

# TEXAS DEPARTMENT OF PUBLIC SAFETY

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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. Patterson* 8/18/11

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