

HUMAN RIGHTS WATCH

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May 30, 2012

Cathy L. Lanier, Chief of Police
Metropolitan Police Department of the District of Columbia
300 Indiana Avenue, NW
Washington, DC 20001

www.hrw.org

Dear Chief Lanier:

For the past 16 months Human Rights Watch has been researching the Metropolitan Police Department's handling of adult sexual assault cases. As part of its research, Human Rights Watch has conducted 128 telephone or in-person interviews and collected documents from the Metropolitan Police Department (MPD) and other government agencies in response to public records requests.

We intend to issue a report in mid-June detailing our findings, but before doing so we would like to inform you of our findings and provide you with an opportunity to respond. We will incorporate any response we receive from you by June 4, 2012, into the report. If we do not hear from you, we will note in the report that we did not receive a response to this letter.

The report covers two general areas: police investigation of sexual assault cases and police treatment of victims who report sexual assaults.

Failure to Investigate

Human Rights Watch analyzed data it received in response to public record requests from two sources: the MPD and from the Office of Victims Services. The Office of Victim Services provided information about the number of victims who have had forensic exams at Washington Hospital Center since October 2008 when the new Sexual Assault Nurse Examiner program began keeping records. The hospital also records how many victims seen at the hospital report to the police and to which department the victim reported. We compared this data to incident reports (PD Form 251s) we received from the MPD in response to our request for all PD Form 251s for all

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sex abuse cases and for all allegations since 2008.¹ Because the MPD is called to the hospital by MedStar when a victim wants to report, a PD-251 would be expected to be prepared for each victim who reports an assault to the police. (In many instances the name of the responding detective has been recorded by hospital staff.) However, according to our analysis, at most 45 percent of victims who report to the MPD and get a forensic exam have a PD-251 assigned to them. If we cross-reference dates, the number of matching PD-251s to hospital reports drops to 34 percent, even if we allow officers an extra two days to file their reports (though according to policy, they are supposed to be filed at the end of a shift).

In addition to comparing hospital reports to PD-251s, Human Rights Watch also compared the reports to the crime incident information available on MPD's website. It is unclear whether those cases have a PD-251 since we were not provided PD-251s for many of those cases. However, even comparing this larger universe of cases to the hospital reports, only 63 percent of the incident reports for sex abuse cases correspond within one or two days of a hospital report. Furthermore, the hospital records more reports of sexual assaults than incidents on the MPD website and PD-251s nearly every month. Because many people report sexual assault without getting a forensic exam (such as walk-ins, people who report after 96 hours, acquaintance assaults, etc.), the MPD's number should always be higher than those recorded at Washington Hospital Center but it frequently is not according to our analysis.

Our research indicates that a significant number of sexual assault cases are not being documented. The findings from data analysis are corroborated by police testimony in civil lawsuit depositions and observations from witnesses in the community. Several police testified that the Sexual Assault Unit detectives routinely instruct them not to write a PD Form 251 when they do not believe a victim. A sexual assault unit supervisor testified in late 2008 he did not even know whether a majority of calls that came into the sexual assault unit resulted in a written report.² An officer estimated that of the 12 times he responded to sexual assault cases, he took seven reports.³ Another officer testified that only one of the five sexual assault complaints she responded to had been considered "founded."⁴ In the other four cases, the sex squad detectives determined the case was unfounded and no written report was taken.⁵ In some cases, though, a form is written up just to "cover the

¹ This information was provided to us in August and December of 2011. We provided a list of all the PD-251s we received to the Attorney General to ensure we had all PD-251s. The Attorney-General cross-referenced the list and provided us with 22 more PD-251s on April 27, 2012.

² Deposition testimony of Detective Sergeant Kevin Steven Rice, _____ v. Washington D.C., et al., October 14, 2008, p. 178.

³ Deposition testimony of Officer Michael Minor, _____ v. Washington D.C., et al., May 14, 2008, p. 48-49.

⁴ Deposition testimony of Officer Ginette Leveque, _____ v. The District of Columbia, et al., April 14, 2008, pp. 67-68, 71.

⁵ Deposition testimony of Officer Ginette Leveque, _____ v. The District of Columbia, et al., April 14, 2008, pp. 73, 157-58. A third officer also estimated that of the over ten sexual assault complaints she had responded to in her career, several or half were deemed "unfounded" by the Sexual Assault Unit and no report was written; Deposition testimony of Tandreia Green, May 8, 2008, p. 64.

officer's interaction with the person at the hospital" even though no investigation would be done.⁶

The practice of reporting to the police and the police not investigating was sufficiently common that the forms nurses at Washington Hospital Center use to document cases in which the victim has decided not to get an exam (the "exam exemption form") has an option for nurses to check off reading "Reported and sex crimes not investigating." Furthermore, minutes from Sexual Assault Response Team meetings show that kits collected from victims who had reported but whose cases were not being investigated were not picked up by detectives.⁷

Observers indicate that cases involving alcohol or drugs in particular are less likely to be investigated by the MPD. The following are some examples of cases described to Human Rights Watch that were not investigated:

- Three observers who work closely with victims immediately after their assault separately told Human Rights Watch about a college student who woke up without pants outside her dorm room. She had skinned knees, bruises, scratches on her face and thighs and abrasions and mulch in her vagina. The police said they would not investigate because the victim did not remember the crime. It was written up as a general report.⁸ As for the mulch, police said maybe she fell while urinating.⁹ The victim felt like she was being called a liar and not taken seriously.¹⁰
- Medical staff recounted the story of a student, Valerie S., a person with disabilities, who woke up the morning after a party off of her wheelchair and naked. She could not remember what happened but was concerned she had been sexually assaulted. The responding officers did not believe her story and said she had not been raped. A SAU detective did not even come to speak with her. She decided not to file a complaint because of the way she was treated.¹¹
- Witnesses told Human Rights Watch about a young woman who was at a bar when an acquaintance brought her a drink. She remembers nothing after that but

⁶ Deposition testimony of Detective Sergeant Kevin Steven Rice, _____ v. Washington, D.C., et al., October 14, 2008, pp. 198-199.

⁷ DC SART Meeting Minutes, April 30, 2009, on file at Human Rights Watch; DC SART Meeting Minutes, June 18, 2009; DC SART Meeting Minutes, May 21, 2009; DC SART Meeting Minutes, April 8, 2009, all on file at Human Rights Watch.

⁸ Human Rights Watch telephone interview with [name withheld], March 29, 2011; Human Rights Watch telephone interview with [name withheld], December 7, 2011.

⁹ Human Rights Watch interview with medical staff M.H., Washington, D.C., March 2, 2011.

¹⁰ Human Rights Watch telephone interview with medical staff D.S., Washington D.C., March 29, 2011.

¹¹ Human Rights Watch telephone interview with medical staff T.N., Washington D.C., March 29, 2011.

woke up between two cars. The police said because she did not remember anything “there was nothing to report.”¹²

In addition, witnesses report that cases against sex workers are routinely dismissed.¹³ Furthermore, allegations of sexual assault are sometimes classified as miscellaneous or as misdemeanors or other crimes (burglary) despite having clear elements of sex abuse crimes.

Police Treatment of Sexual Assault Victims

In addition to failing to document reports of sexual assault, Human Rights Watch found that Sexual Assault Unit detectives regularly treat victims in a dismissive or insensitive manner, adding to their trauma and undermining the possibility that their perpetrator will be brought to justice. Revictimization or counterproductive behaviors by law enforcement personnel documented by Human Rights Watch include: questioning survivors credibility; actively discouraging victims from reporting or providing forensic evidence; threatening victims with prosecution if they are found to be lying; asking victim-blaming or inappropriate questions; telling victims that their stories are not serious enough to investigate; and failing to keep victims’ informed of progress on their cases. Each of these behaviors has been documented extensively in interviews with victims and those who work with victims or have observed police interactions with victims. In addition, similar information was found in a number of complaints filed at the Office of Police Complaints and at the Office of Victims Services. Although not all detectives behave inappropriately towards victims, the number of complaints and range of problems revealed in our research was extensive enough to raise serious concerns about overall lack of training and institutional tolerance of inappropriate behavior.

A few examples of inappropriate behavior by detectives include: Detectives make it clear they do not believe victims directly or by gestures, such as tapping their foot when the victim is telling them about their rape, or by their form of questioning. A victim reported being told repeatedly by a sex crimes unit detective that “no one would believe her,” and that she was “lying” and “wasting their time.”¹⁴ A detective told another victim, “It seems like you’re telling a story and it isn’t yours.”¹⁵ One witness saw a detective look at a patient and tell her she was not sexually

¹² Human Rights Watch telephone interview with M.O., Washington, D.C., March 9, 2011; Human Rights Watch group interview with advocates, Washington, D.C., March 28, 2011.

¹³ Human Rights Watch joint interview with community advocates, Washington, D.C., March 28, 2011; Human Rights Watch telephone interview with P.R., February 18, 2011; Human Rights Watch group interview with advocates, Washington, D.C., March 28, 2011; Human Rights Watch telephone interview with medical staff C.J., May 10, 2011; Human Rights Watch interview with Cindy Teller, Newport Beach, Virginia, June 24, 2011.

¹⁴ Human Rights Watch telephone interview with [name withheld], May 10, 2011; Complaint form, Office of Police Complaints, May 9, 2011 (provided by victim); Narrative of events provided by victim, on file at Human Rights Watch.

¹⁵ Human Rights Watch group interview with sexual assault survivors, Washington, D.C., September 30, 2011.

assaulted.¹⁶ Observers also describe the detectives' attitudes as giving the victim the impression that they are annoyed to have to come and take a report.¹⁷ Another victim reported that her detective rolled her eyes repeatedly when she was telling her about her sexual assault.¹⁸

Several exam exemption reports prepared by nurses when a victim decides not to get an exam describe victims leaving the hospital after talking to the police before getting their forensic exam, frequently upset as a result of their police interaction. Victims, medical staff, and other observers report police discouraging victims from reporting or getting a forensic exam. When one married victim attempted to report her assault, the detective told her he would have to inform her husband in order to proceed with his investigation. "I then asked him, 'Please don't,' and he said 'OK'—and then he handed me a form to deny ongoing investigation so therefore I signed it."¹⁹ Victims are often told "There is nothing we can do," or "You don't meet the criteria for sexual assault."²⁰

Numerous people describe victim-blaming behavior. Another victim attempted to report an assault to two female police detectives from the Sexual Assault Unit. After telling the detectives about her assault, one of the detectives "then went on to relay her unsolicited opinion by saying if someone did something to her that she did not like she would say no or tell them to stop. I was then asked that if I didn't want them to do it why I didn't stop them. I think filing the report was just as traumatic as the crime, if not more."²¹ Others describe similar behavior such as a detective telling an 18-year-old runaway who was assaulted in the middle of the night, "You shouldn't have been outside. This is what happens at two in the morning. What do you expect?"²²

Victims report being subjected to lengthy interviews before being permitted to get a forensic exam, being threatened with charges of false reporting, and, for those whose cases are investigated, a lack of follow-up and inability to reach detectives, even if the victim is feeling threatened by her assailant. Victims and others who work on these issues also report a lack of support or referrals to community services for victims.

¹⁶ Human Rights Watch interview with Cindy Teller, Newport Beach, Virginia, June 24, 2011.

¹⁷ Human Rights Watch group interview with advocates, Washington, D.C., March 28, 2011.

¹⁸ Human Rights Watch group interview with sexual assault survivors, Washington, D.C., September 30, 2011.

¹⁹ Sexual Assault Information Form, dated November 24, 2011; Human Rights Watch telephone interview with medical staff [name withheld], December 7, 2011.

²⁰ Human Rights Watch interview with Cindy Teller, Newport Beach, Virginia, June 24, 2011.

²¹ Office of Police Complaints, Complaint Form, November 12, 2009.

²² Human Rights Watch telephone interview with medical staff C.J., May 10, 2011.

The poor police response to victims may in part be due to lack of training. Deposition testimony, witness interviews, and the response to our Freedom of Information Act Request for all MPD training material reveal little formal training for responding officers or detectives on handling sexual assault cases. Hospital staff indicated that officers' lack of understanding of medical reports means they are unable to recognize injuries that are helpful in proving an assault.²³ Others expressed concern that detectives' expectations of victims immediately after the assault may be unrealistic because they do not understand the effects of trauma, leading officers unfamiliar with the biology of trauma to wrongly think victims are untruthful.²⁴

Many behaviors described in the report contradict police policy, which requires police to investigate all allegations of sexual abuse and to treat victims sensitively. However, despite at least seven complaints to the Office of Police Complaints since 2006, several complaints from medical staff to the Office of Victim Services at the Mayor's Office, a lawsuit, and at least two direct complaints about different detectives to detectives' supervisors, only one officer has been disciplined for inappropriate treatment of a sexual assault victim since June 2006: a detective was suspended in November 2009 for 15 days after inappropriately contacting a sexual assault victim on Facebook.²⁵ No disciplinary action was taken in response to the lawsuit against the MPD for closing an investigation without interviewing the victim, despite testimony from officers that made it clear that this was common practice.

In order to make recommendations to improve police practices, Human Rights Watch researched how police handle sexual assault investigations in cities that have undertaken reform to improve their approach to these cases. In the late 1990s the *Philadelphia Inquirer* revealed that the Philadelphia Police Department had been failing to investigate large number of sexual assault cases. Following the exposé, the department undertook a number of reforms that have rebuilt public confidence in the police. Based on experience in Philadelphia and two other cities (Kansas City and Austin), Human Rights Watch has made a number of recommendations in the report to improve practice at the MPD. Many of the recommendations focus on accountability and transparency. In addition, effective sexual assault units have a

²³ Human Rights Watch telephone interview with medical staff P.R., February 18, 2011.

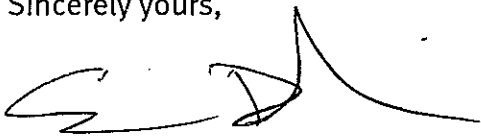
²⁴ Human Rights Watch telephone interview with Y.L., May 26, 2011 and September 30, 2011; Human Rights Watch telephone interview with medical staff P.R., May 10, 2011; Human Rights Watch telephone interview with R.T., Washington, D.C., May 26, 2011. Decades of research shows that trauma decreases a person's ability to provide information that is complete, consistent and 100 percent accurate. Trauma can also cause loss of cognitive and motor skills meaning that a person may not be able to concentrate or may behave irrationally. Other research indicates that because of the short-term impairment caused by trauma, the ability to recall might actually increase later. Louise Ellison, "Closing the Credibility Gap: Prosecutorial Use of Expert Witness Testimony in Sexual Assault Cases," *International Journal of Evidence and Proof*, vol. 9, 2005, p. 243; Sgt. Joanne Archambault and Dr. Kim Lonsway, EVAWI, "Incomplete, Inconsistent and Untrue Statement Made by Victims: Understanding the causes and overcoming the challenges," revised August 26, 2008, pp. 2-3.

²⁵ Metropolitan Police Department letter to Councilmember Phil Mendelson, February 24, 2012, response to February 14, 2012 correspondence in advance of performance oversight hearing, p. 15, http://dcclims1.dccouncil.us/mendelson/CO_Council_Period_19.htm

"victim-centered" approach to investigations. Human Rights Watch's recommendations are attached to this report.

Human Rights Watch and the MPD share the same objective: justice for sexual assault perpetrators and humane treatment of victims. We therefore hope you will consider our recommendations seriously. Failure to investigate sexual assaults is not only a public safety issue, it is a violation of human rights obligations. I hope we can work together to improve police practices in this area. Please let us know if you would like to meet to discuss this matter further, but in any event we look forward to receiving your response by June 4.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Sara Darehshori', with a stylized, flowing script.

Sara Darehshori
Senior Counsel
US Program

CC: Mayor Vincent Gray
Executive Office of the Mayor
1350 Pennsylvania Avenue, NW, Suite 316
Washington, DC 20004

Draft Recommendations

To the United States Department of Justice Civil Rights Division:

- Conduct an investigation into the Metropolitan Police Department's handling of sexual assault cases to determine whether the MPD has engaged in a pattern or practice of conduct that deprives individuals of rights, privileges or immunities secured or protected by the Constitution or laws of the United States.

To the Council of the District of Columbia and the Mayor's Office:

- Establish a task force (including a nationally recognized expert on sexual assault investigations) to examine the Metropolitan Police Department's policies and practices for handling sex crimes cases and recommend changes to ensure all sexual assaults are documented and investigated and victims of sexual assault are treated appropriately.
- Pass legislation giving victims the right to have an advocate present during law enforcement interviews and proceedings.
- Create a permanent oversight mechanism whereby selected advocacy groups review police sexual assault investigation files quarterly to ensure sexual assault cases are handled appropriately and report their findings to the Council.
- Approve legislation to increase funding of victims specialists within the Metropolitan Police Department.
- Request regular reports on implementation of recommended changes to handling of sexual assault cases from the Metropolitan Police Department as part of the Council's regular performance oversight hearings.

To the Metropolitan Police Department:

In order to improve accountability for the follow-up on sexual assault cases:

- Include treatment of victims as a factor in evaluation of Sexual Assault Unit (SAU) detectives and follow through on any complaints regarding how a case was handled by MPD. Complaints may be made by victims, support persons, witnesses or third parties. Investigation into complaints should be conducted by a supervisor with second-level review. Transfer detectives from the unit who are regularly the subject of complaints.

- Require responding officers to document all reports of sexual assault and require Sexual Assault Unit supervisors (a sergeant or lieutenant) to compare call log sheets for sexual assault cases to PD-251s to ensure each report is documented.
- Require supervisors to ensure that forensic evidence kits and other relevant evidence are collected regularly.
- Assign all allegations to detectives for follow-up investigation and require supervisors to review sexual assault allegations to determine whether they are being properly converted to sexual assault cases.
- Establish a tracking system allowing supervisors to monitor the reporting, clearing and closing of all cases by each detective to identify potential problems.
- Establish regular multidisciplinary review of closed cases to discuss ways to improve the investigation and prosecution of sexual assault cases as well as the treatment of victims.
- Develop a system allowing victims to complete and submit victim satisfaction surveys that will be reviewed and responded to by MPD in order to change responses to sexual assault based on input by survivors.
- Require a prosecutor to review all cases in which the perpetrator has been identified before it is closed.

In order to treat sexual assault survivors fairly:

- Give victims the option of having a rape crisis center advocate present during law enforcement interviews or proceedings.
- Provide referral information for counseling for all victims who report sexual assault.
- Require detectives to provide victims with transportation from the hospital after a forensic exam unless he or she has made other arrangements.
- Provide all victims with a case number and the detective's contact information and work hours. They should be told to call 911 in an emergency.
- Require a detective or victim specialist to return calls from victims within one business day; work with victim advocates to keep victims regularly informed of the status of the investigation.
- If a decision is made not to prosecute, inform the victim in a timely and sensitive manner and, if appropriate, offer referrals to community resources for counseling.
- Develop an anonymous reporting system.
- Provide a comfortable and private place for victims to be interviewed at the sexual assault unit.
- Increase the role of victim specialists within the SAU to provide support and referrals to all sexual assault victims and help with practical arrangements as necessary.

- Except in urgent circumstances, allow victims at least one full sleep cycle before scheduling a follow-up interview by a detective.
- Include a former SAU member in upper echelons of MPD management or establish an advisor on sexual assault investigations for the Chief of Police.
- After changes have been implemented, conduct public outreach to encourage members of the community to report sexual assaults and strengthen trust in the police.
- Regularly train all police officers and recruits to understand the realistic dynamics of sexual assault (including non-stranger cases and drug or alcohol-facilitated assaults), the effects of trauma and proper treatment of victims.
- Train detectives to interview sexual assault victims appropriately using trauma-informed techniques and to understand the impact of trauma on victims of sexual assault; investigate non-stranger and drug facilitated sexual assaults; and how to document sexual assault using the language of non-consensual sex.