

TEXAS DEPARTMENT OF PUBLIC SAFETY

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March 4, 2015

Representative Geran Tarr
Alaska State Legislature
120 4th Street
Juneau, AK 99801

Representative Tarr,

Per the request of your staff, the information below and related attachments detail Texas' effort to analyze thousands of untested sexual assault kits.

In the 82nd Texas Legislative session, Senate Bill 1636 was passed to change the handling procedures for sexual assault kits.

- First, it established an end point for discretionary submissions. The vast majority of the untested sexual assault kits in the state were never submitted for laboratory testing due to three main discretionary factors: 1) suspect identity was not an issue in the case; 2) the victim decided not to pursue prosecution; or 3) other issues with evidence, witnesses, or victims resulted in a decision that the case was not prosecutable.
- Effect August 1, 2011, every sexual assault kit that is collected as part of a criminal investigation is required to be submitted to a crime laboratory within 30 calendar days. The requirement appropriately stopped short of mandating the analysis be conducted within 30 days as to not shackle already overwhelmed forensic laboratories. Decisions on the priority of cases to be analyzed should be left to the laboratory and its criminal justice customers.
- Secondly, the statutory language defined an "active case" to include any sexual assault kit that remained unanalyzed and was still within the prescribed statute of limitations. This definition included kits where a prosecution had already occurred. Under the existing Texas statute of limitations, "active cases" covered a timeframe from September 1, 1996 through July 31, 2011.

The statute required every law enforcement agency and forensic laboratory to audit and report the total number of "1636" kits to the Texas Department of Public Safety (DPS). The statute only provided 45 days for that audit and report to take place, and the statute provided no sanction to law enforcement for not reporting.

- DPS provided written guidelines to every law enforcement agency in the state regarding which kits applied to the statute. Those instructions are attached for reference.
- For smaller agencies, 45 days was sufficient, but for larger agencies with a greater volume of kits, it was unattainable. In order to determine if the kit was sent to a laboratory and

analyzed, personnel from the agency must review the actual investigative file. That process takes time, especially if no additional resources/funding are provided to perform the task.

- The lack of a sanction placed DPS in the position of having to “encourage” reporting.
- DPS utilized its crime laboratory directors network to achieve an estimate of the total kits in the state as a gauge of the accuracy of the law enforcement reporting. The networking effort estimated 20,000 untested kits. At the time of our initial report to the legislature, state law enforcement had reported just over 15,000 kits. Reports have continued to trickle in beyond the deadline and more accurate counts of previously reported kits have been updated. Currently, our total is over 19,000 kits reported. The laboratory directors estimate has proven to be a reliable gauge of the total volume.

DPS was required to tally the numbers and provide the Texas Legislature during the 83rd session (in 2013) with an estimated cost and a plan for completing the testing.

- In the interim, DPS secured grant funding from the Texas Governor’s Office and began receiving and analyzing “1636” kits as capacity allowed.
- DPS instructed law enforcement agencies to hold on to their kits until DPS asked for them in order to prevent an untenable storage issue for our laboratory system.
- DPS was able to test approximately 1500 kits in the interim period with the grant funding.
- The City of Houston, which reported the most kits at 6,663, assumed the responsibility for acquiring both city and grant funding to outsource the analysis of their kits.

In February 2013, DPS reported its findings to the Texas Legislature. That report is attached for reference.

- The legislature chose to fund DPS the outsourcing option, with the funding effective on September 1, 2013.
- DPS also required five additional laboratory personnel to review the outsourcing results as a quality assurance issue.
- DPS sent a letter to all law enforcement updating them on the status of the initiative. That letter is attached for reference.

DPS began the contracting process, which took 10 months to complete. DPS contracted with two private laboratories and one university laboratory in Texas.

- All three laboratories were operating at full capacity effective November 1, 2014.
- DPS coordinates which agencies submit to which laboratories, but the agency submits directly to the outsourcing laboratory. The cost of shipping was included in the outsourcing contract and does not burden the law enforcement agency.
- DPS anticipates this effort will take two full years to accomplish the analysis.
- DPS provided a legislative status update in January 2015, which is also attached.

Results from the outsourcing effort are unavailable at this point. The DPS testing conducted between the biennial sessions is available. The highlights include:

- The testing produced CODIS eligible samples in approximately 350 cases or in 20% of the total kits analyzed.
- Approximately 40% of those samples resulted in a CODIS hit.
- Several hits were made to a convicted offender where no suspect was previously available.
- Several hits linked one case to another case with the offender still unknown.
- Over 50% of hits were confirmation hits. The same defendant convicted for the case was identified by DNA in the kit.

- In 40-50% of kits, no DNA is discovered.

Important issues to remember:

- A CODIS hit or match does not guarantee a prosecution and conviction. All the same discretionary issues detailed at the beginning of this letter remain applicable.
- DPS does not have visibility on the prosecution of cases as a result of kit analysis. Inquiries for that data must be directed to the investigative agency or prosecuting attorney.
- To questions on the status of the outsourcing effort, DPS posts the status spreadsheet on its website and updates it monthly.

<http://dps.texas.gov/CrimeLaboratory/sexualAssltEvidenceInit.htm>

Hopefully this information will be helpful for the State of Alaska to develop an effective and efficient initiative to address untested kits in your state. The Texas Department of Public Safety remains available as a resource in your efforts.

Sincerely,



Skylor Hearn, Assistant Director
Law Enforcement Support Division

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August 17, 2011

Guidelines for the Implementation of SB 1636 (82R)

Definitions (for purposes of these guidelines):

Active Case -

Statutory Definition:

"Active criminal case" means a case:

(A) in which:

- (i) a sexual assault has been reported to a law enforcement agency; and
- (ii) physical evidence of the assault has been submitted to the agency or an accredited crime laboratory under this chapter for analysis; and

(B) for which:

- (i) the statute of limitations has not run with respect to the prosecution of the sexual assault; or
- (ii) a DNA profile was obtained that is eligible under Section 420.043 for comparison with DNA profiles in the state database or CODIS DNA database.

What this means (in reference to these guidelines):

- (A) The offense has to have been reported to Law Enforcement (LE) and the evidence must be in the custody of a LE agency or an accredited crime laboratory.
- (B) This does not apply to sexual assault evidence that was collected prior to September 1, 1996.

The new law does not exempt cases that have been adjudicated without DNA analysis from having to be submitted for analysis if they meet the other qualifiers of an active case.

New Case - one for which the evidence was collected on or after August 1, 2011.

Non-active case -

- 1) The evidence was collected prior to September 1, 1996, or
- 2) The investigation of the complaint has determined that no crime was committed.

Old Case - one for which the evidence was collected between September 1, 1996 and July 31, 2011.

Procedures:

- 1) Where does a LE agency submit evidence for new cases? New cases should be submitted to the public accredited laboratory which has traditionally served the LE agency.
 - A) If that laboratory is a DPS laboratory, then the standard DPS evidence submission policies will apply. This includes the signed certification required by the submitting person.
 - B) If that laboratory is a non-DPS laboratory, it will be up to that laboratory to determine if they will accept the evidence.
 - C) If a non-DPS laboratory declines to accept the sexual assault evidence for analysis, the LE agency may request to submit the evidence to the DPS laboratory which serves that geographic area.
- 2) What evidence should be submitted for new cases? DPS guidelines limit the initial evidence submission to a sexual assault (SA) kit and the victim's panties (see the DPS DNA acceptance guidelines for more detail <http://www.txdps.state.tx.us/CrimeLaboratory/DNA.htm>). The submitting agency will be contacted if additional evidence is necessary. LE agencies that are served by other laboratories (non-DPS) should consult with those laboratories for their evidence submission policies.
- 3) Where does a LE agency submit evidence for old cases? No evidence should be submitted to the DPS for old cases until the LE agency has been advised to do so by the Laboratory System. LE agencies are required by the statute to submit to the DPS a list of their active criminal cases, which have not

been submitted to an accredited laboratory. This list is due to the DPS by October 15, 2011. That list (with the information requested below) should be submitted to the DPS laboratory that serves their geographic area (see <http://www.txdps.state.tx.us/CrimeLaboratory/documents/PEHmanual.pdf>).

The following information should be provided with the list of cases: agency name, agency case #, offense type, offense date, county of offense, victim name, suspect name (if known), and a description of the evidence.

- 4) What if evidence from old (active) cases is submitted to or retained by a non-DPS crime laboratory? The LE agency shall notify the DPS, no later than April 1, 2012, which laboratory the evidence was submitted to and any analysis which has been completed, including the date of analysis.
- 5) What evidence should be submitted to DPS for old cases? Only evidence from active criminal cases that has not been submitted to a public accredited laboratory for analysis shall be submitted. If the DPS Laboratory serving the LE agency's area has advised the agency to submit their sexual assault evidence, the agency shall follow the standard DNA submission guidelines as indicated for new cases. Submit the SA kit and panties/underwear if available. The DPS will contact the submitting agency if additional evidence is necessary.
- 6) LE agencies have until April 1, 2012 to submit their sexual assault evidence to the DPS (or other public accredited crime laboratory). The DPS will evaluate the case information submitted in (3) above to determine if storage space is available. The LE agencies will be informed if the DPS can/will accept their evidence and when it can be submitted, if approved.
- 7) The statute requires the person submitting the evidence to a public accredited crime laboratory to provide a signed written certification that "This evidence is being submitted by (name of person making submission) in connection with a criminal investigation". See separate form, LAB-06A.

D. P. Johnson 2/18/11

Deputy Assistant Director
Crime Laboratory Service

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February 15, 2013

Report in Compliance with SECTION 15 (b) of SB1636, 82nd Legislature regarding estimated cost and timeline for the completion of laboratory analyses of all unanalyzed sexual assault kits submitted to an accredited crime laboratory by a law enforcement agency pursuant to Government Code Section 420, Subchapter B-1.

Total Number of SB1636 Kits:

As of February 1, 2013, law enforcement agencies in Texas have reported 15,823 sexual assault kits applicable to SB1636. This information was provided by a total of 136 agencies. Due to the complexity of evaluating statute applicability by large volume agencies, the DPS estimate remains at 20,000 total kits statewide.

Timeline for Completion of Testing:

The timeline proposed is an estimate based upon certain assumptions of which and how many accredited laboratories will receive and analyze the evidence in these sexual assault cases.

Including the DPS system, there are seventeen accredited crime laboratories in Texas capable of conducting the required analyses on these kits – sixteen public and one private laboratory. Those laboratories are listed below:

- DPS Laboratories in Austin, Houston, Garland, Waco, El Paso, Lubbock, Corpus Christi, and Weslaco.
- The Southwestern Institute of Forensic Sciences at Dallas
- The Bexar County Criminal Investigation Laboratory
- The Harris County Institute of Forensic Sciences
- The Houston Police Department Crime Laboratory
- The Tarrant County Medical Examiner Forensic Laboratory
- The Fort Worth Police Department Crime Laboratory
- The Austin Police Department Forensic Science Service Division
- Cellmark Forensics (private)
- The University of North Texas, Health Science Center, DNA Identity Laboratory

In lieu of submission to DPS, the Houston Police Department Crime Laboratory has declared it will facilitate the testing of its 6,663 identified kits through a combination of outsourcing and in-house analysis.

An assumption is made that other agency laboratories listed above will work their own cases as well. Based on that assumption, the DPS expects to receive and analyze evidence in 10,000 cases. DPS has two alternative plans submitted for completing the analysis.

- The first option will be to outsource all the analysis, and then have DPS personnel enter the DNA profiles into the CODIS DNA database. The outsourcing option is likely to take six months to obtain a contract with a private DNA laboratory and an additional six month ramp up time, due to the volume, for that laboratory to commence testing. The testing of evidence is then expected to take two years. The total estimated timeframe for completion with this option is three years.

- The second option will be for DPS to employ a sufficient number of additional forensic scientists and support staff to complete the DNA testing in-house. Once funding is provided, it will take one year to employ and train personnel. Two additional years will be required to complete the DNA testing. The total estimated timeframe for completion with this option is three years.

The aforementioned options are incorporated as Exceptional Item #15 in the DPS Legislative Appropriation Request (LAR) to the 83rd Legislature.

Statewide, the overall timeline for complete testing of all SB 1636 kits - whether analyzing in-house, outsourcing, or a combination - is estimated at three years.

Required Funding:

For DPS, the first option is a plan to out-source the screening and DNA testing of the evidence in the 10,000 cases to one or more accredited private forensic DNA testing laboratories. The estimated cost for a private laboratory to perform screening (detecting biological evidence from which to recover DNA) is \$400 on average for a sexual assault case. The estimated average cost for the subsequent DNA testing is an additional \$1,250 per case. All 10,000 cases will require the screening step. It is estimated that through the screening process, analysts will discover no semen or other male tissue in 30% of the cases to provide for DNA testing. Therefore, we estimate actual DNA testing will be required on evidence in 7,000 cases.

Screening 10,000 cases @ \$400/case:	\$4,000,000.00
DNA testing of 7,000 cases @ \$1,250/case:	\$8,750,000.00
DPS case review and CODIS database work:	\$700,000.00
Total cost for Option 1:	\$13,450,000.00

For DPS, the second option is a plan to conduct all testing of the evidence in the 10,000 cases in-house. This would require adding twenty-five (25) personnel, as well as additional equipment.

	YR1	YR2	YR3
Salaries at \$46,652/yr/FTE	\$1,419,375.00	\$1,419,375.00	\$1,419,375.00
Fringe benefits @ 29.74%	\$453,250.00	\$453,250.00	\$453,250.00
Supplies @ \$329/case		\$1,150,000.00	\$1,150,000.00
Other operating costs	\$500,000.00	\$500,000.00	\$500,000.00
Travel/training	\$50,000.00	\$50,000.00	\$50,000.00
Equipment	\$400,000.00		
Total cost of each year	\$2,822,262.00	\$3,572,625.00	\$3,572,625.00
Total cost for Option 2			\$9,967,512.00

DPS estimates the costs of other laboratories to complete testing in-house or out-source to be similar to the costs listed above.

Statewide, the estimated cost to complete testing on 20,000 kits through out-sourcing would be **\$26,900,000.00**.

Statewide, the minimum estimated cost to complete testing on 20,000 kits through in-house testing would be **\$13,267,512.00**. This figure includes the total DPS in-house option for 10,000 kits, plus the estimated cost for supplies and operating for two years for the additional 10,000 cases assumed to be worked in other local laboratories. Local laboratory estimates for additional staffing, training, and equipment costs cannot be estimated by DPS, but are likely necessary.

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September 5, 2013

Sheriff/Chief,

As you know, SB 1636 (82nd Session) required Texas law enforcement agencies to report to DPS the number of untested sexual assault kits in their custody originating from an offense committed between September 1, 1996, and July 31, 2011. DPS tallied those responses from your agencies and provided that information to the 83rd Legislature in a February 2013 report, also required by SB 1636.

In that report, DPS listed the existing accredited laboratories in the state that would be eligible to work these cases and the estimated cost to work the total estimated number of kits statewide. From that overall cost, DPS broke out the estimated number of kits DPS expected to receive from responding agencies that regularly utilize a DPS laboratory – as opposed those expected to be worked by agencies who normally utilize a non-DPS laboratory. Our exceptional item only covers funding for the kits we anticipated receiving, and no funding for non-DPS laboratories was provided.

However, based on several positive factors, it may still be possible to accomplish this entire initiative with the funding allocated to DPS. Some of those factors include: 1) DPS obtained grant funding in 2012, began working SB 1636 kits as we had overtime capacity in our eight DNA laboratories, and will have analyzed 1000 kits with that initiative; 2) Houston PD's effort to independently acquire their grant funding and work their own kits is a substantial factor; 3) a high percentage of negative findings at screening; and 4) an anticipated contract savings from the previous estimates.

Currently, DPS is not accepting additional SB 1636 kits. We are in the process of soliciting an open bid for contract services. Once the contract(s) are in place, we will provide each agency with instructions on submitting SB 1636 kits directly to the contracted vendor(s). Based on the exceptional item funding, DPS intends to first prioritize agencies that regularly utilize a DPS laboratory, and then include as many kits from non-DPS laboratory agencies as the funding will allow. Again, based on the aforementioned factors, we are hopeful the existing funding will cover the remaining statewide SB 1636 kits reported.

Respectfully,

A handwritten signature in black ink, appearing to read "Skylor Hearn".

Skylor Hearn, Assistant Director
Texas Department of Public Safety
Law Enforcement Support Division

SB 1636 Untested Sexual Assault Kit Initiative
Legislative Update – January 2015

As part of the SB1636 (82nd) statutory requirement, Texas law enforcement agencies have reported to DPS the existence of 18,975 total untested sexual assault kits applicable to the SB1636 statute.

In FY2013, DPS sought and was provided \$600,000 grant dollars from the Governor's Criminal Justice Division to begin testing in anticipation of the effort to come from decisions made in the 83rd session. DPS was able to analyze approximately 1,400 kits with that initiative – reducing the statewide number of SB1636 kits to ~17,575.

During the 83rd session, DPS provided the Legislature with a report on the estimated number of SB1636 kits in the state and the estimated cost to complete their testing. DPS anticipated receiving 10,000 kits from its usual customer agencies and the remainder being worked by the other accredited law enforcement labs in the state.

As requested by Exceptional Item, DPS was appropriated \$10.9 million to outsource the analysis of approximately 10,000 kits and hire five forensic scientists to review the case work and input any eligible data into the CODIS database.

No additional funding was provided to local labs to conducting testing of their agency's kits.

Beginning in September 2013, DPS began the extensive process of contracting with private laboratories to complete this initiative. It was anticipated the process would take 8-10 months to complete due to the complexity of the requirements and site visit/certification of the private laboratories by DPS laboratory staff.

During that period, the University of North Texas Health Science Center's DNA laboratory requested the opportunity to participate in the initiative. Since UNTHSC is already accredited by DPS and we work together on other DNA initiatives, an interagency contract was completed and UNTHSC began accepting SB1636 kits on June 1, 2014. The UNTHSC contract is for \$1,000,000.

In July 2014, two private laboratories were awarded contracts for the remaining outsourcing funds. Orchid Cellmark (Dallas) and Bode Technologies (Virginia) were each contracted for \$4,100,000 to perform analysis of SB1636 kits.

Two questions continue to be asked: "How many kits will you be able to work with \$10,200,000 (professional fees)?" or "How much does it cost to test one kit?" Due to the complexity of sexual assault kit testing, it is difficult to forecast an accurate dollars-to-kits ratio. There is no front-end "cost per kit" figure that is accurate. Kits must first be screened for DNA sources and then if a DNA source is discovered, those items are analyzed in a secondary process. This is best explained by looking the cost of service breakdown in the UNTHSC contract with DPS summarized below (from pages 10-11):

- Kit screening - \$300
- Kit screening for DNA including one evidence sample - \$650
- Analysis of additional semen positive sample - \$210
- Analysis of additional non-semen sample - \$180
- Analysis of reference sample - \$150

SB 1636 Untested Sexual Assault Kit Initiative
Legislative Update – January 2015

- Additional small item examination - \$50
- Additional large item examination - \$150
- Testimony – one day no charge. \$1,500 every additional day. \$1,500 per day for every additional employee subpoenaed.
- Travel expenses for testimony are paid by the requesting agency.
- Client consultation – one hour at no charge. \$250 per hour thereafter.

These are standard contract costs in the forensic science industry and the two private vendors have similar line items in their contracts. Therefore, every kit will require a fee of \$275-469 for screening and those with positive DNA findings could reach as high as \$1,400 or more per kit depending on the required testing based on the evidentiary content. Any required courtroom testimony incurs further costs, equivalent to the testing cost of 1-5 kits per day.

Despite the shortfall in overall funding, DPS believes it is still possible to complete the entire SB1636 initiative with the appropriated funding due to the first four factors listed below and if the final item remains true:

- DPS used grant funding to start the initiative in FY2013 and completed testing on approximately 1,400 kits
- Houston PD outsourced the testing of their 6,663 reported kits with their own funding. That reduced the overall number of kits to be tested to ~10,912.
- The contracted outsourcing costs are close to the estimated outsourcing costs provided to the legislature. (We didn't substantially miss the mark.)
- Approximately 40-50% of the kits tested so far have failed to provide DNA evidence that would require further examination and additional costs.
- No agencies come forward with a large number of unreported kits.

While UNTHSC began analyzing kits in June, the two private vendors' contracts allowed them 90 days to ramp up their services to meet our volume demands. All three outsourcing laboratories should be at full capacity by November 1, 2014. DPS is coordinating the efforts with the vendor laboratories and the local agencies.

DPS still anticipates it taking 24 months to complete the 1636 testing. Since the contracting process absorbed the bulk of the fiscal year, DPS will be requesting a Rider to forward any remaining project funds into FY2016 to complete the initiative.

DPS will provide monthly updates on the initiative beginning in December.