



Follow-Up— Sexual Assault Evidence Kits

California Has Not Obtained the
Case Outcome Information That Would
More Fully Demonstrate the Benefits of
Its Rapid DNA Service Program

March 2019

REPORT 2018-501





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March 7, 2019
2018-501

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

Dear Governor and Legislative Leaders:

In October 2014, the California State Auditor issued Report 2014-109, *Sexual Assault Evidence Kits: Although Testing All Kits Could Benefit Sexual Assault Investigations, the Extent of the Benefits Is Unknown*. That report reviewed the process of collecting sexual assault evidence kits, which may contain DNA evidence that can assist in the investigation of sexual assault cases. It further discussed that, although there are concerns over large numbers of untested kits, the extent of the benefits of mandating the testing of all sexual assault evidence kits was unknown. One of the recommendations we made in the October 2014 report sought to increase the availability of case outcome information that would better demonstrate the extent of the benefits of testing all collected kits throughout the State. We indicated that the California Department of Justice (Justice) was uniquely positioned to provide such information because it operates the Rapid DNA Service (RADS) program, through which it already tests all kits collected in 39 counties.

The following report presents the results of a follow-up audit of Justice's progress related to our October 2014 recommendation. This audit concludes that Justice has not made sufficient efforts to obtain case outcome information that could demonstrate the extent of the benefits of testing all collected sexual assault evidence kits. Justice established a database in which local law enforcement agencies can report case outcome information—such as whether they made arrests—for cases in which DNA evidence provided an investigative lead. However, Justice has obtained minimal amounts of this information because it has not notified many RADS participants that they should report the information, has not adequately trained participants on how to report, and does not periodically follow up with those that do not report. As a result, it has failed to provide valuable information that the State can use to determine the extent of the benefits of testing all sexual assault evidence kits.

This report also discusses significant barriers to the investigation and prosecution of sexual assault cases even when sexual assault evidence kits are tested. One such barrier is the insufficiency of resources available to investigate leads from DNA evidence. However, if the Legislature had case outcome information, it could better identify obstacles and act to direct resources to address them. Therefore, we recommend that if the Legislature amends state law to require testing of all sexual assault evidence kits, it should include a requirement that law enforcement agencies report case outcome information to Justice. If the Legislature does not amend state law to mandate testing, we recommend that it require Justice to obtain case outcome information from RADS participants and summarize that information in an annual report to the Legislature.

Respectfully submitted,

A handwritten signature in black ink that reads 'Elaine M. Howle'. The signature is written in a cursive, flowing style.

ELAINE M. HOWLE, CPA
California State Auditor

Selected Abbreviations Used in This Report

CHOP	CODIS Hit Outcome Project
CODIS	Combined DNA Index System
RADS	Rapid DNA Service

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Summary

Results in Brief

The California Department of Justice (Justice) has not fully implemented a recommendation we made in our October 2014 report to increase available information about sexual assault evidence kits.¹ As a result, the Legislature lacks valuable information on the extent of the benefits of testing all sexual assault evidence kits. We recommended that Justice obtain information on the outcomes of sexual assault cases—such as whether or not a suspect was arrested or convicted—from the law enforcement agencies and district attorneys that participate in its Rapid DNA Service (RADS) program.² The RADS program ensures that all RADS sexual assault evidence kits associated with sexual assault cases are analyzed by one of Justice’s crime laboratories (crime labs). Justice implemented the RADS program in 2011 to decrease the time needed to analyze DNA collected in sexual assault evidence kits and increase the number of kits analyzed in California. When it analyzes a sexual assault evidence kit, a crime lab may identify a suspect’s DNA profile, which it can then upload to the U.S. Federal Bureau of Investigation’s Combined DNA Index System (CODIS). CODIS contains DNA profiles from people who have been convicted of or arrested for certain crimes as well as DNA profiles associated with unknown suspects. When it receives a DNA profile from a sexual assault evidence kit, CODIS compares it to those in its database to try to find a match. Such matches are known as *hits*, and they can potentially benefit the investigation or prosecution of sexual assault cases.

In our original audit, we recognized that—as a program that tests all sexual assault evidence kits in the counties it serves—Justice’s RADS program was uniquely positioned to provide insight into the extent of the benefits associated with testing all sexual assault evidence kits. Justice could gain this insight by tracking case outcome information and whether the hits generated through the RADS program furthered the investigation or prosecution of sexual assault cases. Therefore, in our previous report, we recommended that Justice require RADS counties to report this information to it. We further recommended that Justice report annually to the Legislature about those case outcomes.

¹ Report 2014-109, *Sexual Assault Evidence Kits: Although Testing All Kits Could Benefit Sexual Assault Investigations, the Extent of the Benefits Is Unknown*, October 2014.

² In this report we use the term *law enforcement agency* to refer to local police or sheriff’s departments and separately refer to district attorneys when applicable.

Audit Highlights . . .

Our follow-up audit of Justice’s progress related to our October 2014 recommendation to increase available information about sexual assault evidence kits revealed the following:

- » *Justice has failed to provide valuable information through its RADS program that the State can use to determine the extent of the benefits of testing all sexual assault evidence kits.*
 - *Despite having established a database for law enforcement agencies and district attorneys to report case outcome information for sexual assault cases involving DNA evidence, Justice has not obtained key information.*
 - *Justice has not adequately notified law enforcement agencies participating in the RADS program of case outcome reporting expectations.*
 - *Justice has not provided adequate training and guidance to local agencies regarding how to report case outcome information, resulting in reporting inconsistencies.*
- » *If correctly reported, case outcome information could help policymakers identify needs for additional resources to aid the investigation or prosecution of sexual assault cases.*

However, despite having established a database where local law enforcement agencies and district attorneys can report case outcomes, Justice has frequently not obtained key information on the outcomes of sexual assault cases. We found that of the 417 hits generated from profiles uploaded to CODIS during the three years we reviewed, Justice's CODIS Hit Outcome Project (CHOP) database did not have any case outcome information for 278—67 percent—of them. Additionally, among the cases for which it had partial case outcome information, we found that Justice had not always obtained key information about whether the hits furthered the investigation or prosecution. This information is critical because it can provide key insight into the benefit of increasing the number of sexual assault evidence kits tested in the State.

We identified key deficiencies in Justice's efforts to obtain case outcome information that impaired its ability to do so effectively. Specifically, Justice had not adequately notified law enforcement agencies in counties participating in the RADS program of its expectation that those agencies report that information. Further, Justice has not provided adequate training and guidance to the local agencies regarding how to report case outcome information in CHOP, resulting in inconsistencies in the way some local law enforcement agencies reported this information. Finally, although we expected Justice to regularly review the case outcome information in CHOP to determine which agencies had complied with the reporting expectations and follow up with those that had not, it has not done so since implementing the reporting expectation.

Legislative interest in mandating the testing of all sexual assault evidence kits has not yet resulted in such a requirement. However, as recently as December 2018, a member of the Legislature introduced a bill that would require all sexual assault evidence kits to be tested. Although the bill is still going through the legislative process, we believe that a requirement to test all sexual assault evidence kits would be strengthened if it was accompanied by a requirement that all law enforcement agencies report key case outcome information to Justice. This case outcome information could help policymakers identify needs for additional resources to aid the investigation or prosecution of sexual assault cases.

Summary of Recommendations

If it amends state law to require testing of all sexual assault evidence kits, the Legislature should also require that law enforcement agencies and district attorneys report key case outcome data to Justice. Additionally, it should require Justice to provide training and guidance to those entities on how to report that

information, and follow up with entities that do not report. Further, it should require Justice to annually publish summary information about case outcomes.

If it does not amend state law to require testing of all sexual assault evidence kits, the Legislature should amend the law to require Justice to obtain case outcome information from RADS participants. The Legislature should also require Justice to train all RADS participants on the requirement to report and update case outcome information, develop guidance about how to appropriately and consistently enter case outcome information within CHOP, review the case outcome information within CHOP to identify RADS participants that are not reporting, and annually report to the Legislature a summary of the case outcome information it has obtained.

Agency Comment

Justice asserts that it has fully implemented the recommendation that was the subject of this follow-up, but agreed that it could improve its approach to obtaining case outcome information. However, Justice stated that it will not be able to do so without additional resources.

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Introduction

Background

In 2011 the California Department of Justice (Justice) implemented the Rapid DNA Service (RADS) program. Through the RADS program, Justice's crime laboratories (crime labs) analyze the evidence contained in all RADS sexual assault evidence kits (RADS kits) associated with sexual assault cases in 39 of the 46 counties to which Justice provides forensic services.

When someone reports a sexual assault, a local law enforcement agency sends an officer to meet with and take a statement from the victim. If the victim agrees to participate in a sexual assault examination, specially trained health care providers collect biological evidence from the victim's body and provide medical care to the victim as needed. As part of this examination, health care providers document the biological evidence collected from the victim's body or clothing. Once the exam is completed, the sexual assault evidence kit is transferred to local law enforcement. The text box describes the difference between a standard sexual assault evidence kit and a RADS kit.

The Difference Between a Standard Sexual Assault Evidence Kit and a RADS Kit

Standard sexual assault evidence kit—A hospital performs an examination of the victim, including taking swabs from the victim's body and other physical evidence such as clothing, fibers, and hairs, which the hospital stores in a kit and sends to the appropriate law enforcement agency.

RADS kit—The hospital performs the same examination of the victim but then selects up to three swabs most likely to contain a suspect's DNA profile and sends those directly to one of Justice's crime labs for analysis. The hospital sends the remainder of the evidence it collected to the law enforcement agency.

Source: National Institute of Justice, the National Center for Victims of Crime, as well as memorandums of understanding between Justice and counties participating in the RADS program.

According to the director of Justice's Bureau of Forensic Services (director of forensic services), Justice is working on increasing the capacity of its RADS labs to accommodate enrolling additional counties in Justice's service area in the RADS program. Justice developed the RADS program to decrease the time needed to analyze DNA collected in sexual assault evidence kits and increase the number of kits analyzed. Justice's crime labs analyze each RADS kit in an attempt to obtain a DNA profile from the kit that could identify or confirm the identity of a suspect. If Justice identifies such a profile, it uploads it to the Combined DNA Index System (CODIS) of the U.S. Federal Bureau of Investigation (FBI), where the profile is compared to other DNA profiles. Profiles in CODIS come from a variety of sources, including from individuals who have been convicted or arrested for various crimes and profiles associated with unknown suspects.

If a lab confirms that a DNA profile obtained from a sexual assault evidence kit, including a RADS kit, matches another DNA profile within CODIS and the match aids an investigation, it is

referred to as a *hit*. The FBI considers a match to have aided an investigation—and therefore labels it a hit—if it either generates the identity of the suspect or links to an unknown suspect associated with another case. However, the FBI does not track the resolution of investigations and therefore does not know whether a hit was instrumental in obtaining certain case outcomes. As we discuss later in this report, hits sometimes allow law enforcement agencies to obtain outcomes—such as arresting a suspect—but not always. Justice uses a database, the CODIS Hit Outcome Project (CHOP), to notify law enforcement agencies, including RADS participants, about hits and to track information about changes to cases associated with DNA profiles and hits. Once Justice loads a hit into CHOP and one of Justice’s crime labs enters initial crime data, CHOP notifies the responsible law enforcement agency about the hit, which, when retrieved by the law enforcement agency, could include the suspect’s name.

Justice has also established areas in the CHOP system that law enforcement agencies and district attorneys should use to enter information regarding the outcomes of the sexual assault case investigations and, if applicable, prosecutions for the cases associated with hits. For example, for each hit, a law enforcement agency should report whether it investigated the case, whether it made an arrest, and whether it submitted the case to the district attorney for prosecution. The district attorney should then report on the outcomes related to the prosecution of cases that law enforcement submitted, such as whether it filed charges against a suspect and whether the suspect was convicted.

Justice provides forensic services to 46 counties that make up its service area, including the 39 that participate in the RADS program, because they lack access to their own crime labs. The remaining 12 counties in the State are served by city, county, or federal crime labs and therefore do not typically use Justice’s forensic services or participate in the RADS program. According to the director of forensic services, Justice provides the RADS program to participating counties at no cost to the county and pays for it using funds from both the State’s General Fund and the DNA Identification Fund. Figure 1 shows the counties currently participating in the RADS program (RADS counties) and the location of the Justice crime labs that test sexual assault evidence kits for the RADS program. According to information provided by the director of forensic services, the program tests approximately 1,200 RADS kits a year at an estimated cost of about \$1.9 million annually.

Figure 1
 39 Counties Currently Participate in the RADS Program



Source: Analysis of Justice's RADS program documentation, Justice's Bureau of Forensic Services website, and interviews with staff at Justice.

Note: Alameda participated in the RADS program from May 2014 until July 2015. According to a criminalist manager at Justice, during that time, Justice assisted Alameda in establishing its own rapid DNA service.

* These counties are within Justice's service area and law enforcement agencies in those counties generally do not have access to their own crime lab. According to the director of forensic services, Justice is working to increase the capacity of its RADS labs to accommodate enrolling additional counties in the RADS program.

The Debate Over Untested Sexual Assault Evidence Kits

As stated earlier, Justice developed the RADS program to decrease the time needed to analyze DNA collected in sexual assault evidence kits and increase the number of kits analyzed. Although the RADS program ensures that all RADS kits are analyzed by a crime lab, agencies that do not receive forensic services from Justice or to which Justice has not yet provided the RADS program, may not analyze all sexual assault evidence kits. Outside of the RADS program, when a hospital completes a sexual assault examination, it typically sends the sexual assault evidence kit to the appropriate law enforcement agency, where investigators decide whether to send the kit to a crime lab for analysis. As discussed in our October 2014 report, there are several reasons why law enforcement may choose not to submit a sexual assault evidence kit for analysis. Those reasons include that the investigators reached a final conclusion that no crime occurred, assembled sufficient evidence to arrest a suspect and present the case to the district attorney for prosecution without the DNA analysis, did not continue the investigation because the victim chose not to participate, or determined that testing the kit would not be helpful to the investigation because the suspect acknowledged that there was sexual contact but claimed that it was consensual.

However, some argue that all sexual assault evidence kits should be tested because victims who participate in an invasive examination should feel assured that the evidence they provide will be used to prosecute their attackers. Those who argue for this approach also highlight the fact that the evidence in a kit could influence the outcome of other cases because agencies using CODIS can link a suspect in one case to multiple investigations if the suspect's DNA profile is already in CODIS. Concerns over untested sexual assault evidence kits have resulted in proposed legislation to change state law, which currently gives individual law enforcement agencies the discretion to decide what kits they send to a crime lab for analysis. The proposed change would require that, for all sexual assault evidence kits, California law enforcement agencies either submit the kits directly to a lab for testing or ensure that a program is in place for the medical facilities conducting the sexual assault examinations to submit the kits to a lab for testing. As of the date of this report, none of these proposals have become law. In September 2018 the former Governor vetoed a bill that would have required that all sexual assault evidence kits be submitted to a crime lab for testing. The former Governor stated that he vetoed the bill to allow time to gauge the effects of two other measures he approved that year. The first of these measures was a bill requiring that law enforcement agencies and facilities that may have sexual assault evidence kits—such as hospitals—conduct an audit of all untested sexual assault evidence kits in their possession and submit a report to Justice by

July 2019. The report must include, among other information, the total number of kits, the dates they were collected, and the reasons for not testing them. Justice must then submit a report to the Legislature by July 2020 summarizing the information it receives. The second measure was contained in the Budget Act of 2018 and allocated \$6.5 million for Justice to support the testing of sexual assault evidence kits, including the option for Justice to administer a grant program to local government agencies. The Budget Act requires that grant recipients provide a dollar-for-dollar match to the grant funds they are awarded, and requires Justice to prioritize grants for eliminating existing backlogs of untested kits. In December 2018, a member of the Legislature introduced a bill that would require that all sexual assault evidence kits be submitted to a crime lab for testing, which remains pending as of the date of this report.

In our October 2014 report, we concluded that the extent of the benefits of testing all sexual assault evidence kits was unknown. Research conducted since we issued our original audit report has largely focused on evaluations of projects in two cities, Detroit and Houston, which have recently made efforts to test sexual assault evidence kits that were previously untested. Some of this research evaluated the frequency with which testing previously untested kits generated additional hits. The results of these evaluations show that testing previously untested kits resulted in additional hits, with 29 percent of the untested kits generating hits in one evaluation. However, little information is available regarding how frequently those hits ultimately led to arrests or convictions for the specific cases that the kits were associated with or other cases that have a DNA profile in common with the original case. Similarly, other states, including Colorado and Florida, have passed laws requiring that law enforcement agencies in those states test all sexual assault evidence kits. However, we were unable to identify the extent to which any additional hits that resulted from these new laws furthered the investigation or prosecution of sexual assault cases.

During our previous audit, we recognized that because of its RADS program, Justice was uniquely positioned to provide more insight into the benefits associated with testing all sexual assault evidence kits. Having Justice track the case outcomes and the frequency with which the hits generated through the RADS program furthered the investigation or prosecution of sexual assault cases could aid the State in making decisions about whether to require statewide testing of all sexual assault evidence kits. Therefore, in our previous report we recommended that Justice require RADS counties to report this information for the sexual assault evidence kits Justice has analyzed under the program. We further

recommended that Justice report annually to the Legislature about those case outcomes. That recommendation is the subject of this follow-up audit.

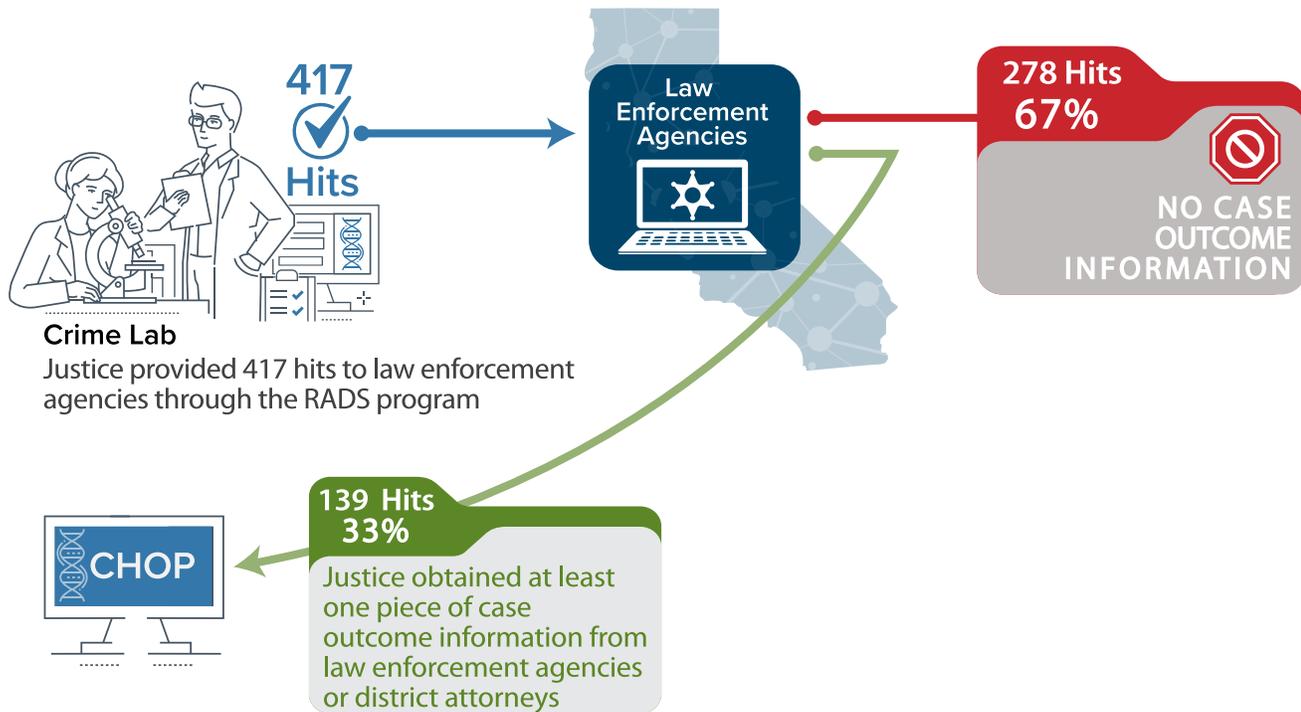
Audit Results

The State Has Obtained Little Sexual Assault Case Outcome Information, Leaving It Unable to Fully Demonstrate the Benefits of the RADS Program

Justice has not obtained key information on the outcomes of most sexual assault cases associated with hits from its RADS program. As described in the Introduction, Justice has included data fields in CHOP for law enforcement agencies and district attorneys to report case outcome information for sexual assault cases. However, as shown in Figure 2 on the following page, as of the date of our review Justice had not obtained any outcome information for 278, or 67 percent, of the 417 cases for which RADS provided law enforcement with hits generated from profiles uploaded to CODIS between April 1, 2015, and March 26, 2018. We expected that law enforcement agencies would have reported at least one piece of case information—whether the agency was investigating the case associated with the hit—for all hits that came from the evidence in a RADS kit. However, CHOP contained information on whether the agency was investigating the case for only 114, or 27 percent, of the 417 hits. Justice obtained information indicating the ultimate resolution of cases even less frequently. Although law enforcement agencies reported that they had submitted cases associated with 63 hits to district attorneys for prosecution, district attorneys reported whether they charged the suspect with a crime in only 17 instances, and they reported whether the suspect was convicted in only four instances. Appendix B on page 27 lists the RADS participants that received hits through the RADS program and the frequency with which they reported key outcome information.

It is possible that some outcome information was not reported because the cases had not progressed far enough for law enforcement or district attorneys to be able to report certain outcomes—such as whether a suspect has been arrested or convicted—but it is unlikely that a lack of progress explains most of the missing information. We visited three law enforcement agencies that are RADS participants—Chico Police Department (Chico), Fairfield Police Department (Fairfield), and Fresno Police Department (Fresno)—and collected case outcome data for each case associated with the 61 hits that the agencies received from profiles uploaded to CODIS during our review period. We found that almost all of the cases we reviewed at the three agencies had progressed far enough that the law enforcement agency and the district attorney were able to or should have been able to report key case outcome information. The Table on page 13 contains the case outcome information that we obtained by reviewing the three agencies' files.

Figure 2
Justice Did Not Obtain Case Outcome Information for the Majority of CODIS Hits



Source: Analysis of Justice's CHOP data for hits generated from profiles uploaded to CODIS through the RADS program from April 1, 2015, to March 26, 2018.

Note: This information is current as of May 2018, when we obtained the CHOP data from Justice.

Additional information that law enforcement agencies and district attorneys can report in CHOP directly relates to how much the hit benefited the investigation or prosecution of the case, but Justice also rarely obtained this information. Specifically, Justice asks law enforcement agencies whether they opened or reopened an investigation based on a hit and asks district attorneys whether the hit was used to prosecute or exonerate someone. However, of the 417 hits from profiles uploaded to CODIS during our review period, Justice obtained information from law enforcement agencies on whether they opened or reopened a case based on those hits in only 84 instances, or 20 percent. Further, it obtained information from district attorneys about whether those hits were used to prosecute or exonerate someone in only one instance. Obtaining this information is crucial to understanding the full benefit of the RADS program, which could aid the Legislature in deciding whether to adopt a requirement to test all sexual assault evidence kits. Knowing whether a suspect was arrested or convicted is beneficial, but this information alone does not indicate whether the hit was a contributing factor in making the arrest or convicting the suspect.

Table

Status of Cases at Three Law Enforcement Agencies for Which the RADS Program Provided a Hit Generated From Profiles Uploaded to CODIS Between April 1, 2015, and March 26, 2018

LAW ENFORCEMENT AGENCY	TOTAL NUMBER OF HITS	IS THE INVESTIGATION STILL ACTIVE?		DID THE AGENCY ARREST A SUSPECT?		DID THE AGENCY SUBMIT THE CASE TO THE DISTRICT ATTORNEY FOR REVIEW?		DID THE DISTRICT ATTORNEY FILE CHARGES AGAINST THE SUSPECT?			WAS THE SUSPECT CONVICTED?		
		YES	NO	YES	NO	YES	NO	YES	NO	PENDING*	YES	NO	PENDING*
Chico	24	2	22	6	18	6	18	5	0	1	2	2	1
Fairfield	19	0	19	11	8	16	3	10	6	0	2	3	5
Fresno	18	3	15	7	11	9	9	8	0	1	1	2	5

Source: Analysis of sexual assault case files and interviews with investigators at Chico, Fairfield, and Fresno police departments.

Note: The scope of our audit did not include a review of whether it was appropriate for cases to progress or stop progressing through investigative or prosecutorial stages. This information is current as of the date of our review in May 2018.

* Pending refers to cases that are in progress. The information we obtained from local law enforcement agencies indicated that the district attorney had not reached a final determination about these case outcomes as of the date we conducted our review of the case file information.

In our review of the case files at the three agencies we visited, we found that hits from the RADS program did not appear to directly contribute to positive case outcomes in some instances, but did contribute in others. For example, in one case we reviewed at Fairfield, the suspect confessed to the sexual assault and was arrested before the hit occurred. Therefore, in this case the hit could not have contributed to the decision Fairfield made to arrest the suspect. Conversely, the case notes for another case at Fairfield indicate that the victim identified a suspect she stated had sexually assaulted her, but the suspect denied that he had ever had sexual contact with the victim. In this case, the hit that Justice provided to Fairfield confirmed that the suspect had sexual contact with the victim. According to the lieutenant who oversees sexual assault cases at Fairfield, the hit, combined with the victim’s statement, enabled law enforcement to arrest the suspect and submit the case to the district attorney for prosecution. However, because Fairfield did not report any of the case outcome information for the hit into CHOP, Justice was not aware of the full benefit that the hit had provided. As we discuss in the next section, Justice did not effectively notify RADS participants, including Fairfield, that they should report outcome information.

As discussed in the Introduction, because the RADS program tests all sexual assault evidence kits in the counties it serves, Justice is uniquely positioned to provide insight into the benefits that a test-all approach to sexual assault evidence kits can provide in solving and prosecuting sexual assault cases. However, because Justice has not obtained most of the outcome data on the sexual

assault cases associated with the hits the RADS program has generated, it has missed an opportunity to provide lawmakers and the public with information that could demonstrate the benefits of testing all sexual assault evidence kits.

Justice Has Not Made Sufficient Efforts to Obtain Sexual Assault Case Outcome Information From RADS Participants

Justice has asserted in reports to the Legislature that a change in state law to require local law enforcement and district attorneys to report case outcomes is the only way that it will be able to obtain sexual assault case outcome information. However, Justice has not effectively used other methods to gather this information. We identified key deficiencies in Justice's efforts that contribute to the poor reporting of case outcome data we observed in CHOP, including a failure to adequately notify local agencies that it expects them to report these outcomes, and a lack of monitoring of and outreach to local agencies that fail to report.

Justice Has Not Effectively Informed All RADS Participants That They Should Report Outcome Data

Although the director of forensic services stated that Justice's primary mechanism for notifying RADS participants of the expectation to report case outcome information was its memorandums of understanding (MOUs) with the participants, Justice did not ensure that all of its RADS participants signed MOUs. Beginning in 2015, in response to our previous audit's recommendation, Justice modified its MOUs to include a requirement that participating law enforcement agencies and district attorneys report case outcome information into the CHOP system for each case for which the RADS program provided a hit. However, we found that Justice did not have MOUs with the law enforcement agencies and district attorneys from 23 of the 39 counties participating in the RADS program. According to the director of forensic services, 11 of these 23 counties participate in a modified RADS program—a version of the RADS program that Justice operates for smaller counties that submit very few sexual assault evidence kits for testing—and Justice does not require these 11 counties to sign MOUs. However, in the absence of an MOU Justice was unable to provide evidence that it had made any other effort to notify these counties that they should report case outcome information in CHOP. The director of forensic services was unable to provide an explanation for why Justice did not enter into MOUs with the remaining 12 RADS counties, and Justice did not have evidence that it had made other efforts to notify them of the expectation to report case outcome information. Several RADS

Justice did not have MOUs with the law enforcement agencies and district attorneys from 23 of the 39 counties participating in the RADS program.

participants without MOUs did not report any case outcome information in CHOP. For example, Justice does not have an MOU with the law enforcement agencies or district attorney of Placer County, and although Placer County law enforcement agencies received 14 hits through the RADS program, neither the district attorney nor any of the law enforcement agencies in the county have reported any outcome information for the related cases.

Further, among the MOUs it did maintain, Justice often did not obtain signatures from all participating parties, making it likely that even in counties that entered into an MOU, some law enforcement agencies were unaware that they should report case outcome information. Ten of the 16 MOUs Justice provided were missing signatures from some or all of the law enforcement agencies in the county. The director of forensic services stated that he did not know why the MOUs lacked some law enforcement signatures, and that Justice should have signatures from all participating law enforcement agencies in the county. He further stated that absent those signatures he does not know how or if Justice notified law enforcement agencies that they should report case outcome information. He indicated that Justice may have notified those agencies about the expectation to report the information through trainings that Justice provides. However, we identified deficiencies in Justice's training of RADS participants regarding reporting case outcome information and discuss those deficiencies in the next section. A lack of awareness is a likely explanation for why some of the agencies that did not sign MOUs with Justice have not reported case outcome information. For example, Justice's MOU with Solano County did not contain signatures from any police departments or the sheriff in the county, and none of those law enforcement agencies reported case outcome information in CHOP.

Of the three law enforcement agencies we visited, only Fresno had signed an MOU. The other two police departments differed in their knowledge about MOUs and the expectations for reporting case outcomes. The detective sergeant who oversees sexual assault investigations at Chico reported that he was unaware of his county's MOU but knew about the reporting expectation because the previous detective sergeant at Chico had informed him about it. At Fairfield, the lieutenant who oversees sexual assault investigations reported that he was unaware of both the MOU and the reporting expectations. As a result, although between April 2015 and the time of our review Fairfield received a high number of hits compared to most of the other law enforcement agencies in the RADS program, it did not report any case outcome information in CHOP. That Fairfield did not report this information demonstrates the importance of adequately notifying reporting agencies of the reporting expectations. RADS participants are unlikely to report case outcome information if they are unaware that Justice expects

Among the MOUs it did maintain, Justice often did not obtain signatures from all participating parties.

them to do so. Justice's failure to adequately notify all RADS participants of the reporting requirements significantly impaired its ability to obtain case outcome information.

Justice Has Not Provided Training to Most RADS Counties

In addition to its MOUs, Justice developed training on the RADS program that mentions the case outcome reporting expectation, but Justice did not provide that training to most of the law enforcement agencies and district attorneys in the counties participating in RADS. According to the director of forensic services, Justice did not require all local law enforcement agencies that participate in the RADS program to attend RADS training. He also stated that he did not know how Justice would enforce such a requirement, because Justice would test the RADS kits whether or not RADS participants attended the training. In 2015 Justice began amending its MOUs to require the reporting of outcome information and should have then ensured that all RADS participants received training on how to report. This training would have been especially important given that, as we discuss later, Justice has not provided guidance on how RADS participants should enter case outcome information into CHOP. However, as of March 2018, Justice had provided trainings that mentioned the expectation to report case outcome information to law enforcement agencies and district attorneys from only six of the 39 RADS counties. Two of the law enforcement agencies we visited, Chico and Fresno, are located in counties where Justice did not provide training. Although Justice provided RADS training three times at California Association of Property and Evidence events in different locations throughout the State of which law enforcement agency and district attorney staff may be members, Justice was unable to demonstrate how many, if any, of the RADS participants attended those trainings.

Even when Justice provided training to a county participating in the RADS program, not all law enforcement agencies in that county received the training.

We found that even when Justice provided training to a county participating in the RADS program, not all law enforcement agencies in that county received the training. For example, Justice's records indicate that it provided RADS training to at least one law enforcement agency in Solano County in March 2016. However, the lieutenant who oversees sexual assault investigations at Fairfield—which is in Solano County—stated that no one at Fairfield had ever received training. According to a former criminalist manager (criminalist manager), Justice did not track which agencies attended the trainings it offered for RADS counties. Therefore, Justice does not know which agencies in those six counties attended.

Further, when we reviewed the content of the RADS trainings that Justice provided between May 2015 and March 2018, we found that the trainings were inconsistent in how clearly they

described the case outcome reporting expectation. These trainings provided information that described the RADS program and how it reduces the time needed to test sexual assault evidence kits. Some of the trainings more fully described Justice's expectation to report case outcome information than others. For example, the training that Justice provided to a Vallejo law enforcement agency in May 2016 described the expectation for law enforcement agencies to report case outcome information in CHOP. The training also showed the local agencies where to enter the information and what types of case outcome information Justice expected them to provide. On the other hand, a training that Justice provided to Monterey County police chiefs in July 2016 simply listed "enter case information into CHOP" in a list of the law enforcement agency's responsibilities and did not explain what specific case information the law enforcement agency should report.

According to the criminalist manager, the reason Justice did not fully describe the reporting expectation in its trainings is that it assumed the MOUs would sufficiently describe this expectation. However, as we describe earlier, Justice did not effectively use its MOUs to notify local law enforcement agencies about the reporting requirements. Further, if it were to reinforce the expectation by training all RADS participants, Justice would likely increase the chances that local agencies would report as it expected. The criminalist manager agreed that explaining the case outcome reporting expectation in detail during training would better inform reporting local agencies about the expectation.

Although the criminalist manager indicated that a training on the CHOP system provided by Justice's outreach program discussed the case outcome reporting expectation, we found that it did not. According to the supervisor of the outreach program—which provides training to CHOP users, including RADS participants—Justice offered the CHOP training to law enforcement agencies and district attorneys when they registered to use the CHOP system, but it did not require them to take the training. The training focused on CHOP's functions and how to navigate the CHOP system, but it did not mention that Justice expected RADS participants to enter case outcome information. Staff at Justice who provide trainings on how to use CHOP stated that these trainings include information on how to complete the fields in CHOP, including case outcome-related fields, but not all training staff mentioned the reporting expectation during CHOP training. Additionally, RADS participants from only 11 of the 39 RADS counties attended CHOP trainings from May 2015 through March 2018. When Justice does not educate RADS participants about its expectation that they provide case outcome information, it decreases the likelihood that they will do so.

The criminalist manager agreed that explaining the case outcome reporting expectation in detail during training would better inform local agencies about the expectation.

Justice Has Not Regularly Reviewed Its Data to Identify the Reporting Agencies With Which It Should Follow Up

Despite the minimal amount of case outcome information it has obtained, Justice has not followed up with RADS participants that have not reported case outcome information. We expected that Justice would periodically review the case outcome information in CHOP to determine which participants have or have not reported the expected information, and then follow up with those that have not. However, it has not done so since implementing the reporting expectation. The director of forensic services indicated that because there is no statutory requirement for law enforcement agencies and district attorneys to provide this information, Justice cannot enforce its expectation of receiving it. He further indicated that although CHOP has the capability to report whether law enforcement agencies and district attorneys are entering case outcome information, Justice lacks the staffing and resources to review this information on a regular basis. However, Justice was unable to provide any analysis demonstrating that it lacks the staffing or resources to conduct regular follow-up to obtain case outcome information. Because it has not periodically reviewed the case outcome information in CHOP, the director of forensic services acknowledged that Justice was unaware of which RADS participants were not reporting this information. He stated that follow-up with entities that are not reporting case outcome information would potentially be effective at increasing the amount of outcome information Justice receives.

Because Justice has not periodically reviewed the case outcome information in CHOP, it was unaware of which agencies were not reporting this information.

In the past, Justice has followed up with reporting agencies to obtain case outcome information, with some success. A field representative in Justice's Bureau of Forensic Services provided records listing follow-up calls that she made to law enforcement and district attorneys in RADS counties. She believes she made these calls between 2012 and 2014, which is before Justice began expecting RADS participants to provide case outcome information. The field representative indicated that the purpose of these calls was to obtain case outcome information and request that local law enforcement agencies and district attorneys enter the information into CHOP. Her records show that the law enforcement agencies and district attorneys she contacted subsequently reported a significant amount of the case outcome information via phone or email, indicating that these agencies are able to provide the information when asked. The field representative stated that she was unsure why this follow-up stopped, but that it may have been because of a lack of staff to make these contacts. However, the field representative's efforts demonstrate that a dedicated follow-up effort could be effective in increasing the case outcome information that Justice obtains from RADS participants.

Justice has repeatedly reported to the Legislature that the only way it will be able to obtain case outcome information from reporting agencies is if the Legislature mandates that the reporting agencies do so. However, according to the criminalist manager, Justice has not contacted local entities to determine why they do not provide outcome data. If it had, it likely would have discovered what we found when we visited three law enforcement agencies—that not every entity is aware that it should report the information or knows how to properly do so. Through follow-up, Justice could have ensured that entities that did not report were aware of the expectation to report outcome information. Until Justice implements strategies to obtain case outcome information, it cannot know whether a legislative change is necessary to ensure that local entities report this information.

According to the criminalist manager, Justice has not contacted local agencies to determine why they do not provide outcome data.

The Sexual Assault Case Outcome Information That Justice Has Obtained Is Not Always Accurate

The limited data that Justice obtained from reporting agencies contained inaccuracies and outdated information in one key field. When we reviewed whether the three local law enforcement agencies we visited had entered case outcome data in CHOP, we found that 63 percent of Fresno’s data were missing from CHOP, 11 percent of Chico’s data were missing, and all of Fairfield’s data were missing.³ Further, when we compared the information in CHOP to the information we obtained from the case files for Chico and Fresno, we identified inaccuracies in some of the CHOP information. All of the information that CHOP contained regarding whether Fresno was still investigating cases associated with a RADS hit was inaccurate. For Chico, 26 percent of that information was inaccurate.

This inaccuracy resulted in part from Justice’s failure to provide guidance on how to enter data into CHOP, leading to inconsistencies in the way some RADS participants report the status of an investigation. CHOP provides three options for indicating whether a sexual assault case is being actively investigated: Yes, No, and N/A (meaning that it is not applicable). The criminalist manager acknowledged that there is no explanation in CHOP of how to answer this question. In our review, we found that Fresno entered “N/A” in CHOP to indicate that the investigations for some cases were closed. However, Chico used “No” to indicate closed investigations. Because Justice has provided no guidance on how to complete this field, these two law

³ As we discussed earlier in our report, Fairfield had not signed an MOU with Justice and stated that it was not aware of the reporting requirement.

Because of the inconsistencies in case outcome reporting, Justice cannot rely on the data in CHOP to understand how many of the cases that received hits are actively being investigated by law enforcement agencies.

enforcement agencies reported the same information differently. As discussed earlier, although staff at Justice who provide trainings on how to use CHOP stated that these trainings—which are distinct from trainings about RADS—include information on how to complete the fields, most RADS participants did not attend the trainings. Additionally, Justice has not developed or provided a manual that explains what the possible responses in the case outcome fields mean. Because of the inconsistencies in case outcome reporting, Justice cannot rely on the data in CHOP to understand how many of the cases that received hits are actively being investigated by law enforcement agencies.

The director of forensic services stated that Justice has neither developed nor provided guidance on how to report case outcome information because it was unaware that law enforcement agencies and district attorneys needed such guidance. He stated that since CHOP's development he is unaware of any feedback or complaints from CHOP users and therefore, he was not aware that there were inconsistencies in how agencies reported case outcome information. However, even absent complaints from CHOP users, we would have expected that Justice would have reached out to them to ensure that they understood how to input case outcome information, especially in light of its lack of guidance for reporting that information. The director of forensic services stated that although creating a manual for how to enter data into CHOP may not be feasible because of staffing constraints, adding explanations in CHOP would be a viable option for Justice and helpful to RADS participants.

Additionally, some of the case outcome information in CHOP is outdated and Justice has no process for reminding agencies to update the data. During the investigation or prosecution of a case, some of the case outcome information will likely change. For example, after a district attorney reports that it filed charges against a suspect but before the case has gone to trial, the district attorney may report that the conviction is "pending." However, after the case is concluded, the district attorney should update the information to indicate whether the suspect was convicted. If reporting agencies do not update the information, Justice may report inaccurate information to the Legislature. According to the criminalist manager, Justice has no process for reminding RADS participants to update the case outcome information in CHOP. She stated that Justice did not develop a process for ensuring that reporting agencies update CHOP information because it believed that the reporting agencies already knew that they were expected to do so.

In our review of the case outcome information at Chico and Fresno, we observed instances in which case files indicated that the agencies had closed the investigations, but CHOP indicated that

those investigations were still ongoing. As stated earlier, 26 percent of the information that Chico reported in the active investigation field—a total of six cases—was inaccurate at the time of our review. In all of these inaccuracies, the case file indicated that the investigation was closed but CHOP indicated that it was still active. The detective sergeant who oversees sexual assault investigations explained that the inaccuracies probably occurred because he or his predecessor had not gone into CHOP to update the information after Chico closed the investigations. If Justice had a process for periodically reminding RADS participants to update the information on pending cases, such as through automated messages generated by the CHOP system, it could increase the frequency with which RADS participants update their information. The acting assistant bureau director at Justice confirmed that CHOP has the capability to generate this type of automated message. As the outdated information we observed within CHOP demonstrates, because Justice does not have such a process, it is unable to ensure that it has the most accurate, up-to-date information to report to the Legislature.

Tracking Case Outcome Information Could Help the Legislature Identify and Remove Barriers to the Successful Investigation and Prosecution of Sexual Assault Cases

The recommendation we made to Justice in our October 2014 report was intended to provide the Legislature valuable information about the extent of the benefits of testing all sexual assault evidence kits. Because of the shortcomings in Justice’s approach to obtaining case outcome information, the Legislature has not had this information available to it in the years since our original report. As discussed in the Introduction, continuing concerns about untested sexual assault evidence kits have generated proposals for changes to state law that would require that all sexual assault evidence kits be submitted to a crime lab for testing. As of the date of this report, none of these proposals have become law. However, if in the future the Legislature amends state law to require law enforcement agencies to test all sexual assault evidence kits, the collection of case outcome information will remain important because it would provide the State with valuable information related to sexual assault cases.

There are many factors other than the evidence available in a sexual assault evidence kit that may affect sexual assault case investigations and the likelihood of successful prosecution of a suspect. Research into the reasons why sexual assault evidence kits have gone untested has identified issues that impair the investigation and prosecution of sexual assault cases, including investigator perceptions of victims’ credibility, their perception of

The recommendation we made to Justice in our October 2014 report was intended to provide the Legislature valuable information about the extent of the benefits of testing all sexual assault evidence kits.

Testing the sexual assault evidence kit is only one piece of a broader strategy for ensuring that sexual assault cases are properly handled.

victims' willingness to participate in the investigation, and limited forensic resources. In August 2017, the National Institute of Justice, which is the research, development, and evaluation agency of the U.S. Department of Justice, issued guidance recommending that all sexual assault evidence kits be submitted for analysis. This was one of 35 recommendations constituting a multidisciplinary approach among law enforcement agencies, victim advocates, attorneys, and others to better respond to sexual assault cases. The other recommendations included collaborating with victim advocates to ensure a victim-centered approach when investigating cases and training law enforcement personnel on how to interview sexual assault victims. In other words, testing the sexual assault evidence kit is only one piece of a broader strategy for ensuring that sexual assault cases are properly handled.

Because sexual assault investigations are dependent on more factors than the testing of sexual assault evidence kits, case outcome information could reveal whether other segments of the criminal justice system, such as sexual assault investigative units, are strained for resources, a reality that some jurisdictions have discovered as they have tested sexual assault evidence kits. In late 2018, the U.S. Department of Justice awarded several grants to state and local law enforcement agencies and district attorneys throughout the country to assist those entities efforts to address untested sexual assault evidence kits. Three of those jurisdictions—Akron, Ohio; Fulton County, Georgia; and Fresno, California—are notable because they received grant funding not for the testing of sexual assault evidence kits, but specifically for the investigation and prosecution of the associated cases. According to a city of Fresno report, there are hundreds of hits from tested sexual assault evidence kits that need further investigation, but limited resources make it difficult to investigate those hits. These grants demonstrate that some jurisdictions may lack the resources to investigate hits they receive from testing sexual assault evidence kits. If similar resource constraints exist at other California law enforcement agencies, requiring law enforcement agencies and district attorneys to report case outcomes could reduce the time it takes for the Legislature to realize that additional resources are necessary.

One recent case from North Carolina demonstrates the importance of ensuring that hits are adequately investigated. News reports indicate that in 2017 in Raleigh, North Carolina, a hit provided the name of a suspect in a sexual assault investigation, but investigators did not obtain a warrant to proceed with their investigation. Subsequent to the hit from that case, a 13-year old child was raped and murdered, and law enforcement charged the individual named in the 2017 hit for those new crimes. The district attorney has publicly stated his belief that if the hit from 2017 had been adequately investigated, the suspect would not have been free

to commit additional crimes. This example demonstrates that hits generated through testing of sexual assault evidence kits are potentially helpful in solving sexual assault cases and preventing future crimes, but only when combined with the appropriate investigative response.

Tracking case outcomes for cases with hits could also help policymakers identify factors besides resource constraints that negatively affect the investigation and prosecution of sexual assault cases. If law enforcement agencies and district attorneys statewide were required to submit case outcome information for all sexual assault cases in which they obtained a hit, the outcome data would show how often certain investigative and prosecution results are achieved. For example, case outcome data would indicate the percentage of cases that never reach the arrest stage and the percentage that are referred for prosecution but never pursued by district attorneys. That information would provide a summary-level view of where the Legislature and others may need to direct attention and resources to improve the outcomes of sexual assault investigations. Tracking outcome data would also provide public accountability for how law enforcement agencies and district attorneys handle sexual assault cases in which a sexual assault evidence kit generated a hit.

If the Legislature requires case outcome reporting in all cases for which hits are generated from the testing of sexual assault evidence kits, Justice is the most logical entity to receive and report those data. Justice has already been tasked with other statewide data collection efforts related to sexual assault evidence kits, such as obtaining information from local law enforcement entities about their number of untested kits. The director of forensic services stated that Justice would need additional resources to collect case outcome information statewide. As we describe earlier in this report, Justice has not effectively pursued obtaining case outcome data. Therefore, any future effort to obtain statewide outcome data will need to address deficiencies in Justice's current approach.

Recommendations

If it amends state law to require testing of all sexual assault evidence kits, the Legislature should also require that law enforcement agencies and district attorneys report key case outcome data to Justice for all cases associated with hits from DNA profiles obtained through those kits. Additionally, the Legislature should require Justice to provide training and guidance to those entities on how to report that information, and follow up with entities that do not report. Further, it should require Justice to annually publish summary information about case outcomes.

If it does not amend state law to require testing of all sexual assault evidence kits, the Legislature should amend the law to ensure that Justice obtains and reports case outcome information that would demonstrate the benefits of the RADS program. Specifically, the Legislature should require Justice to do the following:

- Periodically train all RADS participants on the requirement to report and update case outcome information, and on how to properly do so.
- Develop guidance to inform RADS participants about how to appropriately and consistently enter case outcome information within CHOP.
- Periodically review the case outcome information within CHOP to identify RADS participants that are not reporting or updating case outcome information, and follow up with them to obtain the information.
- Annually report to the Legislature a summary of the case outcome information it has obtained, as well as its efforts to obtain the case outcome information.

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

Respectfully submitted,



ELAINE M. HOWLE, CPA
California State Auditor

Date: March 7, 2019

Appendix A

Scope and Methodology

This follow-up audit focused on a recommendation we made to Justice in our October 2014 report related to sexual assault evidence kits and the RADS program.

Table A
Selected Recommendation in the California State Auditor’s Report 2014-109 and the Methods Used to Follow Up on Its Implementation

RECOMMENDATION	METHOD
<p>1 To report to the Legislature about the effectiveness of its RADS program and to better inform decisions about expanding the number of analyzed sexual assault evidence kits, Justice should amend its agreements with the counties participating in the RADS program to require those counties to report case outcome information, such as arrests and convictions for the sexual assault evidence kits Justice has analyzed under the program. Justice should then report annually to the Legislature about those case outcomes.</p>	<ul style="list-style-type: none"> • Reviewed Justice’s MOUs to determine whether Justice included case outcome reporting requirements, had MOUs with all RADS participants, and obtained all necessary signatures on the MOUs. • Obtained and reviewed documentation of trainings that Justice provided to reporting agencies to determine whether they informed RADS participants of the requirement to report outcome information, and whether they included information on how to properly do so. • Interviewed staff at Justice to determine the extent to which Justice has reviewed its RADS data to identify reporting agencies that have not provided or updated case outcome data, and the extent to which Justice has followed up with those agencies to obtain the data. • Collected and reviewed Justice’s data on the total number of hits generated from profiles uploaded to CODIS between April 1, 2015, and March 26, 2018, and the case outcome data that Justice obtained from RADS participants. Reviewed the data to identify inaccuracies and interviewed staff at Justice regarding its processes for ensuring the accuracy and completeness of the data. • Obtained case outcome information from the Chico, Fairfield, and Fresno police departments for all cases associated with hits generated from profiles uploaded to CODIS through the RADS program between April 1, 2015, and March 26, 2018 (which were the most recent data available at the time we began our review). We selected these agencies because of their geographic location and the relatively high number of hits they received during our review period. We then compared the information we obtained to the information that the three agencies had reported in CHOP. • Interviewed sexual assault investigators at each law enforcement agency to determine whether they were aware of the reporting expectations and to determine their reasons for not reporting case outcome information, if applicable.

Source: Recommendation made in the report by the California State Auditor titled *Sexual Assault Evidence Kits: Although Testing All Kits Could Benefit Sexual Assault Investigations, the Extent of the Benefits Is Unknown*, Report 2014-109 (October 2014), and information and documentation identified in the table column titled *Method*.

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Appendix B

Amount of Outcome Data That Justice Obtained From Each RADS Participant That Received a Hit Through the RADS Program

As tables B.1 and B.2 show, Justice did not obtain case outcome information from law enforcement agencies and district attorneys for a significant number of cases associated with the hits generated from DNA profiles uploaded to CODIS between April 1, 2015, and March 26, 2018, that were processed under the RADS program. Table B.1 displays the total number of these hits and the number of cases for which Justice obtained outcome information from local law enforcement agencies. We would have expected the district attorneys to report at least some case outcome information on all of the cases submitted to them by law enforcement agencies for prosecution. However, because information about referrals to the district attorney was missing for a large number of cases, we were unable to determine the number of cases for which district attorneys should have reported case outcome information. Therefore, Table B.2 on page 31 displays the number of hits for which district attorneys reported some case outcome information, as well as the number of hits for which law enforcement agencies reported submitting the case to the district attorney but the district attorney did not report any case outcome information.

Table B.1
 Amount of Case Outcome Information That Law Enforcement Agencies Reported as of May 2018

LAW ENFORCEMENT AGENCY (BY COUNTY)	HITS RECEIVED THROUGH THE RADS PROGRAM	SOME CASE OUTCOME INFORMATION REPORTED	NO CASE OUTCOME INFORMATION REPORTED*
Alameda	1	0	1
San Leandro Police	1	0	1
Amador	1	0	1
Jackson Police	1	0	1
Butte	40	25	15
Butte Sheriff	7	0	7
Chico Police	24	23	1
Oroville Police	7	1	6
Paradise Police	2	1	1
Colusa	1	0	1
Colusa Sheriff	1	0	1
Del Norte	2	1	1
Del Norte Sheriff	2	1	1

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LAW ENFORCEMENT AGENCY (BY COUNTY)	HITS RECEIVED THROUGH THE RADS PROGRAM	SOME CASE OUTCOME INFORMATION REPORTED	NO CASE OUTCOME INFORMATION REPORTED*
El Dorado	2	0	2
El Dorado Sheriff	1	0	1
Placerville Police	1	0	1
Fresno	21	9	12
Clovis Police	3	0	3
Fresno Police	18	9	9
Glenn	3	0	3
Orland Police	2	0	2
Willows Police	1	0	1
Humboldt	5	0	5
Arcata Police	1	0	1
Eureka Police	2	0	2
Humboldt Sheriff	2	0	2
Kings	2	1	1
Corcoran Police	1	0	1
Kings Sheriff	1	1	0
Lake	8	0	8
Clearlake Police	3	0	3
Lake Sheriff	5	0	5
Lassen	2	0	2
Susanville Police	2	0	2
Marin	15	8	7
Marin Sheriff	2	1	1
Novato Police	2	0	2
San Rafael Police	10	7	3
Tiburon Police	1	0	1
Mendocino	2	1	1
Fort Bragg Police	1	1	0
Mendocino Sheriff	1	0	1
Merced	7	1	6
Livingston Police	1	0	1
Merced Police	5	1	4
Merced Sheriff	1	0	1
Monterey	13	0	13
Greenfield Police	1	0	1
King City Police	1	0	1
Monterey Sheriff	1	0	1
Pacific Grove Police	1	0	1
Salinas Police	6	0	6
Seaside Police	2	0	2
Soledad Police	1	0	1

LAW ENFORCEMENT AGENCY (BY COUNTY)	HITS RECEIVED THROUGH THE RADS PROGRAM	SOME CASE OUTCOME INFORMATION REPORTED	NO CASE OUTCOME INFORMATION REPORTED*
Napa	8	1	7
Napa Police	4	1	3
Napa Sheriff	3	0	3
St. Helena Police	1	0	1
Nevada	3	2	1
Nevada City Police	1	0	1
Nevada Sheriff	2	2	0
Placer	14	0	14
Auburn Police	2	0	2
Lincoln Police	1	0	1
Placer Sheriff	5	0	5
Rocklin Police	2	0	2
Roseville Police	4	0	4
Riverside	31	8	23
Blythe Police	1	0	1
Cathedral City Police	7	5	2
Desert Hot Springs Police	5	0	5
Indio Police	5	0	5
Palm Springs Police	3	0	3
Riverside Sheriff	10	3	7
San Joaquin	29	2	27
Lodi Police	1	0	1
Manteca Police	1	1	0
San Joaquin Sheriff	4	0	4
Stockton Police	21	0	21
Tracy Police	2	1	1
Santa Cruz	6	0	6
Santa Cruz Police	5	0	5
Watsonville Police	1	0	1
Shasta	17	2	15
Anderson Police	2	0	2
Redding Police	11	0	11
Shasta Sheriff	4	2	2
Solano	44	0	44
Benicia Police	4	0	4
Dixon Police	1	0	1
Fairfield Police	19	0	19
Solano Sheriff	1	0	1
Suisun City Police	3	0	3
Vacaville Police	2	0	2
Vallejo Police	14	0	14

continued on next page . . .

LAW ENFORCEMENT AGENCY (BY COUNTY)	HITS RECEIVED THROUGH THE RADS PROGRAM	SOME CASE OUTCOME INFORMATION REPORTED	NO CASE OUTCOME INFORMATION REPORTED*
Sonoma	56	42	14
California State University - Sonoma	3	0	3
Cotati Police	3	0	3
Healdsburg Police	1	1	0
Petaluma Police	3	2	1
Rohnert Park Police	7	1	6
Santa Rosa Police	20	20	0
Sonoma Police	1	0	1
Sonoma Sheriff	18	18	0
Stanislaus	19	4	15
Modesto Police	10	0	10
Stanislaus Sheriff	8	3	5
Turlock Police	1	1	0
Sutter	1	0	1
Sutter Sheriff	1	0	1
Tehama	3	1	2
Tehama Sheriff	3	1	2
Tulare	41	11	30
Dinuba Police	1	0	1
Exeter Police	1	0	1
Porterville Police	8	3	5
Tulare Police	3	0	3
Tulare Sheriff	15	0	15
Visalia Police	13	8	5
Yolo	14	3	11
Davis Police	2	2	0
West Sacramento Police	7	0	7
Woodland Police	4	1	3
Yolo Sheriff	1	0	1
Yuba	6	0	6
Yuba Sheriff	6	0	6
Totals	417	122	295

Source: Analysis of CHOP data for all hits from DNA profiles uploaded to CODIS between April 1, 2015, and March 26, 2018, that occurred through the RADS program.

* Some of these cases may not have progressed far enough for the law enforcement agency to have case outcomes to report.

Table B.2
 Amount of Case Outcome Information That District Attorneys Reported as of May 2018

DISTRICT ATTORNEY	SOME CASE OUTCOME INFORMATION REPORTED	LAW ENFORCEMENT AGENCIES REPORTED REFERRING THE CASE TO THE DISTRICT ATTORNEY, BUT THE DISTRICT ATTORNEY REPORTED NO INFORMATION
Butte	0	5
Del Norte	0	1
Fresno	5	1
Kings	0	1
Marin	1	2
Mendocino	0	1
Napa	0	1
Nevada	0	2
Riverside	0	7
San Joaquin	0	1
Shasta	0	1
Solano	11	0
Sonoma	0	26
Stanislaus	0	3
Tehama	0	1
Tulare	0	8
Yolo	0	1
Yuba	1	0
Totals*	18	62

Source: Analysis of CHOP data for all hits from DNA profiles uploaded to CODIS between April 1, 2015, and March 26, 2018.

Note: In some instances, the law enforcement agencies that received hits did not report whether they submitted the associated cases to the district attorney and the district attorney reported no case information in CHOP. As a result, there are some counties for which we do not know whether the district attorneys should have reported case outcome information. Those counties are Alameda, Amador, Colusa, El Dorado, Glenn, Humboldt, Lake, Lassen, Merced, Monterey, Placer, Santa Cruz, and Sutter.

* For some cases, the district attorney reported case information, but the law enforcement agency had not reported whether it submitted the case to the district attorney.

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March 2019

XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE



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February 19, 2019

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

Re: California State Auditor Report 2018-501; Follow-Up – Sexual Assault Evidence Kits

Dear Ms. Howle,

This letter serves as the Department of Justice’s (DOJ) response to the California State Auditor’s (CSA) report titled “*Follow-Up – Sexual Assault Evidence Kits: California Has Not Obtained the Case Outcome Information That Would More Fully Demonstrate the Benefits of its Rapid DNA Service Program.*”

The DOJ has reviewed the report and appreciates the opportunity to respond to the report. While the audit report notes several areas in need of improvement, DOJ maintains that it fully implemented the recommendation under consideration: ①

Report 2014-109, CSA Recommendation #4: To report to the Legislature about the effectiveness of its RADS program and to better inform decisions about expanding the number of analyzed sexual assault evidence kits, Justice should amend its agreements with the counties participating in the RADS program to require those counties to report case outcome information such as arrests and convictions for the sexual assault evidence kits Justice has analyzed under the program. Justice should then report annually to the Legislature about those case outcomes.

The effectiveness of the Rapid DNA Service (RADS) program has been demonstrated in the number of Combined DNA Index System (CODIS) hits generated since the inception of the program and in the rapid turnaround that the program established for generating those hits. DOJ did modify the agreements – Memorandums of Understanding (MOUs) – based on CSA’s previous recommendation to incorporate the language to require the reporting of case outcomes. DOJ’s responsibility for obtaining the information from local agencies was not specifically stated in this recommendation. The recommendation only addressed DOJ’s responsibility to report to the legislature on case outcomes. The reporting of case outcomes was incomplete due to a lack of input by the local agencies. ②
③
④

We concur with the audit recommendation that the Legislature require law enforcement agencies to report key case outcome data to DOJ. DOJ will continue to support this effort through the following activities: ⑤

* California State Auditor’s comments begin on page 35.

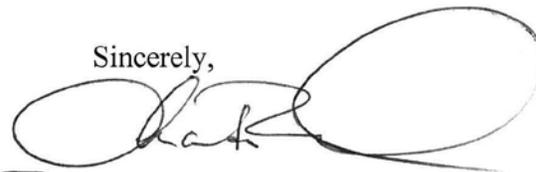
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- A new physical evidence bulletin specifically addressing the RADS program and the expectations for local law enforcement agencies that use DOJ BFS services
- ⑤
- In accordance with the law that became effective in January 2018, DOJ will compile and report local law enforcement data related to RADS

⑥ DOJ agrees that there can be clarification and better training for participants who need to input case outcome information. However, because of program changes and responsibilities to other enacted legislation, the recommendations cannot be implemented without additional program support for DOJ's already strained resources. DOJ's program already maintains the Sexual Assault Forensic Evidence Tracking (SAFE-T) database, the CODIS Hit Outcome Project (CHOP) database, and the California Arrestee (CAL-DNA) Data Bank program, and it provides outreach and communication to local law enforcement who are in need of information on the arrestee program as well as supplies. In addition, program staff aid with sexual assault victim notification and questions related to PC 680, the Sexual Assault Victims' DNA Bill of Rights. DOJ implemented SAFE-T and CHOP despite the fact that no additional resources were allocated for this via the budget process.

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

Sincerely,



For BARRY MILLER, Director
Bureau of Forensic Services

For XAVIER BECERRA
Attorney General

cc: Sean McCluskie, Chief Deputy Attorney General
Kevin Gardner, Chief, Division of Law Enforcement
Chris Ryan, Chief, Division of Operations
Chris Prasad, CPA, Director, Office of Program Oversight and Accountability

Comments

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

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

Justice's assertion that it has fully implemented our recommendation is false. Our recommendation included that Justice should report case outcome information to the Legislature annually. In the years since we made this recommendation, Justice has provided us with copies of four letters it has sent to the Legislature in response to this recommendation, only one of which included any case outcome information. Further, on two occasions before the start of this follow-up audit, we reported that Justice had not yet fully implemented this recommendation because of its failure to report case outcome information.

①

Justice's focus on how quickly its RADS program can generate CODIS hits misses the point of our original recommendation. As we described in our original report and describe again in this follow-up report, CODIS hits are sometimes beneficial to sexual assault investigations, but sometimes they are not beneficial. We provide examples on page 13 of a case in which a hit assisted the investigation and one in which the hit did not appear to assist law enforcement in making an arrest. On page 12, we explain that obtaining information on the extent that hits generated by the RADS program benefited sexual assault case investigations and prosecutions is crucial to understanding the full benefit of the program.

②

Justice claims credit for amending its MOUs but, as we state on page 14, Justice did not have MOUs with 23 of the 39 counties that participate in the RADS program, and Justice was unable to provide evidence that it had made any other effort to notify counties without MOUs that they should report case outcome information. Further, we discuss on page 15 that for most of the counties that did have MOUs, Justice had not obtained signatures from some or all of the law enforcement agencies in the county. Finally, as we state on page 15, RADS participants are unlikely to report case outcome information if they are unaware that Justice expects them to do so.

③

Justice's indication that it was not responsible for obtaining case outcome information because we did not explicitly state this expectation in our recommendation is disappointing. We recommended that Justice report case outcome information to

④

the Legislature. Our expectation was that Justice would make an adequate effort to address that recommendation—something our follow-up audit determined it has not done. An adequate effort would include that Justice notify all RADS participants that they should report case outcome information, but Justice did not do so. It is perplexing that Justice would suggest that we should have made the expectation of adequate effort explicit. As we discuss in our report, Justice had an opportunity to provide key information to the Legislature that could be used to inform decisions about testing all sexual assault evidence kits. Instead, Justice made a lackluster effort to obtain that information and was therefore unable to provide it. Justice's response to our follow-up audit further supports our recommendation that the Legislature require Justice to take a more active approach to obtaining that information.

- ⑤ It is not clear to us how the activity that Justice describes will support its collection of case outcome information. Justice states that it will comply with law that became effective in January 2018 by compiling and reporting local law enforcement data related to RADS. We believe Justice is referring to a requirement in state law that it annually summarize information that all law enforcement agencies statewide report regarding the number of sexual assault evidence kits that they collected in the last year; how many of those kits they submitted for testing; and, if applicable, their reasons for not testing kits. Because this requirement does not include a review of case outcomes, it seems unlikely to support Justice's effort to obtain or report case outcome information.
- ⑥ Justice indicates that it cannot improve its approach to obtaining case outcome information without additional resources. However, as we state on page 18, Justice was unable to provide us with any analysis demonstrating that it lacks staffing or resources to conduct regular follow-up activities to obtain case outcome information. Further, there are steps that Justice can take to improve case outcome reporting that are not likely to take large amounts of staff time or require Justice to build new capabilities into its CHOP system. For instance, we state on page 21 that automated messages generated through the CHOP system could increase the frequency with which RADS participants update case outcome information. As we explain on that page, Justice's acting assistant bureau director confirmed that CHOP already has the ability to generate these types of messages.