HUMAN RIGHTS WATCH

Capitol Offense

Police Mishandling of Sexual Assault Cases in District of Columbia

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Police Mishandling of Sexual Assault Cases in the District of Columbia

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Glossary

Allegation: An allegation under Metropolitan Police Department (MPD) guidelines is "a complaint of sexual abuse, that after preliminary investigation by a member of the Sexual Assault Unit (SAU)," the SAU determines "lacks the criteria of a sexual abuse offense." Examples of cases that the MPD's Standard Operation Procedures might consider allegations include cases in which there are inconsistencies that require follow up, or cases in which the complainant: provides contradictory statements, had sex but is unsure if a crime occurred, is unresponsive, is too intoxicated to talk, or is referred from another jurisdiction.

Clearance By Arrest: A law enforcement agency reports that an offense is cleared by arrest, or solved for crime reporting purposes, when any of three specific conditions have been met: that at least one person has been arrested; charged with the commission of the offense; or turned over to the court for prosecution (whether following arrest, court summons, or police notice).

Exceptional Clearance: Under FBI guidelines, an offense may be cleared by exceptional means when elements beyond the control of law enforcement prevent an offender from being arrested. To exceptionally clear an offense, the law enforcement agency must have met the following four conditions: identified the offender; gathered enough evidence to support an arrest, make a charge, and turn over the offender to the court for prosecution; identified the offender's exact location so that the suspect could be taken into custody immediately; and encountered a circumstance outside the control of law enforcement that prohibits the agency from arresting, charging, and prosecuting the offender. Examples of circumstances that lead to exceptional clearances include: the death of the offender; the victim's refusal to cooperate with the prosecution after the offender has been identified; or the denial of extradition because the offender committed a crime in another jurisdiction and is being prosecuted for that offense. At the MPD, cases may also be considered closed exceptionally if a prosecutor has declined a request for an arrest warrant for lack of prosecutorial merit. This is also known as an administrative closure.

Forensic Evidence Kit: Following a forensic exam, the various swabs and samples collected are placed in separate envelopes (or tubes) and are labeled, sealed, and put in one large

envelope—the forensic evidence kit (sometimes referred to as a "rape kit" or Sexual Assault Evidence Collection Kit).

Forensic Exam: A procedure conducted by a health professional that usually takes four hours, involving a head-to-toe examination of the victim's body, a pelvic exam, and a collection of biological samples from the victim's body. Forensic exams are typically offered to victims who report within up to 96-120 hours of their assault, though in some circumstances it may be possible to collect evidence beyond that period.

Miscellaneous Cases: See Office Information.

MPD: Metropolitan Police Department. The primary law enforcement agency for the District of Columbia.

Office Information: Under MPD guidelines, a complaint of sexual abuse can be deemed an office information 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." Once a complaint is classified as "office information," no further investigation is conducted or required. Police sometimes further classify these cases as "miscellaneous" or "sick [or injured] person to hospital," but they still fall under the general broad category of cases that are not investigated but documented only for "office information" purposes.

OVS: Office of Victim Services, in the Executive Office of the Mayor of the District of Columbia. The OVS oversees the Sexual Assault Nurse Examiner (SANE) Program at Washington Hospital Center—the designated hospital for care of adult sexual assault victims in the District.

PD-251s: The MPD's incident/offense reports, which the responding officer or detective is supposed to take any time a crime complaint is made.

Rape Kit: See Forensic Evidence Kit.

SANE: Sexual Assault Nurse Examiner. According to the MPD, the SANE program in D.C. "provides compassionate and timely medical care available twenty-four (24) hours a day to adult sexual assault victims (eighteen (18) years of age or older) during forensic examinations while ensuring that the evidence is properly collected and preserved. Nurses who conduct the examinations under the program have received specialized training to prepare them to perform forensic examinations in sexual assault cases, to serve as expert witnesses in court cases, and to understand the emotional and psychological impact of sexual assault on victims."[1]

SART (or SARRT): Sexual Assault Response Team (or Sexual Assault Response and Resource Team). A community based approach in which public and private agencies work together to respond to cases of sexual assault. In Washington D.C., the SART team includes representatives from Washington Hospital Center, the US Attorney's Office, the MPD's Sexual Assault Unit, the Office of Victim Services, the US Park Police, and the D.C. Rape Crisis Center.

SAU: Sexual (or Sex) Assault Unit. This is the unit within the MPD that is charged with investigating all sexual offenses within the District of Columbia involving adult victims (age 18 and over). It includes "cold case" sexual assault unit detectives.[2] The Sex Offender Registry Unit also falls under the Sexual Assault Unit.

Sexual Assault Evidence Collection Kit: According to the MPD, "an evidence collection kit used to obtain evidence from a sexual assault victim."[3] See Forensic Evidence Kit

SOP: Standard Operating Procedures for the Sexual Assault Unit. These are the MPD's guidelines for the investigation of sexual assaults.

UCR: Uniform Crime Report. A program within the FBI that collects, publishes, and archives national crime statistics.

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[1] General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," Series 304, Number 06, effective date August 25, 2011, https://go.mpdconline.com/GO/GO_304_06.pdf (accessed May 23, 2012), p. 2.

[2] Ibid.

[3] Ibid.

Unfounding: This occurs when an investigation reveals that no offense occurred, nor was attempted. Under the FBI guidelines, a case can only be "unfounded" if it is "determined through investigation to be false or baseless. In other words, no crime occurred." For a case to be considered officially "unfounded" at the MPD, a detective is supposed to prepare a written report, which must be approved by a supervisor.

VAWA: Violence Against Women Act, originally passed by Congress in 1994 to enhance the investigation and prosecution of violent crimes against women. Under VAWA, victims of sexual assault treated at the SANE center are not required to speak with law enforcement.

WACIIS: Washington Area Criminal Intelligence Information System. An internal database of the MPD containing crime investigation records.

WHC: Washington Hospital Center. The designated hospital for forensic exams for adult sexual assault victims in the Washington, D.C., metropolitan area.

Examples of Statements that Human Rights Watch Heard or Reviewed about the Metropolitan Police Department's Handling of Sexual Assault Cases in the District of Columbia

By failing to classify the crime committed against me as an attempted rape or sexual assault, by ignoring my account of the story, you condemn me to a life where I mistrust the police, abandon any faith I possessed in the criminal justice system, and you have caused me more victimization than the actual perpetrator of the crime committed against me. Moreover, you fail the community you have sworn to protect…
—Letter from Eleanor G., survivor of a 2011 attempted sexual assault, to MPD Chief Cathy Lanier, October 4, 2011

Reporting to the police was far more traumatizing than the rape itself.
—Susan D. (pseudonym), describing interaction with the MPD in March 2011

[The detectives] told me that they did not want to waste their time with me … that no one was going to believe my report and that he didn't even want to file it…. When I called to get the police report number [the detective] told me it was a 'miscellaneous' report…. This is not 'miscellaneous' THIS IS RAPE!
—Maya T. (pseudonym), complaint form, MPD Office of Police Complaints, May 9, 2011

They just didn't listen to me, they made me feel completely ashamed of myself, they made me feel like I was lying or like I was too stupid to understand what happened to me, that I was trying to make something a big deal that wasn't that big of a deal.
—Eleanor G., describing her interaction with the MPD in 2011

It tore me up that he did not believe me and he made it clear to me that he didn't believe me. Traumatized is the word that I felt from the investigator, in some ways, it was worse than the event itself.
—Shelly G. (pseudonym), describing her experience with an MPD detective in October 2009

To hear him tell me he didn't believe me was a slap in my face. It just knocked me down, it was a punch in my stomach. It just took the air right out of me. And where do you go from there when the policeman tells you he doesn't believe you?
—Shelly G. (pseudonym), describing her interaction with an MPD detective in October 2009

The detective was in the room with the interpreter, and two other female officers and after 40 min, the survivor was literally hysterical … the nurses and I could hear it from outside the room … she was sobbing and yelling…. We interrupted and the detective told us 'we'll be done when I say we're done.' Two min later, they walked out of the room … the detective told me there would be no case and told me to go see her.
—Email from a Rape Crisis Center advocate, forwarded to the D.C. Office of Victim Services at the Mayor's Office, April 2009

I think that filing the report was just as traumatic as the crime, if not more…. Is it common place for the police to put blame on the sexual assault victims and then completely ignore them?
—Complaint form, MPD Office of Police Complaints, November 12, 2009

Investigators serve as prosecutor, judge, and jury and stop the process before it begins.
—Experienced community service provider to sexual assault victims, Washington, D.C., February 16, 2011

For a sexual assault survivor who has already experienced an intense violation, to have your governmental system essentially say to you, "This didn't happen, or if it did happen it doesn't really count," is devastating.
—Denise Snyder, D.C. Rape Crisis Center, quoted in *Washington City Paper*, April 9, 2010

I found out you dealt with her about 4 am Friday or Saturday morning … and she chose not to make a report. Something about a gang bang and being

intoxicated…. Anyway, I think it was just an OI [Office Information]. However, she now feels differently and wishes to make a report…. She says her phone isn't working but she can be reached … Sorry, BUT IT IS WHAT IT IS!!!!!!!

—Note from one MPD detective to another, contained in an investigative file from 2009 reviewed by Human Rights Watch

How can you not remember? How can we believe you?

—Witness, reporting a statement made by an MPD detective to a victim, who reported being assaulted by a stranger after going to a bar but could not remember the bar's name

You shouldn't have been outside. This is what happens at two in the morning. What do you expect?

—A member of the medical staff, reporting a statement made by an MPD detective to an 18-year-old runaway who was assaulted at night

Well, she could have fallen on rocks and may not have had panties on. Also what kind of girl is in a room with five guys?

—Nurse, describing the response of a detective to a patient who was found unconscious in a hotel room with five men in 2010 with severe tears to her vagina and rectum that required emergency surgery

You are only doing this to get immigration status, aren't you?

—Lawyers' account of what an MPD detective told his client when she reported being kidnapped and sexually assaulted repeatedly overnight in early 2011

Summary

Sexual assault is all too common across the United States. An estimated one in five women in the United States is a victim of rape or attempted rape in her lifetime. However, victims who report to law enforcement may have very different experiences depending on where they live. Studies indicate that nationwide less than 20 percent of rape or sexual assault victims reported incidents to the police in 2007.[4] Many sexual assault survivors choose not to seek help out of fear that authorities will mistreat or not believe them, or that nothing will happen to their case. Unfortunately, this concern can be well founded. This report focuses on police response to sexual assault in the District of Columbia. The story of Susan D. is not uncommon.

In the spring of 2011, Susan D., a fresh-faced US government employee in her thirties, was raped by a man she met on an internet dating site. Deeply shocked, she could not sleep for two days. On the third day, she finally summoned the courage to go to the hospital for a forensic exam—a four-hour procedure involving a pelvic exam and extensive collection of evidence from her body.

At Washington Hospital Center (WHC), where she went for the exam, Susan met a female detective from the Sexual Assault Unit (SAU) of the Metropolitan Police Department (MPD)—one of the 10 largest local police agencies in the United States and the primary law enforcement agency for the District of Columbia. The detective insisted that Susan talk to her before speaking to a rape crisis center advocate (as Susan had requested), and before having an exam. Shaking and shocked, Susan agreed.[5]

For the next three hours, the detective questioned Susan, interrupting her frequently in a manner—as Susan saw it—to discourage her from reporting the assault and belittle her

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[4] See, for example, Dean G. Kilpatrick, et al, National Crime Victims Research & Treatment Center, Medical University of South Carolina, "Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study," Document No. 219181, US Department of Justice Award No. 2005-WG-BX-0006, February 1, 2007, https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf (accessed November 19, 2012) (finding 16 percent of all rapes are reported to law enforcement).

[5] Susan D.'s (pseudonym) account of her experience is drawn from multiple interviews with Susan in 2011 and 2012, contemporaneous emails to the police department, and a letter from Susan to Chief Cathy Lanier, May 3, 2012, on file at Human Rights Watch. While protecting confidential information, medical staff provided a corroborating, consistent account during a telephone interview on March 29, 2011.

experience. For example, the detective interrupted Susan to say that what she had described was "not a crime," to assert that she was herself raped twice, and to imply that Susan should consider how she would ruin her assailant's life if she filed a report. The detective later told a nurse she thought Susan did not need a forensic exam, although the nurse did in fact administer one.

Susan later waited in vain for police to process the crime scene and collect her clothes for evidence. After an investigator hired by her assailant made threatening calls, Susan tried three times to reach the detective assigned to her case but never heard back and was unable to transfer her case to another detective. After six weeks, the police closed Susan's case without prosecution. In the following months, Susan was diagnosed with Post-Traumatic Stress Disorder (PTSD), which she believes was partly due to her contact with the MPD. "Reporting to the police was far more traumatizing than the rape itself," she said.

***

This Report

This report focuses on the District of Columbia's Metropolitan Police Department (MPD), its recording and investigation of sexual abuse cases, and the experience of sexual abuse survivors who sought MPD assistance. Our investigation provides strong evidence that, between October 2008 and September 2011, the MPD failed to document or investigate many complaints of sexual assault in D.C. Furthermore, in some cases that Human Rights Watch documented, police re-victimized survivors by treating them callously and skeptically, discouraged sexual assault survivors from reporting their assault or getting a forensic exam, and in some instances threatened them with prosecution for false reporting.

Our findings are based on extensive data analysis, documents from four government agencies, and more than 150 interviews.

The data indicates that in several cases, survivors who reported sexual assaults to the police never had their case documented, and others saw their cases languish when officers apparently determined that their cases were not worth pursuing before conducting an effective investigation.

The problems we documented in the MPD's response to sexual assault do not appear to result from official MPD policy. On the contrary, the MPD has long had policies that, if effectively implemented, should have led to better outcomes. Rather, the key problem appears to be practices within the MPD that, during the period we examined, have been inconsistent with departmental policy and resulted in misclassified or undocumented cases. Inadequate training on how to handle sexual assault cases would also appear to be a contributing factor.

The MPD was made aware of many of these problems in the course of a 2008 civil lawsuit brought by a victim whose case was not investigated. In depositions, several MPD members testified that a significant number of sexual assault cases were not documented at the instruction of SAU detectives, despite official policy requiring all sexual assault complaints to be documented in an incident report. According to MPD Chief Cathy Lanier, the MPD implemented reforms following the lawsuit. Yet the Human Rights Watch research in this report indicates that problematic practices continued through 2011.

The mere adoption of new policies or training alone is not likely to lead to meaningful change of what seem to be deeply rooted attitudes within the department that have long been inconsistent with official policy. To really address this problem, the first step MPD leadership should take is to acknowledge its existence and commit to changing the practice by: (1) holding officers who do not document or investigate cases to account; (2) creating a safe and responsive environment for victims or observers of improper treatment to make complaints; (3) responding seriously to complaints; and (4) doing so transparently, with external oversight.

The failure of the MPD to thoroughly investigate all sexual assault cases has potentially devastating consequences for sexual assault victims and for public confidence in law enforcement; and violates the US's obligation under international human rights standards, as well as official MPD policies governing adult sexual assault investigations. It also means that assailants—who may commit multiple offenses before being caught and imprisoned—may be neither investigated nor prosecuted.

Not all detectives in the MPD's Sexual Assault Unit (SAU) are insensitive to victims: several people interviewed for this report told Human Rights Watch about a number of good detectives in the SAU who demonstrate an appropriate attitude toward these crimes. Nor is

evidence of police mishandling of sexual assault cases unique to D.C. Investigations in recent years have revealed misclassification or improper closing of sexual assault cases and forensic exam (or "rape kit") backlogs in a number of police departments across the country. Human Rights Watch has previously documented rape kit backlogs in Illinois and the Los Angeles area.

However, the MPD practices documented in this report contrast sharply with effective police responses to sexual assault in other US cities cited here.

To its credit, the MPD has recently taken some important steps to address the problems we document here. In response to correspondence and discussions with Human Rights Watch in 2012, the MPD has adopted a number of our recommendations, though it will take time to see whether there is consistent enforcement of changes in practice. Nonetheless, as we describe below, there is more the MPD and other government agencies need to do to ensure that the MPD provides an effective and appropriate response to sexual assault in the District of Columbia.

Sexual assault remains the most underreported violent crime in the United States, partly because victims fear that authorities will not believe them and that they will be re-traumatized if they report their assault. Government officials need to ensure that these fears are not realized.

Research

For this report, Human Rights Watch chose to focus on the District of Columbia because of the unusually low number of sexual assaults it reported to the FBI, as well as significantly higher than average MPD rates of "clearing" sexual assault cases than those for comparably sized cities. Low reporting rates or high clearance rates may indicate cases are being "disposed" of improperly.[6] In addition, a lawsuit about MPD's inappropriate handling of a sexual assault case in December 2006 and evidence and experience of multiple observers since then suggested that MPD practices would be worth examining.

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[6] Martin D. Schwartz, "National Institute of Justice Visiting Fellowship: Police Investigation of Rape – Roadblocks and Solutions," Doc. No. 232667, US Department of Justice Award No. 2003-IJ-CX-1027, December 2010, p.15. In other cities with unusually low reported numbers of sexual assaults, such as Baltimore and New Orleans, investigators found that large numbers of cases were classified as non-criminal offenses or not documented at all.

As part of its investigation, Human Rights Watch conducted over 150 interviews and reviewed numerous documents produced by the MPD and other government agencies. These include the Office of Victim Services (OVS) in the Mayor's Office, which oversees the program for sexual assault victims at Washington Hospital Center (WHC)—the designated hospital for care of adult sexual assault victims in the District.

After refusing to provide investigative files for 16 months, the MPD agreed to allow Human Rights Watch access to its internal database in settlement of a lawsuit Human Rights Watch brought in December 2011 to compel disclosure of documents under D.C.'s Freedom of Information Act. As a result, Human Rights Watch was able to review investigative files for over 250 cases at the MPD's offices in August 2012.

To better understand what reforms might be possible in Washington, D.C., Human Rights Watch also reviewed a range of policies and interviewed dozens of stakeholders about reforms undertaken in cities that have improved their investigations of sexual assault crimes: Austin, Philadelphia, Kansas City, and Grand Rapids. We also consulted 14 national experts on sex crime investigation and prosecution, reviewed International Association of Chiefs of Police model procedures, training material, and the Operations Manual for the San Diego Police Department's Sex Crimes Unit, which is well regarded.

Main Findings

Failure to Document and Investigate

From 2008 through September of 2011, MPD officers used a variety of mechanisms to effectively shut down investigations—often before they even got started—of cases they did not deem credible. Human Rights Watch's review of data, agency documents, and police investigative files corroborates the impressions of many victims, community advocates, and witnesses who told us that the MPD often closed cases without meaningful investigation.

As described further below, we documented the following practices that undermined the successful investigation of sexual assault cases in the District of Columbia:

- MPD officers did not document many cases, as is demonstrated by the fact that no incident report exists for a substantial number of cases recorded by Washington

Hospital Center as having been reported to police, nor were these cases located in the police database.

- MPD officers classified several cases that appear to present the elements of serious sexual assaults as for "office information only" or "miscellaneous" cases. In effect, according to SAU guidelines, this means that they do not pursue the investigation further.
- In some cases, MPD officers classified what appeared to be serious sex abuse cases as a non-sex offense or as a misdemeanor, minimizing the victim's experience and also potentially denying the victim access to support services from Victim Services within the MPD.
- In several cases reviewed by Human Rights Watch that the MPD did document, the MPD presented arrest warrant requests to prosecutors based on incomplete investigations. As a result, prosecutors rejected a large number of these requests as "weak" cases. Detectives then closed the cases and recorded them as "exceptionally cleared" even though it appears they never fully investigated them.

Missing Cases

Two witnesses informed Human Rights Watch in early 2011 that when they attempted to follow up with the MPD about sexual assault reports, they found that many of the cases did not have a case number assigned to them and did not appear to be under active investigation. Based on this information, Human Rights Watch compared Washington Hospital Center records of victims who had a forensic exam and reported their assault to the MPD between October 2008 and September 2011 to MPD incident reports (known as PD-251s) relating to sexual assault complaints from the same period.[7] Our analysis excluded 311 victims who had a forensic exam but chose not to report to the police, or who reported to other police departments.[8]

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[7] The data from the WHC was provided to Human Rights Watch by the Office of Victims Services in the mayor's office, in response to a records request from Human Rights Watch. The MPD provided the incident reports.

[8] September 2011 is the last date for which Human Rights Watch has information available from the hospital. Victims may undergo a forensic exam and decide not to report to the police or be uncertain as to whether they would like police involvement. Of 791 patients seen at Washington Hospital Center between October 2008 and September 2011, 260 cases were excluded because a victim decided against, or was unsure about, pursuing the matter with police or because records were unclear; 51 (39 known, 12 estimated) additional cases were excluded because they involved police departments other than the MPD. The remaining 480 patients who went to the hospital and reported a sexual assault to the MPD at that time were used for this analysis.

According to the MPD policy since 2000, all victims who report a sexual assault to the MPD should have an incident report, known as a PD-251, documenting the complaint and assigning it a case number.[9] If no PD-251 is prepared, the reported assault will not be investigated as the necessary step to open an investigation has not been initiated. The Washington Area Criminal Intelligence Information System (WACIIS) database maintained by the police department may contain information about calls received by the MPD on sexual assaults. But, an entry in WACIIS does not mean that an investigation has been opened. For practical, investigative purposes, if there is no PD-251, it means that no official record of the assault exists in the MPD.[10] As one police source put it, "No PD-251, no investigation."[11] When asked if an investigation should be conducted even when no PD-251incident report has been prepared in response to a complaint, Assistant Chief Peter Newsham said that "the officer would be in trouble."[12]

However, Human Rights Watch was unable to find incident reports for a significant number of cases in which a patient underwent a forensic exam and reported to police.

- WHC records showed that 480 patients reported sexual assaults to the MPD at the hospital between October 2008 and September 2011.
- Human Rights Watch was able to locate matching MPD incident reports for 310 victims over the same period (64.5 percent of the total of cases reported at WHC).
- For the remaining 171 victims, Human Rights Watch was unable to find corresponding documentation at MPD of a reported assault. Nor could these cases be located in MPD's database.
- Of the 310 cases for which we located an incident report, 34 were classified as "miscellaneous" or "office information," usually meaning that MPD conducted no further investigation.

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[9] Special Order, Metropolitan Police Department, "Handling of Sexual Abuse Cases," Series SO-07, effective date April 11, 2000, p.3 ("In all cases, whenever a member responds to a call for service or is notified regarding an allegation of sexual abuse, a PD Form 251 and PD Form 252 will be completed.").

[10] Deposition testimony of Officer Michael Minor, _____ *v. Washington D.C., et al.*, May 14, 2008, pp. 98-100; Deposition testimony of Officer Ginette Leveque, --- *v. The District of Columbia et al.*, April 14, 2008, pp. 73-74; Deposition testimony of Officer Tandreia Green, --- *v. The District of Columbia et al.*, May 8, 2008, p. 69.

[11] Human Rights Watch email correspondence with R.A., June 15, 2012.

[12] Human Rights Watch interview with Chief Cathy Lanier, Assistant Chief Pete Newsham, and Sergeant Ronald K, Reid, Washington D.C., June 14, 2012.

Since all investigations require a PD-251, the lack of incident reports suggests that there was no police follow-up for 35.4 percent of victims who reported an assault at the hospital. If we assume detectives followed MPD's own policy and that cases classified as "miscellaneous" or "office information" have not been subject to an investigation, the number of cases reported at WHC but not investigated increases to 42.5 percent.

The problem may be even broader than these numbers suggest. Studies of police reports in Illinois and Los Angeles as well as a national sampling of victims indicate that at least 41 percent of victims who report an assault to the police do not get forensic exams.[13] If this trend holds true for D.C. as well, then we would expect the total number of incident reports at MPD to be significantly higher than the number of reports coming through the hospital. However, assuming the Washington Hospital Center data is correct, 436 victims had exams and reported to MPD in the 3 year period analyzed by Human Rights Watch (excluding 44 cases in which the victim reported to MPD at the hospital but did not have an exam). Over the same time period, MPD has 571 incident reports.[14] Even if all the hospital reports were accounted for at the MPD (as previously noted, at least 35.4 percent are not), the total number of reports at the MPD would still be far lower than expected. If approximately 41 percent of people who report to police do not

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[13] Office on Violence Against Women, US Department of Justice, "Ensuring Forensic Medical Exams for All Sexual Assault Victims: A Toolkit for States and Territories," December 2008, p. 15, http://www.vaw.umn.edu/documents/mcasatoolkit/mcasatoolkit.docbook.orig-ndvh.html#ftn.id595022 (accessed December 19, 2012), p. 15. The study in Los Angeles found that victims underwent a forensic exam in 50 percent of reported sexual assaults. See Cassia Spohn and Katharine Tellis, "Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Los Angeles County District Attorney's Office," Document No. 237582, US Department of Justice Number 2009-WG-BX-0009, February 2012, https://www.ncjrs.gov/pdffiles1/nij/grants/237582.pdf (accessed November 30, 2012), p. III; and Human Rights Watch email correspondence with Cassia Spohn, October 25, 2012. Human Rights Watch's review of cases in Illinois over a 10-year period found that only 31 percent of reported rapes resulted in the administration of a forensic exam. See Human Rights Watch, *United States – "I Used to Think the Law Would Protect Me": Illinois's Failure to Test Rape Kits*, July 7, 2010, http://www.hrw.org/reports/2010/07/07/i-used-think-law-would-protect-me-0, p. 9.

[14] These include 173 police reports showing that the victim did not go to a hospital or went to a hospital other than Washington Hospital Center—and which we excluded from the date comparison analysis—but they exclude cases in which the victim reported bodily contact that would not lead to a forensic exam, such as a slap on the bottom. The MPD stated in one of its letters to Human Rights Watch that it has 1,500 WACIIS entries for the time period analyzed by Human Rights Watch. However, as noted above, for determining whether an investigation was opened into an assault, it is the existence of an incident report that is relevant, as without one there is no investigation. The subject of this report is whether there is appropriate investigation of sexual assault cases. MPD also states that it provided 1,080 incident reports to Human Rights Watch. Over the course of multiple productions, MPD actually provided 1,358 incident reports. However, 787 were not relevant for comparison to the number of reports made by sexual assault victims who had sought a forensic exam at Washington Hospital Center: 317 were outside of the time frame of this analysis, 353 were for cases characterized by minimal contact that would not lead to a forensic exam or were non-sex offenses, and 117 were juvenile offenses. Our analysis did include misdemeanors and other cases in which significant contact was indicated.

have forensic exams, the number of MPD reports for sexual assault for that period would be expected to be 739 cases, not 571.[15]

Stopping the Investigation Before it Begins

The numbers alone present a disturbing picture, though they do not on their own explain why the MPD appears not to have documented all of the cases that victims reported to them. Some clues may be found in depositions taken in 2008 as part of a civil lawsuit against the MPD by a student whose December 2006 sexual assault case was closed without investigation. In those depositions, SAU detectives revealed that, at the time, they regularly failed to even write reports for cases when SAU detectives did not believe victims.

In May 2012, MPD Chief Cathy Lanier told Human Rights Watch that following the lawsuit she had transferred four detectives out of the SAU and developed a new policy for handling sexual assault cases. The new policy, which went into effect in August 2011, is nearly identical in substance to the previous policy (apart from changing the location of the Sexual Assault Nurse Examiner (SANE) program). It, and the changes that occurred after 2008, are acknowledged in this report. However, unless otherwise noted, all data collected and examples of improper police behavior referenced in this report occurred *after* these changes were adopted, and after a new program for conducting forensic exams for sexual assault victims in the D.C. area was established at WHC in late 2008.[16]

Despite the MPD's reforms, the mismatch we found between victim reports at WHC and incident reports collected by the police suggests that some of the practices mentioned in the 2008 depositions continued well into 2011.

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[15] In fact, in some months, the hospital records more cases reported to the MPD than the total number of sexual assault reports or "allegations" MPD has on file for the same month.

[16] Understaffing does not appear to be a factor in deciding to close cases. According to a February 2012 letter from the MPD to a City Council member, SAU/Sex Squad detectives had 23 cases each in 2010; the "ideal [annual] case load" per detective is 36. Letter from Metropolitan Police Department to Phil Mendelson, council member, in response to February 14, 2012 correspondence in advance of performance oversight hearing, February 24, 2012, http://dcclims1.dccouncil.us/mendelson/archive_pr/COJ%20Performance%20and%20Budget%202012/Later%20Rounds/MPD%20FY12%20Performance%20Responses,%202nd%20Round,%202.24.12.pdf (accessed November 21, 2012), p. 12 (for calendar year 2011, the number increased to 40 cases per detective). In Florida and Oregon, sexual assault unit detectives handle average caseloads of 54-110 cases per year.

"Office Information" or "Miscellaneous" Cases

Human Rights Watch reviewed internal police files for 125 cases that were classified as "office information" (a category sometimes also called "miscellaneous"). These included 82, between 2009 and 2011, for which no case number was assigned and no incident report prepared. According to MPD procedure, an incident report is supposed to be prepared for cases classified as "office information," but these cases are, according to the MPD's official policies, "closed by definition."[17] If further investigation is needed, it "should be classified as an 'allegation' and handled accordingly."[18]

Classifying a report of sexual assault as "office information" is problematic for at least two reasons: one, because it shuts down investigations; and two, because "office information" classifications do not hide the victim's identity, address, or phone number on the publicly available report, as is usual when a sexual assault is reported.[19] As a result, victims are potentially exposed to public identification.

Based on interviews with witnesses and a review of police files, the MPD appears particularly likely to disregard cases involving alcohol or drugs, or to document them as for "office information only."[20] This practice suggests a lack of understanding or sensitivity among some MPD detectives to the fact that sexual assaults frequently occur at times when the victim has consumed substances such as alcohol or drugs. The victim's consumption of such substances—or the victim's confusion or inability to recall some events surrounding the assault—should not be a reason to automatically dismiss a case.

A few examples of "office information" cases found in police files include the following:

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[17] Metropolitan Police Department, Sexual Assault Unit SOP, January 14, 2003, pp. 32-33.

[18] Ibid. An allegation is supposed to be investigated until it is upgraded to a case, closed as "unfounded," or until investigative leads have been exhausted.

[19] In addition, dozens of incident reports Human Rights Watch received from the MPD for sexual assault cases not classified as "miscellaneous" included identifying information about victims (including names, addresses, and telephone numbers), raising questions about whether the MPD is strictly adhering to rules against including that information on incident reports and whether it is taking appropriate care in its responses to public records requests.

[20] Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, "The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report," November 2011, www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf (accessed November 19, 2012), p. 22; Dean G. Kilpatrick et al., National Crime Victims Research & Treatment Center, Medical University of South Carolina, "Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study," Document No. 219181, US Department of Justice Award No. 2005-WG-BX-0006, February 1, 2007, https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf (accessed November 19, 2012).

- In late 2011, after consuming a "double shot" of alcohol, a victim reported waking up to find an unknown male engaging in vaginal intercourse with her. She did not know where she was but took a taxi to the hospital for a forensic exam. According to police notes, the victim had bruises on her face, a laceration on her upper lip, and pain in her vaginal area. The victim could not recall the evening's events after leaving a nightclub or indicate where the assault took place. The detective wrote, "At this time this is an allegation solely due to the fact there is DNA that will be transported to the forensic lab where a case number is needed for processing." The detective suggested follow-up at the nightclub and hospital, but nine months later, there was no indication of any investigation in the file after the initial statement.[21]
- In early 2010, a student reported that she was forced to orally copulate a stranger in an alley after a night of drinking. Although the complainant had a forensic exam, the detective did not prepare an incident report or assign the report a case number, and there is no indication that the detective followed up on evidence obtained from the forensic exam. The document trail indicates nothing to suggest that the detective did any investigation or made any effort to find additional evidence or witnesses, yet the detective's internal report concludes, "There is nothing to corroborate the complainant's alleged allegations."[22]
- A young woman was at a bar in February 2011 when an acquaintance brought her a drink. She remembers nothing after that, but the next morning friends found her with no underwear between two parked cars. According to people with knowledge of the case, the police told her that because she did not remember anything there was nothing to report.[23] Internal police investigation files confirm that police recorded the incident as "office information" because "no crime was reported." The police advised the nurse they would not be taking any items collected from the victim because it was a "no report." The detective notes say the detective "provided [the victim] with [my] business card and said to call if she needed police services." Though the victim told the detective the next day that she would like to know what

[21] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012; all notes from review of MPD investigative files are on file at Human Rights Watch.

[22] Ibid.

[23] Human Rights Watch telephone interview with former advocate R.L., Washington, D.C., March 9, 2011; Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011.

the police could do about her case, the case remained classified as "office information" and no indication of investigation was in the file.[24]

Downgrading or Omitting Sex Offenses

Another way in which a sexual assault report may fall through the cracks is by being classified as a non-sex offense or as a less serious crime.

MPD Chief Cathy Lanier correctly noted in her December 20, 2012, letter to Human Rights Watch that criminal charges are ultimately decided by the prosecutor's office (in this case, the US Attorney's Office for the District of Columbia), which can upgrade or downgrade charges as appropriate.

However, police misclassification minimizes what happened to the victim and may have other consequences. For example, until June 2012, allegations and other miscellaneous types of cases were not referred to the MPD's Victims Services. Misclassification also has implications for the public, which is entitled to know accurate information about local crime.

Because detectives put the offense with the most severe penalty first on the incident report, sexual assault cases may sometimes be listed as a second offense after burglary or another crime. However, in some cases, victims reported sexual assaults or attempted sexual assaults, but their crimes were categorized as some other type of crime and either not referred to the SAU at all or not investigated by the SAU as a sexual assault.

For example, a nurse's report notes a case of a woman who in September 2010 was pushed into her apartment by a stranger when she tried to open the door. Her assailant threw her onto the bed, ripped her dress off, and lowered her leggings. The woman urinated on herself in fear and the suspect threw her against a wall, but did not continue with the sexual assault. According to a hospital report, MPD investigated the case as a simple assault and burglary rather than an attempted rape.[25] An October 2009 case in which the victim was handcuffed, driven to an undisclosed location, and sexually assaulted was categorized only as "kidnapping" with no reference to a sexual assault. [26]

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[24] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 23, 2012.

[25] District of Columbia Sexual Assault Nurse Examiners Exam Exemption Report, September 25, 2010, on file at Human Rights Watch.

[26] Incident-Based Event Report, Complaint No. 145XXX, October 10, 2009.

MPD detectives also categorized several cases as "misdemeanors," although they appear to be more serious sex abuse cases.[27] For example, one 2008 incident report classified as a "misdemeanor" indicates:

- The complainant reported that while walking on the street the suspect threw her to the ground, ripped off her underwear, pulled down his pants, made contact with her vagina (without penetration) and attempted to hold his hand over her mouth before fleeing.[28]

Another 2009 "misdemeanor" incident report reads:

- The complainant states that the suspect penetrated her vagina several times with his penis without her consent. The suspect then left the room. When the suspect returned, he slapped the complainant in the face and pushed her down on a mattress. The suspect then penetrated the complainant's vagina with his penis again without her consent. The assault ended when the suspect masturbated on the complainant's face and in her mouth.[29]

Administrative Closures or Exceptional Clearances

Even in cases that are documented and investigated, interviews with witnesses and a review of investigative files raise concerns about the thoroughness of the investigations. In over two-thirds of the 66 arrest warrant affidavit requests in files reviewed by Human Rights Watch the US Attorney's Office rejected the requests, primarily on grounds that the case presented was "weak." As a result, all these cases were counted as "administrative closures." Of the 27 percent of cases (17 cases) that were approved, more than half were charged with misdemeanors or non-sex offenses. In other cities, studies indicate

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[27] In the District of Columbia, "misdemeanor sex abuse" (punishable by not more than 180 days imprisonment and a fine not to exceed $1,000) is defined as "whoever engages in a sexual act or sexual contact with another person and who should have knowledge or reason to know that the act was committed without that other person's permission." Misdemeanor sexual abuse, D.C. Code Ann. § 22-3006. A sexual act is defined as "The penetration, however slight, of the anus or vulva of another by a penis; contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus." Sexual acts also include "the penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person." D.C. Code Section 22-3001 (8). Therefore sexual acts, including oral, vaginal, and anal penetration, which are not committed on an incapacitated victim or forcibly, may technically be misdemeanors (along with groping cases) under D.C. law.

[28] Incident-Based Event Report, Complaint No. 113XXX, August 11, 2008, on file at Human Rights Watch.

[29] Incident-Based Event Report, Complaint No. 132XXX, September 15, 2009, on file at Human Rights Watch.

prosecutors press charges in more than half of cases (54.5 percent) presented for warrants, twice the rate seen in D.C.[30]

Human Rights Watch only reviewed 66 warrant requests, as this was not the focus of the research, so we cannot draw definitive conclusions from the data on warrant refusals. However, the high rate of refusal in the limited sample does raise concerns about possible overuse of exceptional or administrative clearances to close cases.[31] Under FBI crime reporting guidelines, "exceptional clearance" is supposed to occur in cases in which the suspect is known to police and enough information exists to support criminal charges (probable cause), but circumstances beyond law enforcement control prevent arrest (e.g., the suspect is deceased or already incarcerated). However, when a case has been presented to a prosecutor and rejected without an arrest, the MPD also considers the case cleared by exceptional means.

Because the FBI does not distinguish between cases cleared by arrest and cases cleared exceptionally when it publishes crime data from cities, a case closed without an arrest still appears as a case "cleared by arrest."[32] This practice may explain the MPD's unusually high clearance rate for rape. For example, in 2010, the MPD reported clearing 59.8 percent of its rape cases (110 of184 cases), well above the 40 percent average clearance rate for similarly sized cities. Yet in data it provided to Human Rights Watch, the MPD showed only 22 arrests for all sexual assaults in 2010, including 6 child abuse cases (which may be included in FBI data) and possibly other sex crimes which may not be included in FBI data (such as some misdemeanors and sex crimes with male victims).[33] In its response to

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[30] Cassia C. Spohn, et al., "Prosecutors' Charging Decisions in Sexual Assault Cases: A Multi-Site Study, Final Report," Document No. 197048, US Department of Justice Award Number 98-WT-VX-0003, October 28, 2002, pp. 23-24.

[31] Elsewhere, a high rate of rejection of warrants has been linked to such overuse of exceptional clearances. See Cassia Spohn and Katharine Tellis, US Department of Justice, "Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Los Angeles County District Attorney's Office," Document No. 237582, US Department of Justice Award Number 2009-WG-BX-0009, February 2012, https://www.ncjrs.gov/pdffiles1/nij/grants/237582.pdf (accessed October 24, 2012).

[32] *The Washington Post* found that 15 percent of homicides in the District between 2000 and 2011 were closed as "administrative closures" without an arrest and counted the same as "arrests" in closure statistics. Cheryl Thompson, "D.C. homicides: In 15 percent of closed cases, no charges and no arrests," *Washington Post*, October 14, 2012, http://www.washingtonpost.com/investigations/dc-homicides-in-15-percent-of-closed-cases-no-arrests-and-no-trial/2012/10/13/2fb8e5d6-fb8b-11e1-b2af-1f7d12fe907a_story.html (accessed November 21, 2012).

[33] For 2008 and 2009, the MPD reported 15 and 18 arrests respectively to Human Rights Watch, and "clearance" rates at the FBI of 65.1 percent and 76.7 percent. Spreadsheets on file at Human Rights Watch; letter from Metropolitan Police Department to Phil Mendelson, council member, February 24, 2012, p.12. FBI data include cases against females under the age of 18, but for 2008 and 2009 the arrest data provided to Human Rights Watch do not show any arrests for child sexual abuse. Arrests are also not indicative of whether or not a case was ultimately prosecuted.

Human Rights Watch about data concerns, the MPD indicated that its clearance rate was high because it included cases against female victims under 18. Yet this would not explain why MPD's rates are so much higher than other cities, all of which also include juvenile cases. And in any case, an analysis exclusively of 2010 adult cases based on data provided by MPD to Human Rights Watch shows a clearance by arrest rate of 5 percent for all adult sex abuse cases, including misdemeanors, for 2010.

Police Mistreatment of Victims

Many victims, hospital staff, and others who work with victims said that they experienced or witnessed insensitive treatment by some MPD detectives when victims tried to report sexual assault. A number of victims said they felt that their experience reporting to the police was as bad, if not worse, than the assault itself.[34] Human Rights Watch documented the following re-victimizing or counter-productive behaviors among some MPD personnel:

- Questioning survivors' credibility, including threatening victims with prosecution if they are found to be lying;
- Actively discouraging victims from reporting or undergoing a forensic exam;
- Asking victim-blaming or inappropriate questions;
- Requiring detailed interviews while the victim is traumatized;
- Failing to respond to victims seeking information about their cases or calling because their assailant is threatening them;
- A range of other insensitive treatment

Questioning Survivors' Credibility

Victims and witnesses reported that some detectives made it clear they did not believe victims in a number of ways. In some instances they threatened victims with prosecution for false reporting. One detective, according to medical staff, told a victim, "If I find out you are lying, I will look you up and arrest you."[35] A victim who reported an assault in April 2011 said she was told "no one would believe her" and that she was "lying" and "wasting their

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[34] While these statements may seem surprising to some, they are not an uncommon response to poor treatment by law enforcement. Insensitive treatment by those in positions of authority to whom victims turned for help can intensify victims' feelings of shame, guilt, and powerlessness and can cause additional emotional distress. The likelihood of such revictimization is higher in cases of non-stranger assault. See Rebecca Campbell, "The Psychological Impact of Rape Victims' Experiences with the Legal, Medical, and Mental Health Systems," *American Psychologist*, November 2008.

[35] Human Rights Watch interview with medical staff P.R., Washington, D.C., February 18, 2011.

time."[36] Others are more subtle. One victim, for example, reported that a detective rolled her eyes repeatedly while the victim told her what had happened to her in May 2011. A victim said of her experience with the MPD in the fall of 2009,

> I'll never be able to stop shaking my head at the fact that not only was he not supportive, he made me feel awful about myself by telling me it was nothing more than an issue that I got too drunk and was regretting a decision I made. It tore me up that he did not believe me and he made it clear to me that he didn't believe me. Traumatized is the word that I felt from the investigator, in some ways, it was worse than the event itself.[37]

Memory lapses are commonly associated with trauma,[38] but some detectives appeared to disbelieve victims if they were not able to remember elements of the assault.[39] For example, Julie M., a student at a local university, was assaulted on campus by a stranger after she had been drinking. She said that when police asked her to describe the assailant, she was unable to describe him in detail: "It was hard for me to remember it because I was trying to block out what he looked like." She felt police did not believe her in part because she could not provide a specific description, and she said that police closed her case at the time she reported.[40]

Discouraging Forensic Exams and Reports

Hospital staff, advocates, and victims indicate that detectives have at times tried to convince victims not to report the assault or have a forensic exam. One observer estimated

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[36] Human Rights Watch telephone interview with Maya T. (pseudonym), May 10, 2011; Complaint Form, Office of Police Complaints, May 9, 2011 (provided by Maya T.), on file at Human Rights Watch.

[37] Human Rights Watch email correspondence with Shelly G. (pseudonym), June 20, 2012, on file at Human Rights Watch.

[38] Louise Ellison, "Closing the Credibility Gap: The Prosecutorial Use of Expert Witness Testimony in Sexual Assault Cases," *International Journal of Evidence and Proof*, vol. 9, no. 4, p. 243; J. Michael Rivard, M.D. et al, "Acute Dissociative Responses in Law Enforcement Officers Involved in Critical Shooting Incidents: The Clinical and Forensic Implications," *Journal of Forensic Science*, vol. 47, no. 5, July 2002; David Lisak, "The Neurobiology of Trauma," 2002 (unpublished article, on file at Human Rights Watch); Sgt. Joanne Archambault, Dr. Kimberly Lonsway, Ending Violence Against Women International (EVAWI), "Interviewing the Victim," May 2007, p. 21; PPCT Management Systems, Inc. (1989), *Use of Force Human Factors (Chapter One)*; Mary P. Koss, Shannon Tramp, and Melinda Tharan, "Traumatic memories: Empirical foundations, forensic and clinical implications," *Clinical Psychology: Science and Practice*, vol. 2, no. 2, June 1995, pp. 111-132.

[39] Human Rights Watch telephone interview with R.L., March 9, 2011.

[40] Human Rights Watch email correspondence with Julie M. (pseudonym), April 3, 2011.

that in her experience, nine times out of ten a survivor's decision not to report may be because of something police told the victim.[41]

Some detectives discourage reporting by indicating that they will have to inform loved ones about their behavior, stressing the serious consequences to the perpetrator of pursuing a case, or indicating it will take "years" to get forensic tests back.[42] Since 2008, police no longer have authority to decide whether or not a victim will receive a forensic exam. But detective files indicate that in 2010 and 2011 detectives still sometimes notified nurses in cases in which the victim was intoxicated that they would not "authorize an exam" or that "the [complainant] was not a victim of a crime."[43]

Examples of police comments that have the effect of discouraging reporting and forensic testing include:

- When Dolores R. was assaulted as a student at a university in D.C. in 2009, she tried to get a sexual assault exam at her university hospital. Campus police called the MPD. She says that the SAU detective who came to the hospital told her she would have to transfer to another hospital to get an exam, that it was a long process, and perhaps she "didn't want to go through all that." Dolores recalls the detective implied she had to speak to the police to get a forensic exam, though Dolores wasn't sure she wanted to report the sexual assault. Dolores later discovered that WHC was only down the street from where she was. Dolores said the detective also made it clear she had her doubts about Dolores' story, and that it was not a strong enough case to hold up in court. Dolores did not report her assault or get an exam.[44]
- When one married victim, Laura T., attempted to report her assault in late 2011, she indicated 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 –

[41] Human Rights Watch telephone interview with medical staff C.J., May 10, 2011.

[42] Human Rights Watch interview with university staff L.O., Washington, D.C., March 28, 2011; Human Rights Watch telephone interview with Shelly G. (pseudonym), October 12, 2012; case information cover sheet from Shelly G.'s case (provided by MPD), on file at Human Rights Watch; Human Rights Watch telephone interview with Maya T., May 10, 2011; complaint form, Office of Police Complaints, May 9, 2011 (provided by Maya T.); narrative of events provided by Maya T., on file at Human Rights Watch; Human Rights Watch group interview with sexual assault survivors (including with Susan D.), Washington D.C., September 30, 2011.

[43] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, SA09-XXX, SA11-XXX, August 21-23, 2012.

[44] Human Rights Watch group interview with sexual assault survivors (including with Dolores R.), Washington D.C., September 30, 2011.

> and then he handed me a form to deny ongoing investigation [decline an investigation] so therefore I signed it."[45]

The attitude toward victim reporting is apparent in a June 2009 email from one detective to another about a victim he met at the hospital while there for another case. The victim had initially not wanted to report, but had changed her mind and went to Washington Hospital Center for a forensic exam the next day. The detective at the hospital wrote,

> I found out you dealt with her about 4 am Friday or Saturday morning … and she chose not to make a report. Something about a gang bang and being intoxicated…. Anyway, I think it was just an OI [Office Information]. However, she now feels differently and wishes to make a report…. She says her phone isn't working but she can be reached … Sorry, BUT IT IS WHAT IT IS!!!!!!![46]

Victim-Blaming

Several survivors and people who work closely with survivors said that police often question victims or make comments in a manner suggesting the victim is at fault.[47] One medical professional said she heard police appearing to blame the victim with questions and comments that included, "You shouldn't have been out so late," "For God's sake, why did you do that?" or "Why did you walk home by yourself after a few drinks?"[48] Survivors and witnesses reported the following other examples of victim-blaming remarks:

- Medical staff overheard a detective tell 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?"[49]
- Dolores R., a university student who police talked out of reporting her assault in 2009, said the detective asked her, "Why didn't you scream? Why didn't you call a friend? Why didn't you call a cab?" Dolores said, "I did what I did and I can't change that."[50]

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[45] District of Columbia Sexual Assault Information Form, dated November 24, 2011, on file at Human Rights Watch; Human Rights Watch telephone interview with medical staff I.L., December 7, 2011.

[46] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 23, 2012.

[47] Human Rights Watch interview with K.V., Washington, D.C., March 28, 2011; Human Rights Watch telephone interview with medical staff C.J., May 10, 2011; Human Rights Watch group interview with advocates, Washington, D.C., March 28, 2011.

[48] Human Rights Watch telephone interview with medical staff M.W., March 24, 2011.

[49] Human Rights Watch telephone interview with medical staff C.J., May 10, 2011.

- Another victim wrote in a 2009 complaint that a female SAU detective to whom she tried to report an assault told her that if someone did something to her that she did not like she "would say no or tell them to stop." She said the detective also asked "if [she] didn't want them to do it, why [she] didn't stop them."[51]

One victim filed a complaint that referred to "the confrontational, insensitive manner in which they questioned me," which she said was "very degrading and humiliating." She added:

> They seemed to be questioning my integrity…. How could it be that detectives who are assigned to a sexual assault and violent crime unit [are] allowed to behave in this manner?… I felt as if I was assaulted on April 16, 2007, by police officers who swore an oath to serve and protect.[52]

Requiring Detailed Interviews While the Victim is Traumatized

A lengthy interview immediately after an assault may not be appropriate because of the possible effects of trauma on the victim.[53] Victims are frequently traumatized during the initial interview (particularly if it immediately follows the assault) and therefore may not be able to concentrate or act rationally. It may have been hours since the victims last slept and they may still be under the influence of drugs or alcohol. That is why best practices recommended by the International Association of Chiefs of Police suggest delaying a full interview except in exigent circumstances requiring an arrest or identification.[54]

Although MPD policy allows detectives to schedule a follow up interview with a victim after a forensic exam, in practice, detectives often take a detailed statement from the victim

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[50] Human Rights Watch group interview with sexual assault survivors (including with Dolores R.), Washington D.C., September 30, 2011.

[51] Office of Police Complaints, Complaint Form, November 12, 2009, on file at Human Rights Watch.

[52] Office of Police Complaints, Complaint Form, May 4, 2007, on file at Human Rights Watch. Human Rights Watch is not privy to information about investigations performed by the Office of Police Complaints (OPC) into complaints, though in some instances we received conclusions by the OPC either forwarding the information to the MPD because a complaint was outside its jurisdiction or, in two instances, a letter finding no misconduct had occurred. Whether or not "misconduct" was officially found to have occurred, the attitude described in the complaint letters is contrary to the sensitive and victim-centered approach undertaken by police departments with effective responses to crimes of sexual assault.

[53] Louise Ellison, "Closing the Credibility Gap: The Prosecutorial Use of Expert Witness Testimony in Sexual Assault Cases," *International Journal of Evidence and Proof*, vol. 9, no. 4, p. 243.

[54] International Association of Chiefs of Police, "Investigating Sexual Assaults," http://www.theiacp.org/LinkClick.aspx?fileticket=z5xGuyoksGo%3d&tabid=87, p. 8 (accessed January 3, 2012).

before allowing him or her to have a forensic exam. A follow-up interview is generally only scheduled later if the victim is physically incapable of talking at the hospital.[55]

One officer explained that detectives "really go into detail and sometimes they ask questions over and over again."[56] Even if the victim is too incapacitated to communicate, the detectives do not always schedule an interview later. The result is that some victims choose not to report or undergo an exam and others fall through the cracks. For example:

- An April 2009 case in which the complainant reported that the subject tried to rape her but did not say how. The complainant was under the influence and had to be woken with an ammonia capsule to be interviewed at the hospital. The case was filed as "office information" because "The complainant did not report a sexual assault." The police file contained no indication of follow-up with the complainant.[57]
- A victim who reported being assaulted by three men in Chinatown in 2010. According to an advocate, police spoke with her for hours at the hospital before her exam, asking her to repeat the story to different detectives. During that time she was not able to eat or drink. She finally decided not to have the exam as she did not want her family, who came to support her, to have to wait for her any longer.[58]

After receiving Human Rights Watch's recommendation to allow victims at least one full sleep cycle prior to conducting a full interview, the MPD issued a memorandum in June 2012 affording victims 24 hours after a preliminary interview before being re-interviewed, except in urgent cases or when a delay would jeopardize the victim or other members of the public.[59] However, as of October 2012, a source at WHC told Human Rights Watch that they had not yet observed any change in the MPD's interviewing practices.[60]

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[55] Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for Victim Services, Washington, D.C., May 30, 2012. The letter from the Chief of Police to Human Rights Watch dated June 8, 2012 also references the quiet room as established to ensure victims are interviewed in a quiet, private location.

[56] Deposition testimony of Officer Michael Minor, May 14, 2008, pp. 88-89.

[57] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 21, 2012.

[58] Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011.

[59] Criminal Investigations Division, Metropolitan Police Department, Division Memorandum, "Sexual Assault Investigations," June 12, 2012, p.1.

[60] Human Rights Watch telephone interview with Dr. Heather Devore, SANE medical director, Washington, D.C., October 10, 2012.

Unresponsiveness

Numerous people who have worked closely with victims for years said victims regularly complain that they do not hear back from MPD, despite calling the department or individual officers repeatedly.[61] This is true even when the victim has concerns for his or her safety. Shelly D., who reported an assault in October 2009, said getting the police to respond was "like pulling teeth" even after her assailant sent her several threatening messages. Her detective "did not even bat an eye."[62] She ended up moving in order to avoid her assailant.

This lack of responsiveness reinforces victims' perception that their cases are not taken seriously and is often upsetting to them.[63] This sentiment is reflected in one victim's experience, which she described in a written complaint in November 2009, filed with the Office of Police Complaints:

> Shortly after making the report I received threatening emails from one of the parties involved. I phoned the detective and left multiple messages regarding the emails. She never returned my phone call … In the past week I have left multiple messages for both Detective [] and her supervisor Detective Sgt. ---. I have heard nothing from the Metropolitan Police Department since filing the report, 3 months ago, despite countless phone calls.... If I did not know better I would think that they were persuaded not to pursue the case that I definitely want to pursue.[64]

Other Insensitive Behavior

Human Rights Watch obtained information indicating other types of insensitive behavior, apart from that discussed above, including:

- The response of the detective who interviewed Estella C., a 24-year-old student, who reported being assaulted orally and vaginally by an acquaintance in his truck

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[61] Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011; Human Rights Watch interview with university staff L.O., March 28, 2011 and by telephone on June 13, 2011.

[62] Human Rights Watch telephone interview with Shelly G. (pseudonym), June 18, 2012.

[63] Human Rights Watch email correspondence with R.L., May 31, 2012; Human Rights Watch interview with P.S., Washington, D.C., March 15, 2011.

[64] Office of Police Complaints, Complaint Form, November 12, 2009, on file with Human Rights Watch.

in the spring of 2010. Estella drove herself to the police department to report the crime after the assault. According to Estella, the detective who interviewed her repeatedly asked whether the assailant was good at oral sex. Estella said the detective rolled her eyes while she explained what happened, made comments like "So you were into it," and repeatedly said the incident did not sound like rape to her.[65] The detective also said that even though it "didn't sound like a good case," she was "still going to have to type it up."[66] Estella said she eventually drove herself to the hospital for a forensic exam because she did not want to spend more time with the detective, who acted like taking her case would be inconvenient.[67]

- Rosa S. reported being abducted by two men wearing masks and raped repeatedly overnight before being released the next morning. According to her lawyer and a staff member of an organization who worked with her, the detective who interviewed her was very aggressive and asked, "You are only doing this to get immigration status, aren't you?"[68]

MPD Response

Since receiving a summary of this report's findings on May 30, 2012, the MPD has acted on several of the recommendations Human Rights Watch made at the time, and has taken steps to improve how it handles sexual assault cases. For example, the MPD has agreed to add treatment of victims as a factor in evaluating SAU detectives, to create a victim satisfaction survey, to increase supervision over sexual assault cases, to allow victims a sleep cycle before conducting a detailed interview with them (except in emergency situations), and to establish a multidisciplinary review of closed cases. The commander of the Criminal Investigations Division of the MPD included many of these recommendations in a June 12 memo to the SAU. On June 8, 2012, the MPD issued a reminder to all police that they are required to document every complaint of sexual assault.

The MPD's introduction of the reforms noted above is a positive and welcome step. However, we remain concerned about other aspects of the MPD's response to our findings, which has been extremely hostile and defensive in tone. In its initial response to a summary of the

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[65] Human Rights Watch group interview with sexual assault survivors (including Estella C.), Washington D.C., September 30, 2011.
[66] Ibid.
[67] Ibid.
[68] Human Rights Watch telephone interviews with attorney A.J., March 22, 2011; and with J.Z., staff member of community organization where Rosa sought help, June 6, 2012.

findings in June 2012, the MPD insisted that the issues raised in this report have "long since been addressed" and claimed that the Human Rights Watch investigation was "flawed" and "unsubstantiated." In its December 20, 2012, response to a summary of our revised findings (which took into account additional information the MPD provided after our June 2012 exchange), Chief Cathy Lanier dismissed the findings as "nonsensical." Her response stated that our finding about closure rates "exhibits misunderstanding, ignorance or purposeful misreporting" and insists that "HRW in its desire to draw public attention to themselves has used unsupported and erroneous information to attack MPD's handling of sex-abuse cases" as part of an effort to "make a public spectacle" for "self-serving" ends.

In short, the MPD strenuously denies there is any problem with the handling of sexual assault cases, but is nonetheless willing to make some improvements to its policy. The MPD also objects to not being given a full copy of the report well in advance of its release.

The MPD's hostile response is particularly troubling precisely because it runs counter to the very steps that it needs to take to address the problem. As previously noted, to meaningfully reform what appear to be persistent practices within the MPD requires that its leadership begin by acknowledging the existence of a problem and commit to addressing it in an accountable and transparent manner. A detailed response to various claims made by Chief Lanier about the report is available at http://hrw.org/node/112547.

Also of concern is the fact that, in meetings to discuss our findings, some amongst the MPD leadership have expressed repeated hostility toward not only Human Rights Watch, but also those who are perceived as cooperating with the report.

In the weeks after Human Rights Watch shared its findings with the MPD on May 30, we were troubled to learn of a few situations in which people or agencies that the MPD believes shared information with us or cooperated with our investigation experienced unexpected adverse actions from the Office of Victim Services (OVS) in the Mayor's Office. (The deputy mayor for Public Safety and Justice in the Mayor's Office oversees both the OVS and the MPD).

The director of the Sexual Assault Nurse Examiner (SANE) program at Washington Hospital Center had notified the OVS of her intent to leave the program shortly before the MPD was informed of the contents of this report. At the time, the OVS had asked her to train a

replacement and stay until October 2012. But after the report's findings became known, the OVS instructed security to lock her out of her office at the Lighthouse (the building where the SANE program is based). The OVS rescinded the offer for her to facilitate a transition, searched her emails, and questioned her and others in the forensic nursing program about their cooperation with this investigation.[69] In addition, the OVS instructed nurses not to speak with Human Rights Watch.[70] The OVS also asked nurses to sign non-disclosure agreements.[71] The OVS has also substantially cut funding for the D.C. Rape Crisis Center, which some in the MPD have associated with this report, in a number of areas since June.

Inaction and Its Impact

Insensitive police behavior can have devastating consequences.

Sexual assault victims whom police treat poorly when they report are more likely to develop Post-Traumatic Stress Disorder (PTSD).[72] Victims are also less likely to cooperate with the police investigation, significantly decreasing chances that the perpetrator will face justice.[73]

Poor treatment of victims also undermines public confidence in law enforcement and means other victims are less likely to come forward. As Susan said, "if this happened to a friend of mine, I'd tell her to think twice before talking to police." Since sexual assault is already the most underreported violent crime (with less than 20 percent of victims nationally reporting incidents to the police), behavior that discourages reporting is a public safety concern.[74] Furthermore, failing to accurately report sexual assault misleads

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[69] Human Rights Watch telephone interview with Devin Trinkley, July 19, 2012.

[70] Human Rights Watch email correspondence with R.A., June 22, 2012; Human Rights Watch telephone interview with R.T., September 24, 2012.

[71] Human Rights Watch telephone interview with Dr. Heather Devore, SANE medical director, Washington Hospital Center, Washington, D.C., October 11, 2012.

[72] Rebecca Campbell et al., "Community Services for Rape Survivors: Enhancing Psychological Well-Being or Increasing Trauma?" *Journal of Consulting and Clinical Psychology*, vol. 67, no. 6, 1999, pp. 847-858; Rebecca Campbell, "What Really Happened? A validation study of rape survivors' help-seeking experiences with the legal and medical systems," *Violence & Victims*, vol.20, February 2005, pp. 55-68.

[73] See Debra Patterson, "The Impact of Detectives' Manner of Questioning on Rape Victims' Disclosure," *Violence Against Women*, January 11, 2012.

[74] See Dr. Kimberly Lonsway and Sgt. Joanne Archambault, "The 'Justice Gap' for Sexual Assault Cases: Future Directions for Research and Reform," *Violence Against Women*, 18(2), pp. 145-168 (discussing various studies on rape reporting); Dean G. Kilpatrick, et al., National Crime Victims Research & Treatment Center, Medical University of South Carolina, "Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study," Document No. 219181, US Department of Justice Award No. 2005-WG-

the public about crime rates in their communities and distorts public policy debates over allocating resources for law enforcement and victim services.

In addition, the decision not to investigate means that evidence may be lost or remain uncollected by police.[75] It can be demoralizing for nurses, and frustrating for advocates who fear that subjecting victims to a four-hour invasive exam to collect forensic evidence may do more harm than good. As one former advocate asked, "Would I really encourage my girlfriend to go through a kit and be re-traumatized if nothing is happening with the kit?"[76]

Failing to investigate sexual assault violates the United States' obligations under international human rights standards, which recognize rape as a human rights abuse and require the US to protect women and men from sexual assault and rape, while respecting the dignity of victims.

The treatment of victims and handling of sexual assault cases described in this report also violate official MPD policies governing adult sexual assault investigations. These call for "unbiased investigation into all reports of sexual assaults" and require that those who investigate sexual assault complaints be "sensitive" to victims' needs.[77] They also contravene Standard Operating Procedures (SOP) for the SAU, which state that law enforcement has a "legal and moral obligation to thoroughly investigate reports of suspected sexual abuse and determine whether a crime has been committed," and to conduct investigations in "a professional and sensitive manner." The SOPs also state that detectives should realize that an investigation may have "a tremendous impact on the welfare of the victim" and on the successful prosecution of offenders.[78] However, it appears that the MPD is not vigorously enforcing these policies.[79]

BX-0006, February 1, 2007, https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf (accessed November 19, 2012) (finding 16 percent of rapes are reported to law enforcement).

[75] Human Rights Watch telephone interview with medical staff B.C., March 8, 2011; D.C. SART Meeting Minutes, April 30, 2009, on file at Human Rights Watch.

[76] Human Rights Watch telephone interview with R.L., March 9, 2011.

[77] General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," Series 304, Number 06, effective date August 25, 2011, https://go.mpdconline.com/GO/GO_304_06.pdf (accessed May 23, 2012), p. 2.

[78] Metropolitan Police Department, Sexual Assault Unit SOP, January 14, 2003, p. 19.

[79] In addition to seven complaints from sexual assault victims to the Office of Police Complaints, Human Rights Watch is aware of at least four written complaints by sexual assault survivors made directly to MPD, as well as frequent informal complaints about SAU detectives' treatment of victims raised by medical staff and advocates with sergeants in the SAU over the past three years. A letter that the MPD sent to the D.C. City Council in February 2012 stated that only one officer has been disciplined for inappropriate treatment of a sexual assault victim since June 2006. In the instance cited, a detective was

Effective Approaches and Next Steps

Materials and information that Human Rights Watch gathered indicate that MPD uniformed officers do not receive training in the legal definition of sexual abuse in the District of Columbia, or in how to respond to complaints of sexual assault.

Moreover, SAU detectives do not receive specialized training in trauma or sexual assault investigations before joining the unit, which has no information in its Standard Operating Procedures on drug or alcohol facilitated sexual assaults, non-stranger cases, or the impact of trauma on sexual assault survivors. Detectives are not selected for the unit based on their suitability for handling these kinds of sensitive cases, although as of this writing, the chief of police advised Human Rights Watch that plans may be in place to address this problem. The MPD has conducted some training for detectives in the second half of 2012 and has applied for funds for additional training in 2013.

Human Rights Watch did not have data available to determine whether race or other factors impacted police handling of sexual assault cases.

Although no single police department handles cases perfectly, Human Rights Watch found that other US cities have a number of effective approaches to investigating sexual assault cases. These include a victim-centered approach to investigation that includes: requiring sensitivity to trauma issues during the interview, allowing victims one or two sleep cycles before an interview except in urgent circumstances, follow-up, referrals to victim services, creating a non-judgmental environment, and allowing victims to be accompanied by an advocate during police interviews. They also include proper training, and respectful collaboration with victim services providers in the community, such as nurses and rape crisis counselors.

Treatment of victims also should be a factor when evaluating SAU detectives. Most importantly, supervisors should ensure all calls for sexual assault cases are documented and all detectives are held accountable for failing to adhere to department policy. The key

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suspended in November 2009 for 15 days after inappropriately contacting a sexual assault victim on Facebook. Letter from Metropolitan Police Department to Phil Mendelson, council member, February 24, 2012, p. 15. The chief of police told Human Rights Watch that four detectives were transferred from the unit in 2009 in response to concerns raised by the student's lawsuit and that she was unaware of any complaints about misconduct from SAU members, apart from one, that had been sustained. Human Rights Watch telephone interview with Cathy Lanier, chief of police, Metropolitan Police Department, Washington, D.C., June 1, 2012; letter from Chief Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

to any successful implementation of reform is commitment from leadership to thoroughly investigating these cases and treating victims properly. As one expert advised, "Don't let training be a scapegoat for bad supervision."[80]

Any attempt to remedy these serious problems should start with the District of Columbia and its MPD ensuring that every reported sexual assault case has a written record and is thoroughly investigated so that culprits can be identified and arrested. Although measures have been put in place for closer supervision of SAU detectives and the MPD states that "because of suggestions from HRW, MPD changed the reporting procedure and that public reports are taken on all cases," stringent scrutiny by the Washington D.C. City Council and Mayor's Office will be necessary to ensure that changes are implemented in a meaningful manner and sexual assault victims are taken seriously, unlike last time this problem was revealed in 2008. This should be done by an independent oversight body, which conducts regular external reviews of sexual assault investigation files and department records to ensure cases are not falling through the cracks.

A model for such a review system can be found in Philadelphia. In response to a series of *Philadelphia Inquirer* articles in 1999 revealing that the Philadelphia Police Department was misclassifying and failing to investigate sexual assault cases, the police commissioner invited advocacy groups to review its sexual assault cases. This review has occurred on an annual basis for over a decade and is regarded as successful by both police and advocacy groups. All stakeholders report that the practice has resulted in improved police investigations of sexual assault cases.

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Human Rights Watch welcomes the MPD's willingness to consider a number of its recommendations and the changes in its policies that have already occurred. Effective, durable, and systemic reforms are needed to supplement the improvements that have already taken place and support proper investigation of sexual assaults. Police and government officials need to demonstrate clearly to victims of sexual assault that their cases matter and will be taken seriously.

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[80] Human Rights Watch interview with Carol Tracy, executive director, Women' Law Project, Philadelphia, November 1, 2011 (recounting advice she received from a criminologist who consulted with police departments).

Recommendations

To the United States Congress

- Pass the Violence Against Women Reauthorization Act (VAWA). While the bill never reached the President last year, separate versions of VAWA before both the Senate and House in 2012 funded training for law enforcement agencies on how to improve investigation of sexual assault cases and on how to appropriately treat victims. The bills also provided grants to help appoint victim counselors for the prosecution of sexual assault cases.

To the Federal Bureau of Investigation, Criminal Justice Information Services Division Advisory Policy Board

- For the Uniform Crime Reports (UCR), recommend collecting and publishing data separately for crimes law enforcement has "cleared by arrest" and cleared "by exceptional means."
- Clarify in the UCR Handbook that "clearing by exceptional means" does not include cases in which a prosecutor has rejected a warrant request for insufficient evidence.
- Consider revising UCR data collection to include collecting data that would reflect prosecutorial outcomes in order to provide the public with more meaningful information on what ultimately happens to sexual assault cases reported in communities.

To the United States Department of Justice Civil Rights Division

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

To the Council of the District of Columbia and the D.C. Mayor's Office

- Establish a task force (including a nationally recognized expert on sexual assault investigations) to examine the MPD's policies and practices for handling sex

crimes cases and recommend changes to ensure all complaints of sexual assaults are documented and investigated and victims of sexual assault are treated appropriately. The task force should also examine the definition of sex abuse in D.C. to ensure it is in line with current standards.

- Pass legislation giving victims the right to have an advocate, victim specialist, or support person of their choosing present during law enforcement interviews and proceedings.
- Create a permanent independent oversight body tasked to conduct regular reviews of police sexual assault investigation files. The body should report publicly to the city council. It should include members representing civil society, such as groups that provide support services to victims.
- Ensure Victim Services within the MPD (which provides support, information, and referrals to sexual assault and domestic violence survivors) has adequate resources to expand support to the Sexual Assault Unit (SAU). Request regular reports on implementing recommended changes to handle sexual assault cases from the MPD as part of the council's regular performance oversight hearings.

To the Metropolitan Police Department

To Improve Accountability for the Follow-Up on Sexual Assault Cases

- Include treatment of victims as a factor in evaluation of SAU detectives and follow-through on any complaint regarding how a case was handled by MPD. Victims, support persons, witnesses, or third parties should be able to lodge complaints. A supervisor should investigate complaints, with second-level review. Transfer out of the unit and, as appropriate, discipline detectives who are regularly the subject of complaints.
- Require responding officers to document all reports of sexual assault and require SAU supervisors (a sergeant or lieutenant) to compare call log sheets for sexual assault cases to PD-251s to ensure each report is documented.
- Require that supervisors 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 treatment of victims.
- Develop a system allowing victims to complete and submit victim satisfaction surveys for the MPD to review and respond to, 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.

To Treat Sexual Assault Survivors Fairly

- Protect the confidentiality of all victims reporting a sexual assault, regardless of the classification of the offense as a sex abuse offense, an allegation, or an "office information" (or "miscellaneous") case, including cases in which sexual assault is not the "primary" charge.
- Give victims the option of having an advocate, victim specialist, or support person of their choosing 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. Tell victims 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 or Victim Services 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 to interview victims at the SAU.
- Increase the role of victim specialists within the SAU to provide support and referrals to all sexual assault victims and help with practical arrangements.
- 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 implementing reforms, 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; to investigate non-stranger and drug-facilitated sexual assaults; and how to document sexual assault using the language of non-consensual sex.
- In the selection of detectives for the SAU, take into account the detectives' suitability for handling sensitive victim interviews and their ability to be open to understanding the realistic and evolving dynamics of sexual assault.

Methodology

This report is based on more than 150 telephone or in-person interviews, as well as documents produced for Human Rights Watch by the District of Columbia Metropolitan Police Department (MPD), the Office of Victims Services (OVS) in the Executive Office of the Mayor of the District of Columbia, which oversees the Sexual Assault Nurse Examiner (SANE) Program at Washington Hospital Center (WHC), and other government agencies in response to public records requests.

Interviews in Washington D.C. and other major cities (for comparison purposes) were conducted with: sexual assault survivors, current or former police chiefs or commissioners, heads or former heads of sex crimes units, forensic nurses and former forensic nurses, national experts on police responses to sexual violence, rape victim advocates, sex crimes detectives, police officers, staff of sexual assault service organizations, doctors who work with sexual assault victims, university staff who work closely with assault survivors on campus, a judge, a defense attorney, a forensic toxicology expert, sex crimes prosecutors, attorneys representing sexual assault victims, government officials, counselors, journalists who have covered police handling of sexual assault cases in the District of Columbia and elsewhere, and staff of several local community organizations who work in some way with sexual assault survivors, including 10 community organizations in the District of Columbia.

Unless otherwise specified, the witnesses and victims interviewed all described incidents that occurred since the opening in October 2008 of the SANE program at Washington Hospital Center, the designated hospital for care of adult sexual assault victims in the District. SANE has seen service for sexual assault victims expand from one trained forensic nurse to a dozen certified forensic nurse examiners who are on-call 24 hours a day. The nurse examiners have extensive training in how to provide medical, forensic, and emotional care to sexual assault victims.

Most interviews were conducted individually and in private. Four group interviews were conducted: one with sexual assault survivors, another with volunteer advocates, and two with Sexual Assault Response Teams (SART) in Philadelphia and Kansas City (which have re-examined their approach to sexual assault cases in the past decade). No incentive or

remuneration was offered to interviewees. Two interviews were conducted through email. An American Sign Language interpreter was used for two interviews.

Given the sensitive nature of the topic and confidentiality concerns expressed by many interviewees, all survivors' names and other identifying details, such as the precise date and location of the interview, have been withheld, unless they specifically asked to be identified. All initials are randomly assigned pseudonyms. In some instances, the date of the interview has been changed to protect the identity of the source.

Some interviewees who work closely with law enforcement are identified in this report with pseudonyms due to their concerns that their comments would jeopardize relationships with police and negatively impact their ability to provide services to victims. However, not everyone was comfortable being interviewed, even with use of a pseudonym. Indeed, one expert in the field noted that an unanticipated result of the move to have law enforcement work more closely with community groups that support victims is that it has silenced potential critics of police behavior. Following the June 8 police response to our letter, a number of sources expressed additional concern about protecting their identities, so in some cases more general descriptions of their occupations have been used to obscure their identities.

In addition to interviews, we submitted document requests under the District of Columbia Freedom of Information Act to the MPD, the OVS, the Office of the Chief Medical Examiner for the District of Columbia, and the Office of Police Complaints.

The Office of the Chief Medical Examiner, the OVS, and the Office of Police Complaints cooperated fully with our requests for information about toxicology reports, number of people seeking sexual assault kits, and complaints about police handling of sexual assault cases.

The MPD initially failed to provide a complete or timely response to our request for information about policies and procedures relating to sexual assault, training materials, call records, and investigative material. The MPD's response took over 12 months and excluded all investigative files relating to sexual assault apart from public incident report forms. After receiving our May 30, 2012, letter outlining our findings, and as this report was being prepared for press, the police supplemented their response with information that

had been erroneously excluded from their initial response, but still did not include investigative files. That information was incorporated into the report and data analysis.

As part of its research, Human Rights Watch also reviewed deposition transcripts and discovery material from a 2008 civil lawsuit that had been brought against the MPD. Transcripts included testimony from a sexual assault survivor, a family member, a sergeant responsible for a squad of patrol officers, three patrol officers, and two detectives and two detective sergeants (supervisors) from the MPD's Sexual Assault Unit (SAU). Some of those deposed have since been removed from the SAU and in August 2011, the MPD put in place a new policy for handling adult sexual assault cases. However, as noted above, the incidents described in this report primarily occurred between late 2008 and November 2011, when the primary research for this report concluded, after the time that the MPD indicates it undertook a number of reforms to address issues revealed in the police depositions.

Human Rights Watch also reviewed academic studies on the prevalence of sexual assault, incidence of false reporting, the effect of law enforcement's response on survivors and the incidence of re-traumatization, the effect of having advocates present during police interviews, and the toxicology of drugs used to facilitate sexual assaults.

Finally, Human Rights Watch reviewed 10 training manuals and model policies for law enforcement handling sexual assault cases on issues such as interviewing techniques, reporting methods, and clearance methods.

On May 30, 2012, Human Rights Watch met with members of the MPD including Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Ronald Keith Reed, and Tyria Fields, Program Manager for Victim Services. Information from that meeting is incorporated into this report.

At the meeting, Human Rights Watch notified the department of the findings in the report, provided a written summary of its contents, and gave the MPD an opportunity to respond.

In the following months, the police provided over 1000 incident reports, which we have incorporated into our data analysis.[81] The police also provided written responses to the

[81] Many of these were duplicates or misdemeanors with minimal physical contact that fall outside of our analysis.

summary of the report on June 8 and on September 14. The substance of these responses, as well as comments made by Chief Cathy Lanier to Human Rights Watch by telephone in response to the summary of our findings on June 1, have been incorporated into this report. The MPD chose to publish HRW's summary findings as of May 30 along with its response on their website on June 8.

In its June 8 written response to Human Rights Watch, the MPD identified a victim by name who had not wished to be identified publicly (and who Human Rights Watch, in its letter, had not identified). When Human Rights Watch discovered that the MPD had posted its response on its website, including the victim's name, we requested that the victim's name be redacted out of concern for her privacy. In response, Chief Lanier wrote,

> MPD cannot accommodate this request at this time. HRW used this pre-reform (2006) case as an illustration of the current state of affairs at MPD. MPD feels that it is necessary that the public be given an opportunity to research this matter for themselves (using public information), so they can put this allegation in proper context. Transparency is a two way street.[82]

The MPD complained that it was given inadequate time to respond to the report. However, the MPD has been aware of Human Rights Watch's investigation for over a year. Human Rights Watch notified MPD about its research in April 2011 and requested cooperation during the year in correspondence with MPD lawyers.

Shortly after we initiated this investigation, on May 6, 2011, the OVS informed us that Chief Lanier had requested contact information for this report's researcher. Human Rights Watch provided contact information immediately, yet there was no follow-up from the MPD. A number of witnesses stated that members of MPD had indicated to them that they were aware of Human Rights Watch's investigation over the course of 2011.

Human Rights Watch requested a formal interview with members of the SAU on May 3, 2012, and received a response only on May 22, 2012, resulting in the May 30 meeting. On June 14, Human Rights Watch met with Chief Lanier, Assistant Chief Peter Newsham, and Sergeant Ronald Reid to seek their views on our findings and recommendations and share

[82] Email correspondence from Chief Lanier to Human Rights Watch, June 13, 2012, on file at Human Rights Watch.

with them the results of our revised data analysis that incorporated the new incident reports MPD provided in early June. At that meeting, the MPD invited Human Rights Watch to access an internal database, the Washington Area Criminal Intelligence Information System (WACIIS), to look for hospital cases that were still missing documentation. Human Rights Watch reviewed the WACIIS database with MPD staff on June 19. Information from that review is included in this report.

An August 21, 2012, settlement agreement for a lawsuit Human Rights Watch brought to compel a more complete response to our document request enabled us to review investigative files for 173 cases at the MPD's offices, plus 88 cases from 2009 through 2011 that were not assigned case numbers. The files were taken from WACIIS, which should contain a complete record of an investigation. According to the Sexual Assault Unit's Standard Operating Procedures, "[a]ny information received or actions performed on a case shall be documented by the Detectives/officials on a WACIIS PD 854."[83]

Human Rights Watch moved the release date for the report from June to December to enable it to analyze the additional information obtained from the MPD in June, July, and August and to ensure that MPD had adequate opportunity to provide all relevant information for this analysis. Human Rights Watch also offered to interview individuals recommended by MPD as having information relevant for this report.

As a result, Human Rights Watch interviewed 11 people at MPD's request. Seven of those interviewed were prosecutors (who each asked not to be identified in the report), three were doctors, and a fourth was the head of MPD's Victim Services whom Human Rights Watch had met on May 30. Although none was in a position to observe police initial interaction with victims (as one prosecutor said, "we don't go behind the curtain to see if there are other cases,)"[84] which is the focus of this report, their general observations about the SAU have been incorporated into this report.

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[83] Metropolitan Police Department, Sexual Assault Unit SOP, January 14, 2003, pp. 55-57. The SOP indicate these forms are "probably the most important report you will initially fill out in a sex offense investigation" and should contain an "as complete as possible" account of the complainant's report, the investigation, and other important information about the case. It states, "The importance of documentation cannot be overly stressed," as "you have no idea who will be looking at it later." Ibid., pp. 52-55.

[84] Human Rights Watch telephone interview with C.L., assistant US attorney, Washington D.C., September 18, 2012.

The data analysis section of this report includes a more detailed discussion of Human Rights Watch's efforts to ensure that the MPD had an opportunity to locate missing case information.

On December 6, 2012, Human Rights Watch provided the MPD with a summary of our updated findings and provided them with two weeks to respond. Their December 20 response is included in this report.

I. Background

The Metropolitan Police Department (MPD) is one of the 10 largest local police agencies in the United States and serves as the primary law enforcement agency for the District of Columbia. The department includes more than 4,400 members, of which approximately 3,800 are sworn police officers and 600 are civilian employees.[85] Although a number of other law enforcement agencies operate in the District (including the US Park Police, the Metro Transit Police, the Capitol Police, and the Secret Service) most local crimes fall under MPD's jurisdiction.[86]

The Criminal Investigations Division of MPD includes a specialized Sexual Assault Unit (SAU). A lieutenant is responsible for overseeing the unit, which includes two sergeants and 16 detectives.[87] The SAU is responsible for the primary and follow-up investigation of all sexual assaults that occur in the District of Columbia involving adult victims.[88]

MPD Procedures for Investigating Sexual Assault

According to the unit's Standard Operating Procedures (SOP), cases are assigned to the unit in a number of ways: communications (i.e. dispatchers), hospitals, anonymous calls, walk-ins, other police agencies, or referrals by advocacy groups.[89] A review of incident reports shows that most sexual assaults are reported via a radio run (a response to a 911 call), a walk-in, or on-scene (an officer was flagged down on site or called to the scene).

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[85] Metropolitan Police Department, Brief History of the MPDC, http://mpdc.dc.gov/mpdc/cwp/view,a,1230,q,540333,mpdcNav_GID,1529,mpdcNav,%7C31458%7C.asp (accessed April 26, 2012).

[86] See Washington Metro Transit Authority, http://www.wmata.com/about_metro/transit_police/; The United States Park Police, http://www.nps.gov/uspp/; United States Capitol Police, http://www.uscapitolpolice.gov/faq.php; United States Secret Service, http://www.secretservice.gov/whoweare.shtml (all accessed January 10, 2013).

[87] Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for Victim Services, Metropolitan Police Department, Washington, D.C., May 30, 2012. Detectives for the SAU are generally selected from a pool of veteran detectives. Two of the 16 detectives are assigned to investigate cold cases.

[88] General Order, MPD, "Adult Sexual Assault Investigations," August 25, 2011, p. 1.

[89] MPD, Sexual Assault Unit SOP, p. 28; Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, May 30, 2012.

According to MPD's website, a person reporting a sexual assault can expect the following:

- A visit by a police officer to the location of the reported incident when a dispatcher receives a call.
- A police officer to ask some questions about what happened.
- The responding police officer to contact the SAU once an incident involving sexual assault has been reported.
- Transfer of the investigation to the detective once he or she arrives at the scene.
- The detective to conduct a more detailed interview.
- The detective to contact the Forensic Science Division to respond to the scene to collect evidence at the location of the crime.
- The detective to arrange for the victim to be taken to the hospital for a forensic exam, if necessary.
- A specially trained nurse to conduct the forensic exam.

The role of the responding officer is limited.[90] The officer is to contact the witness, conduct a basic interview to find out the "whens, wheres and hows."[91] If there is any mention of sexual assault, the patrol officer contacts the SAU.[92] "Members [responding patrol officers] shall not question the victim in detail about the offense" (emphasis in original order).[93]

An SAU detective is required to respond to the scene of all complaints of sexual assault, even if it is not the primary crime being reported, and all crimes that appear to have sexual overtones.[94] Under the current policy, the SAU detective, not the responding officer, also takes the victim to the hospital if the victim consents to a forensic exam.[95] Forensic exams

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[90] Metropolitan Police Academy, Recruit Officer Training Program, "DC CODE Crimes against Persons," Sergeant Richard Ehrlich, May 2011, p. 39, on file at Human Rights Watch ("Patrol officers need to determine whether it was a sexual act or sexual contact that took place, what method did the suspect employ to achieve the act or contact and what is the relationship between the actor and the victim.").

[91] Deposition testimony of Detective Elgin Wheeler, --- *v. The District of Columbia et al.*, October 3, 2008, p. 72; Deposition testimony of Sergeant George Maradiaga, July 14, 2008, pp. 26-28, 30-31

[92] Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, May 30, 2012.

[93] General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," Series 304, Number 06, effective date August 25, 2011, p. 4. Although this order post-dates much of the research for this report, as discussed below, it is nearly identical in substance to the 2006 General Order governing sexual assault investigations that it replaced.

[94] Ibid.

[95] Ibid., p. 6.

are typically offered to victims who report within 96 hours of their assault, though in some circumstances it may be possible to collect evidence beyond that period.[96]

Some sexual assault victims, however, report first to a hospital. The designated hospital for care of adult sexual assault victims in D.C. is Washington Hospital Center (WHC), which has hosted the Sexual Assault Nurse Examiner (SANE) program since late 2008 (see Methodology section).

The SANE Program is activated through a hospital hotline when a victim (patient) appears at a hospital or reports an assault to police.[97] According to SANE program protocol, the hotline contacts the SANE nurse on call, an advocate from the D.C. Rape Crisis Center, and, if the patient has not already gone to police and would like to report an assault, law enforcement. As a result of reforms instituted since 2008, the hospital dispatch system contacts the SAU directly and an SAU detective responds to the hospital so that the victim only has to speak to a single law enforcement officer.[98]

When patients arrive, they are put in a quiet room to await their exam.[99] If law enforcement (an SAU detective) arrives first, the detective may interview the patient in the quiet room before the exam. The rape crisis center advocate is not allowed to be present for the law enforcement interview, but is available to provide information and emotional support otherwise. The SANE nurse then interviews the victim again and conducts a head-to-toe examination of the victim's body, documenting and photographing visible physical injuries, performing a pelvic exam, and collecting biological samples. This usually takes four hours.[100] The various swabs and samples are placed in separate envelopes or tubes, labeled, sealed, and put in a large envelope—the forensic evidence kit (or sometimes called a "rape kit" or Sexual Assault Evidence Collection Kit).

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[96] D.C. SART Meeting Minutes, October 23, 2008 and November 5, 2008, on file at Human Rights Watch.

[97] If the patient reports to a different hospital, they are supposed to be transferred to the Washington Hospital Center unless they have acute injuries requiring urgent attention. Victims under 18 years of age are referred to the Children's National Medical Center, www.dcrcc.org/sexual_assault/getting_a_forensic_exam/ (accessed May 23, 2012).

[98] Letter from Chief Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

[99] D.C. SART Meeting Minutes, October 23, 2008 and November 5, 2008, on file at Human Rights Watch.

[100] "The D.C. SANE Center: A Best Practice Model," Physician, Washington Hospital Centre, July/August 2009, http://www.whcenter.org/documents/Physician%20Publications/PhysicianJulAug09.pdf (accessed May 23, 2012), p. 10

The SAU detective is responsible for picking up the forensic evidence kit and delivering it to the Crime Scene Investigations Branch within 24 hours of completing the exam.[101] The detective is supposed to schedule a follow-up interview with the victim at the SAU office as soon as possible—but in all cases within 72 hours[102]— to review the completeness of the preliminary investigation, determine the scope and direction of the follow-up investigation, and submit all the paperwork to an SAU official for review.[103] The detective continues the follow-up investigation in accordance with police protocols.

The Sexual Assault Response Team (SART) includes representatives from Washington Hospital Center, the US Attorney's Office, the MPD's Sexual Assault Unit, the Office of Victim Services, the US Park Police, and the D.C. Rape Crisis Center. According to the MPD's website,

> SART is [a] partnership of public and private agencies that work to coordinate a high-quality, multidisciplinary, victim/survivor-centered response to sexual assault cases. This partnership allows for better communications among all those involved in responding to the victim. It improves the process for reporting and prosecuting cases.[104]

The team has had notable success in improving medical treatment for survivors.[105] However, one member noted, "It seems to me that in our efforts to improve the treatment of and for victims of sexual assault, MPD is one of the biggest obstacles."[106]

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[101] General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," Series 304, Number 06, effective date August 25, 2011, p. 11. A prior Special Order, "Sexual Assault Nurse Examiners Program," dated April 2, 2001, SO-01-06, also instructed that it was the detectives' responsibility to deliver forensic exams to Mobile Crime "immediately after the examination, or at least within 24 hours."

[102] General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," Series 304, Number 06, effective date August 25, 2011, p. 12. The prior General Order about adult sexual assault investigations does not specify a time frame but indicates that an SAU detective responding to the scene of a sexual assault is responsible for scheduling a follow-up interview with the victim at the SAU's office. General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," Series 304, Number 6, effective December 22, 2006, p. 12.

[103] Ibid.

[104] Metropolitan Police Department, "Sexual Assault Response Team," http://mpdc.dc.gov/mpdc/cwp/view,a,1232,q,556790,mpdcNav_GID,1523,mpdcNav,%7C31417%7C.asp (accessed April 25, 2012).

[105] Victims, advocates, and others interviewed for this report all reported positively about the quality and efficiency of care for victims at Washington Hospital Center, which is described as a significant improvement over the prior SANE program.

[106] Email from medical staff to OVS, April 6, 2009, on file at Human Rights Watch. However, the Washington Hospital Center chief medical officer, Dr. Janis Orlowski, emphasized that in her view, the "MPD has been a strong partner" since the beginning. Though Dr. Orlowski has never attended a SART meeting, she received reports about clinical programs. Human

Policy guidance governing the procedures and behaviors of officers involved in sexual assault cases can be found in the MPD's General and Special Orders on Adult Sexual Assault Investigations and in the MPD's Standard Operating Procedures.[107]

These procedures contain no information on drug-facilitated sexual assaults and do not discuss non-stranger rape, although most assaults are committed by someone the victim knows.[108] Nor is there mention of possible impact of trauma on victims. However, in other respects, these policies are appropriately victim-centered. New policies, discussed below, have been implemented since June 2012 in response to Human Rights Watch recommendations. In large part, however, the problems documented in this report do not appear to stem from MPD policy (though this should be reviewed with a view towards improvement), but rather from police practice that is inconsistent with it. This problematic behavior is detailed in the following two sections.

Reforms Since 2008

In its responses to Human Rights Watch, the MPD described a number of changes implemented since 2008 or currently in progress, including a change in personnel from some of those who had been associated with the lawsuit described in this report, the new improved SANE Program at Washington Hospital Center, and some training initiatives.

The MPD also stated that it has "reemphasized its role in the Sexual Assault Response Team" since 2008, embracing the multidisciplinary approach to handling sexual assault investigations.[109] It indicated it has increased its collection of specimens for drug-facilitated sexual assault cases and stated that SAU detectives attended a training on drug-facilitated sexual assaults at the US Attorney's Office in June 2010.[110] In addition, the MPD is in the process of developing a formal case review process in which a panel of

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Rights Watch telephone interview with Dr. Janis Orlowski, chief medical officer and chief operating officer for Washington Hospital Center, September 20, 2012.

[107] See Metropolitan Police Department, "Operational Handbook for the Directives System," effective date July 25, 2006, www2.justiceonline.org/dcmpd/sop-Directives.pdf (accessed May 23, 2012); and General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations."

[108] See, for example, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, "The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report," November 2011, www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf (accessed November 19, 2012), pp. 21-22 (only 13.8 percent of victims report being assaulted by a stranger; most victims knew their perpetrator).

[109] Letter from Chief Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

[110] Ibid.

members will review, on a bi-weekly basis, all cases which have been investigated and are not forwarded to the US Attorney's Office for prosecution. MPD is also developing a more extensive selection process for detectives assigned to the SAU, including assessing the candidates' commitment to a multi-disciplinary and victim-centered approach. An updated General Order that sets forth MPD policy for handling sexual assault cases, cited throughout this report, was released in August 2011. An analysis of the new order shows it is nearly identical in substance to the 2006 General Order governing sexual assault investigations that it replaced. The primary changes are: (1) reference to the "Command Information Center," (2) the SANE exams are conducted at Washington Hospital Center instead of Howard University Hospital and a hospital hotline is used to contact the on-duty SANE nurse, and (3) the Crime Scenes Investigations Branch is now referred to as the Forensic Science Services Division.[111] As with the previous policy, it stresses the importance of responding to and investigating all sexual assaults and the need to be sensitive to the needs of the victims and to provide victims with information and assistance.[112] In addition, the unit has grown by three detectives since 2008, including two detectives assigned to handle "cold cases." New leadership has also been added to the unit. References to these changes appear throughout this report.

Since being informed of this report's findings on May 30, the MPD has undertaken a number of significant additional reforms to its handling of sex abuse cases. On June 8, 2012, the MPD issued a reminder to all members of the police department that they are required to take an incident report for "all alleged sexual assaults and assaults with sexual overtones regardless of the circumstances" in accordance with police policy.[113]

On June 12, 2012, Commander George Kucik of the Criminal Investigations Division issued a division memorandum incorporating many of Human Rights Watch's recommended changes, including allowing victims a sleep cycle prior to being re-interviewed; requiring

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[111] General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," Series 304, Number 06, effective date December 22, 2006. The new order is also organized slightly differently and excludes instructions for those who take calls from sexual assault victims. Other word changes are minor. For example, in 2011, SAU detectives are to "make every attempt to arrive on scene as soon as practicable." In 2006 the SAU detective was to "make every attempt to arrive on the scene within an hour." In 2011 the Order references picking up the Sexual Assault Evidence Kit within 24 hours of the completion of the exam; in 2006 detectives were to pick up the kit "when the exam is completed" (though a separate order from 2001 specifies kits are to be picked up within 24 hours).

[112] General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," August 25, 2011,

[113] Metropolitan Police Department, Washington D.C., "Reminder to Members Regarding Sexual Assault Investigations," June 8, 2012, on file at Human Rights Watch.

that detectives respond to complainants within two days of the complainant's call; conducting interviews in a comfortable environment; requiring a supervisor review of all sexual abuse and sexual allegation cases at regular intervals, which will be documented in WACIIS; requiring consultation with a supervisor about upgrading classifications of allegations within 24 hours; requiring weekly audits of kits at WHC to ensure the kits are picked up within three days of a sexual abuse report; requiring monthly reviews with the commander, captain, and lieutenant of open cases; and requiring commander review and approval of cases closed as unfounded.

Victim Services is now required to expand its involvement and offer services to all victims of sexual abuse, including cases that are classified as allegations (or cases in which "the victim's initial report did not indicate all the elements of a sexual assault"). Victim Services is also preparing a survey to provide victims with an opportunity to rate police service, which will be reviewed by the commander. A copy of the June 12, 2012 memorandum is attached as an appendix to this report.

On September 19, 2012, MPD's Victims Services coordinator informed Human Rights Watch that the unit's caseload had indeed increased "significantly" and they had received approval and funding to hire two new staff members to work with sexual assault victims.[114]

On September 25 and 26, 2012, a nationally known forensic nurse examiner conducted a joint training program for law enforcement, nurses, and advocates.[115]

In addition, in September 2012, the MPD informed Human Rights Watch that a mandatory sexual assault response training is being developed for all members of the force, and the MPD has coordinated a "sexual assault awareness campaign" targeted at the alcohol establishments in the district. A number of prosecutors and others Human Rights Watch spoke with felt that the new detectives were an improvement and that the unit was getting better.[116] Most would like to see more resources devoted to the unit.[117] The SANE medical

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[114] Human Rights Watch telephone interview with Tyria Fields, program manager for Victim Services, Metropolitan Police Department, September 19, 2012.

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

[116] Human Rights Watch telephone interviews with J.F., assistant US attorney, Washington D.C., September 18, 2012; with Dr. William Frohna, chairman of the Emergency Department, Washington Hospital Center, September 18, 2012; with S.W.,

director said in October 2012 that, "In the last six months, things are moving in the right direction and communication with the MPD has really improved."[118] In late October, two victims reported that MPD agreed to reopen their cases in response to their complaints about how their cases were handled; one received an apology from a commander.

After receiving Human Rights Watch's letter and recommendation for a department of justice investigation on May 30, 2012, Chief Lanier asked the Department of Justice for an independent review of its handling of sexual assault cases.

On December 20, 2012, Chief Lanier also indicated the SAU had undertaken the following reforms:

1. In 2012, MPD developed an online Sexual Abuse training course which was mandated for all sworn members of the force.
2. MPD issued a directive to first responders to notify a Sexual Abuse Unit detective whenever they respond to a scene where there are sexual overtones.
3. MPD changed the process of collecting data in sexual assault cases.
4. The Mayor's Office of Victim Services has contracted with paid advocates (Network for Victim Recovery of D.C.—NVRDC) to provide resources to the victims of sexual abuse (formerly this was handled by volunteers).
5. NVRDC provided training to all of the members of MPD's Sexual Assault Unit on the impact of trauma and proper approach to victims of sexual assault.
6. MPD undertook a concerted outreach effort to provide victims with resources including the launch of the UASK [119] application, and meetings with the owners of ABC establishments [establishments with

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assistant US attorney, Washington D.C., September 19, 2012; and with E.M., assistant US attorney, Washington D.C., September 19, 2012.

[117] Human Rights Watch telephone interviews with E.M., assistant US attorney, Washington D.C., September 19, 2012; with C.L., Assistant US attorney, Washington D.C., September 18, 2012; and with S.W., assistant US attorney, Washington D.C., September 19, 2012

[118] Human Rights Watch telephone interview with Dr. Heather Devore, October 11, 2012.

[119] According to its website, UASK (University Assault. Services, Knowledge) is a joint project between Men Can Stop Rape and the Office of Victim Services. It provides information about resources to sexual assault survivors. See http://www.uaskdc.org/about-u-ask (accessed December 21, 2012).

liquor licenses] throughout the city to advise them of the prevalence of sexual assaults that are related to their establishments.

7. That the Department of Justice Office of Justice Programs Diagnostic Center is currently working with MPD to do a gap analysis to identify possible future changes that can improve our processes.[120]

MPD objected that "Human Rights Watch did not take the time to find out about the impact of the outreach efforts described above."[121] However, some of these initiatives are not new (police have been instructed to immediately contact the SAU in sexual assault cases since at least 2006)[122] and others, such as the decision to contract with NVRDC and the launch of UASK,[123] are not police initiatives. However, any follow-up investigation undertaken by Human Rights Watch will consider the results of these initiatives.

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[120] Letter from Chief Lanier to Human Rights Watch, December 20, 2012, on file at Human Rights Watch.

[121] Ibid.

[122] Testimony from a 2008 lawsuit indicates that since 2006, responding officers were required to "immediately notify the Sexual Assault Unit." Testimony of Detective Vincent Spriggs, October 23, 2008, p. 80-81; see also testimony of Sgt. George Maradiaga, July 14, 2008, pp. 150-51.

[123] "UASK is a project of Men Can Stop Rape and the District of Columbia Executive Office of the Mayor Office of Victim Services," http://www.uaskdc.org/about-u-ask (accessed January 9, 2013).

II. Police Failure to Document and Investigate

> Law Enforcement has a legal and moral obligation to thoroughly investigate reports of suspected sexual abuse and to determine whether a crime has been committed. This investigation must be carried out in a professional and sensitive manner…. The detective must also realize that the investigation may have a tremendous impact on the welfare of the victim as well as the successful prosecution of the offender.
> —Metropolitan Police Department, Standard Operating Procedures, Sexual Assault Unit, January 14, 2003, p. 19

> Cases [in D.C.] almost always end up dead in the water. I have no belief cases will go forward.
> —L.O., university counselor, Washington, D.C., March 28, 2011

Human Rights Watch initiated research into the MPD's handling of sexual assault cases after observing the unusually low numbers of sexual assaults that the MPD reported to the FBI.

Under the FBI's Uniform Crime Reporting (UCR) program, police departments voluntarily report statistics for certain crimes, including what is termed in the program "forcible rape." Until changes in 2012, the definition of "forcible rape" used by the FBI was "carnal knowledge of a female forcibly and against her will," which is both outdated and most importantly excludes a significant number of rapes and sexual assaults (including drug or alcohol-facilitated sexual assault, sodomy, rape of men, and statutory rape). Nevertheless, comparative numbers reported can still shed some light on potential areas of concern.[124]

Only a small fraction of cities with a population of more than 100,000 report more murders than rapes. Typically, rapes are reported at a multiple of the murder rate; often more than four times as many rapes as murders are reported in urban areas.[125] Of the four cities

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[124] The new definition introduced in 2012 is, "penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."

[125] See Civil Rights Division, US Department of Justice, "Investigation of the Puerto Rico Police Department," September 5, 2011, p. 57 (expressing concern about the low reported number of rapes compared to murders).

where more murders than rapes were reported in recent years, two (Baltimore and New Orleans) have already been the subject of investigations that revealed police practices of either not documenting sexual assault cases or downgrading them to non-criminal offenses.[126] The District of Columbia, with a population of approximately 600,000, reported the same number of rapes and murders in 2008 (186) and 7 more rapes than murders in 2009 (143 murders v. 150 rapes).[127]

MPD also reports "clearance rates" for rape that are significantly higher than the FBI's average. "Clearance" refers to the disposition of a criminal case. Under the Uniform Crime Reporting System possible dispositions include:

- "Closed by arrest" (when a person is arrested, charged with the commission of an offense, and the case is presented to the court for prosecution);
- "Unfounded" (when investigation reveals no offense occurred, nor was attempted); and
- "Exceptionally closed" (when the offender is identified and enough evidence exists to support an arrest, but the offender cannot be arrested for reasons beyond law enforcement's control).[128]

The high clearance rate and the relatively low number of reported rapes raise questions because it may indicate selective documentation of cases.

In 2010, the UCR average clearance for rape cases for cities between 500,000 and 1,000,000 people was 40.6 percent. The clearance rate reported by MPD for rape was 67.7 percent in 2007; 65.1 percent in 2008; 76.7 percent in 2009; and 59.8 percent in 2010.[129] The high clearance rate and the relatively low number of reported rapes raise questions because it may indicate selective documentation of cases. A 2010

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[126] US Civil Rights Division, Department of Justice, "Investigation of the New Orleans Police Department," March 16, 2011, pp. 43-49 (finding that the NOPD's strikingly low number of reported rapes was likely a result of diverting complaints of possible sexual assault into a category of non-criminal or miscellaneous complaints, resulting in a sweeping failure to properly investigate many rapes and sexual assaults); Justin Fenton, "City rape statistics, investigations draw concern: Police defend tactics, but mayor orders review," *Baltimore Sun*, June 27, 2010 (finding that in 4 of 10 emergency calls to police involving allegations of rape, officers concluded there was no need for review, so the cases did not make it to detectives; more than 30 percent of cases that did go to detectives were deemed unfounded).

[127] Federal Bureau of Investigations, US Department of Justice, "Table 4: Crime in the United States by Region, Geographic Division, and State, 2008-2009," September 2010, http://ww2.fbi.gov/ucr/cius2009/data/table_04.html (accessed May 23, 2012).

[128] Metropolitan Police Department Standard Operating Procedures, "Investigative Case Tracking and UCR Classification," effective date April 8, 2003.

[129] Letter from Metropolitan Police Department to Phil Mendelson, council member, February 24, 2012, p.12.

National Institute of Justice study found that in places where detectives were reporting exceptionally high clearance rates, departments had found ways to "dispose" of cases that they did not like and calculated the clearance rates only on "good" cases.[130]

Members of the community who work on issues relating to sexual assault shared with Human Rights Watch their concerns that MPD does not investigate sexual assault cases.[132] Advocates and medical staff recalled numerous instances where patients thought they had reported a sexual assault but there was no record of it with MPD.[133]

In order to get the police to investigate, another witness told Human Rights Watch that the victims "have to give them a dog and pony show."[131]

Very few of the people interviewed by Human Rights Watch who work with survivors could remember even one case that was successfully prosecuted.[134] The threshold for cases moving forward was described by one interviewee as "very high, even if there are text messages, witnesses, an immediate report and a clear memory."[135] In order to get the police to investigate, another witness told Human Rights Watch that the victims "have to give them a dog and pony show."[136]

The consequence of police disregarding a victim's report is simple and dire: a perpetrator will not be held to account. When sexual assaults "disappear," victims often feel a sense of betrayal and distrust that can seriously damage their recovery from the sexual assault.

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[130] Martin D. Schwartz, "National Institute of Justice Visiting Fellowship: Police Investigation of Rape – Roadblocks and Solutions," Doc. No. 232667, US Department of Justice Number 2003-IJ-CX-1027, December 2010, p.15.

[131] Human Rights Watch telephone interview with medical staff M.H., April 8, 2011.

[132] Human Rights Watch telephone interview with community advocate R.L., March 9, 2011 (describing a survivor who lived in a group home who was assaulted by an acquaintance who offered to give her a ride from the Metro stop; the police said, "Your case isn't going to be investigated"); Human Rights Watch telephone interview with L.P., March 16, 2011 (recalling a case of a homeless person where the police did not spend any time with her and "it was clear they were not going to do anything to help"); Human Rights Watch telephone interview with medical staff I.L., December 7, 2011 (recounting a case of an assault in a court-appointed halfway house; rather than make an effort to persuade the victim to talk to him, the detective "blew her off," despite the fact that the assault took place in a government facility).

[133] Human Rights Watch telephone interviews with medical staff P.R., February 18, 2011 and September 22, 2011; and with medical staff M.H., April 8, 2011.

[134] Human Rights Watch telephone interview with P.S., March 15, 2011 and May 3, 2011; Human Rights Watch telephone interview with T.A., April 8, 2011; Human Rights Watch interview with K.V., Washington, D.C., March 28, 2011; Human Rights Watch joint interview with Cyndee Clay, executive director of Helping Individual Prostitutes Survive (HIPS), and colleague, Washington, D.C., March 28, 2011.

[135] Human Rights Watch telephone interview with P.S., March 15, 2011.

[136] Human Rights Watch telephone interview with medical staff M.H., April 8, 2011.

As the director of the Department of Justice Office of Violence Against Woman stated, not counting sexual assault "send[s] an appalling message to these victims that their crimes don't count."[137]

An artificial drop in reported crime numbers also denies the public the right to know actual crime rates in their areas and distorts public policy debates over allocating resources for law enforcement and victim services. Since some studies show that sexual predators commit multiple offenses before they are caught and jailed, it is especially important that each case is investigated and evidence collected.[138] Ultimately, community awareness— or perception— that police do not take these crimes seriously also leads to victims being less willing to report sexual assaults.[139]

The consequence of police disregarding a victim's report is simple and dire: a perpetrator will not be held to account.

Human Rights Watch found the following areas of concern with respect to the MPD's investigation of sexual assaults, each of which is discussed below:

- Over one third of cases (35.4 percent) between 2009 and 2011 in which victims went to Washington Hospital Center for a forensic exam and reported an assault to the MPD could not be found as documented at all in MPD records.
- An additional 7 percent of the cases from the hospital that the MPD did document were classified as for "office information only" and therefore not investigated. Human Rights Watch found dozens of other sexual assault cases placed in this category in police files, all of which were effectively closed without any investigation apart from the initial complainant's report.

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[137] Critical Issues in Policing Series, Police Executive Research Forum, "Improving the Police Response to Sexual Assault," March 2012, http://policeforum.org/library/critical-issues-in-policing-series/SexualAssaulttext_web.pdf (accessed August 3, 2012), p. 34.

[138] Jane E. Brody, "Supportive Steps After Sexual Assault," *New York Times*, December 20, 2011, p. D7; David Lisak and Paul Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," *Violence and Victims*, vol. 17, no. 1, 2002, p. 78; Stephanie K. McWhorter et al., "Reports of Rape Reperpetration by Newly Enlisted Male Navy Personnel," *Violence and Victims*, vol. 24, no. 2, 2009.

[139] Sgt. Joanne Archambault, Dr. Kimberly Lonsway, and End Violence Against Women International (EVAWI), "Clearance Methods for Sexual Assault Cases," July 2007 (updated May 2012), p. 27. In police files, for example, one detective noted that the complainant "advised that she did not call the police for help because she has made several police reports in the past and did not receive satisfactory service." Human Rights Watch notes from review of MPD investigative files, SX10-XXX, August 22, 2012, on file at Human Rights Watch.

- Some sexual assault cases in which another crime also occurred (such as burglary) were not investigated as sexual assault cases at all. Other sexual assault cases were classified as misdemeanors despite indicia of more serious offenses.
- A number of investigative files reviewed by Human Rights Watch revealed incomplete investigations, a lack of supervisory review, and a high rate of closures by the US Attorney's Office because cases were considered too weak. This suggests that the MPD's high "clearance by arrest" rate for sexual assaults may be a result of administrative closures rather than arrests.

A sexual assault may be reported to the MPD in a number of ways. For example, a victim can call 911, flag down an officer (on-scene), go to the police department (walk-in), schedule an appointment with the **Sexual Assault Unit (SAU)** or go to the hospital (Washington Hospital Center) for a forensic exam and request law enforcement involvement. In each case, the responding officer or the hospital contacts the SAU.

As a result of the initial contact, the detective (or responding officer) prepares an **incident report form** (a PD-251) to document the sexual abuse complaint. If no form is prepared, the case is effectively closed, though it may be documented in the police database for office information.

If a PD-251 is prepared, the detective may classify the complaint as a **"sex abuse case"** (SX case) in which the criteria of the crime of sexual abuse have been met on the face of the complaint or a **"sex abuse allegation"** (SA case) in which it is unclear whether or not the legal elements of the sexual abuse offense have been met (for example, the victim is unsure if a crime occurred or was too intoxicated to talk when the form was prepared). "Allegations" are supposed to be investigated and upgraded to an SX case or closed if all investigative leads have been followed and the case remains unsubstantiated. PD-251s are also sometimes classified as "office information". In these cases, the victim's personal information is not kept confidential and no investigation is done. The case is effectively **closed**.

SA or SX cases are either **under investigation (open), suspended (when investigative leads are exhausted), or closed**. They may be closed either by 1) **arrest** (if the perpetrator is arrested and charged with an offense and presented to the court for prosecution); 2) **exceptionally closed** (if the offender has been identified and enough information exists to support charges, but the offender cannot be arrested for reasons outside law enforcement control – such as the offender is dead or already in prison); or 3) **closed as unfounded** (when investigation proves that no offense occurred or was attempted). The MPD sometimes also consider cases exceptionally closed (or cleared) if a request for an arrest warrant has been declined by prosecutors for lack of prosecutorial merit.

ADULT VICTIM IS SEXUALLY ASSAULTED IN D.C.

Missing Cases and the PD-251s

MPD official policy is to file a report for all reported crimes and incidents that come to its attention.[140] Even if the reported event is not a crime (such as a lost wallet) or is not within the MPD's jurisdiction (for example, if the crime occurred in Maryland), all incidents or crimes are supposed to be documented in an incident/offense report, the PD-251.[141]

MPD General Orders (a set of internal policy guidelines and rules for officers about investigating adult sexual assault cases) dating from at least 2001 state that whenever an officer responds to a call for service or is notified regarding a complaint of sexual abuse, an incident report will be completed to document the complaint.[142] Incident reports are publicly available and contain basic information about the location of the crime, the type of crime, the victim, suspect, weapons used or property taken, as well as a brief narrative.[143]

According to the SAU's Standard Operating Procedures, "A PD-251 shall be included with every numbered sex abuse case."[144] PD-251s are also supposed to be prepared for complaints of sexual abuse that an SAU member, after preliminary investigation, determines lack the criteria to be considered sexual abuse (called "allegations").[145]

A December 2006 directive for handling sexual abuse cases states that the officer who arrives on scene shall, "Prepare a PD Form 251 and request assistance from the SAU detective regarding the proper classification."[146] The PD-251 is supposed to be provided to

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

[141] Ibid. The only time a report would not be prepared, according to Commander Kucik, is "if there is definitive information the report is untruthful."

[142] Deposition testimony of Sergeant George Maradiaga, --- *v. The District of Columbia et al.*, July 14, 2008, pp. 135-36; Special Order, Metropolitan Police Department "Sexual Assault Nurse Examiners Program (SANE)," SO-01-06, effective date April 2, 2001, p. 3; General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," Series 304 number 06, effective date December 22, 2006, p. 10; Special Order, Metropolitan Police Department, "Handling of Sexual Abuse Cases," SO-07, effective date April 11, 2000, p. 3 ("In all cases, whenever a member responds to a call for service or is notified regarding an allegation of sexual abuse, a PD Form 251 and PD Form 252 will be completed, documenting the allegations.").

[143] The form has changed during the time period for which we received forms. Until 2009 most forms were filled out manually, by filling in circles for certain information. More recent forms are computerized. However, MPD data collection methods are inconsistent and incomplete. Many fields are consistently left blank by reporting officers.

[144] Metropolitan Police Department, Sexual Assault Unit SOP, p. 55.

[145] An incident report is supposed to be completed documenting complaints of sexual abuse even if no crime was deemed to have occurred, if the offense occurred in another jurisdiction, if the sexual activity was not a crime, or if the offender was arrested in another jurisdiction. Metropolitan Police Department, Sexual Assault Unit SOP, p.31-33.

[146] General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," December 22, 2006, p. 10. Identical language appears in the 2011 General Order. See General Order, Metropolitan Police Department, "Adult Sexual

the SAU detective "by the end of the tour of duty."[147] On June 8, 2012, the MPD issued a reminder to all members of the police department that they are required to take an incident report for "all alleged sexual assaults and assaults with sexual overtones regardless of the circumstances" in accordance with police policy.[148] The PD-251s are reviewed by the reporting officer or detective's supervisor.[149] All PD-251s are also subject to "staff review."[150]

If no PD-251 is prepared, no official record of the assault exists in MPD.[151] The database maintained by the police department, Washington Area Criminal Intelligence Information System (WACIIS), contains information about calls to MPD for sexual assaults. But, as one police source put it, "No PD-251, no investigation."[152] When asked if an investigation should be conducted without one, Assistant Chief Peter Newsham said that "the officer would be in trouble."[153]

As part of its records request to the MPD, Human Rights Watch asked for all PD-251 reports at MPD for adult sexual assault cases and "allegations" (complaints of sexual abuse that an SAU member, after preliminary investigation, determines lack the criteria to be considered sexual abuse) from January 1, 2008 to 2011. We received responses to this request in August and December of 2011 and April 2012. After we notified the MPD of the initial findings in this report on May 30, 2012, the MPD provided us with over 1000 incident reports from 2008 through 2011, which they state is a complete set of PD-251s. We have incorporated these reports into this analysis. In addition, in June and August 2012, we reviewed the MPD's WACIIS database to search for missing cases that the MPD may not

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Assault Investigations," August 25, 2011, p. 7. However, more ambiguously, the 2011 order also says the responding officer should prepare the PD Form 251 "unless otherwise directed by the SAU detective." Ibid., p. 4.

[147] General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," December 22, 2006, p. 10. The 2011 General Order also requires the PD-251 to be complete by the end of an officer's shift. General Order, Metropolitan Police Department, "Adult Sexual Assault Investigations," August 25, 2011 p. 8; Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for victims services, Washington, D.C., May 30, 2012.

[148] "Reminder to Members Regarding Sexual Assault Investigations," June 8, 2012, on file at Human Rights Watch.

[149] Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for Victim Services, Washington, D.C., May 30, 2012.

[150] Ibid.

[151] Deposition testimony of Officer Michael Minor, _____ *v. Washington D.C, et al.*, May 14, 2008, pp. 98-100; Deposition testimony of Officer Ginette Leveque, --- *v. The District of Columbia et al.*, April 14, 2008, pp. 73-74; Deposition testimony of Officer Tandreia Green, --- *v. The District of Columbia et al.*, May 8, 2008, p. 69.

[152] Human Rights Watch email correspondence with R.A., June 15, 2012.

[153] Human Rights Watch interview with Chief Lanier, Assistant Chief Pete Newsham, and Sergeant Ronald K, Reid, Washington D.C., June 14, 2012.

have classified as sexual abuse cases in its system. This included "office information" or "miscellaneous" cases, as well as cases for which no PD-251 was prepared. (See the sidebar for a more detailed chronology of data collection from the MPD).

Through the Freedom of Information Act, Human Rights Watch also requested and received records from the Office of Victims Services (OVS), which oversees the SANE Program at Washington Hospital Center (WHC), the only SANE center in the District of Columbia metro area.

The SANE program regularly reports to OVS the number of forensic exams it administers. It further breaks that number down into those who do not report an assault to the police, those who report their assault to the police, and those for whom an exam was not performed though one was initially requested ("exam exemptions"). Human Rights Watch undertook this analysis after two sources informed us that in their efforts to follow up on sexual assault reports with the MPD, they found no case number had been assigned in a significant number of incidents in which the victim had believe they had reported a sexual assault to the MPD.[154]

Because the nurses usually examine victims after law enforcement speaks with them, they are able to record whether or not the victim is reporting a case to police and which police department was contacted. Human Rights Watch received dates of every sexual assault case seen by the unit for fiscal years 2009, 2010, and 2011. We also reviewed a handwritten log kept by nurses of reported sexual assaults from October 1, 2008, to November 30, 2009. And we reviewed exam exemption forms that nurses prepare when a patient does not undergo an exam for 2009-2011. These forms indicate whether or not the patient is reporting their case to the police and often the name of the detective.

We coded each case based on whether the case resulted in a report filed with the MPD, no report was filed, there was an exam exemption, or whether there was no code or error in the records. Between October 1, 2008, and September 30, 2011, WHC reported seeing 791 patients at their SANE program. Of those, 260 patients did not report to the MPD, were exam exempt, or had an unclear record. We removed these cases from our analysis. An

[154]Human Rights Watch telephone interviews with medical staff P.R., February 18, 2011 and September 22, 2011; and with medical staff M.H., April 8, 2011.

additional 51 cases were marked as outside of the MPD's jurisdiction and were also excluded from the analysis.[155] In total, we documented that 480 patients, at least, reported their assault to the MPD according to WHC for the time period examined.

In response to a summary of our report, the MPD, in June 2012, described five instances in which police would not be required to make a report. They included:

- A case in which a complainant described an assault that occurred 24 years ago, beyond the 15-year statute of limitations;
- Two cases in which the victims decided not to report after speaking with detectives at WHC;
- An incident in which a victim stated she was harassed by a man who said she looked like a man but did not disclose a sexual assault;
- And a case in which the police were called to a scene of a family disturbance but were told when they arrived that there was no assault, but that the parties were arguing.

However, none of these cases would have been included in Human Rights Watch's analysis of missing cases. The only cases compared to MPD PD-251s were cases in which the victim went to Washington Hospital Center for an exam *and* reported their assault to the police. Cases in which the victim reported an event outside the window for a forensic exam would be excluded from the comparison, as would cases in which the police indicated the victim did not go to the hospital for a forensic exam.

Human Rights Watch compared the dates of the 480 sexual assaults reported to the MPD from Washington Hospital Center to the dates on the PD-251s to determine which of the cases reported from the hospital showed a match to an MPD incident report.[156] Human Rights

[155] Victims assaulted in Maryland or Virginia occasionally report for an exam at Washington Hospital Center. Also, some cases in D.C. that occur in parks fall under the jurisdiction of the US Park Police or the Metro Transit Police. WHC provided information on the police department cases which were referred from/to for 24 of the 36 months studied; 39 patients were reported to non-MPD police departments during these months, including 6 in August and 4 in September 2011. Human Rights Watch estimated the number of non-MPD cases for the remaining 12 months. Because August and September 2011 were outliers, Human Rights Watch used the median of non-MPD cases reported to WHC per month (1) to estimate non-MPD cases in the 12 months for which we do not have data. Therefore, a total of 51 cases (39 reported, 12 estimated) were removed from analysis due to being reported to non-MPD police departments. For the 12 estimated cases, we removed cases that did not match a date for an MPD PD-251.

[156] Human Rights Watch used dates for the comparison because we did not have other victim identifying information that could be used to match hospital reports with police reports. Some cases that we counted as matches with police reports may

Watch included in its count of police reports all PD-251s for any case that could have gone to the hospital, including attempted assaults with no penetration, allegations of sexual abuse, misdemeanors with significant bodily contact, other types of sexual assault that could potentially have resulted in a forensic exam, and cases without a clear classification.

Cases in which the police clearly indicated that the patient refused medical treatment or that medical attention was "not applicable" were excluded from the analysis, as were misdemeanors in which contact was minimal (such as a slapped bottom or a pinch) for which a forensic exam was unlikely.[157] Cases outside the time frame were also excluded from the analysis.

... (t)he documents indicate that a total of 204 out of 480 reports (42.5 percent) were not documented or investigated by the MPD.

Between October 1, 2008, and September 30, 2011, Human Rights Watch found 183 police files clearly marked as having originated at Washington Hospital Center.[158] For an additional 216 files, it was unclear from the information available whether the victim went to Washington Hospital Center. These PD-251s were included in the analysis. Because police are required to fill out a PD-251 on their shift and they meet victims at the hospital when they have an exam, it can be expected that a PD-251 for each case will be filed within one day of the hospital report for that case.[159] Therefore, if the dates of a PD-251 corresponded within one day to an exam, we deemed the incidents a match.[160]

We found that between October 2008 and September 2011, for at least 35 percent of victims whom Washington Hospital Center documented as having sought a forensic exam and reported their assault to the MPD while at the hospital, there was no corresponding

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in fact be cases in which a victim happened to report to MPD within 24 hours of a different victim reporting at the hospital. When we were unable to determine from police information whether the victim had a forensic exam at WHC, we gave the benefit of the doubt to the police department and assumed it could be a potential match.

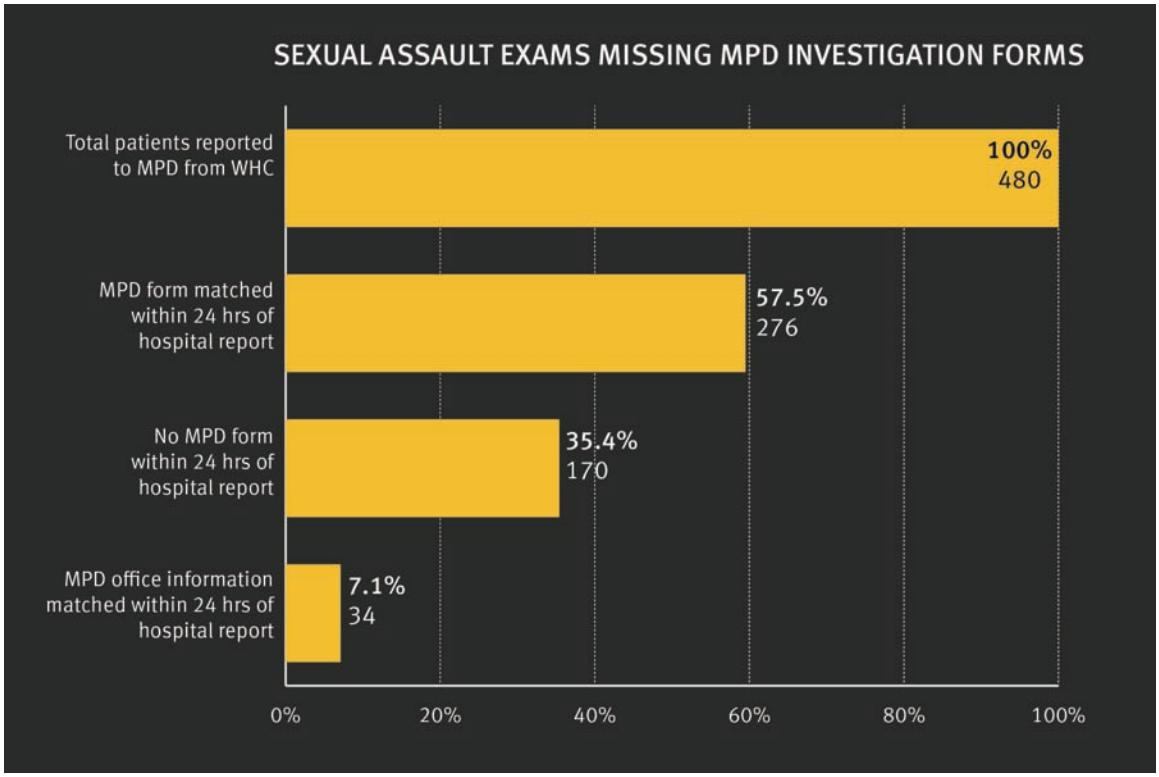
[157] Human Rights Watch included all attempted sexual assaults, even though in many cases where there was no penetration, no sexual assault kit was completed. However, forensic evidence (such as saliva swabs) should be gathered as long as there is contact between the victim and suspect, even if there is no penetration.

[158] Of the 183 police records indicating the victim went to the Washington Hospital Center, 177 were recorded within 24 hours of a WHC hospital report. Five "office information" cases and two "allegations" corresponded to "non-reports" at the hospital.

[159] In the Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for victims services on May 30, 2012, MPD confirmed that PD-251s are all completed during an officer or detective's shift.

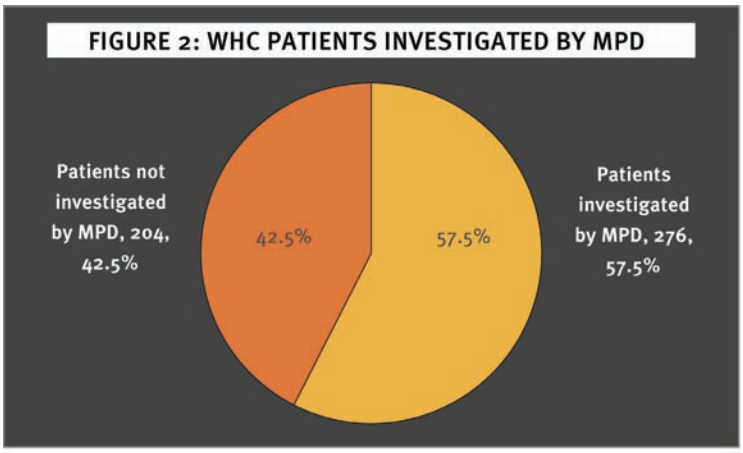
[160] Human Rights Watch initially also compared hospital reports to crime report data about sexual assaults made publicly available on the MPD's website and obtained similar results. However, in its June 8, 2012 response to our findings, the MPD raised concerns that the data on its website was incomplete, as it did not include cases in which it was not clear a sexual assault had occurred. Therefore we have excluded the website-based analysis from this report.

case recorded in a PD-251 within one day of the exam. There were 310 matches between cases documented at Washington Hospital Center and available PD-251s. For 170 cases in which Washington Hospital Center recorded a victim as having reported an assault to the MPD, we could find no corresponding record at the MPD within one day.



Thus a comparison of hospital reports shows only 64.5 percent of hospital reports can be linked by date to a PD-251. Of those cases, thirty-four were classified in police records as "office information" which, according to police policy, means they were not investigated.[161] Therefore, the documents indicate that a total of 204 out of 480 reports (42.5 percent) were not documented or investigated by the MPD.

[161] Cases deemed for "office information" only are also sometimes called "miscellaneous" cases or "sick or injured person to hospital."



Of the 276 cases that were documented and investigated, 227 (82.2 percent) were classified as first or second degree sex abuse or assault with intent to commit first degree sexual abuse. An additional 41 (14.9 percent) were classified as sex abuse allegations, which means the detective considered it unclear whether an assault occurred. The remaining eight cases were classified as other crimes.

We also compared the total number of hospital reports to MPD to the total number of PD-251s the MPD provided to us. The total number of PD-251s prepared by MPD should be significantly higher each month than the number of victims who report at the hospital. All those who reported to the MPD at the hospital should have a PD-251. In addition, the MPD's total number of PD-251s should include victims who report a sexual assault without having a forensic exam at Washington Hospital Center, such as: victims who walk-in and report a sexual assault to the department without going to the hospital; victims who report more than 96 hours after their assault (past the window for exams); victims who report at other hospitals or are examined by their own doctors; and those who decide for one of many reasons not to get an exam at all (such as they know their assailant, do not want to undergo a lengthy invasive procedure, or do not feel it is necessary because there was no penetration). It is likely that many survivors of sexual assault in D.C. never undergo a forensic exam, even if they report the assault to the police. One study in Los Angeles showed that only half of victims who reported a sexual assault to the police in that city underwent a forensic exam.[162] Similarly, Human Rights Watch's analysis of forensic evidence kits in Illinois over a 10-year period found that only 31 percent of reported rapes resulted in the administration of a forensic evidence

[162] See Cassia Spohn and Katharine Tellis, "Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Los Angeles County District Attorney's Office," Document No. 237582, US Department of Justice Number 2009-WG-BX-0009, February 2012, https://www.ncjrs.gov/pdffiles1/nij/grants/237582.pdf (accessed November 30, 2012), p. III; Human Rights Watch email correspondence with Cassia Spohn, October 25, 2012..

kit in that state.[163] A Department of Justice document cites research finding that nationwide only 59 percent of all victims choosing to report the victimization to law enforcement receive medical treatment.[164] Based on these trends, one would expect the total number of police reports for sexual assaults to be notably greater than the number of hospital reports.

Human Rights Watch is not able to determine from publicly available information how many victims attempt to report to the police outside of the context of Washington Hospital Center. However, assuming the Washington Hospital Center data is correct, 436 victims had exams and reported to the MPD in the three-year period analyzed by Human Rights Watch (excluding 44 cases in which the victim reported to the MPD at the hospital but did not have an exam). Over the same time period, MPD has 571 incident reports (including 173 police reports showing that the victim did not go to a hospital or went to a hospital other than Washington Hospital Center that were excluded from the date comparison analysis). Even if all the hospital reports were accounted for at MPD, the number is still far lower than expected. If the national study is correct and approximately 59 percent of people who report have forensic exams, the number of MPD reports for sexual assault for that period would be expected to be approximately 739 cases.

Finally, graphing the monthly number of reports produces the surprising result that in some months the hospital recorded more sexual assault reports to the MPD than the total number of sexual assaults the MPD had documented for the same month. For example, in May 2009, the hospital reported three more sexual assault cases than the MPD documented for the entire month. In October 2009, October 2010, and May 2011, the hospital reported one more case each month than the police documented. In 4 of 36 months, the police and hospital reported the same number of assaults. Because many victims do not get exams, the police should always have more cases than the hospital. This data suggests a significant number of sexual assaults (even apart from those noted at the hospital) may not be documented at all.

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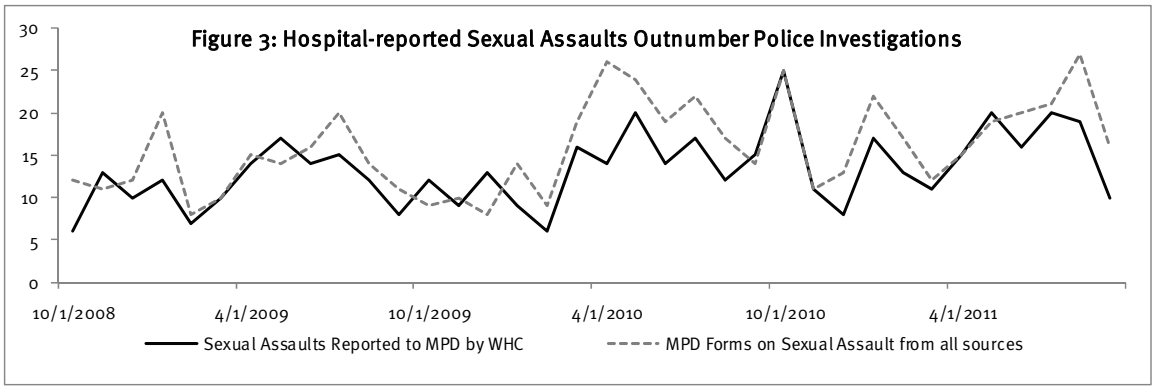
[163] See Human Rights Watch, *United States – "I Used to Think the Law Would Protect Me": Illinois's Failure to Test Rape Kits*, July 7, 2010, http://www.hrw.org/reports/2010/07/07/i-used-think-law-would-protect-me-0, p. 9.

[164] Office on Violence Against Women, US Department of Justice, "Ensuring Forensic Medical Exams for All Sexual Assault Victims: A Toolkit for States and Territories," December 2008, p. 15.



In Chief Lanier's December 20, 2012 letter responding to these findings, she indicates she has "1500 WACIIS [database] reports" for the time frame analyzed and indicates that this database is the correct basis for determining appropriateness of the police response to victims at the hospital. However, a WACIIS report alone, with no corresponding PD 251 incident report and no case number, indicates that this complaint, although received by the department, was not opened for investigation. As Assistant Chief Newsham told Human Rights Watch in a June 14, 2012 meeting, an officer would be "in trouble" for investigating a case with no case number. Because Human Rights Watch's focus is whether cases reported to the police from victims who had sought medical treatment at Washington Hospital Center were then investigated effectively, the existence of a database entry without a case number would not affect our findings. Nonetheless, when MPD raised this objection in June 2012, as described below, Human Rights Watch undertook repeated efforts to locate cases in WACIIS that may not have had incident reports prepared. Any entry found that corresponded to a missing case was included in the analysis, even if there was no case number.

Moreover, Chief Lanier states that the MPD sent Human Rights Watch 1080 PD-251s and therefore 571 is not the appropriate number to use to estimate the total number of reported sexual assaults in D.C. Over the course of the document production, the MPD actually provided Human Rights Watch with 1358 different incident reports. However, 787 of those cases either (1) were outside of the time frame used for this analysis (317); (2) were not sexual abuse cases or involved sexual contact, often over clothing, such as groping a breast, that would not result in a forensic exam (353); or (3) were reports of juvenile offenses and therefore would not involve Washington Hospital Center or the SAU (117). These cases are therefore irrelevant for comparison to cases that did have a

forensic exam. Accordingly, they were excluded from the analysis. For date comparison purposes, an additional 173 cases were excluded because the report indicated clearly that the victim did not go to the hospital or went to a hospital other than WHC.

A 2008 lawsuit filed against the MPD by a victim who attempted to report an assault (see Rachel's box) revealed the MPD practice at the time of giving SAU detectives discretion to decide whether they should file an incident report. Police officers, supervisors, and detectives gave deposition testimony about this practice—which was inconsistent with the official policy of documenting all reports of sexual abuse.[165] A supervisor testified in 2008, "It [filing a report] is all dependent on what the sexual assault unit detective or supervisor wants to do."[166] If the detective advises not to take a report, the officers follow their instructions.[167] An officer said a report must be taken "Only … if a sergeant or somebody demands that you take a report, then the official above the detective demands you take the report, yes, go ahead and take the report."[168] Then, as now, police practice requires that when an officer responds to a scene of a complaint of sexual assault, he or she notifies an SAU detective.[169] The detective then decides if a report should be taken by determining whether a case is "founded" or "unfounded."[170] "Unfounding," as described by officers in deposition testimony, refers to decisions detectives make on the spot without investigating whether or not they will open a case.[171]

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[165] Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, pp. 263, 266-67; Deposition testimony of Detective Elgin Wheeler, October 3, 2008, pp. 225-227; Deposition testimony of Sergeant George Maradiaga, July 14, 2008, pp. 79-84, 138-143, 195.

[166] Deposition testimony of Sergeant George Maradiaga, July 14, 2008, p. 143.

[167] Deposition testimony of Officer Michael Minor, _____ *v. Washington D.C., et al.*, May 14, 2008, p. 43.

[168] Deposition testimony of Officer Michael Minor, May 14, 2008, pp. 45-47.

[169] Deposition testimony of Officer Ginette Leveque, April 14, 2008, pp. 39, 42; Deposition testimony of Officer Tandreia Green, May 8, 2008, p. 30.

[170] Deposition testimony of Sergeant George Maradiaga, July 14, 2008, pp. 79-84, 103-104.

[171] "Unfounding" a case is also a term of art. Under the FBI guidelines, a case can only be "unfounded" if it is "determined through investigation to be false or baseless. In other words, no crime occurred." Uniform Crime Reporting Handbook 2004, Federal Bureau of Investigations, US Department of Justice, p. 77, at http://www.fbi.gov/about-us/cjis/ucr/additional-ucr-publications/ucr_handbook.pdf (accessed May 11, 2012). A case cannot be considered false or baseless if no investigation was conducted or if it yielded insufficient evidence. For a case to be considered officially "unfounded" at the MPD, a written report is supposed to be prepared and approved by a supervisor. Deposition testimony of Detective Elgin Wheeler, October 3, 2008, pp. 226-27, 230; MPD Standard Operating Procedures, Sexual Assault Unit, p. 32. The number of officially "unfounded" MPD cases is low. In 2008, for example, only nine rapes were unfounded according to information provided to the FBI, a percentage of cases (4.84%) much lower than many other cities. Federal Bureau of Investigations, Uniform Crime Reporting data, on file at Human Rights Watch.

An officer explained that SAU detectives had directed him not to take a report if "they feel it's not credible, [the complainant] can't prove anything."[172] A former supervisor in the SAU said that "sometimes" they investigated cases when they did not believe the complainant.[173] In cases where officers or detectives were unsure if something happened but an allegation of a sexual assault was made, a detective testified that there was no requirement for further investigation.[174]

According to depositions in the 2008 case, a decision not to write a report on an "unfounded" case of sex abuse was common at the time.[175]

Documentation of cases seems to have improved since 2008, and it is not clear whether in practice such discretion, albeit not in keeping with official policy, is still afforded to detectives. Even if detective discretion is not an issue, the above data analysis shows that a substantial number of cases remain undocumented, raising questions about if, when, and by whom, decisions are taken not to file reports of every assault reported, despite department policy.

Human Rights Watch has been informed that the officers involved in the 2008 lawsuit were transferred out of the SAU, and Chief Cathy Lanier informed Human Rights Watch about one patrol officer who was disciplined in 2010 for not taking a report of an assault after a victim complained. But Human Rights Watch has been unable to obtain any further information about current disciplinary measures taken against officers if they do not adhere to policies requiring reports for all incidents of sexual assault.[176]

In addition, although Human Rights Watch would have expected to see significant changes after and in response to the flawed practices revealed in the 2008 lawsuit, the experience of victims and those who work with survivors in the community and documentary evidence collected and reviewed from the Office of Victim Services and the MPD suggest that behavior reflected in the depositions persists among some detectives.

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[172] Deposition testimony of Officer Michael Minor, May 14, 2008, pp. 35-36, 40.

[173] Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008 p. 58-59.

[174] Ibid., pp. 62-65, 83.

[175] See deposition testimony of Officer Ginette Leveque, April 14, 2008, pp. 67-68, 71, 73, 157-58, 160-161; deposition testimony of Officer Tandreia Green, May 8, 2008, pp. 64, 203; deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, pp. 178, 198-199; deposition testimony of Officer Michael Minor, May 14, 2008, pp. 47-48 (estimating that reports were not written up for about half the sexual assault cases they responded to at the time of the depositions).

[176] Human Rights Watch telephone interview with Chief Lanier, June 1, 2012.

One police insider provided a possible explanation for the continuing failure to document some cases: "You get disciplined for paperwork. Thus less paper trail, less chance you have of getting in trouble."[177]

The apparent failure of some police to adhere to policy requiring documentation of all incidents reported does not appear to be linked to a shortage of staff. According to a February 2012 letter from the MPD, the SAU (referred to as the "Sex Squad") detectives had 23 cases each in calendar year 2010 and the "ideal case load" per detective is three monthly, or 36 per calendar year.[178] Other police departments (in Florida and Oregon) report an average caseload of at least 54 to 96 sexual assault or major crimes per year per detective.[179]

On June 8, 2012, the date of the MPD's response to Human Rights Watch's letter, the MPD issued a reminder to police to document all complaints of sexual assault.[180]

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[177] Human Rights Watch telephone interview with R.A., September 24, 2011.

[178] Letter from Metropolitan Police Department to Phil Mendelson, council member, February 24, 2012, p. 12.

[179] "Sexual Assault Response and Investigation: Portland efforts fall short of a victim-centered approach," A Report from the City Auditor, June 2007, www.portlandonline.com/shared/cfm/image.cfm?id=158873 (accessed May 24, 2012), p. 28 (reporting a median of 54 sexual assault cases per detective in nine cities, and a five-year average of 56 cases per detective in Portland); William Prummell, "Allocation of Personnel: Investigations," (analyzing caseload for detectives in Charlotte County, Florida and citing a Florida average of 72-96 major crimes cases per detective), on file at Human Rights Watch. Elsewhere sex crimes detectives carry as many as 110 cases per year. Human Rights Watch telephone interview with Sgt. Joanne Archambault, Addy, Washington, May 15, 2012.

[180] "Reminder to Members Regarding Sexual Assault Investigations," June 8, 2012, on file at Human Rights Watch.

TIMELINE OF HUMAN RIGHTS WATCH DOCUMENTATION REQUESTS AND MPD RESPONSES

On April 20, 2011, as part of its records request, Human Rights Watch asked the MPD for all PD-251s for adult sexual assault cases and "allegations" (complaints of sexual abuse that an SAU member, after preliminary investigation, determines lack the criteria to be considered sexual abuse) from January 1, 2008 to 2011. We received partial responses to this request in August and December of 2011 and, after repeated follow-up requests, a supplemental response in April 2012.

On May 30, 2012, Human Rights Watch informed the MPD that it was unable to locate incident reports for a significant number of cases in which the victim had gone to WHC for a forensic exam and reported their assault to the MPD.

Between May 31 and June 8, Human Rights Watch received an extensive production of all PD-251s for sex abuse cases from the MPD. Many were duplicates of the previous production. Human Rights Watch incorporated the new PD-251s into its data analysis.

On June 14, Human Rights Watch met with Chief Cathy Lanier, Assistant Chief Peter Newsham, and Sergeant Ronald Reid and shared the results of the revised data analysis with them. Even after including the new PD-251s in the analysis, Human Rights Watch could not find police reports corresponding to 149 WHC cases recorded as reporting sexual assaults to the MPD over a three-year period. At that time, Chief Lanier offered to allow Human Rights Watch to view MPD's internal database (the WACIIS) in order to locate missing cases, as some cases ("miscellaneous" cases, "office information" cases, or cases that also included another crime such as burglary) may not have been classified in the system as sex abuse cases and thus may have fallen outside the scope of our document request.

On June 19, senior Human Rights Watch staff went to the MPD to examine entries to the WACIIS database to try to identify possible missing cases with MPD members. At that time, Human Rights Watch provided the MPD with a list of the 149 dates for which documentation of hospital cases was missing. The MPD agreed to send incident reports for any case that might correspond with cases for which we were missing documentation.

On June 22, Human Rights Watch sent the MPD a list of case numbers that we believed might correspond to missing hospital reports. We developed the list based on notes from our June 19 review of the WACIIS database with the MPD.

On June 22, July 5, and July 19, Human Rights Watch received additional productions of incident reports and documents from the MPD. These documents completed the MPD's production of reports resulting from the June 19 database review and included a small number of incident reports previously excluded because they had been illegible.

TIMELINE OF HUMAN RIGHTS WATCH DOCUMENTATION REQUESTS AND MPD RESPONSES

On July 20, Human Rights Watch's counsel sent MPD a list of 34 cases produced by MPD that did not appear linked to a hospital report to see if internal records indicated a hospital visit not apparent on the cover sheet. MPD agreed to allow Human Rights Watch to review those 34 case files as part of the August investigative file review process resulting from the settlement agreement.

From August 21 through August 23, 3 Human Rights Watch staff members reviewed 148 case files from the WACIIS database in addition to 25 of the 34 cases mentioned above (8 cases were not in WACIIS and were not relevant to the analysis). Human Rights Watch agreed to take handwritten notes on the files and was not allowed to remove documentation from the office. Human Rights Watch agreed to keep the names of victims, witnesses, and suspects confidential. The cases reviewed included cases about which Human Rights Watch had questions, as well as cases in which Human Rights Watch had interviewed the victim. In addition, Human Rights Watch randomly selected a number of cases representing different sex abuse charges. The settlement agreement also provided Human Right Watch the opportunity to review 88 sex abuse case files from 2009 to 2011 that were in the WACIIS database but had not been assigned case numbers and thus did not have incident reports.

Human Rights Watch was able to determine from reviewing files whether or not the victim had a forensic exam at Washington Hospital Center. We therefore included in the data analysis those cases in which the victim did have an exam, regardless of whether they were classified as sex abuse cases or assigned case numbers. In addition, Human Rights Watch discovered that some cases that had previously been credited as police report matches to hospital reports because of the report date were not, in fact, linked to a hospital report. Accordingly, we corrected those classifications in the final data analysis.[181]

Human Rights Watch also received case cover sheets from the 148 selected cases. In some cases, the cover sheets showed that the police had picked up a forensic exam indicating that the victim went to WHC. We cross-referenced that information with the data used for the analysis of missing cases, though the cover sheets were not always comprehensive so notes from the file were considered authoritative if they indicated the victim went to WHC, even if the cover sheet did not record picking up the forensic exam.

On September 6, Human Rights Watch informed the MPD that it was Human Rights Watch's understanding that we had all the relevant documents. The MPD provided no further documentation of incident reports to Human Rights Watch.

On December 6, 2012, Human Rights Watch informed the MPD of the results of the third data analysis and provided the department with an opportunity to respond to its findings. On December 20, 2012, the MPD responded to the revised finding.

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[181] In re-reviewing WHC records, we also included exam exemption reports in which nurses documented that victims reported to MPD at WHC despite not getting forensic exams. Because of the corrections after reviewing police data, and the inclusion of the exam exemptions who reported to police, the total number of cases for which no matching PD-251 could be located increased to 183 cases in the final analysis.

Rachel G.'s Lawsuit Against the MPD

In 2008, Rachel G. commenced a lawsuit against the Metropolitan Police Department over the MPD's treatment of her when she reported a potential sexual assault in December 2006. At the time, Rachel was a 19-year-old college student, who had attended an off-campus party with a few friends.

When the lights came on after dancing, Rachel's friends noticed that she and the person who had been dancing with her aggressively were gone. After calling Rachel's cell phone and searching for her unsuccessfully, Rachel's friends convinced a man providing security during the party and blocking people from going upstairs to look for her.

Eventually, Rachel appeared at the top of the steps looking "out of it" and barely able to walk. She began vomiting profusely. Rachel said that someone had touched her while she was upstairs. Concerned that she had been drugged and raped, her friends took her to the hospital where staff told her to sleep it off and return the next day.

The next day Rachel woke up with pain in her rectum and hip and returned to the hospital, where she reported her assault to the police. The responding uniformed officer took down some information and then called an SAU detective who spent "two or three minutes, if that" on the phone with her.[182] During the course of litigation, the detective testified, "She told me that she was at a party. And she remembered kissing a guy.... I repeated back to her what she said to me. And there was a pause." The detective said he told the officer on scene, "This young lady, she's not reporting anything, she's not reporting a crime to me. I'm not bringing a sex kit up here."[183]

The detective did not ask for details about what happened or why Rachel wanted a forensic exam if what she was reporting was that she just kissed someone.[184] Later, Rachel testified in her deposition that she told the detective she had been raped, but he informed

[182] Deposition testimony of Vincent Spriggs, --- *v. The District of Columbia et al.*, October 23, 2008, p. 227.
[183] Ibid., pp. 225-226
[184] Ibid., p. 231

her that "I would not be able to receive a sex kit because I do not know the person['s] … last name." The responding officer left without filing a report.[185] The detective did not bring a rape kit to the hospital.

In granting the police motion, the court noted, "Unfortunately, this is not the first instance where the MPD is accused of acting with regrettable indifference to potential crime victims."

When Rachel's sister arrived at the hospital she could not understand why a report was not made. She called 911 twice and waited for more than an hour before two officers came. Rachel testified that the responding officers questioned her as if she were lying. "[They] were barking at me," she said. "They did nothing … to help me or to even try to make me feel like they would help me."[186]

Rachel's sister also testified that the officers were "short and rude" and "I was trying just to ask them some simple questions about the procedure…. I was told … that they were no longer going to answer any questions from me…. I felt like if I was going to ask more questions [that] they were going to, like, try to detain me…. And I didn't want any trouble with the police."[187]

When the officers called the SAU, the detective on duty (who consulted with his supervisor) told them that no investigation would be opened and no forensic exam authorized. [188] The detective told his supervisor that Rachel was "making up stories to the uniform officer so the sex kit can be performed."[189] The supervisor determined, based on statements from the complainant as relayed by the responding officer to the detective, that no crime was committed so there was no need to begin an investigation or for the detective to interview the complainant personally.[190] The unit supervisor later reiterated that his decision was correct, testifying, "blacking out is not a crime."[191] The officers did

[185] Deposition testimony of [Rachel], --- *v. The District of Columbia et al.*, April 1, 2008, pp. 124.

[186] Ibid., pp. 339-340, 346-47.

[187] Deposition testimony of [Rachel's sister], --- *v. The District of Columbia et al.*, March 31, 2008, pp. 145-146, 344-45.

[188] Deposition testimony of Sergeant George Maradiaga, July 14, 2008, pp. 207-208.

[189] Deposition testimony of Detective Sergeant Kevin Steven Rice, _____ *v. Washington D.C., et al.,* October 14, 2008, p. 182.

[190] Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, pp. 188-89; Deposition testimony of Detective Elgin Wheeler, --- *v. The District of Columbia et al.*, October 3, 2008, pp. 124-26, 134-35.

[191] Deposition testimony of Sergeant Kevin Rice, October 14, 2008, p. 211.

write a "miscellaneous" report, which the SAU supervisor testified was meant to "cover" them.[192] The report reads:

> C1 [the complainant] reported to both officers on the scene she attended a house party at the listed location and doesn't know if anything happened to her. C1 reports she blacked out. C1 was informed that a report could not be taken based on the statement she thinks something happened. Then C1 stated she went into the bathroom and a guy followed her in there and touched her breast and private parts and then she blacked out. C1 was asked what do you mean by private parts and C1 stated her rectum hurts. C1 stated she went from one extreme to another so someone had to put something in her drink, then C1 changed her story and said 'I was drunk.' C1 was then advised that in order to take a report, I have [to] have something concrete and not have any guesses. C1 then said she only wanted to have a sex kit done to see if anything happened….[193]

After nearly a full day of waiting for an exam at the first hospital, Rachel left and sought medical care at another hospital having still not showered, gone to the bathroom, or had much to eat, as the hospital had advised.

After waiting uncomfortably for hours at the other hospital, Rachel was told she could not get a forensic exam because she had been denied one earlier by the primary SANE provider in the area and because the police had already ruled it out. Rachel also talked to another SAU detective who informed her she could not help because her case was closed.[194] The next day Rachel tried to get a forensic exam in Maryland, but was turned away because the assault had occurred in the District of Columbia.

Rachel and her family complained to the MPD about how she was treated by responding officers. Despite the civilian complaint, supervisors did not question the officers about

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[192] Ibid., pp. 198-99.

[193] Leveque Exhibit 2, Incident-Based Event Report, December 9, 2006, on file at Human Rights Watch.

[194] Exhibit A to Plaintiff's Opposition to the Defendants' Refiled Motion for Partial Dismissal or in the Alternative for Partial Summary Judgment, Plaintiff's Statement of Material Facts in Opposition to Defendants; Motion for Summary Judgment, citing deposition testimony of [Rachel], April 1, 2008, paras. 104-110, and deposition testimony of [Rachel's sister], March 31, 2008, pp. 177-79.

the incident, discipline them, or speak with them about the decision not to take a report.[195] The department did not sustain the complaint and the incident did not go on the officers' records.[196]

Chief Lanier informed Human Rights Watch that she did transfer some detectives involved in this case out of the SAU at the end of 2008. Policy changes have since made it clear that police authorization is not required for a forensic exam.

Rachel's suit against the MPD was dismissed in August 2010 under the public duty doctrine, which gives police immunity from civil lawsuits. In granting the police motion, the court noted, "Unfortunately, this is not the first instance where the MPD is accused of acting with regrettable indifference to potential crime victims."[197] Rachel has appealed the dismissal. A lawsuit that Rachel also filed against the hospitals is pending.

Stopping the Investigation Before it Begins

> Investigators serve as prosecutor, judge, and jury and stop the process before it begins.
>
> —R.T., experienced community service provider to sexual assault victims, Washington, D.C., February 16, 2011

> I was shocked to hear that under Sharia law, a rape victim has to have four witnesses to the rape in order to have her case prosecuted. Then I realized it was not so different in D.C. because the standard seems so high for cases to move forward.
>
> —L.O., university counselor, Washington, D.C., March 28, 2011

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[195] Deposition testimony of Officer Ginette Leveque, --- *v. The District of Columbia et al.*, April 14, 2008, pp. 24, 29, 37 (though Officer Leveque's supervisor asked her to write an account of what happened); Deposition testimony of Officer Tandreia Green, --- *v. The District of Columbia et al.*, May 8, 2008, pp. 20-21; Deposition testimony of Detective Elgin Wheeler, October 3, 2008, pp. 161-62; Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008 p. 320.

[196] Deposition testimony of Officer Ginette Leveque, --- *v. The District of Columbia et al.*, April 14, 2008, pp. 24, 29, 37 (In contrast, she was disciplined for misusing her laptop because she used the word "hell" in a text message. Ibid. pp. 19-20). Tandreia Green was also disciplined for a paperwork issue, but not for her handling of the case in the lawsuit. Deposition testimony of Officer Tandreia Green, --- *v. The District of Columbia et al.*, May 8, 2008, pp. 20-21.

[197] Memorandum opinion, ----- *v. District of Columbia et al.*, August 25, 2010.

Police use a variety of mechanisms to shut down the possibility of further investigation of cases they do not deem credible. Our review of police investigative files confirmed witness observations that police consider a number of cases "unfounded" as early as the initial interview with the complainant. Some of these cases may not be documented at all. Other sex abuse cases may fall through the cracks if they are classified as a non-sex offense or as a less serious crime.

A number of sex abuse cases that Human Rights Watch examined were considered "office information" or "miscellaneous" cases, which means they were closed without investigation. In addition, several MPD cases were categorized as crimes other than sex offenses or were considered "misdemeanors," although they appear to be more serious sex abuse cases. Some victims raised questions about their cases being classified as a non-sex abuse case or a "miscellaneous" case despite their complaint of sexual assault. The reason for the classification is unclear in the files and raises questions regarding the effectiveness of review.

"Reported and Sex Crimes Closing"

The practice of closing the case immediately after an initial interview is particularly troubling because the victim is frequently traumatized during the initial interview (particularly if it immediately follows the assault) and therefore may not be able to concentrate or respond rationally.[198]

Inconsistencies in statements are a foreseeable symptom of trauma, yet one officer testified in 2008 that a decision not to take a report may be based on the victim's changing of his or her story after speaking with the responding officers.[199] Police investigative files from 2009 through 2011 show a similar reluctance to investigate cases when a victim statement contains inconsistencies (this is discussed further in section IV, on police treatment of victims).[200]

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[198] For research on the effects of trauma, see J. Michael Rivard, M.D. et al, "Acute Dissociative Responses in Law Enforcement Officers Involved in Critical Shooting Incidents: The Clinical and Forensic Implications," *Journal of Forensic Science*, vol. 47, no. 5, July 2002; David Lisak, "The Neurobiology of Trauma," 2002 (unpublished article, on file at Human Rights Watch); Sgt. Joanne Archambault, Dr. Kimberly Lonsway, and EVAWI, "Interviewing the Victim," May 2007, p. 21; PPCT Management Systems Inc. (1989), *Use of Force Human Factors (Chapter One)*; Mary P. Koss, Shannon Tramp, and Melinda Tharan, "Traumatic memories: Empirical foundations, forensic and clinical implications," *Clinical Psychology: Science and Practice*, vol. 2, no. 2, June 1995, pp. 111-132.

[199] Deposition testimony of Officer Michael Minor, May 14, 2008, p. 90-91.

[200] An additional problem is that prior to the change in policy in 2008 that allows victims to get a forensic exam without police authorization, the on-the-spot determination that no crime was committed also meant a sexual assault victim

The police practice of deciding not to investigate a case after speaking to a victim at the hospital has been sufficiently common that the "exam exemption" forms nurses at WHC use to document cases in which the victim has decided not to get an exam include an option for nurses to check that reads: "Reported and sex crimes not investigating," or "Reported and sex crimes closing," or "Reported and sex crimes investigating/not investigating."[201] A number of entries in the hospital log and on these forms for the years 2009 through 2011 indicate that the patient reported but the police were not investigating.[202] In some cases in which it was unclear whether or not a victim was assaulted, police files indicate recommending unfounding the case for lack of corroborating evidence before even picking up the forensic exam from the hospital, though the exam could possibly shed light on the question of whether or not a sexual assault occurred.[203]

Other indicia that police still repeatedly make decisions not to investigate reports appear in meeting minutes. Notes from an April 2009 SART meeting indicate frustration by nurses that, "Often they do not know why the MPD has decided not to investigate a case." And both police and nurses "are concerned about what to do in cases where MPD has decided not to investigate further and the victim still wants an exam. This kit isn't a non-report because it is associated with a [complaint], but MPD is not planning to pursue the case."[204]

The SANE director from July 2008 to December 2009 described the practice that she witnessed as the detectives trying to determine on the spot if it was a case they could win.[205] Some observers who have seen officers respond to sexual assault victims since 2008 also believe that some detectives act as if the burden of proof is higher for victims

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would be denied SANE exams by police who instructed hospitals not to examine complainants. Deposition testimony of Detective Vincent Spriggs, October 23, 2008, pp. 184-85. The decision of whether or not to authorize a kit was also made by a detective without guidelines from superiors. Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, pp. 101-103. This policy has changed, and a victim now does not require any police permission or authorization to avail themselves of a SANE exam, though as discussed below, police still sometimes indicate an exam is not warranted or "authorized."

[201] Exam Exemption forms, through October 2011, on file at Human Rights Watch.

[202] For example, in one case, the patient left the hospital before her exam, and the nurse noted, "MPD Detectives have already seen the patient and will not investigate." District of Columbia Sexual Assault Nurse Examiners Exam Exemption Report, June 23, 2010, on file at Human Rights Watch.

[203] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, SA10-XXX, SA10-XXX, SA11-XXX, August 21, 2012, on file at Human Rights Watch. Other cases are closed before results from forensic exams are returned, even when forensic evidence might address important issues in the case. Ibid., SA09-XXX, SX09-XXX.

[204] MPD/SANE SART Subcommittee Meeting, April 8, 2009, on file at Human Rights Watch.

[205] Human Rights Watch interview with Cindy Teller, D.C. SANE director from July 2008 through December 2009, Newport Beach, Virginia, June 24, 2011.

who are not injured or hysterical.[206] In their experience, they also believe that cases of digital or oral penetration are taken less seriously.[207]

"This is not 'miscellaneous.' THIS IS RAPE!" [208]

In April 2011, Maya T., a 37-year-old woman visiting D.C. from Virginia, reported being abducted and locked in a small room with nothing but a bucket to use as a toilet for three days. During that time, two men raped and sodomized her. While in captivity, she found a cell phone and managed to call 911. The fire department had to break down a door, padlocked from the outside, to reach her. An ambulance took Maya to the hospital where two SAU detectives met her.

Though she was feeling drugged and unwell, the detectives demanded a detailed timeline of what happened at the hospital. When she had difficulty responding, a detective told her she was "wasting their time" and "lying." He asked her if she "knew what penalty a false report brought" and said that he "didn't even want to file it."[209] He said the suspects told different stories from hers and that "no one would believe" her.

The other detective made a number of insulting remarks to Maya during the interview, commenting on her ability to speak Spanish and her body and implying that she wanted to return to the place where she was assaulted because her assailant was bringing her food. After the interview, the detectives did not open an investigation but instead filed a "miscellaneous" report or "office information."[210]

Maya tried to contact the detective to give a statement two days later, when she felt more stable, but he refused to hear it. He said that her case was a "miscellaneous report" and that she had "had consensual sex" with the men. He refused her effort to turn over

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[206] Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011; Human Rights Watch interview with Cindy Teller, June 24, 2011.

[207] Human Rights Watch group interview with advocates, March 28, 2011.

[208] Complaint form, Office of Police Complaints, May 9, 2011 (provided by Maya T.), on file at Human Rights Watch.

[209] Human Rights Watch telephone interview with Maya T. (pseudonym), May 10, 2011; Complaint form, Office of Police Complaints, May 9, 2011 (provided by Maya T.); Narrative of events provided by Maya T., on file at Human Rights Watch.

[210] Incident-Based Event Report, Complaint No. 11058XXX, April 28, 2011, on file at Human Rights Watch.

physical evidence (the suspect's cell phone, which she used to make the call). When she asked about her forensic exam, the detective said, "Rape kit? What rape kit?"[211]

A review of the investigative file indicated that Maya's impression that the police took the suspects at their word was correct. The initial report did not include much of Maya's account of what happened but rather indicated she was kept in a locked room with her consent (the suspect indicated that they both locked the door from the inside and out because the landlord would charge extra rent if he saw her).

The notes indicate Maya called the police when she "felt caged in." It said Maya "could not keep her story straight" and that she "had been having consensual intercourse with this guy and that he had been feeding her" and that "she did not scream or holler." (The report also noted, however, that she was found "yelling" from upstairs and informed officers on the scene that she had been forced to have sex against her will for the last three days). The detective closed the case as unfounded at the time of his interview with Maya.[212]

The MPD investigated the case only after Maya hired an attorney to follow up and complain about how she was treated. Further investigation revealed information consistent with Maya's account (the suspects confirmed she was left in a room with only a bucket as a toilet and had little or no food during her stay, only alcohol, and there was no inside doorknob for her to "lock herself in;" the 911 call transcript indicated she reported being kidnapped, raped, and possibly drugged). The case stalled when detectives refused to allow Maya to have her lawyer with her for a photo line-up "in order to keep the process pure."[213] Senior prosecutors interviewed for this report knew of no policy or reason preventing a victim's lawyer from being present for a photo line-up.[214]

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[211] Complaint form, Office of Police Complaints, May 9, 2011 (provided by Maya T.), on file at Human Rights Watch.

[212] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 22, 2012.

[213] Ibid.

[214] Human Rights Watch telephone interviews with C.L., assistant US attorney, September 18, 2012; and with E.M., assistant US attorney, September 19, 2012.

"Office Information" Cases

Human Rights Watch found that for a number of cases in which a victim reported a sexual assault to the police, the complaint was taken as "office information." (Police sometimes further classify these cases as "miscellaneous" or "sick [or injured] person to hospital" but they still fall under the general broad category of cases documented only for "office information").

Under the MPD guidelines, a complaint of sexual abuse can be deemed an office information 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." [215] An incident report is supposed to be prepared for these cases, even if the crime occurred in another jurisdiction but the victim went to a hospital in the District of Columbia. However, these cases are "closed by definition." If further investigation is needed, it "should be classified as an 'allegation' and handled accordingly."[216]

In Rachel G.'s case, for example, a responding officer testified that a miscellaneous (office information) report was filed in her case because "it was determined that no sexual assault took place,"[217] and that the report was meant to "cover" the officers.[218] In other cases, "office information" is used when the victim does not wish to report a crime at the time. In our data analysis, Human Rights Watch found five "office information" cases that matched cases at the hospital in which victims had a forensic exam but chose not to report their assault to the police at the time ("non-reports"). However, 34 cases in which the victim did report at the hospital fell into the "office information" category.

Overall, Human Rights Watch reviewed a total of 125 sex abuse cases documented as "office information" between 2009 and 2011, including 82 cases in MPD's database that were classified as "office information" for which no case number was assigned and no incident report (PD-251) prepared, contrary to internal guidelines. In most office

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[215] Metropolitan Police Department, Sexual Assault Unit SOP, pp. 32-33.
[216] Ibid.
[217] Deposition testimony of Officer Tandreia Green, May 8, 2008, p. 134.
[218] Deposition testimony of Sergeant Kevin Rice, October 14, 2008, pp. 198-99.

information cases Human Rights Watch reviewed, the information in the file was limited to detective notes from the initial interview with the complainant, but in a few instances the file contained additional interviews or investigation.

Misclassification is also problematic because, since "office information" or "miscellaneous" reports (unlike allegations) are not considered sexual assault cases, the MPD takes no precaution to hide the victim's name.

If officers believe that there is not enough information to substantiate filing an incident as a sex crime case (an SX case) they can file a sexual abuse "allegation" (an SA case) rather than an office information. An allegation "is a complaint of sexual abuse when… after preliminary investigation by an SAU member, a determination is reached that the investigation lacks the criteria of a sexual abuse offense."[219] An allegation is supposed to be investigated until it is upgraded to a case, closed as "unfounded," or until investigative leads have been exhausted.[220] Cases might be considered allegations in MPD's Standard Operation Procedures, among other situations, when there are inconsistencies that require follow up, or when the complainant: provides contradictory statements, had sex but is unsure if a crime occurred, is unresponsive, is too intoxicated to talk, or is referred from another jurisdiction.[221] Such categorization is appropriate if it is tracked and carefully reviewed by a well-trained supervisor who can ensure there is follow-up victim contact.[222]

While a number of reports reviewed by Human Rights Watch were classified appropriately, other sexual assault cases outside of the official "office information" categories were still classified as "miscellaneous" or "sick person to hospital" and for "office information" only. In these cases, minimal, if any, investigation was done.

For example, in the following cases a victim reported a sexual assault but the detective notes indicate the victim was too intoxicated to be interviewed at the hospital. Although

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[219] Metropolitan Police Department, Sexual Assault Unit SOP, January 14, 2003, p. 31.

[220] A letter from MPD's lawyer defines SX files as "sexual assault cases that were further investigated by the Sexual Assault Unit." Letter from Natasha Cenatus, FOIA officer, Metropolitan Police Department, July 26, 2011, on file at Human Rights Watch.

[221] Metropolitan Police Department, Sexual Assault Unit SOP, January 14, 2003, pp. 31-32. However, as described above and elsewhere in this report, in a number of cases in which the victim is too intoxicated to report or otherwise is unclear about elements of the crime, the case is classified as an "office information" case rather than an allegation and is not followed up.

[222] Sgt. Joanne Archambault, Dr. Kimberly Lonsway, and EVAWI, "Reporting Methods for Sexual Assault Cases," July 2007, p. 10.

police policy indicates that a case in which a complainant is too intoxicated to talk or is unresponsive at the time of the report is to be considered an allegation until it is investigated further, these cases were listed as office information cases and from examining the documentation, it would appear as if no follow up was done. In some of these cases, no case number was assigned and no incident report was prepared:

- An April 2009 case in which the complainant reported that the subject tried to rape her but did not say how. The complainant was under the influence and had to be woken with an ammonia capsule to be interviewed at the hospital. The case was filed as "office information" because "The complainant did not report a sexual assault." The police file contained no indication of follow-up.[223]
- A May 2009 case in which the complainant was found intoxicated on the sidewalk stating she was raped. She was "highly intoxicated" at the time of the interview. The report indicates "follow up: None," even though the complainant was taken to the hospital.[224]
- An October 2011 case in which the victim was still intoxicated and refused to talk when detectives interviewed her at the hospital. The file notes that after providing basic information about her rape, the victim walked out of the quiet room (the designated room at WHC where detective's interviews take place). A rape kit was completed, but the case was listed as "miscellaneous" and there is no indication of follow-up in the report.[225]
- An April 2009 case in which notes indicate that "throughout the interview the complainant was slurring her speech and falling asleep. The complainant appeared to be under the influence … she was unable to focus on the interview and continued to fall asleep." Yet no indication of an additional interview when the complainant was coherent appears in the file. The case was not assigned a case number.[226]

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[223] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 21, 2012.

[224] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 23, 2012.

[225] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012. In contrast, in a February 2011 case, a detective notes meeting a complainant at the hospital who was incoherent and unable to tell the detective details of what happened to her. The detective wrote, "I advised the complainant that I would return at a better time." The detective did follow up, and the case was upgraded from an allegation to a sex abuse case, eventually resulting in an arrest. Human Rights Watch notes from review of MPD investigative files, SA11-XXX/SX11-XXX, August 22, 2012.

[226] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 23, 2012.

As in Rachel G.'s case, a number of the cases Human Rights Watch reviewed that were assigned to the category of cases "closed by definition" involved drug or alcohol use. Misclassification is also problematic because, since "office information" or "miscellaneous" reports (unlike allegations) are not considered sexual assault cases, the MPD takes no precaution to hide the victim's name. Publicly available incident reports initially provided to Human Rights Watch in response to its public records request included personal information for victims in some of the cases listed below.[227] This raises serious concerns about victim privacy. In addition, until June 2012, police did not refer victims of cases considered allegations or office information to an MPD's victim specialist for support services.

The following are some of the office information cases Human Rights Watch reviewed (we describe more in the section on drug or alcohol facilitated assaults below):

- An early 2010 case in which a student reported that she was forced to orally copulate a stranger in an alley after a night of drinking. No investigation was done apart from a victim interview, but the detective's internal report concludes, "There is nothing to corroborate the complainant's alleged allegations." The document review indicates that the detective did not prepare an incident report or assign the report a case number. The victim had a forensic exam, but there is no indication of follow-up on possible forensic evidence.[228]
- A May 2010 case in which the complainant was intoxicated and outside a club when a suspect told her if she did not go with him she would be raped. He then took her in a car with a group of four other men who called her friends and told them they would rape her if they did not come and get her. The subject then called another friend of the complainant and told her the complainant was being raped at the time. The victim was taken to the hospital by ambulance after police were contacted. An SAU detective met her and her friends there. She was still intoxicated and did not recall details of what happened to her in the car. For follow up, the detective notes say, "[Complainant] was provided with a business card and was advised that a record of the interview would be made [sic] in the

[227] In addition, Human Rights Watch received dozens of PD-251s from the MPD for sexual assault cases not classified as "miscellaneous" that included identifying information about victims (including names, addresses, and telephone numbers) in violation of MPD guidelines.

[228] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 23, 2012.

department's database." The case was classified as "office information." The file contains no indication of further investigation, follow up, or of results from the forensic exam, until nine months later (March 2011) when a supervisor recommended that the case be reopened.[229]

- The case of Maya T. (see text box) whom the fire department rescued in April 2011 from a room that was padlocked from the outside. Police did not open an investigation at the time but instead filed a "miscellaneous" report that read, "C-1 reports she was locked in a room for three days and made to have sexual intercourse. Investigation revealed that C-1 had agreed to stay in the room until the residence [sic] returned home from work and the sex was consensual." Maya's name and address are on the report.[230] In addition, the detective closed the case as "unfounded" at the time of the report.[231]
- A February 2011 case in which the victim was highly intoxicated and throwing up at a party. Afterwards, her dress was on inside out and her panties and pantyhose were off. The complainant had a forensic exam but the detective notes the "kit was turned over to mobil [sic] crime as no case."[232] It was classified as "miscellaneous."
- A PD-251 describes a victim who reported a sexual assault but was in and out of consciousness and unable to provide details. Her name, address, and phone number appear on the publicly available report.[233]
- A PD-251 in which the complainant reports she went to a party, got drunk, and went to sleep. When she woke up she felt she had been vaginally penetrated and also believed "she received oral sex while a pillow was being pressed against her face." Her personal information is on the PD-251.[234]
- An October 2011 miscellaneous report in which the complainant reports that "an unknown male (S-1) 'pulled his penis out and shoved it in vaginally.'"[235] The victim's identifying information is on the event report.
- An October 2010 miscellaneous report from a victim who went to the hospital for a forensic exam after a night drinking at a club. The form indicates, "An

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[229] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

[230] Incident-Based Event Report, Complaint No. 11058XXX, April 28, 2011, on file at Human Rights Watch.

[231] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 22, 2012.

[232] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 22, 2012.

[233] Incident-Based Event Report, Complaint No. 11024XXX, February 22, 2011, on file at Human Rights Watch.

[234] Incident-Based Event Report, Complaint No. 11122XXX, August 21, 2011, on file at Human Rights Watch.

[235] Incident-Based Event Report, Complaint No. 11145XXX, October 4, 2011, on file at Human Rights Watch.

incident report is needed because R-1 [the complainant] responded to WHC on her own and completed a sex kit."[236] Her identifying information appears on the incident report.

In only one of the above cases was there an indication in the database that a supervisor requested additional investigation from the detective. Of 88 sex abuse cases between 2009 and 2011 that Human Rights Watch reviewed that were not assigned case numbers at all, the database file noted supervisor review for only 4 cases, though it is possible that review took place and was not noted in the police database. Of 43 office information case files reviewed by Human Rights Watch that had case numbers assigned to them, only 11 had indications of supervisor review. Five of those were in relation to warrant requests, four of which were rejected.[237]

Even cases that are documented as "allegations" sometimes languish without investigation. For example:

- In late 2011, after consuming a "double shot" of alcohol, a victim reported waking up to find an unknown male engaging in vaginal intercourse with her. She did not know where she was but was able to take a taxi to the hospital for a forensic exam. According to police notes, the victim had bruises on her face, a laceration on her upper lip, and pain in her vaginal area. The victim had no recollection of the evening's events after leaving a nightclub and was not able to indicate where the assault took place. The detective wrote, "At this time this is an allegation solely due to the fact there is DNA that will be transported to the forensic lab where a case number is needed for processing." Although the detective suggested follow-up at the nightclub and at the hospital, nine months after the assault the file contained no indication of any investigation after the initial statement.[238]
- A case in the spring of 2011 in which the complainant said he was drugged and assaulted. The allegation was initially listed as "pending SANE results" but the kit was not located and sent for testing for several months. In addition, there was no indication of investigation until "the undersigned investigator received a phone call from the Gay and Lesbian Liaison Unit. Officer stated she received a complaint

[236] Incident-Based Event Report, Complaint No. 10143XXX, October 3, 2010, on file at Human Rights Watch.
[237] Human Rights Watch notes from review of MPD files, August 21-23, 2012, on file at Human Rights Watch.
[238] Human Rights Watch notes from review of MPD investigative files, SA11-XXX. August 21, 2012.

about how his case was being handled. C stated nothing had happened on his case" and requested a female detective. Six months later the complainant went to the police department and provided a statement about the assault. In March 2012 the assistant US attorney sent a warrant request back for corrections.[239]

- A January 2009 case in which the victim reports that after drinking with a friend and consensually kissing in his room, the suspect became forceful and inserted his penis into her vagina against her will. The police viewed surveillance video but because of a time discrepancy between when the victim reported she was assaulted and when she swiped her card to enter her dorm, the detectives seemed to lose interest in the investigation. After the forensic exam kit was turned over to the lab (ten days after the exam), there is no indication of any investigation. Even though the victim was "adamant" that the assault took place, it is listed as an allegation.[240]

In her December 20, 2012 response to our December letter informing the MPD of our findings with regard to office information cases, Chief Lanier indicated that our analysis reflected a "complete misunderstanding" and that,

> In the past these classifications were used for cases where the preliminary investigation did not reveal enough elements of a crime in the District of Columbia. A few examples of such cases would include cases where the victim cannot remember details of the offense, other evidence (video) or witness statements indicate the offense did not occur, or the offense occurred in another jurisdiction. Human Rights Watch also failed to mention that because of suggestions from HRW, MPD changed this reporting procedure, and that public reports are taken on all cases and they are classified as either a sexual allegation or a sexual abuse case.[241]

This description is grossly misleading. The definition of "office information" used by Human Rights Watch was taken from the MPD SAU's own Standard Operating Procedures, which

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[239] Human Rights Watch notes from review of MPD investigative files, August 21, 2012.

[240] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 21, 2012.

[241] Letter to Human Rights Watch from Chief Lanier, December 20, 2012, on file at Human Rights Watch.

continue to govern SAU investigations.[242] The Standard Operating Procedures indicate that "office information" cases are "closed by definition" and used when "no crime was deemed to have occurred." While crimes occurring in other jurisdictions are properly categorized as "office information" under MPD's guidelines, any case in which "further investigation is needed"— including a case in which the victim is unsure if a crime occurred— is supposed to be classified as an allegation. After investigation, if it is determined that no crime occurred, it will be closed as "unfounded." Thus, apart from cases occurring in other jurisdictions, the situations described by Chief Lanier, under her procedure and policies, would properly be classified as allegations. The new policies that have come out since informing the MPD of our findings on May 30, 2012, make no reference to the use of "office information" and are consistent with the Standard Operating Procedures.

Eleanor G.

Discounting a sexual assault may negatively impact a victim's recovery and ultimately undermine faith in the law enforcement, as was the case for Eleanor G. On May 29, 2011, Eleanor was walking home late at night when she noticed a strange man walking behind her. He made her nervous so she typed "911" into her cell phone. As she was walking past an alley about to cross the street, her assailant grabbed her from behind. He said "If you scream, I will kill you. Give me your money and anything else I want."

When she put her hands up in a gesture of compliance, his box cutter dug deeply into the palm of her hand. Eleanor fell to the ground. He was on the ground behind her with one arm around her waist and the box cutter at her throat. He insisted she get up and go into the alley. She begged him to take her purse and money and let her go, but he refused.

Eleanor even offered to go to an ATM to get him cash rather than go into the alley. He still insisted that she go into the alley with him and when she refused he pressed the box cutter harder into her throat and then "he started to count down from five." At that point, she was bleeding profusely and felt she had no choice but to go into the alley. Once in the alley, he pushed her against the wall and tried to turn her to face him. Eleanor said,

[242] According to the June 12, 2012 memorandum on sexual assault investigations, the "Criminal Investigations Division is currently reviewing and updating standard operating procedures for the Sexual Assault Unit." Criminal Investigations Division, Metropolitan Police Department, Division Memorandum, "Sexual Assault Investigations," June 12, 2012, p. 1.

> It's very clear to me that it was an attempted sexual assault. He ripped my dress. He forced me into an alley. He wouldn't take my money … I don't understand what possible explanation there could be if it was only a robbery.

When her assailant removed the box cutter from her throat in order to turn her to face him, Eleanor was able to grab his wrist and disarm him. Her assailant hit her in the back of her head but she was able to scream for help. A neighbor ran into the alley when he heard Eleanor's cry of "Rape!" and her assailant fled. Another woman who heard Eleanor's scream called 911 and police arrived on the scene shortly thereafter and transported her to a hospital.

Eleanor was grateful that an officer stayed with her while she was alone at the hospital, but she was later shocked to find her case was categorized as a "robbery w/armed."[243] It was not classified as an attempted sexual abuse, though Eleanor repeatedly told both police officers on the scene and the detective she spoke with later that it was an attempted rape.[244] She attempted to change the classification of her report on more than one occasion but failed.[245] The police kept saying, "Well, but he didn't rape you."[246]

Eleanor wrote to Chief Lanier about her experience and described her rage about this misclassification given how clear she was in her communications with detectives and officers about her assault. A few weeks later, an officer called her at work. During the call he referred to her assault as "an incident" and told her "sometimes we think we're experiencing something but it isn't necessarily what we think." The call was very upsetting for Eleanor:

> All he kept saying was 'the incident,' 'the incident.'… For them it's just an incident. But for me, I was stabbed three times. For me, I felt like I had to pick being between being killed or being raped. It's not just an incident.[247]

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[243] Incident-Based Event Report, Complaint No. 11075XXX, May 29, 2011, on file at Human Rights Watch.

[244] Letter from Eleanor G. to Chief Cathy Lanier, October 4, 2011, on file at Human Rights Watch.

[245] Ibid.; Human Rights Watch telephone interview with Eleanor G., Washington, D.C., July 26, 2012; email correspondence from Eleanor G. to Officers Daryl Marine and Conan Conaboy, Metropolitan Police Department, July 7 and July 15, 2011, on file at Human Rights Watch.

[246] Human Rights Watch interview with Eleanor G., Washington, D.C., August 21, 2012.

[247] Ibid.

The investigative file for the case, which Human Rights Watch reviewed, does not reference an attempted rape at all. The witness who responded after hearing Eleanor cry "rape" was never interviewed.[248] Eleanor felt that the minimization of her experience by the MPD "caused me more victimization than the actual perpetrator of the crime committed against me."[249] She felt,

> They just didn't listen to me, they made me feel completely ashamed of myself, they made me feel like I was lying or like I was too stupid to understand what happened to me, that I was trying to make something a big deal that wasn't that big of a deal…. My police interaction made my recovery much harder…. To me, it feels like they're saying it didn't happen at all because of the omission … they just don't believe what I was saying and that to me is … the worst thing because … I know that they're not going to catch him. [250]

She said she has lost faith in law enforcement and when she looks at police reports, "I don't know when to believe them. I know I should report a crime, but honestly, if I had to go through that again, I'm not sure I would."[251]

It's possible that the police officer who took the report thought that there would be insufficient evidence to charge the case as an attempted rape. Yet that is a decision for prosecutors, not police. Not classifying the case as an attempted sexual abuse case (or even as an allegation) meant that the SAU did not investigate her case and that Eleanor was not referred to a victim specialist; a potential rapist may also have been permitted to walk the streets undetected. The following January, another woman was sexually assaulted at gunpoint in the same alley.[252]

Omitting Sex Offenses

Because detectives put the offense with the most severe penalty first on the incident report, sexual assault cases may sometimes be listed as a second offense after burglary or

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[248] Human Rights Watch notes from review of MPD investigative files, 3DDU11-3XXX, August 21, 2012.
[249] Letter from Eleanor G. to Chief Lanier, October 4, 2011, on file at Human Rights Watch.
[250] Human Rights Watch interview with Eleanor G., Washington, D.C., August 21, 2012.
[251] Ibid.
[252] Ibid.

another crime. However, in some cases, victims reported sexual assaults or attempted sexual assaults, but their crimes were categorized as some other type of crime and either not referred to the SAU at all or not investigated by the SAU as a sexual assault.

For example, an exam exemption report notes a case of a woman who in September 2010 was pushed into her apartment by a stranger when she tried to open the door. Her assailant threw her onto the bed, ripped her dress off, and lowered her leggings. The woman urinated on herself in fear and the suspect threw her against a wall but did not continue with the sexual assault. According to a hospital report, the MPD investigated the case as a simple assault and burglary rather than an attempted rape.[253]

A lawyer described how a close friend in D.C. was woken in her apartment in the summer of 2011 at about 5 a.m. by a stranger holding her down in her bed with what the assailant said was a knife. He said he was going to rape her but she screamed and succeeded in fighting him off before he managed to do so. Police refused to write up the report as an attempted rape and were described by the victim to her friend as "incredibly rude." The MPD classified the incident as a burglary only.[254]

A witness at the hospital reported seeing a case in which the victim's rectum was cut with a knife, but the case was marked as a physical assault only.[255] An October 2009 case in which the victim was handcuffed and driven to an undisclosed location and sexually assaulted was categorized only as "kidnapping."[256]

In other cases, the misclassification of a case may result from misunderstanding the law. The D.C. Code defines a sexual act in part as, "the penetration, however slight, of the anus or vulva by a hand or finger or by any object, *with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person*"[257] (emphasis added).

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[253] District of Columbia Sexual Assault Nurse Examiners Exam Exemption Report, September 25, 2010, on file at Human Rights Watch.

[254] Email communication from lawyer to Human Rights Watch, August 12, 2011.

[255] Human Rights Watch telephone interview with medical staff P.R., May 10, 2011.

[256] Incident-Based Event Report, Complaint No. 145XXX, October 10, 2009.

[257] D.C. Code Section 22-3001. "Sexual acts" also include "The penetration, however slight, of the anus or vulva of another by a penis; contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus."

However, in some cases detectives deemed penetration not to be a sexual act because they did not think the penetration was committed for sexual gratification. Concerned medical staff reported the following exchange to the Office of Victim Services in April 2011:

> [Patient(Pt.)] stated that she was vaginally and possibly anally assaulted by two men who had broke into her fiancee's house and that she had been hit in the head several times and lost consciousness. She wanted to report and have an exam completed. She was also two months pregnant. [After meeting with detectives, the patient decided not to have an exam].

A sergeant asked to look into the matter said he was aware of the incident and that it was not a sex crimes case. Asked why he concluded this, the sergeant told the staff member, "There was no intent for sexual pleasure or gratification."[258] The medical staff member said,

> I explained to him that I didn't believe sexual gratification needed to be proven, that it was various things such as harassment, degradations, humiliation. He specifically told me 'No, it must be for gratification.'[259]

In some cases it is also unclear why a case is classified as an allegation rather than a sex abuse case. For example, an April 2011 report for a victim with a stab wound stated,

> She was given a ride by a 'courtesy driver' from the Giant Food Store … with her groceries. V-1 alleged that the driver then, against her will, took her to an unknown location, where the driver and another unknown subject tied her up with duct tape and forced her to have sex for three days.

The victim stated "she escaped from the location she was held, ran into the street and flagged down a vehicle" that drove her to the hospital. The victim was the subject of a

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[258] Internal OVS email describing account of case, dated April 18, 2011, on file at Human Rights Watch. It is possible the detective thought the suspect was searching for drugs.

[259] Ibid; An exemption form indicates a detective informed the patient that it was a robbery and physical assault and not a sexual assault and that detectives already got the person who assaulted her. The victim said, "I do not feel like dealing with this situation. I am already embarrassed enough." District of Columbia, Sexual Assault Nurse Examiners Exam Exemption Report, dated April 13, 2011, on file at Human Rights Watch. Sergeants who supervise the unit are to ensure that all reports and investigations are properly classified, and they are responsible for the proper investigation of all cases assigned to their squad members. Metropolitan Police Department, Sexual Assault Unit SOP, January 14, 2003, p. 96-97.

missing person report. "It was determined by the sex branch investigators that no criminal report would be taken until further investigation."[260] It is unclear why the case was not initially investigated as a sexual assault case, or whether it was reclassified.

The June 12, 2012 MPD memorandum now requires including an additional classification of "sexual abuse" or "sexual allegation" in all incident reports involving sexual assaults and articulating the offense in the narrative section, even if the primary offense documented is a different crime.[261]

"Misdemeanors"

In the District of Columbia, "misdemeanor sex abuse" (punishable by not more than 180 days imprisonment and a fine not to exceed $1,000) is defined as "whoever engages in a sexual act or sexual contact with another person and who should have knowledge or reason to know that the act was committed without that other person's permission."[262] Therefore sexual acts, including oral, vaginal, and anal penetration, which are not committed on an incapacitated victim or forcibly, may technically be misdemeanors (along with groping cases) under D.C. law, though prosecutors interviewed for this report indicate that would be unusual and that force is not difficult to prove.[263]

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[260] Incident-Based Event Report, Complaint No. 11046XXX, April 7, 2011, on file at Human Rights Watch.

[261] Criminal Investigations Division, Metropolitan Police Department, Division Memorandum, "Sexual Assault Investigations," June 12, 2012, p.2.

[262] Misdemeanor sexual abuse, D.C. Code Ann. § 22-3006. A sexual act is defined as "The penetration, however slight, of the anus or vulva of another by a penis; contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus." Sexual acts also include "the penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person" D.C. Code Section 22-3001 (8).

[263] A review of state law found that of the 15 states that define sexual assault in a way that includes sexual penetration without consent, only one state (Alabama) classifies it as a misdemeanor. Even in Alabama, the punishment for such an assault is up to a year, twice as long as in D.C.. Sexual Misconduct, Ala. Code Sec. 13A-6-65 (2010). Elsewhere, a sexual act of penetration without consent is considered a felony with a multi-year sentence. See, for example, Sexual Abuse in the Second Degree, Or. Rev. Stat. Ann. Sec. 163.425 (West 2011) Sexual Battery; Miss. Code Ann. Sec. 97-3-95 (West 2010); Sexual Battery, penalty, Miss. Code Ann. Sec. 97-3-101 (West 2010); Sexual assault, penalties, Mo. Ann. Stat. Sec. 566.040 (West 2011); Rape in the third degree, N.Y. Penal Law Sec. 130.25 (McKinney 2011). The FBI now defines rape as "The penetration, no matter how slight, of the vagina or anus with any body part or object or oral penetration by a sex organ of another person, without the consent of the victim." "UCR Program Changes Definition of Rape: Includes All Victims and Omits Requirement of Physical Force," Federal Bureau of Investigations, March 2012, http://www.fbi.gov/about-us/cjis/cjis-link/march-2012/ucr-program-changes-definition-of-rape (accessed November 16, 2012). While D.C.'s definition of misdemeanor sex abuse seems out of step with laws elsewhere, it is beyond the scope of this report to compare the District's approach to that of other jurisdictions to determine its effectiveness. Prosecutors interviewed for this report in the District appreciated having the ability to prosecute difficult cases in front of a judge—rather than a jury—which would not be possible if the punishment were more severe. Human Rights Watch telephone interviews with C.L., assistant US attorney, Washington D.C., September 18, 2012; with M.G., assistant US attorney, Washington D.C., September 19, 2012; and with S.R., assistant US attorney, September 18, 2012. However, an expert advises that if you never try these cases before juries, they are never going to understand them or convict, so it is a self-perpetuating cycle. And the result is that victims are less safe

Police consider a "misdemeanor" an "upgrade" from an "allegation." In two cases in which the victims were intoxicated and did not recall details of the assault, detectives recommended "upgrades" to misdemeanors from allegations after confirmation that a sexual act took place.[264]

When reviewing police documents, Human Rights Watch found multiple cases classified as misdemeanors despite descriptions on incident reports that seem to meet criteria for more serious sex offenses.

According to a letter from the MPD,

> Initial sexual abuse reports, like any other police report, are often completed in the infancy stages of an investigation. The reporting member can only report on the facts that are available at the time of the report. If more facts become available, there is a process for reclassifying the report, and MPD frequently reclassifies reports when more information becomes available.[265]

Incident reports are reviewed by the reporting officer's supervisor, or if an SAU detective prepared the incident report, a sergeant in the SAU. All reports are also subject to additional staff review. Modifications to classifications can now be made electronically.

Human Rights Watch compared misdemeanor reports that seemed wrongly categorized to first and second degree sexual abuse cases, and to allegations of sexual abuse and attempted sexual assault, provided by the Metropolitan Police Department in June 2012, to see if the misdemeanor reports had been reclassified. In two cases, we found misdemeanors that had been reclassified as first degree sexual abuse cases. However, the following cases were classified as misdemeanors, despite facts available at the time of the report that indicate a more serious offense. Their investigative files (which Human Rights Watch reviewed in late August 2012) contained no indication of reclassification:

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because offenders are not held accountable. Human Rights Watch email correspondence with Jennifer Long, director, Aequitas: The Prosecutors' Resource on Violence Against Women, October 24, 2012.

[264] Human Rights Watch notes from review of MPD investigative files, SX08-XXX, SX11-XXX, August 21, 2012.

[265] Letter from Chief Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

- A case in which the complainant reported that while walking on the street the suspect threw her to the ground, ripped off her underwear, pulled down his pants, made contact with her vagina (without penetration) and attempted to hold his hand over her mouth before fleeing.[266]
- A case in which the complainant stated the suspect placed his middle finger inside of her vagina without her permission.[267] Detective notes indicate the complainant "didn't tell him to stop because she was scared."[268]
- A case in which the complainant states that the suspect continued to "get things going again" after the complainant told him she did not want to go any further and that he "placed his penis into the complainant's vagina against her will."[269]
- One incident report reads, "The complainant states that the suspect penetrated her vagina several times with his penis without her consent. The suspect then left the room. When the suspect returned, he slapped the complainant in the face and pushed her down on a mattress. The suspect then penetrated the complainant's vagina with his penis again without her consent. The assault ended when the suspect masturbated on the complainant's face and in her mouth."[270] Investigative notes from the report further indicate that the complainant tried to escape but was slapped and raped again.[271]
- A case in which the complainant disclosed "that while she was extremely intoxicated the Suspect had sexual intercourse with her (penis to vulva) without her consent. The complainant advised that due to her level of intoxication she was not able to say no, however, the sexual act was not wanted."[272] The investigative

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[266] Incident-Based Event Report, Complaint No. 113XXX, August 11, 2008, on file at Human Rights Watch.

[267] Incident-Based Event Report, Complaint No. 033XXX, March 12, 2009, on file at Human Rights Watch.

[268] Human Rights Watch notes from review of MPD investigative files, SX09-XXX, August 22, 2012.

[269] Incident-Based Event Report, Complaint No. 108XXX, July 31, 2009, on file at Human Rights Watch.

[270] Incident-Based Event Report, Complaint No. 132XXX, September 15, 2009, on file at Human Rights Watch.

[271] Human Rights Watch notes from review of MPD investigative files, SX09-XXX, August 22, 2012. In response to notice about Human Rights Watch's concern about misclassification of this case, Chief Lanier informed Human Rights Watch on December 20, 2012, that the case was thoroughly investigated and presented to the US Attorney's Office for prosecution, but in this case "there was no effort to upgrade the charges." Letter from Chief Lanier to Human Rights Watch, December 20, 2012. When a case is presented to the US Attorney's Office it should mean that the classification was reviewed and approved by a sergeant and a lieutenant. If that happened in this case, that is troubling. Furthermore, according to records on that case reviewed by Human Rights Watch, the US Attorney's Office declined a warrant request made two-and-a-half weeks after the incident, following an investigation that raises several causes for concern. The investigation of this case is discussed further in the Administrative Closures section below.

[272] Incident-Based Event Report, Complaint No. 11127XXX, August 26, 2011 (reported August 28, 2011), on file at Human Rights Watch.

file also notes that the suspect attempted forced oral contact and ejaculated on the victim's face. The victim screamed after the assault and had a forensic exam.[273]

- A case in which the complainant disclosed that the suspect, her supervisor, "enticed her to perform fellatio on him" over a period of months. She believed she would lose her job if she did not perform the sex acts.[274]
- A case in which the complainant reports that while engaged in sexual intercourse with her boyfriend, he switched places with the suspect without her knowledge.[275]
- A case in which the complainant allowed the suspect to sleep on her couch. The complainant "advised she woke up about 7am to find S-1 on top of her engaging her in sex."[276]
- A case in which the police note that the suspect "entered the apartment by an unknown manner and surprised [the complainant], standing in her bedroom in just his boxer-style underwear and a t-shirt. S-1 [the subject] proceeded to get on top of her while she was laying in the bed. C-1 shouted how in the hell did you get in here, get off of me. S-1 ignored her pleas and began to fondle her breast with his hands underneath her, while sucking on her neck causing a (HICKEY type BRUISE). C-1 still struggling with S-1 continued to shout at S-1 to stop when he proceeded to remove her panties. At that time C-1 shouted at S-1 that I am on my period. S-1 continued to pull down C-1's panties, looked at her vagina and stopped. C-1 got dressed and then left. No threats or verbal responses were reported by C-1 from S-1." The case was listed as a burglary and a misdemeanor sex abuse, not attempted first degree sexual assault.[277]
- A case in which the incident report reads, "The complainant reports the suspect engaged her in oral copulation, then inserted his penis into her vagina without her permission. C-1 (complainant) and S-1 (suspect) are aquaintances [sic]. No force was used per initial police report. There is no mention of force, hence the misdemeanor sex abuse."[278] The investigative file shows no changes to the charge though the notes indicate that the victim "had sex (vaginal intercourse) against her will," cried, and told the defendant to stop.[279]

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[273] Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 21, 2012.

[274] Incident-Based Event Report, Complaint No. 11100XXX, February 1, 2011 (reported July 12, 2011), on file at Human Rights Watch.

[275] Incident-Based Event Report, Complaint No. 11155XXX, October 23, 2011, on file at Human Rights Watch.

[276] Incident-Based Event Report, Complaint No. 11173XXX, November 26, 2011, on file at Human Rights Watch.

[277] Incident-Based Event Report, Complaint No. 10050XXX, April 17, 2010, on file at Human Rights Watch.

[278] Incident-Based Event Report, Complaint No. 11141XXX, September 26, 2011, on file at Human Rights Watch.

[279] Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 21, 2012.

- A case in which the complainant reports that the suspect "put his penis inside C-1's vagina against her will after telling him no."[280] Internal notes indicate that the suspect also digitally penetrated the complainant's rectum and that "The complainant stated that she did not scream or holler or even fight suspect off of her, but she did tell him no and she did not want to do it."[281]
- A case in which the suspect grabbed the complainant's buttocks and "put his finger inside her vagina" though she told him to stop.[282] The investigative file shows the victim told police that the suspect also "made her suck his penis."[283]
- A case in which the complainant reports that while "she was voluntarily in the [suspect's] room" the suspect engaged her in "vaginal intercourse and cunnilingus" without her consent.[284]
- A case in which a complainant reports that the suspect forced her to orally copulate him and a second assailant forced her to touch his penis.[285]
- A case in which the suspect reached under the complainant's skirt and digitally penetrated her vagina against her will while she was walking down the corridor.[286]
- A case in which the complainant reported that the suspect entered her apartment in an unknown manner and got on top of her while she was in her bed. The complainant struggled and shouted and the suspect fondled her breasts and proceeded to pull down her panties before getting dressed and leaving.[287]
- A case in which the complainant reported that her boss pulled on her clothes, groped her breasts, and placed his hand in her pants and digitally penetrated her vagina when she went to his office to discuss working conditions.[288]
- A case in which the suspect stuck his hand up the complainant's skirt and inserted his finger into her rectum.[289]

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[280] Incident-Based Event Report, Complaint No. 11177XXX, December 4, 2011, on file at Human Rights Watch.
[281] Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 21, 2012.
[282] Incident-Based Event Report, Complaint No. 11094XXX, July 1, 2011, on file at Human Rights Watch.
[283] Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 21, 2012.
[284] Incident-Based Event Report, Complaint No. 139XXX, October 1, 2008, on file at Human Rights Watch.
[285] Incident-Based Event Report, Complaint No. 10163XXX, November 11, 2010, on file at Human Rights Watch.
[286] Incident-Based Event Report, Complaint No. 106XXX, July 29, 2009, on file at Human Rights Watch.
[287] Incident-Based Event Report, Complaint No. 10050XXX, April 17, 2010, on file at Human Rights Watch.
[288] Incident-Based Event Report, Complaint No. 013XXX, January 25, 2008, on file at Human Rights Watch.
[289] Incident-Based Event Report, Complaint No. 073XXX, May 29, 2008 (reported May 30, 2011), on file at Human Rights Watch.

- A case in which a woman reported that her boyfriend threatened to "force himself in" her after she twice refused to have sex with him. She was afraid because he had hit her in the past.[290]
- A case in which the complainant reported non-consensual vaginal intercourse with an acquaintance she met in a club.[291]

In the MPD's December 2012 response to notification of Human Rights Watch's findings that cases seemed misclassified on their face, Chief Lanier stated that,

> … the initial classification is not binding nor does the classification of a report as a misdemeanor change the amount of investigative resources and effort that are dedicated to a sexual abuse case. All cases, misdemeanors and felonies have the same resources dedicated to them, and the classification of the offense only becomes relevant at the charging stage.[292]

Chief Lanier further stressed that the prosecutors have the authority to upgrade or downgrade a charge and that in the case provided to the chief by Human Rights Watch, in which the victim was vaginally penetrated repeatedly with force, the prosecutor declined to upgrade the charges.

Of the 28 misdemeanor cases reviewed by Human Rights Watch, 17 were presented to prosecutors for review; 14 of those were rejected and closed administratively for being weak cases (discussed further in the next section). One was sent back for further information. Of the two cases which did result in arrest warrants, both were considered misdemeanors, one in relation to a domestic violence charge. No cases were upgraded. While the same investigative resources may be used for all cases regardless of classification (though as a general rule it would be surprising if all misdemeanors—which usually involve contact over clothing—receive the same investigative resources as violent felonies), the categorization of crime as a misdemeanor as opposed to a more serious offense at the initial stage of investigation minimizes what happened to the victim, may mean the case is not referred to the MPD's Victim Services, and misleads the

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[290] Incident-Based Event Report, Complaint No. 11025XXX, February 24, 2011, on file at Human Rights Watch.
[291] Human Rights Watch notes from review of MPD investigative files, SX09-XXX, August 22, 2012.
[292] Letter from Chief Lanier to Human Rights Watch, December 20, 2012, on file at Human Rights Watch.

public— which is entitled to know accurate information about local crime — about the nature of the crime.

Administrative Closures or Exceptional Clearances

Even in cases that are investigated, interviews with witnesses and a review of investigative files raise concerns that the investigations are not thorough. The US Attorney's Office rejected more than two-thirds of the arrest warrant affidavit requests in files reviewed by Human Rights Watch, primarily on grounds that the case presented was "weak." Arrest data provided by the MPD shows very few suspects were arrested and charged with sex abuse in 2008, 2009, and 2010. Witnesses also report police reluctance to collect evidence or follow leads.

One way for a case to be closed at the MPD is if the US Attorney's Office declines prosecution for lack of prosecutorial merit.[293] Concretely, for this to happen, the police must have filed an affidavit for an arrest warrant, and the prosecutor must have declined to seek the warrant. According to police policy, a sergeant and a lieutenant must review and approve every affidavit for a warrant before it is presented to the US Attorney's Office.[294]

If the US Attorney's Office declines prosecution, there is an administrative closure or a "304.1." That closure might be considered "cleared by exceptional means" and counted the same as "clearance by arrest."[295]

Publicly available "clearance rates" are one way in which police chiefs and departments are publicly evaluated. A prosecutor said, "Pressure for closure rates on police departments is enormous."[296] FBI Uniform Crime Report (UCR) data does not distinguish between cases cleared by arrest and cases cleared by exceptional means in collecting data and tabulating

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[293] Criminal Investigations Division, Metropolitan Police Department, Division Memorandum, "Sexual Assault Investigations," June 12, 2012, p.3.

[294] Metropolitan Police Department, Sexual Assault Unit SOP, p. 59.

[295] The Washington Post found that 15 percent of homicides in the District between 2000 and 2011 were closed as "administrative" closures without an arrest, and each is counted the same as "an arrest" in closure statistics. Cheryl Thompson, "D.C. homicides: In 15 percent of closed cases, no charges and no arrests," *The Washington Post*, October 14, 2012.

[296] Human Rights Watch telephone interview with S.R., assistant US attorney, Washington, D.C., September 18, 2012. The prosecutor also indicated that for sexual assaults, "it is not about closure rates, it is about serving victims," emphasizing the need to reward detectives who treat victims well, regardless of the outcome of the case.

offense clearance rates.[297] Cases are only supposed to be "exceptionally cleared" in limited circumstances when a suspect is identified and police have gathered enough evidence to press charges but circumstances beyond law enforcement control prevent arrest (such as the suspect is deceased, incarcerated, outside of police jurisdiction or— in some circumstances— if the victim no longer wishes to cooperate). The FBI guidelines indicate exceptional clearance is to be used by police agencies to clear offenses once "they have exhausted all leads and have done everything possible in order to clear a case."[298]

Experts in sexual assault investigations and prosecutions also say they would expect affidavits in support of arrest warrants to be presented only when detectives believe they have a case. They would expect a majority of warrant requests to be approved or sent back for further investigation. Another mechanism should be in place if a detective is seeking prosecutorial review of an incomplete or difficult investigation.[299] An analysis of charging decisions in three cities (Kansas City, Miami, and Philadelphia) is consistent with these observations, finding that, overall, prosecutors filed charges in 54.5 percent of cases presented to them.[300]

However, 44 of the 66 warrant requests that Human Rights Watch reviewed in MPD files were rejected by the US Attorney's Office, primarily because the case was deemed "weak."

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[297] Federal Bureau of Investigations, Uniform Crime Reports, "Offenses Cleared," http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/clearances (accessed October 24, 2012); see also Cassia Spohn and Katharine Tellis, "Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Los Angeles County District Attorney's Office," Document No. 237582, US Department of Justice Aware Number 2009-WG-BX-0009, February 2012, https://www.ncjrs.gov/pdffiles1/nij/grants/237582.pdf (October 24, 2012), p. IV.

[298] Federal Bureau of Investigations, US Department of Justice, "Uniform Crime Reporting Handbook 2004." http://www.fbi.gov/about-us/cjis/ucr/additional-ucr-publications/ucr_handbook.pdf (accessed January 10, 2013), p. 80. Current guidelines are not clear about how to "clear" or "close" cases that have been thoroughly investigated but declined for prosecution. In those cases, it may be acceptable to clear a case exceptionally even though an arrest is theoretically possible. Cases that have not been thoroughly investigated, however, should not be cleared exceptionally. To help clarify ambiguities, some experts believe the FBI should consider further revising UCR clearance categories to be brought in line with current practice. In addition to disaggregating "arrest" and "exceptional clearance" data, tracking cases on the basis of prosecutorial outcome would provide the public with more meaningful information on what ultimately happens to sexual assault cases reported in communities. Sgt. Joanne Archambault and Kimberly Lonsway, "Police Clearance Methods: How Are They Currently Defined—and How Should They Be Used?" *Sexual Assault Report*, volume 15, number 4, 2012, pp. 53-58, 63.

[299] Human Rights Watch email correspondence with Jennifer Long, director, Aequitas: The Prosecutors' Resource on Violence Against Women, October 24, 2012; Human Rights Watch telephone interview with Sgt. Joanne Archambault, September 25, 2012.

[300] Cassia C. Spohn et al., "Prosecutors' Charging Decisions in Sexual Assault Cases: A Multi-Site Study, Final Report," Document No. 197048, US Department of Justice Award Number 98-WT-VX-0003, October 28, 2002, pp. 23-24.

Some of the 44 cases were closed because the victim no longer wished to cooperate.[301] Two of them were sent back for further review. Only 18 cases (27.2 percent) had a warrant request approved, and of those, 8 were for misdemeanors, and 2 were for non-sex offenses.[302] Four were for first or second degree sex abuse. For the remaining four cases in which warrants were approved, it was not possible to determine the charges from our review of the files.

Human Rights Watch reviewed only a limited number of files so it is not possible to draw a definitive conclusion from this. But the seemingly high proportion of closures in these cases does raise concern about the thoroughness of investigations and about whether police are properly investigating cases and reviewing arrest warrant requests before presenting them to the US Attorney's Office. One prosecutor from another jurisdiction consulted for this report described these numbers as "way out of the norm" and expressed concerns that police might be consistently presenting warrant requests with insufficient evidence, or that prosecutors may be screening out serious cases because they think they may lose, creating a situation in which offenders are not held accountable.[303]

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In Los Angeles, an extensive study found a similar pattern of high rejection rates for charging in sex crime cases during "pre-arrest" review. Of 383 cases presented by the Los Angeles County Sheriff's Department and the Los Angeles Police Department to prosecutors between 2005 and 2009, researchers found 262 (68.4 percent) were rejected because of insufficient

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[301] In some cases, the police may discourage a victim from cooperating. It is not always possible to determine from notes in the file whether this has occurred, but the section on "Discouraging Reporting" includes some examples in which police actions may have resulted in victims no longer cooperating.

[302] Some cases were investigated as first degree sex abuse but downgraded to misdemeanors by prosecutors. For example, one warrant request specified that "the complainant was forced to have oral and vaginal sex with D" and was investigated as a first degree sex abuse case, but a warrant was issued for a misdemeanor. Human Rights Watch notes from review of MPD investigative files, SX10-XXX, August 22, 2012.

[303] Email correspondence from former prosecutor to Human Rights Watch, October 17, 2012, on file at Human Rights Watch.

evidence or because the victim was unwilling to cooperate (149 of those were rejected before the suspect could be arrested). Charges were filed in 121 (31.6 percent) of cases.[304]
The report found that law enforcement was presenting "problematic" cases to the district attorney (such as cases involving victims who engaged in risk-taking behavior such as drinking or using illegal drugs, or cases in which detectives had questions about whether the victim was truthful) for pre-arrest review, and then when they were rejected, counting them as closed for purposes of their clearance rate.[305] Often the cases presented for review were those that that police had not thoroughly investigated in anticipation of a "reject" that would still count as a clearance.[306] Significantly more cases were cleared exceptionally than through arrest in both the sheriff's and police departments.[307]

Between 2007 and 2011, the UCR average clearance for rape cases for cities between 500,000 and 1,000,000 people ranged from 39.6 percent (2007) to 43.1 percent (2009), with other years reporting clearance rates of 40 or 41 percent.[308] In contrast, the clearance rate reported by the MPD for rape was substantially higher: 67.7 percent in 2007; 65.1 percent in 2008; 76.7 percent in 2009; and 59.8 percent in 2010.[309]

However, according to arrest data the MPD provided to Human Rights Watch, only 15 arrests were made for sexual abuse (first through fourth degree, attempt, misdemeanor or "aggravating circumstances") in 2008; 18 in 2009; and 16 were arrested on adult sex abuse charges in 2010. These arrest numbers are extremely low compared to the number

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[304] See Cassia Spohn and Katharine Tellis, "Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Los Angeles County District Attorney's Office," Document No. 237582, US Department of Justice Aware Number 2009-WG-BX-0009, February 2012, https://www.ncjrs.gov/pdffiles1/nij/grants/237582.pdf, p.131.

[305] Ibid., pp. 142-43, 190, 277.

[306] Ibid., pp. 405-406.

[307] The report found the that clearance rate for the Los Angeles Police Department from 2005-2009 was 45.7 percent, with 12.2 percent cleared by arrest and 33.5 percent cleared by exceptional means. For the Los Angeles County Sheriff's Department, the report found an 88.3 percent clearance rate for the same period, with 33.9 percent cleared by arrest and 54.4 percent cleared by exceptional means. Ibid., pp. I-II.

[308] Federal Bureau of Investigations, Uniform Crime Reports, Table 25, "Percent of Offenses Cleared by Arrest or Exceptional Means, By Population Group," http://www.fbi.gov/stats-services/crimestats (accessed November 16, 2012). The average clearance rate for cities with populations between 500,000 and 1,000,000 for forcible rape was 41.6 percent in 2008; for 2010, 40.6 percent, and for 2011, 40.1 percent.

[309] Letter from Metropolitan Police Department to Phil Mendelson, council member, February 24, 2012, p.12.

of assaults in the district, yet overall clearance rates are very high, indicating that the bulk of the MPD's cases may be closed through an administrative clearance.[310]

For example, in 2010, the MPD reports to the FBI clearing 59.8 percent of 184 sexual assault cases (110 cases), but only 22 arrests for sexual assault were in data provided to Human Rights Watch for that year, including child sex abuse cases, misdemeanor cases, and a fourth degree sex abuse case that would not be included in FBI clearance data. The FBI information includes forcible rape against child female victims but, as discussed elsewhere, excludes other sex offenses such as cases with male victims and cases in which the victim is incapacitated. Even interpreting the data in the light most favorable to the MPD, the numbers are concerning. The number of arrests did go up substantially to 59 cases in the first six months of 2011.[311] We do not have more recent arrest or clearance data and therefore are not in a position to assess whether this increase reflects a meaningful change in the pattern of low arrests and high clearance rates.

In response to our findings, the MPD states that "HRW's suggestion that MPD is over-reporting its closure rates for sexual abuse is absolutely false," noting that these cases are extremely difficult to prove or disprove and that the high closure rate is a result of the inclusion of non-adult cases in FBI data as "the non-adult cases are familial, do close, and do have an impact on closure rates."[312]

Human Rights Watch recognizes that these cases are difficult to prove and therefore would expect clearance or arrest rates to be low, not high, as a result. Furthermore, there is no indication of why inclusion of child cases in FBI data would disproportionately impact the District of Columbia since the same definition applies to all cities, yet the MPD's clearance rates are well above the average (in one year nearly double) for cities its size.

However, the MPD is correct to some degree. If we ignore FBI data and use only the information about adult sexual assault cases provided to Human Rights Watch, for 2010,

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[310] D.C. reported the following number of rapes under the UCR: 192 (2007), 186 (2008), 150 (2009), 184 (2010), 172 (2011). However, this number may include assaults on juveniles and exclude assaults other than forcible male penile penetration of a female vagina. For the same time period, the D.C. Code Index Crimes shows the following number of sexual assaults: 142 (2007), 156 (2008), 134 (2009), 149 (2010), 174 (2011). Letter from Metropolitan Police Department to Phil Mendelson, council member, p. 2.

[311] Arrest data from October 2008 through May 31, 2011, provided to Human Rights Watch, on file at Human Rights Watch.

[312] Letter from Chief Lanier to Human Rights Watch, December 20, 2012, on file at Human Rights Watch.

the estimated clearance by arrest rate for adult sex abuse cases in D.C. (including misdemeanors) is 5 percent. This is based on arrest data and documentation provided to Human Rights Watch by the MPD which shows 16 arrests and 316 incident reports for all adult sex abuse cases in 2010 (6 arrests for child sexual abuse in 2010 are excluded).

The discrepancy between the data provided to the public by the FBI about clearances, and the number of arrests (which may or may not lead to prosecution) demonstrates the need to reform the FBI's data collection so that publication of "clearance rates" is not misleading.

Affidavits in Support of Arrest Warrants

Also troubling is the fact that many of the warrant requests reviewed by Human Rights Watch were flimsy or negative about their own supporting evidence. Information that would be exculpatory or cast doubt on the establishment of probable cause is supposed to be included in the warrant request, but in some cases that Human Rights Watch reviewed, the police had placed more emphasis on problems with the case than reasons for probable cause. In other cases, a request was made based on little, if any, investigation. One possible explanation for such compromised presentation of evidence is that they were prepared as a pretext in order to close a difficult case with little expectation of success. Two prosecutors interviewed referred to cases like these as "cover your ass" cases.[313] The following are examples of warrant requests found in MPD's files:

- In the fall of 2011, a victim reported going to the suspect's house after drinking together. She vomited from alcohol consumption. The victim reported being hit and vaginally assaulted by the suspect and two other suspects. Yet the warrant request consists almost entirely of a list of eight supposed "inconsistencies" in the victim's statement, such as that she did not elaborate on what drinks she had or what liquor was used to make the drinks; she "admitted she smoked weed;" she said the suspect "hit" her but then said he "kicked and punched her;" and that the victim was "adamant" about getting a rape kit but did not get a rape kit done. Elsewhere in the file it is apparent that the victim did undergo a forensic exam at WHC. Yet the arrest warrant request, which the detective filed after collecting the forensic exam, maintains there was no hospital visit. The files contain no

[313] Human Rights Watch telephone interviews with C.L., assistant US attorney, Washington D.C., September 18, 2012; and with S.R., assistant US attorney, Washington, D.C., September 18, 2012.

indication of an investigation, apart from collection of the forensic kit. Other "inconsistencies" listed in the warrant request include that the victim refused to give the address of where her child was and did not have identification.[314]

- In a July 2009 misdemeanor case, the complainant reported meeting the suspect at a club and going home with him, where he sexually assaulted her. The warrant request—which was denied on the grounds that it was a "weak case"—was made solely on the basis of the victim interview, even though other witnesses were named in the file and presumably could have been interviewed.[315]
- A September 2011 case in which the complainant reported being assaulted on a date after some consensual sexual activity. She went to a friend's house immediately after and told her of the assault but the police did not interview her friend. The case was classified as a misdemeanor and a warrant request, based on minimal investigation, was denied because it was a "weak case."[316]
- A January 2010 case in which the victim said she had consensual oral sex with the suspect but made it clear she would not have intercourse. The complainant described a struggle with her assailant before he forcibly penetrated her vaginally. Immediately afterwards she reported it to a friend who suggested she get a forensic exam, but she did not decide to go to the police until a few weeks later. The arrest warrant request consisted of the victim statement only and the fact that the victim identified a photo of her assailant. Police did not interview her friend or the assailant. The arrest warrant request was made and rejected four days after the victim reported her assault.[317]
- An early 2011 case in which the victim said she had consensual oral sex with the suspect but did not give permission for vaginal intercourse and tried to push the suspect off of her. The victim statement was the only information in the file. A week later, a prosecutor rejected a warrant request under "304.1"(administrative closure) due to a "weak case."[318]

Prosecutors interviewed by Human Rights Watch indicated that for some cases an arrest warrant request may be brought on the basis of a complainant's statement alone,

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[314] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.
[315] Human Rights Watch notes from review of MPD investigative files, SX09-XXX, August 22, 2012.
[316] Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 21, 2012.
[317] Human Rights Watch notes from review of MPD investigative files, SX10-XXX, August 22, 2012.
[318] Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 22, 2012.

particularly if it involves a violent offender who should be removed from the street immediately.[319] However, in most cases, especially if the complainant does not remember the events, the prosecutor would expect the file to include additional information such as a "single party call," (or "pretext call"— when the victim is asked to call the suspect on a recorded line), or an interview with a "report of rape witness," (or "outcry witness"— the first person to whom the victim spoke of the assault), or a video from a security camera, even when there is no witness to the assault itself to corroborate the statement.[320]

Over the course of our investigation, victims and others reported a lack of initiative among some detectives when it comes to following basic leads or collecting forensic evidence:

- An attorney reported that in early 2011, her client, Rosa S., was abducted by two men wearing masks who approached her near a metro station close to her workplace. She was taken to a house and raped repeatedly overnight before being released the next morning. Since the assailants knew personal details about her, Rosa suspected that someone with whom she had been in an abusive relationship might have arranged the assault. Initially too scared to tell anyone about her assault, she soon learned she was pregnant. Her lawyers convinced her to go to the police, who—according to the lawyer—conducted an aggressive interview that took several hours. Police did not allow Rosa to have her lawyer present for the interview, instead instructing her to wait outside (prosecutors interviewed for this report knew of no reason why the lawyer would not be permitted to be present).[321]

  According to the attorney, the detective said there was no evidence and that police could not proceed with an investigation because the crime occurred weeks earlier. "What do you want me to do?" he asked the attorney. A staff member from the organization working with Rosa recalled being told by Rosa that the detective told her, "You are only doing this to get immigration status, aren't you?" (Rosa already had a visa). Rosa's lawyer said a social worker who checked on the status of the case at MPD was informed the detective did not believe Rosa and the case would

[319] Human Rights Watch telephone interviews with C.L., assistant US attorney, Washington D.C., September 18, 2012; and with E.M., assistant US attorney, Washington D.C., September 19, 2012.

[320] Human Rights Watch telephone interviews with M.G., assistant US attorney, Washington D.C., September 19, 2012; and with E.M., assistant US attorney, Washington D.C., September 19, 2012.

[321] Human Rights Watch telephone interviews with C.L., assistant US attorney, Washington D.C., September 18, 2012; with E.A., assistant US attorney, Washington D.C., September 18, 2012; and with E.M., assistant US attorney, Washington D.C., September 19, 2012.

not go ahead. Rosa's lawyer recalled that Rosa tried to provide the police with DNA evidence from the abortion she later had, but there was no departmental follow up. Anxious to move on, she did not want to pursue the matter further.[322]

- According to Estella C., when she reported her sexual assault by an acquaintance in a vehicle in the spring of 2010, she was able to give the detective her assailant's nickname, cell phone number, and place of employment. But the detective said she could not interview him because she did not have his proper name. Estella's boyfriend later called the number and got the assailant's name from the caller ID and tried to give it to the detective. "What do I need that for?" the detective asked, when Estella called her with the name so the detective could interview the assailant. The detective told Estella the incident did not sound like rape and the matter would not be pursued. [323] The detective wrote in her notes, "The interview concluded with [Estella] admitting that although she may have been thinking or even saying that she did not want the suspect to touch her or to have vaginal intercourse with her, her actions dictated something totally different. Therefore the suspect may have gotten the wrong idea about her intentions." [324] Estella tried to report the assault to another police district, but was turned away because she had already reported to the SAU.[325] Internal police notes confirm that police conducted no investigation because the detective determined during Estella's initial interview that "no further police actions need to be taken at this time given that no sexual assault occurred." In a case review less than a week after the assault it was noted "In light of the [victim's] constant calls, referred to victims services. Investigation remains closed because no crime occurred."[326]
- In September 2010, one advocate noticed that two separate victims had named a particular perpetrator in sexual assault incidents reported to police a year apart. After checking the records she discovered it was the same suspect—something the MPD did not realize until the advocate called them, twice. Police then reopened the first case, but did not notify the first victim that they were looking into her case.[327]

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[322] Human Rights Watch telephone interviews with attorney A.J., March 22, 2011; and with staff member J.Z, June 6, 2012.

[323] Human Rights Watch group interview with sexual assault survivors (including Estella C.), Washington, D.C., September 30, 2011.

[324] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

[325] Human Rights Watch group interview with sexual assault survivors (including Estella C.), Washington, D.C., September 30, 2011.

[326] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

[327] Human Rights Watch interview with K.V., Washington, D.C., March 28, 2011; Human Rights Watch email correspondence with V.S., April 19, 2012.

- Susan D., who reported being sexually assaulted by a date (see Summary section), said that, although a detective told her not to wash her dress or underwear because a crime scene team would pick it up from her apartment, no one ever came. Nor did anyone process the crime scene (her apartment).[328]
- When Maya T., who reported being kidnapped and sexually assaulted over three days in April 2011, asked the detective assigned to her case about her forensic evidence kit, she said he asked her, "Rape kit? What rape kit?"— even though he had interviewed her in the hospital and knew she had completed an exam. Maya said that the detective was not interested in receiving the narrative of events that she wrote a few days after the assault, when her memory was better, telling her the report was "miscellaneous."[329] Nor did her investigative file indicate that a rape kit was collected.[330]
- When Shelly G. (see text box) went to the MPD with her cell phone in an effort to provide threatening voicemail messages from her assailant to her detective in October 2009, she had to wait for "well over an hour" before he would see her and then he told her he did not know if he could do anything with the evidence.[331]

Human Rights Watch provided three examples of misclassified cases to the MPD in advance of this report's publication. In its response, the MPD addressed only one of these cases, which was classified as a misdemeanor:

- "The complainant states that the suspect penetrated her vagina several times with his penis without her consent. The suspect then left the room. When the suspect returned, he slapped the complainant in the face and pushed her down on a mattress. The suspect then penetrated the complainant's vagina with his penis again without her consent. The assault ended when the suspect masturbated on the complainant's face and in her mouth."[332] Investigative notes from the report further indicate that the complainant tried to escape but was slapped and raped again.[333]

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[328] Human Rights Watch group interview with sexual assault survivors (including Susan D.), Washington D.C., September 30, 2011.

[329] Human Rights Watch telephone interview with Maya T. (pseudonym), May 10, 2011; Complaint form, Office of Police Complaints, May 9, 2011 (provided by Maya T.); narrative of events provided by Maya T., on file at Human Rights Watch.

[330] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 22, 2012.

[331] Human Rights Watch telephone interview with Shelly G. (pseudonym), Washington, D.C., October 12, 2012.

[332] Incident-Based Event Report, Complaint No. 132XXX, September 15, 2009, on file at Human Rights Watch.

[333] Human Rights Watch notes from review of MPD investigative files, SX09-XXX, August 22, 2012.

In its response, the MPD states this case was "thoroughly investigated, and was presented to the United States Attorney's Office (USAO) for prosecution. The USAO has the authority to upgrade or downgrade a charge depending on the facts of the case. In this case there was no effort to upgrade the charges."[334]

The response is troubling for a number of reasons. First, if proper police procedure is followed, a request for an arrest warrant is presented to the USAO only after it has been reviewed by a sergeant and lieutenant. If that happened in this case, it means the detective's supervisors approved classification as a misdemeanor although the incident report, on the face of it, indicates force was used, which makes it a first degree sex abuse case under D.C. law.

Second, the request for a warrant did not lead either to an upgrade or downgrade of charges by prosecutors, who simply rejected it, leading to an administrative closure of the case. We cannot tell for sure why it was rejected, but one possible reason was what appears to be the poor quality of the investigation supporting the warrant request. The investigative file suggests that the investigation focused on gathering evidence to disprove or undermine the complainant's report of the assault, rather than investigating if there was corroborative evidence. For example, the complainant said her assailant had used drugs. The detective contacted the suspect's parole officer and found that his drug test was clean.

That information was included in the affidavit for an arrest warrant. The rest of the investigation consisted of searching for evidence that would show the victim interacted normally with the suspect after the assault. The evidence was not found. The file showed no indication that the detectives pursued any of the forensic evidence either from the forensic exam or the crime scene which may have supported the victim's complaint. There are a number of standard investigative steps such as identifying and interviewing witnesses the complainant may have spoken with immediately after the assault, or conducting a pretext phone call (when the victim is asked to call the suspect on a recorded line), that could have been pursued. The file indicates that they were not. A potential witness was a person with an interest in the property where the assault was said to have occurred. The file indicates that the person was not contacted by the police. In light of what is, and what is not in the investigative file and the police affidavit seeking a warrant, Human Rights Watch finds it troubling that the chief would describe this investigation as "thorough."

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[334] Letter to Human Rights Watch from Chief Lanier, December 20, 2012

Shelly G.

Shelly G. shared the following account about her experience. She was at a bar with co-workers in October 2009. A stranger at the bar was watching her all evening and bought her and her friends drinks. She woke up partially clothed in her living room with the man from the bar, who was also undressed. She had no recollection of what happened but feared she had been sexually assaulted. Afraid for her safety, she locked herself in her bedroom until the morning. She went to the hospital for a forensic exam that day and met an MPD detective there.[335] She told the detective what happened and a friend who was with her also spoke with the detective. However, she felt that once she told the detective that she had been drinking, he shut down. He tried to discourage her from reporting by saying it would "take years" to get results from her forensic exam and DNA results from sperm on her pajamas. Meanwhile, Shelly's assailant contacted her repeatedly over the phone and left her voicemail messages saying, "I know I was aggressive. Don't do anything stupid. Be cool."[336]

Over the course of the investigation, Shelly said getting the detective to follow up "was like pulling teeth."[337] She felt he had already made up his mind it was not a good case and he would not pursue it. When Shelly took her cell phone to the MPD so that the police would have the messages she received from the assailant, she waited for well over an hour before the detective came to get the phone. Then he said, "I don't know if we can do anything with this." When she applied for and received a temporary protective order, she ran into her detective, who asked, "Is this really necessary?"[338]

Shelly was not sure the detective classified the case as sexual abuse (indeed, a review of the file indicated it was classified as an allegation). The detective told her, "I see this kind of case all the time. There isn't enough evidence."[339] He made Shelly feel like she was imagining things or at fault—that she had too much to drink and did something that she regretted.

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[335] Human Rights Watch telephone interview with Shelly G. (pseudonym), June 18, 2012.
[336] Human Rights Watch telephone interview with Shelly G. (pseudonym), October 12, 2012.
[337] Human Rights Watch telephone interview with Shelly G. (pseudonym), June 18, 2012.
[338] Human Rights Watch telephone interview with Shelly G., October 12, 2012.
[339] Human Rights Watch telephone interview with Shelly G., October 12, 2012.

"To hear him tell me he didn't believe me was a slap in my face. It just knocked me down, it was a punch in my stomach. It just took the air right out of me. And where do you go from there when the policeman tells you he doesn't believe you?"

After the assault, Shelly's friend Matt K. ran into the detective at the bar where the events occurred, where the detective had gone to collect evidence. Matt introduced himself to the detective and offered to assist with the investigation. Because he had been drinking, Matt suggested they do the interview another time, but the detective said they could take care of it then. Matt was very concerned about what had happened to Shelly and described in detail what had happened that night. However, he felt the detective was "dismissive." He gave Matt an analogy about seeing two cars about to collide when a truck passes by, making it impossible to see what happened. He did not ask Matt about Shelly's response immediately after the assault and never called him to follow up.[340]

When the detective decided to close Shelly G.'s case in the fall of 2009, he called her late on a Saturday night and asked her what she was doing. She said she had just arrived at a wedding reception. He insisted that he meet with her immediately. He came to the hotel lobby and, according to his notes, told her about a videotape from the bar that he said was inconsistent with her version of events and said "that there was no physical evidence supporting her speculation that she had been abducted and sexually assaulted."[341] Noting his skepticism, Shelly said she confronted the detective about whether he believed her, and he made it clear he did not.[342] She said of the meeting, "To hear him tell me he didn't believe me was a slap in my face. It just knocked me down, it was a punch in my stomach. It just took the air right out of me. And where do you go from there when the policeman tells you he doesn't believe you?"[343]

The detective's skepticism is apparent in the file, despite physical injuries (discoloration on her mouth and hip) and other unexplained physical evidence. After reviewing video footage from the bar, the detective noted, "It was apparent from the video footage that the C's claim of being carried out of [the bar] and being kidnapped, did not appear plausible." Yet

[340] Human Rights Watch telephone interview with Matt K. (pseudonym), October 18, 2012.
[341] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 22, 2012.
[342] Human Rights Watch telephone interview with Shelly G., Washington, D.C., October 12, 2012.
[343] Human Rights Watch interview with Shelly G., Washington D.C., August 21, 2012.

nowhere in the notes from the interviews with Shelly or her friends was there any indication that anyone claimed she had been kidnapped.[344]

The detective's notes did not include any information about the content of the threatening voicemails. In an interview with the detective, the suspect denied that there was sexual contact with Shelly G.[345] Yet the detective closed the case well before receiving results from the forensic exam and before lab results were returned from the pajamas, which would have had direct bearing on the suspect's claim that there had been no sexual contact between him and Shelly.[346] The detective led Shelly to believe her assailant had indicated that they had had a consensual encounter. Like other victims, Shelly described feeling even more traumatized by the experience after reporting to the police. She is still recovering.[347] Three years after the events occurred, on October 26, 2012, after following up with MPD and after Human Rights Watch had informed the department of its preliminary findings, Shelly received a message from Chief Lanier indicating that her case would be re-opened. However, when Shelly spoke with a lieutenant about re-opening her case, the lieutenant was abrasive and left Shelly "feeling, once again, like I am in the wrong."[348]

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[344] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 22, 2012, on file at Human Rights Watch.

[345] Ibid.

[346] Ibid.

[347] Human Rights Watch telephone interview with Shelly G., June 18, 2012.

[348] Human Rights Watch email correspondence with Shelly G., November 1, 2012.

III. Vulnerable Cases

Our review of case files and interviews with witnesses indicate that some police are most likely to be dismissive in cases involving alcohol or drugs. In addition, several people who work with victims told Human Rights Watch that, in their perception, police are less likely to treat sex workers well.

However, Human Rights Watch is aware that there are detectives in the department who have made concerted efforts to pursue cases in which sex workers are victims. As a result, this perception of some people on the ground may reflect the fact that they have witnessed inappropriate responses by some patrol officers or individual detectives, and that the efforts that some are making are not visible in the community.

Drug or Alcohol-Facilitated Sexual Assault

Research indicates that nationally, drugs or alcohol are involved in nearly half of all sexual assaults.[349] The definition of sexual assault in most places, including the District of Columbia, takes this into consideration.

In D.C., first degree sexual abuse includes engaging in a sexual act "after rendering that other person unconscious" or after administering either by force, or threat of force, or without that person's knowledge, "a drug, intoxicant or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct." [350]

Second degree sexual abuse occurs when a person engages in a sexual act with a person who is "incapable of appraising the nature of the conduct; incapable of declining participation in that sexual act; or incapable of communicating unwillingness

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[349] Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, "The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report," November 2011, www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf (accessed November 19, 2012), pp. 22; Dean G. Kilpatrick, et al, National Crime Victims Research & Treatment Center, Medical University of South Carolina, "Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study," Document No. 219181, US Department of Justice Award No. 2005-WG-BX-0006, February 1, 2007, https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf (accessed November 19, 2012).

[350] D.C. Official Code § 22-3002.

to engage in that sexual act."[351] Intoxication may result in this level of impairment. Signs suggestive of drug or alcohol-facilitated sexual assault include unexplained loss or rearrangement of clothing; memory loss, disorientation, or confusion; and unexplained signs of trauma, particularly genital trauma.[352]

Some police (like others in the general public) may not view these cases as "legitimate" because they do not necessarily involve force, but they are all non-consensual sexual acts and the impact on the victim is still devastating. As one victim of second degree sex abuse said,

> The way people react to rape isn't fair. If my purse was stolen, it wouldn't be my fault. I was shattered and I did not have a violent assault.[353]

Drug or alcohol-facilitated assaults are challenging cases to investigate because the victim's memory may be substantially impaired. The sedative property of drugs often used in drug-facilitated sexual assaults means that victims may only have the sense that they were violated but not recall the assaults themselves. In addition, reporting is often delayed, making it possible, if not likely, that toxicology reports will be negative since the drugs leave the victim's system quickly.

These difficulties make it even more important that detectives pursue an investigation and interview any witness who might have interacted with the victim before, during, or after the assault to help establish time frames, corroborate unusual behavior, provide critical facts, and identify other sources of information.[354] As an expert in drug-facilitated sexual assault cases testified in Rachel's case against the MPD,

> The whole point of investigation is putting it all together. And you don't say 'Well, she said she was drunk. Screw it.' Voluntary intoxication is not

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[351] D.C. Official Code § 22-3003.

[352] World Health Organization, "Guidelines for medico-legal care for victims of sexual violence," 2003, p. 8, http://www.who.int/violence_injury_prevention/publications/violence/med_leg_guidelines/en/index.html (accessed November 20, 2012).

[353] Human Rights Watch telephone interview with Kristen A. (pseudonym), California, May 17, 2011.

[354] International Association of Chiefs of Police (IACP) National Law Enforcement Policy Center, "Investigating Sexual Assaults," initially published November 1999, revised July 2005, pp. 10-11.

> consent to have sex. It may still be a sexual assault. And that's the purpose of a proper investigation.[355]

Following the 2008 lawsuit relating to police handling of Rachel's case discussed above, Human Rights Watch would expect to find an internal re-evaluation of the MPD's approach toward cases involving drugs or alcohol. However, victims and witnesses said that even after 2008, the MPD had failed to report cases in which the victim may be intoxicated or drugged.[356] One observer noted that officers may not investigate "college cases" at all unless the victim has sustained substantial physical injury because alcohol is often involved.[357] Another reported,

> Quite honestly it's been a challenge when many of the detectives don't want to move forward on the cases because alcohol or drugs have been involved…. They are clear. It is because of drugs or alcohol they don't want to get involved. [358]

Medical staff describe the police attitude as, "Oh well. That is normal. It happens all the time;" or, if the victim was drunk, "it was her fault she was assaulted.[359] Shelly G. said that when she reported her assault in October 2009, the detective seemed to shut down as soon as she said she had been drinking.[360] According to these observers, if the victim does not recall what happened, the detectives often state that no crime occurred, even though a symptom of a drug-facilitated assault is an inability to remember events.[361] A detective told the former director of the SANE program, "She doesn't remember what happened so there is not a crime. You can't have sex and not remember."[362]

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[355] Amanda Hess, "Test Case: You're Not a Rape Victim Unless Police Say So. This is the story of the night Hannah was not officially raped," *Washington City Paper*, April 9, 2010, http://www.washingtoncitypaper.com/articles/38671/test-case-youre-not-a-rape-victim-unless-police-say/full (accessed January 9, 2012).

[356] Human Rights Watch telephone interview with medical staff B.C., March 8, 2011; Human Rights Watch interview with university staff L.O., March 28, 2011; Human Rights Watch interview with K.V., March 28, 2011.

[357] Human Rights Watch telephone interview with medical staff P.R., February 18, 2011.

[358] Human Rights Watch telephone interview with P.S., March 15, 2011.

[359] Human Rights Watch interviews with medical staff M.H., March 2, 2011; and with Cindy Teller, D.C. SANE director from July 2008 through December 2009, Newport Beach, Virginia, June 24, 2011.

[360] Human Rights Watch interview with Shelly G., Washington, D.C., October 12, 2012.

[361] Human Rights Watch telephone interview with medical staff M.H., April 8, 2011; IACP, "Investigating Sexual Assault," p. 10; Womenshealth.gov, "Violence Against Women, Dating Violence," last updated May 18, 2011, http://www.womenshealth.gov/violence-against-women/types-of-violence/dating-violence.cfm (accessed May 25, 2012).

[362] Human Rights Watch interview with Cindy Teller, June 24, 2011.

In such cases, police sometimes fail to ask particular questions to ascertain if it might be a drug-facilitated sexual assault.[363] Witness reports and a review of MPD investigative files suggest some detectives continue to take a dismissive approach to these cases, which their supervisors tolerate.

In addition to Shelly G.'s case, the following are examples of sexual assault complaints described to Human Rights Watch or found in the MPD's files that occurred since late 2008, that show strong signs they were drug or alcohol-facilitated, and which police apparently decided not to investigate:

- A victim, who woke up in September 2011 with no underwear and with personal items missing from her home after a night drinking at a club, was concerned she had been assaulted after a friend reported seeing her engaging intimately with a strange man. She had no recollection of the night. The detective told her that the progression of the case depended on the SANE results. The file notes stated, "In the meantime, a miscellaneous report will be taken to reflect the fact the complainant has reported the matter to the police." Police told the victim there was "no evidence to substantiate that a crime was committed against her." However, the final entry in the file was an indication that the SANE exam found semen in the victim's cervix, buttocks, and externally. Although it says the detective will follow up, there is no further entry in the investigative file.[364]
- In the spring of 2011, after a night of drinking, a victim reported waking up with dirt on her hair, bed, and clothes, with no underwear, and with bruises on her inner thighs and abrasions on her knees. She had no recollection of what happened the night before or how she got home. The forensic report noted the presence of a clear sticky fluid. Police classified the incident report as "miscellaneous," and listed it as "closed pending" four days later. Police records showed minimal investigation.[365]
- A young woman who was at a bar in February 2011 when an acquaintance brought her a drink. She remembers nothing after that but the next morning friends found her on the street between two parked cars, with abrasions, no underwear, and no

[363] See Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, pp. 66-67, 71-72; deposition testimony of Detective Elgin Wheeler, October 3, 2008, p. 109-110, 210-203; deposition testimony of Officer Ginette Leveque, April 14, 2008, pp. 206-210, 256, 269-70; and deposition testimony of Officer Tandreia Green, May 8, 2008, pp. 70-73, for evidence of practices described in 2008.

[364] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

[365] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

cellphone.[366] According to hospital staff, detectives told her, "You can't remember anything so you aren't reporting a sexual assault. Call us if you remember something." Police did not take a report or follow up.[367] Internal police investigation files confirm that police recorded the incident as "office information" because "no crime was reported." The detective noted having "provided [the victim] with my business card and said to call if she needed police services." Though the victim told the detective the next day that she would like to know what the police could do about her case, the case remained classified as "office information" and the file did not indicate any investigation.[368]

- A college student who woke up outside her dorm room in the spring of 2010 without pants and with skinned knees, bruises, scratches on her face and thighs, and abrasions and mulch in her vagina. According to medical staff, police said they would not investigate because the victim did not remember the crime, which they wrote up as a general report.[369] They attributed the mulch to her possibly falling on the ground while urinating outdoors.[370] The victim said she felt like she was being called a liar and not taken seriously.[371]
- Valerie S., who has a physical disability and woke up the morning after drinking at a party out of her wheelchair and naked. She could not remember what happened but was concerned she had been sexually assaulted. Medical staff say that the responding officers said this was not the case. She decided not to file a complaint because of the disbelieving way the officers questioned her.[372]

The MPD states it has made efforts to improve its handling of drug-facilitated sexual assault cases since 2008. The efforts included having detectives attend a 2010 training at the US Attorney's Office, led by an expert in drug-facilitated sexual assault cases. Also, the MPD states that the number of cases submitted for toxicology testing "has substantially increased."[373] Records from the Office of Chief Medical Examiner (which conducts

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[366] Human Rights Watch telephone interview with former advocate R.L., March 9, 2011; Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011.

[367] Human Rights Watch telephone interview with medical staff G.M., March 11, 2011.

[368] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 23, 2012.

[369] Human Rights Watch telephone interviews with medical staff D.S., March 29, 2011; and with medical staff I.L., December 7, 2011.

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

[371] Human Rights Watch telephone interview with medical staff D.S., March 29, 2011.

[372] Human Rights Watch telephone interview with medical staff T.N., March 29, 2011.

[373] Letter from Chief Cathy Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

toxicology tests in suspected drug-facilitated sexual assault cases for the MPD) show that their lab received, collected, or had transferred to it: 6 sexual assault forensic evidence kits in 2008, 2 in 2009, 12 in 2010, and 7 as of May 25, 2011.[374]

A new measure that could improve the handling of these cases is a case review process. Chief Lanier told Human Rights Watch that the MPD is in the "process of developing a formal case review process in which a panel will review, on a bi-weekly basis, all cases that have been investigated and are not forwarded to the US Attorney's Office for prosecution."[375] The concept of "case review" of closed cases has been on the SART agenda since 2010.[376] However, as of October 2012, it had not been implemented.[377] Different sources told Human Rights Watch this was because law enforcement was not providing necessary information.[378]

Additional Cases Involving Drugs or Alcohol That Raise Questions

- The case of a sex worker who, according to community advocates, attempted to report an assault. Law enforcement told her that she was "complicit in her assault" and that she had no case because she had done drugs.[379]
- The case of Kathy A., whom medical staff said woke up with no clothes on after a job doing make-up at a party. She did not remember what happened but suspected she had been drugged and assaulted. "Happens all the time," a member of the medical staff recalled the detective telling her. "There is nothing we can do."[380]
- The early 2011 case of a victim who had only two drinks but blacked out while driving. Hospital staff said she woke up with her pants off, and her wallet and phone missing. She remembered a flash of two guys in her car but nothing else. Two weeks after reporting her assault to police at the hospital, her forensic exam

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[374] Letter from the Sharlene E. Williams, general counsel, Office of the Chief Medical Examiner, May 25, 2011, in response to Human Rights Watch's Freedom of Information Act Request dated April 20, 2011.

[375] Letter from Chief Cathy Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

[376] D.C. SART Meeting minutes, September 16, 2010.

[377] Human Rights Watch telephone interview with R.S., December 21, 2012.

[378] Human Rights Watch telephone interview with Washington, D.C. city government official, May 16, 2011; Human Rights Watch interview with medical staff M.H., Washington, D.C., March 2, 2011.

[379] Human Rights Watch joint interview with Cyndee Clay and colleague, Washington, D.C., March 28, 2011.

[380] Human Rights Watch telephone interview with medical staff L.L., March 23, 2011.

kit and blood and urine samples were still awaiting pick-up because the detectives said the crime could have happened in Maryland. [381]

- A July 2009 case in which the complainant was highly intoxicated at the time of her report and indicated she had been assaulted. Though at the time her statement appeared unclear, the victim called back nine days later to ask about results from her rape kit. The detective explained it would take six weeks or longer for results, but the file does not indicate any follow-up or investigation after the call.[382]
- An October 2011 case in which the victim had half an open soda after a date and woke up without her shirt, tights, and underwear, and with her head spinning and hurting. She was very upset but could not recall what had happened or how her clothing had gone missing. She had not had any alcohol or drugs but witnesses described her as wobbly. She went for a forensic exam, but police listed the case as office information and did not assign a case number.[383]
- A fall 2011 case in which the complainant reports that he lost consciousness after meeting the suspect at a nightclub, but awoke briefly to find the suspect anally penetrating him before losing consciousness again. The detective wrote up the report as an "allegation of a misdemeanor," though assigned no case number. The file notes that the detective left one message for the suspect on his cell phone over two months after the assault. It also notes one unsuccessful attempt five months after the assault to go to the nightclub, when it was closed. But it contains no indication of further investigation.[384]
- A May 2010 case in which the complainant was at a bar with a friend and next remembers waking up in a lobby with no shoes, underwear, or purse, with soreness in her vaginal area. The complainant was very upset. The case was taken as an "office information" case and apart from delivering the forensic kit to the lab, there is no indication of any follow-up or investigation before it was closed.[385]
- A May 2009 case in which the complainant was found intoxicated on the sidewalk stating she was raped. She was "highly intoxicated" at the time of the interview and was taken to the hospital. But the report indicates "follow up: None." [386]

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[381] Human Rights Watch telephone interview with medical staff B.C., March 8, 2011.
[382] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 21, 2012.
[383] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 23, 2012.
[384] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 23, 2012.
[385] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.
[386] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 23, 2012.

- An October 2010 case in which the victim was found in a wooded area "bleeding from the nose and mouth" with her pants and underwear off. The victim "admitted to having smoked PCP." Though the victim had a SANE exam, the case was closed before the results were returned from the lab. The case was categorized as office information "injured person to hospital." The "complainant was advised … that she did not report that she was sexually assaulted."[387] The complainant said she wanted to leave the matter alone, but added that "the SANE Nurse told her she was the victim of a sexual assault because of injuries to her face/mouth and that there were tears to her vaginal area." However, the detective notes that the nurse noted no "acute" findings (emphasis added) during the genital examination and therefore the detective "finds that no crime was reported or alleged to have been committed."[388]
- A January 2010 case in which a complainant reported waking up after a night of partying with no pants and underwear, on a floor in an apartment. She had no recollection of what happened but had a SANE exam. The case was designated "office information." The file does not indicate whether police picked up the forensic exam kit.[389]

Naked, Bloody, and Unconscious

Two hospital staff members reported that in October 2010, a victim was brought to the hospital after a passerby spotted a trail of blood leading to a hotel room and called the police. When police arrived at the scene, they found a woman naked, bloody, and unconscious in a tub filled with ice in a hotel room bathroom. Five men were passed out in the room. The victim had lost significant amounts of blood, had a tear from her vagina to her rectum, and required emergency surgery and a blood transfusion. According to the staff members, an SAU detective told someone who works with sexual assault survivors, "Well, she could have fallen on rocks and may not have had panties on. Also what kind of girl is in a room with five guys?"[390]

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[387] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

[388] Ibid.

[389] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

[390] Human Rights Watch telephone interviews with medical staff M.H., April 8, 2011; and with medical staff I.L., December 7, 2011.

Sex Workers

Sex workers face an increased risk of sexual assault. Many predators rightly believe that sex workers may be reluctant to report to the police. However, according to the Manhattan District Attorney's Office, prosecuting people who prey on sex workers is especially important because sex workers are often targets for serial offenders or killers because of their vulnerability and unwillingness to go to police.[391]

...in practice, officers may make a quick decision that a sexual assault case involving a sex worker victim is not winnable and therefore not pursue it.

The Standard Operating Procedures for the MPD's Sexual Assault Unit state that, "One of the myths surrounding sexual assault is that prostitutes cannot be victims of sexual assault. Whether or not someone is involved with prostitution does not affect the fact that forcing sex on someone is sexual assault and illegal."[392] Human Rights Watch research also indicates that a number of detectives in the SAU aggressively investigate cases in which the victims are sex workers. According to the assistant US attorney responsible for prosecuting sexual assaults in D.C., since 2008 at least 14 cases, involving 24 victims who were sex workers, have been prosecuted or are now under investigation. Many of these cases involved the same detectives, whom she praised for their positive interaction with victims.[393] Chief Cathy Lanier also told Human Rights Watch that detectives are actively investigating a case involving a paid escort that was reported in late May 2012, even though the victim was not able to participate in the investigation. Lanier acknowledged that failing to investigate crimes against sex workers (or others), even if the victim is unable to engage in the investigation, leaves violent predators on the street and is a serious threat to public safety.[394]

Nevertheless individuals who have witnessed MPD officers interact with sex workers who reported sexual assault shared concerns that, in practice, officers may make a quick decision that a sexual assault case involving a sex worker victim is not winnable and

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[391] Human Rights Watch interview with Melissa Mourges, chief of Cold Cases Unit, and Martha Bashford, chief of Sex Crimes Unit, Manhattan District Attorney's Office, New York City, January 31, 2012.

[392] Metropolitan Police Department, Sexual Assault Unit SOP, January 14, 2003, p. 10.

[393] Human Rights Watch telephone interview and email exchange with Kelly Higashi, assistant US attorney, Washington, D.C., June 4, 2012. In addition, a number of cases are investigated by MPD's Human Trafficking Unit, which is not a part of the Sexual Assault Unit.

[394] Human Rights Watch telephone interview with Chief Cathy Lanier, June 1, 2012.

therefore not pursue it. For example, one transgender victim of a violent sexual assault was told by her lawyer that police did not pursue her case because the suspect said she was a sex worker.[395] Problematic behavior observed by advocates and/or medical staff in sex worker victim cases includes:

- A focus on whether money was exchanged, and if so, a decision not to pursue the case.[396]
- Police repeatedly giving feedback such as, "I'll take the report but they're not going to do anything about it because the person was high," or "the victim's background is going to come out so it is not worth following up."[397]
- Police not treating an assault against a sex worker as a sexual assault, but rather as a case where the victim was not paid.[398] For example, one exam exemption report prepared by a nurse in 2011, quoted an officer as saying the patient "frequently prostitutes herself and then comes to report if she has not been paid enough money."[399]

Human Rights Watch also noted that in one investigative file for a case in which the complainant reported being assaulted in April 2009, the detective seemed to question the victim's credibility, noting that "the complainant … admitted to being a prostitute in the past."[400] This indicates that despite current efforts on the part of some detectives in the SAU, the experience and perception of the sex worker community is that crimes against them are not treated appropriately.

Sex worker lack of faith in police handling of assault cases against them is a long standing problem that can be traced back to before 2008, as two surveys from that period indicate.[401] One D.C. survey, for 2007 and 2008, indicated that 75 percent of sex workers who had sought help from the police were dissatisfied with the response.[402]

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[395] Human Rights Watch telephone interview with Ruby C. (pseudonym), February 2, 2012.

[396] Human Rights Watch telephone interview with medical staff P.R., February 18, 2011.

[397] Human Rights Watch joint interview with Cyndee Clay and colleague, Washington, D.C., March 28, 2011.

[398] 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, June 24, 2011; Human Rights Watch telephone interview with N.Z., May 17, 2011.

[399] District of Columbia Sexual Assault Nurse Examiner Exam Exemption Report, January 24, 2011, on file at Human Rights Watch.

[400] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 23, 2012.

[401] A 2006 survey by an organization that works primarily with street sex workers in Washington, D.C., found that 90 percent of 149 respondents had experienced violence, but only one of those women said she would go to the police if she were hurt.

To protect sex workers, an advocacy group has created a "DC Bad Date Sheet" that describes people who have victimized sex workers, their vehicle, if relevant, and the assault. The sheet is updated every few weeks and usually then includes up to five new incidents of assaults, which are often violent. Crimes on the sheet dated March 17, 2011, for example, include robberies and physical and sexual assaults on sex workers by perpetrators wielding guns, knives, a stun gun, and an ice pick.[403]

Advocates for sex workers said the victims had not reported these violent assaults because police had in the past not believed victims who reported their assaults or blamed them for engaging in risky behavior.[404] Advocates estimate that of 60 to 70 annual assaults on sex workers, only 5 percent report to the police.[405] In some cases, sex workers accuse police officers of being the perpetrators of assault and one sex worker, in January 2012, told Human Rights Watch that some officers are known for demanding sex in exchange for not arresting them.[406]

See Alliance for a Safe & Diverse D.C., "Move Along: Policing Sex Work in Washington, D.C.," 2008, p. 17 (citing Helping Individual Prostitutes Survive (HIPS), Survey on Violence, Washington D.C., 2006). The Move Along report also notes police indifference and poor response to violence against sex workers and transgender women and instances when the police themselves commit violence against sex workers.

[402] Survey respondents indicated that police had sometimes made the situation worse—insulting or abusing people who had turned to them for help, arresting them, or asking respondents for sex—rather than investigating the crimes committed against them. See Alliance for a Safe & Diverse D.C., "Move Along: Policing Sex Work in Washington, D.C.," p. 56. An SAU detective was arrested for solicitation of a prostitute on July 11, 2008. Deposition testimony of Detective Elgin Wheeler, October 3, 2008, pp. 25-26.

[403] "DC Bad Date Sheet," March 17, 2011, on file at Human Rights Watch.

[404] Human Rights Watch joint interview with Cyndee Clay and colleague, March 28, 2011.

[405] Ibid.

[406] See Alliance for a Safe and Diverse D.C., "Move Along: Policing Sex Work in Washington, D.C.," p.56; Human Rights Watch interview with Monica B. (pseudonym), Washington, D.C., January 26, 2012.

IV. Police Mistreatment of Victims

The investigating officer's attitude and show of concern can often determine whether or not the victim follows through to the next step in the judicial process.

— Metropolitan Police Department, Standard Operating Procedures, Sexual Assault Unit, January 14, 2003, p. 19

If a victim does not feel comfortable with the police when reporting a sexual assault, then the entire process can be undermined. Furthermore, the mistreatment, or the appearance of mistreatment by the police can deter others from bringing complaints forward.

—Letter from MPD Chief Cathy Lanier, Washington, D.C., June 8, 2012

I'll never be able to stop shaking my head at the fact that not only was he [the MPD detective] not supportive, he made me feel awful about myself by telling me it was nothing more than an issue that I got too drunk and was regretting a decision I made. It tore me up that he did not believe me and he made it clear to me that he didn't believe me. Traumatized is the word that I felt from the investigator, in some ways, it was worse than the event itself.

—Shelly G., Washington D.C., June 20, 2012

I think that filing the report was just as traumatic as the crime, if not more.... Is it common place for the police to put blame on the sexual assault victims and then completely ignore them?

—Letter from sexual assault victim in D.C. to Office of Police Complaints, about her treatment by MPD detectives, November 12, 2009

If I were ever to be physically harmed, I would not trust a D.C. police officer to ever do anything for me. I would not even think to call a D.C. police officer to try to help me because it would not happen.

—Rachel G., sexual assault survivor, deposition transcript, April 1, 2008

An estimated one in five women in the United States is a victim of rape or attempted rape in her lifetime. However, studies indicate that nationwide, less than 20 percent of rape or sexual assault victims reported incidents to the police in 2007.[407]

Many sexual assault survivors choose not to seek help out of fear that authorities will mistreat or not believe them.[408] Unfortunately, this concern can be well founded. In D.C., testimony from several observers and victims indicates that some MPD members treated victims insensitively when they attempted to report a sexual assault.[409]

Police may not realize how potentially damaging their interactions with victims can be. But negative police interactions can lead to re-victimization of survivors of sexual assault and increase the likelihood they will suffer Post-Traumatic Stress Disorder (PTSD).[410]

Poor treatment of victims can also lead to botched or dropped investigations.[411] Prosecutors interviewed for this report stressed the importance of detectives building relationships with victims and earning their trust in order to get them to explain clearly what happened. [412] One prosecutor said, "Cases rise and fall on the victim's ability to tell their story."[413] A positive initial contact with law enforcement is therefore very important.[414]

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[407] See, for example, Dean G. Kilpatrick, et al, National Crime Victims Research & Treatment Center, Medical University of South Carolina, "Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study," Document No. 219181, US Department of Justice Award No. 2005-WG-BX-0006, February 1, 2007, https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf (accessed November 19, 2012) (finding 16 percent of all rapes are reported to law enforcement).

[408] See, for example, Debra Patterson, Megan Greeson, and Rebecca Campbell, "Understanding Rape Survivors' Decisions Not to Seek Help from Formal Social Systems," *Health & Social Work*, May 2009, p. 127.

[409] Human Rights Watch interview with Cindy Teller, D.C. SANE director from July 2008 through December 2009, Newport Beach, Virginia, June 24, 2011; Human Rights Watch telephone interview with R.L., March 9, 2011; Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011.

[410] Rebecca Campbell, "What Really Happened? A validation study of rape survivors' help-seeking experiences with the legal and medical systems," *Violence & Victims*, vol. 20, February 2005, pp. 55-68; Human Rights Watch telephone interview with medical staff P.R., May 10, 2011; Rebecca Campbell et al., "Community Services for Rape Survivors: Enhancing Psychological Well-Being or Increasing Trauma?" *Journal of Consulting and Clinical Psychology*, vol. 67. no. 6, 1999, pp. 847-858.

[411] See Debra Patterson, "The Impact of Detectives' Manner of Questioning on Rape Victims' Disclosure," *Violence Against Women*, January 11, 2012; and Debra Patterson, "The Linkage Between Secondary Victimization by Law Enforcement and Rape Case Outcomes," *Journal of Interpersonal Violence*, March 17, 2010.

[412] Human Rights Watch telephone interviews with S.R., assistant US attorney, Washington D.C., September 18, 2012; and with M.G., assistant US attorney, Washington D.C., September 19, 2012

[413] Human Rights Watch telephone interview with C.L., assistant US attorney, Washington D.C., September 18, 2012

[414] Human Rights Watch telephone interviews with S.R., assistant US attorney, Washington D.C., September 18, 2012; and with J.F., assistant US attorney, Washington D.C., September 18, 2012.

A victim who is treated well is also more likely to cooperate with prosecution, significantly increasing chances that the perpetrator will be brought to justice.

In contrast, not treating victims well may not only result in letting a rapist go free, potentially to commit other crimes, it also undermines public confidence in law enforcement. In many communities, word of ill-treatment travels fast among social networks, making other victims less likely to come forward.[415] One person who has worked with sexual assault victims in D.C. for 10 years said, "If I were assaulted I am not sure I would report. It is hard for me to encourage people to go to the MPD when I think that process may be re-traumatizing and harmful."[416]

As described in detail in the subsections below, Human Rights Watch documented the following re-victimizing or counter-productive behaviors by MPD personnel:

- Questioning survivors' credibility;
- Actively discouraging victims from reporting or undergoing a forensic exam;
- 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.

The findings are drawn from accounts of witnesses and victims and corroborated by information found in detectives' files. When notified that Human Rights Watch considered several of our findings substantiated by information included in investigators' notes, Chief Lanier responded that it was a "cheap shot" and "nonsensical that a detective would report his/her own mistreatment of a victim."[417] Chief Lanier also indicates that "HRW is highlighting cases and selectively using the facts" and that "HRW draws negative conclusions that do not include all of the relevant facts." However, notes in files, cited below, are indicative that detectives may not realize their treatment of victims is inappropriate.

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[415] Human Rights Watch telephone interview with G.D., September 27, 2011; Human Rights Watch interview with K.V., Washington, D.C., March 28, 2011; Human Rights Watch telephone interview with L.O., June 13, 2011.

[416] Human Rights Watch interview with L.O., Washington, D.C., March 28, 2011.

[417] Letter from Chief Lanier to Human Rights Watch, December 20, 2012.

Human Rights Watch did not attempt to identify particular detectives or officers engaged in this activity and it is possible that the actions of a few are tainting perceptions of the unit as a whole.[418] It is important to note that according to victims, medical staff, and advocates, not all detectives in the MPD's SAU behave insensitively to victims.[419] One witness recalled observing a detective behaving sensitively to a toothless, homeless, male victim who she feared would be treated poorly.[420]

... the breadth of observations in this report raises concerns about institutional tolerance of re-victimizing behavior by those detectives known not to interact well with victims.

Many of the prosecutors interviewed for this report at the MPD's request emphasized that a number of detectives in the unit do very good work,[421] are good at making victims feel "comfortable,"[422] are "inspiring," and "don't get the credit they deserve."[423] New detectives were singled out for praise.[424] Some prosecutors were able to give examples of difficult cases that were successfully prosecuted because of the efforts a detective made to work with the victim.[425]

But the prosecutors also acknowledged that other detectives "shouldn't be doing this kind of work at all,"[426] "don't want to be there,"[427] "are not good at making victims feel

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[418] In a telephone interview with Dr. Janis Orlowski, chief medical officer and chief operating officer for Washington Hospital Center, she indicated that though she is not directly involved with the SANE program activities, in her position she receives "assessments of the quality and safety of clinical programs, including the SANE program." In this capacity, she said that she was aware of some early complaints about the MPD and had done an internal review and believed that they "surrounded a particular individual" and that the internal review—conducted in 2010 or early 2011—did not support the complaints. However, as no other individual interviewed for this report—including 14 individuals who work or have worked in the SANE program at WHC—raised the existence of or confirmed the existence of such an internal review, Human Rights Watch was not able to confirm the report's existence or assess its contents. The information gathered for this report primarily took place after the time period that the report would have covered (2009). Human Rights Watch telephone interview with Dr. Janis Orlowski, September 20, 2012.

[419] Human Rights Watch telephone interviews with Kristin A. (pseudonym), May 17, 2011; with C.S., October 21, 2011; with medical staff L.L., March 23, 2011; and with Kelly Higashi., assistant US attorney, Washington, D.C., June 4, 2012.

[420] Human Rights Watch telephone interview with R.W., October 5, 2011.

[421] Human Rights Watch telephone interview with J.F., assistant US attorney, Washington D.C., September 18, 2012.

[422] Human Rights Watch telephone interview with S.W., assistant US attorney, Washington D.C., September 19, 2012.

[423] Human Rights Watch telephone interview with C.L., assistant US attorney, Washington D.C., September 18, 2012.

[424] Human Rights Watch telephone interviews with J.F., assistant US attorney, Washington D.C., September 18, 2012; and with S.W., assistant US attorney, Washington D.C., September 19, 2012.

[425] Human Rights Watch telephone interview with J.F., assistant US attorney, Washington D.C., September 18, 2012.

[426] Human Rights Watch telephone interview with C.L., assistant US attorney, Washington D.C., September 18, 2012.

[427] Human Rights Watch telephone interview with M.G., assistant US Attorney, Washington D.C., September 19, 2012.

comfortable,"[428] or are less likely to believe victims,[429] and "they would be happy to have some [detectives] go."[430] When assigned a case with those detectives, the prosecutor thinks, "I wish I got someone else."[431]

However, the breadth of observations in this report raises concerns about institutional tolerance of re-victimizing behavior by those detectives known not to interact well with victims. Also, even detectives praised by prosecutors for their positive victim interactions were the subject of some complaints detailed below, which further illustrates the importance of training and accountability for all detectives. Though some have noted improvements in recent months, any improvement has to be durable and systemic in order to have impact.

The MPD should act quickly to address instances in which detectives behave inappropriately.

Questioning Survivors' Credibility

A significant barrier to successful investigation of sexual assault is the persistent belief among some law enforcement officers that victims fabricate sexual assaults out of vindictiveness or to cover up behavior that they regret. Studies show that the rate of false reporting for sexual assault is low (2-10 percent),[432] yet all too often, law enforcement treats reports of sexual assault with skepticism.[433] Victims treated with suspicion are less likely to cooperate with police, making investigation even less likely.[434]

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[428] Human Rights Watch telephone interview with S.W., assistant US attorney, Washington D.C., September 19, 2012.

[429] Human Rights Watch telephone interview with S.R., assistant US attorney, Washington D.C., September 14, 2012.

[430] Human Rights Watch telephone interview with C.L., assistant US attorney, Washington D.C., September 18, 2012.

[431] Human Rights Watch telephone interview with S.W., assistant US attorney, Washington D.C., September 19, 2012.

[432] David Lisa et al., "False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases," *Violence Against Women*, December 16, 2010, 16:1318 (finding a false report rate of 5.9 percent over a 10-year study of reported sexual assaults at a major northeastern university).

[433] Sgt. Joanne Archambault, Dr. Kimberly Lonsway, and EVAWI, "Clearance Methods for Sexual Assault Cases," July 2007 (updated August 2008), p. 28.

[434] See Debra Patterson, "The Impact of Detectives' Manner of Questioning on Rape Victims' Disclosure," *Violence Against Women*, January 11, 2012; and Debra Patterson, "The Linkage Between Secondary Victimization by Law Enforcement and Rape Case Outcomes," *Journal of Interpersonal Violence*, March 17, 2010. If the police do not believe the victim, they may perhaps make this known to her by aggressively questioning on the absence of injury or a delay in reporting. The victim may become upset and withdraw cooperation, which in many places may in itself be grounds for considering a case unfounded. In addition, if investigators have already interviewed the suspect, who may claim the act was consensual, they may aggressively question the victim using information from the suspect, leading the victim to recant. The investigation may stop with the initial interview. This in turn serves to confirm the investigators' belief that the victim was lying. Dr. Kimberly A.

The MPD policy explicitly states that "members shall not express any personal opinions regarding alleged sexual offenses" during a sexual assault investigation.[435] Still, police skepticism about reports of sexual assault is a problem reported by victims and those who have witnessed police interaction with victims in Washington D.C.[436] Narratives in investigative files reviewed by Human Rights Watch corroborate this perception.

Some who work with victims in D.C. estimate that in "easily half" of all cases, victims have the impression that police do not believe them.[437] A person who has worked for years to support victims in D.C. said the biggest problem she finds is victims saying, "The detective didn't believe me."[438] Another veteran on these issues said some detectives "start from an assumption that the victim is lying until proven otherwise."[439] The head of SANE until December 2009 also said victims used to ask her, "Why did the police talk to me like that? They don't believe me."[440] One victim, Shelly G., was exasperated and asked her detective if he believed her. He made it clear he did not.[441]

The testimony provided in the 2008 lawsuit against the District of Columbia, indicates that police skepticism about victims seeking forensic exams has existed for some time. A former SAU supervisor testified in 2008 that,

> [I]t's not an uncommon practice for females to come to the hospital to get a sex kit for various reasons, to not include [seeking to report a] criminal [offense] … They may come because they went out on a date, don't know who they slept with, get the morning after pill, get contraceptives for STDs.[442]

Lonsway, Sgt. Joanne Archambault, Dr. Alan Berkowitz, and EVAWI, "Excerpt from False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault," February 2009.

[435] Metropolitan Police Department, General Order, "Adult Sexual Assault Investigations," December 22, 2006, p.3; Metropolitan Police Department, General Order, "Adult Sexual Assault Investigations," August 25, 2011, p. 4.

[436] Human Rights Watch telephone interviews with medical staff G.M., March 11, 2011; with P.S., March 15, 2011; with medical staff D.S., March 29, 2011; and with medical staff I.L., December 7, 2011.

[437] Human Rights Watch telephone interview with R.L., March 9, 2011; Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011.

[438] Human Rights Watch telephone interview with medical staff I.L., December 7, 2011.

[439] Human Rights Watch telephone interview with R.T., February 16, 2011.

[440] Human Rights Watch interview with Cindy Teller, D.C. SANE director from July 2008 through December 2009, Newport Beach, Virginia, June 24, 2011.

[441] Human Rights Watch telephone interview with Shelly G. (pseudonym), Washington, D.C., October 12, 2012.

[442] Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, p. 221. Another officer testified that, in his opinion, a woman may lie about being a victim of sexual assault to get a boyfriend in trouble or to get access to a

Police investigative files from later periods indicate that this skepticism persists among some detectives, who believe victims choose to undergo extensive forensic exams only to get a morning after pill or treatment for sexually transmitted diseases. This belief has no objective basis, however, as access to health care and emergency contraception (the morning after pill) is not limited to sexual assault victims. Both services can be obtained without submitting to an invasive, lengthy forensic examination or potentially difficult police interview.

The following are examples from case files in which detectives indicated a belief that the victim was undergoing a forensic exam for reasons other than sexual assault:

- An investigator notes a May 2009 case of a woman who had limited speech and comprehension who was with friends in the neighborhood smoking weed when one of the guys "got rough with her and told her to pull her pants down." She complied, although she did not want to do it. The detective wrote, "The problem is that she has a serious itching problem in the vaginal area and told her power of attorney that she needed help." The case was classified as an "office information" because, the detective noted, the victim just wanted medical attention.[443]
- In Estella's case (described further below) in May 2010, Estella wanted a forensic exam because she was reporting a sexual assault. But her detective wrote in her report that "after realizing that the [subject] did not sexually assault her, the complainant still insisted upon having a SANE examination. She stated that she wants to ensure she is not pregnant and did not get a disease" and "was upset about the fact he did not use a condom."[444] According to Estella, the detective asked her, "Do you really want to file a report or do you just want meds?"[445]
- In the file for Susan's 2011 case, the detective indicates she had a forensic exam because the suspect did not use a condom and she wanted to take the morning after pill and get checked out.[446]
- In a March 2011 case, the detective indicates the victim went through with a SANE exam at WHC because Providence hospital does not give morning after pills.[447]

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pregnancy test or the morning after-pill (See, for example, deposition testimony of Detective Vincent Spriggs, October 23, 2008, p. 239).

[443] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 21, 2012, on file at Human Rights Watch.

[444] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

[445] Human Rights Watch group interview with sexual assault survivors (including Estella C.), Washington, D.C., September 30, 2011.

[446] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

[447] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

In the aftermath of trauma, victims often make statements that are inconsistent or incomplete. They may also seek to hide or minimize unflattering behavior out of fear that they will not be believed or that they will be blamed for their assault. If police respond by treating victims with suspicion and interrogating them when confronted with gaps in their stories, they may sabotage the investigation. For that reason, it is very important that the detective create a non-judgmental environment and not convey disbelief during the victim interview. Assessments about inconsistencies can be made after conducting an investigation.

Skepticism of a victim's account during an initial interview is apparent in some detectives' investigative notes:

- Detective notes of an interview with a victim immediately after her assault in the fall of 2011 say, "There are many inconsistencies in her account of the alleged sexual assault," such as that the victim said the suspect hit her and then said he kicked and punched her. The crime scene was listed as "Allegedly the suspect's bedroom." Notes state that the suspect hit the complainant on the eye when he forced her on the bed, "but that might have been an accident."[448]
- Detective notes from a December 2010 case read, "This investigation should be classified as a sexual abuse allegation. [Complainant] does not report exactly what happened to her. C states 'he took advantage of me, he raped me' 'he forced himself in me and raped me.' She does not explain how she was forced and how she was sexually abused. [Complainant] provides contradictory statements. [Complainant's] version of events is full of inconsistencies. She identifies herself as suffering from schizophrenia and depression. Both officers reported to know [complainant] as local crack user and prostitute."[449]
- In an early 2010 case in which the victim reported she was forced to orally copulate a stranger, the police notes indicate skepticism about the report. The complainant, a deaf student, told police that after a night of drinking with classmates, she blacked out and woke up on an unknown street between 2:30 and 3:00 a.m. She told detectives that as she was walking a large man came up and was "gusting" her for a drink. She walked faster but he followed her and grabbed her sweater and took her into an alley and told her to sit down. The detective wrote, "[Complainant]

[448] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.
[449] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

> stated that the big black man pulled down his pants and she sucked his penis, only because she did not know if he had a gun or a knife or what he was going to do…. The complainant does not mention any force or threats or how she knew to suck suspect's penis." In a second interview the detective noted, "The [complainant] did not describe any force or threats during this alleged altercation … [the complainant] describes the assailant making a motion by pointing to his genitals that he wanted his penis sucked."[450] The case was not assigned a case number and no investigation was done.

A delay in reporting, even if brief, can raise questions about a victim's credibility. In two investigative files reviewed by Human Rights Watch, detective notes indicate "the complainant was asked what her delay in making the report sooner was," even though the complainant reported the day after the assault.[451]

Notes from an October 2010 case classified as "office information" state, "It should be noted that [complainant] waited over 12 hours before requesting medical services and police assistance."[452] In Estella's case, the detective wrote, "Once home, the [complainant] pondered over what had transpired and felt that she had been raped. Therefore she responded to the district."[453] Estella went to the police department within an hour of her assault.

Detectives convey their mistrust of victims both directly and indirectly.[454]

In Maya's case in April 2011 (see text box), the detective repeatedly told her that "no one would believe" her and that she was "lying" and "wasting their time."[455] In 2009, a detective told another victim, Dolores R., "It seems like you're telling me a story and it isn't yours."[456] One witness saw a detective look at a patient and tell her she was not

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[450] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 23, 2012.

[451] Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 21, 2012.

[452] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

[453] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

[454] Human Rights Watch telephone interview with R.L., March 9, 2011; Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011.

[455] Human Rights Watch telephone interview with Maya T. (pseudonym), May 10, 2011; Complaint form, Office of Police Complaints, May 9, 2011 (provided by Maya T.); narrative of events provided by Maya T., on file at Human Rights Watch.

[456] Human Rights Watch group interview with sexual assault survivors (including with Dolores R.), Washington D.C., September 30, 2011.

sexually assaulted.[457] Bystanders have heard detectives raise their voices to victims and ask, "Why are you here?"[458] A person who works with survivors reported, "I have had police walk out of the room and say 'She is lying to us.'"[459]

Others also report that some detectives go so far as to explicitly threaten victims with arrest on charges of false reporting. Apart from Rachel G. (see box above), three other victims, all of whom had cases after 2009 (after reforms were implemented), told Human Rights Watch that they were threatened with prosecution for false reporting.[460] People who work with victims also report having heard detectives stressing to victims that filing a false report is unlawful and carries penalties.[461] One member of the medical staff recalls hearing a detective explicitly say, "If I find out you are lying, I will look you up and arrest you."[462]

These may not be isolated incidents. During a training of Rape Crisis Center volunteers, one former volunteer remembers an SAU detective saying, "'We make it very clear to survivors that there is a penalty for false reporting.' He said that if anything seemed off, they repeatedly remind the victim that they cannot false report."[463]

The form of questioning may also reveal police doubts about a victim's story. Some describe police as "hunting for a good victim" and treating survivors as they would be treated in court.[464] Jennifer W. described her experience in a complaint to the Office of Police Complaints in May 2007. She was assaulted at her workplace and reported the incident to her supervisor, who reported the crime to police. Jennifer met with two SAU detectives whose "confrontational, insensitive manner" she found "very degrading and humiliating."

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[457] Human Rights Watch interview with Cindy Teller, June 24, 2011.

[458] Human Rights Watch telephone interview with medical staff D.S., March 29, 2011.

[459] Human Rights Watch telephone interview L.P., March 16, 2011.

[460] Human Rights Watch group interview with sexual assault survivors, Washington D.C., September 30, 2011; Human Rights Watch telephone interview with Maya T. (pseudonym), May 10, 2011; Complaint form, Office of Police Complaints, May 9, 2011 (provided by Maya T.); narrative of events provided by Maya T., on file at Human Rights Watch; Human Rights Watch telephone interview with medical staff P.R., May 10, 2011; Deposition testimony of Officer Ginette Leveque, April 14, 2008, pp. 250-51.

[461] Human Rights Watch telephone interviews with medical staff B.C., March 8, 2011; and with C.B., May 12, 2011.

[462] Human Rights Watch telephone interview with medical staff P.R., February 18, 2011.

[463] Human Rights Watch telephone interview with C.B., May 12, 2011.

[464] Human Rights Watch joint interview with Cyndee Clay and colleague, March 28, 2011.

> They seemed to be questioning my integrity … they would not allow me to answer in full, interrupting me repeatedly (e.g. 'That is a 'Yes' or 'No' question, Ma'am!')
>
> They … made it obvious they had a pre-conceived notion of the incident that had occurred and that they did not find my testimony credible. Both officers persistently asked me humiliating, irrelevant questions regarding the assault … They did not attempt to understand my position or feelings or what I was going through.[465]

If the victim has a criminal record, it may contribute to police doubts about her report of sexual assault. The head of the SANE program from 2008 to 2009 said that during her time, detectives would sometimes run a victim's name through the system; if he or she had a record, they brought it up in the police interview.[466] Advocates and victims corroborated this. Six police investigative files reviewed by Human Rights Watch referred to a detective running a complainant's name through the system to check their criminal record before interviewing the victim. In one August 2011 case, the detective noted,

> Upon conducting a WALES [Washington Area Law Enforcement database] check, [the complainant] was found to be wanted on a bench warrant. [Complainant] was placed under arrest.[467]

In another case, a detective wrote, "A check through WALES and Colombo indicates the [complainant] has been arrest [sic] for soliciting in the same area where she alleges her assault occurred."[468]

Running a record check on victims is not necessarily problematic (if a routine practice with all crime victims), but existence of an unrelated criminal issue should not be used to discount a victim's complaint of sexual assault. Yet advocates indicated that, in their

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[465] Office of Police Complaints, Complaint Form, May 4, 2007, on file at Human Rights Watch.

[466] Human Rights Watch interview with Cindy Teller, June 24, 2011.

[467] Human Rights Watch notes from review of MPD investigative files, SA11-XXX/SX11-XXX, August 21, 2012.

[468] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 23, 2012. Other cases found include SA10-XXX ("The [complainant's] name was run through Colombo and NCIC. The complainant has no warrants."); SA10-XXX (The [complainant] name was run through Colombo and NCIC. The [complainant] had no warrants but had been arrested for unregistered ammunition and leaving scene of accident."); SA11-XXX; SA11-XXX.

experience, if a victim's name comes up in the system, the police do not believe him or her.[469] A victim complained to an advocate in August of 2011 that she believed her case was not being followed up because of her record.[470] Maya T., too, was asked about her criminal record when she reported her assault in April 2011, as part of a general pattern of questioning that indicated the detective doubted her credibility.[471]

"How can you not remember? How can we believe you?"

In other cases, victims who spoke to Human Rights Watch said that they were left with the impression that the detective simply took the suspect's word over theirs. Susan D., the US government employee who was assaulted on a date in spring 2011, said the detective assigned to her case interviewed the suspect. Afterwards, the detective told Susan that the suspect had acknowledged sexual contact, but claimed it was consensual. When Susan pointed out that this contradicted an earlier statement by the suspect that nothing happened, the detective said the suspect had not known his earlier statement was being recorded, and "Why would he lie?" Susan said, "I felt like my credibility was less than the assailant. The only follow-up was to blame me."[472] The investigative file for Susan's case seems to confirm her impression of bias. It contained a one page "bio of the subject" listing his various "academic and leadership achievements." No other note of his statement (or of the victim's impressive credentials) was in the file.[473]

In Maya's case, detectives also told her they had spoken with the suspects and believed their version of events—that it was consensual — over hers, even though she had been found locked in a room. In that case, the police did not even open an investigation but instead filed a "miscellaneous" report, or "office information."[474] A review of the investigative file indicated that Maya's impression that the police took the suspects at their word was correct.[475] (See text box)

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[469] Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011.

[470] Human Rights Watch telephone interview with L.S., October 21, 2011.

[471] Complaint form, Office of Police Complaints, May 9, 2011 (provided by Maya T.).

[472] Human Rights Watch group interview with sexual assault survivors (including with Susan D.), Washington D.C., September 30, 2011.

[473] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

[474] Incident-Based Event Report, Complaint No. 11058XXX, April 28, 2011, on file at Human Rights Watch.

[475] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 22, 2012.

In notes from an October 2011 investigative file, the detective's skepticism of the victim is apparent from her description of the complainant as "combative and very evasive" and the list of "inconsistencies" described above in the warrant request. The detective notes "Canvass: None. S-1 (Suspect) stood by on scene and was cooperative. Said it was consensual and he used a condom."[476]

"You can only cry rape so many times…"

Unwillingness to believe victims is sometimes conveyed by body language. One witness described an interviewing technique she witnessed in which two detectives interview the victim. One stands with his arms crossed while the other questions the victim. Sometimes they tag team, "seemingly looking for inconsistencies in the victim's story."[477] Other advocates also describe detectives giving victims the impression that they are annoyed to have to come and take a report.[478] Estella C. reported that her detective rolled her eyes repeatedly when she was telling her about her sexual assault.[479] Susan D. reported that her detective "made several facial expressions during the interview, such as exaggeratingly raising her eyebrows," that made it clear that what Susan was telling her was problematic.[480]

Displaying disbelief to a victim appears especially acute when the victim has been drinking. One advocate expressed her concern regarding a deaf victim of sexual assault in a 2009 email that was forwarded to the Office of Victims Services (OVS) in the Mayor's Office:

> The detective was awful. Completely intimidating, didn't believe her, and told her there was no case number because it wasn't rape since she 'consented.'… I warned the survivor upon meeting the detective that she would be harsh and to stay strong and tell her everything she can remember. Turns out it was a stranger who she met at a party after her friends left her there. (She was visiting from [out of town]) … the guy took advantage of her (she was drunk) and told her to sleep with him otherwise [he] would kick her out to sleep on the street.

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[476] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

[477] Human Rights Watch interview with Cindy Teller, June 24, 2011.

[478] Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011. Another observer noted that while a detective took a statement from a male homeless victim, his partner stood tapping her foot looking off in the distance, as if the interview was wasting her time. Human Rights Watch telephone interview with R.W., October 5, 2011.

[479] Human Rights Watch group interview with sexual assault survivors (including with Estella C.), Washington D.C., September 30, 2011.

[480] Letter from Susan D. to Chief Lanier, May 3, 2012, on file at Human Rights Watch.

> The detective was in the room with the interpreter, and two other female officers and after 40 min, the survivor was literally hysterical … the nurses and I could hear it from outside the room … she was sobbing and yelling (as loud as she could while signing)…. We interrupted and the detective told us 'We'll be done when I say we're done.' Two min later, they walked out of the room … the detective told me there would be no case and told me to go see her.[481]

Although memory lapses are commonly associated with trauma,[482] detectives appear to disbelieve victims if they do not remember elements of the assault. Examples provided to Human Rights Watch include:

- An observer recalled a woman who was new to town and had gone out to a bar with acquaintances. When she got home she was pulled into a neighbor's yard and raped by a stranger. When she could not remember the name of the bar she had visited, a police officer said, "How can you not remember? How can we believe you?"[483]
- Julie M. was a student at a local university when a stranger assaulted her on campus after she had been drinking. She went to WHC the next day and reported the incident to the police, who interviewed her there and wanted to know what the man looked like. "It was hard for me to remember it because I was trying to block out what he looked like," she said, adding that she felt police did not believe her because she did not report the incident to campus police and couldn't give the
- specific location and description.[484] Julie said the police did not follow up with her about her complaint because the case was closed.

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[481] Email correspondence dated April 6, 2009 from advocate, forwarded to the Office of Victims Services, and on file with Human Rights Watch. An additional problem was noted by observers of police handling cases involving deaf victims. When police sign for themselves and take a statement, observers have noticed they tend to make mistakes. For example, in one case the victim said there was no weapon, but the police wrote down there was a weapon. Also, victims of trauma often sign faster than usual, so interpreters need to be specifically trained to work with trauma victims. The role of the interpreter is not sufficiently appreciated. Human Rights Watch interview with K.V., Washington, D.C., March 28, 2011.

[482] Louise Ellison, "Closing the Credibility Gap: The Prosecutorial Use of Expert Witness Testimony in Sexual Assault Cases," *International Journal of Evidence and Proof*, vol. 9, no. 4, p. 243; J. Michael Rivard, M.D. et al, "Acute Dissociative Responses in Law Enforcement Officers Involved in Critical Shooting Incidents: The Clinical and Forensic Implications," *Journal of Forensic Science*, vol. 47, no. 5, July 2002; David Lisak, "The Neurobiology of Trauma," 2002 (unpublished article, on file at Human Rights Watch); Sgt. Joanne Archambault, Dr. Kimberly Lonsway, and EVAWI, "Interviewing the Victim," May 2007, p 21; PPCT Management Systems, Inc. (1989), *Use of Force Human Factors (Chapter One)*; Mary P. Koss, Shannon Tramp, and Melinda Tharan, "Traumatic memories: Empirical foundations, forensic and clinical implications," *Clinical Psychology: Science and Practice*, vol. 2, no. 2, June 1995, pp. 111-132.

[483] Human Rights Watch telephone interview with R.L., March 9, 2011.

[484] Human Rights Watch email correspondence with Julie M. (pseudonym), April 3, 2011.

Skepticism about sexual assault goes beyond detectives in the SAU. A community member on a police ride-along was present when police were called to respond to a sexual assault report. Even though there were several police in the area, they did not respond until they were called a second time. The community member said that she heard officers say about the crime, "You can only cry rape so many times," and "Sexual assault cases—too much paperwork."[485] An attorney who previously worked with the MPD recalled a detective saying to her about a victim, "You know how 13-year-old girls are. They just make stuff up."[486]

"Sexual assault cases—too much paperwork."

Additional Illustrative Cases

- A victim reported waking up from being unconscious and intoxicated in August of 2011 to find an acquaintance grabbing her neck and placing a pillow over her head. He then orally copulated her and vaginally penetrated her without her consent. The victim told him "No." The detective notes say, "If that was the case, we should assume she would not be able to see or speak." The detective also indicates that she changed her mind about reporting because a counselor told her if she reported, shelters were available to her. The case was upgraded from an "allegation" to a sex abuse case only after the suspect admitted to penetration.[487]
- A case from fall 2011 in which the victim reported being hit and vaginally assaulted by three suspects while intoxicated. The detective notes as an "inconsistency" that the complainant did not elaborate on what drinks she had or what liquor was used to make the drinks. She also "admitted she smoked weed."[488]
- In a January 2009 case the victim was found barefoot, with no coat, and injured, with no recollection of where she was. Concerned citizens called an ambulance, which took her to the hospital for a forensic exam because the medics believed she had been sexually assaulted. The detective notes indicate that "Officers advised that [when] a lot of the female patrons left this same nightclub, they were not wearing their coats or shoes."[489]

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[485] Human Rights Watch telephone interview with C.B., May 12, 2011.

[486] Human Rights Watch telephone interview with K.M., November 9, 2011.

[487] Human Rights Watch notes from review of MPD investigative files, SA11-XXX/SX11-XXX, August 21, 2012.

[488] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012, on file at Human Rights Watch.

[489] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 23, 2012.

Advocates and Counselors

Using an advocate or counselor to assist victims through the investigative process can be beneficial to both victims and law enforcement.[490] One victim, Suzy N., who had an advocate with her when she reported in California in July 2011, said, "Just having someone who believed me was very important. She was supportive and emotionally helpful. She helped me feel like I could testify [give a statement]."[491]

Model policies and guidelines recommend contacting a victim advocate as soon as possible to provide assistance for victims throughout the investigative process. This includes the forensic exam, law enforcement interviews, pretext phone calls (when the victim is asked to call the suspect on a recorded line), and interviews with the prosecutor.[492] At least eight states (Washington, California, Iowa, New York, Louisiana, Wyoming, Washington, and Montana) have laws explicitly giving victims the right to have an advocate present with them at the time of questioning by law enforcement.[493]

Advocates may be community-based (such as advocates at a local rape crisis center) or system-based (a victim advocate employed by law enforcement or the prosecutor's office). They provide emotional support for victims during law enforcement interviews and ensure victims' rights are protected. If having an advocate present for the interview is not possible, it is still valuable to have an advocate (or support person) on-site to provide emotional support and information to the victim before and after the interview or procedure.[494]

The presence of an advocate also allows detectives to focus on the questioning, knowing that the victim's emotional needs will be taken care of. And detectives find

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[490] Dr. Kim Lonsway and Sgt. Joanne Archambault, "Advocates and Law Enforcement: Oil and Water?" *Sexual Assault Report*, vol. 11, no.6, pp. 81-82, 86-95; Rebecca Campbell, "Rape Survivors' Experiences With the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?" *Violence Against Women*, 2006.

[491] Human Rights Watch telephone interview with Suzy N. (pseudonym), October 29, 2011.

[492] EVAWI, "Interviewing the Victim," pp. 47-48; International Association of Chiefs of Police (IACP), "Investigating Sexual Assaults Model Policy," pp. 2, 3, 7; San Diego Police Department, Sex Crimes Unit SOP, pp. 1-15.

[493] Cal. Pen. Code Section 679.04 Victim of Sexual Assault, Right to Advocate and Support Person; Iowa Code Ann. Section 915.20, Victim Counselors; LSA-R.S. 46:1844: Basic Rights for Victims and Witness (Louisiana); MCA 46-24-106 Crime Victims—Family Members—Right to Attend Proceedings—Exceptions—Right to Receive Documents—Rights During Interviews (Montana); McKinney's Exec. Law Section 642, Criteria for Fair Treatment Standards (New York); Or. Code Section 147.425, Victim's Personal Representative (Oregon); Wash. Rev. Code Ann. Section 70.125.060, Personal Representative May Accompany Victim During Treatment or Proceedings (Washington state); W.S. 1977 Section 1-40-203 Victim and Witness Bill of Rights (Wyoming).

[494] EVAWI, "Interviewing the Victim," p. 56.

victims more likely to report and more likely to remain engaged in the investigation if they have an advocate. Indeed, studies show that victims are more likely to have a police report taken (59 percent v. 41 percent) and law enforcement is more likely to investigate the case further (24 percent v. 8 percent) when an advocate is involved.[495]

Discouraging Forensic Exams and Reports

An MPD Special Order dating from 2001 sets forth police department policy on sexual assault exams:

> The detective shall explain to the victim the critical need for a forensic examination and encourage the victim to use the services available through the SANE Program. The detective shall explain the benefits of the program and answer questions the victim may have.[496]

However, several people who work with victims said they try to get to the hospital before police, who may otherwise talk victims out of getting an exam or filing a complaint.[497] Some medical staff expressly told Human Rights Watch that for this reason, they would prefer if a victim took an ambulance or taxi to the hospital rather than be brought in by police.[498]

Advocates and contemporaneous documentation by nurses confirm a number of people, after speaking with police, decide not to get an exam or report a sexual assault when they had initially asked for an exam and sought to report to law enforcement.[499] Detective notes

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[495] Kimberly A. Lonsway et al., "Excerpt: The Role of Victim Advocates in the Criminal Justice System: Community and System-Based Advocates," May 2012, p. 2. Training module currently in development for the OnLine Training Institute hosted by End Violence Against Women International, http://olti.evawintl.org (accessed January 10, 2013).

[496] Metropolitan Police Department, Special Order, "Sexual Assault Nurse Examiners Program (SANE)," April 2, 2001, p. 3.

[497] Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011; and Human Rights Watch telephone interviews with medical staff C.J., May 10, 2011; with medical staff I.L., December 7, 2011; with medical staff B.C., March 8, 2011; with M.W., March 24, 2011; and with R.L., March 9, 2011.

[498] Human Rights Watch interview with medical staff P.R., Washington D.C., March 28, 2011.

[499] For example, Washington Hospital Center exam exemption reports (forms prepared for OVS when SANE nurses are called in to perform an exam but then do not do so) read, "SANE did not get to speak to patient but according to detective, pt.[patient] asked for ride to boyfriend's house. 2 known acquaintances gave her a ride. She fell asleep in car, woke up, 1 man was performing anal sex on her while the other was forcing her to perform oral sex on him. That was all the history I received. Reason for exemption: During interview with det. [detective], patient cursed at det. and ran out of ER." District of Columbia, Sexual Assault Nurse Examiners Exemption Report, dated October 8, 2009, on file at Human Rights Watch; Also "Pt. left before I could speak to him. Medstar informed me that MPD and DRCC were notified but pt. left after talking to law enforcement. I spoke with charge RN who confirmed pt. left after initially asking for kit and MPD then left on own after

in files reviewed by Human Rights Watch corroborate witness testimony that victims are sometimes discouraged from getting forensic exams.

In some cases, victims decide not to report their sexual assault after police indicate their case would not hold up in court.[500] The 2009 SANE director said she knew of victims being told, "There is nothing we can do," or "You don't meet the criteria for sexual assault."[501] Other times, police discouraged victims from reporting by saying that they would have to tell loved ones about their behavior or by stressing the serious consequences to the perpetrator of pursuing the case. According to a college counselor, students are sometimes told, "If you go forward with this case, your parents are going to know you have been drinking."[502]

One observer estimated that in her experience, nine times out of ten the decision not to report may be because of something police told the victim.[503] Examples of police comments that have the effect of discouraging reporting and forensic testing include:

- When Dolores R., who was assaulted as a student at a university in D.C. in 2009, tried to get a sexual assault exam at her university hospital, campus police called the MPD. The SAU detective who came to the hospital told her she would have to transfer to another hospital to get an exam, that it was a long process, and perhaps she "didn't want to go through all that." The detective implied she had to speak to the police to get a forensic exam, though Dolores wasn't sure she wanted to report the sexual assault. Dolores later discovered that WHC was only down the street. The detective also made it clear she had her doubts about Dolores' story, and that it was not a strong enough case to hold up in court. Dolores did not report her assault or get an exam.[504]
- When one married victim, Laura T., attempted to report her sexual assault in late 2011, the detective told her he would have to inform her husband in order to

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speaking with MPD." District of Columbia, Sexual Assault Nurse Examiners Exam Exemption Report, dated May 15, 2010, on file at Human Rights Watch.

[500] Human Rights Watch telephone interview with medical staff M.W., March 24, 2011.

[501] Human Rights Watch interview with Cindy Teller, June 24, 2011.

[502] Human Rights Watch interview with university staff L.O., Washington, D.C., March 28, 2011.

[503] Human Rights Watch telephone interview with medical staff C.J., May 10, 2011.

[504] Human Rights Watch group interview with sexual assault survivors (including with Dolores R.), Washington D.C., September 30, 2011.

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 [decline an investigation] so therefore I signed it."[505]

- In November 2010, a complainant reported a strange man had broken into her home and physically and sexually assaulted her roommate. She told the officer she was worried her roommate had been sexually assaulted because she was bleeding and her clothes were ripped. She said the officer "dismissively said 'you can take her to the hospital if you want.'" The officer also told her "no crime had been committed and there was nothing he could do unless the man had threatened to kill us."[506]
- In an early 2010 case, a complainant who had been using drugs reported that a suspect threatened to kill her if she did not do what he said, threw her on a bed, punched her in the face, and then vaginally and orally assaulted her. Detective notes indicate the complainant was asked repeatedly by different members of the MPD about her "alleged sexual assault." Though she initially wanted a forensic exam, she eventually refused to have one and signed a waiver stating she did not want to pursue the case.[507]

In six other cases, detectives' notes indicate that they asked victims to sign a form stating they did not want to make a report during their initial interview immediately after their assault. Unless arrest is imminent, experts advise against asking victims to sign waivers of investigations or prosecutions before conducting thorough, evidence-based investigations.[508] The practice is particularly advised against for cases in which the detective has decided not to investigate because he or she does not believe the victim.[509]

Hostility toward victim reporting is apparent in a June 2009 email from one detective to another about a victim he met at the hospital who had initially not wanted to report but had changed her mind. He wrote,

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[505] District of Columbia Sexual Assault Information Form, dated November 24, 2011, on file at Human Rights Watch; Human Rights Watch telephone interview with medical staff I.L., December 7, 2011.

[506] Office of Police Complaints, Complaint Form, November 5, 2010, on file at Human Rights Watch.

[507] Human Rights Watch notes from review of MPD investigative files, 7DDU10-XXX, August 23, 2012.

[508] IACP, "Investigating Sexual Assaults Model Policy," July 2005, p.4; Human Rights Watch group interview with Kansas City SART, July 22, 2011; Human Rights Watch interview with Sgt. Liz Donegan, Victims Services Unit, Austin Police Department, Austin, Texas, December 13, 2011.

[509] EVAWI, "Interviewing the Victim," p. 43.

> I found out you dealt with her about 4 am Friday or Saturday morning … and she chose not to make a report. Something about a gang bang and being intoxicated…. Anyway, I think it was just an OI [Office Information]. However, she now feels differently and wishes to make a report…. She says her phone isn't working but she can be reached … Sorry, BUT IT IS WHAT IT IS!!!!!!![510]

Apart from discouraging reporting, witnesses and a review of police documents indicate that law enforcement sometimes also discourage victims from getting forensic exams, despite police policy to encourage exams. Although law enforcement has not had a role in determining whether a victim gets a forensic evidence kit since late 2008, when federal law requirements for funding changed, as discussed below, law enforcement officers may still sometimes indicate to nurses that a victim should not have an exam.[511] For example:

- In 2009, a nurse report noted a female detective who arrived to interview a patient (pt.) and "stated that she hadn't interviewed the pt. and she (the detective) would make the determination as to whether or not an exam (SANE) needed to be done … that it was her decision if there was even a criminal case."[512]
- In a February 2011 miscellaneous case in which the victim was highly intoxicated and woke up with her clothes partially off and inside out, the detective notes say, "The [complainant] wanted to go to the hospital. The detective called the SANE nurse to let her know that there was a complainant coming in who wanted a kit done and that this is NOT a sex case. No crime occurred." The complainant did have a kit done and the detective notes the "kit was turned over to mobil [sic] crime as no case."[513]
- In the January 2009 case in which the victim was found injured, barefoot, and with no coat, in response to a question from a nurse about the scope of the exam, the "Detective advised no SANE examination required by MPD as [the complainant]

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[510] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 23, 2012.

[511] The Violence Against Women Act of 2005, 42 U.S.C. Sec. 3796gg-4(d), specifies that states and territories may not "require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam, reimbursed for charges incurred on account of such an exam, or both." As of January 5, 2009, all states must certify that they are in compliance with these requirements in order to remain eligible for STOP Grant funds from the Office on Violence Against Women (OVW). See also deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, pp. 97-98, 113; deposition testimony of Sergeant Ronald Reid, September 25, 2008 pp. 96-98, 100-104 (indicating that these policy changes went into effect at the MPD in 2008).

[512] Handwritten note of nurse, dated January 20, 2009, on file at Human Rights Watch.

[513] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 22, 2012.

reported no crime." Though it was unclear if the complainant was missing her underwear when she arrived at the hospital, the "detective said there was no need for [clothing] evidence as the [complainant] was not a victim of a crime."[514]

- SART meeting minutes from March 2011 indicate that the Department of Justice's Office on Violence against Women contacted the OVS because of a complaint from an advocacy group stating that "victims of sexual assault cannot get a forensic exam without first talking to the police."[515]

Conversely, police have sometimes given the absence of a forensic medical exam as a reason not to investigate a case. One observer reported, "I have heard detectives ask why they did not get a rape kit or why they delayed in coming forward…. In those cases they won't even interview perpetrators at all. Never does the client hear from the MPD. The MPD will often say the survivor doesn't have a kit so it is hard to move forward."[516] She also noted that when the victim knows the perpetrator, they are more likely to choose not to get an exam.[517]

Some experts estimate that, nationwide, only a minority of victims disclose their sexual assault during the period (96 to 120 hours) where a forensic exam is warranted.[518] A study of hundreds of cases in the Los Angeles area in 2008 found that in half the cases in which victims reported to police they had undergone a forensic exam.[519]

In a number of files Human Rights Watch reviewed, the report noted the lack of an exam as a reason for closing the case. For example, a November 2010 case was closed and described as a "weak case, no evidence since [complainant] refused to respond for a SANE exam," with the

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[514] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 23, 2012.

[515] D.C. SART Meeting Minutes, March 17, 2011, on file at Human Rights Watch.

[516] Human Rights Watch telephone interview with P.S., March 15, 2011. Others also note that if there is no rape kit, police say there is no case. Human Rights Watch interview with Cyndee Clay, March 28, 2011; Human Rights Watch telephone interview with L.P., March 16, 2011. When reviewing investigative files, Human Rights Watch noted a September 2011 case in which "The complainant was asked what her delay in making a report sooner was." Yet the report was made the evening after the assault. The case was deemed a misdemeanor despite a claim of forcible vaginal penetration. Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 21, 2011.

[517] Ibid.; Human Rights Watch telephone interview with N.Z., May 17, 2011.

[518] Dr. Kim Lonsway and Sgt. Joanne Archambault, "Advocates and Law Enforcement: Oil and Water?" *Sexual Assault Report*, vol. 11, no.6, http://www.sane-sart.com/filemgmt_data/files/Advocates%20and%20Lwa%20Enforcement_SATI_DEC%202007.pdf (accessed May 25, 2012), p. 6.

[519] Cassia Spohn and Katharine Tellis, "Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with the Los Angeles Police Department, the Los Angeles County Sheriff's Department, and the Los Angeles County District Attorney's Office," Document No. 237582, US Department of Justice Award No. 2009-WG-BX-0009, February 2012, https://www.ncjrs.gov/pdffiles1/nij/grants/237582.pdf (accessed January 10, 2013), p. III; Human Rights Watch email correspondence with Cassia Spohn, October 25, 2012.

detective also noting the importance of the SANE exam. However, apart from the complainant interview, no investigation of the case (such as an interview with the suspect who had been identified or a "report of rape" witness who had spoken with the complainant immediately after the assault) is apparent in the investigative file.[520] In a 2011 case, the complainant reported that a named suspect raped her, but she was intoxicated at the time of her report and unclear about the details. The detective noted, "By refusing to be examined, the [complainant] hampered any attempt to collect any evidence or sustain that a sexual assault ever occurred. Based on those factors, the report is classified as office information."[521]

Interviewees also said that police have been reluctant over the years to collect forensic evidence kits from the hospital. Detectives are responsible for ensuring the kit is hand-delivered to the mobile crime lab or the crime scene investigative branch.[522] SAU Standard Operating Procedures stress the "timely and proper collection, preservation, submission, and chain-of-custody of sex kits and evidence is crucial to sex abuse investigations."[523] Furthermore, the General Order governing police investigation of sexual assault states the SAU detective should pick up the kit and deliver it to the Crime Scene Investigations Branch, Forensic Science Services Division (FSSD), within 24 hours of the exam's completion.[524]

Although this policy has been in place since 2001, until recently, several medical staff at the hospital described getting police to pick up kits from the hospital to take to the lab as "a battle" that required several calls and emails.[525] A safe intended to store kits for people who had not decided whether to report was repurposed in 2009 to hold kits awaiting police pick-up. Investigative files from 2009 show some kits awaiting pick-up for over four months. However, reports reviewed by Human Rights Watch show significantly improved pick-up time since 2011.[526]

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[520] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012; see also Human Rights Watch notes from review of MPD investigative files, SX11-XXX, SA11-XXX, SX11-XXX, August 21-23, 2012.

[521] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 23, 2012.

[522] Metropolitan Police Department, Sexual Assault Unit SOP, January 14, 2003, p. 43.

[523] Ibid., p. 42.

[524] Metropolitan Police Department, General Order, "Adult Sexual Assault Investigations," August 25, 2011, p. 11. The policy as of 2001 states, "This should be done immediately after the examination, or at least within 24 hours." Metropolitan Police Department, Special Order, "Sexual Assault Nurse Examiners Program (SANE)," Series Number SO-01-06, effective date April 2, 2001, p. 7.

[525] Human Rights Watch telephone interviews with medical staff D.S., March 29, 2011; with medical staff B.C., March 8, 2011; with P.R., February 18, 2011; with medical staff M.H., March 2, 2011; and with medical staff L.L., March 23, 2011.

[526] Human Rights Watch notes from review of MPD investigative files, August 21-23, 2012.

Contemporaneous emails from nurses in 2009 reveal tension between nurses and police about the kits, with detectives saying nurses did not tell them what to do with the kits, and nurses asserting that it felt like they had to "jump through a lot of hoops" to get kits picked up.[527] Minutes from SART meetings at the time reveal a direct, and predictable, link between police reluctance to pick up kits and a decision by police not to investigate some cases at all. Minutes from an April 2009 meeting referred to "renewed discussion" about what to do with kits when the MPD has decided not to investigate, but a Sexual Assault Nurse Examiner had collected evidence. "This can't be a non-report because the victim did report," the minutes said, "but MPD does not want to take custody of the kit since they already know they are not moving forward with the case."[528] Three other minutes from that year discussed the problem of kits falling into the category of "reports without investigation."[529]

The MPD states that "MPD immediately addressed the issue" when it was brought to their attention in 2009 and that as of June 2012, they had collected all kits.[530] However several people in early 2011 told Human Rights Watch that the storage safe was always full (it holds up to twelve kits)[531] and medical staff reported how one detective said outright, "You can collect evidence if you want, but I'm not going to do anything with it."[532]

In the early 2011 case of a complainant who had only two drinks but blacked out while driving, sensitive blood and urine sat for weeks in the refrigerator awaiting pick-up for testing while detectives debated who had jurisdiction since the location of the crime was unclear.[533]

Medical staff said they found it harder to do their jobs if they believed the forensic evidence kits would just sit on the shelf, because they feared the lengthy and invasive exams they conducted re-victimized survivors.[534] "Sometimes I feel like, 'what am I doing

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[527]Human Rights Watch telephone interviews with medical staff D.S., March 29, 2011; with medical staff B.C., March 8, 2011; with P.R., February 18, 2011; with medical staff M.H., March 2, 2011; and with medical staff L.L., March 23, 2011.; email correspondence from nurse to SANE director, April 11, 2009, on file at Human Rights Watch.

[528] D.C. SART Meeting Minutes, April 30, 2009, on file at Human Rights Watch.

[529] D.C. SART Meeting Minutes, June 18, 2009; D.C. SART Meeting Minutes, May 21, 2009; D.C. SART Meeting Minutes, April 8, 2009, all on file at Human Rights Watch.

[530] Letter from Chief Cathy Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

[531] Human Rights Watch telephone interviews with medical staff D.S., March 29, 2011; with medical staff B.C., March 8, 2011; with P.R., February 18, 2011; with medical staff M.H., March 2, 2011; and with medical staff L.L., March 23, 2011.

[532] Human Rights Watch telephone interview with medical staff B.C., March 8, 2011.

[533] Ibid.

[534] Human Rights Watch telephone interview with medical staff D.S., March 29, 2011.

this for?'" one said.[535] There also may be evidentiary consequences. An expert toxicologist told Human Rights Watch, "Deterioration of any organic chemicals will occur over time. If they [the police] don't come, there will be some loss of something."[536]

Following notification of this report's initial findings on May 30, 2012, the MPD instituted a policy requiring all forensic kits to be picked up from WHC within three days of a sexual abuse or sexual allegation report. An audit of kits will be conducted weekly by an SAU official.[537]

Additional Cases in Which Police Discouraged Reporting or Forensic Exams

- Shelly G. was told in October 2009 that forensic results "would take years" to come back. An examination of her investigative file showed that the results were returned within four months, by which time her case had already been closed for three months.[538]
- An observer recalled that in Susan D.'s case, after she reported being assaulted by someone she met on an internet dating site, the detective told Susan she had "led her assailant on" and had no case. The detective almost convinced Susan not to file a report.[539] The detective also told Susan 's nurse and Susan, "I don't think she needs a SANE exam."[540]
- An observer described an incident in August 2011 involving a young woman, whom friends found in a room at a house party with her pants off. Concerned after seeing a man leave the room, the friends called an ambulance. The victim had been intoxicated and could not remember what happened. According to an advocate, the detective who responded said, "OK, so why am I here?" She did not leave a card or sign in at the hospital (as protocol requires) and dismissed the victim's concerns about the sexual assault, though the victim wanted to make a report.[541]

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[535] Human Rights Watch telephone interview with medical staff B.C., March 8, 2011.

[536] Human Rights Watch interview with Larry Kobilinsky, Toxicology Department, John Jay College of Criminal Justice, New York City, September 15, 2011.

[537] Criminal Investigations Division, Metropolitan Police Department, Division Memorandum, "Sexual Assault Investigations," June 12, 2012, p.3.

[538] Human Rights Watch telephone interview with Shelly G. (pseudonym), October 12, 2012; case information cover sheet from Shelly G.'s case provided by MPD, on file at Human Rights Watch.

[539] Human Rights Watch telephone interview with medical staff T.N., March 29, 2011.

[540] Letter from Susan D. (pseudonym) to Chief Cathy Lanier, May 3, 2012, on file at Human Rights Watch; Human Rights Watch group interview with sexual assault survivors (including with Susan D.), Washington D.C., September 30, 2011.

[541] Human Rights Watch telephone interview with R.W., October 5, 2011.

- When Maya T. reported, police asked, "You are going to give that man 23 years for rape ... 23 years ... do you know what that does?"[542]
- Susan D. said that the message she got from the detective when she reported was: "You are going to ruin his life."[543] Susan felt she was being discouraged from reporting and stated, "I feel like I was being intimidated and that she was implying that I should think twice about my story because this would have serious consequences for this man and that she didn't think that what had happened was rape."[544] The detective's notes state that Susan "didn't want to get him[the suspect] in trouble" but do not mention that she told Susan that if she "wanted to file a report [the detective] would show up at his place of employment the very next morning and arrest him and that he would probably be fired from his job."[545]
- Detective notes from a closed September 2008 case indicate the complainant "did not want to file criminal charges against the defendant which could lead to the ruining of the defendant's future ambitions."[546]
- Medical staff recalled a case when police, frustrated with a victim who changed her story many times, said in front of her, "I don't know if this warrants a kit."[547]
- In an April 2010 case, detective notes say, "I advised [Nurse] that I was not authorizing an exam at this point, but would be responding to her location to interview complainant."[548]
- Investigative notes from a detective in September 2011 regarding a victim who did not recall what had happened to her after leaving a club but was seen by a friend with an unknown man and woke up with no underwear and missing some personal items from her house read, "The undersigned advised that she is welcome to submit to a SANE examination. However, the only thing the exam would possibly yield is that either someone had sexual intercourse with her or not."[549]

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[542] Human Rights Watch telephone interview with Maya T., May 10, 2011; Complaint form, Office of Police Complaints, May 9, 2011 (provided by Maya T.); narrative of events provided by Maya T., on file at Human Rights Watch.

[543] Human Rights Watch group interview with sexual assault survivors (including with Susan D.), Washington D.C., September 30, 2011.

[544] Letter from Susan D. (pseudonym) to Chief Lanier, May 3, 2012, on file at Human Rights Watch.

[545] Ibid.; Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

[546] Human Rights Watch notes from review of MPD investigative files, SX08-XXX, August 21, 2012.

[547] Human Rights Watch telephone interview with medical staff M.W., March 24, 2011.

[548] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

[549] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

Victim-Blaming

As part of an investigation, detectives may need to ask sensitive questions about victim behavior. Questions about inconsistencies, drug or alcohol consumption, and consensual sexual activity are legitimate. However, this information can be collected without traumatizing victims. For example, questions about high-risk behavior such as drug use or prostitution can be seen as an indication that the detective blames or doubts the victim. Explaining why it is important for victims to provide this information makes it more likely the victim will cooperate.[550]

However, HRW spoke with victims who described how they were asked questions about consensual sexual activity and alcohol use in a manner which made them feel that the questioning officer did not believe an assault had taken place at all, or that it was not an incident that they would be interested in following up.551 This impression was reinforced in the review of investigative files. In several files it appeared that some detectives inordinately focused on risk-taking behavior by the victim during the initial interview and then used it as a reason not to continue the investigation. Investigations in which victim's behavior was in question often seemed to be dropped after the initial interview or were classified as "office information." Factors such as a victim's alcohol intake or other similar behavior should never preclude a thorough investigation of the case.

Several survivors and people who work closely with survivors said that police in D.C. often question victims or make comments in a manner suggesting the victim is at fault.[552] One medical professional said she heard police appearing to blame the victim with questions and comments that included "You shouldn't have been out so late," "For God's sake, why did you do that?" or "Why did you walk home by yourself after a few drinks?"[553]

Survivors reported the following examples:

- Estella C. was assaulted by an acquaintance in May 2010 as they sat in his van talking. Immediately afterwards, Estella reported the assault to a detective, who rolled her

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[550] EVAWI, "Interviewing the Victim," p. 73.

[551] Human Rights Watch group interview with sexual assault survivors, Washington D.C., September 30, 2011; Human Rights Watch telephone interviews with Shelly G. (pseudonym), October 12, 2012; and with Maya T. (pseudonym), May 10, 2011.

[552] Human Rights Watch interview with K.V., Washington, D.C., March 28, 2011; Human Rights Watch telephone interview with medical staff C.J., May 10, 2011; Human Rights Watch group interview with advocates, March 28, 2011.

[553] Human Rights Watch telephone interview with medical staff M.W., March 24, 2011.

eyes when Estella told her that she had told the assailant she did not want to have sex. Estella's sense of guilt about having sat in the truck at all was intensified by the detective, who asked why she had not fled the vehicle or hit her acquaintance.[554] The detective's interview notes confirm Estella's impression and state that "[Estella] advised that at the time it did not dawn on her to get out of the suspect's vehicle and advise the police that she felt she had been raped."[555] The detective described Estella's actions as "being responsive and accepting of the [subject's] sexual behavior." The notes also indicate that Estella told the suspect "No," that she was saving herself for her boyfriend, placed her hand over her vagina, and was crying during the assault (and during the police interview immediately after the assault)—yet the notes fail to draw the conclusion that this might have also provided the suspect with an indication that penetration was not consensual.[556]

- Dolores R., a university student who police talked out of reporting her assault in 2009, said the detective asked her, "Why didn't you scream? Why didn't you call a friend? Why didn't you call a cab?" Dolores said, "I did what I did and I can't change that."[557]
- Another victim writes in 2009 that a female SAU detective to whom she tried to report an assault told her that if someone did something to her that she did not like she "would say no or tell them to stop." She said the detective also asked "if [she] didn't want them to do it, why [she] didn't stop them."[558]

People who work with survivors similarly describe MPD victim-blaming:

- Medical staff overheard a detective tell 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?"[559]
- A victim reporting an assault who was wearing a short skirt told a lawyer that the responding officer and the detective investigating her case commented on her outfit. The victim was very upset and no longer wanted to work with the officers.[560]

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[554] Human Rights Watch group interview with sexual assault survivors (including with Estella C.), Washington D.C., September 30, 2011.

[555] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 21, 2012.

[556] Ibid.

[557] Human Rights Watch group interview with sexual assault survivors victims (including with Dolores R.), Washington D.C., September 30, 2011.

[558] Office of Police Complaints, Complaint Form, November 12, 2009, on file at Human Rights Watch.

[559] Human Rights Watch telephone interview with medical staff C.J., May 10, 2011.

- One member of the medical staff witnessed detectives indicating that the victim asked for it if they dressed a certain way or saying things such as, "You were invited to his house. What do you expect?" or "You know how it is at parties."[561]

Even if the detective doubts a victim, questioning should not take the form of an interrogation. It may be necessary to ask difficult and potentially embarrassing questions about a victim's conduct, but detectives should preface the questions with an explanation so as not to give the appearance of blaming the victim, which can be traumatizing. However, in addition to witness descriptions above, notes from detectives' files indicate that questioning may in some cases be confrontational and upsetting to victims. For example:

- In a December 2011 case of a non-stranger assault that was listed as a misdemeanor, the notes indicate, "The complainant stated that she did not scream or holler or even fight suspect off of her..." Later the detective notes that the complainant "appears to be avoiding undersigned detective." The case was closed after the victim refused to return the detective's calls. [562]
- Detective notes for a February 2010 case in which a complainant reported being assaulted by a man in a van who had given her a ride and then attempting to call the police from a nearby 7/11 store afterward read, "When questioned why she did not try to get away from [the suspect] she added that the suspect had a knife, a gun, a shovel and tools in the van making her afraid. When questioned about her calling the police from a non-existing 7/11 within the area of the offense, she changed it to say that it was a store.... When questioned why her clothes were not stained, dirty, torn or wet from laying on the snow while being raped, she claimed not to know..."[563]
- In an April 2009 case, a complainant reported being assaulted after stopping at a gas station. The notes say, "when challenged about the purchase, and what the teller looked like, the complainant changed her story..."[564]

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[560] Human Rights Watch telephone interview with H.U., November 14, 2011.

[561] Human Rights Watch telephone interview with medical staff C.J., May 10, 2011.

[562] Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 21, 2012.

[563] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 23, 2012.

[564] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 23, 2012. The notes go on to say that when the "detective tried to get detailed information, the complainant would add more to her story the second time." However, notes indicate the complainant was unable to focus, falling asleep and slurring her speech, while being asked repeatedly details of her story.

Staff at colleges in D.C. who work with police and students on these issues also found that police response to sexual assaults—which often takes the form of warning students to lock their doors and not walk home alone late at night—can be problematic.

In 2010, for example, police implied that a sleeping student who was sexually assaulted in an off-campus house was partially to blame for the crime that happened. An MPD lieutenant is reported as having stated, "This was a preventable crime.... Students have to lock their doors and protect themselves by staying in groups." The victim had in fact locked her door with a deadbolt. The perpetrator had removed her air conditioning unit and climbed in through her window.[565]

Staff said they felt police did not appreciate the need for a more balanced approach that included focusing on perpetrator accountability and encouraging women to report assaults.[566] In addition, while advice about locking doors and not walking alone at night is appropriate when it comes to avoiding falling victim to crime in general, it ignores the reality that most sexual assaults are committed by non-strangers.

Additional Cases of Victim-Blaming

- Michelle B., a student, reported an assault by an acquaintance in her dorm in October 2008. When she went to MPD to report, she felt she was interrogated. She said she was asked if she was lying and if she "had a sexy nightgown on," causing her to feel that police blamed her for the assault.[567]
- A victim who was assaulted by her ex-boyfriend and attempted to report the assault to the police in the spring of 2008 was repeatedly asked why she let him in. When she expressed frustration about the questioning, she said the officer "walked over to the person who assaulted me and began laughing with him."[568]
- Eleanor G. said that the first question the police photographer asked her when he met her at the emergency room following her stabbing and attempted rape in an alley in May 2011 was, "Why didn't you just give him your purse?"[569]

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[565] Kara Brandeisky, "Prevent Sexual Assault by Blaming the Perpetrator," *The Georgetown Voice*, September 9, 2010, http://georgetownvoice.com/2010/09/09/prevent-sexual-assault-by-blaming-the-perpetrator/ (accessed January 10, 2013).
[566] Human Rights Watch telephone interview with G.D., September 27, 2011.
[567] Human Rights Watch video interview with Michelle B., April 12, 2011.
[568] Office of Police Complaints, Complaint Form, May 14, 2008, on file at Human Rights Watch.
[569] Letter from Eleanor G. to Chief Cathy Lanier, October 4, 2011, on file at Human Rights Watch.

- In an October 2011 case, the "complainant was asked in what manner the defendant took her pants off. The complainant went on to relate she took her jeans off herself. There are many inconsistencies with her account of her alleged sexual assault."[570]
- A March 2011 case in which the victim, a diabetic, did not recall what had happened after drinking: "The complainant acknowledged that she does not know the effects alcohol has on a diabetic with an out of control glucose level."[571]
- A January 2010 case in which the victim had consensual oral sex with the suspect but made it clear she would not have intercourse. When they moved from one location to another, the detective noted, "I asked [the complainant] what she thought was going to happen when [the subject] placed her on the bed."[572]
- In a summer 2009 case in which the complainant met the suspect at a club and went home with him where he assaulted her, the detective wrote, "I asked [the complainant] that since this was the first time meeting [the suspect] and she did walk to [the suspect]'s house, what her intention was when she got there." The detective also noted, "I asked [the complainant] what she was doing while the defendant was putting on the condom."[573]
- After a victim reported being assaulted by an acquaintance on a college campus in the fall of 2008, the suspect walked her out of his room. After being taken by ambulance to a hospital for a SANE exam, she was interviewed by a detective. The detective's notes say, "As the two passed the court yard area, they passed an emergency post that the complainant did not activate for help."[574]

Requiring Detailed Interviews While the Victim is Traumatized

A lengthy interview immediately after an assault may not be appropriate because of the possible effects of trauma on the victim.[575] Victims are frequently traumatized during the initial interview (particularly if it immediately follows the assault) and therefore may not be able to concentrate or act rationally. It may have been hours since the victims last slept and, as mentioned above, they may still be under the influence of drugs or alcohol.

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[570] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

[571] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

[572] Human Rights Watch notes from review of MPD investigative files, SX10-XXX, August 21, 2012.

[573] Human Rights Watch notes from review of MPD investigative files, SX09-XXX, August 22, 2012.

[574] Human Rights Watch notes from review of MPD investigative files, SX08-XXX, August 21, 2012.

[575] Louise Ellison, "Closing the Credibility Gap: The Prosecutorial Use of Expert Witness Testimony in Sexual Assault Cases," *9 International Journal of Evidence and Proof*, vol. 9, no. 4, p. 243.

Decades of research show that trauma decreases a person's ability to provide information that is complete, consistent, and wholly accurate, especially in the first hours or days after the incident.[576]

The MPD's General Order on Adult Sexual Assault Investigations, a set of internal police guidelines for officers related to investigating adult sexual assault cases, states that the detective shall, "[O]btain a statement of facts from the victim when time, location and conditions permit" and "schedule a follow-up interview with the victim at the SAU [Sexual Assault Unit]'s office as soon as possible, but in all cases within seventy-two (72) hours."[577]

In practice, however, detectives often take a detailed statement from the victim before allowing him or her to have a forensic exam. The rationale for this, according to the MPD, is that they do not want to risk losing evidence that needs to be collected immediately. Also, some victims may wish to speak to detectives right away. Though an MPD commander says a decision about when to take a detailed interview depends on how the victim responds, the lieutenant responsible for the SAU also said the purpose of a quiet room set aside for victims at the hospital is to enable detectives to conduct a full interview there. A follow-up interview is generally only scheduled later if the victim is physically incapable of talking at the hospital.[578]

One officer explained that detectives "really go into detail and sometimes they ask questions over and over again."[579] According to victims and several veteran victim

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[576] See J. Michael Rivard, M.D. et al., "Acute Dissociative Responses in Law Enforcement Officers Involved in Critical Shooting Incidents: The Clinical and Forensic Implications," *Journal of Forensic Science*, vol. 47, no. 5, July 2002; David Lisak, "The Neurobiology of Trauma," 2002 (unpublished article, on file at Human Rights Watch); Sgt. Joanne Archambault, Dr. Kimberly Lonsway, and EVAWI, "Interviewing the Victim," May 2007, p. 21; PPCT Management Systems, Inc. (1989), *Use of Force Human Factors (Chapter One)*; Mary P. Koss, Shannon Tramp, and Melinda Tharan, "Traumatic memories: Empirical foundations, forensic and clinical implications," *Clinical Psychology: Science and Practice*, vol. 2, no. 2, June 1995, pp. 111-132.

[577] Metropolitan Police Department, General Order, "Adult Sexual Assault Investigations," Series 304, Number 06, effective date August 25, 2011, p. 12. The 2006 policy also indicated the detective shall "schedule a follow up interview with the victim at the SAU's office," but did not indicate a time frame. It also referenced the SAU detective on-scene "conducting an interview with the victim to obtain additional facts, and to make proper notifications."

[578] Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for Victim Services, Washington, D.C., May 30, 2012. The letter from the chief of police to Human Rights Watch, dated June 8, 2012, also references the quiet room as established to ensure victims are interviewed in a quiet, private location.

[579] Deposition testimony of Officer Michael Minor, May 14, 2008, pp. 88-89.

advocates, the process is drawn out further if the victim has to repeat his or her story to different detectives. In some cases, victims are interviewed for several hours before being allowed to have a forensic exam.[580]

Survivors reported feeling traumatized and ill-prepared to answer questions at the hospital. Susan, who had not slept for two days, described feeling in a state of shock during the three-hour interview she endured before being allowed to get an exam.[581] Her requests to be re-interviewed later, when her memory was better, were refused.[582] Nor was she permitted to review the detective's notes from the initial interview to see if they were accurate.[583] Maya also reported feeling physically ill at the time of her police interview and being unable to remember events clearly. Despite her protests, detectives pressed her for a timeline at the hospital but appeared to be uninterested in the full account of events that she wrote a few days later, having already decided there was no case.[584]

Victims may also be incapable of being interviewed at the time they undergo a forensic exam because they are still intoxicated or under the influence of drugs. However, in its review of investigative files, Human Rights Watch found that detectives did not necessarily follow up to interview the victim when they were stable and as a result, some cases appear to slip through the cracks entirely.

Delaying the exam can be problematic as victims are not supposed to eat or drink or go to the bathroom before the kit is taken. After waiting, victims may decide not to have an exam

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[580] Human Rights Watch telephone interview with medical staff P.R., February 18, 2011; Human Rights Watch interview with Cindy Teller, Newport Beach, Virginia, June 24, 2011; Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011; Human Rights Watch telephone interview with medical staff I.L., December 7, 2011.

[581] Human Rights Watch group interview with sexual assault survivors (including with Susan D.), Washington D.C., September 30, 2011.

[582] Letter from Susan D. (pseudonym) to Chief Cathy Lanier, May 3, 2012, on file at Human Rights Watch.

[583] In Susan D.'s file, the detective's notes from the interview consist almost entirely of an account of the consensual part of Susan's date with the suspect. There is no mention of the signs of trauma she was showing at the time of the interview. Nor is there an indication that Susan physically resisted the assault, was pinned down, felt threatened by some of the language used by the suspect, and felt intimidated because the suspect was much larger than she was. Furthermore, Susan explained that the consensual sexual activity was undertaken as an effort to avoid rape, but that context was not included anywhere in the file reviewed by Human Rights Watch. Although the detective's notes say that she went over her statement with Susan "to ask if it was accurate and she said yes," Susan flatly denies that. In a letter to Chief Lanier, she wrote, "I have also not been allowed to review Detective [--]'s notes from my interview, during which I don't believe she understood what I was saying and consequently was not writing complete notes." Letter from Susan D. to Chief Cathy Lanier, May 3, 2012, on file at Human Rights Watch; Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 21, 2012.

[584] Human Rights Watch telephone interview with Maya T. (pseudonym), May 10, 2011; Complaint Form, Office of Police Complaints, May 9, 2011 (provided by Maya T).

at all.[585] Several SART meeting minutes from 2009 note the need to shorten the police interview at the hospital but the change was "still in progress" and "not yet implemented" or "indefinitely on hold."[586]

Some instances in which the victim decided against an exam after a long interview include:

- A patient who was interviewed by detectives for a long time despite requests by hospital staff to attend to her medical needs. She fled the hospital before nurses were allowed to access her, according to a 2011 exam exemption report.[587]
- A victim who reported being assaulted by three men in Chinatown in 2010. According to an advocate, police spoke with her for hours at the hospital before her exam, asking her to repeat the story to different detectives. During that time she was not able to eat or drink. She finally decided not to have the exam as she did not want her family, who came to support her, to have to wait for her any longer.[588]
- A woman who was kidnapped in Fairfax at a metro station on her way to the parking lot and assaulted. The Metro Police, MPD, and the Virginia Police were all involved because they were not sure which had jurisdiction. An advocate said that instead of coordinating their interview with the victim, different detectives came in and out, repeated questions, and interrupted each other while the victim waited for an exam at the hospital. She told medical staff the experience was "overwhelming and confusing."[589]
- One victim in 2011 reported to nurses being questioned for "many hours – like an inquisition" and decided to delay her exam until the next day.[590]
- In September 2009, nurses reported that a victim refused to give a history of her assault to the nurses "stating she had already given the account to 6 other [MPD] police officers." Despite complaining of pain in her chest, neck, and throat, she was too upset to answer questions from nurses and ultimately did not get a forensic exam that day.[591]

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[585] Human Rights Watch interview with Cindy Teller, Newport Beach, Virginia, June 24, 2011.

[586] D.C. SART Meeting Minutes, April 8, 2009; D.C. SART Meeting Minutes, June 18, 2009; D.C. SART Meeting Minutes, May 21, 2009, all on file at Human Rights Watch.

[587] District of Columbia Sexual Assault Nurse Examiners Exam Exemption Report, January 13, 2011, on file at Human Rights Watch.

[588] Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011.

[589] Human Rights Watch interview with K.V., Washington, D.C., March 28, 2011.

[590] District of Columbia Sexual Assault Nurse Examiner Exam Exemption Report, July 18, 2011, on file at Human Rights Watch

[591] District of Columbia Sexual Assault Nurse Examiner Exam Exemption Report, September 14, 2010, on file at Human Rights Watch

Requiring a victim to tell their story repeatedly may also lead a victim to decide not to cooperate. Police notes for a 2011 case not assigned a case number indicate one complainant "became irritated stating that she had told this story to 5 other people. The undersigned apologized and stated it was necessary for her to repeat the story. This is when [complainant] stated her contempt for police." The complainant decided not to report.[592]

The effects of trauma on a victim's ability to present a coherent account of what happened do not seem to be understood by detectives. Rather, the inability to give a coherent statement is sometimes used as grounds for closing a case.

In several cases reviewed by Human Rights Watch, the detectives emphasized (even immaterial) inconsistencies in the victim's immediate statements. Furthermore, as described in the earlier section on "victim-blaming," the detective may then "confront" the victim with inconsistencies, which may result in the victim choosing not to cooperate with the investigation any further. For example, detective notes indicate the following:

- In a March 2010 case in which a complainant described being assaulted in a taxi after leaving a nightclub, detective notes read, "At the time of the alleged assault the complainant accounts were inconsistence [sic] and all over the place." Detectives ultimately requested that the case be unfounded.[593]
- One complainant from June 2010, who had suffered a serious injury, was asked "on two occasions to … come into the office to be reinterviewed and confronted on the inconsistencies" but never showed up.[594]
- Another victim interviewed immediately after her assault in January 2009, was described as "very evasive and inconsistent" and ultimately was taped giving a statement that she did not want to go through with an investigation after initially having called the police.[595]
- A 2011 case in which the arrest warrant was declined because the complainant, who had been seriously injured during the assault, "became uncooperative after being confronted with misleading statements that she made during her initial disclosure."[596]

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[592] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 23, 2012.
[593] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 22, 2012.
[594] Human Rights Watch notes from review of MPD investigative files, SA10-XXX, August 23, 2012.
[595] Human Rights Watch notes from review of MPD investigative files, SA09-XXX, August 21, 2012.
[596] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 23, 2012.

- Detective notes in the case of a woman assaulted in a hotel in May 2011 read, "review of the evidence in the case revealed that there [were] several inconsistencies to the complainant's report. C initially reported that she was writing when the suspect grabbed her but told the detective she was leaning on a bench."[597]

An additional problem with conducting a detailed interview immediately is that detectives do not have time to review other information about the case before speaking to the victim and so lack a full picture of what occurred, which may in turn compromise the investigation.[598]

After receiving Human Rights Watch's recommendation to allow victims at least one full sleep cycle prior to conducting a full interview, the MPD issued a memorandum in June 2012, affording victims 24 hours after a preliminary interview before being re-interviewed, except in urgent cases or when a delay would jeopardize the victim or other members of the public.[599] However, as of October 2012, a source at WHC told Human Rights Watch that they had not yet observed any change in the MPD's interviewing practices.[600]

Police Unresponsiveness

Numerous people who have worked closely with victims for years said victims regularly complain that they do not hear back from the MPD despite calling the department or individual officers repeatedly.[601] This is true even when the victim has concerns for his or her safety.

According to victim advocates, this lack of responsiveness reinforces victims' perception that their cases are not taken seriously and is often upsetting to them.[602] One advocate said that victims often tell her, "They won't return calls. I know they don't believe me."[603] A person who works with survivors described the failure to respond as a "systematic way to

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[597] Human Rights Watch notes from review of MPD investigative files, SX11-XXX, August 21, 2012.

[598] Human Rights Watch interview with Sgt. Joanne Archambault, Addy, Washington, May 31, 2012.

[599] Criminal Investigations Division, Metropolitan Police Department, Division Memorandum, "Sexual Assault Investigations," June 12, 2012, p.1.

[600] Human Rights Watch telephone interview with Dr. Heather Devore, SANE medical director, October 10, 2012.

[601] Human Rights Watch group interview with advocates, Washington D.C., March 28, 2011; Human Rights Watch interview with university staff L.O., March 28, 2011 and by telephone on June 13, 2011.

[602] Human Rights Watch email correspondence with R.L., May 31, 2012; Human Rights Watch interview with P.S., March 15, 2011.

[603] Human Rights Watch interview with R.L., March 9, 2011.

shut down survivors so they won't pursue cases. If it is not the intent, it is certainly the effect as at a certain point they want to move on."[604]

This sentiment is reflected in one victim's experience, which she described in a written complaint in November 2009 filed with the Office of Police Complaints:

> Shortly after making the report I received threatening emails from one of the parties involved. I phoned the detective and left multiple messages regarding the emails. She never returned my phone call … In the past week I have left multiple messages for both Detective [] and her supervisor Detective Sgt. ---. I have heard nothing from the Metropolitan Police Department since filing the report, 3 months ago, despite countless phone calls.... If I did not know better I would think that they were persuaded not to pursue the case that I definitely want to pursue.[605]

Susan D. also reported that her calls to a detective went unanswered after she got in contact following threats from an investigator hired by her assailant. After contacting the detective's superior, the detective finally returned the call.[606] Shelly D., who reported an assault in October 2009, said getting the police to respond was "like pulling teeth" even after her assailant sent her several threatening messages. Her detective "did not even bat an eye."[607] She ended up moving in order to avoid her assailant. Other victims reported not hearing from the police again after their initial report was written, and not having calls returned. [608] One victim, who was not updated about her case, reported being "afraid to leave her house", worried that the assailant might find her.[609]

Even people who work on these issues professionally describe how difficult it can be to get detectives to return calls about their clients' cases. As the head of a community organization put it, "The amount of self-advocacy you have to do to get cases followed up

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[604] Human Rights Watch interview with university staff L.O., March 28, 2011.

[605] Office of Police Complaints, Complaint Form, November 12, 2009, on file with Human Rights Watch.

[606] Human Rights Watch group interview with sexual assault survivors (including Susan D.), Washington D.C., September 30, 2011.

[607] Human Rights Watch telephone interview with Shelly G. (pseudonym), June 18, 2012.

[608] Human Rights Watch video interview with Michelle B. (pseudonym), April 12, 2011; Deposition testimony of [Rachel G.'s sister], March 31, 2008, p. 205; Human Rights Watch email correspondence with Julie M. (pseudonym), April 3, 2011.

[609] Human Rights Watch telephone interview with Kristen A. (pseudonym), California, May 17, 2011.

on is insane."[610] Another advocate said she has to draw on political connections to get police to respond. [611] And a third community advocate who has worked with victims said that survivors are often left in the dark and regularly ask her to follow up with police. A detective told her the police do not follow up with victims as a rule because they "don't want to taint the case" or risk a subpoena.[612] Medical staff report calls from patients months after their exams wondering what happened to their case.

Lack of information about the status of their case is hard for victims, many of whom have put their lives on hold.[613] Students may wait for news from police about whether their case is moving forward before deciding whether to report to the university, yet may not know for six months that the case has been closed. The protracted process may also give victims a sense of false hope, making it even harder for them to comprehend a decision not to prosecute.[614]

After receiving Human Rights Watch's recommendations, the MPD, in June 2012, issued a memorandum requiring detectives to provide the complainant with the case number, their contact information, and work hours. "The detective shall ensure that proper follow up is conducted with the complainant" and will respond to calls from a complainant "within (2) business days."[615]

Other Insensitive Behavior

The attitude conveyed by law enforcement during the victim interview can be "the single most important factor in determining the success of the victim interview—and therefore the entire investigation," according to a manual for investigating sexual assaults.[616]

An MPD Special Order states, "Members who investigate sexual assault complaints shall be sensitive and compassionate to the needs of the victim and have compassion, while providing information and assistance though this traumatic situation."[617]

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[610] Human Rights Watch joint interview with Cyndee Clay and colleague, Washington, D.C., March 28, 2011.
[611] Human Rights Watch interview with university staff L.O., March 28, 2011.
[612] Human Rights Watch telephone interview with P.S., March 15, 2011.
[613] Human Rights Watch interview with university staff L.O., March 28, 2011.
[614] Ibid.
[615] Criminal Investigations Division, Metropolitan Police Department, Division Memorandum, "Sexual Assault Investigations," June 12, 2012, p.2.
[616] EVAWI, "Interviewing the Victim," May 2007, p 6.

Unfortunately, apart from behavior described above, Human Rights Watch uncovered a range of insensitive behavior and remarks from some MPD detectives charged with investigating sexual assault, indicating that policy is not strictly followed.
In a number of instances, detectives spoke or behaved in ways that demeaned or upset the sexual assault victims, increasing the likelihood that patients would not report their assaults. A person who works closely with survivors said they often ask, "Will I have to deal with him or her again?"— referring to Sexual Assault Unit detectives.[618]

Internal police notes indicate that police ask victims about their physiological response to their assaults during their initial interview.[619] Victims told Human Rights Watch that when they admitted to detectives that their bodies had involuntarily responded to the assaults (experienced symptoms of arousal), they felt the detectives lost interest in their cases. Victims described feeling betrayed by their bodies and struggling to cope with their biological responses.[620]

If the case is going to trial (which is often not the case, and was not the case in any of the files reviewed in which this information appeared), information about physical arousal may be relevant. However, an involuntary orgasm does not indicate consent and according to at least one expert, that kind of question is not appropriate in the initial interview and is needlessly upsetting to victims.[621] Nor do prosecutors see a physical response as a barrier to successful prosecution.[622]

Examples of inappropriate behavior or attitudes by MPD detectives include:

- The response of the detective who interviewed Estella C., a 24-year-old student, who was assaulted orally and vaginally by an acquaintance in his truck in the spring of 2010. Estella drove herself to the police department to report the crime after the assault. According to Estella, the detective who interviewed her

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[617] Metropolitan Police Department, Special Order, "Sexual Assault Nurse Examiners Program (SANE)," Series Number SO-01-06, effective date April 2, 2001, p. 2.
[618] Human Rights Watch telephone interview with medical staff M.H., April 8, 2011.
[619] See, for example, Human Rights Watch notes from review of MPD investigative files, SA11-XXX, SA10-XXX, SA11-XXX, August 21, 2012.
[620] Human Rights Watch group interview with sexual assault survivors (including Estella C.), Washington D.C., September 30, 2011.
[621] Human Rights Watch telephone interview with Sgt. Joanne Archambault, September 26, 2012.
[622] Human Rights Watch telephone interview with M.G., assistant US attorney, September 19, 2012.

repeatedly asked whether the assailant was good at oral sex. Estella said the detective rolled her eyes while she explained what happened, made comments like "So you were into it," and repeatedly said the incident did not sound like rape to her.[623] The detective also said that even though it "didn't sound like a good case," she was "still going to have to type it up."[624] Estella said she eventually drove herself to the hospital for a forensic exam because she did not want to spend more time with the detective, who acted like taking her case would be inconvenient.[625]

- For people with a psychiatric history, witnesses have heard police raise their voices and ask, "what do you want me to do with this?", giving patients a hard time and implying the case is not worth pursuing.[626]
- A fall 2011 case in which the complainant reports that after meeting the suspect at a nightclub, he lost consciousness but awoke briefly to find the suspect anally penetrating him before losing consciousness again. Beneath information about the complainant, the detective noted, "Homosexual male who hangs out in gay bars."[627]
- The detective who interviewed Susan D. made several references to her own personal history during the interview. When Susan said she was uncomfortable when her assailant made references to her "tight white pussy," the detective said, "Honey, that's not anything. I am half-white and my husband says that kind of thing to me all the time."[628] The detective also disclosed she had been raped twice. Susan, at one point feeling frustrated that the detective did not understand how fearful she was, said, "I wish he [the assailant] had a gun so you would understand." The detective responded, "No you don't. That happened to me." When Susan told the detective about being touched, the detective repeatedly interrupted and said, "That is not a crime."[629]
- One victim, a doctor, who reported being sexually assaulted in the spring of 2011, told hospital personnel the police were "unbelievably rude and argumentative"

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[623] Human Rights Watch group interview with sexual assault survivors (including Estella C.), Washington D.C., September 30, 2011.
[624] Ibid.
[625] Ibid.
[626] Human Rights Watch telephone interviews with medical staff D.S., March 29, 2011; and with R.L., May 17, 2011.
[627] Human Rights Watch notes from review of MPD investigative files, SA11-XXX, August 23, 2012.
[628] Human Rights Watch group interview with sexual assault survivors (including with Susan D.), Washington D.C., September 30, 2011.
[629] Ibid.

and wondered, if they treated her, a doctor, this way, "how do they treat less fortunate patients?"[630]

- In the case of Rosa S., who was abducted by two men wearing masks and raped repeatedly overnight before being released the next morning, the detective who interviewed her was aggressive and asked, "You are only doing this to get immigration status, aren't you?"[631]
- During Maya T.'s initial interview with detectives in April 2011, the female detective asked her if she had gastric bypass surgery and said, "I can tell you still have all that fat under your arms." She asked Maya to speak Spanish since her assailants were Spanish-speaking and then told her to "Stop butchering my language" and to "Shut up." The detective also told Maya, "You know you aren't allowed back there, right?" implying that Maya wanted to return to the place of her assault, another comment Maya found insulting.[632]

The impact police insensitivity can have on victims is illustrated by the description of one patient's reaction to being questioned by a detective. According to a 2009 email that medical staff sent to the Office of Victims Services,

> [The detective] had been in the room with the patient for about 30-40 minutes when we heard screams and very loud crying coming from the room through the closed doors. Mind you, the patient had been calm, cooperative and tear-free before [the detective] went in the room. The advocate and I knoced [sic] on the door. I opened it and asked if everything was OK. [The detective] said 'yes, we would have come out if it wasn't. We're all police here, you can leave.' In a curt and hostile tone. I reminded her that we would need to start the forensic exam soon and she replied 'you'll start when I'm finished. You can leave now.'
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> When I made it back to the room, the patient was crying inconsolably.[633]

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[630] Human Rights Watch telephone interview with medical staff P.R., May 10, 2011.

[631] Human Rights Watch telephone interviews with attorney A.J., March 22, 2011; and with staff member J.Z, June 6, 2012.

[632] Human Rights Watch telephone interview with Maya T. (pseudonym), May 10, 2011; narrative of events provided by Maya T., on file at Human Rights Watch.

[633] Email communication from a Washington Hospital Center SANE nurse to the Office of Victims Services, April 6, 2009, on file with Human Rights Watch.

Victims too describe trauma resulting from their experiences with the MPD. Sixteen months after her assault, Estella C. could still not discuss her experience trying to get the MPD to respond to her sexual assault without crying.[634] Shelly G. said her experience reporting her assault to the MPD in October 2009 was "really traumatizing. They made me feel like it was my fault or like it was in my mind. It was an awful feeling. It took me years to get back on my feet and get back to being the person I was before the assault."[635]

In contrast, if victims are treated in a supportive and positive manner, the experience can help facilitate recovery. A former rape victim advocate contrasted her experience in D.C., where she felt victims were treated dismissively and cases were almost "always dead in the water," to her experience as an advocate in another city:

> Before starting the interview, the detective explained that he had to ask difficult questions but that he was not blaming her [the victim]. Rather he was trying to find the suspect. It was a huge thing for her to be validated by the officer. Even if the case doesn't move forward, it was still helpful for her recovery.[636]

Since October 2006, according to a February 2012 letter from the MPD to the City Council, only one officer has been disciplined for inappropriate treatment of a sexual assault victim: a detective was suspended in November 2009 for 15 days after inappropriately contacting a sexual assault victim on Facebook.[637]

However, Chief Lanier indicated in a telephone interview that four detectives and a supervisor were transferred from the SAU in 2008, partially in response to the lawsuit by the student who had not been able to get a rape kit or have her case investigated by police.[638] Also, in the spring, a lieutenant opened an investigation into a complaint from

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[634] Human Rights Watch group interview with sexual assault survivors (including Estella C.), Washington, D.C., September 30, 2011.

[635] Human Rights Watch telephone interview with Shelly G. (pseudonym), June 18, 2012.

[636] Human Rights Watch interview with university staff L.O., Washington D.C., March 28, 2011. Also in contrast, Sheri P. (pseudonym) was assaulted in North Carolina in 1988. The detective assigned to her case was so concerned about storing her evidence properly that he brought the forensic evidence kit home and put it in his refrigerator. It meant so much to her that he believed her. She described it as the only thing that made the situation bearable. Human Rights Watch group interview with sexual assault survivors (including with Sheri P.), Washington D.C., September 30, 2011.

[637] Letter from Metropolitan Police Department letter Phil Mendelson, council member, February 24, 2012, p. 15.

[638] Human Rights Watch telephone interview with Chief Cathy Lanier, June 1, 2012.

Susan D. about her treatment by detectives in April 2011, and in October the MPD informed her they were reopening her case.

The MPD claims it is aware of only 12 citizen complaints against an SAU member since 2008, only one of which has been sustained, and has no record of other complaints by hospital staff or advocates.[639] However, some of the complaints (such as failure to investigate or dismissive behavior) fall outside of the definition of police misconduct reviewed by the Office of Police Complaints and would not be sustained by them, but referred to the MPD to handle internally. Also, many of the concerns raised in this report have been brought up informally with the MPD by various stakeholders during the time this report was researched, yet the MPD has often not addressed those concerns.

Referrals to Community Resources

MPD's Standard Operating Procedures recognize that,

> Taking the time to address the victim's needs will ultimately lead to a more successful involvement of the victim in the criminal justice process.[640]

Furthermore, a General Order states,

> The policy of the Metropolitan Police Department (MPD) [on sexual abuse cases is] … to provide information and assistance throughout this traumatic event.[641]

However, police do not seem to make sufficient efforts to refer sexual assault victims to community services or address their needs. Although a victim specialist is assigned to the SAU within the police department, she appears from police orders and interviews with victims and community workers to have a very limited role.[642]

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[639] Letter from Chief Cathy Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

[640] Metropolitan Police Department, Sexual Assault Unit SOP, January 14, 2003, p. 19.

[641] Metropolitan Police Department, General Order, "Adult Sexual Assault Investigations," August 25, 2011, p. 2.

[642] Although prior to June 2012, one person in Victim Services was primarily responsible for sexual assault cases, other members of the unit were available to assist her as needed. Human Rights Watch telephone interview with Tyria Fields, September 19, 2012.

Not one advocate for sexual assault victims interviewed knew of any victim who had been independently referred by the police to the rape crisis center (apart from calls or referrals made by the hospital call center as part of standard procedure).[643]

When questioned in 2008, police officers said that it was not practice then for uniformed officers responding to sexual assault cases to provide complainants with information about resources available in the community for sexual assault victims.[644] In 2012, an MPD sergeant told Human Rights Watch that detectives now pass on referral information orally.[645] One victim did say that detectives suggested she contact the Deaf Abused Women's Network after her assault.[646]

Some written material with information for survivors is available at police headquarters. However, in response to our records request for public outreach materials on sexual assault, the MPD only provided four, apparently very dated documents. All four referred victims to Howard University Hospital, which has not been staffed to provide forensic exams since 2008.[647] One document included advice like "using a whistle" if attacked. During a Human Rights Watch visit to the MPD on May 30, 2012, Victim Services provided us with three additional one-page pamphlets about crime victims' compensation, the role of Victim Services, and a program (VINE) that informs victims of a change in an offender's custody status.

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[643] Human Rights Watch telephone interviews with J.V., March 7, 2011; with R.L., March 9, 2011; with L.P., March 16, 2011; and with L.S., October 21, 2011; Human Rights Watch interview with Y.L., Washington, D.C., September 30, 2011.

[644] Deposition testimony of Officer Ginette Leveque, April 14, 2008, p. 102; deposition testimony of Officer Tandreia Green, May 8, 2008, pp. 113.

[645] Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for Victims Services, May 30, 2012.

[646] Human Rights Watch email correspondence with Julie M. (pseudonym), April 3, 2011.

[647] One, a "Handbook for Victims of Sexual Assault," was written in July 2001. While it contains helpful information about sexual assaults and myths about sexual assault, it is outdated. It sends victims to the Howard University Hospital, which has not been staffed to provide forensic exams since 2008. D.C. Rape Crisis Center, "Sexual Assault: A Handbook for Victims," July 2001. Another similar pamphlet is undated, but it also refers victims to Howard University Hospital. See D.C. Rape Crisis Center, "If you've been raped … what to expect, where to turn, what you can do." A third document is a one-page flyer that emphasizes prevention measures against stranger assaults with tips such as making sure all doors and windows have sturdy locks and "avoiding walking or jogging alone, especially at night." It advises readers to "use a whistle to alert others if you are threatened." Though it is dated January 2011, it still refers victims to the Howard University Hospital for treatment. This document also appears on the MPD website. See http://mpdc.dc.gov/mpdc/cwp/view,a,1237,q,547802,mpdcNav_GID,1551.asp (accessed April 26, 2012). The final document is a pamphlet prepared by the Victim Witness Assistance Unit of the US Department of Justice. It is not clear whether or how the handbooks are distributed to victims.

Nor is it clear that other forms of support described in police policies are actually made available to victims. According to a police department General Order, a victim specialist assigned to the SAU must ensure that the victim receives an assistance package containing an application to receive compensation for crime-related expenses, and the victim specialist should be "available for any additional questions from the victim."[648]

However, only one victim interviewed—Susan D.—had spoken to the victim specialist, whom she had only found by searching the MPD website and calling directly, rather than contacting her via a police referral. Advocates who work with survivors said they had not met the MPD victim specialist or heard of her from survivors.[649] Victim service providers also report not knowing or being able to reach the victim advocate at the MPD.[650]

According to the program manager for Victim Services, the unit contacts victims as soon as it receives a PD-251. The unit has 10 specialists, most of whom have master's degrees in counseling, who are able to inform victims of their rights, help with victim compensation, refer them to resources, and help them through the investigative process before handing them off to the US Attorney's Office victims unit for support after the investigation. One or two of the staff members primarily deal with sexual assault victims, though others are available to assist if necessary.[651]

The victims we spoke with may not have been referred to the unit because their cases were not classified as sexual assaults but rather as allegations or office information. However, the MPD says the SAU has now "expanded its involvement of its Sexual Assault Victim Services Representative to include contacting and following up with victims where the victim's initial report did not indicate all the elements of a sexual assault."[652]

Following Human Rights Watch's recommendations, a memorandum was issued on June 12, 2012, that requires all sexual allegation and sexual abuse cases to be referred to the "CID Victim Services Unit" who will contact the complainant within 72 hours of the

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[648] Metropolitan Police Department, General Order, "Adult Sexual Assault Investigations," August 25, 2011, p. 13.

[649] Human Rights Watch telephone interview with L.S., October 21, 2011

[650] Ibid; Human Rights Watch telephone interview with L.O., June 13, 2011.

[651] Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for victims services, May 30, 2012.

[652] Letter from Chief Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

report.[653] The Victim Services Branch program manager confirmed that their caseload has increased substantially since June and that she was given approval to hire two more staff members to assist with this work.[654]

Training

The poor police response to victims may be partly due to lack of training, which has repercussions both for victims and the progress of investigations.

Hospital staff indicated that officers' lack of understanding of medical reports means they are unable to recognize injuries that are helpful in corroborating an assault.[655] A counselor and others who work with victims 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 to wrongly think victims are untruthful.[656]

Deposition testimony, witness interviews, and the response to our Freedom of Information Act (FOIA) request for all MPD training material reveal little formal training for responding officers or detectives on handling sexual assault cases. In his 2008 deposition, a sergeant could recall only three or four trainings on sexual assault within the MPD during the previous two decades.[657] Indeed, two sources indicate that SAU detectives would like more training.[658]

Members of the SAU do not receive any specialized formal training in handling sexual assault cases before being assigned to the unit. In interviews with an SAU sergeant,

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[653] Criminal Investigations Division, Metropolitan Police Department, Division Memorandum, "Sexual Assault Investigations," June 12, 2012, p.4. The Victim Specialists Unit is part of the MPD's Victims Services Branch.

[654] Human Rights Watch telephone interview with Tyria Fields, MPD's program manager for Victim Services, September 19, 2012.

[655] Human Rights Watch telephone interview with medical staff P.R., February 18, 2011.

[656] Human Rights Watch telephone interviews with Y.L., May 26, 2011 and September 30, 2011; with medical staff P.R., May 10, 2011; and with R.T., May 26, 2011. 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. EVAWI, "Interviewing the Victim," May 2007, p. 21; Louise Ellison, "Closing the credibility gap: The prosecutorial use of expert testimony in sexual assault cases," *The International Journal of Evidence & Proof,* vol. 9, no. 4, pp. 243-44.

[657] Deposition testimony of Sergeant Ronald Reid, July 9, 2008, pp. 38-39.

[658] Human Rights Watch interview with two city government officials, October 3, 2011, Washington, D.C.; and SART Meeting Minutes, Thursday June 16, 2011, on file at Human Rights Watch (mentioning a request from the head of the Sexual Assault Unit for "additional training/information on progressive disclosures, trauma impact on memory.").

lieutenant, and the commander responsible for criminal investigations, they said that detectives are not required to attend any training other than the basic investigator course prior to becoming a member of the unit. No specific class on investigating sexual assault is required for either detectives or supervisors in the unit.[659]

Nor are SAU detectives required to undergo any training regarding sexual assault medical forensic examinations, or drug- facilitated sexual assaults, or interacting with sexual assault victims.[660] According to the MPD, in June 2010, SAU detectives attended a training at the US Attorney's Office conducted by an expert in drug-facilitated sexual assaults.[661] Generally, though, any guidance given to detectives is "on the job," according to members of the MPD.[662] This involves new detectives pairing with veteran counterparts for three to four weeks of training before taking cases on their own.[663] In a letter to Human Rights Watch, this was described as a "mentoring program." After the first month, the "mentor detective remains available for questions and advice to the new detective, and also remains available for case discussion."[664]

Although Standard Operating Procedures are provided to SAU members, it is not clear the extent to which detectives in the unit consult them.[665] In any event, the Standard Operating Procedure manual, as provided to Human Rights Watch, is itself deficient. For example, it contains no information on drug-facilitated sexual assaults and does not discuss non-stranger sexual assault—even though most assaults are committed by someone whom the victim knows.[666] Nor is there mention of possible effects of trauma.

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[659] Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for victims services, May 30, 2012.

[660] Deposition testimony of Sergeant Ronald Reid, September 25, 2008, pp. 21-23; deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, pp. 92-93.

[661] Letter from Chief Cathy Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

[662] Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, p. 140; deposition testimony of Detective Elgin Wheeler, October 3, 2008, p. 46.

[663]Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for Victim Services, May 30, 2012.

[664] Letter from Chief Cathy Lanier to Human Rights Watch, June 8, 2012, on file at Human Rights Watch.

[665] At the time of the 2008 lawsuit, deposition testimony suggested that detectives did not extensively consult the Standard Operating Procedures. See Deposition testimony of Sergeant Ronald Reid, September 25, 2008, p. 261; deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, pp. 90-91, 261; and deposition testimony of Detective Vincent Spriggs, October 23, 2008, pp. 39-43.

[666] Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, "The National Intimate Partner and Sexual Violence Survey: 2010 Summary Report," November 2011, www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf (accessed November 19, 2012), p. 22.

According to a February 24, 2012 letter from Chief Cathy Lanier to Council Member Phil Mendelson sent ahead of a performance oversight hearing, recruits received 28 weeks of academy training, and 12 to 16 weeks of on-the-job training with an experienced field training officer.[667] However, little of that time appears to be devoted to training on sexual assault.[668]

In response to a request for all training materials for officers or detectives pertaining to sexual assault since January 1, 2008, Human Rights Watch received notes from a course entitled "Recruit Officer Training Program," dated May 2011. The lesson plan for the 40-hour course, entitled "DC CODE Crimes against Persons," includes a brief section on the definition of sexual abuse but does not go through the elements of the crimes.

Since sexual assaults are investigated by the SAU, the materials say, "it is not necessary for patrol officers to understand the exact elements of each of the four degrees of sexual abuse."[669] Although examples are provided to generally familiarize recruits with the contents of the sex abuse statute, there is no instruction on interviewing victims other than a directive to officers to "remain professional" and "use proper terminology."[670]

Human Rights Watch also received "instructor notes" for a 28-hour lesson plan for recruit officers on preliminary investigations, dated October 1999, that does not include information about sexual assault, but does say, "Should an investigation prove that a false report was made investigating officer shall consider charging the person making the report with 'False Report.'"[671]

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[667] Letter from Metropolitan Police Department to Phil Mendelson, council member, February 24, 2012, p. 9.

[668] Washington D.C. was one of eight US cites selected to take part in the "Making a Difference" project, designed to improve handling of sexual assault cases, and participated in the project from 2003 to 2005. As part of the project, the city reportedly initiated a four-hour training of first responders on sexual assault in collaboration with the D.C. Rape Crisis Center and the SANE program. In addition, the US attorney's office was to provide one hour of training to all detectives on sexual abuse, domestic violence, and crimes against children. EVAWI, Making a Difference Project, Reform Efforts, Washington D.C., www.evawintl.org/mad.aspx?subpage=4 (accessed January 10, 2013). However, the MPD said it could not locate any records in response to our request for information on training materials received or generated as part of this project. Nor was any material included in its response to our request for all training on sexual assault. The sergeant in charge of the unit who attended the conference does not recall any changes made to the SAU's practices as a result of that project, so any changes may have been short lived. Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008, pp. 290-291.

[669] Metropolitan Police Academy, Recruit Officer Training Program, "DC CODE Crimes against Persons," Sergeant Richard Ehrlich, May 2011, pp. 38-39, on file at Human Rights Watch.

[670] Ibid, p. 39.

[671] Metropolitan Police Department, Institute of Police Science, Lesson Plan, Officer N.B. Dahlenburg, October 1999, on file at Human Rights Watch.

The final training document provided, "DC Code part 1," defines crimes in the D.C. Code, including sexual abuse, and does include the definitions of the degrees of sexual abuse, including drug-facilitated sexual assault. [672]

Patrol officers confirmed in deposition testimony that in 2008, they did not receive any training on sexual assault or the MPD policies related to investigating sexual assaults before or during their MPD work.[673] Patrol officers did not receive training on drug-facilitated sexual assault,[674] nor were they familiarized with the purpose of a sexual assault forensic medical examination or what it entails.[675] Patrol officers will only receive sexual assault investigation training if it is included in annual "in-service" trainings, which it rarely is.[676] Indeed, an experienced patrol officer said he had not received in-service training on handling sexual assault cases in 10 years.[677]
In contrast, all officers receive significant training on intra-family offenses. According to a 2003 General Order, "Prior to permanent appointment, newly hired sworn members shall receive a minimum of twenty (20) hours of basic training in responding to intrafamily offenses. Sworn members shall receive a minimum of eight (8) hours of in-service training designed to familiarize them with the dynamics of intrafamily offenses."[678]

Although police are required to undergo 40 hours of "in-service" training each year and receive a brief training as part of roll call, the MPD does not often avail itself of these opportunities to train its members on the realistic dynamics of and appropriate handling of

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[672] Deposition testimony in 2008 indicates that this course is for new detectives and devotes about an hour and a half to sex crimes. Deposition Testimony of Sergeant Kevin Steven Rice, October 14, 2008, p. 19.

[673] Deposition testimony of Officer Michael Minor, May 14, 2008, p. 12, 23, 27; deposition testimony of Officer Ginette Leveque, April 14, 2008, pp. 38.

[674] Deposition testimony of Officer Michael Minor, May 14, 2008, pp. 28-29; deposition testimony of Sergeant Ronald Reid, September 25, 2008, pp. 23-25; deposition testimony of Officer Ginette Leveque, April 14, 2008, pp. 38, 60-63; deposition testimony of Detective Elgin Wheeler, October 3, 2008, p. 53; and deposition testimony of Sergeant George Maradiaga, July 14, 2008, pp. 35, 44, 97-98.

[675] Deposition testimony of Officer Ginette Leveque, April 14, 2008, pp. 119-21; deposition testimony of Detective Elgin Wheeler, October 3, 2008, pp. 52-53; deposition testimony of Sergeant George Maradiaga, July 14, 2008, pp. 90, 201-202.

[676] Deposition testimony of Sergeant Ronald Reid, September 25, 2008, pp. 23-25, 27; deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008 p. 17-18, 92. Deposition testimony indicates there was one video prepared for first responders on how to interact with sexual assault victims, but it is not clear that it has been shown and it was not produced in response to our request for training materials. It was not shown between 2005 and October 2008. Deposition testimony of Detective Sergeant Kevin Steven Rice, October 14, 2008 pp. 46-48, 92-93; deposition testimony of Officer Tandreia Green, May 8, 2008, pp. 24, 46.

[677] Deposition testimony of Officer Michael Minor, May 14, 2008, p. 17.

[678] Metropolitan Police Department, General Order, "Intrafamily Offenses," GO-OPS-304.11, effective date November 7, 2003, https://go.mpdconline.com/GO/3743000.pdf (accessed January 7, 2013), p. 3.

sexual assault cases.[679] Community groups report that police refuse to accept their offers to train officers or detectives on sexual assault or trauma.[680]

Although the D.C. Rape Crisis Center used to train police, as of May 2012, it had not conducted a training with the MPD in five years.[681] According to a SART team participant, the SAU has refused offers to bring in other sexual assault investigation experts to train detectives or officers without charge. It also long refused to participate in SANE training.[682]

Three MPD detectives and a sergeant attended an international conference on sexual assault, domestic violence, and stalking in San Diego in April 2012. [683] The MPD SAU lieutenant reported that an experienced detective conducted a one-hour in-service training for all SAU detectives on "interviewing victims and witnesses" in late 2011 and a proposal has been made to have an outside expert come in and train detectives more extensively in the fall of 2012 and possibly again in 2013.[684] However, the MPD was unable to schedule training with the expert in 2012.

After the findings of this report were sent to the MPD on May 30, 2012, some detectives registered for free on-line training with End Violence Against Women International. The MPD's Victim Services Branch also contacted Legal Momentum with regard to an on-line training course for officers on intimate partner sexual violence in October 2012.[685] In December 2012, the MPD indicated that the Network for Victim Recovery of D.C. has provided training to all members of the SAU "on the impact of trauma and the proper approach to victims of sexual assault." The MPD also states it "developed online Sexual Abuse training which was mandated for all sworn members of the force."[686]

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[679] See Metropolitan Police Department, "Scheduling and Attendance of In-Service Training," GO-PER-201.30, effective date July 27, 2001; Metropolitan Police Department, "Roll Call Training," GO-PER-404.06, effective date July 31, 2002.

[680] Human Rights Watch telephone interviews with R.L., March 9, 2011; with R.T., May 8, 2012; and with J.V., March 7, 2011.

[681] Human Rights Watch telephone interview with R.T., May 8, 2012.

[682] Human Rights Watch telephone interview with medical staff I.L., December 7, 2011; Human Rights Watch interview with medical staff P.R., Washington D.C., March 2, 2011. The former SANE director, Devin Trinkley, offered to create an online training program for officers and SAU detectives, but MPD would not return her calls and the program was not implemented. Human Rights Watch telephone interview with Devin Trinkley, July 19, 2012.

[683] Human Rights Watch telephone interview with Sgt. Joanne Archambault, May 14, 2012.

[684] Human Rights Watch interview with Commander George Kucik, Lieutenant Pamela Burkett-Jones, Sergeant Keith Ronald Reed, and Tyria Fields, program manager for Victim Services, May 30, 2012.

[685] Human Rights Watch email correspondence with staff at Legal Momentum, October 17, 2012.

[686] Letter from Chief Lanier to Human Rights Watch, December 20, 2012.

The prosecutors interviewed for this report supported training detectives in the handling of sexual assault cases. One described annual training of detectives in human trafficking (a specialized group within the major narcotics division) that has taken place since 2004 as an example of successful implementation of regular training that could happen for SAU detectives.[687] Training in victimization of sex workers by pimps is also included at roll call training for all officers.[688] Training on trauma and cultural sensitivity for survivors in particular groups, including immigrants and members of the lesbian, gay, bisexual and transgender community, would also be an important component of any training program that is implemented.[689]

Nonetheless, as important as training is, training alone, without accountability, transparency, and proper supervision, will not lead to necessary changes.

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[687] Human Rights Watch telephone interview with M.G., assistant US attorney, Washington D.C., September 19, 2012

[688] Ibid.

[689] The US Department of Justice similarly recommends training on cultural sensitivity for forensic nurse examiners. See US Department of Justice, Office on Violence Against Women, "National Training Standards for Sexual Assault Medical Forensic Examiners," June 2006, https://ncjrs.gov/pdffiles1/ovw/213827.pdf (accessed November 19, 2012).

V. Improving Sexual Assault Investigations

> Leadership, management, accountability, transparency and community engagement are the necessary components of systemic change and we saw the impact in Philadelphia.
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> —Email from Carol Tracy, executive director, Women's Law Project, May 17, 2012

To better understand what reforms might be possible in Washington, D.C., Human Rights Watch reviewed a range of policies and interviewed numerous experts and stakeholders about reforms undertaken in Austin, Philadelphia, Kansas City, and Grand Rapids—cities that have re-examined their approach to sexual assault cases in recent years.[690]

While no single unit does everything perfectly, we have identified basic elements that often characterize effective police responses to sexual assault. Many of these can be contrasted with the approach Human Rights Watch uncovered amongst some officers at MPD.

A lengthier report on approaches to improving sexual assault investigations can be obtained here: http://hrw.org/node/112547; however the following chapter provides a snapshot of our findings, which have informed our conclusions and recommendations regarding MPD's response to sexual assaults in the capital.

A Non-Judgmental, Victim-Centered Approach

In cities that have instituted reforms, there has been a strong focus on encouraging victims to report their crimes. The captain of the Philadelphia Special Victims Unit stressed that reporting numbers for rape and sexual assault remain low and getting people to report is something they are "battling every day."[691]

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[690] Grand Rapids, Austin, Kansas City, and Washington, D.C were among eight US cities involved in the Making a Difference (MAD) Project, an initiative in which multidisciplinary teams from each city worked together to establish new national standards for effectively investigating and prosecuting sexual assault. The project was implemented and supported by End Violence Against Women International (EVAWI).

[691] Human Rights Watch interview with Captain John Darby and Commissioner Charles Ramsey, Philadelphia, Pennsylvania, November 1, 2011.

Police departments use various methods to encourage reports, ranging from protocols allowing people to provide information to police about sexual assault without recording identifying information ("blind reporting") to public awareness campaigns.

In Austin, Texas, victims are permitted to use a pseudonym on all medical and legal documents associated with the case because "it gives the victim a choice about whether she wants people to know she is a survivor."[692] In Grand Rapids, in early 2011, the police department implemented a blind reporting policy allowing victims to report anonymously either indirectly (by filling out a form and writing his or her own statement and sending it to the Grand Rapids Police Department) or directly (if the victim meets with the detective to explain what happened but does not share identifying information.)[693] Sergeant Rogers of the Grand Rapids Police Department explained that the advantage of this is that the police are made aware of a suspect's characteristics or name so if another related case arises, they may be able to persuade the anonymous victim to come forward.[694] In addition, it gives victims more control by providing those who are unsure about whether to report an option between reporting and not reporting.[695]

Another survey of 891 officers in two southeastern states showed 53 percent of respondents believed 10 to 50 percent of victims lied about being raped and another 10 percent thought 51-100 percent of women gave false reports of rape. In fact, studies show only 2-10 percent of rape cases are false. Overcoming skepticism is essential to improving police response.

Kansas City and Austin both participate in the "Start by Believing" public outreach campaign, which aims to improve the response of friends, family members, professionals, and other support people to a victim's first disclosure of sexual assault to help victims get the support they need and encourage reporting.

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[692] Sgt. Joanne Archambault, Dr. Kimberly Lonsway, and EVAWI, "Reporting Methods for Sexual Assault Cases," July 2007, pp. 13-15.

[693] Human Rights Watch interview with Patti Haist, director of clinical services, and Chris Dunnuck, nurse coordinator, YWCA, Grand Rapids, Michigan, July 23, 2012.

[694] Human Rights Watch interview with Sergeant Kristen Rogers, Grand Rapids, Michigan, July 26, 2012.

[695] Ibid; Human Rights Watch interview with Patti Haist and Chris Dunnuck, July 23, 2012.

Encouraging reporting has little impact without efforts to improve police responsiveness. Unfortunately, throughout the US, many police remain highly skeptical of victims. A survey as recent as 2010 showed that over half of detectives with less than 7 years of experience, interviewed in 16 police departments believed that 40 to 80 percent of sexual assault complaints were false.[696] Another survey of 891 officers in two southeastern states showed 53 percent of respondents believed 10 to 50 percent of victims lied about being raped and another 10 percent thought 51-100 percent of women gave false reports of rape.[697] In fact, studies show only 2-10 percent of rape cases are false.[698] Overcoming skepticism is essential to improving police response.

The attitude conveyed by law enforcement can be "the single most important factor in determining the success of the victim interview—and therefore the entire investigation," according to a manual about investigating sexual assaults.[699] A Model Policy published by the International Association of Chiefs of Police (IACP) stresses the importance of officers' and investigators' (detectives') attitudes towards victims in ensuring the latters' cooperation and ability to cope with the emotional effects of the crime.[700]

Detectives should be trained to reassure the victim that they are not there to judge, and that nothing the victim did gave the suspect permission to sexually assault them.[701] As one Kansas City detective remarked to Human Rights Watch, "They need to understand that we get it."[702]

Detectives can explain to victims the importance of not withholding any information so that their credibility is not questioned later. In Austin, Grand Rapids, and Kansas City, the detective or advocate makes a point of explaining to the victim that people often leave

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[696] Martin D. Schwartz, "National Institute of Justice Visiting Fellowship: Police Investigation of Rape –Roadblocks and Solutions," Doc. No. 232667, US Department of Justice Number 2003-IJ-CX-1027, December 2010.
[697] Amy Dellinger Page, "Gateway to Reform? Policy Implications of Police Officers' Attitudes toward Rape," *American Journal of Criminal Justice*, vol. 33, no. 1, May 2008, pp. 44-58.
[698] David Lisak et al., "False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases," *Violence Against Women*, December 16, 2010, pp. 1318-34 (finding a false report rate of 5.9 percent over a 10 year study of reported sexual assaults at a major northeastern university).
[699] EVAWI, "Interviewing the Victim," May 2007, p 6.
[700] IACP, "Investigating Sexual Assaults Model Policy," July 2005.
[701] EVAWI, "Interviewing the Victim," May 2007, pp. 25-26; see also San Diego Police Department, Sex Crimes Unit Standard Operating Procedures (SOP), April 10, 2002, p. 1-13, on file at Human Rights Watch.
[702] Human Rights Watch group interview with Kansas City SART (including Detective Catherine Johnson, Kansas City Police Department), Kansas City, Missouri, July 22, 2011.

things out and it is better to know everything—even unflattering or illegal behavior—upfront, while also reassuring the victim that he or she is not at fault and will not be judged.[703] Philadelphia, Kansas City, and Austin all have policies not to charge the victim with illegal behavior that happened around the assault (unless it is absolutely necessary given the seriousness of the offense), and make it clear that the victim will not be arrested for offenses like illicit drug use or underage drinking.[704] Experts strenuously object to threatening victims implicitly or explicitly with charges for false reporting.[705] In Austin, the head of the Sex Crimes Unit eliminated a requirement that victims sign a perjury statement before beginning an interview because it conveyed suspicion toward victims that was likely to make them feel uncomfortable and less willing to participate.[706]

Interviews

Due to the possible impact of trauma and a victim's possible reactions, the first responding officer (generally a patrol or uniformed officer) should limit the amount of information gathered from a victim immediately after the assault.[707]

He or she should address any safety or medical concerns, collect just enough information to establish the elements of the crime, identify potential witnesses and suspect(s), and identify and secure evidence.[708] In Austin, responding officers gather basic facts and determine whether a detective should respond to the scene, for example if there is a perpetrator that needs to be arrested immediately.[709] A detective conducts a detailed interview later.

The possible impact of trauma on short-term memory means it is preferable to give the victim one or even two sleep cycles before conducting a detailed interview.[710] Not rushing an interview may be advisable for other reasons too: a victim may be under the influence of drugs or alcohol at the time of the initial report; he or she may need a

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[703] Ibid.; Human Rights Watch interview with Dolores Lapart-Litton, victim services supervisor, Adriana Duarte, victim services counselor, and Sgt. Liz Donegan, Victims Services Unit, Austin Police Department, Austin, Texas, December 14, 2011.
[704] Human Rights Watch group interview with Kansas City SART, July 22, 2011; Human Rights Watch group interview with Sexual Assault Advisory Committee, Philadelphia, Pennsylvania, November 1, 2011.
[705] Human Rights Watch group interview with Sexual Assault Advisory Committee, November 1, 2011.
[706] Human Rights Watch interview with Sergeant Liz Donegan, Austin Police Department, Austin, Texas, December 13, 2011.
[707] Human Rights Watch group interview with Sexual Assault Advisory Committee, November 1, 2011.
[708] International Association of Chiefs of Police (IACP) National Law Enforcement Policy Center, "Investigating Sexual Assaults," initially published November 1999, revised July 2005, p. 2, 6.
[709] Human Rights Watch Interview with Sgt. Liz Donegan, December 13, 2011.
[710] EVAWI, "Interviewing the Victim"p. 52; see also Louise Ellison, "Closing the credibility gap: The prosecutorial use of expert testimony in sexual assault cases," *The International Journal of Evidence & Proof,* vol. 9, no. 4, 2005, pp. 243-44.

chance to rest, change clothes, or bathe after a forensic exam. He or she may also require some time to process what has happened and make arrangements for child-care or transportation.[711] It also gives detectives an opportunity to evaluate all of the reports generated as a result of the call before questioning the victim.[712]

Beginning an interview by acknowledging the victim's trauma is often helpful. The guiding principle for detectives in Philadelphia, according to the former head of the Special Victims Unit, is, "How do you want someone in your family to be treated?"[713] In Kansas City, police start the interview by saying, "We are really glad you are here because you are safe," or "Thank you for being here."[714] In San Diego, detectives are instructed to validate and normalize a victim's responses by understanding and explaining Post-Traumatic Stress Disorder and the impact trauma has on victims.

Victims should be informed about the progress of their case, the detective should return phone calls in a timely manner, and any decision not to arrest the suspect or further pursue the case should be carefully explained to the victim.[715]

Advocates and Referrals to Community Resources

Using an advocate or counselor to assist victims through the investigative process can be beneficial to both victims and law enforcement.[716]

For example, use of rape crisis center advocates from the Metropolitan Organization to Counter Sexual Assault (MOCSA) is a key component of Kansas City's victim-centered response to sexual assault. Advocates are called to the hospital when a victim is brought in for a forensic exam, and they are present for the victim during the police interview. The Sex Crimes Section leadership welcomes their involvement because they

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[711] EVAWI, "Interviewing the Victim"p. 52.

[712] For these reasons, Austin detectives try to give sexual assault victims 48 hours before follow-up questioning. Kansas City detectives conduct one preliminary interview at the hospital and a longer and more detailed interview at another location later. Human Rights Watch group interview with Kansas City SART, July 22, 2011.

[713] Human Rights Watch group interview with Sexual Assault Advisory Committee, November 1, 2011.

[714] Human Rights Watch group interview with Kansas City SART, July 22, 2011. The SANE nurse in Austin similarly emphasized that she makes a point of thanking victims who come in and telling them how courageous they are. Human Rights Watch interview with Jenny Black, coordinator, Austin/Travis County Sexual Assault Nurse Examiners, Austin, Texas, December 14, 2011.

[715] See for example, San Diego Police Department, Sex Crimes Unit SOP, April 10, 2002, p. 1-13.

[716] Dr. Kim Lonsway and Sgt. Joanne Archambault, "Advocates and Law Enforcement: Oil and Water?" *Sexual Assault Report*, vol. 11, no. 6, pp. 81-82, 86-95; Rebecca Campbell, "Rape Survivors' Experiences With the Legal and Medical Systems: Do Rape Victim Advocates Make a Difference?" *Violence Against Women*, 2006.

find victims more likely to report an assault and remain engaged in the investigation if they have an advocate. One detective described a situation in which a victim experienced a flashback during an interview and was only able to finish her statement with the advocate's support.[717] Kansas City Sexual Assault Response Team (SART) members caution that the role of the advocate has to be clearly explained: they are there for support and are not part of the police investigation. As a prosecutor put it, "As long as people know what is expected, it works."[718] In Austin, victim service counselors are integrated into the Sex Crimes Unit and provide support to the victim at every stage of the process, acting as an intermediary between detectives and victims.[719]

Cities with constructive practices for victims inform them verbally and in writing of their rights and of community resources available to them.[720] For example, the Victim Services Unit in Austin gives each victim a detailed packet of resources[721] and refers victims to the rape crisis center.[722] Kansas City detectives send victims who miss an appointment a follow-up letter containing information about counseling services and detectives also regularly refer victims to the rape crisis center.[723] In Grand Rapids, all officers are required to provide victims with a "2-1-1" card, which is a pocket guide to programs and services in the area, including support services for sexual assault victims. In addition, the detectives in the family service team have a wide array of pamphlets (in English and Spanish) on site that they are able to provide victims when they are interviewed.[724] In Philadelphia, police and hospital personnel routinely refer victims to the rape crisis center.[725]

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[717] Human Rights Watch group interview with Kansas City SART, July 22, 2011.
[718] Ibid. (Trisha Lacey, sex crimes prosecutor, Kansas City).
[719] Human Rights Watch interview with Dolores Lapart-Litton, Adriana Duarte, and Sgt. Liz Donegan, December 14, 2011.
[720] EVAWI, "Interviewing the Victim," May 2007, p. 96, 99; San Diego Police Department, Sex Crimes Unit SOP, April 10, 2002, p. 1-15; IACP, "Investigating Sexual Assaults, Model Policy," May 2005.
[721] Folder of information provided by Austin Police Department, on file at Human Rights Watch (folder contains a case information sheet—with a case number and contact information for the detective, victim services counselor, and D.A.'s victim witness assistance—an explanation of the criminal justice process, a sheet explaining the rights of victims, an explanation of access to court information, an application for financial compensation from the state for victims of violent crimes, health care information, information on emotional care for sexual assault survivors, information for family and friends on how to help and support a sexual assault survivor, referrals for counseling programs, a pseudonym form, and information about the Victims Services Unit and the Austin Police Department).
[722] Human Rights Watch interview with Gail Rice, community advocacy director, SafePlace, Austin, Texas, December 14, 2011.
[723] Human Rights Watch group interview with Kansas City SART, July 22, 2011.
[724] Human Rights Watch interview with Sgt. Kristen Rogers, Grand Rapids, Michigan, July 26, 2012. Pamphlets and leaflets on file with Human Rights Watch.
[725] Human Rights Watch group interview with Sexual Assault Advisory Committee, November 1, 2011.

Cross-Disciplinary Collaboration

In four cities that Human Rights Watch visited—Philadelphia, Austin, Grand Rapids, and Kansas City— collaboration between police and the various agencies and community groups that work with sexual assault survivors was viewed as an essential component of success. As Sergeant Rogers of Grand Rapids said, "We couldn't survive without a good working relationship with them."[726] This collaboration often takes the form of a formal Sexual Assault Response and Resource Team (SART or SARRT), which may include forensic examiners, detectives, advocates, and prosecutors.[727] Philadelphia's Sexual Assault Advisory Committee, which has operated for over 20 years, is less formal and open to anyone who wants to participate.

In each city, medical staff, advocates, and police recognized that the victim's wellbeing is important to everyone.[728] Collaboration across disciplines yields a number of benefits. Communication between law enforcement and medical personnel can assist the investigation by helping the nurse document and collect evidence. In Philadelphia and Grand Rapids, one noted benefit of improved communication is that nurses share relevant information with detectives that the victim may not have mentioned, such as the possible location of a condom.[729] The detectives in Kansas City also call nurses to decipher technical medical reports.[730] In each city, team members noted that their relationships and mutual respect allow them to raise concerns informally about insensitive or inappropriate behavior and feel confident they will be addressed.[731]

Leadership and Training

Leaders within the sexual assault unit and in the upper reaches of the police department hierarchy who are committed to thorough investigation of sexual assault crimes are essential

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[726] Ibid.

[727] Sgt. Joanne Archambault, Dr. Kimberly Lonsway, and EVAWI, "Clearance Methods for Sexual Assault Cases," July 2007 (updated May 2012), p. 29.

[728] Human Rights Watch group interview with Kansas City SART, July 22, 2011; Human Rights Watch interview with Tess Sherman, analyst, Sex Crimes Unit, Austin Police Department, Austin, Texas, December 14, 2011; Human Rights Watch group interview with Sexual Assault Advisory Committee, November 1, 2011.

[729] Human Rights Watch group interview with Sexual Assault Advisory Committee, November 1, 2011; Human Rights Watch interview with Sgt. Kristen Rogers, Grand Rapids, Michigan, July 26, 2012.

[730] Human Rights Watch group interview with Kansas City SART, July 22, 2011.

[731] Human Rights Watch group interview with Sexual Assault Advisory Committee, November 1, 2011; Human Rights Watch group interview with Kansas City SART, July 22, 2011; Human Rights Watch interview with Gail Rice, December 14, 2011; Human Rights Watch interview with Patti Haist and Chris Dunnuck, July 23, 2012.

to success. As one retired police chief told Human Rights Watch, "Culture has to change from the top. Clear messages need to be sent about how these cases are handled."[732]

In Austin, Kansas City, and Philadelphia, community advocates and medical personnel frequently credited the commitment of the head of the sex crimes unit as the reason for improved treatment of victims. These captains and sergeants in turn felt they had support they needed from top management to do what was necessary to handle these cases appropriately.

The captain in Kansas City and his counterparts in Philadelphia and Austin worked hard to change the culture of their departments and reinforce a victim-centered approach.

In Philadelphia, drastic changes to the Special Victims Unit in the late 1990s came only when police leadership made reform a priority after recognizing there was a problem and being embarrassed due to media attention. A Philadelphia advocate credited Commissioner Timoney for the changes there, stating, "it was the leadership of Commissioner Timoney that transformed sex crime investigations. Commissioner Timoney reorganized the department and put in appropriate management and accountability measures."[733] A veteran prosecutor summed it up: "Attitude is top down."[734] The current head of the city's Special Victims Unit stressed the importance of reminding "people of how things can deteriorate if you take your mind off it."[735] Information about sex crimes cases is raised during roll call (when officers present themselves for inspection and a briefing before leaving on assignment) and information bulletins about cases are regularly sent out. Daily conference calls also reference sex crimes.[736]

Moreover, effective departments have instituted specialized training in sexual assault. In Austin, San Diego, Kansas City, Philadelphia, and New York City, police receive detailed training on investigating sexual assault. In New Orleans, after realizing that detectives' lack

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[732] Human Rights Watch telephone interview with Dan Clark, former police chief, Lakewood (Ohio) Police Department, February 3, 2011.

[733] Police Executive Research Forum, Critical Issues in Policing Series, "Improving the Police Response to Sexual Assault," March 2012, http://policeforum.org/library/critical-issues-in-policing-series/SexualAssaulttext_web.pdf (accessed November 29, 2012), p. 9.

[734] Human Rights Watch telephone interview with Chris Mallios, northeast regional attorney advisor, AEquitas: The Prosecutor's Resource on Violence Against Women, November 10, 2011.

[735] Human Rights Watch interview with Captain John Darby and Commissioner Charles Ramsey, November 1, 2011.

[736] Ibid.

of understanding of how sexual assault victims think led to misclassification of cases, police leadership asked advocates and experts at Tulane University to design a training program to teach detectives how to better relate to sexual assault victims. Detectives undergo training quarterly and all patrol officers will do a smaller version of the training program.[737]

The need for training is constant because of high turnover,[738] and specialized training is necessary because police training on investigating other crimes can be counterproductive if applied to sexual assault survivors. Police are often trained in interrogating witnesses and suspects rather than in interviewing victims. Furthermore, police are often suspicious when information is presented in a disorganized or inconsistent manner, or when victims recall information days, weeks, or even months after the assault.[739]

One study showed that if victims do not tell the whole story up front, cases are less likely to progress.[740] Training in the effects of trauma on memory can help officers understand this is not a cause for suspicion and that inconsistencies should not be confused with a false report.[741] Police also need enough training in the dynamics of sexual violence to understand counterintuitive behavior, such as a victim returning to a party after an assault or "freezing" and not fighting back.[742]

Experts also recommend training officers in the elements of sexual assault offenses so they can better identify incidents that meet the criteria, even if they lack the element of force or fear. In many places, including the District of Columbia, it is unlawful to engage in sexual activity with someone who is extremely intoxicated, incapacitated, severely disabled, unconscious, or otherwise physically helpless, even if the intoxicating substance was not administered covertly by the suspect.[743] Yet responding officers may not realize the victim's intoxication may mean that force is not necessary to establish sexual abuse.[744]

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[737] Police Executive Research Forum, "Improving the Police Response to Sexual Assault," p. 11.
[738] Human Rights Watch telephone interview with Chris Mallios, November 10, 2011.
[739] EVAWI, "Interviewing the Victim," May 2007, p. 22.
[740] See Debra Patterson, "The Impact of Detectives' Manner of Questioning on Rape Victims' Disclosure," *Violence Against Women*, January 11, 2012.
[741] EVAWI, "Interviewing the Victim," pp. 7, 22.
[742] Human Rights Watch telephone interview with Chris Mallios, November 10, 2011.
[743] EVAWI, "Reporting Methods for Sexual Assault Cases," p. 32; D.C. Official Code Section 22-3003.
[744] EVAWI, "Reporting Methods for Sexual Assault Cases," p. 11.

Officers should also be aware that specific recollection of penetration is not necessary to report a sexual assault. According to the FBI spokesperson:

> There is in fact no requirement that a victim specifically recall the act of penetration—especially in cases where a woman might have blacked out. If a woman says she has reason to believe she was raped but cannot recall details because she was under the influence of alcohol or drugs, the incident should be counted as a rape. If subsequent investigation proves that no rape took place, police can subtract it from their crime total.[745]

Accountability and Transparency

In Austin, Philadelphia, Grand Rapids, and Kansas City, a number of safeguards have been put in place to ensure that sexual assault cases are investigated. Each department has incorporated most, if not all, of the following practices:

- Requiring that all sexual assault incidents be put in writing and assigned a number for tracking purposes and secondary review;
- Clearly instructing officers to assume that sexual assault cases are valid unless established otherwise by investigative findings;
- Reviewing call logs to ensure cases are not slipping through the cracks;
- Checking each case to see that the investigation is handled appropriately;
- Reviewing caseloads to monitor the reporting, clearing, and closing of all cases by each detective to identify potential problems;
- Serious and prompt responses to complaints about improper treatment by victims;[746]
- Removal of detectives who do not meet the expectations of the unit. [747]

Experts agree that detectives should not be granted the discretion to declare a case unfounded or not to write a report after taking only an initial statement from the victim. All incidents (including those where it is unclear if the legal elements of a sexual assault are

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[745] Mark Fazlollah et al., "How police use a new code when sex cases are unclear," *Philadelphia Inquirer* (quoting Mary Victoria Pyne, spokeswoman for the FBI UCR program), October 18, 1999.
[746] EVAWI, "Clearance Methods for Sexual Assault Cases," pp. 35-36.
[747] Human Rights Watch group interview with Kansas City SART, July 22, 2011; Human Rights Watch group interview with Sexual Assault Advisory Committee, November 1, 2011; Human Rights Watch Interview with Sgt. Liz Donegan, December 13, 2011; Human Rights Watch interview with Dolores Lapart-Litton, Adriana Duarte, and Sgt. Liz Donegan, December 14, 2011.

met) should be documented, reviewed by a supervisor, and followed up.[748] For example, in Kansas City, every sexual assault case must be written up and investigated. The policy has paid off. The captain, recalling one sexual assault case in which detectives doubted that a crime had occurred, said,

> The perpetrator snuck into the victim's house and approached her from behind. He told her not to look at him and made her take a bath afterwards. The victim never saw the suspect. Despite their doubts, detectives investigated the case and a month later a similar crime occurred. Eventually they were able to link the perpetrator to four cold cases in addition to five cases in 2009 and 2010.[749]

A written record is necessary so that officers and detectives can be held responsible for every sexual assault call they receive. Finally, detectives should not be pressured to "clear" (or remove from an active investigative caseload) a high percentage of their cases.[750]

In cities such as Philadelphia[751] and Austin,[752] stringent oversight of the progress of cases and external reviews by advocacy organizations of case files have brought increased accountability and improved police response.

In Philadelphia, to restore public confidence in the police following revelations about its mishandling of sexual assault cases in 1999, Commissioner John Timoney proposed what seemed to be a radical idea at the time: allowing advocacy groups to review

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[748] EVAWI, "Clearance Methods for Sexual Assault Cases," p. 18; EVAWI, "Reporting Methods for Sexual Assault Cases," pp. 6-7. Incident reports may be appropriate where the victim makes a report that does not meet the elements of a sexual offense; for example if a person felt pressured into having sexual contact with another person but the pressure did not rise to the level of a forcible sexual assault. However, some form of report must be created and reviewed. There must also be the ability to re-categorize the case if more information becomes available or if the victim decides to cooperate after initially not be able to participate in the investigation. EVAWI, "Clearance Methods for Sexual Assault Cases," pp. 18-19.
[749] Human Rights Watch telephone interview with Captain Mark Folsom, Special Victims Unit, Kansas City Police Department, Kansas City, Missouri, August 24, 2011.
[750] Under the FBI Uniform Crime Reporting (UCR) system, cases may be cleared by arrest (where the suspect has been taken into custody, charged, and handed to the court for prosecution), exceptionally cleared (when the case cannot be charged though the offender is identified, at a known location, and there is enough evidence to support the case, but the offender is in another jurisdiction or deceased or the victim is unable to participate in the investigation), or unfounded (if an investigation shows no offense occurred or was attempted).
[751] John Timoney, "Fixing Policies Was Just the First Step; We also Had to Restore the Department's Credibility," Subject to Debate: A Newsletter of the Police Executive Research Forum, vol. 25, no. 5, September/October 2011, http://www.policeforum.org/library/subject-to-debate-archives/2011/Debate_Sep-Oct2011_web.pdf (accessed May 16, 2012).
[752] Human Rights Watch interview with Tess Sherman, December 14, 2011.

investigative files of sex crimes cases. The review process is conducted once a year. Representatives from five advocacy groups (bound by confidentiality agreements) meet in a sex crimes unit conference room for a few days each year and review all "unfounded" cases as well as 100 randomly selected case files, child abuse cases referred to the department by third parties, and a category of cases established for situations where the victim does not recall what happened.[753] The reviewers examine files to determine if all relevant witnesses were interviewed; all indicated forensic testing was requested and results returned; victim interviews were conducted appropriately and without blame or interrogation techniques; coding is correct; no victim polygraph tests were threatened or performed; and that the ultimate determination as to whether a crime was committed is consistent with the evidence collected.[754] They also scrutinize victim recantations to ensure they were not influenced by police or others.

The result has been better investigations and improved treatment of victims. The head of the Philadelphia Special Victims Unit said his investigators adhere to a higher threshold because they know their files will be reviewed: "Our investigators are well aware that they may be asked tough questions about their assigned cases at some point down the road. They pay more attention to detail and are more careful through every step of the investigation. The case review program ultimately makes them better investigators."[755] Over the years, the advocates also describe seeing "a vast improvement in the files," which contain more documentation and more sign-off from supervisors.[756] Fewer cases are dropped without an investigation.[757]

In Austin, when Sergeant Liz Donegan took over the Sex Crimes Unit in 2002, she discovered that patrol officers regularly cleared sexual assault cases without documenting the incident in a written report. She issued a directive requiring all calls to respond to sexual assault cases to be documented in a formal report that is forwarded to the Sex Crimes Unit for review to ensure the cases do not disappear from the

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[753] In cases where the victim does not recall if he or she was assaulted, a rape kit is done, and if the lab results are positive and the victim says it was non-consensual, the case is reclassified as a rape. Human Rights Watch interview with Captain John Darby and Commissioner Charles Ramsey, November 1, 2011.

[754] Police Executive Research Forum, "Improving the Police Response to Sexual Assault," p. 38.

[755] Ibid., p. 39; Human Rights Watch interview with Captain John Darby and Commissioner Charles Ramsey, November 1, 2011.

[756] Human Rights Watch interview with Carol Tracy and Terry Fromson, November 1, 2011

[757] Human Rights Watch group interview with Sexual Assault Advisory Committee, November 1, 2011.

system.[758] If a detective wants to close a case as "unfounded," he or she must meet personally with his or her supervisor to justify the decision. As a result, Austin has very few unfounded cases.[759] The New Orleans Police Department also implemented procedures requiring the commander of the sex crimes section to sign off on the classifications for all sexual assault cases after finding that large numbers of sexual assault cases that officers did not think were true were classified as "miscellaneous."[760]

Following the *Baltimore Sun*'s expose in 2010 that city police led the nation in "unfounding" cases, Baltimore Commissioner Fred Bealefeld gave the Sexual Assault Response Team the ability to audit Police Department practices and past cases.[761] He also required the unit commander to sign off on any unfounded sexual assault case in the city. Patrol officers are no longer able to make that determination.[762] Other proposed reforms include case-management software that would allow every agency involved with the response to sexual assaults to access the status of a sexual assault case.[763] The Baltimore commissioner stressed that in order to achieve transparency, "you have to give people a lot of access," including people who have historically been very critical of the Police Department and "Agencies need to be ready for every bit of criticism that this issue brings."[764] Although there have been changes in policy and personnel in Baltimore Police Department's Sex Offense Unit since 2010, reform is ongoing and it is too early to assess the impact of the changes.

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[758] Human Rights Watch interview with Sgt. Liz Donegan, December 13, 2011; EVAWI, Making a Difference Project, Reform Efforts, Austin, Texas, www.evawintl.org/mad.aspx?subpage=4 (accessed January 20, 2013).

[759] Human Rights Watch interview with Sgt. Liz Donegan, December 13, 2011.

[760] Police Executive Research Forum, "Improving the Police Response to Sexual Assault," p. 11.

[761] Ibid., p. 9.

[762] Ibid., p. 10.

[763] Justin Fenton, "Coordinator will oversee Baltimore sex assault investigation reforms," *Baltimore Sun,* March 14, 2011, http://articles.baltimoresun.com/2011-03-14/news/bs-md-ci-sart-coordinator-hired-20110314_1_offense-unit-sexual-assaults-sun-investigation (accessed November 29, 2012).

[764] Police Executive Research Forum, "Improving the Police Response to Sexual Assault," p. 10.

VI. International Human Rights Obligations

The United States is party to a number of international conventions that recognize rape as a human rights abuse, and require that the US ensure the protection of its citizens from sexual violence, including rape. Federal, state, and local governments must uphold these requirements under the US Constitution.[765]

In 2010, the United Nations Human Rights Council adopted a resolution on efforts to eliminate all forms of violence against women, stressing that "States ... must exercise due diligence to prevent, investigate, prosecute and punish the perpetrators of violence against women and girls and provide protection to women and girls who have experienced violence, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms."[766]

The US is party to the International Covenant on Civil and Political Rights (ICCPR), and to the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (Convention against Torture), which both set out important standards for victims of rape.[767] The ICCPR guarantees the right to security of the person under article 9, which includes a right to protection of bodily integrity against third parties.[768] Both the Convention against Torture and the ICCPR (under article 7) guarantee the right to be free from torture and cruel, inhuman, or degrading treatment.[769] International tribunals and other bodies have

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[765] The US Constitution states, "[A]ll treaties made, or which shall be made, under the authority of the United States shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Law of any State to the contrary notwithstanding." US Constitution, article VI, clause 2. Upholding this constitutional principle, the US Supreme Court has stated, "[I]nternational law is part of our law, and must be ascertained and administered by the courts of justice of the appropriate jurisdiction…" The Paquete-Habana, 175 U.S. 677, 700 (1900). Treaties of the United States have been held to be binding on states independent of the will and power of state legislatures. See *Asakura v. City of Seattle*, 265 U.S. 332 at 341 (1924) (holding that a treaty made under the authority of the United States stands on the same footing of supremacy as do the provisions of the Constitution and laws of the United States and "operate[s] of itself without the aid of any legislation, state or national; and it will be applied and given authoritative effect by the courts").

[766] Human Rights Council, "Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention," A/HRC/14/L.9/Rev.1, June 16, 2010, para. 1.

[767] International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200 A(XXI), 21 U.N. GAOR Supp (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 161, entered into force March 23, 1976, ratified by the United States on June 8, 1992; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. Res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at197, U.N. Doc. A/39/51(1984), entered into force June 26, 1987, ratified by the United States on October 21, 1994.

[768] ICCPR, art. 9.

[769] ICCPR, art. 7; Convention against Torture.

established that rape is covered by the prohibitions on torture, and that the government must act to prevent rape and bring to justice those responsible.[770] The US is also a member of the Organization of American States, and as such is legally bound to protect and prevent violations of the rights contained in the American Declaration on the Rights and Duty of Man, including the right to life and security of the person.[771]

Private Actors

This obligation to protect individuals from harm is not limited to liability for action by or on behalf of governments. General international law and specific human rights treaties hold that states may be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence.

The United Nations Human Rights Committee (HRC) has made it clear that states party to the ICCPR and other conventions violate their obligation under these treaties not only when state actors are responsible for the action, but also when the state fails to take necessary steps to prevent violations caused by private actors. The HRC's General Recommendation 31 to the ICCPR notes that state parties must "take appropriate measures or … exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities."[772] The Committee Against Torture requires state parties to prevent and protect victims from gender-based violence and rape by exercising due diligence in investigating, prosecuting, and punishing perpetrators—even private actors—of rape and sexual assault.[773]

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[770] See, for example, European Court of Human Rights (ECHR), *Aydin v. Turkey*, no. 57/1996/676/866, Judgment of September 25, 1997, http://www.unhcr.org/refworld/docid/3ae6b7228.html (accessed January 10, 2013), paras. 62-88; International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Furundzija*, Case No. IT-95-17/1-T, Judgment (Trial Chamber), December 10, 1998, paras. 163-86.

[771] American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948). In relation to US obligations to act with due diligence to prevent, investigate, sanction, and offer remedies in cases of violence against women perpetrated by private actors, Inter-American Commission on Human Rights (IACHR), *Jessica Lenahan (Gonzales) et al. (United States),* Report No. 80/11, Case 12.626, July 21, 2011, paras. 101-36. In this case, the Commission found that the US government, through the actions and omissions of its state agents in Colorado, failed to act with due diligence to protect three victims from domestic violence, in violation of obligations not to discriminate and to provide for equal protection before the law, and that the government also violated the right to judicial protection. See also in general for legal obligations on states to investigate sexual assaults with due diligence: IACHR, "Access to Justice for Women Victims of Sexual Violence in the Americas," OEA/Ser.L/V/II, Doc. 68, January 20, 2007, pp. 10-48; IACHR, "Access to Justice for Women Victims of Sexual Violence in Mesoamerica," OEA/Ser.L/V/II. Doc. 63, December 9, 2011, pp. 5-14.

[772] UN Human Rights Committee, General Comment 31, Nature of the General Legal Obligation imposed on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 9.

[773] UN Committee Against Torture (CAT), General Comment No. 2, Implementation of article 2 by States Parties, U.N. Doc. CAT/C/GC/2 (2008).

The Inter-American Court of Human Rights has reinforced that responsibility for violations of human rights rests with the state, as well as with the perpetrators when the state refrains from taking necessary measures to investigate crimes or prevent future violations:

> An illegal act which violates human rights and which is initially not directly imputable to a state (for example because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of an act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.[774]

Similarly, the Inter-American Commission of Human Rights, too has stated,

> When the State apparatus leaves human rights violations unpunished and the victim's full enjoyment of human rights is not promptly restored, the State fails to comply with its positive duty under international human rights law. The same principle applies when a State allows private persons to act freely and with impunity to the detriment of the rights recognized in the governing instruments of the inter-American system.[775]

These provisions make clear that the US is bound to take all necessary possible measures to prevent sexual assault and rape even when carried out by private actors.

Non-Discrimination

The principle of non-discrimination, the "backbone of the universal and regional systems for the protection of human rights," also creates additional obligations to take steps to investigate, punish, and prevent rape.[776] Violence against women has been repeatedly

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[774] Inter-American Court on Human Rights (IACtHR), *Velasquez-Rodriguez Case*, Judgment of July 29, 1988, para. 172.

[775] The Inter-American Commission (IACHR), established by the American Declaration on the Rights and Duties of Man, co-exists with the Inter-American Court on Human Rights (IACtHR) and considers complaints about violations of the Declaration and the American Convention on Human Rights before they are referred to the court. See IACHR, *Jessica Lenahan (Gonzales) et al. (United States)*, para. 173.

[776] IACHR, *Jessica Lenahan (Gonzales) et al. (United States),* para. 107.

recognized as one of the most extreme and pervasive forms of discrimination, severely impairing the ability of women to enjoy their rights.[777]

For example, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a treaty the US has signed but not ratified, obligates states parties to combat discrimination against women.[778] The Committee on the Elimination of Discrimination against women, the treaty body that interprets and monitors compliance with the CEDAW, has affirmed that gender-based violence is a form of discrimination against women and that state parties should have effective legal, preventive, and protective measures in place to provide justice for victims, hold offenders accountable, and protect society from future acts of sexual violence.[779] As a signatory to the treaty, the US is obliged to, at a minimum, not act in a way that would undermine the intent and purpose of the treaty.[780]

International and regional human rights systems have affirmed "the strong link between discrimination, violence and due diligence, emphasizing that a State's failure to act with due diligence to protect women from violence constitutes a form of discrimination, and denies women their right to equality before the law."[781]

The European Commission on Human Rights has found that failure to protect women against violence breaches their right to equal protection of the law, even if the failure is unintentional.[782]

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[777] See for example, UN General Assembly, Declaration on the Elimination of Violence against Women, December 20, 1993, G.A. res. 48/104, 48 U.N. GAOR Supp. (no. 49) at 217, U.N. Doc. A/48/49 (1993) ("Affirming that violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms."); See also UN General Assembly, Resolution 64/137, "Intensification of efforts to eliminate all forms of violence against women," A/RES/64/137, February 11, 2010 ("Stressing that States have the obligation to promote and protect all human rights and fundamental freedoms for all, including women and girls, and must exercise due diligence to prevent and investigate acts of violence against women and girls and punish the perpetrators, to eliminate impunity and to provide protection for victims, and that failure to do so violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.").

[778] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, entered into force September 3, 1981. The United States signed CEDAW in 1980 but has not ratified.

[779] UN Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence Against Women, UN Doc. A/47/38 (1992), para. 24(t).

[780] Vienna Convention on the Law of Treaties, adopted May 23, 1969, entered into force January 27, 1980, art. 18.

[781] IACHR, *Jessica Lenahan (Gonzales) et al. (United States)*, paras. 110-111; UN General Assembly, Declaration on the Elimination of Violence against Women, art. 4(c)(urging States to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the state or against private persons.").

[782] ECHR, *Opuz. v. Turkey*, (Application no. 33401/02), judgment of June 9, 2009, para. 191.

The Inter-American Commission on Human Rights has stated, "Ensuring that women can freely and fully exercise their human rights is a priority in the Americas," since principles of non-discrimination and equal protection are fundamental to the Inter-American system.[783] Following this reasoning, the commission has found that the US's failure to act with due diligence to protect plaintiffs from domestic violence violated its obligation not to discriminate and to provide for equal protection under the law. [784]

As with the duty to protect individuals from harm, the non-discrimination obligation applies even if the perpetrator is a private actor.[785] As former UN Special Rapporteur on Violence against Women Radhika Coomaraswamy stated in her first report on the subject in 1994,

> In the context of norms recently established by the international community, a State that does not act against crimes of violence against women is as guilty as the perpetrators. States are under a positive duty to prevent, investigate and punish crimes associated with violence against women.[786]

Due Diligence

The positive duty to prevent and punish harm to individuals, including violence against women, requires that states act with due diligence to investigate acts of violence and hold offenders to account. The due diligence standard is expressed in a variety of legal instruments and other sources of international law.[787]

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[783] IACHR, "The situation of the rights of women in Ciudad Juarez, Mexico: the right to be free from violence and discrimination," ("Cuidad-Juarez"), Inter-Am.C.H.R., OEA/Ser.L/V/II.117, Doc. 44 (2003), paras. 99-100.

[784] IACHR, *Jessica Lenahan (Gonzales) et al. (United States)*, paras. 173, 212.

[785] UN Committee on the Elimination of Discrimination against Women, General Recommendation 19, Violence Against Women, UN Doc. A/47/38 (1992) ("States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation."); UN General Assembly, Declaration on the Elimination of Violence against Women (States should "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons.").

[786] UN Commission on Human Rights, Preliminary Report Submitted by the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/1995/42, November 22, 1994, para. 72.

[787] See, for example, UN Commission on Human Rights, Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Erturk, E/CN.4/2006/61, January 20, 2006, paras. 19-29 (concluding that customary law requires states to prevent and respond to acts of violence with due diligence); See above, UN Human Rights Council, "Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention," A/HRC/14/L.9/Rev.I, June 16, 2010; UN Committee on the Elimination of Discrimination against Women, *A.T. v. Hungary*, Communication No. 2/2003, January 26, 2005; IACHR, *Jessica Lenahan (Gonzales) et al. (United States)*, paras. 122-124; IACtHR, *Velasquez Rodriguez Case*, para. 172.

The case law of human rights tribunals has helped clarify the practical requirements for diligent and thorough investigation of human rights violations. The European Court of Human Rights has made clear that the obligation under international law to protect the rights to life and bodily integrity entails the conduct of an effective official investigation when a violation occurs, so that the domestic laws that are intended to offer protection are effectively implemented.

An effective investigation has been defined as one that is capable of leading to the identification and punishment of those responsible. Authorities must take reasonable steps available to secure the evidence concerning the incident, including, inter alia, witness statements and forensic evidence. There must be effective access for the complainant to the investigation procedure. Any deficiency in the investigation that undermines its ability to establish the person or persons responsible will risk running afoul of the requirement to provide an effective remedy.[788]

In *M.C. v. Bulgaria*, in 2003, the European Court of Human Rights held that the state failed to meet its obligations to establish and apply effectively a criminal-law system punishing rape when it failed to investigate sufficiently a "date rape" case due to the absence of traces of violence and resistance. In that case, despite authorities' questioning of 17 persons (some repeatedly), and consulting experts, the court found the investigation inadequate because authorities failed to explore the possibilities for establishing the surrounding circumstances and did not sufficiently test the credibility of conflicting witness statements.[789]

In *Opuz v. Turkey*, the European Court of Human Rights found local authorities failed to use the required diligence to prevent domestic violence recurring after terminating proceedings without conducting any meaningful investigation. The court found the state both failed in its obligation to prevent inhuman or degrading treatment and violated prohibitions on discrimination since domestic violence is regarded as gender-based violence, a recognized form of discrimination against women.[790]

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[788] For the Court's repeated findings on the obligation to investigate, see, among others, *Jordan v. the United Kingdom*, no. 24746/94, Judgment of May 4, 2001; *Isayeva v. Russia*, no. 57950/00, Judgment of February 24, 2005; and *Adali v. Turkey*, no. 38187/97, Judgment of March 31, 2005.

[789] ECHR, *M.C. v. Bulgaria*, no. 39272/98, Judgment of December 4, 2003, paras. 119, 153, 177-87.

[790] ECHR, *Opuz v. Turkey*, (Application no. 33401/02), Judgment of June 9, 2009, paras. 74, 75, 169, 191, 200.

States in the Inter-American system have repeatedly been held internationally responsible for lack of due diligence in preventing human rights violations or investigating or sanctioning perpetrators.[791] The Inter-American system too has made clear that it is not the formal existence of remedies that demonstrates due diligence, but rather that they are made available and effective. An investigation of alleged violations alone is not enough to clear the state of liability. Due diligence requires an effective search for truth by the state at its own initiative. The investigation must be serious, prompt, thorough, impartial, and in accordance with international standards in this area.[792] Furthermore, any inquiry,

> [M]ust be undertaken in a serious manner and not as a mere formality preordained to be ineffective.... Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.[793]

The affected parties must also have access to information about the development of the investigation.[794] The Inter-American Commission has stressed that "The importance of due investigation cannot be overestimated, as deficiencies often prevent and/or obstruct further efforts to identify, prosecute and punish those responsible."[795]

Treating Survivors with Dignity

In considering states' compliance with their duties to investigate cases, regional human rights bodies have recognized the importance of treating victims in a respectful and humane fashion.

The Inter-American Commission on Human Rights has noted that lack of respect for the dignity of victims or their families, a lack of sensitivity, and victim-blaming may have the effect of re-victimizing them and causing people to turn away from the justice system.[796]

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[791] See, for example, Ibid.; IACHR, *Maria da Penha Maia Fernandes (Brazil)*, Report No 54/01, Case 12.051, April 16, 2001.

[792] IACHR, *Jessica Lenahan (Gonzales) et al. (United States)*, para. 181.

[793] IACtHR, *Velasquez Rodriguez case*, para. 177.

[794] IACHR, "Cuidad Juarez", paras 143-146.

[795] Ibid., para. 137.

[796] IACHR, "Access to Justice for Women Victims of Violence in the Americas," OEA/Ser.L/V/II, Doc. 68, January 20, 2007, paras. 172-176.

In a 2011 case against the US relating to domestic violence, the Inter-American Commission expressed concern that insensitive remarks from a dispatcher in Colorado in response to pleas for police action "result[ed] in a mistrust that the State structure can really protect women and girl-children from harm, which reproduces the social tolerance towards these acts."[797]

The commission also underscored the internationally recognized principle providing that law enforcement officers, in the performance of their duties, "shall respect and protect human dignity and maintain and uphold the human rights of all persons."[798]

To prevent re-victimization, human rights bodies stress the importance of proper training of law enforcement officials so that they may learn to interact with victims in a way that fully respects their dignity. The Declaration on The Elimination of Violence against Women urges states to "take measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to sensitize them to the needs of women."[799]

The Human Rights Council too has encouraged states to create gender-sensitized training for law enforcement.[800] Training alone is insufficient: it must be accompanied by measures to monitor and evaluate results and to apply sanctions where agents do not comply with their responsibilities under the law. As an Inter-American Commission on Human Rights decision states, "Training is one side of the coin and accountability is the other."[801]

Impunity

Due investigation, prosecution, and punishment are not only the required responses to violence against women, but also key means to prevent future violence.[802] Vigilantly and quickly prosecuting perpetrators conveys to offenders and the public that society

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[797] IACHR, *Jessica Lenahan (Gonzales) et al. (United States),* para. 167.

[798] IACHR, "Access to Justice for Women Victims of Violence in the Americas," paras. 132, 134.

[799] UN General Assembly, Declaration on the Elimination of Violence against Women, art. 4(i).

[800] UN Human Rights Council, "Accelerating efforts to eliminate all forms of violence against women: ensuring due diligence in prevention," A/HRC/14/L.9/Rev.I, June 16, 2010.

[801] IACHR, "Ciudad Juarez," para. 156.

[802] Ibid., para. 153.

condemns violence against women.[803] In contrast, not acting "serves to perpetuate the psychological, social, and historical roots and factors that sustain and encourage violence against women."[804]

Since rape is a historically underreported crime, it is all the more important to respond effectively to those who do come forward. Failing to do so fosters an environment of impunity, confirms that such violence and discrimination is acceptable, and fuels its perpetuation—especially since some studies suggest that perpetrators of rape are frequently repeat offenders.[805] The denial of an effective response by police both springs from and feeds into the perception that violence against women is not a serious crime.[806]

Evidence of the MPD's failure to investigate with due diligence sexual assaults, discussed in this report, calls into question whether the government is in violation of its obligations under international law.

The District of Columbia has laws and policies in place that would allow for humane treatment of victims and diligent investigation and prosecution of sexual assault crimes, but it is failing to effectively and consistently enforce them. It is time for it to do so.

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[803] UN Committee on the Elimination of Discrimination against Women, *Fatma Yildirim v. Austria*, Communication No. 6/2005, CEDAW/C/39/D/6/2005, August 6, 2007, para. 12.3(b).

[804] IACHR, *Maria Da Penha Maia Fernandes (Brazil)*, para. 55.

[805] See, for example, David Lisak and Paul M. Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," *Violence and Victims*, vol. 17, no. 1, 2002.

[806] IACHR, "Ciudad Juarez," para. 36.

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Appendix

MPD June 12, 2012 memorandum

METROPOLITAN POLICE DEPARTMENT

CRIMINAL INVESTIGATIONS DIVISION

George Kucik
COMMANDER

DIVISION MEMORANDUM

Series: 2012-	**Date Issued:**	**Expires: Until Rescinded**

Subject: *Sexual Assault Investigations*

The Metropolitan Police Department is committed to three fundamental principles to support all sexual assault investigations. First, the treatment of the victim is the absolute most important aspect of the investigation. Sexual assault cases are extremely difficult to investigate and are even more difficult to prosecute. At the end of the process, the victim should always walk away feeling that they were treated with the utmost dignity and respect. Regardless of the outcome, if the victim is not satisfied, then it is not a successful case. Second, the goal of any criminal investigation is to find the truth. Arrests and prosecutions sometimes occur, but justice for all can only be achieved by determining the truth. Lastly, the approach to criminal sexual assault investigations is constantly evolving. Over the years the Metropolitan Police Department has learned that the multidisciplinary approach appears to be the best, and we stand ready to continually evolve to improve our approach and processes.

As such, the Metropolitan Police Department, Criminal Investigations Division is currently reviewing and updating the standard operating procedures for the Sexual Assault Unit. These updates will ensure that the proper investigation and resolution is brought to all sexual assault cases.

Effective immediately, the following procedures will be strictly adhered to until incorporated into the departmental Sexual Assault SOP

CID SEXUAL ASSAULT UNIT

- SAU detectives will conduct a preliminary interview with all victims of sexual assault or victims of assaults with sexual overtones. After the initial interview, victims shall be afforded (24) twenty-four hours (one full sleep cycle) prior to being re-interviewed. This shall not apply in cases where urgency dictates, or if a delay would jeopardize the victim, or other members of the public. Any deviation from this policy shall be documented in WACIIS as to the urgency of the matter which required deviation from this policy.

- SAU detectives will ensure that a PD Form 251 and a WACIIS entry are prepared every time they are called to the scene of a sexual assault or an assault with sexual overtones. If there are elements of a sexual abuse present, a PD 251 offense report will be prepared documenting the crime.

  If the elements of sexual abuse have not been met, the SAU detective will ensure an incident report is prepared with the classification "Sexual Allegation". If a PD 251 report of a different offense or incident is being prepared, the additional classification of "Sexual Abuse" or "Sexual Allegation" shall be included as a secondary classification and articulated in the narrative section of the report. In the 251, the reporting member shall indicate the sexual assault detective who responded to the scene.

- In all cases that require an SAU response, the SAU detective will provide the complainant with case numbers (CCN), their contact information as well work hours. The detective shall ensure that proper follow up is conducted with the complainant, to include if contacted by the complainant, they shall respond within (2) business days to the complainant.

- Whenever feasible interviews with victims shall be conducted in a comfortable environment (e.g. interview rooms designed for such) so as not to add undue stress to the complainant. This is paramount, especially while inside of MPD facilities.

- In all criminal cases where a sexual assault has been determined to have occurred, members from the SAU will investigate the case. For example, a member responds to the scene of a burglary and the victim states the suspect fondled her while inside of the residence. This case shall be assigned to a SAU detective. Although the burglary is a felony and the sexual assault is a misdemeanor in this example, the sexual assault crime determines the need for the assignment to be handled by a member from SAU. Detectives are advised to coordinate all efforts with members of the district detective units in developing leads which may result in closure

matching other cases with a similar pattern or M.O. not involving sexual assaults.

- All Sexual Abuse and Sexual Allegation Reports will be thoroughly investigated by an SAU detective. An SAU official will review all reports of Sexual Abuse and Sexual Allegation and do a WACIIS entry to document the review at the following intervals (w/in 24 hours, seven days, fifteen days, 30 days, 60 days, one year) until the case is closed.

- When classifying cases as Sexual Allegations, the SAU detective will consult with one of the SAU sergeants as soon as possible but no later than 24 hours for an initial case review to determine if the case should remain as an allegation or upgraded.

- Sexual Allegations Case reviews shall occur within the guidelines of the CID Case Review Policy, and all case reviews shall be documented by the SAU Official in the Electronic WACIIS File.

- If additional facts become available at anytime in a Sexual Allegation investigation that support the elements of sexual abuse, a PD 252 will be prepared by an SAU member changing the classification of the report to a Sexual Abuse offense report.

- SAU Officials shall ensure that all Sexual Assault Examination Kits are obtained from Washington Hospital Center and delivered to the Forensic Services Unit within three days of any Sexual Abuse or Sexual Allegation report. The SAU case Detective shall be responsible to make sure that a request has been made to FSD to have the sex kit analyzed by the DNA Lab.

- An audit of kits at the WHC shall be conducted weekly by an SAU official.

- SAU Officials shall be responsible to ensure that the policies in this directive are strictly adhered to and shall monitor the daily activities of the unit.

- Monthly Case Jacket Reviews with the lead detective present shall be held with the Commander of CID, the Branch Captain of SIB, and the Lieutenant from the SAU. These reviews shall include open cases (to include SA Cases) from the previous (30) days.

- The review shall determine how the case is progressing, what other steps need to be taken, and provide direction for further steps.

- A case may not be closed by the SAU absent one of the following

circumstances:

- An Arrest
- Prosecution declined by the USAO (304.1) for lack of prosecutorial merit. These cases shall be supported by a declined warrant and/or a memorandum from the USAO.
- The case is unfounded – The Commander of the Criminal Investigations Division must review and approve for any case to be classified as unfounded.

❖ In cases of 304.1 Administrative Closures, the PD 252 shall indicate the specific language by the USAO why a case was not prosecuted. Additionally, an SAU Official shall review the case prior to authorization of closure and the case file will be forwarded to the branch Captain, SIB, and the Commander, CID for final review. These cases shall be supported by a declined warrant and/or a memorandum from the USAO.

CID VICTIM SERVICES

In all sexual allegation and sexual abuse cases reported to the MPD, the CID Victim Services Unit shall be proactive and offer support in all cases. The Victim Services shall adhere to the following:

1. Contact Complainants in all Sexual Allegation and Sexual Abuse reports within 72 hours of the report.
2. Create and implement a survey for victims to rate their police service. Victims will be asked to voluntarily participate in the survey.
3. Report to CID Commander quarterly on results of survey.

Capitol Offense

Police Mishandling of Sexual Assault Cases in District of Columbia

Sexual assault is the most underreported serious crime in the United States. Victims fear authorities will not believe them and that reporting will only cause them more pain. This fear may be well-grounded. Police are often skeptical of victims and sometimes respond to reports of assaults in ways that are re-traumatizing.

Based on extensive data analysis, documents from four government agencies, and more than 150 interviews, *Capitol Offense* examines the handling of sexual assault cases by the Metropolitan Police Department (MPD) of the District of Columbia. The report provides strong evidence that between 2008 and September 2011 the MPD mishandled many complaints of sexual assault in D.C. In several cases, victims who reported sexual assaults to the police never had their case documented, or saw it languish when officers apparently determined without effective investigation that their claims were not credible. Human Rights Watch also documented inappropriate and harmful treatment of victims by MPD, such as questioning victims' credibility; actively discouraging victims from reporting or providing forensic evidence; or asking victim-blaming questions.

Not documenting or investigating reports of sexual assault denies justice to the victims, is a public safety issue, and misrepresents to the public the incidence of sexual assault in D.C.

Victims who are not treated appropriately are less likely to cooperate with investigations, further reducing chances that perpetrators will be brought to justice.

These problems do not appear to stem from official MPD policy, but rather from practices followed within the MPD that, during the period examined, were inconsistent with departmental policy and post-2008 reforms.

Since learning of this report's findings in May 2012, the MPD has adopted a number of our recommendations and made some policy changes. However, ensuring meaningful and sustained change requires more: it needs a commitment by leadership to change departmental practices, increase accountability and responsiveness, and extend external oversight of reforms to ensure transparency.

A victim who was traumatized by her experience reporting a sexual assault to the Metropolitan Police Department.

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