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File ID: 2023-01478

4/2/2024

Discussion Item 13.

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**Audit of the Sacramento Police Department's Property and Evidence Division - Sexual Assault Evidence Kits**

File ID: 2023-01478

**Location:** Citywide

**Recommendation:** Pass a **Motion** approving the City Auditor's Audit of the Sacramento Police Department's Property and Evidence Division - Sexual Assault Evidence Kits.

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**Presenter:** Kevin Christensen, Principal Fiscal Policy Analyst, (916) 808-4743, kmchristensen@cityofsacramento.org, Office of the City Auditor

**Attachments:**

1-Description/Analysis

2-Audit of the Sacramento Police Department's Property and Evidence Division - Sexual Assault Evidence Kits

**Description/Analysis**

**Issue Detail:** This audit was approved as part of the 2022-23 Audit Plan. According to the City Council Rules of Procedures, the Budget and Audit Committee shall receive, review, and forward to the council as appropriate reports, recommendations, and updates from the City Auditor. This report documents the Audit of the Sacramento Police Department's Property and Evidence Division - Sexual Assault Evidence Kits.

**Policy Considerations:** The City Auditor's presentation of the Audit of the Sacramento Police Department's Property and Evidence Division - Sexual Assault Evidence Kits is consistent with the Mayor and City Council's intent to have an independent audit function for the City of Sacramento.

**Economic Impacts:** None.

**Environmental Considerations:** None.

**Sustainability:** None.

**Commission/Committee Action:** On September 5, 2023, the Budget and Audit Committee passed a motion to accept the City Auditor's Audit of the Sacramento Police Department's Property and Evidence Division - Sexual Assault Evidence Kits and to forward to the City Council for approval.

**Rationale for Recommendation:** This staff report provides the City Council with information that may be used to meet its responsibility to provide oversight and supervision of the City Auditor and other City departments.

**Financial Considerations:** The cost of the Audit of the Sacramento Police Department's Property and Evidence Division - Sexual Assault Evidence Kits was funded out of the FY2021/22 and FY2022/23 Office of the City Auditor budgets.

**Local Business Enterprise (LBE):** None.

# Audit of the Sacramento Police Department's Evidence and Property Division – Sexual Assault Evidence Kits

Report # 2023/24-04 | September 2023

Sacramento Police Department had not Previously Taken Steps to Comply with a Recent California Law Related to the Auditing and Reporting of Untested Sexual Assault Evidence Kits.

Opportunities Exist for the Sacramento Police Department to Update Evidence Procedures Related to Sexual Assault Evidence as Recommended by Best Practices.


Opportunities Exist for the Sacramento Police Department to Seek Various Grants to Assist in Processing Untested Sexual Assault Evidence Kits.



*City of*  
**SACRAMENTO**  
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# AUDIT FACT SHEET

## Audit of the Sacramento Police Department's Evidence and Property Division – Sexual Assault Evidence Kits

### Relevant Legislation



#### 2016 Assembly Bill No. 1744

Establishes the basic components for a standardized sexual assault forensic medical evidence kit.

#### 2017 Assembly Bill No. 1312

Prohibits a law enforcement agency from destroying or disposing of sexual assault evidence kit or other crime scene evidence from an unsolved sexual assault case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim's 40th birthday.

#### 2017 Assembly Bill No. 41

For a kit collected on or after January 1, 2018, a law enforcement agency must report information regarding sexual assault evidence kit, within 120 days of the collection of the kit, to the California Department of Justice through a database established by the department.

#### 2018 Assembly Bill No. 3118

Codifies Penal Code Section 680.4 and requires law enforcement agencies to conduct an audit of all untested sexual assault kits in their possession and shall, no later than July 1, 2019, submit a report to the Department of Justice.

#### 2019 Senate Bill No. 22

Codifies Penal Code Section 680.4 and ensures that a rapid turnaround DNA program is in place, as specified, and require a crime lab to either process the evidence or transmit the evidence to another crime lab for processing.

### BACKGROUND

Due to the increase of sexual assaults over the past years in California, the State Legislature passed several state laws to address law enforcement agencies obligations to victims of sexual assaults in the handling, processing, and timely testing of sexual assault evidence (SAE) or other crime scene evidence. The Sacramento Police Department (SPD) Evidence and Property Division is responsible for the storage of SAE kits. According to SPD's Evidence and Property Procedural Manual, SPD's Evidence and Property Division receives all SAE kits from the Sacramento County District Attorney Office's Crime Lab (CCL). The objective of this audit was to determine whether SPD's Evidence and Property Division is operating in compliance with applicable policies, laws, and industry best practices.

### FINDINGS

#### **Finding 1: Sacramento Police Department had not Previously Taken Steps to Comply with a Recent California Law Related to the Auditing and Reporting of Untested Sexual Assault Evidence Kits**

We believe that SPD has an opportunity to take additional steps to undertake an audit of the SAE kits within the department's possession to determine the total number of kits, determine whether the kit is tested or untested, and report this data to Attorney General. Specifically, we recommend:

- Assign staff to undertake an audit of the sexual assault kits within the department's possession to determine the number of untested SAE kits.
- Report the number of untested sexual assault kits to the California Office of the Attorney General.
- Consider working with City management to identify and allocate resources to prioritize and test untested sexual assault kits.

#### **Finding 2: Opportunities Exist for the Sacramento Police Department to Update Evidence Procedures Related to Sexual Assault Evidence as Recommended by Best Practices**

The SPD can implement policies and processes specifically aimed at managing SAE kits in its possession consistent with best practices. Specifically, we recommend:

- Consider conducting an audit of all SAE kits to establish a total inventory.
- Consider requiring regularly scheduled audits and identify metrics to collect and report to SPD management.
- Consider designing and providing training on a disposition policy specifically addressing sexual assault evidence.

#### **Finding 3: Opportunities Exist for the Sacramento Police Department to Seek Various Grants to Assist in Processing Untested Sexual Assault Evidence Kits**

While SPD has successfully utilized grants to assist funding department programs, we found that SPD can take steps to identify and procure available resources to assist in funding the testing of untested of SAE kits in its possession.

- Search for and apply for grants that can assist with the reduction of untested sexual assault evidence kits.

## Introduction

In accordance with the City Auditor’s 2022/23 Audit Plan, we have completed the *Audit of the Sacramento Police Department’s Evidence and Property Division – Sexual Assault Evidence Kits*. In an effort to provide timely reporting, we are presenting this audit as a separate audit that is part of the larger audit of the *Audit of the Sacramento Police Department’s Evidence and Property Division*. This first installment is a review of the City of Sacramento Police Department Evidence and Property Division’s compliance with California legislation regarding the storage and management of sexual assault evidence kits. We conducted this performance audit in accordance with 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. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The City Auditor’s Office would like to thank the Sacramento Police Department and the Sacramento County District Attorney Office’s Crime Laboratory for their cooperation during the audit process.

## Background

According to the California Office of the Attorney General’s Open Justice database and published reports, the amount of sexual assault crimes in the state of California has increased over the years.<sup>1</sup> The California Department of Justice defines sexual assault as, “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.”<sup>2</sup> Due to the increase of sexual assaults over the past years in California, the State Legislature passed several state laws to address law enforcement agencies obligations to victims of sexual assaults in the handling, processing, and timely Deoxyribonucleic acid (DNA) testing of sexual assault evidence or other crime scene evidence.

## Sexual Assault Crimes

Sexual assault is a serious crime and a dangerous offense that is committed against a person. For example, legislative changes to California Penal Code sec. 243.4 defines sexual assault and battery as, “Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery.” Additional examples of sexual assault crimes include sexual assault, sodomy, and lewd or lascivious acts.

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<sup>1</sup> According to the California Office of the Attorney General, Open Justice is, “a data-driven initiative that works to increase access to criminal justice data and support the development of public policy.”

<https://openjustice.doj.ca.gov/>

<sup>2</sup> The Office of the Attorney General is the state attorney general of California. The California Office of the Attorney General carries out the responsibilities of the office through the California Department of Justice.

When a sexual assault is reported, the victim is provided the opportunity to see a medical professional, who assists in collecting DNA evidence used to identify, investigate, and potentially prosecute perpetrators.

When a sexual assault crime is reported, a Sacramento Police Department (SPD) police officer at the scene obtains important information from the victim, collects relevant evidence from the crime scene, and contacts the contracted medical provider for assistance, if needed.<sup>3</sup> SPD then transports the victim to a medical provider for treatment and offers a victim a sexual assault examination. If the victim completes a sexual assault examination, the completed sexual assault evidence (SAE) kit is sent to a crime lab for processing. As discussed in greater detail below, the passage of Senate Bill No. 22 (SB 22) significantly impacted how local law enforcement agencies are required to process SAE kits. Since the enactment of SB 22, the SPD Evidence and Property Division sends SAE kits to the Sacramento County District Attorney's Crime Laboratory for processing. Prior to the enactment of SB 22, law enforcement agencies were not mandated to process all SAE kits.

Law enforcement agencies use DNA and forensic identification analysis for identifying and prosecuting sexual assault offenders. Adults arrested or charged with a felony are required by law to submit DNA samples as a result of that arrest, charge, or adjudication. California Penal Code sec. 680 states that law enforcement agencies have an obligation to victims of sexual assault to properly handle, retain, and timely test DNA sexual assault kit evidence or other crime scene evidence, and to be responsive to victims concerning the developments of forensic testing and the investigation of their cases.<sup>4</sup>

To assure that law enforcement agencies are adhering to similar practices, the International Association of Property and Evidence (IAPE) established standards for processing and storing SAE kits. There are also standards for the documentation, packaging, labeling, and color coding of the SAE kits. Additionally, there are standards for the movement, tracking, and storage of the SAE kits. Several additional best practices have been published related to the collection, testing, and storage of SAE kits, such as U.S. Department of Justice's National Institute of Justice (NIJ) which issued a publication titled *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*.

### California State Legislation

The California State Legislature has, within the past 10 years, prioritized the importance of prosecuting those believed to have committed sexual assaults at the local level through the passage of a slate of legislation. California state legislative successes have included requiring local law enforcement agencies to implement new processes and requirements to ensure that victims of sexual assaults have rights,

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<sup>3</sup> The City has contracted with the Sutter Medical Foundation to conduct sexual assault and forensic examinations for victims of sexual assault.

<sup>4</sup> Throughout our report we will use the term sexual assault evidence kit while other organizations use terms such as rape kit evidence, sexual assault forensic evidence (SAFE) kits, etc.



protection, and access to information related to their cases. Legislation has also evolved to ensure law enforcement agencies are held accountable, maintain accurate records, and are transparent. As discussed in greater detail below, the different legislation touches different aspects of the sexual assault investigative processes such as requiring a standardization of sexual kit testing practices, requiring testing, and auditing and reporting of untested SAE kits.

The following are some State Senate and Assembly bills that address requirements that law enforcement agencies and other agencies must follow when processing and managing sexual assault evidence kits.

**Figure 1: California State Legislation Related to the Management of Sexual Assault Evidence Kits**

Approved by Governor	Legislation	Description of Legislation
2016	Assembly Bill No. 1744	Establishes the basic components for a standardized sexual assault forensic medical evidence kit.
2017	Assembly Bill No. 1312	Prohibits a law enforcement agency from destroying or disposing of sexual assault evidence or other crime scene evidence from an unsolved sexual assault case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim’s 40th birthday.
2017	Assembly Bill No. 41	For a kit collected on or after January 1, 2018, a law enforcement agency must report information regarding sexual assault evidence kit, within 120 days of the collection of the kit, to the California Department of Justice through a database established by the department.
2018	Assembly Bill No. 3118	Codifies Penal Code Section 680.4 and requires law enforcement agencies to conduct an audit of all untested sexual assault evidence kits in their possession and shall, no later than July 1, 2019, and submit a report to the Department of Justice.
2019	Senate Bill No. 22	Codifies Penal Code Section 680 and ensures that a rapid turnaround DNA program is in place, as specified, and require a crime lab to either process the evidence or transmit the evidence to another crime lab for processing.

Source: Sacramento City Auditor’s Office based on California State Legislation at <https://leginfo.legislature.ca.gov/>.

As seen above, the California Legislature recently passed at least five bills addressing investigation and processing of evidence related to sexual assault. This audit focuses on two of the bills related to auditing, testing, and reporting requirements for SAE kits.

Assembly Bill No. 3118 (AB 3118), which added Penal Code sec. 680.4, requires all law enforcement agencies, medical facilities, crime laboratories, and any other facilities that receive, maintain, store, or preserve SAE kits to conduct an audit of all untested SAE kits in their possession. The Legislature signaled the intent of the law was to leverage new federal and state databases for the collection of DNA evidence to increase the prosecution of sexual assault crimes in two ways. First, provide the Legislature an estimate of the number of untested SAE kits in each local law enforcement agency and the state. Second, encourage local law enforcement agencies to apply for grants to assist in the testing of untested SAE kits in their possession in order to include the relevant DNA information into federal and state databases. This new law required affected entities to conduct internal audits and report specified information to the Department of Justice by July 1, 2019, and the Department of Justice to summarize the audits received in a report to the Legislature by July 1, 2020.

The California Legislature passed Senate Bill No. 22 (SB 22) in October 2019, which codified Penal Code sec. 680. It required law enforcement agencies to “timely” submit SAE kits received on or after January 1, 2016, to a crime lab and process the evidence or transmit the evidence to another crime lab for processing. SB 22, known as the “Sexual Assault Victims’ DNA Bill of Rights”, additionally requires crime labs to process SAE kits, create DNA profiles, and upload qualifying profiles into Combined DNA Index System (CODIS) no later than 120 days after receiving the evidence.<sup>5</sup> Further, the law requires that law enforcement agencies make certain information available to the victim.

### **Office of the Attorney General’s Report on Sexual Assault Evidence Testing**

In 2020, the Office of the Attorney General issued its *Statewide Audit of Untested Sexual Assault Forensic Evidence Kits 2020 Report to the Legislature* that included information submitted by participating local law enforcement agencies in response to the requirements set forth in AB 3118. The audit discussed various legislation related to the sexual assault evidence kits and also included information from various law enforcement agencies that reported the number of untested kits in their possession.

One of the central purposes of AB 3118 was the requirement that local law enforcement agencies conduct an audit and determine the number of untested SAE kits statewide in order to inform the California Legislature about the issue. The Legislature had been prompted, in part, by news reports stating that local law enforcement agencies in California had more than 13,000 untested SAE kits.

According to the Office of the Attorney General’s report, there are about 690 law enforcement agencies in California including city police departments, county sheriffs’ departments, district attorneys, state

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<sup>5</sup> As described in greater detail below, CODIS is the Combined DNA Index System and is the term used to describe the FBI’s program of support for criminal justice DNA databases as well as the software used to run these databased.

investigators, coroners, probation departments, school districts and universities, airport police and others. In addition, there are 18 public crime laboratories or laboratory systems that handle SAE kits.

The Office of the Attorney General received responses from a total of 149 law enforcement agencies and crime laboratories. These law enforcement agencies and crime laboratories reported a combined total of 13,929 untested SAE kits. Notably, more than 500 law enforcement agencies did not participate.

### **Development of Grant Funding to Assist Local Agencies Comply with New Laws**

Local law enforcements agencies may be eligible for various federal and state funding and grants such as the National Sexual Assault Kit Initiative (SAKI) grant, Edward Byrne Memorial Justice Assistance Grant (JAG) Program, and the Paul Coverdell Forensic Science Improvement Grants Program (Coverdell) Program.

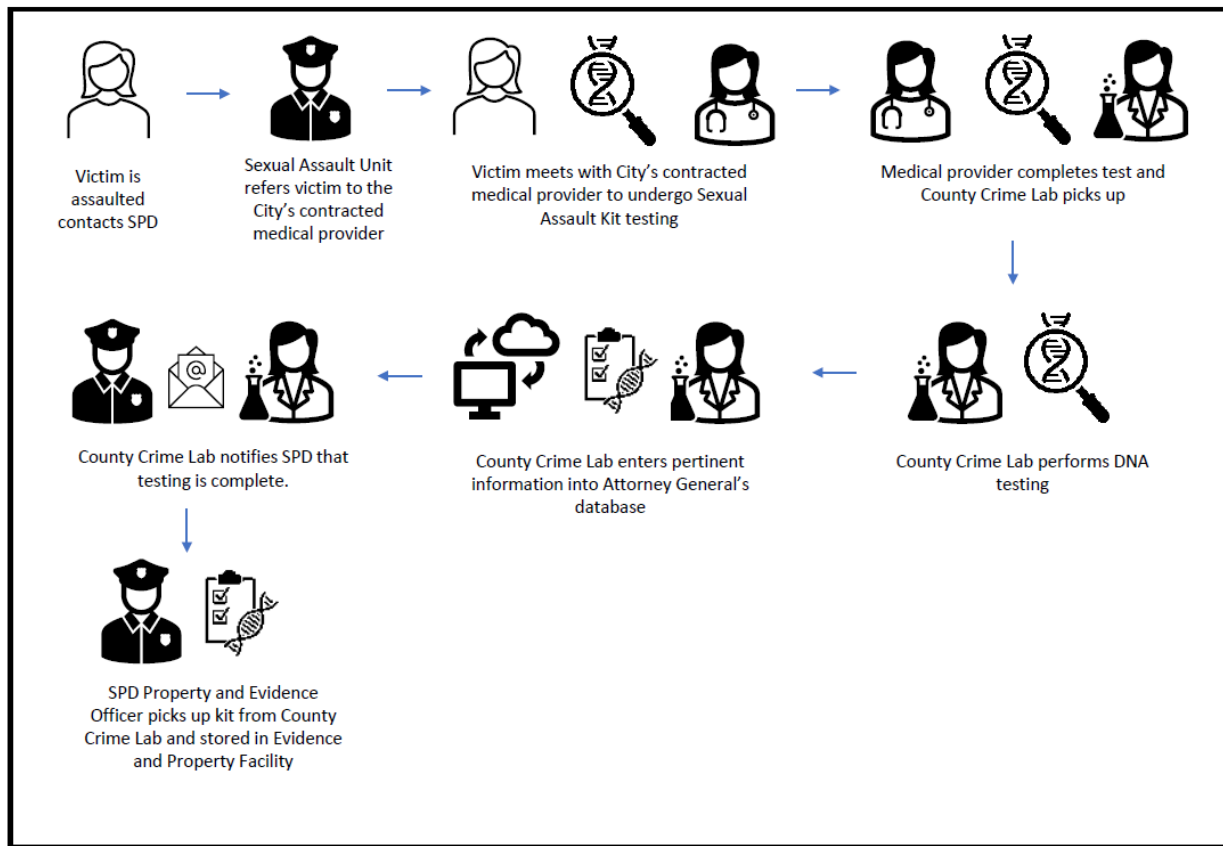
For example, many different law enforcement agencies throughout the state have reduced the number of untested sexual assault evidence kits in their possession with the assistance of the National Sexual Assault Kit Initiative (SAKI). According to the U.S. Department of Justice’s Bureau of Justice, the SAKI program provides support to agencies such as funding to inventory, track, and efficiently reduce the number of untested sexual assault evidence kits. The program also helps agencies create the necessary protocols and policies to improve collaboration and promote sustainable reform among laboratories, police, prosecutors, and victim service providers.

### **Sacramento Police Department**

The police evidence and property function are vital to the criminal justice process. The effective and efficient management of evidence and property operations is essential to providing high quality service to the community. Within the Sacramento Police Department (SPD), evidence and property management is embedded in the Office of Investigations Division. The Evidence and Property Division staff are responsible for storing impounded property and ensuring the integrity of evidence for court action.

The SPD Evidence and Property Division is also responsible for the storage of SAE kits. According to SPD’s *Evidence and Property Procedural Manual*, SPD’s Evidence and Property Division receives all SAE kits from the Sacramento County District Attorney Office’s Crime Laboratory (County Crime Lab) after they have been tested and the results reported. The following image shows the chain of custody of the SAE kits.

Figure 2: Chain of Custody of the Sexual Assault Evidence Kits



Source: Sacramento City Auditor’s Office based on review of Sacramento Police Department’s policies and procedures.

When an SAE kit is received from the Sacramento County District Attorney Office’s Crime Laboratory, the Evidence and Property Division includes specific information in the Versadex Records Management System (RMS), which is a function of Versaterm.<sup>6</sup> According to the SPD’s *Evidence and Property Section Procedural Manual*, SAE kits are received by Evidence and Property personnel from the Sacramento County District Attorney Office’s Crime Laboratory. After a SAE kit is received from the Sacramento County District Attorney Office’s Crime Laboratory, Sacramento Police Department Evidence and Property staff upload the sexual assault evidence kit’s information to Versadex, their computer Record Management System (RMS) that monitors all evidence entering and exiting the facility to ensure that chain of custody is secure. The RMS entry includes the date/time received, basic description, County Crime Laboratory number (CCL #), and the name of the person the kit was taken from.

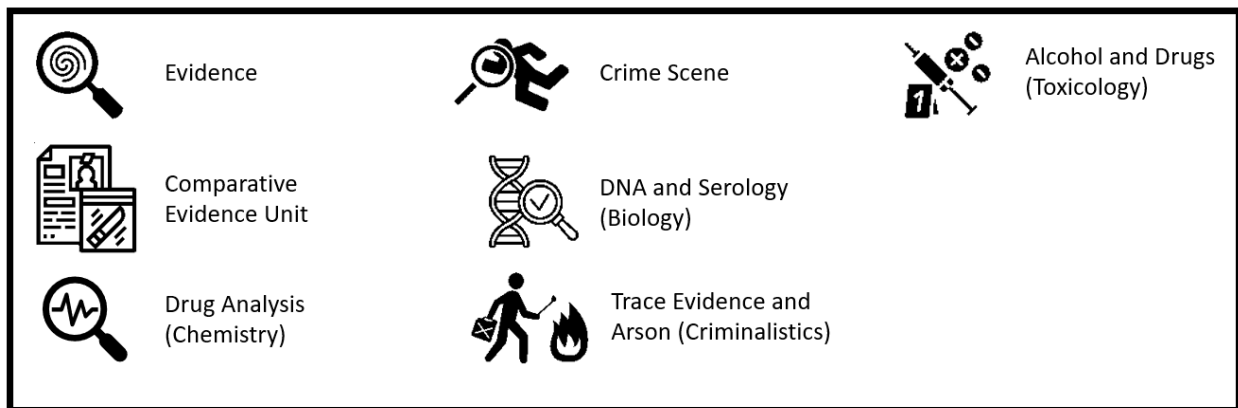
<sup>6</sup> According to their website, “Versaterm offers Computer-Aided Dispatch Systems (vCAD), Records Management Systems (vRMS), and Mobility Solutions for public safety agencies.” <https://www.versaterm.com/company>

## Sacramento County Office of the District Attorney

The SPD works with the Sacramento County Office of the District Attorney for the prosecution of various violations of criminal law. Sacramento County Office of the District Attorney Crime Laboratory (County Crime Lab) is also responsible for processing sexual assault evidence kits for SPD. According to the Sacramento County Office of the District Attorney website, the Sacramento County Office of the District Attorney Crime Laboratory is one of the few in California that is managed by the Office of the District Attorney.

The County Crime Lab is responsible for the recognition, collection, preservation, scientific analysis, and interpretation of physical evidence, with a goal towards presentation of such evidence in criminal court cases. The County Crime Lab provides the following services:

*Figure 3: Sacramento County Office of the District Attorney Crime Laboratory Services*



Source: Sacramento City Auditor's Office based on County District Attorney Office Crime Laboratory Services <https://www.sacda.org/crime-lab/crime-lab-services/>

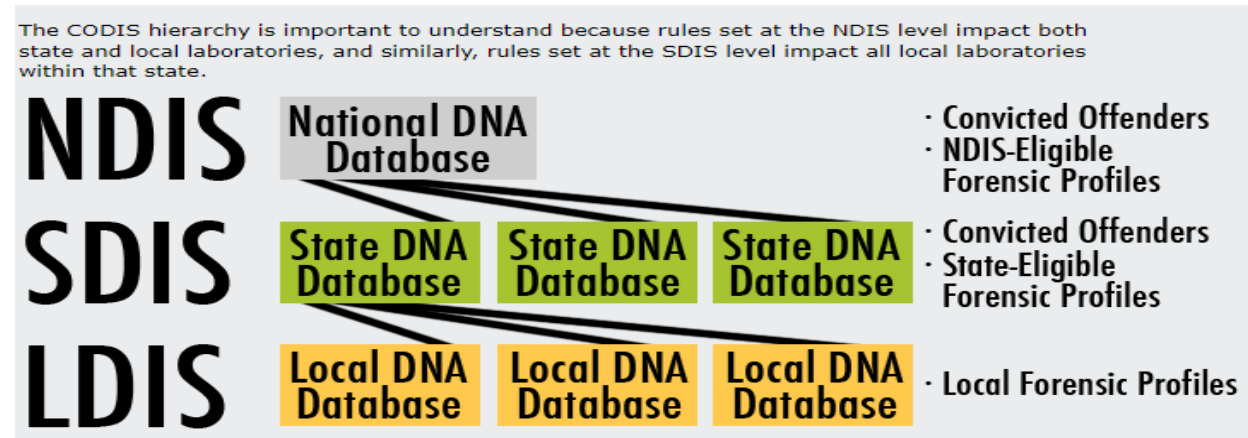
As seen in the image above, the County Crime Lab is responsible for analyzing DNA and serology.<sup>7</sup> The County Crime Lab examines items of evidence from sexual assaults for the presence of foreign DNA. After the County Crime Lab processes sexual assault evidence kits, relevant evidence data is uploaded into the Combined DNA Index System (CODIS), a national database where law enforcement agencies can share DNA profiles and compare them to other existing evidence to generate investigative leads. Law enforcement agencies use CODIS to link DNA evidence obtained from crime scenes and potentially identify serial criminals.

<sup>7</sup> Merriam-Webster Dictionary defines serology as, "a medical science dealing with blood serum especially in regard to its immunological reactions and properties."

The FBI organized CODIS as a hierarchy that includes national, state, and local indexes known as National DNA Index System (NDIS), State DNA Index System (SDIS), and Local DNA Index System (LDIS), respectively.<sup>8</sup> The FBI manages the national index, each state assigns a crime lab to maintain their respective state index, and crime labs maintain their own local index.

When DNA profiles match, the profiles can be uploaded and searched against the SDIS and NDIS databases. A candidate match indicates an association between two or more DNA profiles. They are defined in the following image:

**Figure 4: CODIS Hierarchy of Databases Used for Storage and Access to Forensic Profiles**



Source: National Forensic Science Technology Center (NFSTC) <https://projects.nfstc.org/fse/12/12-05.html>

As seen in the image above, local law enforcement agencies have a critical role in providing DNA profiles to the Local DNA Database. It is important that law enforcement agencies are processing, managing, and submitting DNA evidence to assure that the database can be accurate and be utilized for investigative purposes.

<sup>8</sup> According to the FBI's, *Privacy Impact Assessment for the [National Deoxyribonucleic Acid (DNA) Index System (NDIS) of the Combined DNA Index System Software (CODIS)]*, "CODIS utilizes a three-tiered index system to organize DNA information and create a national search and storage capability for DNA records. The first (and lowest level) of CODIS's three tiers consists of Local DNA Index Systems (LDISs), which generally correspond with city and county participating Criminal Justice Agency forensic laboratories. The second tier consists of State DNA Index Systems (SDISs), which generally correspond with state-level participating Criminal Justice Agency forensic laboratories. DNA records flow upward from LDISs to SDISs, which enables forensic laboratories within the state to compare DNA records; and from SDISs to NDIS, which enables forensic laboratories to compare DNA records on a national level."

## Objective, Scope, and Methodology

The objective of this audit was to determine whether SPD's Evidence and Property Division is operating in compliance with applicable policies and procedures, laws, and industry best practices.

During our preliminary fieldwork for that project, we conducted a series of walk-throughs of the SPD evidence and property warehouse to observe the storage of different classifications of evidence within the warehouse, such as general evidence, firearms, drugs, and money. Through these walkthroughs and discussions with management of the Evidence Facility, we observed the storage of SAE kits. We observed that these SAE kits were not separated based on age or tested status. Although they are not required to be separated, this led us to inquire about the completeness of the SAE kit testing processes and testing completion rates. Since the SPD was unable to respond to questions about the testing completeness, we designed and engaged in additional testing steps. Due to the sensitivity of the issue, we are presenting this audit as the first portion of our larger *Audit of the Sacramento Police Department's Evidence and Property Division*.

The objective of this audit, the *Audit of the Sacramento Police Department's Evidence and Property Division – Sexual Assault Evidence Kits*, is refined to determine whether SPD is in compliance with California legislation regarding the storage, audit, reporting, and management of sexual assault evidence kits.

We reviewed recent California legislation to determine new laws guiding sexual assault investigations, testing of evidence, and reporting and storage requirements. We requested SPD's policies and procedures regarding the collection, storage, and processing of the SAE kits. We reviewed relevant information from federal and state law enforcement agencies and audit shops to determine trends in testing, records of tested and untested SAE kits, and efforts to conduct audits and perform SAE testing. We reviewed the Office of the Attorney General's *Statewide Audit of Untested Sexual Assault Forensic Evidence Kits 2020 Report to the Legislature* to determine whether the City of Sacramento submitted the audited data. We sought to document relevant data about the number of untested SAE kits statewide. Additionally, we sought to identify law enforcement agencies that complied with the requirements of Assembly Bill No. 3118 (AB 3118) to include for benchmark interviews.

We conducted benchmarking interviews with representatives of the Los Angeles Police Department, the Anaheim Police Department, the City of Elk Grove Police Department, and the City of Santa Ana Police Department to determine their processes for auditing tested and untested SAE kits, methods for reporting the information to federal and state databases, their processes for testing the untested SAE kits in their possession, and their processes for applying for grant funding to assist with these activities.

We requested data on all SAE kits listed in the SPD's evidence and property database, called Versadex. The requested data included the date the kit was received, the location of the kit, the evidence number,

and the status of the kit. SPD provided data that listed more than 3,000 SAE kits. The dates of the sexual assault evidence kits ranged from 1979 to 2021. According to SPD, a total of 841 SAE kits collected between 1979 and 2021 had been disposed of based on statutes of limitations, disposition schedules based on legal requirement for maintenance, and completed investigations.<sup>9</sup> Notably, prior to the passage of Assembly Bill No. 1312 (AB 1312), which extended the period of time that law enforcement agencies were required to maintain a SAE kit to 20 years, there was no requirement that SAE kits be maintained. We then worked with staff from SPD's Evidence and Property Division to locate and review a series of samples of SAE kits.

We designed samples of SAE kits located in the SPD evidence and property warehouse by stratifying the total population into two separate groups based on the legislative and legal requirements set by Senate Bill No. 22 (SB 22) and Assembly Bill No. 3118 (AB 3118). This would allow us to determine if the City of Sacramento is substantially in compliance with SB 22 as well as determine an estimated amount of untested sexual assault evidence kits, as required by AB 3118.

- First, SB 22 required law enforcement agencies to submit all SAE kits collected on or after January 1, 2016, to a crime lab for testing within 20 days after being booked into evidence. As such, one of our samples consisted of SAE kits collected on or after January 1, 2016. There were 674 SAE kits dated after 2016. According to SPD, the department took several steps to comply with SB 22 including implementing procedures requiring that all SAE kits be tested. As such, we anticipated a lower level of risk that a significant number of SAE kits collected after January 1, 2016, would not be tested. We therefore took a judgmental sample of 25 SAE kits collected after January 1, 2016.<sup>10</sup>
- Second, as stated above, AB 3118 required law enforcement agencies to conduct an audit of all SAE kits and report the number of tested and untested kits to the Office of the Attorney General. The population from which we selected our second sample consisted of all SAE kits collected before January 1, 2016. There were 1,632 SAE kits dated before 2016. We identified a higher risk of noncompliance for these kits. As a result, we selected to use a statistical sample to produce a higher level of assurance. For SAE kits received before 2016 we designed the sample with a margin of error of five percent and a confidence level 90 percent, yielding a sample size of 233 SAE kits. According to SPD, an audit was not conducted to comply with AB 3118. As such,

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<sup>9</sup> We did not conduct any testing to assess the appropriateness of the disposal of these kits.

<sup>10</sup> The Oxford Reference defines judgmental sampling as, "a form of sampling in which the auditor selects a sample from a population on the basis of his or her own experience and assessment of the situation, rather than using statistical sampling techniques." Our sample does not produce a statistical result that can be projected onto the population. <https://www.oxfordreference.com/display/10.1093/oj/authority.20110803100026339>



we anticipated a higher level of risk of non-compliance and therefore selected to use a statistical sample to produce a higher level of assurance.<sup>11</sup>

For each SAE kit, we compared the Property Report number, the Tag Number, Article Number, and Serial Number provided by SPD to the information details, including the unique identification number assigned by the County Crime Lab, on the actual SAE kit. In addition, we assessed the controls in place designed to assure that SPD's Evidence and Property Division has the correct Sacramento County District Attorney Office's Crime Laboratory numbers for a sample of SAE kits within our entire sample testing.

We then sent the lists to the Sacramento County District Attorney Office's Crime Laboratory to verify that SAE kits had been tested and included the correct County Crime Laboratory numbers. We then estimated the number of SAE kits that the County Crime Lab did not test. Using information provided in the Office of the Attorney General's *Statewide Audit of Untested Sexual Assault Forensic Evidence Kits 2020 Report to the Legislature*, we compared the number of untested kits estimated by our sample to the number of untested kits reported by California law enforcement agencies.

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<sup>11</sup> According to The Public Company Accounting Oversight Board, "statistical sampling helps the auditor (a) to design an efficient sample, (b) to measure the sufficiency of the evidential matter obtained, and (c) to evaluate the sample results. By using statistical theory, the auditor can quantify sampling risk to assist himself in limiting it to a level he considers acceptable." <https://pcaobus.org/oversight/standards/auditing-standards/details/AS2315>

## **Finding One: Sacramento Police Department had not Previously Taken Steps to Comply with a Recent California Law Related to the Auditing and Reporting of Untested Sexual Assault Evidence Kits.**

Due to the seriousness of sexual assault crimes, the California Legislature in recent years has passed several laws to require law enforcement agencies to submit sexual assault evidence (SAE) kits for testing and reporting the outcomes in a timely manner. The responsibility to create processes and identify funding to comply with these laws, many of which have been codified in the California Penal Code, have been left to local law enforcement agencies.

We found that SPD had not previously taken steps to comply with a recent law requiring local law enforcement agencies to audit untested SAE kits in their possession and report this information to the California Office of the Attorney General. In the absence of an audit of SPD quantifying untested SAE kits, we conducted testing as part of our fieldwork and estimate that SPD is in possession of approximately 340 untested SAE kits collected prior to 2016. Notably, we found the kits we reviewed were all present and stored, generally, appears to be in conformance with the International Association of Property and Evidence standards.

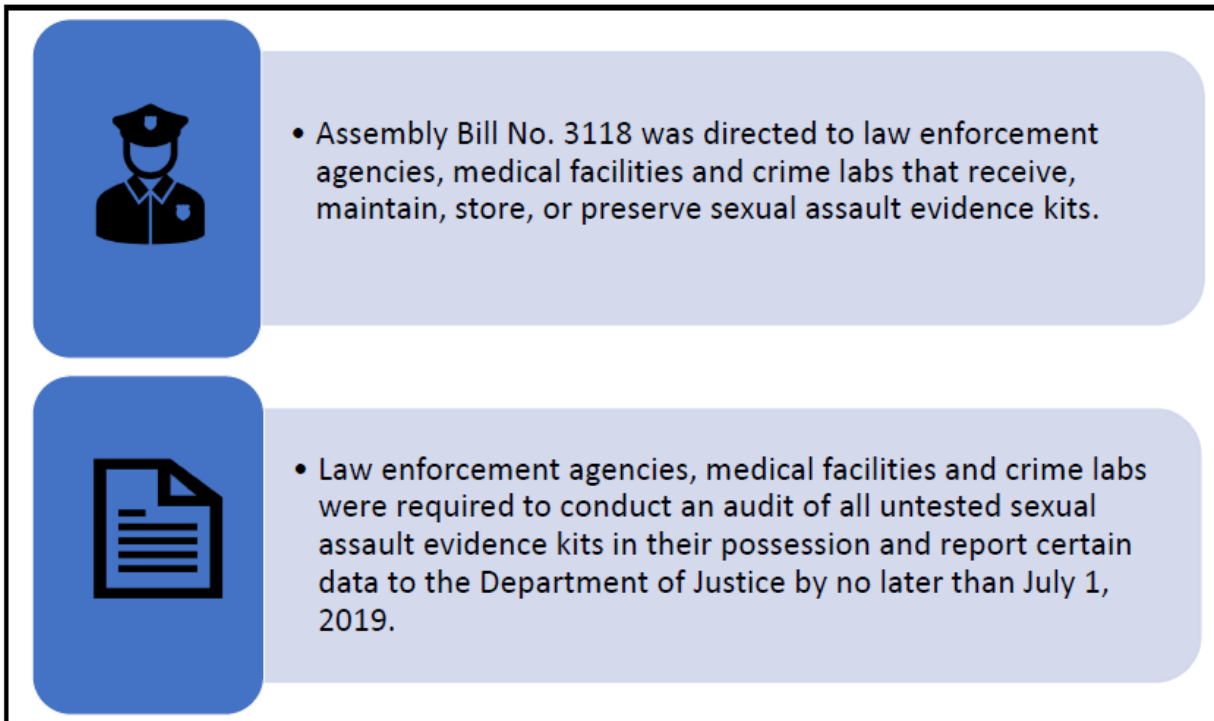
According to SPD officials, adequate staffing has previously not been available for the SPD to implement a comprehensive compliance program with all the new legal requirements related to sexual assault. To SPD's credit, the department has engaged retired annuitants to bring the department into compliance with Senate Bill No. 22 (SB 22) affecting more recently reported and investigated sexual assault crimes. SPD stated its intent is to work to ensure compliance with the legislative changes related to SAE kits collected prior to January 1, 2016, as funding is identified.

We believe SPD should work with City management to more expeditiously identify funds to conduct an audit to count all untested SAE kits in their possession and report this information to the California Office of the Attorney General. To its credit, during the report writing phase of this project, SPD management directed staff to complete the audit and submit the contents to the California Office of the Attorney General, as required by Assembly Bill No. 3118 (AB 3118) and California Penal Code sec. 680.4.

Sexual assault crimes are a public safety issue that affects men, women, and children in the state of California. Due to the seriousness of sexual assault crimes, as stated above, the state has put renewed focus on investigating and prosecuting sexual assault perpetrators. State legislators passed AB 3118 in September 2018 that codified in California Penal Code 680.4 the requirement that local law enforcement agencies perform an audit of all untested SAE kits in their possession and report the

information to the California Department of Justice by July 1, 2019.<sup>12</sup> Figure 5 below summarizes the requirements of AB 3118.

**Figure 5: Summary of Assembly Bill No. 3118**



Source: Sacramento City Auditor's Office based on review of California State Legislature Assembly Bill No. 3118

Additionally, the law required local law enforcement agencies to report to the Office of the Attorney General: (1) the date the kit was collected; (2) the date the kit was picked up by a law enforcement agency, for each law enforcement agency that has taken custody of the kit; (3) the date the kit was delivered to a crime laboratory; and (4) the reason the kit has not been tested. Complying with these elements of the law require significant effort by the local law enforcement agency to research investigative files, SAE kits, and report the information.

As stated in the Background section, the Office of the Attorney General's *Statewide Audit of Untested Sexual Assault Forensic Evidence Kits 2020 Report to the Legislature* found that the 149 California law enforcement agencies that submitted their audit results held more than 13,900 untested SAE kits. We conducted interviews with various law enforcement agencies that participated in the California Office of

<sup>12</sup> California Penal Code sec. 680.4 states: "(a) Each law enforcement agency, medical facility, crime laboratory, and any other facility that receives, maintains, stores, or preserves sexual assault evidence kits shall conduct an audit of all untested sexual assault kits in their possession and shall, not later than July 1, 2019, submit a report to the Department of Justice..."

the Attorney General's audit, including the Los Angeles Police Department, Santa Ana Police Department, the City of Elk Grove Police Department, and Anaheim Police Department. These law enforcement agencies complied with AB 3118 and Penal Code sec. 680.4 by conducting an audit of SAE kits and submitting results to the California Office of the Attorney General.

Performing an audit of the SAE kits in the property evidence facility can be a tedious and time intensive process. For example, officials from the Los Angeles Police Department and the Anaheim Police Department noted that the audit had to be conducted by an active or retired investigator from the department's division focused specifically on sexual assault crimes. This was necessary because the law required law enforcement agencies to report specific information related to the SAE kit, such as the reason the SAE kit was not tested. Many times, these officials explained, the investigator or detective had to research investigative files or review additional evidence from the case to make such a determination. These agencies successfully conducted the required audits and subsequently submitted the required information to the California Office of the Attorney General.<sup>13</sup> According to interviews, these agencies, determined the total untested SAE kit population, developed a plan to prioritize the kits into groups, and implemented a process to submit the untested kits to a crime lab for testing.

In contrast, we interviewed SPD officials who stated they have not conducted an audit to count all SAE kits in their possession, could not state the number of untested SAE kits in inventory, and did not submit a report to the California Department of Justice. The City of Sacramento was not included in the Office of the Attorney General's *Statewide Audit of Untested Sexual Assault Forensic Evidence Kits 2020 Report to the Legislature*. As a result, SPD had not taken steps to comply with AB 3118 and Penal Code Section 680.4.

According to SPD, prior to the new slate of legislation guiding sexual assault investigations, many SAE kits were not tested upon collection based on the investigators and the District Attorney prosecutor's professional judgement about the potential success of the case. SPD officials stated that SAE kit testing is expensive, and in some instances, the cases connected to the SAE kit carried a low probability of investigative or prosecutorial success. In these instances, rather than testing, the decision was made to store the kit to support the investigation if new evidence was discovered. Additionally, according to SPD officials, many victims were uninterested in pursuing prosecution and did not want the kit tested.

Since the enactment of AB 3118 and codification of Penal Code sec. 680.4, SPD officials stated the auditing and reporting had not been completed due, in part, to the unavailability of sufficient staffing to conduct the audit. SPD officials stated, similar to our interviews with other law enforcement agencies, a

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<sup>13</sup> These statistics appeared in the California Office of the Attorney General's *Statewide Audit of Untested Sexual Assault Forensic Evidence Kits 2020 Report to the Legislature*.  
<https://oag.ca.gov/sites/all/files/aqweb/pdfs/publications/aq-rpt-audit-usasfe-kits-2020.pdf>

retired investigator or detective is needed to conduct the research because SPD is apprehensive to take active qualified staff from current, open cases in order to conduct an inventory of older SAE kits.

Finally, SPD officials also stated the department has focused its efforts on complying with other aspects of the legal requirements guiding more recent sexual assault investigations. As stated above, SPD has engaged retired annuitants to conduct research and ensure the department is in compliance with SB 22, which codified Penal Code sec. 680.<sup>14</sup> As discussed in the Background section, SB 22 requires, in part, that all SAE kits collected on or after January 1, 2016, are tested and reported in relevant databases. According to SPD, the department focused financial resources on SB 22. SPD officials stated these reviews required the retired officers to review the SAE kits and the investigative files to determine whether materials stored in evidence may contain DNA that should be tested, such as clothing or bedding. SPD stressed that upon completion of this work, the department intends to allocate staffing resources as they become available to focus on compliance with AB 3118 and Penal Code 680.4.

As part of our fieldwork for this audit, we sought to determine whether SPD held untested SAE kits in its possession. Our testing consisted of conducting a sample of SAE kits, verifying their location, matching the SPD case number to the Sacramento County District Attorney's Crime Laboratory's test number, and documenting whether they were tested, untested, or missing. We visited SPD's evidence and property warehouse and designed the sample of SAE kits by stratifying the total population into two separate groups based on the legislative and legal requirements set by SB 22 and AB 3118. This would allow us to determine if the City of Sacramento is in compliance with SB 22 as well as estimate the amount of untested SAE kits, as required by AB 3118.

- First, SB 22 required law enforcement agencies to submit all SAE kits collected on or after January 1, 2016, to a crime lab for testing within 20 days after being booked into evidence. As such, one of our sample groups consisted of SAE kits collected on or after January 1, 2016.
- Second, as stated above, AB 3118 required law enforcement agencies to conduct an audit of all SAE kits and report the number of tested and untested kits to the Office of the Attorney General. Considering our first sample would capture all tested and untested kits after January 1, 2016, our second sample consisted of all SAE kits collected before January 1, 2016.

SPD's inventory system did not identify whether SAE kits had been tested. Therefore, we sent our results to the Sacramento County District Attorney's Crime Laboratory (County Crime Lab). We requested the County Crime Lab confirm if the SAE kits, that were included in our sample, were tested or untested.

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<sup>14</sup> The legislation titled the "Sexual Assault Victims' DNA Bill of Rights" created several new requirements for the testing of SAE kits when they are collected, reporting in federal and state databases, and providing notification to the victims about the testing status.

We conducted a judgmental sample of kits collected on or after January 1, 2016 (post-2016 SAE kits). The figure below shows the percentage of tested (Yes) and untested (No) SAE kits dated after 2016.

**Figure 6: City Auditor’s Analysis of the County Crime Lab’s Review of Post-2016 SAE Kits**

Post-2016 SAE Kits - Tested		Percentage
Yes (Y)	25	100%
No (N)	0	0%
<b>Total</b>	<b>25</b>	<b>100%</b>

Source: Sacramento City Auditor’s Office based on testing of sample of SAE kits.

As indicated in the table above, 100 percent of the 25 SAE kits collected after January 1, 2016, in our sample were tested.<sup>15</sup> This tested rate appears consistent with efforts described by SPD to prioritize compliance with SB 22.

Figure 7 below identifies whether our sample of SAE kits collected before January 1, 2016 (pre-2016 SAE kits) were tested.

**Figure 7: City Auditor’s Analysis of the County Crime Lab’s Review of Pre-2016 SAE Kits**

Pre-2016 SAE Kits - Tested		Percentage
Yes (Y)	177	76%
No (N)	49	21%
Different Jurisdictions*	7	3%
<b>Total</b>	<b>233</b>	<b>100%</b>

Note: Our audit procedures focused on SAE kits that were tested by the Sacramento County Office of the District Attorney Crime Laboratory. According to the SPD, the seven SAE kits reported in the table were not tested in the Sacramento County Office of the District Attorney Crime Laboratory due to issues, such as the location of where the assault occurred, the SAE kits would be tested in crime laboratories in other jurisdictions.

Source: Sacramento City Auditor’s Office based on testing of sample of SAE kits.

Based on the information above, we found that 21 percent of our sample of SAE kits dated before 2016, were untested. Extrapolating that percentage to the total population of 1,632 pre-2016 SAE kits in SPD’s possession, we estimate that SPD is in possession of approximately 340 untested SAE kits.

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<sup>15</sup> Although our sample did not identify any untested kits, this does not mean all post 2016 kits have been tested. Our small sample indicates a low risk of a large number of untested kits.

We compared SPD’s Evidence and Property Division’s approximately 340 untested SAE kits to the number of untested SAE kits reported in the Office of the Attorney General’s *Statewide Audit of Untested Sexual Assault Forensic Evidence Kits 2020 Report to the Legislature*.

**Figure 8: A Review of Pre-2016 SAE Kits and the 2020 Office of the Attorney General’s Audit**

Local Law Enforcement Agency	Estimated Sacramento PD	Los Angeles PD	Anaheim PD	Santa Ana PD	Elk Grove PD
<b>No. of Untested SAE kits</b>	<b>340</b>	<b>374</b>	<b>239</b>	<b>505</b>	<b>17</b>

Source: Sacramento City Auditor’s Office based on data collected in fieldwork (green) and from the Office of the Attorney General’s *Statewide Audit of Untested Sexual Assault Forensic Evidence Kits 2020 Report to the State Legislature* (orange).

As the table illustrates, the number of untested kits that were maintained by different local law enforcement agencies varied. However, these figures are significant because, during our interviews, these law enforcement agencies described their ability to identify and commit the needed resources, perform an audit to determine the number of untested kits in their possession, and develop a testing plan to ensure the number of untested SAE kits was significantly reduced.

Meanwhile, as stated above, SPD has not conducted an audit of untested SAE kits. As a result, SPD had not previously taken steps to comply with California state law requiring the audit of untested SAE kits and reporting this information to the California Office of the Attorney General. Additionally, SPD has not followed other California law enforcement agencies that have conducted audits of SAE kits in their possession and taken the additional, non-statutorily required, step of testing SAE kits in their possession collected prior to January 1, 2016. Notably, as stated in the Office of Attorney General Report, more than 500 agencies had not completed the audit in time for inclusion in the Office of Attorney General report.

As stated above, SPD has completed steps to comply with SB 22, which required the testing of SAE kits collected after January 1, 2016, through the hiring of retired annuitants, or recently retired police officers. We believe these actions by SPD are illustrative of the department’s desire to work toward compliance with all the new laws concerning SAE kit testing, auditing, managing, and reporting.

According to law enforcement, the California Legislature, and victim’s rights organizations, testing SAE kits can yield evidence in the form of a DNA profile, which can be entered into local, state, and national DNA databases containing DNA from offenders. By testing every SAE kit connected to a reported crime, more DNA profiles will be developed and uploaded to these databases, meaning more DNA from crime scenes will be linked, identifying perpetrators of sexual violence and other crimes. For example, according to the National Institute of Justice, testing previously untested kits in Detroit, Michigan assisted law enforcement to identify more than 400 serial rapists. As another example, according to a

January 2023 media report in the *Sacramento Bee*, SPD officers collected DNA evidence at the scene of a sexual assault crime, tested the evidence and submitted it into a state-wide database.<sup>16</sup> According to the media report, SPD was able to discover through the DNA database additional DNA evidence linking the suspect to “numerous cases,” including a similar incident investigated by the Sacramento County Sheriff’s Office.

We believe that SPD has an opportunity to take additional steps to undertake an audit of the SAE kits within the department’s possession to determine the total number of kits, determine whether the kit is tested or untested, and report this data to the California Office of the Attorney General. As stated above, to SPD’s credit, during the report writing phase of this project, SPD directed its staff to conduct an audit of untested SAE kits and report the findings to the California Office of the Attorney General, as required by AB 3118 and California Penal Code sec. 680.4. We believe the completion of this step will, as discussed in greater detail in Finding Two, position SPD to work with other City departments to identify and apply for grant funding to fund the testing of the untested kits through the County Crime Lab or other sources of testing.

## **RECOMMENDATION**

**We recommend the Sacramento Police Department:**

- 1. Assign staff to undertake an audit of the sexual assault evidence kits within the department’s possession to determine the total number of untested sexual assault evidence kits.**
- 2. Report the number of untested sexual assault evidence kits to the California Office of the Attorney General.**
- 3. Consider working with City management to identify and allocate resources to prioritize and test untested sexual assault evidence kits.**

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<sup>16</sup> Ahumada, Rosilio, "Man already facing sex assault charge linked through DNA to Sacramento prowling incident." *Sacramento Bee*. January 25, 2023.



## **Finding Two: Opportunities Exist for the Sacramento Police Department to Update Evidence Procedures Related to Sexual Assault Evidence as Recommended by Best Practices.**

The Sacramento Police Department (SPD) can implement policies and processes specifically aimed at managing sexual assault evidence kits (SAE kits) in its possession consistent with best practices. Best practices recommend that local law enforcement agencies that store and maintain SAE kits should design specific procedures and processes for this evidence that includes a specific disposition schedule and annual audits. The SPD should consider updating property and evidence policies pertaining to the SAE kits to align with current best practices to ensure compliance with relevant legal requirements.

According to the International Association of Property and Evidence (IAPE), the U.S. Department of Justice's National Institute of Justice (NIJ), and the California Commission on Peace Officer Standards and Training (POST), keeping an accurate and up-to-date record of SAE kits in the evidence and property warehouse is critical to the prosecution of sexual assault crimes. Sexual assault evidence may be held in the evidence room for many years because of long-time limits of prosecution and the possibility of post-conviction appeal. In addition, inadmissible DNA evidence from one case may still have evidentiary value in another case if there are multiple victims, or for sentencing purposes to show a pattern of behavior.

We found that the SPD has not designed and implemented policies and procedures for the storage and monitoring of SAE kits that align with best practices. Specifically, we found:

- SPD does not have policies in place to regularly audit SAE kits in its possession as recommended by best practices.
- SPD had not previously implemented a specific set of policies for the disposition of SAE kits as recommended by best practices.

Notably, we found that SPD requires annual audits and provides specific disposition processes for other evidence, such as firearms and narcotics. We believe the SPD should consider leveraging the institutional knowledge in the operations of these processes to update policies and procedures related to annual audits and develop a systematic review process for disposition for SAE kits to align with best practices. We believe monitoring the accurate storage and ensuring the appropriate and legal disposition of SAE kits is extremely important to pursuing justice for those involved in these cases and the community. To its credit, during the writing phase of this project, SPD created and implemented a disposition policy specifically for sexual assault evidence.

## SPD does not have policies in place to regularly audit sexual assault evidence kits in its possession as recommended by best practices

The Sacramento Police Department can implement policies to regularly audit SAE kits in its possession as recommended by best practices. Best practices recommend that SAE kits stored in evidence and property warehouses should be audited regularly to establish trends, ensure compliance with law, and assure accurate tracking. The SPD should consider updating property and evidence policies to require a comprehensive inventory and annual auditing of SAE kits.

According to the U.S. Department of Justice's NIJ publication titled *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach*, a comprehensive inventory should be conducted by local law enforcement agencies of SAE kits in its possession. This inventory should focus on determining the number, status, and individual descriptive information, such as unique kit identifiers and data collected.<sup>17</sup> According to the NIJ, a single inventory provides a snapshot of the SAE kits at a point in time and a starting point to begin a comprehensive auditing program. Additionally, according to the NIJ, routine inventories provide the ability to establish trends, assess progress on eliminating untested SAE kits, and ensure appropriate timelines for movement, analysis, storage, and destruction.

Additionally, both the IAPE and the NIJ recommend local law enforcement agencies conduct annual audits of the SAE kits in inventory. According to IAPE, annual audits should verify SAE kits are being stored and labeled correctly, and if they have been sent to the lab for testing according to statute or policy. These findings should be reported by individual case number to the assigned investigator or the investigator's supervisor for their investigative information. Similarly, the NIJ recommends that annual audit focus on verifying that all SAE kits in the property room are present and in their specified location.

Although the POST's *Law Enforcement Evidence and Property Management Guide* does not suggest annual audits of SAE kits, they suggest that agencies conduct audits of the evidence and property unit to maintain a high degree of evidentiary integrity, ensure safekeeping of all items, and preserve the chain of custody of evidence and property.<sup>18</sup> They also suggest that agencies create a written directive

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<sup>17</sup> The U.S. Department of Justice's National Institute of Justice issued a publication titled *National Best Practices for Sexual Assault Kits: A Multidisciplinary Approach* in August 2017. The intent of the publication is to identify best practices to assist jurisdictions and organizations in the development of protocols to address issues that arise in the course of working with sexual assault evidence, including timing of sample collection at the point of care; standardizing sample collection methods; transferring evidence between agencies; storing parameters; maintaining SAE kits.

<sup>18</sup> The California Commission on Peace Officer Standards and Training's *Law Enforcement Evidence and Property Management Guide* provides standardized recommended guidelines for the management of the evidence and property in the agency's care and control.

addressing the procedures for conducting an audit. The written directive should include at a minimum a quarterly review of selected stored items with an emphasis on sensitive items, review of packaged evidence seals for any evidence of tampering, and a requirement for audit results to be documented and directed to the appropriate agency manager.

As discussed in above, the SPD has not conducted a comprehensive audit or inventory for all of the SAE kits in its possession. Additionally, the SPD does not require annual audits and reporting to SPD management of all SAE kits in its possession. As a result, SPD does not engage in ongoing efforts to verify whether all SAE kits in the property room are present and in their specified location, if they are being stored correctly, and labeled correctly.

In contrast, the SPD has policies in place to require conducting internal audits for firearms, narcotics, money, and jewelry valued at more than \$100, and upon changes in staffing. As such, we believe that SPD Evidence and Property Division is already knowledgeable about processes and methodologies for conducting audits.

As mentioned in the previous finding, SPD officials first focused financial resources on efforts to be in compliance with SB 22 and intends to allocate resources to focus on compliance with AB 3118 and Penal Code 680.4. We consulted with the Executive Director of IAPE and learned that it is not uncommon for local law enforcement agencies to fall out of compliance with unfunded mandates from the state and local legislators. These agencies often lag because of the manpower needed to achieve compliance, according to IAPE's Executive Director.

We believe the SPD should consider requiring an audit of all SAE kits in its possession to establish a total inventory as recommended by best practices issued by IAPE and the U.S. Department of Justice's NIJ. Additionally, SPD should also consider requiring annual audits and identify metrics to collect and report to SPD management such as disposition schedules and trends. As discussed in Finding Three, we believe that SPD may be eligible for several grant programs to augment its sexual assault investigation programs which may assist in these inventory and annual audit efforts.

#### **RECOMMENDATIONS:**

##### **We recommend the Sacramento Police Department:**

- 4. Consider conducting an audit of all sexual assault evidence kits in its possession to establish a total inventory.**
- 5. Consider requiring regularly scheduled audits and identify metrics to collect and report to SPD management.**

## **Sacramento Police Department had not previously implemented a specific set of policies for the disposition of sexual assault evidence kits as recommended by best practices**

The Sacramento Police Department, at the time this audit began, had not implemented policies to establish specific procedures for the disposition of sexual assault evidence in its possession as recommended by best practices. Local law enforcement agencies should have a dedicated process for the disposition of SAE kits to allow the purging of unneeded items as regulated by federal and state statutes. To its credit, during the writing phase of this project, SPD created and implemented a disposition policy specifically for sexual assault evidence in order to align with current best practices and ensure compliance with relevant legal requirements.

According to IAPE, the timely and appropriate handling of sexual assault evidence for criminal case prosecution and appeals is extremely important to maintaining the criminal justice system for those involved in these cases and the communities that the criminal justice system serves. Local law enforcement agencies should have a systematic review process for the disposition of SAE kits that includes an assessment of whether an item related to sexual assault is still needed in the inventory after all legal and departmental mandates have been satisfied. Additionally, an assessment should include whether the SAE is legally available to be returned to a victim after proper notification is made per federal or state statute.

According to IAPE, the design of a thorough disposition process for SAE kits should include a review and approval from the case investigator. For example, before any items are destroyed, transferred, or released, the case investigator must be involved in the process. According to IAPE, no evidence in sexual assault cases should ever be disposed of without the approval of the case investigator.

According to IAPE, the design of the disposition process for SAE kits should provide specific guidelines to ensure compliance with federal and state legal requirements. For example, the federal Sexual Assault Survivor's Rights Act, codified in Title 18, USC sec. 3772, created several rights for victims of sexual assault. For example, a sexual assault victim has a right to:

- Have a sexual assault evidence collection kit or its probative contents preserved, without charge, for the duration of the maximum applicable statute of limitations or 20 years, whichever is shorter.
- Be notified by the law enforcement agency, no later than 60 days prior to the date of the intended destruction or disposal of the items.
- Upon written request, be granted further preservation of the sexual assault kit.

Similarly, California Penal Code sec. 680 includes statutes of limitation requirements that must be considered prior to disposing of evidence. California Penal Code 680 states that a law enforcement agency shall not destroy or dispose of sexual assault kit evidence or other crime scene evidence from an unsolved sexual assault case before at least 20 years, or if the victim was under 18 years of age at the time of the alleged offense, before the victim's 40th birthday.

Additionally, according to POST's *Law Enforcement Evidence and Property Management Guide*, one of the critical functions of the evidence and property unit is to ensure the appropriate, timely, and lawful disposition of evidence and property. The guide suggests creating a written directive that addresses the issues to consider in determining the disposition of evidence and property.

The written directive should include information about the safe disposal of biological/DNA materials, the use of qualified/approved disposal vendor, comply with California Penal Code sec. 1417.9 related to the disposition of evidence in criminal cases, and comply with California Penal Code sec. 799 related to the retention.<sup>19</sup> California Penal Code sec. 799 demands indefinite retention for certain biological/DNA evidence. Additionally, before a law enforcement agency destroy or dispose biological/DNA evidence, they need to notify the following:

- The person who is incarcerated;
- Any counsel of record;
- The Public Defender in the county of conviction;
- The District Attorney in the county of conviction; and
- The Office of the Attorney General.

The SPD General Orders and the *Evidence and Property Procedural Manual* do not provide specific guidance or policies pertaining to the disposition of sexual assault evidence, including SAE kits.

In contrast, the SPD has policies containing specific disposition procedures for several classifications of high-risk evidence, including firearms, certain designations of currency, narcotics, evidence seized pursuant to a search warrant. As such, we believe that the SPD Evidence and Property Division is already knowledgeable about designing and working with prosecutors to properly review, approve, and dispose of different classifications of evidence.

To its credit, during the reporting writing phase of this report, SPD implemented a disposition process specifically for the handling of sexual assault evidence and SAE kits. This process should include different

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<sup>19</sup> California Penal Code sec. 1417 addresses the persons that a governmental entity must notify before the disposition of evidence in criminal cases. California Penal Code sec. 799 addresses the indefinite retention of evidence.

approvals from relevant SPD personnel involved in the collection and storage of the evidence as well as individuals with specific knowledge about the probative value of the evidence, including investigators or prosecutors. We believe this process should be included in the SPD's *Evidence and Property Procedural Manual* and training should be provided to SPD personnel. As discussed in Finding Three, we believe that SPD may be eligible for several grant programs to augment its efforts to bring its storage and manage of sexual assault evidence in compliance with best practices to ensure compliance with federal and state law.

**RECOMMENDATIONS:**

**We recommend the Sacramento Police Department:**

- 6. Consider designing a disposition policy specifically addressing sexual assault evidence that include different department reviews and approval. The disposition schedule should address compliance with federal and state legal requirements for retention and communication with victims. Upon implementation of the policy, the SPD should provide training for personnel involved in the disposition process.**

### **Finding Three: Opportunities Exist for the Sacramento Police Department to Seek Various Grants to Assist in Processing Untested Sexual Assault Evidence Kits.**

The California State Legislature's recent slate of laws guiding the collection, testing, and reporting of sexual assault kits has put pressure on local law enforcement agencies to create, fund, and implement new testing procedures. Most of the work and costs related to augmenting processes related to SAE kits have fallen onto local law enforcement agencies. However, following the passage of these new laws, government and non-profit agencies have created several grants available to law enforcement agencies to help pay for testing of untested sexual assault evidence (SAE) kits.

Opportunities exist for the Sacramento Police Department (SPD) to consult with the Sacramento County District Attorney's Office and the Sacramento County Crime Laboratory to determine the laboratory availability, potential for outsourcing testing work, and potential costs associated with testing the untested SAE kits in SPD's possession. SPD can also work with City management to allocate resources to identify, apply for, and procure funding to audit, as required by state law, and assist in funding the testing of the untested SAE kits in its possession. Specifically, we found SPD can apply for a series of grants created to assist in this process, such as the National Sexual Assault Kit Initiative (SAKI) Program.

As stated above, since the passage of the legislation, several potential grant sources have come about, including:

- U.S. Department of Justice, Bureau of Justice Assistance's SAKI Program;
- Edward Byrne Memorial Justice Assistance Grant (JAG) Program; and
- Paul Coverdell Forensic Science Improvement Grants (Coverdell) Program

The grants can be used to assist law enforcement agencies with reducing the untested SAE kits in their possession. According to the U.S. Department of Justice, reducing the number of unsubmitted SAE kits in their jurisdictions will provide local law enforcement and prosecutors the evidence and tools to solve and reduce violent crimes associated with sexual assault, while achieving the long-term goal of improving the criminal justice response to sexual assault.

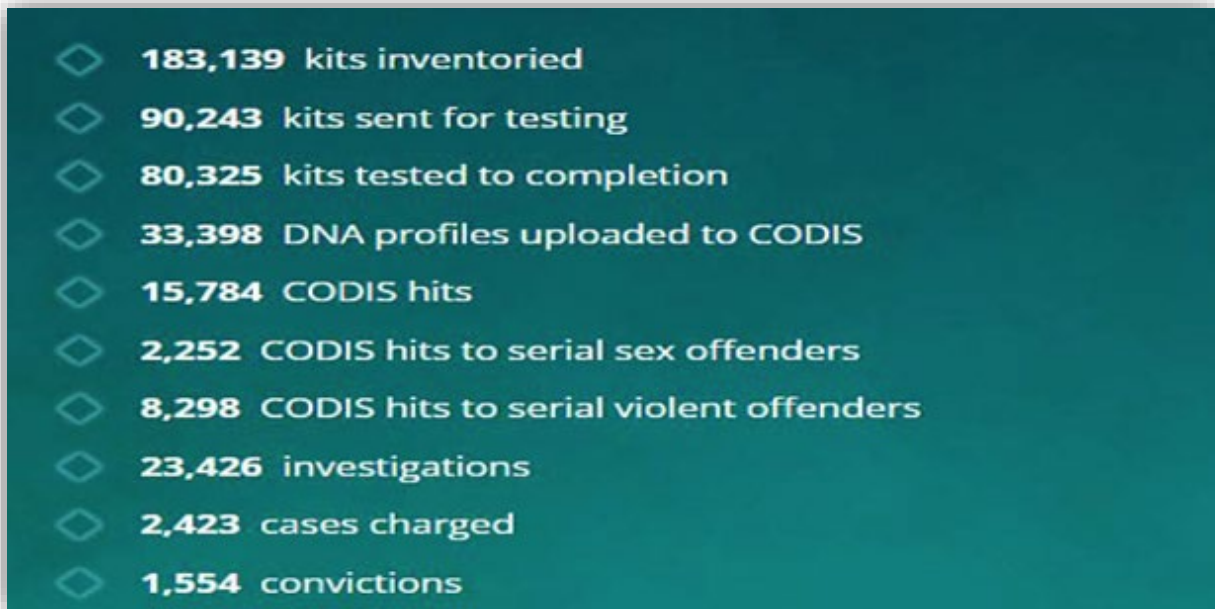
We noted that several law enforcement agencies we interviewed used the SAKI program to augment their SAE testing processes. According to the U.S. Department of Justice's Bureau of Justice Assistance, the SAKI program funding provides support for agencies to conduct the following activities:

- Inventory, track, and expeditiously test previously unsubmitted SAE kits;
- Collect and test lawfully owed DNA from offenders/arrestees;

- Produce necessary protocols and policies to improve collaboration among laboratories, police, prosecutors, and victim service providers;
- Provide resources to address the sexual assault investigations and prosecutions that result from evidence and Combined DNA Index System<sup>20</sup> hits produced by tested SAE kits; and
- Optimize victim notification protocols and services.

As part of our fieldwork for this project, we contacted several law enforcement agencies that participated in the Office of the Attorney General’s *Statewide Audit of Untested Sexual Assault Forensic Evidence Kits 2020 Report to the Legislature* and reported the number of untested kits in their possession. During our interviews, we found that several agencies applied for and received funding from the SAKI program. These agencies expressed how the funding was helpful in significantly reducing the number of untested sexual assault evidence kits within their respective jurisdictions. The U.S. Department of Justice maintains statistics on how the SAKI program has assisted grantees in reducing their untested SAE kits. Figure 9 below details these program statistics as of December 2022.

*Figure 9: National Sexual Assault Kit Initiative Program Statistics Reported by U.S. Department of Justice as of January 2023*

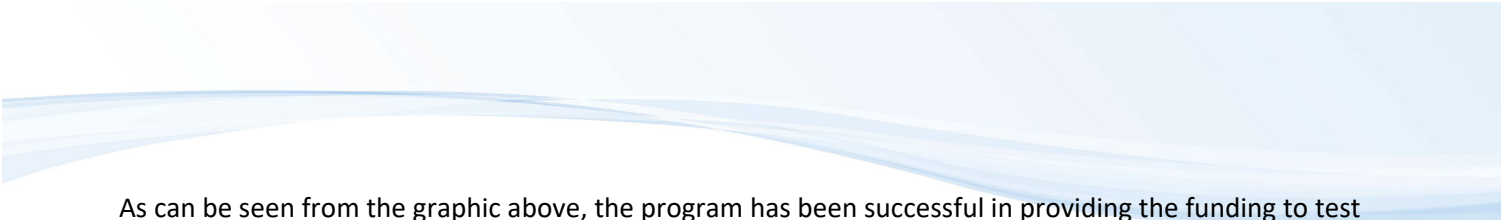


Source: U.S. Department of Justice Bureau of Justice Assistance’s National Sexual Assault Kit Initiative<sup>21</sup>

<sup>20</sup> The Combined DNA Index System (CODIS) is the United States national DNA database created and maintained by the Federal Bureau of Investigation.

<sup>21</sup> According to the National Sexual Assault Kit Initiative website, the data contained in the image was reported as of January 2023 and is updated quarterly on state and local levels.





As can be seen from the graphic above, the program has been successful in providing the funding to test more than 80,000 SAE kits and assisted in more than 1,500 convictions of sexual or serial violent offenders.

The U.S. Department of Justice has an Office of Justice Programs (OJP) Grant Application Resource Guide (Guide) to help grant applicants in preparing and submitting applications for funding. The Guide addresses various policies, statutes, and regulations that apply to applicants. Grant applicants can also visit Grants.gov customer service and JustGrants Service Desk to get technical assistance with submitting the grant application.

Grant applicants can review the Guide as well as the latest funding solicitation in preparing and submitting applications for funding. For example, the Fiscal Year 2023 SAKI solicitation states that grant applicants must propose to implement a comprehensive approach to unsubmitted SAE kits. Grant applicants are required to track several data points, such as inventoried SAE kits throughout the course of the award period. Agencies are also expected to use an automated information technology system to track each SAE kit using an assigned unique identifier. For agencies that need assistance with creating or establishing an automated information technology system, several automated information technology systems have been created specifically for tracking SAKI cases and are available for grant recipients at no additional cost. Applicants must delineate the amount of funding requested for SAE kit testing and the associated technical review and CODIS upload activities. Additionally, award recipients must attend an annual two-day SAKI workshop that takes place in Washington D.C. A critical condition of the grant is that grant applicants must know the amount of untested sexual assault evidence kits in their possession.

The Edward Byrne Memorial Justice Assistance Grant (JAG) Program also provides criminal justice funding to local and state jurisdictions. The program provides law enforcement agencies with funding for crime analysis and investigation, including testing SAE kits and other program areas. Notably, SPD has already taken advantage of the JAG Program and received funding to provide support for various programs within the department. Since this is an ongoing program, SPD could benefit from applying for the JAG program and using funds to help reduce the number of untested SAE kits in its possession. According to the U.S. Department of Justice's Office of Justice Programs reported funding statistics, the following are examples of agencies that applied and received the grant: City and County of San Francisco, City of Long Beach, Orange County, and City of San Diego.

Likewise, the Paul Coverdell Forensic Science Improvement Grants (Coverdell) Program provides funding to states and local governments to help improve the quality and timeliness of forensic science and medical examiner/coroner services. Recipients of the grant must use the grant to address emerging forensic science issues and technology. One potential area of use is funding for testing SAE kits. SPD would also benefit from applying to the Coverdell Program to secure funding and using the funds to

reduce the number of untested SAE kits in its possession. According to the U.S. Department of Justice's Office of Justice Programs reported funding statistics, the following are examples of agencies that applied and received funding: City of Long Beach, City of Los Angeles, County of Los Angeles, and County of Alameda.

Finally, we found that the California Office of the Attorney General has over the last five years offered grant programs, such as DNA Capacity Enhancement for Backlog Reduction Program and the Untested Sexual Assault Evidence Grant-Backlog Reduction Program, to assist local law enforcement test SAE kits and report the results to state and federal databases. While most of these grant opportunities have closed, Office of the Attorney General's officials stated the agency is currently working on identifying new sources of funding in the future for more grant opportunities to assist local law enforcement agencies in these practices. In fact, the Office of the Attorney General has recently augmented its staff with plans to offer more assistance.

As stated in the Background and Finding One, SPD works with the Sacramento District Attorney's Office and the Sacramento County Crime Laboratory in the processing of sexual assault evidence.

Based on interviews with SPD management, due to limited resources, they have not identified the direct costs that are necessary for processing the untested SAE kits. We believe SPD should consult with the Sacramento District Attorney's Office and the Sacramento County Crime Lab to determine laboratory availability, potential for outsourcing testing work, and potential costs associated with processing untested sexual assault evidence kits in the SPD's possession. We believe SPD and the City would benefit from researching and applying for grants that would help fund the testing and reduce the number of untested sexual assault evidence kits in SPD's possession.

## **RECOMMENDATION**

**We recommend the Sacramento Police Department:**

- 7. Consult with the Sacramento County District Attorney's Office and the Sacramento County Crime Laboratory to determine the laboratory availability, potential for outsourcing testing work, and potential costs associated with processing untested sexual assault evidence kits in the SPD's possession.**
- 8. Search for and consider applying for grants that can assist with the reduction of untested sexual assault evidence kits in its possession.**

City of  
**SACRAMENTO**  
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## MEMORANDUM

**TO:** Jorge Osegura, Auditor, City of Sacramento      **DATE:** August 1, 2023

**FROM:** Steve Oliveira, Deputy Chief  
Sacramento Police Department       **REF:** OOI 8-1

**CC:** Howard Chan, City Manager  
Mario Lara, Assistant City Manager

**SUBJECT:** **The Audit of the Sacramento Police Department Evidence and Property Division – Sexual Assault Evidence Kits.**

The Sacramento Police Department appreciates the opportunity to review this report and respond to the recommendations proposed by the Office of the City Auditor. These recommendations are listed below and are followed by the Department's response for each:

1. Assign staff to undertake an audit of the sexual assault kits within the Department's possession to determine the total number of untested SAE kits.

Response: Concur. The Sacramento Police Department is conducting the audit and expects to finish it by September 1, 2023.

2. Report the number of untested sexual assault kits to the California Office of the Attorney General.

Response: Concur. The number of untested sexual assault kits will be submitted to the California Office of the Attorney General.

3. Consider working with City management to identify and allocate resources to prioritize and test untested sexual assault kits.

Response: Concur. The Sacramento Police Department is currently working with the Sacramento County Crime Lab to identify all pre-2016 untested sexual assault kits. Each of these cases will be reviewed to determine if testing is needed.

4. Consider conducting an audit of all SAE kits in its possession to establish a total inventory.

Response: Concur. An audit and total inventory were completed during the audit process.

5. Consider requiring regularly scheduled audits and identify metrics to collect and report to SPD management.

Response: Concur. The Sacramento Police Department's Evidence and Property section is currently working with our contracted RMS providers to provide improved methods and software to track sexual assault kits.

6. Consider designing a disposition policy specifically addressing sexual assault evidence that include different department reviews and approval. The disposition schedule should address compliance with federal and state legal requirements for retention and communication with victims. Upon implementation of the policy, the SPD should provide training for personnel involved in the disposition process.

Response: Concur. During the audit process, the Sacramento Police Department updated its policies to address these specific issues.

7. Consult with the Sacramento District Attorney's Office and the Sacramento County Crime Laboratory to determine the laboratory availability, potential for outsourcing testing work, and potential costs associated with processing untested sexual assault kits in the SPD's possession.

Response: Concur. The Sacramento Police Department will discuss this recommendation with the Sacramento County District Attorney's Office.

8. Search for and consider applying for grants that can assist with the reduction of untested sexual assault evidence kits in its possession.

Response: Concur. The Sacramento Police Department will search for applicable grant opportunities.