



## **OFFICE OF VICTIMS' RIGHTS**

# **REPORT ON OFFICE OF VICTIMS' RIGHTS' PILOT PROGRAM CONCERNING CERTAIN SEXUAL ASSAULT AND SEXUAL ABUSE CLAIMS**

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## INTRODUCTION

The Alaska Office of Victims' Rights (OVR) was created by the Legislature in 2001 as an independent office within the legislative branch of state government. The placement of the OVR in the legislative branch avoids conflicts within state government and ensures that the OVR has the necessary independence to investigate criminal justice agencies and make appropriate recommendations. Alaska Statute 24.65, *et seq.* (effective July 1, 2002) provides authority for the OVR's investigative powers and responsibilities.

The Alaska Legislature passed Senate Bill 134 charging the OVR with the responsibility to review/survey complaints crime victims made to the OVR involving first degree sexual assault crimes and investigative delay. The following report contains the findings of this review. The aim of this report is to improve the administration of the criminal justice system statewide.

## OVERVIEW OF PILOT PROJECT

Senate Bill 134<sup>1</sup> (hereinafter “Pilot Project”) was passed on June 16, 2006.<sup>2</sup> This legislation created a pilot project to review and investigate certain complaints made by victims of Sexual Assault in the First Degree or Sexual Abuse of a Minor in the First Degree. The legislation designated the OVR to administer the pilot project and report its findings to the legislature.

Senate Bill 134 specified that the pilot program was to focus on complaints involving crimes of “sexual assault in the first degree or sexual abuse of a minor in the first degree” that had not been timely or completely investigated. In essence, the legislation tasked the OVR to review/survey complaints it has received involving Sexual Assault in the First Degree or Sexual Abuse of a Minor in the First Degree and allegations of investigative delay.

Under the procedures set out in AS 24.65.100, the OVR has jurisdiction to investigate relevant complaints regarding a victim’s contacts with criminal justice agencies. Senate Bill 134 requires the OVR to consult with and make reports to justice agencies under the procedures set out in AS 24.65.140 and 24.65.150. In the instant report, the OVR has the privileges and immunities set out in AS 24.65.190 and 24.65.200.<sup>3</sup> Finally, Senate Bill 134 encourages the OVR to make recommendations for legislative action.

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<sup>1</sup> Short title: “Pilot Project: Sex Offense Victims Rights.” Ch. 74 SLA 06.

<sup>2</sup> A copy of the Act is included as Addendum A to this Report.

<sup>3</sup> These statutes relate to the investigation and publication of the instant findings.

# SEXUAL ASSAULT

## Overview:

Sexual assault (Sexual Assault in the First Degree and Sexual Abuse of a Minor in the First Degree) are two of the most serious crimes in the state of Alaska. The crime of Sexual Assault in the First Degree (SA1) is committed under any one of the following circumstances: (1) sexual penetration of another person without that person's consent; (2) attempted sexual penetration of another, without consent, that causes serious physical injury; (3) sexual penetration of a person the offender knows is mentally incapable, and who is in the offender's care either by authority of law or is in a state-licensed facility or program; or (4) the offender is a health care worker who, in the course of professionally treating another, sexually penetrates that person, and the offender knows the person is unaware a sexual act is being committed. AS 11.41.410.<sup>4</sup>

The crime of Sexual Abuse of a Minor in the First Degree (SAM1) is committed when the offender is: (1) 16 years old or older and sexually penetrates a person younger than 13, or aids, induces, causes or encourages a person younger than 13 to engage in the sexual penetration of another; or (2) 18 years old or older and sexually penetrates a person younger than 18, and is the victim's natural parent, stepparent, adopted parent or legal guardian; or (3) 18 years old or older and sexually penetrates a person who is younger than 16 and resides in the offender's household, and either has authority over the victim or is in a position of authority in relation to the victim. AS 11.41.410.<sup>5</sup>

## Sentencing Ranges:

Defendants convicted of sexual assault crimes face severe sentences in Alaska.

If convicted of SA1 or SAM1, a defendant faces a maximum sentence of 99 years imprisonment. Subject to aggravating and/or mitigating factors, a definite term of imprisonment under the following presumptive sentencing ranges shall be imposed:

1. If the offense is a first-time felony conviction, and the defendant:
  - a. did not possess a firearm, use a dangerous instrument, or cause serious physical injury while committing the offense, and the victim was less than 13 years old: 25-35 years. If the victim was 13 or older: 20-30 years.
  - b. possessed a firearm, used a dangerous instrument, or caused serious physical injury while committing the offense: 25-35 years.

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<sup>4</sup> AS 11.41.410(a) (ThomsonWest 2007). This statute is reproduced in Addendum B of this report.

<sup>5</sup> AS 11.41.434(a) (ThomsonWest 2007). This statute is reproduced in Addendum B of this report.

2. If the offense is a second felony conviction, and the defendant has:
  - a. no prior conviction for a sexual felony: 30-40 years.
  - b. a prior conviction for a sexual felony: 35-45 years.
3. If the offense is a third felony conviction, and the defendant:
  - a. does not have two prior convictions for sexual felonies, is not subject to a mandatory 99-year sentence for a conviction of first degree murder or murder of an unborn child, and has not previously been convicted of two or more “most serious felonies”: 40-60 years.
  - b. has two prior convictions for sexual felonies, is not subject to a mandatory 99-year sentence for a conviction of first degree murder or murder of an unborn child, and has not previously been convicted of two or more “most serious felonies”: 99 years. AS 12.55.135.<sup>6</sup>

### **Current Crime Statistics for Alaska:**

The crimes of SA1 and SAM1 are widespread throughout Alaska. “Alaska generally, and Anchorage specifically, have been plagued by a high incidence of forcible rapes and sexual assaults.”<sup>7</sup>

Alaska’s population is exposed to these crimes at higher rates than other states and/or at higher averages than the national average. *See Uniform Crime Reports*, Federal Bureau of Investigation <<http://www.fbi.gov/ucr/ur.htm>> (Addendum C).

According to the Alaska Justice Forum, a publication of the Justice Center for the University of Alaska at Anchorage:

Anchorage has a very high incidence of reported rape. Between 2000 and 2003, the rate of reported forcible rape in Anchorage was 163 percent higher than in the U.S. as a whole. Over the past twenty years, Anchorage has been consistently at or near the top of U.S. metropolitan statistical areas for rates of reported forcible rape.

G. Matthew Snodgrass, *Sexual Assault Case Processing: A Descriptive Model of Attrition and Decision Making*, Alaska Justice Forum (University of Alaska Anchorage), Spring 2006, Vol. 23, No. 1 at 1 (Addendum E).

According to the Uniform Crime Report of the Federal Bureau of Investigation, the Alaska rate of forcible rape is over twice that of the national rate for the years 2006 and 2007.

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<sup>6</sup> AS 12.55.125(i)(1) (ThomsonWest 2007). This statute is reproduced in Addendum B of this report.

<sup>7</sup> André Rosay, *Forcible Rapes and Sexual Assaults in Anchorage*, Alaska Justice Forum (University of Alaska Anchorage) Winter 2004, Vol. 20, No. 4 at 1 (Addendum D).

Anchorage vastly exceeded the number of forcible rapes compared to other cities in Alaska during 2006 and 2007.<sup>8</sup>

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<sup>8</sup> These data, i.e., findings, are set out in Addendum C.

## **PILOT PROJECT METHODOLOGY**

The Alaska Legislature directed the OVR to review/survey the complaints made by crime victims between September 13, 2006 and September 1, 2008 for offenses of SA1 and SAM1 alleged to have been committed on, or after, July 10, 2003. In preparation for its report, the OVR examined all complaints filed with the OVR alleging sexual assault received during the September 13, 2006 to September 1, 2008 reporting period.

Approximately 157 cases were reviewed for the Pilot Project. Each case was reviewed by more than one attorney for the OVR. From this initial grouping, 26 cases were identified as being within the scope of the Pilot Project, in that they were first degree sexual assault cases that alleged untimely or incomplete investigation during the relevant time period.

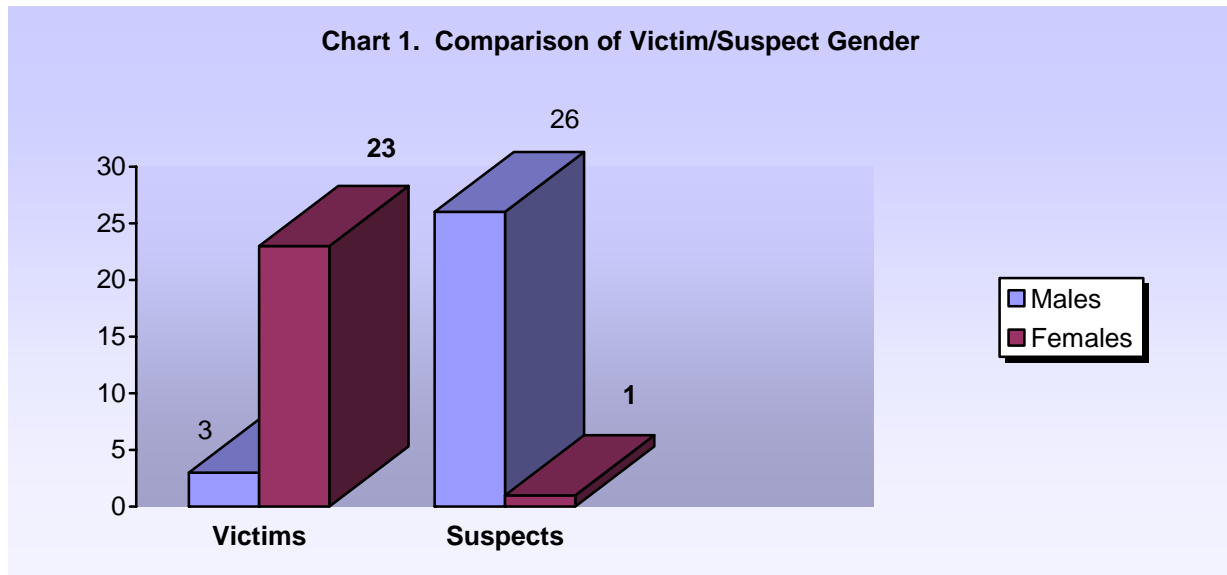
In sum, in order for a complaint to fall within the scope of the Pilot Project, it must have met three variables: (1) the crime must have been alleged to have been committed on or after July 10, 2003, (2) the complaint must have been filed with the OVR between September 13, 2006 and September 1, 2008; and (3) the complaint must have alleged that there was an incomplete or untimely investigation.



## VICTIM/SUSPECT DEMOGRAPHICS

The typical location of the crime was an urban environment with a population exceeding 100,000, e.g., Anchorage and Fairbanks. The OVR received the majority of complaints alleging investigative delay from the Third Judicial District.<sup>9</sup> Finally, it was discovered that most of the sexual assaults occurred between people who knew one another through kinship, prior intimate relationship, or acquaintance.

### A. Gender



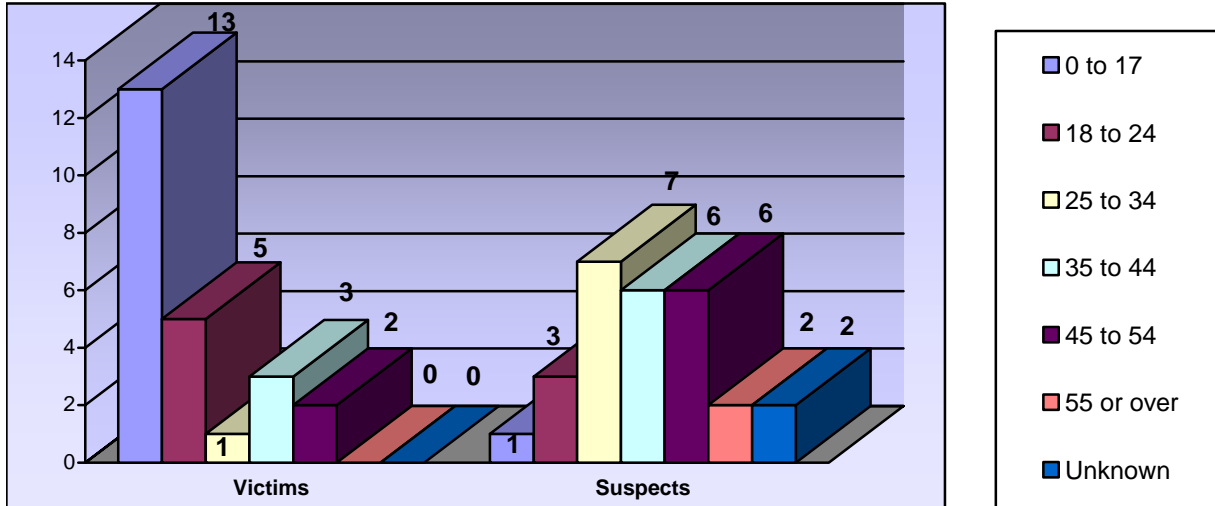
Twenty-six cases of SA1 and SAM1 constituted the relevant sample for the Pilot Project. Chart 1 indicates that of the 26 incidents investigated, 23 victims were female and 3 victims were male. Twenty-six suspects were male and 1 suspect was female. Note that though the incidents total 26, 27 suspects are reported because two suspects were implicated in one incident.

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<sup>9</sup> This factor is likely due to the positive efforts of law enforcement to make victims aware of their rights as victims and because the OVR is located in the Third Judicial District. The Third Judicial District encompasses the southcentral region of Alaska: the Mat-Su Borough, Anchorage, and the Kenai Peninsula.

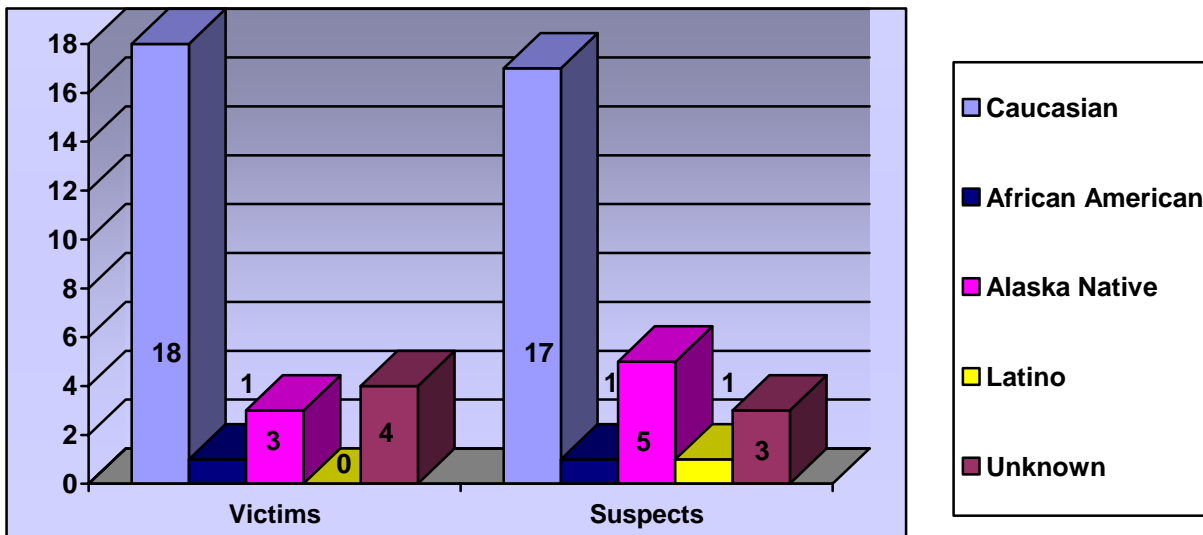
**B. Age**

**Chart 2. Age of Victims and Suspects**



The majority of victims were 17 years old or less, while the majority of suspects ranged in age from 25 to 34. None of the victims were over 54. Note that the ages of two of the suspects are presently unknown due to incomplete data.

**Chart 3. Victim and Suspect Race**



The majority of victims and suspects were Caucasian.

## CRIME LOCATION DATA

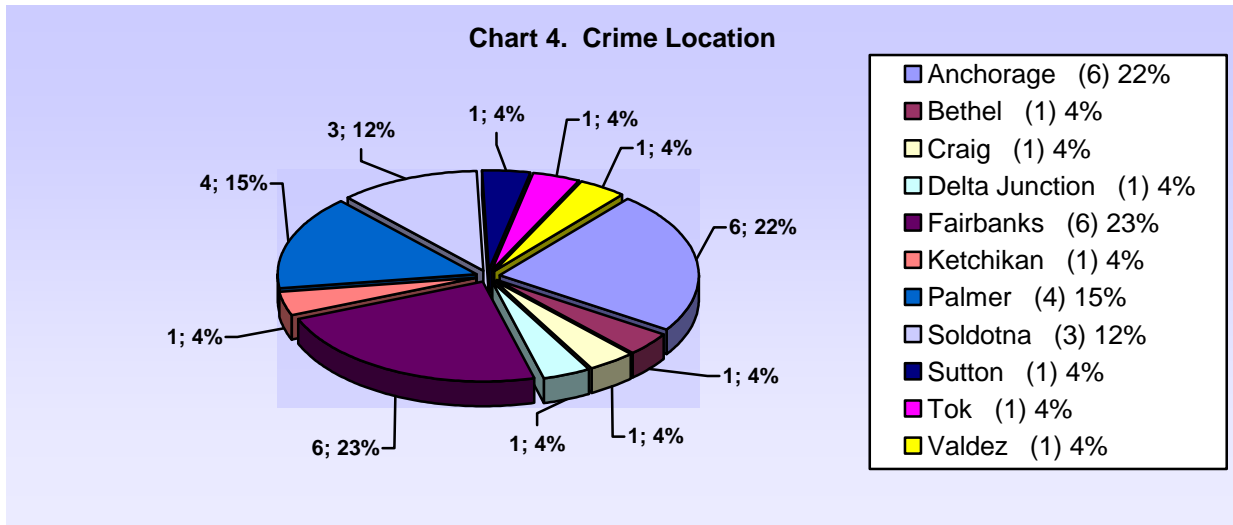


Chart 4 illustrates the location of the sexual assaults studied in the Pilot Project. While the incidents occurred at locations across Alaska, the majority were committed in the state’s major urban centers, i.e., Anchorage (22%) and Fairbanks (23%).

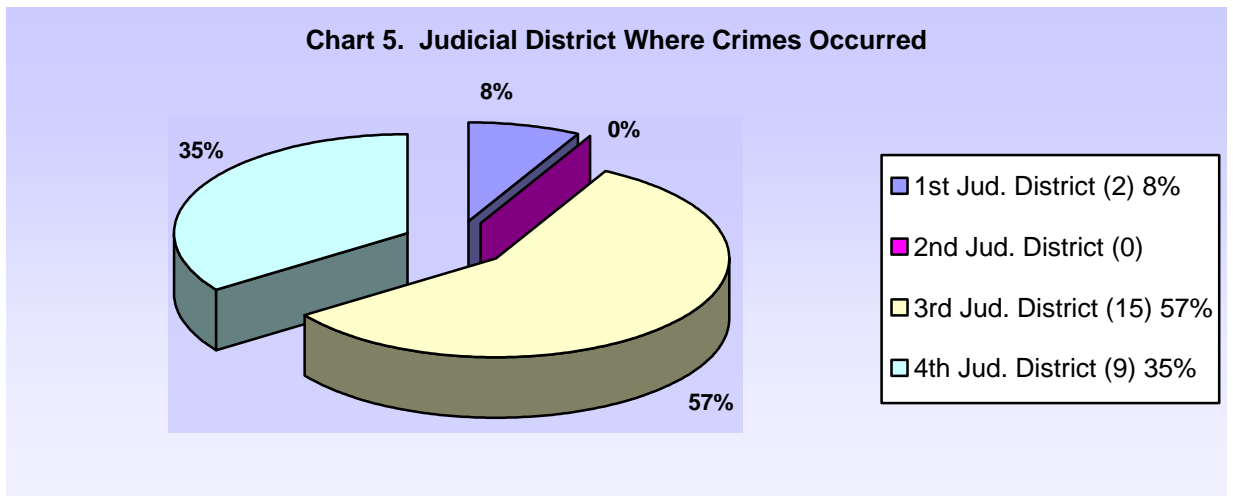


Chart 5 illustrates the judicial districts in which the reported assaults occurred. The majority of the incidents (15) occurred in the Third Judicial District, which includes Anchorage, the Mat-Su Borough and the Kenai Peninsula. Thirty-five percent (9 incidents) occurred in the Fourth Judicial District, which includes Fairbanks, Bethel, Delta Junction and Tok. Located in the First Judicial District, Ketchikan and Craig were the sites of two of the reported incidents.

## **NATURE OF INVESTIGATIVE DELAY**

As required by the parameters of the Pilot Project, each complaint included in this study alleged untimely or incomplete investigation by law enforcement and/or criminal justice agencies. The OVR determined that these allegations fall roughly into two categories: (1) legitimate or inconclusive complaints of delay in which the delay may have affected disposition of the case; and (2) complaints of delay in which the complaints were not substantiated and likely did not affect disposition of the case.

### **Legitimate or Inconclusive Complaints of Delay; Delay May Have Affected Disposition of Case:**

Of the 26 complaints included in this report, one was legitimate in terms of delay. In particular, the OVR discovered that a criminal justice agency had not initiated an investigation after the initial interview with the victim. The delay occurred when law enforcement lost contact with the victim.

Eight of the complaints were inconclusive in terms of delay. This category includes one complaint which alleged an incomplete investigation. The OVR discovered that the investigation had stalled. Action by the OVR resulted in a completed investigation. A second case falling into this category concerned a delay in obtaining a search warrant which enabled the suspect to dispose of evidence. It is unclear whether the delay affected the disposition of the case because the suspect died while the case was being screened by the District Attorney's Office. A third complaint concerned delayed DNA analysis because of a delay in sending physical evidence to the crime lab and because of a backlog at the crime lab. The police agency responsible for the delay revised its policies, at OVR's urging, to prevent a recurrence. This investigative delay has been classified as inconclusive because the case remains in an investigative phase. The remaining complaints deemed inconclusive remain under investigation or in the process of being screened.

### **Complaints of Delay Not Substantiated; Delay Likely Did Not Affect Disposition of Case:**

The majority (17) of the reported complaints of delay were not substantiated and likely did not affect the disposition of the case. These cases resulted in conviction on a plea agreement or were screened out by law enforcement and/or prosecution agencies. Cases were screened out by law enforcement agencies for reasons including: the victim confessed no sexual assault occurred, law enforcement lost contact with victim; and/or the victim failed to cooperate.

Factors leading to cases were screened out by prosecution agencies include (but are not limited to) delayed report by victim, lack of corroborating evidence/no physical evidence, no admissions from suspect, insufficient evidence to convince a jury beyond reasonable doubt, and inconsistencies in victim's statements/victim credibility issues.

## CASE DISPOSITION

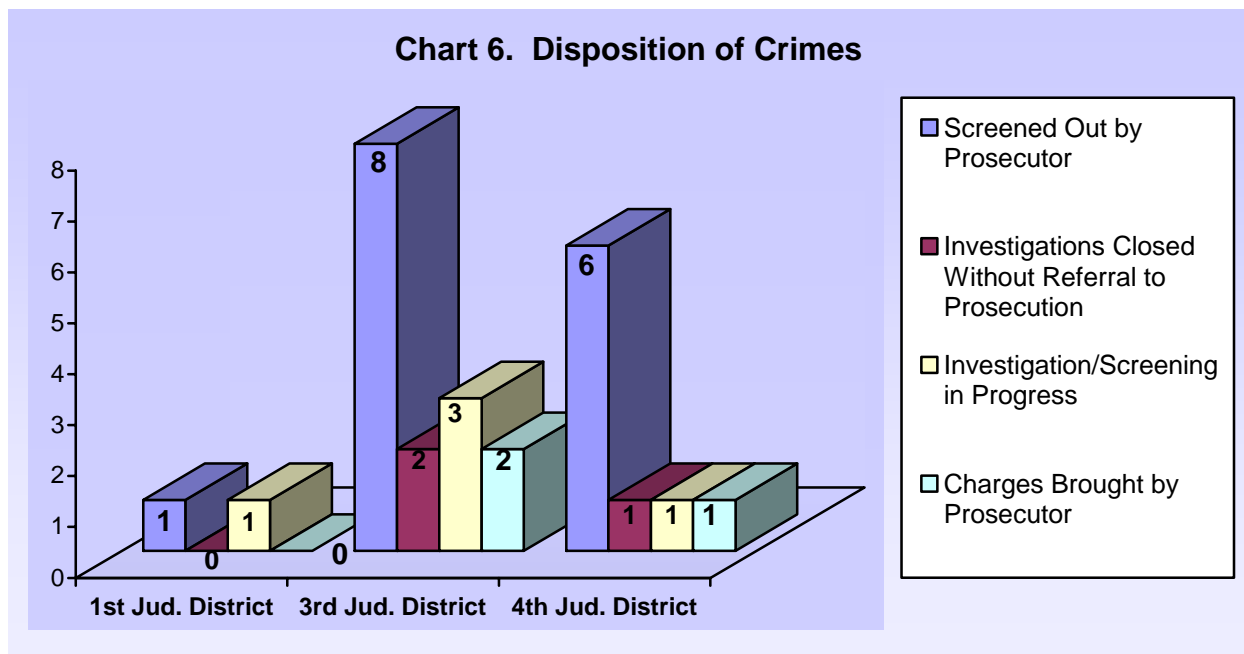
In compiling the data for this report, the OVR determined that once a victim reported a crime of SA1 or SAM1, the case was disposed of in one of three fashions: (1) the District Attorney's Office declined to prosecute, (2) law enforcement closed the case without referral to prosecution, or (3) formal charges were filed by prosecution agencies.

As reflected by Chart 6 below, of the 26 sexual assault complaints qualifying for inclusion in this report, the majority (15) were screened out (i.e., prosecution was declined) by the District Attorney's Office. Reasons for declining prosecution included delayed reporting to law enforcement by the victim, insufficient evidence, victim credibility issues (including inconsistencies in the victim's statements), lack of corroboration, lack of evidence, and defense claim of consent by the suspect.

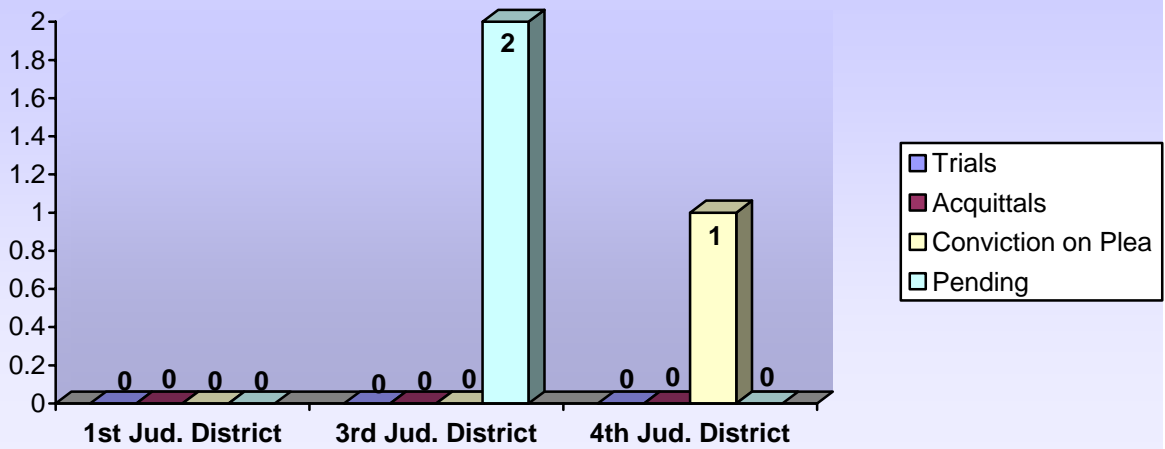
Investigations of three of the reported complaints were closed by law enforcement without referral to prosecution: one because the victim confessed that no sexual assault had occurred, a second because the victim failed to cooperate with law enforcement officers, and the third because contact with the victim was lost.

At present, five of the 26 reported cases remain under investigation by law enforcement officials and/or are still being screened by prosecutorial entities.

Finally, as illustrated in Chart 7 below, only three of the reported 26 cases resulted in formal charges being filed against the suspect by the District Attorney's Offices.



**Chart 7. Disposition of Charges Brought by Prosecutor**



Of the three cases that resulted in the filing of formal charges, none were brought to trial, one resulted in a conviction upon entry of a plea, and two remain pending at the trial court level.

## **RECOMMENDATIONS AND FINDINGS**

As an initial matter, the OVR finds the sample size of sexual assault complaints (26) falling within the parameters of the study is too limited for sweeping system-wide conclusions. Given the limited sample size and findings, the legislature may wish to consider whether to expand the parameters of the Pilot Project.

However, insofar as conclusions based on the limited sample may be drawn, the OVR finds that the law enforcement efforts in the majority of cases were appropriate.

The following general observations are evident from the OVR's Pilot Project. Evidence collection is vital to effective prosecution of the sexual assault crimes. Law enforcement and criminal justice agencies must continue to work together to improve evidence collection techniques. Additionally, the OVR recommends that state resources be committed to relieving the backlog of DNA analysis at the state crime lab. The OVR believes that timely access to Sexual Assault Response Team examinations, especially in rural communities, will increase convictions for sexual assault crimes. Further, according to Pilot Project data, community and system-based advocacy groups should continue to promote sexual assault awareness and prevention.

## **CONCLUSION**

The OVR conducted a Pilot Project to examine sexual assault crimes involving investigative delay. The OVR reviewed over 156 complaints filed over a two-year period, and analyzed 26 cases involving sexual assault and allegations of investigative delay. The OVR believes that prompt investigation and evidence collection by law enforcement increases prosecution rates for sexual assault crimes. The OVR will continue to work with criminal justice agencies to improve system-wide response to sexual assault crime victims alleging investigative delay.