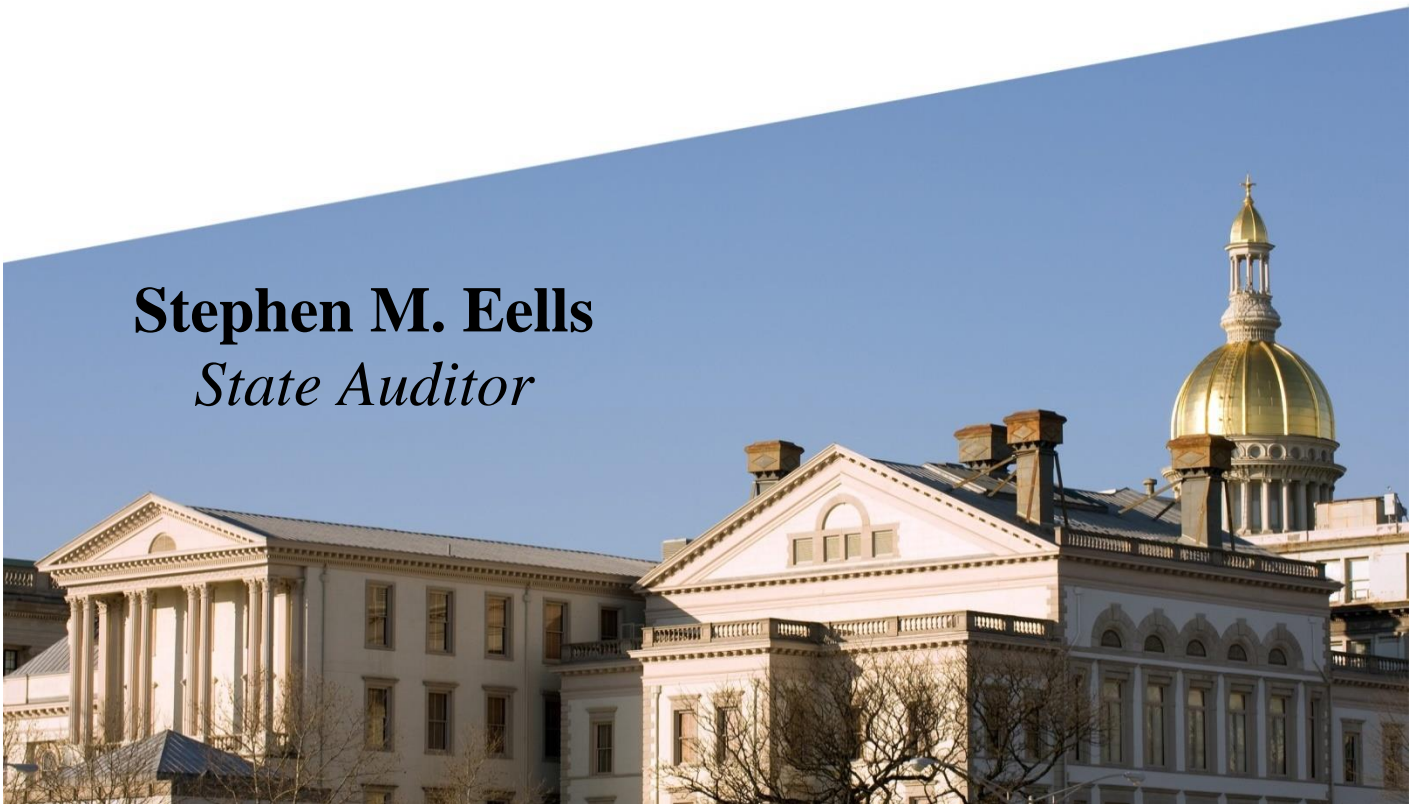


New Jersey Legislature
★ *Office of* LEGISLATIVE SERVICES ★
OFFICE OF THE STATE AUDITOR

Department of Law and Public Safety
Office of the Attorney General
Sexual Assault Examination Process

July 1, 2017 to August 31, 2018

Stephen M. Eells
State Auditor



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Enclosed is our report on the audit of the Department of Law and Public Safety, Office of the Attorney General, Sexual Assault Examination Process for the period of July 1, 2017 to August 31, 2018. If you would like a personal briefing, please call me at (609) 847-3470.

A handwritten signature in dark ink, appearing to read "Stephen M. Eells", with a stylized flourish at the end.

Stephen M. Eells
State Auditor
June 19, 2019

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Scope

We have completed an audit of the Department of Law and Public Safety, Office of the Attorney General (department), Sexual Assault Examination Process for the period July 1, 2017 to August 31, 2018. Our audit included an evaluation of the procedures, processing, recording, and tracking of Sexual Assault Forensic Examination (SAFE) Kits collected from July 10, 2014 to August 31, 2018.

According to the *Crime in the United States Report* published annually by the Federal Bureau of Investigation's (FBI) Uniform Crime Reporting Program, there were 5,135 sexual assaults reported to law enforcement agencies in New Jersey during calendar years 2014 through 2017. Per the New Jersey County Prosecutors' Offices, there were 5,931 SAFE Kits collected during the period July 10, 2014 to August 31, 2018.

Objectives

The objectives of our audit were to evaluate the procedures in which SAFE Kits are collected, recorded, tracked, and stored, and to determine if any backlogs exist at the state's forensic labs. An additional objective was to determine the quantity of unprocessed SAFE Kits and the reasons they were not submitted for processing.

This audit was conducted pursuant to the State Auditor's responsibilities as set forth in Article VII, Section I, Paragraph 6 of the State Constitution and Title 52 of the New Jersey Statutes.

Methodology

Our audit was conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

In preparation for our testing, we studied federal and state laws, the administrative code, and Attorney General Directives and Guidelines. In addition, we reviewed the guidelines of the New Jersey State Police and the County Prosecutors' Offices. Provisions we considered significant were documented, and compliance with those requirements was verified by observation and through our survey of the SAFE Kit process. We also read the state's Uniform Crime Report, reviewed statistical trends, and interviewed department personnel to obtain an understanding of the process and the internal controls. Finally, we surveyed the County Prosecutors' Offices to document the policies and procedures of the county and local law enforcement agencies.

A nonstatistical sampling approach was used. Our samples of SAFE Kit verifications were designed to provide conclusions on our audit objectives, as well as internal controls and compliance.

Conclusions

We determined there was no backlog for the processing of SAFE Kits at the state forensic labs. We also found that, for various reasons, many kits at the state, county, and local law enforcement agencies were not submitted to the state forensic labs for processing. In making these determinations, we found deficiencies concerning the tracking of the SAFE Kits, as well as inconsistent policies and procedures used by the various law enforcement agencies.

Background

When a sexual assault is reported and a victim consents, a Sexual Assault Response Team (SART) is activated. This consists of a forensic nurse examiner who will collect any evidence in a SAFE Kit. As part of the examination, the nurse tests for any possible sexually transmitted diseases, provides any necessary contraception, and addresses any possible physical trauma which may need attention. At that time, the victim makes the decision whether to involve law enforcement and press charges. If the victim chooses to contact law enforcement, an investigator will conduct an investigation and discuss facts with the County Prosecutor. A decision is then made as to whether a crime has been committed and whether processing the SAFE Kit is beneficial to the case. The SAFE Kit is then either processed at one of the state's two forensic labs or stored by the County Prosecutor's Office or the investigating law enforcement agency.

If the prosecutor decides to process the kit, it is sent to one of the labs. The New Jersey State Police Central Regional Laboratory handles the processing for the state with the exception of Union County which is handled by the Union County Forensics Laboratory.

If a victim chooses to not involve law enforcement, the SART Coordinator becomes the custodian of the kit. On July 10, 2014, the Office of the Attorney General issued a directive to the County Prosecutors requiring these SAFE Kits to be held for a minimum of five years. These SAFE Kits are referred to as Five-Year Hold Kits and maintain the anonymity of the victims. Victims then have five years to decide if they want to involve law enforcement and press charges. The five-year holding period that began on July 10, 2014 will begin to expire on July 10, 2019.

Observation

Unsubmitted Sexual Assault Forensic Examination Kits

A significant number of unsubmitted Sexual Assault Forensic Examination (SAFE) Kits are held by law enforcement agencies for various reasons.

A significant portion (52 percent) of the 5,931 total SAFE Kits were submitted to a forensic lab for processing. Federal regulations require a crime to be committed prior to uploading a suspect's DNA profile into the FBI's Combined DNA Index System (CODIS). Therefore, not all SAFE Kits should be processed by a forensic lab. The following table summarizes the law enforcement agencies' (LEAs) reported reasons SAFE Kits were not submitted to the forensic labs. These multiple reasons were subjectively consolidated to best represent the LEAs' responses. Included are Five-Year Hold Kits (19 percent of total SAFE Kits) which are not to be processed because the victims did not give consent to involve law enforcement.

Reason	Count
Five- Year Hold Kits	1,122
Victim declined to file a complaint/No cooperation	677
Estimated counts because municipalities did not submit surveys	178
Victim informed police the crime did not occur	98
Unknown	90
Insufficient evidence for prosecution	82
Investigation revealed crime never occurred	73
Investigator suspected the act was consensual	71
Legal review deemed processing not necessary	69
DNA evidence was not needed for prosecution	66
No charges approved by county prosecutor	50
No response provided by agency	50
Law enforcement did not pick up kit	44
DNA not expected due to facts of case	31
The kit is scheduled to be sent	28
Suspect admitted to sex and said it was consensual	23
Active case	21
History of unfounded allegations/Mental illness	18
Investigator had no suspects	15
Case concluded at grand jury	14
Taken as part of a homicide investigation	7
Victim filed complaint against partner	7
Total	2,834

The most common reason SAFE Kits were not tested was because the victims did not consent to reporting the offense to an LEA and are therefore considered Five-Year Hold Kits. The remaining unsubmitted SAFE Kits are categorized either by the reasons they were not tested or were estimated because the information was not provided by the LEAs. We estimated the number of unsubmitted kits, in possession of the LEAs that did not complete the survey, by comparing the best information available from other surveyed LEAs with the SAFE Kit testing data retrieved from the state's Laboratory Information Management System.

Using this information, we prepared an aging report to summarize the SAFE Kits that were collected statewide from July 10, 2014 to August 31, 2018 and were not submitted for processing by a state forensic lab:

Aging Report	# of Kits
90 days or less	113
91 to 180 days	97
181 days to 1 year	178
1 to 2 years	351
2 to 3 years	334
3 to 4 years	336
More than 4 years	51
TOTAL	1,460
Five-Year Hold Kits & Unknown dates	1,374
Total including Five-Year Holds & Unknown dates	2,834

Note: The aging report total does not include the 1,122 Five-Year Hold Kits and 252 SAFE Kits that were either estimated or did not have a collection date provided.

As of January 1, 2019, the Union County Forensics Laboratory began testing all SAFE Kits with collection dates from July 10, 2014, where a criminal complaint was filed, to generate suspects' DNA profiles on a case-by-case basis. The case-by-case determination by the Union County lab does not exclude reported SAFE Kits from testing for reasons that include, but are not limited to, perceived weaknesses in the case, previous adjudication of the case, or prior partial forensic testing. The New Jersey State Police Central Regional Laboratory has no such plans because of the potential effect this may impose on its operations and available resources.

The National Institute of Justice (NIJ) and the FBI Laboratory have formed a partnership to

address the issue of the significant number of untested kits throughout the United States. Each month, the FBI lab processes and tests a limited number of previously untested SAFE Kits while scientists at NIJ collect and analyze data from the kits. Any law enforcement agency or public forensic laboratory is eligible to apply for the initiative to aid investigations, solve more crimes, and hold more criminals accountable by uploading eligible profiles into CODIS.



Findings

Policies and Procedures

Policies and procedures for the handling of Sexual Assault Forensic Examination (SAFE) Kits are inconsistent throughout the state.

The DNA evidence contained in a SAFE Kit can be crucial to the identification of unknown suspects, including serial offenders, and can strengthen the prosecution of those who commit these criminal acts. Written policies and procedures for the handling of SAFE Kits should be in place and followed by all law enforcement agencies (LEAs) throughout the state to ensure a consistent response by law enforcement to all sexual assaults. In an effort to develop an understanding of the statewide environment, a survey was distributed to the New Jersey State Police and all County Prosecutors' Offices who then distributed the survey to all applicable local LEAs. The LEAs were surveyed on the following policies and procedures:

Question	Written Procedures	%	Informal Procedures	%	No Procedures	%	Total Responses	No Response*
1. Specific criteria for submitting SAFE Kits for forensic testing.	85	34%	56	22%	109	44%	250	2
2. Timelines within which an agency should send SAFE Kits for forensic testing.	67	27%	54	22%	129	51%	250	2
3. Victim notification when a SAFE Kit is submitted for forensic testing, and if it is not submitted for testing.	30	13%	31	14%	167	73%	228	24
4. Logging, tracking and storing SAFE Kits.	136	55%	50	20%	62	25%	248	4
Question			Yes	%	No	%	Total Responses	No Response*
5. Destruction of both tested and untested SAFE Kits.			150	60%	100	40%	250	2

*-"No Response" indicates incomplete surveys submitted by the LEAs.

As displayed above, a significant number of LEAs operate without written policies and procedures for either some or all aspects of our survey. Organizations, such as LEAs, should

Recommendation

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Tracking of Sexual Assault Forensic Examination Kits

The department should improve the tracking and reporting of all Sexual Assault Forensic Examination (SAFE) Kits.

In an effort to identify the number of unprocessed SAFE Kits in New Jersey, we asked each County Prosecutor's Office and the New Jersey State Police (NJSP) to report the total number of kits, Five-Year Hold Kits, and other unprocessed kits from July 10, 2014 to August 31, 2018. The New Jersey State Police Central Regional Laboratory and the Union County Forensics Laboratory were asked to provide the total number of processed kits for the same time period. The counties and the NJSP reported that 5,931 total kits were collected during this period, of which 1,122 Five-Year Hold Kits and an additional 1,712 kits were not submitted to either of the state's forensic labs. These labs reported that a total of 2,955 kits were processed. Based on the information reported, a reconciliation of SAFE Kits could not be achieved because of timing issues, inter-county transfers of kits, paper-only kits and the fact that the data was reported from several different sources.

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Directive No. 2018-5 which is intended to improve the collection of statewide data involving sexual assaults.

The State of Idaho implemented a statewide sexual assault kit tracking system and offers the software program free of charge to any public entity in an effort to encourage other states and agencies to also implement sexual assault kit tracking.

Recommendation

The department should implement a statewide sexual assault kit tracking system to ensure the tracking and reporting of all SAFE Kits. We also recommend the department review Idaho's tracking system and determine if it can be implemented in New Jersey.

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June 14, 2019

Dear Mr. Kaschak:

On behalf of the Office of the Attorney General, thank you for the opportunity to provide comments to the draft audit report ("the report") regarding the **Department of Law and Public Safety, Office of the Attorney General, Sexual Assault Examination Process**, provided by your office on May 16, 2019.

For purposes of background, throughout the State, each County has a Sexual Assault Response Team (SART) that provides a coordinated response to victims of sexual assault. A SART is comprised of a law enforcement officer, a confidential sexual violence advocate (CSVA), and a forensic nurse examiner (FNE). A victim of sexual assault is eligible for the services of the SART when the victim is 13 years of age or older; the assault occurred within five days; and the victim consents to a SART activation. A SART activation occurs when the victim chooses to engage with one, two, or all three members of the SART.

Every victim of sexual assault over the age of 13 who reports an assault within five days, is entitled to request a medical forensic exam to identify injuries and collect forensic evidence. A Sexual Assault Forensic Evidence (SAFE) Kit is specifically designed to collect and preserve physical evidence yielded from a medical forensic exam, which can be used in a criminal sexual assault investigation. The FNE, or health care provider, will perform the exam and collect evidence using the SAFE Kit.

If the victim consents, the SAFE Kit is provided to law enforcement. Pursuant to the Revision of Attorney General Law Enforcement Directive 2011-1, victims who undergo a medical forensic exam, but choose not report the incident to a law enforcement agency, may request to have their SAFE Kits "held" for a period of five years. Kits elected to be held for the five-year retention period shall be referred to as "Five-Year Hold Kits." If the victim is an adult, evidence shall be retained for at least five years. If the victim is a minor, evidence shall be retained for at least five years after the victim reaches the age of 18.



The report includes an Observation that addresses the testing of SAFE Kits. With regard to this Observation, the Department of Law and Public Safety ("the Department") appreciates the recognition by the State Auditor that a significant portion of the SAFE Kits collected during the time period audited were sent for testing by a forensic lab. The observations from the report clearly reflect the many reasons why SAFE Kits that are submitted to law enforcement may go untested. However, as also mentioned, SAFE Kits do not go untested as a result of backlog, as there is no backlog in the State, with the New Jersey State Police Laboratory processing tens of thousands of evidence samples annually.

Sexual assault cases are thoroughly investigated and prosecuted by our law enforcement community, and there is discretion when it comes to the decision to test a SAFE Kit. It is important to note, and the Department was pleased to see mentioned, that pursuant to federal regulations, DNA profiles can only be uploaded into the Combined DNA Index System (CODIS) Database when a crime has occurred.

There are many reasons that account for lack of testing. However, the majority of untested Kits are those Five-Year Hold Kits, where a victim does not want the involvement of law enforcement. In New Jersey, the victim's decision is paramount, and all SART members are committed to ensuring that a victim-centered approach is employed in any investigation.

The report also included the following recommendations, to which we respond as follows:

Recommendation:

The department should ensure that formal policies and procedures are established by each county for the handling of SAFE Kits in an effort to strengthen the investigation and adjudication of sexual assault cases.

Response:

Pursuant to the Attorney General Standards for Providing Services to Victims of Sexual Assault, implemented by Attorney General Law Enforcement Directive 2018-5, each County shall have formal policies and procedures for the handling of SAFE Kits and Five-Year Hold Kits, which will encompass preservation, storage, retention, reporting and tracking, to maintain integrity of evidence and follow the proper chain of custody. These policies and procedures will be submitted to the Office of the Attorney General to confirm compliance by December 31, 2019.

Recommendation:

The department should implement a statewide sexual assault kit tracking system to ensure the tracking and reporting of all SAFE Kits. We also recommend the department review Idaho's tracking system and determine if it can be implemented in New Jersey.

Response:

The Department will create a working group whose goal will be to assess the feasibility of implementing a statewide tracking system. This assessment will include the resources and funding required to establish such a system. The working group will explore all options for standardizing the tracking of SAFE Kits, with the clear understanding that the victim's rights to confidentiality and the decision to involve law enforcement will not be compromised.

The Office of the Attorney General would like to thank the audit team, as well as the State Auditor, for all of their hard work and dedication during this audit process. Their professionalism and compassion while dealing with an important issue are greatly appreciated. We look forward to maintaining the excellent working relationship that we have with the Office of State Auditor in order to continue our unceasing efforts to improve the Department.

Please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,



William H. Cranford
Acting Administrator

WHC/kmb

cc:

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