



Fact Sheet

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Fact Sheet

Victims of sexual assault in Washington, D.C. are not getting the effective response they deserve and should expect from the district's Metropolitan Police Department (MPD), according to a new report from Human Rights Watch. The 196-page report, *Capitol Offense*, describes in detail police practices where, too often, sexual assault cases are not properly documented or investigated and victims face callous, traumatizing treatment, despite official departmental policy to the contrary.

Human Rights Watch has twice sent detailed letters informing the MPD of the report's findings, with the expectation that the MPD leadership would respond constructively by engaging with the serious problems identified in the report. The MPD did, after the first letter, state that it would adopt a number of Human Rights Watch's recommendations. But it coupled those statements with a pair of written responses that seem inconsistent with an acceptance of the need to examine and reform its internal practices.

In two letters dated June 8 and December 20, 2012, MPD Chief Cathy Lanier offered a critique of Human Rights Watch's work that is hostile in tone, incomplete, and often factually inaccurate. We believe the MPD's response does more to create confusion and distract the public from the findings of the report than to seriously engage the issues and improve its approach to sexual assault cases.

None of the criticisms in the MPD's letters affect the validity of the report's findings. However, those criticisms are addressed below in order to dispel any confusion they may generate.

We urge the MPD to reconsider its approach to sexual assault cases and to those who raise concerns about MPD practices, seeking more rigorous prosecution of rape and improved protection of the interests of victims.

HRW finding #1: MPD did not document a large number of sexual assault complaints made at Washington Hospital Center.

- MPD policy requires that detectives file an incident report (known as a PD-251) for *every* sexual assault complaint it receives. Without an incident report, a complaint will not be investigated. However, HRW found that of the 480 sexual assault victims who underwent a forensic exam and reported their assault to the MPD at the Washington Hospital Center (WHC, the designated hospital for care of adult sexual assault victims in the District of Columbia) between October 2008 and September 2011, only 310 had corresponding incident reports. That is, **no incident report was filed in 170 cases, more than one-third of the total.**
- Because an estimated 40 to 59 percent of victims who report an assault do not go to the hospital, the total number of incident reports at the MPD should be significantly higher than the number of reports coming through the hospital. That is, if the 480 complaints lodged at the hospital amount to 59 percent of the total number of complaints, **the number of incident reports filed at MPD should be at least 739. However, MPD was able to provide only 571 incident reports** for cases of sexual assaults that might result in a forensic exam during the period examined.

MPD response to HRW finding #1: MPD claims that its internal database, the Washington Area Criminal Intelligence Information System (WACIIS), contains records for 1,500 sexual assault complaints during the time frame investigated by HRW, and that MPD provided 1,080 PD-251s to HRW, “numbers that far exceed the expected level of 739 cases.”¹ It further indicates that an appropriate police response would be determined by the WACIIS entries, not by the incident reports.

The facts on finding #1: As the MPD well knows, the numbers it cites above are irrelevant to HRW’s conclusion that the MPD fails to *investigate* many sexual assault complaints.

- Since 2000, MPD policy requires that *all* sexual assault complaints be documented in an incident report (the PD-251) which assigns the case a case number. According to Assistant Chief Peter Newsham, in a June 14, 2012 meeting with Human Rights Watch, if an officer investigated a case without a case number, “He would be in

¹ Letter from Chief Cathy Lanier to Human Rights Watch, December 20, 2012.

trouble.”² Or as another police source put it, “**No PD-251, no investigation.**”³ Human Rights Watch asked the MPD for reports related to all such complaints between October 2008 and September 2011.

- The existence of an entry in the WACIIS database without a case number does not indicate an investigation exists. Cases in WACIIS without case numbers—420, by MPD’s count—signify merely that a detective met a victim. They have no bearing on the question at issue: How many of the victims who underwent a forensic exam at Washington Hospital Center had their complaints investigated?
- **Because the focus of the Human Rights Watch report is whether cases are investigated, cases that are noted in the database but not investigated do not change the conclusion.**
- Furthermore, Chief Lanier raised the issue of WACIIS in her initial response to Human Rights Watch’s findings in June 2012. As a result, Human Rights Watch made every effort to search WACIIS for missing cases. Human Rights Watch searched the WACIIS database, alongside MPD members, for 150 specific cases reported at the hospital but not assigned a PD-251. HRW also gave the MPD several months to locate the missing records.
- In addition, HRW reviewed all sex abuse cases in WACIIS for 2009 through 2011 for which no PD-251 was prepared. As part of a settlement agreement resulting from a lawsuit brought by Human Rights Watch to obtain MPD records, Human Rights Watch was supposed to have access to all cases in WACIIS that had not been assigned a case number. We were provided with 88 such cases—far fewer than the 420 cases MPD’s letter indicates exist in the database. Of the 88 cases referenced above, 82 were “office information cases,” which MPD’s Standard Operating Procedures define as “closed by definition.”
- If the victim in any of those cases went to the hospital, they were included in the data analysis. **Thus, *all* relevant WACIIS cases were included in the data analysis.**
- Also misleading is the MPD’s claim to have provided HRW 1,080 incident reports, a larger number than the 571 used in HRW’s analysis. In fact, over the course of both document productions, the MPD provided 1,358 unique incident reports. However, 787 of those were not relevant to the analysis: 317 were outside of the time frame of the data analysis (prior to October 2008 or after October 2011); 117

² Human Rights Watch meeting with Chief Cathy Lanier, Assistant Chief Peter Newsham, and Sergeant Ronald Reid, Metropolitan Police Department, Washington, D.C, June 14, 2012.

³ Human Rights Watch email correspondence with R.A., June 15, 2012.

were juvenile cases that would not have gone to Washington Hospital Center for an exam; and an additional 353 were either non-sex offenses or crimes involving limited sexual contact, primarily outside of clothing, that are not relevant for an analysis of cases in which the victim undergoes a forensic exam. Regardless of the classification of an offense, if the incident report indicated penetration or attempted penetration, the report was included in the analysis. Thus the number of relevant sexual assault incident reports provided is actually 571, far lower than would be expected.

HRW finding # 2: Even in cases where MPD detectives did document sexual assault complaints, they sometimes failed to investigate.

Of the 310 sexual assault victims who had forensic exams at Washington Hospital Center during the time period in question and for whom HRW located an MPD incident report, 34 (or over 10 percent) were classified as “miscellaneous” or “for office information only,” meaning according to MPD policy **the case was recorded but closed without a full investigation.** Human Rights Watch also reviewed an additional 82 “office information” cases not assigned case numbers, a number of which appeared to relate to serious sexual assaults.

MPD response to finding #2: HRW’s assertion that “miscellaneous” or “office information” classifications are effectively closed and not investigated “is untrue and shows a complete misunderstanding of the classification of reports at the time. In the past these classifications were used for cases where the preliminary investigation did not reveal enough information to substantiate the elements of a crime in the District of Columbia. A few examples of which 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.”

The facts on finding #2: The MPD’s claim that “office information” cases are properly investigated before being closed is untrue.

- Under MPD’s Standard Operating Procedures for its Sexual Assault Unit (in effect since 2003), **“office information” cases are cases considered “closed by**

- definition.”** The same procedures state that “if further investigation is needed, the investigation should be classified as an ‘allegation’ and handled accordingly.”⁴
- Examples of appropriate use of “office information” or “miscellaneous” classifications include cases involving “an arrest of a sex offender in another jurisdiction; a report of an offense that occurred in another jurisdiction; sexual activity that is not a crime,” and cases where “no crime was deemed to have occurred.” **They do *not* include two of the three examples cited by Chief Lanier—“where the victim cannot remember details of the offense” and where “other evidence (video) or witness statements indicate the offense did not occur,” which are patently inappropriate.**
 - If a report “lacks the criteria of a sexual abuse offense,” under MPD policy, it is supposed to be *considered an allegation and investigated further* and either upgraded to a sexual abuse case or closed—*not* classified as “office information.”⁵

HRW finding #3: HRW reviewed 66 arrest warrant requests submitted by the MPD to the US Attorney’s Office. More than two-thirds were rejected by prosecutors, primarily on the grounds that the cases presented were “weak.”

Human Rights Watch found that MPD detectives appeared to present weak requests for arrest warrants to prosecutors. If a request is rejected, the MPD can then clear the cases administratively, even though it may not have carried out a thorough investigation. Whether this was a deliberate strategy is beyond the scope of this report, but it appeared to be a repeated and tolerated pattern.

HRW noted that the clearance rate reported by the 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—substantially higher than the average clearance rate for similarly sized cities (usually 40 or 41 percent).⁶ Yet

⁴ Metropolitan Police Department, Sexual Assault Unit Standard Operating Procedures, January 14, 2003, pp. 32-33.

⁵ *Ibid.*, p. 31-32.

⁶ The clearance rate measures the proportion of crimes reported to the FBI in which a suspect is arrested and charged or “exceptionally cleared.” 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, but circumstances beyond law enforcement control prevent arrest (for example, the suspect is deceased or already incarcerated). 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.”

arrest data for 2008 through 2010 shows only 15 to 18 arrests. The high rate at which prosecutors reject MPD warrant requests raises concerns about **possible overuse of “exceptional” or administrative clearances to close cases without investigation.**

MPD response to finding #3: “HRW should be well aware that sexual abuse cases are some of the most difficult to prove for investigators and in court.... HRW’s suggestion that MPD is overreporting its closure rates for sexual abuse is absolutely false and is an example of how HRW is trying to use misinformation and unsupported and uncorroborated information to draw conclusions.... To dismiss the fact that non-adult sex abuse cases have an impact on closure rates again shows HRW’s misunderstanding of the issue. The large majority of non-adult cases are familial, do close, and do have an impact on closure rates.”

The facts on finding #3: Here MPD either misunderstands or misrepresents HRW’s finding, which is *not* that MPD is overreporting clearance rates, but rather that the high clearance rate may be attributable to MPD improperly using “exceptional clearance” to close cases without investigating them. HRW is well aware that sexual abuse cases are difficult, and would therefore expect a low closure rate. The large discrepancy between the few arrests and high clearance rates, along with the quality of requests for arrest warrants reviewed by HRW, indicates misuse of exceptional clearance.

If the MPD is following the same FBI guidelines as other cities, including regarding the reporting of juvenile cases, then MPD offers no explanation for why there is such a big discrepancy between its clearance rates and those of other comparably-sized cities.

Finally, if we ignore FBI data and use only the information about adult sexual assault cases provided to Human Rights Watch for 2010, 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 (excluding 6 arrests for child sexual abuse).

HRW finding #4: MPD misclassified cases of sex abuse as other or lesser offenses.

MPD detectives categorized several cases as crimes other than sex offenses or as “misdemeanors,” although they appear to be more serious sex abuse cases. While

criminal charges are ultimately decided by the prosecutor's office (in this case, the US Attorney's Office for the District of Columbia), to misclassify a sexual assault case in this way at the initial stage of investigation minimizes what happened to the victim in ways that can damage the victim's recovery and, until recently, meant that the victim was unlikely to be referred to victim services for assistance. It also leaves the public dangerously misinformed about local crime.

MPD response to finding #4: “[I]nitial 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. HRW also failed to mention that D.C. Code (22-3006) – ‘Misdemeanor Sexual Abuse’ does include non-consensual sexual acts i.e. penetration of the vulva by a penis.”

The facts on finding #4: HRW's report does acknowledge that D.C.'s definition of misdemeanor sexual abuse includes non-consensual penetration, and that charging decisions are ultimately made by the assistant US attorney. However, in a number of cases cited in the report, **the classification of an attempted rape or completed sexual assault as a misdemeanor appeared patently inappropriate**, such as in the following 2009 case, which MPD claims was “thoroughly investigated” and presented to a prosecutor: 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. Investigative notes from the report further indicate that the complainant tried to escape but was slapped and raped again.

That this case was presented to a prosecutor (who, as noted above, rejected it as “weak”) means that—assuming official procedures were followed—the case received not only the standard review that all incident reports receive, but was also reviewed by the highest ranking members of MPD's Sexual Assault Unit, **who approved classifying what appears to be a violent first-degree assault as a misdemeanor.**

Furthermore, the MPD describes this case having been “thoroughly investigated.” However, Human Rights Watch's review of the investigative file suggests a minimal investigation, the

primary purpose of which seems to have been to undermine the victim's credibility, 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 the 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."

The other two examples of misclassification provided are not addressed by the MPD.

Human Rights Watch finding #5: Victims and witnesses reported that some MPD members treated victims insensitively when they reported their sexual assaults, findings corroborated by information in police files.

MPD response to finding #5: "HRW takes what can only be described as a cheap shot at MPD by suggesting they have reviewed reports that document mistreatment of sexual abuse victims. Aside from being nonsensical that a detective would report his/her own mistreatment of victims, HRW fails to provide any concrete examples."

The facts on finding #5: Police mistreatment of victims is documented extensively in the report and is substantiated by notes in investigative files that are cited in the report. The police response is indicative that detectives (and their supervisors) may not realize their treatment of victims is inappropriate.

Human Rights Watch finding #6: Cases involving alcohol or drugs are less likely to be investigated properly by the MPD.

MPD response to finding #6: MPD indicates that in June 2010 the US Attorney’s Office invited a nationally-recognized expert on drug-facilitated sexual assaults to conduct training for prosecutors and detectives on investigating these cases. “Additionally, through the SANE program, the number of cases in which urine and blood samples are taken from victims in suspected drug-facilitated sexual assaults has substantially increased, and MPD SAU detectives deliver those samples for toxicological analysis at the D.C. Office of the Chief Medical Examiner (OCME) on a regular basis.”

The facts on finding #6: According to the Chief Medical Examiner’s Office, the MPD transferred 6 kits to their office in 2008; 2 in 2009; 12 in 2010; and 7 as of May 25, 2011. While the number did significantly increase between 2009 and 2010, the low numbers overall—especially in 2009—support the observations of victims, medical staff, and others that cases in which substances are involved are less likely to be pursued appropriately. A number of the “office information” cases Human Rights Watch reviewed at MPD involved cases in which the victim had been drinking and are described in the report.

Other MPD claims:

HRW refused to work cooperatively with MPD.

“HRW’s refusal to work cooperatively with MPD, and HRW’s insistence of attempting to make a public spectacle are indicative of HRW’s self-serving goals. In spite of MPD’s full cooperation and unprecedented access that was given to HRW, HRW has continued to ignore relevant information in an attempt to paint a skewed picture of the state of affairs in the District of Columbia.”

The facts: Here MPD utterly mischaracterizes the nature and extent of its “cooperation” with HRW, which was initially minimal and later only grudging. Human Rights Watch spent days with individual officers searching for missing cases and reviewing case files. Human Rights Watch also conducted interviews with 11 additional witnesses at the MPD’s request. However:

- MPD’s cooperation with HRW and “unprecedented access” resulted from a settlement agreement after HRW brought a lawsuit against MPD for its failure to

comply with HRW's document requests. The access to material subsequently granted to HRW was strictly confined to what was in the agreement; indeed, MPD withheld additional relevant material because it was technically outside of the scope of the agreement.

- Unfortunately, the threat of public reporting—which is standard Human Rights Watch procedure—that would attract media attention is precisely what seems to have prompted MPD to cooperate with HRW, albeit grudgingly and in a limited fashion.
- HRW repeatedly requested cooperation from the MPD over a 14-month period; MPD began to cooperate only once it was clear what HRW's findings were and that they would be made public.
- HRW has made repeated efforts to work with the MPD, but has been met with repeated hostility from the leadership. Moreover, as noted in the report, the MPD has reacted negatively against a number of people perceived to have cooperated with Human Rights Watch in researching this report.
- The report is based on information from nearly a hundred sources in the District of Columbia, including seven community organizations, as well government agencies including the Office of Victim Services, the Office of Police Complaints, and the Chief Medical Examiner's Office, in addition to MPD's own files.

Human Rights Watch refused to give an advance copy of the report to MPD.

The facts: Human Rights Watch provided a full copy of the report to MPD at the same time an advance copy was provided to the media.

- MPD has been aware of Human Rights Watch's investigation since April 2011, and has known of the content of the report for seven months.
- On May 30, 2012, Human Rights Watch provided MPD with an extensive summary of our findings at that time. Human Rights Watch met with them to discuss the findings that day and on two other occasions and pushed back the report's release date in order to ensure that the MPD had every opportunity to provide Human Rights Watch with information and locate missing cases. As mentioned above, Human Rights Watch even interviewed eleven additional witnesses at the MPD's request.
- In addition, Human Rights Watch provided the MPD with an updated summary of findings on December 6, 2012.

In its initial response, the MPD claimed that the problems documented by HRW “have long since been addressed.”

In her June 8, 2012 letter to HRW, Chief Lanier writes: “[I]n 2006, after a sexual assault received a great deal of media attention, there were concerns that the case was not properly handled by the MPD.... MPD agrees that the depositions that were taken during the course of the civil suit were very troubling. However, the issues that were raised ... have long since been addressed.”

“Since the issues raised in this [case] came to light, the Council of the District of Columbia passed legislation and a number of reforms were implemented by MPD. Additionally, the members associated with that case are no longer assigned to MPD’s Sexual Assault Unit. Although your letter highlights excerpts from the 2008 depositions, there is no mention of the subsequent reforms or their impact.”

The facts: MPD's claim here is misleading, since it fails to note that the research for this report covers the time period 2008-2011, *after* reforms had been supposedly been implemented.

- Moreover, MPD’s response misses a key point raised in the report. As we have informed the department, the crux of the problem is not MPD’s policies. Since 2000, MPD policies have required all sexual assault complaints to be documented; since 2003, officers have been instructed to withhold judgment at the time of the report. However, as the 2008 lawsuit revealed, those policies were not effectively enforced and cases were regularly not documented when detectives did not believe the victim. Our research indicates that that practice continued well after 2008, despite changes to policy supposedly brought about as a result of the lawsuit. We conclude that changes in policy alone, while welcome, will not result in meaningful reform without a sustained commitment from leadership to reform police culture and practices that seem to tolerate inappropriate treatment of victims and allow detectives to close cases on the spot without investigation. The letter reveals that that commitment is not in evidence.
- The August 2011 policy is nearly identical to the prior policy—the major change being to the location of the sexual assault forensic program. The implementation of the new policy does not affect the practice described in the report of failing to

document and investigate crimes and treating victims improperly, nor does it appear to address the problems raised by the 2008 lawsuit.

The MPD states it is “aware of only twelve citizen complaints” against SAU members since 2008 and that the Office of Police Complaints (OPC) has sustained only one complaint of misconduct and another citizen complaint is pending at the MPD.

Furthermore, “MPD did not find any records of hospital staff or advocates filing complaints.”

The facts: It is not surprising that many victims would not feel comfortable complaining to the police after being treated poorly by them. However, advocates and medical staff informally made leaders of the Sexual Assault Unit aware of their concerns about improper treatment of victims. The insufficiency of the response is the reason witnesses came to HRW and also the reason HRW found it necessary to issue this report. In addition:

- While Human Rights Watch is not privy to investigations of the Office of Police Complaints, it is possible that their definition of police misconduct does not include some of the behavior documented in the report. The Office of Police Complaints accepts complaints relating to harassment; use of unnecessary or excessive force; use of language or conduct that is insulting, demeaning, or humiliating; discriminatory treatment; retaliation for filing a complaint with the Office of Police Complaints; and failure to wear identification. The complaint must be made within 45 days of an incident, a time frame which precluded at least one victim we spoke with from filing a complaint. Failure to investigate a complaint is not within the OPC’s jurisdiction and other insensitive conduct—such as discouraging reporting or a forensic exam, indicating they do not believe a victim, or asking victim-blaming questions, may or may not be considered “insulting, demeaning, or humiliating.”
- In some instances, the OPC determined that a complaint was outside its jurisdiction or, in two instances, that no misconduct had occurred. Whether or not “misconduct” was officially found to have occurred, the police attitude described in the complainant’s letters is contrary to the sensitive and victim-centered approach that should be adopted by police departments seeking to improve their response to crimes of sexual assault.

All other improvements mentioned by MPD in the letter have been acknowledged in the report. Human Rights Watch welcomes changes to policy and personnel, but if there is

no acknowledgement from leadership that serious problems continue to exist in how police respond to rape claims and victims, it is not likely that other necessary reforms will be implemented.