

PERFORMANCE AUDIT



Office of the
Washington
State Auditor
Pat McCarthy

Washington State Patrol Sexual Assault Kits Follow-up

December 17, 2024

Report Number: 1036028

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State Auditor's Conclusions

To its credit, the Washington State Patrol has successfully followed the Legislature's direction and tested all but 1% of the sexual assault kits it has received since 2015. In this follow-up performance audit, we also found the Patrol tested 95% of sexual assault kits it considers subject to the state-mandated, 45-day testing timeframe.

Untested kits represent an unnecessary hinderance to the interests of justice and a source of significant concern for survivors of sexual assault. Responding to a backlog of thousands of untested kits, the Legislature in 2019 and 2020 set clear goals for the Patrol to clear the backlog and test all new kits in a timely manner. Our previous performance audit, completed in 2022, found the global pandemic that began in 2020 and other factors slowed progress. As of January of 2022, the Patrol had tested 74% of all kits received since 2015.

At the time, the Patrol was following leading practices, and we committed to return to the subject in the future to determine whether the agency's efforts were successful. As a result of this follow-up audit, we can confirm the Patrol has done commendable work, including acquiring new equipment and adopting more efficient processes to increase its testing capabilities. Local law enforcement agencies also play a significant role in this process, and they must remain vigilant in their efforts to identify kits and submit them for testing. I encourage both the Patrol and local law enforcement agencies to continue their efforts to entirely eliminate the testing backlog and to test each and every new kit in a timely manner. Washington has set high goals in this area, but they are well justified, and they are now within our reach.

Background

Timely testing of sexual assault evidence is essential to help survivors heal and ensure justice is served

After a sexual assault occurs, forensic evidence is collected at a medical facility by a nurse or other medical professional and packaged into a sexual assault kit. Testing these kits in a timely manner can help resolve crimes and ensure justice is served. Not testing these kits in a timely manner can prevent conviction of serial offenders and impair survivors' ability to heal.

In Washington, state law establishes requirements to help ensure sexual assault kits are tested promptly, and makes the Washington State Patrol responsible for testing all kits statewide. Law enforcement agencies must submit all sexual assault kits that are reported as part of an investigation to the Patrol for testing. All kits must be submitted to the Patrol for testing regardless of when they were collected or the status of the investigation, provided the assault survivor consents to testing. The Patrol's Crime Laboratory Division tests DNA evidence, including evidence from sexual assault kits, at five labs statewide.

Investments aimed to strengthen the Patrol's testing capabilities and address backlogs

Since 2015, the Legislature has appropriated more than \$30 million to the Patrol for testing sexual assault kits. This included funding for the expansion of laboratory space in Vancouver. In addition, in 2017, the Attorney General's Office received \$3 million of federal funding as part of the national Sexual Assault Kit Initiative program to inventory and test sexual assault kits.

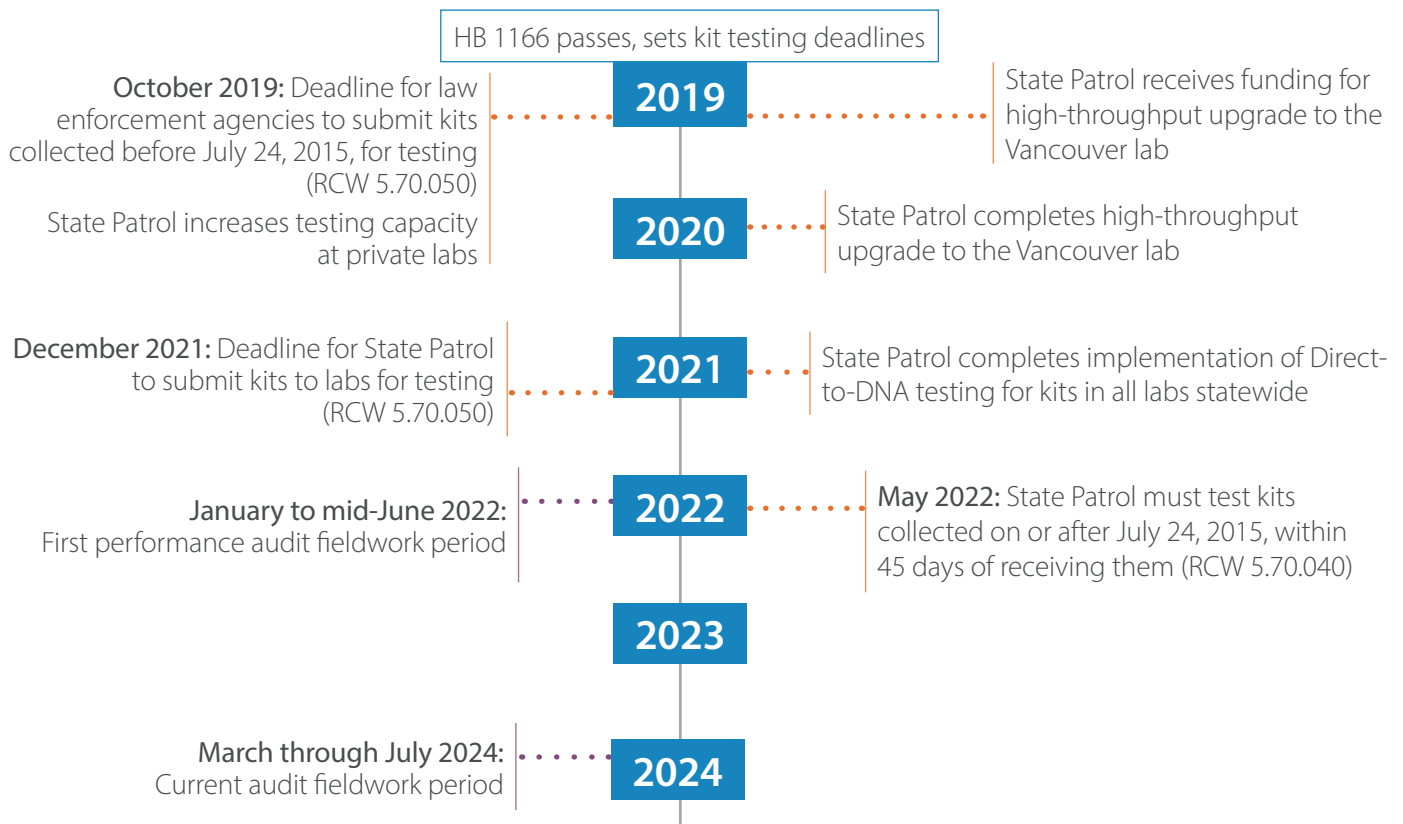
In 2018, the Attorney General's Office inventoried untested kits, and the results put a spotlight on the extent of the backlog of untested sexual assault kits in Washington. This review found Washington law enforcement agencies had a backlog of more than 9,000 untested sexual assault kits that they had not submitted to the Patrol for testing.

Following publication of the Attorney General’s review, the Legislature passed new laws (RCWs 5.70.040 and 5.70.050) in 2019 and 2020 that set three key timeframes for testing sexual assault kits in Washington:

- By October 1, 2019, all law enforcement agencies were required to send all previously untested kits to the Patrol.
- By December 1, 2021, the Patrol was required to submit the kits to labs for testing.
- As of May 1, 2022, the Patrol must test all new sexual assault kits received for offenses on or after July 24, 2015, within 45 days of receiving them.

Exhibit 1 shows a timeline of sexual assault testing legislation in Washington.

Exhibit 1 – Timeline of key events for sexual assault kit testing



Source: Auditor created based on legal requirements, interviews and document reviews.

This audit followed up on previous audit findings that the Patrol had not yet eliminated the sexual assault kit backlog as required

In 2022, a performance audit (see sidebar) conducted by our Office examined both the Patrol's Crime Laboratory's processing of sexual assault kits and the statewide sexual assault kit tracking system. The audit found the Patrol had taken important steps to eliminate the sexual assault kit backlog, but thousands of kits remained untested. As of January 2022, the Patrol had tested 74% of all kits received since 2015. The audit made no formal recommendations, but strongly encouraged the Patrol to continue its efforts to test all sexual assault kits in a timely manner.

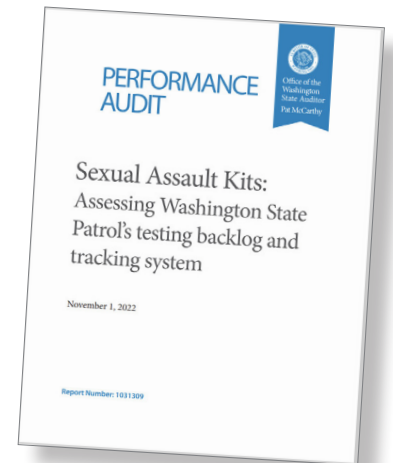
This audit followed up on the 2022 audit to determine the extent to which the Patrol has eliminated the backlog of untested sexual assault kits. The audit also evaluated the Patrol's compliance with the 45-day testing requirement, which our Office did not review during the previous audit because not enough time had passed between when the requirement took effect and when we completed our audit fieldwork.

This audit was designed to answer the following question:

- Has the Patrol eliminated the untested sexual assault kit backlog since the 2022 performance audit?

Next steps

Our performance audits of state programs and services are reviewed by the Joint Legislative Audit and Review Committee (JLARC) and/or by other legislative committees whose members wish to consider findings and recommendations on specific topics. Representatives of the Office of the State Auditor will review this audit with JLARC's Initiative 900 Subcommittee in Olympia. The public will have the opportunity to comment at this hearing. Please check the JLARC website for the exact date, time, and location (www.leg.wa.gov/JLARC). The Office conducts periodic follow-up evaluations to assess the status of recommendations and may conduct follow-up audits at its discretion. See **Appendix A**, which addresses the I-900 areas covered in the audit. **Appendix B** contains information about our methodology.



Read the report on our website:
<https://portal.sao.wa.gov/ReportSearch/Home/ViewReportFile?arn=1031309&isFinding=false&sp=false>

Audit Results

The Patrol has eliminated 99% of the backlog and has tested nearly all sexual assault kits within 45 days as required by state law

Answer in brief

State law established the Patrol's testing priorities, which the Patrol has successfully followed. The Patrol tested all but 1% of sexual assault kits it received since 2015, with most untested kits being from inactive investigations. The Patrol tested 95% of sexual assault kits it considers subject to the state law required timeframe within 45 days. The Patrol's efforts to improve testing efficiency, while largely successful, can still be hampered by external factors. These factors include when the Patrol receives the request for testing and the complexity of testing needed.

State law established the Patrol's testing priorities, which the Patrol has successfully followed

The state law that took effect in 2020 requires the Patrol to complete testing on all sexual assault kits received after May 1, 2022, within 45 days.

The law sets rules for testing materials associated with a forensic sexual assault kit. It does not set testing standards for evidence collected separately that is not part of a sexual assault medical forensic examination. The law excludes kits with offense dates prior to July 24, 2015. Testing is considered complete when all relevant information has been entered into the FBI's Combined DNA Index System (CODIS), which houses DNA profiles from federal, state and local participating forensic laboratories.

Terms used in this report

The State Patrol applies these operational definitions to its sexual assault testing program:

Offense date: The date provided by law enforcement, and used by the Patrol as the kit collection date for its categorization of kits. *Note:* The medical exam/kit collection may or may not occur on the same day as the offense.

Received date: Date the request to test a kit is entered into the Patrol's evidence tracking system. This is not necessarily the date the Patrol receives the kit for testing.

Backlogged kits: Any kit that has been awaiting testing for one or more days is considered part of the backlog.

According to the law, the Patrol must prioritize testing in the following order:

- Active investigation and cases with impending court dates
- Active investigation where public safety is an immediate concern
- Violent crimes investigations, including active sexual assault investigations
- Post-conviction cases
- Other crimes' investigations and nonactive investigations, such as previously unsubmitted older sexual assault kits

The Patrol tested all but 1% of sexual assault kits it received since 2015, with most untested kits being from inactive investigations

Since 2015, the Patrol has received more than 28,000 requests to test for sexual assault kits and related evidence. At the height of the backlog in 2021, the Patrol had received requests for 8,300 kits that had not yet been tested. Since 2021, the Patrol has completed testing on thousands of kits, leaving less than 300 kits (about 1%) untested as of April 30, 2024.

Exhibit 2 on the following page illustrates the fluctuations in the number of untested kits in the backlog between 2015 and April 30, 2024. (See the note in the sidebar.) Our previous audit observed two main factors that likely contributed to delays in completing testing for kits received between 2019 and 2022:

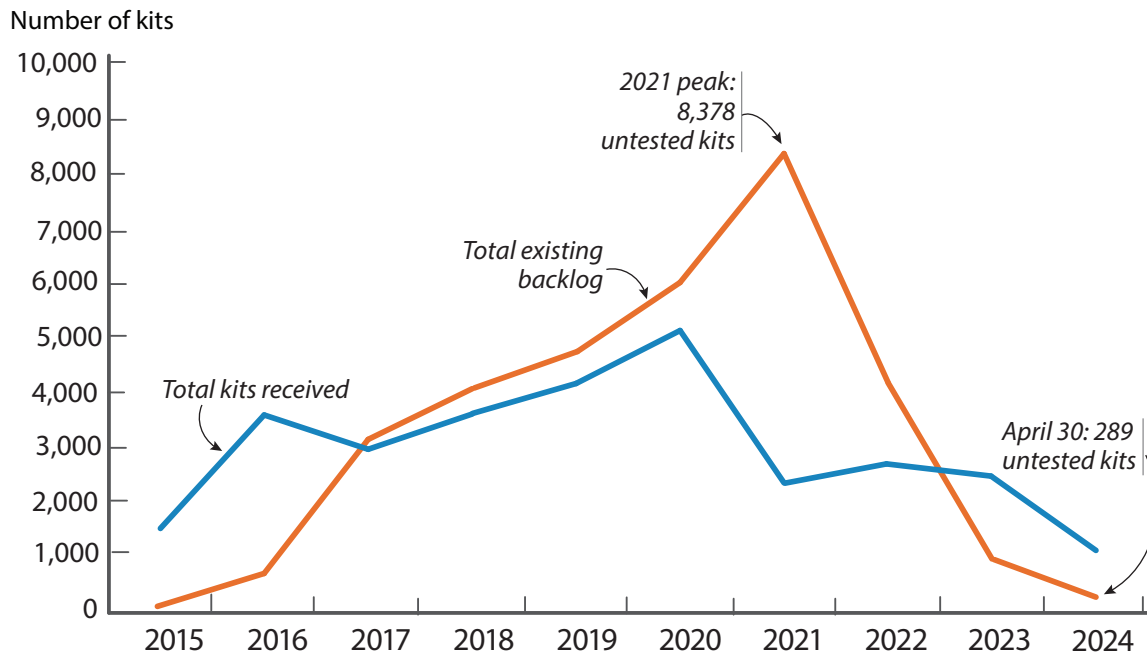
- The implementation of new, improved testing equipment was delayed in part due to issues around the COVID-19 pandemic.
- The Patrol had yet to implement the “Direct-to-DNA” testing protocol that increases efficiencies.

In addition to the issues noted in the previous audit, the Patrol received an influx of sexual assault kits for testing in 2020 during the COVID-19 pandemic. As shown in Exhibit 2, the spike in the number of untested kits in the backlog directly followed the year the Patrol received the highest number of requests for testing since 2015.

For data on kits in this section of the report, the unit of measurement includes both kits and other items of evidence (such as bedding or clothing), due to limitations in State Patrol's evidence tracking system. See Appendix B for more details about data limitations.

Exhibit 2 – Number of sexual assault kits received and untested, 2015-2024

2024 data through April 30, 2024



Source: Auditor created from Washington State Patrol data.

The Patrol has been effective at testing sexual assault kits that are either associated with an active investigation, or if the evidence is needed for a pending trial proceeding. Of the almost 300 untested sexual assault kits the Patrol has in its backlog, less than 9% of the untested kits were classified as being associated with an active investigation. Most kits that remain untested (56%) are associated with inactive investigations or have been deemed lower priority by the responsible law enforcement agency. The remaining 35% of the untested backlog includes sexual assault kits from older offenses (offense dates prior to July 24, 2015) that were previously unsubmitted to the lab. We did not obtain data necessary to determine whether these kits are associated with an inactive investigation, but according to state law, these types of kits are considered low priority for testing.

The Patrol tested 95% of sexual assault kits it considers subject to the state law required timeframe within 45-days

The Patrol tracks compliance with state law, which requires all kits it receives since May 1, 2022, to be tested within 45 days. Based on its interpretation of the intent of the 45-day requirement, the Patrol prioritizes testing kits that are part of an active investigation, that were submitted for testing on or after May 1, 2022, and that also

have an offense date on or after January 1, 2022. It was the Patrol's understanding that the intent of the sexual assault kit legislation was twofold: to eliminate the backlog of older kits by December 31, 2021, and to test new kits (received after May 1, 2022) within 45 days. Therefore, the Patrol considered kits with offense dates prior to January 1, 2022, and those associated with an inactive or low-priority case to be subject to the backlog elimination aspect of the legislation but not the 45-day testing requirement.

According to the Patrol, it has tested almost all kits within 45 days as required by state law. The Patrol reports it has received more than 3,000 requests for testing of sexual assault kits that were classified as active investigations and are subject to the 45-day testing requirement. Of these kits, about 95% completed testing and had results uploaded into CODIS within the required 45 days. The number of days it took to complete testing for all these kits ranged from two to 126 days.

An additional 274 sexual assault kits (8% of kits) were classified as inactive or low priority, and therefore were not included in the Patrol's timeliness reporting. Depending on the interpretation of the state law, it is possible these could be subject to the 45-day requirement because they were received by the Patrol on or after May 1, 2022. Testing completion time for these additional kits was not available, so we were unable to determine how long it took the Patrol to test them.

The Patrol's efforts to improve testing efficiency, while largely successful, can still be hampered by external factors

As our 2022 audit reported, Patrol officials said they had implemented many of the leading practices identified in our report. This included acquiring new equipment designed to automate processes and increase the number of samples tested at a time, and adopting Direct-to-DNA processes to make testing more efficient. Since 2023, the Patrol also expanded testing capacity in anticipation of historical kits from local law enforcement agencies, authorizing five additional scientists to conduct testing of sexual assault kits. The Patrol's strategic plan includes goals focused on reducing backlogs and testing turnaround times, reflecting this prioritization.

Two issues can affect the Patrol's ability to meet all requirements: When it receives kits and the complexity of testing needed

Even though law enforcement agencies should have submitted all requests for testing of kits with offense dates prior to July 24, 2015, to the Patrol by October 1, 2019, the Patrol continues to receive these requests. Patrol staff said that they

sometimes receive such requests to test older kits or other materials associated with an assault in larger-than-expected batches. Staff also said in some cases, they received a request for testing but not the actual kit until much later. When law enforcement agencies fail to submit kits promptly, or send kits in large batches, it can take longer for any given kit to move through the testing process. Of the 102 pre-2015 date kits that had not yet been tested at the time of our audit, 12 of the kits (or about 12%) were incomplete because the responsible law enforcement agency failed to send kits to the Patrol in a timely manner.

The complexity of evidence can also affect how long it takes to test a kit. Kits with multiple pieces of evidence, or those containing evidence that requires more complex tests, can increase the time it takes to complete the testing process.

Recommendations

We make no formal recommendations, but we encourage the Washington State Patrol to continue its efforts to test all sexual assault kits in a timely manner.

Agency Response



STATE OF WASHINGTON

December 9, 2024

Honorable Pat McCarthy
Washington State Auditor
P.O. Box 40021
Olympia, WA 98504-0021

Dear Auditor McCarthy:

Thank you for the opportunity to review and respond to the State Auditor's Office performance audit report, "*Washington State Patrol Sexual Assault Kits Follow-up*." The Washington State Patrol (WSP) is pleased with the work of its Crime Laboratory Division in addressing the backlog of sexual assault kits. We appreciate the SAO acknowledging the progress made.

The impact of the global pandemic on the WSP's ability to meet initial goals for reducing the backlog should not be understated. The pandemic affected the hiring, training, and deployment of personnel tasked in backlog reduction efforts. It also disrupted independent labs handling older kits, vendors involved with lab expansion, and new equipment delivery and validation. In short, the pandemic slowed down all aspects of the strategy to reduce the backlog through science collaboration, increased capacity, and improved logistics.

Furthermore, the WSP provides DNA test results for newly submitted sexual assault kits to law enforcement partners within an average of 40 days.¹ Most of the sexual assault kits can be processed within 45 days. However, there will always be a small percentage of kits that are more complex and cannot be completed within 45 days without sacrificing due diligence and the pursuit of thorough, quality forensic DNA testing results.

The WSP remains committed to providing high-quality, timely DNA testing of sexual assault kits as part of its forensic DNA testing program. As of November 19, 2024, the WSP has further reduced the backlog and only 12 historical kits remain. The WSP expects to finish testing of these kits in the next few weeks.

Sincerely,

Chief John R. Batiste
Washington State Patrol

Pat Sullivan, Director
Office of Financial Management

cc: Joby Shimomura, Chief of Staff, Office of the Governor
Kelly Wicker, Deputy Chief of Staff, Office of the Governor
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¹ The average is based on sexual assault kits completed in 2024 through October 31, 2024.

Appendix A: Initiative 900 and Auditing Standards

Initiative 900 requirements

Initiative 900, approved by Washington voters in 2005 and enacted into state law in 2006, authorized the State Auditor’s Office to conduct independent, comprehensive performance audits of state and local governments.

Specifically, the law directs the Auditor’s Office to “review and analyze the economy, efficiency, and effectiveness of the policies, management, fiscal affairs, and operations of state and local governments, agencies, programs, and accounts.” Performance audits are to be conducted according to U.S. Government Accountability Office government auditing standards.

In addition, the law identifies nine elements that are to be considered within the scope of each performance audit. The State Auditor’s Office evaluates the relevance of all nine elements to each audit. The table below indicates which elements are addressed in the audit. Specific issues are discussed in the Results and Recommendations sections of this report.

I-900 element	Addressed in the audit
1. Identify cost savings	No.
2. Identify services that can be reduced or eliminated	No.
3. Identify programs or services that can be transferred to the private sector	No.
4. Analyze gaps or overlaps in programs or services and provide recommendations to correct them	No.
5. Assess feasibility of pooling information technology systems within the department	No.

I-900 element	Addressed in the audit
6. Analyze departmental roles and functions, and provide recommendations to change or eliminate them	No.
7. Provide recommendations for statutory or regulatory changes that may be necessary for the department to properly carry out its functions	No.
8. Analyze departmental performance data, performance measures and self-assessment systems	Yes. The audit used departmental performance data and performance measures to analyze the State Patrol's progress in eliminating the backlog of untested sexual assault kits and testing kits within 45 days as required by state law.
9. Identify relevant best practices	No.

Compliance with generally accepted government auditing standards

We conducted this performance audit under the authority of state law (RCW 43.09.470), approved as Initiative 900 by Washington voters in 2005, and in accordance with generally accepted government auditing standards as published in *Government Auditing Standards* (July 2018 revision) issued by the U.S. Government Accountability Office. 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.

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Appendix B: Objectives, Scope and Methodology

Objectives

The purpose of this performance audit was to assess the Washington State Patrol's progress toward eliminating its backlog of untested sexual assault kits, including whether all state testing requirements were met. The audit was designed to address the following objective:

- Has the State Patrol eliminated the backlog of untested sexual assault kits since the time of the 2022 performance audit?

For reporting purposes, the audit results have been organized into key findings. The findings relate to the original objective as follows:

- The Patrol tested all but 1% of sexual assault kits it received since 2015, with most untested kits being from inactive investigations (pages 8-9).
- The Patrol tested 95% of sexual assault kits it considers subject to the 45-day state law requirement (pages 9-10).

Scope

This performance audit examined the Patrol's progress in eliminating the sexual assault kit testing backlog and its compliance with all testing requirements as of April 30, 2024. The audit focused on the performance of the Patrol as the state agency responsible for testing sexual assault kits. It did not examine in-depth the performance of other entities involved in sexual assault kit tracking and testing, such as medical facilities, local law enforcement agencies, and the Attorney General's Office as the recipient of the federal Sexual Assault Kit initiative grant.

The audit's scope included an examination of whether the Patrol met the legal requirement to test sexual assault kits and enter relevant information into the national DNA database (CODIS) within 45 days of receipt. The requirement became effective May 1, 2022, which was after the period of performance reviewed in the 2022 performance audit, so it was not evaluated before this audit.

The audit adopted the operational definition of "backlog" used by the Patrol: any sexual assault kit that has not been tested within one day or more. The audit examined the Patrol's progress testing the following groups of kits as defined by the Patrol.

- **SAK-3s.** "Historical" kits collected prior to July 24, 2015, that were not previously submitted to the Patrol for testing.

- **SAK-2s.** Kits collected on or after July 24, 2015, that are designated by law enforcement as low priority or part of an inactive investigation.
- **SAKs.** Includes requests specific to sexual assault kits. Kits collected after December 31, 2021, that were received by the Patrol on or after May 1, 2022. This is a new category created to monitor compliance with the 45-day testing requirement (RCW 5.710.040).
- **STR(SAK)s.** Evidence associated with a request for DNA testing that may or may not be associated with a sexual assault kit. Includes evidence designated by law enforcement as high priority or associated with an active investigation.

The audit did not examine in-depth the performance of other entities involved in sexual assault kit tracking and testing, such as medical facilities, local law enforcement agencies, and the Attorney General's Office as the recipient of the federal Sexual Assault Kit Initiative grant. It also did not address whether the State Patrol's Crime Laboratory Division met federal quality assurance standards.

Methodology

We obtained the evidence used to support the findings, conclusions and recommendations in this audit report during our fieldwork period (March through July 2024), with some additional follow-up work afterward. Here we summarize the work we performed to address the audit objective.

Has the Patrol eliminated the backlog of untested sexual assault kits since the time of the 2022 performance audit?

To address this objective, we reviewed the results of the 2022 performance audit, researched legal requirements, conducted interviews and reviewed documents. We also reviewed data to understand the Patrol's compliance with all testing requirements.

Interviews and document reviews to understand Washington's sexual assault kit testing processes

We conducted interviews with Patrol managers and staff to understand processes related to eliminating the backlog of untested kits, including their strategies, process improvements and any challenges they encountered. We also requested and reviewed relevant documents, including reports, strategic plans and project management documents.

Review of Patrol data on sexual assault kit testing

We requested and reviewed aggregate and raw data from the Patrol on its progress toward eliminating the sexual assault kit testing backlog. We reviewed data starting from 2015, because that is when the Patrol established different categories of kits in response to legislation, through early 2024. We reviewed this data to understand the Patrol's progress toward eliminating the testing backlog and meeting the 45-day testing requirement.

The data was drawn from the system the Patrol uses to track chain of custody for evidence. This system was designed to track forensic scientists' work and not necessarily individual cases. For that reason, the Patrol could not provide data that had a kit as the unit of measurement. Instead, the unit of

measurement for data in this report is a request for DNA testing related to a sexual assault case, which can include sexual assault kits, other items beyond the kit itself (such as bedding or clothing), or both.

While the previous audit's conclusions regarding the backlog included all categories of requests – SAK-2s, SAK-3s, and STR(SAK)s – we focused conclusions for this audit on only the requests the Patrol categorizes as being associated with a sexual assault medical forensic examination (SAKs, SAK-2s, SAK-3s and some STR(SAK)s (those received before May 1, 2022).

The data represents a snapshot in time as of May 31, 2024. Data on sexual assault kits is dynamic, as the Patrol regularly receives new kits to be tested from police. The data includes only those kits that have been received by the Patrol's Crime Laboratory or contracted private labs for testing, and does not include any kits that have not yet been submitted by police.

Data reliability testing and limitations

The Patrol provided the data we reviewed; the data itself was self-reported by law enforcement agencies, and the Patrol manually entered it into the evidence tracking system. We tested the reliability of this data by comparing it to publicly available reports to the Legislature and other stakeholders, and then conducting follow-up interviews with Patrol employees knowledgeable about the data. From this work we noted the following data limitations:

- **Lack of descriptors for some categories needed to identify sexual assault kits.** Requests categorized as SAK-2, SAK-3 and some STR(SAK)s (those with a “Received Date” prior to May 1, 2022) may include both sexual assault kits and evidence related to a sexual assault not associated with a kit. According to Patrol staff, most SAK-2 and SAK-3 requests are actual kits, but these categories still may include service requests that are from a sexual assault investigation but that are not a kit. The Patrol does not collect data on these categories necessary to determine whether they are associated with an actual sexual assault kit or not. Therefore, we will not be able to directly confirm whether requests categorized as SAK-2s and SAK-3s are subject to the 45-day requirement even if all other conditions in RCW 5.70.040 are met. Given that Patrol indicated most of these requests were kits, we determined it would be more accurate to include these requests in our total kit calculations rather than to exclude them.
- **Lack of end dates for some kits.** CODIS upload dates for kits not categorized as a SAK (SAK-2 and SAK-3) were not readily available in the data provided. According to RCW 5.70.040(2), testing is considered complete when DNA testing results have been uploaded into CODIS. Therefore, we were only able to directly confirm compliance with the 45-day requirement for kits categorized as a SAK.

Work on internal controls

We assessed general internal controls to gain an understanding of the Patrol's compliance with legal requirements and recommended practices.

As part of answering our audit objective question, we gained a general understanding of controls by reviewing strategic plans and interviewing Patrol management and staff. The purpose of this work was to understand the Patrol's plans, performance measures and processes for achieving goals to comply with all testing requirements, as well as its strategies for responding to risks to achieving those goals.

We evaluated the design of the Patrol's internal controls and their implementation and noted any deficiencies in operating effectiveness of those controls. As detailed on page 10, we noted one potential internal control deficiency related to how the Patrol monitors compliance with state law. We have verbally discussed this potential deficiency with the agency and communicated that the Patrol should consider collecting data necessary for tracking testing time for all kits potentially subject to the 45-day requirement.



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– Pat McCarthy, State Auditor

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