analyzed for the presence of DNA and compared to a known suspect's reference sample. The work request is tracked from the day it is received into the laboratory until the day a final report is

San Diego Police Department's Response to the California State Auditor's Report on Sexual Assault Kits

issued. All items of evidence requested are reported together in that report, and not individually in separate reports.

Our evidence is tracked by a second database, one that is used by all police officers. This database contains the information about the item of evidence impounded. It is possible through this database to track types of evidence impounded (i.e. SART kits), and when those items were impounded into the property room. This database also includes a field that indicates whether an impounded SART kit was submitted to the laboratory. This field was added specifically to track SART kit submissions, enabling us to answer how many kits the Department had in its property room at any given time, and how many were analyzed by laboratory staff. Over several years of tracking this data, we have seen that SART kits are submitted for laboratory analysis approximately 45-50% of the time. This is the number reflected in the audit report. Barring an unusual circumstance, kits forwarded to the laboratory as part of a work request are prioritized for testing to ensure rapid turnaround times.

These two databases were created for different reasons, and do not interact with each other. Our CMS does not track individual items, and our evidence database does not track turnaround times. As we do not issue reports for separate items of evidence, the information being sought by the audit team does not exist.

④ ⑤

Concern 2: Numerical representations of case productivity are under reported due to use of databases not suited to the query.

④

Metrics provided in the auditor's report in Table 5 show that the San Diego Police Department's Crime Laboratory completed 75 kits in 2011, 134 in 2012, and 169 in 2013. After discussion with the auditors, it was ascertained that the 2011 numbers are artificially low as only SART kits impounded and completed within 2011 were counted. This accounting does not include the productivity of the laboratory in January, February, and March of 2011, when we were working on kits impounded towards the end of 2010. All other law enforcement agencies were subject to this same methodology. In San Diego, the numbers were derived from two separate databases, neither of which captured the information the auditors needed. This made the Department question the accuracy of the reported results. To ensure accuracy, the Department conducted its own audit of the laboratory's 2011 cases to determine how many work requests, with SART kits included, were actually worked in 2011 by our DNA analysts.

⑥ ⑦

The audit team counted only cases that were received in 2011 and then completed in 2011. The Department used the same parameters and pulled a list of completed forensic biology cases from our CMS and the electronic report for each one of these cases (to include Sex Crimes, DV, and Child Abuse cases only). Noted was any case that had been received and completed within 2011 in which a SART kit was analyzed. We counted each case only once, regardless of the number of SART kits analyzed. This number was 107. (95 Sex Crimes, 10 Child Abuse, and 2 Domestic Violence cases.) This is an increase in nearly 40% over the 75 cases reported in Table

⑦

San Diego Police Department's Response to the California State Auditor's Report on Sexual Assault Kits

- 5 of the Auditor's Report. We believe that were the Department to look at cases from 2012 and 2013, we would see similar discrepancies. Looking at the data from the two differing databases, the Department acknowledges that it is not possible to get an accurate count of completed cases that contain a SART kit within a certain timeframe, as the two systems do not necessarily correlate, and neither provides the actual data desired by the audit team. This Department considers the whole of submitted evidence to be of primary concern, rather than one piece of evidence that may or may not provide an investigative lead. The Department's audit results are significant. The cases included in Figure 2 are those submitted to the laboratory by the Sex Crimes, Child Abuse, and Domestic Violence Units only. They do not include the approximately 1000 additional cases worked by the Forensic Biology Unit each year.

FIGURE 1

Year	Cases Completed
2011	208
2012	214
2013	247
Total	669

Concern 3: Numerical Representation of Turnaround Times are Overstated Due to Inaccurate use of Database Systems.

Of concern is the numerical representation describing the length of time it takes to complete a SART kit. As previously stated, it is not feasible to track the length of time it takes to analyze a SART kit using the databases examined by the audit team. There are several issues with attempting to track SART kit turnaround time within the San Diego Police Department. First, the laboratory database does not track individual items of evidence by themselves. Rather, the database tracks work requests which could contain several items of evidence. Second, for efficiency, the laboratory has introduced robotics and batch processing into its work flow. Rarely are the analysts working one piece of evidence at a time, as it is highly inefficient. Using these efficiency improvements, the laboratory went from processing 3-5 SART kits per month per analyst, to 15 SART kits per month per analyst. It would take an analyst one week to screen one kit. When batching kits, it takes an analyst one month to screen 15 kits. Returning to a process in which we would analyze one kit at a time to determine its turnaround time would be inefficient. Our overall turnaround time for analyzing all sexual assault cases would increase drastically. In 58% of the sex crimes work requests submitted and completed in 2011, items other than a SART kit were screened. In 48% of these requests, items in addition to the SART kit were examined. In order to track SART kits accurately, we would have to analyze the SART kit separately from other pertinent evidence in nearly half our cases. This being said, the auditors settled for looking at turnaround times for our cases (not work requests) instead.

San Diego Police Department’s Response to the California State Auditor’s Report on Sexual Assault Kits

The method the auditors used provided turnaround times that are skewed. At the initiation of the audit, the audit team was made aware of the limitations of the database. The Department suggested the following approach. ⑩

- 1) Cull a list of sex crimes, child abuse, and domestic violence work requests completed by the Forensic Biology Unit for each year of interest. ⑪
- 2) Using the date received and date completed for each work request, determine the range and average turnaround times for these requests.

Analyzing these specific work requests ensures the cases would likely contain SART kits, analysis done only in the Forensic Biology Unit. Each work request has its own turnaround time, as additional work can continue to be requested in the future. For example, in a sex crimes series case, the original SART kit could be requested in January. In March, September, and December, additional suspects may be identified, and further work requested. We treat these as four separate work requests, with four separate turnaround times. The Department conducted its own audit, and when this method was used, it produced the following results.

FIGURE 2

Year	Average Turnaround Time	Shortest Turnaround Time	Longest Turnaround Time
2011	54 days	1 day	344 days
2012	60 days	1 day	248 days
2013	61 days	1 day	418 days
Total (average)	58 days	1 day	337 days

The data attained from the Department’s audit shows that the laboratory averages a 60 day turnaround time for a sex crimes work request in its entirety (this includes the SART kit and any other evidence submitted on the request for analysis.) The methodology the audit team used increased the laboratory’s turnaround times and inaccurately elevated our “maximum days to complete a kit.” ⑫

As already stated, the auditors were unable to track the turnaround times of SART kits. However, instead of tracking work requests, they chose to track the turnaround times of cases, which could include several work requests submitted over several years. They did not concentrate on the cases in which we would likely have SART kits, but instead encompassed all types of cases. This artificially increased our turnaround times, as homicide cases are often more complicated and require more analytical work. In addition, this methodology does not take into account this Department’s policy of assigning out the sex crime cases as soon as received, something not done with our property crimes. ⑬
⑭

San Diego Police Department's Response to the California State Auditor's Report on Sexual Assault Kits

Instead of looking at individual work requests, they used entire cases, encompassing several work requests as their numerical representation of our turnaround times. From the Audit Report, "At the San Diego Police Department, because of data limitations we could only measure the crime lab's timeliness of processing sexual assault evidence kits by considering the length of time the lab required to analyze *all of the evidence* for each **case** involving a sexual assault evidence kit." This means they looked at the date the first request on a case came into the lab and used that as a starting point. They then looked at the completion date of the last request received on a particular case as the completed date. This is problematic, as ongoing cases could have requests submitted to the laboratory for years as the investigation unfolds. It is clear this affected their maximum days to complete analysis of a kit, as the number went from 241 days in 2011 to 486 in 2012 to 595 in 2013. These numbers reflect cases that are still being investigated, and provide limited meaning on how long it took our analyst to analyze a SART kit, if one was even present. Nor do they represent how long it took for a work request to be completed.

- ⑮ While the Department understands the limitations presented to the auditors with respect to tracking SART kits, it appears an insufficient attempt was made in this metric to accurately gauge the turnaround times of our sex crime work requests. A better representation of our analytical processes was possible, and suggested, but was not utilized. While the tables used in the report are heavily footnoted, this data is still presented under the headings "...to complete analysis of a kit," which may be misleading.

Concern 4: Backlog Determinations Based on Unrealistic Time Frames

In the Audit Report a bold heading states "Sexual Assault Kits are Frequently Backlogged at the Crime Lab." The report adopts the federal definition of a backlogged case: a work request that has not had a final report issued prior to 30 days from receipt. In Table 5, the report lays out a numerical representation of how many cases were or were not completed under this 30 day time frame. Table 5 in the Audit Report notes that the San Diego Police Department laboratory is completing a small fraction of cases in less than 30 days.

- ⑯ The Department questions whether 30 days is a reasonable length of time to have sex crime work requests completed. It is important to keep in mind that 1) SART kits are analyzed along with other types of evidence as a matter of routine, and any data generated in this report reflects work requests in their entirety; 2) as previously stated, batch casework allows analysts to provide results on numerous cases in a shorter amount of time (1 week to screen 1 kit, 1 month to screen 15 batched kits); and 3) the analytical process itself is only one aspect of providing a final report; technical and administrative reviews add additional weeks to the process.

The 30 days utilized by the National Institute of Justice (NIJ) when tracking its grant funding for DNA Backlog Reduction Programs, is a numerical value that can ensure like to like comparisons across all agencies it is funding. However, it is not a definition that is applicable to the reality of processing cases in the DNA section, nor is this a timeframe that is applied to SART kits only.

San Diego Police Department's Response to the California State Auditor's Report on Sexual Assault Kits

NIJ asks its grantees to track work requests and not specific items of evidence when providing backlog numbers. It is also significant that AB 1517, the Sexual Assault Victim's DNA Bill of Rights, speaks to sexual assault evidence and not to SART kits specifically. The bill suggests that 120 days is an appropriate turnaround time for sexual assault work requests, a time frame the San Diego Police Department's laboratory is well within when providing analytical results. It may not be an accurate representation to claim that our laboratory frequently has sexual assault kits backlogged. Rather, our process ensures that we assign out sexual assault cases virtually upon arrival into our laboratory, and rarely have more than 10-20 sex crime cases that are not actively being worked. Work requests are completed in their entirety and final reports are issued on average within 60 days.

Conclusion

A thorough and complete investigation of all sexual assault cases is of paramount priority to the San Diego Police Department. The Department takes an aggressive and proactive approach to sexual assault investigations. Sex crime cases are immediately assigned for laboratory analysis—a SART kit being one example of numerous evidentiary items in an investigation. A seasoned and experienced detective reviews the case as a whole and works the case from all angles; this includes collection and testing of all physical evidence. Work requests are then submitted to the laboratory that may include several pieces of evidence, not just a SART kit. The auditors' objective was to count SART kits and testing turnaround times. Unfortunately, the laboratory databases do not capture turnaround times for any single piece of evidence; this includes SART kits. The reality of forensic case management makes it not only impractical to track evidence in this matter, but it would not be the best practice in what is a dynamic and comprehensive investigatory process. It would not be practical or beneficial to a criminal investigation to parcel out specific pieces of evidence to run separately in order to answer the questions posed by the auditors. In order to solve a crime, a law enforcement agency is more concerned with analyzing all pertinent evidence in a timely fashion.

④⑰

The Department suggests the following when contemplating legislative action with respect to these kits. First, our investigators have years of training that enable them to make legitimate and reasoned choices about what evidence to submit to the laboratory for analysis. Mindful of limited resources, investigators will ensure that the case is legitimate, the analytical work will provide investigative leads, and the resulting search of any profiles will not violate state or federal law. Second, sexual assault evidence should be considered in its entirety, and not parsed out to increase efficiencies for one type of evidence only. Many cases are solved by the analysis of evidence other than the kits themselves. It is providing the information from the evidence that is of importance, not analyzing one piece which may or may not be relevant to the investigation. Last, it is important to note that in spite of the introduction of robotics, Y-screening, and casework batching, thorough and scientifically unassailable work in these cases takes time. AB 1517 provides a legitimate timeframe in which to strive to complete the majority of cases.

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE SAN DIEGO POLICE DEPARTMENT

To provide clarity and perspective, we are commenting on the San Diego Police Department's response to our audit. The numbers below correspond to the numbers we have placed in the margin of the department's response.

Throughout its response, the San Diego Police Department refers to the kits we reviewed as SART kits. The acronym SART refers to a Sexual Assault Response Team, which is a group of professionals and volunteers who are specially trained to treat and examine victims of sexual assault. Because we could not be certain that such teams collect all the kits relevant to this audit, we refer to kits as sexual assault evidence kits throughout our report.

①

The San Diego Police Department indicates that the term "backlog" is synonymous with the number of kits yet to be tested. We do not consider these terms synonymous. According to the definition used by the federal Department of Justice's National Institute of Justice (NIJ), which we reference in our report on page 36, a kit is considered backlogged only if a crime lab does not issue a final report on its testing within 30 days of receiving the kit. Therefore, we did not consider a kit that had been at the lab for less than 30 days to be backlogged, even if it had not yet been tested.

②

The audit scope and objectives approved by the Legislature, as indicated on page 11, directed our office to review information pertaining to the backlog of sexual assault evidence kits in California. Our concentration on providing information about kits followed this direction.

③

The San Diego Police Department's concerns about our use of its databases to determine how many sexual assault kits it processed during our review period and how long it took to process them are misplaced and exaggerated. We acknowledge in our report on pages 18, 33, 34, and 37, the limitations with these databases, including that the data we used overstates processing time for kits. Nonetheless, these databases were the best source for determining this information. Moreover, it should be noted that it is not unusual in our audits for us to have to use databases of agencies we audit that are not ideally suited for our purposes, acknowledging limitations as necessary.

④

- ⑤ We are aware that the San Diego Police Department's databases do not contain the level of information necessary to identify the amount of time it takes the department's lab to process sexual assault evidence kits as a discrete piece of evidence. Because of this, we report information on pages 33 and 37 that represents the amount of time the department spent analyzing all forensic biology requests in cases with a sexual assault evidence kit. This includes the amount of time the department's lab took to analyze the kit for those cases and on pages 33 and 37 we state that our information about processing times is overstated with respect to the sexual assault evidence kits.
- ⑥ As we explain on page 12 under Objective 2(d), our review focused on sexual assault evidence kits received into evidence between 2011 and 2013. This is because the San Diego Police Department's crime lab database did not allow us to identify the cases the lab worked on that included sexual assault evidence kits. Instead, we relied on the department's evidence database to identify which cases included kits and determined that the information that the database contained about evidence collected before 2011 was incomplete. Thus, our analysis did not include cases which the lab began working on in 2010 and which were completed in 2011.
- ⑦ We stand by the figure shown in Table 5, on page 37, that there were 75 cases involving sexual assault evidence kits in which the San Diego Police Department's crime lab finished analysis on all forensic biology requests in 2011. We do not know the precise methodology used by the department to arrive at a different case number and conclusion than ours, and therefore we cannot verify the accuracy of its assertion that there were 107 cases completed in 2011. One likely difference between our method and the department's is in the definition of a completed case. We counted cases as completed when the last request for lab analysis was completed. As can be seen on page 33 of our report in Table 4, in the column labeled, *Maximum Days to Complete Analysis of a Kit*, this means that some cases for which the lab began analysis in one year are accounted for in the following year in our table.
- ⑧ The relevance of this table to our audit report is highly questionable. The investigative units the San Diego Police Department has identified certainly handle some cases which do not appear to involve sexual assault evidence kits, such as child abuse or domestic violence cases where sexual assault is not alleged.
- ⑨ We did not settle. As we indicate in comment 4, the databases we used were the best source of information for identifying relevant data about the San Diego Police Department's processing of sexual assault evidence kits. The information in the department's lab database does not specify which of the lab's work requests

involved kits, and a single case can have multiple work requests. Had we chosen to follow the approach the department suggests, identifying only the work requests specific to sexual assault evidence kits would have required us to manually review reports on at least 495 separate work requests. Such an approach would be cost prohibitive and thus impractical.

Our data are not skewed. They accurately portray what we say they portray, within the data limitations explained in the report.

⑩

We had numerous discussions with the San Diego Police Department throughout our audit about the methodology for our analysis and different approaches to that analysis that were available. In fact, during the audit the department suggested we narrow our focus to only work requests for the lab's forensic biology unit, and we adopted that suggestion when we performed our analysis. Narrowing the scope of our review to the three investigative units suggested by the department would have included many work requests that did not involve sexual assault evidence kits. It also would risk excluding cases with sexual assault evidence kits. For example, during our review we observed a case involving a kit that the department's vice unit investigated. Under the department's approach, we would have excluded cases such as this one from our analysis. Therefore, the data the department presents as resulting from this methodology is not relevant to our audit report.

⑪

The data in Table 4 on page 33 are not inaccurately elevated. They accurately portray what we say they portray, within the data limitations explained in the report.

⑫

The San Diego Police Department is wrong in its assertion that our methodology resulted in our analysis including cases that extended over several years. As indicated in Table 4 on page 33, the maximum turnaround time we observed for processing entire cases involving kits was 595 days, or under two years.

⑬

We emphatically reject the San Diego Police Department's suggestion that its proposed methodology would have been superior to ours. Although the department suggests we should have looked only at some cases that would *likely* have kits, we focused on all cases that actually *did* have kits.

⑭

We reject the assertion that we made an insufficient attempt to measure the amount of time the San Diego Police Department's crime lab took to analyze sexual assault evidence kits. We considered the department's suggested approach, but as we indicate previously in comment numbers 9, 11, and 14, found it to be flawed and impractical.

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- ⑩ The 30-day standard that we reference at page 36 is the definition used by the NIJ, and is intended to standardize the discussion of backlogs at crime labs. We used this definition in our analysis and considered any kit for which a crime lab did not issue a final testing report within 30 days to be backlogged.
- ⑪ As reflected in tables 4 and 5 on pages 33 and 37, respectively, the other two locations we visited during this audit were already tracking key dates related to sexual assault evidence kit analysis prior to the start of our audit. We used the information those agencies were already recording to determine the processing time for kits at those agencies. We therefore disagree that this kind of tracking is impractical.

October 2014

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



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September 22, 2014

Elaine M. Howle, CPA*
California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: CSA Report 2014-109

Dear Ms. Howle,

The Department of Justice (DOJ) has reviewed the California State Auditor's (CSA) draft report titled "*Untested Rape Kit Backlogs*" and appreciates the opportunity to respond to the report. ①

In order to better serve victims in sexual assault cases, DOJ's Bureau of Forensic Services (BFS) designed the Rapid DNA Service ("RADS") program. RADS is a high-throughput program for the analysis of sexual assault evidence. Using RADS, whenever a sexual assault kit is collected from a rape victim, representative samples are packaged separately and sent directly to the hospital and to the crime laboratory for DNA analysis. RADS is designed to support victims and assist law enforcement investigators by rapidly processing the best evidence and when appropriate uploading perpetrator DNA profiles to the Combined DNA Index System (CODIS), the DNA database, to search for matching profiles and other cases.

It is important to note that in her first year in office, Attorney General Harris eliminated a long-standing backlog of untested rape kits in state-run labs, which included 1,300 DNA cases. Along with committing additional resources to the labs, Attorney General Harris introduced new technology that drastically increased the speed in which cases are analyzed. Within 15 working days, the evidence is imported into the CAL-DNA Data Bank and compared to over 2.3 million offenders in California and 11 million offenders nationwide.

In April 2014 the RADS program received the U.S. Department of Justice's Award for Professional Innovation in Victim Services for its successful efforts to improve DNA analysis of rape kits by law enforcement agencies. Attorney General Harris offers the RADS technology and training to any crime laboratory that is in need of updating their processes.

Assembly Bill 1517 (Skinner), if enacted, will require law enforcement to submit sexual assault forensic evidence to the crime lab within 20 days after it is booked into evidence. The bill will also require crime labs to upload qualifying DNA profiles into CODIS within 120 days after receiving the evidence. While we support the objectives of the bill, AB 1517 will directly impact the operations of the DOJ BFS by doubling the number of rape kits submitted and analyzed, at an

* California State Auditor's comments appear on page 83.

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estimated cost of \$2 million a year. Unfortunately, there are insufficient resources in the DNA Identification Fund to support the potential cost increase. It is unknown how DOJ will handle the increased volume with existing resources and the impact it will have to other DOJ mandated programs.

In response to the CSA's specific recommendations identified in the draft report, DOJ submits the following responses:

CSA Recommendation:

To report to the Legislature about the effectiveness of its RADS program and to better inform decisions about expanding the number of analyzed sexual assault evidence kits, Justice should amend its agreements with the counties participating in the RADS program to require those counties to report case outcome information such as arrests and convictions for the sexual assault evidence kits Justice has analyzed under the program. Justice should then report annually to the Legislature about those case outcomes.

DOJ Response:

Justice agrees with this recommendation. Justice will require the use of the CODIS Hit Outcome Program (CHOP) database, in its memorandum of understanding (MOU), as a way of tracking progress in RADS cases. Until a legislative requirement is enacted, it will be difficult to compel law enforcement and district attorney offices to update the progress/status of their rape cases. Once a law is passed to require law enforcement and district attorneys offices to report this information to Justice, Justice will report annually to the Legislature about the specified case outcomes.

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CSA Recommendation:

To establish more comprehensive information about sexual assault evidence kits, specifically the number of kits collected and analyzed across the State, the Legislature should direct local law enforcement agencies to report annually how many sexual assault evidence kits they collect and analyze each year to Justice. The Legislature should also require an annual report from Justice that details this information.

DOJ Response:

Justice agrees with this recommendation. Currently, there is no legal requirement for law enforcement to provide this data; therefore, agencies cannot be compelled to provide this information to Justice. Once a law is passed to require law enforcement and district attorneys offices to report this information to Justice, Justice will report annually to the Legislature the number of kits collected and analyzed each year by local law enforcement agencies.

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CSA Recommendation:

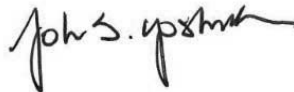
To provide the Legislature and the State with more complete information about law enforcement agency decisions not to analyze sexual assault evidence kits, the Legislature should direct local law enforcement agencies to report annually to Justice their reasons for not analyzing sexual assault evidence kits. The Legislature should require an annual report from Justice that details this information.

DOJ Response:

Justice agrees with this recommendation. Currently, there is no legal requirement for law enforcement to provide this data; therefore agencies cannot be compelled to provide this information to Justice. Once a law is passed to require law enforcement and district attorneys offices to report this information to Justice, Justice will report annually to the Legislature the reasons local law enforcement did not analyze the evidence kits.

Again, thank you for the opportunity to review and comment on the draft audit report. If you have any questions or concerns regarding this matter, you may contact me at the telephone number listed above.

Sincerely,



JOHN YOSHIDA, Chief
Bureau of Forensic Services

For KAMALA D. HARRIS
Attorney General

cc: Nathan R. Barankin, Chief Deputy Attorney General
Elizabeth L. Ashford, Chief of Staff
Jill Habig, Special Assistant Attorney General
Larry Wallace, Director, Division of Law Enforcement
Suzy Loftus, Assistant Director, Division of Law Enforcement
Tammy Lopes, Director, Division of Administrative Support
Andrew J. Kraus III, CPA, Director of Office of Program Review and Audits

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE CALIFORNIA DEPARTMENT OF JUSTICE

To provide clarity and perspective, we are commenting on the California Department of Justice's (Justice) response to our audit. The numbers below correspond to the numbers we have placed in the margin of Justice's response.

The draft report Justice reviewed did not include the title of our report because the title includes conclusions we reach that are not specific to Justice. The title Justice refers to in its response reflects the description of the subject of the audit that was included in the audit scope and objectives approved by the Joint Legislative Audit Committee.

Although Justice states that it will report to the Legislature about specified case outcomes once a law is passed to require law enforcement and district attorneys' offices to report this information to Justice, our recommendation on page 49 for Justice to report to the Legislature about case outcome information is not contingent upon a change to state law. Instead, Justice could implement this recommendation by amending its agreements with the counties participating in the Rapid DNA Service Program to require this information and then summarizing the information in a report to the Legislature. Therefore, we would expect Justice to submit such reports even without a change to state law.

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