

RESOLUTION

WHEREAS, the Austin City Council recognizes that work must be done at a societal level to reduce incidence of sexual assault and to help heal victims; and

WHEREAS, the Austin City Council recognizes the complexity of the work the Austin Police Department's (APD) Sex Crimes Unit performs and the expertise and dedication of the members of the Unit, and wishes to uplift their work with the best resourcing, training and support; and

WHEREAS, per the APD's final annual crime and traffic report for 2017, Austin had 834 reported rapes in 2017, a 12% increase from 2016 (747); and

WHEREAS, sexual assault continues to be a severely underreported crime—only 9.2% of victims report their experience to the police according to the Institute of Domestic Violence and Sexual Assault; and

WHEREAS, sexual assault victims must live with the consequences of their assault and are more likely to experience certain medical conditions; victims are almost twice as likely as non-victims to suffer from asthma (20.9% versus 12.5%), frequent headaches (21% versus 11%), irritable bowel syndrome (9% versus 4.2%), and chronic pain (20.3% versus 9.9%); and

WHEREAS, in October 2018, the APD completed initial testing of its more than 4,000 rape kit backlog dating back to the 1990's; and

WHEREAS, thousands of those rape kits still await Combined DNA Index System (CODIS) technical review and entry into the CODIS database, a process that at current pace will take years; and

1 **WHEREAS**, the Center for Investigative Reporting and ProPublica reported
2 in November 2018 that between 2012 and 2017, more than 1,400 sexual assault cases
3 were exceptionally cleared by the APD, with no arrests; and

4 **WHEREAS**, the Center for Investigative Reporting and ProPublica reported
5 in November 2018 that two out of three cleared rape investigations were closed by
6 exceptional means in 2016; and

7 **WHEREAS**, Exceptional Clearance, as per the Federal Bureau of
8 Investigation (FBI), refers to cases that meet one of the following criteria:

9 Cleared by exceptional means in certain situations, elements beyond law
10 enforcement's control prevent the agency from arresting and formally charging the
11 offender. When this occurs, the agency can clear the offense exceptionally. Law
12 enforcement agencies must meet the following four conditions in order to clear an
13 offense by exceptional means. The agency must have:

- 14 ● Identified the offender.
- 15 ● Gathered enough evidence to support an arrest, make a charge, and turn
16 over the offender to the court for prosecution.
- 17 ● Identified the offender's exact location so that the suspect could be
18 taken into custody immediately.
- 19 ● Encountered a circumstance outside the control of law enforcement that
20 prohibits the agency from arresting, charging, and prosecuting the
21 offender; and

22
23 **WHEREAS**, according to the FBI, examples of exceptional clearances
24 include, but are not limited to, the death of the offender (e.g., suicide or justifiably
25 killed by police or citizen); the victim's refusal to cooperate with the prosecution
26 after the offender has been identified; or the denial of extradition because the

1 offender committed a crime in another jurisdiction and is being prosecuted for that
2 offense. In the FBI's Uniform Crime Reporting Program, the recovery of property
3 alone does not clear an offense; and

4 **WHEREAS**, "Victim-centered" is defined by the U.S. Department of Justice
5 as the systematic focus on the needs and concerns of a victim to ensure the
6 compassionate and sensitive delivery of services in a nonjudgmental manner. A
7 trauma-informed approach considers the impact of trauma and victim safety
8 considerations. This approach includes integrating provisions for prioritizing and
9 protecting victims' privacy; and

10 **WHEREAS**, further incorporating healing-centered and survivor focused
11 approaches into City processes that serve survivors of sexual assault has the potential
12 to yield wider successes for clearing sexual assault, has the potential to improve
13 survivor cooperation with the investigation, and therefore may positively impact the
14 exceptional clearance classification rate; and

15 **WHEREAS**, the Council lacks a regular structure for direct data reporting to
16 inform its policy decisions for public safety matters and data that is regularly
17 reported may not meet the need for decision making by policy makers; and

18 **WHEREAS**, the City would benefit from analyzing, determining and
19 addressing best practices with respect to victim healing and survivor focused
20 approaches and the barriers that might exist to their implementation; and

21 **WHEREAS**, the APD has taken steps toward improvement by requesting and
22 receiving an audit from the Department of Public Safety concerning its classification
23 of closed sexual assault cases as cleared exceptionally, yet the root causes of above-
24 average rates of exceptional clearance, the lack of complete testing of some rape

1 kits, low rates of reporting and prosecution may not be revealed by this limited
2 review by a peer institution; and

3 **WHEREAS,** current victim cooperation rates may point to systemic
4 problems; and

5 **WHEREAS,** the APD has expressed a need and commitment to a
6 comprehensive third-party review of the full process of the disposition of sexual
7 assault cases starting with their initial entry to the department; and

8 **WHEREAS,** one of the core responsibilities of the municipal government and
9 the local police department in dealing with sexual assault is to maintain public trust
10 by ensuring that survivors receive justice and to help their healing process by being
11 careful not to retraumatize them, all while ensuring due process; **NOW**

12 **THEREFORE,**

13 **BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

14
15 The City Manager is directed to undertake a comprehensive evaluation of how
16 reported sexual assaults are investigated and processed, including why a number of
17 reported cases do not proceed to prosecution within the criminal justice system.

18 The evaluation shall examine at minimum either 200 sexual assault cases or
19 fifty percent of sexual assault cases from each year, whichever number is greater,
20 for each of the prior seven years of sexual assault case reports from adult victims
21 who reported to the APD (excluding cases that are being actively investigated or
22 pending in court). The evaluator may at any point use their discretion to examine
23 cases beyond this minimum threshold. In addition, cases examined shall be
24 representative of the diversity of cases from each year taking care that they: represent
25 a cross section of investigators investigating cases in each year, include different

1 victim types, and include both cases that did and did not move forward to
2 prosecution. The evaluator may add to the aforementioned list of criteria as per their
3 professional judgement in order to ensure a diversity of cases are examined.

4 At a minimum, the evaluation shall include a look into the following data and
5 dimensions involved in the processing and investigation of a sexual assault case at
6 the APD:

- 7 1. Interviews with sexual assault survivors who made reports to the APD about
8 their experiences with the investigative process, interviews with current and
9 former sworn officers and civilian staff involved with cases, staff from other
10 agencies involved with cases (as available), local subject matter experts,
11 entities that work directly with sexual assault survivors and all materially
12 relevant stakeholders as available;
- 13 2. The degree to which the APD is adhering to state and federal law with regard
14 to the investigation and reporting, including but not limited to:
 - 15 a. Evidence collection, prioritization, storage, testing, and handling;
 - 16 b. Victim notification;
 - 17 c. Confidentiality/privacy;
 - 18 d. Interagency communications and cooperation;
 - 19 e. Case triage and prioritization;
- 20
21 3. A review of policies and practices with respect to adult sexual assault cases to
22 ensure that these do not promote bias based on gender, race, disability, or
23 LGBTQ status of the victim and to ensure that these include the use of victim-
24 centered practices (including but not limited to policies and practices with

1 respect to the investigation, interview practices, record keeping, nature and
2 frequency of victim contact, etc.);

3 4. Whether the APD is adhering to national best practices in adult sexual assault
4 investigation (i.e., timing and process for interviews, the use of soft rooms to
5 interview victims, trauma-informed interview techniques, contacting and
6 interviewing suspects, and suspect exams for evidence collection, etc.);

7 5. The thoroughness, consistency, and completeness of record keeping across
8 staff in the Sex Crimes Unit currently and over time consistent with national
9 best practices, such as those from the International Association of Chiefs of
10 Police;

11 6. A review of the treatment given to sexual assault cases and victims of sexual
12 assault in drug or alcohol involved or facilitated sexual assault cases in order
13 to ascertain that these cases and victims do not receive inappropriate
14 differential treatment because of the drug or alcohol involvement or
15 facilitation;

16 7. Whether the APD consistently applies policies and practices with respect to
17 stranger and non-stranger sexual assault;

18 8. The accuracy of case clearance decisions and long-term data regarding the
19 ways in which adult sexual assault cases are cleared;

20 9. The appropriateness of current staffing and training provided, and budgets
21 regarding adult sexual assault in relation to caseload, staffing formulas and
22 other units within the agency;

1 10. Documentation of current policies regarding issuing warrants and filing cases
2 regarding sexual assault, and any issues that exist with these;

3 11. Issues regarding current policies or lack thereof for adult sexual assault cases,
4 including, but not limited to:

5 a. How the case was communicated by the APD to the prosecutor's office,
6 and how the case was staffed by the APD;

7 b. Whether the APD has appropriate requirements in place regarding
8 follow-up investigation or interviews to address any concerns or need
9 for further evidence that prosecutors may have about a case, including
10 the number of attempts required and the extent to which these
11 interactions are victim-centered and trauma-informed and how/if
12 victim services is involved in these interactions;

13 c. Whether the APD appropriately obtains and effectively implements
14 specialized training for investigators and their chain of command on
15 sexual assault, victim interviewing techniques, interpersonal violence,
16 and trauma, and whether known best practices are being employed and
17 to what extent they are being implemented effectively;

18 d. Whether the APD has appropriate practices or policies in place
19 regarding documentation of written and verbal communication with the
20 District Attorney's Office about decisions made on sexual assault cases.

21 **BE IT FURTHER RESOLVED:**

22 This evaluation shall be conducted by a nationally recognized, non-
23 governmental entity or multidisciplinary team with demonstrated knowledge and
24 expertise in the investigation and prosecution of adult sexual assault in the United

1 States. Allowable exceptions include universities who may be governmental. No
2 chosen entity, individual or multidisciplinary team, regardless of type, shall have a
3 conflict of interest.

4 The selected entity must have demonstrated knowledge and expertise to
5 provide a comprehensive and multidisciplinary evaluation of and comprehensive
6 report regarding the processing and investigation of adult sexual assault cases
7 reported to the APD over the past seven years. The selected entity must demonstrate
8 previous successful experience evaluating similarly sized organizations and/or
9 communities on their handling of reported adult sexual assaults.

10 The selected entity will have a demonstrated commitment to engage with the
11 public, governmental stakeholders, and non-governmental stakeholders in the
12 process of evaluating a governmental agency's response to public health and public
13 safety issues.

14 Exhibit A provides known potential entities and individuals that may meet the
15 criteria.

16 The City Manager is directed to determine appropriate funding sources and
17 bring the resulting contract forward for approval.

18 The City Manager shall develop this contract with input from the Commission
19 for Women and the Public Safety Commission, as allowable by the City's
20 purchasing rules. The City Manager shall select the contractor best qualified and
21 suited to conduct the independent evaluation and report mandated by this resolution.
22 The department under evaluation shall not select its own evaluator for this contract
23 as it is the subject of the evaluation.

1 If after completing market research for a prospective solicitation, it is
2 determined any specification within this resolution cannot be met as stated, the City
3 Manager shall return to Council with a recommendation for a way forward.

4 **BE IT FURTHER RESOLVED:**

5 A written report shall be completed by the selected third-party entity. An
6 update on the progress of the evaluation shall be returned to Council within six
7 months of the adoption of this resolution. The update shall include a timeline for full
8 completion. The setting of a final date for completion shall not preclude intermediate
9 reports to Council and the implementation of recommendations included in those
10 intermediate reports.

11 **BE IT FURTHER RESOLVED:**

12 The written report shall be posted in a prominent place on the City's website.
13 The report shall not be redacted prior to its publication except for redactions needed
14 to comply with the law to maintain anonymity and privacy of individuals otherwise
15 identified in the report.

16 **BE IT FURTHER RESOLVED:**

17 The report shall be delivered and presented by the third-party entity
18 conducting the evaluation to the Public Safety Commission and the Commission for
19 Women at the next scheduled meeting or at a special-called meeting of those
20 commissions. Any other commission may receive a formal presentation by the
21 Office of the City Manager as mutually scheduled.

22

1 **BE IT FURTHER RESOLVED:**

2 The report shall include findings of the information reviewed as detailed
3 above in this resolution accompanied by corresponding data sets.

4 **BE IT FURTHER RESOLVED:**

5 The report shall include recommendations relevant to the entire life cycle of
6 sexual assault cases with the APD, such that the City may implement these
7 recommendations in order to improve system responses for survivors of sexual
8 assault such that justice is best ensured. These include, but are not limited to,
9 recommendations on:

- 10 ● How the City of Austin could make the process of reporting and cooperating
11 with a case more accessible and responsive to public needs;
- 12 ● Opportunities to address issues or shortcomings, including opportunities to
13 test ideas to help the City to deliver a more accessible and responsive service
14 to sexual assault survivors;
- 15 ● Possible changes to internal policies;
- 16 ● Possible changes to current practices;
- 17 ● Possible changes to current training or the implementation of new training;
- 18 ● An action plan for how the APD should implement recommended policies,
19 practices, and training;
- 20 ● Possible changes or enhancements to organizational staffing practices and
21 policy (for both sworn and civilian staffing);
- 22 ● Opportunities for better working conditions, facilities, tools and resources for
23 both civilian and sworn staff in working sexual assault cases or with sexual
24 assault victims at the APD;
- 25 ● The necessary frequency of case reviews and audits, including recommended
26 content of case reviews and audits (led internally by the APD or external to
27 the Department), and the sharing of data and findings from these reviews and
28 audits to the Council and the public;

