

The Commonwealth of Massachusetts

Report

of the

**SENATE COMMITTEE ON
POST AUDIT AND OVERSIGHT**

entitled

When Time Is of the Essence:

*A Review of Collection, Transport, Handling and Analysis of Sexual Assault Evidence
Collection Kits and Toxicology Kits in Massachusetts*

(under the provisions of Section 63 of Chapter 3
of the General Laws, as most recently amended by
Chapter 557 of the Acts of 1986)

October 22, 2013



The Commonwealth of Massachusetts

MASSACHUSETTS SENATE

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October 22, 2013

Mr. William F. Welch, Clerk of the Senate
State House, Room 335
Boston MA 02133

Dear Clerk Welch:

Pursuant to M.G.L. Chapter 3, Section 63, as most recently amended by Chapter 557 of the Acts of 1986, the Senate Committee on Post Audit and Oversight respectfully submits to the full Senate the following report: *WHEN TIME IS OF THE ESSENCE: A Review of Collection, Transport, Handling and Analysis of Sexual Assault Evidence Collection Kits and Toxicology Kits in Massachusetts.*

This report is based on research by the Senate Committee on Post Audit and Oversight. The Committee held a public hearing on this issue and conducted interviews with a wide variety of stakeholders involved with purchasing, administering, delivering, testing, storing and overseeing sexual assault evidence collection kits and toxicology kits in Massachusetts. The report identifies inefficiencies and other flaws in the system, as well as areas that function well, and offers eight sets of recommendations for improvements that would benefit not only individual victims of rape and sexual assault but also public safety generally.

Respectfully filed by the Senate Committee on Post Audit and Oversight,

Senator Cynthia Stone Creem, Chair

Katherine M. Clark, Vice Chair

Senator Gale D. Candaras

Senator Eileen M. Donoghue

Senator Benjamin B. Downing

Senator Michael O. Moore

**When Time Is of the Essence:
A Review of Collection, Transport, Handling
and Analysis of Sexual Assault Evidence
Collection Kits and Toxicology Kits in
Massachusetts**

**A Report of the
Senate Committee on Post Audit and Oversight**

October 2013

Massachusetts Senate
The Honorable Therese Murray
Senate President

Senator Cynthia Stone Creem, Chair
Katherine M. Clark, Vice Chair
Senator Gale D. Candaras
Senator Eileen M. Donoghue
Senator Benjamin B. Downing
Senator Michael O. Moore
Senator Robert L. Hedlund

Senate Committee on Post Audit and Oversight

Senator Cynthia Stone Creem, Chair

It shall be the duty of the Senate Committee on Post Audit and Oversight (established under Section 63 of Chapter 3 of the General Laws) to oversee the development and implementation of legislative auditing programs conducted by the Legislative Post-Audit and Oversight Bureau with particular emphasis on performance auditing. The Committee shall have the power to summon witnesses, administer oaths, take testimony and compel the production of books, papers, documents and other evidence in connection with any authorized examination or review. If the Committee shall deem special studies or investigations to be necessary, they may direct their legislative auditors to undertake such studies or investigations.

Senate Post Audit and Oversight Bureau

This report was prepared by **Hilary Weinert Hershman**, Research Director, and **Michael Avitzur**, Legislative Counsel.

The Committee would like to acknowledge the assistance of Senator Creem's staff, including Chief of Staff Richard Powell, Legislative and Budget Director Catherine Anderson, Policy Counsel Lisamarie Sears, Executive Assistant Wendy Levine, as well as interns Myles Thompson and Adolph Dubose and former legal intern Margaret Siegel.

The Committee would also like to acknowledge the assistance and cooperation of the Andrea J. Cabral, Secretary of the Executive Office of Public Safety and Security; **Curtis M. Wood**, *Undersecretary of Forensic Science and Technology* for the Executive Office of Public Safety and Security; the State Police Crime Laboratory; the Boston Police Department; Boston Police Crime Laboratory Unit; the SANE Program at the Department of Public Health; the Massachusetts Chiefs of Police Association; the Massachusetts District Attorneys Association; the Massachusetts Hospital Association; the Committee for Public Counsel Services; Jane Doe, Inc.; and the Boston Area Rape Crisis Center.

EXECUTIVE SUMMARY

Key Findings

State officials have been aware for years of delays in the delivery of rape kits to the state crime lab, as well as backlogs in laboratory testing. The Senate Committee on Post-Audit and Oversight has found **a lack of any comprehensive, unified, electronic statewide system for tracking rape kits** in Massachusetts and a **shortage of nurses** specially trained to assist victims and collect evidence for rape kits, as well as **structural roadblocks** that limit the ability of police departments to deliver the kits to a lab as quickly as might otherwise be possible.

All of these factors can contribute to delays in the process that begins at the time a rape kit is first administered – typically in a hospital emergency department, in the hours or days after a victim has been assaulted – to the time it is ultimately tested in a state or Boston crime lab, where investigators seek either to determine or confirm the identity of the assailant from DNA and other evidence collected in the kit. And while the Executive Office of Public Safety and Security and the City of Boston have made great strides over the past few years in reducing the backlog of untested rape kits within their possession, there remain delays, for a number of reasons, in completing testing.

Changes proposed here by the Committee to address these findings could help reduce those delays by pinpointing where in the process they occur most often. Speedy processing of kits can, in turn, **improve public safety by aiding law enforcement in catching rapists quickly and ensuring that the right person is identified** as the assailant. At the same time, implementation of the Committee's proposed changes should help support and empower survivors.

Key Recommendations

In this report, the Committee offers **detailed recommendations for the creation of a tracking system** for rape kits, along with other recommendations for improvements in the way the state and its municipalities handle rape kits, including:

- Enabling the on-line completion of provider sexual crime report forms, instead of requiring them to be completed by hand and then faxed. This change could boost compliance rates by making the task easier and would also support the recommended tracking system and pave the way for better analysis of trends and problem areas in sex crimes statewide.
- Development of better transport options between municipal police and state crime labs, to ease the burden on local police departments, which are currently required to have police officers deliver rape kits from hospitals to lab sites which may be quite distant from their police stations.

- Investigation of the possibility of an alternative transport system – one that would take the responsibility for transport of rape kits out of the hands of local uniformed officers by shifting it to other law-enforcement staff, a dedicated courier system, or even an outside option like the Postal Service or one of the express-shipping firms.
- Deployment of more sexual assault nurse examiners (“SANEs”) -- who are trained experts in administering rape kits -- thus improving criminal-justice outcomes and the standard of care for victims, who are often traumatized or injured.
 - Better coordination between hospitals and local rape-crisis centers, which are uniquely suited to support and advocate for victims.
- Greater empowerment of victims to learn the status of the evidence in their cases, and to help them decide whether to file a criminal report.

How This Report Was Developed

On behalf of the Senate Committee on Post-Audit and Oversight (“Committee”), the Post-Audit and Oversight Bureau (“Post-Audit Bureau”) has examined each step in the handling, transportation, and testing of sexual assault evidence collection kits (“SAECKs” or “rape kits”) and toxicology kits (containing blood and urine samples from the victim to test for alcohol and drugs) in Massachusetts. The goal of this examination was twofold: to assess whether the process is unnecessarily lengthy or inefficient, and to determine what legal, procedural, administrative, and/or logistical changes might reduce existing delays. Reducing these delays benefits both the survivor, by providing a prompt avenue to justice, and the public, by allowing more rapid identification, arrest, and pre-trial detention of the perpetrator, which in turn eliminates his opportunity to victimize others and provides an opportunity for swift justice. In addition, if the delay in identifying a perpetrator through DNA analysis continues for months or even years, as has been reported, see *infra* pp.4-5, the survivor’s interest in participating in the prosecution may wane or disappear, resulting in the perpetrator never being brought to justice.

Our examination of the handling of rape and toxicology kits has involved a June 11, 2013, public hearing, at which numerous stakeholders testified; the transmission of requests for production of information and documents to state agencies, the City of Boston, district attorneys, police chiefs, and victim advocacy groups; and informal discussions with these entities and with representatives of the criminal defense bar, hospital representatives, and crime laboratory administrative and information technology personnel.

This report will examine, first, the process that unfolds after a victim of sexual assault seeks medical treatment, including the assistance a victim receives when initially seen at the hospital, the collection of evidence from the victim’s body and

belongings to obtain relevant biological material, the transport of that evidence to the crime lab, and the analysis of the evidence at the crime lab in an effort to find the perpetrator's DNA and to determine whether the victim may have been drugged at the time of the attack. Next, the report will discuss problems that were discovered at various stages of this process. Finally, the report will provide findings and detailed recommendations for addressing the problems discovered.

INTRODUCTION

Rape and sexual assault continue to be a significant problem globally, nationally, and here in Massachusetts. In the United States alone, well over 250,000 people age 12 or older are victims of rape and sexual assault each year,¹ meaning that there is a sexual assault in this country approximately once every two minutes. Yet sexual assaults remain among the most under-reported crimes; estimates suggest that only about 35% are reported.² Part of the problem may be rape victims' awareness of the small likelihood that a person who commits a rape will be punished for that crime. Recent statistics indicate that, out of 100 rapes committed, only twelve lead to the arrest of a suspect,³ only nine are prosecuted, only five lead to a felony conviction, and only three of those convicted will spend even a single day in prison.⁴ In the face of such daunting statistics, it is incumbent upon us to ensure that, whenever victims are brave enough to come forward to report a sexual assault, we have the systems, protocols, and resources in place to support them and assist in the successful prosecution of the crime.

One reason so few rapes are reported to police is that rape survivors are often concerned that they will not be believed.⁵ A factor contributing to their concern may be that, contrary to popular belief, most rapes are perpetrated by someone known to the victim.⁶

¹ In 2010, according to the federal government, "females nationwide experienced about 270,000 rape or sexual assault victimizations." Bureau of Justice Statistics, *Special Report, Female Victims of Sexual Violence, 1994-2010* (March 2013), at 1.

² "The percentage of rape or sexual assault victimizations reported to police increased to a high of 56% in 2003 before declining to 35% in 2010, a level last seen in 1995." *Id. at 1*. It should therefore be remembered, whenever data on these crimes are presented, that this low reporting rate complicates the compilation of accurate numbers and statistical analysis.

³ *Id. at 8*.

⁴ "Reporting Rates," Rape, Abuse & Incest National Network website, www.rainn.org/get-information/statistics/reporting-rates.

⁵ J. Du Mont, K.L. Miller, and T.L. Myhr, *The Role of 'Real Rape' and 'Real Victim' Stereotypes in the Police Reporting Practices of Sexually Assaulted Women*, VIOLENCE AGAINST WOMEN 9(4)(April 2003), 466-486.

⁶ See, e.g., *Medical and Forensic Evidence in Massachusetts Sexual Assault Cases: Presentation to the Governor's Council on Sexual Violence*, PowerPoint Presentation, February 5, 2013 ("Governor's Council Presentation"), p. 13 (indicating that, in that sample, only 30% of the assailants were strangers to the victim). At the national level, "victims of rape and sexual assault report that in nearly 3 out of 4 incidents, the offender was not a stranger." *Sex Offenses and Offenders*, Bureau of Justice Statistics, February 1997. Even when the identity of an alleged assailant is not in question, a rape kit can be helpful in establishing that an assault did take place and in corroborating the victim's description of events.

A rape survivor may also not report the crime because of an awareness from news reports⁷ that, even if she⁸ is believed by law enforcement, the wheels of justice move painfully slowly. The lengthy sequence of steps that must take place between a sexual assault and the eventual conviction (or exoneration) of an alleged perpetrator can be emotionally, and even physically, painful for the survivor. One of the first and most crucial steps is the intimate physical examination of the rape survivor for the collection of potential DNA evidence—a process that unfortunately may add to the victim’s discomfort and humiliation. The long time period before the rape kits are analyzed at the crime lab, 63 days or more in half the cases in Massachusetts,⁹ can unnecessarily prolong a victim’s suffering and uncertainty. Properly collecting, preserving, and testing DNA evidence is, therefore, key to law enforcement’s investigation and prosecution of a sexual assault case.

PREVIOUS STUDIES AND REPORTS

The concern with delays in obtaining DNA results from a sexual assault is neither new nor confined to Massachusetts. Delays in this process, in particular backlogs at crime laboratories, have been the subject of numerous news articles and studies.¹⁰ As reported in news accounts earlier this year, the City of Detroit plans to begin working toward eliminating a backlog of approximately 11,000 rape kits, some from cases dating back almost a quarter-century.¹¹ Closer to home, a June 2010 WHDH-TV news report

⁷ See *infra* pp.5-6.

⁸ Although the authors of this report are aware that males can be victims of sexual assault or rape, the majority of survivors are female. See, e.g., Governor’s Council Presentation, p.13. We will therefore take the liberty of referring to rape victims as female. Conversely, although there have been occasional instances of female rape perpetrators, especially in the case of statutory rape (defined in Massachusetts as “unlawfully [having] sexual intercourse or unnatural sexual intercourse, and [abusing] a child under 16 years of age,” M.G.L. c. 265, § 23), most rapists are male. Bureau of Justice Statistics, *Special Report, Female Victims of Sexual Violence, 1994-2010* (March 2013), p. 5. We will therefore refer to perpetrators in this report as male. However, we wish to emphasize that not all victims are adult women, that the gender disparity among victims is lower among juveniles, and that the transgender community faces high rates of victimization.

⁹ One recent study of Massachusetts cases found that the median time from a sexual assault examination until the lab report reached police was 63 days. Governor’s Council Presentation, p.22. If the arithmetic mean or average were used for this statistic, it would probably be higher, in particular because the Executive Office of Public Safety and Security has found that there are some extreme outliers in police transport times from hospitals to the crime lab. See Draft Memorandum dated December 3, 2010, from Alex Wagner to Marc Germain, regarding PSCR kit tracking (“EOPSS December 3, 2010 Memo”), provided by EOPSS to the Committee on September 9, 2013.

¹⁰ See, e.g., a series of recent studies by Human Rights Watch, including *I Used to Think the Law Would Protect Me*, July 7, 2010, available at <http://www.hrw.org/node/91360>, and *Testing Justice*, March 31, 2009, available at <http://www.hrw.org/node/81826>, exploring backlogs in Illinois and Los Angeles, respectively.

¹¹ Kathleen Gray, *Senate OKs \$4M to Test Thousands of Backlogged Rape Kits*, DETROIT FREE PRESS, June 19, 2013.

by Hank Philippi Ryan found that, at that time, there were about 2,000 unprocessed rape kits at the State Police Crime Lab (“state lab”) here in Massachusetts.¹²

Due to the seriousness and widespread nature of DNA backlogs, the federal government has made grant monies available to states to help crime labs reduce backlogs, increase lab capacity, keep current with new technologies, acquire state-of-the-art DNA analysis equipment, and hire (and retain) additional qualified staff.¹³ Despite these funding efforts, delays in handling and processing rape kits have not yet been eliminated.

THE PROCESS

Although most of the attention locally and nationally has focused on backlogs in completion of DNA analyses at crime laboratories, the Post-Audit and Oversight Bureau has concluded that the delays that occur in Massachusetts between sexual assault evidence collection and the receipt of crime lab results cannot be attributed solely to backlogs at the crime labs. Indeed, it appears that delays often happen at other points in the multi-stage process that occurs between a rape and the issuance of DNA and toxicology results. We will therefore review the steps in this process to assist readers of this report in understanding the issues.

Collection of Evidence from the Rape Survivor

In Massachusetts, as elsewhere, the process for identification (or confirmation of the identity) of an alleged rapist from his DNA generally begins at the hospital¹⁴ where the rape survivor is examined, treated for injuries, and, if she so chooses, physical evidence is collected from her body for completion of a SAECK. In Massachusetts, 70-80% of SAECKs are collected by either Massachusetts- or nationally-certified SANEs, who have been trained to administer the rape kit and gather physical evidence from the victim.¹⁵ The SANE or other medical provider will also take photographs of the victim’s visible injuries.¹⁶

¹² Hank Philippi Ryan, *Hank Investigates: Rape Kits*, June 22, 2010, available at <http://www1.whdh.com/features/articles/hank/BO143496/>.

¹³ Grants for these purposes are available under The Debbie Smith Act of 2004, 42 U.S.C. § 14135 (2012), and the Violence Against Women Act of 1994 (VAWA), as reauthorized by the Sexual Assault Forensic Evidence Reporting (SAFER) Act of 2013, Pub.L. 113-4.

¹⁴ In Massachusetts, evidence collection from minors who have allegedly been sexually assaulted may occur at a children’s advocacy center affiliated with the Massachusetts Pediatric SANE Program. See *Protocol for the Transportation of Adult and Pediatric Sexual Assault Evidence Collection Kits from Hospitals and Children’s Advocacy Centers to the Crime Laboratories* (2013), available at <http://www.mass.gov/eopss/law-enforce-and-cj/law-enforce/sexual-dom-viol/sexual-assault-evidence-collection-kit.html> (“Transport Protocol”). Since most rape kits are completed at hospitals, however, the writers of this report will refer to sexual assault evidence collection locations generically as “hospitals.”

¹⁵ DPH certified SANEs are registered nurses with a minimum of three years nursing experience who then undergo further training in the forensic aspects of an alleged rape examination, including the SAECK kit,

Massachusetts SANEs are employed directly by the Department of Public Health (“DPH”), not by hospitals, and are summoned to hospitals by pager. We are informed that Massachusetts has the only SANE program in the U.S. “that provides centrally managed statewide service delivery.”¹⁷ In that respect, Massachusetts is “ahead of the curve” in terms of the initial evidence collection from victims of sexual assault. SANEs offer trauma-informed care that can improve short- and long-term outcomes for victims. Sometimes, however, no SANE is available to perform the kit collection, and it is performed by the hospital’s medical or nursing staff, who may not have the same degree of training and experience in the process as a SANE.¹⁸

The sexual assault evidence collection kit contains supplies for the collection of physical evidence from a sexual assault victim, such as swabs, combs, fingernail scrapers, a blood tube, and envelopes in which to seal the evidence, as well as evidence transport bags (“ETBs”) for the victim’s clothing and any other evidence that may be on hand.¹⁹ The kit also contains detailed instructions and reporting forms for the hospital personnel performing the exam, as well as (in the case of an adult kit) a packet of information on support services for the victim. Finally, the kit contains labels for marking each piece of evidence with the kit’s number, a biohazard sticker, and police evidence seals to seal the kit. Each kit has a unique tracking number assigned to it by Tri-Tech Forensics, which provides the kits to the Executive Office of Public Safety and Security (“EOPSS”) for distribution to hospitals and children’s advocacy centers.²⁰

Once the SAECK collection is completed, the kit is placed in a secure refrigerator at the hospital, an entry is made in the refrigerator log book, and hospital personnel

crime lab considerations, and forensic photography. Executive Office of Health and Human Services, *Sexual Assault Nurse Examiner Certification Training Program*, available at <http://www.mass.gov/eohhs/gov/departments/dph/programs/community-health/dvip/violence/sane/training-and-application-process.html>

¹⁶ Governor’s Council Presentation, at 14.

¹⁷ Theodore P. Cross, Joan Meunier-Sham, and Cynthia L. Moore, *Forensic Evidence in Child Sexual Abuse Cases: The Experience of Using a Statewide Pediatric Forensic Evidence Collection Kit*, (2013), at 2, available at www.cfrc.illinois.edu.

¹⁸ *Id.* at 1.

¹⁹ Even where this report, in its discussion of police transport of evidence, does not mention evidence transport bags (“ETBs”), the reader of this report should presume that references to transport of rape and toxicology kits also include transport of the related ETBs.

²⁰ Tri-Tech Forensics produces the Adult, Pediatric, and Toxicology Kits for EOPSS’s Office of Grants and Research (“OGR”). Tri-Tech ships the Adult and Toxicology Kits directly to hospitals. OGR ships the Pediatric Kits to hospitals and select children’s advocacy centers. OGR “receives a log from the manufacturer of the unique kit numbers assigned to the kits shipped to the hospitals.” Response of EOPSS to Information Request of Post-Audit Committee, June 6, 2013 (“EOPSS June 6 Response”), at 2.

contact the police department with jurisdiction²¹ to request that a police officer be sent to pick up the kit.²² Since 2007, Massachusetts SAEC Kit and Toxicology Kit Log Books have been used at all 27 DPH-SANE sites “to track the chain of custody and pick-up of the kits from the hospitals.”²³

If the circumstances of a sexual assault indicate that the survivor may have been intoxicated, was drugged by her assailant, and/or was unconscious at the time of the crime, the SANE or other medical provider will provide the option for the survivor, with informed consent, to provide blood and urine samples for the toxicology kit that accompanies the SAECK.²⁴ All completed toxicology kits from across the state are delivered to the State Police Crime Lab by the police department with jurisdiction and analyzed there, regardless of whether the victim has reported the crime to police.²⁵

Before an adult victim leaves the hospital, the SANE or a hospital staff member provides the victim with the Patient Information Packet from the SAECK. That packet contains a variety of materials to assist the victim, including the kit number and a toll-free phone number for the Toxicology Alert and Forensic Information Line, which the victim can call to obtain the results of the toxicology tests. The Boston Area Rape Crisis Center (“BARCC”) provides this service at no charge to all rape survivors in Massachusetts to allow them to easily (and anonymously) learn the results of the toxicology testing.²⁶ The toxicology results are generally available six to twelve weeks after the blood sample is drawn.²⁷

²¹ Under Massachusetts law, the police department where the crime allegedly occurred is responsible for investigating the crime. M.G.L. c. 41, §98; see also EOPSS June 6 Response, at 3. For simplicity’s sake, we will refer to that police department as the “police department with jurisdiction.”

²² On occasion, a police officer for the jurisdiction in which the crime took place will accompany a rape survivor to the hospital from the police station or the scene of the crime or will be sent to the hospital to interview her. If that police officer is still at the hospital when the kit collection has been completed, he or she will be entrusted with the transport of the kits to the police station. Otherwise, Massachusetts SANES “immediately” call the police department with jurisdiction once a SAECK is completed and ready for transport. DPH SANE Program’s Response to the Committee dated August 15, 2013, at 2. In the case of a sexual assault out of state for which the forensic exam is performed in Massachusetts, the State Police have responsibility for transport of the kit and evidence to the appropriate lab. Transport Protocol, at 1.

²³ DPH SANE Program’s Response to the Committee dated August 15, 2013, at 2.

²⁴ The toxicology kit is used where there is an indication that “a drug facilitated sexual assault has taken place.” EOPSS June 6 Response. The toxicology tests look for alcohol, drugs, and medications in a rape survivor’s blood and urine.

²⁵ Discussions of Post-Audit Bureau staff with representatives of both the Boston Area Rape Crisis Center (September 11, 2013) and Massachusetts State Police (same date).

²⁶ Discussion of Post-Audit Bureau staff with representatives of BARCC, September 11, 2013.

²⁷ Material provided to the rape survivor after the kit collection informs her that she can call the Toxicology Alert and Forensic Information Line six weeks after the assault to learn her toxicology testing results. EOPSS, however, has indicated that toxicology testing generally takes about twelve weeks, EOPSS Response to Information Request of Post-Audit Committee, July 31, 2013 (“EOPSS July 31 Response”),

Provider Sexual Crime Reports

In addition to completing the SAECK and toxicology kit, the SANE or other medical provider is required to complete a Provider Sexual Crime Report (“PSCR”) and forward it to EOPSS.²⁸ This form (a blank copy of which is attached as EXHIBIT 1), requests various items of information about a sexual assault, including the location, description, and timing of the assault, the types of kits collected at the hospital, whether the assault was reported to the police, and, if so, to which police department, the date and time when the police were called to pick up the kit, and the name of the police department called for kit pickup. Information from the PSCR is manually entered into a database at EOPSS’s Office of Grants and Research (“OGR”) and shared annually with DPH.²⁹ At this point, the PSCR is used only for the compilation of statistics about rapes and sexual assaults.³⁰

Role of Rape Crisis Centers

Upon being notified by a hospital that a sexual assault survivor is being seen, the local rape crisis center will, if feasible, send a medical advocate to the hospital to be present during the rape kit collection process and hospital treatment, in order to offer emotional support and practical help and advice. Because the SANE (or other medical provider) administering the rape kit may not leave the examination room once the kit has been opened, the medical advocate can also provide information to friends or family of the survivor in the waiting room, as well as information to the survivor about counseling and other services available to sexual assault victims.³¹

Transportation of Kits to the Police Department and Crime Lab

at 1; turnaround time from the point at which the toxicology kit is assigned to an analyst until issuance of a report is approximately 50 days. E-mail from EOPSS to Post-Audit Bureau staff, September 23, 2013.

²⁸ M.G.L. c. 112, § 12½, requires physicians or managers of hospitals or institutions that have treated a victim of sexual assault to report such case “at once” to the police department with jurisdiction and the department of criminal justice information services.

²⁹ EOPSS July 31 Response, p.12.

³⁰ See, e.g., Brittany Peters, *Violent Crime in Massachusetts* (October 2012), available at <http://www.mass.gov/eopss/law-enforce-and-cj/crime-stats-rsrch/rsrch-policy-anal/relevant-pubs/violent-crime-annual-policy-brief.html>.

EOPSS, *Analysis of College Campus Rape and Sexual Assault Reports* (September 2012), available at <http://www.mass.gov/eopss/law-enforce-and-cj/crime-stats-rsrch/rsrch-policy-anal/relevant-pubs/analysis-of-college-campus-rapes.html>

EOPSS, *Understanding Sexual Victimization* (April 2008), available at <http://www.mass.gov/eopss/docs/eops/publications/understanding-sexual-victimization-2001-to-2006.pdf>

³¹ Discussions of Post-Audit Bureau staff with BARCC, September 11, 2013.

Once the police officer picks up the SAECK, toxicology kit (if completed), and evidence transport bag from the hospital, he or she generally transports them to the police station's evidence unit to be logged in and assigned a police identification number.³² The police do not open a kit during transport to avoid contaminating its contents. As mentioned above, the police transport all toxicology kits, regardless of where the crime took place, to a State Police Crime Lab ("state lab") facility. If the alleged crime took place outside of Boston, the police will transport the SAECK and ETB to the state lab as well. If the alleged crime took place in Boston, however, the SAECK and ETB will be transported by the Boston Police to the Boston Crime Lab.³³ At each transfer of a rape kit and/or toxicology kit, hospital, police, and laboratory representatives acknowledge in writing their receipt of the kit on the outside of the kit in order to preserve the chain of custody of the evidence, which may ultimately prove crucial in obtaining a criminal conviction of the assailant.

After the crime lab finishes its analysis, it notifies the police to come to the lab to retrieve the kit. The results of the DNA analysis do not always accompany the physical evidence and may not be available to the police department for months.³⁴

Handling of "Unreported" and "Reported" Kits

A rape survivor is not obligated to report the crime to the police and often chooses not to do so. There are many reasons why a rape survivor might make such a decision, as discussed in the Introduction to this Report. See *supra* pp.4-5. However, some rape victims, while choosing not to report the crime to the police immediately, may still elect to have the rape and toxicology kit collection done while receiving medical care at a hospital as a result of the assault. If the survivor chooses this path, her SAECK is referred to as an "unreported kit," a designation which affects its later handling.³⁵

Unreported kits are retained for six months by the crime lab, but are given lower priority than reported kits, unless and until the survivor reports the crime to the police.³⁶

³² EOPSS June 6 Response, p.3.

³³ EOPSS, *Adult Sexual Law Enforcement Guidelines, 2009*, at 34, available at <http://www.mass.gov/eopss/docs/oqr/lawenforce/2009adultsalawenforceguidelines.pdf>

³⁴ Massachusetts Association of Chiefs of Police, *Policies on Handling Sexual Assault Evidence -- Survey Responses*, August 27, 2013, provided to the Committee by the Massachusetts Chiefs of Police Association ("Chiefs' Policies Survey"), answers to questions 10 and 11.

³⁵ The exception is for Pediatric Sexual Assault Kits, which are tested even if the crime is unreported. EOPSS June 6 Response, at 7.

³⁶ EOPSS indicates that "[u]nreported kits receive a lower priority [than reported or pediatric kits] and will be assigned for processing of the blood sample throughout the regular rotation of case assignments." *Id.* at 7.

According to state lab guidelines, unreported kits for victims age 16 and older are to be sent to the lab's Criminalistics Unit for blood swatching only.³⁷ The kit and evidence are to be retained in the lab's cold storage for six months after the blood is swatched. For victims 12 and younger, the unreported kit is to be sent to the Criminalistics Unit for examination. The kit is tested and returned to the submitting agency. Unreported kits for subjects between the ages of 13 and 15, inclusive, are sent to the Criminalistics Unit where the biological samples are removed, placed in a heat sealed packet, and preserved for 27 years from the individual's 16th birthday.³⁸

As discussed above, at the time of the kit collection, the survivor is informed that she may report the crime to the police, but she is advised that the kit may not be processed if she waits to report the crime for more than six months.³⁹ She is also informed that, if she is still undecided about whether to report the crime when the six-month deadline approaches, she can contact the police department with jurisdiction or the district attorney's office for the county where the crime occurred ("DA") to request that the kit be kept at the lab for a longer time period, a request that the lab will automatically grant.⁴⁰ If the survivor did not initially report the crime to law enforcement but reports it later, her kit will become a "reported kit" and will undergo "streamlined analysis" by the lab.⁴¹

If the survivor does not report the crime to law enforcement for six months after kit collection and does not request an extension, the crime lab sends the rape kit back to the police department with jurisdiction.⁴² There is, however, no protocol in place for either the police or the crime lab to forewarn the survivor when the time for destruction or return of the kit is imminent.

³⁷ Massachusetts State Police Forensic Services Group, *Evidence Handling and Submission Manual* (version 9.0, 2013), § 3.6, at 15.

³⁸ *Id.* See also EOPSS June 6 Response, p.7. According to EOPSS, however, "[i]f the submitting agency or police department believes a crime was committed, the State Police Crime Lab will go forward with DNA testing as long as the testing request is not retracted by the DA's office." *Id.*

³⁹ See also M.G.L. c. 41, § 97B (requiring hospitals to inform victims of rape that the evidence in the rape kit shall be kept for at least six months upon the written request of the victim at the time the evidence is obtained). The state lab does not destroy untested kits. The state lab will return evidence from tested kits to the submitting police department rather than destroy it, except upon express authorization from the District Attorney indicating that the case has been adjudicated and, if applicable, the defendant has completed probation. EOPSS June 6 Response, at 13.

⁴⁰ EOPSS July 31 Response, at 7. The Committee, however, recommends that this procedure be incorporated into regulations or lab policies to ensure that it is followed.

⁴¹ Presentation by Massachusetts State Police Forensic Services Group to (and discussion with) Post-Audit Bureau staff, September 11, 2013.

⁴² If the survivor reports the crime to the police after the crime lab has returned the kit, the police can thereafter send the kit back to the lab for processing. Discussions of Post-Audit Bureau staff with representatives of EOPSS and the State Police Crime Lab, September 11, 2013.

Testing at the Crime Lab

Once a rape kit or toxicology kit arrives at the crime lab, lab personnel must log it in, using both the kit identification number and the police identification number. At the state lab, lab personnel will also label the kit and any related evidence, such as the evidence transport bag, with a bar-coded label representing the evidence's Laboratory Information Management System ("LIMS") number, which is different from the EOPSS kit number.⁴³ The kit and ETB contents are thereafter assigned to a criminalist, who performs an analysis of the contents of the kit – and then, if applicable, the clothing of the victim – for biological material (blood, semen, saliva, etc.). The Criminalistics Unit of the state lab shares its report with the police department with jurisdiction and the DA, who will in turn determine whether DNA analysis is necessary.⁴⁴ If the police and/or DA want the DNA analysis done, they must provide the crime lab with an "activation form" requesting that it be performed.⁴⁵ The BPD Crime Lab provides the investigator with analysis reports indicating samples that are submitted to the DNA unit for further processing.⁴⁶ Because of staffing, equipment, and infrastructure limitations at the State Police Crime Lab and the Boston Crime Lab, the amount of time required for a kit to be analyzed by a criminalist or DNA analyst may be quite long. See *infra*, pp.21-23.

Using the DNA Analysis Results

If there is an identified suspect whose DNA has been collected by the police, lab personnel will be able to confirm whether the suspect's DNA was found during the rape kit analysis.⁴⁷ Alternatively, if there is no identified suspect, the crime lab's DNA analyst may be able to upload the DNA profile results into the local and state DNA database systems, as well as the federal CODIS database,⁴⁸ provided the profile meets the

⁴³ The Boston Police Department crime lab labels the kit and accompanying evidence with a bar-coded label representing an Evidence Tracking number. BPD's e-mailed response to the Committee, dated October 15, 2013 ("BPD October 15 Response").

⁴⁴ DNA analysis would be necessary if DNA is discovered by the Criminalistics Unit and consent and identity are at issue in the underlying criminal case.

⁴⁵ Discussions of Post-Audit Bureau staff with representatives of EOPSS and the State Police Crime Lab, September 11, 2013.

⁴⁶ BPD October 15 Response.

⁴⁷ The absence of the suspect's DNA from samples taken from a rape survivor does not eliminate the possibility that a particular suspect was the perpetrator. There are many reasons why his DNA may not be found during the examination of the victim and her clothes or bedding, including the possibility that he was wearing gloves or a condom or that the victim did not have the suspect's DNA under her fingernails or his hair on her body.

⁴⁸ The Combined DNA Index System ("CODIS") is the FBI's support program for criminal justice DNA databases and the accompanying software. A main component of CODIS is the National DNA Index System ("NDIS"), which contains DNA profiles from federal, state, and local participating forensic libraries. CODIS allows law enforcement agencies to search an unknown suspect's DNA profile against the

CODIS criteria,⁴⁹ in order to see if there is a match with a DNA profile in the databases.⁵⁰ Once the crime lab has completed the DNA analysis, the results are released by the crime lab to the police department with jurisdiction and the DA.⁵¹ If the DNA database matches the DNA profile of an identified person, the police can then focus on that person as a suspect in the sexual assault.⁵² The police will obtain a DNA sample from the suspect, either through arrest or consent of the suspect or by obtaining a search warrant,⁵³ in order to confirm that his DNA profile actually matches that of the alleged perpetrator.

THE PROBLEMS

The Post-Audit Bureau reviewed how rape and toxicology kits are handled, transported, and tested in Massachusetts, in order to determine how to expedite the discovery of evidence identifying a perpetrator, while reducing the physical and emotional distress experienced by the rape survivor. We determined that there are several points in the process described above at which the handling, transport, and analysis of these kits are delayed by factors that could be relatively easily eliminated. We also found that some of the delays in the process are due to insufficient staffing or infrastructure to perform a certain task (such as evidence transport or DNA analysis). We discuss below some of the problems and causes of delay we have found in this process.

Insufficient Availability of SANEs

network of DNA databases in NDIS, which contains DNA profiles from known individuals and unknown DNA profiles from other unsolved crimes. Any potential match is relayed to the searching law enforcement agency and allows that agency to either investigate the known individual or link related crimes. 42 U.S.C. § 14132.

⁴⁹ NDIS was authorized by the *DNA Identification Act of 1994*, codified at 42 U.S.C. §14132 (“DNA Act”). The DNA Act specifies the types of sources from which DNA profiles can be uploaded to NDIS, including profiles from convicted offenders, arrestees, detainees, crime scenes, known individuals (other than those who voluntarily submitted a sample solely for elimination purposes), unidentified human remains, and missing persons or their relatives. Participating laboratories must also meet quality assurance standards issued by the Director of the FBI. 42 U.S.C. § 14131.

⁵⁰ The BPD Crime Laboratory submits positive biological samples from the evidence for DNA analysis and comparison to CODIS, Local DNA Database (LDIS), and, if possible, the State and National DNA Databases (SDIS & NDID) -- provided the profile meets the CODIS criteria -- for any possible case-to-case or case-to-offender linkages. BPD October 15 Response.

⁵¹ EOPSS June 6 Response, at 11.

⁵² Some samples in the CODIS database, however, come from crime scenes, and the person whose DNA was collected at a crime scene may not have been identified. Although a match in this situation does not lead the police directly to a suspect, it may help link two crimes together and therefore allow law enforcement to focus their investigations on persons with contact with the victims of both crimes.

⁵³ EOPSS, *Adult Sexual Assault Law Enforcement Guidelines* (2009), at 35, available at <http://www.mass.gov/eopss/docs/eops/publications/2009-sa-final-6-9-09.pdf>.

One important problem, particularly affecting a rape survivor's experience immediately after the assault, is that there is insufficient availability of Massachusetts-certified or nationally-certified SANEs⁵⁴ in Massachusetts to have one available to assist every rape victim who may present at a Massachusetts hospital. In addition to offering experienced care to sexual assault victims, the participation of SANEs in a rape case can assist law enforcement; according to the SANE website, "Massachusetts DA's anecdotally report alleged perpetrators are more likely to plead guilty before trial when the prosecution presents evidence collected by SANEs, saving enormous prosecution costs."⁵⁵ The present distribution of SANEs by the DPH SANE Program assigns them to the hospitals with the highest emergency room volumes in a particular geographical area,⁵⁶ as well as to hospitals in different areas, in order to provide some level of SANE availability at all times in all regions of the state.⁵⁷ The hospitals where SANEs see sexual assault victims are referred to as "SANE sites" (see map attached as EXHIBIT 2). According to the Massachusetts SANE Program, 70% of the Massachusetts SAECKs are administered at the DPH-designated SANE sites. That percentage is even higher in Boston; 80% of kits processed by the Boston Crime Lab are collected at SANE sites.⁵⁸

Although the DPH SANE Program makes efforts to train health care providers at those hospitals that are not SANE sites, we understand that these providers do not receive the same training, and therefore may not perform the evidence collection process as confidently and effectively, as certified SANEs.⁵⁹ In addition, nationally-certified SANEs are not subject to the supervision and continuing education requirements imposed on Massachusetts SANEs.⁶⁰ We also understand that, at non-SANE hospitals, staff may have to ask the survivor to wait until medical and nursing

⁵⁴ The International Association of Forensic Nurses (IAFN), an organization based in Maryland, provides certification to SANEs, sometimes referred to as "SANE-A" certification. For simplicity, we will refer to SANE-A nurses as "nationally-certified" SANEs.

⁵⁵ EOHHS, *SANE Overview*, available at <http://www.mass.gov/eohhs/gov/departments/dph/programs/community-health/dvip/violence/sane/overview.html>

⁵⁶ Post-Audit Bureau staff telephone conversation with Massachusetts Hospital Association representative, August 27, 2013.

⁵⁷ Discussions of Post-Audit Bureau staff with DPH SANE Program, September 16, 2013. A SANE for each participating hospital or region is on call 24 hours a day, seven days a week, and reachable by pager. *Id.*

⁵⁸ Letter from Joan Meunier-Sham, RN, MS, Director, MA SANE Program, to the Committee, dated August 15, 2013.

⁵⁹ For example, a recent study of Massachusetts sexual assault cases found that SANEs identified significantly more genital injuries during kit collection than non-SANEs. Governor's Council Presentation, pp.18-19.

⁶⁰ Letter from Joan Meunier-Sham, RN, MS, Director, MA SANE Program, to Senator Cynthia Stone Creem, dated August 15, 2013.

staff with proper training in SAECK collection are available,⁶¹ creating another unnecessary source of delay and stress to the survivor.

Delays in Transport from the Hospital to the Lab

The next point in the process when delay may occur is after the SANE or other medical provider has collected the evidence for the SAECK and/or toxicology kit, and called the police department with jurisdiction to request that a police officer come to collect the kit(s) and evidence transport bag. It is not clear to the authors of this report whether most – or even many – hospitals have a protocol in place to ensure that the police collect kits in a timely fashion.⁶²

There are substantial differences in the amount of time it takes different police departments to pick up rape and toxicology kits from hospitals and deliver them to the crime lab. Although representatives of the crime lab of the Boston Police Department (“BPD”) testified at the June 11, 2013, SPAO hearing that the BPD generally transports rape kits to the Boston Crime Lab within three days,⁶³ the same speed does not characterize some other municipalities that use the services of the State Police Crime Lab system.⁶⁴ There are several reasons for delays in transport to the state lab:

- Massachusetts police departments generally use a two-stage transport process: first, a police officer transports the kit(s) and evidence transport bag(s) to a police station to log them into evidence; and, second, a police officer transports this

⁶¹ Oral testimony of hospital staff convened by the Massachusetts Hospital Association at the Committee’s public hearing, June 11, 2013.

⁶² Massachusetts hospitals have recently expressed a willingness to assign staff to check the secure refrigerator on a daily basis and, if needed, place calls to police departments reminding them to pick up any kits that remain in the refrigerator. Post-Audit Bureau staff telephone conversation with representative of Massachusetts Hospital Association, August 27, 2013. In addition, according to the SANE Program, “[a]ll MA SANES are trained that if they notice [SAECKs] in the refrigerator at a hospital, they should always call the appropriate police department and notify them that there is a kit still waiting to be transported.” DPH Response to the Committee, August 15, 2013, at 2. A SANE site’s designated SANE Liaison will also call the police department upon learning that a kit has not been promptly transported to the lab. *Id.*, at 1.

⁶³ Oral testimony of Donald Hayes, Director of the Boston Crime Lab, at Committee hearing on June 11, 2013. Of course, transport to the Boston lab is much less involved than to the state, because generally those kits will be coming from within the city, rather than from all over the state.

⁶⁴ Rape kits from victims assaulted in Boston go to the Boston Crime Laboratory. Rape kits from assaults in any other municipality go to one of the State Police satellite labs. See Transport Protocol, at 2. According to one study of Massachusetts rape cases, the median time from examination at the hospital to arrival at the crime lab was 8 days, but 24.3% of the kits arrived at the lab 19 days or more after examination. Governor’s Council Presentation, p.23.

evidence from the police station to the appropriate lab. This two-stage process may unnecessarily complicate and prolong the transport of the evidence.⁶⁵

- As for the first stage, because the police department with jurisdiction over the crime is responsible for transporting the evidence to the police station and then to the appropriate crime lab, the police officer who collects a kit from a hospital may need to travel there from a distant location in the state. According to the Chiefs' of Police Survey, however, kits almost always are picked up within four days.⁶⁶
- As for the second stage, transport from the police station to the crime lab may take days or weeks after the police department receives the evidence.⁶⁷ This situation may be especially acute where the crime lab to which the police officer must transport the kit is a considerable distance from the police station (map of the state lab locations at EXHIBIT 3).
- To further complicate the transfer of the kit(s) from the hospital to the lab, the State Police Crime Laboratory satellite labs require that the police make an appointment in advance to deliver the kits⁶⁸ and are open only limited hours or days.⁶⁹ We are informed that it therefore sometimes takes two to four weeks for a police department to arrange for delivery to a satellite lab.⁷⁰

A history of transportation delays

An analysis of kit transport times described in a December 2010 EOPSS internal memorandum showed that, although most rape kits are transported from the hospital to

⁶⁵ This two-stage process is not mandated, nor apparently contemplated, in the Transport Protocol, see *supra* p.6, n.14, which sets forth procedures for transport of sexual assault evidence by the police to the crime labs. The Transport Protocol provides only that, after the police officer picks up the evidence at the hospital, "[t]he police officer will then transport the kits and ETB to the appropriate crime lab." Transport Protocol, at 1.

⁶⁶ Chiefs' Policies Survey, answer to question 6.

⁶⁷ *Id.*, answer to question 7.

⁶⁸ EOPSS requires all non-drug evidence submitted to the crime lab to be entered into the LIMS system on the same business day it is received. *Massachusetts State Police Forensic Services Group, Laboratory Information Management System, Protocol and User Manual* (version 2.0) (2013), at 8. The state lab therefore requires police departments to make appointments to avoid the lab's being overwhelmed with more evidence at one time than its Evidence Control Unit staff can handle. Discussion of Post-Audit Bureau staff with EOPSS and State Crime Lab personnel, September 11, 2013.

⁶⁹ December 13, 2012, State Police Crime Lab Evidence Control Unit Schedules, received from EOPSS on September 23, 2013.

⁷⁰ Chiefs' Policies Survey, answers to questions 7 and 8.

the state lab in a reasonably timely fashion, some kits took an excessively long time to make their way to the lab.⁷¹ This analysis found that, although 86.2% of the kits studied

⁷¹ EOPSS December 3, 2010, Memo, at 1.

were picked up at the hospital within 1 day or less, in 4 cases that process took over 100 days. Even more concerning was the finding that only 50.9% of the kits were transported from the police department to the lab within 7 days or less; an additional 30% were transported by day 19; and in 31 cases, transport took more than 100 days.⁷² The author of the memorandum concluded that “[i]t would be beneficial to conduct a more thorough analysis of these outliers to determine if there are patterns or causes for the delayed drop-offs.”⁷³

This December 2010 analysis was an update to an earlier study by EOPSS to determine the length of time that it took adult PSCR sexual assault evidence collection kits (i.e., kits for which a PSCR was completed) to be transported from the hospital to the state lab. A July 8, 2010, EOPSS internal memorandum describing that earlier study concluded that, for the kits in its dataset, it took an average of two days for the police to pick up a kit at the hospital after being notified that the kit was completed. Total average time for the police to transport the kits to the state lab was 18 days.⁷⁴ However, six of the police departments studied had average transport times over 50 days, including four that had average transport times over 100 days.⁷⁵

All of these findings followed a 2009 study of ten specific police departments, from regions throughout the state, which found that while three of these departments averaged a seven-day turnaround between medical provider and state lab, the other seven departments had averages ranging from 23 to 99 days.⁷⁶

More recently, a February 2013 study conducted for EOPSS combining the two stages of transport found that, out of 535 sexual assault examinations, only 45% of the

⁷² *Id.*, at 3.

⁷³ *Id.*

⁷⁴ Memorandum dated July 8, 2010, from Mica Astion and Marc Germain to Ellen Frank and Diane DeAngelis, regarding PSCR Kit Tracking Analysis (“EOPSS July 8, 2010 Memo”), provided by EOPSS to the Committee on September 9, 2013, at 2.

⁷⁵ *Id.*, at 3.

⁷⁶ Memorandum dated July 15, 2009, from Sandra McCroom to Shelley Penman, Diane DeAngelis, and Keith O’Brien, regarding PSCR Kit Tracking Interviews, at 1, provided by EOPSS to the Committee on June 7, 2013.

kits arrived at the lab within 7 days of the hospital examination, only 69% arrived within 14 days, and 16% took more than 28 days.⁷⁷

Data received from a survey conducted at the Committee's request by the Massachusetts Chiefs of Police Association showed that virtually all police chiefs who responded indicated that it takes 4 days or less for their departments to pick up a kit from the hospital. Most departments were able to transport kits to the state crime lab within 9 days, but 11% of the departments reported that it took 10 to 15 days, and 8 chiefs out of 77 stated that it took over 15 days. Several respondents indicated that they had to wait two to four weeks for an appointment with the state crime lab to deliver a kit.⁷⁸

More concerning, the turnaround times for results from the state lab varied tremendously: one chief reported average lab turnaround time as two weeks; two reported it as between six months and one year; and one put it at *one to two years*.⁷⁹ Several respondents also indicated that they had a kit from a current case that had been at the lab for nine months or more.

Past efforts to address the problem

EOPSS provided the Committee with an undated letter, said by EOPSS to have been delivered in July 2008 from its then-Secretary to police departments across the state. This letter stated that it "serve[d] as a request for [police] assistance in ensuring the timely transportation of all ... SAEC kits and accompanying evidence ..." and emphasized the importance of "expediting transport of the evidence ... to prevent evidence degradation."⁸⁰

⁷⁷ "Ted Cross NIJ Study Transport Analysis February 2013," provided by EOPSS to the Committee on September 9, 2013. In its response to a draft version of this report, EOPSS maintains that the study "reflects substantial progress in reducing the time associated with the delivery and testing of [SAECKs]" and quotes Ted Cross's conclusion that "[s]hort time periods between examination, arrival at the lab, and reporting back to police were the norm." EOPSS also interprets the study as reflecting "improvement regarding the time from arrival of the kit at the Crime Lab to the generation of a DNA report to the submitting police department." EOPSS Response to the Committee, dated October 15, 2013 ("EOPSS October 15 Response"), at 1.

⁷⁸ Chiefs' Policies Survey, answer to question 7.

⁷⁹ Chiefs' Policies Survey, answers to question 11.

⁸⁰ Undated two-page letter from Kevin M. Burke, Secretary of Executive Office of Public Safety (as it was then called), with the salutation, "Dear Chief of Police" ("2008 Secretary's Letter"), provided by EOPSS to the Committee in response to its May 1, 2013, Request for Information. The letter also reminded the police chiefs of state policies and protocols regarding proper handling and transport of such evidence and stated that "any financial burden incurred by adhering to this transportation protocol may, at the discretion of the Chief of Police, be defrayed as an allowable expense using state community policing grant funds." *Id.*

At the time, this 2008 letter was merely the latest in a series of substantially-similar letters, sent every two years or so, from at least two prior secretaries under the previous Governor.⁸¹ But the Committee was informed at its public hearing that this particular letter represented a more-concerted effort, at that time, to address extensive delays in some departments and monitor compliance by police departments generally – delays that EOPSS had heard about from hospitals.⁸² And in fact, using different language than in the previous letters, the Secretary’s 2008 letter went on to state that

[b]eginning in July 2008, my office will be instituting a sexual assault evidence collection and toxicology kit tracking system to monitor police compliance in both the pick up and timely transport of kits to the State Police Crime Lab. [Those] not picked up at local hospitals within seven days of a hospital’s pick up request or delayed evidence transport to the crime lab will be documented by my office. If a department is flagged for not complying ... it will be notified and asked to improve its transport procedure.⁸³

At its June 11, 2013 hearing, the Committee heard testimony from EOPSS that they had been unable to successfully implement such a system. They had tried to match PSCR information – in particular, the hospitals’ kit identification numbers – to information in EOPSS’s LIMS database, but the effort proved too time- and labor-intensive and was ultimately abandoned. *See supra*, pp.17-18. Instead, EOPSS conducted a phone survey in 2009 to try to identify causes for delays, as well as the other steps discussed above.⁸⁴

Any lapse in collecting the kits from a hospital or delivering them to the lab will obviously contribute to the delay in obtaining the results of the DNA analysis.

Delays at the Crime Labs⁸⁵

⁸¹ The Committee received two letters from EOPSS that were sent by former Public Safety Secretaries Edward A. Flynn and Robert C. Haas, each addressed “Dear Chief of Police.” Although these letters were also undated, the Committee was told by a long-time EOPSS official in public testimony that such letters were sent to chiefs of police “every couple of years,” starting in 2003.

⁸² Oral testimony of EOPSS representatives at the Committee’s public hearing, June 11, 2013.

⁸³ 2008 Secretary’s Letter.

⁸⁴ Oral testimony of EOPSS representatives at the Committee’s public hearing, June 11, 2013.

⁸⁵ In response to a draft of this report, EOPSS states that the lab “is currently in the process of training staff in Lean Six Sigma, a program to eliminate waste and improve efficiency, utilizing funds from a

The next important source of delay is the fact that, once received at the crime lab, the rape kit must wait for appropriate lab personnel to examine and analyze it. There are two parts to, and two different crime lab departments involved in, this process. First, a criminalist examines the items transported to the laboratory to find evidence of blood, semen, saliva, or other bodily fluids.⁸⁶ At that point, the criminalist prepares a report, which must undergo peer review before it is released to the police department with jurisdiction and the appropriate district attorney's office. In order for DNA analysis to be done, either the police or DA must provide the lab with an activation form requesting DNA analysis. Once that form is received, the samples are sent to lab's forensic biology department to be assigned to a DNA analyst. After performing the DNA analysis, the analyst will then need to prepare a report for transmission to the police and DA.⁸⁷

Unfortunately, it can take weeks or even months for the crime lab to issue DNA analysis results from a sexual assault. According to EOPSS, the Criminalistics Unit at the state lab seeks to examine a reported kit within 60 days. After that is accomplished, the lab will assign the case to the next available DNA analyst, which can take one to three months. Delays in receipt of documentation can extend this time frame.⁸⁸

EOPSS has indicated that the state lab's goal for conducting DNA analysis on a rape kit is 90 days after assignment to an analyst,⁸⁹ and indeed the lab reports that it is currently *averaging* 60 days.⁹⁰ As for toxicology testing, EOPSS has indicated that, "[d]ue to the large scope of testing the toxicology laboratory offers," that process averages approximately 12 weeks.⁹¹

The Boston Police Department reports that while it has no "formal" goal for processing rape kits, it strives to complete initial processing and deliver samples to the

federal grant. This program will be implemented first in the DNA unit, then the Evidence Control Unit, and then in other disciplines in the lab." EOPSS October 15 Response, at 7.

⁸⁶ EOPSS states that it is necessary for a criminalist to review evidence before DNA analysis, because this protocol "eliminates the potential for overloading the DNA lab with evidence that does not need to be analyzed (which improves turnaround times). It also helps to ensure that DNA samples are more likely to be CODIS eligible." EOPSS October 15 Response, at 7.

⁸⁷ Discussion of Post-Audit Bureau staff with EOPSS and State Police Crime Lab personnel, September 11, 2013.

⁸⁸ If the defendant requests an outside expert to observe the testing, that request may extend the time frame to four to twelve months. EOPSS June 6 Response, at 8.

⁸⁹ Testimony of EOPSS Secretary Andrea J. Cabral at June 11, 2013 hearing; EOPSS June 6 Response, at 8.

⁹⁰ EOPSS July 31 Response, at 3.

⁹¹ EOPSS July 31 Response, at 2.

lab's DNA Section within two weeks, and then to produce DNA results in another 8-12 weeks. The BPD's "ultimate" goal is to cut the latter period down to 4-6 weeks, meaning results would be available no more than 8 weeks after submission to the lab. However, staffing concerns in 2012 have hampered the lab's ability to meet its targets and resulted in an "unprecedented" backlog and a current turnaround time of 20-23 weeks in the DNA Section.⁹²

Delays may also occur at the time of DNA analysis if there is evidence that the rape survivor had consensual sex around the time of the sexual assault with someone other than the perpetrator. In order to determine which DNA belongs to the perpetrator, police will attempt to obtain a DNA sample from the consensual partner so as to eliminate that person's DNA. In addition, if counsel for the alleged perpetrator requests to have their own expert conduct DNA testing of the evidence and the biological sample is small enough that it will be totally consumed by the crime lab's DNA analysis, arrangements must be made to deal with this problem, delaying the crime lab's DNA testing and results even more.⁹³

The Police Chiefs' survey, however, included two respondents out of 77 who reported lab turnaround time as between six months and one year, and one who put it at *one to two years*.⁹⁴ Several respondents also said that they had a kit from a current case that had been at the lab, awaiting analysis, for nine months or more.⁹⁵

Although data supplied by EOPSS indicates that, between January and June of 2013, the State Crime Lab's backlog of unprocessed SAECKs has gone steadily down (from 230 to 144), since October 2012 the backlog of unprocessed toxicology kits has gone steadily up (from 57 to 151).⁹⁶ In addition, EOPSS data showed that, at the time of the June 11th hearing, there were 424 kits "awaiting clearance (i.e., exhaustive authorizations from outside agencies, standards required, etc.)," "60 cases pending assignment in the Criminalistics Unit," "53 pending in the DNA Unit," and "65 cases in

⁹² Response of the Boston Police Department to Information Request of the Post Audit Committee, dated October 4, 2013 ("BPD October 4 Response"), at 1. This response also states that "priority" cases can still be completed, according to BPD, within two weeks of their arrival at the lab. *Id.*

⁹³ According to EOPSS, "the majority of the backlog is due to administrative needs being met for cases by external agencies (e.g., exhaustive authorizations, submission of appropriate standards)." EOPSS June 6 Response, at 9. "Exhaustive authorizations" apparently refers to permission to "exhaust" the sample during testing. EOPSS July 31 Response, at 3.

⁹⁴ EOPSS maintains that these two "exceptions do not detract from the progress that has been made to date; rather, they highlight the work left to be done." EOPSS October 15 Response.

⁹⁵ Chiefs' Policies Survey, answers to question 11 &12.

⁹⁶ EOPSS July 31 Response, at 2. EOPSS disputes the characterization of the number of unprocessed kits as a "backlog." *Id.*

the process of inquiry by the Criminalistics Unit to gather more information, (e.g., police report).⁹⁷

Inadequate Tracking of Rape Kits

The amount of delay involved at each stage of this process from hospital evidence collection to lab results can vary considerably, both among police departments and labs and across cases, depending in part upon the demands placed on law enforcement in a particular locale at a particular moment in time. Determination of the points in the process where delays frequently occur and the entities and personnel responsible, however, could be achieved by use of a centralized database system that follows a SAECK by its identifying kit number from the moment of its distribution by EOPSS until DNA results are obtained and disseminated. Unfortunately, such a system does not currently exist in Massachusetts. Some progress has been made on the tracking front by the addition in May 2007 of five additional variables to the PSCR form to assist with kit tracking.⁹⁸ However, two studies conducted for EOPSS showed significant discrepancies between the kit numbers from the PSCRs and the kit numbers in the crime lab database.⁹⁹

⁹⁷ EOPSS July 31 Response, at 4.

⁹⁸ EOPSS July 8, 2010 Memorandum, at 1.

⁹⁹ *Id.*, p.2; EOPSS December 8, 2010 Memo, at 1.

FINDINGS AND RECOMMENDATIONS

FINDING 1:

There is no unified database system in Massachusetts that tracks rape kits from the moment they are purchased by EOPSS through the time that they are processed at the crime laboratories. Although EOPSS keeps track of the kit numbers of the adult rape kits that it sends to each hospital¹⁰⁰ and the State Police Crime Lab has a laboratory information management system (LIMS) that keeps track of information about a kit once it arrives at the lab, there is currently no single state-wide electronic system that tracks to what hospital a kit is delivered, how and when the kit is completed, when the kit is picked up by the police from the hospital, when it is delivered by the police to the lab, and how the kit progresses through the stages of storage, handling, and analysis at the lab.¹⁰¹ This problem is highlighted by the two EOPSS studies discussed above, see *supra* pp.17-18, which found discrepancies in the numbers of sexual assault kits between the Provider Sexual Crime Report and state crime lab datasets that EOPSS's Office of Grants and Research examined.¹⁰²

A unified tracking system using the rape kit number can help law enforcement focus on where delays are occurring. An example of how this type of system has been used elsewhere can be found in West Virginia. West Virginia has instituted a secure tracking system for evidence from sex crimes. This program, known as "SAKiTA," gives each sex crime kit a tracking number when the kit is sent to a hospital. SAKiTA allows SANEs and other medical providers to submit a form electronically or by mail to the crime lab in order to get feedback as to what evidence was found in the kit when it was examined at the crime lab. According to the U.S. Office for Victims of Crime, this system will help the West Virginia State Police Forensic Laboratory determine the location of sex crime kits once they have been sent to the laboratory from hospitals, as well as the status of kits once received at the lab. It will also allow comparison of results from kits collected by SANEs and non-SANEs.¹⁰³

¹⁰⁰ Because the kit number for pediatric rapes is sealed inside the kit and therefore not known until the kit is used, EOPSS is not able to maintain a list of pediatric kits. EOPSS Response to Committee, October 18, 2013.

¹⁰¹ EOPSS June 6 Response, at 3.

¹⁰² Draft Memorandum dated December 3, 2010 from Alex Wagner to Marc Germain, provided by EOPSS to the Post-Audit Bureau on September 9, 2013; EOPSS July 8, 2010 Memorandum, at 2.

¹⁰³ Office of Justice Programs, *SART Toolkit: Resources for Sexual Assault Response Teams*, available at <http://ovc.ncjrs.gov/sartkit/practices/crime-sexual-wv.html>.

RECOMMENDATIONS:

One central agency, most appropriately EOPSS, should create and maintain a database system that tracks the distribution, use, handling, transport, storage, and analysis of every SAECK by rape kit number from the time the kit is distributed by EOPSS until the kit is no longer necessary for law enforcement or when the statute of limitations has expired for prosecution of a sexual assault. Each kit should be labeled with a bar-coded label such as those currently used for the state lab's LIMS system. Over three years ago, the authors of the July 8, 2010 EOPSS internal memorandum, discussed above, see *supra*, p.18, came to the same conclusion. They recommended that, “[u]sing existing EOPSS resources, [EOPSS should] consider implementing a web-based notification system for PSCR kits, thereby creating a centralized database of all tracking information.”¹⁰⁴

We concur with the authors of that EOPSS memorandum, though our own recommendations, directly below, go further than that memorandum, both in scope and in detail:

- This tracking system should present data in the form of an electronic spreadsheet including, for each kit number, the following information, which would be entered in real time at each step of the process:¹⁰⁵
 - Current location of the kit
 - When data on the kit last updated
 - Hospital to which the kit was distributed by EOPSS
 - Date of distribution by EOPSS
 - Purpose for which the kit was used (e.g., evidence collection from rape survivor, demonstration or training, disposed of because not used before expiration date, transferred to another hospital)
 - If transferred to another hospital, the name of that hospital
 - Date and time the kit was used, disposed of, or transferred
 - Date and time when the kit was put into refrigerated storage at the hospital
 - Date and time when contact (in person or by telephone) was made by the hospital with the police, requesting pick-up of the kit
 - The police station or department contacted by hospital
 - Name (or badge number) of police staff person taking the call
 - Date and time when police officer picked up the kit

¹⁰⁴ EOPSS July 8, 2010 Memo, at 2. Moreover, although only 65% of the police chiefs who responded to the Chiefs' Policies Survey replied that they had a tracking system for rape kits, 75% were in favor of a statewide tracking system that would interact with the state crime lab. Chiefs' Policies Survey, answers to questions 9 and 18.

¹⁰⁵ In response to this recommendation, EOPSS indicates that “we do not currently have the existing resources necessary to construct this web based system ... [S]uch a development project could run in excess of \$1 million, and take 12-18 months to gather requirements, develop, test, train and deploy statewide.” EOPSS October 15 Response, at 4.

- Name (or badge number) of the police officer picking up the kit
 - Date and time when the kit was logged into evidence at the police station
 - Location of police station
 - Date and time when the kit left the police station to be transported to the crime lab
 - Name (or badge number) of the police officer transporting the kit to the lab
 - Location of crime lab
 - Date and time when kit was received and logged in by crime lab
 - Date when kit was assigned to a criminalist
 - Name (or employee number) of the criminalist
 - Date of criminalist report
 - Date the criminalist report was provided to police department and district attorney's office
 - Police department and district attorney's office to which the criminalist report was provided
 - Date that an activation form for DNA analysis was received at the crime lab (as appropriate)
 - Date when samples were provided to a DNA analyst
 - Name (or employee number) of the DNA analyst
 - Results of DNA analysis
 - Date of DNA analyst report
 - Date the DNA analyst report was provided to police department and district attorney's office
 - Police department and district attorney's office to which the DNA analyst report was provided
 - Date and time when kit was returned to police station after analysis
 - Location of police station
 - Date that the kit was used for purposes other than evidence collection (if applicable)
 - Information regarding whether the DNA profile obtained from the kit samples matched any profile in local, state, or national databases
- The Committee recognizes the complexities of designing and maintaining such a system. Nevertheless, the Committee believes that it would provide a valuable tool for all participants in the process of using, transporting, storing, and analyzing rape and toxicology kits.¹⁰⁶ Ideally, this system would be used by properly-vetted individuals at the hospitals, police departments, and laboratories, who would enter the data in real time at each stage in the kit's usage, transport, and analysis. Alternatively, the information could be transmitted to the oversight agency by e-mail.
 - This centralized database could be queried, using the kit identification number, to determine (1) at any given moment, the step in the process that a particular kit has reached; and (2) after the fact, at what point(s) delays occurred. The data on

¹⁰⁶ Although the State Police Crime Lab has its Laboratory Management Information System ("LIMS"), these systems are accessible only to crime lab personnel.

this system could be analyzed annually to determine where delays are regularly occurring in order to address them.

- To the extent that the Boston Crime Lab is currently purchasing and customizing a LIMS system for its own use, the City's information technology personnel should also examine the possibility of including the data fields and capabilities described above in the system currently under development, as well as the possibility of linking its system to the EOPSS system, to create a truly comprehensive statewide system.
- If installing or upgrading the current state (and anticipated Boston) LIMS system to provide the above information appears either too expensive, too technologically difficult, or too likely to lead to questions about the chain of custody, a less costly alternative would be a system of e-mail reminders such as the one described below:¹⁰⁷
 - Whenever a rape kit is completed, a designated person at the hospital (e.g., an administrative staff member on the particular shift) would, within one hour, send an e-mail notification to the designated contact person at the police department with jurisdiction, with a copy to the designated contact person at EOPSS, in addition to calling a police station for pick-up or transferring the kit to a police officer at the hospital.
 - This e-mail notification of a kit completion, which could be based on a uniform template and/or be accomplished by e-mailing the PSCR, should contain the unique sexual assault evidence kit identification number, as well as the time the kit collection was completed.
 - In order for these e-mail notifications to reach the correct recipients, EOPSS would need to prepare and distribute to every hospital at which SAECKs are performed an electronic list of e-mail addresses, updated as necessary, for the designated contacts at every police department in the Commonwealth.
 - After a certain amount of time, e.g., two weeks, EOPSS would check with the lab to determine whether the kit had yet arrived.
 - There could be reminders set up electronically to prompt EOPSS when it is time to check on each kit, or EOPSS could, on a certain day each week, check on the kits that were the subject of e-mails that came in the previous week.
 - If the crime lab reports that it has not yet received a kit, EOPSS will follow up with both the hospital and the police department to try to track down the location of the kit and its status.
 - This procedure would be repeated as necessary, until the kit arrives at the lab and is time-stamped as received there.

¹⁰⁷ EOPSS has indicated to the Committee that it "does not support the use of email as a substitute for a tracking system ... because (i) multiple email systems would be involved, giving rise to logistic and security concerns; and (ii) timely receipt of email is unreliable." EOPSS October 15 Response, at 4. The Committee finds EOPSS's rejection of both of the Committee's proposed tracking systems discouraging.

- At the end of each year, EOPSS could create a spreadsheet concerning all kits completed, with the dates and times of each kit's completion at the hospital and its arrival at the crime lab.
 - These data could then be analyzed to assess where the delays are occurring, and appropriate follow-up could be done to address problem areas in the transport process.
 - If a kit arrives at the lab without prior e-mail notification from the hospital, EOPSS would send the hospital's designated staff member (and chief of staff) a reminder, explaining that the hospital needs to follow protocol by sending an e-mail notification in all cases.
 - This e-mail notification system should serve to improve compliance, until it approaches 100%.¹⁰⁸
- The Committee by no means intends to suggest that the proposed approaches are the only reasonable ways to achieve its goal of a statewide tracking system for rape and toxicology kits. Other states have implemented such systems,¹⁰⁹ and we can benefit from exploring those as part of a collaborative effort involving all relevant stakeholders. However, we caution that whatever approach is taken, confidentiality of victims and privacy of all data must remain paramount objectives.
 - EOPSS and the City of Boston should continue to make efforts to access all federal and private sources of grant money (in particular, monies specifically earmarked to help victims of sexual assault and/or to decrease DNA backlogs at crime labs) in order to increase the number of criminalists and DNA analysts at the state and Boston crime labs and to reduce the backlog of cases at the labs.

FINDING 2:

Provider Sexual Crime Reports do not currently exist in a format -- and are not structured or used -- to maximize their usefulness.

RECOMMENDATIONS:

PSCR's should be made available for on-line completion by hospital personnel or SANEs. The completion and online submission of the PSCR, including identification of the location of the offense, could serve both as a notification to EOPSS and the crime labs, as well as a request to the appropriate police department for pick-up of kits and

¹⁰⁸ This procedure, of course, would not solve the problem of a kit for which no e-mail is sent *and* which never arrives at the lab, since EOPSS would never know that the kit had been completed. However, adherence to this system would diminish, if not eliminate, the likelihood of such an event. Nor would this procedure address the instances in which the crime was committed -- or the kit collection performed -- out of state. Additional procedures would have to be devised to deal with those situations.

¹⁰⁹ Jane Doe, Inc.'s Response to the Committee, dated October 15, 2013

evidence transport bags.¹¹⁰ It could also improve completion rates of PSCR's to virtually 100% through electronic reminders, as described above.¹¹¹

FINDING 3:

Transport of sexual assault evidence collection kits and toxicology kits from hospitals to crime labs is delayed, at the present time, by the requirement that a police officer from the police department with jurisdiction must pick up the kits from the hospital and then, after logging them into evidence, transport them to the crime lab. This procedure is not the only feasible way, or even the most efficient way, to transport DNA evidence. In 2009, EOPSS had an intern conduct a phone survey of representatives of law enforcement and/or crime laboratories in other states to determine how their tracking and transport systems for rape kits operated. The survey yielded the following information:

- In Rhode Island, for the most part, police do not take custody of a rape kit; the medical facility sends the kit directly to the crime lab using a private courier service chosen by the hospital.¹¹² The laboratories provide the hospital and police with an Evidence Exam Request form. Couriers, who are bonded, are required to sign that form, the rape kit, and any other chain of custody forms.¹¹³
- In Virginia, the state police generally pick up the kits when contacted by a medical provider and bring them to the state police or the local police department with jurisdiction, where the kit is assigned a case number and case agent, who "retains sole custody" of the evidence. The police print labels for the kit and its contents, which are entered into the computer system for tracking purposes and

¹¹⁰ The Massachusetts Hospital Association expressed its strong support for an on-line system for submitting PSCRs. MHA suggests, in addition, that a small working group of health care providers and state officials work on making the report consistent with other electronic health record (EHR) efforts, so that providers can use existing electronic records to automatically populate the PSCR. This would enhance efficiency and reduce the time required.

EOPSS expresses its support for the concept of moving to an electronic PSCR system, but cautions that "the complexities of developing such a system are significant," including necessary equipment being supplied to the 77 hospitals that administer forensic exams so that it is available for the provider conducting an exam, and revisions to existing trainings and protocols. EOPSS October 15 Response, at 4.

¹¹¹ Currently, PSCRs are completed by SANEs whenever they perform kit collection. Although completion of the PSCR is not as consistently done by other medical providers, their compliance has improved over the last decade. Discussions between Post-Audit Bureau staff and the DPH SANE Program, September 16, 2013.

¹¹² Interview by EOPSS with representatives of the Rhode Island State Police and Rhode Island Department of Health Laboratories, in Attachment D to EOPSS July 31 Response.

¹¹³ *Id.*

apparently used at the laboratory on its own computer system, to keep track of the movements of the kit. The kit label number and the kit's movements are also recorded on paper. Virginia police use courier shipping (generally UPS) when hand delivery is not efficient for geographical reasons. Courier shipping was described as involving more paperwork than hand delivery, but the state police representative interviewed was aware of "very few, if any, notable problems associated with the use of courier service."¹¹⁴

- In order to expedite DNA analysis, the California Department of Justice currently has a pilot program operating in seven counties. In this program, three swabs of evidence are taken from the victim's body, sealed, and sent overnight by priority mail to the crime lab in Richmond.¹¹⁵

According to Dr. Kimberly A. Lonsway, Research Director at the National Center for Women and Policing, DNA evidence may be sent overnight via priority mail, provided it is not sent over a weekend.¹¹⁶ Naturally, documentation as to the chain of custody will be required. FBI guidelines allow evidence to be sent via USPS Registered Mail, FedEx, or UPS, as long as the method of shipping and tracking numbers are recorded on the chain of custody form.¹¹⁷

Moreover, the Code of Massachusetts Regulations explicitly permits DNA evidence to be sent by mail or delivery service.¹¹⁸ There thus seems to be no regulatory bar in Massachusetts to the submission of evidence to the state lab by mail or a courier or delivery service in a manner similar to that in the California pilot program discussed above.¹¹⁹

¹¹⁴ Interview by EOPSS with representative of Virginia State Police, Attachment D to EOPSS July 31 Response.

¹¹⁵ Julie Johnson, *New System Provides Faster Results for DNA Tests*, THE PRESS DEMOCRAT, August 27, 2013, available at <http://www.pressdemocrat.com/article/20130827/community/130829614>.

¹¹⁶ Kimberly Lonsway, *Successfully Investigating Acquaintance Sexual Assault: A National Training Manual* (May 2001), at Appendix A, available at <http://www.mincava.umn.edu/documents/acquaintsa/participant/dnaevidence.html#idp37559664>.

¹¹⁷ Kim Wagner, ed., *Handbook of Forensic Evidence*, Federal Bureau of Investigation, Laboratory Division, (revised 2007), at 12.

¹¹⁸ "Those permitted by law or approved and trained by the Director [of the State Police Crime Laboratory], or their designees, to collect DNA samples must submit all DNA samples to the Crime Laboratory in person or via delivery service such as U.S. Mail." 515 CMR 1.03(2)(2013) (emphasis added).

¹¹⁹ The Massachusetts State Police Crime Lab's own evidence handling manual provides that "[e]vidence may be submitted [to the lab] ... [v]ia delivery service (with the exception of drugs)." *Mass. State Police Forensic Evidence Services Group Evidence Handling and Submission Manual* (version 9.0, 2013), § 2.3.1, at 9.

Moreover, the 2008 Secretary's letter to Chiefs of Police, see *supra* p.20, states: "[Y]ou will be hearing more about a federal grant recently awarded to the [state crime lab] to address the backlog of

RECOMMENDATIONS:

- The Legislature, EOPSS, DPH, and representatives of the State Police, municipal police, and other stakeholders should explore the idea of a system using private couriers, mail, or delivery services, rather than police officers, to transport rape and toxicology kits and evidence transfer bags to the state lab. Since such services reliably deliver documents and other important materials for businesses and government, they should provide adequately reliable delivery for the kits and, with appropriate procedures in place, properly preserve the chain of custody. Eliminating the need for police officer transport would free up police officers for more core types of law enforcement duties. Moreover, using a courier service chosen by the hospital, as in Rhode Island, could allow the hospitals to pay for the service as a form of community benefits. The Committee is aware,

DNA evidence and for a pilot project that would allow kit transportation to the crime laboratories by overnight mail. We will keep you informed of that pilot project's progress." To the Committee's knowledge, no such pilot program was ever instituted.

however, that the criminal defense bar and EOPSS have some concerns about this proposal.¹²⁰ The Committee would therefore recommend additional legal analysis prior to implementation of any such system.

- The Committee also recommends that consideration be given to other delivery methods, including having State Police, civilian police staff, or a cadre of state employees dedicated to this function make the deliveries.
- In addition, the Legislature, EOPSS, DPH, and representatives of the State Police, municipal police, and other stakeholders should change state law and/or state and/or local procedures to allow (or mandate) that rape and toxicology kits be transported *directly* from hospitals to the crime labs, whether transport is accomplished by police officer, courier service, or mail. That change would eliminate what appears to be a superfluous step in the process (and a possible source of delay), namely the transport of kits to the police station to log them into evidence before delivery to the crime lab. This intermediate step seems especially unnecessary for so-called “unreported kits,” for which the police will not have a related criminal investigation.¹²¹
- Alternatively, to the extent that the appropriate crime lab (or satellite lab) is not open every weekday during business hours, police departments should plan hospital pick-ups for a day on which the nearest state lab is open. The police can, in that way, transport the kits from hospital to lab on the same day, with only a brief stop at the police station to log the items into evidence.

FINDING 4:

¹²⁰ EOPSS has indicated to the Committee that “EOPSS and its member agencies have serious concerns about (i) ensuring the integrity of the chain of custody of evidence if alternative couriers are used, and (ii) the potential need for courier testimony in court.” EOPSS, however, also stated that, “despite these concerns, EOPSS defers to ... the Massachusetts District Attorney’s Association and the Committee on Public Counsel Services about the adequacy and appropriateness of utilizing alternative couriers to transport evidence.” EOPSS October 15 Response, at 5.

¹²¹“EOPSS has expressed serious concerns about this recommendation. “Police departments should be made aware of sexual assault incidents that occur in their jurisdiction, regardless of whether the victim reports the crime. This is critical information ... in particular, in cases where a serial rapist may be conducting such crimes in bordering communities.” EOPSS October 15 Response, at 5. In response to that concern, the Committee recommends that, if kits are transported directly from the hospital to the lab, hospital personnel notify the police department with jurisdiction that the kit collection was done and provide the kit number to the lab (without disclosing the identity of the victim if she has not yet reported the crime to police).

State Police satellite crime laboratory evidence-intake personnel are not available a sufficient number of hours to receive rape and toxicology kits in a reasonably prompt fashion from police departments.

RECOMMENDATIONS:

- The State Police Crime Lab should staff its satellite labs so as to allow police officers (or other transport services, as discussed above) to deliver rape and toxicology kits within one to two business days after the kit collection at the hospital. To the extent that the restricted evidence-acceptance hours of satellite labs are a result of limited personnel, the labs should give adequate evidence-intake staffing a higher priority in order to allow evidence delivery to each satellite lab during normal business hours on weekdays.¹²²
- EOPSS should continue to make every effort to access all federal and private sources of grant money in order to increase personnel and business hours at satellite lab.

FINDING 5:

Massachusetts crime labs that process evidence from sexual assaults can take weeks or months to produce a DNA profile that will help identify the perpetrator. The California pilot program described above, see *supra* p.30, includes new lab technology that reduces the time required to extract DNA from a swab to six hours, compared to the two days required using traditional methods. Because of the expedited procedure, the average turnaround time for obtaining DNA results is reduced to fifteen business days. With the Rapid DNA Service (RADS), a single individual can analyze up to 20 cases simultaneously.¹²³ Although traditional rape kit evidence is also gathered in these cases, its use in further analysis was required in only 9% of cases where RADS was

¹²² In response to this recommendation, EOPSS states that “the Crime Lab has been able to significantly increase the staff assigned to the Evidence Control Unit. At present, most police departments obtain same day appointments or an appointment within three days to deliver evidence.” This claim is inconsistent with the survey information obtained from the Massachusetts Chiefs of Police Association. See *supra*, p.19. EOPSS has also indicated that “the appointment system will remain in place for the convenience of the submitting agency ... to ensure that multiple agencies do not arrive all at the same time and cause processing delays.” EOPSS October 15 Response, at 6. It further states, elsewhere, that this recommendation “would entail hiring additional personnel in the Evidence Unit ... If the laboratory were to add another 2-3 technicians at approximately \$35,000-\$40,000 per technician this would allow for more hours. However, the satellite locations do not typically receive enough evidence on a daily basis to require this ... 5 day/week schedule. With the recent addition of resources in the [ECU] the laboratory is now better prepared to handle the overflow and the rush submission requests as needed.” EOPSS October 15 Response to Committee Questions, at 6-7.

¹²³ Eva Steinberger, et al., *No Rape Case Goes Unanalyzed: A Rapid Approach to Sexual Assault Evidence*, THE POLICE CHIEF 80 (September 2013), 52-54, available at http://www.policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=3072&issue_id=92013.

used.¹²⁴ The program has been a tremendous success; the assistant director of the California DOJ lab that piloted this procedure has reportedly stated that “[c]ounties don’t have an (evidence) backlog for cases where assaults have occurred once the Rapid DNA Service was established.”¹²⁵

RECOMMENDATIONS:

- The State Police Crime Lab and the Boston Crime Lab should investigate the California DNA pilot program to see if it can be used in Massachusetts to expedite the receipt of results of DNA analysis from sexual assault cases.¹²⁶
- EOPSS and state budget planners should further consider the proposal to consolidate the State Police Crime Lab’s central operations under one roof, while still maintaining the satellite labs. (The lab is currently broken up into units, which are currently housed in two separate facilities, several miles apart.) This idea holds out the promise of improved efficiency and management, as well as greater storage space.¹²⁷

FINDING 6:

Not enough hospitals in Massachusetts are certified as SANE sites. This results in areas of the state where a victim who seek medical examination and treatment at a hospital shortly after a sexual assault is unlikely to have evidence collection performed by a SANE.¹²⁸ (See map attached as EXHIBIT 2.) Rape crisis center advocates and the DPH SANE Program maintain that certified SANEs generally perform the sexual assault evidence collection more quickly, and more comfortably for a sexual assault survivor, than do non-SANEs, which probably makes a survivor more likely to cooperate with all of the evidence collection steps. The more evidence that is collected for the kit, the more likely it is that a perpetrator will be identified (if a stranger) or that there will be confirmation (or exoneration) of an alleged suspect.

¹²⁴ *Id.*

¹²⁵ Julie Johnson, *New System Provides Faster Results for DNA Tests*, THE PRESS DEMOCRAT, August 27, 2013, available at <http://www.pressdemocrat.com/article/20130827/community/130829614>.

¹²⁶ In response to this recommendation, EOPSS states that it “will certainly investigate [the California program] further,” as part of its ongoing interest in “ways to improve.” EOPSS October 15 Response, at 7.

¹²⁷ EOPSS “support[s] the centralization of all our testing functions to one location, but cautions that, “[a]bsent a design study with a specific site in mind, it is not possible to provide a defensible estimate of such a cost.” EOPSS’s October 15 Response, at 7.

¹²⁸ The 27 current SANE hospitals represent less than 20% of the total number of Massachusetts hospitals. Although not all hospitals would necessarily be appropriate SANE facilities, expansion of the program into more hospitals would offer reasonable access to more victims.

In addition, Massachusetts-certified SANEs work for the DPH MA SANE program, increasing the likelihood of better quality control in the evidence collection process. Massachusetts-certified SANEs are supervised by Regional Coordinators and have continuing education requirements.¹²⁹ Finally, both Massachusetts- and nationally-certified SANEs have a great deal of experience understanding the trauma that a rape survivor experiences and are, therefore, more likely than emergency room staff to offer the kind of support that the survivor needs.

RECOMMENDATIONS:

DPH should make it a priority to increase SANE services in areas of the state with fewer SANE sites, and to allow an additional SANE to be on duty during certain shifts in regions where more than one pager notice is likely to occur during those shifts.¹³⁰

- In addition, DPH should continue to work with EOPSS to make every effort to access all federal and private sources of grant money to increase the number of SANEs available to Massachusetts hospitals.
- DPH should require all nationally-certified SANEs operating in Massachusetts to comply with the coordination and continuing education requirements of the DPH SANE program.
- The SANE program should make available, both in hard-copy and online, a list of “best practices” for the treatment of rape survivors, in particular for the collection of evidence for the SAECK.
- The SANE program should annually monitor nationally-certified SANEs and non-SANEs performing SAECK collection to determine if the providers are adhering to the best practices.¹³¹

¹²⁹ Discussions of Post-Audit Bureau staff with DPH SANE Program representative, September 16, 2013; see also www.mass.gov/dph/sane.

¹³⁰ DPH reports that it is engaged in a multi-year strategic-planning process, “focused on stabilizing and expanding services across the Commonwealth [and] exploring ways to diversify funding and to create partnerships to create program sustainability, while also maintain[ing] regulatory oversight of MA SANE practice.” One way in which the SANE program hopes to expand its capacity for handling sexual-assault cases is through a tele-nursing pilot program. DPH Response to the Committee, dated October 17, 2013 (“DPH’s October 17 Response”).

¹³¹ DPH notes that the SANE program “does not currently have the authority or the resources to provide quality monitoring of nationally trained SANEs ... [T]his would require statutory changes and itemized requirements that would constitute a major shift in Program responsibility to becoming a licensure program. While it is something that could be explored and possibly implemented, any movement in this direction would require legislation, resources and significant additional funding and should be considered judiciously.” DPH’s October 17 Response.

FINDING 7:

Some hospitals do not consistently contact rape crisis centers when a person comes to the hospital alleging a sexual assault.¹³² The presence of a rape crisis center medical advocate during a victim's initial post-assault hospital visit offers important support to the victim and can help to explain the evidence-gathering and criminal-justice processes and deal with both emotional and physical reaction to the assault. Providing the victim with the support and guidance of rape crisis advocates will likely diminish the victim's anxiety and stress about the experience, both during the hospital visit and later. The advocate can also counsel the victim as she considers whether to report the crime and provide her with a referral both to counseling during the emotional and physical recovery from the assault and to sources for advice and assistance during any civil or criminal proceedings.

RECOMMENDATIONS:

- Where feasible, hospitals outside of Boston should offer a program similar to the "one-call" system offered in Boston, in which the Boston Area Rape Crisis Center ("BARCC") and the SANE program are simultaneously contacted by pager when a person comes into the hospital alleging a rape or assault.¹³³
- EOPSS and/or DPH should continue to work to access all available sources of contract funding and/or grant funding to support rape crisis centers' work.

FINDING 8:

No system currently exists to notify a rape survivor who has not reported the crime to the police that the crime lab is about to send the "unreported" rape kit back to the police department with jurisdiction, which generally occurs six months after the kit collection was done.

RECOMMENDATIONS:

- Hospitals should keep a spreadsheet, properly secured, that includes the patient name, medical record number, and rape kit number for each patient from whom a rape kit or toxicology kit was collected. These lists should be maintained for sufficient time to address statute of limitation concerns.

¹³² Discussions of staff with Jane Doe, Inc., and BARCC, August 21 and September 11, 2013, respectively.

¹³³ The Committee recognizes that a system exactly like Boston's may not work everywhere, but recommends that a multi-disciplinary team – one including the SANE program, hospitals, and rape-crisis centers – review and assess options, at either a statewide or a regional level. At the very least, such work should result in protocols and policies to improve communications and collaboration.

- Several weeks before an unreported kit is going to be sent back to the police department with jurisdiction, the crime lab that is storing the kit should notify the hospital where the kit was collected. The hospital should arrange for a social worker or victim advocate to notify the victim about the imminent return of the kit to the police department.¹³⁴ To the extent that the victim fails to respond to the hospital contact before the six-month deadline, or has not previously requested that the kit be kept at the lab beyond the normal six months, the lab would then be free to return the kit to the police department.

CONCLUSION

The Senate Committee on Post-Audit and Oversight has examined the path of sexual assault evidence collection kits and toxicology kits from time they are manufactured and distributed to hospitals and children’s advocacy centers until their analysis at the crime laboratories. The Committee has concluded that, although lab backlogs may have been reduced over the past several years, the process of gathering evidence from rape victims, transporting that evidence to crime laboratories, and analyzing that evidence could use some improvements.

Massachusetts has been a leader in recognizing the importance of proper treatment of victims and collection of evidence in cases of rape and sexual assault. We can be proud, for example, of having the only centralized statewide system for providing SANEs to care for and gather evidence from sexual assault victims, providing knowledgeable support and experienced, sensitive evidence-gathering.

More must be done, however, for the Commonwealth to remain at the forefront:

- We should expand the SANE program in order to make SANEs available to respond to all sexual assaults in Massachusetts, within reason.

¹³⁴ Care must be taken to ensure that this notification is done in a way that is trauma-informed and sensitive to the victim. A victim may not wish to revisit the matter at all, or she may be in a situation in which a cold call or message – one that might be overheard – could put her safety in jeopardy. Because of this, and because of the potential, in all cases, that this contact may in itself be traumatic, it is our goal to initiate a discussion on this topic among relevant stakeholders, rather than to prescribe a specific method for implementing this particular recommendation.

- We should improve state and municipal systems for transport, storage, and analysis of sexual assault and toxicology kits.
 - Most importantly, we need an up-to-date, consolidated statewide system that tracks the progress of a rape kit from distribution by EOPSS through laboratory analysis. Such a system would allow both real-time determination of the status of a particular rape kit and retrospective determination of when and where delays are occurring, in order to develop strategies to diminish or prevent delays.
 - It is time to explore alternate means of delivering rape kits to crime labs, moving away from the old model that requires each police department to take an officer away from core policing duties, make an appointment with a lab, and spend as much as a few hours driving to and from the crime lab to deliver the kit. We offer suggestions, including private shipping firms, a dedicated non-uniformed staff of couriers, or simply shortening the trip by allowing an officer to deliver kits directly from the hospital to the lab. We also suggest a broader review of the efficiency of the satellite lab system now in place, including operating hours, storage systems and staffing levels.

Addressing delays in this system will both aid the victim, by speeding her access to justice, and benefit society by getting sexual predators off our streets. We owe that much to rape survivors and to our communities.