

# Division of State Police

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## Processing of Sexual Offense Evidence Collection Kits

Report 2019-S-44 | May 2020

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objective

To determine if the Division of State Police's (Division) Crime Laboratory System (CLS) processed Sexual Offense Evidence Collection Kits in compliance with Executive Law Section 838-a: Maintenance of Sexual Offense Evidence Kits (Executive Law). This audit covered the period November 28, 2016 through October 31, 2019 and considered information provided by the Division through February 12, 2020.

## About the Program

Medical professionals use Sexual Offense Evidence Collection Kits (kits) to collect DNA and other evidence during the physical exam of an alleged victim of sexual assault. Once a victim consents to release a kit for testing, the investigating law enforcement agency collects it and sends it to a forensic laboratory to be analyzed and to potentially develop a DNA profile. DNA profiles that meet specific requirements are added to a federally administered database that facilitates the electronic exchange and comparison of information, which can help link violent crimes and known offenders.

The Executive Law, which was enacted in November 2016 and amended in February 2017, required all law enforcement agencies to submit any untested kits in their possession to a forensic laboratory by December 28, 2017 for analysis. The amendment further required kits received by law enforcement agencies prior to February 26, 2017 to be processed and results reported within 210 days of receipt at the lab, and kits received by law enforcement agencies on or after February 26, 2017 to be processed and reported on within 90 days of receipt at the lab.

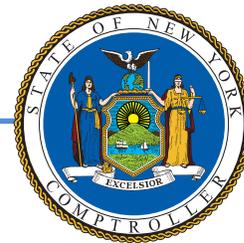
The Forensic Investigation Center (FIC) in Albany is the only CLS laboratory that processes kits, and it does so for all jurisdictions across the State, excluding New York City.

## Key Findings

- From November 28, 2017 to October 31, 2019, the FIC processed 1,656 kits. Only 356 of the 1,656 kits (21 percent) were completed within the time frames prescribed by law.
- As of October 31, 2019, the FIC had 1,916 kits that needed to be processed, and as of that date, the required processing time frame had elapsed for 1,681 kits (88 percent).
- In response to the Executive Law, Division officials stated that law enforcement agencies submitted 2,227 kits to the FIC in 2017 – more than three times the number of kits received the prior year, far surpassing the Division's estimates. We project it will take the FIC about two years with its current staffing levels to process the backlog and to begin processing all newly received kits within 90 days, as required.

## Key Recommendation

- Review the FIC's ability to process kits within the statutory time frames and determine what process changes and resources are needed to meet Executive Law requirements.



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**Office of the New York State Comptroller  
Division of State Government Accountability**

May 27, 2020

Mr. Keith M. Corlett  
Superintendent  
Division of State Police  
1220 Washington Avenue, Building 22  
Albany, NY 12226

Dear Superintendent Corlett:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Processing of Sexual Offense Evidence Collection Kits*. This audit was performed pursuant to the State Comptroller's authority under Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendation are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

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<b>Term</b>	<b>Description</b>	<b>Identifier</b>
CLS	Crime Laboratory System	<i>System</i>
CODIS	Combined DNA Index System	<i>System</i>
Division	Division of State Police	<i>Auditee</i>
Executive Law	Executive Law Section 838-a: Maintenance of Sexual Offense Evidence Kits	<i>Law</i>
FIC	Forensic Investigation Center, Albany	<i>Office</i>
Kit	Sexual Offense Evidence Collection Kit	<i>Key Term</i>
Unit	Biological Sciences Casework Unit	<i>Office</i>

# Background

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Medical professionals use Sexual Offense Evidence Collection Kits (kits) provided to hospitals and other health care providers to collect DNA and other evidence during the physical exam of an alleged sexual assault victim. The victim has the right to choose whether to report the incident to law enforcement and consent to have the kit released by the hospital for forensic testing.

Once a victim provides consent, the investigating law enforcement agency collects the kit and sends it to a forensic laboratory for analysis and to attempt to obtain a DNA profile. If a DNA profile is developed and meets specific requirements, it is entered into the Combined DNA Index System (CODIS), a federally administered database of DNA profiles from convicted persons, crime scenes, and unidentified human remains. CODIS facilitates the electronic exchange and comparison of DNA profiles among federal, State, and local forensic laboratories, which can help link violent crimes and known offenders. According to Division of State Police (Division) officials, a crime must have been committed for a profile to be CODIS eligible. If a crime was not committed, the kit is returned to the submitting law enforcement agency without further analysis.

Forensic laboratories may also opt to analyze a kit that is not likely to yield a CODIS-eligible profile to obtain other types of evidence (kits can also be used to collect evidence for crimes other than sexual offenses, for example, in death and homicide investigations). Once the analysis is complete, the lab generates a report and sends it to the submitting law enforcement agency and the district attorney's office for the county in which the incident occurred. If a DNA profile is found and meets requirements, the results are entered into CODIS. If no DNA profile is found, this is noted in the report to the submitting law enforcement agency.

Executive Law Section 838-a, Maintenance of Sexual Offense Evidence Kits (Executive Law), enacted on November 28, 2016, sets forth the procedures for processing kits, including assessing case-specific information for CODIS eligibility; analyzing the contents of the kit and developing a CODIS-eligible profile, if possible; and reporting the results of such analysis to the submitting law enforcement agency. A February 2017 amendment required law enforcement agencies to submit all untested kits in their custody – regardless of age – to a forensic laboratory by December 28, 2017 for processing. The amendment established further timelines and required laboratories to consider the date kits were received by law enforcement agencies in order to determine required processing times. Kits received by law enforcement agencies prior to February 26, 2017 must be processed within 210 days of receipt at the lab, and kits received by law enforcement agencies on or after February 26, 2017 must be processed within 90 days of receipt at the lab. The amendment also required law enforcement agencies to begin submitting kits received after February 26, 2017 to forensic laboratories within ten days. (Executive Law covers only kits used to collect evidence for sexual offenses; therefore, all figures presented in this report are limited to kits associated with sexual offenses.)

Prior to the enactment of the Executive Law, there were no requirements for the testing of kits submitted to a forensic laboratory by law enforcement agencies.

Rather, the investigating law enforcement agency had discretion over whether and when to submit a kit for testing.

The Division's Crime Laboratory System (CLS) is composed of four laboratories, including the Forensic Investigation Center (FIC) in Albany, which provide forensic analysis support to all State criminal justice agencies. However, the FIC is the only CLS laboratory that processes kits, and it does so for all jurisdictions across the State, excluding New York City.



# Audit Findings and Recommendation

The FIC has taken steps to speed up kit processing; however, it has not been able to meet the time frames required by the Executive Law. Of the 1,656 kits processed from November 28, 2017 to October 31, 2019, only 356 (21 percent) were completed in compliance with prescribed time frames. For 928 kits, it took the FIC more than double the allotted time to process them. While the FIC has decreased the average processing time for kits, hired additional employees to process kits, and created additional laboratory space, we project it will take the FIC about two years with its current staffing levels to process the backlog and to begin processing all newly received kits within 90 days, as required.

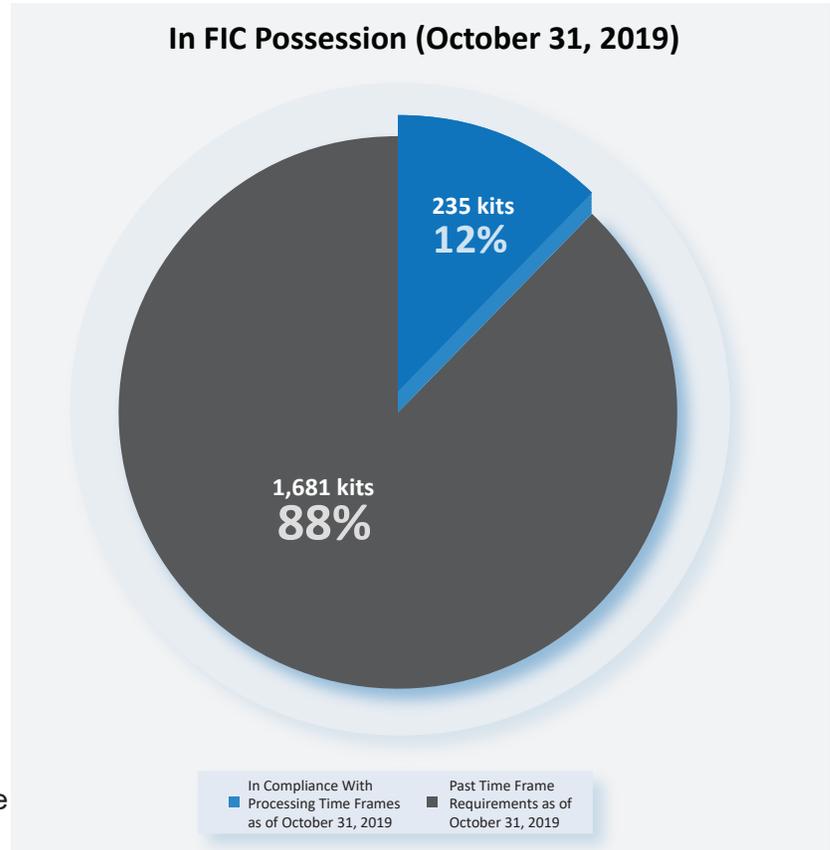
## Compliance With Executive Law

### Impact of Executive Law

Division officials stated that law enforcement agencies submitted 2,227 kits to the FIC in 2017 – more than three times the number of kits received the prior year, far surpassing officials’ estimates. Officials stated they did not have the resources to process such an influx of kits within the required time frames. They further stated that, prior to the enactment of the Executive Law, there was no uniform tracking of kits at the local, State, or federal levels and this lack of information meant the FIC could not accurately anticipate the number of kits it would receive in response to the new requirements.

Due to the Executive Law’s requirements, the number of kits received annually by the FIC has increased steadily. For example, in 2015, the FIC reportedly received 547 kits; in 2018, our analysis found the FIC received 969. From November 28, 2017 (the date the processing time frames took effect) through October 31, 2019, the FIC received 2,356 kits related to sexual offense cases. Over this same period, the FIC processed 1,656 kits and assessed, but did not test, an additional 169. These 169 kits were returned to the submitting law enforcement agencies without analysis because the FIC’s initial assessment determined they were not CODIS eligible.

Using data provided by the FIC, we sought to determine if kits were processed in compliance with Executive Law time frames. We considered



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the date the kits were received by the FIC to determine processing times. Our analysis found only 356 of the 1,656 processed kits (21 percent) were completed in compliance with prescribed time frames and 1,300 kits (79 percent) were not. Additional analysis showed it took the FIC more than double the allotted time to process 928 of the 1,656 completed kits. Of those 928 kits, 604 were subject to the 90-day requirement and took more than 180 days to process, and 324 were subject to the 210-day requirement and took more than 420 days to process.

## Agency Efforts

FIC officials have dedicated time and resources to better meet the Executive Law's requirements by filling positions related to processing kits, creating additional space to analyze the influx of kits, and improving processing methods. Because the staff in the FIC's Biological Sciences Casework Unit (Unit) also process evidence other than that covered by the Executive Law, such as evidence collected in death and homicide investigations, we could not determine how much of their time is being dedicated specifically to meeting Executive Law requirements. We note that the FIC received 30 additional positions in State fiscal year 2017-18 to accommodate the Executive Law and the FIC had filled all of these positions by January 2019. However, due to staffing fluctuations, the total staff in the Unit increased from 65 in October 2016 to 88 in July 2019. Eighteen forensic scientists account for most of the 23 new staff.

Starting July 18, 2018, the FIC implemented a streamlined method that lessened the time required to perform kit analysis. We found the new method decreased processing time by about 79 percent. Previously, it took the FIC an average of 133.7 days to process a kit, and that average has dropped to 27.5 days. However, these figures are based on the date the analyst begins processing, not the date the FIC receives the kit (the date the Executive Law requirements are based on). The average number of days between the FIC receiving a kit and an analyst beginning processing is 235.6. With that holding time factored in, processing times are 369.3 days under the old method and 263.1 days under the new method. FIC officials stated that the holding time for kits can be attributed to the initial volume of kits received, the FIC's limited processing capacity, the shipping of kits from CLS labs to the FIC, and the prioritization of kit processing (e.g., some kits take precedence over others due to criminal case proceedings).

We determined the FIC has been completing an increasing number of kits per year since the Executive Law took effect. From 2018 to 2019, the FIC increased the number of kits completed by 64 percent (609 kits in 2018 to 997 kits from January 1, 2019 through October 31, 2019). However, despite agency efforts, there is still a significant backlog. As of October 31, 2019, the FIC had 1,916 kits that needed to be processed. At the time, the required processing time frame had elapsed for 1,681 kits (88 percent). Of those, 1,067 were required to be processed within 90 days, and 614 kits were required to be processed within 210 days. Based on the average number of kits processed for August, September, and October 2019 and the average number received per month for January 2018 through October 2019, we project it will take

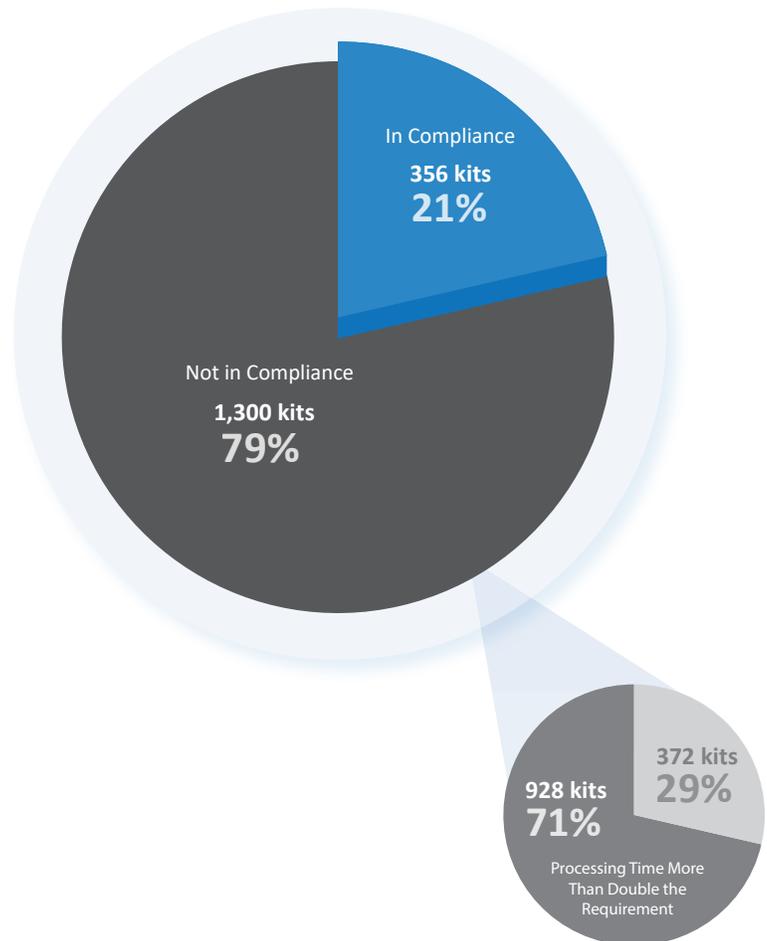
the FIC about two years with its current staffing levels to process the backlog and to begin processing all newly received kits within 90 days, as required.

The FIC has not been able to comply with the processing requirements for all kits it receives. Timely processing of kits is imperative as kits can yield evidence, such as DNA profiles, which can be entered into local, State, and national databases. The more DNA profiles developed and uploaded to these databases, the more easily investigators can link possible suspects to crimes and generate leads.

## Recommendation

1. Review the FIC's ability to process kits within the statutory time frames and determine what process changes and resources are needed to meet Executive Law requirements.

### Processed Kits: Compliance With Executive Law



# Audit Scope, Objective, and Methodology

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The objective of our audit was to determine if the Division's CLS processed kits in compliance with the Executive Law. This audit covered the period November 28, 2016 through October 31, 2019 and considered information provided by the Division through February 12, 2020.

To accomplish our objective, we reviewed relevant laws, regulations, and CLS procedures and interviewed Division officials. We became familiar with, and assessed the adequacy of, the Division's internal controls as they relate to its performance and our audit objective. We also reviewed the processes for assessing and processing kits. Additionally, we tested the data reliability of the CLS' information system. To determine if the CLS' information system was accurate and complete, we selected a random sample of 50 unprocessed kits to confirm that they were present at the FIC. Our analysis of the data determined there were 1,916 unprocessed kits. We excluded 87 unprocessed kits that had already been assigned to an analyst to ensure our sample was likely to include kits that would still be on site at the FIC. We further tested the system by obtaining information from 45 sheriffs' departments and comparing that information to CLS' information system data. We originally contacted 58 sheriffs' departments, excluding New York City counties from our sample. Thirteen sheriffs' departments did not respond to our request for information. Based on the results of our testing, we found the data to be reliable for the purposes of our audit; however, the results of that testing cannot be projected back on the entire population.

We analyzed data from the CLS' information system for the period November 28, 2016 through October 31, 2019 to determine the processing time for all kits in the FIC's possession during this period. Our analysis covered all kits received as well as all kits processed during this period. To determine if a kit must be processed within 90 or 210 days, we followed CLS Case Management Policy. According to this policy, kits with offense dates of January 26, 2017 or later are subject to the 90-day processing time frame, and kits with offense dates of January 25, 2017 or earlier are subject to the 210-day processing requirement.

# Statutory Requirements

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## Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions, and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these functions do not affect our ability to conduct independent audits of program performance.

## Reporting Requirements

We provided a draft copy of this report to Division officials for their review and comment. Their comments were considered in preparing this final report and are included in their entirety at the end of it. Division officials generally agreed with our recommendation and noted that they will continue to review and improve their kit processing methods to increase output and comply with all applicable laws based on their current level of resources and available space.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Superintendent of the Division of State Police shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendation contained herein, and if the recommendation was not implemented, the reasons why.

# Agency Comments

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**ANDREW M. CUOMO**  
Governor

**KEITH M. CORLETT**  
Superintendent

May 1, 2020

Mr. Brian Reilly, CFE, CGFM  
Audit Director  
Office of the New York State Comptroller  
Division of State Government Accountability  
110 State Street, 11<sup>th</sup> Floor  
Albany, New York 12236

**Re: Draft Audit Report – 2019-S-44, Issued April 2, 2020**

Dear Mr. Reilly:

The Division of State Police (“Division”) is in receipt of the Office of the State Comptroller’s draft report (2019-S-44) regarding its audit of the Division’s Processing of Sexual Offense Evidence Collection Kits (“kits”) in compliance with Executive Law § 838-a. Please accept the following as the Division’s written response to the draft report in accordance with Executive Law 170, which we understand will be appended to the final report.

**Audit Recommendation:** *Review the FIC’s ability to process kits within the statutory time frames and determine what process changes and resources are needed to meet Executive Law requirements.*

**Response:** The Division agrees in part with this recommendation but must note that the Division constantly endeavors and reviews its processes to meet the statutory time frames for processing the kits and provides the following explanation:

Since Executive Law § 838-a was enacted, the FIC has worked tirelessly to streamline its processing of kits and increase its output of tested kits. These efforts began in 2017 and included: (i) expanding staff by hiring and training new personnel to work exclusively on kits; (ii) designing and creating additional analytical space; (iii) retrofitting office space within the FIC; and (iv) relocating non-Bioscience laboratory staff. The renovation and installation work was completed in mid-2019.

Contemporaneous with these efforts, and in following national best practice recommendations, the FIC began working on a new male-DNA based screening process to address the volume of kits that were submitted in response to the legislation. The FIC expended considerable time and effort to implement this new process, which has greatly improved efficiency by decreasing the testing turnaround time while increasing the testing capacity of kit samples. It also utilizes improved testing sensitivity, which significantly furthers the goal of obtaining a perpetrator’s DNA profile for entry into CODIS.

The FIC continues to dedicate a significant amount of resources to processing kits, assigning over half of its DNA analysts to work primarily on kits. Utilizing this level of resources with the new processing method, the FIC has not only decreased processing time “by about 79%,” as noted in your office’s draft report, but also significantly increased the number of kits being

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tested. For example, in the last two quarters of 2019, the FIC doubled its output of tested kits from previous quarters (2019 Q3 =397, Q4 = 403). Furthermore, as of January 31, 2020, the FIC's new kit processing method has yielded 256 CODIS-eligible DNA profiles out of 886 kits tested. There have been 105 CODIS hits associated with these tested kits since the new procedure has been implemented.

As the draft report aptly notes, the FIC's efforts to comply with the statutory time frames have been significantly hampered by the substantial influx of kits that resulted after the enactment of the legislation. The 2,227 kits received in 2017 alone far exceeded what the FIC anticipated in immediate response to the legislation. Furthermore, when comparing the years preceding passage of the legislation, the FIC has experienced an over 50% increase in annual kit submissions since 2017.

The substantial increase in the number of kits has been further complicated by the fact that many of the kit submissions in 2017 included little, if any, information necessary to ascertain whether a kit might yield a CODIS-eligible profile. The required paperwork submitted with many kits lacked any detail about the case or included vague and conclusory assertions suggesting no crime was committed. Absent the necessary documentation that a crime was committed, any profile developed from that kit is not CODIS-eligible (see National DNA Index System Operational Procedures Manual s. 3.1.1.1). As a result, most kits required FIC staff to contact the submitting agency to obtain information necessary to make an initial CODIS-eligibility assessment. This was particularly challenging for older cases because the submitting agencies could provide very little information on the underlying incident. This endeavor was also extremely time consuming given the number of kits involved and the lack of timely response by some submitting agencies.

While the Division endeavors to meet the testing time frames established by Executive Law§ 838-a, limited office and analytical space also hinders the FIC's ability to process a large volume of kits. With additional laboratory and office space, the FIC could continue to expand its Biological Science section, thereby allowing it to increase the number of staff dedicated to kit processing while also maximizing the section's operational capacity and efficiency.

In conclusion, the Division will continue to review and improve its kit processing methods to increase output and comply with all applicable laws based on its current level of resources and available space.

Please let us know if you have any questions or require additional information for purposes of this audit.

Very truly yours



Keith M. Corlett  
Superintendent

# Contributors to Report

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## Executive Team

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