



# **U.S. DEPARTMENT OF JUSTICE AUDIT OF THE CONVICTED OFFENDER DNA BACKLOG REDUCTION PROGRAM**

U.S. Department of Justice  
Office of the Inspector General  
Audit Division

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# **CONVICTED OFFENDER DNA BACKLOG REDUCTION PROGRAM**

## **EXECUTIVE SUMMARY**

Advances in DNA technology provide law enforcement powerful new tools to identify suspects from biological evidence where older techniques could not. While this increase in the usage of DNA profiling is helping to solve crimes and exonerate the innocent across the country, many public and private crime laboratories are not fully equipped to handle the increased demand for DNA testing. The increased demand for DNA analyses, without a corresponding growth in forensic laboratory capacity, has caused a large backlog of unanalyzed DNA samples from convicted offenders and crime scenes, and this backlog can significantly delay criminal investigations.

To aid in reducing this national convicted offender DNA sample backlog the Department of Justice (DOJ) – through its Office of Justice Programs' (OJP), National Institute of Justice (NIJ) – used approximately \$14.5 million appropriated by Congress under the Crime Information Technology Act to fund the first year of the Convicted Offender DNA Backlog Reduction Program (Backlog Reduction Program) in fiscal year (FY) 2000.

To further promote the use of DNA technology, the DOJ established a strategic objective to increase the availability and use of technological resources for combating crime. As part of this effort, in 2004 DOJ implemented a 5-year, \$1 billion DNA initiative to improve the capacity to solve crimes using DNA evidence by eliminating casework and convicted offender backlogs, funding research and development, improving crime laboratory capacity, and providing training for all stakeholders in the justice system.

In support of this DNA initiative, funding is provided to help states reduce the backlog of convicted offender samples awaiting analysis and entry into the Combined DNA Index System (CODIS) maintained by the Federal Bureau of Investigation (FBI).<sup>1</sup> As a result, DOJ – through its OJP,

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<sup>1</sup> CODIS is a national DNA-profile matching service administered by the FBI, which is comprised of databases containing DNA profiles from crime scenes, convicted offenders and arrestees, and missing persons.

NIJ – has funded several programs to strengthen DNA capabilities in state and local laboratories.<sup>2</sup>

This audit examines the Backlog Reduction Program, which is designed to accelerate the analysis of convicted offender and arrestee DNA samples collected by states and to provide timely CODIS-compatible data for state and national DNA databases.<sup>3</sup> The Backlog Reduction Program is intended to help states with existing laboratories that conduct DNA analysis of samples from convicted offenders or arrestees to reduce their backlog of such samples by either in-house analysis or by sending samples to vendor laboratories for analysis. Specifically, funds for the in-house portion of the Backlog Reduction Program (In-house Program) are to be used by a state's designated existing and accredited DNA database laboratory to reduce the backlog of DNA database samples through in-house analysis of samples and through in-house technical review of DNA profiles generated by vendor laboratories. Through the outsourcing contracts portion of the Backlog Reduction Program (Outsourcing Program), the NIJ contracts directly with vendor laboratories on behalf of the states so that states can outsource the analysis of their backlogged samples.<sup>4</sup>

As shown in Figure 1, between FYs 2005 and 2007, 39 states received funding totaling \$41.3 million to analyze 1.46 million DNA samples. Of the 39 states, 15 participated in the In-house Program only, 15 participated in the Outsourcing Program only, and 9 participated in both programs. Figure 1 also indicates the names and locations of the six vendor laboratories that participated in the Outsourcing Program.

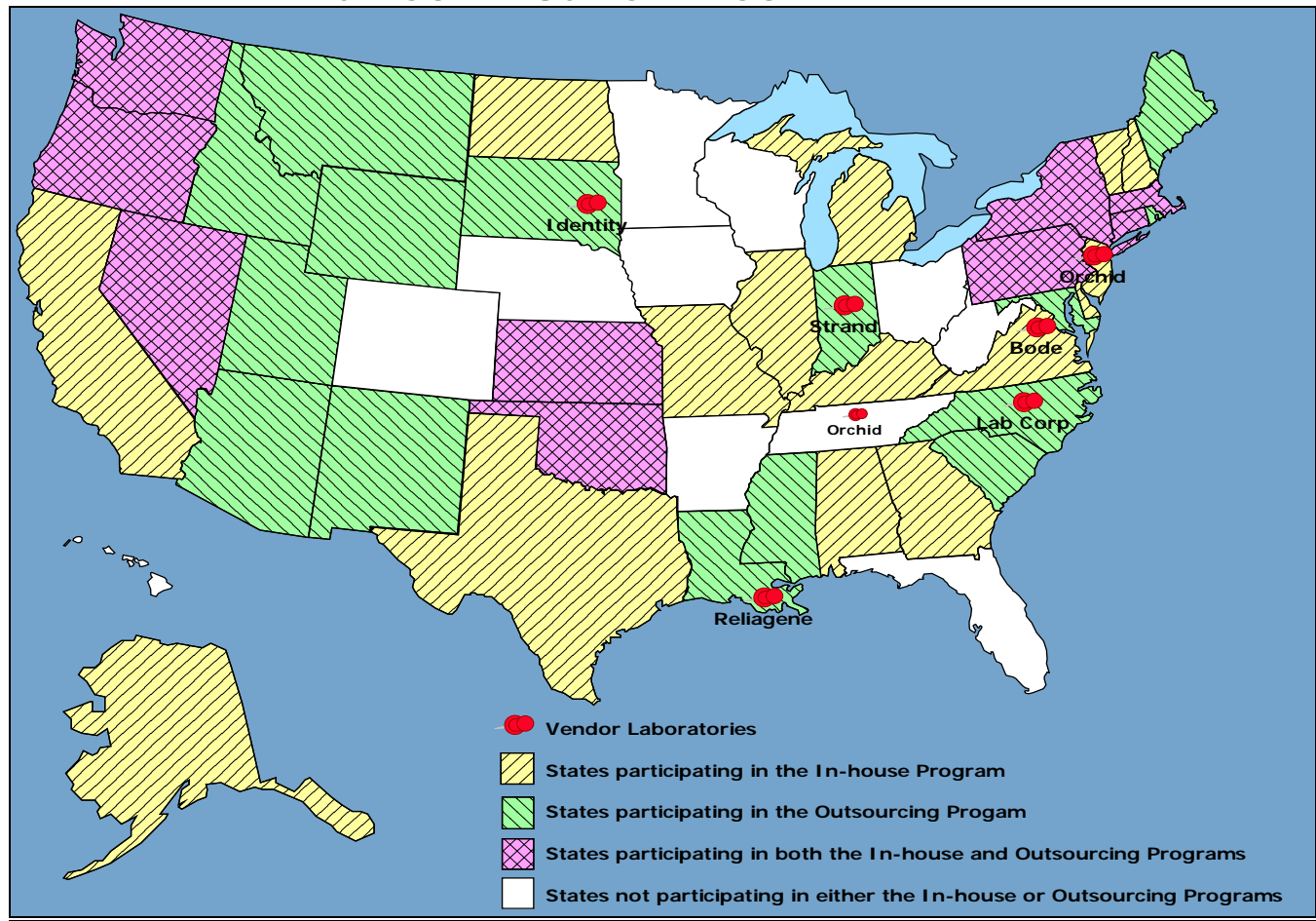
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<sup>2</sup> The NIJ is the research, development, and evaluation part of OJP that examines crime control and justice issues. Within the NIJ, the Office of Science and Technology manages technology research and development, development of technical standards, testing, forensic sciences capacity building, and technology assistance to state and local law enforcement and corrections agencies.

<sup>3</sup> The Backlog Reduction Program funds the analysis of samples that have been collected by the states pursuant to applicable laws. Therefore, for the purposes of this audit, the convicted offender backlog consists of samples that have been collected but not uploaded into CODIS. The Backlog Reduction Program does not provide funding for the collection of DNA samples.

<sup>4</sup> Beginning in FY 2008, the Outsourcing Program provided funding to allow states to contract directly with vendor laboratories.

**FIGURE 1. VENDOR AND STATE LABORATORIES PARTICIPATION IN THE BACKLOG REDUCTION PROGRAM<sup>5</sup>**



Source: In-house Program awards and Outsourcing Program contracts

### Office of the Inspector General Audit Approach

The Office of the Inspector General (OIG) conducted this audit to evaluate the NIJ's administration of the Backlog Reduction Program by evaluating:

- the impact of the Backlog Reduction Program on reducing the convicted offender DNA backlog;
- the NIJ's administration and oversight of the In-house Program;

<sup>5</sup> Orchid has two laboratory locations, the headquarters is located in New Jersey and the facility that performs the convicted offender DNA analysis is in Nashville, Tennessee.

- the extent to which the In-house Program award recipients have administered their awards in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award;
- the NIJ's oversight of the Outsourcing Program; and
- the compliance by vendor laboratories with contractual requirements.

We conducted audit work at the NIJ, where we interviewed officials responsible for administering and monitoring the Backlog Reduction Program, examined In-house and Outsourcing Program files, and reviewed other materials to assess the Backlog Reduction Program performance and accomplishments. We also conducted audits of selected award recipients to determine whether reimbursements claimed for costs under the In-house Program were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and the terms and conditions of the award. Additionally, we conducted site visits at two vendor laboratories to evaluate vendor compliance with the terms and conditions of the contracts awarded under the Outsourcing Program, as well as to assess the adequacy of the NIJ's oversight of the vendor laboratories.

Finally, we conducted a national survey of all state and vendor laboratories to collect statistics on each state's backlog, as well as to obtain feedback on the NIJ's management and oversight of the Backlog Reduction Program.

The results of our audit are detailed in the Findings and Recommendations section of this report, and Appendix I contains a more detailed description of our audit objectives, scope, and methodology.

## **Results in Brief**

The national backlog of convicted offender DNA samples has been reduced significantly as a result of efforts by the states to analyze their backlog of convicted offender DNA samples. We found that the backlog of DNA samples has been reduced by between 36 and 43 percent from FY 2005 through FY 2007. In addition, our audit found that the Backlog Reduction Program has had a significant impact on this effort by the states, and has funded the analysis, technical review, and upload of approximately 1.46 million of these backlogged convicted offender DNA samples during the

same time period. As of June 30, 2008, the analysis of 971,764 samples of the approximately 1.46 million samples that have been funded has been completed under the Backlog Reduction Program. Of those 971,764 analyzed, 617,550 have been uploaded to CODIS as of June 30, 2008.

According to the state laboratories, the profiles corresponding to the 617,550 samples uploaded to CODIS under the Backlog Reduction Program have generated 7,023 "hits" or matches that provide law enforcement with investigative leads that would not otherwise have been developed.<sup>6</sup>

However, many states have received an influx of convicted offender samples because of recent legislative changes that increase the number of qualifying offenses and arrests for which samples from offenders can be collected. As a result, even while the Backlog Reduction Program has been successful at increasing the number of convicted offender samples that are analyzed, the backlog may continue to grow.

While we found the Backlog Reduction Program has resulted in an increased analysis of DNA samples, we identified several awards to the state laboratories where no financial or programmatic activity had occurred, which delayed the entry of backlogged profiles into CODIS.

We also determined that the NIJ continued to award In-house Program funding to several state laboratories that had not utilized previous award funding.<sup>7</sup> To prevent this situation from occurring in the future, the NIJ added requirements to the FY 2008 In-house Program solicitation to reject applications from laboratories with prior In-house Program awards that remain entirely unobligated as of the posting date of the solicitation. Yet, we found that despite these measures the NIJ continued to award In-house Program funds to applicants that met this criteria.

The OJP Financial Guide requires that the award recipients collect data appropriate for facilitating reporting requirements established by the *Government Performance and Results Act (GPRA)*. The award recipient must ensure that valid and auditable source documentation is available to support

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<sup>6</sup> Throughout the report, we refer to matches within the CODIS database as "hits." A "hit" is when one or more DNA profiles from a crime scene are linked to a convicted felon.

<sup>7</sup> This condition was identified in a prior OIG audit. See U.S. Department of Justice Office of the Inspector General, *No Suspect Casework DNA Backlog Reduction Program*, Audit Report No. 05-02 (November 2004), 10, 12.

all data collected for each performance measure specified in the In-house Program solicitation.

Based on the results of our individual audits of In-house Program award recipients, we found that the majority of the state laboratories were unable to provide auditable source documentation on the performance information reported under the awards. As a result, we were unable to verify the accuracy of the performance information reported to the NIJ by the state laboratories. In our opinion, to comply with the requirements of the OJP Financial Guide and ensure that the NIJ has reliable performance data from which to accurately monitor the In-house Program, the NIJ should require award recipients to establish an auditable mechanism to track the performance data required under the In-house Program.

We also found that although the NIJ required state laboratories receiving In-house and Outsourcing Program funding to include information on performance measures in quarterly performance metric reports (performance reports), the NIJ did not adequately use the reported information to evaluate the effectiveness of the individual awards and contracts under the Backlog Reduction Program, or to manage the Backlog Reduction Program.

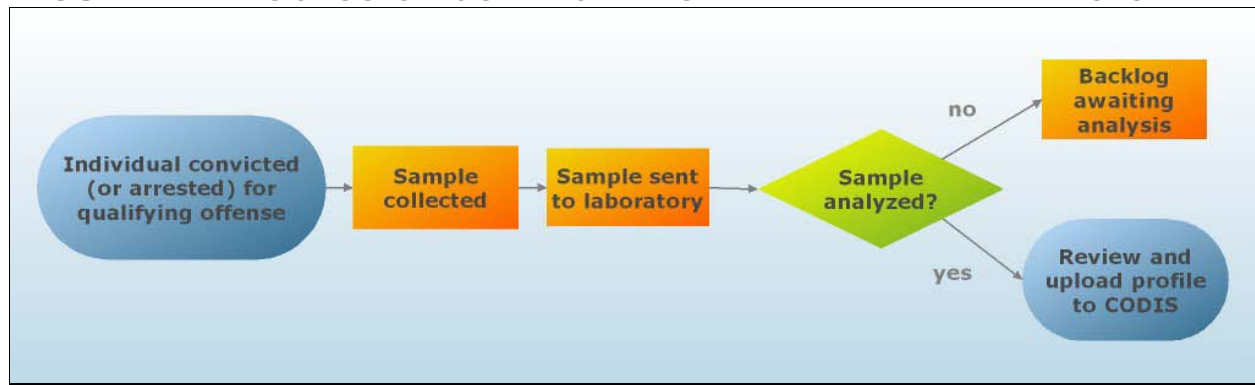
Finally, during our site visits of two vendor laboratories that received awards under the Outsourcing Program, we found that in general vendor invoices were accurate, and adequate controls were in place to ensure the accuracy and integrity of samples. However, we identified several areas of concern related to the timely completion and return of samples to the state laboratories under the contracts awarded. We believe that as the liaison between the state and vendor laboratory, the NIJ should work with both the vendors and the state laboratories to ensure that the problems causing delays to the analysis and uploading of DNA samples are resolved.

Our report contains detailed information on the full results of our audit, and includes 11 recommendations to assist the NIJ in its monitoring and oversight of the Backlog Reduction Program participants. The remaining sections of this Executive Summary describe in more detail our audit findings.

## Background

The processing of convicted offender DNA samples involves collecting DNA samples, analyzing the samples, technically reviewing the profiles, and uploading the profiles into the CODIS database.

**FIGURE 2. PROCESS OF CONVICTED OFFENDER DNA ANALYSIS**



Source: OIG

As shown in Figure 2, in certain states individuals convicted of or arrested for a qualifying offense are required to provide a DNA sample.<sup>8</sup> These samples are collected by the states' designated officials by drawing a blood sample or collecting a "buccal" swab sample, which is a swabbing of the inside of the cheek, from the individual. The sample is then sent to the crime laboratory where analysts extract DNA from the sample and develop a unique DNA profile by performing additional laboratory testing.<sup>9</sup> The resulting DNA profile is technically reviewed for accuracy and then electronically uploaded into the CODIS database, which is linking known offenders to crime scene evidence.

When a state laboratory does not have sufficient resources to complete any step in the overall process, including the collection of convicted offender samples, a backlog is created.<sup>10</sup> The size of the backlog in each state results from the number of crimes committed, the statutes

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<sup>8</sup> As of August 2008, 13 states allow for the collection of DNA samples from arrestees, including Alaska, Arizona, California, Kansas, Louisiana, Maryland, Minnesota, New Mexico, North Dakota, South Dakota, Tennessee, Texas, and Virginia.

<sup>9</sup> A DNA profile consists of the actual DNA characteristics, which permit the DNA from one person to be distinguished from that of another person.

<sup>10</sup> For the purposes of this audit, the convicted offender backlog consists of samples that have been collected but not uploaded into CODIS.



defining from whom samples can be collected, and available resources to analyze the samples.

In our national survey, 16 percent of the state laboratories reported that they were aware of specific instances where additional crimes may have been committed by an offender while that offender's DNA sample was part of the backlog in their state.<sup>11</sup>

## **Backlog Reduction Program Performance**

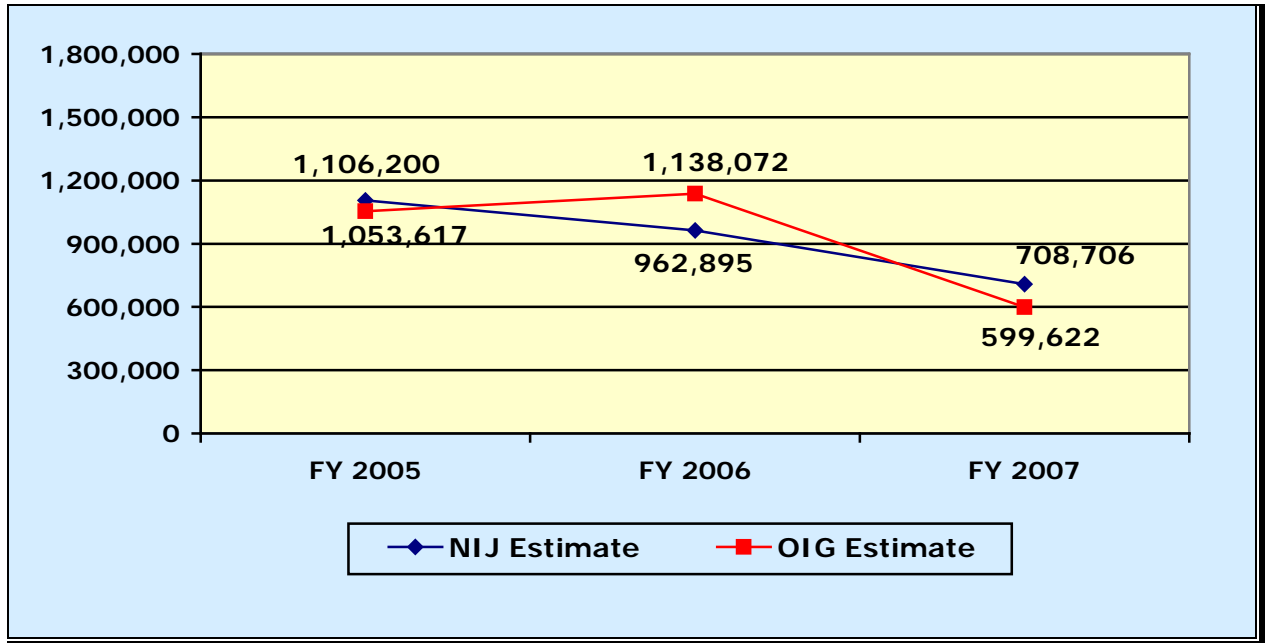
While there is no single comprehensive resource that tracks or estimates the backlog in local and state laboratories, we attempted to assess the backlog to evaluate the effectiveness of the Backlog Reduction Program in reducing the backlog of DNA samples. To this end, we interviewed NIJ, vendor laboratory, and state laboratory officials and reviewed statistical information contained in the performance reports, quarterly financial status reports, and semiannual progress reports (progress reports) submitted by each award recipient under the Backlog Reduction Program. Additionally, we surveyed all state laboratories conducting analysis of convicted offender and arrestee samples and all vendor laboratories with outsourcing contracts to obtain statistical information of trends in the overall backlog and customer satisfaction information concerning the NIJ's oversight and management of the Backlog Reduction Program.

As illustrated in Chart 1, based on Backlog Reduction Program statistics obtained from the NIJ and our survey of state laboratories, we determined that the national backlog of convicted offender samples awaiting analysis has declined since FY 2005. Specifically, as reported by the NIJ, the number of samples awaiting analysis has decreased by 35.9 percent from 1,106,200 in FY 2005 to 708,706 in FY 2007. Likewise, the numbers obtained from the OIG survey also indicated a decline, decreasing by 43.1 percent from 1,053,617 in FY 2005 to 599,622 in FY 2007.

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<sup>11</sup> See Appendix II, questions 11 and 12 for complete details concerning state laboratories' survey responses on the impact of the backlog.

**CHART 1. CONVICTED OFFENDER SAMPLES AWAITING ANALYSIS**

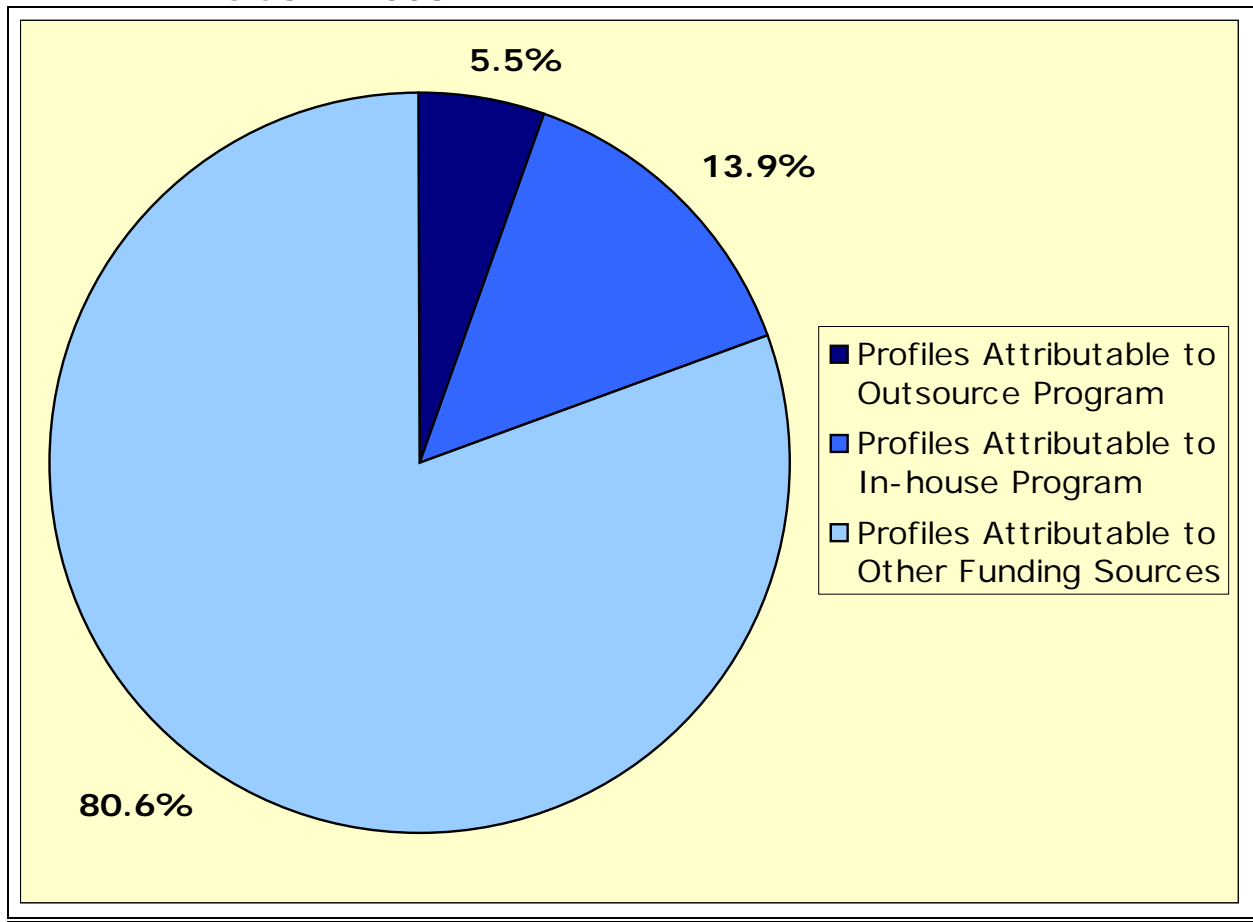


Source: The NIJ and OIG

Additionally, we determined that the analysis of 971,764 convicted offender samples, 617,550 of which have been uploaded into CODIS as of June 30, 2008, can be attributed to the efforts of the Backlog Reduction Program. This represents 19 percent of the 3.2 million convicted offender profiles uploaded to CODIS from all funding sources, including funds from states and other federal programs, between January 2006 and July 2008, as noted in Chart 2.<sup>12</sup>

<sup>12</sup> The percentage of uploaded samples generated by the Backlog Reduction Program was calculated by taking the number of profiles uploaded as a result of Backlog Reduction Program funding as reported in the quarterly performance reports for both the In-house and Outsourcing Programs (617,550) and dividing it by the total number of profiles uploaded to CODIS between January 2006 and June 2008 as reported by the FBI (3,187,923).

**CHART 2. BREAKDOWN OF CODIS UPLOADS FROM JANUARY 2006 TO JULY 2008<sup>13</sup>**



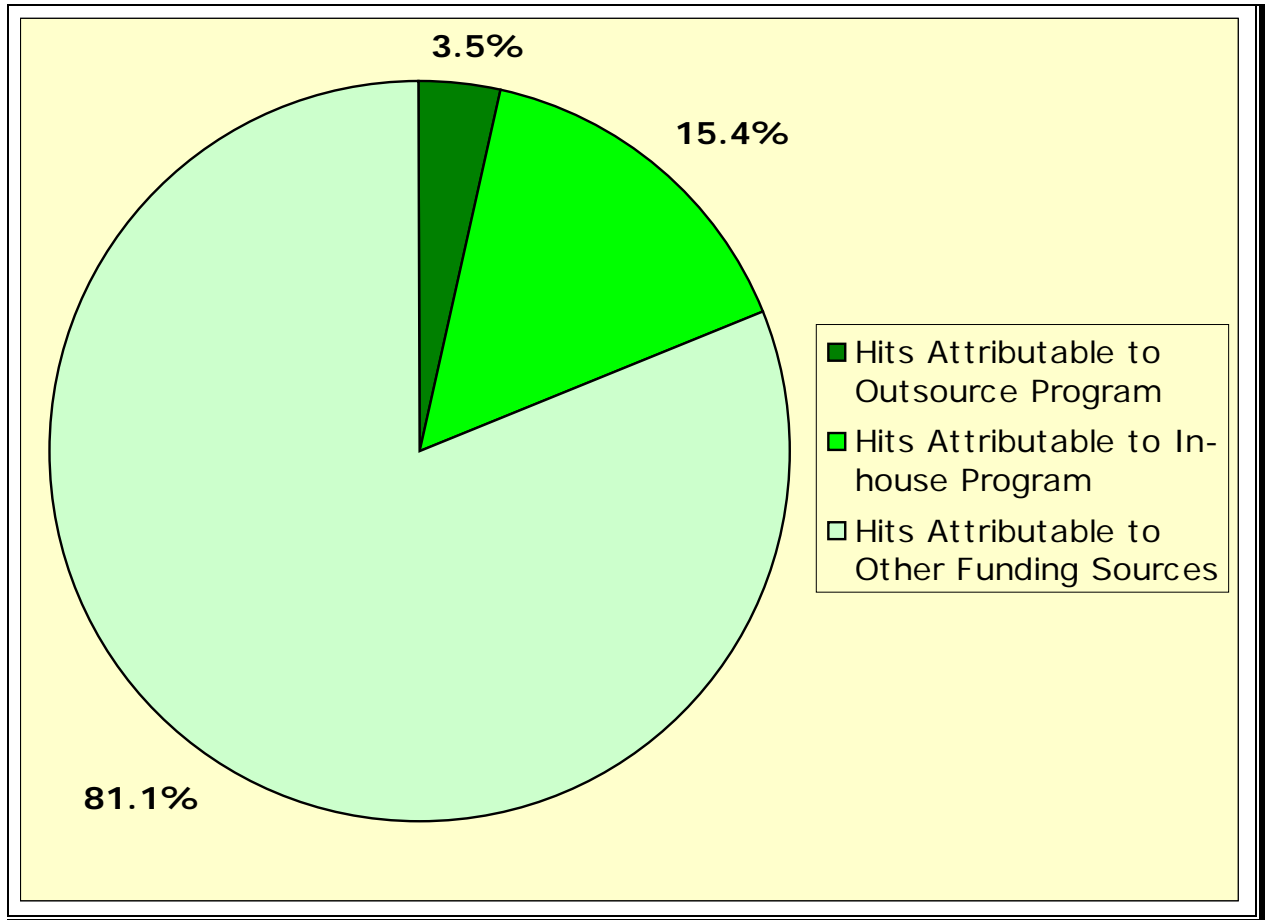
Source: The NIJ and FBI

As a result of the 617,550 profiles uploaded under the Backlog Reduction Program, there were an additional 7,023 hits that provided law enforcement with investigative leads that would not otherwise have been developed. These hits represent 19 percent of the 37,110 hits that occurred between January 2006 and June 2008, as noted in Chart 3.<sup>14</sup>

<sup>13</sup> Differences in totals throughout the report are due to rounding (the sum of individual numbers prior to rounding may differ from the sum of the individual numbers rounded).

<sup>14</sup> The percentage of hits generated by the Backlog Reduction Program was calculated by taking the number of hits generated with Backlog Reduction Program funding as reported in the quarterly performance reports for both the In-house and Outsourcing Programs (7,023) and dividing it by the total hits between January 2006 and June 2008 as reported by the FBI (37,110).

**CHART 3. BREAKDOWN OF CODIS HITS FROM JANUARY 2006 TO JUNE 2008**



Source: The NIJ and FBI

Thus, our analysis indicates that the Backlog Reduction Program had a positive impact on reducing the convicted offender backlog and increasing the uploading of DNA profiles into CODIS for investigative leads. However, it is important to note that we identified several inconsistencies and omissions in the statistical information reported by NIJ, which prevent a complete assessment of the overall Backlog Reduction Program performance. These inconsistencies and omissions include double-counting of samples, reporting of samples analyzed in excess of those funded, incorrectly reporting cumulative statistics, and failure to submit required metric reports. These issues are discussed in detail in Finding II of the report.

As noted above, the backlog from FY 2005 through FY2007 has been reduced in part due to funding provided by the Backlog Reduction Program. However, to prevent a future increase in the backlog, state laboratories

require additional capacity to keep up with the expected increase in the submission of samples as state legislation expands current state DNA collection statutes to include more categories of offenders and arrestees.

### **Adequacy of the NIJ's Administration and Oversight**

While our analysis indicated the Backlog Reduction Program is having a positive impact on reducing the backlog, we identified several concerns about the In-house and Outsourcing Programs. We believe that addressing these concerns could improve the effectiveness of the Backlog Reduction Program and further reduce the number of backlog samples in a more timely manner.

First, we found that the NIJ did not provide adequate guidance to the state laboratories on how to collect and report performance information, resulting in inaccuracies in the statistical information reported to the NIJ by the state laboratories. We believe that the NIJ should:

- Develop a reliable and reasonable method for award recipients to determine the number of samples analyzed and uploaded using Backlog Reduction Program funds; and
- Ensure that the state laboratories submit required performance measures that include the number of samples analyzed and uploaded as well as the number of hits generated as a result of using In-house and Outsourcing Program funding.

Second, we found significant delays to the start of several Backlog Reduction Program awards, which caused over 180,000 convicted offender samples to not be uploaded to CODIS in a timely manner. These Backlog Reduction Program awards lacked any indication of activity in both financial and programmatic reports that were submitted to the NIJ, suggesting that award recipients may have encountered problems fulfilling the award requirements or that the Backlog Reduction Program may not be meeting the specific needs of the award recipient. To ensure that the Backlog Reduction Program is successful, the NIJ should monitor both financial and programmatic activity by individual award recipients and address any problems to ensure that the overall objective of reducing the backlog is accomplished.

Finally, we found that the NIJ had awarded additional In-house Program funds to state laboratories before they had utilized previous award funding. In our judgment, awarding additional In-house Program funds when previous funds have not yet been drawn down limits the amount of funds that can be awarded to different laboratories that are in a position to immediately utilize federal funds. Program officials acknowledged to us that new awards were made to state laboratories that had not begun work on a previous award. The NIJ therefore added language to the FY 2008 In-house Program solicitation to reject applications from state laboratories with prior awards that remain entirely unobligated as of the posting date of the solicitation. However, despite these corrective measures, we determined that the NIJ continued to award In-house Program funds to laboratories that had yet to obligate any of the previous award funding before new awards were made.

### **In-house Program Recipients Award Administration**

After the awards have been accepted by the state laboratories, the NIJ is responsible for ensuring that the award recipients comply with the requirements of the award. To determine whether the award recipients were compliant with applicable laws, regulations, guidelines, and the terms and conditions of the awards, we conducted audits of 8 selected state laboratories awarded funds under the In-house portion of the Program. These 8 state laboratories held 19 In-house Program awards totaling approximately \$11.49 million.

Based on the results of the individual audits, we found that the state laboratories were generally in compliance with the relevant laws, rules, and regulations covering the Backlog Reduction Program, with the following exceptions: (1) unallowable items purchased using award funds; (2) unallowable overtime expenditures charged to the In-house Program; and (3) funds that could be put to better use. In total, we questioned \$561,861 of the \$11.49 million in awards.

In addition, we found that several of these 8 state laboratories did not maintain auditable source documentation for the performance information reported to the NIJ, which is required under the OJP Financial Guide. Based on the individual audits, we found that award recipients did not specifically track the samples completed with funding from each award separately, or distinguish samples analyzed using federal funds from samples analyzed using other sources. We also found that some amounts reported on the

performance reports included samples sent to contractors that were not affiliated with the awards. As a result, we were unable to verify the accuracy of the performance data reported to the NIJ by award recipients funded under the In-house Program. We recommend that, to comply with the requirements of the OJP Financial Guide and to ensure that the NIJ has reliable performance data from which to accurately monitor In-house Program performance, the NIJ should require award recipients to establish an auditable mechanism to track the performance data required under the In-house Program.

### **Adequacy of the NIJ's Administration and Oversight of the Outsourcing Program**

We conducted site visits of two vendor laboratories that received awards under the Outsourcing Program. We found that these vendors regularly performed quality and technical reviews of the convicted offender samples analyzed, that in general the vendor invoices were accurate, and that adequate controls were in place to ensure the accuracy and integrity of samples.

However, we identified several areas of concern related to the timely completion and return of samples to the state laboratories under the contracts awarded. We found that delays in the analysis of samples were caused by:

- changes to the contract,
- equipment problems which reduced sample capacity,
- delays in receipt of payment preventing the purchase of supplies,
- low quality samples preventing DNA analysis, and
- staff turnover impacting the productivity of the vendor laboratories.

A liaison between the states and vendor laboratories, the NIJ should implement policies and procedures to initiate conference calls between vendors and state laboratories at the beginning of the contracts to ensure that both parties are in agreement on the interpretation of the terms of the statement of work. In addition, the NIJ should implement regular communications with vendor and state

laboratories to identify and address problems that arise throughout the life of contracts to ensure that the goals and objectives of the Outsourcing Program are met.

## **Conclusion**

Our audit found evidence that the Backlog Reduction Program has contributed significantly to a reduction in the backlog of convicted offender samples.

However, while we identified a declining trend in the backlog of convicted offender DNA samples from FY 2005 through FY 2007, due in part to the Backlog Reduction Program, the overall backlog could grow in the future due to circumstances outside of the control of either the NIJ or the state laboratories. In particular, many states are considering expanding current DNA collection statutes to include convictions and arrests for additional qualifying offenses. If these legislative expansions are enacted without an appropriate increase in funding for DNA analysis, state laboratories will not have the capacity to handle the increase in DNA submissions.

It is important to note that our analysis relied on metrics reported to the NIJ by the state laboratories; however, we also found that the NIJ did not provide guidance to the state laboratories on collecting and reporting performance information, which resulted in incomplete data.

Additionally, we found that although the NIJ required state laboratories receiving In-house and Outsourcing Program funding to include information on performance measures in performance reports, the NIJ did not use the reported information to manage its Backlog Reduction Program as a whole, or to evaluate the effectiveness of the individual awards and contracts under the Backlog Reduction Program.

We also identified awards that lacked any indication of financial or programmatic activity, delaying the entry of backlogged convicted offender profiles into CODIS. We also identified state laboratories that had been awarded new contracts when they had not yet used any of the funds from a previous award.



## Recommendations

In this report, we make 11 recommendations to strengthen the NIJ's oversight and administration of the Backlog Reduction Program. Key recommendations include:

- Providing improved guidance on reporting the performance information.
- Ensuring that performance reports are submitted timely and include all required performance measurement data for the Outsourcing Program.
- Summarizing and using the performance information reported by state laboratories to report on and evaluate the effectiveness of the Backlog Reduction Program.
- Monitoring financial and programmatic activities to determine if award funds are being utilized in a timely manner, and follow up with award recipients on any difficulties in using Backlog Reduction Program funds.
- Ensuring that award recipients substantially accomplish the objectives of an award before any new awards are funded.

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## INTRODUCTION

Advances in DNA technology provide law enforcement powerful new tools to identify suspects from biological evidence where older techniques could not. While this increase in the usage of DNA profiling is helping to solve crimes and exonerate the innocent across the country, many public and private crime laboratories are not fully equipped to handle the increased demand for DNA testing. The increased demand for DNA analyses, without a corresponding growth in forensic laboratory capacity, has caused a large backlog of unanalyzed DNA samples from convicted offenders and crime scenes, and this backlog can significantly delay criminal investigations.

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To further promote the use of DNA technology, DOJ established a strategic objective to increase the availability and use of technological resources for combating crime. To this end, in 2004, DOJ implemented a 5-year, \$1 billion DNA initiative to improve the capacity to solve crimes using DNA evidence by eliminating casework and convicted offender backlogs, funding research and development, improving crime laboratory capacity, and providing training for all stakeholders in the justice system.

In support of this DNA initiative, Congress passed annual appropriations of \$151 million for each FY 2005 through FY 2009 for various DNA programs, including funding to help states reduce the backlog of convicted offender samples awaiting analysis and entry into the Combined DNA Index System (CODIS) maintained by the Federal Bureau of Investigation (FBI).<sup>15</sup>

As a result, DOJ – through its OJP, NIJ – has funded several programs to assist governments in implementing, expanding, or improving their use of DNA technology, by initiating programs to strengthen DNA capabilities in

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<sup>15</sup> CODIS is a national DNA-profile matching service administered by the FBI, which is comprised of databases containing DNA profiles from crime scenes, convicted offenders and arrestees, and missing persons.

state and local laboratories.<sup>16</sup> This audit focuses on the Backlog Reduction Program, which provides funds to states with existing laboratories that conduct DNA analysis of convicted offender or arrestee DNA samples to reduce their backlog of such samples.<sup>17</sup> These funds are intended to support completion of additional analyses at the state laboratories, or enable the laboratories to send samples to accredited fee-for-service laboratories (vendor laboratories) for analysis.

Other DNA programs included in the \$1 billion DNA initiative and funded by NIJ include:

- Forensic Casework DNA Backlog Reduction Program. The goal of this program is to assist eligible states and local governments to reduce the backlog of DNA samples gathered from crime scenes and victims awaiting analysis and entry into CODIS and to decrease the amount of time required by public DNA laboratories to analyze and upload crime scene and victim DNA samples.<sup>18</sup>
- DNA Capacity Enhancement Program. This program seeks to improve the infrastructure and analysis capacity of existing state and local crime laboratories that conduct DNA analysis so they can process DNA samples efficiently and cost-effectively.
- DNA Research and Development. This program funds research and development to enhance the forensic uses of DNA technology. It focuses on developing technologies that result in faster, more robust, more informative, less costly, or less labor-intensive identification, collection, preservation, or analysis of DNA evidence collected from crime scenes.
- Forensic Science Training Development and Delivery Program. In 2007, the NIJ awarded funding to 13 training providers to develop or

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<sup>16</sup> The NIJ is the research, development, and evaluation part of OJP that examines crime control and justice issues. Within the NIJ, the Office of Science and Technology manages technology research and development, development of technical standards, testing, forensic sciences capacity building, and technology assistance to state and local law enforcement and corrections agencies.

<sup>17</sup> The Backlog Reduction Program is authorized under the Debbie Smith Act of 2004, 42 U.S.C. § 14135 (2006), and includes annual appropriations of \$151 million for FYs 2005 through 2009.

<sup>18</sup> In 2007, NIJ combined the Forensic DNA Capacity Enhancement and Forensic Casework Backlog Reduction Programs into the Forensic DNA Backlog Reduction Program.

deliver knowledge-based forensic science curricula for the state and local forensic science community.

- Solving Cold Cases with DNA Evidence. Through this program the NIJ supported law enforcement agencies' efforts to solve old violent crime cases known as "cold cases," by funding the analysis of DNA evidence for FYs 2005 and 2007 in "cold cases" that have the potential to be solved through DNA testing.
- DNA Missing Persons. This program funded various research and testing of unidentified human remains for FYs 2005 and 2006.

**TABLE 1. DNA PROGRAMS AND FUNDING FOR FYs 2005 - 2007<sup>19</sup>**

PROGRAM	FY 2005 FUNDING	FY 2006 FUNDING	FY 2007 FUNDING
Convicted Offender DNA Backlog Reduction Program	\$8,067,922	\$20,160,240	\$13,117,740
Forensic DNA Backlog Reduction Program	---	---	44,239,199
Forensic Casework DNA Backlog Reduction	18,077,578	17,327,935	---
DNA Capacity Enhancement Program	29,699,654	37,647,704	---
DNA Research and Development	7,795,256	2,164,109	4,048,563
Forensic Science Training Development and Delivery	---	---	9,202,817
Solving Cold Cases With DNA Evidence	14,245,153	---	8,748,330
DNA Missing Persons	1,768,650	1,000,000	---
<b>TOTALS</b>	<b>\$79,654,213</b>	<b>\$78,299,988</b>	<b>\$79,356,649</b>

Source: DNA.gov and the NIJ

### Combined DNA Index System

The FBI has provided the law enforcement community with CODIS, a national DNA profile matching service comprised of databases containing

<sup>19</sup> Differences in totals throughout the report are due to rounding, e.g., the sum of individual numbers prior to rounding may differ from the sum of the individual numbers rounded.



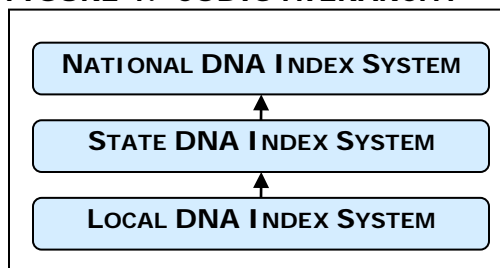
DNA profiles from crime scenes, convicted offenders and arrestees, and missing persons.<sup>20</sup>

The FBI began the CODIS program as a pilot project in 1990. The DNA Identification Act of 1994 (Act) authorized the FBI to establish a national index of DNA profiles for law enforcement purposes. The Act, along with subsequent amendments, has been codified in federal statutes to provide the legal authority to establish and maintain the national index.<sup>21</sup>

The federal statute authorizes the national index to contain the DNA identification records of persons convicted of crimes, persons who have been charged with a crime, and other persons whose DNA samples are collected under applicable legal authorities. Samples voluntarily submitted solely for elimination purposes are not authorized for inclusion in the national index. The federal statute also authorizes the national index to include analysis of DNA samples recovered from crime scenes or from unidentified human remains, as well as those voluntarily contributed from relatives of missing persons.

The FBI implemented CODIS as a database with three hierarchical levels that enables federal, state, and local crime laboratories to compare DNA profiles electronically. The three distinct levels are: NDIS, managed by the FBI as the nation's DNA database containing DNA profiles uploaded by participating states; the State DNA Index System (SDIS) serving as each state's DNA database containing DNA profiles from local laboratories; and the Local DNA Index System (LDIS), used by local laboratories. DNA profiles originating at the local or state level flow upward to the state and national levels. A laboratory's profiles need to be uploaded to NDIS before they are accessible for comparison.

**FIGURE 1. CODIS HIERARCHY**



NDIS is the highest level in the CODIS hierarchy and enables the laboratories participating in the CODIS program to compare DNA profiles on a national level. Each state participating in CODIS has one designated SDIS

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<sup>20</sup> A DNA profile consists of the actual DNA characteristics, which permit the DNA of one person to be distinguished from that of another person.

<sup>21</sup> 42 U.S.C. § 14132 (2007)

laboratory.<sup>22</sup> The SDIS laboratory maintains its own database and is responsible for overseeing NDIS communications for all CODIS-participating laboratories within the state.

## **National Institute of Justice**

The NIJ is the research, development, and evaluation agency of DOJ. The NIJ's mission is to provide objective, independent, evidence-based knowledge and tools to meet the challenges of crime and justice, particularly at the state and local levels.<sup>23</sup>

## **Convicted Offender DNA Backlog Reduction Program**

When an individual is convicted of a qualifying offense, or arrested for a qualifying offense in certain states, the individual is required to provide a DNA sample.<sup>24</sup> These samples are collected by the states' designated officials by drawing a blood sample or taking a "buccal" swab sample, which is a swabbing of the inside of the cheek from the individual. The sample is then sent to the crime laboratory where analysts extract DNA from the sample and develop a unique DNA profile by performing additional laboratory testing. The resulting DNA profile is technically reviewed for accuracy and electronically uploaded into the CODIS database, which is linking known offenders to crime scene evidence. If a state laboratory does not have sufficient resources to complete any step in the overall process, including the collection of convicted offender samples, a backlog is created.<sup>25</sup> The size of the backlog in each state is affected by various statutes, available resources, and the number of crimes committed.

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<sup>22</sup> Each state has a single designated SDIS laboratory that processes convicted offender samples. However, Nevada also uses an LDIS laboratory to process convicted offender samples. Therefore, throughout this report, the reference to state laboratories includes the 50 SDIS laboratories, plus the 1 Nevada LDIS laboratory, that process convicted offender samples.

<sup>23</sup> The NIJ's principal authorities are derived from the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C § 3722 (2006)) and Title II of the Homeland Security Act of 2002 (6 U.S.C. § 162 (2007)).

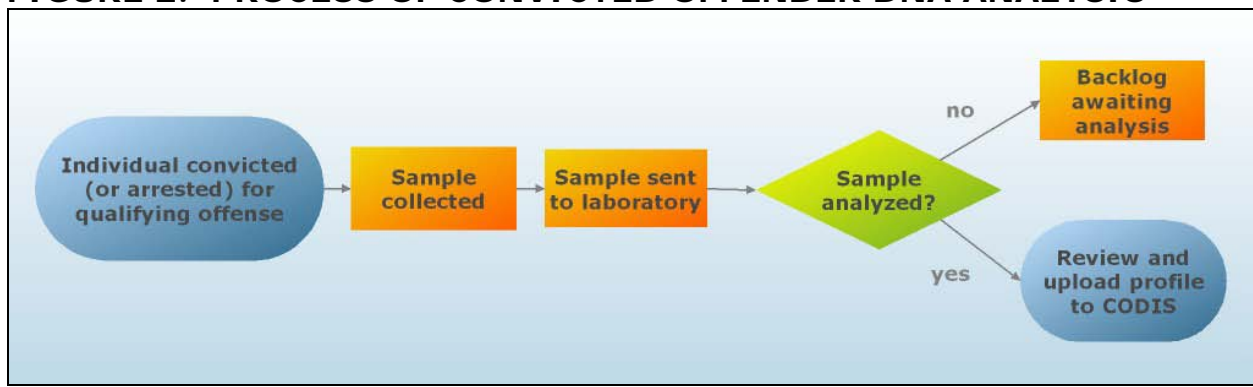
<sup>24</sup> As of August 2008, 13 states allow for the collection of DNA samples from arrestees; however, the impact of an expansion of collection legislation can have a large affect on the backlog, as well as the performance of the Backlog Reduction Program. A more detailed discussion on the potential impact of changes in collection legislation is discussed later in this report on page 27.

<sup>25</sup> Appendix VI provides a more detailed discussion of the components of the DNA backlog.

We conducted a national survey of all state and vendor laboratories to collect statistics on each state's backlog, as well as to obtain feedback on the NIJ's management and oversight of the Backlog Reduction Program. In our survey, 16 percent of the state laboratories reported that they were aware of specific instances where additional crimes may have been committed by an offender while that offender's DNA sample was part of the backlog in their state.<sup>26</sup>

As shown in Figure 2, the processing of convicted offender DNA samples involves collecting the samples, analyzing those samples, technically reviewing the profiles, and uploading the profiles into the CODIS database.

**FIGURE 2. PROCESS OF CONVICTED OFFENDER DNA ANALYSIS**



Source: Office of the Inspector General

To this end, the Backlog Reduction Program offers an opportunity for states with existing laboratories that conduct DNA analysis of samples from convicted offenders or arrestees to reduce the backlog of such samples, either by in-house analysis or by sending samples to vendor laboratories for analysis. Specifically, the objective of the Backlog Reduction Program is to accelerate the analysis of convicted offender and arrestee DNA samples collected by states in order to provide timely CODIS-compatible data for state and national DNA databases.<sup>27</sup> The Backlog Reduction Program has two parts: funding to states to reduce their backlog of samples through in-house analysis (In-house Program), and payment for the analysis of

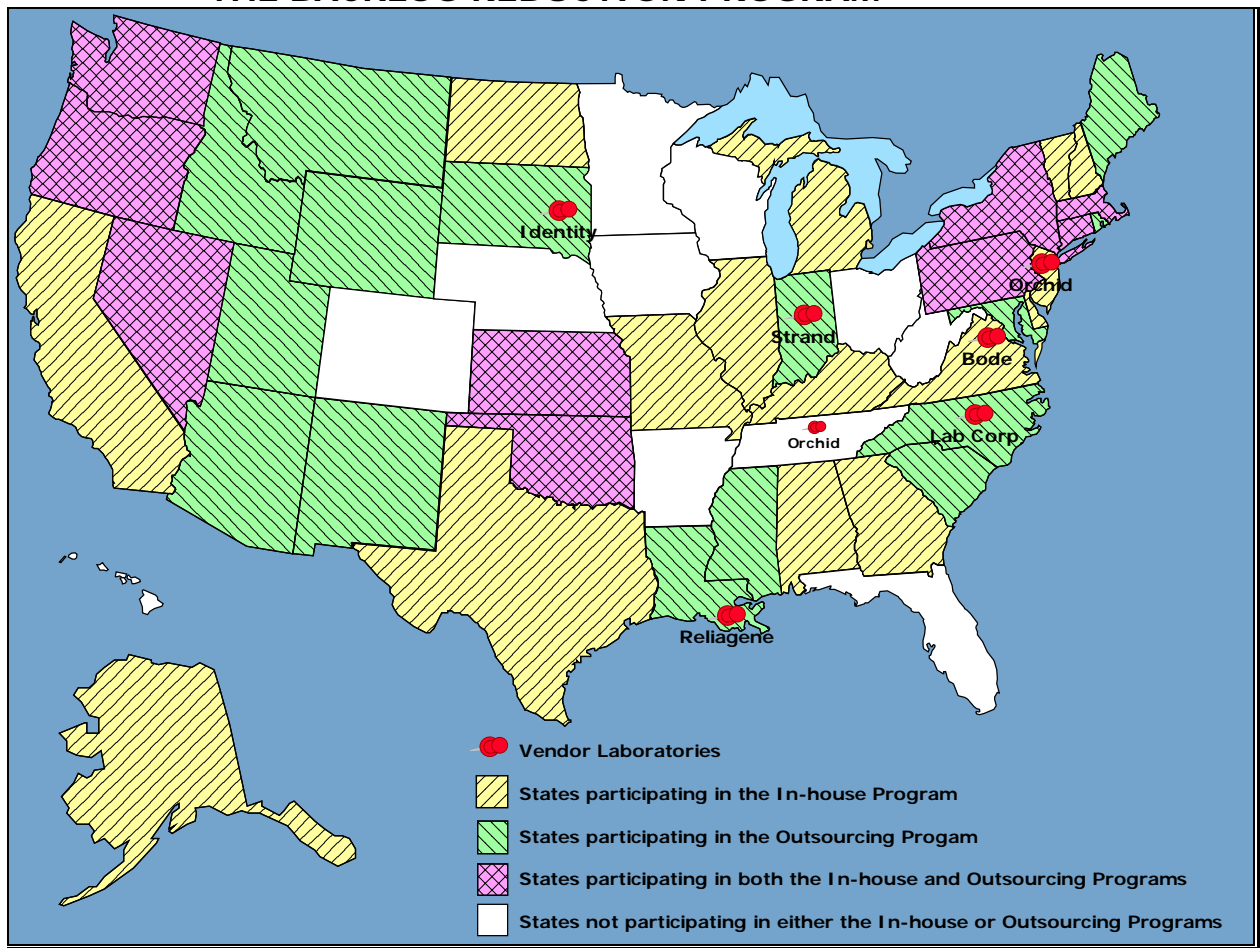
<sup>26</sup> See Appendix II, questions 11 and 12 for complete details concerning state laboratory's survey responses on the impact of the backlog.

<sup>27</sup> For purposes of this audit, the convicted offender backlog is those samples that have been collected but either not analyzed or uploaded into CODIS. See Appendix VI for a complete explanation of the components of the convicted offender backlog.

samples by vendor laboratories on behalf of the states (Outsourcing Program).

As shown in Figure 3, between FYs 2005 and 2007, 39 states received funding totaling \$41.3 million to analyze 1.46 million DNA samples. Of the 39 states, 15 participated in the In-house Program only, 15 participated in the Outsourcing Program only, and 9 participated in both programs. Figure 3 also indicates the names and locations of the six vendor laboratories that participated in the Outsourcing Program.

**FIGURE 3. VENDOR AND STATE LABORATORIES PARTICIPATION IN THE BACKLOG REDUCTION PROGRAM<sup>28</sup>**



Source: In-house Program awards and Outsourcing Program contracts

<sup>28</sup> Orchid has two laboratory locations, the headquarters is located in New Jersey and the facility that performs the convicted offender DNA analysis is in Nashville, Tennessee.

Funds for the In-house Program are to be used by a state's designated existing and accredited DNA database laboratory to reduce the backlog of convicted offender DNA database samples through in-house analysis of samples or through in-house technical review of DNA profiles generated by vendor laboratories. As shown in Table 2, the awards under the In-house Program totaled approximately \$4.7 million in FY 2005, \$6.7 million in FY 2006, and \$5.5 million in FY 2007. As a result of these awards, the NIJ funded the analysis or technical review of 676,138 backlog samples between FYs 2005 and 2007.

**TABLE 2. IN-HOUSE PROGRAM AWARDS FOR FYs 2005 - 2007<sup>29</sup>**

STATE	FY 2005 FUNDS	SAMPLES FUNDED	FY 2006 FUNDS	SAMPLES FUNDED	FY 2007 FUNDS	SAMPLES FUNDED
AL	\$863,280	28,776	\$396,000	13,200	\$528,000	13,200
AK	---	---	87,500	3,500	160,000	4,000
CA	756,927	30,000	756,297	32,723	---	---
CT	---	---	---	---	17,250	3,450
DE	42,494	1,903	---	---	33,000	825
GA	200,000	8,000	294,000	11,760	603,400	21,500
IL	80,094	29,432	16,175	2,750	---	---
KS	227,213	7,680	248,238	9,040	---	---
KY	53,313	1,800	73,381	2,308	---	---
MA	---	---	---	---	50,000	10,000
MI	---	---	---	---	372,256	11,633
MO	266,998	12,493	254,471	12,500	---	---
NV	118,800	3,690	---	---	---	---
NV	\$66,227	2,257	---	---	---	---
NH	---	---	---	---	46,000	1,250
NJ	1,375,407	56,700	615,829	23,491	---	---
NY	237,000	7,900	825,000	27,500	1,000,000	25,000
ND	---	---	52,500	2,100	57,200	1,430
OK	---	---	22,471	20,000	50,730	10,146
OR	---	---	---	---	384,000	9,600
PA	---	---	953,203	41,268	---	---
TX	419,391	19,552	1,517,288	76,438	1,781,320	44,533
VT	39,566	1,320	76,843	2,600	43,600	1,090
VA	---	---	---	---	360,000	9,000
WA	---	---	480,412	16,800	---	---
<b>TOTALS</b>	<b>\$4,746,710</b>	<b>211,503</b>	<b>\$6,669,608</b>	<b>297,978</b>	<b>\$5,486,756</b>	<b>166,657</b>

Source: The NIJ

<sup>29</sup> Samples funded include quality assurance/quality control samples, in-house backlog analysis, and in-house technical review of profiles generated by a vendor laboratory.

Additionally, through the Outsourcing Program, the NIJ contracts directly with vendor laboratories on behalf of the states so that states may outsource the analysis of their backlogged samples.<sup>30</sup> Outsourcing contracts totaled approximately \$24.4 million for FYs 2005 through 2007 to analyze 786,669 backlog samples. Table 2 shows the outsourcing contracts for each vendor in FYs 2005 through 2007.

**TABLE 3. CONTRACTS AWARDED UNDER THE OUTSOURCING PROGRAM FOR FYs 2005 - 2007**

VENDOR	FY 2005 FUNDS	SAMPLES FUNDED	FY 2006 FUNDS	SAMPLES FUNDED	FY 2007 FUNDS	SAMPLES FUNDED
Bode	\$---	---	\$3,624,818	134,236	\$1,454,350	29,300
Identity	---	---	3,039,916	106,722	---	---
Lab Corp	---	---	---	---	2,290,634	78,290
Orchid	1,386,876	49,646	5,765,872	153,303	2,630,600	93,950
ReliaGene	1,934,336	69,207	1,060,025	31,015	1,085,000	35,000
Strand	---	---	---	---	170,400	6,000
<b>TOTALS</b>	<b>\$3,321,212</b>	<b>118,853</b>	<b>\$13,490,632</b>	<b>425,276</b>	<b>\$7,630,984</b>	<b>242,540</b>

Source: OJP Grant Management System

*Allowable Uses of Backlog Reduction Program Funding*

In general, the NIJ limits awards under the Backlog Reduction Program to a maximum of 12 months.<sup>31</sup> For FYs 2005 through 2007, all expenditures were required to relate directly to in-house analysis and technical review of DNA database samples by the state's designated DNA database laboratory or the technical review of vendor-generated profiles by the state's designated DNA database laboratory. In FY 2006, authorized use of funding was expanded to include consultant and contractor technical review of profiles, and in FY 2007 was expanded further to include salaries and benefits of additional employees, laboratory and computer equipment, laboratory renovations, and software. As shown in Table 4, for FYs 2005 through 2007, the following types of expenditures were allowable under the In-house Program:

<sup>30</sup> Vendor laboratories are contracted through the U.S. General Services Administration (GSA). The NIJ awards delivery orders for the analysis of backlogged samples to vendor laboratories on behalf of the states participating in the Outsourcing Program. Throughout this report we refer to the delivery orders as contracts.

<sup>31</sup> According to the In-House Program solicitations, the NIJ may elect to extend an award for an additional 6 months if the award recipient provides documentation that its DNA analysis laboratory is accredited by a nonprofit professional association actively involved in forensic science and nationally recognized within the forensic science community.

**TABLE 4. EXPENDITURES ALLOWED UNDER THE IN-HOUSE PROGRAM FOR FYs 2005 - 2007**

TYPE OF EXPENDITURE	FY 2005	FY 2006	FY 2007
Overtime	√	√	√
Supplies <sup>32</sup>	√	√	√
Administrative Expenses <sup>33</sup>	√	√	√
Consultant and Contractor Services for Data Review	---	√	√
Salary and Benefits of Additional Laboratory Employees	---	---	√
Laboratory and Computer Equipment for the DNA database laboratory	---	---	√
Renovations	---	---	√
Software, such as expert systems and Laboratory Information Management Systems	---	---	√

Source: In-house Program solicitations for FYs 2005, 2006, and 2007

*Performance Measures Required under the Backlog Reduction Program*

To ensure compliance with the *Government Performance and Results Act (GPRA)*, 31 U.S.C § 1115 (2007), award recipients are required to collect and report data that measures the results of the awards implemented under the Backlog Reduction Program. As shown in Table 5, to assist in fulfilling DOJ's responsibilities under GPRA, the NIJ requires award recipients to collect and report data relevant to these measures on a quarterly basis.

**TABLE 5. PERFORMANCE MEASURES REQUIRED UNDER THE IN-HOUSE PROGRAM FYs 2005 – 2007**

OBJECTIVE
To reduce the backlog of convicted offender and/or arrestee DNA samples (DNA database samples)

<sup>32</sup> Funds may be used to acquire commercially available Polymerase Chain Reaction (PCR) kits accepted by NDIS and other laboratory supplies for analysis of DNA database samples, including analysis of quality assurance samples.

<sup>33</sup> Up to 3 percent of the federal portion of the award may be used for administrative expenses directly related to the performance of the project.

<b>PERFORMANCE MEASURE</b>			
Percent reduction in the convicted offender DNA sample backlog			
<b>DATA TO BE PROVIDED BY AWARD RECIPIENTS<sup>34</sup></b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>
The number of convicted offender samples awaiting analysis at the beginning of the award period	√	√	√
The number of convicted offender samples analyzed using In-House Program funds	√	√	√
The number of convicted offender profiles developed using In-House Program funds entered into CODIS	√	√	√
The number of CODIS hits resulting from profiles developed from In-House Program funds	√	√	√
The number of convicted offender samples awaiting review at the beginning of the award period, due to lack of laboratory resources	---	√	√
<b>DATA TO BE PROVIDED BY AWARD RECIPIENTS</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>
The number of convicted offender samples reviewed using In-House Program funds	---	√	√
The number of reviewed convicted offender profiles entered into CODIS using In-House Program funds	---	√	√
The number of CODIS hits resulting from profiles reviewed from In-House Program funds	---	√	√

Source: In-House Program solicitations for FYs 2005, 2006, and 2007

## Prior Reviews

In May 2002 the Office of the Inspector General (OIG) issued Audit Report No. 02-20, *The Office of Justice Programs Convicted Offender DNA Sample Backlog Reduction Grant Program*, in which we examined the Backlog Reduction Program in order to: (1) assess its impact on the backlog; (2) evaluate the administration of the Backlog Reduction Program; and (3) assess compliance by states and contractor laboratories with legislative and Backlog Reduction Program requirements.

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<sup>34</sup> In the FY 2006 solicitation, NIJ approved funds to be used to hire consultants and temporary contract staff to conduct data review of convicted offender DNA profiles that, due to the lack of laboratory resources, have yet to be reviewed and entered into CODIS. These consultants or contract laboratory personnel must meet all NDIS requirements concerning the use of outside consultants for the review of DNA data.



The OIG audit concluded that OJP needed to improve its monitoring of the Backlog Reduction Program's progress toward achieving its stated performance measurements. While OJP tracked the Backlog Reduction Program's progress, OJP was not gathering the correct data and statistics necessary to accurately monitor and report that progress. Additionally, the report concluded that OJP needed to develop and implement written procedures to ensure that grant officials followed up when grantees failed to comply with grant requirements or failed to file grant reports on a timely basis.

In November 2004, the OIG issued Audit Report No. 05-02, *The No Suspect Casework DNA Backlog Reduction Program*, a program designed to help the state laboratories identify, collect, and analyze forensic DNA samples from evidence collected in cases where no suspect has been identified or in which the original suspect had been eliminated. Our audit found inconclusive data on the success of the Casework Backlog Reduction Program in increasing the capacity of state laboratories to process and analyze crime-scene DNA in cases in which there are no known suspects, delays of almost 2 years in drawdowns from grantees, and delays in reviewing DNA samples resulting in profiles paid for by the Casework Backlog Reduction Program not being entered into CODIS. The audit also revealed deficiencies in OJP's administration and oversight of the Casework Backlog Reduction Program. We found that OJP had issued second-year awards to grantees that had not fully spent the first year's awards, released inconsistent requirements for contract laboratories versus state run laboratories, and failed to ensure that profiles generated with grant funds were entered into CODIS to benefit the national DNA database.

### **OIG Audit Approach**

The OIG conducted this audit to assess the NIJ's administration of the Backlog Reduction Program by evaluating:

- the impact of the Backlog Reduction Program on reducing the convicted offender DNA backlog;
- the NIJ's administration and oversight of the In-house Program;
- the extent to which the In-house Program award recipients have administered their awards in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award;

- the NIJ's oversight of the Outsourcing Program; and
- the compliance by vendor laboratories with contractual requirements.

We conducted audit work at the NIJ, where we interviewed officials responsible for administering and monitoring the Backlog Reduction Program, examined In-house and Outsourcing Program files, and reviewed other materials to assess the Backlog Reduction Program performance and accomplishments. We also conducted audits of several award recipients to determine whether reimbursements claimed for costs under the In-House Program were allowable, supported, and in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award. Additionally, we conducted site visits at two vendor laboratories to evaluate vendor compliance with the terms and conditions of the contracts awarded under the Outsourcing Program, as well as to assess the adequacy of the NIJ's oversight of the vendor laboratories.

Finally, we conducted a national survey of all state and vendor laboratories to collect statistics on each state's backlog, as well as to obtain feedback on the NIJ's management and oversight of the Backlog Reduction Program.

The results of our audit are detailed in the Findings and Recommendations section of this report, and the audit objectives, scope, and methodology are presented in Appendix I.

## FINDINGS AND RECOMMENDATIONS

### I. IMPACT OF THE BACKLOG REDUCTION PROGRAM ON THE CONVICTED OFFENDER BACKLOG

The backlog of convicted offender DNA samples awaiting analysis has declined significantly. Based on our analysis, the backlog has fallen from FY 2005 through FY 2007 by between 35.9 percent and 43.1 percent. It appears that the Backlog Reduction Program has played an important role in this reduction by increasing the number of convicted offender samples analyzed and uploaded to CODIS. Of the approximately 1.46 million samples funded under the Backlog Reduction Program, 971,764 have been analyzed and 617,550 uploaded into CODIS as of June 30, 2008, which represents 19 percent of the total number of convicted offender profiles uploaded to CODIS between January 2006 and July 2008. We found that these Backlog Reduction Program-funded uploaded profiles generated 7,023 "hits" or matches that provide law enforcement with investigative leads that would not otherwise have been developed<sup>35</sup>. This represents 19 percent of the 37,110 hits that occurred during this time period.

The NIJ requires award recipients to collect and report data that measures the results of the awards implemented under the Backlog Reduction Program in order to measure the overall performance of the Backlog Reduction Program in reducing the backlog. The ability to increase the number of hits between forensic case samples and convicted offender profiles is directly related to the number of convicted offender DNA profiles entered into CODIS. To this end, each state receiving Backlog Reduction Program funds should be able to demonstrate an increase in the number of CODIS compatible DNA profiles generated from convicted offender samples, either through the In-house or the Outsourcing Program, above and beyond what a state's convicted offender laboratory could accomplish in the absence of the Backlog Reduction Program.

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<sup>35</sup> The FBI refers to matches within the CODIS database that provide law enforcement with investigative leads that would not otherwise have been developed as "hits." A "hit" is when one or more DNA profiles from a crime scene are linked to a convicted felon.

We note that the size and trend of the backlog is a function of the difference between the number of samples a laboratory receives and the number of samples a laboratory is capable of analyzing. As described in greater detail later in this section, many states are receiving an influx of convicted offender samples because of recent legislative changes that increase the number of qualifying offenses and arrests for which samples from offenders can be collected. Thus, even while the Backlog Reduction Program may be successful at increasing the number of convicted offender samples that are analyzed, the backlog may continue to grow because of an increase in the number of samples that are collected.

While there is no single comprehensive measure that tracks or estimates the backlog in local and state laboratories, we attempted to evaluate the backlog. To evaluate the effectiveness of the Backlog Reduction Program in reducing the number of backlog samples, we interviewed NIJ officials and reviewed statistical information contained in the quarterly performance metrics reports (performance reports), quarterly financial status reports, and semiannual progress reports (progress reports) submitted by each award recipient under the Backlog Reduction Program. Additionally, we surveyed all state laboratories conducting convicted offender/arrestee analysis and vendor laboratories with outsourcing contracts to obtain statistical information of trends in the overall backlog and customer satisfaction information concerning the NIJ's oversight and management of the Backlog Reduction Program.<sup>36</sup>

### **NIJ Estimates of the Convicted Offender Backlog**

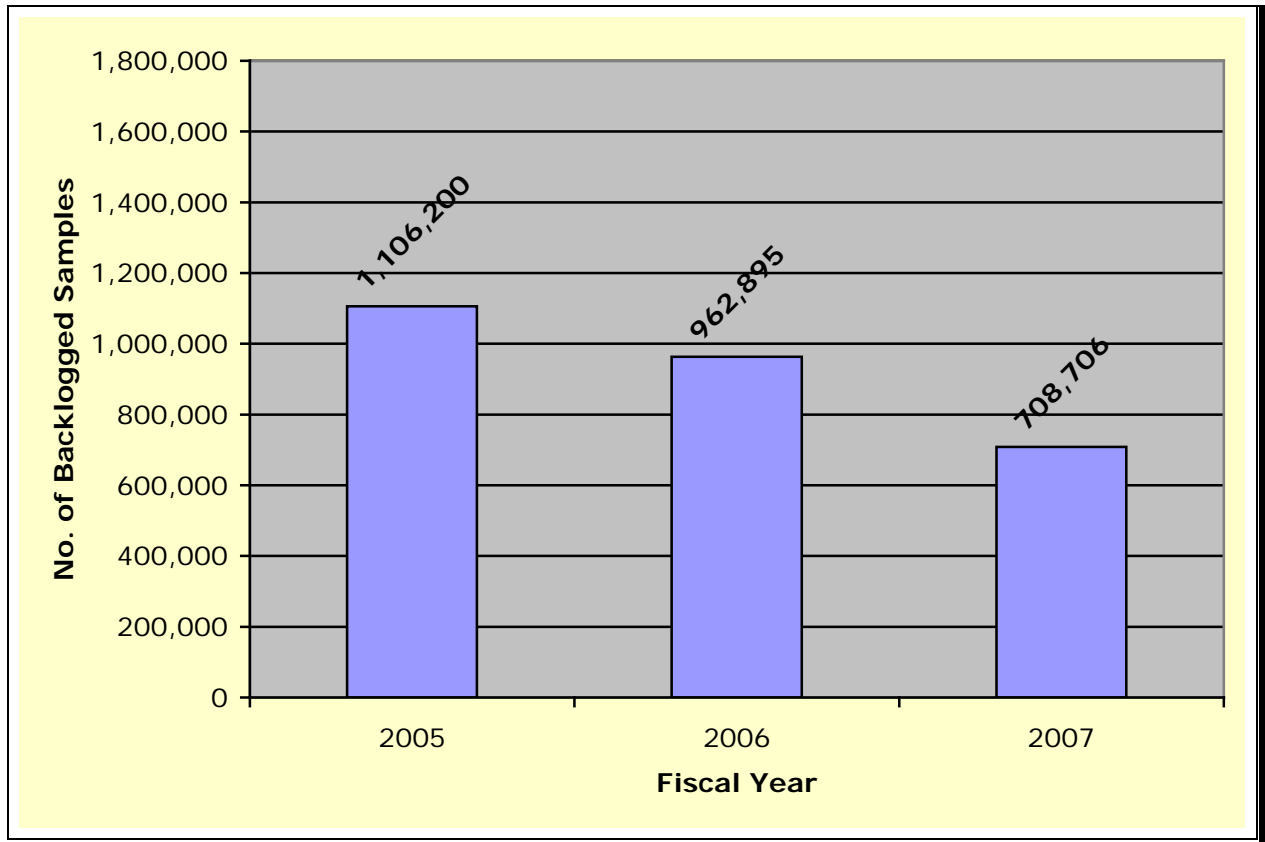
In general, according to the NIJ, funding under the Backlog Reduction Program is awarded based on the number of backlog samples awaiting analysis, as well as the number of samples projected to be analyzed during the award period with federal funds. Each year the NIJ obtains estimates of the backlog from state laboratories to plan future funding under the Backlog Reduction Program. States are asked to report the number of backlogged samples currently awaiting analysis and provide estimates of the number of backlogged samples anticipated to be received by the end of the fiscal year.

As shown in Chart 1, the NIJ surveys suggested a reduction in the backlog from FYs 2005 through 2007.

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<sup>36</sup> For a detailed discussion of the NIJ's administration and oversight of the Backlog Reduction Program, see Finding II.

**CHART 1. NIJ ESTIMATES OF THE CONVICTED OFFENDER BACKLOG FOR FYs 2005 THROUGH 2007**



Source: The NIJ

However, the data provided by the NIJ for the FY 2005 backlog estimate was calculated based on the number of samples that were funded under the Backlog Reduction Program, rather than the actual number of backlogged samples awaiting analysis in each state. For FY 2005, the NIJ reported the number of samples funded under the In-house Program (211,853) added to the number of samples funded under the Outsourcing Program (894,347) to arrive at its estimate of 1,106,200 backlogged samples.<sup>37</sup>

In FY 2006, the NIJ's backlog estimate was calculated by adding the number of uncompleted carry-over FY 2005 backlogged samples (253,196)

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<sup>37</sup> The total number of samples funded under the outsourcing portion for FY 2005 (894,347) was calculated by adding the number of mandatory (533,991) and optional (360,356) outsourced Contract Line Item Numbers (CLINs) for FYs 2003 through 2005, which carried over into FY 2005.

and the total FY 2006 backlogged samples (709,699), as reported to the NIJ by states requesting funding, to arrive at its estimate of 962,895 backlogged samples.

By contrast, in FY 2007 the NIJ conducted a survey of all state laboratories to obtain a national estimate of the backlog. This survey requested the number of convicted offender and arrestee samples on hand as of May 2007 and the number of convicted offender and arrestee samples anticipated to be received between May and September 2007. The results of this survey placed the national estimate of the backlog at 708,706 unanalyzed samples as of September 30, 2007.

Since the NIJ's convicted offender backlog estimates in FY 2005 were based upon the amount funded instead of the actual backlog and FY 2006 and FY 2007 estimates relied on the states to project the number of samples expected at the end of the fiscal year, we conducted our own survey in an attempt to assess the accuracy of the NIJ's backlog estimates.

### **OIG Survey of State Laboratories Regarding the Convicted Offender Backlog**

In addition to assessing the size of the backlog, our survey was designed to obtain feedback on a variety of topics from state laboratories conducting convicted offender analysis and vendor laboratories with outsourcing contracts. We sought information on current and past backlogs and the factors that might have influenced the growth or reduction of those backlogs from FY 2005 through FY 2007.

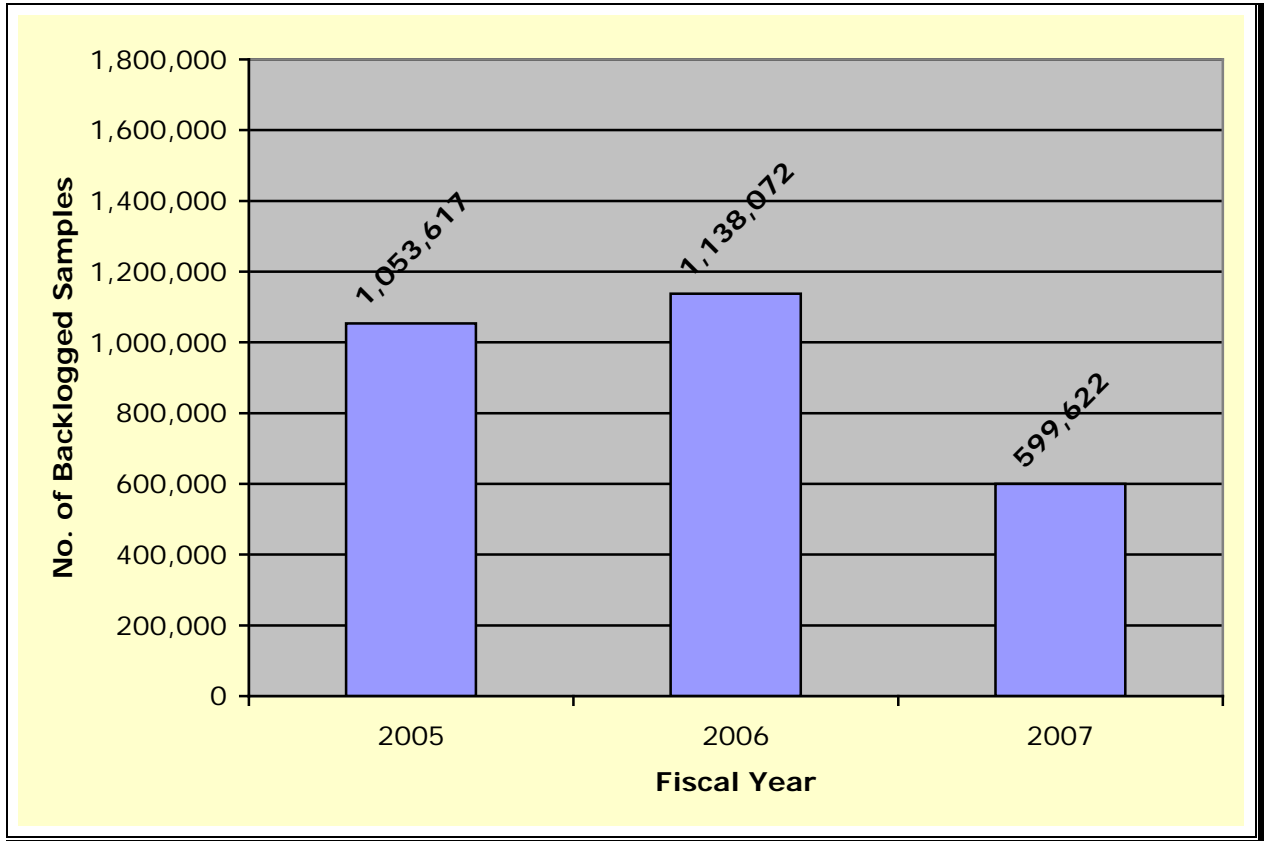
We received 51 responses from state laboratories conducting convicted offender analysis and 5 responses from vendor laboratories with outsourcing contracts, which represents a 100 percent response rate.

We analyzed survey results to detect commonalities of responses and consensus of opinions. As part of this analysis, we tabulated responses for all questions, identified trends in supplemental comments, and identified any potential weaknesses from the consensus responses and comment trends. The results of our analysis of the survey can be found in Appendices II and III and are referenced throughout this report where applicable.

To estimate the overall backlog, in our survey we asked each state laboratory to report the total number of convicted offender and arrestee

samples awaiting analysis at the end of FYs 2005 through 2007. As shown in Chart 2, our surveys placed the backlog for FYs 2005 through 2007 at 1,053,617; 1,138,072; and 599,622.

**CHART 2. OIG ESTIMATES OF THE CONVICTED OFFENDER BACKLOG FOR FISCAL YEARS 2005 THROUGH 2007**



Source: OIG national survey of state laboratories

### **Discrepancies in Statistical Information Regarding the Convicted Offender Backlog**

In our analysis of the impact of the Backlog Reduction Program on the convicted offender backlog, we compared numbers obtained from our survey of state laboratories with the results of the annual survey conducted by the NIJ. As shown in Table 6, we often found significant discrepancies between the data we received and data collected by the NIJ.

**TABLE 6. COMPARISON OF NIJ AND OIG BACKLOG DATA**

STATE	NIJ DATA			OIG SURVEY DATA		
	FY 2005	FY 2006	FY 2007	FY 2005	FY 2006	FY 2007
AL	95,015	17,552	13,200	50,277	16,946	3,832
AZ	76,273	24,010	35,000	52,634	49,117	51,192
CA	30,000	50,000	30,000	215,667	251,885	60,189
LA	10,000	<b>18,530</b>	121,355	100,000	<b>82,108</b>	45,236

Source: The NIJ and OIG

Some of the discrepancies between backlogs reported each year to the NIJ and the backlogs reported in our survey were significant, such as in the case of Louisiana for FY 2005, where 10,000 backlog samples were reported to the NIJ but 100,000 samples were reported to the OIG. These differences may be attributable to the fact that the NIJ asked states to estimate the number of samples that the state anticipated receiving, as well as the samples already on hand, while the OIG data is based on historical information reported by state laboratories.<sup>38</sup> Additionally, the NIJ's FY 2005 backlog statistics were based on the number of samples funded under the Backlog Reduction Program rather than on information on the size of the backlog obtained from the state laboratories.

In addition, we found discrepancies between the number of laboratories that reported statistics to the NIJ and the OIG, as shown in Table 7. For each year, approximately 0 to 33 percent of the states did not report statistics in the NIJ's annual survey while approximately 2 to 6 percent of the respondents did not provide a response to the backlog question on the OIG survey.<sup>39</sup>

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<sup>38</sup> The OIG did not verify the accuracy of survey data submitted by state laboratories.

<sup>39</sup> In FY 2006, survey results provided by the NIJ did not distinguish between a non-response and zero backlog. Therefore, we cannot determine NIJ's response rate for FY 2006. Of the 50 SDIS (and 1 LDIS) laboratories that process convicted offender and/or arrestee DNA samples, all responded to our survey. However, Ohio did not provide information on the backlog for FYs 2005, 2006, or 2007; New Mexico did not provide backlog data for FYs 2005 and 2006; and Alaska did not provide this information for FY 2005.



**TABLE 7. STATE PARTICIPATION IN REPORTING BY FISCAL YEAR**

CATEGORY	2005	2006 <sup>40</sup>	2007
Reported a backlog to OIG	42	45	44
Reported a backlog to the NIJ	41	41	34
Reported zero to OIG	6	4	6
Reported zero to the NIJ	10	10	0
Did not respond to OIG	3	2	1
Did not respond to the NIJ	0	0	17

Source: The NIJ and OIG

Because of the discrepancies identified between the data obtained from the NIJ and the data obtained from our survey, we were unable to determine the exact number of samples awaiting analysis in the convicted offender backlog. Nevertheless, although we have identified potential concerns with the data, in our judgment the NIJ and OIG data obtained and presented in the following sections of this report represents a reasonable estimate for measuring the overall success of the Backlog Reduction Program in reducing the number of samples awaiting analysis.<sup>41</sup>

### **Number of Convicted Offender Samples Awaiting Analysis**

As discussed previously, the goal of the Backlog Reduction Program is to reduce and ultimately eliminate the backlog of samples awaiting analysis. To determine whether the Backlog Reduction Program is achieving its goal, we analyzed the data on the backlog we obtained from the NIJ and our own survey of state laboratories to estimate the actual backlog.

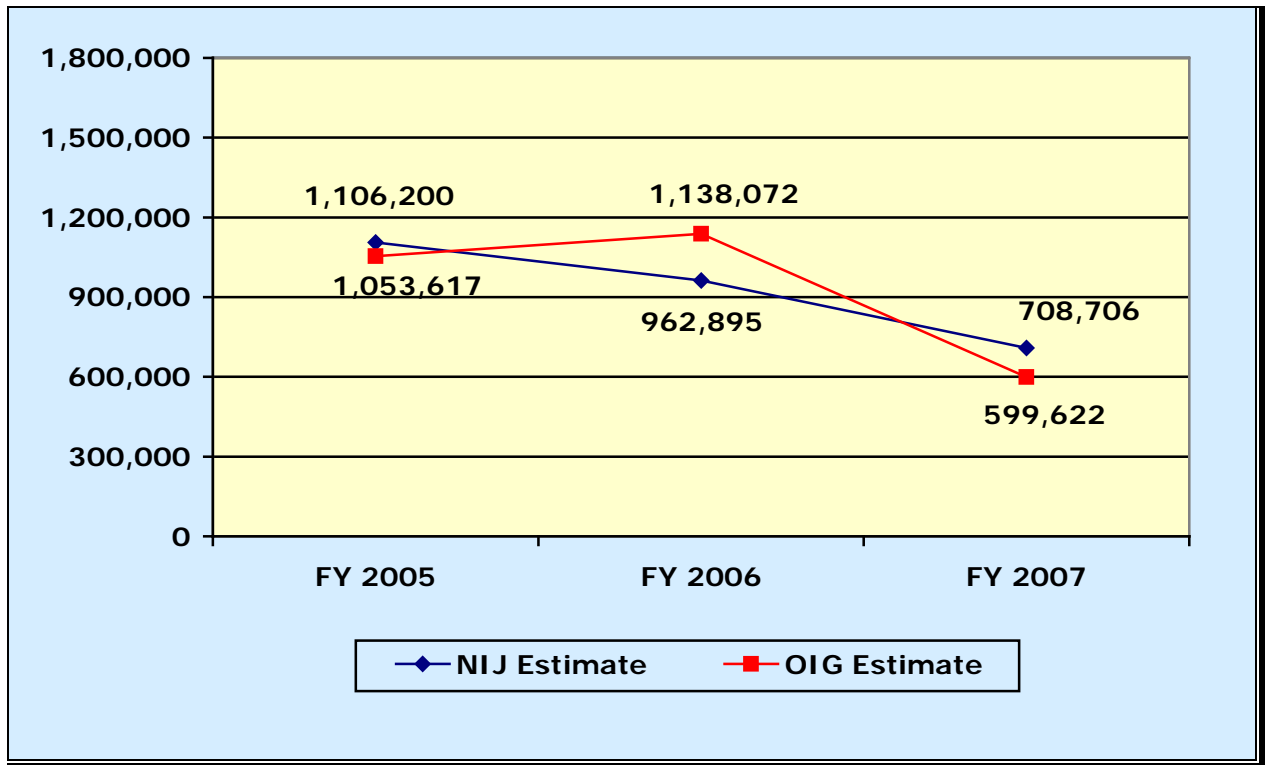
As shown in Chart 3, the number of backlog samples awaiting analysis has been declining since 2005 by somewhere between 35 and 43 percent. As reported by the NIJ, the number of samples awaiting analysis has decreased by 35.9 percent from 1,106,200 in FY 2005 to 708,706 in FY 2007. The numbers obtained from the OIG survey also indicated a decline, decreasing by 43.1 percent from 1,053,617 in FY 2005 to 599,622 in FY 2007.

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<sup>40</sup> For FY 2006, data was reported as zero from the NIJ in 9 states, and no data was reported for Washoe County, NV. However, the data provided by the NIJ did not distinguish non-response from zero backlog.

<sup>41</sup> For a detailed discussion of issues related to statistical information used to measure performance under the Backlog Reduction Program, see Finding II.

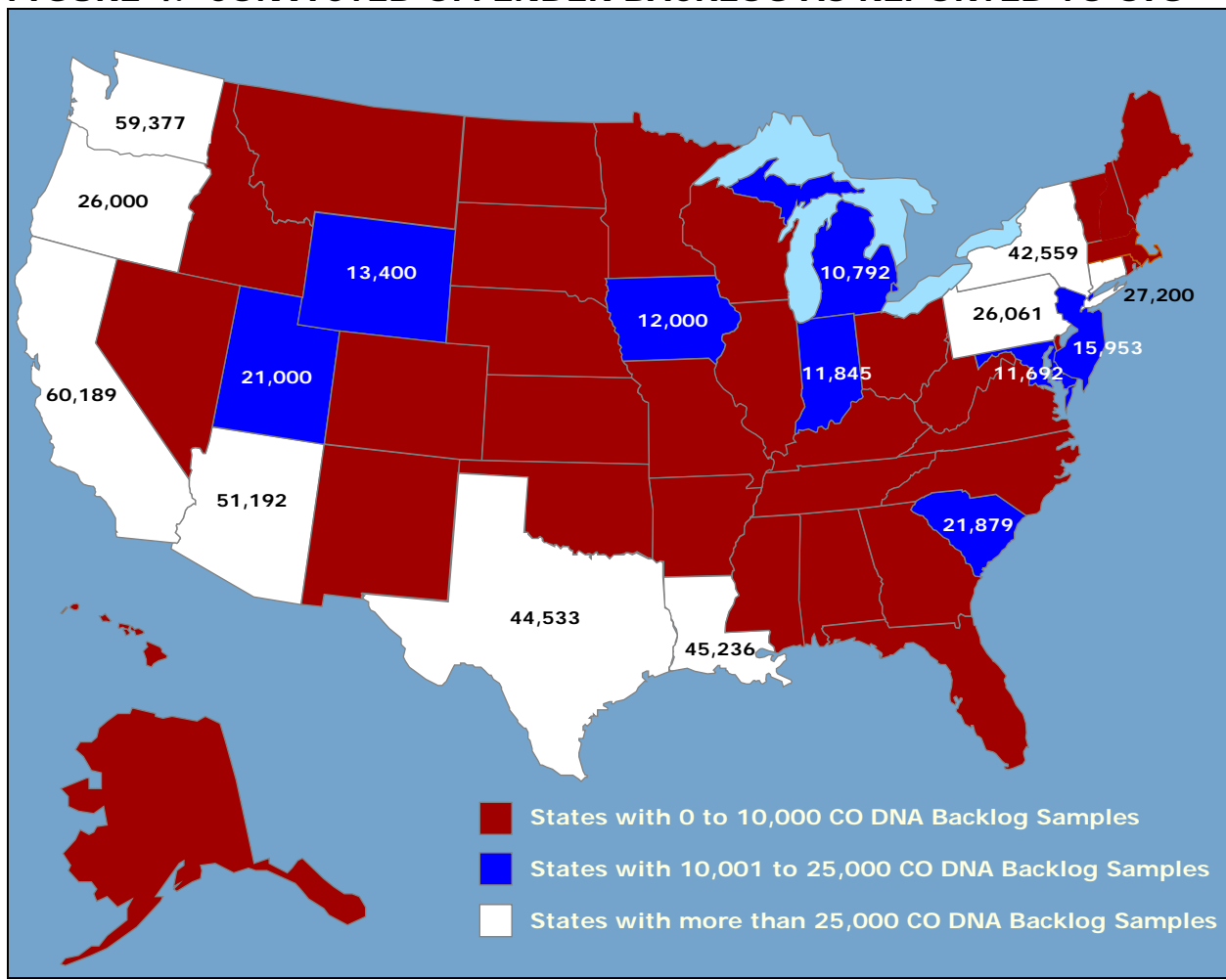
**CHART 3. CONVICTED OFFENDER SAMPLES AWAITING ANALYSIS**



Source: The NIJ and OIG

According to the statistics reported in our survey of the 51 state laboratories, at the end of FY 2007 10 states (Arizona, California, Connecticut, Louisiana, Massachusetts, New York, Oregon, Pennsylvania, Texas, and Washington) accounted for 388,347 of the 599,622 (64.7 percent) backlog samples reported to the OIG. Another 8 states (Indiana, Iowa, Maryland, Michigan, New Jersey, South Carolina, Utah, and Wyoming) accounted for 118,561 (19.7 percent) of the backlog samples. The other 32 states accounted for the remaining 92,714 (15.5 percent) backlog samples. Figure 4, illustrates the extent of individual backlogs by state.

**FIGURE 4. CONVICTED OFFENDER BACKLOG AS REPORTED TO OIG**



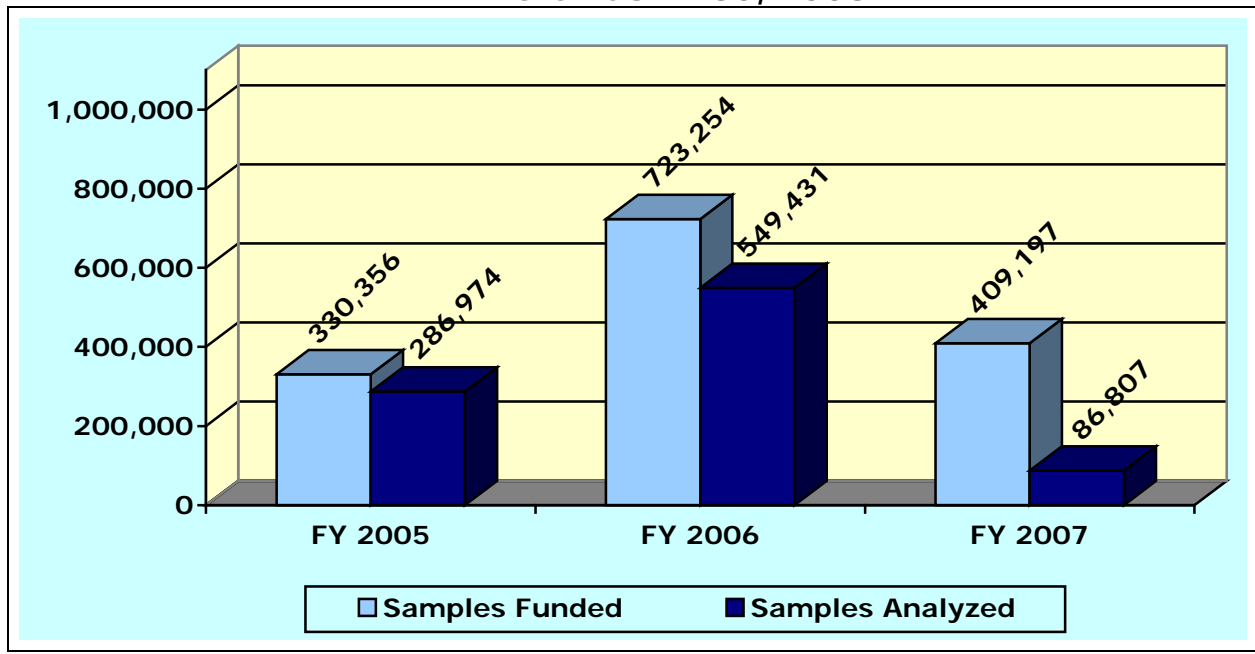
Source: OIG national survey of state laboratories

### Number of Convicted Offender Samples Analyzed

We also examined the number of DNA samples analyzed through funding from the Backlog Reduction Program. As shown in Chart 4, between FYs 2005 and 2007 the Backlog Reduction Program funded analysis of 1.46 million samples, with 923,212 samples (63.1 percent) reported as analyzed through June 30, 2008.<sup>42</sup>

<sup>42</sup> The samples funded are the number of samples forecasted to be completed through the combined funding of both the In-house and Outsourcing Program funding. The samples analyzed represent those samples that used funds from the awards issued in that fiscal year, but were not necessarily analyzed in that year. For example, the samples for which funding for analysis was awarded in FY 2005 may have been analyzed across all three fiscal years.

**CHART 4. NUMBER OF CONVICTED OFFENDER SAMPLES FUNDED AND ANALYZED AS OF JUNE 30, 2008<sup>43</sup>**



Source: OJP GMS and the NIJ

Using the Backlog Reduction Program data reported to the NIJ by the states and vendor laboratories, however, we found that 450,507 (66.6 percent) of the 676,138 In-house Program samples funded between FYs 2005 and 2007 had been analyzed. Additionally, only 521,257 (66.3 percent) of the 786,669 Outsourcing Program samples funded had been analyzed.

The reasons for these delays in analyzing samples are discussed in detail in Finding II. Table 8 illustrates the number of backlogged samples funded and the percentage of the total number of backlogged samples analyzed under both the In-house and Outsourcing Programs between FYs 2005 and 2007.

<sup>43</sup> Because In-house Program awards and Outsourcing Program contracts for FY 2007 were still open at the time of our audit, analysis of samples under FY 2007 funding had not been completed.

**TABLE 8. IN-HOUSE AND OUTSOURCING PROGRAMS BACKLOG  
SAMPLES FUNDED AND ANALYZED AS OF JUNE 30, 2008**

	FY 2005	FY 2006	FY 2007	TOTALS
<b>IN-HOUSE PROGRAM</b>				
Samples Funded	211,503	297,978	166,657	676,138
Samples Analyzed	182,993	209,543	57,971	450,507
Percentage Completed	86.5%	70.3%	34.8%	66.6%
<b>OUTSOURCING PROGRAM</b>				
Samples Funded	118,853	425,276	242,540	786,669
Samples Analyzed	103,981	352,060	65,216	521,257
Percentage Completed	87.5%	82.8%	26.9%	66.3%

Source: The NIJ

### **Number of Convicted Offender Profiles Uploaded into CODIS**

To assess the significance of the number of samples that have been analyzed under the Backlog Reduction Program, we compared the number of convicted offender profiles uploaded to CODIS that can be attributed to the Backlog Reduction Program to the number of convicted offender profiles attributable to other funding sources such as state, local, or other federal DNA-related program funding.<sup>44</sup> A sample must be developed into a profile and entered into CODIS to be useful in generating investigative leads. Therefore, analysis of a backlog sample is not usable until it is uploaded.

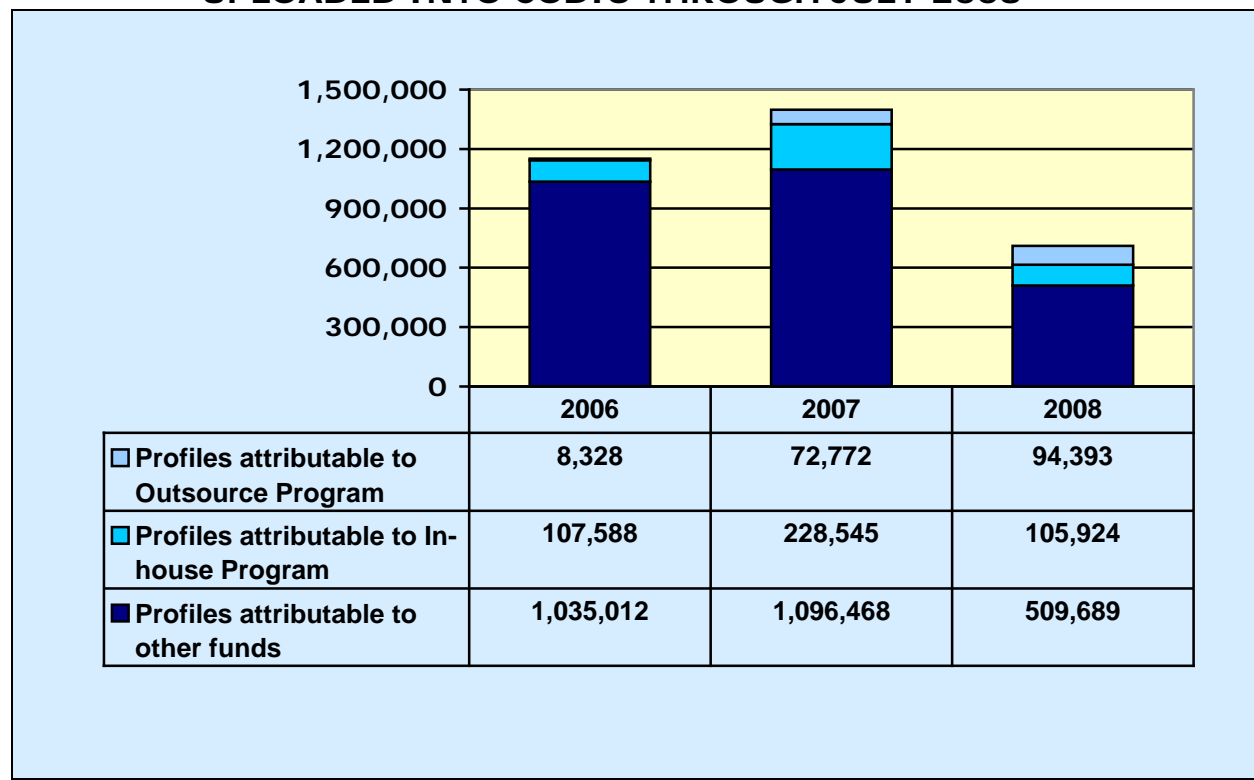
Using the Backlog Reduction Program data reported to the NIJ by the state and vendor laboratories, we found that profiles attributable to the Backlog Reduction Program uploaded to CODIS in calendar year (CY) 2006 accounted for 10.1 percent of the total convicted offender uploads for the year. In CY 2007 that percentage increased to 21.6 percent, and as of July 2008 the percentage increased to 31.2 percent of the total convicted offender uploads. Chart 5 illustrates the percentage of the total number of

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<sup>44</sup> The number of uploaded profiles from the In-house and Outsourcing Programs was obtained through analysis of the performance metric reports submitted by the state laboratories. Those numbers were deducted from the FBI totals of uploaded profiles for each calendar year to determine the profiles attributable to other funding sources not related to the Backlog Reduction Program.

convicted offender profiles uploaded to CODIS that can be attributed to the Backlog Reduction Program.<sup>45</sup>

**CHART 5. NUMBER OF ANALYZED CONVICTED OFFENDER PROFILES UPLOADED INTO CODIS THROUGH JULY 2008**



Source: The FBI, NIJ, and OIG

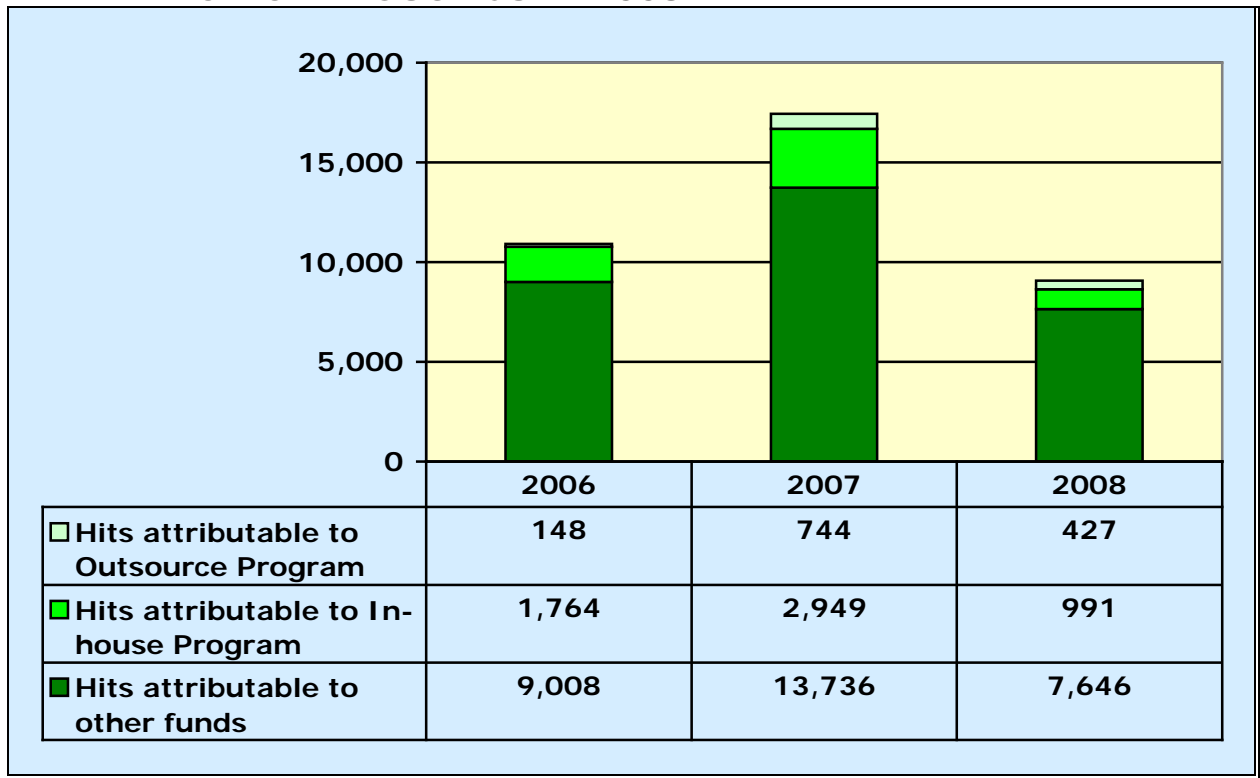
### Number of CODIS Hits Resulting from Profiles Reviewed

According to the FBI, 37,110 hits were generated from convicted offender and arrestee profiles uploaded to CODIS from January 2006 to June 2008. Data reported to the NIJ by the state laboratories show that of these hits, 7,023 (19 percent) of the profiles were attributed to the Backlog

<sup>45</sup> As discussed in Finding II, we found that performance reports for the Outsourcing Program were incomplete and may not be an accurate representation of actual Outsourcing Program performance. However, it is the only data available for the number of uploads attributable to the Outsourcing Program.

Reduction Program.<sup>46</sup> Chart 6 illustrates the number of convicted offender hits that were generated by CODIS from January 2006 through June 2008 and the amount that were attributed to the Backlog Reduction Program.

**CHART 6. NUMBER OF CONVICTED OFFENDER HITS IN NDIS AND SDIS THROUGH JUNE 2008**



Source: The FBI, NIJ, and OIG

As discussed above, based on our analysis of Backlog Reduction Program statistics obtained from both the NIJ and our own survey, we determined that the backlog of convicted offender samples awaiting analysis has declined between 35.9 percent and 43.1 percent since FY 2005. We also found that, as of June 30, 2008, the Backlog Reduction Program had funded the analysis or technical review of approximately 1.46 million convicted offender samples, resulting in the analysis of 971,764, upload of 617,550 samples, and 7,023 hits generated.

<sup>46</sup> As discussed in Finding II, we found that performance reports for the Outsourcing Program were incomplete and may not be an accurate representation of actual Outsourcing Program performance. However, it is the only data available for the number of hits attributable to the Outsourcing Program.

As a result, between January 2006 and July 2008, 19 percent of the 3.2 million profiles uploaded to CODIS were attributed to the Backlog Reduction Program, and between January 2006 and June 2008, 19 percent of the 37,110 hits were attributed to the Backlog Reduction Program.

Although the statistical information presented shows a reduction in the backlog, it is important to recognize that the backlog fluctuates due primarily to the expansion of state DNA collection statutes.<sup>47</sup> As a result, any reduction in the backlog attributed to the Backlog Reduction Program may be offset as states require more categories of offenders and arrestees to submit DNA samples.

### **Effect of Expansions of DNA Collection Legislation on the Backlog**

Between 1988 and 1998 all 50 states enacted DNA collection statutes. Many of these statutes required that offenders convicted of a limited number of “new” offenses give a DNA sample to be analyzed and the resulting profile added to the state’s convicted offender DNA database. In some cases, new legislation made the collection of samples from convicted offenders retroactive.

Since 1998 the states have significantly expanded the number of qualifying offenses that require convicted offenders to submit a DNA sample. Some states have even passed legislation allowing for the collection of DNA from persons arrested for, but not yet convicted of, certain offenses.<sup>48</sup> As shown in Figure 5, as of August 2008, 47 states enacted laws requiring DNA collection from persons convicted of any felony offense, and 13 states also allow for the collection of DNA samples from arrestees for certain offenses.<sup>49</sup> As a result of the expansion of new DNA collection laws, the number of samples that require analysis is likely to increase as more states move to collect samples for a greater number of qualifying offenses. In our survey we queried state laboratories concerning the impact on the backlog in their state resulting from legislative expansions to collections that had been passed during the last 5 years. Of the 38 respondents, 33 (87 percent) said

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<sup>47</sup> See Appendix IV for additional examples of factors that influence a laboratory’s ability to analyze the DNA samples it receives.

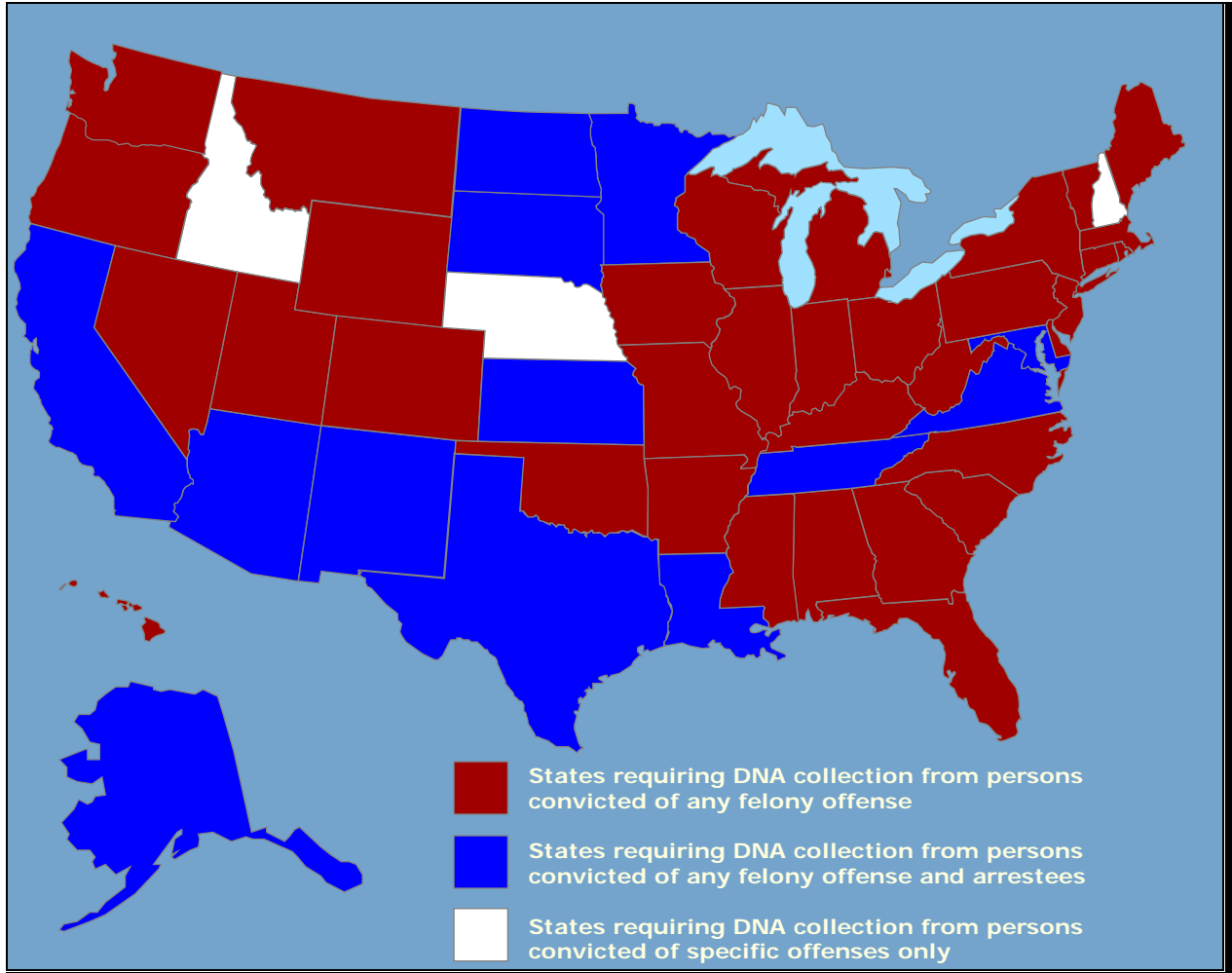
<sup>48</sup> State-dependent qualifying arrests are generally only for violent felonies, including murder, sex crimes, and burglary.

<sup>49</sup> State-dependent qualifying arrests are generally only for violent felonies, including murder, sex crimes, and burglary.



that the implementation of legislative expansions to collections passed during the last 5 years has increased the backlog in their state.

**FIGURE 5. STATE LEGISLATION GOVERNING OFFENDER DNA SAMPLE COLLECTION AS OF AUGUST 2008**



Source: National Conference of State Legislatures and DNA Resource.com

As discussed in the following sections, new laws passed in Texas, California, and New York have resulted in dramatic increases to the convicted offender DNA backlog.

## *Texas*<sup>50</sup>

According to the Texas FY 2005 In-house Program narrative submitted to the NIJ in support of its award application, in April 2004 the state's collection legislation was expanded to require DNA samples from persons convicted of any felony. As a result, the number of samples received by the state laboratory increased by more than 100 percent from about 1,500 per month to over 3,000 per month. Although the new legislation more than doubled the number of samples to be analyzed, it did not provide any additional funding to cover the costs of analyzing the additional samples.

The In-house Program narratives submitted by Texas for FYs 2006 and 2007 indicated that in September 2005 a new state law expanded DNA collection from individuals newly convicted of qualifying offenses to also include retroactive collection from persons already in the state's prison system convicted of a felony offense but have yet to provide a DNA sample. The laboratory estimated this retroactive expansion would include 44,744 inmates from the Texas Department of Criminal Justice and 3,154 juveniles from the Texas Youth Commission, and would result in an increase of samples received from about 3,000 per month to over 7,500 per month, an increase of 150 percent. Like the previous legislation, this new law did not provide any state funding to defray the cost of the additional DNA analysis.

## *California*<sup>51</sup>

In its FYs 2005 and 2006 narratives submitted to support its request for In-House Program funding, California attributed a significant increase in the receipt of convicted offender samples to the passage of "Proposition 69" in November 2004. Proposition 69 required that a DNA sample be collected from: (1) adults and juveniles convicted of any felony offense; (2) adults and juveniles convicted of any sex offense or arson offense, or an attempt to commit any such offense (not just felonies); and (3) adults arrested for or charged with felony sex offenses, murder, or voluntary manslaughter (or the attempt to commit such offenses). Additionally, Proposition 69 required that, beginning in January 2009, DNA must be collected from adults arrested for or charged with any felony offense. The state laboratory estimated that

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<sup>50</sup> Between FYs 2005 and 2007, Texas received funding totaling \$3,717,999 to analyze 140,523 samples under the In-house Program.

<sup>51</sup> Between FYs 2005 and 2006, California received funding totaling \$1,513,224 to analyze 62,723 samples under the In-house Program.

the number of samples that it would receive and process would increase by 100 percent from 65,000 to 130,000 annually.

Proposition 69 required DNA samples to be taken from parolees and individuals already serving time in a correctional facility for a qualifying offense. To address the costs of the new legislation, the state increased criminal fines and other penalties to support the expansion of DNA collection on an ongoing basis. However, the law did not provide any additional funding to address the samples that are required to be submitted retroactively.

### *New York*<sup>52</sup>

In July 2004, New York expanded its collection legislation to require DNA samples from individuals convicted of additional felony offenses and sex-related misdemeanor offenses. The new legislation was retroactive and created a backlog of approximately 11,000 DNA samples.

Additionally, in May 2005 the state's Computerized Criminal History records were modified to indicate whether an offender had been convicted of a qualifying offense under New York State law but had not provided a DNA sample. This system allows the state to identify offenders who might owe a DNA sample when rearrested or convicted for any new offense, whether the offense is a DNA qualifying offense or not. There were more than 14,000 offenders who fell under this category as of June 2005.

In June 2006, the legislation was expanded again to require a DNA sample from all persons convicted of a felony and from persons convicted of 18 designated misdemeanors. The requirements were applied retroactively to the pool of individuals currently serving sentences for these newly designated offenses. As a result, the New York State Police estimated the expansion would increase the state's current backlog by 67 percent, from approximately 15,000 samples to 25,000 samples by September 30, 2006.

### **Potential Impact of Adding Arrestees to Collection Legislation**

As these examples illustrate, most expansions of collection laws result in a considerable increase in a state's DNA backlog. However, not every

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<sup>52</sup> Between FYs 2005 and 2007, New York received funding totaling \$2,062,000 to analyze 60,400 samples under the In-house Program.

state is affected similarly by a legislative expansion. The impact of new legislation on a state's backlog is determined by several variables, including whether legislative changes are retroactive, whether additional appropriations accompany the statute change, whether statutes apply to both adults and juveniles, whether statutes apply to probationers and parolees, and which agencies are tasked with collection of the samples and the compliance level of those collections.

In 2005 Congress passed the DNA Fingerprint Act, which allowed arrestee samples to be uploaded to CODIS as well as for Federal agencies to collect DNA samples from persons arrested or detained under the authority of the United States.<sup>53</sup> While 13 states allow for the collection of DNA samples from arrestees, many more are considering collecting DNA samples from arrestees. Moreover, 69 of the 103 pieces of DNA database expansion legislation that were introduced in state legislatures as of May 2008 were related to adding arrestees as qualifying for DNA collection.

To forecast the impact the addition of arrestees might have on the backlog, we first estimated a current national convicted offender workload. This estimate is based on the current laws of the 50 states, arrests as reported in the FBI's Uniform Crime Reports for 2006, and a national conviction rate as reported in the Bureau of Justice Statistics Report, *Felony Sentences in State Courts, 2004* issued in July 2007. We then used these estimates to project the increase to our estimated national workload if all states moved to DNA sampling of all felony arrestees.

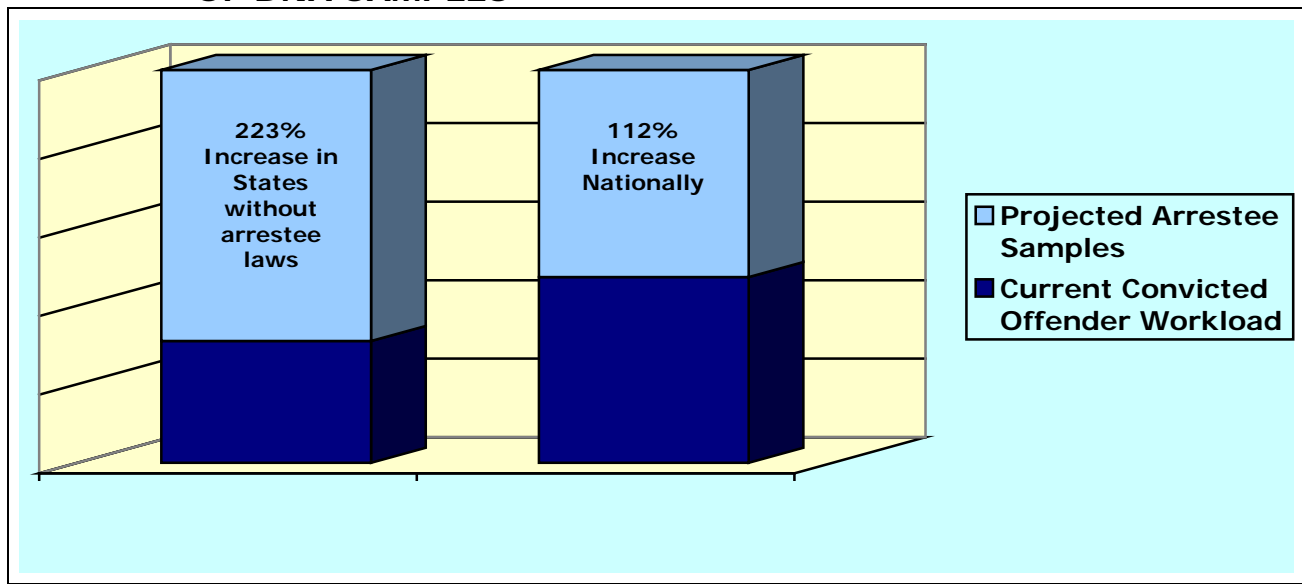
As shown in Chart 7, if all felony arrests are added in every state, we estimate that the national convicted offender workload would increase by 112 percent over the current national workload. Additionally, in states that currently do not have arrestee collection legislation, we estimate that the expansion of legislation to include arrestees would increase the annual receipt of DNA samples by 223 percent for those states.<sup>54</sup>

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<sup>53</sup> 42 U.S.C. § 14132 (2006) and 42 U.S.C. § 14135a (2006)

<sup>54</sup> See Appendix V for a complete analysis of the methodology used to calculate the potential impact of adding arrestees to collection legislation.

**CHART 7. OIG ESTIMATE OF LEGISLATIVE IMPACT DUE TO ADDITION OF ARRESTEE SAMPLES ON ANNUAL RECEIPT OF DNA SAMPLES**



Source: OIG

Although the statistical information discussed earlier indicates that the Backlog Reduction Program is having an impact on the convicted offender backlog, the backlog fluctuates, due primarily to the expansion of state DNA collection statutes. Consequently, any positive effect of the Backlog Reduction Program could be offset as states authorize expansion of collection legislation to include more categories of offenders and arrestees.

Throughout the remaining sections of this report, we identify several issues that have an impact on the effectiveness of the Backlog Reduction Program as a whole. These concerns also relate to the effectiveness of the individual programs implemented by the state and vendor laboratories awarded under both the In-house and Outsourcing Programs. We believe that if these issues are addressed, the effectiveness of the Backlog Reduction Program could be improved, and the number of backlog samples awaiting analysis reduced.

## II. ADEQUACY OF THE NATIONAL INSTITUTE OF JUSTICE OVERSIGHT AND ADMINISTRATION OF THE BACKLOG REDUCTION PROGRAM

We found significant delays in the analysis, review, and upload of over 180,000 backlogged samples for both the In-house and Outsourcing Programs. Additionally, although the NIJ required state laboratories receiving In-house and Outsourcing Program funding to collect information on performance measures, we found that the NIJ did not adequately use the reported information to manage its Backlog Reduction Program. Specifically, the NIJ did not summarize the performance information reported by state laboratories to evaluate the effectiveness of the Backlog Reduction Program's individual awards and contracts, and did not provide adequate guidance to the state laboratories on collecting and reporting performance information. As a result, we identified inconsistencies with the statistical information reported by the laboratories, which prevents the NIJ from fully and accurately assessing overall Backlog Reduction Program performance.

Federal regulations require that award recipients be monitored throughout the life of the award to ensure that: (1) the award recipients comply with the programmatic, administrative, and fiscal requirements of the relevant statutes, regulations, policies, and guidelines; (2) awards are carried out in a manner consistent with the relevant statutes, regulations, policies, and guidelines of the program; (3) the award recipients are provided guidance on policies and procedures, program requirements, general federal regulations, and basic programmatic, administrative, and financial reporting requirements; and (4) problems that may impede the effective implementation of the program are identified and resolved.

To this end, in November 2004 the NIJ implemented the Grant Progress Assessments to address findings and recommendations identified in prior OIG audit reports related to improving NIJ's monitoring procedures.<sup>55</sup> Through two Cooperative Agreements totaling \$13,231,841 with the National

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<sup>55</sup> As discussed earlier, the previous OIG reports included: U.S. Department of Justice Office of the Inspector General, *The Convicted Offender DNA Backlog Reduction Program*, Audit Report 02-20 (May 2002), 4 and the *Office of Justice Programs Annual Financial Statement Fiscal Year 2005*, Audit Report 06-17 (March 2005), 1.

Forensic Science Technology Center (NFSTC), DNA staff conducted the Grant Progress Assessments for both the In-house Program and the Outsourcing Program.<sup>56</sup>

As defined by NFSTC, the objectives of the Grant Progress Assessment Program are to:

- assess the award recipient's progress in meeting program goals and objectives,
- review the status of administrative documentation,
- identify challenges faced by the award recipient in achieving program objectives,
- identify successful or "model programs,"
- assess the impact of the award funding, and
- strengthen the NIJ program management and oversight.

Although the NIJ implemented the Grant Progress Assessments to strengthen its oversight and monitoring of the Backlog Reduction Program, our audit identified several issues that reduce the effectiveness of the NIJ's oversight and administration of the Backlog Production Program as a whole, as well as to the individual programs implemented by the state and vendor laboratories under both the In-house and Outsourcing Programs.<sup>57</sup> These concerns are related to:

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<sup>56</sup> These cooperative agreements funded other activities at NFSTC in addition to the Grant Progress Assessments including forensic training designed to provide training courses and resources to forensic analysts and community outreach to support the forensic science community. In addition to conducting the Grant Progress Assessments of the Backlog Reduction Program, NFSTC performs the Grant Progress Assessments of the DNA Casework Backlog Reduction Programs, the DNA Capacity Enhancement Program, grants provided by the Paul Coverdell Forensic Sciences Improvement Act, and the Solving Cold Cases with DNA programs.

<sup>57</sup> As part of our overall audit of the Backlog Reduction Program, we conducted audits of 8 state laboratories that received a cumulative total of 19 In-house Program awards, and visited 2 vendor laboratories awarded 17 contracts under the Outsourcing Program. A detailed discussion of our audits related to the state and vendor laboratories can be found in Findings III and IV.

- the failure to adequately address delays in the utilization of funds awarded to process backlogged samples; and
- the failure to adequately collect and use performance information reported by state laboratories to demonstrate Backlog Reduction Program results.

## **Utilization of Backlog Reduction Program Funding**

As stated previously, the objective of the Backlog Reduction Program is to accelerate the analysis of convicted offender and arrestee DNA samples collected by states in order to provide timely CODIS-compatible data for state and national DNA databases. To accomplish this objective, the NIJ provides 1-year awards and contracts to state and vendor laboratories to analyze backlogged samples. To ensure the Backlog Reduction Program is meeting these goals, it is essential that Backlog Reduction Program funding be awarded and utilized in a timely manner.

We reviewed award obligations and drawdowns for all Backlog Reduction Program awards and contracts between FYs 2005 and 2007 to determine the effectiveness of the NIJ's administration and oversight of funding awarded under the Backlog Reduction Program. We found that, in general, the NIJ awarded funds in a timely manner. However, as detailed in the following sections, we found significant delays in the expenditure of funds for both the In-house and Outsourcing Programs, resulting in untimely analysis, review, and uploading of samples funded under the Backlog Reduction Program.<sup>58</sup>

### *In-house Program*

For each of the 45 In-House Program awards between FYs 2005 and 2007, which totaled approximately \$16.9 million, we obtained and reviewed the award payment history to determine: (1) whether In-House Program funds had been drawn down, and (2) the length of time between the date the In-House Program funds were obligated and the date of the initial drawdown. We identified 8 awards totaling approximately \$2.74 million for

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<sup>58</sup> Although we used the rate of drawdowns as an indicator of award activity, we also reviewed quarterly financial status reports and performance reports submitted by the state laboratories to determine any financial and programmatic activities that may have occurred under the awards.



77,715 samples for which no funds had been drawn down. This issue was identified in a prior OIG audit of the No Suspect Casework DNA Backlog Reduction Program funded by NIJ.<sup>59</sup>

We also found 10 awards totaling approximately \$4.12 million for 160,578 samples for which the initial drawdown occurred more than 1 year after the funds were obligated, indicating that the analysis and upload of a total of 238,293 samples may have been delayed, thereby reducing the investigative power of CODIS.

#### Analysis of Inactive Awards

Based on our review of drawdowns for the 45 awards totaling \$16.9 million, we found that no funds had been drawn down for 10 of the 45 awards (22 percent) as of June 30, 2008. We recognize that failure to draw down In-House Program funds is not a definitive indicator of award activity since it is possible that funds were expended but not yet drawn down as a reimbursement. Therefore, to further analyze this situation, we reviewed quarterly financial status reports and performance reports for these 10 awards to determine whether the award recipients reported any financial activity or samples analyzed.

As shown in Table 16, we found that seven of the awards had no drawdowns, reported no financial activity, and also reported no samples analyzed, no profiles uploaded, or hits generated in the performance reports submitted to the NIJ as of June 30, 2008.<sup>60</sup>

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<sup>59</sup> U.S. Department of Justice Office of the Inspector General, *The No Suspect Casework DNA Backlog Reduction Program*, Audit Report 05-02 (November 2004), 10, 12.

<sup>60</sup> The 2007 Cooperative Agreement awarded to Connecticut reported a negligible amount of financial activity (less than 10 percent of the award) on a quarterly financial status report submitted to the NIJ.

**TABLE 16. ANALYSIS OF INACTIVE IN-HOUSE PROGRAM AWARDS AS OF JUNE 30, 2008**

FISCAL YEAR	STATE	TOTAL AWARD	SAMPLES FUNDED	NO. OF INACTIVE DAYS
2005 <sup>61</sup>	Nevada	\$66,227	2,257	1,003
2006	Kansas	248,238	9,040	663
2006 <sup>62</sup>	Missouri	254,471	12,500	525
2007	New York	1,000,000	25,000	298
2007	Connecticut	17,250	3,450	298
2007	Alaska	160,000	4,000	298
2007	Alabama	528,000	13,200	298
<b>TOTAL</b>		<b>\$2,274,186</b>	<b>69,447</b>	<b>AVG. 484</b>

Source: OJP Grant Management System

Based on our analysis of inactive In-House Program awards, it appears that 69,447 backlog samples funded under the In-house Program had not been analyzed, reviewed, or uploaded into CODIS, with an average of 484 inactive days after receiving funding for each award.

Initial Drawdown Analysis

We also identified 36 of the 45 awards (80 percent), totaling \$12.3 million, for which the initial drawdown did not occur for more than 6 months after the award start date, as shown in Table 17.

**TABLE 17. INITIAL DRAWDOWN ANALYSIS OF AWARDS UNDER THE IN-HOUSE PROGRAM**

NO. OF MONTHS SINCE FUNDS OBLIGATED	NO. OF AWARDS	AWARD FUNDING
0 to 3 Months	1	\$50,730
>3 to 6 Months	8	4,566,009
>6 to 12 Months	26	8,164,123
> 12 Months	10	4,122,212
<b>TOTAL</b>	<b>45</b>	<b>\$16,903,074</b>

Source: OJP GMS

Of these 36 awards, we identified 10, totaling \$4.12 million, for which the initial drawdown occurred more than 1 year after the award start date. We reviewed performance reports and quarterly financial status reports for

<sup>61</sup> The 2005 award to Nevada was de-obligated on July 2, 2008.

<sup>62</sup> The 2006 award to Missouri was de-obligated on March 9, 2008.

these 10 awards to determine whether the award recipients reported financial activity, samples analyzed, profiles uploaded, or hits generated. As shown in Table 18, we found that 5 of the 10 awards (50 percent) had no drawdowns, reported no financial activity, and also reported no samples analyzed, no profiles uploaded, or hits generated in the performance reports submitted to the NIJ until 1 year after the award start date. We also found two awards that reported no financial activity, no samples analyzed, no profiles uploaded, or hits generated in the performance reports submitted to the NIJ until more than 6 months after the award start date. Two of the remaining three awards had been de-obligated by the NIJ and the 2006 award to Kansas has already been counted under our analysis of inactive awards.<sup>63</sup>

**TABLE 18. AWARDS WITH INITIAL DRAW DOWNS IN EXCESS OF 1 YEAR AFTER AWARD START DATE**

<b>FISCAL YEAR</b>	<b>STATE</b>	<b>AWARD AMOUNT</b>	<b>SAMPLES FUNDED</b>	<b>NO. OF DAYS UNTIL STATE LABORATORY REPORTED AWARD ACTIVITY</b>
2005	California	\$756,927	30,000	402
2005	Nevada	118,800	3,690	365
2005	New Jersey	1,375,407	56,700	548
2005	New York	237,000	7,900	365
2006	Alabama	396,000	13,200	548
<b>TOTALS</b>		<b>\$2,884,134</b>	<b>111,490</b>	<b>AVG. 446 DAYS</b>

Source: OJP GMS

Based on our review, it appears that 111,490 samples were not analyzed, reviewed, and uploaded for more than 1 year after the award start date. According to NIJ officials and responses received through our survey of state laboratories, each laboratory has its own reasons why delays might have occurred. However, NIJ stated there were two overarching issues that could be responsible for some of the delays. First, in 2005 award recipients were required to conform to the National Environmental Policy Act (NEPA) 42 U.S.C. § 4321 (2006). Section 102 of NEPA requires all federal agencies to prepare detailed environmental impact statements assessing the

<sup>63</sup> A 2005 Cooperative Agreement awarded to Washoe County, Nevada was de-obligated on July 2, 2008 due to issues arising from the County receiving funds from private donations. A 2006 Cooperative Agreement awarded to Missouri was de-obligated on March 9, 2008 because the state had eliminated a large backlog through a 2005 Backlog Reduction Program grant and no longer needed the funds.

environmental impact of and alternatives to major federal actions significantly affecting the environment. To ensure compliance with the NEPA, the NIJ placed a special condition on awards that required award recipients to submit an environmental impact statement. According to NIJ officials, it took state laboratories between 8 and 12 months to comply with the requirement. As a result, award recipients were unable to access FY 2005 Backlog Reduction Program funding until they had met the NEPA requirement. To address this delay for future awards, the NIJ allowed award recipients whose environmental impact statements resulted in a finding of no significant impact to obtain a NEPA waiver for up to 5 subsequent years beginning in FY 2006.

NIJ officials further stated that delays were caused by availability and use of resources – primarily personnel. When state laboratories hire additional staff, the laboratories must properly train and certify new technicians before samples may be processed. These procedures tie up an already limited staff and may temporarily impact the laboratories' capacity to conduct analysis of backlogged samples.

During our audits of 5 of the 10 awards that had delays of greater than 1 year from the start date until the first drawdown, we inquired with officials as to the cause of the delays. Three of the five state laboratories cited NEPA requirements as the cause of the delay, one state laboratory cited the fact that state budget regulations prohibited it from using federal funds before the state budget was authorized, and one state laboratory cited the validation of new equipment and the hiring of new staff to address the increase in samples caused by the passage of arrestee legislation as the cause for the delay.

#### Funds Awarded to Recipients without Previous Award Drawdowns

Although we identified delays to the start of In-house Program awards, we found that the NIJ continued to award In-House Program funding to state laboratories conducting convicted offender analysis under the In-house Program even though they had not drawn down funding from previous awards.

**TABLE 19. ADDITIONAL IN-HOUSE PROGRAM FUNDS AWARDED TO STATE LABORATORIES NOT DRAWING DOWN ON PREVIOUS AWARDS**

STATE	PREVIOUS AWARD FISCAL YEAR	AWARD AMOUNT <sup>64</sup>	INITIAL SAMPLES FUNDED	NEW AWARD FISCAL YEAR	AWARD AMOUNT	NEW SAMPLES FUNDED
Alabama	2006	\$396,000	13,200	2007	\$528,000	13,200
California	2005	756,927	30,000	2006	756,297	32,723
Connecticut	2007	17,250	3,450	2008	720,000	18,000
Delaware	2007	33,000	825	2008	45,080	1,288
Kentucky	2005	53,313	1,800	2006	73,381	2,308
New Jersey	2005	1,375,407	56,700	2006	615,829	23,491
New York	2005	237,000	7,900	2006	825,000	27,500
Vermont	2005	39,566	1,320	2006	76,843	2,600
	<b>TOTALS</b>	<b>\$2,908,463</b>	<b>115,195</b>		<b>\$3,640,430</b>	<b>121,110</b>

Source: OJP GMS

As shown in Table 19, we found that the NIJ awarded a total of \$3.6 million to fund analysis of 121,110 samples to laboratories that had not drawn down any In-House Program funding for previous awards. This issue was identified in a prior OIG audit of the No Suspect Casework DNA Backlog Reduction Program funded by the NIJ.<sup>65</sup>

For example, we found that FY 2006, the NIJ awarded \$396,000 to the state laboratory in Alabama to analyze 13,200 backlogged samples. According to the quarterly financial status reports filed by the state laboratory as of March 31, 2008, no expenditures had been incurred under this award. Additionally, the state laboratory reported to the NIJ that it had not analyzed or uploaded any backlogged samples until April 1, 2008, more than 17 months after the start of the award. Yet, on August 9, 2007, the NIJ awarded \$528,000 in additional In-House Program funding to the same state laboratory in Alabama for the analysis, review, and upload of 13,200 additional backlog samples. As of March 31, 2008, funds awarded to Alabama in FY 2007 had been obligated for more than 350 days before any drawdowns occurred on the award given to the same state laboratory in Alabama in FY 2006.

<sup>64</sup> For each of the initial awards listed in Table 19, no drawdowns had occurred prior to the obligation of grant funds for the new grant.

<sup>65</sup> OIG, *The No Suspect Casework DNA Backlog Reduction Program*, 10, 12.

We asked NIJ officials why additional In-House Program funding had been awarded to state laboratories that had not utilized In-House Program funding from previous awards. NIJ officials stated that In-House Program funding awarded to state laboratories will remain open until a state laboratory analyzes the total number of samples for which it was funded. However, NIJ officials acknowledged to us that new awards were made to state laboratories that had not begun work on a previous award and added language to the FY 2008 solicitation designed to prevent this condition from recurring. Specifically, according to the FY 2008 solicitation, the NIJ may reject applications from applicants with prior awards for analysis under the In-house Program that remain entirely unobligated as of the posting date of the solicitation.

Despite this action, we found that in FY 2008 the NIJ awarded funding to two state laboratories that, as of April 1, 2008, had not obligated any of the In-House Program funds they were previously awarded.<sup>66</sup> In our opinion, awarding additional In-house Program funds to state laboratories with inactive awards prevents those funds from being put to better use by another laboratory or federal program.

### *Outsourcing Program*

We also reviewed all 38 Outsourcing Program contracts, totaling \$24.4 million awarded to outside laboratories in the Outsourcing Program between FYs 2005 and 2007. For each contract awarded to vendor laboratories, we obtained and reviewed the Statement of Work, contracts, and vendor invoices to determine: (1) whether funds had been expended, and (2) the length of time between the date the funds were awarded and the date of the initial invoice. During our review of the invoices, we identified:

- 2 contracts totaling \$146,350 for which no invoices had been received, and
- 7 additional contracts totaling \$2,716,857 for which the initial invoice occurred more than 6 months after the contract was awarded.

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<sup>66</sup> According to the FY 2008 solicitation, applications for In-House Program funding were due April 4, 2008. During our analysis of quarterly financial status reports, we reviewed financial activity up to April 1, 2008. We believe any application submitted by grantees that had not obligated any FY 2007 funds by April, 1, 2008, would violate the requirement set forth in the solicitation.

As detailed in the following sections, we found that the NIJ is not adequately monitoring the utilization of funds for the analysis of backlogged samples under the Outsourcing Program. Based on our review of invoices for the 38 contracts awarded totaling \$24.4 million, we found that no invoices had been received on 2 (5.3 percent) contracts totaling \$146,350, indicating that more than 3,700 convicted offender samples funded had not been analyzed, reviewed, and uploaded into CODIS, as shown in Table 20.

**Table 20. INACTIVE OUTSOURCING PROGRAM CONTRACTS**

FISCAL YEAR	STATE	VENDOR	CONTRACT AMOUNT	SAMPLES FUNDED
2006	Idaho	Identity Genetics	\$108,000	2,400
2007	Kansas	Bode Technology Group	38,350	1,300
<b>TOTAL</b>			<b>\$146,350</b>	<b>3,700</b>

Source: NIJ vendor files

As shown in Table 21, based on the results of our review, we also identified 7 of the 38 contracts awarded (18.4 percent), totaling \$2.72 million, for which no activity had occurred for more than 6 months after the contract start date delaying the analysis and upload to CODIS of 76,559 convicted offender DNA samples.

**TABLE 21. CONTRACTS DELAYED MORE THAN 6 MONTHS FROM CONTRACT START DATE TO FIRST INVOICE**

FISCAL YEAR	STATE	VENDOR	CONTRACT AMOUNT	SAMPLES FUNDED	DAYS FROM AWARD TO START
2006	South Dakota	Identity Genetics	\$275,400	10,800	201
2006	Louisiana	Identity Genetics	611,490	18,530	231
2006	Mississippi	Reliagene	783,020	23,030	255
2006	Maine	Reliagene	124,875	3,375	256
2006	Utah	Identity Genetics	495,000	15,000	261
2006	Connecticut	Identity Genetics	51,072	1,824	273
2007	Wyoming	Bode Technology Group	376,000	4,000	183
<b>TOTAL</b>			<b>\$2,716,857</b>	<b>76,559</b>	<b>Avg. 237</b>

Source: The NIJ vendor files

According to NIJ officials, the start of some of the contracts was delayed because state laboratories did not send samples to the vendors in a timely manner. They said that this delay could have been attributed to the process of approving a vendor laboratory by the states before samples are submitted. To qualify a vendor laboratory, a state first performs a site visit

of the vendor. Vendor laboratories must also complete a test batch of samples before becoming approved so the state can verify the accuracy of the vendor's testing results.

During our audit, we visited two of the six vendor laboratories that held these contracts. We identified several issues that caused delays to the analysis of backlogged samples under the Outsourcing Program, including: (1) poor quality of samples received from the state laboratory, (2) delays in payment caused by late approval of invoices by the state laboratory, (3) samples delayed due to internal issues the laboratory had with equipment malfunctions and staff turnover, and (4) changes to the analysis defined in the statement of work by the state laboratories. While many of these issues were outside of the control of the NIJ and the vendor laboratories, NIJ could encourage state laboratories to resolve these issues by not issuing new awards until the already obligated funds were substantially used.<sup>67</sup>

We also surveyed vendor laboratories to determine if they had problems with the volume of work and quality of samples submitted by the state laboratories. Three of the five survey respondents said they had problems with the samples submitted by the state laboratories. Based on the comments from respondents, the volume problems included sample shipments being delayed and insufficient quantities being shipped to the vendor laboratory preventing the vendor from meeting its contract commitments for quantity of samples processed. Additionally, four of the five respondents said they had quality problems with samples submitted by the state laboratories due to poor collection methods.

### **Utilization of Performance Information Collected**

We evaluated whether performance information was used to manage the Backlog Reduction Program. We assessed whether:

- NIJ officials regularly collected timely and credible performance information from state laboratories that received funding under the Backlog Reduction Program; and

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<sup>67</sup> These issues are discussed in greater detail in Finding IV.



- NIJ officials used performance information reported by state laboratories to manage the Backlog Reduction Program and improve performance.

The NIJ requires state laboratories receiving In-house and Outsourcing Program funding to include information on performance measures in performance reports.<sup>68</sup>

As discussed in Finding I, we attempted to use the NIJ statistical data generated from the performance reports submitted by the state laboratories to determine if the Backlog Reduction Program was meeting its overall objective of reducing the number of backlogged samples awaiting analysis. However, we identified several limitations with the NIJ's data that prevented us from obtaining a fully accurate picture of Backlog Reduction Program performance. For example, three state laboratories reported cumulative data (rather than data for each individual quarter as instructed) on the number of samples analyzed and uploaded, as well as the number of hits generated. Without accurate quarterly reporting, NIJ is unable to timely assess the performance of the Backlog Reduction Program in achieving its overall objective of reducing the backlog. Also, the NIJ is unable to assess the overall performance of the awardees, or fully recognize problems in implementing and executing the Backlog Reduction Program.

Additionally, at least one state laboratory reported all samples analyzed within the laboratory rather than only those samples analyzed with In-house Program funding, despite an NIJ requirement to report only on the latter. Because the NIJ failed to require grantees who were non-compliant with NIJ reporting requirements to submit corrected reports that were in compliance, we found that the NIJ performance data did not accurately reflect the performance of award recipients under the In-House Program as a whole. Therefore, we conducted our own analysis of the performance reports submitted by each state laboratory awarded Backlog Reduction Program funding either through the In-house or Outsourcing Program during FYs 2005 through 2007.

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<sup>68</sup> Prior to CY 2007, state laboratories using the Outsourcing Program reported statistics monthly.

*In-house Program*

The NIJ requires the state laboratories to submit statistics concerning the convicted offender and arrestee DNA samples analyzed, DNA profiles uploaded into CODIS, and hits generated using In-House Program funds. To determine the impact of the In-House Program on the backlog, we determined that these statistics, after verification by the OIG, were the best available data. In evaluating the performance data reported by the state laboratories, we found that the NIJ did not adequately summarize these statistics and many state laboratories were submitting inaccurate statistics. These errors resulted in the NIJ over-reporting samples analyzed and uploaded under the In-House Program.

We compared performance data as reported by the NIJ as of March 31, 2008, to the performance reports submitted by the state laboratories.<sup>69</sup> As shown in Table 9, based on our comparison, we found that the NIJ statistics included 90,021 (15.3 percent) more samples analyzed, 126,453 (22.5 percent) more profiles uploaded, and 496 (9.9 percent) more hits generated than reported in the state laboratories' performance reports.

**TABLE 9. IN-HOUSE PROGRAM STATISTICS REPORTED TO THE NIJ BETWEEN OCTOBER 1, 2005, AND MARCH 31, 2008**

<b>ACTIVITY</b>	<b>NIJ ANALYSIS OF PERFORMANCE REPORTS</b>	<b>OIG ANALYSIS OF PERFORMANCE REPORTS</b>	<b>DIFFERENCE</b>
Samples Analyzed	679,228	589,207	90,021
Profiles Uploaded	688,030	561,577	126,453
Hits	5,516	5,020	496

Source: The OIG, NIJ, and state laboratories

We determined that these differences were attributable to 12 instances in which the NIJ statistics were incomplete, 1 instance in which the number of samples analyzed appeared to be double-counted, 3 instances in which the state laboratory erroneously reported cumulative statistics rather than individual quarterly statistics as instructed, and 6 instances in which we were unable to determine the cause of the differences between the NIJ statistics and the performance reports.

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<sup>69</sup> The NIJ statistical information was generated from the performance reports submitted by the state laboratories receiving funding under the In-House Program. We traced NIJ statistics to the performance reports to ensure that statistical information provided by NIJ was accurately recorded, complete, and reliable.

As a result of the discrepancies, we were unable to rely on NIJ's reported statistics and conducted our own analysis of the performance reports submitted by the state laboratories as of June 30, 2008. The results of our analysis are shown in Table 10.<sup>70</sup>

**TABLE 10. OIG ANALYSIS OF STATE LABORATORY REPORTED PERFORMANCE BETWEEN OCTOBER 1, 2005, AND JUNE 30, 2008**

TOTAL AWARDS	SAMPLES ANALYZED	SAMPLES UPLOADED	HITS
45	664,175	633,172	5,704

Source: State laboratory performance metrics and vendor invoices

Moreover, upon further review we determined that several state laboratories reported substantially more samples analyzed than were funded under the In-House Program for the period October 1, 2005, through June 30, 2008. As shown in Table 11, we found that the performance reports for 11 of the 45 awards indicated that for the 411,468 analyzed samples that had been reported as being funded by the In-house Program, 213,668 samples, or 52 percent, were, in fact, not funded by the In-House Program.

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<sup>70</sup> Table 10 contains OIG's compilation of all the performance data submitted by state laboratories as of June 30, 2008. However, at the time of our audit, we did not have a separate report from the NIJ compiling data through the same time period. Thus, we were unable to compare our compilation of data as reflected in Table 10 to a compilation of data by the NIJ.

**TABLE 11. STATES REPORTING SAMPLES ANALYZED IN EXCESS OF THE TOTAL SAMPLES FUNDED UNDER THE IN-HOUSE PROGRAM**

FISCAL YEAR	STATE	SAMPLES REPORTED AS ANALYZED	TOTAL SAMPLES FUNDED	DIFFERENCE
2005	Missouri	15,749	12,493	3,256
2005	Alabama	55,344	28,776	26,568
2005	California	125,325	30,000	95,325
2005	Georgia	8,781	8,000	781
2005	Illinois	45,817	29,432	16,385
2005	Kansas	12,097	7,680	4,417
2005	Nevada	10,401	3,690	6,711
2006	Kentucky	4,399	2,308	2,091
2006	California	84,686	32,723	51,963
2006	Pennsylvania	46,811	41,268	5,543
2007	North Dakota	2,058	1,430	628
<b>TOTALS</b>		<b>411,468</b>	<b>197,800</b>	<b>213,668</b>

Source: The NIJ

Of the 213,668 samples that were not funded by the In-house Program, 190,241 (89.0 percent) came from 4 awards to the state laboratories for Alabama, California, and Illinois. The state laboratory for California made up the largest number of analyzed samples incorrectly reported as being funded by the In-House Program, accounting for 147,288 of the 213,668 samples (68.9 percent).<sup>71</sup>

We also determined that several state laboratories reported substantially more samples uploaded than were funded under the In-House Program for the period October 1, 2005, through June 30, 2008. As shown in Table 12, we found the performance reports for 11 of the 45 awards indicated that for the 383,985 samples reported as uploaded with In-House Program funding, 191,115 samples, or 50 percent, were uploaded with funding sources other than In-House Program funding.

<sup>71</sup> During our audit of the California Department of Justice (California DOJ), we determined that California DOJ was reporting every sample analyzed as federally funded, regardless of total funding, because it believed that some federal dollars from the In-House Program were used for virtually every sample analyzed. This issue is further discussed in Finding III.

**TABLE 12. STATES REPORTING SAMPLES UPLOADED IN EXCESS OF THE TOTAL SAMPLES FUNDED UNDER THE IN-HOUSE PROGRAM**

FISCAL YEAR	STATE	SAMPLES REPORTED AS UPLOADED	TOTAL SAMPLES FUNDED	DIFFERENCE
2005	Missouri	15,749	12,493	3,256
2005	Alabama	44,163	28,776	15,387
2005	California	120,374	30,000	90,374
2005	Georgia	8,781	8,000	781
2005	Illinois	45,817	29,432	16,385
2005	Nevada	10,042	3,690	6,352
2006	Kentucky	3,535	2,308	1,227
2006	California	84,686	32,723	51,963
2006	Illinois	7,316	2,750	4,566
2006	Pennsylvania	41,464	41,268	196
2007	North Dakota	2,058	1,430	628
<b>TOTALS</b>		<b>383,985</b>	<b>192,870</b>	<b>191,115</b>

Source: The NIJ

We discussed with the NIJ the issue of state laboratories reporting substantially more samples than were funded under the In-House Program. According to NIJ officials, it is appropriate for state laboratories to count a sample as analyzed or uploaded under the In-House Program as long as any portion of the analysis has been accomplished using In-House Program funds. According to the In-House Program solicitations, samples to be analyzed with In-House Program funds must represent the numbers to be analyzed or reviewed above and beyond those that could be analyzed or reviewed without the additional In-House Program funding. In our opinion, reporting all samples analyzed, regardless of the funding source, as being analyzed or uploaded using In-House Program funds does not meet this requirement. It also will lead to double counting across multiple programs, inflating the true impact of the Backlog Reduction Program on the number of additional backlog analyses performed.

To account for the discrepancies identified with NIJ's In-house Program statistics, we adjusted the statistics for the number of samples analyzed, the number of samples uploaded, and the number of hits to accurately reflect what was reported by the state laboratories in their performance reports. For state laboratories reporting significantly more samples than were funded under the In-House Program, we limited the number of samples analyzed

and uploaded to the number of samples that were funded under the award. The results of our analysis are presented in Table 13.

**TABLE 13. OIG ADJUSTED IN-HOUSE PROGRAM STATISTICS BETWEEN OCTOBER 1, 2005 AND JUNE 30, 2008**

<b>ACTIVITY</b>	<b>OIG ANALYSIS OF PERFORMANCE REPORTS</b>	<b>EXCESS SAMPLES</b>	<b>OIG ADJUSTED TOTALS</b>
Samples Analyzed	664,175	213,668	450,507
Profiles Uploaded	633,172	191,115	442,057
Hits <sup>72</sup>	5,704	0	5,704

Source: The OIG, NIJ, and state laboratories

### *Outsourcing Program*

Under the Outsourcing Program, the NIJ requires state laboratories to submit quarterly statistics on the number of: (1) samples sent to the vendor laboratory, (2) samples analyzed by the vendor laboratory, (3) samples uploaded into CODIS, (4) failed samples, and (5) hits generated. To determine the impact of the Outsourcing Program on the backlog, we concluded these statistics, after verification by the OIG, were the best available data. Therefore, we evaluated the performance data reported by the state laboratories and found that many reports were missing, submitted reports did not match quantities from vendor invoices, and the NIJ did not adequately summarize the reports they received. We concluded that the NIJ is under-reporting the number of analyzed and uploaded samples that have been funded by the Outsourcing Program.

To determine whether the statistics reported by the state laboratories were accurate, we compared the statistics submitted by the state laboratories with the vendor laboratory invoices submitted to the NIJ for payment.

In comparing vendor invoices to state laboratory statistics, we found differences that were due to missing and incomplete submissions of statistics by the laboratories. Specifically, as shown in Table 14, of the 38 contracts

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<sup>72</sup> Since state laboratories did not identify specific samples, we were unable to attribute the reported hits to specific samples analyzed and uploaded using In-House Program funds. As a result, we made no adjustments to the hits reported by the state laboratories on the performance metric reports.

under the Outsourcing Program, we found that the state laboratories failed to submit the required statistics for 5 contracts (13.2 percent).

**TABLE 14. NO. OF SAMPLES ANALYZED BY STATE LABORATORIES WITH NO PERFORMANCE REPORTS ON RECORD**

FISCAL YEAR	STATE	VENDOR INVOICE SAMPLES
2005	Massachusetts	29,415
2006	South Carolina	38,272
2006	Oklahoma	31,169
2007	New York	2,088
2007	Kansas	75
<b>TOTAL</b>		<b>101,019</b>

Source: The NIJ vendor files

Additionally, as shown in Table 15, for 10 (26.3 percent) of the contracts we found that the required statistics reported by the state laboratories were lower than the number of samples reported as analyzed on vendor invoices for the same time period.

**TABLE 15. COMPARISON OF STATE LABORATORY REPORTED SAMPLES AND VENDOR INVOICES REPORTED SAMPLES BETWEEN OCTOBER 1, 2005 AND JUNE 30, 2008**

FISCAL YEAR	STATE	STATE LABORATORY REPORTED SAMPLES	VENDOR INVOICE REPORTED SAMPLES	DIFFERENCE
2005	New Jersey	11,595	52,252	40,657
2005	Connecticut	964	22,314	21,350
2006	Oregon	6,486	12,237	5,751
2006	New Mexico	7,657	7,684	27
2006	Connecticut	508	956	448
2006	Utah	250	593	343
2006	Louisiana	1,784	2,414	630
2006	Washington	48,003	49,049	1,046
2007	Louisiana	10,471	11,500	1,029
2007	Connecticut	524	7,998	7,474
<b>TOTALS</b>		<b>88,242</b>	<b>166,997</b>	<b>78,755</b>

Source: The NIJ vendor files

There were also an additional 18 contracts in which 31,698 samples were reported analyzed by the state laboratories but had not yet been invoiced.

Statistics reported by the state laboratories should be the best tool that the NIJ has to measure the number of profiles uploaded to CODIS and the number of CODIS hits from profiles analyzed using Outsourcing Program funds.<sup>73</sup> However, we found that the state laboratories are submitting incomplete and inaccurate data. Without complete data, the statistics for the number of profiles uploaded and the hits generated do not provide a complete and accurate representation of the performance of the Outsourcing Program.

As a result, we analyzed the statistics for the number of samples reported in the vendor invoices. We found that vendor laboratory invoices, which are verified by the state laboratories prior to submission to the NIJ for payment, reported 521,257 samples analyzed compared to only 373,126 samples analyzed as reported by the state laboratories, resulting in a difference of 148,131. Additionally, state laboratories reported 175,493 samples uploaded and 1,329 CODIS hits generated. Thus, we concluded that NIJ is under-reporting the number of analyzed and uploaded samples that have been funded by its Outsourcing Program.

### **OIG Analysis of Collected Performance Information**

Although the NIJ required state laboratories receiving In-house and Outsourcing Program funding to include information on performance measures, we found that the NIJ did not provide adequate guidance to, or oversight of, the state laboratories' reporting of performance information. As a result, we identified inconsistencies with the statistical information reported, which we believe prevents the NIJ from accurately assessing overall Backlog Reduction Program performance. In particular, we found that the state laboratories are over-reporting the number of analyzed and uploaded samples funded by the In-house Program while under-reporting those statistics for the Outsourcing Program. In our opinion, to obtain accurate performance information, the NIJ should provide state laboratories with guidance on and oversight of reporting the performance information required in the performance reports. Specifically, we recommend that the NIJ:

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<sup>73</sup> Neither the NIJ nor the vendor laboratories have access to CODIS. The state laboratories are responsible for uploading DNA profiles and reporting hits once the vendors complete their analysis of the DNA samples. Therefore, the NIJ cannot rely on vendor invoices to determine the number of profiles uploaded and hits generated by vendor developed profiles.



- Develop a reliable and reasonable method for award recipients to determine the number of samples analyzed and uploaded using Backlog Reduction Program funds; and
- Ensure that the state laboratories submit required performance measures that include data for all samples analyzed and uploaded, as well as the number of hits generated using Outsourcing Program funding.

We also found that although state laboratories were required to report performance information to NIJ on a quarterly basis, the NIJ did not adequately use the reported information to manage its Backlog Reduction Program or to improve performance. Specifically, the NIJ did not summarize the performance information reported by state laboratories to report on the performance of the Backlog Reduction Program as a whole. Performance information also was not used to evaluate the effectiveness of the individual awards and contracts under the Backlog Reduction Program in accordance with GPRA requirements. We believe that the NIJ should summarize the performance information reported by state laboratories to ensure the true impact of the Backlog Reduction Program is presented and the performance of the awardees in implementing and executing the Backlog Reduction Program is effectively monitored.

## **Conclusion**

Although the purpose of the Backlog Reduction Program is to accelerate the analysis of backlogged samples into CODIS, we found significant delays in the analysis, review, and upload of backlogged samples for both the In-house and Outsourcing Programs. From our analysis, we determined that these delays caused 184,637 convicted offender samples to not be uploaded to CODIS for 9 months or more. If Backlog Reduction Program funds are not used to analyze, review, and upload convicted offender samples in a timely manner, the goals of the Backlog Reduction Program are undermined.

The NIJ should monitor both financial and programmatic activity to ensure that the overall objective of reducing the backlog is accomplished. The lack of financial and programmatic activity is an indication that an award recipient may have encountered problems fulfilling the award requirements or that the Backlog Reduction Program may not be meeting the specific needs of the award recipient. As a result, we recommend that the NIJ

monitor financial and programmatic activities, any problems identified are addressed, unused Backlog Reduction Program funds are de-obligated in a timely fashion, and the objectives of each award are substantially accomplished before new awards to the same laboratory are funded.

## **Recommendations**

We recommend that the NIJ:

1. Provide state laboratories improved guidance on reporting the performance information required in performance reports.
2. Develop a reliable and reasonable method for award recipients in the In-house Program to determine the number of samples analyzed using In-House Program funds.
3. Ensure that performance reports are submitted in a timely manner and include all required performance measurement data for the Outsourcing Program.
4. Summarize the performance information reported by state laboratories to report on the effectiveness of the Backlog Reduction Program as a whole.
5. Utilize the performance information reported by state laboratories to evaluate the effectiveness of individual awards and contracts funded under the Backlog Reduction Program, and to follow up on any poor performance.
6. Ensure that financial and programmatic activities are monitored to determine if Backlog Reduction Program funds are being utilized in a timely manner.
7. Follow up with award recipients that have not demonstrated any progress toward completion of the objectives of the In-house Program award to determine whether the recipients have encountered difficulties in implementing the award, and provide assistance as necessary.

8. Ensure that award funds are de-obligated and the awards are closed if award recipients are unable to use Backlog Reduction Program funds in a timely manner.
9. Ensure that award recipients substantially accomplish the objectives of an award before any new awards are funded.

### III. COMPLIANCE WITH IN-HOUSE PROGRAM REQUIREMENTS

We conducted 8 audits of state laboratories involving 19 In-House Program awards totaling approximately \$11.49 million to determine their compliance with what we considered to be the most important conditions of the awards. Based on the results of these audits of awards under the In-house Program, we identified \$561,861 in total dollar related findings. We also found that performance information reported by the state laboratories were not verifiable, as required by the OJP Financial Guide. Finally, we found significant delays between the award start date and the first drawdown of funds. These findings indicate that the NIJ is not be adequately monitoring the In-House Program to ensure that award recipients are administering their awards in accordance with applicable laws, regulations, guidelines, and terms and conditions of the awards.

After awards have been accepted by state laboratories, the NIJ is responsible for managing and administering the programmatic and financial aspects of the awards.

As shown in Table 22, to determine whether the award recipients were compliant with applicable laws, regulations, guidelines, and the terms and conditions of the awards, we reviewed 8 state laboratories that received a total of 19 awards.

**TABLE 22. IN-HOUSE PROGRAM AWARDS SELECTED FOR REVIEW**

STATE	FISCAL YEAR	TOTAL AWARD
California	2005	\$756,927
	2006	756,297
Georgia	2005	200,000
	2006	294,000
	2007	603,400
Kansas	2005	227,213
	2006	248,238
Missouri	2005	266,998
	2006	254,471
North Dakota	2006	52,500
	2007	57,200

STATE	FISCAL YEAR	TOTAL AWARD
New Jersey	2005	1,375,407
	2006	615,829
New York	2005	237,000
	2006	825,000
	2007	1,000,000
Texas <sup>74</sup>	2005	419,391
	2006	1,517,288
	2007	1,781,320
<b>TOTAL</b>	<b>19 AWARDS</b>	<b>\$11,488,479</b>

Source: OJP GMS

We included these award recipients in our review because they generally involved the states that received the largest award amounts and had drawn down the largest amount of funds as of the start of our audit. The 8 state laboratories we reviewed received a total of approximately \$11.49 million to analyze 430,340 backlogged samples.<sup>75</sup> As of July 25, 2008, these recipients had drawn down approximately \$9.1 million, or 68 percent of the \$16.9 million In-House Program funds awarded.

For each individual audit, we tested compliance with what we considered to be the most important conditions of the awards. Unless otherwise stated in our report, we applied the OJP Financial Guide as our primary criteria in auditing these awards.<sup>76</sup> Specifically, we tested:

- **Award Expenditures** to determine whether the costs charged to the awards were allowable and supported.
- **Reporting** to determine whether the required quarterly financial status reports, progress reports, and performance reports were submitted on time and accurately reflected award activity.

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<sup>74</sup> Although audit work was conducted at the Texas Department of Public Safety (Texas DPS), a separate report will not be issued. The audit objectives, scope, and methodology for the individual grant audits are presented in Appendix I.

<sup>75</sup> The funding received by the eight recipients selected represents 68 percent of the funds awarded under the In-House Program between FYs 2005 and 2007.

<sup>76</sup> The OJP Financial Guide serves as a reference manual assisting award recipients in their fiduciary responsibility to safeguard award funds and ensure funds are used appropriately.

- **Budget Management and Control** to determine whether award recipients adhered to the NIJ-approved budget for expenditures of award funds.
- **Drawdowns** to determine whether the requests for reimbursement were adequately supported and if award recipients managed award receipts in accordance with federal requirements.
- **In-House Program Performance** to determine whether award recipients achieved award objectives and to assess performance and accomplishments.

### **Common Findings Identified**

Through the individual audits of awards made under the In-house Program, we found two common findings related to compliance with the reporting requirements outlined in the In-House Program solicitation or special conditions of the award. We determined that: (1) performance reports were not submitted in a timely manner, and (2) data reported in the performance reports was not verifiable.

#### *Untimely Submission of Performance Reports*

According to the FYs 2005, 2006, and 2007 In-House Program solicitations and the special conditions of each award, performance reports must be submitted within 45 days of the end of each quarter. These reports address specific questions regarding the number of convicted offender samples analyzed, and the number of DNA profiles reviewed, entered into CODIS, and uploaded into NDIS when applicable. The responsive data should be used by the NIJ to monitor the progress of each award recipient and determine whether the In-House Program is producing its intended results.

For each award we examined, we determined that the award recipients filed the reports semiannually and not quarterly as required. We asked award recipients why the reports were not filed quarterly, and they responded that the NIJ only requested the reports on a semiannual basis, so the reports were submitted along with the progress reports that were due at the same time.

We discussed this issue with the NIJ and found that OJP's Grant Management System was not set up to accept quarterly performance reports, making it difficult for award recipients to meet the quarterly filing requirements. Because of this, the NIJ instructed award recipients to submit quarterly data with semiannual progress reports. The NIJ added a special condition to the FY 2007 Backlog Program awards to require 1st and 2nd quarter data to be submitted in the January-June progress report, and 3rd and 4th quarter data to be submitted in the July-December progress report. We found that the semiannual performance reports in GMS were filed along with the progress reports and were generally on time according to the updated guidance. As a result of the NIJ's additional guidance, we are not offering any recommendations.

#### *Data Reported in Performance Reports Were Not Verifiable*

The OJP Financial Guide requires that award recipients collect data appropriate for facilitating reporting requirements established by the *Government Performance and Results Act*. According to the Guide, award recipients must ensure that valid and auditable source documentation is available to support all data collected for each performance measure specified in the In-House Program solicitation.

In the FYs 2005, 2006, and 2007 In-House Program solicitations, the NIJ requires award recipients to report:

- The number of convicted offender DNA samples at the beginning of the award period;
- The number of convicted offender samples analyzed using In-House Program funds;
- The number of convicted offender DNA profiles developed and entered into CODIS and NDIS using In-House Program funds; and
- The number of CODIS hits (LDIS, SDIS, NDIS, forensic hits, offender hits and investigations aided) resulting from profiles developed from In-House Program funds.

Based on our individual audits, we found that award recipients did not track the samples completed with funding from each award separately, or distinguish samples analyzed using federal funds from samples analyzed

using other sources. We also found that some amounts reported on the performance reports included samples sent to contractors that were not affiliated with the awards.

As a result, we were unable to verify the accuracy of the performance data reported to the NIJ by award recipients funded under the In-House Program. We believe that to comply with the requirements of the OJP Financial Guide and ensure that it has reliable performance data from which to accurately monitor In-House Program performance, the NIJ should require award recipients to establish a mechanism that is both valid and auditable to track the performance data required under the In-house Program.

### **Isolated Instances of Non-compliance**

We also identified isolated instances of non-compliance with the OJP Financial Guide and conditions of the awards during the individual audits, including: (1) unallowable items purchased using award funds; (2) unallowable overtime expenditures charged to the In-House Program; and (3) funds that could be put to better use. Recommendations regarding these findings were included in our separate audit reports. The following is a summary of the findings from each of the audits of these eight award recipients.

#### *New Jersey Department of Law and Public Safety<sup>77</sup>*

The New Jersey Department of Law and Public Safety (DLPS) received a total of \$1,991,236 in In-House Program funding to reduce its backlog of 80,191 samples through in-house analysis and data review. Based on our audit, we found that the DLPS did not fully comply with the In-House Program requirements in three of the five areas audited, including: (1) award expenditures, (2) reporting, and (3) In-House Program performance.

Specifically, we found that the DLPS charged \$99,349 in unsupported overtime expenditures, \$18,466 in pre-award personnel and fringe benefit expenditures, and \$2,527 in unallowable non-budgeted administrative

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<sup>77</sup> Details regarding findings identified and associated recommendations can be found in the OIG audit report, entitled U.S. Department of Justice Office of the Inspector General, *National Institute of Justice Convicted Offender DNA Backlog Reduction Program Cooperative Agreements to The New Jersey Department Of Law And Public Safety*, Audit Report No. GR-70-08-003 (September 2008).



equipment to the 2005 award. We also recommended \$179,899 in unspent funding from both awards be de-obligated and put to better use because the objectives of the In-House Program have been achieved. As a result of the deficiencies, we questioned a total of \$300,241 in In-House Program funding under these awards. The amount of dollar-related findings totaled 15 percent of the total award funding.

### In-house Program Performance

As part of this audit, we sought to measure the DLPS's success in meeting award objectives. To accomplish this, we interviewed DLPS officials and reviewed award documentation.

In June of each year the DLPS submitted for each award the estimated number of samples that would be backlogged at the start of each award in October of the same year. The DLPS's 2005 In-House Program goal was to analyze 54,000 backlogged samples within the award period from October 2005 to September 2006. The goal stated in the 2006 application was to analyze an additional 22,373 backlogged samples during the award period from October 2006 to September 2007. In total, the DLPS estimated the awards would be used to analyze 76,373 backlogged samples and 3,818 quality assurance samples.

To determine if DLPS met its stated goal of analyzing a total of 76,373 backlogged samples, we reviewed the DLPS monthly reports summarizing the number of samples received, analyzed, sent to contractors, and uploaded to CODIS. Based on our analysis, we found that the DLPS monthly reports contained laboratory activity as a whole and did not track the specific group of backlogged samples identified in each award application. Because of this, we could not determine when the initial 56,000 backlogged samples identified in the 2005 award and the additional 22,373 samples from the 2006 award were completed. In our view, it is important to track the backlogged samples associated with each award so that In-House Program progress can be tracked throughout the life of the award and In-House Program adjustments can be made if needed.

Although we could not identify the specific samples attributed to each award, we reviewed the overall laboratory output to determine if the goals of the In-House Program were met. According to the laboratory reports, there were fewer than 4,300 samples awaiting analysis as of March 31, 2008. From the reports, we found that these 4,300 samples were from the current

influx of samples, as DLPS had received over 38,000 samples after its award applications were submitted in October 2006. Although we cannot pinpoint when the original backlog identified in these applications was eliminated, we estimate that it was at the end of 2007.

Because we determined the backlogged samples identified in the applications have been completed, and laboratory officials confirmed that the backlog was eliminated, we recommend that the remaining balance of the awards totaling \$179,899 in unspent funds be de-obligated and put to better use.

### *Kansas Bureau of Investigation*<sup>78</sup>

The Kansas Bureau of Investigation (KBI) received a total of \$475,451 in In-House Program funding to reduce its backlog of 16,720 samples through in-house analysis and data review. Based on our audit, we found that KBI's financial management system generally appears to have an adequate system of internal controls to ensure compliance with applicable requirements, and the system of controls adequately provides for segregation of duties, transaction traceability, system security, and limited access. Our review also revealed that expenditures listed in KBI's accounting records supported drawdowns made under the award, and KBI complied with the budget requirements of the award. Generally, transactions reviewed were properly authorized, classified, supported, and charged to the award. However, we found KBI did not upload analyzed convicted offender samples into the state and national DNA Index System as required by the solicitation.

#### In-House Program Performance

The purpose of this award was to accelerate the analysis of convicted offender samples collected by states in order to provide compatible data for local, state, and national DNA databases so that law enforcement was provided with critical investigative information in a timely manner. As shown in Table 23, we found that as of December 2007, the KBI analyzed 5,925 or 77 percent of the samples proposed to be analyzed and uploaded to

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<sup>78</sup> Details regarding findings identified and associated recommendations can be found in the OIG audit report, entitled U.S. Department of Justice Office of the Inspector General, *Office of Justice Programs National Institute of Justice Cooperative Agreement Awarded To The Kansas Bureau of Investigation*, Audit Report No. GR-60-08-009 (July 2008).

CODIS by a 2005 award from NIJ. However, of the total samples analyzed, we found that only 1,509 or 25 percent of the samples had been uploaded to CODIS.

**TABLE 23. ANALYSIS OF SAMPLES ANALYZED AND UPLOADED BY THE KANSAS BUREAU OF INVESTIGATION**

<b>AWARD FISCAL YEAR</b>	<b>NO. OF SAMPLES TO BE ANALYZED PER PROPOSAL</b>	<b>NO. OF SAMPLES ANALYZED</b>	<b>NO. OF SAMPLES UPLOADED TO CODIS</b>
2005	7,680	5,925	1,509
2006	9,040	0	0
<b>TOTAL</b>	<b>16,720</b>	<b>5,925</b>	<b>1,509</b>

Source: Progress reports and performance reports submitted by Kansas Bureau of Investigations

According to KBI officials, the progress of analyzing, reviewing, and uploading samples had been delayed and the In-House Program was subsequently extended by OJP through a Grant Adjustment Notice (GAN). KBI officials stated that the In-House Program activities were progressing until Kansas began collecting DNA samples from arrestees. During this time, KBI officials indicated they stopped working on the backlogged samples in order to address samples received as a result of the “new” arrestee statute, which included purchasing and validating the new kit design, implementing new database software, hiring new staff, and developing new procedures for handling arrestee samples. After implementing the arrestee collection, KBI officials stated that they resumed working on their backlog with the objective of eliminating the backlog by the end of 2008.

*North Dakota Office of the Attorney General*<sup>79</sup>

The North Dakota Office of the Attorney General (North Dakota) received \$109,700 in In-House Program funding to reduce its backlog of 3,530 samples through In-house analysis and data review. During our audit, we found that North Dakota’s financial management system generally appears to have an adequate system of internal controls to ensure compliance with applicable requirements, and the system of controls adequately provides for segregation of duties, transaction traceability,

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<sup>79</sup> Details regarding findings identified and associated recommendations can be found in the OIG audit report, entitled U.S. Department of Justice Office of the Inspector General, *Office of Justice Programs National Institute of Justice Cooperative Agreements Awarded To The North Dakota Office of the Attorney General*, Audit Report No. GR-60-08-008 (July 2008).

system security, and limited access. Our review also found that expenditures listed in North Dakota's accounting records supported drawdowns made under the award and that North Dakota complied with the budget requirements of the award. Additionally, we reviewed all transactions and found that they were properly authorized, classified, supported, and charged to the award.

We also reviewed statistical information reported in both the progress reports and metric reports submitted by North Dakota to NIJ as required under the award. Specifically, we verified statistical information contained in these reports by comparing North Dakota's CODIS convicted offender uploads during the quarterly reporting periods to the number of cases reported on the metric reports. For the \$52,500 awarded in FY 2006, we found that North Dakota analyzed and uploaded to CODIS 2,100 (100 percent) of the samples funded. For the \$57,200 awarded in FY 2007, we found that as of the progress report dated January 28, 2008, and metric report dated January 29, 2008, North Dakota reported that no funds had been drawn down or expended.

#### *Georgia Bureau of Investigation*<sup>80</sup>

The Georgia Bureau of Investigation (GBI) received three awards between FYs 2005 and 2007 totaling \$1,097,400 to perform the analysis of 41,260 samples. Based on our review of the GBI's accounting records, quarterly financial status reports, progress reports, and operating policies and procedures, we found that the GBI generally complied with In-House Program requirements.

GBI received funds to analyze, review and upload 8,000 convicted offender samples under its FY 2005 award, 11,760 samples under its FY 2006 award, and 21,500 samples under its FY 2007 award. We determined that GBI had successfully completed the analysis, review, and upload of 8,781 samples (110 percent) under the FY 2005 award, 10,338 (88 percent) under the FY 2006 award, and 12,746 (60 percent) under the FY 2007 award. We discussed accomplishment of the targets with GBI staff. GBI officials stated, and we confirmed, that the 2006 target was

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<sup>80</sup> Details regarding findings identified and associated recommendations can be found in the OIG audit report, entitled U.S. Department of Justice Office of the Inspector General, *Office of Justice Programs National Institute of Justice DNA Backlog Reduction Cooperative Agreements Awarded To The Georgia Bureau of Investigation*, Audit Report No. GR-40-08-005 (September 2008).

not met because the cost of grant-funded supplies was higher than anticipated, and the amount of supplies purchased was not sufficient to analyze the target number of samples. GBI officials also informed us that the 2007 cooperative agreement had been extended through December 2008. GBI anticipates that the target for the FY 2007 award will be met by December 2008 if the prior level of performance is maintained.

#### *New York State Police Forensic Investigation Center*<sup>81</sup>

The New York State Police (NYSP) Forensic Investigation Center received an FY 2006 award of \$825,000 to reduce its backlog by 27,500 samples through in-house analysis and data review. During our audit, we determined that the NYSP generally complied with the requirements of the award and was successful in meeting its objectives. However, we found that the NYSP did not submit all required progress and performance reports in a timely or accurate manner. In addition, we identified concerns about the way in which the NYSP used its award funding relative to the objectives of the In-House Program and related requirements. While we found that the funding from this award was used for incremental or additional samples to be analyzed, we also found that the NYSP did not thoroughly document that the DNA samples being analyzed with award funds were incremental or additional to what the NYSP could accomplish with its own existing funding.

#### In-House Program Performance

NYSP received funds to analyze, review and upload 27,500 convicted offender samples under its FY 2006 award. In progress reports submitted to the NIJ, the NYSP reported that all 27,500 backlog samples were analyzed using agreement funding between July and December 2007. However, during our audit the NYSP could not specifically identify a set group of 27,500 DNA samples at the beginning of the agreement or track the staff overtime and supplies related to each sample. Instead, the NYSP simply identified the first 27,500 DNA samples analyzed after agreement funding became available as the backlogged samples analyzed with this agreement.

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<sup>81</sup> Details regarding findings identified and associated recommendations can be found in the OIG audit report, entitled U.S. Department of Justice Office of the Inspector General, *National Institute of Justice Convicted Offender DNA Backlog Reduction Program Cooperative Agreement To The New York State Police Forensic Investigation Center*, Audit Report No. GR-70-08-004 (September 2008).

## *Missouri State Highway Patrol*<sup>82</sup>

The Missouri State Highway Patrol (MSHP) received two awards totaling \$521,469 to analyze 24,993 backlogged convicted offender samples through the In-house Program. During our audit, we found that the MSHP did not use the FY 2006 award; as a result, \$254,471 was de-obligated. We also found that the MSHP had not notified OJP of its use of sole-source vendors for all of its procurement purchases, did not accurately charge overtime and fringe benefit costs, and did not correctly or timely complete its Financial Status, Categorical Assistance Progress, and Quarterly Performance Metrics Reports.

### In-House Program Performance

We determined the MSHP reported erroneous performance metrics data in the reports for the periods ending December 31, 2006, and March 31, 2007, because the information submitted was not supported by the limited documentation we received from the MSHP. In total, the MSHP misrepresented its processing of DNA samples by 12.61 percent. As a result of MSHP's inaccurate performance metrics reporting, the NIJ did not receive accurate information for the specific reporting periods.

## *California Department of Justice*<sup>83</sup>

The California Department of Justice (California DOJ) was granted two awards between FYs 2005 to 2006 totaling \$1,513,224 for the analysis of 60,000 backlogged convicted offender DNA samples.

We found that the California DOJ generally complied with the terms and conditions of the grants, with the exception that the California DOJ did not consistently submit timely progress reports for either grant. In total, six

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<sup>82</sup> Details regarding findings identified and associated recommendations can be found in the OIG audit report, entitled U.S. Department of Justice Office of the Inspector General, *Office of Justice Programs National Institute of Justice Cooperative Agreement Awarded to The Missouri State Highway Patrol*, Audit Report No. GR-50-09-002 (February 2009).

<sup>83</sup> Details regarding findings identified and associated recommendations can be found in the OIG audit report, entitled U.S. Department of Justice Office of the Inspector General, *Office of Justice Programs Convicted Offender DNA Backlog Reduction Program Grants Awarded to The California Department of Justice*, Audit Report No. GR-90-09-001 (January 2009).

of the eight required progress reports were submitted late. The grantee acknowledged the lack of timeliness in submitting progress reports and attributed it to administrative oversight and failure to effectively manage multiple, competing priorities.

### In-House Program Performance

We determined the California DOJ had successfully met or exceeded its goal of reducing the state's backlog by 60,000 samples using In-House Program funding.

### **Conclusion**

We conducted 8 audits of state laboratories, which included 19 In-House Program awards totaling approximately \$11.49 million. Based on the results of the individual audits of these awards, we identified \$561,861 in total dollar related findings. We also found that performance information reported by the state laboratories was not fully verifiable, as required under the OJP Financial Guide. Finally, we found significant delays between the award start date and the first drawdown of funds for some of these awards. These findings indicate a lack of adequate monitoring of the In-House Program by NIJ.

### **Recommendation**

We recommend that the NIJ:

10. Require award recipients to establish a mechanism that is both valid and auditable for tracking performance data required under the In-House Program.

#### **IV. VENDOR COMPLIANCE WITH THE CONTRACT REQUIREMENTS**

In general, we found that invoices from vendor laboratories analyzing DNA samples were accurate, adequate controls were in place to ensure the accuracy and integrity of samples, and quality and technical reviews were regularly performed. However, we identified several areas of concern related to the timeliness of the samples completed and returned to the state laboratories under the contracts. As the liaison between the state and vendor laboratory, the NIJ should work with both vendors and state laboratories to reduce such delays.

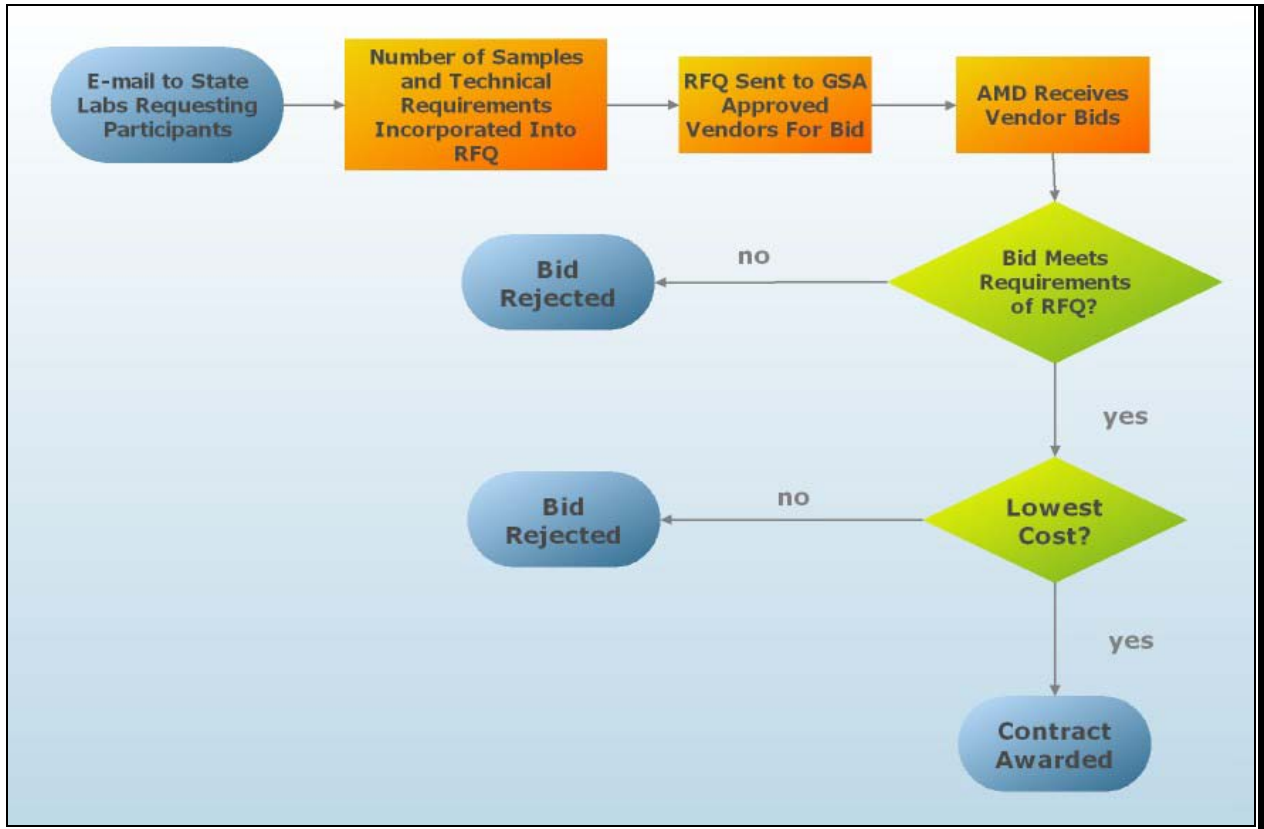
In addition to In-house Program awards, the NIJ also offers awards for state laboratories to reduce their backlog of convicted offender samples by sending those samples to vendor laboratories for analysis.<sup>84</sup> As illustrated in Figure 6, each year the NIJ requests state laboratories to provide the number of backlogged samples to be analyzed through the Outsourcing Program, as well as the technical requirements for the analysis of the samples. Based on the responses, the NIJ enters the information into a standard Request for Quote (RFQ) that is sent out to bid to vendor laboratories on the GSA approved list. Vendor laboratories then submit bids to perform the analysis to OJP's Acquisition Management Division (AMD). The bids include a self-certification that the laboratory complies with the provisions in the RFQ, including the capacity and technical ability to perform the analysis. The accuracy of the vendor laboratories' self-certification may be verified by the NIJ by looking at the Grant Progress Assessment report that must be completed annually for all vendors. The contracts are typically awarded to the vendor that meets all RFQ requirements and has the lowest cost.

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<sup>84</sup> Under the Outsourcing Program, the NIJ is responsible for providing federal contract administration, and serving as the technical contact for all contracts awarded under the Outsource Program. Through this role, the NIJ acts as the liaison between the state and vendor laboratories to ensure that any problems that arise during the course of the contract are resolved.



**FIGURE 6. CONTRACT AWARD PROCESS**

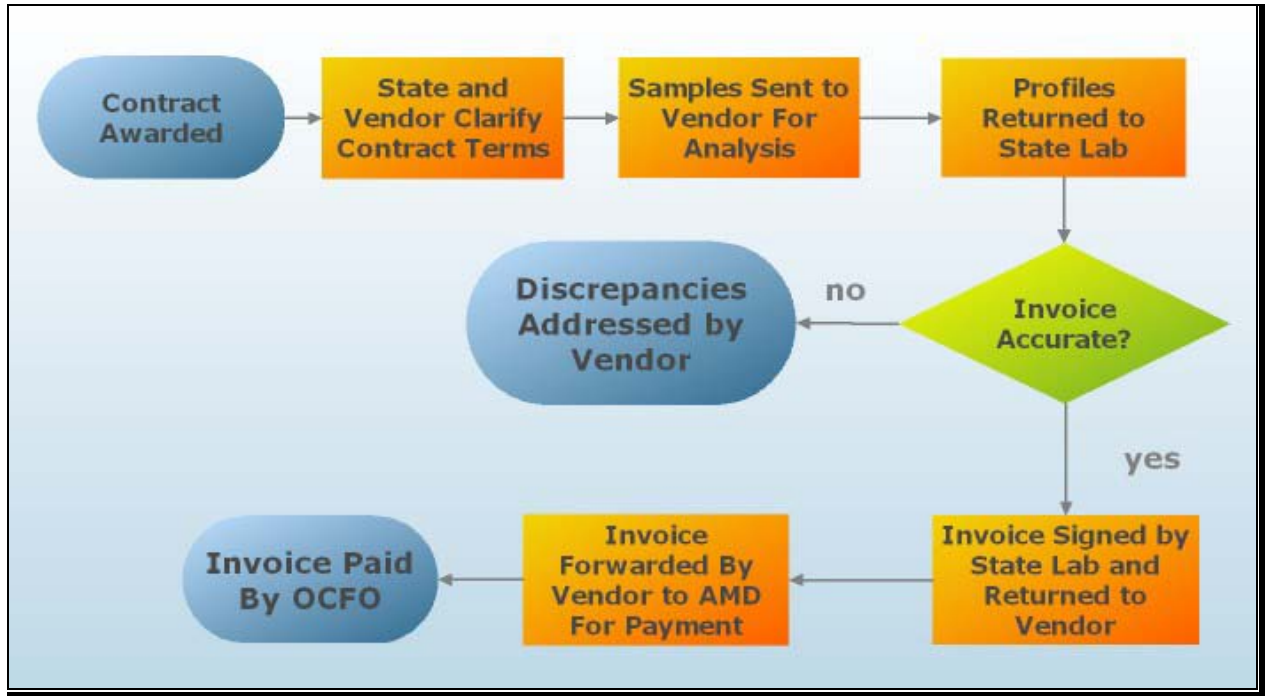


Source: The NIJ

Once a vendor laboratory has been awarded a contract to analyze a state laboratory's backlog samples, the state and vendor laboratories work directly with each other to obtain the samples and clarify any issues with the statement of work.<sup>85</sup> As illustrated in Figure 7, samples are processed by the vendor laboratory, which prepares and sends an invoice to the state laboratory along with the completed profiles. The state laboratory is responsible for verifying the invoice for accuracy, authorizing the profiles and invoice for payment, and returning the approved invoice back to the vendor laboratory. The vendor laboratory then forwards the approved invoice to OJP's Office of the Chief Financial Officer (OCFO) for payment.

<sup>85</sup> The SOW provides the vendor with all of the detailed requirements and criteria the vendor must accomplish or adhere to in the delivery order.

**FIGURE 7. INVOICE PAYMENT PROCESS**



Source: The NIJ

As shown in Table 24, contracts under the Outsourcing Program totaled approximately \$3.3 million in FY 2005, \$13.5 million in FY 2006, and \$7.6 million in FY 2007 to analyze 786,669 backlog samples between FYs 2005 and 2007.

**TABLE 24. VENDOR LABORATORIES FOR FYs 2005 THROUGH 2007**

VENDOR	FY 2005 FUNDS	SAMPLES FUNDED	FY 2006 FUNDS	SAMPLES FUNDED	FY 2007 FUNDS	SAMPLES FUNDED
Bode	\$---	---	\$3,624,818	134,236	\$1,454,350	29,300
Chromosomal	---	---	---	---	---	---
Identity	---	---	3,039,916	106,722	---	---
Lab Corp	---	---	---	---	2,290,634	78,290
Orchid	1,386,876	49,646	5,765,872	153,303	2,630,600	93,950
ReliaGene	1,934,336	69,207	1,060,025	31,015	1,085,000	35,000
Strand	---	---	---	---	170,400	6,000
<b>TOTALS</b>	<b>\$3,321,212</b>	<b>118,853</b>	<b>\$13,490,632</b>	<b>425,276</b>	<b>\$7,630,984</b>	<b>242,540</b>

Source: The NIJ vendor files

To verify vendor laboratory compliance with the terms of the contracts, we performed site visits at two vendor laboratories. We selected these laboratories based on a risk assessment of all vendor laboratories

receiving contracts under the Outsourcing Program. Our risk assessment included a review of In-House Program narratives submitted to the NIJ in the award applications by award recipients, an assessment of the comments received in our survey, and comments from NIJ officials. Comments that we received concerning the vendor laboratories related to inaccurate convicted offender profiles being produced, failure to adhere to policies and procedures, and the untimely completion of outsourced samples.

Based upon our results, we selected Orchid/Cellmark (Orchid) located in Nashville, Tennessee and Identity Genetics, Inc. (IGI) located in Brookings, South Dakota for site visits.

For each site visit, we tested compliance with what we considered to be the most important conditions of the contract. Specifically, we:

- reviewed invoices from each of the vendor laboratory's active contracts to ensure that the samples invoiced reconciled to the samples actually analyzed,
- assessed the controls in place to ensure accuracy of the number of samples tested as well as the integrity of the samples throughout the process,
- ensured that quality checks and technical reviews had been performed as required, and
- verified the timeliness of the samples being completed and returned to the state laboratory.

### **Orchid/Cellmark**

The forensic DNA testing services of Orchid in the United States are concentrated in two laboratories. Casework analysis is provided primarily by the facility in Dallas, Texas, and convicted offender CODIS profiling services are provided by the facility in Nashville, Tennessee. According to the NIJ, contracts originally awarded to the Orchid facility in Dallas were transferred to the Nashville facility after serious issues of non-compliance with the FBI's Quality Assurance Standards (QAS) were uncovered in an annual DNA audit. The specific issues of non-compliance were not disclosed to the OIG. As a result of the contract transfers from Orchid of Dallas to Orchid of Nashville, we performed a site visit to the Nashville facility only, since it is the only

Orchid laboratory analyzing samples under the Outsourcing Program. As shown in Table 25, Orchid was awarded 10 contracts totaling approximately \$9.8 million for the analysis of 296,899 backlog DNA samples.

**TABLE 25. CONTRACT ACTIVITY FOR ORCHID AS OF JUNE 30, 2008**

FISCAL YEAR	STATE	AWARD AMOUNT	SAMPLES	TOTAL OF INVOICES	COMPLETED SAMPLES
2005	Connecticut	\$596,324	21,412	\$621,445	22,314
2005	Massachusetts	790,552	28,234	823,732	29,415
2006	Pennsylvania	3,267,361	82,718	3,100,672	78,498
2006	Rhode Island	79,800	2,000	79,800	2,001
2006	New Mexico	263,211	7,685	263,177	7,684
2006	Idaho	108,000	2,400	0	0
2006	Washington	2,047,500	58,500	1,716,715	49,049
2007	Louisiana	1,400,000	50,000	342,972	13,249
2007	Louisiana	1,120,000	40,000	343,000	11,500
2007	Montana	110,600	3,950	7,000	250
<b>TOTAL</b>		<b>\$9,783,348</b>	<b>296,899</b>	<b>\$7,298,513</b>	<b>213,960</b>

Source: OJP

In general, we found that Orchid's invoices were accurate, and samples were completed and returned to the state laboratories in a timely manner. However, we had received several comments from state laboratories related to Orchid's inadequate controls to ensure the accuracy and integrity of the samples throughout the process and inadequate quality checks and technical reviews by Orchid under the contracts awarded. Specifically, comments were received from several state laboratories regarding unqualified staff processing samples, repeated contamination events, inadequate equipment to produce according to the statement of work, lack of protocol to process state laboratory backlog, and numerous errors in processing samples. As a result, we followed up on these concerns to ensure each was adequately addressed during our site visit.

#### *Laboratory Information Management System*

During our site visit to Orchid, we found that it developed an Excel-based, fully integrated Laboratory Information Management System to handle all aspects of the process from receipt of shipment from the state laboratory to shipment of the completed profiles back to the state laboratory. The process begins with initial receipt of samples collected in a receiving room. From there, samples are taken into Orchid's laboratory and

assigned a unique barcode. Typically, the samples are received with a barcode from the state laboratory, and that barcode is matched to the Orchid generated barcode so that the sample is tracked throughout the process. Orchid's Laboratory Information Management System is fully integrated with processing equipment so each sample can be tracked throughout the process.

### *Policies and Procedures*

Orchid officials informed us that to ensure accuracy, completeness, and proper authorization, all Orchid policies and procedures are fully documented and available on-line, and that these policies and procedures require laboratory technicians to be fully trained and certified for some or all of the various process operations involved in analyzing samples before they are allowed to handle any sample. Additionally, Orchid's policies require that any new staff trained and certified to analyze samples are monitored an additional 6 months before being allowed to work independently.

Upon observation of Orchid's processes and procedures, we found that technicians have a unique user identification and password that limits access to the Laboratory Information Management System based upon their qualifications. Only technicians who have been trained and certified in a given task may perform that step in the overall analysis. Orchid also had a system of checks and reviews where certain procedures are verified and signed off by an independent technician. Additionally, Orchid established a quality review in which its personnel perform routine audits and observe laboratory technicians.

### *Contract Compliance*

Orchid officials explained that to ensure compliance with the contract requirements, particularly criteria specific to the contract such as Reflective Fluorescent Unit minimums and maximums, they created an on-line spreadsheet that details the specifics of every contract.<sup>86</sup> Laboratory technicians are to refer to these requirements throughout the process to ensure the analysis is within specified limits. Additionally, Orchid policies

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<sup>86</sup> The reflective fluorescent unit is a measure of the reflectivity of the fluorescent material used to identify the ends of a DNA string so that the alleles can be quantified. The reflective fluorescent unit must be within minimum and maximum limits to ensure high-quality readings.

and procedures require that all technical specifications are documented and reviewed on a regular basis.

*Summary*

Many of the conditions identified in our risk assessment appear to be isolated to Orchid's Dallas facility. Based on our review of Orchid's Nashville facility, it appears adequate internal controls have been established to ensure that samples sent to Orchid are analyzed under the terms and conditions of the contract.

**Identity Genetics, Inc.**

Based in Brookings, South Dakota, Identity Genetics, Inc. (IGI) is a privately owned, independent company that specializes in DNA testing. IGI conducts genetic analyses for the purpose of determining paternity, family relationships, and forensic testing. Between April 28, 2006, and May 1, 2006, IGI was awarded 2 contracts totaling approximately \$1.4 million for the analysis of 55,868 backlog samples. Between September 1, 2006, and September 13, 2006, IGI was awarded an additional 5 contracts totaling approximately \$1.7 million for the analysis of 50,854 backlog samples for a total of approximately \$3.0 million for 106,722 samples, as shown in Table 26.

**TABLE 26. CONTRACT ACTIVITY FOR IDENTITY GENETICS, INCORPORATED AS OF JUNE 30, 2008**

FISCAL YEAR	STATE	AWARD AMOUNT	SAMPLES	AMOUNT INVOICED	COMPLETED SAMPLES
2006	South Carolina	\$1,060,360	43,280	\$937,664	38,272
2006	Oregon	320,994	12,588	313,044	12,237
2006	Connecticut	51,072	1,824	26,768	956
2006	Wyoming	225,600	4,700	201,072	4,088
2006	Utah	495,000	15,000	19,569	593
2006	South Dakota	275,400	10,800	142,214	5,577
2006	Louisiana	611,490	18,530	79,662	2,414
<b>TOTAL</b>		<b>\$3,039,916</b>	<b>106,722</b>	<b>\$1,719,992</b>	<b>64,137</b>

Source: OJP

In general, we found that IGI's invoices were accurate, adequate controls were in place to ensure the accuracy and integrity of samples, and quality and technical reviews were regularly performed. However, we identified several areas of concern related to the timeliness of the samples

completed and returned to the state laboratories under the contracts awarded. Additionally, we received several comments from state laboratories regarding IGI's lack of productivity, problems with instrumentation, and high number of rejected samples. IGI officials stated the causes of the delays included:

- changes to the contract,
- equipment problems that reduced sample capacity,
- delays in receipt of payment prevented purchase of supplies,
- low-quality samples prevented DNA analysis, and
- staff turnover impacted the productivity.

#### *Changes to the Contract*

During our site visit, IGI officials explained that changes to the contract can have a negative impact on IGI's ability to perform. For example, under its contract with the Louisiana state laboratory, IGI was originally required to run backlog samples using a 3130 genetic analyzer. During this time, the Louisiana state laboratory also was using contractors to perform the technical review of all samples generated by IGI. However, in June 2008 the Louisiana state laboratory's contract with the technical review vendor ended. As a result, the Louisiana state laboratory began using an expert system for technical review (a computer program that can assist forensic DNA analysts with the technical review of DNA samples by alerting the analyst to those samples that may require a more thorough manual review). This dramatically reduces the amount of time an analyst needs to spend on reviewing DNA profiles prior to upload. Because the Louisiana state laboratory only validated the expert system using data generated by a 3100 genetic analyzer, it requested that IGI switch from a 3130 to a 3100 genetic analyzer so that it would not have to manually review all profiles. However, because IGI did not have a validated 3100 in operation at the time, it could not comply with the request without incurring a significant increase in costs. As a result, IGI had only processed 12 percent of the backlog samples under the contract. At the time of our review, IGI, the Louisiana state laboratory, and the NIJ were discussing potential solutions.

### *Equipment Problems Reduced Sample Capacity*

Between April and September 2006, IGI was awarded 7 contracts to analyze 106,722 backlogged samples. To increase its capacity and process samples in a timely fashion, IGI purchased a second genetic analyzer in December 2006, which was validated and put into service in July 2007. However, shortly after being put into service, IGI experienced problems with its first genetic analyzer. As a result, from July 2007 until March 2008 this genetic analyzer was out of service reducing IGI's capacity and output.

### *Delays in Receipt of Payment Prevented Purchase of Necessary Supplies*

IGI officials also explained that it had experienced delays in receiving payment for invoices at the beginning of the contract award period, which limited its ability to purchase additional supplies needed to analyze the backlogged samples. As a small company, IGI did not receive the volume discounts on supplies and did not have the necessary funding to purchase supplies for the entire contract up front. According to an IGI official, the company relied on timely reimbursement to continue to fund their analysis. Originally, the process for payment of an invoice required the state laboratory to review all data submitted before an invoice was sent to the NIJ for payment, resulting in a delay in the payment of submitted invoices. The NIJ has since changed this requirement and allows payment of an invoice after the state laboratory has verified the accuracy of the number of samples invoiced without the state laboratory having to first review and verify the quality and accuracy of the data.

### *Low Quality Samples Prevented DNA Analysis*

According to IGI officials, they have also experienced problems with the samples received from the state laboratories. For example, when a convicted offender's DNA is collected, a swabbing of the inside of the cheek is taken. This swabbing, called a buccal swab, is then smeared onto FTA paper, a paper specially treated to bind and protect DNA from degradation.<sup>87</sup> Many of the samples submitted to IGI showed no indication of saliva on the FTA paper, and in order to obtain sufficient extracted DNA to develop a profile, IGI had to modify the original FTA extraction protocol specified in the

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<sup>87</sup> FTA paper is specially treated to bind and protect nucleic acids extracted from blood, plant and animal tissue, and other sources from degradation. For analysis, a small disc is punched from the FTA paper containing the DNA sample of interest, washed, dried and used for polymerase chain reaction (PCR).



statement of work. According to IGI officials, these modifications greatly increased the time and cost of analysis for IGI.

### *Staff Turnover*

Because of delays to the contracts and a lack of communication between IGI and the state laboratories, many laboratories complained to both the NIJ and IGI. According to IGI officials, as a result of customer service issues the former laboratory director and technical director resigned, resulting in a large impact on IGI's productivity.

### *Summary*

In our judgment, many of the issues causing delays to the completion of the contracts awarded to IGI under the Outsourcing Program are outside the control of IGI. Therefore, options for corrective action regarding IGI are limited. However, we believe as the liaison between the state and vendor laboratory, the NIJ should continue to work with both IGI and the state laboratories to ensure that the problems identified are resolved and the goals and objectives of the contracts awarded are met.

### **Conclusion**

During our site visits we found that, in general, vendor laboratories had adequate controls in place to ensure the accuracy and integrity of samples, and that vendor invoices were accurate. However, we identified several issues that caused delays to the analysis of backlogged samples under the Outsourcing Program including: (1) poor quality of samples received from the state laboratory, (2) delays in payment caused by late approval of invoices by the state laboratory, (3) samples delayed due to internal issues the laboratory had with equipment malfunctions and staff turnover, and (4) changes to the analysis defined in the statement of work by the state laboratories. Even though some of these issues were outside the control of the NIJ and the vendor laboratories, they prevented the Outsourcing Program from achieving its objective of accelerating the analysis of convicted offender and arrestee DNA samples collected by states, pursuant to applicable laws, in order to provide timely CODIS-compatible data for state and national DNA databases. As the liaison between the state and vendor laboratory, the NIJ should continue to work with both the vendors and the state laboratories to ensure that the problems causing

delays to the Outsourcing Program are resolved and the goals and objectives of the contracts awarded are met.

### **Recommendation**

We recommend that the NIJ:

11. Develop policies and procedures to facilitate pre-contract discussions as well as ongoing contract monitoring between state and vendor laboratories, to ensure that contract expectations are clear and that problems are identified, discussed, and resolved in a timely manner.

## STATEMENT ON INTERNAL CONTROLS

In planning and performing our audit of the Convicted Offender DNA Backlog Reduction Program, we considered the NIJ's internal controls for the purpose of determining our auditing procedures. The evaluation was not made for the purpose of providing assurance on the internal control structure as a whole. However, we noted certain matters that we consider reportable conditions under generally accepted government auditing standards.<sup>88</sup>

### Finding II

- The NIJ did not use reported information to manage the Backlog Reduction Program as a whole, or to evaluate the effectiveness of the individual awards and contracts under the Backlog Reduction Program.
- The NIJ failed to provide adequate guidance on reporting performance information resulting in performance data that did not accurately reflect the performance of award recipients under the Backlog Reduction Program as a whole.
- The NIJ did not adequately address delays by the states to utilize Backlog Reduction Program funding to analyze, review, and upload backlogged samples from both the In-house and Outsourcing Programs.

### Finding III

- The NIJ did not require award recipients to ensure that valid and auditable source documentation is available to support all data collected as specified in the In-House Program solicitation and required by the OJP Financial Guide.

Because we are not expressing an opinion on the overall management control structure of the NIJ, this statement is intended solely for the information and use by this component in administering the federal regulations governing for federal awards.

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<sup>88</sup> Reportable conditions involve matters coming to our attention relating to significant deficiencies in the design or operation of the management control structure that, in our judgment, could adversely affect the ability of NIJ to administer awards and contracts under the Backlog Reduction Program.

## STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards*, we tested the NIJ's records and documents pertaining to the Backlog Reduction Program to obtain reasonable assurance about the NIJ's compliance with laws and regulations, that, if not complied with, we believe could have a material effect on the administration of the Backlog Reduction Program. Compliance with laws and regulations applicable to qualifying Backlog Reduction Program applicants for award eligibility and to the administration of the Backlog Reduction Program awards is the responsibility of the NIJ management. An audit includes examining, on a test basis, evidence about compliance with laws and regulations. At the time of our audit, the federal regulations governing the requirements for the Backlog Reduction Program could be found in:

- *The Debbie Smith Act of 2004* – Extended the *DNA Backlog Analysis Act of 2000* (PL 108-405) by authorizing appropriations of \$151,000,000 in each of FYs 2005 through 2009
- *The DNA Fingerprint Act of 2005* - Amends the *DNA Identification Act of 1994* to repeal a provision prohibiting the DNA profiles from arrestees who have not been charged with a crime from being included in the National DNA Index System.
- 28 C.F.R. Part 66, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments
- OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments

Nothing came to our attention that caused us to believe that the NIJ management was not in compliance with the federal regulations governing the requirements for federal awards listed above.

## OBJECTIVE, SCOPE, AND METHODOLOGY

We audited the Convicted Offender DNA Backlog Sample Reduction Program, which was designed to accelerate the analysis of convicted offender and arrestee DNA samples collected by states, pursuant to applicable laws, in order to provide timely CODIS-compatible data for state and national DNA databases. The objectives of this audit were to determine the adequacy of the NIJ's administration of the Backlog Reduction Program by evaluating:

- the impact of the Backlog Reduction Program on reducing the convicted offender DNA backlog;
- the NIJ's administration and oversight of the In-house Program;
- the extent to which the In-house Program award recipients have administered their awards in accordance with applicable laws, regulations, guidelines, and terms and conditions of the award;
- the NIJ's oversight of the Outsourcing Program; and
- the compliance by vendor laboratories with contractual requirements.

We conducted our audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The audit generally covered, but was not limited to, Backlog Reduction Program performance, Backlog Reduction Program awards and contracts made between FYs 2005 through 2007. Audit work was conducted at the NIJ headquarters, eight selected state laboratories, and two vendor laboratories.

While there is no single comprehensive resource that tracks or estimates the backlog in local, state, and federal laboratories, we attempted to evaluate and characterize the backlog to determine the effectiveness of the Backlog Reduction Program in reducing the backlog of DNA samples by interviewing NIJ officials and reviewing statistical information contained in the quarterly performance metrics reports, quarterly financial status reports, and semiannual progress reports submitted by each award recipient under the Backlog Reduction Program. Reliance on computer processed data was

not significant to our objectives. Additionally, we conducted a survey of all state laboratories conducting analysis of convicted offender/arrestee sample analysis and all vendor laboratories with outsourcing contracts to obtain statistical information of trends in the overall backlog.

To evaluate the adequacy of the NIJ's oversight and administration of the Backlog Reduction Program, we compared documentation provided by state laboratories to the NIJ estimates of Backlog Reduction Program performance to determine whether the NIJ: (1) regularly collected timely and credible performance information from state laboratories that received funding under the Backlog Reduction Program; and (2) used the performance information reported by state laboratories to manage the Outsourcing Program and improve performance.

To determine whether the NIJ was monitoring the utilization of funds awarded under the Backlog Reduction Program, we reviewed drawdown reports for each of the awards under the In-House Program. For those awards with no reported drawdowns, we further analyzed this condition by reviewing quarterly financial status reports and performance reports for awards to determine whether the award recipients reported financial activity or samples analyzed. We also compared the award start date to the date of the initial drawdown to determine the length of time between the date the funds were obligated and the date of the initial drawdown. For awards where the initial drawdown occurred 1 year from the date funds were obligated, we obtained all performance reports submitted prior to the initial drawdown to determine whether the award recipients reported financial or programmatic activity prior to the initial drawdown.

To determine whether the NIJ had awarded funds to recipients that had not drawn down funding from previous awards, we reviewed quarterly financial status reports and performance reports for awards that had not been drawn down to determine whether the award recipients reported financial activity or samples analyzed. We then compared the date of first drawdown of the inactive award to the date funds were obligated under a subsequent award.

Additionally, our survey of state and vendor laboratories collected customer satisfaction information concerning the NIJ's oversight and management of the Backlog Reduction Program.

To determine the extent to which in-house analysis award recipients have administered the awards in accordance with applicable laws, regulations, guidelines, and terms and conditions of the awards, we issued a separate report for each of the following state laboratories:

1. Kansas Bureau of Investigation, Topeka, Kansas, Audit Report GR-60-08-009, issued July 2008;
2. North Dakota Office of the Attorney General, Bismarck, North Dakota, Audit Report GR-60-08-008, issued July 2008;
3. New Jersey Department of Law and Public Safety, Trenton, New Jersey, Audit Report GR-70-08-003, issued September 2008;
4. The Georgia Bureau of Investigation, Decatur, Georgia, Audit Report GR-40-08-005, issued September 2008;
5. The New York State Police Forensic Investigation Center, Albany, New York, Audit Report GR-70-08-004, issued September 2008;
6. Missouri State Highway Patrol, Jefferson City, Missouri, Audit Report GR-50-09-002, issued February 2009;
7. California Department of Justice, Sacramento, California, Audit Report GR-90-09-001, issued January 2009.

The judgmental selection of these award recipients was based on the award amount and on the amount of funds drawn down as of the start of our audit. For each of these audits, we tested compliance with what we considered to be the most important conditions of the awards. Our testing was conducted by judgmentally selecting a sample of expenditures for the grants that we audited. Judgmental sampling design was applied to obtain broad exposure to numerous facets of the grants reviewed, such as dollar amounts or expenditure category. This non-statistical sample design does not allow projection of the test results to all grant expenditures. Unless otherwise stated in our report, we applied the OJP Financial Guide as our primary criteria in auditing these awards. The OJP Financial guide serves as a reference manual assisting award recipients in their fiduciary responsibility to safeguard award funds and ensure funds are used appropriately. Specifically, we tested:

- **Award Expenditures** to determine whether the costs charged to the awards were allowable and supported.
- **Reporting** to determine whether the required quarterly financial status reports, progress reports, and performance reports were submitted on time and accurately reflected award activity.

- **Budget Management and Control** to determine whether award recipients adhered to the NIJ-approved budget for expenditures of award funds.
- **Drawdowns** to determine whether the requests for reimbursement were adequately supported and if award recipients managed award receipts in accordance with federal requirements.
- **Backlog Reduction Program Performance** to determine whether award recipients achieved award objectives and to assess performance and accomplishments.

Finally, to verify vendor laboratory compliance with the terms of the contracts, we performed two vendor laboratory site visits. We selected the laboratories based on a risk assessment of all vendor laboratories receiving contracts under the Outsourcing Program. Our risk assessment included a review of In-House Program narratives submitted to the NIJ in the award applications by award recipients, an assessment of the comments received in our survey, and comments from NIJ officials. Based upon our results Identity Genetics, Inc., located in Brookings, South Dakota and Orchid/Cellmark located in Nashville, Tennessee were selected for site visits.

For each site visit, we tested compliance with what we considered to be the most important conditions of the contract. Specifically, we:

- reviewed and tested a judgmental sample of invoices from each of the vendor laboratory's active contracts to ensure that the samples invoiced reconciled to the samples actually analyzed<sup>1</sup>;
- assessed the controls in place to ensure accuracy of the number of samples tested as well as the integrity of the samples throughout the process;
- ensured that quality checks and technical reviews had been performed as required; and
- verified the timeliness of the samples being completed and returned to the state laboratory.

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<sup>1</sup> Our testing was conducted by judgmentally selecting a sample of invoices for the vendors that we visited. Judgmental sampling design was applied to obtain broad exposure to numerous facets of the contracts reviewed, such as dollar amounts or number of samples invoiced. This non-statistical sample design does not allow projection of the test results to the entire population of invoices.



## CONSOLIDATED RESPONSES FOR THE OIG SURVEY OF OFFENDER LABORATORIES

The OIG initiated an audit of the OJP, NIJ's management of the Backlog Reduction Program. As part of that audit we collected statistics on each state's offender backlog, as well as their feedback on the NIJ's management of the Backlog Reduction Program. These responses were intended to be used to help understand where opportunities for improvement might exist in the NIJ's management of the Backlog Reduction Program, and to collect as background information on the scope of the national offender backlog. We asked for one completed survey per offender laboratory, but we also encouraged laboratories to obtain input from other qualified staff within their laboratory. We requested that respondents not consult with people outside their laboratory, and used the term "backlog" throughout the survey to refer to the analysis and data-review portions of the offender DNA backlog. This term does not include the collection portion of the backlog. Any reference to *samples* refers to offender DNA samples.

### Survey Results

#### DEMOGRAPHICS

**1. In what state is your laboratory located?**

The survey was sent to all 51 state laboratories that process convicted offender samples.<sup>2</sup> Our response rate was 100 percent.

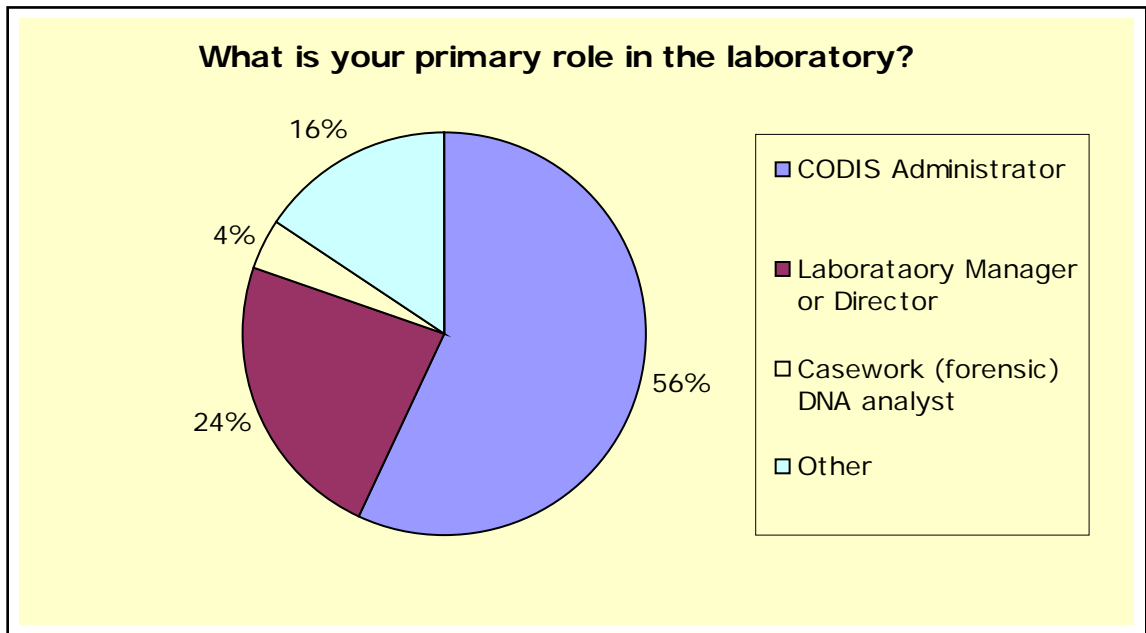
**2. What CODIS level is your laboratory?**

Forty-nine of the respondents said they were a state laboratory and two said they were an LDIS laboratory.

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<sup>2</sup> Each state has a single designated SDIS laboratory which processes convicted offender samples. Although Nevada also uses an LDIS laboratory to process convicted offender samples, throughout this report, the reference to state laboratories includes the 50 SDIS laboratories plus the one Nevada LDIS laboratory that processes convicted offender samples.

**3. What is your primary role in the laboratory?**



Of the *Other* responses given, six said they had some supervisory role, one said they were the acting CODIS Administrator, and one said they were the technical leader.

**4. What is the staff level of the DNA section (both forensic and offender) in your laboratory (include technicians, examiners, managers, etc., but exclude clerical support or management that are not specific to the DNA section)?**

The average response was 11 to 15 staff.

**5. Of the overall DNA section, how many of the staff are devoted primarily or entirely to offender database work, which includes both analysis and review of samples?**

The average answer was three to four staff.

## STATISTICS

- 6. As of September 30, 2005, how many offender DNA samples did you have awaiting analysis?**

As of September 30, 2005, the total number of samples the offender laboratories had awaiting analysis was 1,071,117.

- 7. As of September 30, 2005, how many offender DNA samples did you have awaiting data review after analysis had been done?**

As of September 30, 2005, the total number of samples the offender laboratories had to data review after analysis had been done was 204,179.

- 8. As of September 30, 2005, how many offender DNA samples, that were analyzed and data reviewed, were awaiting upload to NDIS?**

As of September 30, 2005, the total number of analyzed and data reviewed samples that were awaiting upload to NDIS was 126,840.

- 9. Please provide as accurately as possible the following statistics for offender samples/profiles:**

Survey respondents were asked to provide an estimate of the beginning backlog for FYs 2006, 2007, and 2008. Of the 51 total survey respondents, 47 provided a beginning backlog estimate for FY 2006, 48 provided an estimate for FY 2007, and 49 provided an estimate for FY 2008. The total responses are shown in the following table:

	FY 2006	FY 2007	FY 2008 <sup>3</sup>
a. Your beginning backlog balance for the start of the time period listed in the corresponding column headings	1,053,617	1,138,072	599,622
b. Samples received during...	1,080,031	1,013,346	638,902
c. Samples analyzed during...	852,764	1,169,285	666,679
d. Samples data-reviewed during...	929,783	1,039,500	670,157
e. Profiles uploaded to NDIS during...	985,393	1,322,084	746,130

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<sup>3</sup> Statistics reported for FY 2008 are as of March 31, 2008.

Survey respondents were also asked to provide an estimate of the percentage of funding their laboratory received for offender DNA activity in FY 2006, FY 2007, and the first two quarters of FY 2008. Of the 51 total survey respondents, 44 provided a funding estimate for FY 2006, 45 for FY 2007, and 46 for the first two quarters of FY 2008. The responses are presented in the following table:

<b>CONTINUED FOR EACH SEPARATE TIME PERIOD, WHAT PERCENTAGE OF THE FUNDING FOR OFFENDER DNA ACTIVITIES IN YOUR LABORATORY CAME FROM...</b>				
	PERCENTAGE OF FUNDING	10/01/05 – 9/30/06	10/1/06- 9/30/07	10/1/07 – 3/31/08
State or Local funds	100% - 75%	39%	36%	39%
	74% - 50%	11%	11%	13%
	49% - 1%	18%	24%	28%
	0%	32%	29%	20%
NIJ Backlog Reduction Program funds	100% - 75%	34%	40%	33%
	74% - 50%	14%	13%	17%
	49% - 1%	14%	9%	17%
	0%	39%	38%	33%
Other federal funds	100% - 75%	3%	2%	2%
	74% - 50%	0%	0%	0%
	49% - 1%	3%	7%	7%
	0%	95%	90%	90%

10. a. **Over the last 5 years (January 1, 2003 – December 31, 2007), besides federal funding, did other factors such as: legislative expansions, state funding, and crime rates, have a significant impact (increase or decrease) on the offender backlog in your laboratory?**

Seventy-five percent of respondents said over the last 5 years (January 1, 2003 - December 31, 2007), besides federal funding, other factors such as legislative expansions, state funding, and crime rates had a significant impact (increase or decrease) on the offender backlog in their laboratory. Twenty-five percent of respondents said these other factors did not have a significant impact on the offender backlog in their laboratory.

**b. If Yes please indicate the level (*Low, Medium, or High*) of impact your laboratory has experienced due to the factors listed in the table below and whether the factors increase or decrease the backlog in your laboratory:**

Factor a. Implementation of legislative expansions to collections passed during the last 5 years.

Of the 38 respondents who said *Yes* to Question 10.a., 33 said implementation of legislative expansions to collections passed during the last 5 years has increased the backlog in their laboratory. Specifically:

- 23 said implementation of legislative expansions to collections passed during the last 5 years had a *High* impact on increasing their backlog,
- 7 said implementation of legislative expansions to collections passed during the last 5 years had a *Medium* impact on increasing the backlog, and
- 3 said implementation of legislative expansions to collections passed during the last 5 years had a *Low* impact on increasing their backlog.

Of the remaining five *Yes* responses,

- 4 said implementation of legislative expansions to collections passed during the last 5 years had no impact on their backlog, and
- 1 response had to be disregarded because the respondent selected both the increased and decreased options.

Factor b. Implementation of legislative expansions to collections passed prior to the 5 years, but not implemented at that time.

Of the 38 respondents who said *Yes* to Question 10.a.:

- 23 said implementation of legislative expansions to collections passed prior to the 5 years, but not implemented at that time, had no impact on the backlog in their laboratory;
- 10 did not provide a response;

- 2 said implementation of legislative expansions to collections passed prior to the 5 years, but not implemented at that time, was not applicable;
- 1 response was disregarded because the respondent selected both the increased and decreased options;
- 1 respondent said implementation of legislative expansions to collections passed prior to the 5 years, but not implemented at that time, had a *High* impact on increasing the backlog; and
- 1 respondent said implementation of legislative expansions to collections passed prior to the 5 years, but not implemented at that time, had a *Low* impact on increasing their backlog.

Factor c. State or local funding for offender work was significantly increased.

Of the 38 respondents who said *Yes* to Question 10.a.:

- 5 said significant increases in state or local funding had a *High* impact on increasing their backlog;
- 4 said significant increases in state or local funding had a *Medium* impact on increasing their backlog;
- 3 said significant increases in state or local funding had a *High* impact on decreasing their backlog; and
- 3 said significant increases in state or local funding had a *Medium* impact on decreasing their backlog.

Of the remaining responses:

- 12 respondents said significant increases in state or local funding had no impact on their backlog;
- 8 respondents did not provide a response;
- 1 response was disregarded because the respondent selected both the increased and decreased options;

- 1 respondent said since 1995, the state had never funded the program; and
- 1 respondent said significant increases in state or local funding was not applicable.

Factor d. State or local funding for offender work was significantly decreased.

Of the 38 respondents who said *Yes* to Question 10.a.:

- 23 respondents said a significant decrease in state or local funding for offender work had no impact on their backlog;
- 11 respondents did not provide a response;
- 2 respondents said it was not applicable;
- 1 respondent said since 1995, the state had never funded the program; and
- 1 said a significant decrease in state or local funding for offender work had a *High* impact on decreasing their backlog.

Factor e. Significant increase in staff.

Of the 38 respondents who said *Yes* to Question 10.a., 12 said significant increases in staff have increased the backlog in their laboratory, while 10 said significant increases in staff have decreased the backlog in their laboratory. Specifically:

- 8 said significant increases in staff had a *High* impact on increasing their backlog;
- 4 said significant increases in staff had a *Medium* impact on increasing their backlog;
- 5 said significant increases in staff had a *High* impact on decreasing their backlog;
- 4 said significant increases in staff had a *Medium* impact on decreasing their backlog; and
- 1 said significant increases in staff had a *Low* impact on decreasing their backlog.

Of the remaining responses:

- 9 said significant increases in staff had no impact;
- 5 respondents did not provide a response;
- 1 response was disregarded because the respondent selected both the increased and decreased options; and
- 1 respondent said significant increases in staff was not applicable.

Factor f. Significant decrease in staff.

Of the 38 respondents who said *Yes* to Question 10.a., 7 said significant decreases in staff have increased the backlog in their laboratory while 1 said significant decreases in staff have decreased the backlog in their laboratory. Specifically:

- 6 said significant decreases in staff had a *High* impact on increasing their backlog;
- 1 said significant decreases in staff had a *Low* impact on increasing their backlog; and
- 1 said significant decreases in staff had a *Low* impact on decreasing their backlog.

Of the remaining responses:

- 15 said decreases in staff had no impact;
- 11 respondents did not provide a response;
- 2 responses were disregarded because the respondents selected both the increased and decreased options; and
- 2 respondents said significant decreases in staff was not applicable.

Factor g. Decreasing crime rates caused a corresponding drop in collections.



Of the 38 respondents who said *Yes* to Question 10.a.:

- 25 said this factor had no impact;
- 11 respondents did not provide a response; and
- 2 respondents said this factor was not applicable.

Factor h. Increasing crime rates caused a corresponding spike in collections.

Of the 38 respondents who said *Yes* to Question 10.a., 4 said increasing crime rates caused a corresponding spike in collections, leading to an increase in the backlog in their laboratory. Specifically:

- 2 said increasing crime rates causing a corresponding spike in collections had a *Low* impact on increasing their backlog;
- 1 said increasing crime rates causing a corresponding spike in collections had a *Medium* impact on increasing their backlog; and
- 1 said increasing crime rates causing a corresponding spike in collections had a *High* impact on increasing their backlog.

Of the remaining responses:

- 20 said this factor had no impact;
- 11 respondents did not provide a response;
- 1 response was disregarded because the respondent selected both the increased and decreased options; and
- 2 respondents said increasing crime rates causing a corresponding spike in collections was not applicable.

Factor i. *Other (please describe)*.

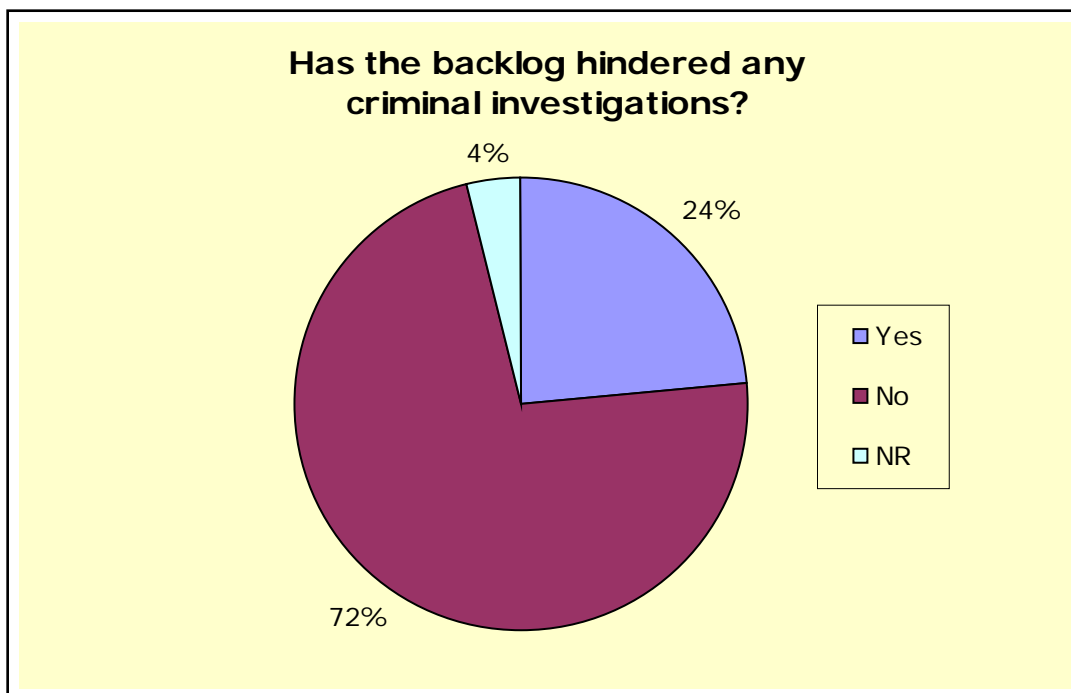
Of the 38 respondents who said *Yes* to Question 10.a.:

- 31 respondents did not provide an *Other* factor,

- 6 respondents listed an *Other* factor, and
- 1 respondent who did not list an *Other* factor selected no impact.

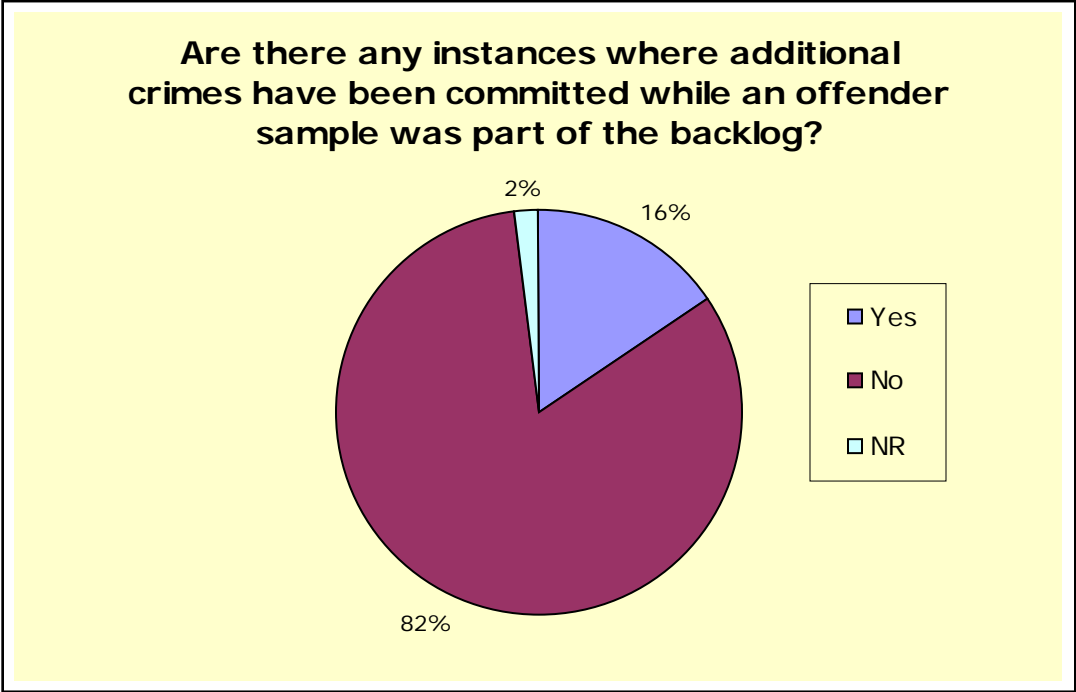
Of the six respondents who listed an *Other* factor, five of the six factors had an impact on increasing the backlog and one of the factors had an impact on decreasing the backlog. The factors that increased the backlog were new legislation that leads to changes in laboratory setup, two state collection initiatives aimed at collecting outstanding samples, the inclusion of non-violent cases, and continuing staff turnover. The factor that decreased the backlog was the installation of an expert system.

**11. Are you aware of any specific instances(s) where the offender backlog in your state has played some role in hindering the investigation of criminal cases?**



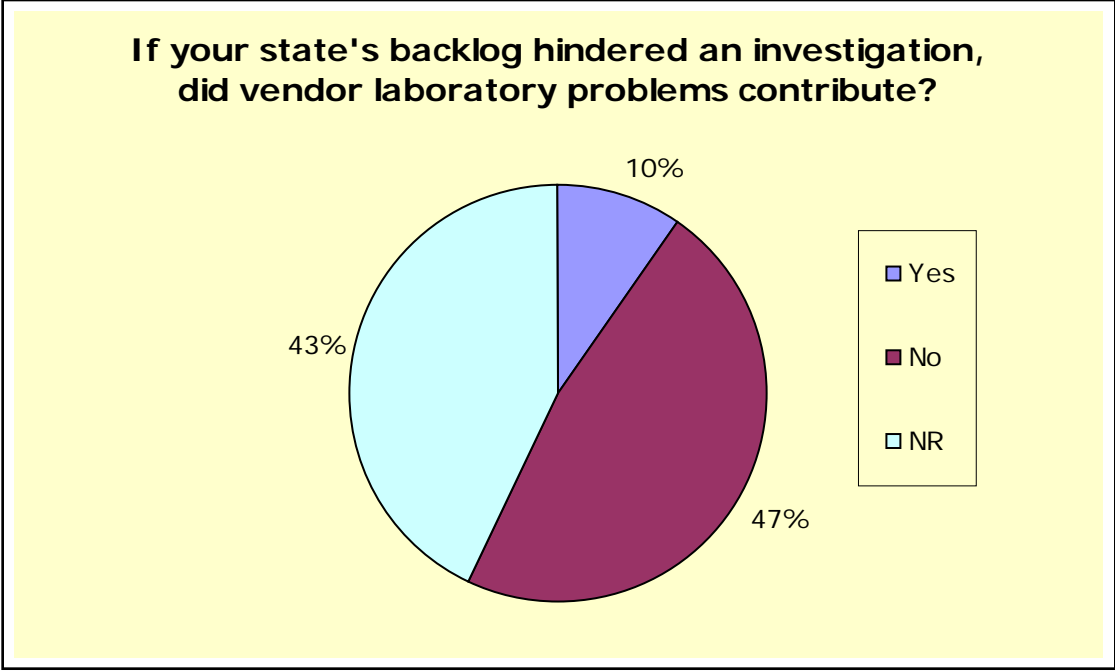
The respondents who said *Yes* were asked to describe why. Eight of the 12 comments given included examples of actual cases that were hindered due to offender backlogs, and the other 4 comments were more general statements that offender backlogs have hindered investigations.

12. Are you aware of any specific instance(s) where additional crime(s) may have been committed by an offender while sample(s) from the same offender were part of the backlog in your state?



The respondents who said Yes were asked to describe why. Of the seven comments provided by the respondents who said Yes, two gave examples of general crimes such as burglary, four provided examples of specific cases, and one comment talked about a specific case that was more an example of the ramifications of the casework backlog than the offender backlog.

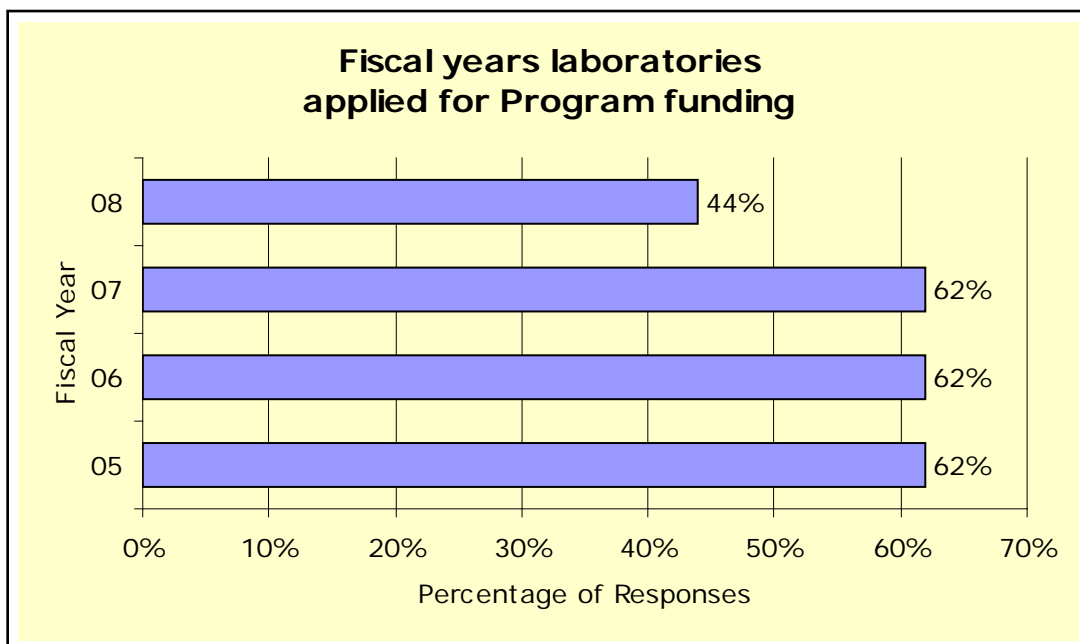
13. If you provided an example of a situation where your state's backlogs hindered an investigation or allowed an offender to commit additional crime(s), did vendor problems (such as extended delays in getting results back) contribute to that specific situation?



The respondents who said Yes were asked to describe why. The four comments provided by the respondents who said Yes said there were delays in processing samples by the vendor laboratories.

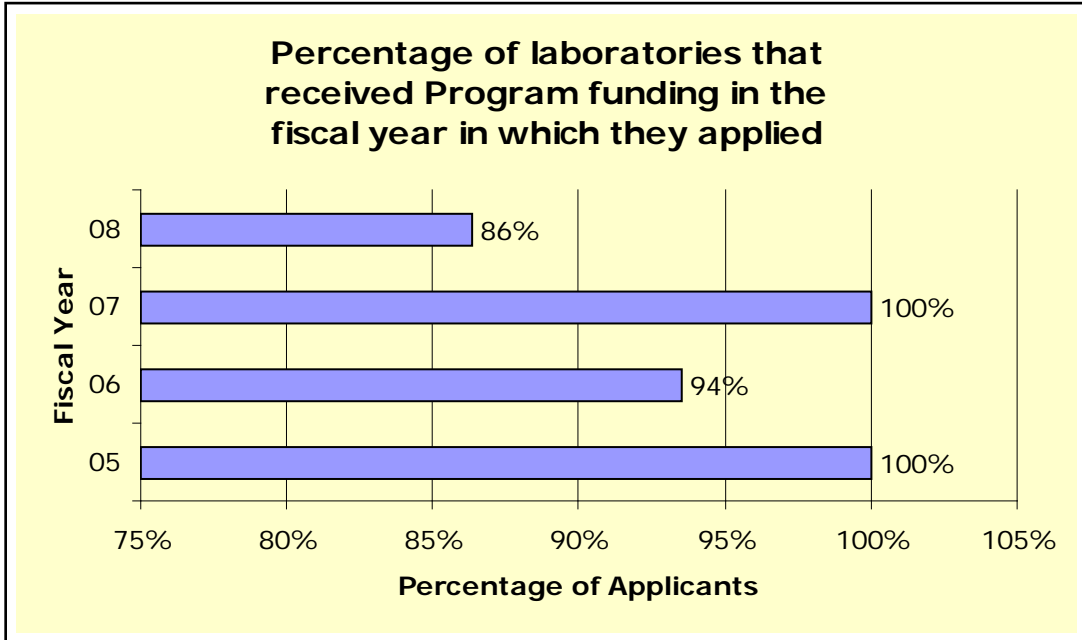
## PARTICIPATION

14. For which of the following FY(s) has your laboratory applied for assistance through the Backlog Reduction Program, whether through direct funding or outsourcing funding? Check all that apply.



Ten of the 51 respondents said they did not apply for any funding during any of the FYs listed. Respondents who answered *No* to Question 14 were told to skip to Question 16. In addition, the respondents who said *No* to Question 14 were told not to answer Questions 18 to 31.

15. For which of the following FY(s) had your laboratory applied for and received assistance through the Backlog Reduction Program, whether through direct funding or outsourcing funding? Check all that apply.



Respondents were given the following option to provide additional comments: If you applied for and did not receive assistance for any of the above FYs, please explain why. There were six respondents who applied for, but did not receive, funding through the Backlog Reduction Program; three of the six provided an explanation why and three did not.

The explanations given are as follows: for one respondent, during FY 2006 their backlog grant was de-obligated; another respondent was denied assistance in FY 2008 due to un-obligated funds; and during FY 2006 one respondent did not have a backlog due to no collection mechanism.

16. **My laboratory did not apply for any assistance because: (please specify the FY(s) and select the primary reason(s))**

Respondents were asked to specify in which FYs they did not request funding, and could choose from a total of seven possible reasons for not requesting assistance. Two of the answers allowed for respondents to elaborate, and the last possible answer was an *Other* option.

- 1) Only 4 respondents listed a specific FY. Three listed FY 2008 and one listed FY 2007 and FY 2008.
- 2) 15 respondents said their laboratory did not apply for any assistance because their analysis and data-review offender backlog is negligible. Respondents who selected this answer were then asked to list the top three factors that assisted their laboratories in achieving a negligible backlog, and eight did so. The responses given are as follows:
  - 4 respondents said previous or current grant funds;
  - 2 respondents said state funds were sufficient (an option given in the question);
  - 1 respondent mentioned very specific technology implementations at their laboratory; and
  - 1 respondent said they did not have a backlog due to a limited number of qualifying offenses.
- 3) 8 respondents said their offender backlogs were being addressed with state funding (including state-funded staffing).
- 4) 2 respondents said their analysis and data-review offender backlogs were being addressed through other federal funding programs.
- 5) 4 respondents said they had a backlog, but knew that some point of qualification would exclude them from participating. These four respondents elaborated and selected the following responses:
  - 1 respondent specified "in-house capacity requirements";
  - 2 respondents provided comments and stated: "Our backlog would not have met Backlog Reduction Program requirements" and "State & federal funds usage causing a supplanting issue"; and
  - 1 respondent specified "in house capacity requirements" and provided a comment stating: "relatively small number of samples, not worth the time to prepare proposal based on the minimal funding we would receive."

- 6) 1 respondent said they have a backlog, but lacked the resources (time or staff) to prepare an application to request funding;
- 7) The last option given in Question 16 was *Other*. Two respondents selected the *Other* option; one respondent did not provide additional comment; and one stated “[W]e did not apply for federal FY08 funding. It was determined that federal funding from FY 2006 and FY 2007 awards, along with state funding received in FY 2009 would cover analysis performed until the federal FY 2009 funding was available.”

**17. In your opinion, based on your experience and observations when applying any funds to reduce offender backlogs, please rate the top three methods that you think produce the best return on investment. (use 1 as being the best, 2 the next best, and 3 the third best)**

Fifty out of 51 survey recipients responded to this question. To evaluate which method respondents believed produced the best return on investment we calculated the weighted average for each of the 10 choices of methods presented to respondents. (A value of 1 was assigned to all responses of 1, a value of 2 was assigned to all responses of 2, and a value of 3 was assigned to all responses of 3. Any responses rated as 4 or lower were disregarded.)

Based upon our analysis, the three highest rated methods were: the use of contractor assistance for analysis (with a weighted average rating of 1.6), increases in staffing (with a weighted average rating of 1.7), and the implementation of robotics (with a weighted average rating of 1.7).

Six respondents provided comments under *Other laboratory or computer equipment upgrades* or *Other*. Their comments were as follows:

- “BSD 3130xl, Excel Marcos for QC and data conversions,”
- “Change in lab[oratory] DNA analysis software,”
- “Update section computers [so] that data is processed quicker,”
- “All equipment needed to process samples in-house was purchased with NIJ grant funding,”



- “DNA platform upgrades,” and
- “Validation of single amp DNA kits.”

## RESPONSIVENESS

**18. Since October 1, 2005, how timely have you been receiving responses from Backlog Reduction Program staff or your specific OJP grant manager to questions or concerns you have had on the following issue areas:**

There were 39 respondents who had funding through the backlog Reduction Program. Of the respondents that reported having issues, the NIJ was usually timely in its response to all issue areas presented in the question on an average of 65 percent of the time, often timely on an average of 19 percent of the time, rarely timely an average of 13 percent of the time, never timely an average of 3 percent of the time. The specific percentage responses for each category are shown in the table below.

ISSUE AREAS YOU SOUGHT RESPONSE FROM NIJ/OJP:	A. NEVER TIMELY	B. RARELY TIMELY <sup>4</sup>	C. OFTEN TIMELY <sup>5</sup>	D. USUALLY TIMELY <sup>6</sup>
Guidance on allowable uses of funds	0%	3%	20%	77%
Changes to approved uses of funds	4%	7%	33%	56%
Quality problems with vendor laboratory	5%	26%	11%	58%
Productivity problems with vendor laboratory	6%	25%	13%	56%
Tracking of performance/statistics	0%	12%	23%	65%
Assistance with required forms or reports	0%	6%	15%	79%

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<sup>4</sup> For the purposes of our survey a *rarely timely* response indicates that the NIJ did not respond to the question or concern for more than 2 weeks.

<sup>5</sup> For the purposes of our survey an *often timely* response indicates that the NIJ responded to the question or concern within 2 weeks.

<sup>6</sup> For the purposes of our survey a *usually timely* response indicates that the NIJ responded to the question or concern in less than 1 week.

Three respondents provided comments on an *Other* issue area. The issue given, along with the NIJ's response time were:

- "Removal of NEPA special condition"<sup>7</sup> - *A. never timely,*
- "NEPA Requirements or GANS" - *C. often timely* (received within 2 weeks), and
- "Changes to testing procedures" - *B. rarely timely* (delayed more than 2 weeks).

**19. a. In your opinion, if responses from the NIJ/OJP were untimely, how often did that limit your laboratory's ability to accomplish the following:**

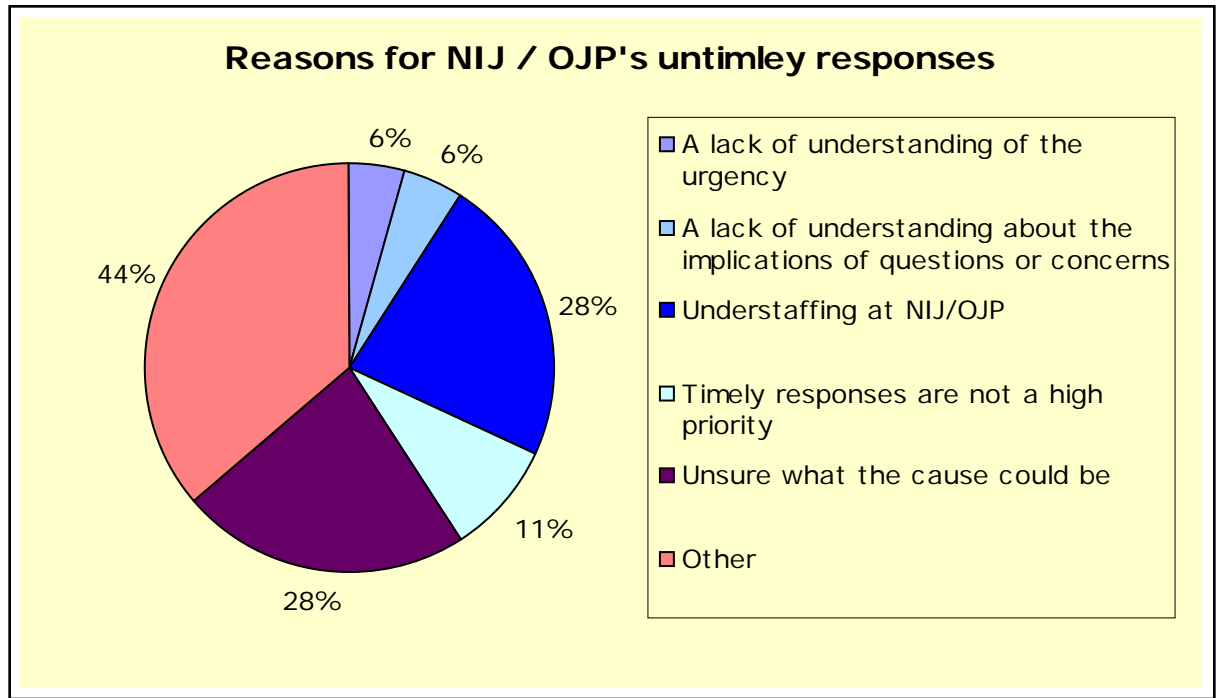
Eleven of the 19 responses to this question (58 percent) indicated that untimely responses from the NIJ rarely limited their laboratory's ability to efficiently use grant funds and 8 of the 19 respondents (42 percent) indicated that untimely responses from the NIJ rarely limited their laboratory's ability to comply with grant funds. The specific responses are shown in the table below.

	VERY OFTEN	OFTEN	SOMETIMES	RARELY
To comply with contract requirements	0	1	1	1
To process offender samples	0	1	2	0

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<sup>7</sup> National Environmental Policy Act, 42 U.S.C. § 4321 (2006).

b. What reasons do you attribute to the NIJ/OJP's untimely responses? Check all that apply.



Of the eight respondents who said *Other*, six provided a comment. Two of the six comments attributed the untimely responses to NEPA requirements, one attributed the untimely responses to changes within GMS, and two attributed the untimely response difficulty contacting managers due to a limited work schedule and staff changes.

20. Based on your response to Question 18, where responses from the NIJ/OJP have been received within 2 weeks, to what degree did the responses address the following issue areas?

There were 35 respondents who had responses from the NIJ addressing issues within 2 weeks. Of the respondents who reported receiving a response within 2 weeks, the NIJ's response to all issue areas presented in the question fully addressed concerns on an average of 64 percent of the time, moderately addressed concerns on an average of 15 percent of the time, minimally addressed concerns on an average of 6 percent of the time, did not address concerns at all on an average of 0 percent of the time. The specific percentage responses for each category are shown in the table below.

<b>ISSUE AREAS YOU SOUGHT RESPONSE FROM THE NIJ/OJP:</b>	<b>NOT AT ALL</b>	<b>MINIMALLY ADDRESSED<sup>8</sup></b>	<b>MODERATELY ADDRESSED<sup>9</sup></b>	<b>FULLY</b>
Guidance on allowable uses of funds	0%	4%	12%	84%
Changes to approved uses of funds	0%	5%	15%	80%
Quality problems with vendor laboratory	0%	8%	25%	67%
Productivity problems with vendor laboratory	0%	18%	18%	64%
Tracking of performance/statistics	0%	6%	28%	67%
Assistance with required forms or reports	0%	4%	8%	88%

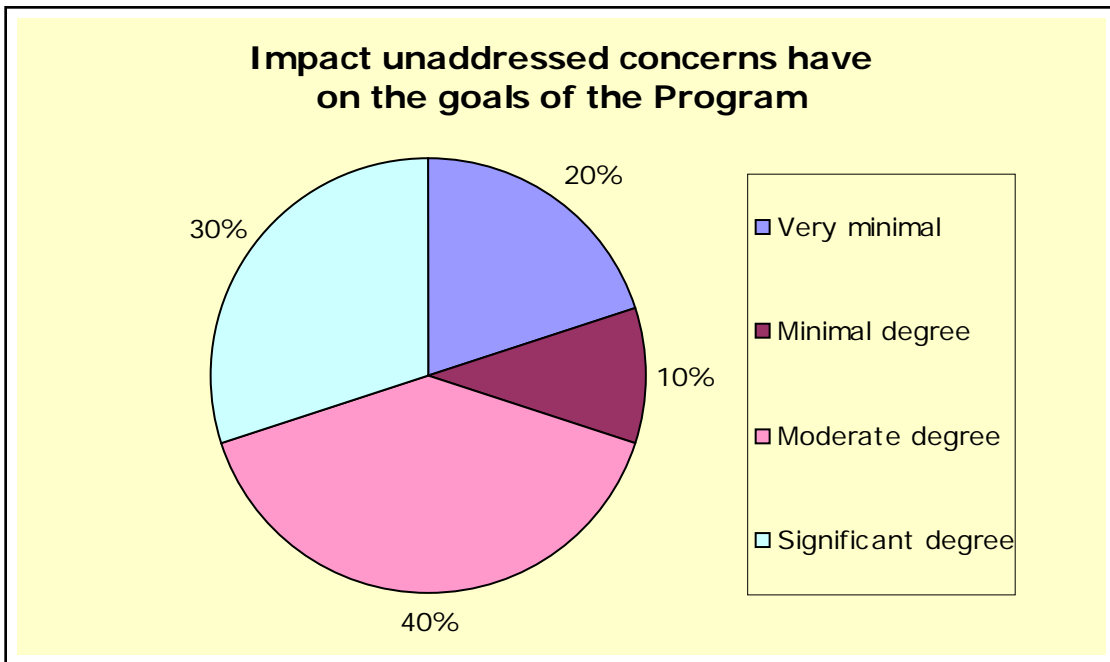
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<sup>8</sup> For the purposes of our survey a “minimally addressed” response indicates that significant aspects of the vendor laboratories’ concern were not addressed by the NIJ.

<sup>9</sup> For the purposes of our survey a “moderately addressed” response indicates that minor aspects of the vendor laboratories’ concern were not addressed by the NIJ.

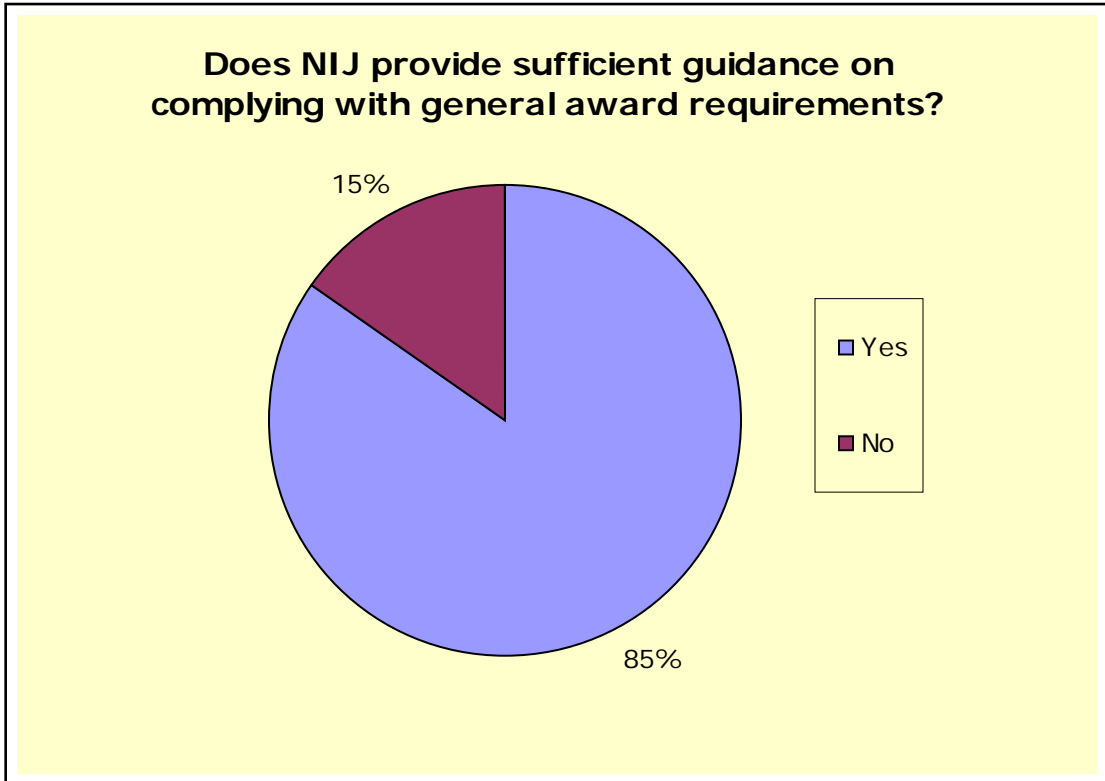
21. If any of the concerns you raised to the NIJ/OJP remain unaddressed, to what degree do you believe those concerns have the potential to undermine the achievement of the Backlog Reduction Program goals (i.e., the most efficient and effective reduction to the offender backlog possible)?

Of the 10 respondents who reported having unaddressed concerns, 2 reported that these concerns have very minimal potential to undermine Backlog Reduction Program goals, 1 reported minimal potential, 4 reported moderate potential, and 3 reported significant potential.



## MANAGEMENT

22. Does the NIJ provide sufficient guidance on complying with Backlog Reduction Program-specific requirements to ensure award recipients understand and comply with those requirements?



The respondents who answered *No* to Question 22 were asked to explain. The explanations provided were:

- training on managing grants is needed;
- requirements for the 2008 application were not stated in the application;
- confusion about special conditions;
- on the application, referenced rules did not seem to apply;

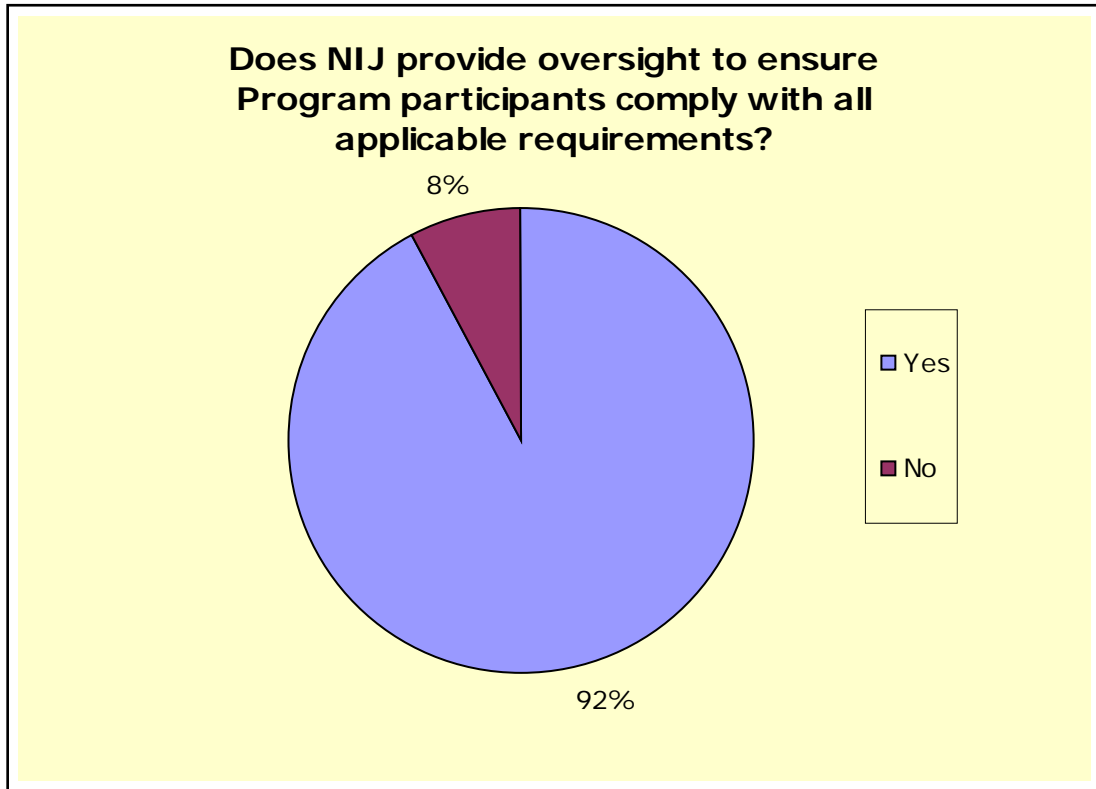
- grantee workshop does not focus on the grant process; and
- issues were not addressed until audit.

**23. Does the NIJ provide sufficient guidance on complying with Backlog Reduction Program-specific requirements as listed below on the use of funds to ensure award recipients clearly understand and comply with those requirements?**

<b>BACKLOG REDUCTION PROGRAM REQUIREMENTS</b>	<b>YES, THE NIJ PROVIDES SUFFICIENT GUIDANCE</b>	<b>NO, THE NIJ DOES NOT PROVIDE SUFFICIENT GUIDANCE</b>
Performance measurements	89%	11%
Performance statistics	89%	11%
Backlog Reduction Program-specific restrictions	86%	14%

The respondents who answered *No* to Question 23 were given the opportunity to explain why. The consistent explanation given for the three Backlog Reduction Program requirements were little to no guidance has been offered. In addition, one respondent who gave an *Other* response, stated "Award period," and provided the following explanation: "NIJ directs states on what must be entered for the award period on their grant application while fully admitting that the funding will not be available or accessible in time. This prohibits the states from accurately assessing their needs for the actual time period when funding would be accessible."

24. Does the NIJ provide oversight (including monitoring) to ensure that Backlog Reduction Program participants comply with all applicable requirements?



The respondents who said *No* were asked to explain. The responses varied and are as follows:

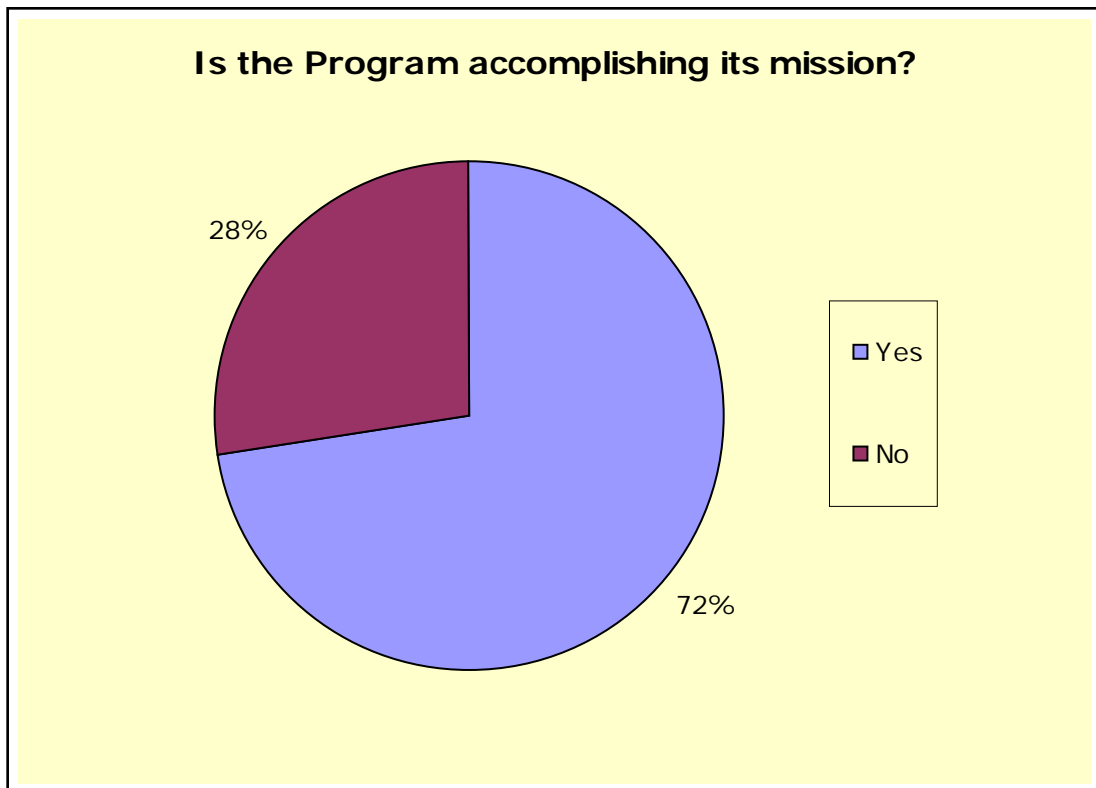
- "In the past, NIJ seemed more reactive than proactive;"
- "I have never been approached for monitoring purposes on these grants. Perhaps the monitoring is done at the outsource laboratory level" (NOTE: This respondent said *Yes* to Question 30, Has your laboratory had a Grant Progress Assessment performed related to Backlog Reduction Program funding since October 1, 2005?); and
- "Analysis requirements from the vendor laboratory were changed and found acceptable by NIJ but our laboratory was not informed of the changes until a site-visit was conducted at the vendor laboratory."



25. **If you answered Yes to Question 24; in your opinion, what do you think is the level of oversight that is provided by the NIJ?**

On average, respondents felt that a moderate level of oversight was appropriate.

26. **Do you believe the Backlog Reduction Program is accomplishing its mission of assisting the DNA community in reducing offender backlogs in the best manner possible?**



The *No* option provided an area for respondents to comment on how the Backlog Reduction Program could better accomplish its mission. The comments provided were:

- "Provide full funding up front...."
- "Laboratories [need] to be able to support themselves."
- "Increase staff and reduce turn-over."
- "Outsourcing is a temporary fix...."
- "Let laboratories choose, control, and qualify vendors."

- “Funds... need to be doled out more often than once a year.”
- “More timely awarding of contracts, and better screening of vendors.”
- “Laboratories could base a funding request on how many samples they could analyze during the funding period, regardless of what is backlogged as of day one.”
- “It would be better if the funding were a set amount like the casework grants.”

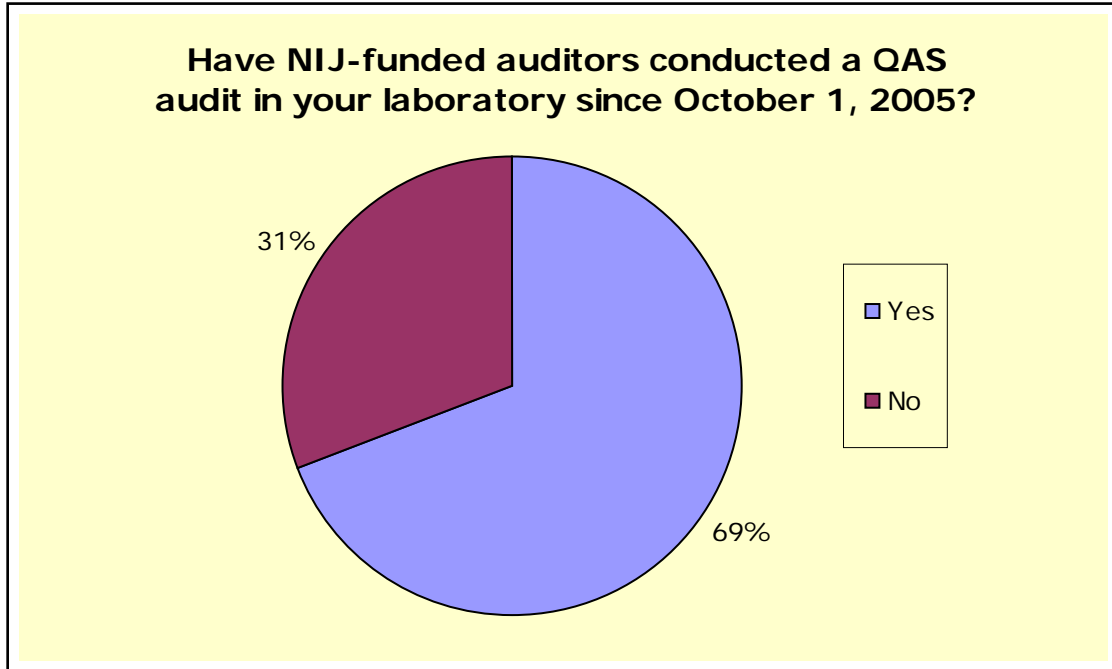
**27. How would you rate the overall effectiveness of the NIJ’s current management of the Backlog Reduction Program?**

On average, respondents rated the NIJ’s current management as *good*. Respondents were asked to provide an example relating to the rating they provided. Eleven respondents provided examples: two rated the effectiveness of the NIJ’s current management as *fair*, eight rated it *good*, and one rated it *excellent*. The examples provided by the two respondents who rated the NIJ’s effectiveness as *fair* mentioned problems with the proposal process, and that state laboratories have no input in the use of vendor laboratories.

The overall trend of the comments from respondents who rated the NIJ’s current management of the Backlog Reduction Program as *good* and *excellent* was that management has improved with better communication and needs are currently being met. However, turn-over in the Backlog Reduction Program office has made communication challenging. In addition, respondents said Grant Managers were responsive and immediate assistance has been provided.

## AUDITS & ASSESSMENTS

28. Have NIJ-funded auditors conducted a QAS audit at your laboratory since October 1, 2005?



The respondents who said *No* were asked to explain and then skip to Question 30. The common explanations given were that their laboratory is part of an audit group or region that provides QAS auditors.

29. a. Does your laboratory have any concerns with the NIJ-funded auditors who conducted the QAS audits at your laboratory since October 1, 2005?

Of the 27 respondents who said *Yes* to Question 29, 4 said *Yes* they have concerns with the NIJ-funded auditors who conducted the QAS audits at their laboratory, 22 said they do not have any concerns, and 1 was unsure/not applicable based on limited experience.

- b. If *Yes* which of the following concerns does your laboratory have with the NIJ-funded auditors conducting the QAS audits? Check all that apply.

Since respondents were asked to check all the options that applied, the four respondents selected multiple concerns. Of the four respondents who said Yes to Question 29.a.:

- 3 said their concerns included inconsistency of interpretations;
- 3 said their concerns included the audit scope;
- 2 said their concerns included the audit process;
- 1 said their concerns included the audit approach; and
- 1 said their concerns included a conflict of interest with the NIJ.

**c. Which of these concerns has your laboratory raised to the NIJ? Check all that apply.**

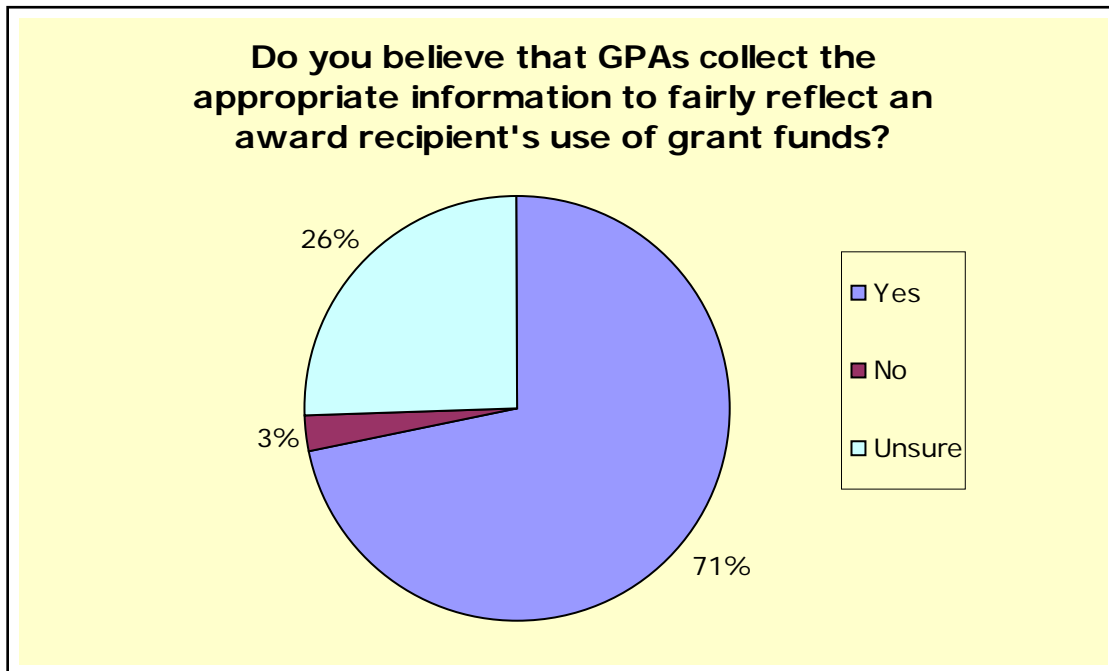
One of the respondents said that the NIJ was told about concerns regarding the NIJ-funded auditors' audit approach, audit scope, and inconsistency of interpretations, while another respondent said that the NIJ was told just about the respondents' concerns regarding the NIJ-funded auditors' audit approach and audit scope. The remaining two respondents said they raised no concerns with the NIJ and provided the following comments: "Auditor was not in line with FBI interpretations, but cleared up during audit with education and discussion" and "decided not to use NFSTC auditors in the future."

30. Has your laboratory had a Grant Progress Assessment (GPA) performed related to Backlog Reduction Program funding since October 1, 2005?



The 3 percent (one respondent) who said *No* provided the following comment: "last GPA 12/2004."

31. Do you believe that GPAs collect the appropriate information to fairly reflect an award recipient's use of Backlog Reduction Program funds?



The respondents that answered *Yes* were asked to explain how the GPAs collect the appropriate information. These respondents commented that the GPAs collect the appropriate information because the assessments are very thorough.

### **VENDOR PERFORMANCE**

**Instructions:** *If your laboratory did not use NIJ funding for outsourcing samples since October 1, 2005, please go to Question 36 at the end of the survey.*

32. Please provide information on the NIJ outsourcing vendors your laboratory has used from October 1, 2005, or after.

Thirty respondents reported using Backlog Reduction Program funds for outsourcing samples. Thirteen of the 30 respondents used multiple vendors. Respondents reported using vendor laboratories to outsource 912,179 samples. The breakdown of the number of samples sent to each vendor is listed in the following table:

VENDOR	NO. OF RESPONDENTS	SAMPLES OUTSOURCED
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LABORATORY	USING VENDOR	
Orchid	14	375,756
Myriad	7	149,006
Reliagene	7	111,552
Lab Corp	6	50,900
Identity Genetics	7	76,820
Bode	8	142,945
Strand	2	5,200
<b>TOTAL</b>	<b>51</b>	<b>912,179</b>

Question 32 also asked the respondents to provide an overall rating of satisfaction with the vendors they have used. The average rating by respondents, for each vendor laboratory, is shown in the following table:

VENDOR LABORATORY	AVERAGE RATING
Orchid	2.0 – Good
Myriad	2.1 – Good
Reliagene	2.3 – Good
Lab Corp	2.2 – Good
Identity Genetics	3.4 – Fair
Bode	1.9 – Good
Strand	2.5 – Good to Fair

**33. a. Did you experience any problems with the quality of work produced by any of the NIJ outsourcing vendors your laboratory has used?**

Fifteen of the 30 respondents who outsourced said they did not experience quality problems, 13 respondents said they did, and 2 were unsure. Specifically, of the 13 respondents who said they did experience problems with the quality of work produced by an outsourcing vendor:

- 5 said they had quality problems with Orchid,
- 2 said they had quality problems with Myriad,
- 1 said they had quality problems with Reliagene,
- 1 said they had quality problems with Lab Corp,
- 4 said they had quality problems with Identity Genetics,
- 1 said they had quality problems with Bode, and

- 1 said they had quality problems with Strand.

All 13 respondents who said they had experienced quality problems provided additional comments. The common quality problems identified in the comments concerned vendor laboratories having contamination problems, problems meeting appropriate standards, and having unqualified staff working at the vendor laboratories.

**b. If Yes please answer the following questions.**

**1. Did you make the NIJ aware of these problems?**

Eleven respondents said *Yes* and two said *No*.

**2. Did the NIJ act to help resolve these problems?**

Seven respondents said *Yes* and five said *No*.

**3. Did the problems produce a lasting delay to your progress?**

Eleven respondents said *Yes* and 2 said *No*.

**4. Where you satisfied with how the problems were ultimately resolved?**

Eight respondents said *Yes* and five said *No*.

**34. a. Did you experience any problems with the volume of work produced by any of the NIJ outsourcing vendors your laboratory has used?**

Fifteen of the 30 respondents said they did not experience volume problems, 12 said *Yes*, and 3 were unsure. Specifically, of the 12 respondents who said they did experience volume problems:

- 3 said they had volume problems with Orchid;
- 1 said they had volume problems with Reliagene;
- 1 said they had volume problems with Lab Corp;
- 4 said they had volume problems with Identity Genetics;



- 1 said they had volume problems with Bode;
- 1 said they had volume problems with Strand; and
- 1 did not provide the name of the laboratory with which they had volume problems.

All 12 respondents who said they had experienced volume problems provided additional comments. The volume problems identified in the comments concerned vendor laboratory contract noncompliance, instrumentation issues at the vendor laboratories, and batch size problems leading to increased review time by the offender laboratories.

**b. If Yes please answer the following questions.**

**1. Did you make the NIJ aware of these problems?**

Ten respondents said *Yes* and 2 said *No*.

**2. Did the NIJ act to help resolve these problems?**

Nine respondents said *Yes* and two said *No*.

**3. Did the problems produce a lasting delay to your progress?**

Eleven said *Yes* and two did not respond.

**4. Were you satisfied with how the problems were ultimately resolved?**

Five respondents said *Yes* and three said *No*.

**35. a. Did you experience any problems with data compatibility of work produced by any of the NIJ outsourcing vendors your laboratory has used?**

Twenty-six of the 30 respondents said they did not experience any data compatibility problems, two were unsure, and two said they did experience data compatibility problems. Specifically, of the two respondents who said they did experience data compatibility problems:

- 2 said they had data compatibility problems with Reliagene.

The two respondents who said they had experienced data compatibility problems provided additional comments, and those comments were:

- "Several times the vendor sent data in packets that could not be opened."
- "Data from the vendor is very time consuming to analyze. Partly due [to] the analysis software and partly due to [the] vendor."

**b. If Yes please answer the following questions.**

**1. Did you make the NIJ aware of these problems?**

Two respondents said *No*.

**2. Did the NIJ act to help resolve these problems?**

One respondent said *No*.

**3. Did the problems produce a lasting delay to your progress?**

One respondent said *Yes* and one said *No*.

**4. Were you satisfied with how the problems were ultimately resolved?**

One respondent said *Yes*.

**36. Do you have any suggestions for how the NIJ can better manage the outsourcing vendor aspects of the Backlog Reduction Program?**

Sixteen of the 51 respondents provided a suggestion for improvements to the Backlog Reduction Program. In general, respondents suggested that the outsourcing laboratories need to have more of an input in both selecting the vendor laboratories they are to use and putting together the contacts, and that funding should focus on in-house capacity requirements.



## CONSOLIDATED RESPONSES FOR THE OIG SURVEY OF VENDOR LABORATORIES

The OIG initiated an audit of the NIJ's management of the Outsourcing Program. These responses were intended to be used to help understand where opportunities for improvement might exist in the NIJ's management of the Outsourcing Program, and to collect as background information on the scope of the national offender backlog. We asked for one completed survey per offender laboratory, but we also encouraged laboratories to obtain input from other qualified staff within their laboratory. We requested that respondents not consult with people outside their laboratory, and used the term "backlog" throughout the survey to refer to the analysis and data-review portions of the offender DNA backlog. This term does not include the collection portion of the backlog. Any reference to *samples* refers to offender DNA samples.

### Survey Results

#### DEMOGRAPHICS

**1. In what state is your laboratory located?**

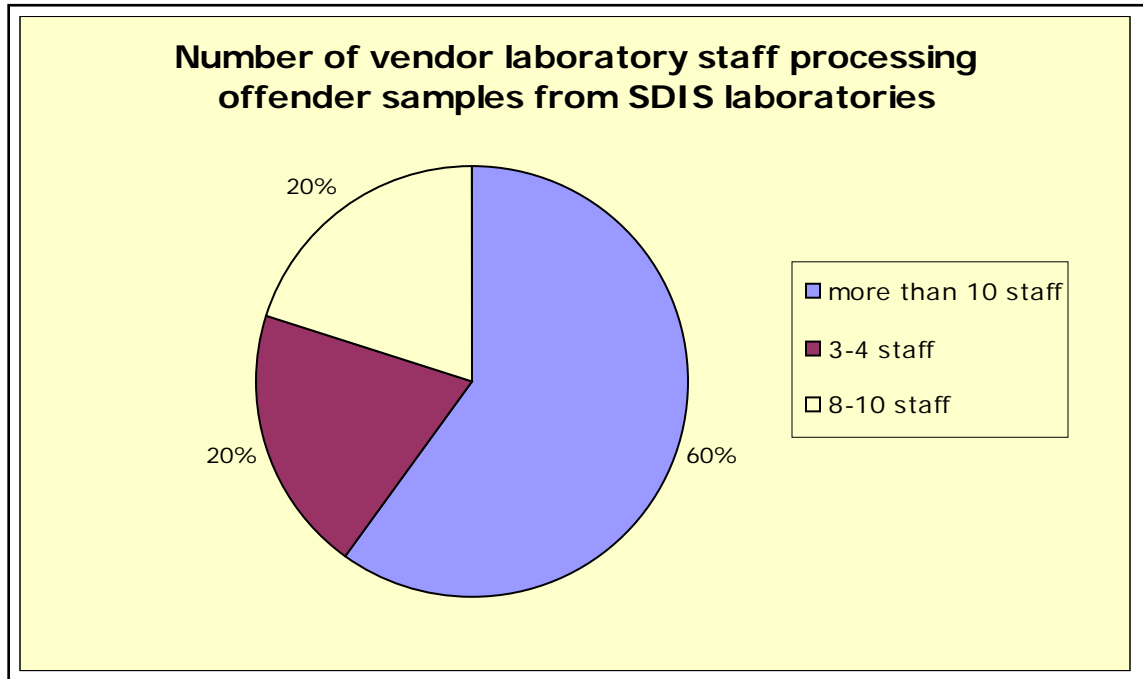
The vendor survey was sent to all vendor laboratories that have outsourcing contracts with the NIJ. We received a response rate of 100 percent.

**2. What is your primary role in the laboratory?**

Of the five responses received,

- 2 were from Technical Leaders,
- 2 were from Directors, and
- 1 was from a Chief Operating Officer.

3. How many staff are devoted primarily or entirely to the processing of offender samples from State laboratories?  
(Check one)



### RESPONSIVENESS

4. Since October 1, 2005, how timely have you been receiving responses from the Backlog Reduction Program staff to questions or concerns you have had on the following issue areas?

All 5 respondents reported having issues requiring response from the NIJ. The NIJ was usually timely in its response to all issue areas presented in the question on an average of 43 percent of the time, often timely on an average of 43 percent of the time, rarely timely an average of 13 percent of the time, never timely an average of 0 percent of the time. The specific percentage responses for each category are shown in the table below.

<b>ISSUE AREAS:</b>	<b>NEVER TIMELY</b>	<b>RARELY TIMELY<sup>10</sup></b>	<b>OFTEN TIMELY<sup>11</sup></b>	<b>USUALLY TIMELY<sup>12</sup></b>
Contract Compliance	0%	20%	40%	40%
Assistance with required forms or reports	0%	0%	75%	25%
Payment delays	0%	33.3%	33.3%	33.3%
Problems with the states who outsource offender samples	0%	0%	25%	75%

One comment given under the *Other* option was that “[P]ayment of invoices has dramatically improved since 2005,” but the respondent marked that this issue area was not applicable.

**5. a. In your opinion, if responses from the NIJ were untimely, how did that limit your laboratory’s ability to accomplish the following:**

Three of the five respondents indicated the NIJ was untimely in responding to issues identified in Question 4. Their responses to Question 5.a. are as follows:

	<b>VERY OFTEN</b>	<b>OFTEN</b>	<b>SOMETIMES</b>	<b>RARELY</b>
To comply with contract requirements	0	1	1	1
To process offender samples	0	1	2	0

**b. What reasons do you attribute to the NIJ/OJP’s untimely responses? (Check all that apply)**

- 2 respondents indicated it was due to a “lack of understanding for the urgency”;
- 2 respondents indicated it was due to a “lack of understanding about the implications of the questions or concerns”;

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<sup>10</sup> For the purposes of our survey a *rarely timely* response indicates that the NIJ did not respond to the question or concern for more than 2 weeks.

<sup>11</sup> For the purposes of our survey an *often timely* response indicates that the NIJ responded to the question or concern within 2 weeks.

<sup>12</sup> For the purposes of our survey a *usually timely* response indicates that the NIJ responded to the question or concern in less than 1 week.

- 1 respondent indicated “timely responses are not a high priority”;
- 1 respondent indicated it was due to “understaffing at NIJ”;
- 1 respondent indicated they were “unsure what the cause could be”; and
- 1 respondent gave an *Other* response and indicated it was due to “communication breakdown between NIJ and OJP.”

**6. Based on your response to Question 4, where responses from the NIJ have been received within 2 weeks, to what degree did the responses address the following issue areas?**

Four of the five respondents who had answers from the NIJ addressing issues within 2 weeks reported that the NIJ’s response to all issue areas presented in the question fully addressed concerns on an average of 50 percent of the time, moderately addressed concerns on an average of 25 percent of the time, minimally addressed concerns an average of 25 percent of the time, and did not address concerns at all an average of 0 percent of the time. The specific percentage responses for each category are shown in the table below:

<b>ISSUE AREAS:</b>	<b>NOT AT ALL</b>	<b>MINIMALLY ADDRESSED<sup>13</sup></b>	<b>MODERATELY ADDRESSED<sup>14</sup></b>	<b>FULLY</b>
Contract Compliance	0%	0%	25%	75%
Assistance with required forms or reports	0%	25%	25%	50%
Payment delays	0%	50%	50%	0%
Problems with the states who outsourced offender samples	0%	25%	0%	75%

One comment given to Question 6 was “Don’t recall receiving a response within 2 weeks.” Based on this respondent’s answers to Question 4, selecting “Not Applicable” would have been more appropriate.

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<sup>13</sup> For the purposes of our survey a *minimally addressed* response indicates that significant aspects of the vendor laboratories’ concern were not addressed by the NIJ.

<sup>14</sup> For the purposes of our survey a *moderately addressed* response indicates that minor aspects of the vendor laboratories’ concern were not addressed by the NIJ.

7. **If any of the concerns you raised to the NIJ remain unaddressed, to what degree do you believe those concerns have the potential to undermine the achievement of the Backlog Reduction Program goals (i.e., the most efficient and effective reduction of the offender backlog possible)? (check one)**

The three vendor laboratories who responded to this question each gave a different answer. One indicated their unaddressed concerns have a *significant degree* of potential to undermine the achievement of the Backlog Reduction Program goals.

Another respondent indicated their unaddressed concerns have a *moderate degree* of potential to undermine the achievement of the Backlog Reduction Program goals and the third respondent indicated their unaddressed concerns have a *minimal degree* of potential to undermine the achievement of the Backlog Reduction Program goals.

## **MANAGEMENT**

8. **Does the NIJ provide sufficient guidance on complying with general contract requirements to ensure understanding and compliance with those requirements? (check one)**

Three of the five respondents indicated *Yes* and two of the five indicated *No*. Respondents who indicated *No* were asked to explain and are as follows:

- “Unsure whether NIJ is able to provide guidance for certain aspects of the contract requirements.”
- “As a vendor that has participated in the Backlog Reduction Program frequently over several years, we feel that we understand the requirements, but sometimes the state laboratories do not.”

9. **Does the NIJ provide oversight (including monitoring) to ensure vendor laboratories comply with all applicable contract requirements?**

All five respondents indicated *Yes*.



**10. If you answered Yes to Question 9; in your opinion, what do you think is the level of the oversight that is provided by the NIJ? (check one)**

Three respondents indicated the NIJ provided *moderate oversight*; one respondent indicated the NIJ provided *great oversight*; and one respondent selected *Other* and provided the following explanation: "Yearly NIJ audit is sufficient."

**11. Do you believe the Outsourcing Program is accomplishing its mission of assisting the DNA community in reducing offender backlogs in the best manner possible? (check one)**

Four of the five respondents indicated *No*, and stated that the Outsourcing Program could accomplish its mission better if it would incorporate changes such as: more discussions between their laboratories and the state laboratories to help streamline the process, more standardization of contracts, and greater accountability of vendor laboratories not meeting the delivery requirements of the contracts.

**12. How would you rate the over all effectiveness of the NIJ's current management of the Outsourcing Program? (check one)**

Four of the respondents indicated *Good* and one respondent indicated *Excellent*. Respondents were asked to provide an example related to the rating they provided and two of the respondents did. Their examples are as follows:

- *Excellent* – "The NIJ program managers were instrumental in addressing and successfully resolving a procedural issue that developed in the initiation of a new contract. The program manager took immediate and effective action to ensure that both the state laboratory and the vendor laboratory understood the contract requirements. The issue was resolved and the contract moved forward."
- *Good* – "We were able to modify one of our State projects to better meet the State's needs without excessive delay or red tape."

## **AUDITS & ASSESSMENTS**

- 13. Have NIJ-funded auditors conducted a QAS audit at your laboratory since October 1, 2005? (*check one*)**

All five respondents indicated *Yes* and stated that the month and year all five audits took place was January 2008.

- 14. a. Does your laboratory have any concerns with the NIJ-funded auditors who conducted the QAS audits at your laboratory since October 1, 2005?**

Three of the five respondents indicated *No*; one respondent indicated they were “unsure/not applicable based upon limited experience”; and one respondent indicated *Yes*.

- b. If *Yes*, which of the following concerns does your laboratory have with the NIJ funded auditors who conducted the QAS audits?**

The one respondent who indicated *Yes* to Question 14.a. selected the following two concerns: “conflict of interest with the auditee” and “inconsistency of interpretations.”

- c. Which of these concerns has your laboratory raised to the NIJ? (*check all that apply*)**

The one respondent who indicated *Yes* to Question 14.a. indicated they raised their “inconsistency of interpretations” concern with the NIJ.

- 15. Has your laboratory had a Grant Progress Assessment (GPA) performed since October 1, 2005? (*check one*)**

All five respondents indicated *Yes*. One of the five did not provide a month or year and the other four indicated their GPAs took place in January 2008.

**16. Do you believe that GPAs collect the appropriate information to fairly reflect a vendor's compliance with contractual requirements? (check one)**

Four of the five respondents indicated *Yes* and one respondent indicated *No*. Two of the respondents who indicated *Yes* provided the following comments:

- "All outsourcing contracts, records, and reports were reviewed to assess compliance with the federal grant program."
- "Evaluation of data from monthly progress reports is sufficient."

The respondent who answered *No* to Question 16 gave this comment: "[W]e are unsure if the GPAs look only at the bottom line of the number of samples completed or if they look into why the requirements have not been met."

## **INTERACTION WITH STATE LABORATORIES**

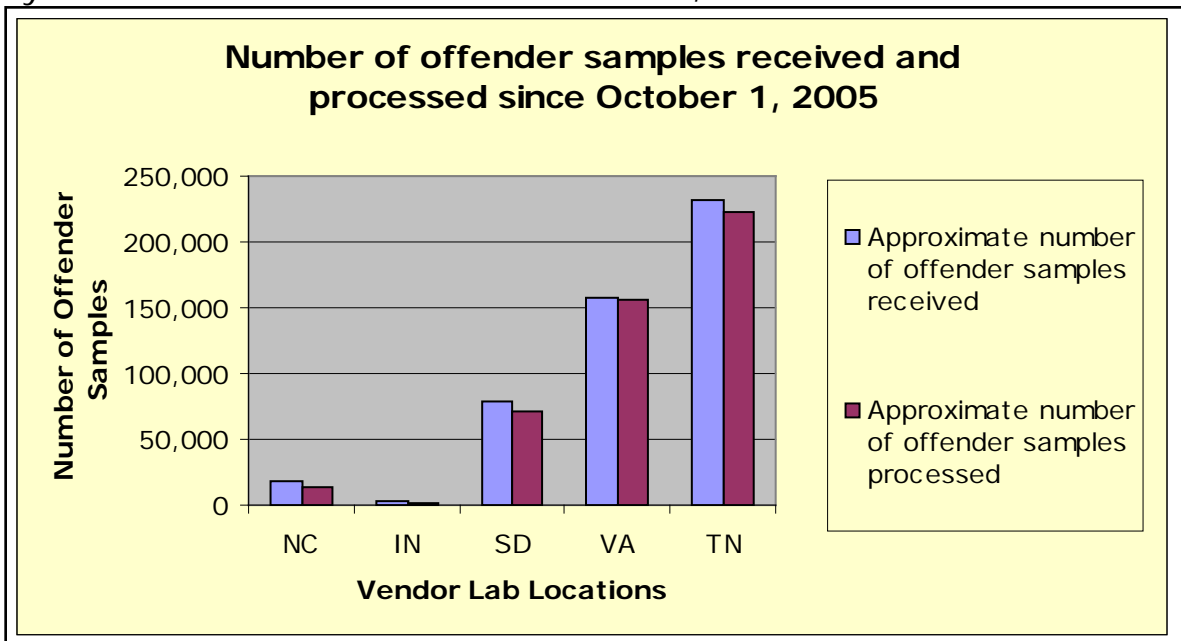
**17. Please provide information on the state laboratories that have outsourced offender samples to you from October 1, 2005, or after.**

Respondents stated that the five vendor laboratories had received approximately 489,382 offender samples since October 1, 2005, and they had processed approximately 464,600 offender samples during the same time. Specifically, the vendor laboratories in:

- North Carolina received approximately 18,211 and processed approximately 13,483;
- Indiana received approximately 2,955 and processed approximately 1,134;

- South Dakota received approximately 78,820 and processed approximately 71,179;
- Virginia received approximately 157,396 and processed approximately 156,804; and
- Tennessee received approximately 232,000 and processed approximately 222,000.

The graph below shows the breakout of samples received and analyzed by the vendor laboratories since October 1, 2005.



Of the 22 state laboratories that have outsourced offender samples to the 5 vendor laboratories (3 state laboratories outsourced to more than 1 vendor laboratory so the rating totals will be 5 higher than the number of state laboratories that outsourced):

- 13 were rated as *Excellent*;
- 8 were rated as *Good*;

- 2 were rated as *Fair*; and
- 4 were rated as *Poor*.

Of the four state laboratories rated as *Poor*, one outsourced to more than one vendor laboratory and the other two vendor laboratories rated the same state laboratory as *Excellent* and *Good*.

Of the two rated as *Fair*, one outsourced to more than one vendor laboratory and the other two vendor laboratories rated the same state laboratory as *Excellent* and *Good*.

The third laboratory that outsourced to more than one vendor laboratory was rated *Good* by one vendor laboratory and *Excellent* by the other vendor laboratory.

**18. a. Did you experience any problems with the volume of work submitted by any of the state laboratories?**

Three of the five vendor laboratory respondents indicated they had volume problems with the samples submitted by the state laboratories. Two respondents indicated they did not have volume problems. Based on the comments given by the respondents, the volume problems had to do with sample shipments being delayed and not as many samples being shipped as expected.

**b. If Yes please answer the following questions.**

**1. Did you make the NIJ aware of these problems?**

The three vendor laboratories that had volume problems indicated they brought the problems to the NIJ's attention.

**2. Did the NIJ act to help resolve these problems?**

Two of the three laboratories that brought the problem to the NIJ's attention indicated the NIJ acted to help resolve these problems, while one respondent indicated the NIJ did not act to help resolve these problems.

**3. Did the problems produce a lasting delay to your progress?**

One of the two laboratories that indicated the NIJ acted to help resolve the problems also indicated Yes, the problem produced a lasting delay, while the other two laboratories indicated the problems did not produce a lasting delay in their progress of meeting the goals and objectives of the contract.

**4. Were you satisfied with how the problems were ultimately resolved?**

All three vendor laboratories that had volume problems indicated they were satisfied with how the problems were ultimately resolved.

**19. a. Did you experience any problems with the quality of samples submitted by any of the state laboratories?**

Four of the vendor laboratory respondents indicated they had quality problems with samples submitted by the state laboratories, and one respondent indicated they did not have quality problems. Based on the comments given by the respondents, the quality problems had to do with the type of FTA cards used and the transferring of the sample to the FTA cards.<sup>15</sup>

**b. If Yes please answer the following questions.**

**1. Did you make the NIJ aware of these problems?**

Of the four laboratories that had quality problems, three made the NIJ aware of the problems and one did not.

**2. Did the NIJ act to help resolve these problems?**

Two of the three laboratories indicated the NIJ acted to help resolve the problems, while one respondent indicated the NIJ did not act to resolve the problem.

**3. Did the problems produce a lasting delay to your progress?**

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<sup>15</sup> FTA paper is specially treated to bind and protect from degradation; nucleic acids; blood, plant and animal tissue extracts; and other sources. For analysis, a small disc is punched from the FTA paper containing the DNA sample of interest, washed, dried and used for polymerase chain reaction (PCR).

Three of the four vendor laboratories indicated the problem produced a lasting delay in their progress, while one respondent indicated it did not.

**4. Were you satisfied with how the problems were ultimately resolved?**

Two of the four laboratories indicated they were satisfied with how the problems were ultimately resolved, while two respondents indicated they were not satisfied.

**20. Do you have any suggestions for how the NIJ can better manage the outsourcing aspects of the Outsourcing Program?**

All five respondents provided a comment to Question 20. The comments concerned: (1) more standardization in the reports and the sample type; (2) factors other than pricing should be used in awarding new contracts; and (3) communication between the NIJ, state laboratory, and vendor laboratory should increase, post award.

## **FACTORS INFLUENCING THE BACKLOG**

According to the NIJ's DNA Task Force, several major factors influence the productivity of DNA laboratories across the country. Consequently, if a laboratory's productivity cannot keep pace with analysis demand, a backlog of samples awaiting analysis occurs. The following list focuses on those general factors that affect a laboratory's ability to analyze incoming offender samples.

### **Potential Resource Issues**

A laboratory's ability to keep pace with incoming convicted offender samples are greatly affected by resource issues. Examples of resource issues include:

- **Capacity:** Our nation's crime laboratories do not have the capacity to take full advantage of DNA forensic technology because of inadequate equipment, cramped laboratory space, outdated information systems, and growing casework demands.
- **Funding:** Crime laboratories face rapidly increasing workloads and lack the funds to purchase and maintain new equipment and hire qualified personnel. They continue to be deluged with DNA analysis requests, and these requests will only increase as more States enact statutes authorizing the collection of samples from more categories of offenders and arrestees. As states continue to expand the categories of offenders required to provide DNA samples, crime laboratory personnel lack the resources to analyze all convicted offender DNA samples in a timely manner. In addition, legislatures in many states have passed "unfunded mandates" (i.e., a law that requires the implementation of a convicted offender database without providing funding for that implementation).
- **Personnel:** State and local crime laboratories lack sufficient numbers of trained forensic scientists. State and local governments with shrinking budgets lack adequate resources to hire trained scientists. Even when funds are available, there is an insufficient pool of qualified forensic scientists to hire. Consequently, productivity can be greatly influenced by personnel issues.



## **State Legislation**

State legislation issues are discussed in detail in the Introduction section of this report, and unfunded mandates are covered by the Funding section above. These legislative issues combine to provide a challenging environment in which convicted offender databasing laboratories must work, and an environment that may not permit a productivity level that keeps pace with incoming samples.

## **Role of Sample Collection Agencies**

Various agencies external to the laboratory are often charged by the legislation to oversee the collection of the convicted offender samples and the safe transfer of those samples to the possession of the laboratory. These agencies can include prison facilities, local jails, sheriff's departments, and probation and parole offices. These external agencies face similar hurdles such as the laboratory, including limited resources, unfunded mandates, and political issues. Also, the collection process makes the laboratories dependent on accuracy and thoroughness on the part of these external agencies. The collection agencies must ensure that the correct people are giving samples and that full and accurate identifying and criminal history information is sent to the laboratory with the sample.

## METHODOLOGY USED TO ESTIMATE IMPACT OF ARRESTEE LEGISLATION

We analyzed the FBI's Uniform Crime Reporting (UCR) data on arrests by state.<sup>16</sup> We made the following assumptions from the data presented by the FBI for our analysis:

- The categories of violent crime and property crime contain offenses that are felonies in all states;<sup>17</sup> and
- The arrests reported in these two categories represent all felony arrests within a state.

Thirty-one percent is a national estimate of the overall conviction rate for violent felonies, which include murder, rape, robbery, and aggravated assault, as reported by the Bureau of Justice Statistics.<sup>18</sup> We made the following assumptions regarding this estimate:

- The overall conviction rate for violent felonies is the same as the conviction rate for all felonies; and
- The felony conviction rate is the same in all states.

We then multiplied the arrests reported for qualifying offenses based on the DNA database laws of each state as of July 2008 in the UCR by the conviction rate of 31 percent to obtain a current level of convicted offenders by state.<sup>19</sup> For states that already included arrestees, those numbers were added to the current workload total.

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<sup>16</sup> The Uniform Crime Reporting (UCR) Program was conceived in 1929 by the International Association of Chiefs of Police to meet a need for reliable, uniform crime statistics for the nation. In 1930, the FBI was tasked with collecting, publishing, and archiving those statistics. Today, several annual statistical publications are produced from data provided by nearly 17,000 law enforcement agencies across the United States.

<sup>17</sup> Violent crimes are offenses of murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault. Property crimes are offenses of burglary, larceny-theft, motor vehicle theft, and arson.

<sup>18</sup> Bureau of Justice Statistics, *Felony Sentences in State Courts, 2004*, NCJ 215646 (July, 2007), 3.

<sup>19</sup> National Conference of State Legislatures, "State Laws on DNA Data Banks," July 2008, <http://www.ncsl.org/programs/cj/dnadatabanks.htm> (accessed September 1, 2008).

To estimate the increase in workload created by the addition of felony arrests, we then added the remaining arrestees to the current workload and calculated the percent increase over the current workload.

The estimate of 112 percent is an estimate of the impact of arrestee legislation nationwide. The impact of expanding legislation to include arrestees in an individual state that did not previously have an arrestee collection law is estimated to be an increase of 223 percent over the current workload. These estimates are different because some states already have arrestee legislation in place.

It is important to note that the number of samples that are reported are used to calculate the baseline workload and the percentage increase above the baseline workload and should not be used as current estimates of states' convicted offender workload or the number of arrestees they should expect to receive. Instead, to calculate the impact of legislation on the additional receipt of arrestees in a particular state that does not already include arrestees, the rate of 223 percent should be multiplied by the current workload.

**COMPONENTS OF THE CONVICTED OFFENDER BACKLOG**

The convicted offender DNA backlog can be broken down into four basic components: (1) samples that are “owed” but have not been collected; (2) samples that have been collected but have not been analyzed; (3) samples that have been analyzed but have not been technically reviewed; and (4) samples that have been analyzed and reviewed but have not yet been uploaded to NDIS.

**COMPONENTS OF CONVICTED OFFENDER BACKLOG**

<b>Convicted Offender Backlog</b>	<b>Samples Not Yet Collected</b>
	<b>Samples Awaiting Analysis</b>
	<b>Samples Awaiting Technical Review</b>
	<b>Samples Awaiting Upload to NDIS</b>

Source: OIG

One component of the convicted offender backlog is those samples that an individual is required by law to provide, but for various reasons the samples have not yet been collected. The most common reason for a collection backlog is new legislation making the collection of DNA samples from convicted offenders retroactive and thus suddenly increasing the backlog of samples that need to be collected in individual states.<sup>20</sup>

In 2003, the NIJ estimated that the number of samples not yet collected to be between 500,000 and 1 million nationwide. The NIJ based its estimate on anecdotal discussions with crime laboratory directors and information from state correctional administrators as well as a comparison of BJS felony conviction data to NDIS upload data.

However, in a statement before the Senate Subcommittee on Crimes and Drugs in May of 2002, the former Director of the NIJ stated,

[T]he number of samples that require analysis has been, and is likely to continue to be, in a state of flux as more states move to

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<sup>20</sup> New York expanded DNA collection legislation in June 2006 to require the retroactive collection of DNA samples from individuals convicted of any one of the 18 misdemeanors who were still serving sentences at the time the law was passed. As a result, the state of New York needed to collect 30,000 retroactive samples the day the law was passed, immediately placing a large number of samples in backlog status. As of June 2007, New York estimated that only 6,200 retroactive samples remained to be collected under the new law.

collect samples from all convicted felons. Therefore, there is no reliable estimate of the number of offender samples that are required by state or federal statute, but which are yet to be collected, but several hundred thousand owed samples are likely.

We attempted to obtain an updated estimate of the number of samples not yet collected and found that there is still no reliable method of estimating this number for the following reasons:

- The local and state laboratories are not responsible for collecting the samples from convicted offenders, and generally do not have any reliable method of tracking this data because it is not within their control; and
- Many different correctional institutions, parole and probation offices, and law enforcement agencies within each state may be required to collect DNA samples from convicted offenders, and these agencies may or may not have a coordinated or comprehensive method for tracking whether these samples are collected.

While we acknowledge that the owed but uncollected convicted offender samples could potentially have an impact on the overall backlog, we focused our audit on the backlog of DNA samples that have been collected from convicted offenders but are awaiting analysis. The NIJ's Convicted Offender DNA Backlog Reduction Program specifically funds only those samples that have been collected by the states pursuant to applicable laws. Therefore, for the purposes of this audit, the convicted offender DNA backlog shall be those samples that have been collected but not uploaded into CODIS.

NIJ RESPONSE TO THE DRAFT REPORT

MEMORANDUM TO: Glenn A. Fine  
Inspector General  
United States Department of Justice

THROUGH: Raymond J. Beudet  
Assistant Inspector General for Audit  
Office of the Inspector General  
United States Department of Justice

FROM: Laurie O. Robinson  
Acting Assistant Attorney General

SUBJECT: Response to Office of the Inspector General's Draft  
Audit Report, *Convicted Offender DNA Backlog  
Reduction Program*

This memorandum provides a response to the recommendations directed to the Office of Justice Programs (OJP) included in the Office of the Inspector General's (OIG's) draft audit report entitled, *Convicted Offender DNA Backlog Reduction Program*.

The Office of Justice Programs has reviewed the draft audit report and finds all of the recommendations posed by the OIG to be reasonable and justifiable. Many of the findings and recommendations identified by the OIG were already recognized as issues by the National Institute of Justice (NIJ) before the audit was initiated. Corrective actions for many of the recommendations had already been identified and initiated prior to the release of this report. The Office of Justice Programs has proposed attainable corrective actions in response to each of the recommendations posed by the OIG. The Office of Justice Programs is confident that the implementation of these corrective actions will further strengthen the impact of the Convicted Offender and/or Arrestee DNA Backlog Reduction Programs on reducing the backlog of convicted offender and/or arrestee DNA samples.

The draft audit report contains 11 recommendations and no questioned costs directed to OJP. For ease of review, these recommendations are stated in bold and are followed by OJP's response.

- 1. Provide state laboratories improved guidance on reporting the performance information required in performance reports.**

The Office of Justice Programs agrees with this recommendation. NIJ has or will institute the following corrective actions:

- A. **New awards:** NIJ developed the fiscal year (FY) 2009 Program solicitation to address these issues. The revised solicitation was posted on March 3, 2009 on the OJP website at <http://ncjrs.gov/pdffiles1/nij/sl000868.pdf>. Providing better guidance and structure for data reporting from the outset of the FY 2009 Program will allow NIJ to provide consistent guidance on the collection and reporting of the data during the remainder of the project and program, thereby reducing confusion and increasing the quality of data received. The following components have been enhanced or modified in the FY 2009 Program:
- 1) Requirement of a Data Collection Plan: Applicants for federal assistance under the FY 2009 Program are required to submit a Data Collection Plan (Plan) with their applications, which describes the applicant's plan for the collection of the data required for performance measures. NIJ staff will use an internal checklist to review each application and the checklist will be uploaded to the Grants Management System (GMS) upon completion of the review process. Additionally, any application that does not include a Plan or fails to describe a data collection method, which clearly facilitates reporting accurate and verifiable performance measure data, will be returned to the applicant for an opportunity to revise and resubmit their application. Awards will not be made without the inclusion of an adequate Plan. NIJ program managers will provide feedback and communicate with applicants to ensure that the Plan is reasonable and achievable.
  - 2) Clarification of "Backlog": In order to further clarify how applicants should calculate the backlog samples and cost per sample, NIJ has added language to the FY 2009 Program solicitation that states, "[c]alculate the eligible backlog of DNA database samples by adding the current backlog existing at the time of application to the anticipated receipt of samples through March 31, 2010, then reducing this number by the number of samples that will be analyzed using existing State or local funding sources and/or other Federal assistance. The number of samples that can be analyzed during the project period should reflect the laboratory's known or anticipated capacity at the time of project initiation and the total eligible estimated backlog. Applicants should base the amount of their requests under this solicitation

on their actual cost estimates, but may not request more than \$35.00 per sample analyzed (or per sample processed if no profile is generated but reasonable attempts were made)" (see page 4 in the FY 2009 Program solicitation). By better understanding the calculation of the backlog proposed for analysis at the outset of the project, NIJ and the award recipient will have a better foundation for future discussions regarding how to calculate the performance measure data required in performance reports.

3) Semi-annual Performance Measure Data to be Included in Semi-annual Progress Reports:

This corrective action has been completed by NIJ. The FY 2009 Program solicitation advises applicants that the submission of semi-annual performance measurement data will be required as part of the mandatory semi-annual progress report submission in the GMS (see pages 10-11 in the FY 2009 Program solicitation). By eliminating the requirement for quarterly data submitted semi-annually, NIJ has removed a major cause of confusion associated with the reporting of performance measure data. Additionally, NIJ has added a clarifying statement to the solicitation that states, "[p]erformance measure data must be submitted semi-annually with progress reports. The performance measure of CODIS hits resulting from Convicted Offender funds are those CODIS hits resulting from DNA analyses of database (convicted offender and arrestee) samples and review of DNA profiles (from convicted offender and arrestee samples) that are funded under this solicitation."

4) Clarified Performance Measure Data Descriptions:

This corrective action has been initiated and is anticipated to be completed by December 31, 2009, to correspond with the end of the first semi-annual progress reporting period for FY 2009 awards.

The GMS "Performance Metrics" module is a part of the GMS "Grant Reports" module. Recipients of awards under Convicted Offender [and/or Arrestee] DNA Backlog Reduction programs are required to submit performance measure data through these modules at the end of each semi-annual reporting period (January 1 through June 30 and July 1 through December 31). The GMS "Performance Metrics" module will contain new performance measure data collection language for FY 2009 awards. The objectives of the new language are to simplify previous years'



language (due to the change in the requirement to submit quarterly performance measure data with semi-annual progress reports described above in Section 2); and expand the clarification of what is required for each dataset, see Figure 1: FY 2009 Performance Measure Language.

**Figure 1: FY 2009 Performance Measure Language**

<b>Performance Measure 1</b>	At the beginning of the award period, what was the number of DNA database samples awaiting DNA analysis?
<b>Performance Measure 2</b>	At the end of the semi-annual reporting period, what was the number of DNA database samples analyzed using funds from this award? (Note: The value should only represent the samples analyzed within the six months of the reporting period. If this is a Final Report, please provide the cumulative metric for the entire project period – and note this is the total for the entire award period.)
<b>Performance Measure 3</b>	At the end of the semi-annual reporting period, what was the number of DNA database profiles entered into CODIS as the result of funds provided under this award? (Note: The value should only represent the CODIS entries made within the within the six months of the reporting period. If this is a Final Report, please provide the cumulative metric for the entire project period – and note this is the total for the entire award period.)
<b>Performance Measure 4</b>	At the end of the semi-annual reporting period, what was the number of CODIS hits attributable to analyses funded under this award? (Note: The value should only represent the CODIS hits made within the six months of the reporting period. If this is a Final Report, please provide the cumulative metric for the entire project period – and note this is the total for the entire award period.)

Source: National Institute of Justice

B. **Active awards:** NIJ has made changes to the methods of providing guidance specifically to the points of contact assigned to active awards made under the Convicted Offender [and/or Arrestee] DNA Backlog Reduction programs in FYs 2005-2008.

- 1) Clarified Performance Measure Data Descriptions: This corrective action has been initiated and is anticipated to be completed by December 31, 2009, to correspond with the next semi-annual progress reporting period for active projects funded by awards made under the Convicted Offender [and/or Arrestee] DNA Backlog Reduction programs in FYs 2005-2008.

In September 2008, NIJ changed the language in the GMS “Performance Metrics” module in an attempt to better clarify what is being requested from recipients of active awards, see Figure 2: Modification to Performance Measure Language. Due to restrictions on the number of allowable characters in the GMS “Performance Metrics” module, the clarifying language is not entirely legible in GMS, and thus NIJ has since sent templates in Word format via email containing the modified performance measure data collection language to all active award points of contact in the Convicted Offender [and/or Arrestee] DNA Backlog Reduction programs. Award recipients can upload the completed templates as attachments to their progress reports, or simply cut and paste the material into the performance measures or narrative section of the progress report in GMS. OJP is continuing to work with GMS developers on improving the Performance Metrics and Grants Report modules in GMS, in order to provide clearer guidance on how to report performance measurement data in the system for NIJ active awards. However, if the restrictions on the number of allowable characters in GMS cannot be resolved, the NIJ program managers will continue to email the templates to all active award points of contact.

**Figure 2: Modification to Performance Measure Language**

<b>Original Performance Measure 1</b>	At the beginning of the award period, what was the number of DNA database samples awaiting DNA analysis?
<b>Modified Performance Measure 1</b>	Required: At the beginning of the award period, what was the number of DNA database samples awaiting DNA analysis?

<b>Original Performance Measure 2</b>	At the end of the prior quarterly reporting period, what was the number of DNA database samples analyzed using funds from this award?
<b>Modified Performance Measure 2</b>	At the end of the <u>first three months of this reporting period</u> , what was the number of DNA database samples analyzed using funds from this award? (Note: The value should only represent the samples analyzed within the first three months of the reporting period.)
<b>Original Performance Measure 3</b>	At the end of the current quarterly reporting period, what was the number of DNA database samples analyzed using funds from this award?
<b>Modified Performance Measure 3</b>	At the end of the <u>last three months of this reporting period</u> , what was the number of DNA database samples analyzed using funds from this award? (Note: The value should only represent the samples analyzed within the last three months of the reporting period. If this is a Final Report, please provide the cumulative metric for the entire project period – and note this is the total for the entire award period.)
<b>Original Performance Measure 4</b>	At the end of the prior quarterly reporting period, what was the number of DNA database profiles entered into CODIS as the result of funds provided under this award?
<b>Modified Performance Measure 4</b>	At the end of the <u>first three months of this reporting period</u> , what was the number of DNA database profiles entered into CODIS as the result of funds provided under this award? (Note: The value should only represent the CODIS entries made within the first three months of the reporting period.)
<b>Original Performance Measure 5</b>	At the end of the current quarterly reporting period, what was the number of DNA database profiles entered into CODIS as the result of funds provided under this award?
<b>Modified Performance Measure 5</b>	At the end of the <u>last three months of this reporting period</u> , what was the number of DNA database profiles entered into CODIS as the result of funds provided under this award? (Note: The value should only represent the CODIS entries made within the last three months of the reporting period. If this is a Final Report, please provide the cumulative metric for the entire project period – and note this is the total for the entire award period.)
<b>Original</b>	At the end of the prior quarterly reporting period, what

<b>Performance Measure 6</b>	was the number of CODIS hits attributable to analyses funded under this award?
<b>Modified Performance Measure 6</b>	At the end of the <u>first three months of this reporting period</u> , what was the number of CODIS hits attributable to analyses funded under this award? (Note: The value <u>should only represent the CODIS hits made within the first three months of the reporting period.</u> )
<b>Original Performance Measure 7</b>	At the end of the current quarterly reporting period, what was the number of CODIS hits attributable to analyses funded under this award?
<b>Modified Performance Measure 7</b>	At the end of the <u>last three months of this reporting period</u> , what was the number of CODIS hits attributable to analyses funded under this award? (Note: The value should only represent the CODIS hits <u>made within the last three months of the reporting period</u> . If this is a Final Report, please provide the <u>cumulative metric for the entire project period – and note this is the total for the entire award period.</u> )

Source: National Institute of Justice

- 2) Data Collection Plan: This corrective action has been initiated and will be ongoing throughout the life of previously awarded active projects.

NIJ has been working with and plans to continue to work with recipients of awards under the Convicted Offender [and/or Arrestee] DNA Backlog Reduction programs in the nascent stages of the funded projects to better define baseline performance measure data, the measurement of data produced using existing funding sources, and the method of calculating data produced using federal funds provided under each award. NIJ will continue to review previously awarded active awards to confirm that adequate performance measure data is being submitted with progress reports. Where performance measure data are not consistent with project objectives and/or appear to be inaccurate, NIJ will contact award recipients to implement a retroactive data collection plan.

In instances where award funds are utilized for the purchase of laboratory supplies and consumables, NIJ will be able to determine the direct correlations in money spent to samples processed. In some instances, the measurement of the direct impact a purchase using award funds has on the number of samples additional to

what could be accomplished using existing funding sources, requires a more detailed plan.

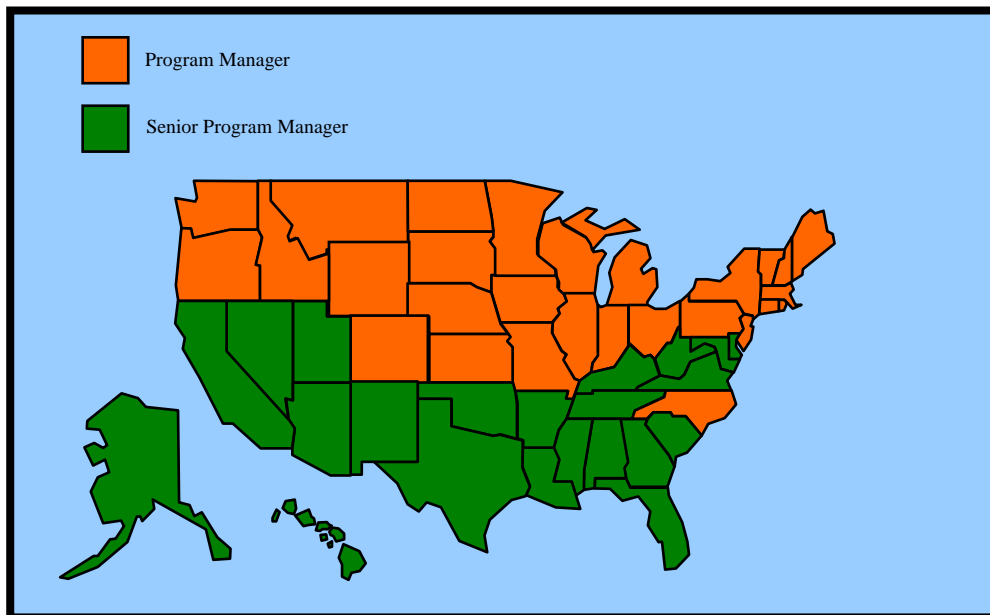
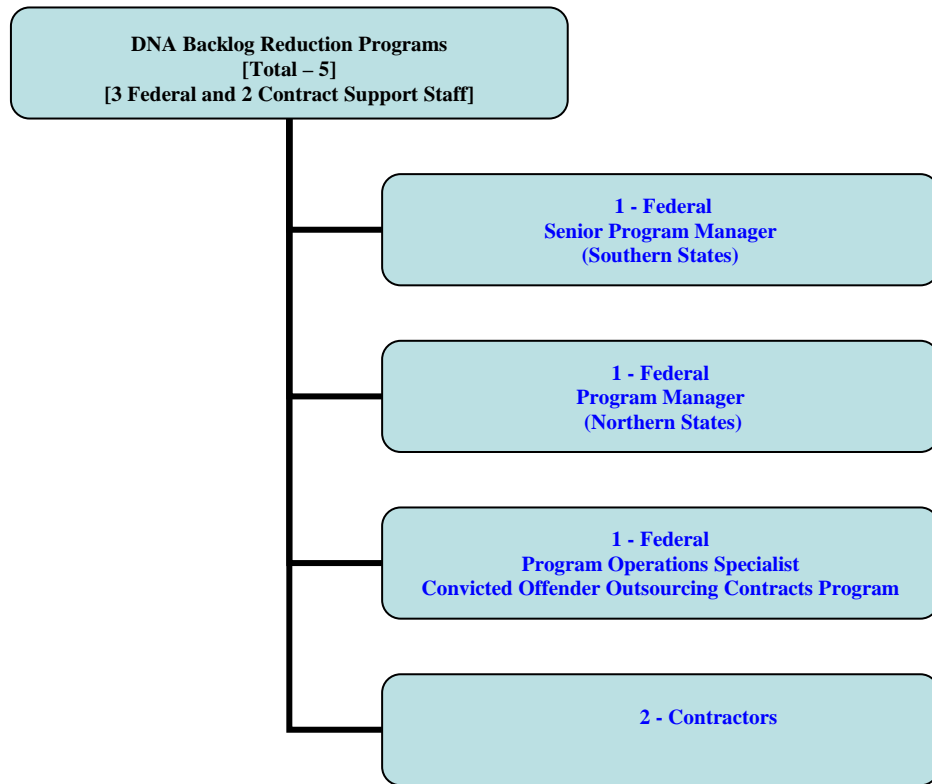
NIJ recognizes the increased difficulty that the award recipient faces in relating capacity enhancement projects to quantifiable increases in samples analyzed, and accordingly removed capacity enhancement activities as an allowable cost from the FY 2009 Program solicitation (see pages 8-9 in the above-referenced solicitation). NIJ anticipates this modification to the solicitation will result in projects with direct relationships between funds expended and samples analyzed using award funds. It is expected that by limiting this program to projects with direct relationships, NIJ can ensure better outcomes.

C. **Additional Guidance to Grantees:** The implementation of these corrective actions has been completed, and the activities will be ongoing throughout the duration of the programs.

1) Grant Oversight

At the midpoint of FY 2009, the DNA Backlog Reduction programs (including the Convicted Offender [and/or Arrestee] DNA Backlog Reduction programs) are now managed by two Program Managers (for the "In-House" programs, divided geographically) and one Program Operations Specialist (for the "Outsourcing" program). Additionally, NIJ has added two contract support staff to assist with managing the programs, see Figure 3 below, DNA Backlog Reduction Programs Support Staff (as of March 4, 2009). NIJ will continue to monitor the personnel resources assigned to the management and support of these programs, and will consider adjustments to staffing levels and/or assignments as necessary.

**Figure 3: DNA Backlog Reduction Programs Support Staff  
(as of March 23, 2009):**



Source: National Institute of Justice

- 2) Outreach Newsletters:  
Newsletters are made available online at <http://www.nfstc.org/programs/index.htm> so that award recipients may access this information at any time. NIJ plans to send a newsletter describing the changes to the FY 2009 performance measure data expectations, by March 31, 2009.
- 3) Training:  
A Grant Management Summit for 2009 is being planned at this time, and NIJ intends to continue holding the Grants Management Summit on an annual basis

**2. Develop a reliable and reasonable method for award recipients in the In-House Program to determine the number of samples analyzed using In-House Program funds.**

The Office of Justice Programs agrees with this recommendation.

This corrective action has been initiated and is partially completed. NIJ anticipates using the next semi-annual progress reporting period to continue to provide feedback and guidance to award recipients. Additionally, an internal document will be drafted for use as a reference guide for NIJ staff for providing guidance to award recipients on how to develop reliable and reasonable methods for determining the number of samples analyzed using In-House Program funds. It is anticipated that this document will be created by December 31, 2009, to coincide with the end of the next reporting period. The oversight portion of the action will be ongoing throughout the duration of previously awarded active projects.

**A. Develop and disseminate a clear definition of “backlog”:** NIJ has added language to the FY 2009 Program solicitation to more clearly define what a “backlog” is in regards to the Program for new awards. The solicitation states, “[c]alculate the eligible backlog of DNA database samples by adding the current backlog existing at the time of application to the anticipated receipt of samples through March 31, 2010, then reducing this number by the number of samples that will be analyzed using existing State or local funding sources and/or other Federal assistance. The number of samples that can be analyzed during the project period should reflect the laboratory’s known or anticipated capacity at the time of project initiation and the total eligible estimated backlog” (see page 4 in the FY 2009 Program solicitation). By incorporating the improved definition directly into the

solicitation language, NIJ is able to quickly disseminate this information to all applicants for federal assistance under this program in FY 2009.

- B. Develop and disseminate improved guidance on how to calculate goal data:** Once the applicable backlog, as discussed above, has been defined, the applicant may calculate the number of samples that will be analyzed which will then be the goal of the funded project. Applicants are now also required to base project costs on actual per cost estimates.

In order to further clarify how to calculate the goal and how it relates to funds requested, NIJ has added language to the FY 2009 Program solicitation that states, “[t]he number of samples that can be analyzed during the project period should reflect the laboratory’s known or anticipated capacity at the time of project initiation and the total eligible estimated backlog. Applicants should base the amount of their requests under this solicitation on their actual cost estimates, but may not request more than \$35 per sample analyzed (or per sample processed if no profile is generated but reasonable attempts were made).” By better understanding the calculation of the backlog, the goal for sample analysis, and the estimated costs proposed at the outset of the project, NIJ and the award recipient will have a better foundation for future discussions regarding how to calculate the performance measure data related to the number of samples analyzed using award funds. By incorporating the improved definition directly into the solicitation language, NIJ is able to quickly disseminate this information to all applicants for federal assistance under this program in FY 2009. Additionally, NIJ will continue to include this topic at its Grant Management Summit, held annually, as previously stated in our response to Recommendation Number 1.

- C. Provide improved guidance on how to calculate the baseline performance measure data:** NIJ provided additional guidance to States in January 2009 with the progress report template previously mentioned that included additional language as follows, “[a]t the beginning of the award period (October 1 of the year corresponding to the award number), what was the number of DNA database samples awaiting DNA analysis? This number should never change from one progress report to the next for this award.”
- D. Utilizing these key components NIJ and the award recipients can develop a reliable and reasonable method for award recipients in the In-House Program to determine the number of samples analyzed using In-House Program funds:** Using the



above key components, an award recipient may now utilize basic mathematical formulas in order to determine the number of samples analyzed using Convicted Offender and/or Arrestee DNA Backlog Reduction Program funds.

For new and future awards, NIJ will utilize the application review stage to assess the reliability and reasonableness of a project's proposed method of determining the number of samples analyzed using award funds. Starting with the FY 2008 awards, all application reviews were documented using an internal checklist, which was uploaded to GMS upon completion of the review process. For FY 2009, the application review checklist has been amended to include a review of applications to determine if a reliable and reasonable method for determining the number of samples analyzed using award funds is included in the application. Applications with deficiencies identified during review will be returned for an opportunity to revise and resubmit. NIJ program managers will continue to provide feedback and communicate with applicants to ensure that all applications are complete; and that the FY 2009 applications contain a reliable and reasonable method for determining the number of samples analyzed using award funds.

For active awards made prior to FY 2009, NIJ will continue to review a project's semi-annual progress report to confirm that performance measure data accurately reflect the number of samples analyzed using In-House Program funds. NIJ has been working on capturing retroactive and real-time performance measure data (see our response to Recommendation Number 4 below). This information is now being captured in real-time during the review of submitted progress reports. By collecting and viewing the reported performance measure data in comparison to previously reported performance measures, NIJ staff is able to assess:

- If baseline performance measure data is consistent with previously reported data;
- If the number of samples analyzed has increased as would be expected in light of project goals and timelines; and
- If the reported performance measure data appears to be accurate. If the numbers do not appear to be consistent, NIJ staff will closely examine the data and may question the award recipient regarding whether data has been captured correctly and/or reported accurately.

Where performance measure data are not consistent with project objectives and/or appear to be inaccurate, NIJ will contact award

recipients to retroactively develop reliable and reasonable methods to determine the number of samples analyzed using In-House Program funds.

In instances where award funds are utilized for the purchase of laboratory supplies and consumables, direct correlations can be made between award funds expended and samples analyzed. In some instances, the development of a method for award recipients to determine the number of samples analyzed using program funds requires more structure. NIJ understands that projects that do not have straightforward correlations between award funds expended and samples analyzed require more hands-on communication with awards recipients in order to ensure reliable and reasonable methods for the calculation of samples analyzed using program funds.

As stated previously in our response to Recommendation Number 1, NIJ recognizes the increased difficulty of relating capacity enhancement projects to quantifiable increases in samples analyzed and has removed capacity enhancement activities from the FY 2009 Program solicitation.

**3. Ensure that performance reports are submitted in a timely manner and include all required performance measurement data for the Outsourcing Program.**

The Office of Justice Programs agrees with this recommendation. In response to this recommendation, NIJ has initiated the following corrective actions:

- A. **Outsourcing Program:** The target completion date for this corrective action is to have documentation in place and information disseminated to points of contacts at the state laboratories participating in the Outsourcing Program prior to and no later than the award of any new FY 2009 contracts under the Outsourcing Program.

By September 30, 2009, NIJ will develop and implement written procedures aimed at addressing this recommendation. Procedures will include timed activities such as:

1) NIJ will send a reminder to award recipients with active contracts in the Outsourcing Program 15 days prior to the designated due date of each performance report.

2) Due dates for performance measures are at the end of each calendar quarter.

3) If the performance reports are not received within 1 week of the due date, NIJ will contact the participating State to address the noncompliance with the contract requirements to offer technical assistance to the participating State

4) If the performance reports are not received within 15 days of the designated due date, NIJ will determine why the reports are delinquent.

5) Based on the determination, NIJ may require the participating State to provide, and follow, a written plan to ensure that future reports are submitted by the designated due date

6) In extreme cases, NIJ may recommend the cancellation of the contract for the State's convicted and/or arrestee samples to the OJP's Office of Administration, Acquisition Management Division (AMD).

To ensure that the performance reports include all required performance measurement data for the Outsourcing Program, NIJ will include in its documented procedures a requirement that NIJ carefully review each performance report and address any issues with the performance measurement data with the award recipient. Procedures for ensuring that these reports include all required performance measurement data will also include timed activities such as, if performance measurement data correction requests are not satisfied within 15 days of the request, NIJ will determine why the request has not been satisfied by the designated due date. Based on the determination, NIJ may require the participating State to provide, and follow, a written plan to ensure that future performance measurement data correction requests are satisfied by the designated due date. In extreme cases, NIJ may recommend the cancellation of the contract for the State's convicted and/or arrestee samples to AMD.

#### **4. Summarize the performance information reported by state laboratories to report on the effectiveness of the Backlog Reduction Program as a whole.**

The Office of Justice Programs agrees with this recommendation. In response to this recommendation, NIJ has initiated the following corrective actions:

##### **A. Retroactively collect performance information reported by State laboratories:** This corrective action has been completed.

NIJ has retroactively collected the cumulative performance measure data reported for all awards made under Convicted Offender [and/or

Arrestee] DNA Backlog Reduction programs for which the reporting of performance measure data was required.

**B. Collect performance measure data reported by State**

**laboratories:** The implementation of this corrective action has been completed and the action will be performed semi-annually and as necessary throughout the duration of this program as long as the submission of performance measure data is required.

NIJ will continue to collect performance measure data in real-time (semi-annually) as reports are submitted for active projects.

**C. Summarize the performance measure data to report on the effectiveness of the Backlog Reduction Program as a whole:**

This corrective action has been initiated and will be ongoing throughout the duration of this program as long as the submission of performance measure data is required. The target date for the completion of the first internal evaluation report is at the beginning of FY 2010 (October 2009) to coincide with the anticipated completion of all FY 2005 and additional FY 2006 Convicted Offender and/or Arrestee DNA Backlog Reduction Program funded projects. Dissemination of information to award recipients will occur after the completion of the internal report and the target date for this will be December 2009.

Summary data for the program, regardless of year funded, will be evaluated in order to report on the effectiveness of the Convicted Offender and/or Arrestee DNA Backlog Reduction Program as a whole. NIJ anticipates utilizing these reports for internal evaluation as well as disseminating information to award recipients in order to provide feedback and foster an open dialog on the overall progress of the program.

**5. Utilize the performance information reported by State laboratories to evaluate the effectiveness of individual awards and contracts funded under the Backlog Reduction Program, and to follow up on any poor performance.**

The Office of Justice Programs agrees with this recommendation. In response to this recommendation, NIJ initiated the following corrective action. The format for data collection and evaluation will be finalized by the end of the next progress-reporting period (December 31, 2009). The corrective action will be ongoing throughout the duration of the program as long as the submission of progress reports containing performance information and performance measure data is required.

NIJ intends to create a process for the real-time capture of performance measure data on a semi-annual basis. Having all previously reported performance measure data visible during the review of submitted reports allows NIJ staff to assess the reported progress, or lack thereof, of each project at the time of report submission. By collecting and viewing the reported performance measures in comparison to previously reported performance measures, NIJ staff is able to evaluate and provide feedback on whether:

- Baseline performance measure data are consistent with previously reported data;
- The number of samples analyzed has increased as would be expected in light of project goals and timelines; or
- The reported performance measure data appear to be accurate. If the numbers do not appear to be consistent, NIJ staff will closely examine the data and may question the award recipient regarding whether data have been captured correctly and/or reported accurately.

Currently, NIJ is providing feedback to award recipients during the progress report review in instances where performance measure data are obviously reported inaccurately or inconsistently. It is anticipated that the implementation of the real time mechanism for performance measure data collection and visibility will allow NIJ staff to identify more instances of inadequate performance measure data reporting or project progress.

- 6. Ensure that financial and programmatic activities are monitored to determine if Backlog Reduction Program funds are being utilized in a timely manner.**
- 7. Follow up with award recipients that have not demonstrated any progress toward completion of the objectives of the In-House Program award to determine whether the recipients have encountered difficulties in implementing the award, and provide assistance as necessary.**

The Office of Justice Programs agrees with these recommendations. Corrective actions have been implemented, and the monitoring activities will continue for the duration of all active awards.

The need for better tools for program managers to assess award recipient's financial and programmatic activities was recognized by the OJP, and in late 2007, the OJP made available the Enterprise Reporting Tool (ERT), which allows program managers to receive critical

programmatic and financial information on an award in a single report that pulls data directly from GMS as well as other databases at the OJP.

In January 2008, NIJ's DNA Backlog Programs division started utilizing this report, which allows program managers to review all awards that they manage from a single award recipient. Critical financial and programmatic data recovered include the award number, grant start and end dates, the submission date of the last financial and progress report submitted, an indication of whether the report submitted was a regular or final report, award amount, unobligated funds, and balance available after draw downs had occurred. The NIJ's DNA Backlog Programs staff manually added to this report fields that captured the percent of unobligated funds for each award, the percentage of funds drawn down, and manually added information from GMS to the spreadsheet of any special conditions pending that withheld funds. During 2008, NIJ program managers worked with the ERT software engineers to further refine this data so that the percentage calculations were automatically generated by ERT, special conditions were automatically extracted from GMS, and contact information for the grant point of contact (POC) and the financial point of contact (FPOC) were added.

The utility of this system is that a program manager can quickly extract vital programmatic and financial information from a single software program that allows for a rapid assessment of all the awards that they manage for a particular award recipient.

That utility is further enhanced by the fact that NIJ program managers can create a list of comments or action items resulting from their review of this data. Program managers are then sending this review to the award recipients.

The use of the ERT reports and the transmission of these reports to award recipients is one way that NIJ is using to meet the recommendations of the OIG. As a corrective action to Recommendation Numbers 7 and 8, NIJ intends to send these ERT reports to award recipients every quarter, after the final due date for the quarterly financial reports, in order to ensure that financial and programmatic activities are monitored to determine if Backlog Reduction Program funds are being utilized in a timely manner. NIJ program managers can utilize the "Comment" fields of the report to provide feedback to award recipients that have not demonstrated any progress toward completion of the objectives of the award. These reports are intended to initiate an open dialog between NIJ and award recipients in order to determine whether the recipients have encountered difficulties in implementing the award, and for NIJ staff to

provide assistance as necessary. While NIJ intends to use this tool as a method of reminding and encouraging award recipients to use awarded funds in a timely fashion; they have no control over the speed that the award recipient can utilize funds to reduce their backlogs (i.e. there may be State procurement issues that are out of the control of NIJ).

Additionally, NIJ intends to continue holding the annual Grants Management Summit as a second corrective action in response to these recommendations. In late 2006, a new program manager recognized the need for training for grant managers in State and local DNA labs with respect to programmatic and financial matters related to the management of their awards. In February 2007, NIJ paid for all DNA POCs to attend a two-day DNA Summit in Washington, DC. Covered topics included a financial seminar by a senior trainer from the OJP's Office of the Chief Financial Officer (OCFO), GMS training by the GMS engineers, presentations by the Grant Progress Assessment (GPA) team on the program and how it works, and presentations by NIJ's DNA Backlog Program Office personnel on the programmatic requirements (allowable costs, progress reports, performance metrics, etc). In August 2008, a second Grant Management Summit was presented to all DNA and Coverdell (base recipient) grant POCs in Clearwater, Florida. The same topics were covered in the 2008 Summit, but a great deal of emphasis was placed on the very issues raised in these recommendations. Additionally, NIJ is also planning a Grant Management Summit in 2009.

Another method that NIJ has been using since 2005 is the Grant Progress Assessment (GPA) Program. Each DNA award recipient is visited biennially to assess programmatic and financial progress on their awards. Although the assessment is not the equivalent of a financial audit, the GPA assessors do track expenditures, or lack thereof, in each budget category. NIJ is currently working with the OJP's Office of Audit, Assessment, and Management (OAAM) to make the necessary modifications to the Program in order to upgrade the GPA assessments to the equivalency of a site visit. NIJ program managers have referred several award recipients to the OCFO for on-site financial monitoring, as a result of GPA reports received. As part of its annual monitoring plan, the OCFO also conducts desk reviews and on-site financial monitoring of OJP award recipients as well. Programmatic issues raised during the GPA assessments are handled by the individual program managers of the award.

NIJ program managers also conduct site visits to award recipients they feel could benefit from technical assistance. In 2008, the site visits by program managers were assigned to high-priority award recipients based

on the results of the newly designed Grant Assessment Tool developed by OAAM.

In summary, NIJ recognized that oversight of the Convicted Offender [and/or Arrestee] DNA Backlog Reduction programs awarded in 2005 and 2006 needed improvement, and in 2007 started taking steps to improve the oversight of these awards. The oversight initiatives that were implemented in 2007 have benefited from the OIG audit of the convicted offender program in that additional refinements have been added to the existing oversight based on suggestions and comments received from the OIG.

The OJP believes that the actions NIJ has already taken and those planned for this year (upgrading of the GPA Program) will ensure that financial and programmatic activities are monitored and award recipients demonstrate progress toward completion of the objectives of the In-House Program are implemented.

- 8. Ensure that award funds are de-obligated and the awards are closed if award recipients are unable to use Backlog Reduction Program funds in a timely manner.**
- 9. Ensure that award recipients substantially accomplish the objectives of an award before any new awards are funded.**

The Office of Justice Programs agrees with these recommendations. The corrective action for these recommendations has been initiated and will have two completion dates. The first date will occur on September 30, 2009, which is the anticipated award date for new awards made from the FY 2009 Program solicitation. The second closure date will begin on September 30, 2009, when all FY 2005 awards will end, and the final closure date will be December 31, 2009, which is when all the FY 2005 awards are expected to be closed out by NIJ.

The Convicted Offender Backlog Reduction Program was first offered in 2005. That same year, NIJ placed a withholding special condition on all awards to ensure that award recipients met the requirements of the National Environmental Protection Act (NEPA). This new requirement delayed all award recipients' access to program funds for an average of six months and had a ripple effect that spread to later years; a problem that only exacerbated the timely use of funds reported by award recipients that were having procurement issues within their own agencies. In 2007, NIJ became concerned about the lack of timely usage of



program funds by some award recipients, as the NEPA ripple effect should have disappeared.

NIJ intends to continue to limit the access to new funds for agencies that are not expending their awards in a timely fashion. In late 2007, NIJ sought and received approval to include the following statement into the FY 2008 Convicted Offender and Arrestee DNA Backlog Reduction Program solicitation, "NIJ may reject applications from applicants with prior awards for convicted offender (and/or arrestee) in-house analysis that remain entirely unobligated as of the posting date of this solicitation."

Prior to the posting of the FY 2008 Convicted Offender and Arrestee DNA Backlog Reduction Program solicitation, NIJ program managers contacted agencies that had prior awards of totally unobligated funds and informed them of the notice they could expect in the FY 2008 solicitation. Only one of the agencies that were contacted made an application for assistance in FY 2008, and that application was denied. Unlike the awards made in FY 2005 and FY 2006, NIJ officials considered the fact that some award recipients had just received their FY 2007 funds in October 2007. NIJ officials made a decision not to reject requests for assistance from any agency that had totally unobligated FY 2007 funds. The grant application period overlaps the award period by about 6 months and it was deemed unwise to penalize States who had not yet accessed their FY 2007 funds because they hadn't quite finished their work on a prior year's award.

It was noted in this draft audit report that NIJ made awards in FY 2008 to agencies that had unobligated prior year funds. NIJ concedes that this is a true statement; however, this was not due to accidental oversight on the part of NIJ staff. NIJ intentionally did not consider FY 2007 awards due to the overlap in the application dates and the award period for the reasons mentioned above. In order to clarify this requirement, NIJ has modified the language included in the FY 2009 solicitation to read, "NIJ may reject applications from applicants with awards for convicted offender (and/or arrestee) in-house analysis from FY 2005-2007 that remain entirely unobligated as of the posting date of this solicitation," (see page 15 of the FY 2009 Program solicitation); thereby clarifying exactly which prior year awards must be entirely unobligated.

NIJ will work closely with the award recipients to ensure they obligate funding promptly. NIJ will consider the deobligation of uncompleted convicted offender backlog reduction awards only as a last resort. NIJ believes that an unexpected loss of award funds through an NIJ mandated deobligation would directly and negatively impact a State's ability to

reduce their reported backlog of samples awaiting analysis and CODIS entry. NIJ is aware that many States have reported serious issues with timely procurement, have significant staffing issues, and other justifiable reasons why they are not utilizing funds in a timely fashion.

During the exit conference, the suggestion was made to NIJ that the program managers should document offers of technical assistance, problems reported by States in implementing their awards, and NIJ's awareness of these issues. NIJ has adopted these suggestions. As a result, NIJ has implemented a real-time collection and analysis method for performance measures and a notes feature to include documentation of technical assistance and impediments.

In summary, NIJ plans to limit access to new funds for States that have fallen behind in their expenditure of existing awards. If necessary, NIJ will consider mandating the closure of awards and deobligation of the associated unexpended funds.

**10. Require award recipients to establish a mechanism that is both valid and auditable for tracking performance data required under the In-House Program.**

The Office of Justice Programs agrees with this recommendation. The corrective action for this recommendation has been completed for new awards and has been initiated for active awards. NIJ anticipates using the next semi-annual progress reporting period to continue to provide feedback and guidance to award recipients, and completion of this will occur on December 31, 2009, to coincide with the end of the next reporting period. Additionally, internal written guidelines for NIJ staff to use in providing guidance to award recipients on how to develop valid and auditable mechanisms for tracking performance data will be created by December 31, 2009, to coincide with the end of the next reporting period. Monitoring will be ongoing throughout the duration of the funded projects.

**A. New Awards:** As previously mentioned in our response to Recommendation Number 1, NIJ now requires that applicants for federal assistance under the FY 2009 Program solicitation include a Data Collection Plan with their applications. During the application review process, NIJ staff will review the proposed data collection plans. Applications that do not include a plan will be returned to applicants for an opportunity to revise and resubmit their application. Plans that do not describe a data collection method that will clearly facilitate reporting accurate and verifiable performance measure data will also

be returned to applicants for revision. Awards will not be made without the inclusion of an adequate Data Collection Plan. NIJ program managers will provide feedback and communicate with applicants to ensure that data collection plans are reasonable and achievable.

B. **Active and Existing Awards:** NIJ has been working with, and plans to continue to work with, recipients of awards under the Convicted Offender [and/or Arrestee] DNA Backlog Reduction programs in the nascent stages of the funded projects to better define baseline performance measurement data, the measurement of data produced using existing funding sources, and the method of calculating data produced using federal funds provided under each award. In instances where award funds are utilized for the purchase of laboratory supplies and consumables, direct correlations can be made in money spent to samples processed. In some instances, the measurement of the direct impact a purchase using award funds has on the number of samples, in addition to what could be accomplished using existing funding sources, requires a more detailed plan.

C. **All Awards:** NIJ proposes to utilize the mechanism for review of performance measure data described in our response to Recommendation Number 5 in order to ensure reported performance measure data is valid. Instances of inadequate performance measure data reporting will be followed up by NIJ staff to ensure that the mechanism for tracking performance data is valid and auditable. Additionally, NIJ plans to continue to include this topic at its annual Grant Management Summit, to be held later in FY 2009.

**11. Develop policies and procedures to facilitate pre-contract discussions as well as ongoing contract monitoring between state and vendor laboratories, to ensure that contract expectations are clear and that problems are identified, discussed, and resolved in a timely manner.**

The Office of Justice Programs agrees with this recommendation. The corrective action for this recommendation will be coordinated by NIJ and AMD and is in progress.

A. **NIJ:** NIJ will be working with States requesting assistance through the Outsourcing Program to:

- Determine what assistance is needed;
- Insert States specific needs into the standardized Request for Quote/ Statement of Work, and

- Provide funds to AMD to cover the contracts developed.

The primary communication with the vendor laboratories eligible to provide assistance through the Outsourcing Program will be the responsibility of AMD.

The States notify the NIJ program manager and the Contracting Officer Technical Representative (COTR) when changes are needed in the contract, or when problems arise. The NIJ program manager/COTR then notifies the contracting officer in AMD of the issue, who is responsible for making the contract modifications or settling the dispute. If the contract dispute is technical in nature, then the NIJ program manager/COTR and AMD can seek scientific or technical assistance from the NIJ DNA program managers.

The net result is that AMD is primarily communicating with the vendors and NIJ primarily with the States. NIJ supports AMD's response (see below). Additionally, NIJ will work with AMD to develop a written protocol describing the roles and responsibilities of the program manager, COTR, and States, with reference to requests for changes in the contracts and problems that arise, if any. The target completion date for this corrective action is to have documentation in place and information disseminated to points of contacts at the OJP and the state laboratories participating in the Outsourcing Program prior to and no later than the award of any new FY 2009 contracts under the Outsourcing Program.

NIJ has provided States with a Post Award Package Notebook, and most recently with electronic copies of the documents related to the Outsourcing Program, which includes materials to assist the State's convicted offender sample processing. NIJ will continue to provide this material to States that participate in the Outsourcing Program.

B. **AMD Response:** AMD will implement actions to establish and sustain communications with the States, the vendor laboratories, and OJP key personnel. Specifically:

- By June 30, 2009, AMD will host an annual Vendor Laboratory Industry Day to facilitate pre-contract discussions, respond to questions, and provide clarification about the solicitation process, the DNA Backlog Program, etc. The industry day will be held within two weeks after issuance of the solicitation being competed in that given year. Additionally, AMD will require any vendor laboratory

interested in competing for new contracts to attend the annual Vendor Laboratory Industry Day.

- Upon award, AMD will issue to the awarded vendor, a contract award notification that will include the contract award, contract requirements, key deliverables, performance schedule, and will identify and explain the responsibilities of the contracting parties, which include NIJ, AMD, Vendor Laboratory, and the State Representative. Shortly thereafter, AMD and NIJ will host a contract award kick-off meeting with the vendor laboratory and State to review the information in the award notification letter to ensure there is no misunderstanding of the requirements by the vendor laboratory or State.
- NIJ will host quarterly conference calls between the vendor laboratory, the State, and AMD to discuss apparent obstacles, workload, and performance issues, if any. Additionally, NIJ will continue dialog between vendor laboratory and the States to obtain feedback on services being provided and to identify obstacles.
- AMD and NIJ will continue ongoing discussions regarding the program and vendor laboratory performance in meeting contract requirements. The agency will continue to monitor monthly reports to assess program performance and identify and issues of concern.

Thank you for your continued cooperation. If you have any questions regarding this response, please contact LeToya Johnson, Deputy Director of the Audit and Review Division, Office of Audit, Assessment, and Management, on (202) 514-0692.

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## APPENDIX VIII

### OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT

The OIG provided a draft of this audit report to OJP NIJ. The NIJ response is incorporated in Appendix VII of this final report. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

#### Summary of Actions Necessary to Close Report

1. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has fully implemented all parts of its corrective action plan to provide state laboratories improved guidance on reporting the performance information required in performance reports.
2. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has fully implemented all parts of its corrective action plan to develop a reliable and reasonable method for award recipients to determine the number of samples analyzed using In-House Program funds.
3. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has developed and implemented written procedures to ensure that that performance reports are submitted in a timely manner and include all required performance measurement data for the Outsourcing Program.
4. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has completed its summary report on the effectiveness of the Backlog Reduction Program as a whole.
5. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has fully implemented its corrective action plan to

utilize the performance information reported by state laboratories to evaluate the effectiveness of individual awards and contracts funded under the Backlog Reduction Program, and to follow up on any poor performance.

6. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has fully implemented the use of the modified Enterprise Reporting Tool reports to ensure that financial and programmatic activities are monitored to determine if Backlog Reduction Program funds are being utilized in a timely manner.
7. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has fully implemented the use of the modified Enterprise Reporting Tool reports to follow up with award recipients that have not demonstrated any progress toward completion of the objectives of the In-house Program award and provide assistance as necessary.
8. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has fully implemented its corrective action plan for Recommendation No. 6.
9. **Closed.**
10. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has fully implemented its corrective action plans for Recommendation Nos. 1 and 5.
10. **Resolved.** The NIJ concurred with our recommendation. This recommendation can be closed when the NIJ provides documentation supporting that it has fully implemented all parts of its corrective action plan to develop policies and procedures to facilitate pre-contract discussions as well as ongoing contract monitoring between state and vendor laboratories, to ensure that contract expectations are clear and that problems are identified, discussed, and resolved in a timely manner.