



Written Statement of Sara Darehshori
Senior Counsel, US Program
Human Rights Watch

to

Council of the District of Columbia, Committee on the Judiciary and
Public Safety

**Hearing on “Sexual Assault Victims' Rights Amendment Act
of 2013, B20-417”**

December 12, 2013

Chairman Wells, Members of the Judiciary Committee,

I am Sara Darehshori, Senior Counsel in the US Program at Human Rights Watch and author of the report *Capitol Offense*, which documents serious problems in police handling of sexual assault cases in the District of Columbia from 2008 to 2011. Thank you for holding this hearing and for considering measures to improve the handling of sexual assault investigations.

I have two key recommendations in this area that I strongly urge you to adopt:

- First, establish an independent external expert to monitor sexual assault investigations in DC.
- Second, provide victims with the right to an advocate, with no exception—in other words, eliminate the exception in the current bill that would allow police to exclude advocates anytime it is viewed as “detrimental to the purpose of the interview.”

Our report, and a subsequent supplemental report released in June, both of which I would like to submit for the record, described well over a hundred (126) cases in which police either improperly categorized or failed to investigate sexual abuse cases or in which they treated victims in an inappropriate or harmful manner. Much of the information in the report came from the police’s own files.

Since learning of our findings on May 30, 2012, the Metropolitan Police Department (MPD) has undertaken a number of welcome reforms, including initiating formal training of detectives in the sexual assault unit and instructing that sex offenses may not be categorized as “for office information only.” We had previously found that a substantial number of cases were filed as “office information,” which meant that they were closed after only a preliminary investigation. Eliminating this category is a positive step. They have also adopted new policies intended to improve treatment of victims.

However, external oversight remains crucial. MPD policies have long required all cases to be investigated and victims to be treated sensitively. The problems we saw stem not from policies, but from a culture at MPD that failed to take sexual assault seriously. Training and new policies, without accountability and a genuine commitment from leadership, will not result in change.

I would like to remind the Council that the situation we are in is not new. In 2008, a sexual assault survivor whose case was not investigated and who was treated callously when she tried to report an assault brought a lawsuit against police. During depositions in that case, it became clear that police were routinely not investigating or in many cases even

documenting sexual assault cases. After the media reported on this evidence, the MPD promised to address the problem.

However, while the MPD did carry out some reforms, which we described extensively in our report, most had little effect. Our research revealed that the same problems persisted for three years after the problems were exposed. Most of the cases in our report were from 2011, well after police say they implemented reforms. While police may have begun documenting cases, far too often they were classifying them as “office information” or non-sex offenses, and not investigating them. Callous treatment of victims continued, as was evident from police files and survivor testimony. A new policy the MPD put in place in August 2011 was virtually identical to the old policy, though official policies were never the problem.

More meaningful change only began to take place when it was clear Human Rights Watch planned to make its report public in June 2012.

Yet, while adopting some of our recommendations, the MPD has downplayed the report’s findings and the extensive documentation of mistreatment of victims, refusing to acknowledge the existence of a problem. Recent reports of alleged sex crimes by police officers only add to our concern that MPD is failing to give this issue the serious attention it deserves.

And this is why external oversight is absolutely essential to ensuring that real reform takes place. The presence of an external monitor is the best way to restore public confidence in police. And if cases are in fact being handled properly, there is no reason for MPD to object to external oversight, as it will only show that they have in fact improved their conduct.

Once the spotlight is gone, we have no assurance that MPD won’t return to its old practices unless ongoing monitoring is put in place.

Indeed, there has been no confirmation that some of the promised changes have taken place—an analysis prepared by Crowell & Moring for the Council takes at face value MPD’s claims that it has reformed. Yet I have heard from victims, and advocates, and hospital personnel who have observed police that victims still do not hear from detectives about their cases, that after two years MPD is still not willing to share information that would allow for meaningful case review, and that victims may not actually be allowed sleep cycles before full interviews. The police union has yet to be approached about changes in hiring criteria or evaluations for SAU detectives, a necessary first step in implementing a change that supposedly began over a year ago. It is not clear anyone has been held to account for improper treatment of victims—the detective whose insensitive conduct was described by two earlier witnesses not only remains in the unit but also trains other detectives on how to

investigate sexual assaults. The only way to ensure accountability, and that 2013 is not a repeat of 2008, is through external independent oversight.

The proposal to have the Police Complaints Board monitor the MPD is insufficient. The Police Complaints Board does not have expertise in sexual assault investigations, nor does it have resources to handle additional work, nor the authority to ensure recommendations are implemented. Moreover, in its last report, it indicated MPD does not cooperate with their investigations in one third of their cases. MPD has made it clear that it does not view the Board's disciplinary recommendations as binding and its policy recommendations are also not binding.

Moreover, while it is fine to expand the Board's mandate to include sexual violence, some traumatized sexual assault victims may be unwilling to file formal complaints about their treatment by police if they have already experienced poor, victimizing, or other inadequate treatment at the hands of an investigating officer. Therefore, reviewing official complaints will say little about whether police practices have improved. Instead, an external expert needs to gather information confidentially from survivors, advocates, and others in a position to observe police behavior in order to assess what is happening on the ground. That is not the traditional model for the complaints board. At a minimum, they would require funds to retain an expert to monitor progress.

Finally, we recommend that DC align its victims' rights law with the best practices in other states, by providing sexual assault victims with the right to an advocate—with no exception. In the current bill, the exception is so broad, allowing law enforcement to exclude the advocate if they decide it is "detrimental," that it renders the right virtually meaningless. That's dramatically different from the law in other jurisdictions, including California, which was supposedly the model for this bill. We join the other groups here in calling for elimination of the exception.

Thank you.



Written Statement of Maria McFarland
Deputy Director, US Program
Human Rights Watch

to

Council of the District of Columbia, Committee on the Judiciary and
Public Safety

**Hearing on “Sexual Assault Victims' Rights Amendment Act
of 2013, B20-417”**

December 12, 2013

Chairman Wells, councilmembers,

Thank you for the opportunity to speak today and for taking up the issue of sexual assault investigations in the District of Columbia. I'm the Deputy US Program Director for Human Rights Watch, where I was involved in the publication of our January report about sexual assault investigations in DC, *Capitol Offense*, and subsequent materials related to it.

I would like to remind the Council of two of our report's key findings, which nobody—including Crowell & Moring in its analysis—has contested, and which urgently require the Council's attention:

- First, the MPD failed to effectively investigate many cases of sexual assault from 2008 to 2011, often disposing of them by, for example, misclassifying them as “office information” cases;
- Second, members of the MPD repeatedly mistreated victims.

Inadequate Investigations

One of the reasons we first focused on DC was that, compared to other jurisdictions, the MPD was reporting unusually low numbers of sexual assaults occurring in the district. At the same time, it was reporting unusually high numbers of these cases to the FBI as having been “cleared” or solved.¹ For example, in 2010, the MPD reported clearing 59.8 percent of its rape cases (110 of 184 cases), nearly 50 percent above the 40.6 percent average clearance rate for similarly sized cities.²

A 2010 National Institute of Justice study found that in places where detectives were reporting exceptionally high clearance rates, police departments had found ways to “dispose” of cases that they did not like so they could calculate the clearance rates only on “good” cases.³ Thus, the pattern in DC suggested that police might be finding ways to selectively document or “dispose” of cases (which would explain the low number of assaults being reported), or were improperly “clearing” them after inadequate investigations (explaining the unusually high clearance rates).

¹There are two types of clearance: “clearance by arrest” (essentially, when at least one person has been arrested, charged and turned over to the court for prosecution); and “clearance by exceptional means” (when law enforcement has identified the offender and gathered enough evidence for an arrest, yet was unable to make an arrest due to factors outside of their control, such as the death of the offender or victim's refusal to cooperate with the prosecution after the offender has been identified). The FBI does not distinguish between cases “cleared by arrest” and cases that are “exceptionally cleared” when it publishes crime data from cities, so in FBI records a case closed without an arrest still appears as a case “cleared by arrest.”

² 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 July 15, 2013), p. 2.

³ 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 (cited in Human Rights Watch, *Capitol Offense*, p. 49).

Our suspicions were borne out in our review of the MPD’s case files, as well as testimonies from victims, community advocates, and witnesses. Of particular concern, we found not only that MPD had failed to document a number of cases, as explained by my colleague Brian Root; we also found that MPD had often misclassified cases as “office information.” Specifically, of the 480 hospital reports we examined, 89 matched cases that the MPD had categorized as “for office information only.”⁴ In fact, nearly a third (190 out of 660) of the relevant cases we examined in police files were classified as office information. A number of other cases appeared to have been misclassified as less serious or non-sex offenses, despite clear indications that they were serious sexual assaults.⁵

Classifying a case as “office information” indicates that police detectives determined that the case was not worthy of further investigation based on their initial contact with the victim or after a minimal preliminary investigation at the time of the complaint.

In practice, the classification of all these cases as “office information” was troubling, as it meant under police policy that these cases were “closed” at the time of their report. Nor were they reported as sexual assaults at all— a fact that explains the low reports of sexual assaults in the district, and contributes to the misleading high “clearance” rate.

An additional factor contributing to the unusually high clearance rates also appears to be that police were improperly closing them—“clearing” them—after conducting only inadequate investigations that did not result in an arrest. In fact, in data the MPD provided to Human Rights Watch for 2010, the MPD showed only 22 arrests for all sexual assaults in the District of Columbia for that year, including child cases, even though it had reported 110 cases as “cleared.”⁶

In short, we found that police were either not investigating a large number of cases (by instead misclassifying them), or that they were conducting poor investigations, closing cases without really solving them.

⁴ Human Rights Watch, “Analysis of Additional Documentation Provided by Metropolitan Police Department,” June 26, 2013, http://www.hrw.org/sites/default/files/reports/2013_US_AdditionalDocs.pdf.

⁵ Human Rights Watch, *Capitol Offense*, pp. 47-94.

⁶ In addition, 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. As explained in *Capitol Offense*, we were also troubled to find that over two-thirds of the 66 arrest warrant affidavit requests in files we reviewed, 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.” Due to the limited number of warrant requests we reviewed, we could not draw definitive conclusions from the data on warrant refusals. But the high rate of refusal in the limited sample added to our concerns about possible improper use of exceptional or administrative clearances to close cases without conducting a thorough investigation. *Ibid.*, pp. 94-99.

Victim mistreatment

We also found that the police's failure to effectively investigate so many cases was compounded by individual officers' frequent mistreatment of victims. *Capitol Offense* includes scores of examples of mistreatment of victims or mishandling of sexual assault cases, drawn from at least 104 cases during the relevant time period. These examples included behavior such as: aggressively questioning victims' credibility in ways likely to induce further trauma (for example, by suggesting that they were to blame for the assault), actively discouraging victims from reporting or undergoing a forensic exam, requiring detailed interviews at times when victims are often visibly traumatized, and failing to respond to victims' calls or requests for assistance. Many of today's witnesses experienced such mistreatment, which risks not only traumatizing the victim further, but also making it less likely they will cooperate with investigations by the MPD.

New documents produced by the MPD after release of *Capitol Offense* contain evidence of mistreatment in an additional 24 cases, as outlined in our June 26, 2013, updated findings.⁷

What the Council Should Do

Both the evident inadequacy of MPD investigations and the victim mistreatment we documented from 2008 through 2011 are serious problems that the Council must take up in a strong and effective manner.

We are pleased that the MPD claims to have adopted some reforms, such as improved training for police officers, and the reported elimination of the "office information" category for sexual assault cases—which may have contributed to the recent rise in reported assaults.

Unfortunately, however, the MPD's leadership has often appeared defensive and unwilling to even acknowledge the existence of problems. And without strong leadership that recognizes the existence of a problem and is committed to addressing it, reform and training can wither on the vine. Indeed, as long ago as 2005, the MPD participated in the "Making a Difference Program" a privately funded project intended to improve community response to sexual assault requiring selected cities to undergo extensive training in handling sexual assault cases. While some of the other cities, such as Austin or Grand Rapids, made great strides in improving sexual assault investigations, in DC the training seems to have had little impact. And as my colleague Sara Darehshori pointed out, even

⁷ Human Rights Watch, "Analysis of Additional Documentation Provided by Metropolitan Police Department," http://www.hrw.org/sites/default/files/reports/2013_US_AdditionalDocs.pdf.

though DC claimed to have reformed its sexual assault investigations since 2008, our research shows that many problems persisted afterwards. Indeed, reports we have received from victims after the release of *Capitol Offense* suggest that problems persist to this day, despite the MPD's promises.

To ensure that the latest round of reforms and training are effectively implemented and do not again fall flat, it is crucial that the DC Council establish an independent external oversight mechanism.

Unfortunately, the bill currently on the table falls short of the mark. It is positive in some respects: it bars billing victims for the cost of forensic exams, and protects confidential communications between victims and advocates. Most notably, the bill grants victims the "right" to have an advocate present during police interviews and medical exams—though it is crucial that the Council remove an exception allowing detectives to shut advocates out of interviews if their presence “will be detrimental to the purpose of the interview.”

But the bill fails to establish an independent oversight mechanism that has the expertise and authority to hold the MPD to its promises and can give survivors the confidence that their cases will be taken seriously in the future. Establishing such a mechanism is critical to ensuring that the MPD's handling of sexual assault cases truly improves this time.

I know the MPD has been very hostile at times to even constructive criticism of its actions, and that it has objected to the idea of external oversight. But I urge you not to be cowed.

The Council's duty, first and foremost, is to the residents of the District of Columbia, who want a responsive and sensitive police force that will protect them from sexual assault and other crimes. It's time for the Council to make sure that happens.

Thank you again.



Written Statement of Brian Root, PhD
Quantitative Analyst, US Program
Human Rights Watch

to

Council of the District of Columbia, Committee on the Judiciary
and Public Safety

**Hearing on “Sexual Assault Victims' Rights Amendment
Act of 2013, B20-417”**

December 12, 2013

Members of the Judiciary Committee, Chairman Wells,

Thank you for the opportunity to speak today. I am the Quantitative Analyst at Human Rights Watch. My expertise is in research design and methodology and on the use of data analysis for human rights research. I conducted the data analysis for Human Rights Watch's report *Capitol Offense*, as well as for our updated findings of June 2013.

I would like to briefly explain our methodology and findings with regard to numbers, and address some of the concerns others, including the MPD and Crowell & Moring, have raised about them.

A. Human Rights Watch's Quantitative Analysis of Washington Health Center (WHC) and Metropolitan Police Department (MPD) Data

Our analysis was centered on records kept by the Washington Hospital Center (WHC), which showed that 480 patients reported sexual assaults to the MPD at the hospital between October 2008 and September 2011. We focused only on patients that reported to the MPD, and excluded patients where it was unclear whether MPD was contacted.¹ Human Rights Watch then tried to locate any MPD record that might correspond to these patients. At its most basic level, this was a matching exercise, matching WHC records to MPD records.

Due to confidentiality concerns, Human Rights Watch did not have access to names within either the WHC or the MPD data. Therefore we matched reports to files based on the date of the report, as well as descriptive information from MPD files. However, our analysis was conservative, giving the MPD credit for all possible matches. Specifically:

- We credited the MPD for a match even when the police report did not indicate a hospital visit. As a result, it is very likely that we credited the MPD for files that did not, in fact, correspond to a hospital patient.
- We also credited the MPD for any sexual assault file they had within 48 hours (both the day before and the day after) of a hospital report for which

¹ 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.

there was no other clear file, again making it likely that the MPD was credited for reports not related to WHC patients.

Additionally, Human Rights Watch provided MPD with many opportunities and options to locate and produce the requested data. We gave the MPD lists of dates for which they had failed to provide us with any record, in the hopes they would turn up additional files. Also, the MPD allowed Human Rights Watch to search the internal WACIIS database. Human Rights Watch was very clear in communication with the MPD when describing the types of records we were attempting to locate.

We released our original findings—based on a set of records that the MPD claimed was complete—in January 2013. However, on May 31, 2013, the MPD provided Human Rights Watch with 178 case reports that they claimed were cases we had reported as missing. In fact, we had already accounted for half of those cases in our analysis.² However, to take into account the newly discovered cases (the MPD never made clear why it failed to turn them over earlier, in response to our many requests), we issued updated findings in June, 2013. The updated findings are that:

- Human Rights Watch could not locate any MPD files for 64, or 13.3%, of the 480 WHC reports. These cases are missing—it would appear the MPD never documented them.
- Eighty-nine, or 18.5%, of the WHC reports corresponded to an MPD “office information” file. An “office information” file means that detectives either did not file the required information to prompt a full investigation or determined the case was not worthy of further investigation based on initial contact with the victim or minimal preliminary investigation. Essentially, the case was closed at the time of the report and that case was not considered a sexual assault.
- In another 9 cases, 2% were classified as non-sex offenses such as simple assault.
- In conclusion, Human Rights Watch was able to match only 2 out of 3 victims who reported sexual assault to the MPD at the hospital to investigation files for sex offenses.

² Only 106 of these new files were newly relevant to the analysis.

B. Methodological Response to the Crowell & Moring LLP analysis of Human Rights Watch's Findings

The Washington DC City Council retained the Crowell & Moring LLP law firm to analyze Human Rights Watch's findings. The firm released their analysis on June 25, 2013. The Crowell analysis focused heavily on the quantitative portion of the Human Rights Watch report and claimed that our findings were flawed. The Crowell analysis stated that only five WHC reports were missing within MPD records, not the 64 reports our analysis found. Yet Crowell's conclusions are unsound. In fact it would be impossible to reach those conclusions and they are based on a deeply flawed methodology.

The basic problem is that Crowell itself never ran a quantitative analysis on all of the WHC and MPD data. Rather, Crowell examined information that MPD provided on what they say were "180+" cases. These appear to be the 183 dates which Human Rights Watch's original January 2013 report listed as missing MPD information.³ The MPD claims to have used the names of the victims, provided by the WHC for these 183 dates, to locate the missing records.⁴ However, it appears that Crowell never examined all 480 cases which Human Rights Watch attempted to match. So it was impossible for Crowell to determine whether the cases that the MPD provided to it were not already matched to a WHC case in the Human Rights Watch analysis. This is because we used a 48-hour window to match WHC records to any MPD record that could feasibly correspond to a sexual assault within that time period.

Consider the following hypothetical but likely scenario:

Hospital records show that on December 7 an exam was conducted at WHC and reported to MPD. When Human Rights Watch examined MPD files, we found no documentation on that day (or the day before or after) and

³ Because multiple exams may occur on a single day, the MPD claims to have examined over 240 names that had exams on the 180+ dates.

⁴ Crowell also states that the WHC Office of Victim Services (OVS) has now determined that 24 of the report dates that it had provided to Human Rights Watch and MPD were simply wrong, and are actually not dates on which cases were reported to the MPD. Additionally, the analysis states that 19 of the exams that OVS had documented as reported were actually reported to non-MPD jurisdictions. It is impossible for Human Rights Watch to verify either of these claims. If true, this would alter the Human Rights Watch findings, though again, that would be due to OVS's provision of inaccurate data, and not because of a methodological flaw.

concluded the case was missing. The MPD, using the victim's name, found a match within their files of the December 7 exam, allowing Crowell to conclude this was not in fact a missing case.

Hospital records also show that on December 9 two exams were conducted, and we found two sexual assaults in MPD records for that same day. We thus concluded that there were matches for both exams. Because the MPD looked up names for only "180+" cases, it did not look at all the exams for December 9, because it was only looking at dates for which we said there was a missing case, and we had not reported a missing case on December 9.

But it is quite possible that the MPD (and therefore Crowell), using the victim's name, found that the December 7 exam corresponded to one of the December 9 MPD records. This would have been one of the very records we wrongly assumed was a match with a December 9 exam. If so, that would leave one of the December 9 exams without a match in MPD files. The only way Crowell could have ensured there was a match in MPD records for that December 9 exam is by also searching MPD files for the names of people with exams on December 9, which it did not do.

In other words, the only way to get an accurate count of missing cases would have been for Crowell to examine MPD files on all 480 WHC reports, not just the "180+" that it looked at. Since it did not do that, its conclusions are completely unreliable.

C. Claims that the Human Rights Watch report resulted in a decrease in reporting of sexual assault to the SANE unit.

Finally, in Crowell's analysis, the firm repeats a tendentious and unscientific claim that the HRW report resulted in a drop in the number of sexual assault victims requesting medical forensic evaluations. Specifically, it states that there was a "fairly significant and dramatic decrease in the number of SANE [Sexual Assault Nurse Examiner] exams performed since the release of the Human Rights Watch report," highlighting a reduction in the numbers of exams between January, when

the report was released, and February/March 2013. Yet attributing the drop to the Human Rights Watch report is a baseless leap.

First, there is always monthly variation in the number of SANE exams reported. The decrease cited by Crowell was not nearly as large as other monthly decreases or increases we find in the data. Specifically, the decrease between January and February was 7 exams, yet we have seen decreases of 17 exams between other months or increases of 9 exams. Indeed, in comparing year to year shifts at the monthly level, *the largest decrease between FY2012 and FY2013 seems to have happened in October, well before the release of the HRW report*—in October 2011 (FY2012) there were 46 exams, whereas in October 2012 (FY2013)) there were only 32 exams (a drop of 14).

Second, there is always a seasonal decrease in these winter months, likely due in large part to weather. The number of SANE exams in February 2013 was almost identical to the number in February 2011.

Finally, there is no evidence to attribute causation for any decrease to the Human Rights Watch report. Certainly, the MPD's public and very hostile response to the report surely gained the attention of many of the district's citizens and that may have influenced any decision not to report. But it is impossible to know if any single event or trend caused the drop. It is surprising that, of all possible explanations, Crowell chose to endorse the claim that our report deterred sexual assault victims from getting exams. Its judgment in this respect casts doubt on the rigor and seriousness of its overall analysis.

In conclusion, our updated findings of June 16, 2013 remain unchanged. The MPD has yet to account for the nearly a third of WHC reports from late 2008 to 2011 that were either undocumented or documented as "office information" only and therefore never investigated. The MPD's failure, to this date, to transparently account for these raises real doubts about the seriousness with which it handles sexual assault investigations.