



Human Rights Watch Analysis of Additional Documentation Provided by Metropolitan Police Department

On January 24, 2013, Human Rights Watch released a report that found the Metropolitan Police Department (MPD) of Washington, DC repeatedly failed to properly document or investigate sexual assault cases, and that MPD detectives subjected many victims to callous, traumatizing treatment. The report, “Capitol Offense,” cites 101 different cases to illustrate the problems with police handling of sexual assaults and draws on over 150 interviews including testimony from dozens of victims, medical staff, and advocates who have worked closely with victims and observed law enforcement interaction with sexual assault survivors. Human Rights Watch called on Washington, DC's mayor and City Council to create an independent mechanism to monitor the police department's response to sexual assault complaints and to afford victims the right to have an advocate present during police interviews.

Since learning of Human Rights Watch's findings, MPD has, to its credit, implemented a number of our recommendations, including increased training for detectives, new policies on the classification and handling of sexual assault cases, and increased staffing of a victims services unit to better serve sexual assault victims. However, without an independent monitoring mechanism in place, there is reason to doubt that the improved policies will be implemented in a meaningful manner.

Part of Human Rights Watch's report, “[Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia](#),” examined 480 cases over a three-year period, between 2008 and 2011, in which a victim underwent a forensic exam and reported a sexual assault at Washington Hospital Center (WHC), the designated hospital for care of adult sexual assault victims. Based on documentation obtained from MPD, Human Rights Watch concluded that MPD had failed to either document or properly classify 42.5 percent of the 480 cases. These cases broke down as follows:

- Cases in which police failed to file incident reports, as required to initiate an investigation (170 fell into this category or 35.4 percent of the 480 cases). We referred to these cases as “missing cases.”

- Cases which police classified as non-criminal incidents and documented as for “office information only,” which under MPD policy means that a case is effectively closed, with little to no investigation (34 cases or 7.1 percent of the 480 cases).

In addition, our review found a number of cases which appeared to be misclassified as less serious or non-sex offenses despite indicia of forcible sexual assault or attempted first degree sexual assault. The other sections of the report documented our concerns with certain aspects of MPD’s approach to investigating sexual assault as well as concerns with its treatment of some victims.

Human Rights Watch reached these findings based on MPD’s assertions that they had provided all incident reports for sexual assault cases for the relevant time period in response to our Freedom of Information Act request. Under the terms of a settlement agreement, Human Rights Watch also reviewed all sex abuse cases for which no case number had been assigned and no incident report prepared between 2009 and 2011.

Although MPD evidently accepted a number of Human Rights Watch’s recommendations, they contested the findings of “Capitol Offense,” claiming that the cases we had identified as “missing” were not missing at all, but rather had simply been overlooked by Human Rights Watch. On February 5, 2013, and repeatedly over the following two weeks, DC Police Chief Cathy Lanier announced to journalists that MPD had located most of the “missing documentation.” Human Rights Watch pointed out that the MPD had had the necessary information to find any documentation related to the mishandled cases for months, and we immediately requested the opportunity to review the newly discovered documentation.¹

On May 31, in response to an official records request filed by Human Rights Watch in mid-April, MPD provided HRW with 178 case summary reports.² Human Rights Watch closely reviewed each case file to see how it correlated with our pre-existing information and whether, if the case was a duplicate of one previously provided, the file contained additional information that altered the classification of the case.

Of the 178 summary reports, 106 involve cases for which we previously had found no documentation but which can now be linked to some form of documentation. However the bulk of these cases are classified as non-criminal “office information” incidents (59) or non-sex offenses (4). Of the remaining 43 hospital cases for which there is now some

¹ Human Rights Watch repeatedly requested information from MPD for the “newly found” cases beginning on February 6, 2013 but received no response. Ultimately Human Rights Watch had to file a formal Freedom of Information Act document request on April 15, 2013, which resulted in the documents used for this analysis.

² MPD provided 179 case summary reports, but two of these reports referred to the same incident.

corresponding documentation, 25 are cases we had reviewed previously; however new information provided enabled us to associate each case with a missing hospital report; the other 18 are sexual assault allegations (9), first degree sexual assaults (5), misdemeanors (2), a third degree sexual assault (1) and an attempt (1) for which no previous information had been provided.³ The other 73 cases were not relevant at all: 51 were duplicates of incidents that had been included in the previous analysis; 17 (9 of which were also duplicates) were excluded because they do not appear to be hospital cases or because the case matched a “non-report” or a case outside of MPD’s jurisdiction that was excluded from the original analysis; and 5 did not match a date for which we had a missing hospital report.

For reasons detailed below, the new documents from May 31, far from invalidating the conclusions of “Capitol Offense,” confirm the report's findings that MPD failed to document or properly classify a significant number of sexual assault cases.

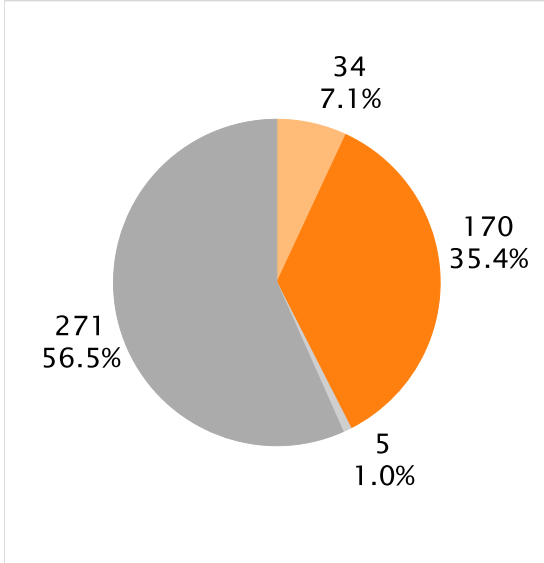
After reviewing all of the new documentation, we have adjusted our assessment and conclude that MPD either did not document at all, did not document as sexual assaults, or effectively closed at the time of the report 33 percent of the 480 cases reported at Washington Hospital Center (as opposed to 43 percent reported in the January “Capitol Offense” report). These cases include: 64 cases where a patient reported a sexual assault to MPD but MPD detectives did not document the case at all; 59 cases classified in the new documentation as “office information” (meaning detectives determined the cases were not “legitimate” without conducting more than minimal investigation); and 30 “office information” cases we already had included as such in “Capitol Offense.”⁴ Nine hospital reports corresponded with incident reports for non-sex offenses.

³ Eighty-nine case files provided on May 31 related to cases Human Rights Watch had already reviewed for our report “Capitol Offense.” Twenty-six of those cases had been excluded from our analysis published in “Capitol Offense” based on the information contained in the incident reports. In 18 cases, the incident report we originally reviewed either indicated a hospital other than WHC (11) or that the complainant did not go to a hospital (7). However, the additional investigative files provided on May 31, 2013 revealed that in those 18 cases the complainant had later been transferred to WHC or did in fact go to WHC. In two cases, the complainant was listed as a juvenile (in which case the complainant would ordinarily go to Children’s Hospital) and for six cases the crime listed indicated sexual contact of the sort that would not ordinarily result in a hospital visit—yet they in fact had gone to WHC. Those 26 cases were added to the analysis contained in this document.

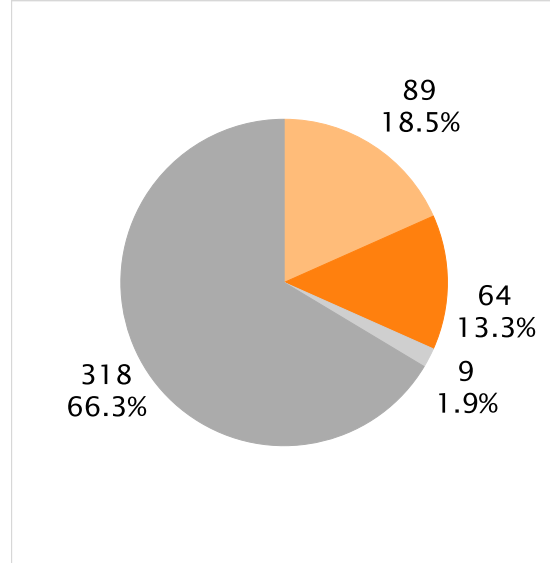
⁴ The 106 newly matched case files include several files from the previous documentation newly matched because the new documentation provided more complete date information. In “Capital Offense”, there were 34 “Office Information” cases. Because the new files allowed us to match sexual assault cases to some of these dates, the number of “Office Information” matches from the original case files was reduced to 30. For 34 of the 89 “office information” cases, MPD did not prepare an incident report at all meaning, for practical purposes, that no official public record of the complaint exists at MPD. When asked what would happen if an officer pursued an investigation without a PD-251 incident report, Assistant Chief Peter Newsham said “the officer would be in trouble.” Human Rights Watch interview with Chief Cathy Lanier, Assistant Chief Peter Newsham, and Sergeant Ronald K. Reid, Washington, DC, June 14, 2012.

WHC Sexual Assault Cases Reported to MPD (FY 2008 - 2011)

Original Analysis



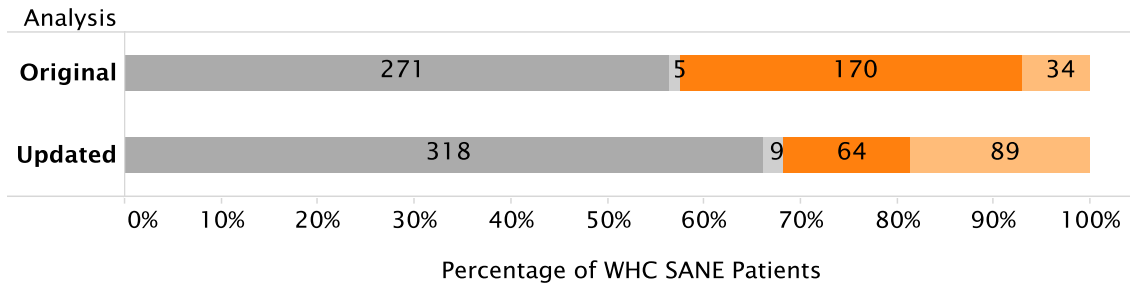
Updated Analysis



Category

- Patients classified as Office Information
- Patients undocumented by MPD
- Patients whose cases were classified as non-sex offenses
- Patients with corresponding sex abuse case numbers

WHC Sexual Assault Cases Reported to MPD (FY 2008 - 2011)



Category

- Patients classified as Office Information
- Patients undocumented by MPD
- Patients whose cases were classified as non-sex offenses
- Patients with corresponding sex abuse case numbers

For 35 dates, Human Rights Watch was not provided with any police documentation that corresponds to hospital records of patients reporting a sexual assault at Washington Hospital Center; for an additional 26 days, the hospital has records of more patients reporting assaults than for which the police provided documentation. Because of concerns about patient privacy, Human Rights Watch was unable to compare names of patients to hospital reports. However, in the other cases, it was straightforward to correlate the hospital reports and police records based on the dates on which the patient gave forensic evidence at the hospital and reported the assault.

Human Rights Watch also has made two adjustments to its prior findings based on new information: one previous office information case was upgraded to an alleged second degree sex abuse case and was reclassified as a sex crime for purposes of this analysis. Additional documentation also clarified that a kidnapping and rape case we originally cited as an example of misclassification because it had been classified only as a kidnapping despite a clear complaint of sexual assault in the summary, was possibly correctly classified because it appeared from the newly obtained investigator's notes that the sexual assault very likely occurred in Maryland.⁵ In the initial report provided to Human Rights Watch, it indicated only that the assault occurred in "an undisclosed location, possibly Maryland." However, the classification as "kidnapping" with no mention of sexual assault meant that the victim's name was on publicly available documents, including the report provided to Human Rights Watch.

Overall, the new documentation also reinforces Human Rights Watch concerns that victims are often treated improperly when they report sexual assaults.

The New Documents

In the 89 cases for which there was new documentation in the MPD's May 31 disclosure, the additional material was consistent with Human Rights Watch's conclusion that cases are often mishandled or inadequately documented or investigated. Of the 89 cases, 66 were classified as "office information." Four cases were classified as non-sex offenses, such as theft or simple assault, and do not appear to have been reclassified despite police notes indicating an associated sexual assault complaint.⁶ Ten cases were classified as

⁵ Incident-Based Event Report, CCN 10-145XXX, October 10, 2009

⁶ In two of these cases (a simple assault and an aggravated assault), investigative files indicate detectives determined a sexual assault complaint was "unfounded" or had not occurred.

allegations, five cases were first degree sex abuse cases (including two non-sex offenses that were later reclassified), one was an attempted first degree sex abuse case, two were misdemeanors, and one was a third degree sexual assault.

Classification as “office information” means that detectives either did not file the required documents to prompt a full investigation, or determined the case was not worthy of further investigation based on the initial contact with the victim or after a minimal preliminary investigation conducted at the same time that the sexual assault victim reported the crime (for example, by interviewing an individual accompanying the victim to the hospital or someone else on scene).⁷

According to MPD Chief Lanier, because of suggestions from Human Rights Watch, MPD ceased using the “office information” classification for sexual assault cases in June 2012.⁸ This may account for the recent increase in reported sexual assaults in DC. However, documenting all cases, while welcome and important for informing the public about the actual number of sexual assault reports in a community, does not in itself ensure that cases are thoroughly investigated (or investigated at all) or that those who report are treated properly. As Human Rights Watch documented in “Capital Offense,” a significant number of sexual abuse cases appeared to be closed before a thorough investigation had been completed.⁹

Following our review of the files, we believe that the information on record supports a classification of office information in a small number of cases, either because the preliminary investigation indicated clearly that there was a misunderstanding at the time of the report and no assault occurred, the victim indicated in both hospital and police records

⁷ Under MPD guidelines, a case is deemed for “office information” only after preliminary investigation by a member of the Sexual Assault Unit, when it involves any of the following: “an arrest of a sex offender in another jurisdiction; a report of an offense that occurred in another jurisdiction (information that can possibly be used in the future); sexual activity that is not a crime; and no crime was deemed to have occurred.” Such cases are “closed by definition.” If further investigation is needed it should be “classified as an allegation and handled accordingly.” Metropolitan Police Department, Standard Operating Procedures, Sexual Assault Unit, January 14, 2003, p. 33. Police notes in the files we obtained indicate that officers classify a case as office information when they have concluded, on the basis of a preliminary investigation, that it is “not a legitimate case.” Columbo Sex Summary Report, Office Information/ Alleged Sexual Assault, SA08-XXX, no CCN number, November 23, 2008 (unless otherwise noted, all cases are on file at Human Rights Watch). As we noted in our report, “Capitol Offense,” sexual assault cases classified as for “office information” are rarely if ever investigated in any depth. Indeed, in 57.7 percent (41 of 71) of cases classified as “office information” in the new documentation provided that were in DC and did not correspond to a non-report at the hospital, the classification was based on a single interview with the complainant. In 23 of the 71 cases (32 percent), detectives conducted a preliminary investigation at the time of the report, either on scene or at the hospital with other witnesses who were present before determining that no crime occurred. In some cases, it was noted that the investigation would continue, but no incident report or documentation provided indicated that it had.

⁸ Letter from Chief Cathy Lanier to Human Rights Watch, December 20, 2012.

⁹ Human Rights Watch, *Capitol Offense: Police Mishandling of Sexual Assault Cases in the District of Columbia*, January 2013, <http://www.hrw.org/reports/2013/01/24/capitol-offense-o>, pp. 94-107.

that he or she did not wish to report to police, or, as in four cases, the crime took place outside of the District.

Two of the office information cases provided in this production were later upgraded upon supervisory review from office information to a sexual offense, which means that they were eventually treated as a sexual assault allegation or case. These were counted in this analysis as sexual assault cases. In no case did we see an arrest linked to a report classified as “office information.” In 71 of the office information cases, the classification does not seem appropriate. In 32 of these cases, no incident report was prepared. According to police commander George Kucik, no report would be prepared “if there is definitive information the report is untruthful.”¹⁰ If a definitive decision that a report is untruthful is being made at such an early stage, prior to even receiving rape kit results in such a high percentage of cases, this is very troubling.

In 59 of these 71 office information cases (83 percent), detectives determined that no criminal offense had occurred when the complainant was either intoxicated, under the influence of drugs, or had some form of mental illness and/or was not taking medications.¹¹ Often the complainant was unable to recall specific details or give a coherent account of the assault, which may make investigation more difficult but is not evidence that an assault did not occur.

Indeed according to MPD’s standard operating procedures for the sexual assault unit, when a complainant is unsure if a crime occurred, provides contradictory information, or is too intoxicated to talk, the case should be categorized as an “allegation.”¹²

In other cases, police classified a case as “office information” when the complainant was uncooperative or unsure about reporting. However, under police policy, if the complainant has told a second party that he or she was raped, but “refused to talk with the police or have a medical examination,” has made “no disclosure,” or shows “physical signs that something happened, but the complainant refuses to cooperate with police,” the case should be deemed an allegation. An allegation is documented in an incident report and is

¹⁰ Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Ronald Keith Reid and Tyria Fields, program manager for Victims Services, Metropolitan Police Department, Washington, D.C., May 30, 2012.

¹¹ In 45 of the 71 office information cases analyzed, the victim was intoxicated; in 19 files, it was indicated the victim had a disability. In 5 cases, both circumstances applied.

¹² Metropolitan Police Department, Sexual Assault Unit, Standard Operating Procedures, January 14, 2003, p. 31.

supposed to be investigated until it is upgraded to a case, closed as unfounded, or investigative leads have been exhausted.¹³

Clearly many “office information” cases should have been treated as allegations subject to follow-up investigation. For example, in a case from January 2009, the complainant woke up nude on a bed in an apartment with five men and no memory of the night before after having one drink in the apartment. She saw four condom wrappers in her shoe and came to the hospital for an exam. For follow-up the detective says, “None at this time. [Complainant] cannot say with affirmation that a sexual assault took place.” The detective indicates the complainant came to the hospital to “be checked out” and to see if she had sexual intercourse.¹⁴

As we noted in the report, the high frequency with which MPD categorized these kinds of cases as “office information,” rather than as “allegations,” is extremely troubling. Research indicates that intoxicated or otherwise incapacitated or mentally ill persons are particularly vulnerable to sexual assaults, while trauma science shows that trauma interferes with the encoding and subsequent recall of memories, making it impossible for the victim to recall specifics of what happened or to recount events in a linear fashion. Thus, lack of memory, or inconsistent statements, should not be a reason to determine an assault has not occurred.

MPD’s new policies ending the use of “office information” and requiring increased supervisory review of case files will help ensure that cases are not miscategorized in the future. However, our report “Capitol Offense” illustrates problems with MPD investigations of sexual assault, irrespective of how the crime was categorized by the MPD. Therefore, we believe that steps need to be taken to be certain that investigations, regardless of how the crime is categorized, are not compromised by a lack of understanding about the effects of trauma on memory.

One of two “office information” cases upgraded by MPD subsequent to their initial classification

On September 29, 2009, a detective who was about to leave for the day offered to assist in a case that had just come into the hospital. In that case, the complainant reported being assaulted on her way back from watching television at a friend’s house but had difficulty remembering where she was during the assault, and had difficulty communicating what

¹³ Ibid., p. 32.

¹⁴ Columbo Sex Summary Report, Office Information, SA09-XX, CCN 09-000-XXX, January 29, 2009.

happened. The detective noted that the complainant's "words were slurred and she spoke really fast and it was hard for anyone to understand her." The detective had to ask questions repeatedly before she could understand her answers. The detective was concerned that the complainant was unable to comprehend what was being asked of her and asked for a doctor's assistance. The detective also sent an officer to the complainant's residence to see if she had any mental disorders or was on medication that would inhibit the complainant's understanding of questions. The detective learned from the complainant's mother that the complainant was on PCP and difficult to understand in that state, but better when she came down. The detective noted she will "re-interview the complainant at a later date once she has come down off the PCP."

The detective then contacted the head of the forensic nursing program after hearing from an advocate that a forensic exam might not be completed in order to make sure one was done. The detective also took the suspect's cell number and followed up with the investigation, ultimately interviewing the complainant at home when she was coherent, seeking a subpoena for subscriber information from the suspect's cell phone number, following up with the complainant about her rape kit results, and interviewing other witnesses. The detective ultimately managed to upgrade the case from "Office Information" to "First Degree Sexual Abuse/Kidnapping" and continued to pursue the case for several months.¹⁵

Unfortunately, this new case was one of only two "office information" cases for which Human Rights Watch received documentation indicating it was upgraded to an actual sexual assault case. For the rest of the cases, there was no indication of a thorough investigation or a change of report status.

Also troubling is that out of the new "office information" cases reviewed by Human Rights Watch, 53 had a forensic exam in which the complainant underwent an invasive physical examination in order to obtain evidence of the assault and are classified as reports to MPD at the hospital. Although hospital records or files indicated victims wished to go forward in these cases, of the 53, only 15 cases (28 percent) show any indication that the forensic exam was taken to a lab for analysis.¹⁶ Thus, there is reason to believe that many kits were never tested. For example in one office information case it was "requested that this case not be sent to the lab and tested considering it did not rise to the level of a crime. Case

¹⁵ Incident/Investigation Report, Office Information, SA09-XXX, Case Number 09250XXX, September 29, 2009.

¹⁶ Of the remaining 18 (of 71) office information cases reviewed, eight did not have forensic exams. For the remaining ten, it was unclear from the documents whether or not an exam was conducted.

closed.”¹⁷ In another case the detective noted “No SANE [Sexual Assault Nurse Examination] Kit was requested by the undersigned or partner in this case. This is an Office Information Only situation.”¹⁸ Not taking kits to be tested both deprives the victim, who may be uncertain about what happened, of possible information about events and also means that potential cases involving repeat offenders could be overlooked.

Finally, the MPD’s decision to classify cases as office information when a sexual assault has been reported raises serious privacy concerns. Protections are in place to protect the identity of victims who report a sexual assault. The same is not true for office information cases. In the first set of documents provided to Human Rights Watch for our investigation resulting in the publication of our report “Capitol Offense,” office information reports provided by MPD included names and identifying information for victims. If “office information” is no longer being used going forward, this will hopefully no longer be a problem for future sexual assault cases. However, protections should be put in place for sexual assault complaints that had previously been classified as “office information” to ensure that victim identifying information is not publicly available.

Cases Revealing Poor Police Investigative Practices and Mistreatment of Victims

The new case information provided also includes notes which demonstrate poor police practices, possibly as a result of poor training, that may harm victims. These include cases in which victims were interviewed while intoxicated or ill, cases in which victims were asked to sign forms indicating they did not wish to pursue a case before a thorough investigation of the evidence had been done, cases in which rape kits were not analyzed or in which the police indicated a kit was not “needed,”¹⁹ or cases in which there were inexplicable delays in follow-up.²⁰ In a number of cases, police seemed to place great

¹⁷ Case Summary Report, Office Information, SA 11-XX, Case Number 11250XXX, March 16, 2011.

¹⁸ Columbo Sex Summary Report, Injured Person to Hospital, SA09-XX, CCN 09-000XXX, January 1, 2009. Another Office Information case notes “no kit is being requested by the government.” Case Summary Report, Office Information, SA10-XX, Case Number 10089XXX, March 12, 2010.

¹⁹ Columbo Sex Summary Report, Office Information, SA08-XXX, no CCN number, November 23, 2008 (for a complainant who had no recollection of what happened to her, the detective notes indicate “it was the investigators determination that a sex kit was not needed” and that “the complainant responded to the hospital basically on a fact finding mission to check if she had vaginal sex and to check for any sexually transmitted diseases”).

²⁰ For example, in relation to an assault that took place in December 2008, there is no indication in the case file, classified as “miscellaneous,” of any effort whatsoever to follow-up with the complainant until June 2012, three-and-a-half years after the assault took place, and 20 months after the file indicates an entry for a DNA CODIS Match Report in October 2010. By June 2012 the complainant had no longer lived at her address for at least a year. See Case Summary Report, Miscellaneous Report, SA10-XX, CCN 110033XXX, December 29, 2008.

weight on the absence of visible anogenital injury to corroborate the victim’s account. While this is a relevant inquiry, numerous studies show that in most sexual assault cases no anogenital trauma is visible, particularly in cases involving victims of color.²¹

Of particular concern is the absence of an effective mechanism to recognize inappropriate behavior at the time it occurred and to take corrective measures. This reinforces Human Rights Watch’s central concerns presented in our report “Capitol Offense”: ensuring cases are thoroughly investigated and that those who report are treated properly. While the additional training of MPD officers that has taken place over the past year is important, without a serious commitment by leadership to hold detectives accountable for inappropriate practices, training will not be sufficient to effectuate real change. We therefore continue to believe external oversight and the right to have an advocate present for police interviews will be crucial to achieving these objectives.

Requiring Detailed Interviews While the Victim is Traumatized or Incapacitated

In a number of cases classified as “office information,” victims were interviewed when the notes indicate that they were not in fit condition to participate in an interview.

Interviewing an intoxicated or ill complainant may affect both the quality of the information received and the willingness of the victim to participate. In some cases, detectives asked victims to “sign off” on a form indicating they are not interested in pursuing their case during this initial interview, though that is a practice discouraged by experts unless an arrest is imminent.²² For example,

- “At first, it was very difficult to awaken [the complainant]. Then once awake, [the complainant] continued to fall asleep and appeared to be intoxicated and incoherent in her speech. However ultimately [complainant] became a little more coherent and was able to be interviewed.” The case was considered “office

²¹ Studies show that in 60-77 percent of sexual assault cases, victims show no anogenital injury and that injury is even less likely to be seen in victims with darker skin. Winifred Maguire, Edward Goodall and Tara Moore, “Injury in Adult Female Sexual Assault Complainants and Related Factors,” *European Journal of Obstetrics & Gynecology and Reproductive Biology*, vol. 142, no. 2 (February 2009); Iain McLean et al., “Female Genital Injuries Resulting from Consensual and Non-consensual Vaginal Intercourse,” *Forensic Science International*, vol. 204 (2011); Marilyn S. Sommers et al., “Forensic Sexual Assault Examination and Genital Injury: Is Skin Color A Source of Disparity?” *American Journal of Emergency Medicine*, vol. 26, no. 8 (October 2008). See Jenifer Markowitz, Aequitas Resource Center, “Absence of Anogenital Injury in the Adolescent/Adult Female Sexual Assault Patient,” October 2012, http://www.aequitasresource.org/Absence_of_Anogenital_Injury_in_the_Adolescent_Adult_Female_Sexual_Assault_Patient_Issue_13.pdf (accessed June 11, 2013) (summarizing multiple studies on this issue).

²² See International Association of Chiefs of Police (IACP), “Investigating Sexual Assaults Model Policy,” July 5, 2005.

information” and “closed” at the time of the interview in part because of the complainant’s “multiple inconsistent statements.” The detective notes also indicate the complainant “has not taken any of her prescribed medications for about two weeks, She was just tired.”²³

- “The interview [at WHC] took approximately two and half [sic] hours and the complainant appeared sleepy or as if she was on some type of substance that was causing her to fall sleep [sic].”²⁴
- “The [complainant] appeared to be high on marijuana while talking to this writer and she admitted she smoke [sic] marijuana after she left the suspect’s residence and that she was in fact high while speaking with this writer.”²⁵
- “The undersigned and Detective [redacted] attempted to interview the complainant. She did indeed appear very intoxicated. She had bouts of screaming, sobbing and calmness as she tried to explain what happened.”²⁶ This case was not assigned a case number.

Though a June 12, 2012 MPD memorandum sets forth a new policy requiring detectives to conduct only a “preliminary” interview at the time of the report and allow victims a full sleep cycle before being re-interviewed except in urgent circumstances,²⁷ no changes in police practice had been noticed at the hospital four months after the new policy was announced.²⁸ While these changes in police policy are welcome, oversight is needed to confirm the changes in policy are implemented.

Questioning Survivors’ Credibility without Properly Accounting for the Effects of Trauma

As noted above, because of the impact of trauma on the brain during an assault, victims may recall events in fragments and may provide an inconsistent account of what happened. Rather than understand that this is to be expected in these types of cases, detectives appear in some cases to take it as evidence that no crime occurred. In one case, after

²³ Case Summary Report, Office Information, SA11-XX, CCN 11-035-XXX, March 16, 2011.

²⁴ Columbo Sex Summary Report, Miscellaneous Report, SA10-XX, CCN 10-051XXX, April 19, 2010.

²⁵ Columbo Sex Summary Report, Alleged 1st Degree Sex Abuse, SA11-XX, no CCN number, May 12, 2011.

²⁶ Columbo Sex Summary Report, Allegation, SA09-XXX, no CCN number, September 20, 2009.

²⁷ Criminal Investigations Division, Metropolitan Police Department, Division Memorandum, “Sexual Assault Investigations,” June 12, 2012.

²⁸ Human Rights Watch telephone interview with Dr. Heather Devore, SANE medical director, Washington Hospital Center, October 10, 2012.

noting the victim “gave several accounts” of what happened when questioned, the detective began to put quotation marks in his notes around her claims of sexual assault, writing for example that the complainant said the suspect “pushed her onto the bed and ‘raped’ her.”²⁹ When victims think they are doubted, they tend to shut down and may choose not to cooperate with the investigation. In addition to the dozens of cases described in “Capitol Offense,” new examples include the following:

- A complainant reported in April 2011 being raped by someone who offered to give her a ride home from a convenience store. He put a gun to her head and forcibly assaulted her and told her “no one would believe her” and the police “are going to ask her why she got into a car with somebody you don’t know.” Because the complainant added new information to her account during her interview and did not initially mention that her cousin had met the suspect, the detective wrote, “Based on the inconsistencies in the [complainant’s] account of what transpired this writer determined that further or additional investigation was needed to determine if this matter would be a numbered case.” On the “miscellaneous” incident report under injury it says, “stated she was assaulted.” A check of the suspect’s cell phone number that day revealed that the assailant had the same name as a registered sex offender in Maryland, though there is no indication in the material provided that the case was investigated further.³⁰
- In a July 2010 case, a complainant who was stabbed reported at the hospital that she was also raped during the assault. The interview notes indicate, “She was asked what we should think if the results from the sex kit come back with a finding that there was no sign of any sexual activity taking place even though [she claimed] the assailant had unprotected vaginal sex with her and he ejaculated. She responded that she may have been delusional due to her wounds, that nobody is perfect and added, ‘to me in my mind it [sic] I seemed to be raped. I don’t know any more.’” It was then noted that she was diagnosed with “post dramatic syndrome” [sic] and “no longer takes medication.” The detective notes go on to say, “When I asked her to repeat the suspect and the suspect vehicle description she changed the [suspect] clothing to a blue top from a green top and the car from tan to brown in color.... I conclude that there are multiple inconsistencies with [complainant]’s statements. She does not work for [witness-1], they had a relationship. She no longer lives at [REDACTED]. She did not tell me about the fact that two weeks ago she was put out. She did not tell anyone about the rape until the 5th. She told me

²⁹ Case Summary Report, Sex Abuse MISD, SA09-XXX, CCN 09-172XXX, December 3, 2009.

³⁰ Columbo Sex Summary Report, Miscellaneous Report, SA11-XX, CCN 11-056-XXX, April 26, 2011.

the assault happen [sic] on the 3rd, but she was found by [witness-1] on the 4th.... She claims to receive therapy from an organization that does not offer counseling but food assistance. The allegation should be unfounded at this time.”³¹

- In a March 2010 case, a complainant reported being raped by three assailants. She eventually decided not to go forward with the case in part because she said “while [a detective] was in the car talking to her that [the detective] didn’t believe her.”³² Although the initial detective was not a sexual assault unit detective, it demonstrates the chilling effect of skepticism on the willingness of a victim to cooperate.
- A complainant who reported in February 2010 being awakened by a suspect who was on top of her assaulting her gave different statements about whether her bedroom door was locked when she went to sleep. Detective notes say, “The [complainant] was told that she originally reported that she went into the bedroom and locked the door. She became defensive and started saying to this writer you sound like you don’t believe me. This writer explained that she (the [complainant]) was reporting this information and that what she originally reported and what she was saying now were different.”³³
- In an October 2010 case, though the notes in the file indicate that the complainant told police the suspect “penetrated” her over her objections, the detective notes, “The complainant did not make any disclosures to the undersigned as to what allegedly occurred causing her to want a SANE examination.”³⁴
- In a May 2009 case in which a complainant reported being vaginally penetrated against her will, the detective notes state, “I spoke with [complainant]’s social worker who stated that [complainant] was 2 points away from MR [presumably mental retardation]. [Complainant] has a cognitive delay, and has a history of promiscuity.”³⁵
- In a September 2009 case, the complainant met someone whom she thought was a friend of her fiancé and invited him home where he raped her. The notes indicate four “inconsistencies” such as she said the assailant locked the bedroom door, but

³¹ Case Summary Report, Aggravated Assault, DDU10-2XXX, CCN 10-094XXX, July 5, 2010.

³² Case Summary Report, Assault on a Police Officer, SA10-XX, CCN 10034XXX, March 17, 2010.

³³ Columbo Sex Summary Report, Alleged 2nd Degree Sexual Abuse/Miscellaneous, SA10-XX, CCN 10-016-XXX, February 7, 2010.

³⁴ Case Summary Report, Miscellaneous Report, SA10-XXX, CCN 10144XXX, October 5, 2010.

³⁵ Columbo Sex Summary Report, Office Information, SA09-XX, no CCN number, May 1, 2009.

the fiancé said it was unlocked when he came in. Although the fiancé reported that the suspect immediately asked him if he had a gun, which is what the complainant said she told the suspect in order to scare him off, the case was ultimately deemed unfounded based on inconsistencies between the complainant's and complainant's boyfriend's statements.³⁶

- In a July 2011 case in which a complainant was found in the back seat of a car with no pants and reported being sodomized by two assailants, detectives noted she was barely coherent and difficult to rouse for the interview. During her questioning, “She did not mention the use of any weapons, nor was she specific as to how she was forced to participate in the unwanted sexual acts.” The detective asked “questions pertaining to how many vehicles were on the street at the time of the offense, descriptions of the assailants, as well as their specific actions during the attack.” The complainant failed to answer any of the questions. The detective notes she had been released from a hospital for a crack cocaine overdose earlier that day. The report then goes on to note that after attempting to ask follow-up questions, she walked away and indicated that while she wanted a forensic exam, she no longer wanted to participate in the sexual assault examination process. “The Complainant completed a Victim/Witness Sign-Off Sheet.”³⁷

Confrontational Questioning, Including Treating Victims as Suspects

In some of the cases we reviewed, the line of questioning pursued by detectives appeared to treat the complainants as suspects. In one case, a pregnant complainant who was forcibly vaginally assaulted by the baby's father was actually arrested at the hospital after a record search revealed an outstanding arrest warrant for her.³⁸ In other cases, the detective notes reveal questioning that is confrontational or seeks to “destroy,” as one detective's notes put it, the victim's account. The manner of questioning may upset victims and cause them to cease cooperating with law enforcement.

- In a May 2010 case of a male assaulted by another hotel guest, at the time of the initial report, the police notes make it clear that the detective had decided no crime occurred so the case was considered “injured person to hospital.” The victim had intended to get a forensic exam but the SANE nurse reported he never arrived at the

³⁶ Case Summary Report, WACIIS Investigation Only – Non-reportable, SA09-XXX, no CCN number, September 18, 2009.

³⁷ Columbo Sex Summary Report, Sexual Abuse Allegation, SA11-XXX, CCN 11-103-XXX, July 18, 2011.

³⁸ WACIIS Investigative Supplement Report, 1st Degree Sex Abuse, SX09-XXX, CCN 09170XXX, November 28, 2009.

hospital. Four days later, the detective notes indicate that “The complainant told me that he did not take the SANE exam because the Detective in the case told him that he would be arrested if he took the examination. The complainant stated that the Detective also stated he would be arrested if he filed his reported [sic].” The complainant also told the nurses about the conversation with the detective, and they told him he had a right to a SANE exam if he wanted one. The detective then noted that he told the complainant he had never said he would arrest him if he took the exam or filed a report. The case was suspended due to lack of cooperation from the complainant.³⁹

- A complainant indicated that she had been out socializing with friends in May 2009 and the suspect offered her a ride home. The suspect followed her into the apartment where she began to get ready for bed. As she was brushing her teeth, the suspect appeared in the bathroom door and indicated he wanted to “fuck” her. He grabbed her arms and threw her on the bed, pinned her arms, and forcibly penetrated her. The complainant said that during the assault she told the assailant, “What are you doing? I have aids” and “You’re going to die” and “My boyfriend will be here in fifteen or twenty minutes” in an effort to discourage the assault. She asked the suspect to get her water. Eventually he got her water. The complainant then grabbed her robe and ran out the back door. She went to a friend’s house and reported the assault to a security guard.

The detective notes say, “When I attempted to ask follow up questions the complainant stated she was not sure if she invited the suspect into the apartment and she did not know how he had obtained her keys. She wasn’t sure if she offered him a glass of water. The complainant questioned the reported events several times and she offered numerous possibilities to explain how the suspect got into her home.” After being questioned about learning the suspect’s name “as he engaged her in sexual intercourse,” the complainant stated to the detective and his partner “I said are you trying to establish if I wanted this.”

The detective noted when they went to her house “she made several changes to her initial report.” In her bedroom the detectives noted, “The complainant’s ‘night dress’ was draped over the foot rail of her bed. When we asked about the location of her ‘night dress,’ the complainant offered several possibilities.... We also observed petroleum jelly on the bed ... I asked the complainant, ‘What did you do when he got the petroleum jelly?’ The complainant did not remember. The

³⁹ Case Summary Report, Injured Person to Hospital, SA10-XX, CCN 10-066XXX, May 15, 2010.

complainant did not state that she told the suspect she did not want to engage in sex with him nor did the complainant indicated [sic] to the suspect that his advances were unwanted. The complainant did not have any injuries and she did not complain of injuries. The complainant repeatedly told the undersigned and partner that she was not intoxicated at the time of the reported incident but she could not remember many of the details pertaining to the sexual encounter.”⁴⁰ The complainant’s kit was not picked up from the hospital until two-and-a-half months after her assault.

- A complainant reported being assaulted after leaving a bar in December 2009. The detective “asked the Complainant what her intentions were when she left the party. She advised that she was planning on driving herself home. When the detective followed-up with information that [REDACTED] was in possession of the car keys therefore her intentions must have been different, the Complainant became incensed. The Complainant screamed at the members and the hospital staff before putting on her shoes and leaving the Emergency Room.”

A few days later the Complainant contacted the detective who noted, “The Complainant then asked if [REDACTED] was any closer to finding her ‘rapist’ who is still out there and maybe hurting other women. [REDACTED] attempted to explain his position to the Complainant when she became angry and started yelling into the telephone. The telephone call ended when the Complainant abruptly hung up.”⁴¹

- In December 2009, the complainant reported being raped in a parking garage at around 9:00 at night. She went to the hospital. Following the SANE exam, the detective took her to the scene of the crime. The detective noted strong alcohol on her breath, and spoke with a parking attendant who contradicted the complainant’s assertions about paying two dollars to park in the garage. “This writer [detective] explained to the [complainant] that if she was only in the Target for twenty minutes she would not have had to pay any more that [sic] one dollar. She then became defensive and said maybe she was in there more than twenty minutes.” The detective learned she had been drinking at an office party and concluded, “It is this writer’s belief that the [complainant] is not being honest about what and where if any offense occurred it transpired. In addition to the [complainant]’s account being

⁴⁰ Columbo Sex Summary Report, Alleged Sexual Assault, SA09-XX, CCN 09-172XXX, May 22, 2009.

⁴¹ Case Summary Report, Sexual Abuse Allegation, SA09-XXX, CCN 09-176-XXX, December 12, 2009.

destroyed by pure facts and truths she could not even dispute.” The case was considered “non-reportable.”⁴²

- In a May 2009 case a complainant reported being assaulted orally and vaginally by a known suspect behind a school when he was walking her home. She flagged down an officer on the scene and had a forensic exam. Although “From May 1st to May 15th, 2009, the complainant responded to the Office of the Sexual Assault Unit and had left messages for the undersigned in regards to the identity of her alleged assailant,” the file does not indicate any effort to interview or locate the suspect.

However, the detectives did obtain video footage from the school where the assault occurred showing the complainant and suspect before the assault and determined that the complainant did not appear to be under duress at the time. The detectives then re-interviewed the complainant and confronted her with the video “frame by frame,” asking her to “explain away the contradiction.”

Although the complainant stood by her account that the sexual contact was not consensual and she was afraid, after what appeared to be aggressive questioning she ultimately acknowledged that “the images depicted do not tell a lie and must be truthful” and that “the video did not capture a crime in progress, but what appears to be a consensual encounter between she [sic] and the alleged suspect” and “came to the conclusion that the alleged suspect could not be arrested and charged with a crime that obviously did not occur, especially in the way she claimed it occurred....” The case was recommended to be unfounded.⁴³

⁴² Case Summary Report, WACIIS Investigation Only – Non-reportable, SA09-XXX, no CCN number, December 23, 2009.

⁴³ Incident/Investigation Report, Sex Abuse –MISD, SX09-XX, CCN 09058XXX, May 1, 2009.