

OFFICE OF THE STATE AUDITOR

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# DIANA DIZOGLIO

Official Audit Report – Issued August 8, 2024

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## Executive Office of Public Safety and Security

For the period July 1, 2020 through October 31, 2022



OFFICE OF THE STATE AUDITOR

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**DIANA DIZOGLIO**

August 8, 2024

Terrence Reidy, Secretary  
Executive Office of Public Safety and Security  
1 Ashburton Place, Suite 2133  
Boston, MA 02108

Dear Secretary Reidy:

I am pleased to provide to you the results of the enclosed performance audit of the Executive Office of Public Safety and Security. As is typically the case, this report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2020 through October 31, 2022. As you know, my audit team discussed the contents of this report with agency managers. This report reflects those comments.

I appreciate you and all your efforts at the Executive Office of Public Safety and Security. The cooperation and assistance provided to my staff during the audit went a long way toward a smooth process. Thank you for encouraging and making available your team. I am available to discuss this audit if you or your team have any questions.

Best regards,



Diana DiZoglio  
Auditor of the Commonwealth

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## LIST OF ABBREVIATIONS

CODIS	Combined DNA Index System
DA	district attorney
EOPSS	Executive Office of Public Safety and Security
LLEA	local law enforcement agency
MSPCL	Massachusetts State Police Crime Laboratory
OGR	Office of Grants and Research
PII	personally identifiable information
PSCR	Provider Sexual Crime Report
QLIM	quantity-limited evidence
SAECK	sexual assault evidence collection kit

## EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Executive Office of Public Safety and Security (EOPSS) for the period July 1, 2020 through October 31, 2022.

The purpose of our audit was to determine the following:

- whether EOPSS ensured that information entered into its master database from the Provider Sexual Crime Report (PSCR) forms was free of personally identifiable information (PII) of survivors of sexual assault in accordance with Section 12A1/2 of Chapter 112 of the General Laws;
- whether EOPSS ensured that previously untested investigatory sexual assault evidence collection kits (SAECKs) were reviewed for quantity-limited evidence (QLIM)<sup>1</sup> and that district attorneys' offices were notified of the review results within 90 days of the effective date of Section 2(a) of Chapter 35 of the Acts of 2021;
- whether EOPSS ensured that the Massachusetts State Police Crime Laboratory (MSPCL) shipped previously untested investigatory SAECKs that were identified as not containing QLIM to an accredited crime laboratory for DNA testing within 180 days of the effective date of Section 2(b) of Chapter 35 of the Acts of 2021;
- whether EOPSS submitted "Sexual Assault Evidence Collection Kit (SAECK) Quarterly Reports" in accordance with Section 2(c) of Chapter 35 of the Acts of 2021; and
- whether EOPSS ensured that law enforcement agencies and other responsible entities correctly tracked the location and status of SAECKs in accordance with Section 18X(b)(i) of Chapter 6A of the General Laws.

Below is a summary of our findings and recommendations, with links to each page listed.

<b>Finding 1</b> <b>Page <a href="#">14</a></b>	EOPSS did not ensure that its PSCR data was free of PII.
<b>Recommendations</b> <b>Page <a href="#">14</a></b>	<ol style="list-style-type: none"><li>1. EOPSS should review its PSCR master database for any PII. In instances where PII is found, the associated PSCR form should be redacted.</li><li>2. EOPSS should establish processes and controls to periodically review its PSCR master database to ensure that there is no PII present within its data.</li><li>3. EOPSS should communicate to medical facilities that survivors' confidential information is not to be included in any capacity within the PSCR form.</li><li>4. EOPSS should provide training to Office of Grants and Research employees to ensure that they know not to include PII when entering data into the master database.</li></ol>

1. According to Section 8.02 of Title 515 of the Code of Massachusetts Regulations, evidence is considered quantity-limited "when [the Massachusetts State Police Crime Laboratory] determines that the item . . . will require exhaustive testing during DNA analysis in order to maximize the potential for obtaining DNA results."

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<b>Finding 2</b> <b>Page <u>16</u></b>	EOPSS did not ensure that MSPCL met the 90-day timeframe for the QLIM review of previously untested SAECKs.
<b>Recommendation</b> <b>Page <u>17</u></b>	EOPSS should ensure that MSPCL enhances controls to meet the regulated deadlines for SAECKs and QLIM reviews.
<b>Finding 3</b> <b>Page <u>18</u></b>	EOPSS did not ensure that MSPCL shipped SAECKs in a timely manner.
<b>Recommendation</b> <b>Page <u>18</u></b>	EOPSS should ensure that MSPCL ships the remaining previously untested investigatory SAECKs.
<b>Finding 4</b> <b>Page <u>20</u></b>	EOPSS's Track-Kit system showed incorrect locations for SAECKs.
<b>Recommendations</b> <b>Page <u>21</u></b>	<ol style="list-style-type: none"><li>1. EOPSS should educate local law enforcement agencies about the importance of updating the Track-Kit system with the physical locations of SAECKs.</li><li>2. EOPSS should periodically audit the locations of SAECKs to ensure that the Track-Kit system is up-to-date.</li></ol>

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## OVERVIEW OF AUDITED ENTITY

The Executive Office of Public Safety and Security (EOPSS) was established by Section 2 of Chapter 6A of the Massachusetts General Laws. EOPSS is a secretariat that oversees the following state public safety agencies, boards, and commissions.

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EOPSS Organizations	
Department of Criminal Justice Information Services	Massachusetts State Police Crime Laboratory (MSPCL)
Department of Fire Services	Municipal Police Training Committee
Massachusetts Department of Correction	Office of Grants and Research (OGR)
Massachusetts Emergency Management Agency	Office of the Chief Medical Examiner
Military Division of the Commonwealth	Sex Offender Registry Board
Massachusetts Parole Board	State 911 Department
Massachusetts State Police	

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According to its website,

*EOPSS is responsible for the policy development and budgetary oversight of its secretariat agencies, independent programs, and several boards which aid in crime prevention, homeland security preparedness, and ensuring the safety of residents and visitors in the Commonwealth.*

EOPSS is located at 1 Ashburton Place, Suite 2133 in Boston.

### Provider Sexual Crime Report Forms

Section 12A1/2 of Chapter 112 of the General Laws requires medical providers to report all cases of sexual assault in which a survivor seeks medical treatment to the Department of Criminal Justice Information Services. Medical providers send these reports, regardless of whether the survivor reported the case, to a local law enforcement agency (LLEA).

During treatment, a medical provider completes a Provider Sexual Crime Report (PSCR) form, collecting information including but not limited to the following:

- the survivor's gender, age, and race;
- the date, time, and location of the assault;
- the number of assailants, their relation(s) to the survivor, and their gender(s);

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- the type of weapon(s), if any, and/or force used;
  - the survivor's description of the assault; and
  - whether the incident was reported to the police at the time of the exam.

According to Section 12A1/2 of Chapter 112 of the General Laws, the PSCR form must not include any of the survivor's personally identifiable information (PII), such as their name, address, or any other data that could confirm their identity.

The medical facility faxes the PSCR form to the LLEA. The medical facility also sends a copy of the PSCR form to OGR, where analysts input the information into a master database. The PSCR master database was created in 1999, and its data is used to research sexual assault trends in the Commonwealth.

### **Sexual Assault Evidence Collection Kits**

EOPSS oversees the distribution, collection, testing, and reporting of the sexual assault evidence collection kits (SAECKs) for patients 12 years or older and pediatric SAECKs for patients under the age of 12.

A SAECK is a sealed box containing detailed protocols and materials that specially trained medical providers use to conduct a forensic medical sexual assault examination, if the survivor gives their consent. If the survivor consents, a medical provider collects DNA evidence from the survivor's body, clothing, and belongings. Once complete, the medical provider notifies the appropriate LLEA that it needs to retrieve a SAECK, at which time the LLEA transfers the SAECK to a crime laboratory<sup>2</sup> for analysis if the survivor reported the assault to police, or if the survivor is 15 years old or younger.

In cases where the survivor has not reported the sexual assault, the LLEA becomes the custodian of the SAECK. According to Section 97B1/2 of Chapter 41 of the General Laws, the LLEA preserves the evidence for the duration of the statute of limitations for all sexual assault and rape cases. The SAECK is then stored and remains untested until the survivor reports the sexual assault to police.

A public or private crime laboratory conducts DNA testing of the sexual assault evidence by screening for biological materials to develop a DNA profile of the individual(s) who contributed that biological material.

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2. Crime laboratories are facilities that provide forensic services, performing analyses on evidence obtained as part of criminal investigations. There are nine accredited MSPCL sites located across the Commonwealth.



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If a qualifying DNA profile is developed from the evidence, that profile is uploaded into the Federal Bureau of Investigation's Combined DNA Index System (CODIS)<sup>3</sup> and the state's DNA database.

## **Track-Kit System**

Section 18X of Chapter 6A of the General Laws requires EOPSS to create a statewide SAECK tracking system. EOPSS implemented the web-based Track-Kit system to allow users to trace SAECKs from distribution to collection to processing to storage. Survivors of sexual assault can confidentially view the location and status of their SAECKs in the Track-Kit system.

A medical provider enters a SAECK's unique barcode and assigns a responsible LLEA in the Track-Kit system based on where the sexual assault took place. The medical provider who administers the examination gives the survivor a passcode. The survivor has the option to receive notifications from the Track-Kit system by text message or email as their SAECK moves through the testing process. There is no PII entered into the Track-Kit system by the medical provider, the LLEA, MSPCL, or the Boston Police Department Crime Laboratory.

The LLEA updates the Track-Kit system when it receives a SAECK. If the survivor filed a police report, the LLEA sends the SAECK to MSPCL or the Boston Police Department Crime Laboratory for testing and the receiving laboratory updates the location in the Track-Kit system. SAECKs may be returned to the LLEA before the completion of testing. The Track-Kit system automatically notifies the survivor when their SAECK's location is updated in the system if they have chosen to receive these notifications.

## **Previously Untested Investigatory SAECKs**

Chapter 69 of the Acts of 2018 mandated that medical facilities submit all previously untested SAECKs to law enforcement before they are ultimately sent to MSPCL or a police crime laboratory for testing. These previously untested SAECKs are not logged within the Track-Kit system. Instead, they are separate from the SAECKs collected after 2019.

Chapter 5 of the Acts of 2019 introduced an \$8 million investment for submitting all previously untested SAECKs in police custody to a crime lab and for ensuring that the reforms in Section 214 of Chapter 69 of the Acts of 2018 were implemented. Chapter 35 of the Acts of 2021 amended the Acts of 2019 so that the

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3. According to the US Department Justice's Office of the Inspector General's website, "CODIS is a national DNA information repository maintained by the [Federal Bureau of Investigation] that allows state and local crime laboratories to store and compare DNA profiles from crime-scene evidence and convicted offenders."

\$8 million investment covered the costs of testing all previously untested investigatory SAECKs. MSPCL or an accredited private crime laboratory would perform the testing.

Section 2 of Chapter 35 of the Acts of 2021 required MSPCL to conduct reviews of all previously untested investigatory SAECKs for quantity-limited evidence (QLIM) within 90 days of the effective date of the Acts of 2021. MSPCL provided results of these reviews to the assigned district attorneys' (DAs') offices. The assigned DAs' offices then conducted their own reviews of the evidence to determine whether a crime laboratory should perform DNA testing on the SAECKs. The assigned DA would contact the survivor if a SAECK contained QLIM and the DA had made the decision not to proceed with testing.

This law also mandated that all previously untested investigatory SAECKs that MSPCL identified as not containing QLIM to be transferred within 180 days of the effective date of the Acts of 2021 to an accredited public or private crime laboratory for DNA testing. The assigned DA's office would notify survivors that their SAECKs were being transferred to an accredited public or private crime laboratory. For cases that had already resulted in a conviction or guilty plea, the DA needed to obtain consent from the survivor to proceed with testing. EOPSS told us during our audit that MSPCL only transfers SAECKs once it received authorization from the assigned DA's office.

According to EOPSS's December 2021 "Sexual Assault Evidence Collection Kit (SAECK) Quarterly Report," "The MSPCL determined that prior to July 1, 2021, there were 6,502 SAECKs submitted to the MSPCL from 2000 to 2018 to be reviewed for eligibility under the Act." (See the [Appendix](#).)

These previously untested investigatory SAECKs were stored at various LLEAs and crime laboratories throughout the Commonwealth.

## Quarterly Reports

Section 2 of Chapter 35 of the Acts of 2021 requires EOPSS to file a quarterly report with the House of Representatives, the Senate, and the Joint Committee on Public Safety and Homeland Security on the status of the previously untested investigatory SAECKs no later than January 1, 2022. These quarterly reports must include the following information required by Section 2 of Chapter 35 of the Acts of 2021:

*(i) the number of untested investigatory sexual assault evidence kits in the possession of public crime laboratories prior to [July 1, 2021]; (ii) the year each kit was collected; (iii) the date each kit was tested; and (iv) the date the resulting information was entered into CODIS and the state DNA databases.*

## AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Executive Office of Public Safety and Security (EOPSS) for the period July 1, 2020 through October 31, 2022.

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.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did EOPSS ensure that the information entered into the Provider Sexual Crime Report (PSCR) master database did not contain personally identifiable information (PII) of survivors of sexual assault, in accordance with Section 12A1/2 of Chapter 112 of the General Laws?	No; see Finding <u>1</u>
2. Did EOPSS ensure that all previously untested investigatory sexual assault evidence collection kits (SAECKs) were reviewed for quantity-limited evidence (QLIM) and that district attorneys' (DAs') offices were notified of the review results within 90 days of the effective date of Section 2(a) of Chapter 35 of the Acts of 2021?	No; see Finding <u>2</u>
3. Did EOPSS ensure that the Massachusetts State Police Crime Laboratory (MSPCL) shipped to an accredited private crime laboratory all previously untested investigatory SAECKs that were identified as not containing QLIM within 180 days of the effective date of Section 2(b) of Chapter 35 of the Acts of 2021?	No; see Finding <u>3</u>
4. Did EOPSS file "Sexual Assault Evidence Collection Kit (SAECK) Quarterly Reports" with the Legislature, as required by Section 2(c) of Chapter 35 of the Acts of 2021?	Yes
5. Did EOPSS ensure that the location and status of SAECKs were accurate in the Track-Kit system, in accordance with Section 18X(b)(i) of Chapter 6A of the General Laws?	No; see Finding <u>4</u>

To accomplish our audit objectives, we gained an understanding of the aspects of EOPSS's internal control environment that we determined to be relevant to our objectives by reviewing applicable agency policies and procedures, as well as by interviewing EOPSS staff members and management. We evaluated the design of controls over the PSCR master database, previously untested investigatory SAECKs,

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EOPSS's "Sexual Assault Evidence Collection Kit (SAECK) Quarterly Reports," and the Track-Kit system. To obtain sufficient, appropriate evidence to address our audit objectives, we performed the following procedures.

### **PSCR Data Review for PII**

To determine whether the PSCR master database contained any PII, we obtained a list from the Office of Grants and Research (OGR) of all the records in the PSCR database. There was a total of 27,028 records in this list from the period August 15, 1999 through March 29, 2023.

We performed a data analysis on all of these records to determine whether they included either a name or address, producing a population of 2,066 records that could potentially contain PII. We determined that 322 of these records included a street number and street name that could be combined with the city and state listed to complete a physical address. We filtered this population of 322 records for records that had a SAECK number within the data, producing 236 records with address information and an associated case file. From the population of 236 records, we selected a random, nonstatistical<sup>4</sup> sample of 35 records. For each of the 35 records in this sample, we reviewed the physical sexual assault case files from MSPCL, including police reports and law enforcement correspondence, to determine whether the address in the data matched that of the survivor.

In addition, of the 2,066 records that could potentially contain PII, we determined that 14 records included both a first and last name. However, the names were not identified as being law enforcement officers, medical providers, or employees of the Department of Social Services, which would be an acceptable release of information. Further, we reviewed the associated sexual assault case file for all 14 records to determine whether the information matched that of the survivor or a relative of the survivor.

Due to the sensitive nature of the aforementioned information, we took measures to keep this information confidential. Those measures include, but are not limited to, redacting any PII contained within records we collected and only collecting those records that were necessary to serve as audit evidence.

See Finding 1 for an issue we identified with PII in the PSCR master database.

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4. Auditors use nonstatistical sampling to select items for audit testing when a population is very small, the population items are not similar enough, or there are specific items in the population that the auditors want to review.

## **QLIM Review and Notification**

To determine the timeliness of the QLIM review, EOPSS provided us with a Microsoft Excel workbook that logged the progress of the population of 6,502 previously untested investigatory SAECKs maintained by MSPCL. MSPCL told us that the workbook contained two “Review Date” data fields that signified the dates MSPCL completed its initial and secondary reviews of each SAECK for QLIM. The Acts of 2021, which went into effect July 1, 2021, mandated that the SAECKs be reviewed within 90 days; therefore, we determined that the deadline was September 29, 2021. We calculated the number of days between each SAECK’s most recent review date and September 29, 2021 to determine whether each review was completed on time.

To determine the timeliness of each MSPCL QLIM review notification to the assigned DA’s office, we extracted a population of 2,090 SAECKs containing QLIM from the original population of 6,502 previously untested investigatory SAECKs. We reviewed all 75 notification emails and attachments sent from MSPCL to the assigned DAs’ offices informing them of the results of its review. We confirmed that each of the 2,090 SAECKs containing QLIM was included in these emails. We compared the email dates to the deadline date to determine whether the emails were sent within the 90-day timeframe.

See Finding 2 for an issue we identified with the QLIM reviews within the 90-day timeframe.

## **Transfer of SAECKs within 180 Days**

We determined the timeliness of MSPCL’s transfer of previously untested investigatory SAECKs that were identified as not containing QLIM to an accredited private crime laboratory for DNA testing. EOPSS provided us with a Microsoft Excel workbook that recorded the progress of the 6,502 previously untested investigatory SAECKs. Our analysis of the “Testing Status” data field identified 2,819 records with values that included shipping dates (month and year) to the accredited private crime laboratory from January 2022 through December 2022. Of the corresponding 2,819 SAECKs, we found 1,834 of these SAECKs that were identified as not containing QLIM. These served as our population of shipped previously untested investigatory SAECKs that were identified as not containing QLIM. See the [Appendix](#) for a breakdown of the 6,502 SAECKs that were previously collected but had not yet received DNA testing.

The data field “Date of DA Response” signified the date an assigned DA’s office notified the crime laboratory of its approval for a kit to proceed with DNA testing. We calculated the deadline of 180 days from the effective date of the Acts of 2021 to be December 28, 2021. We selected a sample of 527

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previously untested investigatory SAECKs from the population of 1,834 that had DA approval for DNA testing as of that date to determine whether these SAECKs were shipped to an accredited private crime laboratory by the deadline.

We also interviewed knowledgeable staff members at MSPCL to determine when the first shipments of previously untested investigatory SAECKs were sent to a private crime laboratory. Additionally, we verified the accreditation certificates for both MSPCL and the private crime laboratory were valid during the audit period.

See Finding [3](#) for an issue we identified with the transfer of SAECKs within the 180-day timeframe.

### **Submission of Quarterly Reports**

To determine whether EOPSS filed “Sexual Assault Evidence Collection Kit (SAECK) Quarterly Reports” as required, we obtained copies of all five reports that reported on activity related to previously untested investigatory SAECKs that occurred during the audit period, as well as the corresponding emails from EOPSS to the House of Representatives, the Senate, and the Joint Committee on Public Safety and Homeland Security. In addition, we examined the Journals of the House of Representatives and the Senate, which document the resolutions, orders, petitions, and reports submitted to the House and the Senate, to verify that EOPSS submitted the “Sexual Assault Evidence Collection Kit (SAECK) Quarterly Reports.” We examined all five quarterly reports to determine whether they included the following information required by Section 2 of Chapter 35 of the Acts of 2021:

*(i) the number of untested investigatory sexual assault evidence kits in the possession of public crime laboratories prior to [July 1, 2021]; (ii) the year each kit was collected; (iii) the date each kit was tested; and (iv) the date the resulting information was entered into [the Combined DNA Index System (CODIS)] and the state DNA databases.*

We noted no exceptions in our testing; therefore, we concluded that, during the audit period, EOPSS filed “Sexual Assault Evidence Collection Kit (SAECK) Quarterly Reports” with the Legislature, as required by Section 2(c) of Chapter 35 of the Acts of 2021.

### **Track-Kit System**

To determine whether the Track-Kit system correctly tracked the location and status of SAECKs throughout the criminal justice process in accordance with Section 18X(b)(i) of Chapter 6A of the General

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Laws, we obtained a list of all 3,547 records<sup>5</sup> from the Track-Kit system. Within this population, we identified 3,008 SAECKs with collection dates entered during the audit period. Based on our internal control evaluation, we selected a random, statistical<sup>6</sup> sample of 60 records using a 95% confidence level,<sup>7</sup> 5% tolerable rate,<sup>8</sup> and 0% expected error rate.<sup>9</sup> For each of the 60 records in our sample, we visited the associated crime laboratory or local law enforcement agency (LLEA) recorded as the current location of the SAECK and confirmed with officials that the kit was present. SAECKs held in a location other than what was on file were considered instances of noncompliance.

See Finding 4 for an issue we identified with location updating within the Track-Kit system.

We used a combination of nonstatistical and statistical sampling methods for our audit objectives and did not project the results from the samples to the populations.

## Data Reliability Assessment

### PSCR Master Database

To determine the reliability of the list of records from the PSCR master database, we performed the following tests:

- We conducted a process walkthrough, observing OGR analysts entering information from a PSCR form into the PSCR master database.
- We checked for duplicate records and missing values in key fields.
- We compared the total number of PSCR records on the list we received from OGR against the total number of records we observed in the PSCR master database to ensure that we were provided the complete list.

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5. This population did not include the previously untested investigatory SAECKs, as those kits were not in the Track-Kit System.  
6. Auditors use statistical sampling to select items for audit testing when a population is large (usually over 1,000) and contains similar items. Auditors generally use a statistics software program to choose a random sample when statistical sampling is used. The results of testing using statistical sampling, unlike those from judgmental sampling, can usually be used to make conclusions or projections about entire populations.  
7. Confidence level is a mathematically based measure of the auditor's assurance that the sample results (statistic) are representative of the population (parameter), expressed as a percentage.  
8. The tolerable error rate (which is expressed as a percentage) is the maximum error in the population that is acceptable while still using the sample to conclude that the results from the sample have achieved the objective.  
9. Expected error rate is the number of errors that are expected in the population, expressed as a percentage. It is based on the auditor's knowledge of factors such as prior year results, the understanding of controls gained in planning, or a probe sample.

- We randomly selected a sample of 20 records from the list of records and traced the information to source documentation (copies of the original PSCR forms that OGR received from medical facilities) to ensure accuracy.
- We randomly selected a sample of 20 PSCR forms and traced information from the forms to the database to ensure completeness.

### **Previously Untested Investigatory SAECKs and Quarterly Reports**

To determine the reliability of the list of previously untested investigatory SAECKs that we obtained from MSPCL, we performed the following tests:

- We interviewed EOPSS and MSPCL management who were responsible for the data in this list.
- We checked for duplicate records.
- We compared the total number of records in this list to the totals reported by each DA's office.
- We compared the total number of records in this list to the totals reported in EOPSS's February 2023 "Sexual Assault Evidence Collection Kit (SAECK) Quarterly Report."
- We randomly selected a sample of 20 records from the list of previously untested investigatory SAECKs and traced the information (e.g., case number, SAECK barcode number, law enforcement agency, and SAECK shipping date) to source documentation (e.g., Evidence Submission forms, Requests for the Examination of Physical Evidence forms, and Record of Evidence Submitted forms) included in physical MSPCL case files to ensure accuracy.
- We randomly selected a sample of 20 records from MSPCL case files and traced the information to the list of previously untested investigatory SAECKs we obtained from MSPCL to ensure completeness.

### **Track-Kit System**

To determine the reliability of the Track-Kit system data, we interviewed EOPSS and MSPCL management who were responsible for maintaining the data. We also reviewed the System and Organization Control reports<sup>10</sup> that covered the period January 1, 2021 through December 31, 2021. We verified that the System and Organization Control reports described testing of certain information system general controls (access controls, security management, configuration management,

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10. A System and Organization Control report is a report, issued by an independent contractor, on controls about a service organization's systems relevant to security, availability, processing integrity, confidentiality, or privacy.



contingency planning, and segregation of duties) without exception. In addition, we reviewed the peer review report of the accounting firm that prepared the Service Organization Control reports.

In addition, we performed the following tests:

- We checked for duplicate records, missing values in key fields, and dates outside the audit period.
- We compared the total number of records in the list we received from EOPSS to the agency's total number of records reported in the system to ensure that we were provided a complete list.
- We randomly selected a sample of 20 records from the data and traced the information (e.g., unique SAECK bar code number, medical facility, and the LLEA) to the PSCR forms to ensure accuracy, and we traced the information from 20 randomly selected PSCR forms in physical files to the Track-Kit system data to ensure completeness.

Based on the results of the data reliability assessment procedures described above, we determined that the information obtained for the audit period was sufficiently reliable for the purposes of our audit.

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## DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

### 1. The Executive Office of Public Safety and Security did not ensure that its Provider Sexual Crime Report data was free of personally identifiable information.

The Executive Office of Public Safety and Security (EOPSS) did not ensure that the Provider Sexual Crime Report (PSCR) forms and data in the PSCR master database records did not contain personally identifiable information (PII).

Of the 35 PSCR master database records we reviewed for address information, we found that 11 contained the home address of a survivor of sexual assault within the case files at the Massachusetts State Police Crime Laboratory (MSPCL). In addition, of the 14 full names identified within the PSCR data, we found that 5 were documented as being a direct relative of a survivor in the MSPCL case files.

The lack of proper review of the PSCR forms and subsequent data has created a threat to privacy and confidentiality for survivors of sexual assault.

### Authoritative Guidance

According to Section 12A1/2 of Chapter 112 of the Massachusetts General Laws,

*Every physician attending, treating, or examining a victim of rape or sexual assault, or, whenever any such case is treated in a hospital, sanatorium or other institution, the manager, superintendent or other person in charge thereof, shall report such case at once to the department of criminal justice information services and to the police of the town where the rape or sexual assault occurred but shall not include the victim's name, address, or any other identifying information. The report shall describe the general area where the attack occurred.*

### Reasons for Issue

EOPSS told us that nurses at medical facilities incorrectly record certain survivor information in the Provider Sexual Crime Report. The Office of Grants and Research's (OGR's) analysts enter all of the information contained within the report into the master database.

### Recommendations

1. EOPSS should review its PSCR master database for any PII. In instances where PII is found, the associated PSCR form should be redacted.

2. EOPSS should establish processes and controls to periodically review its PSCR master database to ensure that there is no PII present within its data.
3. EOPSS should communicate to medical facilities that survivors' confidential information is not to be included in any capacity within the PSCR form.
4. EOPSS should provide training to OGR employees to ensure that they know not to include PII when entering data into the master database.

### **Auditee's Response**

*Section 12A1/2 of Chapter 112 of the General Laws requires medical providers to complete reports, referred to as PSCR forms, and, in doing so, to refrain from including personally identifiable information (PII). Those forms are, in turn, sent to OGR for inclusion in a PSCR master database, which is not publicly accessible. In other words, OGR staff transcribes the information in the records into a master internal PSCR database.*

*Unfortunately, in 11 out of the 35 records you reviewed for address information, providers had included the home address of a survivor of sexual assault, and this information was then entered into the database. As noted above, this information was never at any point accessible to the public.*

*While neither EOPSS nor OGR staff can redact PSCR forms, which are submitted by the medical providers, EOPSS has updated its Policy Manual to make clear that, irrespective of a provider's compliance with the law, and even though the database is not publicly accessible, OGR staff must omit any PII from the PSCR database when they transcribe information from PSCR forms.*

*To the best of its ability, EOPSS has educated, and will continue to educate, medical providers and staff on their statutory obligations concerning PII. EOPSS does monitor and audit its PSCR database and will continue to do so.*

### **Auditor's Reply**

While the PSCR master database data may not be publicly accessible, including names or addresses that could be associated with survivors or perpetrators of sexual assault in the PSCR master database poses a security risk to these individuals in the event of a data breach.

Based on EOPSS's response, it is taking measures to address our concerns regarding this matter.

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## **2. The Executive Office of Public Safety and Security did not ensure that the Massachusetts State Police Crime Laboratory met the 90-day timeframe for the quantity-limited evidence review of previously untested investigatory sexual assault evidence collection kits.**

MSPCL did not review 3,084 (47%) of the 6,502 previously untested investigatory sexual assault evidence collection kits (SAECKs) within 90 days of July 1, 2021. The time to complete the quantity-limited evidence (QLIM) review ranged from 41 days to 161 days, with an average of 89 days.

MSPCL did not notify the assigned district attorneys' (DAs') offices of the results of its QLIM review within the 90-day timeframe for 1,641 (79%) of the 2,090 previously untested investigatory SAECKs that contained QLIM.

Prolonged reviews of QLIM can result in delays in DNA testing and subsequent delays in DNA profiles being entered into the Combined DNA Index System (CODIS) database, which can prolong the process to identify potential perpetrators, prevent them from committing other crimes in the future, and hold them accountable for their actions.

### **Authoritative Guidance**

Section 2(a) of Chapter 35 of the Acts of 2021 states,

*Notwithstanding any general or special law to the contrary, all previously untested investigatory sexual assault evidence kits which contain quantity limited evidence . . . shall be identified by the state police crime laboratory within 90 days of the effective date of this act. Within said 90-day period, the state police crime laboratory shall notify the relevant prosecuting district attorney's office and each district attorney's office shall notify individuals who submitted to a sexual assault evidence kit if: (i) their kits contain quantity limited evidence; and (ii) the district attorney's office has not authorized the state police crime laboratory to proceed with testing.*

### **Reasons for Issue**

EOPSS did not have sufficient controls over QLIM reviews during the audit period that would have ensured the statutory deadline was met. (For example, EOPSS could have performed a statistical analysis of the data to determine the required time to complete a QLIM review and used this information for a benchmark.) EOPSS management told us that they had difficulties completing reviews concurrently with their normal workload because of staffing levels at the time of their review. According to MSPCL, a QLIM review must be performed by a forensic scientist, and compliance with federal DNA analyst requirements and lab protocols require a 10-to-12-month training period for newly hired forensic scientists.

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## Recommendation

EOPSS should ensure that MSPCL enhances controls to meet the regulated deadlines for SAECKs and QLIM reviews.

## Auditee's Response

*Pursuant to Section 2(a) of Chapter 35 of the Acts of 2021, the MSPCL completed its review of all 6,502 previously untested SAECKs by December 13, 2021, within three months of the statutory deadline of September 29, 2021. The statutory deadline was a one-time deadline that is no longer applicable to any other SAECK kits.*

*Given that the law was enacted on August 3, 2021, EOPSS and MSPCL are proud that they were able to complete the review of such a large number of previously untested SAECK in such a short period of time. EOPSS had stated publicly, at the time of the enactment that the statutory deadline would be impossible to meet and doing so would be forensically impracticable given MSPCL's obligation to comply with its ordinary testing obligations. Nonetheless, to come as close as possible to meeting the deadline, EOPSS and the MSPCL implemented overtime incentives and provided grant funding for each DA's office to complete its obligations under the law.*

*We respectfully disagree with the conclusion that EOPSS did not have sufficient controls in place over QLIM reviews during the audit period. The law required MSPCL to go back twenty years to investigate existing kits that needed testing and protocols were in place to manage that process. The QLIM status was determined consistent with these protocols. For example, controls for the evaluation of the QLIM status of evidence, are reflected in the following protocols:*

- *Examination of Submitted Evidence*
- *Recovery and Initial Classification of Trace Evidence*

## Auditor's Reply

While we can appreciate the volume of reviews, EOPSS did not satisfy the statutory deadline for all previously untested SAECKs.

EOPSS states that it had controls over the QLIM reviews during the audit period, but these controls did not specifically address the statutory deadline of 90 days. We strongly encourage EOPSS to implement our recommendation.

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### **3. The Executive Office of Public Safety and Security did not ensure that the Massachusetts State Police Crime Laboratory shipped sexual assault evidence collection kits in a timely manner.**

Of the 527 SAECKs that the assigned DAs' offices authorized for DNA testing on or before December 28, 2021, none were shipped to the contracted private crime laboratory within 180 days of July 1, 2021. MSPCL sent its first shipment of SAECKs to a private crime laboratory for testing in January 2022.

Prolonged shipment of SAECKs can potentially delay testing of DNA profiles and input into the CODIS. Testing results could also identify perpetrators of sexual assault and assist law enforcement with holding perpetrators accountable for their actions.

#### **Authoritative Guidance**

Section 2(b) of Chapter 35 of the Acts of 2021 states,

*Notwithstanding any general or special law to the contrary, all previously untested investigatory sexual assault evidence kits which are not identified by the state police crime laboratory as quantity limited evidence . . . shall be transferred within 180 days of the effective date of this act to an accredited public or private crime laboratory designated by the secretary of public safety and security for testing; provided, that the district attorney shall provide notice to individuals who submitted to the sexual assault evidence kit that their kits have been so transferred; provided further, that for untested investigatory sexual assault evidence kits associated with a case which has resulted in a conviction or a guilty plea, the district attorney for the district in which the case was prosecuted shall contact the individual who submitted to a sexual assault evidence kit and obtain consent to test the kit notwithstanding the conviction or guilty plea.*

#### **Reasons for Issue**

EOPSS and MSPCL did not have sufficient controls in place during the audit period that would have ensured the timely shipping of the previously untested SAECKs. The 180-day shipping requirement was specific to that population of SAECKs.

#### **Recommendation**

EOPSS should ensure that MSPCL ships the remaining previously untested investigatory SAECKs.

#### **Auditee's Response**

*As explained in a legal opinion letter we previously provided to the Auditor, the 180-day statutory deadline must be interpreted consistently with two additional provisions in Section 2 of Chapter 35 of the Acts of 2021, and with the best interests of survivors in mind:*

- *First, under section 2(a), within 90 days of the effective date of the statute, the lab must determine whether the kit contains "quantity limited evidence," and, in such a case, the lab must notify the relevant DAs office. This is because testing kits with quantity limited evidence will destroy the evidence that DAs may need to rely upon to prosecute a case. The DAs must, in turn, determine whether it is permissible for the lab to proceed to test the kit and, by necessary implication, provide the lab with notice of this determination so that the lab can proceed accordingly—i.e., test or not test.*
- *Second, under section 2(b), testing may only occur if the relevant DA has notified the survivor that their kit was transferred for testing and, in cases where the kit is associated with a case "which has resulted in a conviction or a guilty plea," the relevant DA has contacted the individual who submitted the kit to obtain consent to test.*

*Accordingly, under these two provisions, the 180-day deadline for EOPSS to transfer previously untested SAECKs runs from the date the DA has provided the MSPCL with authorization to test those kits. The MSPCL, of course, does not control the date on which DAs provide such authorization.*

*To interpret the 180-day deadline as running from the date of enactment could have caused the MSPCL, in the interest of complying with that deadline, to destroy evidence that the DAs office determines should not be destroyed, or violate the express wishes of the survivor to not have the kit tested.*

*In any event, we respectfully disagree with the conclusion that "EOPSS and MSPCL did not have sufficient controls in place during the audit period that would have ensured the timely shipping of the previously untested SAECKs." The MSPCL had controls in place to send the SAECKs for testing as quickly as possible upon receipt of DA authorization. The process of screening and shipping evidence is controlled by the following MSPCL protocols:*

- *Sample Preparation for DNA Quantification*
- *Forensic Biology Evidence Sendout Protocol*
- *Forensic Biology Evidence Documentation, Handling and Sendout Policy*
- *Forensic Biology Evidence Sendout Procedure For Project HB4013*

*As it relates to the SAECKs approved for testing on or before December 28, 2021, over 60% of these SAECKs were not in possession of the MSPCL at the time of approval. The evidence needed to be requested from the LLEAs, who needed to locate and submit the evidence to the MSPCL. Additionally, 10% required preliminary screening at the MSPCL and were not immediately available for shipment. Overall, 14% of these SAECKs did not require shipment to the private laboratory. Of the remaining SAECKs, 92% were submitted for testing to the private laboratory within 180 days of approval from the DAs. The MSPCL maintained a monthly shipment plan throughout this project.*

*For all SAECKs eligible for shipment, 60% of SAECKs were shipped within 90 days of approval and 91% of SAECKs were shipped within 180 days of approval from the DAs.*

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*Finally, the MSPCL does have controls in the form of policies and procedures related to the shipment and testing of SAECKs. The MSPCL is deeply committed to the work of reviewing SAECKs and always acts with the survivor's best interests in mind.*

## **Auditor's Reply**

Section 2(b) of Chapter 35 of the Acts of 2021 indicates that EOPSS had 180 days to transfer the SAECKs to an accredited crime laboratory. These acts do not appear to support EOPSS's interpretation of this statutory deadline.

EOPSS states that it had controls over shipping of SAECKs during the audit period, but these controls did not specifically address the statutory deadline of 180 days. We strongly encourage EOPSS to implement our recommendation.

## **4. The Executive Office of Public Safety and Security's Track-Kit system showed incorrect locations for sexual assault evidence collection kits.**

During our audit, the current locations for 17 out of the 60 SAECKs in our sample were inaccurate.

The Track-Kit system indicated that 15 of these 17 SAECKs in our sample were in MSPCL's possession, but we confirmed that these 15 SAECKs were retrieved by and in the possession of local law enforcement agencies (LLEAs). Additionally, the system indicated that the remaining 2 of these 17 SAECKs in our sample were in possession of LLEAs; however, we confirmed that they had been transferred to the EOPSS long-term storage facility.

If the Track-Kit system is not consistently updated, survivors of sexual assault will not always have access to the most up-to-date locations of their SAECKs and may not know where their SAECKs are in the testing process. Further, law enforcement agencies may not know where the SAECKs can be found, delaying or preventing them from accessing this evidence.

## **Authoritative Guidance**

Section 18X(b) of Chapter 6A of the General Laws states,

*The statewide sexual assault evidence kit tracking system shall:*

- (i) track the location and status of sexual assault evidence kits throughout the criminal justice process, including: (1) the initial collection in examinations performed at hospitals or medical facilities; (2) receipt and storage at a governmental entity, including a local law enforcement agency, the department of state police, a district attorney's office or any other*



*political subdivision of the commonwealth or of a county, city or town; (3) a hospital or medical facility that is in possession of forensic evidence pursuant to section 97B of chapter 41; (4) receipt and analysis at forensic laboratories; and (5) storage and any destruction after completion of analysis;*

*(ii) allow hospitals or medical facilities performing sexual assault forensic examinations, law enforcement agencies, prosecutors, the crime laboratory within the department of state police, or any crime laboratory operated by the police department of a municipality with a population of more than 150,000, and other entities in the custody of sexual assault kits to update and track the status and location of sexual assault kits;*

*(iii) allow victims of sexual assault to anonymously track and receive updates regarding the status of their sexual assault kits.*

## Reasons for Issue

MSPCL management told us that LLEAs are not updating the Track-Kit system once SAECKs are either returned to an LLEA or placed into EOPSS's long-term storage. EOPSS did not have procedures for reviewing the location within the Track-Kit system.

## Recommendations

1. EOPSS should educate LLEAs about the importance of updating the Track-Kit system with the physical locations of SAECKs.
2. EOPSS should periodically audit the locations of SAECKs to ensure that the Track-Kit system is up-to-date.

## Auditee's Response

*As the Auditor notes, the law requires LLEAs that obtain possession of kits to update locations in the Track-Kit system. EOPSS has no authority over the LLEAs. Moreover, given that the Auditor recognizes that the LLEA is the entity that has removed the kits from the MSPCL possession, the conclusion that the database discrepancy may result in law enforcement agencies being unable to locate kits is unfounded.*

*Nonetheless, EOPSS will start running a data query that will specify instances in which LLEA's have not updated Track-Kit. This will allow EOPSS to proactively contact LLEAs to ensure they are fulfilling their obligation to update the tracking system. With this additional step, EOPSS will be able to know which law enforcement agency to contact and notify that it has yet to complete its role in the Track-Kit system. EOPSS has also added to the Policy Manual a quarterly review of all kits that are indicated by lab as "ready for pick up" and missing a lab pick up date. Outreach will take place if a kit is missing the required information.*

*EOPSS has also held numerous trainings through [the Municipal Police Training Committee] regarding Track-Kit. In addition to voluntary trainings that law enforcement personnel may attend,*

*training has also been implemented in the mandatory Sexual Assault Investigator Training. EOPSS will continue to work with our Law Enforcement partners to ensure they understand their responsibilities.*

### **Auditor's Reply**

EOPSS states that the database discrepancy is unfounded. We found that 17 of the 60 SAECKS in our sample were in a different location to what was logged in the Track-Kit system. EOPSS indicates that this was because LLEAs removed these SAECKS from MSPCL. As an appropriate internal control, MSPCL should record which entity removed each SAECK from its possession to ensure that those kits can be easily located and to preserve a documented chain of evidence.

Based on EOPSS's response, it is taking measures to address our concerns regarding this matter.

## APPENDIX

### Breakdown of Previously Untested Investigatory Sexual Assault Evidence Collection Kits as of December 31, 2022

The Massachusetts State Police Crime Laboratory (MSPCL) identified a population of 6,502 Sexual Assault Evidence Collection Kits (SAECKs) that were previously collected but had not yet received a forensic DNA analysis.

Reviews by MSPCL and assigned district attorneys' (DAs') offices resulted in the following:

- MSPCL determined that 789 of the 6,502 SAECKs did not meet DNA testing requirements under the Acts of 2021. (See the table below.)
- The assigned DAs' offices with jurisdiction over the case associated with each SAECK determined that 1,675 of the 6,502 SAECKs did not meet DNA testing requirements under the Acts of 2021. (See the table below.)
- The assigned DA's office had reviewed and authorized 3,307 SAECKs for DNA testing.
- As of December 2022, 731 SAECKs were still pending review by an assigned DA's office.

### SAECKs Ineligible for DNA Testing

Below is a breakdown of the reasons that MSPCL determined 789 of the 6,502 SAECKs did not meet DNA testing requirements, according to the Executive Office of Public Safety and Security's (EOPSS's) February 2023 "Sexual Assault Evidence Collection Kit (SAECK) Quarterly Report."

Reason	Number of SAECKs
The SAECK was not reported to law enforcement	59
Sexual assault occurred out of state, but the SAECK was prepared at a hospital in Massachusetts	12
Initial testing of the SAECK did not include material suitable for DNA testing	175
Previously tested for DNA	271
Duplicate record of a SAECK	45
The SAECK was destroyed or could not be located by the law enforcement agency with custody	227
<b>Total SAECKs that did not meet requirements</b>	<b><u>789</u></b>

According to EOPSS’s February 2023 “Sexual Assault Evidence Collection Kit (SAECK) Quarterly Report,” following the assigned DAs’ offices reviews, MSCPL was informed of the determination that an additional 1,675 of the 6,502 SAECKs would not require DNA testing under Chapter 35 of the Acts of 2021. Below is a breakdown of the reasons from the DAs’ offices:

Reason	Number of SAECKs
No crime occurred	679
No QLIM testing	470
Insufficient information to authorize testing	183
Post-conviction—unable to contact survivor	230
Post-conviction—survivor declined testing	113
Total exceptions under Chapter 35 of the Acts of 2021	<u>1,675</u>

Of the 6,502 previously untested investigatory SAECKs, a total of 2,464 (38%) were determined not to require DNA testing.

### SAECKs Eligible for DNA Testing

The remaining 4,038 of the 6,502 previously untested investigatory SAECKs were deemed eligible for DNA testing. As of December 31, 2022, 731 SAECKs were still pending review by the assigned DAs’ offices (see the table below). MSPCL received authorization from the prosecuting DAs’ offices to proceed with DNA testing for 3,307 SAECKs.

	Number of Untested SAECKs
Pending DA Authorization for DNA Testing	731
DA-Authorized DNA Testing	3,307
Total Remaining Untested SAECKs	<u>4,038</u>

Of the 6,502 previously untested investigatory SAECKs, 3,307 (51%) were authorized for DNA testing by the assigned DA's office.

From January 2022 through December 2022, MSPCL transferred 2,819 of the 3,307 SAECKs authorized for DNA testing to a private crime laboratory. Out of the 3,307, MSPCL held 18 SAECKs for testing. There were 470 of the 3,307 previously untested investigatory SAECKs that still needed to be transferred to the private crime laboratory.

As of December 31, 2022, the private crime laboratory and MSPCL have completed DNA testing for 634 SAECKs (624 by the crime laboratory, and 10 by MSPCL) out of the 3,307 SAECKs authorized for DNA testing.

Of the 3,307 previously untested investigatory SAECKs that have been approved by DA's offices, 2,673 are still pending DNA testing.

	Number of Previously Untested Investigatory SAECKs Approved for DNA Testing	Percentage
<b>Completed DNA Testing (as of December 31, 2022)</b>	634	19%
<b>Still Awaiting DNA Testing (as of December 31, 2022)</b>	2,673	81%
<b>Total SAECKs Approved for DNA Testing</b>	<u>3,307</u>	<u>100%</u>