



An Audit Report on

Investigation and Prosecution Processes for Reported Sexual Assaults in Texas

October 2020

Report No. 21-002



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Overall Conclusion

The investigation and prosecution of reported incidents of adult and child sexual assaults face many challenges throughout the criminal justice process. Based on statewide data related to sexual assaults, interviews, site visits, and survey responses, auditors identified some of the leading reasons a reported incident of sexual assault may not lead to an arrest of a suspect or prosecution of an offender. Those include:

- **Collecting evidence to determine whether a suspect committed a sexual assault may be difficult.** Local law enforcement and district attorneys' offices indicated that proving a suspect acted without consent is difficult for sexual assaults that involve adult victims. Consent does not need to be proved in a sexual assault involving a child victim.
- **A victim of a sexual assault may be reluctant to participate in the investigation and prosecution process.** Local law enforcement, district attorneys' offices, and community-based advocacy organizations identified various reasons some victims are not actively involved in an investigation and prosecution, such as fear, embarrassment, and distrust of the criminal justice system.
- **Key differences in the investigation and prosecution procedures for sexual assaults involving adult and child victims may affect how a sexual assault case progresses through the criminal justice system.** The investigation and prosecution processes for a sexual assault of a child include statutorily required

Background Information

House Bill 1 (86th Legislature) required the State Auditor's Office (SAO) to examine the investigation and prosecution processes for adult and child sexual assaults from the time of the first report through final court decisions, including identifying why reported sexual assault cases may not proceed to prosecution and conviction within the criminal justice system (see Appendix 2 for more information about House Bill 1).

As described in *A Report on the State Auditor's Office's Methodology for Examining the Investigation and Prosecution Processes for Reported Sexual Assaults in Texas* (SAO Report No. 20-014, December 2019), auditors performed the following work to address the requirements of House Bill 1:

- **Collected and analyzed statewide data** on adult and child sexual assaults reported by local law enforcement and district clerks' offices to the Department of Public Safety and the Office of Court Administration for calendar years 2014 through 2018.
- **Performed on-site visits** of select local law enforcement, district attorneys' offices, and district clerks' offices.
- **Conducted a statewide survey** of local law enforcement, district attorneys' offices, community-based advocacy organizations, crime laboratories, and district clerks' offices.

Supplemental Report

For more complete information about the results of the surveys conducted by the State Auditor's Office, see [A Supplemental Report on Survey Results for an Audit of Investigation and Prosecution Processes for Reported Sexual Assaults in Texas](#) (State Auditor's Office Report No. 21-303, October 2020).

This audit was conducted in accordance with the requirements in House Bill 1 (86th Legislature) that were incorporated into Rider 5, page X-6, the General Appropriations Act (86th Legislature).

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procedures to (1) ensure a coordinated response by local law enforcement and district attorneys' offices in obtaining information needed to investigate and prosecute those incidents, (2) minimize revictimization of a child victim, and (3) facilitate a successful outcome in the criminal justice and child protection systems. There are no similar requirements for sexual assaults involving adult victims.

These challenges can impede efforts by local law enforcements' and district attorneys' offices to promptly arrest and then prosecute an offender for sexual assault.

Best Practices

Some local law enforcement and district attorneys' offices indicated that they have adopted certain nationally recognized best practices and implemented other actions to help address those challenges, including:

- Training detectives and prosecutors on victim-centered/trauma-informed practices for engaging victims of sexual assault.
- Improving communication and coordination of investigation and prosecution activities for sexual assaults that involve adult victims by participating in sexual assault response teams.
- Creating specialized units staffed with detectives and prosecutors trained for investigating and prosecuting sexual assaults.

Statewide Data Limitations

Auditors determined that there is not comprehensive **statewide** data collected on adult and child sexual assaults in Texas that provides complete information on the progress of a reported sexual assault through the investigation and prosecution processes of the criminal justice system.

While the State collects information on reported incidents, arrests, prosecutions, and court dispositions for sexual assaults, the data collected on reported incidents is maintained by a different information system than the system that maintains data collected on arrests, prosecutions, and court dispositions. The two information systems are unrelated, which prevents records in one system from being traced to the records in the other system (for example, reported incidents cannot be traced to arrests).

Furthermore, the information on certain outcomes of sexual assault investigations, such as those that do not lead to an arrest, is not collected at a statewide level. Information on the outcomes of sexual assault investigations (for example, unfounded and suspended/inactive investigations) is available only at each respective law enforcement agency.

Audit Objective and Scope

The objective of this audit was to examine the investigation and prosecution processes for reported adult sexual assaults and child sexual assaults in Texas during calendar years 2014 through 2018.

The scope of this audit included examining the investigation, prosecution, and reporting processes for reported incidents of sexual assault (Texas Penal Code, Section 22.011) and aggravated sexual assault (Texas Penal Code, Section 22.021) in Texas of adult and child victims during calendar years 2014 through 2018. In addition, the audit scope included gaining an understanding of the automated systems and processes that supported the reporting of data related to sexual assaults during the audited period.

Acknowledgment

The State Auditor's Office appreciates the assistance and cooperation provided by the governmental, local law enforcement, educational, and community-based entities that were contacted during the development of the statewide survey.

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Detailed Results

Chapter 1

Overview: Examination of Investigation and Prosecution Processes for Reported Sexual Assaults

As required by House Bill 1 (86th Legislature)¹, auditors examined the investigation and prosecution processes for reported adult and child sexual assaults² in Texas from January 1, 2014, through December 31, 2018, according to the procedures described in [A Report on the State Auditor's Office's Methodology for Examining the Investigation and Prosecution Processes for Reported Sexual Assaults in Texas](#) (SAO Report No. 20-014, December 2019). Those procedures included:

- Collecting and analyzing statewide data on adult and child sexual assaults reported by local law enforcement (city police departments or county sheriff's offices) and district clerks' offices to the Department of Public Safety (DPS) and the Office of Court Administration (OCA).
- Performing on-site visits to select local law enforcement, district attorneys' offices, and district clerks' offices.
- Conducting statewide surveys of local law enforcement, district attorneys' offices, district clerks' offices, crime laboratories, and community-based advocacy organizations to collect information related to the investigation, prosecution, and reporting of adult and child sexual assaults.

Based on the site visits, auditors identified key stages for the investigation and prosecution of sexual assaults that involve adult and child victims. In addition, based on information from site visits and survey responses, auditors identified some of the challenges that can affect whether a reported sexual assault proceeds to prosecution and results in a conviction within the criminal justice system (see Chapter 2).

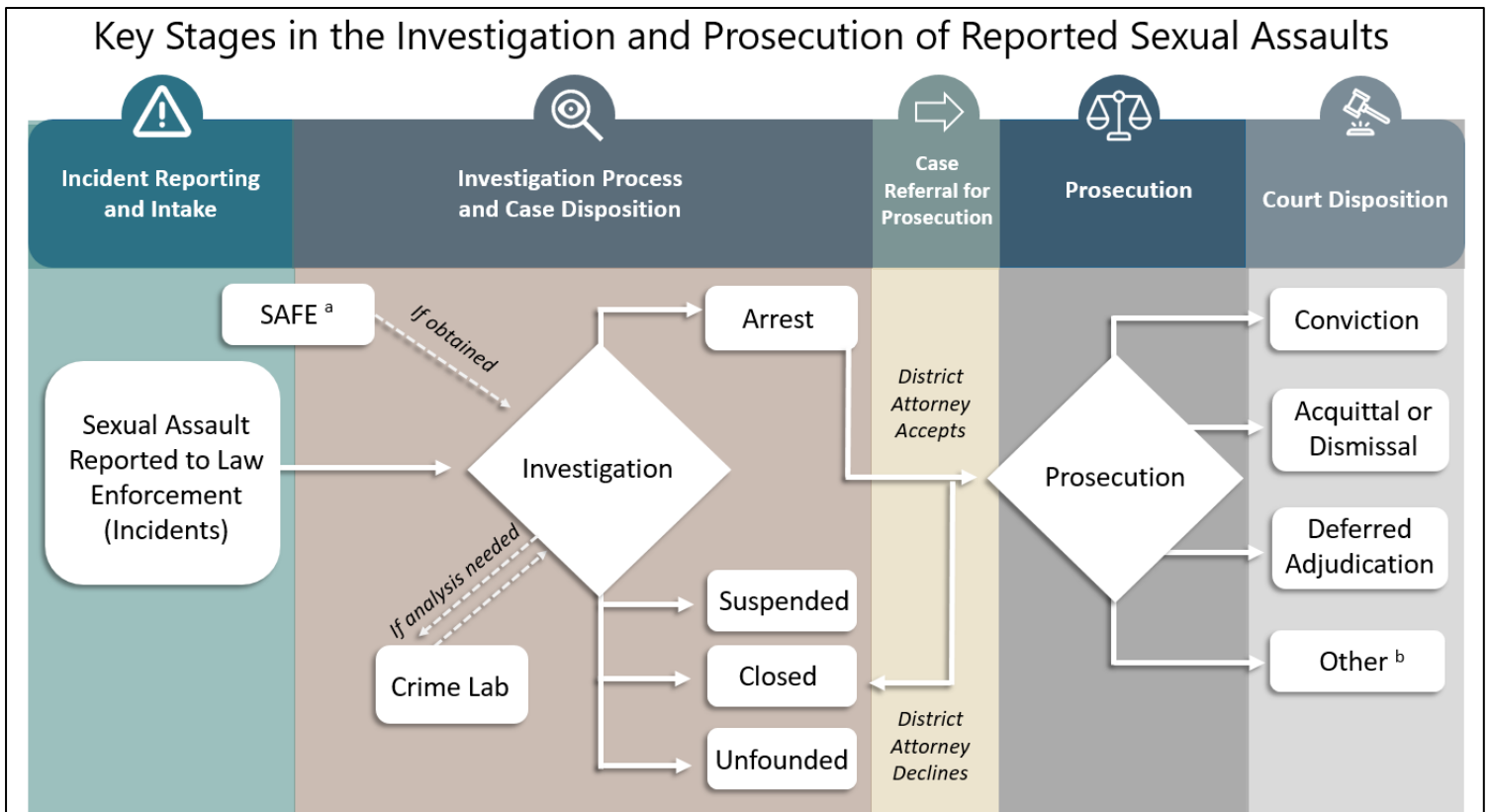
¹ The requirements in House Bill 1 were incorporated into Rider 5, page X-6, the General Appropriations Act (86th Legislature). See Appendix 2 for more information about House Bill 1.

² As specified by House Bill 1 (86th Legislature), the term "sexual assault" throughout this audit report refers to sexual assaults classified under Texas Penal Code, Sections 22.011 (Sexual Assault) and 22.021 (Aggravated Sexual Assault), unless otherwise noted. See Appendix 5 for more information about the definitions in those sections of statute.

Key Stages Identified for the Investigation and Prosecution of Sexual Assaults

Reported sexual assaults may proceed through key stages in the criminal justice system: incident reporting and intake, investigation, prosecution, and court disposition (see Figure 1). The information discussed below provides a high-level overview of those stages; not all sexual assault cases follow the same processes due to the specific circumstances of the case, jurisdictional differences, or other factors.

Figure 1



^a Sexual Assault Forensic Examination.

^b Other dispositions include mistrials; cases in which the court accepts a defendant’s admission of guilt for multiple charges and issues a disposition, including sentencing, for one of the charges; and instances in which a court issued an order of nondisclosure prohibiting public entities including courts, clerks of the court, law enforcement agencies, and prosecutorial offices from disclosing certain criminal records.

Source: Based on information that auditors obtained during site visits.



Incident Reporting and Intake. Local law enforcement receives a report of an alleged sexual assault incident in various ways such as the victim, a witness, an emergency response call, or a referral from a hospital, school, or other entities. Local law enforcement collects information about the alleged incident, records the information in its records management system, and reports required information about the sexual assault to DPS.³ Local law enforcement assigns the reported incident to staff, such as a patrol officer or detective, for investigation and to victim services counselors to help the victim obtain a sexual assault forensic examination (SAFE).⁴ If a victim did not obtain an examination before reporting the alleged sexual assault incident to law enforcement, the victim may schedule an examination or the law enforcement agency’s personnel may take the victim to the health care provider when the alleged sexual assault is reported. The evidence collected in the sexual assault kit during the sexual assault forensic examination (SAFE) is submitted for testing at a crime laboratory.



Investigation. Local law enforcement performs the investigation, which may include: (1) interviewing and obtaining statements from the victim, any witnesses, and the suspect, (2) reviewing the test results of the sexual assault kit from the crime laboratory, and (3) collecting and examining other evidence related to the reported sexual assault. Based on that investigation:

- If local law enforcement identifies a suspect and the evidence collected establishes probable cause that a suspect committed sexual assault (see text box for information on probable cause), then the suspect may be arrested⁵ and charged. If a suspect

Evidentiary Standards

Evidence collected during an investigation must meet two key legal standards:

- **Probable Cause.** Evidence must provide a reasonable basis to believe a suspect committed a crime. This standard must be met when (1) local law enforcement decides to arrest and charge a suspect for sexual assault and (2) a grand jury agrees that a suspect should be charged and prosecuted for sexual assault.
- **Beyond a Reasonable Doubt.** Evidence must convince a trial judge or jury beyond a reasonable doubt that a defendant committed a sexual assault. This standard must be met to convict a defendant for sexual assault.

Sources: Texas Code of Criminal Procedure, Sections 2.13, 14.03, 14.06, 15.05, 21.02-21.04, 21.11, 38.03, and 38.23; and Texas Penal Code, Section 2.01.

³ Texas Government Code, Section 411.042 (effective September 1, 2007) and Title 37, Texas Administrative Code, Section 27.121 (effective January 6, 2010) requires law enforcement agencies to collect certain information about sexual assault and aggravated sexual assault incidents and report it to DPS.

⁴ Prior to September 1, 2019, Texas Code of Criminal Procedure, Section 56.06, required a law enforcement agency to request a medical examination of a victim of a reported sexual assault within 96 hours of the reported incident unless the victim has made one or more false reports to any local law enforcement agency and if there is no other evidence to corroborate the allegation. House Bill 616 (86th Legislature) increased the time frame for when a medical examination should be performed from 96 hours to 120 hours from the time of the incident effective September 1, 2019.

⁵ There are instances in which law enforcement can clear a case **without making an arrest**, which is referred to by law enforcement as “clearing a case exceptionally”. DPS requires that the following four conditions be met to clear a case exceptionally: (1) the investigation has definitely established the identity of the suspect; (2) there is enough information to support an arrest charge and turning over the case to the court for prosecution; (3) the exact location of the suspect is known so that the suspect could be taken into custody; and (4) there is some reason outside law enforcement’s control that prevents the arresting, charging, and prosecuting of the suspect.

is arrested, local law enforcement will refer the case to the district attorney's office for consideration of prosecution.

- If the evidence collected does not support the reported sexual assault, then local law enforcement will determine the allegation to be unfounded and close the case.
- If the evidence establishes probable cause that another crime was committed, local law enforcement may pursue charges against the suspect for that crime.
- If local law enforcement has exhausted all leads or is waiting on crime laboratory testing results, it may suspend a sexual assault investigation. A suspended investigation remains an open case until law enforcement obtains evidence that either establishes probable cause that a suspect committed a sexual assault or determines that the allegation is unfounded.



Case Referral and Prosecution. Upon referral by local law enforcement, the district attorney's office reviews the case and available evidence. Based on that review, the district attorney will accept or decline the case:



- If the district attorney's office accepts the case, it will present it to a grand jury. If the grand jury determines that probable cause exists to support the sexual assault charge, it will return an indictment and the case will proceed to trial. If the grand jury does not return an indictment, the district attorney's office has the option of dismissing the case or refile charges with new evidence.
- If the district attorney's office declines the case, it may return the case to local law enforcement for further investigation or to close the case.



Court Disposition. If the case proceeds to trial, the district attorney's office presents the case to a judge and/or jury. The court determines whether the evidence presented proves beyond a reasonable doubt that the defendant committed the charged sexual assault. In lieu of a trial, the prosecutor may offer the defendant a plea agreement (see text box for more information about plea

Factors Considered for Plea Agreements

Prosecutors may consider many factors when deciding whether to offer a plea agreement and what the conditions of the plea agreement should include. During interviews and in survey responses, prosecutors indicated the most common reasons for pursuing plea agreements included:

- To shield the victim from having to testify at trial or because it was the victim's preference.
- There is uncertainty about the outcome of a trial or insufficient evidence to support a sexual assault charge.
- There is limited trial docket [schedule] availability.
- To resolve a case faster than if it goes to trial.
- To limit the likelihood of an appeal of the court verdict.
- There is an expectation to offer the suspect a plea bargain.

Sources: Auditors' interviews with prosecutors during site visits and prosecutors' responses to the SAO statewide survey.

agreements). If the court finds the defendant guilty at trial or as the result of a plea agreement, the case proceeds to sentencing. The court may issue the convicted defendant a sentence of incarceration, probation, or deferred adjudication and/or require the convicted defendant to register as a sex offender.

Chapter 1-B

Site Visits and Statewide Survey Methodology

Auditors' procedures included conducting site visits at selected local law enforcement agencies, district attorneys' offices, and district clerks' offices; conducting interviews with community-based advocacy organizations; and surveying 1,630 entities throughout Texas (see text box for site visit locations). The questions in the surveys were designed to collect responses similar to the information gained during the site visits so that auditors could summarize the results at a statewide level for this report. (See Appendix 1 for more information about methodologies used during the audit.)

Site Visits

Auditors conducted site visits at selected local law enforcement agencies, district attorneys' offices, and district clerks' offices in the following counties: Bexar County, Dallas County, Harris County, Tarrant County, and Travis County. The local law enforcement agencies selected were the Austin Police Department, Bexar County Sheriff's Office, Dallas Police Department, Fort Worth Police Department, Houston Police Department, and Travis County Sheriff's Office.

Site Visits. On-site work at the selected entities included the following procedures:

- Interviews with local law enforcement investigators, district attorneys' office prosecutors, and district clerks' office staff to gain an understanding of their processes and to determine the staffing, financial, and training resources available to these entities related to sexual assault investigations, prosecutions, and reporting.
- Comparing the information in samples from the statewide data provided by DPS and OCA to the case file documentation at the local law enforcement agencies, district attorneys' offices, and district clerks' offices. Some of the entities that auditors visited were not able to provide case files for all of the samples selected for testing due to the following: (1) the entities maintained hard copy case files in off-site locations and were not able to obtain all of those files prior to stay-at-home restrictions put into place due to the COVID-19 pandemic and (2) some of the files were confidential.

Survey Methodology. Auditors developed survey questions and conducted online surveys from February 10, 2020, through May 8, 2020 (see Appendix 1 for more information on development of the surveys). Survey recipients

included: 1,054 local law enforcement agencies (police departments and sheriffs' offices), 158 district attorneys' offices, 148 community-based advocacy organizations that assist victims of sexual assault, 21 crime laboratories, and 249 district clerks' office.

Of the 1,630 entities that were contacted, 1,029 (63 percent) entities completed the surveys. Auditors summarized the responses for each type of survey (such as local law enforcement agencies, district attorneys' offices, etc.) at a statewide level. (See Appendix 3 of this report for a summary of the key results from survey responses.)

A Supplemental Report on Survey Results for an Audit of Investigation and Prosecution Processes for Reported Sexual Assaults in Texas, (SAO Report No. 21-303), is available at <http://www.sao.texas.gov/Reports/Rider5/21-303/Summary.html> and summarizes all responses to each of the SAO surveys.

There Are Significant Challenges Within the Investigation and Prosecution Processes of a Sexual Assault That Affect Whether It Will Lead to the Arrest and Prosecution of a Suspect

The investigation and prosecution of reported incidents of adult and child sexual assaults face many challenges throughout the criminal justice process. Table 1 shows the number of reported sexual assault incidents and arrest charges from January 1, 2014, through December 31, 2018, and also includes the number of prosecuted and prosecutions pending for those arrest charges as of March 2020. (See Chapter 4 for more information about the statewide data for sexual assault incidents, arrest charges, and prosecutions.)

Table 1

A Summary of the Total Number of Reported Sexual Assault Incidents, Arrest Charges, Prosecuted, and Prosecutions Pending			
From 2014 through 2018 ^a			
Reported Sexual Assault Incidents ^{b c}	Arrest Charges	Prosecuted ^d	Prosecutions Pending ^d
71,274	23,422	16,207	2,343
<p>^a While the sexual assault incidents and arrest charges shown are for the same five-year period, they are based on two different data sources that are not related and cannot be matched to one another. However, the totals presented illustrate the difference between the number of reported sexual assault incidents and the number of arrest charges that occurred over a five-year period.</p> <p>^b DPS indicated that the data on reported incidents shown may include incidents that were determined to be unfounded. (See Chapter 3 for more information on reported sexual assault incidents.)</p> <p>^c Auditors determined that the statewide data available on reported sexual assault incidents was not sufficiently reliable. However, the statewide data was the best data available for purposes of this audit. (See Chapter 3 for more information on statewide data limitations.)</p> <p>^d The total shown represents the status of arrest charges filed from 2014 through 2018 that were either prosecuted or pending prosecution as of March 2020.</p>			

Sources: DPS' Uniform Crime Reporting Program and Computerized Criminal History System (CCH).

During site visits that auditors conducted and in survey responses, local law enforcement and district attorneys' offices identified several reasons for why a reported incident of sexual assault may not lead to an arrest or prosecution. The most common reasons identified were:

- Obtaining evidence to prove that a suspect acted without consent in a sexual assault of an adult may be difficult (see Chapter 2-A).
- A victim may choose not to assist local law enforcement and the district attorney's office with the investigation and prosecution of a sexual assault (see Chapter 2-B).

- Key differences between the investigation and prosecution processes for a sexual assault that involves a child victim compared with a sexual assault involving an adult victim may affect how a sexual assault case progresses through the criminal justice system (see Chapter 2-C).

Local law enforcement and district attorneys' offices indicated that they have taken actions to help overcome some of the identified challenges to the investigation and prosecution of sexual assaults by implementing certain recognized best practices and other measures (see Chapter 2-D).

Chapter 2-A

Collecting Evidence Needed to Determine Whether a Suspect Committed a Sexual Assault May be Difficult to Obtain

During site visits, local law enforcement and district attorneys' offices indicated that they rely on the evidence that is collected from (1) victim and witness statements and (2) forensic analysis to help decide whether to arrest and prosecute a suspect for sexual assault. In addition, they explained the evidence collected should help confirm the identity of the suspect and show that the suspect committed a sexual assault. However, in both interviews and survey responses, detectives and prosecutors identified challenges related to collecting that evidence.

For sexual assaults that involve an adult victim, proving that a suspect acted without consent may be difficult.

For sexual assault cases that involve adult victims, local law enforcement and district attorneys' offices must prove that a suspect acted without the consent of a victim to charge a suspect with sexual assault. This challenge is specific to a sexual assault involving an adult victim; consent does not need to be proved in a sexual assault involving a child victim. Table 2 on the next page lists the circumstances listed in Texas Penal Code, Section 22.011, in which a suspect is considered to have acted without the victim's consent.

Table 2

The Circumstances Considered When Determining Whether a Person Committed a Sexual Assault by Acting without Consent	
Texas Penal Code, Sections 22.011 (b) states that [a person intentionally and knowingly acts] without the consent of the other person if:	
(1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;	(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;	(8) the actor is a public servant who coerces the other person to submit or participate;
(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;	(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
(4) The actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;	(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or
(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;	(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other.
(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;	

Source: Texas Penal Code, Section 22.011.

Statewide data on sexual assaults showed that most reported sexual assaults involve adult victims that may be in a relationship with the suspect (such as married or dating) or know the suspect. Table 3 shows the types of relationships identified for sexual assaults of an adult victim reported to DPS' Uniform Crime Reporting Program from 2014 through 2018.

Table 3

Adult Victims The Number of Reported Sexual Assaults based on the Suspect's Relationship to the Victim from January 1, 2014, through December 31, 2018		
Type of Relationship ^a	Number of Reported Incidents ^b	Percentage
Known, Not Family ^c	15,667	48%
Unknown Person ^d	8,188	25%
Family ^e	6,458	20%
Otherwise Known ^f	2,624	8%
Relationship Was Not Reported	31	Less than 1%
Totals	32,968	100% ^g

Adult Victims		
The Number of Reported Sexual Assaults based on the Suspect's Relationship to the Victim from January 1, 2014, through December 31, 2018		
Type of Relationship ^a	Number of Reported Incidents ^b	Percentage
<p>^a The types of relationships shown, except for "Otherwise Known", are determined by auditors based on DPS' relationship categories for reporting incidents.</p> <p>^b See Chapter 3-A for more information on the statewide data collected on reported sexual assault incidents.</p> <p>^c "Known, Not Family" includes the following DPS categories: friend, acquaintance, neighbor, babysitter, boyfriend/girlfriend, homosexual relationship, employer, and employee.</p> <p>^d "Unknown Person" includes the DPS categories stranger and unknown.</p> <p>^e "Family" includes the following DPS categories: spouse, common-law spouse, parent, sibling (brother or sister), child, grandparent, grandchild, in-law, stepparent, stepchild, stepsibling, ex-spouse, and other family member.</p> <p>^f "Otherwise Known" is a DPS category that could include family and other individuals known by the victim.</p> <p>^g Percentages do not sum to 100% due to rounding.</p>		

Source: DPS' Uniform Crime Reporting Program.

Additionally, detectives and prosecutors stated during site visits that some reported sexual assaults may involve the use of alcohol and drugs, which can affect a victim's ability to recall details. Such factors can increase the difficulty for establishing probable cause that a suspect acted without consent.

Detectives and prosecutors interviewed said that for many sexual assaults, the victim's statement may be the only evidence that a suspect acted without consent. They emphasized that without other evidence (such as forensic photographs and electronic data like emails, text messages, chats, or social media posts), there may be insufficient evidence to establish probable cause to arrest and charge a suspect or establish proof beyond a reasonable doubt for a court to find that a defendant committed a criminal offense.

Sexual Assault Kit

The sexual assault kit contains items used to collect and preserve evidence obtained during the sexual assault forensic examination of a sexual assault victim, such as bodily fluids and clothing. The evidence may be accompanied by photographs and x-rays from the forensic examination.

Source: *Texas Evidence Collection Protocol*, Office of the Attorney General.

The collection and forensic analysis of the evidence in a sexual assault kit is a lengthy process, which can delay the decision on whether to arrest and charge a suspect for sexual assault.

According to law enforcement and district attorneys' offices visited, forensic analysis of the sexual assault kit often is important to a sexual assault investigation (see text box for more information). The evidence in a sexual assault kit, such as bodily fluids, the victim's clothing, and photographs of physical injuries is important to establishing probable cause that a suspect committed a sexual assault and determining whether to arrest and charge a suspect. However, during interviews and in survey responses, detectives and prosecutors identified challenges

that may cause delays during the collection and examination of the evidence in a sexual assault kit, which are described below.

Extended or delayed processing of sexual assault kits can delay arrests and prosecutions, according to interviews with and survey results from detectives and prosecutors. Crime laboratories (crime labs) complete the forensic analysis of collected sexual assault kits that detectives submit. However, according to interviews during site visits and survey responses, that forensic analysis may take an extended amount of time to complete. Specifically, survey responses from 13 (68 percent) of 19 crime labs indicated that the average processing time of a sexual assault kit was longer than 90 days, and 5 (26 percent) of the labs indicating that that the average time was longer than a year (see Table 4). (See Appendix 3 for more information about the survey results.)

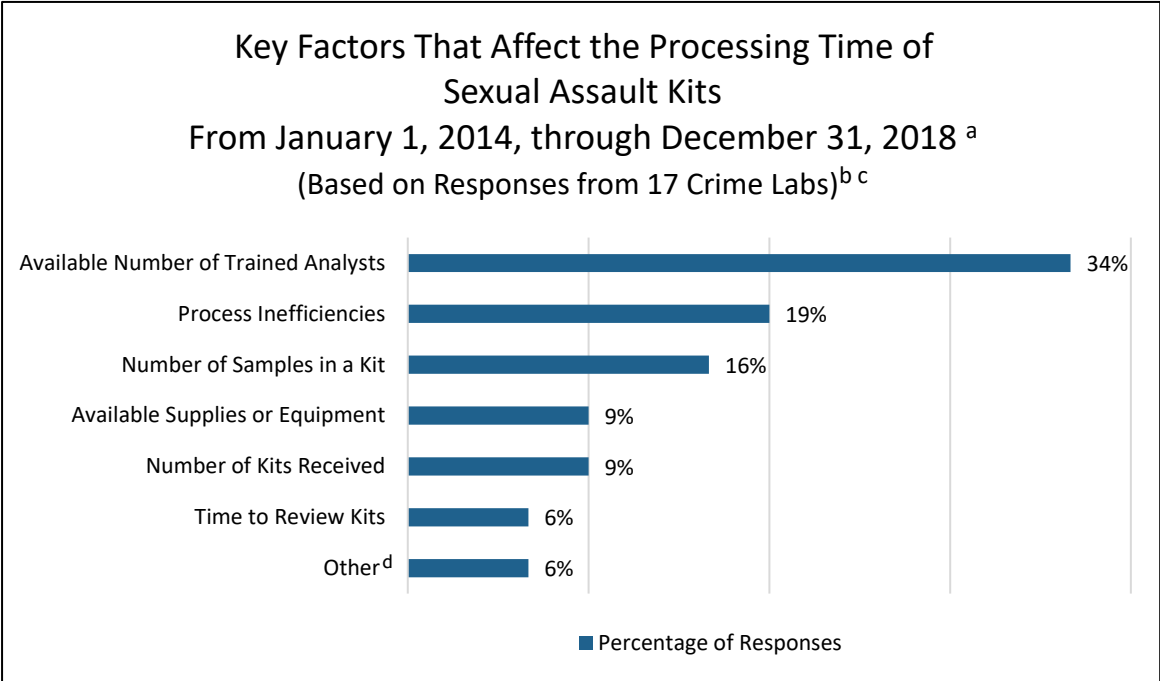
Table 4

The Average Processing Time for a Sexual Assault Kit Reported by Crime Labs for the Period From January 1, 2014, through December 31, 2018		
Response	Number of Crime Labs that Responded	Percentage of Total Survey Responses Received
Less than 30 days	1	5%
30 to 90 days	5	26%
91 to 180 days	3	16%
181 to 365 days	5	26%
More than 365 days	5	26%
Totals	19	100%^a
^a Percentages do not sum to 100% due to rounding.		

Source: Respondents to the SAO survey of crime labs.

In survey responses, crime labs also identified the top factors that affect the processing of sexual assault kits, including an insufficient number of trained analysts and process inefficiencies (see Figure 2 on the next page).

Figure 2



^a Percentages do not sum to 100% due to rounding.

^b Of the 19 respondents, 2 crime labs did not answer this question.

^c A crime lab's answer could include multiple categories.

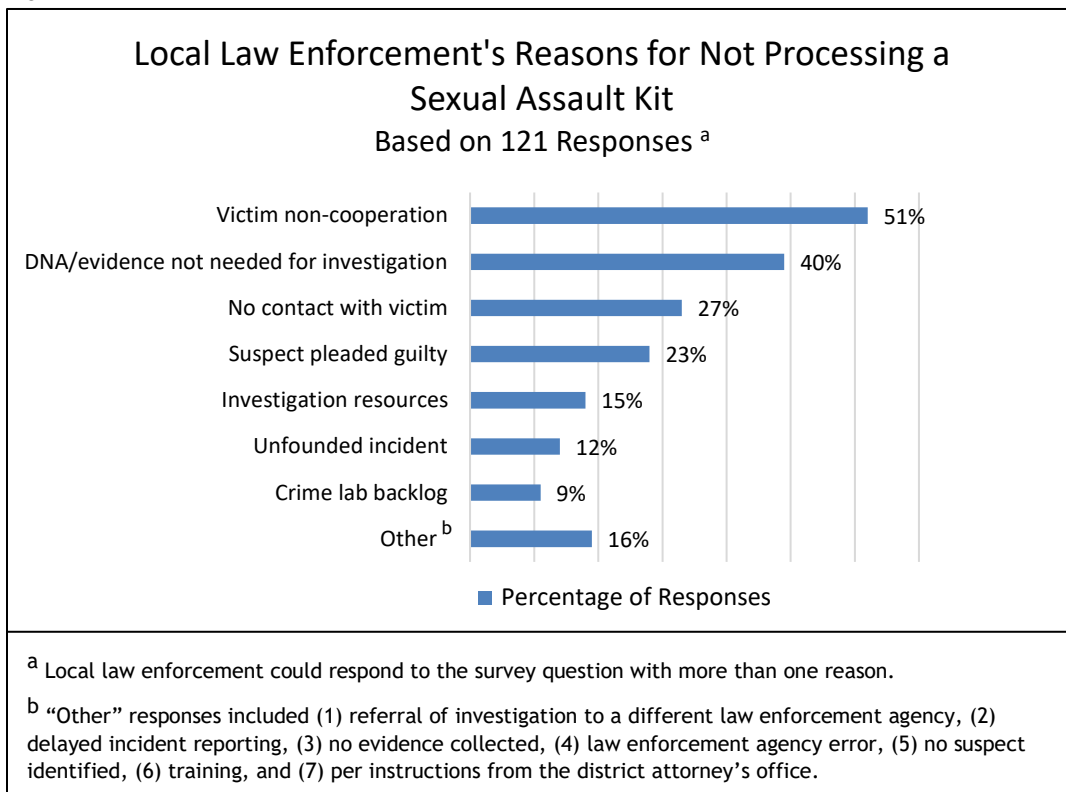
^d "Other" factors identified by crime labs included accreditation requirements and complying with DNA protocols and standards.

Detectives and prosecutors interviewed during site visits asserted that delays in processing a sexual assault kit can result in (1) suspending investigation activities until the receipt of the processing results, which may lead to a backlog of unresolved sexual assault investigations, or (2) delaying the decision to arrest a suspect and file charges for sexual assault.

During site visits and in responses to the SAO survey, local law enforcement noted that sexual assault kits collected were not always submitted to crime labs for forensic analysis. Based on 121 survey responses from local law enforcement agencies, the two most common reasons for why a collected sexual assault kit may not be submitted for analysis was (1) a lack of victim cooperation in the investigation and (2) the evidence in the sexual assault kit was not needed (for example, if the case was unfounded). A smaller number of respondents cited a lack of law enforcement agency resources. Only 9 percent of the law enforcement respondents attributed a crime laboratory backlog in processing kits as a reason for not submitting a kit.

Figure 3 shows the most common reasons that were identified in survey responses for not submitting a sexual assault kit for processing from January 1, 2014, through December 31, 2018, provided by local law enforcement in their responses to the SAO survey.

Figure 3



Source: Respondents to the SAO survey of local law enforcement.

In instances for which a sexual assault kit was not submitted for forensic analysis, detectives explained that an investigation may be classified as inactive unless the sexual assault was determined to be unfounded. An inactive case may be re-opened if a sexual assault kit is subsequently processed at a later date.

Delayed reporting of a sexual assault can increase the difficulty of collecting needed evidence, according to law enforcement officials interviewed. During interviews at site visits of local law enforcement agencies, detectives noted that victims may not report a sexual assault to local law enforcement for days, weeks, or years from when the incident occurred (see Chapter 2-B for more information on the reasons a victim may delay reporting a sexual assault). The longer the delay in reporting a sexual assault to local law enforcement, detectives explained, the less likely local law enforcement will be able to identify and collect sufficient evidence needed to confirm a suspect’s identity and establish probable cause to show that a sexual assault occurred, particularly with cases involving child victims.

A Victim of Sexual Assault May Be Reluctant to Participate in the Investigation and Prosecution Process

In their survey results, most community-based advocacy organizations indicated that adult victims reported sexual assaults to law enforcement agencies less than 50 percent of the time.

A May 2018 report by the Police Executive Research Forum⁶ explained that victims of sexual assault must cope with the physical, mental, and emotional aftermath of a sexual assault crime, and they often are faced with the additional challenge of combating sexual assault myths and gender bias that perpetuate victim-blaming. It stated that victims who report the crime may feel that they are being subjected to a criminal justice system that seems insensitive, uncaring, or even hostile to victims. The report also noted that a sexual assault is an extremely intimate crime, and victims suffer physical and emotional harms that can be devastating. Additionally, the report explained, as victims try to cope with the trauma of the crime itself, they often suffer additional harm when they are subtly, or not so subtly, blamed for being victimized, in ways that victims of robbery or theft or any other crime are never blamed. As a result, the report noted, sexual assaults are severely underreported by victims compared with other crimes.

Additionally, the results from site visits and survey responses from many local law enforcement and district attorneys' offices identified the lack of victim cooperation as a significant challenge to investigating and prosecuting sexual assaults.

There can be multiple reasons a victim may decide not to participate in the investigation and prosecution processes. Survey responses from community-based advocacy organizations and interviews with detectives and prosecutors identified various factors for why some victims are unwilling to be involved in investigation and prosecution process. The leading factors cited by the community-based advocacy organizations, detectives, and prosecutors during site visits and in surveys included:

Fear. As discussed in Chapter 2-A, most reported sexual assaults involve a suspect that is known to the victim. Detectives and prosecutors indicated during sites visits that such a relationship may cause the victim to fear retaliation from a suspect for reporting the crime. They added that threats, coercion, and other actions of a suspect can deter the victim from cooperating with authorities particularly in sexual assault cases involving a domestic/family violence situation with the suspect.

⁶ *Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault*, Police Executive Research Forum, May 2018.

Embarrassment. The personal violation that a victim experiences from a sexual assault may create feelings of humiliation, detectives said during interviews. A victim must share intimate details that can be difficult to discuss (in some instances, multiple times) with detectives, prosecutors, grand juries, and courts about the sexual assault. Victim services counselors, detectives, and prosecutors said that a victim also may have to contend with judgment/public perception from family, friends, and those in the criminal justice system, as well as cope with the effect the sexual assault has on their cultural or religious beliefs.

Distrust of the criminal justice system. Community-based advocacy organizations, local law enforcement, and district attorneys' offices indicated that sexual assault victims may perceive the criminal justice process as being insensitive to them.

A September 2016 report by the taskforce created by House Bill 2455 (84th Legislature)⁷ stated that sexual assault victims frequently chose to not report a sexual assault to local law enforcement based on an expectation that the criminal justice system will be ineffective, re-traumatizing, or both. Each year, far more victims seek assistance from Texas' sexual assault programs and other health and social service providers than from law enforcement agencies.

The most common reason community-based advocacy organizations cited in their survey responses for why victims may not cooperate with investigations was because the victims feel the criminal justice system will not believe them. Detectives and prosecutors also stated that as a top reason for noncooperation in interviews during site visits. They added that how victims perceive they are treated during initial interactions with authorities can significantly influence this feeling. For example, authorities may lose the victim's cooperation if patrol officers, detectives, and prosecutors have not been trained to understand the psychological trauma that a sexual assault can have (1) on a victim's ability to recall the details about the incident and (2) on the victim's behavior.

Detectives and prosecutors said a victim also may become frustrated and lose confidence in the criminal justice system if they do not fully understand the criminal justice process and if the investigation and prosecution processes progress slowly, particularly in instances where there are ongoing delays in processing a victim's sexual assault kit. More than one-third of the responses to the SAO survey from community-based advocacy organizations

⁷ *Recommendations for Collecting and Reporting Data Relating to Family Violence, Sexual Assault, Stalking, and Human Trafficking As Directed by HB 2455, 84th Legislature; A Report By the Taskforce to Promote Uniformity in Collection and Reporting of Information on Family Violence, Sexual Assault, Stalking, and Human Trafficking; September 2016.*

indicated that taking steps to support the victim could improve the investigation and prosecution process. This includes informing victims about case status and better educating them about the process.

Chapter 2-C

Requirements for Investigation and Prosecution Processes for Sexual Assaults Involving Child Victims May Help Those Cases Progress More Successfully Than Those Involving Adult Victims

The operational structure of local law enforcement and district attorneys' offices can influence how effectively and efficiently a sexual assault case is managed as it progresses through the criminal justice system. Law enforcement agencies and district attorneys' offices interviewed identified significant differences between the investigation and prosecution procedures followed for a sexual assault that involves a child victim and those followed for an adult victim, including the resources available to perform those procedures. Those differences can put investigations of sexual assaults of adults at a disadvantage in terms of how efficiently and effectively a thorough investigation can be performed, according to detectives and prosecutors interviewed.

Key differences in the investigation and prosecution procedures for sexual assaults involving adult and child victims may affect how a sexual assault case progresses through the criminal justice system.

The investigation and prosecution of sexual assaults of child victims involve certain statutorily required procedures that are intended to (1) ensure a coordinated response by local law enforcement and district attorneys' offices while obtaining information needed to investigate and prosecute those incidents, (2) minimize revictimization of a child victim, and (3) facilitate a successful outcome in the criminal justice and child protection systems.

Specifically, Texas Family Code, Chapter 264, Subchapter (E), requires that an investigation and prosecution of any alleged abuse or neglect of a child (including sexual assault) include the following actions:

- **Use of a multi-disciplinary team.** The members of a multi-disciplinary team reviews allegations of child abuse and neglect and jointly assist with investigating and prosecuting those allegations. Statute requires that the members of a multi-disciplinary team include the Texas Department of Family and Protective Services,⁸ the local children's advocacy center, local law enforcement, and the local district attorney's office. Members are required to cooperate through shared fact-finding and effective case development.

⁸ The Texas Department of Family and Protective Services participation involves representatives from its Child Protective Investigations division.

- **Conducting forensic interviews.** Statute requires the use of forensic interviews for child abuse and neglect investigations (see text box for more information about forensic interviews). The interview is conducted in a manner that is legally sound; of a neutral, fact-finding nature; and coordinated with the members of the multi-disciplinary team to minimize duplicate interviewing by local law enforcement and the district attorney's office.

Similar required practices do not exist to allow non-law enforcement staff to assist local law enforcement and district attorneys' offices with investigating and prosecuting sexual assaults involving adult victims.

The required practices for investigating and prosecuting sexual assaults of children may likely explain why cases involving child victims result in arrests and convictions more often than cases involving adult victims. For the 5-year period audited, sexual assaults involving child victims represented 53 percent of all reported sexual assault incidents, but they accounted for 68 percent of all arrest charges and 75 percent of all convictions for sexual assaults, according to data from the DPS' Uniform Crime Reporting Program and Computerized Criminal History System (CCH) (see Figure 4 on the next page).

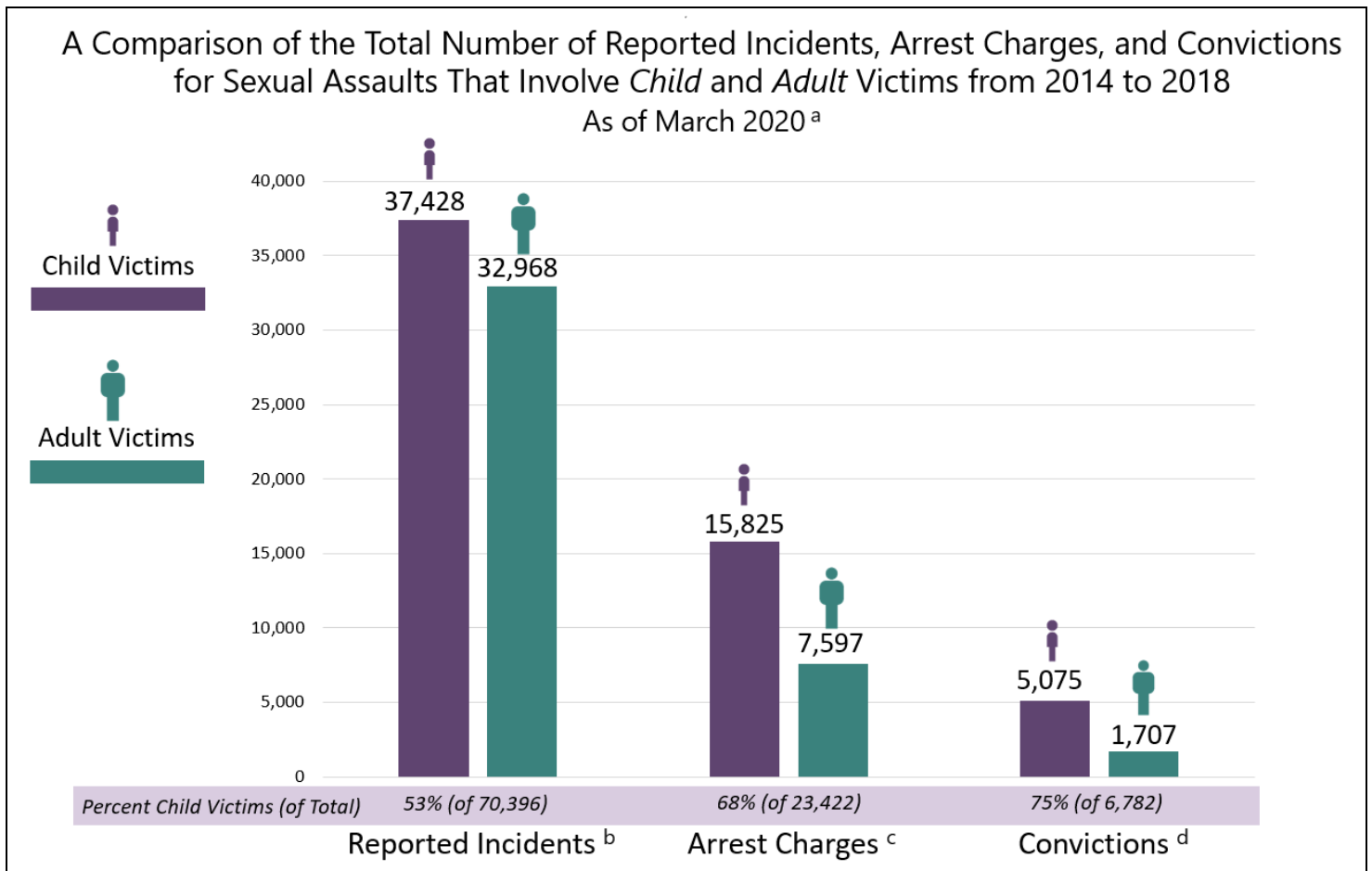
Forensic Interview of a Child Victim

A forensic interview is a legally sound method of gathering factual information regarding allegations of abuse and/or exposure to violence. The interview is conducted by a neutral professional utilizing research and practice informed techniques.

The purpose of a forensic interview is to obtain a statement from a child in a developmentally and culturally sensitive, unbiased and fact-finding manner that will support accurate and fair decision making by the involved multi-disciplinary team in the criminal justice and child protection systems. Forensic interviews should be child-centered and coordinated to avoid duplication. Anyone in the role of a forensic interviewer should have initial and ongoing formal forensic interviewer training and participate in forensic interviewer peer review.

Sources: Texas Family Code and Texas Standards for the Children's Advocacy Centers™.

Figure 4



^a While the reported incidents and arrest charges shown are for the same five-year period, they are based on two different data sources that are not related and cannot be matched to one another. However, the totals presented illustrate the difference between the number of sexual assault reported incidents and the number of arrest charges that occur over a five-year period. See Chapter 3 for more information on the data sources for reported incidents and arrest charges.

^b The reported incidents shown does not include 878 reported incident that were classified by auditors as “Age of Victim Unknown.” See Chapter 4-A for more information on reported incidents.

^c See Chapter 4-B for more information on arrest charges for sexual assault.

^d The number of convictions shown were as of March 2020. The number of convictions are subject to change due to subsequent convictions on pending arrest charges, appeals, and violations of probation for deferred adjudication. See Chapter 4-D for more information on the number of convictions for sexual assault.

Sources: Data from DPS’ Uniform Crime Reporting Program and CCH.

State funds help support investigations and prosecutions of sexual assaults that involve child victims.

Children’s Advocacy Centers of Texas™

The statutory purpose of the Children’s Advocacy Centers of Texas™ is to coordinate joint investigations of child abuse between the Texas Department of Family and Protective Services, local law enforcement, and prosecution; and conduct forensic interviews of child victims of alleged abuse; and to ensure the seamless provision of aftercare services such as trauma-informed mental health services and case management services.

As of May 2019, children’s advocacy centers served 208 counties throughout Texas.

Sources: The Health and Human Services Commission’s *Legislative Appropriations Request* for fiscal years 2018-2019 and the Children’s Advocacy of Centers of Texas™.

The State contracts with the Children’s Advocacy Centers of Texas™ to provide certain statutorily required services for child victims of abuse and neglect, including services that assist sexual assault investigations (see text box for more information about the advocacy centers).

Information obtained during site visits showed that local law enforcement and district attorneys’ offices may rely on the assistance that the local children’s advocacy center provides when investigating and prosecuting sexual assaults of child victims.

State funds are appropriated to the designated state agency to contract with the Children’s Advocacy Centers of Texas™ for providing training, technical assistance, evaluation services, and funds administration to support contractual requirements for the individual centers throughout Texas. This includes support and management of multi-disciplinary teams, conducting forensic interviews, and other aftercare support related services for child victims of abuse and neglect. Table 5 shows a summary of the total amount of state funds appropriated from fiscal years 2014 through 2018 to reimburse the Children’s Advocacy Centers of Texas™ for services delivered.

Table 5

State Funds Appropriated for Children’s Advocacy Centers of Texas™ Services		
State Biennium	Designated State Agency	General Appropriations Budget Total
2014-2015	Office of the Attorney General	\$20.0 million
2016-2017	Health and Human Services Commission	\$26.7 million
2018-2019	Health and Human Services Commission	\$27.2 million

Sources: General Appropriations Acts (83rd, 84th, and 85th Legislatures).

Interviews with detectives suggested that the resources provided through the Children Advocacy Centers of Texas™ for managing multi-disciplinary teams and forensic interviews represent an advantage for investigations and prosecutions of sexual assault cases involving child victims that are not available for cases involving adult victims.

Local Law Enforcement and District Attorneys' Offices Have Adopted Certain Nationally Recognized Best Practices and Implemented Other Actions to Overcome Challenges of Investigating and Prosecuting Sexual Assaults

Site visits and responses to the SAO survey showed that generally local law enforcement and district attorneys' offices have written policies and procedures in place to provide guidance on specific investigation and prosecution activities related to sexual assaults (such as the collection and submission of evidence, preparing investigation reports, and informing victims of their right to information about their sexual assault case). Local law enforcement and district attorneys' offices indicated that they have also taken actions, including adopting certain nationally recognized best practices, to help address the challenges encountered when investigating and prosecuting sexual assaults. Those actions included:

- Training staff on victim-centered/trauma-informed practices for engaging victims of sexual assault.
- Improving communication and coordination of investigation and prosecution activities by participating in sexual assault response teams.
- Creating specialized units for investigating and prosecuting sexual assault crimes.

Those actions are described in more detail below.

Training on Victim-centered/Trauma-informed Practices

Local law enforcement and district attorneys' offices have recognized the importance of their staff (such as patrol officers, detectives, prosecutors, victim advocates, and victim services counselors) receiving training to (1) understand the traumatic experience that a sexual assault can have on a victim and (2) develop the skills needed to avoid further traumatizing a sexual assault victim, such as forensic interviewing techniques (see text box for more information on victim-centered/trauma-informed practices).

Victim-centered/Trauma-informed Approaches

A victim-centered approach involves a focus on the needs of the victim to ensure that services are delivered to the victim in a compassionate and nonjudgmental manner. A victim-centered approach can help prevent re-traumatization of the victim, and can empower the victim to actively participate in the criminal justice process.

Trauma-informed practices involve recognizing the symptoms of trauma and its prevalence and understanding how those symptoms can affect an individual who has experienced trauma.

Source: *Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault, Police Executive Research Forum, May 2018.*

Site visits and responses to the SAO survey indicated that while staff involved in investigations and prosecutions may receive victim-centered/trauma-informed related training, more training opportunities are needed.⁹

Table 6 summarizes the responses to the SAO survey about how often staff received such training.

Table 6

Summary of SAO Survey Responses for How Often Investigation and Prosecution Staff Received Victim-Centered/Trauma-Informed Related Training						
Staff Position		Training Provided				
		At Hire	Once	Periodically (at least once annually)	Not Taken	Other
Local Law Enforcement	Detective	94	125	212	76	8 ^a
	Patrol Officer	159	192	148	117	14 ^a
	Supervisor	88	169	196	89	10 ^a
	Victim Advocate	46	30	92	68	1 ^a
District Attorneys' Offices	Prosecutor	14	4	58	Not Applicable ^b	6 ^c
	Victim Services Counselor	23	7	68	Not Applicable ^b	4 ^c
Totals		424	527	774	350	43
^a Local Law Enforcement "Other" includes (1) as required by the Texas Commission on Law Enforcement, (2) dependent on work/education history, (3) occasionally (less than annually), (4) upon request, and (5) when funding/availability allows. ^b "Not Taken" was not present as an option for District Attorneys' Offices to select on the SAO survey. ^c District Attorneys' Offices' "Other" includes (1) annually, (2) biannually, or (3) indicated that prosecutors/victim services counselors did not receive training.						

Source: Local law enforcement agencies' and district attorneys' offices' responses to the SAO survey.

⁹ Senate Bill 586 (86th Legislature) amended the Texas Occupations Code to include the following training requirements:

- (1) Section 1701.253 (b) requires the Texas Commission on Law Enforcement to establish a comprehensive education and training program for local law enforcement that includes requirements relating to the best practices and trauma-informed techniques to effectively recognize, investigate, and document cases that involve child abuse and neglect, family violence, and sexual assault.
- (2) Section 1701.4045, requires the Texas Commission on Law Enforcement to establish minimum requirements for the training, testing, and certification of special officers for responding to allegations of child abuse and neglect, family violence, and sexual assault.

The requirements were effective September 1, 2019.

Improving Communication and Coordination of Investigation and Prosecution Activities for Sexual Assault Cases by Participating in Sexual Assault Response Teams

Local law enforcement and district attorneys’ offices have worked to improve coordination and communication among investigators and prosecutors through the use of multi-disciplinary teams and forensic interviews for sexual assault cases that involve child victims (see Chapter 2-C for more information about multi-disciplinary teams and forensic interviews). Some indicated that they have adopted similar practices to improve investigation and prosecution activities for sexual assault cases that involve adult victims by participating on a sexual assault response team.

A sexual assault response team is similar to a multi-disciplinary team with some key differences in how a sexual assault response team operates in Texas.¹⁰ Table 7 describes the differences between a sexual assault response team and a multi-disciplinary team.

Table 7

Differences Between a Sexual Assault Response Team and a Multi-disciplinary Team	
Sexual Assault Response Team	Multi-disciplinary Team
<ul style="list-style-type: none"> ▪ Participation on a sexual assault response team by local law enforcement and district attorneys’ offices is voluntary. It may include representatives from local community-based advocacy organizations that provide support to adult victims of sexual assaults and medical professionals that provide treatment to sexual assault victims. ▪ The primary goals of a sexual assault response team is to improve the treatment of victims of sexual assault, case outcomes, efficiency and protection of the community. A sexual assault response team provides members an opportunity to jointly discuss and identify ways to strengthen and improve investigation and prosecution processes for sexual assault cases. 	<ul style="list-style-type: none"> ▪ The members of a multi-disciplinary team are statutorily required to include the Texas Department of Family and Protective Services, the local children’s advocacy center, local law enforcement, and the local district attorney’s office. ▪ The members of a multi-disciplinary team review allegations of child abuse and neglect and jointly assist with investigating and prosecuting those allegations.

Sources: Information about sexual assault response teams is from the Texas Association Against Sexual Assault, local law enforcement, and district attorneys’ offices. Information about multi-disciplinary teams is from Texas Family Code, Chapter 264, Subchapter (E).

¹⁰ The terms *sexual assault response team* and *multi-disciplinary team* may be interchangeable and have different meanings in other states. The use of those terms for this report reflect their meanings as used by local law enforcement and district attorneys’ offices in Texas.

Creating Specialized Units for Investigating and Prosecuting Sexual Assault Crimes

Local law enforcement and district attorneys' offices have created specialized units to investigate and prosecute only sexual assault-related crimes. Those units may also be specific to either sexual assaults involving child victims or adult victims.

Specialized units have staff (such as detectives and prosecutors) trained and experienced with investigating and prosecuting sexual assaults; such training may include victim-centered/trauma-informed practices for engaging sexual assault victims. Research has indicated that detectives and prosecutors with specialized training can help improve the chances of gaining a victim's cooperation and, ideally, the staff can more effectively address the challenges with investigating and prosecuting sexual assaults.^{11,12}

Tables 8 summarizes the local law enforcement and district attorneys' responses to the SAO survey about whether they had a specialized unit to investigate and prosecute sexual assault cases from January 1, 2014, through December 31, 2018.

Table 8

Total Number of Local Law Enforcement and District Attorneys' Offices That Had a Specialized Unit to Investigate and Prosecute Sexual Assault Cases From January 1, 2014, through December 31, 2018				
Entity	Specialized Unit for Adult Victims Only	Specialized Unit for Child Victims Only	Specialized Units for Adult and Child Victims	No Specialized Units
Local Law Enforcement	4	11	111	429
District Attorney's Offices	0	8	10	81
Totals	4	19	121	510

Sources: Local law enforcement agencies' and district attorneys' offices' responses to the SAO survey.

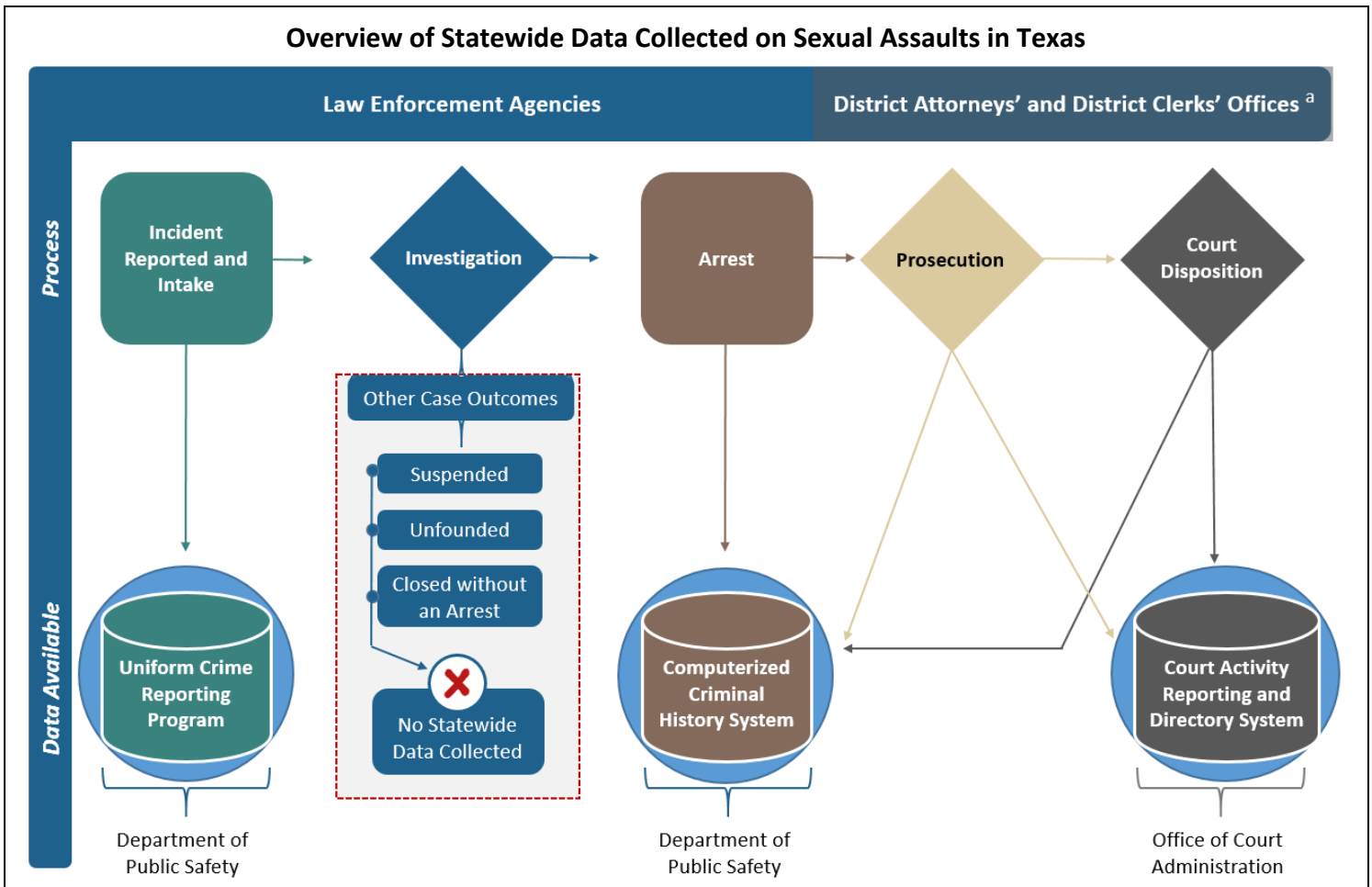
¹¹ *Model Response to Sexual Violence for Prosecutors (RSVP) An Invitation to Lead*, AEquitas, Justice Management Institute, and Urban Institute, 2017.

¹² *Executive Guidebook: Practical Approaches for Strengthening Law Enforcement's Response to Sexual Assault*, Police Executive Research Forum, May 2018.

Statewide Data on Sexual Assaults in Texas Is Limited

Auditors determined that there is not comprehensive **statewide** data collected on adult and child sexual assaults in Texas that provides complete information on the progress of a reported sexual assault through the investigation and prosecution processes of the criminal justice system. Figure 5 shows the information systems that collect the statewide data on the investigation and prosecution of sexual assaults.¹³

Figure 5



^a Texas Code of Criminal Procedure, Sections 66.301 and 66.304, requires criminal justice agencies and district clerks' offices to compile and maintain records needed for reporting data to the Computerized Criminal History System, which is managed by DPS, and includes data such as arrest, prosecution, and court-related information. In addition, Title 1, Texas Administrative Code, Section 171.4, requires district clerks' offices to report aggregate court activity statistics to the OCA on a monthly basis, such as information related to certain types of felony cases (including sexual assault cases), cases on the docket [schedule], dispositions, and other supplementary information.

Source: Based on information provided by the DPS and OCA.

¹³ In accordance with House Bill 1 (86th Legislature), statewide data on sexual assaults for purposes of this audit is defined by Texas Penal Code, Section 22.011 (Sexual Assault) and 22.021 (Aggravated Sexual Assault). The statewide data did not include sexual assault data that DPS collects and submits to the Federal Bureau of Investigations according to the National Incident-based Reporting System methodology, which defines sexual assault differently than the Texas Penal Code.

As Figure 5 shows, while the State collects select information on sexual assaults, the data is collected by different and unrelated information systems, which prevents records in one system from being matched to the records in another system (for example, matching a reported sexual assault incident to an arrest). Additionally, the information on the outcomes of all reported sexual assault investigations, such as those that do not lead to an arrest, is not collected at a statewide level. Information on the outcome of sexual assault investigations is available only at each respective law enforcement agency.

The statewide data collected on sexual assaults includes:

- **Data on sexual assault incidents reported by law enforcement agencies.** State statute requires law enforcement agencies to collect and report to DPS certain information on reported sexual assaults and aggravated sexual assaults, as defined by Texas Penal Code, Sections 22.011 and 22.021, respectively (see text box). This includes information on the victim, offender, weapons and injuries, as applicable. Law enforcement agencies report this information as part of DPS' Uniform Crime Reporting Program.¹⁴ Statute does not require law enforcement agencies to collect and report information on the outcomes of related investigations, such as whether they resulted in an arrest, were closed, were inactive, or determined to be unfounded (see Chapter 3-A).
- **Arrest, prosecution, and court disposition data related to sexual assault offenses.** DPS collects this data in its Computerized Criminal History System (CCH). However, auditors determined that the data did not include all prosecution records. Without complete prosecution information, auditors could not accurately determine the number of arrest charges that either the district attorney's office or a grand jury declined (see Chapter 3-B).
- **Court activity data on cases involving sexual assault offenses.** OCA collects this data in its Court Activity Reporting and Directory System. District clerks' offices submit monthly reports to the OCA that contain aggregate, countywide statistics on court activity for sexual assault offenses. The data provides only the total number of court cases in distinct court activity categories without any detailed information about the court cases¹⁵. Auditors were unable to trace that data back to individual cases

State Reporting Requirements

The 80th Legislature passed House Bill 76, which amended Texas Government Code, Chapter 411, to establish reporting requirements for sexual assaults.

¹⁴ The Uniform Crime Reporting Program is responsible for producing crime statistics for law enforcement administration, operation, and management.

¹⁵ See Appendix 4 for information on actions taken to collect court data at the case level.

on sexual assault for purposes of the audit. As a result, auditors did not use this information for data analysis. (See Appendix 1 for more information on court activity data for sexual assaults.)

Auditors also identified inaccurate and incomplete records within the statewide data through (1) data analysis and (2) the verification of samples of statewide data to supporting documentation during site visits. However, the statewide data from DPS was the best available source of statewide information on sexual assaults for the purposes of this audit. See Chapter 4 for more information on auditors' analysis of the statewide data collected.

Chapter 3-A

Statewide Data Available on Adult and Child Sexual Assault Incidents Did Not Include Information on the Outcomes of Investigation Activities and Contained Inaccurate Information

Texas Government Code, Section 411.042 (h), requires law enforcement agencies to collect and report certain information on incidents of sexual assault that are specific to Texas Penal Code, Sections 22.011 (sexual assault) and 22.021 (aggravated sexual assault) (see text box for more information).

Law enforcement agencies report information on adult and child sexual assault incidents as part of the Uniform Crime Reporting Program's collection of state mandated, sexual assault incident data.

However, auditors identified limitations with that data, which are discussed below.

Law enforcement agencies are not required to report the outcome of their sexual assault investigations to DPS.

While law enforcement agencies are statutorily required to report certain demographic information on victims, offenders, weapons, and injuries involved in reported sexual assault incidents, they are not required to report information on (1) the outcome of a subsequent investigation (for example, whether the investigation was closed, unfounded, or in progress), (2) whether the investigation led to an arrest, or (3) if the sexual assault incident was referred to a district attorney's office for prosecution.

Texas Penal Code Definitions

The Texas Penal Code, Sections 22.011 and 22.021, define the following types of sexual assault:

- **Texas Penal Code, Section 22.011-Sexual Assault.** A sexual assault is committed when an offender performs sexual acts against another person without their consent, or a child younger than 17 years of age.
- **Texas Penal Code, Section 22.021-Aggravated Sexual Assault.** An aggravated sexual assault is committed when during a sexual assault, certain other acts were committed, such as serious bodily injury; placing the victim in fear of serious bodily injury; attempted murder; kidnapping; presence of a deadly weapon; use of drugs; or the victim is younger than 14 years old, elderly, or disabled.

Source: Texas Penal Code, Sections 22.011 and 22.021.

As a 2016 report by the taskforce created as the result of House Bill 2455 (84th Legislature)¹⁶ explained:

“To improve the criminal justice response to sexual assault, and to increase public confidence in that response, it is crucial for policymakers to understand when, why, and how often reported sexual assaults result in successful prosecution. ... However, current data collection practices in Texas do not result in the capture of important categories of case-outcome information necessary to answer these questions. Although the [Texas] Department of Public Safety collects data on criminal complaints for sex offenses, including the numbers of complaints received by law enforcement agencies and jurisdictions in which those complaints are received, several data gaps render the information on the outcome of those complaints incomplete and, therefore, the data are of limited utility.”

While DPS requires law enforcement agencies to submit reports to the Uniform Crime Reporting Program on incidents for certain types of sexual assault defined by the Texas Penal Code¹⁷ (see text box for more information on the information that should be reported), information on the outcomes of all reported sexual assault investigations, such as those that do not lead to an arrest, is available only at each respective law enforcement agency.

Information Reported on Sexual Assault Incidents

Law enforcement agencies should report the following information for each sexual assault incident to DPS:

- The specific sexual assault offense committed.
- Age, gender, race, and ethnic origin of the victim and offender(s).
- Relationship of the offender(s) to the victim.
- Type of weapon used.
- Physical injury sustained by the victim.
- Location for where the incident occurred.
- The number of victims and offenders.
- Whether the offender(s) was/were under the influence of alcohol or drugs.
- Date and time of the incident.

Source: Title 37, Texas Administrative Code, Section 27.121.

Sexual assault incidents that are statutorily required to be reported to DPS cannot be matched to arrest, prosecution, and court disposition data in CCH.

The data on sexual assault incidents collected by the Uniform Crime Reporting Program and the data on arrests, prosecutions, and court dispositions in CCH do not share any unique identifiers that would allow a reported sexual assault incident to be matched to a corresponding arrest, prosecution, or court disposition in CCH. As a result, auditors were unable to determine the statewide number of reported sexual assault incidents that resulted in either an arrest or prosecution for the five-year scope of this audit. (See Chapter 4 for more information on the analysis of sexual assault incidents.)

¹⁶ *Recommendations for Collecting and Reporting Data Relating to Family Violence, Sexual Assault, Stalking, and Human Trafficking As Directed by HB 2455, 84th Legislature*; A Report By the Taskforce to Promote Uniformity in Collection and Reporting of Information on Family Violence, Sexual Assault, Stalking, and Human Trafficking; September 2016.

¹⁷ In addition to sexual assaults and aggravated sexual assaults, DPS requires law enforcement agencies to report on the following sections of the Texas Penal Code: Section 21.02 (Continuous sexual abuse of young child or children), Section 21.11 (a)(1) (Indecency with a child by contact), Section 21.11 (a)(2) (Indecency with a child by exposure), and Section 43.25 (Sexual performance by a child).

Statewide data on sexual assault incidents was not consistently accurate and complete.

Auditors analyzed statewide data and tested samples of specific case files during site visits and identified errors and missing information in the statewide data on sexual assault incidents. Specifically, auditors identified inaccurate and incomplete information within the data tested that resulted from the following:

- **Unreported sexual assault incidents.** Law enforcement agencies did not consistently report all sexual assault incidents to the Uniform Crime Reporting Program. During site visits, auditors identified arrest records for sexual assaults in which the associated incident was not included in the statewide data.
- **Data entry errors.** Data entry errors by law enforcement agencies resulted in (1) reporting inaccurate information such as the victim's age¹⁸ (which can affect whether a sexual assault is classified as involving an adult or a child victim), (2) reporting the same sexual assault incident more than once, and (3) incorrectly reporting a non-sexual assault incident as a sexual assault incident.

However, auditors used this data because it was the best available source of statewide information on reported sexual assault incidents for the purposes of this audit.

Chapter 3-B

The Statewide Data on Arrest Charges and Court Dispositions Relating to Sexual Assaults Was Accurate and Complete; However, Statewide Data on Prosecution Actions Was Incomplete

Auditors analyzed the data related to sexual assaults in CCH and tested samples of specific arrest, prosecution, and court data records in that information system for accuracy and completeness. While statewide data on arrest charges and court dispositions¹⁹ was reasonably accurate and complete for audit purposes, the statewide data on prosecution actions in CCH was incomplete.²⁰ Specifically, of 16,207 court dispositions for arrest

¹⁸ Examples of inaccurate victim ages identified included children who were 1 through 9 years old whose ages were erroneously reported with an added zero (for example, the age of a 3-year-old victim was reported as 30 years old). Additionally, auditors identified incidents for which the victim's age was reported as the age *at the time of report* to law enforcement instead of the age *at the time of the incident*, which resulted in inaccurately reported victim ages.

¹⁹ For purposes of this report, court disposition refers to whether a prosecuted arrest charge resulted in a conviction, dismissal, deferred adjudication, pending, etc.

²⁰ Auditors previously identified the issue of missing prosecution records in CCH in *An Audit Report on the Criminal Justice Information System at the Department of Public Safety and the Texas Department of Criminal Justice* (State Auditor's Office Report No. 16-025, May 2016).

charges recorded in CCH during the five-year scope of the audit, 4,555 (28 percent) did not have related prosecution records. This shows that the prosecution records in CCH are not complete. As a result, there is a significant risk that some of the arrest charges recorded in CCH have missing prosecution records that should have been submitted.

While auditors could analyze court actions on sexual assaults based on the court disposition records, the prosecution records are the only source in CCH that would provide information on whether a district attorney's office or grand jury declined arrest charges for sexual assault. Without complete prosecution records, auditors could not accurately determine the number of arrest charges for sexual assault that were declined for prosecution by district attorneys' offices or grand juries. (See Chapter 4 for more information about auditors' analysis of statewide data on arrest charges, prosecution, and court records related to sexual assault charges.)

Additionally, as discussed in Chapter 3-A, the arrest, prosecution, and court data in CCH cannot be matched to the reported sexual assault incidents collected by the Uniform Crime Reporting Program. Information on the outcome of investigations and prosecution actions related to a specific reported sexual assault is available only through local law enforcement and the district attorney's office involved in the case.

Analysis of Statewide Data for Adult and Child Sexual Assaults in Texas from January 1, 2014, through December 31, 2018

Auditors examined statewide data on adult and child sexual assaults²¹ in Texas from January 1, 2014, through December 31, 2018, from the Uniform Crime Reporting Program and CCH, both of which are maintained by DPS. Specifically, auditors analyzed the following statewide data:

- Sexual assault incidents reported by law enforcement agencies.²²
- Arrests for sexual assaults including information on prosecution actions and court dispositions related to those arrests.²³

Information on the outcomes of all reported sexual assault investigations, such as those that do not lead to an arrest, is available only at each respective law enforcement agency and district attorney's office. As a result, auditors were unable to determine the statewide number of sexual assault incidents that were:

- Closed, classified as inactive, or determined to be unfounded by law enforcement agencies.
- Declined for prosecution by the district attorney's office prior to arrest.

Figure 6 on the next page shows an overview of the number of sexual assaults by category of reported incidents, arrest charges, prosecutions, and court dispositions from calendar years 2014 through 2018 based on the statewide data available.

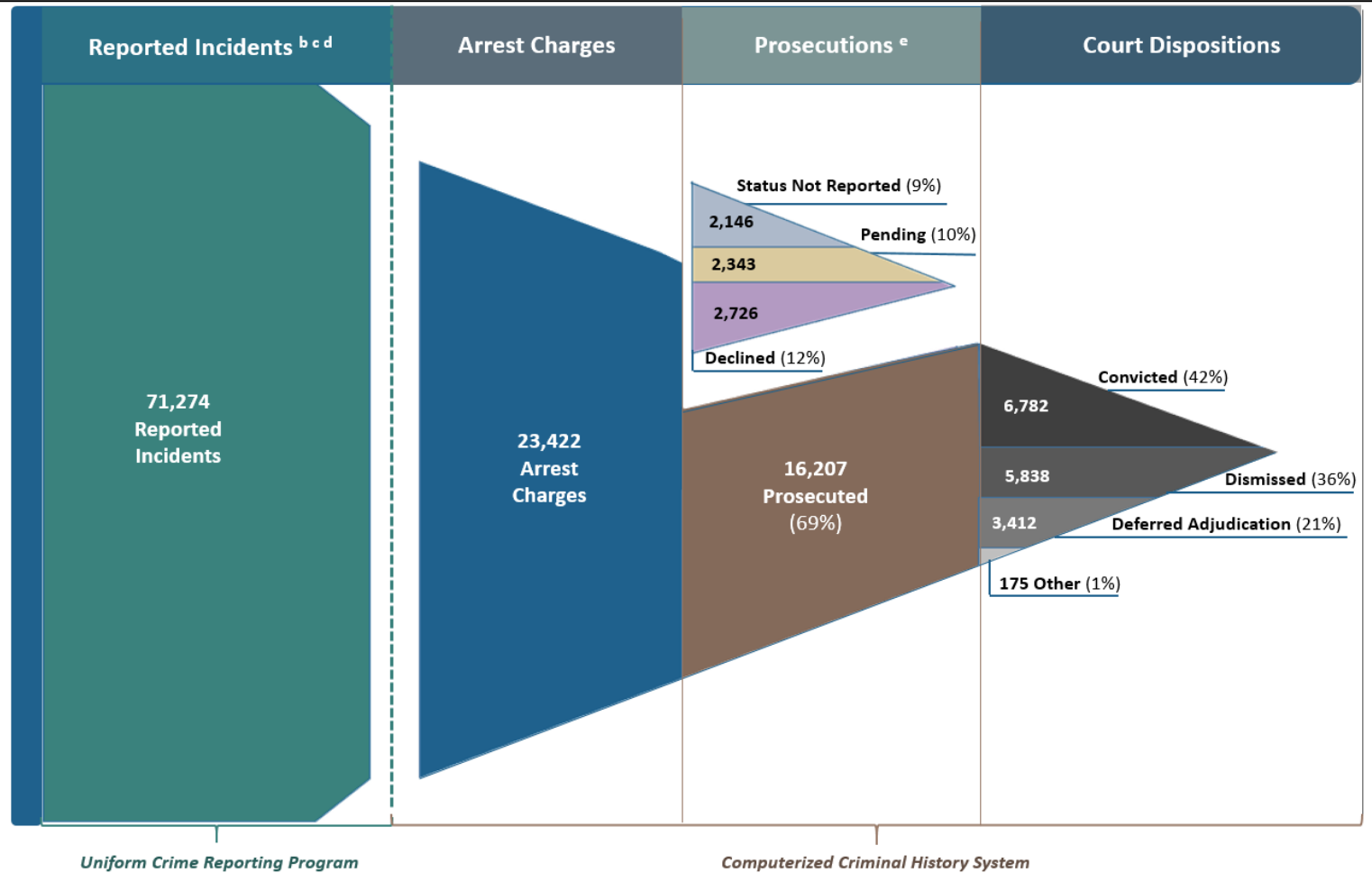
²¹ In accordance with House Bill 1 (86th Legislature), the statewide data on sexual assaults that auditors analyzed was limited to sexual assaults incidents as defined by Texas Penal Code, Section 22.011 (sexual assault) and Section 22.021 (aggravated sexual assault). See Chapter 3 for more information on the statewide data.

²² Statewide data on reported sexual assault incidents was determined to be insufficiently reliable for purposes of this audit (see Chapter 3-A for more information about the data weaknesses identified). However, the statewide data presented in this chapter represents the best available statewide data for sexual assaults in Texas during the scope of the audit.

²³ The statewide data used for this audit is based on sexual assault charges filed at the time of arrest. As a result, the statewide data does not include offense charges that were changed to sexual assault charges at the time of prosecution.

Figure 6

Reported Incidents, Arrest Charges, Prosecutions, and Court Dispositions for Sexual Assaults January 1, 2014, through December 31, 2018 ^a



^a While the sexual assault incidents and arrest charges shown are for the same five-year period, they are based on two different data sources that are not related and cannot be matched to one another. However, the totals presented illustrate the difference between the number of reported sexual assault incidents and the number of arrest charges that occurred over a five-year period.

^b The number of reported incidents is calculated based on the incident number assigned to a reported sexual assault which may include more than one sexual assault victim.

^c DPS indicated that the data on reported incidents shown may include incidents that were determined to be unfounded. (See Chapter 3 for more information on reported sexual assault incidents.)

^d Auditors determined that the statewide data available on reported sexual assault incidents was not sufficiently reliable. However, the statewide data was the best data available for purposes of this audit. (See Chapter 3 for more information on statewide data limitations.)

^e The total shown represents the status of arrest charges filed from 2014 through 2018 that were either prosecuted or pending prosecution as of March 2020.

Source: Data from DPS's Uniform Crime Reporting Program and CCH.

Key Observations

Below is a summary of the key results of auditors' analysis of the available statewide data on reported sexual assault incidents and arrest charges from January 1, 2014, through December 31, 2018:

- There was a significant difference between the number of reported sexual assault incidents and the number of arrest charges for sexual assaults (see Figure 6).
- There were 71,274 sexual assault incidents reported to law enforcement agencies from 2014 through 2018 (see Chapter 4-A).
- There were 23,422 arrest charges for sexual assault from 2014 through 2018. Of those arrest charges, 15,825 (68 percent) involved child victims and 7,597 (32 percent) involved adult victims (see Chapter 4-B).
- Nearly 70 percent of the arrest charges for sexual assault filed were prosecuted (see Chapter 4-C).
- Most arrest charges that had a court disposition either resulted in a conviction or were dismissed (see Chapter 4-D).
- Of the total arrest charges for sexual assault filed from 2014 through 2018, 75 percent were prosecuted according to the original offense charge and felony level (see Chapter 4-E).

Chapter 4-A

A Summary of Sexual Assault Incidents Reported from 2014 through 2018

Table 9 on the next page shows the total annual numbers of sexual assault incidents reported to law enforcement agencies from January 1, 2014, through December 31, 2018. The table shows the annual subtotals for the 71,274 sexual assault incidents reported during that five-year period by (1) the type of sexual assault offense (i.e., sexual assault or aggravated sexual assault) and (2) whether the sexual assault involved an adult or a child victim.

Table 9

The Total Number of Sexual Assault Incidents Reported to Law Enforcement Agencies From 2014 Through 2018 ^a						
Sexual Assault Offense ^b	2014	2015	2016	2017	2018	Totals ^{c d}
Adult Victims ^d						
Sexual Assault	4,800	5,031	5,068	5,404	6,193	26,496
Aggravated Sexual Assault	1,274	1,179	1,409	1,464	1,146	6,472
Subtotals	6,074	6,210	6,477	6,868	7,339	32,968
Child Victims ^d						
Sexual Assault	4,750	4,551	4,493	4,650	4,880	23,324
Aggravated Sexual Assault	3,147	2,812	2,855	2,649	2,641	14,104
Subtotals	7,897	7,363	7,348	7,299	7,521	37,428
Age of Victim Unknown ^d						
Sexual Assault	112	153	119	133	157	674
Aggravated Sexual Assault	22	34	42	71	35	204
Subtotals	134	187	161	204	192	878
Grand Totals	14,105	13,760	13,986	14,371	15,052	71,274
<p>^a Auditors determined that the statewide data available on reported sexual assault incidents was not sufficiently reliable. However, the statewide data was the best data available for purposes of this audit. (See Chapter 3-A for more information on statewide data limitations.)</p> <p>^b In accordance with House Bill 1 (86th Legislature), the totals shown in this table are for sexual assaults defined in Texas Penal Code, Section 22.011 (sexual assault, which does not include aggravated sexual assault), and Section 22.021 (aggravated sexual assault).</p> <p>^c The number of reported incidents is calculated based on the incident number assigned to a reported sexual assault which may include more than one sexual assault victim.</p> <p>^d DPS indicated that the data on reported incidents shown may include incidents that were determined to be unfounded. (See Chapter 3 for more information on reported sexual assault incidents.)</p> <p>^e Auditors classified a reported incident as having either an adult or a child victim based on the available data. The classification of a reported incident as either an adult or a child victim was based on the reported victim age and the definition of “child” as someone younger than 17 years old in Texas Penal Code, Section 22.011.</p>						

Source: DPS' Uniform Crime Reporting Program.

Chapter 4-B

A Summary of Arrest Charges for Sexual Assault from 2014 through 2018

Table 10 on the next page shows the total annual numbers of arrest charges for sexual assault from January 1, 2014, through December 31, 2018. The table shows the annual subtotals for the 23,422 arrest charges for sexual assault that were made during that five-year period by (1) the type of sexual assault offense (i.e., sexual assault or aggravated sexual assault) and (2) whether the sexual assault involved an adult or child victim.

Table 10

The Total Number of Sexual Assault Arrest Charges Filed From 2014 Through 2018 ^a						
Arrest Charge	2014	2015	2016	2017	2018	Total
Adult Victims						
Sexual Assault	989	1,070	1,064	1,179	1,182	5,484
Aggravated Sexual Assault	442	434	399	445	393	2,113
Subtotals	1,431	1,504	1,463	1,624	1,575	7,597
Child Victims						
Sexual Assault	1,406	1,474	1,478	1,558	1,512	7,428
Aggravated Sexual Assault	1,746	1,686	1,679	1,592	1,694	8,397
Subtotals	3,152	3,160	3,157	3,150	3,206	15,825
Grand Totals	4,583	4,664	4,620	4,774	4,781	23,422
^a The totals presented in this table (1) show arrest charges for sexual assaults defined in Texas Penal Code, Section 22.011 (sexual assault, which does not include aggravated sexual assault) and Section 22.021 (aggravated sexual assault), and (2) do not include arrests charges for juvenile offenders.						

Source: Data from DPS' CCH.

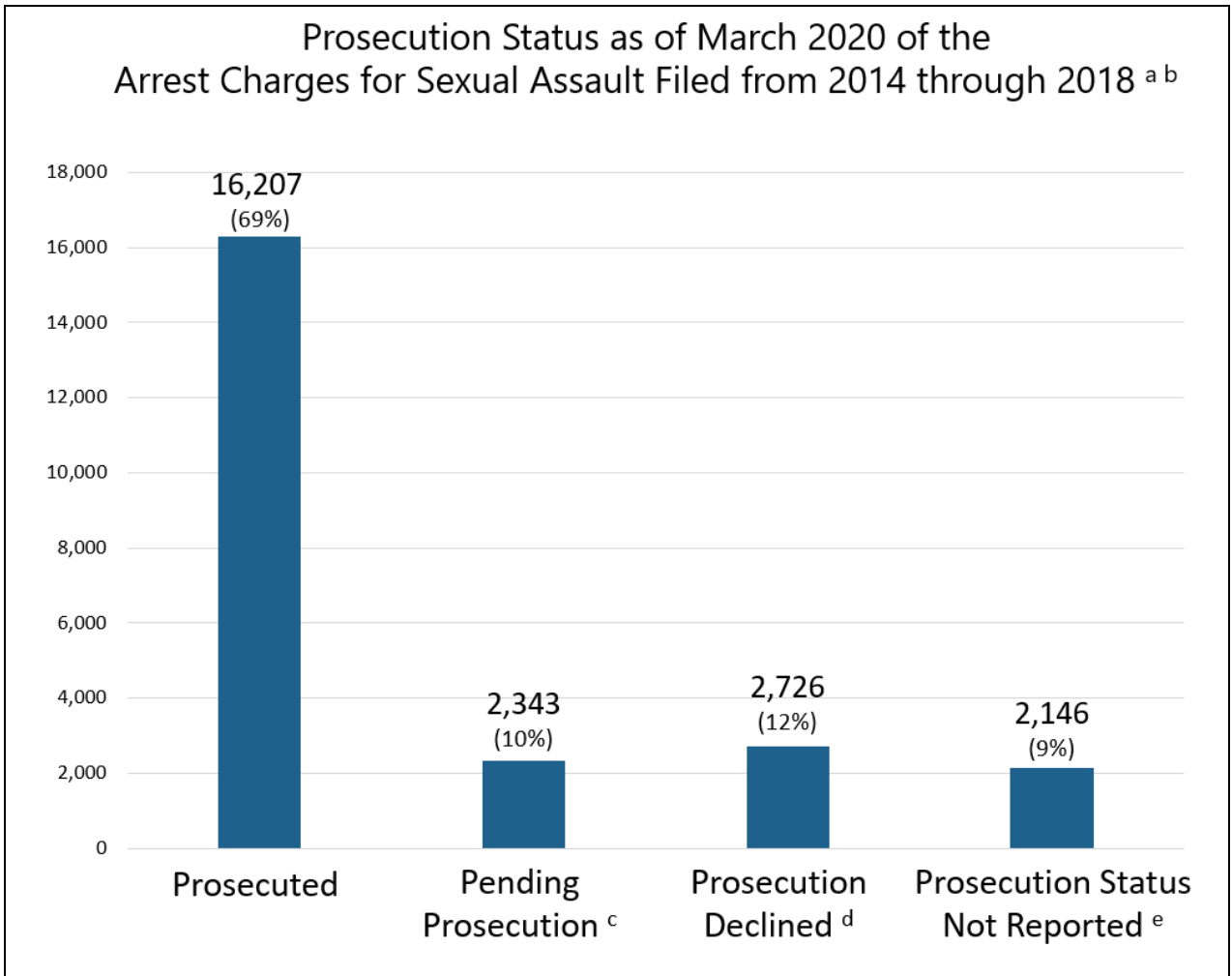
Chapter 4-C

A Summary of the Prosecution Status as of March 2020 for Arrest Charges for Sexual Assaults Filed from 2014 through 2018

Figures 7 and 8 on the following pages show summaries of the prosecution statuses as of March 2020 for the 23,422 arrest charges for sexual assaults filed from January 1, 2014, through December 31, 2018:

- The total number of arrest charges by prosecution status (i.e., prosecuted, prosecution pending, prosecution declined, and prosecution status not reported) (see Figure 7).
- A comparison of the status of prosecutions for arrest charges by type of victim (i.e., child or adult) and type of sexual assault offense (i.e., sexual assault or aggravated sexual assault) (see Figure 8).

Figure 7



^a The totals in this figure (1) show the arrest charges for sexual assaults defined in Texas Penal Code, Section 22.011 (sexual assault, which does not include aggravated sexual assault) and Section 22.021 (aggravated sexual assault) and (2) do not include arrest charges for juvenile offenders, and (3) do not include offense charges that were changed to sexual assault charges at the time of prosecution.

^b The totals in this figure include the prosecution statuses as of March 2020 for arrest charges for sexual assaults filed from 2014 through 2018. The numbers reported are subject to change due to subsequent completed prosecutions on pending arrest charges, appeals, and violations of probation for deferred adjudication.

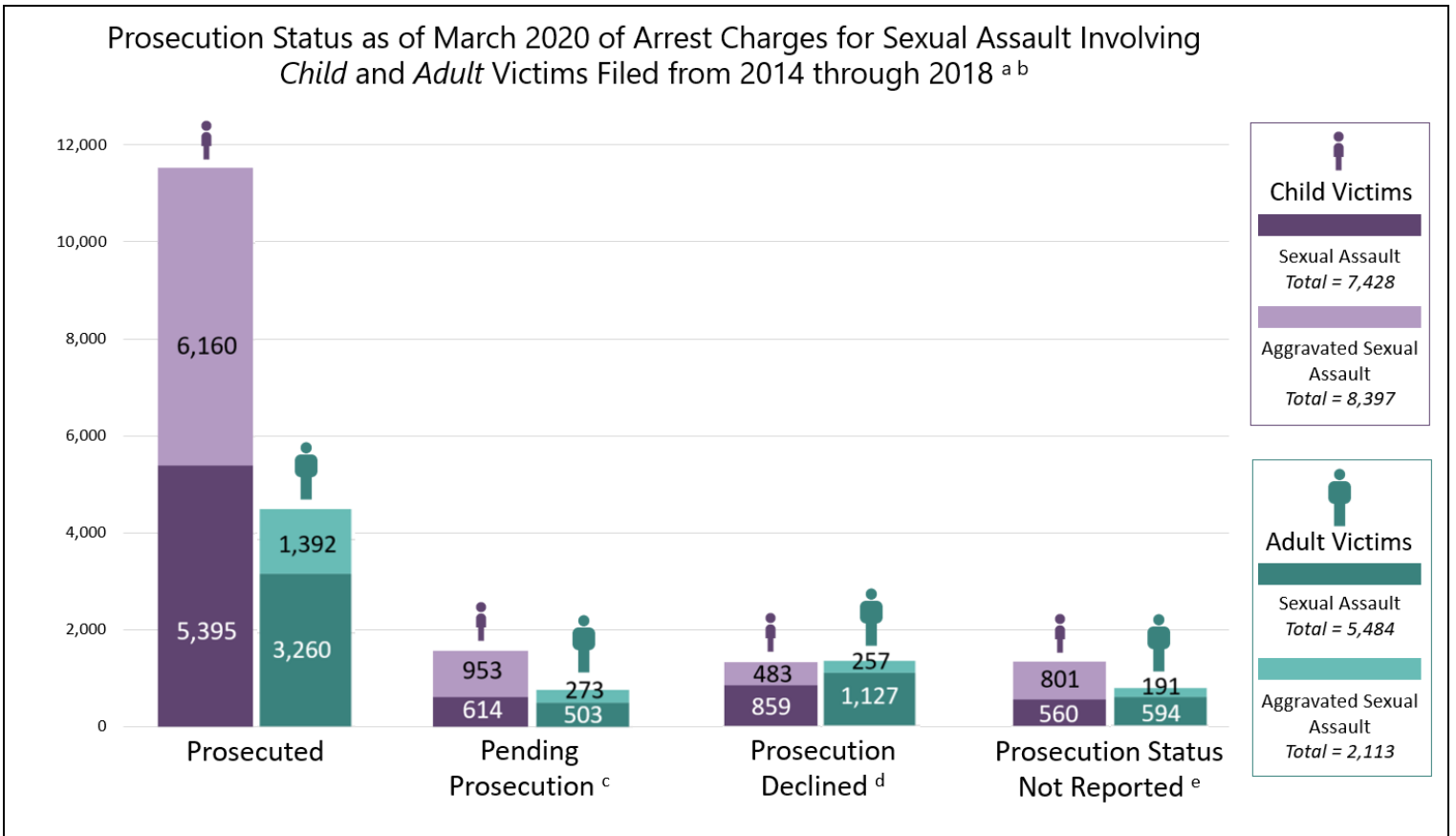
^c The totals in this figure for “Pending” include arrest charges that had a matching prosecution record but did not have a court disposition.

^d The totals in this figure for “Prosecution Declined” include: (1) 1,376 (50 percent) arrest charges that were no-billed by a grand jury, (2) 1,132 (42 percent) arrest charges that were declined by the prosecutor, (3) 168 (6 percent) arrest charges that were dropped by the arresting law enforcement agency, (4) 34 (1 percent) arrest charges that were withdrawn by the complainant, (5) 9 (less than 1 percent) arrest charges that were declined by the prosecutor because the offender completed pre-trial probation, (6) 4 (less than 1 percent) arrest charges that were declined because the offender has absconded or otherwise evaded prosecution, and (7) 3 (less than 1 percent) arrest charges that were declined because the charges were considered late filings under the statute of limitations.

^e The total in this figure for “Not Reported” includes arrest charges that did not have a prosecution record or a court disposition. However, auditors determined that some of the arrest charges recorded in CCH have missing prosecution records that should have been submitted (see Chapter 3-B for more information). As a result, the totals shown may include arrest charges that may have been accepted or declined for prosecution.

Source: Data from DPS’ CCH.

Figure 8



^a The totals in this figure (1) show the arrest charges for sexual assaults defined in Texas Penal Code, Section 22.011 (sexual assault, which does not include aggravated sexual assault) and Section 22.021 (aggravated sexual assault), (2) do not include arrest charges for juvenile offenders, and (3) do not include offense charges that were changed to sexual assault charges at the time of prosecution.

^b The totals in this figure include the prosecution statuses as of March 2020 for arrest charges for sexual assaults filed from 2014 through 2018. The totals for each prosecution status are subject to change due to subsequent completed prosecutions on pending arrest charges, appeals, and violations of probation for deferred adjudication.

^c The totals in this figure for “Pending” include arrest charges that had a matching prosecution record but did not have a court disposition.

^d The totals in this figure for “Prosecution Declined” include: (1) 1,376 (50 percent) arrest charges that were no-billed by a grand jury, (2) 1,132 (42 percent) arrest charges that were declined by the prosecutor, (3) 168 (6 percent) arrest charges that were dropped by the arresting law enforcement agency, (4) 34 (1 percent) arrest charges that were withdrawn by the complainant, (5) 9 (less than 1 percent) arrest charges that were declined by the prosecutor because the offender completed pre-trial probation, (6) 4 (less than 1 percent) arrest charges that were declined because the offender has absconded or otherwise evaded prosecution, and (7) 3 (less than 1 percent) arrest charges that were declined because the charges were considered late filings under the statute of limitations.

^e The total in this figure for “Not Reported” includes arrest charges that did not have a prosecution record or a court disposition. However, auditors determined that some of the arrest charges recorded in CCH have missing prosecution records that should have been submitted (see Chapter 3-B for more information). As a result, the totals shown may include arrest charges that may have been accepted or declined for prosecution.

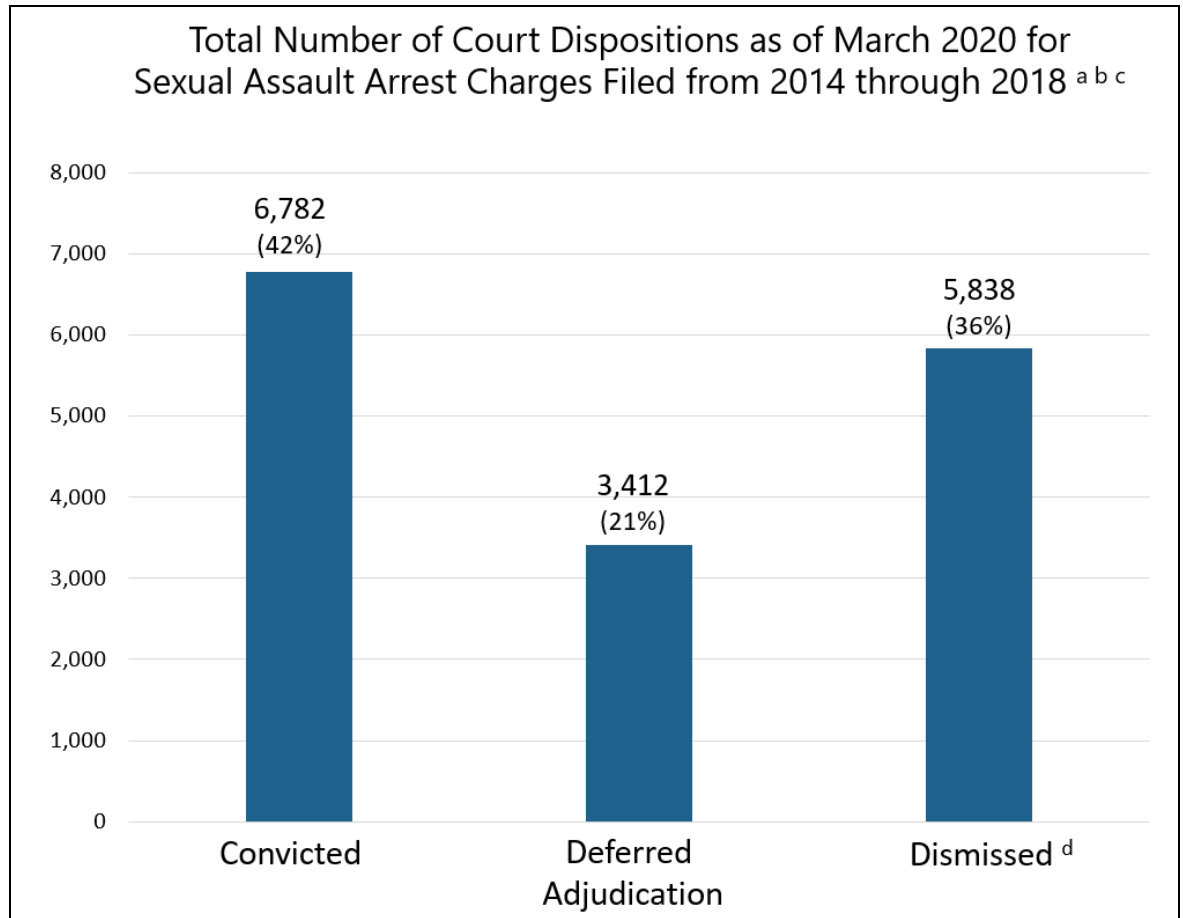
Source: Data from DPS’ CCH.

A Summary of the Court Dispositions as of March 2020 on Arrest Charges for Sexual Assaults Filed from 2014 through 2018

Figures 9 and 10 on the following pages show summaries of the court dispositions as of March 2020 for the 16,207 prosecuted arrest charges for sexual assaults filed from January 1, 2014, through December 31, 2018:

- The total number of court dispositions by status on sexual assault arrest charges (see Figure 9).
- A comparison of the status of court dispositions for prosecuted arrest charges by type of victim (child or adult) and type of sexual assault offense (sexual assault or aggravated sexual assault) (see Figure 10).

Figure 9



^a The totals in this figure (1) show the arrest charges for sexual assaults defined in Texas Penal Code, Section 22.011 (sexual assault, which does not include aggravated sexual assault) and Section 22.021 (aggravated sexual assault), (2) do not include arrest charges for juvenile offenders, (3) do not include offense charges that were changed to sexual assault charges at the time of prosecution, and (4) do not include court dispositions in which the conviction was pending as of March 2020.

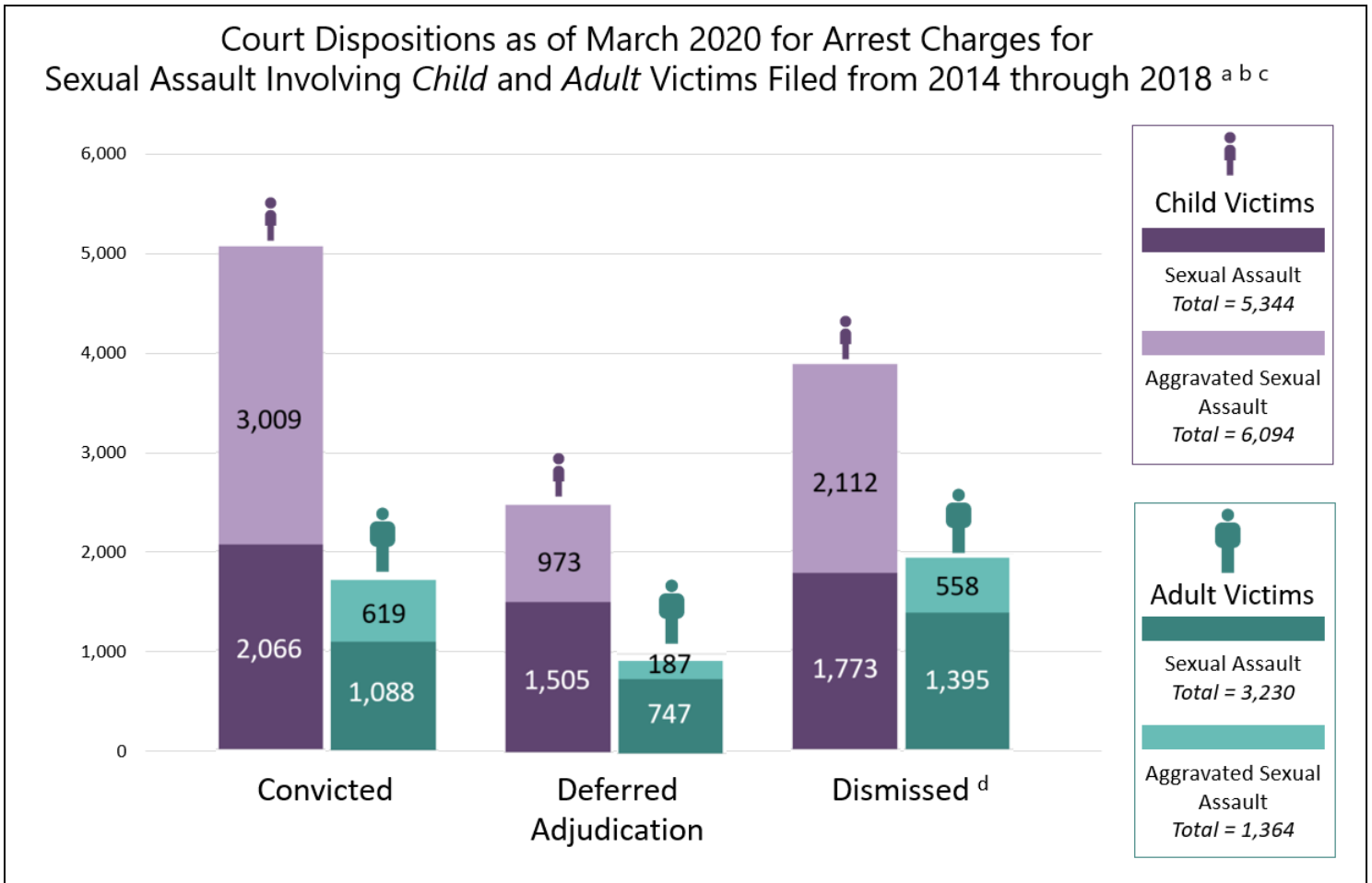
^b The totals in this figure include the court dispositions as of March 2020 for arrest charges for sexual assaults filed from 2014 through 2018. The totals are subject to change due to subsequent court dispositions on pending arrest charges, appeals, and violations of probation for deferred adjudication.

^c In addition to the dispositions shown, there were 175 (1 percent) “other” dispositions that included mistrials; cases in which the court accepted a defendant’s admission of guilt for multiple charges and issued a disposition, including sentencing, for one of those charges; and instances for which a court issued an order of nondisclosure prohibiting public entities including courts, clerks of the court, law enforcement agencies, and prosecutorial offices from disclosing certain criminal records.

^d The total in this figure for “Dismissed” include: (1) 4,840 (83 percent) arrest charges that were dismissed, (2) 463 (8 percent) arrest charges that were waived, (3) 215 (4 percent) arrest charges that were abandoned (4) 149 (3 percent) arrest charges that were acquitted, (5) 117 (2 percent) arrest charges which the defendant was found not guilty, (6) 52 (1 percent) arrest charges which the defendant was deceased at the time of prosecution, and (7) 2 (less than 1 percent) arrest charges that were quashed.

Source: Data from DPS’ CCH.

Figure 10



^a The totals in this figure (1) show the arrest charges for sexual assaults defined in Texas Penal Code, Section 22.011 (sexual assault, which does not include aggravated sexual assault) and Section 22.021 (aggravated sexual assault), (2) do not include arrest charges for juvenile offenders, (3) do not include offense charges that were changed to sexual assault charges at the time of prosecution, and (4) do not include court dispositions in which the conviction was pending as of March 2020.

^b The totals in this figure include the court dispositions as of March 2020 for arrest charges for sexual assaults filed from 2014 through 2018. The totals are subject to change due to subsequent court dispositions on pending arrest charges, appeals, and violations of probation for deferred adjudication.

^c In addition to the dispositions shown, there were 175 (1 percent) “other” dispositions that included mistrials; cases in which the court accepted a defendant’s admission of guilt for multiple charges and issued a disposition, including sentencing, for one of those charges; and instances for which a court issued an order of nondisclosure prohibiting public entities including courts, clerks of the court, law enforcement agencies, and prosecutorial offices from disclosing certain criminal records.

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Source: Data from DPS’ CCH.

A Summary of the Arrest Charges for Sexual Assault in Which the Offense Charge and Felony Level Were Upgraded, Reduced, or Not Changed When Prosecuted for Charges Filed from 2014 to 2018

Most arrest charges for sexual assault were prosecuted according to the original offense charge and felony level. Specifically, the offense charge and felony level (i.e., first-degree felony, second-degree felony) did not change for 12,162 (75 percent) of the 16,207 arrest charges for sexual assault filed from 2014 through 2018 that were prosecuted. (See text box for more information on felony imprisonment terms.)

Figure 11 shows the total number of arrest charges that were upgraded, reduced, or not changed.

Felony Imprisonment Terms

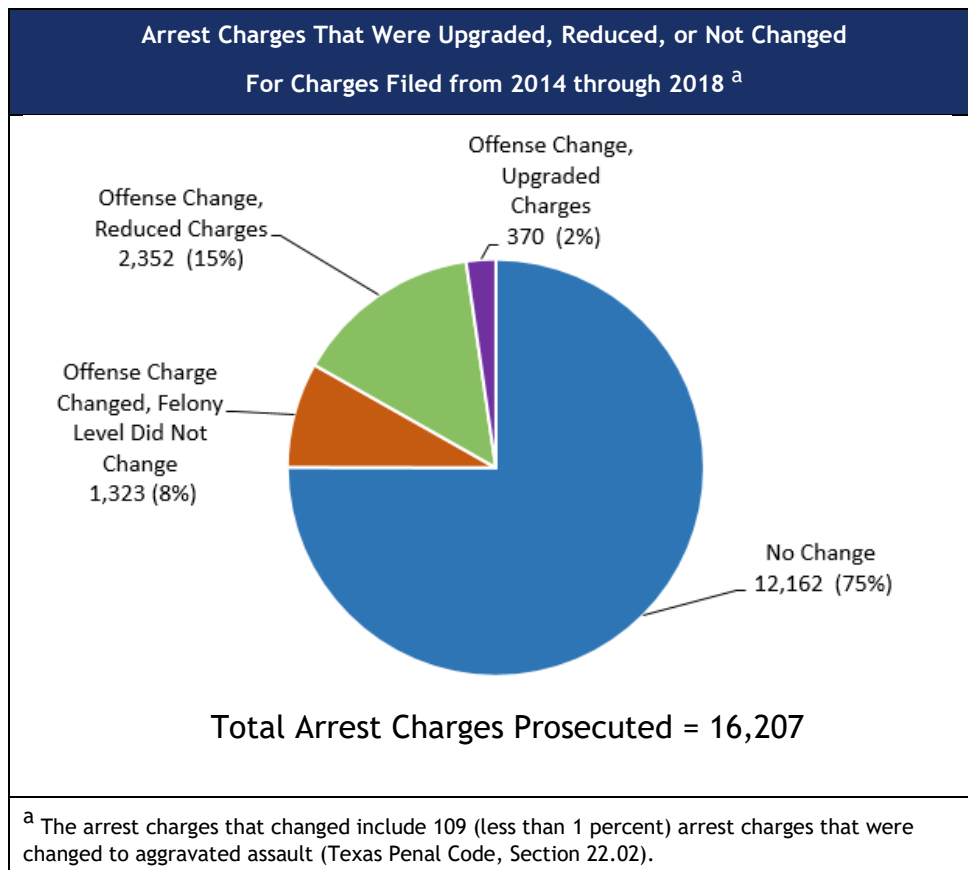
For felonies, the following terms of imprisonment can be considered during sentencing:

- 1st Degree is punishable by imprisonment for life or for any term of not more than 99 years or less than 5 years.
- 2nd Degree is punishable by imprisonment for any term of not more than 20 years or less than 2 years.
- 3rd Degree is punishable by imprisonment for any term of not more than 10 years or less than 2 years.
- State Jail is punishable by confinement in a state jail for any term of not more than two years or less than 180 days.

In addition, a felony sentencing may also include a fine not to exceed \$10,000.

Source: Texas Penal Code, Sections 12.32 through 12.35.

Figure 11



Source: Data from DPS' CCH.

Opportunities Exist to Strengthen the Investigation and Prosecution Processes for Reported Sexual Assaults

While the 86th Legislature passed several bills related to improving the investigation and prosecution processes for sexual assaults (see Appendix 4), additional opportunities exist to continue improving (1) how sexual assaults are investigated and prosecuted and (2) how statewide data on sexual assaults is collected. To address the issues discussed in this report more fully, legislative action may be necessary to make changes to processes currently used by state agencies, local law enforcement, and district attorneys' offices. The following are areas to consider:

Examining issues surrounding consent.

As discussed in Chapter 2-A, during site visits and in survey responses, local law enforcement and district attorneys' offices indicated that obtaining evidence to prove that a suspect acted without consent as defined by Texas Penal Code, Sections 22.011 (Sexual Assault) and 22.021 (Aggravated Sexual Assault), can be difficult. Examining the issues with obtaining necessary evidence could provide more comprehensive information for determining whether there should be any adjustments to statutory definitions.

Determining the extent to which a multi-disciplinary team approach and forensic interviewing techniques should be used for investigations and prosecutions of sexual assaults of adult victims.

As discussed in Chapter 2-C, there are statutory requirements for investigations of sexual assaults that involve child victims that are not required for investigations involving adult victims. Both during site visits and in survey responses, local law enforcement and district attorneys' offices indicated that the required practices have proven beneficial for the investigations and prosecutions of sexual assaults involving child victims, and that investigations of sexual assaults involving adult victims may likewise benefit from incorporating some or all of those practices.

Improving data collection on reported incidents of sexual assault to track how sexual assaults progress through the criminal justice system.

As discussed in Chapter 3, the data available on adult and child sexual assaults in Texas does not allow tracking of reported incidents through the criminal justice system on a statewide basis. If comprehensive data is desired to facilitate tracking on a statewide basis of reported sexual assault incidents through investigations to their outcomes, including incidents that do not lead to arrests, then changes to statewide reporting requirements would need to be considered, including requiring additional reporting from law

enforcement agencies. Changes will also need to be made to data that is currently collected at a statewide level.

Additionally, survey respondents offered ideas on how to improve the investigation, prosecution, and reporting processes for sexual assaults. Among those recommendations included:

- [Law Enforcement Agencies](#) indicated that additional training for officers, first responders, detectives, and supervisors would improve investigations.
- [District Attorneys' Offices](#) indicated that additional and better training for prosecutors and law enforcement, including training on cell phone evidence and cognitive bias, would improve investigation and prosecution processes.
- [Community-based Advocacy Organizations](#) recommended implementing processes that better support the victims, including regularly informing them of case status and educating them about the process.
- [Crime Laboratories](#) indicated that recruiting and retaining more qualified crime lab staff and standardizing sexual assault kit submissions would help improve the processing of sexual assault kits and other evidence.
- [District Clerks' Offices](#) indicated that additional training on what information should be reported and how would help improve reporting of sexual assault information to statewide information systems.

See [A Supplemental Report on Survey Results for an Audit of Investigation and Prosecution Processes for Reported Sexual Assaults in Texas](#), (SAO Report No. 21-303, October 2020) for additional recommendations and other information from survey respondents.

Appendices

Appendix 1

Objective, Scope, and Methodology

Objective

The objective of this audit was to examine the investigation and prosecution processes for reported adult sexual assaults and child sexual assaults in Texas during calendar years 2014 through 2018.

Scope

The scope of this audit included examining the investigation, prosecution, and reporting processes for reported incidents of sexual assault (Texas Penal Code, Section 22.011) and aggravated sexual assault (Texas Penal Code, Section 22.021) in Texas of adult and child victims during calendar years 2014 through 2018. In addition, the audit scope included gaining an understanding of the automated systems and processes that supported the reporting of data related to sexual assaults during the audited period.

Methodology

The audit methodology included (1) collecting and analyzing statewide data on sexual assaults of adult and child victims that local law enforcement and district clerks' offices reported to the Department of Public Safety (DPS) and the Office of Court Administration (OCA); (2) performing site visits of selected local law enforcement, district attorneys' offices, and district clerks' offices; and (3) conducting statewide surveys (SAO surveys).²⁴

Site visits. Eight counties were selected for site visits based on a risk assessment that auditors performed that analyzed county population and statewide data for reported incidents, arrests, and court dispositions for sexual assaults. For each county selected, when possible, auditors visited a local law enforcement agency, the district attorney's office, and the district clerk's office. The eight counties (and the law enforcement agency) selected were:

- Bexar County (Bexar County Sheriff's Office)
- Dallas County (Dallas Police Department)

²⁴ For additional information about the planning and design of the audit methodology, see *A Report on the State Auditor's Office's Methodology for Examining the Investigation and Prosecution Processes for Reported Sexual Assaults in Texas* (SAO Report No. 20-014, December 2019).

- El Paso County (El Paso Police Department)²⁵
- Harris County (Houston Police Department)
- Nueces County (Corpus Christi Police Department)²⁵
- Potter County (Potter County Sheriff's Office)²⁵
- Tarrant County (Fort Worth Police Department)
- Travis County (Austin Police Department and the Travis County Sheriff's Office)

SAO surveys. The SAO surveys were conducted online and distributed to 1,630 organizations throughout Texas that included police departments, sheriffs' offices, district attorneys' offices, community-based advocacy organizations that assist victims of sexual assault, crime laboratories, and district clerks' offices. The surveys were designed to collect information on the following topics related to the investigation and prosecution of adult and child sexual assaults:

- Information on the investigation, prosecution, and reporting processes followed for adult and child sexual assaults.
- Information on current financial, staffing, and training resources for investigating and prosecuting adult and child sexual assaults.
- Challenges and barriers for effectively investigating, prosecuting, and reporting adult and child sexual assaults.
- Ideas for improving the investigation and prosecution processes for adult and child sexual assaults.

Auditors compiled and summarized the responses to the survey. See [A Supplemental Report on Survey Results for an Audit of Investigation and Prosecution Processes for Reported Sexual Assaults in Texas](#), (SAO Report No. 21-303, October 2020) for additional information on the statewide survey results.

²⁵ Auditors were unable to conduct a site visit to the selected county due to social distancing and stay-at-home requirements as a result of the COVID-19 pandemic effective March 2020. In lieu of a site visit, the selected local law enforcement agency, the district attorney's office, and the district clerk's office within the county were provided an opportunity to complete the relevant SAO survey.

Data Reliability and Completeness

Auditors reviewed statewide data from the following information systems related to reported sexual assaults in Texas of adult and child victims for validity and reasonableness:

- **DPS' Uniform Crime Reporting Program** – Law enforcement agencies are statutorily required to report certain information on sexual assaults, which they report to this information system. Auditors assessed the validity and completeness of the reported sexual assault incident data by (1) reviewing query parameters used to extract the data, (2) analyzing the data, and (3) verifying the accuracy and completeness of samples of reported incident data to supporting records. As discussed in Chapter 3-A, auditors determined that the data was not sufficiently reliable for purposes of this audit; however, auditors used the data because it was the best available source of statewide information on reported sexual assault incidents for the purposes of this audit.
- **DPS' Computerized Criminal History System (CCH)** – Law enforcement agencies, district attorneys' offices, and district clerks' offices report arrest charges, prosecution status, and court disposition data to this information system. Auditors assessed the validity and completeness of the arrest, prosecution, and court disposition data by (1) reviewing query parameters used to extract the data, (2) analyzing the data, and (3) verifying the accuracy and completeness of samples of arrest, prosecution, and court disposition data to supporting records. As discussed in Chapter 3-B, while the data on arrests and court dispositions was sufficiently reliable for purposes of this audit, the prosecution data was determined to be not sufficiently reliable. However, auditors used the prosecution data because it was the best available source of statewide information on prosecutions involving sexual assaults for the purposes of this audit.
- **OCA's Court Activity Reporting and Directory System - Court Summary Data.** District clerks' offices submit monthly reports to the OCA that contain aggregate, countywide statistics on court activity for sexual assault offenses. Auditors assessed the validity and completeness of the monthly court activity data by (1) reviewing query parameters used to extract the data, (2) analyzing the data, and (3) verifying the accuracy and completeness of samples of court activity data to supporting records. Auditors determined that the data was not sufficiently reliable for purposes of this audit. Auditors were not able to confirm the accuracy of the number of court cases reported for the samples tested because the data was reported at a summary level. Additionally, auditors identified

missing and invalid information in the data. As a result, auditors did not use this information for data analysis.

Sampling Methodology

For each county that auditors visited, auditors selected a nonstatistical sample through random selection to test the accuracy and compliance of the statewide data for sexual assault (1) reported incidents, (2) arrest charges, (3) prosecutions, (4) court dispositions, and (5) reported court activity. Specifically:

- To test reported incidents in calendar years 2014 through 2018, auditors selected a maximum of 60 adult victim reported incidents and 60 child victim reported incidents for each county. Auditors reduced the sample sizes if the population of reported incidents for adult or child victims was less than 60.
- To test arrest charges, prosecutions, and court dispositions in calendar years 2014 through 2018, auditors selected a maximum of 60 adult victim cases and 60 child victim cases for each county. Auditors reduced the sample sizes if the population of cases for adult or child victims was less than 60.
- To test court summary information reported to OCA in calendar years 2014 through 2018, auditors selected 20 monthly reports for each county.

The nonstatistical samples were not generally representative of the population; therefore, it would not be appropriate to project the test results to the population.

Information collected and reviewed included the following:

- Reported incident data on sexual assaults of adult and child victims for calendar years 2014 through 2018 from the Uniform Crime Reporting Program, provided by DPS.
- Arrest, prosecution, and court disposition data on sexual assaults of adult and child victims for calendar years 2014 through 2018 from CCH, provided by DPS.
- Court activity data on sexual assaults of adult and child victims for calendar years 2014 through 2018 from the Court Activity Reporting and Directory System, provided by OCA.

- Reports and records from DPS, OCA, Office of the Attorney General, and selected local law enforcement, district attorneys' offices, and district clerks' offices.
- Staffing and financial information provided by selected local law enforcement, district attorneys' offices, and district clerks' offices, as well as from the Children's Advocacy Centers of Texas™.
- Research reports on nationally-recognized best practices for (1) investigation of sexual assaults; (2) collecting, processing, and maintaining records and chain of custody of sexual assault kits; (3) prosecuting sexual assaults; and (4) sexual assault response teams relating to investigating, prosecuting, and reporting sexual assaults.
- Responses to the SAO surveys from (1) local law enforcement agencies, (2) district attorneys' offices, (3) community-based advocacy organizations that support survivors of sexual assaults (4) crime laboratories, and (5) district clerks' offices.

Procedures and tests conducted included the following:

- Collected and analyzed statewide data on adult and child sexual assaults.
- Interviewed staff and management at (1) DPS; (2) OCA; (3) Office of the Attorney General; (4) local law enforcement agencies, district attorneys' offices, and district clerks' offices visited; and (5) community-based advocacy organizations.
- Tested the accuracy and compliance of statewide data on sexual assaults of adult and child victims including reported incident, arrest, prosecution, and court disposition records.
- Reviewed the financial and staffing resources for local law enforcement agencies, district attorneys' offices, and district clerks' offices visited.
- Reviewed national best practices for investigating and prosecuting sexual assaults.
- Compiled and summarized the responses to the SAO survey.

Criteria used included the following:

- Texas Code of Criminal Procedure, Chapters 2, 4, 5, 12-17, 21, 32, 32A, 38, 42, 42A, 56, 60, 66, and 102.
- Texas Family Code, Chapters 32, 57, 261, and 264.

- Texas Government Code, Chapters 43-45, 71, 72, 411, 420, and 572.
- Texas Health and Safety Code, Chapter 323.
- Texas Penal Code, Chapters 2, 12, 21, 22, and 43.
- Title 1, Texas Administrative Code, Chapter 171.
- Title 37, Texas Administrative Code, Chapters 27 and 651.
- DPS' Computerized Criminal History reporting policies, data dictionary, and appendices.
- Policies and procedures for law enforcement agencies, district attorneys' offices, and district clerks' offices visited.

Project Information

Audit fieldwork was conducted from September 2019 through October 2020. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The following members of the State Auditor's staff performed the audit:

- Willie Hicks, MBA, CIA, CGAP (Project Manager)
- Tammie Wells, MBA, CIA, CFE (Assistant Project Manager)
- Scott Boston (Team Lead)
- Jennifer Lehman, MBA, CIA, CFE, CGAP (Team Lead)
- Thomas Andrew Mahoney, CGAP (Team Lead)
- Jacqueline Thompson, CFE (Team Lead)
- Quang Tran, CFE (Team Lead)
- Kirstin Adamcik, MBA
- Cody Bogan
- Pamela A. Bradley, CPA, CFE
- Charlotte Carpenter, CPA

- Evan Cresap, CPA
- Aaron Daigle, CPA
- John Felchak
- Elizabeth Gallegos, MAcc
- Benjamin Hikida, MAcy, CFE
- Jessica McGuire, MSA
- Alana Montoro
- Sterling Pape
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- Daniel Spencer, MSA, CFE
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- Tony White, CFE
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Excerpt from House Bill 1 (86th Legislature), Related to the State Auditor's Office's Audit of Reported Adult and Child Sexual Assaults in Texas

5. Audit Plan of Disposition of Sexual Assault Investigations.

(a) By December 31, 2019, the [State Auditor's Office] shall develop a methodology for an audit for inclusion in the audit plan subject to approval by the Legislative Audit Committee, examining and reporting on the investigation and processing of reported adult sexual assaults and child sexual assaults in Texas. The audit shall address and examine adult and child sexual assaults independently. The audit shall address and examine the processes from the time of first report through final disposition, including why reported cases do not proceed to prosecution and conviction within the criminal justice system. The audit shall examine a five-year period from calendar years 2014 through 2018 and shall include data from city and county jurisdictions across the state. The audit shall provide a broad, comprehensive review of the policies, practices, and actions of government agencies, including district attorneys' offices, with respect to state and federal law, nationally recognized best practices, and comparative procedures with respect to adult and child sexual assault investigations and prosecutions. The audit shall also include an evaluation of the practices and policies of government agencies, including district attorneys' offices, for making a determination to prosecute, and a comparative analysis of budget and resources available to affected government agencies and departments.

(b) In developing the audit, the [State Auditor's Office] shall compile and analyze information relating to the commission of offenses under Sections 22.011, 22.02, and 22.021, [Texas] Penal Code, including information regarding the number of cases:

- (1) in which the law enforcement agency investigating the offense forwarded the case to the appropriate local county or district attorney, including cases that are prosecuted as a different criminal offense;
- (2) closed or classified as inactive by the law enforcement agency without forwarding the case to the appropriate local county or district attorney, and the reasons for that closure or classification;
- (3) in which the local county or district attorney did not prosecute the offense, and the reasons for not prosecuting the offense, including whether the offense was referred to a grand jury; and
- (4) cases that were dismissed after an indictment had been filed.

(c) The [State Auditor's Office] shall ensure that the minimal amount of identifying data is collected during the audit. The audit report may not include any identifying information on specific victims, prosecutors, suspects or defendants, or cases, whether closed or pending.

(d) The [State Auditor's Office] shall conduct the audit and provide and file a report of the audit and results with all members of the legislature who sit on a committee with oversight responsibility for any entity or program that is the subject of any portion of the report. The [State Auditor's Office] shall also file a copy of the report with the Office of the Attorney General, the Senate Finance Committee, the House Appropriations Committee, the Department of Public Safety, and any other agencies, offices, or task forces working on issues related to sexual assault, or that the [State Auditor's Office] considers to be a relevant recipient of the report. The report shall be delivered on or before November 1, 2020.

(e) The [State Auditor's Office] shall coordinate with the Office of Court Administration[,] governmental agencies municipalities and counties to use information and data those entities may already possess, including from a previously completed or currently contracted comparable audit.

Notwithstanding the foregoing, the [State Auditor's Office] shall not be limited to using existing data or any specific sources for relevant data and the [State Auditor's Office] is directed to use all reasonable efforts to obtain relevant data from any and all sources, including publicly available data and data provided to and/or by educational and non-profit entities.

Summary of Survey Responses

Auditors sent online surveys to 1,630 entities throughout Texas from February 2020 through May 2020. The entities contacted included:

- 1,054 local law enforcement agencies (803 city police departments and 251 county sheriffs' offices).
- 158 district attorneys' offices.
- 148 community-based advocacy organizations.
- 21 crime laboratories.
- 249 district clerks' offices.

Auditors compiled and summarized the survey responses received. (See [A Supplemental Report on Survey Results for an Audit of Investigation and Prosecution Processes for Reported Sexual Assaults in Texas](#), (SAO Report No. 21-303, October 2020) for additional information on the statewide survey results). Key responses for each survey are summarized below.²⁶

Law Enforcement Agencies

A total of 566 (54 percent) of the 1,054 local law enforcement agencies (Agencies) contacted responded to the SAO survey. A summary of the key responses from those respondents include:

- **Specialized Units.** A total of 18 percent of small county Agencies indicated that they had a specialized unit to investigate sexual assault crimes; in contrast, 75 percent of medium and large county Agencies indicated that they had a specialized unit to investigate sexual assault crimes.²⁷
- **Resources.** Agencies indicated the following with regards to the sufficiency of resources available for investigating sexual assaults:
 - ♦ A total of 52 percent of Agencies indicated that there were sufficient resources related to sexual assault kit processing and training for sexual assault crimes involving adults or children.

²⁶ In some instances, respondents did not answer all survey questions. In addition, for some survey questions, respondents could provide more than one response.

²⁷ Of those 566 respondents, 518 represented counties with populations of less than 100,000 ("small" counties); 48 represented either counties with populations between 100,001 and 1 million ("medium" counties) or counties with populations of more than 1 million ("large" counties).

- ♦ A total of 53 percent of Agencies indicated that there were not sufficient resources related to offering competitive salaries, and a total of 61 percent of Agencies indicated that there were not sufficient resources related to hiring additional detectives.
- ♦ Related to the collection, processing, and review of test results for sexual assault kits and other forensic evidence, a total of 53 percent of Agencies indicated that there was not sufficient resources in advanced technology and a total of 83 percent of Agencies indicated that there was not sufficient specialized staffing, support, and transportation resources.
- **Challenges for Investigations.** Agencies indicated that factors that presented challenges for investigating adult and child sexual assaults from 2014 through 2018 include:
 - ♦ Lack of victim cooperation.
 - ♦ Unable to corroborate the victim's statement.
 - ♦ Lack of evidence to confirm the suspect's identity.
 - ♦ Determining that the suspect acted without the victim's consent (in adult cases only).
 - ♦ Witnesses are unwilling to cooperate in the investigation.
- **Training and Staffing.** The most common recommendations for improving investigations of sexual assault crimes were providing more training (in areas such as evidence collection, interviewing a victim, and victim-centered/trauma-informed techniques); adding staff (including detectives); and increasing wages and benefits for Agency personnel.
- **Multi-disciplinary Teams (MDTs) and/or Sexual Assault Response Teams (SARTs).** A total of 57 percent of Agencies indicated that they participated in an MDT and/or SART in the investigation and prosecution of sexual assault crimes from 2014 through 2018 (see Chapter 2-D for more information about MDTs and SARTs).

District Attorneys' Offices

A total of 100 (63 percent) of the 158 district attorneys' offices contacted responded to the SAO survey. A summary of the key responses from those respondents include:

- **Specialized Units.** A total of 12 percent of small county respondents indicated that they had a specialized unit to handle sexual assault cases; in contrast, 37 percent of medium county respondents indicated that they had a specialized unit to handle sexual assault cases.²⁸
- **Case Referrals.** District attorneys' offices estimated that, on average, they accepted more referrals from law enforcement agencies for adult and child sexual assault cases than they declined from 2014 through 2018. Specifically, district attorneys' offices indicated that they accepted an average of 106 adult sexual assault cases and 297 child sexual assault cases on an annual basis, and they declined an average of 24 adult sexual assault cases and 43 child sexual assault cases on an annual basis.
- **Case Dispositions.** District attorneys' offices indicated that the most common disposition for their sexual assault cases was a conviction through a plea bargain.
- **Reasons for Plea Bargains.** Respondents indicated that the most common reasons for pursuing a plea bargain in a sexual assault case were:
 - ♦ The victim's preference.
 - ♦ Prosecutors' uncertainty about the outcome of the trial.
 - ♦ Insufficient evidence to support a sexual assault charge.
 - ♦ To limit the likelihood of an appeal of the court verdict.
 - ♦ Expectation to offer the suspect a plea bargain.
- **Resources.** District attorneys' offices indicated the following with regards to the sufficiency of resources available for prosecuting sexual assaults:
 - ♦ There were sufficient resources related to ethics training (73 percent of respondents), training for child sexual assault crimes (65 percent of respondents), training to understand crime laboratory reports (57 percent of respondents), and training for adult sexual assault crimes (55 percent of respondents).

²⁸ Of those 100 respondents, 75 represented counties with populations of less than 100,000 ("small" counties) and 25 represented counties with populations between 100,001 and 1 million ("medium" counties).

- ♦ There were not sufficient resources related to offering competitive salaries (60 percent of respondents) and hiring additional prosecutors (65 percent of respondents).
- **Multi-disciplinary Teams (MDTs) and/or Sexual Assault Response Teams (SARTs).** A total of 97 percent of respondents indicated that participating in an MDT and/or SART was beneficial to the prosecution of sexual assault crimes. (See Chapter 2-D for additional information about MDTs and SARTs.)

Community-Based Advocacy Organizations

A total of 125 (84 percent) of the 148 community-based advocacy organizations (Organizations) contacted responded to the SAO survey (see text box). A summary of the key responses from those respondents include:

- **Survivors of Sexual Assaults Do Not Always Report Incidents to Law Enforcement Agencies.** Most Organizations indicated that adult sexual assault survivors reported sexual assaults to law enforcement agencies less than 50 percent of the time. However, some Organizations indicated that child sexual assaults were reported more frequently.

Advocacy Services
<p>Survey respondents stated that community-based advocacy organizations provide the following services to survivors of sexual assault:</p> <ul style="list-style-type: none"> ▪ Therapy. ▪ Advocacy. ▪ Shelter/moving services. ▪ Accompaniment/transportation. ▪ Sexual assault forensic examinations. ▪ Forensic interviews. ▪ Legal services. ▪ Sexually transmitted disease testing. ▪ Emergency contraceptives. ▪ Other (which includes crime victim's compensation assistance, case management, referrals, and resource coordination).

Organizations indicated that the most common reasons for why a survivor does not report a sexual assault to law enforcement include:

- ♦ 30 percent of responses indicated that survivors do not report due to fear.
- ♦ 22 percent of responses indicated that survivors do not report due to concerns over not being believed or being blamed.
- ♦ 20 percent of responses indicated that survivors do not report due to feelings of guilt, shame, and embarrassment.
- **Survivors Are Reluctant to Cooperate with Local Law Enforcement Agencies and District Attorneys' Offices.**
 - ♦ The most common reason Organizations indicated for why survivors do not work with law enforcement was because they feel they will not be believed.

- ♦ The most common reason Organizations indicated for why survivors do not work with district attorneys' offices was because the process takes too long.

Crime Laboratories

A total of 19 (90 percent) of the 21 crime laboratories contacted responded to the SAO survey. A summary of the key responses from those respondents include:

- **Crime laboratory funding.**
 - ♦ Eleven respondents were from crime laboratories that were primarily State-funded.
 - ♦ Eight respondents were municipal or privately funded crime laboratories.
- **Sexual Assault Kit Processing Time.** 68 percent of respondents indicated that crime laboratories' average processing time for a sexual assault kit for calendar years 2014 through 2018 was more than 90 days.²⁹
- **Need More Trained Analysts.** 34 percent of responses indicated that the number of trained analysts staffed by crime laboratories was a significant factor in the amount of time it took to process sexual assault kits.

District Clerks' Offices

A total of 219 (88 percent) of the 249 district clerks' offices (Offices) contacted responded to the SAO survey. A summary of the key responses from those respondents include:

- **Number of Staff Responsible for Reporting.**
 - ♦ 74 percent of respondents indicated that 1 to 2 staff are responsible for compiling and reporting both electronic and manual data to the Department of Public Safety (DPS).³⁰

²⁹ The 86th Legislature approved House Bill 8, which set a new requirement to test sexual assault kits within 90 days of receiving the evidence effective January 1, 2021 (see Appendix 4 for more information about House Bill 8).

³⁰ Texas Code of Criminal Procedure, Section 66.304, requires Offices to compile and maintain records needed for reporting data to DPS's Computerized Criminal History System, including data such as prosecution- and court-related information.

- ♦ 87 percent of respondents indicated that 1 to 2 staff are responsible for compiling and reporting both electronic and manual data to the Office of Court Administration (OCA).³¹
- **Data Accuracy Review.** 74 percent of respondents indicated that Office staff verify the accuracy of data prior to submission to both DPS and OCA.

³¹ Title 1, Texas Administrative Code, Section 171.4, requires Offices to report court activity to OCA on a monthly basis, including information related to certain types of felony cases (including sexual assault cases), cases on the docket, dispositions, and other supplementary information.

Recent Legislation and Other Actions Taken to Improve the Investigation and Prosecution Processes for Sexual Assault

Recent Legislation

Table 11 provides information about the bills passed by the 86th Legislature related to the investigation and prosecution of reported sexual assaults. The bills listed in Table 11 became effective on September 1, 2019.

Table 11

Bills Passed During the 86th Legislature Related to Sexual Assault Investigation and Prosecution Processes			
Bill Number	Subject	Summary of Bill Impact	Statutes Affected by the Bill
House Bill (HB) 8	Statute of Limitations, Sexual Assault Kits, Evidence, and Statewide Telehealth Center	<ul style="list-style-type: none"> ▪ Expanded the statute of limitations related to sexual assaults for which the forensic DNA testing has not been conducted. ▪ Added timeframe requirements related to (1) collection of evidence by law enforcement from the health care facility that performed the sexual assault forensic examination, (2) DNA database comparison of the evidence, (3) crime laboratory analysis of the evidence, and (4) the retention period of sexual assault kits. ▪ Added requirements related to processing of untested sexual assault kits and reporting requirements for local law enforcement agencies. ▪ Required the Office of the Attorney General to establish and fund a statewide telehealth center for sexual assault forensic examinations to expand access for underserved populations. 	<ul style="list-style-type: none"> ▪ Texas Code of Criminal Procedure, Sections 12.01, 38.43, and 56.065 ▪ Texas Government Code, Sections 420.003, 420.033, 420.035, 420.041-420.047^a, and 420.101-420.108 ▪ Texas Health and Safety Code, Sections 323.005 and 323.0052
HB 531	Sexual Assault Kits and Records	<ul style="list-style-type: none"> ▪ Added a requirement for health care facilities to retain medical records from sexual assault forensic examinations until the 20th anniversary of the date the records were created. 	<ul style="list-style-type: none"> ▪ Texas Health and Safety Code, Section 241.1031 ▪ Texas Occupations Code, Section 153.003
HB 616	Sexual Assault Kits and Evidence	<ul style="list-style-type: none"> ▪ Revised the timeframe related to sexual assault forensic examinations from 96 to 120 hours from when the sexual assault is reported to law enforcement. ▪ Added a requirement that law enforcement agencies document whether it requested a sexual assault forensic examination. 	<ul style="list-style-type: none"> ▪ Texas Code of Criminal Procedure, Sections 56.01, 56.021, 56.06, 56.065, and 56.54 ▪ Texas Health and Safety Code, Sections 323.005 and 323.0051
HB 667	Prosecution of Sexual Assaults	<ul style="list-style-type: none"> ▪ Added requirements relating to whether victim was a person with whom the defendant was prohibited from engaging in sexual intercourse or deviate sexual intercourse to information about affirmative defense and felony degree statutes. 	<ul style="list-style-type: none"> ▪ Texas Penal Code, Section 22.011
HB 1399	Sexual Assault Kits and Records	<ul style="list-style-type: none"> ▪ Required the director of the Texas Department of Public Safety to apply for federal grant funds to create and store DNA records for offenders arrested for sexual assault offenses. 	<ul style="list-style-type: none"> ▪ Texas Code of Criminal Procedure, Sections 42A.352 and 102.020 ▪ Texas Government Code, Sections 411.1425 and 411.1471
HB 1590	Sexual Assault Survivors' Task Force (SASTF) and Officer Training	<ul style="list-style-type: none"> ▪ Created the SASTF, which will develop statewide policy recommendations; advise the Texas Commission on Law Enforcement (TCOLE) to improve officer training; provide information and resources on best practices to law enforcement, prosecutors, and judges (to include trauma-informed policies); and facilitate coordination between state agencies. ▪ Required TCOLE to consult with the SASTF regarding law enforcement training curriculum. 	<ul style="list-style-type: none"> ▪ Texas Government Code, Sections 420.012, 420.031, and 772.0064 ▪ Texas Occupations Code, Section 1701.253

Bills Passed During the 86th Legislature Related to Sexual Assault Investigation and Prosecution Processes

Bill Number	Subject	Summary of Bill Impact	Statutes Affected by the Bill
HB 3106	Reporting	<ul style="list-style-type: none"> Required law enforcement agencies to enter information regarding the investigation of sexual assault offenses into the Federal Bureau of Investigation’s national database. 	<ul style="list-style-type: none"> Texas Government Code, Section 420.035^b
Senate Bill (SB) 71	Statewide Telehealth Center	<ul style="list-style-type: none"> Required the Office of the Attorney General to establish and fund a statewide telehealth center for sexual assault forensic examinations to expand access for underserved populations. 	<ul style="list-style-type: none"> Texas Government Code, Sections 420.101-420.108
SB 586	Officer Training	<ul style="list-style-type: none"> Added requirements relating to the use of best practices and trauma-informed techniques to the training program that TCOLE requires of local law enforcement agencies and for the courses and programs for schools that are licensed by TCOLE specifically for training officers. 	<ul style="list-style-type: none"> Texas Occupations Code, Sections 1701.253^c, 1701.352, and 1701.4045
SB 821	Multi-disciplinary Teams	<ul style="list-style-type: none"> Added requirements for a child advocacy center to enter into a memorandum of understanding regarding participation in the multi-disciplinary team response with the department responsible for child abuse investigations, county and municipal law enforcement agencies, and each county or district attorney with jurisdiction over child abuse cases. Added requirements for the child advocacy center to adopt a multi-disciplinary team working protocol. Added requirements that a child advocacy center (1) facilitates the multi-disciplinary team responses; (2) develops formal processes for the team to routinely discuss information regarding cases and services needed; and (3) provides a system to monitor and track case outcomes, victim support and advocacy services, forensic interviews, and evidence-based, trauma-focused services for child victims. Added provisions for other entities to participate in multi-disciplinary team meetings and for team members to share information. Revised statutes related to: (1) establishing child advocacy centers; (2) adding provisions for organizations to become members of the child advocacy center board; (3) updating eligibility requirements for child advocacy centers to receive contracts; (4) requiring the multi-disciplinary team to respond to reports of child neglect; (5) requesting confidential information from child advocacy centers; and (6) developing standards for child advocacy centers. 	<ul style="list-style-type: none"> Texas Family Code, Sections 264.402, 264.403, 264.4031, 264.404-264.406, 264.4061, and 264.408-264.411
SB 1259 ^(d)	Prosecution of Sexual Assaults	<ul style="list-style-type: none"> Added requirements related to the statute of limitations and the definition of consent in instances involving assisted reproduction. 	<ul style="list-style-type: none"> Texas Code of Criminal Procedure, Section 12.01 Texas Penal Code, Section 22.011

^a The change in law made to Texas Government Code, Section 420.042(c), applies only to sexual assault evidence and evidence of other sex offenses received by a public accredited crime laboratory on or after January 1, 2021. Evidence received by a public accredited crime laboratory before January 1, 2021, is governed by the law in effect immediately before the effective date of HB 8.

^b Texas Government Code, Section 420.035, applies only to a pending investigation of a sexual assault or sex offense, regardless of whether the investigation was commenced before, on, or after the effective date of HB 3106.

^c TCOLE shall establish the comprehensive education and training program required in Texas Occupations Code, Section 1701.253(b), not later than January 1, 2020.

^d The changes in law apply only to an offense committed on or after the effective date of SB 1259. An offense committed before the effective date of SB 1259 is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. An offense was committed before the effective date of SB 1259 if any element of the offense occurred before that date.

Other Actions Taken

- **Texas Evidence Collection Protocol Update.** The Texas A&M College of Nursing and the Texas Attorney General Sexual Assault Prevention and Crisis Services Program updated the Texas Evidence Collection Protocol (Protocol) in August 2019. The primary purposes are to:

- ♦ Minimize the physical and psychological trauma to the patient of a sexual assault, and
- ♦ Maximize the probability, through examination, of collecting and preserving the physical evidence for potential use in the legal system.

See text box for more information about the Protocol.

Texas Evidence Collection Protocol Background

Texas Government Code, Section 420.031, was revised in 1997 by the 75th Legislature to include the Texas Evidence Collection Protocol (Protocol). A statewide advisory committee developed the Protocol, which was released in 1998.

The Protocol provides procedures and recommendations for medical, legal, law enforcement, advocacy, and forensic science professionals and includes information related to:

- Responsibilities of the responding law enforcement officers and prosecutors.
- Patient consent to a medical examination and release of evidence to law enforcement.
- Required sexual assault kit contents.
- Medical examination procedures, collecting different forms of evidence, and preserving the integrity of the evidence.

Source: *Texas Evidence Collection Protocol*, Office of the Attorney General, 1998.

- **Implementation of a Uniform Case Management System That Will Assist in Collecting Court Data at the Case Level.** In September 2018 the Texas Judicial Council (Council) requested that the Legislature (1) fully fund the collection of relevant case-level data by the Council and (2) direct the Office of Court Administration (OCA) to develop that statewide system to better facilitate and improve the collection, reporting, and use of court data to address limitations with the court data that OCA currently collects. The General Appropriations Act (86th Legislature) appropriated \$30 million to OCA for the 2020-2021 biennium to purchase a uniform case management system to improve its collection of court data.

Texas Penal Code, Sections 22.011 (Sexual Assault) and 22.021 (Aggravated Sexual Assault)

The information below provides the conditions and definitions of actions under which the offenses of Sexual Assault and Aggravated Sexual Assault are considered to be committed, as stated in the Texas Penal Code that was in effect during the audit scope of calendar years 2014 through 2018.

Section 22.011, Sexual Assault.

(a) A person commits an offense if:

(1) the person intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) regardless of whether the person knows the age of the child at the time of the offense,³² the person intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

³² "...regardless of whether the person knows the age of the child at the time of the offense..." was added by HB 29 (85th Legislature, Regular Session) and HB 1808 (85th Legislature, Regular Session), effective September 1, 2017.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force, violence, or coercion;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person or to cause harm to the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or

(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, [Texas] Family Code.

(c) In this section:

- (1) "Child" means a person younger than 17 years of age.
- (2) "Spouse" means a person who is legally married to another.
- (3) "Health care services provider" means:
 - (A) a physician licensed under Subtitle B, Title 3, [Texas] Occupations Code;
 - (B) a chiropractor licensed under Chapter 201, [Texas] Occupations Code;
 - (C) a physical therapist licensed under Chapter 453, [Texas] Occupations Code;
 - (D) a physician assistant licensed under Chapter 204, [Texas] Occupations Code; or
 - (E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, [Texas] Occupations Code.
- (4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:
 - (A) licensed social worker as defined by Section 505.002, [Texas] Occupations Code;
 - (B) chemical dependency counselor as defined by Section 504.001, [Texas] Occupations Code;
 - (C) licensed professional counselor as defined by Section 503.002, [Texas] Occupations Code;
 - (D) licensed marriage and family therapist as defined by Section 502.002, [Texas] Occupations Code;
 - (E) member of the clergy;
 - (F) psychologist offering psychological services as defined by Section 501.003, [Texas] Occupations Code; or
 - (G) special officer for mental health assignment certified under Section 1701.404, [Texas] Occupations Code.
- (5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, [Texas] Health and Safety Code, or any

other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a)(2):

(1) that the actor was the spouse of the child at the time of the offense;
or

(2) that:

(A) the actor was not more than three years older than the victim and at the time of the offense:

(i) was not required under Chapter 62, [Texas] Code of Criminal Procedure, to register for life as a sex offender; or

(ii) was not a person who under Chapter 62, [Texas] Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(B) the victim:

(i) was a child of 14 years of age or older; and

(ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

Section 22.021, Aggravated Sexual Assault.

(a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) regardless of whether the person knows the age of the child at the time of the offense,³³ intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or

³³ "...regardless of whether the person knows the age of the child at the time of the offense..." was added by HB 29 (85th Legislature, Regular Session) and HB 1808 (85th Legislature, Regular Session), effective September 1, 2017.

that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) with the intent of facilitating the commission of the offense, administers or provides to the victim of the offense any substance capable of impairing the victim's ability to appraise the nature of the act or to resist the act;

(B) the victim is younger than 14 years of age, regardless of whether the person knows the age of the victim at the time of the offense; or

(C) the victim is an elderly individual or a disabled individual.

(b) In this section:

(1) "Child" has the meaning assigned by Section 22.011(c).

(2) "Elderly individual" has the meaning assigned by Section 22.04(c).

(3) "Disabled individual" means a person older than 13 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.³⁴

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).

(d) The defense provided by Section 22.011(d) applies to this section.

(e) An offense under this section is a felony of the first degree.

³⁴ Section (b)(3), the definition of "Disabled individual", was added by HB 2589 (84th Legislature), effective September 1, 2015.

(f) The minimum term of imprisonment for an offense under this section is increased to 25 years if:

(1) the victim of the offense is younger than six years of age at the time the offense is committed; or

(2) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).

Related State Auditor's Office Reports

Table 12

Related State Auditor's Office Reports		
Number	Report Name	Release Date
20-014	<i>A Report on the State Auditor's Office's Methodology for Examining the Investigation and Prosecution Processes for Reported Sexual Assaults in Texas</i>	December 2019
16-025	<i>An Audit Report on the Criminal Justice Information System at the Department of Public Safety and the Texas Department of Criminal Justice</i>	May 2016

Copies of this report have been distributed to the following:

Legislative Audit Committee

The Honorable Dan Patrick, Lieutenant Governor, Joint Chair

The Honorable Dennis Bonnen, Speaker of the House, Joint Chair

The Honorable Jane Nelson, Senate Finance Committee

The Honorable Robert Nichols, Member, Texas Senate

The Honorable Giovanni Capriglione, House Appropriations Committee

The Honorable Dustin Burrows, House Ways and Means Committee

Office of the Governor

The Honorable Greg Abbott, Governor



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