



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 27, 2021

Kevin P. Bruen
Superintendent
Division of State Police
1220 Washington Avenue, Building 22
Albany, NY 12226

Re: Processing of Sexual Offense
Evidence Collection Kits
Report 2021-F-19

Dear Superintendent Bruen:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the Division of State Police's Crime Laboratory System to implement the recommendation contained in our prior audit report, *Processing of Sexual Offense Evidence Collection Kits* (Report [2019-S-44](#)).

Background, Scope, and Objective

Medical professionals use Sexual Offense Evidence Collection Kits (kits) provided to hospitals and other health care providers to collect DNA and other evidence during the physical exam of an alleged sexual assault victim. The victim has the right to choose whether to report the incident to law enforcement and consent to have the kit released by the hospital for forensic testing. Once a victim provides consent, the investigating law enforcement agency collects the kit and sends it to a forensic laboratory for analysis and to attempt to obtain a DNA profile.

If a DNA profile is developed and meets specific requirements, it is entered into the Combined DNA Index System (CODIS), a federally administered database of DNA profiles from convicted persons, crime scenes, and unidentified human remains. CODIS facilitates the electronic exchange and comparison of DNA profiles among federal, State, and local forensic laboratories, which can help link violent crimes and known offenders. Forensic laboratories may also opt to analyze a kit used to collect evidence for crimes other than sexual offenses, for example, in death and homicide investigations. Once the analysis is complete, the lab generates a report and sends it to the submitting law enforcement agency and the district attorney's office for the county in which the incident occurred. If no DNA profile is found, the results are noted in the report to the submitting law enforcement agency.

Executive Law Section 838-a, Maintenance of Sexual Offense Evidence Kits (Executive Law), enacted in November 2016, set forth the procedures for processing kits, including assessing case-specific information for CODIS eligibility; analyzing the contents of the kit and developing a CODIS-eligible profile, if possible; and reporting the results of such analysis to the submitting law enforcement agency. A February 2017 amendment required law enforcement

agencies to submit all untested kits in their custody – regardless of age – to a forensic laboratory by December 28, 2017 for processing. The amendment established further timelines and required laboratories to consider the date kits were received by law enforcement agencies in order to determine required processing times. Kits received by law enforcement agencies prior to February 26, 2017 were required to be processed within 210 days of receipt at the lab, and kits received by law enforcement agencies on or after February 26, 2017 must be processed within 90 days of receipt at the lab. The amendment also required law enforcement agencies to begin submitting kits received after February 26, 2017 to forensic laboratories within 10 days. Prior to the legislation, standard requirements for submitting kits to forensic laboratories did not exist, and the investigating law enforcement agencies could use their discretion when deciding whether to submit a kit for testing.

The Division of State Police’s (Division) Crime Laboratory System (CLS) is composed of four laboratories, including the Forensic Investigation Center (FIC) in Albany, which processes kits for the Division and provides forensic analysis support available to all State criminal justice agencies.

We issued our initial audit report on May 27, 2020. The audit objective was to determine if the Division’s CLS processed kits in compliance with the Executive Law. Our initial audit covered the period November 28, 2016 through October 31, 2019 and considered information provided by the Division through February 12, 2020. The audit found that, from November 28, 2017 to October 31, 2019, the FIC processed 1,656 kits, but only 356 of the 1,656 kits were completed within the time frames prescribed by law. Also, as of October 31, 2019, the FIC had 1,916 kits that needed to be processed, and as of that date, the required processing time frame had elapsed for 1,681 kits. In response to the Executive Law, Division officials stated that law enforcement agencies submitted 2,227 kits to the FIC – more than three times the number of kits the prior year and far surpassing the Division’s estimates. During the initial audit, we found the FIC took steps to speed up kit processing; however, it was not able to meet the time frames required by the Executive Law.

The objective of our follow-up was to assess the extent of implementation, as of August 12, 2021, of the one recommendation included in our initial audit report.

Summary Conclusions and Status of Audit Recommendations

We found that the Division has implemented the one recommendation made in our initial audit report, resulting in significant progress in addressing the issues we identified.

Follow-Up Observations

Recommendation 1

Review the FIC’s ability to process kits within the statutory time frames and determine what process changes and resources are needed to meet Executive Law requirements.

Status – Implemented

Agency Action – Our follow-up review found the FIC is working to enhance its ability to process kits within the statutory time frames. Division officials report that, since our initial audit, the FIC has increased staffing resources, implemented a new kit-assignment strategy, and purchased customizable software to improve its ability to process kits in compliance with the Executive Law. A report provided by officials indicates the FIC has increased the

monthly percentage of kits completed within the legislative time requirements from 16% in January 2021 to 52% in August 2021.

According to officials, the FIC has increased the number of forensic scientists able to complete one or both portions of kit processing from 29 scientists in May 2020 to 43 scientists as of September 2021. Additionally, the FIC has implemented a new kit-assignment strategy such that each analyst's workload consists of equal parts backlog kits and recently submitted kits. As a result of these changes, officials reported the number of backlog kits decreased from 1,674 in January 2021 to 1,146 in August 2021.

The FIC also purchased a customizable sample tracking system for sexual offense kits, which will improve the tracking and assignment of kit submissions. Once implemented, the new software will automatically prepare customized reports prioritizing kit assignments, send e-mail notifications for kits that are approaching or have exceeded the required time frame, and provide immediate backlog figures for unassigned kits in the system. However, at the time of our review, the software had not been implemented as FIC staff are currently working with the software vendor to customize system specifications and requirements in order to integrate the kit-tracking software into the laboratory's existing Laboratory Information Management System software.

Major contributors to this report were Marisa Sutliff, Theresa Nellis-Matson, Heath Dunn, and Innocentia Freeman.

We thank the management and staff of the Division for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Cynthia A. Herubin, CIA, CGAP Audit
Manager

cc: Olga Cordi, Division of State Police