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Taking Sexual Assault Seriously: The Rape Kit Backlog and Human Rights

Chairman Cornyn, Senator Cruz, and other honorable members of this Senate subcommittee:

My name is Skylor Hearn, and I serve as an assistant director with the Texas Department of Public Safety (DPS). It is an honor to appear before this subcommittee today and participate in the dialogue on this critical issue of untested rape kits in the United States. My purpose today is to detail the achievements and progress underway in the State of Texas to address this issue and identify the successes, lessons learned, and remaining steps in our effort.

Issue Overview

This national issue relative to the thousands of untested sexual assault kits across the country has focused great attention on the rights of victims, criminal justice practices, law enforcement efficiency, and the crushing demand on forensic crime laboratories. The State of Texas has been proactive in identifying and seeking resolutions through state legislative action. What we have determined in Texas, which likely mirrors other parts of the nation, is that several causative factors contribute to these sexual assault kits not being tested.

Investigative or prosecutorial discretion is the most prevalent reason identified. Generally, this area covers two aspects: non-identity cases and non-acceptance cases. In non-identity cases, both the victim and the known suspect agree that a sexual act occurred; however, they argue whether it was consensual. The forensic processing of a rape kit in these cases provides no probative value. As such, many law enforcement agencies choose not to conduct forensic testing on these kits as a matter of investigative expediency and financial efficiency.

In non-acceptance cases, many victims decide not to pursue charges for a variety of reasons. Prosecuting attorneys also assess the perceived credibility of suspects, victims, and witnesses to these crimes and may determine that a successful prosecution is unattainable regardless of the potential forensic evidence. In both of these scenarios, if the determination is made early in the investigation, then it is unlikely the rape kit would be submitted and analyzed by a forensic laboratory. Other causative factors include a lack of resources within law enforcement agencies and forensic crime laboratories to facilitate appropriate submission and timely analysis, as well as reported allegations of negligence on behalf of law enforcement agencies for a lack of appropriate procedures and evidence preservation.

While many of these causative factors for not testing every rape kit are legitimate in the criminal justice system from an individual case perspective, the predatory aspect of those who perpetrate sexual assault requires greater scrutiny to effectively address the impact to human rights posed by these criminals and their acts. The shifting nature of the nation's population and the

transitory nature of some sexual predators have resulted in the need to view these crimes in a different light. There are many scenarios where serial offenders could escape detection by targeting a specific class of victim or by committing crimes across multiple jurisdictions. What could be viewed as an isolated date rape incident by one jurisdiction may be the work of a serial date rapist with similar allegations in other cities and in other states. This is the dynamic landscape of sexual assault investigations we face today.

### Texas Legislation

The formal effort to address these issues in Texas began with legislative action during the state's 82<sup>nd</sup> Legislative Session in 2011. The enabling legislation, Senate Bill 1636, addressed several important areas surrounding the issue of untested rape kits. First and foremost, the legislation established an end point for discretionary rape kit testing. Effective August 1, 2011, every sexual assault kit collected as part of a criminal investigation is required to be submitted to a forensic crime laboratory within 30 calendar days and testing must be completed. This critical step eliminated the potential for future kits to go untested. The legislation did not mandate a timeframe or priority on the analysis of the kits.

The legislation then statutorily defined "active cases" based on the existing statute of limitations under Texas law. This step sought to ensure that untested rape kits from closed or suspended criminal investigations based on agency or prosecutorial nomenclature were not excluded from the initiative. Based on the language, the statute required analysis of untested kits even if a prosecution had already been completed and a defendant was convicted or acquitted.

The statute required every law enforcement agency and forensic laboratory in the state to audit and report the total number of applicable untested rape kits in its possession to DPS. The legislation provided 45 days for this audit and reporting to be completed. As a lesson learned, 45 days was not long enough for larger agencies with greater volumes of sexual assault cases to complete this action. Most law enforcement agencies do not have an electronic database of case evidence that specifically identifies if the evidence was submitted to a crime laboratory and whether or not it was analyzed. That type of information is maintained in case folders. Therefore, law enforcement agencies were required to review every sexual assault case folder individually to determine if there was a rape kit collected, if it was applicable to the initiative, and if it remained untested. This effort resulted in many agencies missing the reporting deadline. However, most agencies were diligent in their efforts and completed their reporting as soon as possible.

### Findings and Funding

The legislation required DPS to provide a report to the 83rd Texas Legislature in 2013. As a result of law enforcement reporting at the time of the report, Texas identified over 15,000 applicable untested rape kits statewide with the majority, not surprisingly, located in the major urban areas. However, based on informal communication with agencies and other crime laboratories – as well as the latency in reporting - DPS believed and stated in the report that the total number could actually be as high as 20,000 kits. As of May 2015, the number of reported untested rape kits has climbed to more the 20,000.

Of the total reported kits, approximately 6,600 belonged to the City of Houston. To their credit, the city identified internal funding as well as grants to outsource the testing of their kits. Their effort to complete the testing, verifications, and investigative follow-up continues.

In 2013, the 83<sup>rd</sup> Texas Legislature appropriated funding to DPS to coordinate and outsource the remainder of the statewide untested rape kit initiative. This process is fully underway, and we expect to complete the testing portion of the initiative on every applicable rape kit in Texas by November 2016.

### Early Results

Prior to the appropriations provided by the Texas Legislature, DPS obtained grant funding from the Texas Governor's Office to begin analyzing these cases. With those grant funds, DPS completed testing on approximately 1,700 kits. Some of those initial results include:

- Testing produced CODIS eligible samples in approximately 350 cases or in 20 percent of the analyzed kits.
- Approximately 40 percent of those eligible samples resulted in CODIS matches.
- Several matches were made to a convicted offender where no suspect was previously identified.
- Several matches linked one case to another case with the offender still unknown.
- Over 50 percent of the matches were confirmatory. The same defendant convicted for that case was identified by DNA located in the rape kit.
- In 40-50 percent of rape kits analyzed, no foreign DNA was discovered.

With the outsourcing under way, over 1,300 additional rape kits have been analyzed under the state-funded initiative through March 2015. No CODIS information from the outsource testing is available at this time, but DPS expects similar results from the overall testing as seen in the smaller sampling. It is important to remember that a CODIS match does not guarantee a prosecution or a conviction. Many of the same discretionary issues previously detailed that could prevent a successful prosecution could remain applicable.

To increase the transparency of the effort and aid those seeking information on the status of the initiative, DPS posts its outsourcing status sheet on our public website. The data is updated monthly as invoices are received. Our latest figures are included as an attachment to this testimony and a link to the website is provided below.

<http://dps.texas.gov/CrimeLaboratory/documents/sb1636OutsourceStatusRpt.pdf>

### Next Steps

The Texas legislation has addressed two of the three core issues with untested rape kits: 1) it ended discretionary testing practices to prevent this issue from resurfacing in the future, and 2) it is facilitating the forensic analysis of the untested kits. The third core issue is the effective, efficient, and timely analysis of forensic evidence going forward.

Mandatory submission and testing of sexual assault kits impacts forensic laboratory services. Laboratories will continue to need additional funding for personnel, resources, and instrumentation to meet the ever-increasing demands of forensic case work. While validated

rapid DNA (rDNA) instruments will be a reality in 18 to 24 months, unfortunately they will not be beneficial in this effort. The rDNA instruments will only expedite the analysis of known offender and sole contributor samples. The rDNA instruments cannot be used for analyzing evidentiary crime scene samples with mixed genetic profiles.

Today, DPS reports CODIS matches to the submitting law enforcement agency or local laboratory, but we have no further insight into the outcome or disposition of the match. This “blind” notification system creates the potential that important leads could be missed and never investigated. Those important leads can be exculpatory as well as inculpatory. The current match notification system also prohibits our ability to report metrics on the effectiveness and efficiency of this initiative to state legislative or congressional bodies that appropriate its funding. To address this issue, state CODIS laboratories must have electronic case management and reporting systems that facilitate joint access to laboratories, law enforcement agencies, and prosecuting attorneys. CODIS matches reported to a submitting law enforcement agency or local laboratory must be updated regarding any investigative closure or prosecution and the resulting dispositions. DPS is currently in the process of acquisitioning such a system.

### Conclusion

While the efficiencies of this initiative can be argued, the forensic results are unequivocal. Forensic DNA evidence from untested rape kits is linking known offenders to reported crimes. Forensic DNA evidence from untested rape kits is linking previously unassociated cases together and identifying serial offenders. From a victim’s rights or human rights perspective, this initiative could result in an extraordinary impact in providing a measure of justice for current victims and in the prevention of future crimes and victimization.

Data Valid Through April 1, 2015

DPS Lab Region	Agency	# SA Cases Reported to DPS	# Cases Completed by DPS prior to outsource contracts	To Be Outsourced	Outsource Complete
Austin					
	Alamo PD, San Antonio	2	2	0	
	Austin PD	1204		1204	
	AISD PD	10		10	
	Bandera Co SO		1	0	
	Balcones Heights PD		1	0	
	Bartlett PD	none to report		N/A	
	Boerne PD	none to report		N/A	
	Bryan PD		19	0	
	Cedar Park PD	14	14	0	
	College Station PD	48		48	
	Comal Co SO	1	7	0	
	Devine PD	1	2	0	
	Elgin PD	4		4	
	Florence PD	none to report		N/A	
	Georgetown PD	5		5	
	Giddings PD	7	7	0	
	Granger PD	none to report		N/A	
	Hallettsville PD	1		1	
	Helotes PD	1	1	0	
	Hutto PD	none to report		N/A	
	Jarrell PD	none to report		N/A	
	Johnson City PD	2	2	0	
	Kendall Co. So	none to report		N/A	
	Kyle PD	4		4	
	Lakeway PD	2	2	0	
	Leander PD	3	3	0	
	Liberty Hill PD	none to report		N/A	
	Llano PD	1	1	0	
	New Braunfels PD	2	3	0	
	Pflugerville PD	2		2	
	Round Rock PD	54	40	14	
	San Antonio PD	2077	515	1830	71
	San Marcos PD	39	3	36	35
	Schertz PD	none to report		N/A	
	Schulenburg PD		2	0	
	Seguin PD	31	11	20	
	SouthWestern Univ PD	3	3	0	
	Taylor PD	22	20	2	
	Texas A&M Univ PD	5		5	5
	Thrall PD	none to report		N/A	
	Travis Co. SO	365	2	363	
	Universal City PD	8	13	4	4
	Williamson Co SO	85	57	28	
	Austin Totals	4003	731	3580	115
Corpus Christi					
	Atascosa SO	2	3	0	
	Bishop PD	4		4	
	Corpus Christi PD	207	3	204	
	Dimmit Co SO		3	0	
	Ingleside PD	13	2	11	
	Jim Wells SO	1	1	0	
	Kennedy Co SO		1	0	
	Mathis PD		1	0	
	Port Lavaca PD	10	10	0	
	Refugio PD		1	0	
	Rockport PD	12			
	Victoria PD	107	2	105	
	Victoria SO	15	9	6	
	Corpus Totals	371	36	330	0
El Paso					
	El Paso PD	27	28	0	

Data Valid Through April 1, 2015

	El Paso SO	27	81	0	
	Socorro PD	26	0	27	10
	El Paso Totals	80	109	27	10
Garland					
	Addison PD	4	0	4	
	Allen PD	20	15	1	2
	Anderson Co SO	3	3	3	3
	Athens PD	2	2	0	
	Carrollton PD	36	16	3	1
	Dallas PD	4144	0	4144	551
	Denton PD	12	10	9	9
	Denton Co. SO	5	4	0	
	DeSoto PD	20	10	2	8
	Duncanville	2	0	2	2
	Ellis Co. SO	12	0	12	
	Farmers Branch PD	31	2	28	11
	Flower Mound PD	1	0	1	
	Fort Worth PD	1018	0	1018	264
	Frisco PD	12	1	1	12
	Garland PD	18	2	16	16
	Haltom City PD	8	0	8	10
	Harrison Co. SO	2	2	0	
	Henderson PD	30	0	30	8
	Italy PD	2	0	2	
	Lewisville PD	31	0	31	29
	Marshall PD				1
	McKinney PD	17	18	17	17
	Morris Co. SO	3	1	1	1
	Paris PD	9	0	9	8
	Parker SO	5	4	0	
	Richardson PD	20	5	17	3
	Roanoke PD	2	2	2	2
	Seven Points PD	5	0	5	
	Sherman PD	35	33	33	32
	TDCJ OIG	2	1	0	
	Terrell PD	1	3	0	
	The Colony PD				22
	Tyler PD	30	29	0	
	UT Dallas PD	1	0	1	1
	Winnsboro PD	1	1	0	
	Waxahachie PD	38	0	38	34
	Wood Co SO	1	1	1	1
	Garland Totals	5583	165	5439	1048
Houston					
	Beaumont PD	none to report		N/A	
	Conroe PD	75		75	
	Galveston Co. SO		1	0	
	Harris Co DA	1		1	
	Houston PD	6663	N/A	N/A	
	Lufkin PD	28	29	0	
	Nacogdoches PD	42		42	
	Orange PD	9		9	
	Pasadena PD	67	45	22	
	TDCJ OIG - Reg E	10	10	0	
	Houston Totals	6895	85	149	0
Lubbock					
	Abilene PD	309		309	
	Amarillo PD	952	10	942	8
	Big SPRING P.D.	8	8	0	
	Borger PD	32	40	8	18
	Colorado City PD	2		2	
	Dumas PD	5		7	
	Hardeman County SO	none to report		N/A	
	Lockney PD	none to report		N/A	
	Lubbock -Cooper ISD PD	none to report		N/A	

Data Valid Through April 1, 2015

	Lubbock PD	205	81	0	1
	Lubbock SO	9		9	
	Midland PD	197	129	30	58
	Odessa PD	60	1	76	
	Plainview PD	11	11	0	
	Potter Co. SO	18		18	
	Randall Co. SO	28		28	
	San Angelo PD	138	99	53	6
	Snyder PD	none to report		N/A	
	Stratford PD	1	1	0	
	Sweetwater PD			10	10
	TDCJ OIG Region C	2		2	
	Texas Tech PD	none to report		N/A	
	Tom Green SO	11	11	0	
	Texas A&M PD	1			
	TX Rangers	2		2	
	Vernon Police Dept	2		2	2
	West Texas A&M PD	1		0	
	Lubbock Totals	1994	391	1498	103
	Weslaco				
(McAllen)	Edinburg PD	18	9	0	
	Pharr PD	9	9	0	
	McAllen PD	102	10	70	
	Mission PD	59	0	59	
	Weslaco Totals	188	28	129	0
	Waco				
	Belton PD	5	4	1	
	Commanche PD	none to report		N/A	
	Copperas Cove PD	89	68	21	
	Corsicana PD	38		38	
	Coryell Co SO	7	7	0	
	Gatesville PD	2	5	0	
	Harker Heights P.D.	152		152	
	Hewitt PD	2		2	
	Hill Co SO	27	28	0	
	Hood Co S.O.	3		3	
	Killeen P.D.	233	96	137	
	Lacy Lakeview P.D.	4		4	
	Mills Co S.O.	1		1	
	TDCJ OIG	1		1	
	Temple PD	48		48	
	T.S.T.C.	none to report		N/A	
	Waco P.D.	19		19	
	Whitney P.D.	2		2	
	Waco Totals	633	208	429	0
As of 04/17/15					
Totals	# Agencies 155	19747	1753	11581	1276

Note: all numbers are approximate.

Note: Requests for information regarding the probative nature of any testing that was done, the determination of any investigative information that was revealed, or the use of any of the testing results for investigative or prosecutorial use should be directed to the individual law enforcement agencies.