KING COUNTY PROSECUTING ATTORNEY'S OFFICE



JUSTICE
COMPASSION
PROFESSIONALISM
INTEGRITY
LEADERSHIP

November 18, 2024

The Prosecuting Attorney's Office Proviso Response Ordinance 19791

Background:

This report is in response to Ordinance 19791, which set forth the following:

- 198 Of this appropriation, \$100,000 shall not be expended or encumbered until the
- 199 prosecuting attorney transmits a report on adult and juvenile sex offense cases and a
- 200 motion that should acknowledge receipt of the report and a motion acknowledging receipt
- 201 of the report is passed by the council. The motion should reference the subject matter,
- 202 the proviso's ordinance number, ordinance section, and proviso number in both the title
- 203 and body of the motion.
- 204 The report shall include, but not be limited to the following:
- 205 A.1. The total number of referred sex offenses and, of the total number of
- 206 referred sex offenses, the number that were pled down to a non-sex offense;
- 207 2. The total number of referred felony sex offenses and, of the total number of
- 208 referred felony sex offenses, the number that were pled down to a lesser felony;
- 209 3. The total number of referred felony sex offenses and, of the total number of
- 210 referred felony sex offenses, the number that were pled down to a misdemeanor sex
- 211 offense;
- 212 4. The total number of referred felony sex offenses and, of the total number of
- 213 referred felony sex offenses, the number that were pled down to a misdemeanor non-sex
- 214 offense: and
- 215 5. The total number of referred sex offenses cases that were pled down and, of
- 216 the total number of referred sex offense cases that were pled down, the number that were
- 217 referred to a diversion program and which diversion programs they were referred to.
- 218 B. The data requested in subsection A. of this proviso shall include adult sex
- 219 offense cases and juvenile sex offense cases; however, they shall be reported on
- 220 separately and not combined.

- C. The report shall 221 cover the period from January 1, 2019, through December 31,
- 222 2023. The data requested in subsection A. of this proviso shall be provided for each year
- 223 of the reporting period.
- 224 The prosecuting attorney should electronically file the report and motion required
- 225 by this proviso no later than November 1, 2024, with the clerk of the council, who shall
- 226 retain an electronic copy and provide an electronic copy to all councilmembers, the
- 227 council chief of staff, and the lead staff for the law and justice committee, or its
- 228 successor.

PAO Response:

A. Context

The Special Assault Unit (SAU) of the King County Prosecuting Attorney's Office (PAO) handles most sexual assault related and child abuse cases in King County. Some sexual assault cases, that occur between intimate partners, are handled by the Domestic Violence Unit. Generally, the PAO has reported out cases via its public dashboard under the umbrella category of "Sexual Assault and Child Abuse" or for Juvenile Court cases "Sex Offenses". This work is generally reported out as cases referred to the PAO by law enforcement and work done by the KCPAO in the specified time period.

The King County Council's proviso request required a different form of analysis that took substantial work to pull together. The data included in this report tracks cases by year of referral to their ultimate outcome. So, every date listed corresponds to the date the cases were referred to the KCPAO.

As with any data, it is always important to put numbers in context. In 2020, the King County Auditor performed a thorough audit of sexual assault investigations including but not limited to many of the data points below as well as case specific reviews and numerous interviews with system and community partners.¹

Among other things, the auditor found King County data results fall within the wide range of national estimates for rape prosecution and conviction rates. The audit also noted a rise in sexual assault reports to police. While not every report constitutes a chargeable crime, the auditors opined that per recent studies, cultural changes including the "Me Too" movement, encouraged more victims to come forward globally. Some of this is reflected in the rise in statutory referrals (cases where law enforcement are required to submit the case by law even though they do not believe charges should be filed) described below. In the years following the report, the PAO has provided annual updates to recommendations the auditor made to improve sexual assault investigations.

The standard PAO offense categories were narrowed down to attempt to limit the report to what might generally be considered "sexual assault" or "sex offense" cases in the common understanding. The data in this report includes cases that are defined by RCW 9.94A.030 as sex offenses, and crimes like Assault in the Fourth Degree with Sexual Motivation or Voyeurism in the Second Degree, which are considered sexual assaults, but do not meet the legal definition of

¹ https://kingcounty.gov/en/legacy/depts/auditor/auditor-reports/all-landing-pgs/2020/sai-2020

"sex offense." Where the term "sex offense" is used, that refers to crimes identified by RCW 9.94A.030.

B. Filing Decisions

Sexual assault cases, like other cases, are referred to the PAO when law enforcement formally submits a case to the PAO for review. The PAO and the other Prosecuting Attorney's Offices in Washington State are not investigative agencies; prosecutors review investigations done by law enforcement (typically police) to determine if there is sufficient legally admissible evidence to support the charges as outlined in state law. The PAO also determines whether the case meets our office's Filing and Disposition Standards in light of the evidence presented.

Law enforcement typically submits a case to the PAO for review under one of the following circumstances: (1) they believe charges should be filed, (2) they would like legal review of an investigation but are not recommending charges, or, (3) when they are required by law to submit the case even though they do not believe charges should be filed (these are often referred to as "Statutory Referrals").

The below table shows how many "sexual assault" cases were referred to the PAO from law enforcement per year:

	2019	2020	2021	2022	2023	Total
Adult Superior	1093	1039	894	942	1099	5067
Court						
Juvenile Court	233	168	165	221	214	1001
Total	1326	1207	1059	1163	1314	6069

Adult Superior Court referrals are those with adult suspects and, if it is appropriate to file charges, cases would be filed in King County Superior Court. Juvenile Court cases are those with juvenile suspects.

Each referral undergoes **review** by Deputy Prosecuting Attorneys (DPAs) and can have one of several outcomes. It takes time for the PAO to conduct an individual review and to determine the appropriate course of action in each individual matter. The amount of time it takes to conduct this review varies depending on the complexity of case, the amount of evidence presented, whether follow up investigation is required, and other factors. Many sexual assault referrals contain voluminous amounts of information – hours of video and hundreds of pages of documents – which, accordingly, involves significant time for review and follow up with police investigators. As a result, a case may not have a filing decision in the same year that it is referred. Adult cases are listed as having one of the following outcomes or case statuses: Declined, Statutory Referral Only (SRO), Filed, Merged into another case, or Under Review.

A case is "**Declined**" when the PAO determines that it will not or cannot file charges. Cases are declined when there is insufficient admissible evidence to prove a felony crime beyond a reasonable doubt, or when the case does not meet our office's <u>Filing and Disposition Standards</u>. In these instances, the PAO sends a notice of the decline and an explanation for its decision to the investigating law enforcement agency. The PAO also notifies the victim—typically through

both a letter and through the victim's advocate. DPAs also make themselves available to answer any questions a victim may have about the PAO's decision to decline a charge. DPAs also make themselves available for questions from the investigating detective/agency. A more detailed discussion of the different reasons that a case may be declined can be found on the <u>PAO's public dashboard and its associated glossary</u>.

"Statutory referral only" or "SRO" is in reference to RCW 26.44.030, which requires law enforcement to submit certain cases to prosecutors regardless of whether they believe charges should or can be filed.

Statutory referrals frequently involve alleged harm to children or vulnerable adults. Statutory referrals require law enforcement to make a referral regardless of whether they believe there is insufficient evidence that a crime has been committed. When submitting the case for review, law enforcement chooses to submit it as an SRO, rather than naming a potential crime.

SROs receive the same level of scrutiny by the PAO as other referrals because prosecutors may disagree with a law enforcement officer's assessment that a case is an SRO. In these situations, a DPA may ask for follow-up investigation or may file the case based on information originally submitted by law enforcement.

Law enforcement can also label some referrals as SROs when the referral does not meet the statutory definition of SRO. Law enforcement may do this because they do not believe that charges should be filed but *do* want a prosecutor's review. These SROs may include sexual assaults that do not meet the statutory definition of an SRO, may include behavior that is not sexual in nature (such as alleged physical abuse of a child or vulnerable adult), may include some non-SAU cases where law enforcement simply wanted a referral reviewed, and may include some referrals that are incorrectly labeled as SRO.

Including statutory referral numbers in the calculation of our charging rate of sexual assault cases is misleading because it can appear as if the PAO is declining an unusually high number of sexual assault cases. As the 2020 King County audit showed, the PAO's case numbers are in line with other Prosecuting Attorney's Office in other jurisdictions.

A case is only counted as a "Statutory Referral only" if/when the PAO has finished its review of the case and determined that the PAO agree with law enforcement that charges should not be filed.

A case is **filed** when the PAO formally files paperwork with the Court alleging that one or more persons (typically referred to as the "defendant" or "defendants" in adult cases or the "respondent" in Juvenile Court cases) committed a crime or crimes and a judge finds that there is probable cause to believe a crime was committed.

Law enforcement conducts all investigations and can make initial arrest decisions; however, no charge/case can be filed without prosecutor review and approval. The PAO independently reviews law enforcement investigations and determines the appropriate course of action. There is a common misconception that victims "press charges." This is not the case. Victims play an important role in providing input on how they may like a case to progress, and in many cases, a victim's testimony may be necessary to prove charges beyond a reasonable doubt. However, it is

the PAO's legal and ethical duty/obligation to determine whether charges should be filed based on <u>admissible</u> evidence and in accordance with the office's Filing and Disposition Standards (which are published on the PAO's website).

A case can be "merged into another case" in certain instances where a defendant has two or more closely related cases and it is legally appropriate to combine them. When this occurs, one case will have another filing decision outcome (filed, declined, or SRO) and the other(s) will be listed as having been merged into another case.

Some of the cases that are listed as "under review" are awaiting additional investigation from law enforcement before a filing decision can be made. Declined cases can be reopened if new evidence is presented. This frequently happens after law enforcement has completed necessary and/or additional investigation. It can also happen if a victim or investigator requests the PAO to reconsider its decision to decline and changes surrounding the investigation change (for instance, when a victim who had initially not wanted the PAO to file charges later changes their mind). In these situations, the case returns to "under review" status and the referral date will be the original referral date, not the date the case was reopened.

The below table shows the filing decision outcome for sexual assault referrals involving adult suspects by the year that the case was referred.

Adult Referral Outcome:	2019	2020	2021	2022	2023	Total
Declined	418	417	314	309	341	1799
Filed	405	370	347	305	284	1711
Statutory Referral Only (SRO) - never						
intended for prosecution	268	248	228	318	430	1492
Merged into another case	2	4	3	5	19	33
Under Review			2	5	25	32
Total	1093	1039	894	942	1099	5067

Referrals involving juvenile suspects have a different set of procedural rules and legal requirements. As a result, juvenile referrals have different outcome types. For example, there are different reasons (that do not apply to adult suspects) as to why a case might be declined for prosecution. For example, when a suspect is under twelve (12) years-old charges, generally, cannot be legally brought (see RCW 9A.04.050) in accordance with state law.

Additionally, there are cases where the PAO is statutorily required to divert a case away from formal prosecution: This includes circumstance when the allegations involve misdemeanor level conduct and the referral is the juvenile's first legal referral. These cases are listed as "Legally required misdemeanor diversion." In this type of diversion, the juvenile suspect is referred to Superior Court probation, where they are required to engage in treatment or other programing. There is no statutory authority to divert a felony sex offense, and the PAO does not, under any circumstance, divert felony sex offenses involving juvenile suspects.

Juvenile Referral Outcome:	2019	2020	2021	2022	2023	Total
Declined	81	40	39	51	69	280

Statutory Referral Only (SRO) - never						
intended for prosecution	58	71	73	115	92	409
Filed	88	51	49	47	42	277
Legally required misdemeanor diversion	*	*	*	*	10	*
Under Review	*	*	*	*	*	*
Total	233	168	165	221	214	1001

^{*}Juvenile Data, particularly for cases not filed with the court, is particularly sensitive and protected by statute (RCW 13.50.050). Accordingly, and in compliance with the <u>Washington State Department of Health guidelines for small numbers on sensitive data</u>, any values less than 10 (including 0) and any values that would necessarily reveal what a value less than ten would be have been redacted and replaced with a "*".

C. File Case Dispositions

Once a case is **filed**, it can take a substantial period of time to resolve (reach a disposition). A disposition is the final result in a case.

The time to resolution can vary greatly among individual cases, depending on the complexity of the case and many other factors. A case is only counted as being resolved/disposed once (even when there are multiple charges in a single case). Resolutions/dispositions are categorized by the most consequential or impactful disposition in the case. For example, if a defendant is charged with two different crimes in one case and pleads guilty to one crime and has the other dismissed, the case would count as one plea (not one plea and one dismissal).

Each victim is entitled to work with an advocate and almost all SAU victims work with a community or system-based advocate. Advocates are the primary points of contact for victims throughout the court process/course of their case.

Consistent with the Victim Bill of Rights, DPAs work with victim advocates to keep victims updated about proceedings and to seek victim input on any potential case disposition or outcome.

Below are potential case outcomes in the order used to determine how a case disposition is counted:

• Trial - There are two types of trials: jury trials and bench trials. Jury trials are far more common. In a jury trial, a jury of 12 lay persons from the community decides whether a defendant is guilty or not guilty of the crimes charged. A jury makes an individual decision on each charged crime. If a defendant is charged with multiple crimes, a jury could find the defendant guilty of some crimes and not guilty of others. The jury's decision must be unanimous to convict; if the jury cannot reach a unanimous decision on one or more crimes, the case is not disposed and will need to be resolved in another way (an additional trial, plea, or dismissal).

Bench trials are far less common and can only occur if the defendant requests a bench trial and specifically waives their constitutional right to a jury trial. In a bench trial, the judge acts as the

jury, in addition to being the judge. All Juvenile Court trials are "bench trials."

- We do not report the outcomes of trials. Any case that is resolved by a trial is counted as a trial, regardless of whether the verdict was guilty, not guilty, or a mix. The PAO does this because we do not want to unduly characterize or incentive convictions or long prison sentences as "wins." DPAs are directed and encouraged to pursue the just result in an ethical manner, rather than simply seek convictions.
- Plea In a plea, the defendant or respondent pleads guilty to one or more crimes. This is also typically referred to as a "plea agreement" because the defendant or respondent and the PAO usually come to an agreement on the details of the plea. This can involve a plea agreement to a less serious crime than the defendant or respondent was originally charged with or may also involve having some charges dismissed. Plea agreements can also involve the defendant pleading guilty to the crime(s) they were originally charged with. A plea is not always a reduced charge.

A plea cannot be entered unless a Judge finds the defendant or respondent has made a knowing, intelligent, and voluntary decision to do so. Victims often support resolution by plea because it provides for a certain outcome compared to what can be perceived as the relatively uncertain outcome of a trial.

In situations when the PAO resolves a case in a manner that is contrary to a victim's wishes, the PAO makes those decisions based on concerns about our ability to prove the charge(s) beyond a reasonable doubt based upon on all available *and* admissible evidence. DPAs make themselves available to both victims and law enforcement to answer questions about resolutions. DPAs do this to hear feedback and concerns and to answer questions about the PAO's decisions.

• **Dismissal** - A case may be dismissed upon a motion by the PAO, defense, or the court. The dismissal of a case or crimes means that the defendant is no longer charged with the crime; in other words, the legal case is ended.

Some cases are dismissed in order to be referred to, or upon completion of, an alternative program such as Mental Health Court, Drug Court, or Veteran's Court, but that does not mean the case goes away. In these types of circumstances, the case is handled in the alternative, therapeutic courts. If an individual does not complete the alternative, therapeutic court requirements and conditions, the Superior Court felony case can resume.

Sometimes, there are other nuances with dismissed cases. For example:

- O It is not uncommon for defendants have multiple criminal cases pending at the same time. In this type of situation, a case may resolve with the defendant pleading guilty to some of the cases in exchange for the dismissal of some charges. For example, if a defendant pleaded guilty to two cases in exchange for the dismissal of a third, those three cases would each be counted separately, two as pleas and one as a dismissal.
- Cases are sometimes dismissed when the Court finds that an individual is incompetent to stand trial (after an evaluation by the Washington State Department of Social and Health Service). These types of dismissals can come with an order for the defendant to be sent to Western State Hospital for civil commitment (mandatory treatment). If the defendant's competency is restored, the PAO may refile the criminal case.
- The PAO may also dismiss a case if new information comes to light that causes the PAO to conclude that the defendant did not commit the charged offense, that the case can no longer be proven beyond a reasonable doubt, or that the interests of justice no longer warrant prosecution.
- o Judges can also make legal rulings that result in dismissing of the case.

Cases that are not yet resolved are listed as "**Open**". Cases may be open because the defendant failed to appear for court for a substantial period (a criminal case generally cannot proceed without the defendant's presence) or other complications may have prevented a disposition.

The tables below show case dispositions based on the year of law enforcement referral (not the year of the disposition). Cases are often referred in one year, but resolved in another. Therefore, this table should not be used to analyze the number of pleas, dismissals or trials in any given calendar year.

Status of Filed Adult Cases by the Year the Case was Referred to the KCPAO								
	2019	2020	2021	2022	2023	Total		
Plea	272	226	198	161	85	942		
Open	35	48	71	94	170	418		
Dismissal	60	59	61	42	27	249		
Trial	38	37	17	8	2	102		
Total	405	370	347	305	284	1711		

In addition to the categories listed above, Juvenile Court cases can also be resolved/disposed through a "Deferred Disposition" or the completion of a post-filing diversion ("Post-Filing Diversion Completed").

A **Deferred Disposition** is a juvenile disposition outcome that is set forth in statute (see RCW 13.40.127) and where a guilty finding is entered and the imposition of sentence is deferred for a some period of supervision. If the juvenile successfully completes the conditions of supervision, then the court may dismiss the guilty finding.

Post-Filing Diversion Completed are resolutions where charges have been initially filed into juvenile court, but where the parties agree to resolve the case as a diversion rather than as a

formal, legal adjudication. These types of resolutions usually involve cases that would otherwise be eligible for diversion at the time of charging, but the PAO exercised its discretion to formally file charges (as opposed to diverting charges up front) in order to have more control over the intervention/outcome.

Status of Filed Juvenile Cases by the Year the Case was Referred to the KCPAO								
	2019	2020	2021	2022	2023	Total		
Deferred Disposition	35	18	16	*	*	79		
Dismissal	19	*	*	*	*	45		
Open	*	*	*	*	27	29		
Plea	26	18	20	25	*	*		
Post-Filing Diversion								
Completed	*	*	*	*	*	*		
Trial	*	*	*	*	*	15		
Total	88	51	49	47	42	277		

^{*}Juvenile Data, including that for filed cases that do not result in a conviction or are sealed or vacated, is particularly sensitive and protected by statute (RCW 13.50.050). Accordingly, and in compliance with the Washington State Department of Health guidelines for small numbers on sensitive data, any values less than 10 (including 0) and any values that would necessarily reveal what a value less than ten would be have been redacted and replaced with a "*".

D. Detail on Plea Dispositions

When a defendant or respondent enters a plea of guilty, they can do so to the charge(s) they were originally charged with, a greater charge, or a lesser charge.

The data listed below shows cases that were resolved by a plea, displayed by the most serious class of offense that was originally filed (labeled Original File Class) and the most serious class of offense that was pleaded (guilty) to (labeled Plea Disposition Class). The classes involved are A, B, C, and M (in order of severity) which are defined as:

- A refers to class A felonies. Class A felonies are the most serious alleged offenses and can include sex offenses and non-sex offenses. Some common sex offense Class A felonies include Rape in the First Degree, Indecent Liberties (with force), Rape of a Child in the First or Second Degree, and Child Molestation in the First Degree. A conviction of a class A felony could result in a sentence of life imprisonment, a fine of up to \$50,000, or both.
- **B** refers to class B felonies, which are less serious, but still very serious offenses. Class B felonies include sex offenses and non-sex offenses. Some common Class B felonies include Rape in the Second Degree, Indecent Liberties (without force), and Child Molestation in the Third Degree. A conviction of a Class B felony can result in imprisonment of up to ten years and/or a \$20,000 fine.
- C refers to class C felonies, which can include sex offenses and non-sex offense. Some common sex offense Class C felonies include Rape in the Third Degree, Rape of a Child in the Third Degree, and Child Molestation in the Third Degree. A conviction of a Class C felony could result in up to five years in prison and a \$10,000 fine.

- M refers to gross misdemeanors and misdemeanors, which can include sex offenses and non-sex offenses. Gross misdemeanors carry a maximum sentence of 364 days in jail and/or a \$5,000 fine. Misdemeanors carry a maximum sentence of 90 days in jail and/or a \$1,000 fine. Some common SAU gross misdemeanor crimes are Communicating with a Minor for Immoral Purposes, Assault in the Fourth Degree with Sexual Motivation, and Sexual Misconduct with a Minor in the Second Degree.
- SA refers to sex offenses that require sex offender registration upon conviction. RCW 9.94A.030(47) defines crimes that qualify as sex offenses.

The PAO has attempted to calculate how many cases resulted in a plea to a "sexual assault" offense (SA at Disposition) and how many cases did not involve a plea to a "sexual assault" offense (NOT SA at Disposition).

Some of the cases in the "NOT SA" column were resolved with charges that reflect the sexual nature of the crime, even though they do not qualify as sex offenses. For example, a defendant may plead guilty to Assault in the Second Degree (a class B felony "strike" offense) with the admission that the defendant assaulted the victim with the intent to commit the crime of rape. In this example, a disposition would be counted in the "NOT SA" column.

Adult Pl	Adult Plea Dispositions:										
Original	Plea										
Filed	Disposition			SA at	NOT SA at						
Class	Class	Cases	Defendants	Disposition	Disposition						
Α	Α	71	71	67	4						
Α	В	135	135	95	40						
Α	С	145	144	87	58						
Α	М	98	98	73	25						
В	Α	1	1	1							
В	В	47	47	33	14						
В	С	106	105	84	22						
В	М	69	69	48	21						
С	В	5	5	3	2						
С	С	111	98	93	18						
С	М	120	119	92	28						
М	С	4	4	3	1						
М	М	30	30	26	4						

Original						
Plea	2019	2020	2021	2022	2023	Total
Α	127	125	88	71	38	449
Α	24	13	19	11	4	71
В	40	46	22	19	8	135
С	33	41	31	24	16	145
М	30	25	16	17	10	98
В	68	43	51	41	20	223
Α			1			1
В	12	10	10	8	7	47
С	35	21	22	20	8	106
М	21	12	18	13	5	69
С	61	49	57	45	24	236
В	2	2	1			5
С	32	19	23	20	17	111
М	27	28	33	25	7	120
M	16	9	2	4	3	34
С	1	1		2		4
М	15	8	2	2	3	30
Total	272	226	198	161	85	942

Juvenile Data, including for filed cases that do not result in a conviction or are sealed or vacated, is particularly sensitive and protected by statute (RCW 13.50.050). Accordingly, and in compliance with the Washington State Department of Health guidelines for small numbers on sensitive data, any values less than 10 (including 0) have been redacted and replaced with a "*" along with any values that would necessarily reveal what a value less than ten would be.

However, the number of juvenile plea dispositions where the resulting charge was not classified as a "sexual assault" was so small that all of that information had to be redacted from the report. So, the columns for that listed the number of case that were a sexual assault charge at disposition are not included for juveniles.

Juveni		

Original	Plea		
Filed	Disposition		
Class	Class	Cases	Respondents
Α	А	14	14
Α	В	*	*
Α	С	19	19
Α	М	30	30
В	В	*	*
В	С	*	*
В	M	*	*
С	С	*	*
С	M	13	13
М	М	*	*

^{*}Juvenile Data, including that for filed cases that do not result in a conviction or are sealed or vacated, is particularly sensitive and protected by statute (RCW 13.50.050). Accordingly, and in compliance with the Washington State Department of Health guidelines for small numbers on sensitive data, any values less than 10 (including 0) and any values that would necessarily reveal what a value less than ten would be have been redacted and replaced with a "*".

Juvenile F	Juvenile Plea Disposition Breakdown by Year of Referral:									
Original										
Plea	2019	2020	2021	2022	2023	Total				
Α	23	12	13	13	*	*				
Α	*	*	*	*	*	14				
В	*	*	*	*	*	*				
С	*	*	*	*	*	19				
М	10	*	*	*	*	30				
В	*	*	*	*	*	*				
В	*	*	*	*	*	*				
С	*	*	*	*	*	*				
М	*	*	*	*	*	*				
С	*	*	*	*	*	19				
С	*	*	*	*	*	*				
М	*	*	*	*	*	13				
M	*	*	*	*	*	*				
М	*	*	*	*	*	*				
Total	26	18	20	25	*	*				

^{*}Juvenile Data, including that for filed cases that do not result in a conviction or are sealed or vacated, is particularly sensitive and protected by statute (RCW 13.50.050). Accordingly, and in compliance with the Washington State Department of Health guidelines for small numbers on sensitive data, any values less than 10 (including 0) and any values that would necessarily reveal what a value less than ten would be have been redacted and replaced with a "*".