

RESOLUTION NO. 20190131-077

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, for the purposes of this resolution, "sexual assault" is defined by the Texas Penal Code Sec. 22.011; 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 emotional and medical consequences of their assault, which are often chronic and severe; lifetime prevalence of post-traumatic stress disorder (PTSD) in women who are sexually assaulted is estimated to be 50%, and high risk health behaviors, including substance abuse, chronic health conditions, and mental illness all appear at significantly higher rates among women who experienced sexual assault when compared to women who have not; 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

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

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

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

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

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

WHEREAS, according to the FBI, examples of exceptional clearances include, but are not limited to, the death of the offender (e.g., suicide or justifiably killed by police or citizen); the victim's refusal to cooperate with the prosecution after the offender has been identified; or the denial of extradition because the offender committed a crime in another jurisdiction and is being prosecuted for that offense. In the FBI's Uniform Crime Reporting Program, the recovery of property alone does not clear an offense; and

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

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

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

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

WHEREAS, the APD has taken steps toward improvement by requesting and receiving an audit from the Department of Public Safety concerning its classification of closed sexual assault cases as cleared exceptionally, yet the root causes of above-average rates of exceptional clearance, the lack of complete testing of some rape kits, low rates of reporting and prosecution may not be revealed by this limited review by a peer institution; and

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

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

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

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

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

The evaluation shall examine at minimum either 200 sexual assault cases or fifty percent of sexual assault cases from each year, whichever number is greater, for each of the prior seven years of sexual assault case reports from adult victims who reported to the APD (excluding cases that are being actively investigated or

pending in court). The evaluator may at any point use their discretion to examine cases beyond this minimum threshold. In addition, cases examined shall be representative of the diversity of cases from each year taking care that they: represent a cross section of investigators investigating cases in each year, include different victim types, and include both cases that did and did not move forward to prosecution. The evaluator may add to the aforementioned list of criteria as per their professional judgement in order to ensure a diversity of cases are examined.

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

1. Interviews with sexual assault survivors who made reports to the APD about their experiences with the investigative process, interviews with current and former sworn officers and civilian staff involved with cases, staff from other agencies involved with cases (as available), local subject matter experts, entities that work directly with sexual assault survivors and all materially relevant stakeholders as available;
2. The degree to which the APD is adhering to state and federal law with regard to the investigation and reporting, including but not limited to:
 - a. Evidence collection, prioritization, storage, testing, and handling;
 - b. Victim notification;
 - c. Confidentiality/privacy;
 - d. Interagency communications and cooperation;
 - e. Case triage and prioritization;

3. A review of policies and practices with respect to adult sexual assault cases to ensure that these do not promote bias based on gender, race, disability, or LGBTQ status of the victim and to ensure that these include the use of victim-centered practices (including but not limited to policies and practices with respect to the investigation, interview practices, record keeping, nature and frequency of victim contact, etc.);
4. Whether and how the APD is adhering to national best practices in adult sexual assault investigation (i.e., timing and process for interviews, the use of soft rooms to interview victims, trauma-informed interview techniques, contacting and interviewing suspects, and suspect exams for evidence collection, etc.);
5. The thoroughness, consistency, and completeness of record keeping across staff in the Sex Crimes Unit currently and over time consistent with national best practices, such as those from the International Association of Chiefs of Police;
6. A review of the treatment given to sexual assault cases and victims of sexual assault in drug or alcohol involved or facilitated sexual assault cases in order to ascertain that these cases and victims do not receive inappropriate differential treatment because of the drug or alcohol involvement or facilitation;
7. Whether and how the APD consistently applies policies and practices with respect to stranger and non-stranger sexual assault;
8. The accuracy of case clearance decisions and long-term data regarding the ways in which adult sexual assault cases are cleared;

9. The appropriateness of current staffing, resources and training provided, and budgets regarding adult sexual assault in relation to caseload, staffing formulas and other units within the agency;
10. Documentation of current policies regarding issuing warrants and filing cases regarding sexual assault, and any issues that exist with these;
11. Issues regarding current policies or lack thereof for adult sexual assault cases, including, but not limited to:
 - a. How the case was communicated by the APD to the prosecutor's office, and how the case was staffed by the APD;
 - b. Whether the APD has appropriate requirements in place regarding follow-up investigation or interviews to address any concerns or need for further evidence that prosecutors may have about a case, including the number of attempts required and the extent to which these interactions are victim-centered and trauma-informed and how/if victim services is involved in these interactions;
 - c. Whether the APD appropriately obtains and effectively implements specialized training for investigators and their chain of command on sexual assault, victim interviewing techniques, interpersonal violence, and trauma, and whether known best practices are being employed and to what extent they are being implemented effectively;
 - d. Whether the APD has appropriate practices or policies in place regarding documentation of written and verbal communication with the District Attorney's Office about decisions made on sexual assault cases.

BE IT FURTHER RESOLVED:

This evaluation shall be conducted by a nationally recognized, non-governmental entity or multidisciplinary team with demonstrated knowledge and expertise in the investigation and prosecution of adult sexual assault in the United States. Allowable exceptions include universities who may be governmental. No chosen entity, individual or multidisciplinary team, regardless of type, shall have a conflict of interest.

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

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

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

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

The City Manager shall develop this contract with input from the Commission for Women and the Public Safety Commission, as allowable by the City's purchasing rules. The City Manager shall select the contractor best qualified and

suited to conduct the independent evaluation and report mandated by this resolution. The department under evaluation shall not select its own evaluator for this contract as it is the subject of the evaluation.

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

BE IT FURTHER RESOLVED:

A written report shall be completed by the selected third-party entity. An update on the progress of the evaluation shall be returned to Council within six months of the adoption of this resolution. The update shall include a timeline for full completion. Should the third-party entity determine actionable recommendations in advance of the evaluation completion date, the entity shall report those recommendations to the City Manager for consideration. The City Manager may implement these recommendations on an ongoing basis. The City Manager shall provide updates to Council on whether and how recommendations from the evaluator will be implemented, in advance of implementation.

BE IT FURTHER RESOLVED:

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

BE IT FURTHER RESOLVED:

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

BE IT FURTHER RESOLVED:

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

BE IT FURTHER RESOLVED:

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

- How the City of Austin could make the process of reporting and cooperating with a case more accessible and responsive to public needs;
- Opportunities to address issues or shortcomings, including opportunities to test ideas to help the City to deliver a more accessible and responsive service to sexual assault survivors;
- Possible changes to internal policies;
- Possible changes to current practices;
- Possible changes to current training or the implementation of new training;
- An action plan for how the APD should implement recommended policies, practices, and training;

- Possible changes or enhancements to organizational staffing practices and policy (for both sworn and civilian staffing);
- Opportunities for better working conditions, facilities, tools and resources for both civilian and sworn staff in working sexual assault cases or with sexual assault victims at the APD;
- The necessary frequency of case reviews and audits, including recommended content of case reviews and audits (led internally by the APD or external to the Department), and the sharing of data and findings from these reviews and audits to the Council and the public;
- The establishment of a collaborative community process with inclusion of the City of Austin Commission for Women and Public Safety Commissions (and other City of Austin commissions as recommended), and local subject matter experts and entities that work directly with sexual assault survivors to provide periodic and ongoing policy recommendations for policy makers and the City Manager that could be used to guide efforts to improve system responses for survivors of sexual assault;
- The integration of best policies and practices already in place in other APD units, such as those used in working youth sexual assault cases, into the Sex Crimes Unit;
- Any further comprehensive institutional and/or community analysis and or assessments to be taken on by the City and necessary collaborators/facilitators;
- Recommendations to improve transparency and the ongoing sharing of data and findings to the Council and the public; and
- Affirmation of what is going well and should be continued.

If a response is not provided to any of the above, the evaluator should clearly state why in the report.

BE IT FURTHER RESOLVED:

With this report the City Manager should include a recommended plan for cases found to have problems during this evaluation. The City Manager may consult with the evaluator for input on this plan.

ADOPTED: January 31, 2019

ATTEST:

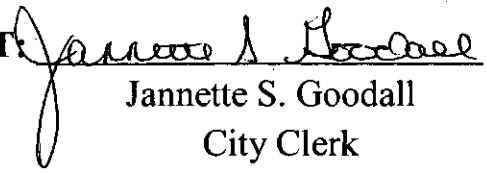

Jannette S. Goodall
City Clerk

Exhibit A: Known Subject Matter Experts Who May Meet Resolution Criteria

- National Sexual Violence Resource Center
- End Violence Against Women International
- Quattrone Center for the Fair Administration of Justice.
- Ann Munch
- Ann Burgess
- Tom Trembley
- Ujima
- Praxis International
- Women's Law Project