



Austin Police Department

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February 4, 2019

To: Mike Lesko, Deputy Assistant Director, Texas DPS Crime Records Services
From: Brian Manley, Chief of Police, Austin Police Department
Subject: Response to DPS Uniform Crime Reporting Audit Report 01-11-2019

I want to thank DPS and your Incident Based Reporting team for conducting the audit of APD's use of the UCR Exceptional Clearance code. Upon receipt of the final audit findings, APD assembled an internal review team to review the findings and provide a response. The team began their review on January 4, 2019, and included a collaboration meeting with the DPS IBR Audit Team on January 22, 2019, although their collaboration with DPS continued informally throughout the process.

Of the 95 cases that DPS audited, twenty-nine offenses were correctly classified and scored, and required no follow-up, and one offense labeled as an Internal Affairs incident was not reviewed. This table summarizes the team's findings of the remaining 65 offenses:

	# of Offenses	Concur	Did not Concur
Hierarchy Rule	5	2	3
Misclassification of Rape Offenses	14	12	1*
Use of Unfounded Clearance	14	13	1
Use of Exceptional Clearance	30	28	2
Timely Clearance	2	2	0
TOTALS	65	57	7

* Upon review, one case was found to be cleared by the Arrest clearance code, not the Exceptional clearance code. Therefore, we did not include it in the Misclassification totals.

APD initiated several proactive measures ahead of DPS's audit report and later as a result of its findings:

- Before the release of the audit report, APD detective unit personnel received a two-hour refresher, covering the basics of clearance codes with an emphasis on the use of the exceptional clearance code in a "train-the-trainer" model. The Internal Review Team also attended the refresher. The curriculum was approved and audited by the DPS Audit Team.
- APD strengthened its case clearance policy (*G.O. 406 Case Clearance*) by providing more explicit guidance to detectives and supervisors by:
 - Ensuring that supervisors review and approve case clearance codes for accuracy through the use of an approval checkbox within the report.
 - Requiring detectives to complete a detailed supplemental report using a predefined template that ensures that cases comply with all four prongs necessary to substantiate a clearance code of "exceptional."
- APD supplemented the Sex Crimes Unit with an additional supervisor, expanding the total to three. This smaller span of control will aid in the oversight and management of 17 Sex crimes detectives who have a complex variety of tasks in these types of investigations.
- APD and DPS have also strengthened their relationship through this process and have worked together in the spirit of collaboration by:
 - Providing points of contact within each organization to serve as a resource for APD personnel to contact with case clearance questions.
 - DPS appreciated the discussion with APD in regards to our Department's philosophy of "believability versus provability" when deciding the proper case clearance for sexual assault offenses. Both agencies agreed that while unfounded or suspended cases should not receive an exceptional case clearance, it is APD's prerogative on choosing whether to unfound or suspend a case based on our philosophy of "start by believing."¹ APD concurred with 13 of the 14 offenses reviewed by DPS that the case should not have received an exceptional clearance code, but in 9 instances, APD believed the cases should have been suspended as opposed to cleared with an unfounded clearance code. Moving forward, APD will review the totality of the circumstances in cases where the victim recanted and either suspend or unfound based on the specific facts of each case. In either instance, whether the case is suspended or unfounded, it can be reopened at any time for further investigation.

The Austin Police Department is a learning organization and continually strives toward improving our internal processes. The internal review team conducted a root cause analysis to seek out any particular patterns or trends that they could identify (acknowledging that 65 cases are a small sample size).

- Several UCR misclassifications of rape offenses occurred because the UCR definition of rape and the Texas Penal Code definition of Sexual Assault differ.
Example 1 – Consensual sex between a 16-year-old and 12-year-old violates *Texas Penal Code 22.021 Aggravated Sexual Assault*² because the 12-year-old victim was

¹ <https://www.startbybelieving.org/>

² <https://statutes.capitol.texas.gov/Docs/PE/htm/PE.22.htm#22.021>

younger than 14 years of age, cannot legally consent, and there is no affirmative defense for the suspect. However, for **UCR reporting purposes**, it was consensual and therefore not a reportable rape under the UCR definition. APD merely reported the offense under the incorrect classification.³ Statutory rapes are reported as Other Sex Offenses (See Appendix).

Example 2 – Consensual sex between a 19-year-old and 15-year-old violates Texas Penal Code 22.011 Sexual Assault because the 15-year-old victim was younger than 17 years of age, cannot legally consent, and the suspect was more than three years older, not meeting the affirmative defense. However, for **UCR reporting purposes**, it was not a reportable rape under the UCR definition. APD merely reported the offense under the incorrect classification. Statutory rapes are reported as Other Sex Offenses (See Appendix).

Many improper uses of the exceptional clearance code were as a result of a misunderstanding that clearing cases solely for one of these two reasons does not by itself qualify.

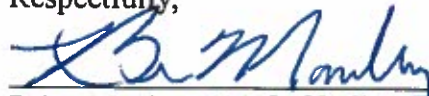
- Lack of victim cooperation that led to a lack of probable cause to pursue the investigation.
- Declinations of prosecution due to the lack of probable cause.

Example – Clearing cases exceptionally due to a lack of victim cooperation (prong 4) does not by itself qualify. The investigator must still answer yes to prongs 1-3. Most often, the investigator did not meet the probable cause requirement due to a lack of victim cooperation (prong 2), which required an unfounded or suspended case clearance.

The internal review team reviewed five offenses under the “Use of Exceptional” section that did not meet any criteria (zero prongs) to justify an exceptional clearance code according to DPS. APD agrees that these five cases did not justify the use of the exceptional clearance code. However:

- The team noted that all five offenses contained at least one prong.
- All five offenses contained an identified suspect (prong 1). Investigators were able to interview and obtain statements in three of these offenses.

Respectfully,



Brian Manley, Chief of Police
Austin Police Department

³ <https://ucr.fbi.gov/nibrs/summary-reporting-system-srs-user-manual>

**Appendix
Table of UCR Definitions**

Cleared by Exceptional Means (Page 115 of the UCR Manual)

In certain situations, law enforcement is not able to follow the three steps outlined under "Cleared by Arrest" to clear offenses known to them. Often they have exhausted all leads to clear a case. If agencies can answer all of the following questions in the affirmative, they can clear the offense *exceptionally* for the purpose of reporting to UCR.

1. Has the investigation definitely established the identity of the offender?
2. Is there enough information to support an arrest, charge, and turning over to the court for prosecution?
3. Is the exact location of the offender known so that the subject could be taken into custody now?
4. Is there some reason outside law enforcement control that precludes arresting, charging, and prosecuting the offender?

**17. Sex Offenses (Except Rape and Prostitution and Commercialized Vice)
(Page 163 of the UCR Manual)**

This classification includes offenses against chastity, common decency, morals, and the like.

The ability of the victim to give consent is a professional determination by the LEA. The age of the victim, of course, plays a critical role in this determination. Individuals do not mature mentally at the same rate. Certainly, no 4-year old is capable of consenting, where victims aged 10 or 12 may need to be assessed within the specific circumstances.

Sexual attacks on males are included in this classification. However, depending on the nature of the crime and the extent of the injury, the offense could be classified as an assault.

This classification includes all sex offenses except rape and prostitution and commercialized vice.

Agencies include in this classification:

Adultery and fornication
Seduction
Buggery
Fondling
Incest
Statutory rape (no force)
Indecent liberties

Indecent exposure
Attempts to commit any of
the above

UCR Rape Definition (Page 174 of the UCR Manual)

Rape— Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.