

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

**ALEXANDRIA McGAUGHEY,** )  
 )  
 **Plaintiff,** )  
 )  
 v. ) **Civil Case No. 07-1498 (RJL)**  
 )  
 **DISTRICT OF COLUMBIA, et al.,** )  
 )  
 )  
 **Defendants.** )

**MEMORANDUM OPINION**  
(August 25 2010) [#189]

Plaintiff Alexandria McGaughey (“plaintiff” or “McGaughey”) has filed this diversity action against eight defendants, including the District of Columbia (“District”), for the events stemming from her attempts to receive medical treatment at various hospitals in the District of Columbia following her alleged drugging and sexual assault in December 2006.

McGaughey has filed three negligence claims against the District: Count VII, which alleges negligent hiring, training, and supervision of Metropolitan Police Department (“MPD”) officers; Count VIII, which alleges negligent interference in McGaughey’s medical treatment; and Count IX, which alleges negligent failure to investigate McGaughey’s alleged sexual assault. *See* Amend. Compl. ¶¶ 107-120. On August 5, 2009, the District moved for summary judgment on these claims. Def.’s Mot. Summ. J. (“Def. Mot.”) [#189]. On December 31, 2009, the instant motion, among others, was referred to Magistrate Judge Deborah A. Robinson for report and

recommendation pursuant to Local Civil Rule 72.3. *See* Order [#239]. On February 24, 2010, Magistrate Judge Robinson issued her Report & Recommendation, recommending that the District's motion for summary judgment be denied. *See* Report & Recommendation [#245]. On March 10, 2010, the District objected to Magistrate Judge Robinson's recommendation. *See* Def.'s Objection ("Def. Obj.") [#253].

Local Civil Rule 72.3(c) provides that the Court "shall make a *de novo* determination of those portions of a magistrate judge's findings and recommendations to which objection is made." LCvR 72.3(c). The Court "may accept, reject, or modify, in whole or in part, the findings and recommendations of the magistrate judge." *Id.* Though not precise in its objections, the District appears to object to all aspects of Magistrate Judge Robinson's report.<sup>1</sup> Accordingly, this Court reviews the entire Motion for Summary Judgment *de novo*. After careful consideration of the pleadings, the relevant law, and the entire record herein, the Court GRANTS the District's Motion for Summary Judgment for the following reasons.

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<sup>1</sup> Specifically, the District argues that Magistrate Judge Robinson's "most fundamental error" was her finding that punitive damages were to be determined by the factfinder. Def. Obj. 7. Second, the District contends that Magistrate Judge Robinson erred in resting her recommendation of denial on the finding whether McGaughey had reported sexual assault to the MPD was disputed. *Id.* 9. The District also objects to her failure to address whether McGaughey proffered facts supporting the existence of a "special relationship" between herself and the police, contending that she also erroneously applied the law on this issue, *id.* 10-11, and to her failure to address the District's standing and discretionary function arguments, *id.* 15. It also objects to her finding that causation is a question for the jury. *Id.* 14. Finally, the District claims that her failure to address plaintiff's damages claims—or what it contends is a lack thereof—is further basis for the Court to reject Magistrate Judge Robinson's report and recommendation. *Id.* 17-18.

### **BACKGROUND**

Because the facts of this case are complicated and involve many defendants, the following is a summary of those facts that pertain to the District as a defendant. All inferences are drawn, as they must be, in favor of the plaintiff.

On December 9, 2006, McGaughey visited Howard University Hospital (“HUH”) to be seen for her alleged sexual assault the night before and to have a rape kit performed. Pl.’s Ex. 46, McGaughey’s HUH Medical Records. This was her second visit to HUH since the alleged assault. *Id.* At some time during her visit, an MPD officer responded in person to HUH. Pl.’s Ex. 22, Alexandria McGaughey Dep. 141:2-9, Apr. 1, 2008 (“A. McGaughey Dep.”). The officer then called a Sexual Assault Unit (“SAU”) detective, who spoke with McGaughey over the phone. Pl.’s Ex. 37, Vincent Spriggs Dep. 224:13-225:13, Oct. 23, 2008 (“Spriggs Dep.”); A. McGaughey Dep. 330:2-13. The detective informed either (or both) McGaughey and/or the officer at the scene that no rape kit would be brought to the hospital. Spriggs Dep. 225:16-226:7; A. McGaughey Dep. 123:22-124:8. An MPD Special Order required detectives responding to reports of sexual assault to respond in person at the scene. Pl.’s Ex. 67, Sexual Assault Nurse Examiners Program (SANE), Special Order, Metropolitan Police, Apr. 2, 2001; *see also* Pl.’s Opp’n Ex. 8, MPD, Sexual Assault Unit, Standard Operating Procedures, Jan. 14, 2003; Pl.’s Opp’n Ex. 5, Ginette Leveque Dep. 39:5-13, Apr. 14, 2008. Plaintiff’s sister, Raegen, who was present at HUH, then called MPD again, and was instructed to call 911, which she did. Pl.’s Ex. 23, Raegan McGaughey Dep. 135:20-136:20, Mar. 31, 2008. Two different officers then responded to HUH in person, where they proceeded to contact

the SAU, reaching a different SAU detective. Pl.'s Ex. 42, Elgin Wheeler Dep. 115:1-13, Oct. 3, 2008 ("Wheeler Dep."). That SAU detective then contacted his squad supervisor, and informed him that the officers at the scene reported that McGaughey was unsure if she was assaulted, that she was giving "hypothetical answers to the uniform officer to get a sexual assault kit done," and that a prior SAU detective had interviewed her and determined that no crime was reported. Wheeler Dep. 116:8-117:5; Pl.'s Ex. 31, Kevin Rice Dep. 181:14-182:7, Oct. 14, 2008 ("Rice Dep."). Based on this information, the squad supervisor determined that the SAU would not open a case, and that message was relayed, through the detective and officers, to plaintiff. Rice Dep. 184:22-185:14; A. McGaughey Dep. 343:5-8. The officers then took a report of the encounter. Pl.'s Opp'n Ex. 4, Dec. 9, 2006 Police Report.

After failing to obtain a rape kit at HUH, plaintiff then sought treatment at George Washington University Hospital ("GWUH"). A. McGaughey Dep. 151:10-12. There, McGaughey spoke to yet another MPD detective over the phone, who told her that she had contacted her supervisor but McGaughey's case had been closed, and that therefore McGaughey could not receive a rape kit. *Id.* 344:1-345:6.

### **DISCUSSION**

Summary judgment is proper where the evidence shows "that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (citing same). The moving party bears the initial responsibility of demonstrating the absence of a genuine dispute of material fact. *Celotex*, 477 U.S. at 323. A party

opposing a motion for summary judgment “may not rely merely on allegations or denials in its own pleading; rather, its response must—by affidavits or as otherwise provided in this rule—set out specific facts showing a genuine issue for trial.” Fed. R. Civ. P. 56(e). Though the Court must draw all justifiable inferences in favor of the non-moving party in deciding whether there is a disputed issue of material fact, “[t]he mere existence of a scintilla of evidence in support of the [non-movant]’s position will be insufficient; there must be evidence on which the jury could reasonably find for the [non-movant].” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252, 255 (1986). “If the evidence is merely colorable, or is not significantly probative, summary judgment may be granted.” *Id.* at 249-50 (citations omitted).

The District argues that it is protected from suit on McGaughey’s negligence claims by the public duty doctrine. Plaintiff contends that because she has not alleged failure to protect, but instead has alleged affirmative harm by the police, the public duty doctrine is inapposite, and furthermore, that even if the public duty doctrine does apply, she has established a “special relationship” with the police sufficient to be owed a special duty from them. I disagree.

Under the public duty doctrine, the District “owe[s] no duty to provide public services to particular citizens as individuals. Instead, . . . the District’s duty is to provide public services to the public at large.” *Hines v. District of Columbia*, 580 A.2d 133, 136 (D.C. 1990) (citations omitted). Because an officer’s duty is to the public, his subsequent “failure to perform it, or an inadequate or erroneous performance, must be a public and not an individual injury, and must be redressed, if at all, in some form of public

prosecution.” *Morgan v. District of Columbia*, 468 A.2d 1306, 1310-11 (D.C. 1983) (en banc) (quotations omitted). The public duty doctrine does not extend to mere “ordinary” negligence—for example, mishandling of a police dog, or reckless driving of a police car—for which any person would be answerable. *Warren/Nichol v. District of Columbia*, 444 A.2d 1, 7-8 (D.C. 1981) (en banc). Instead, it covers instances where the plaintiff contends that a defendant police officer “failed to do what reasonably prudent police employees would have done in similar circumstances. *Id.* at 8. The doctrine thus protects government officials against a “novel sort of professional malpractice” by shielding their discretionary decisions and actions taken in an official capacity from suit. *Id.*

There are, however, limited instances where the public duty doctrine does not protect the District from suit. First, where the government is affirmatively responsible for injury through ordinary negligence resulting from the use of its police powers, the public duty doctrine will not apply. *Lisner v. Smith*, 254 F. Supp. 2d 89, 102 (D.D.C. 2003) (finding public duty doctrine inapplicable where claim was that police negligently issued a press release and negligently arrested plaintiff); *see also District of Columbia v. Evans*, 644 A.2d 1008, 1017 n.8 (D.C. 1994) (finding public duty doctrine inapplicable where plaintiff alleged that police negligently shot and killed her epileptic son).

Second, the public duty doctrine does not protect the District from suit if a special relationship between the government and the individual creates a specific legal duty to that individual. *Powell v. District of Columbia*, 602 A.2d 1123, 1128 (D.C. 1992). A special relationship may be established by a “statute prescribing ‘mandatory acts clearly

for the protection of a particular class of persons rather than the public as a whole.” *Id.* at 1129 (quoting *Morgan*, 468 A.2d at 1314); see *Turner v. District of Columbia*, 532 A.2d 662 (D.C. 1987). However, because “[a]gency protocols and procedures, like agency manuals, do not have the force or effect of a statute or an administrative regulation,” they are insufficient to give rise to a special relationship. *Wanzer v. District of Columbia*, 580 A.2d 127, 133 (D.C. 1990). Alternatively, a plaintiff can demonstrate a special relationship by showing: (1) direct or continuing contact between the plaintiff and the governmental agency; and (2) justifiable reliance by the plaintiff. *Powell*, 602 A.2d at 1130 (citing *Platt v. District of Columbia*, 467 A.2d 149, 151 (D.C. 1983)). For example, “[a] special relationship undoubtedly exists where an individual assists law enforcement officials in the performance of their duties” or where police otherwise “make ‘active use’ of a private citizen” in executing their official duties. *Morgan*, 468 A.2d at 1312, 1313. By contrast, however, “a special relationship does not come into being simply because an individual requests assistance from the police.” *Id.* at 1313 (citations omitted). “Even a series of contacts over a period of time between a public agency and an injured or endangered person is not enough to establish a special relationship, absent some showing that the agency assumed a greater duty to that person than the duty owed to the public at large.” *Wanzer*, 580 A.2d at 132.

McGaughey argues in the alternative that both instances apply to her case. First, she argues that her claims against the MPD (and therefore, against the District) do not allege a failure to protect her from criminal acts or harm caused by a third party, and therefore, that the public duty doctrine does not apply. Pl.’s Opp’n 25-26. Instead,

McGaughey alleges that the MPD affirmatively harmed her by “improperly insert[ing] themselves into [p]laintiff’s treatment and the collection of evidence at the hospital, thereby ‘worsening’ her injury.” *Id.* 28.

However, McGaughey misstates the requirements for application of the public duty doctrine. Though a duty to protect the public from criminal conduct is *one* duty of the MPD, it is not their only duty. For example, providing emergency rescue services is one public duty. *See Miller v. District of Columbia*, 841 A.2d 1244 (D.C. 2004) (applying public duty doctrine to negligent rescue from fire); *Allison Gas Turbine v District of Columbia*, 642 A.2d 841 (D.C. 1994) (applying public duty doctrine to negligent underwater rescue). Responding to reports of alleged crime and making judgment calls about how to allocate investigate resources are two others. *See, e.g., Morgan*, 468 A.2d at 1311. McGaughey’s interactions with the police occurred in the police officers’ regular performance of their official duties; that is, responding to reports of alleged crime and deciding whether to open an investigation.<sup>2</sup> Though they may have negligently responded to her report of sexual assault, and negligently determined that her case was not a sexual assault case, thereby preventing her from receiving a rape kit, that

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<sup>2</sup> Magistrate Judge Robinson recommended denial of the District’s summary judgment motion because she found a genuine dispute of material fact: namely, whether “any officer of the Metropolitan Police Department receive[d] a report that the Plaintiff had been sexually assaulted[.]” Report & Recommendation 7. However, this Court finds that, as argued by the District, this fact was not in dispute, as the District has conceded for the purposes of this motion that the MPD did in fact receive a report that the plaintiff had been sexually assaulted. *See* Def. Obj. 9 (“In seeking dismissal by summary judgment, the District made no material argument to refute [p]laintiff’s claim that MPD responded to Howard University Hospital, met with her, and received her sex assault report.”); Def.’s Stmt of Facts ¶ 13 (“MPD arrived at Howard University Hospital during plaintiff’s second visit, and spoke with her about the sex assault allegations.”).

negligence arose in the performance of a police duty. The District's liability is therefore limited by the public duty doctrine.

McGaughey attempts to distinguish her claim from those barred by the public duty doctrine by stating that the police *affirmatively* inserted themselves into her medical treatment. She claims that "MPD's egregious mishandling of [p]laintiff's case also contributed to the delay of her care and treatment by the hospitals (during which time she suffered extreme pain and distress), and to [p]laintiff's severe and longstanding emotional distress from being treated so horribly by MPD." Pl.'s Opp'n 39. However, though the officers may have acted in violation of MPD policy (*see, e.g.*, Pl.'s Ex. 67, Sexual Assault Nurse Examiners Program (SANE), Special Order of the Metropolitan Police, Apr. 2, 2001), they did nothing to affirmatively *prevent* HUH or GWUH from administering a rape kit. Indeed, plaintiff's continuing position in this case has been that the hospitals she attended—both HUH and GWUH—could have performed rape kits regardless of police involvement. Pl.'s Stmt of Facts ¶158. Thus, unless McGaughey can demonstrate a special relationship engendering a special duty to her, her negligence claims against the MPD are barred by the public duty doctrine.

McGaughey argues that her repeated contacts with the police and subsequent justifiable reliance created a special relationship sufficient to entitle her to a special duty from the police. Pl.'s Opp'n 29-33. But again, McGaughey's argument falls short. As in *Warren*, where the plaintiffs repeatedly contacted the police for assistance from a burglary-in-progress, and, when the police negligently responded, were subsequently

raped and tortured, plaintiff's repeated contact with the MPD does not give rise to a special relationship. 444 A.2d at 2-3; *see also Morgan*, 468 A.2d at 1313 (citing cases).

Unfortunately, this is not the first instance where the MPD is accused of acting with regrettable indifference to potential crime victims. *See, e.g., Warren*, 444 A.2d at 1-3. However, as the D.C. Court of Appeals warned then, "the desire for condemnation cannot satisfy the need for a special relationship out of which a duty to specific persons arises." *Id.* at 4. "Realistically speaking, while public prosecution does little to console those who suffer from the mistakes of police officials, on balance the community is better served by a policy that both protects the exercise of law enforcement discretion and affords a means of review by those who, in supervisory roles, are best able to evaluate the conduct of their charges." *Morgan*, 468 A.2d at 1312. Accordingly, because McGaughey's claim against the MPD arises from alleged negligence in the performance of their police duties, and because she cannot show a special relationship that gives rise to a special police duty to her, the public duty doctrine protects the District from suit, and summary judgment for the District must be GRANTED.

#### CONCLUSION

For the foregoing reasons, the District's motion for summary judgment is GRANTED. An appropriate order will accompany this memorandum opinion.

  
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RICHARD J. LEON  
United States District Judge

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

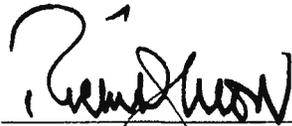
<b>ALEXANDRIA McGAUGHEY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civil Case No. 07-1498 (RJL)</b>
	)	
<b>DISTRICT OF COLUMBIA, et al.,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	

**ORDER**

For the reasons set forth in the Memorandum Opinion entered this date, it is this 25<sup>th</sup> day of August, 2010, hereby

**ORDERED** that the defendant District of Columbia's Motion for Summary Judgment [#189] is **GRANTED**.

**SO ORDERED.**

  
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RICHARD J. LEON  
United States District Judge

## Legislation Enacted

Law 17-346, the "Emergency Care for **Sexual Assault** Act of 2008", was introduced in Council and assigned Bill No. 17-323 which was referred to the Committee on Health. The Bill was adopted on first and second readings on December 2, 2008, and December 16, 2008, respectively. Signed by the Mayor on January 12, 2009, it was assigned Act No. 17-664 and transmitted to both Houses of Congress for its review. D.C. Law 17-346 became effective on March 25, 2009.

DC ST § 7-2121

District of Columbia Official Code 2001 Edition Currentness  
Division I. Government of District.  
Title 7. Human Health Care and Safety. (Refs & Annos)  
Subtitle I. Protection and Care Systems.  
Chapter 21A. Victims of Sexual Assault Emergency Care.  
➡§ 7-2121. **Definitions.**

For the purposes of this chapter, the term:

- (1) "Emergency contraception" means a drug or drug regimen approved by the U.S. Food and Drug Administration to prevent pregnancy when administered after sexual contact, including oral contraceptive pills.
- (2) "Hospital" means a facility that provides 24-hour inpatient care, including diagnostic, therapeutic, and other health-related services, for a variety of physical or mental conditions, and may, in addition, provide outpatient services, particularly emergency care.

DC ST § 7-2122

District of Columbia Official Code 2001 Edition Currentness  
Division I. Government of District.  
Title 7. Human Health Care and Safety. (Refs & Annos)  
Subtitle I. Protection and Care Systems.  
Chapter 21A. Victims of **Sexual Assault** Emergency Care.  
➡§ 7-2122. **Information about emergency care.**

(a) The Department of Health, in collaboration with the Board of Medicine and the Board of Pharmacy, shall develop medically and factually accurate written information regarding prophylactic antibiotics for the treatment of **sexually** transmitted diseases and emergency contraception for the prevention of pregnancy due to **sexual assault**.

(b) The Department of Health shall disseminate the written information produced pursuant to subsection (a) of this section to all hospitals in the District.

DC ST § 7-2123

District of Columbia Official Code 2001 Edition Currentness

Division I. Government of District.

Title 7. Human Health Care and Safety. (Refs & Annos)

Subtitle I. Protection and Care Systems. Best Section Begin

Chapter 21A. Victims of **Sexual Assault** Emergency Care.

➔§ 7-2123. Access to emergency care for victims of **sexual assault**.

All hospitals that provide emergency care to victims of **sexual assault** shall:

- (1) Provide each victim of **sexual assault** written information developed pursuant to § 7-2122;
- (2) Provide each victim of **sexual assault** an oral explanation of the written information distributed pursuant to paragraph (1) of this section;
- (3) Orally inform each victim of **sexual assault** in a language he or she understands of the option to be provided by the hospital prophylactic antibiotics for the treatment of **sexually** transmitted diseases and emergency contraception for the prevention of pregnancy; and
- (4) Consistent with accepted medical practice and protocols, immediately provide prophylactic antibiotics for the treatment of **sexually** transmitted diseases and emergency contraception for the prevention of pregnancy to each victim of **sexual assault**, if the victim requests it and if the requested treatment is not medically contraindicated.

DC ST § 7-2124

District of Columbia Official Code 2001 Edition Currentness

Division I. Government of District.

Title 7. Human Health Care and Safety. (Refs & Annos)

Subtitle I. Protection and Care Systems.

Chapter 21A. Victims of **Search Term Begin Sexual Assault Search Term End** Emergency Care.

➔§ 7-2124. **Personnel training.**

Hospitals shall have written policies and procedures to ensure that all personnel who provide care or information to a victim of **sexual assault**:

- (1) Are trained to provide medically and factually accurate and objective information about prophylactic antibiotics for the treatment of **sexually** transmitted diseases and emergency contraception for the prevention of pregnancy to a victim of **sexual assault** ;
- (2) Actually provide that information to a victim of **sexual assault**; and
- (3) Ensure immediate access to prophylactic antibiotics for the treatment of **sexually** transmitted diseases and emergency contraception for the prevention of pregnancy to each victim of **sexual assault**, if requested and such treatment is not medically contraindicated.

DC ST § 7-2125

District of Columbia Official Code 2001 Edition Currentness  
Division I. Government of District.  
Title 7. Human Health Care and Safety. (Refs & Annos)  
Subtitle I. Protection and Care Systems.  
Chapter 21A. Victims of Sexual Assault Emergency Care.  
➡§ 7-2125. **Compliance.**

The Department of Health shall determine compliance with the requirements of this chapter. The failure to comply with the requirements of this chapter may result in a civil fine to be determined by the Mayor.

## Sexual Assault Response Team

Consistent with the Metropolitan Police Department's mission, the Sex Assault Unit is committed to community policing and prevention by working with other stakeholders in combating sexual violence. The Sex Assault Unit is an active member of the **Sexual Assault Response Team (SART)**.

SART is 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.

### Who Participates in SART?

- MPDC Sex Assault Unit
- United States Attorney's Office Sex Offense and Domestic Violence Section, and Victim/Witness Assistance Unit
- DC Rape Crisis Center
- US Park Police
- Washington Hospital Center Sexual Assault Nurses Examiners (SANE) Program

#### **The SANE program is administered through the SART:**

The District of Columbia has developed the Sexual Assault Nurse Examiner (SANE) Program to provide comprehensive care to adult victims of rape, sexual assault, and other sex crimes. The DC SANE program is a partnership between the Executive Office of Mayor, Office of Victim Services and Washington Hospital Center where medical forensic exams are conducted. The program is staffed 24 hours-a-day, 7 days-a-week by nurses with specialized training in medical forensic evidence collection. Exams are available to victims within 96 hours of an incident.

#### **DC SANE Services**

- Medical examination and evidence collection by nurses with specialized training in medical forensic evidence collection.
- STDs/HIV testing and prophylactic treatment for STDs/HIV and pregnancy.
- Support services by victim advocates from the DC Rape Crisis Center.
- Referrals to counseling and crime victim compensation.
- Follow-up care at the Lighthouse Center for Healing.

## **SANE Program**

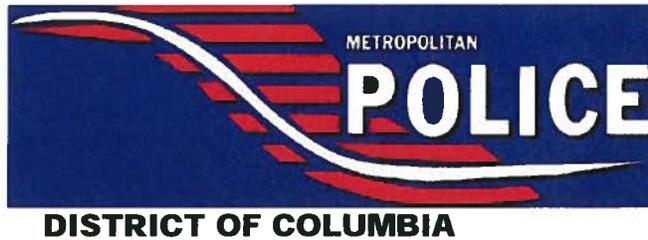
The SANE program provides a comprehensive response to victims of sexual assault. Victims are treated by a nurse who has special training in the observation and documentation of relevant medical findings, and in the collection of forensic evidence following a sexual assault. All materials collected during the exam are stored in a secure location in the hospital until they are transported to the D.C. crime lab which ensures proper chain of custody, an important issue if the case is prosecuted in court.

In addition to receiving medical treatment, patients are immediately put in contact with victim advocates from the D.C. Rape Crisis Center and law enforcement. However, under the Violence Against Women's Act, victims of sexual assault treated at the SANE center are not required to speak with law enforcement. When patients are ready to leave the hospital, they are given a packet that contains information about their exam, instructions for follow-up care and local resources available for sexual assault victims.

“This brings together all of the vital resources for sexual assault victims in one place,” said Heather DeVore, MD, a Washington Hospital Center Emergency Department physician and medical director of the SANE program. “The last thing an assault victim needs is the added stress of trying to gather information about who to call or where to go for follow-up. The SANE program takes care of that. It's an efficient approach that provides seamless access to all services.”

All sexual assault victims in the District who are 18 and older are encouraged to seek treatment at the SANE center, which operates 24 hours a day, seven days a week. The program is a partnership between Washington Hospital Center, Executive Office of the Mayor and the Office of Victim Services.

# GENERAL ORDER



<b>Subject</b>		
<b>Adult Sexual Assault Investigations</b>		
<b>Topic</b>	<b>Series</b>	<b>Number</b>
<b>OPS</b>	<b>304</b>	<b>06</b>
<b>Effective Date</b>		
<b>August 25, 2011</b>		
<b>Replaces:</b>		
GO-OPS-304.06 (Adult Sexual Assault Investigations), Effective Date December 22, 2006		
<b>Rescinds:</b>		
GOC-08-09 (GO-OPS-304.06 [Adult Sexual Assault]), Effective Date 12/09/08		
SO-00-07 (Handling of Sexual Abuse Cases), Effective Date: April 11, 2000		
SO-01-06 (Sexual Assault Nurses Examiner SANE), Effective Date: April 2, 2001		

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## I. BACKGROUND

The preliminary (initial) investigation of sexual assaults is the responsibility of the first responding member and will be limited in inquiry to establish whether or not a sexual assault may have occurred. Members who respond to the scene of a sex offense are responsible for conducting the preliminary investigation and notifying the Sexual Assault Unit (SAU), Criminal Investigations Division, Investigative Services Bureau. The preliminary investigation continues until transfer of the case from the initial investigating member, to a detective assigned to the SAU.

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 (ages eighteen (18) and older), for assisting the United States Attorney's Office (USAO) and the D.C. Office of the Attorney General (OAG) with the presentation of these cases for prosecution, and for maintaining the Sex Offender Registry. The Sex Offender Registry Unit (SORU) falls under the Sexual Assault Unit.

**II. POLICY**

The policy of the Metropolitan Police Department (MPD) is to respond to and provide an unbiased investigation into all reports of sexual assault, to ensure that members who investigate sexual assault complaints are sensitive to the needs of the victim, and to provide information and assistance throughout this traumatic event.

**III. DEFINITIONS**

When used in this directive, the following terms shall have the meanings designated:

1. **CODIS (Combined DNA Index System) – A computer software program that operates local, state, and national databases of DNA profiles from convicted offenders, unsolved crime scene evidence, and missing persons. CODIS software enables state, local, and national law enforcement crime laboratories to compare DNA profiles electronically, thereby linking serial crimes to each other and identifying suspects by matching DNA profiles from crime scenes with profiles from convicted offenders.**
2. **Foreign Protection Order [D.C. Official Code § 16-1041(2)] – A protection order issued by a tribunal of another state.**
3. **Member – Sworn MPD employee or MPD Reserve Corps member.**
4. **Official Custody [D.C. Official Code § 22-3001(6)] –**
  - a. **Detention following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following or pending civil commitment proceedings; or pending extradition, deportation, or exclusion;**
  - b. **Custody for purposes incident to any detention described in Part III.4.a., including transportation, medical diagnosis or treatment, court appearance, work, and recreation; or**
  - c. **Probation or parole.**
5. **Sex Offender [D.C. Official Code § 22-4001(9)] – Person who lives, resides, works, or attends school in the District of Columbia, and who:**
  - a. **Committed a registration offense on or after July 11, 2000;**
  - b. **Committed a registration offense at any time, and is in custody, or under supervision, on or after July 11, 2000;**

- c. Was required to register under the law of the District of Columbia on the day before July 11, 2000; or
  - d. Committed a registration offense at any time in another jurisdiction and, within the registration period, enters the District of Columbia to live, reside, work, or attend school.
- 6. Sexual Assault Nurse Examiners (SANE) Program – 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 for collecting evidence 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. The SANE Program also provides victims with access to trained advocates from the D.C. Rape Crisis Center who provide information and support.
  - 7. Sexual Assault Evidence Collection Kit – An evidence collection kit used to obtain evidence from a sexual assault victim.
  - 8. Sexual Assault Unit – Comprised of sexual assault and “cold case” sexual assault unit detectives who conduct investigations of sexual assaults on alleged victims eighteen (18) years of age or older.

#### **IV. REGULATIONS**

- A. The Youth Investigations Division shall be responsible for the investigation of all sex offenses involving a victim who is under eighteen (18) years of age **at the time of the offense**.
- B. Sworn and civilian members shall protect the confidentiality of victims, suspects, and witnesses consistent with applicable laws and MPD directives.
  - 1. Members who identify potential patterns of sexual assault activity shall immediately contact an SAU official through their chain of command.
  - 2. SAU shall coordinate with the Public Information Office (PIO) on the release of all information to the public regarding potential patterns of sexual assault activity including, but not limited to, posts to MPD Email List Groups.
- C. Members shall contact the Office of Unified Communications to request the on-duty SAU detective respond to the scene:

1. For all allegations of sexual assault including, but not limited to, incidents where sexual assault is not the “primary” allegation/charge.
  2. For all crimes that appear to have sexual overtones.
- D. Members who initially respond to adult sexual assault incidents shall ask only the necessary questions to enable them to determine the type of crime, and to obtain the required information for a lookout broadcast. Members **shall not** question the victim in detail about the offense.

**NOTE:** This is not intended to inhibit the preliminary investigation process, but to recognize the severe emotional stress suffered by victims of sexual assaults.

- E. Members who respond to an alleged sexual assault shall remain on the scene until they confer with the assigned SAU detective and shall provide copies of any notes to him/her.
- F. The member who conducts the preliminary questioning shall prepare the PD Form 251 (Incident-Based Event Report) unless otherwise directed by the SAU detective.
- G. During the course of a sexual assault investigation, members shall not express any personal opinions regarding alleged sexual offenses.
- H. After completion of the preliminary investigation, further contact with the victim of a sex offense shall be made **only** by assigned detectives from the SAU or the SAU Victim Specialist.

**NOTE:** Members should be aware that many victims of a sexual crime do not want friends or relatives to know about the assault.

- I. In open adult sexual assault investigations, the case jackets, crime scene examination case files, and evidence collected during the course of the investigation shall be retained for the length of each crime’s statute of limitations.
- J. In closed adult sexual assault investigations, evidence shall be retained for five (5) years, or as long as the person is in official custody, whichever is longer.
- K. Members shall comply with SO-06-03 [Records Retention and Evidence Preservation (Millicent Allewelt Act of 2004)] as applicable.
- L. Members of the SAU shall comply with the SAU Standard Operating Procedures (SOP).

**V. PROCEDURES****A. Sexual Assault Calls for Service**

1. Members who arrive on the scene of an alleged sexual assault shall be responsible for the following duties as part of the preliminary investigation:
  - a. Ensure member safety on the scene.
  - b. Immediately render first aid and arrange for emergency medical treatment, if necessary.
    - (1) Cases involving life-threatening injuries will be handled by the Fire and Emergency Medical Services (FEMS), according to FEMS protocol.
    - (2) If the victim requires emergency treatment, and the injuries are non-life threatening, FEMS personnel will transport the victim to Washington Hospital Center.
  - c. **When practicable, and when the victim does not need immediate medical attention, request that the victim remain at the scene until the SAU detective arrives.**
  - d. Ensure the suspect is detained, if on the scene, until the arrival of the SAU detective. Do not read the suspect his/her Miranda Rights, or question him/her.
    - (1) The SAU detective shall make the determination whether probable cause exists to place the suspect under arrest.
    - (2) If the SAU detective determines that an arrest will not be made at that time, he/she shall document all information, and ensure that the primary member completes a PD Form 76 (Stop and Contact Report) and a PD Form 251 for a Forcible Stop or a Stop and Frisk, before the suspect is released.
  - e. Advise the radio dispatcher to notify the Command Information Center (CIC) or have an official on the scene contact the CIC to request the on-duty SAU detective respond to the scene.
  - f. Briefly interview the victim to determine if a sexual assault is being reported, and when/where the offense occurred.

- (1) If the victim does not speak English, or is deaf or hard of hearing, members shall ensure compliance with the procedures outlined in GO-SPT-304.18 (Language Access Program) and GO-OPS-304.14 (Deaf or Hearing-Impaired Arrestees).
  - (2) When conducting preliminary questioning, there should be no more than two (2) members present. It is not necessary for the victim to be interviewed by any other members on the scene before the SAU detective arrives.
  - (3) Members who are questioning the victim shall inform the victim that the SAU detective might ask similar questions, but in more detail.
  - (4) Members shall not ask the victim about his/her immigration status in accordance with GO-PER-201.26 (Duties, Responsibilities, and Conduct of Members of the Department).
- g. If the suspect is not on the scene, obtain a description, and broadcast a lookout. Complete the PD Form 106 (Look-Out Information) in accordance with GO-SPT-302.02 (Radio Broadcasts and Look-Outs).

**NOTE:** Except for cases involving fresh pursuit, members should not attempt to contact the suspect at any address without the assistance of an SAU detective.

- h. Advise the SAU detective if the victim is deaf or hard of hearing, has language barriers, or any special needs. For these cases, the SAU detective shall be guided by procedures outlined in GO-SPT-304.18 (Language Access Program) and GO-OPS-304.14 (Deaf or Hearing-Impaired Arrestees).
- i. Inform the victim what to expect next.
- (1) The SAU detective shall handle the subsequent investigation of the case.
  - (2) The SAU detective may take the victim to the hospital for medical treatment and to collect evidence.
  - (3) An advocate from the D.C. Rape Crisis Center will be available at the hospital.

- j. Refer any additional questions the victim may have to the SAU detective, or the SAU official on the scene.
  - k. Preserve the crime scene and any potential evidence on the scene.
    - (1) Members shall not allow any member not directly involved with the investigation of the case to enter the crime scene.
    - (2) If possible, discourage the victim from bathing, using the bathroom, drinking, changing clothes, washing, changing bed linen, or smoking prior to the medical examination by the SANE nurse.
    - (3) If practical, the victim shall be advised to take a change of clothing to the hospital. When a change of clothing is not practicable, the victim will be provided clothing at the hospital.
  - l. Canvass the immediate area for witnesses, and record their names, addresses and telephone numbers. Members shall request that witnesses remain on the scene until the arrival of the SAU detective.
  - m. Provide copies of their notes and all other documentation to the SAU detective by the end of the shift.
  - n. Complete the PD Form 119 (Complainant/Witness Statement) upon request by the SAU detective.
2. Reporting Member Responsibilities
- a. The first member who arrives on the scene of an alleged sexual assault and who comes in contact with the victim shall be considered the reporting member and shall remain on the scene until he/she has been interviewed by the SAU detective.
  - b. In addition to adhering to the requirements in Part V.A.1 of this order, the reporting member shall:
    - (1) Prepare a PD Form 251 and request assistance from the SAU detective regarding the proper classification. The PD Form 251 should include only basic information – a brief description of what happened, where, and when – so the complainant is not forced to be repetitive in such sensitive cases.

NOTE: Members are reminded that the victim's full name, date of birth, and address shall be included on the PD Form 251. Non-public information will be redacted from public forms.

- (2) Complete the PD Form 252 (Supplement Report.) In cases where the alleged sexual assault is an intrafamily offense event, both the PD Form 252 and the PD Form 252-B (Domestic Violence Supplemental Report) shall be completed in accordance with GO-OPS-304.11 (Intrafamily Offenses).
  - (3) Document anything that might be important to the investigation including, but not limited to, any injuries to the victim, damage to clothes, and other observations that might be helpful to the investigation.
  - (4) Provide copies of notes, the PD Forms 251, 252, and 252-B (if applicable), and all other documentation to the SAU detective by the end of the reporting member's shift.
  - (5) Complete the PD Form 119 (Complainant/Witness Statement) upon request by the SAU detective.
3. PSA officials shall:
- a. Respond to all sexual assault calls for service.
  - b. Take charge of the scene until relieved by the on-scene SAU detective, SAU supervisor, or higher-ranking official.
  - c. When requested by the SAU detective, assign a member to accompany a sexual assault victim who is transported to the hospital.
  - d. Debrief the responding members to determine known facts and circumstances.
  - e. Not interview the victim.
  - f. Ensure that responding members are performing their duties, particularly with regard to the crime scene log, crime scene preservation, and identification of witnesses.
  - g. Assign a member to provide a secure location for the victim away from any media and establish a command post, when necessary.

- h. Assess the need for other resources, such as canine or helicopter assistance.
  - i. As needed, assign specific tasks to secondary members to assist the primary member.
  - j. Ensure that the primary member briefs the SAU detective on all known facts and circumstances.
  - k. Evaluate and respond to requests by the SAU detective for additional personnel and resources to manage the scene.
  - l. Ensure that the reporting member remains on the scene until released by the SAU detective.
  - m. Ensure that all involved patrol members submit information and supply copies of all notes to the SAU detective.
4. District Watch Commanders shall:
- a. Monitor and respond to all felony sexual assault calls for service.
  - b. Coordinate and provide resources as necessary.
5. The SAU detective who responds to the scene of a sexual assault shall continue the preliminary investigation and shall:
- a. Make every attempt to arrive on the scene as soon as practicable.
  - b. Identify the official in charge, and other key personnel.
  - c. Identify him/herself and establish control of the crime scene. The ranking SAU official, or, in his/her absence, the SAU detective, has the authority to manage the crime scene.
  - d. Notify the Forensic Science Services Division (FSSD) to process the crime scene.
  - e. Notify the CIC and an SAU supervisor regarding all felony sexual assaults.
  - f. If necessary, notify the appropriate liaison unit (e.g., Latino Liaison Unit; Asian Liaison Unit; Gay, Lesbian, Bisexual, Transgender Liaison Unit) to respond and assist the victim.

- g. Debrief the PSA official and other members at the scene to determine known facts and circumstances.
- h. Conduct an initial assessment (e.g., is the crime scene properly secured; are there unnecessary personnel/citizens within the scene; have any artifacts or contamination been introduced to the scene).
- i. If necessary to begin processing the scene, in the absence of the SAU supervisor, resolve all legal issues, including whether a search warrant, or consent, is necessary. Contact the SAU supervisor for guidance as necessary.
- j. Ensure that the victim and witnesses are isolated. Conduct an interview with the victim to obtain additional facts, and to make proper notifications.
- k. Instruct the reporting member in the preparation of the necessary forms (e.g., PD Forms 251, 252, 119 and 81) and determine the classification of the PD Form 251.
- l. To assist in processing the scene, brief the FSSD technician regarding the details of the crime.
- m. Request that the victim undergo a sexual assault examination in all cases where there is a potential for DNA or trace evidence.
  - (1) Sexual assault examinations shall only be performed with the consent of the victim and should take place after the SAU detective has described the advantages of having the sexual assault examination through the SANE program.
  - (2) In all cases where the victim requests a SANE examination within ninety-six (96) hours of the offense, the examination shall be conducted. In cases where the victim requests a SANE examination and the offense occurred after ninety-six (96) hours, the victim shall be presented to the SANE nurse for a determination as to whether or not an examination should be conducted.
    - (a) If the time frame is inconclusive, the SAU detective shall request that the examination be conducted.
    - (b) If the detective has any questions concerning unusual circumstances or whether or not an

examination should be performed, he/she shall contact the SANE Coordinator at Washington Hospital Center.

- (3) The SAU detective shall make arrangements to transport the victim to Washington Hospital Center for a SANE exam, and for additional medical treatment, if needed.
  - (a) The SAU detective shall call the Washington Hospital Center hotline. The hotline operator will place a call to the on-call SANE nurse to notify him/her of the pending exam.
  - (b) The SAU detective shall request the name of the on-call SANE nurse from the hotline operator and request to be transferred to the nurse to brief the nurse on the circumstances of the assault and provide an estimated time of arrival.

**NOTE:** SANE examinations are conducted at the Washington Hospital Center. However, if a victim wishes to go to another hospital, he/she can have a SANE forensic examination performed at any D.C. hospital. Both the SANE nurse and the advocate operate on an on-call basis, and will respond to meet with the victim within an hour of being contacted by the detective.

- (4) If the victim is transported to Washington Hospital Center and is unable to obtain assistance from a SANE nurse, the victim will be examined in the emergency room of Washington Hospital Center or the nearest area hospital.
- (5) The SAU detective shall advise the victim that if he/she is examined by anyone other than a SANE nurse, the victim will absorb the cost of the examination, but may receive reimbursement through the victim/witness compensation program [GO-OPS-204.06 (Victim/Witness Services)].
- (6) The SAU detective shall sign the police log at the Washington Hospital Center nursing station, and provide his/her name and contact information.
- (7) Within twenty-four (24) of the completion of the examination, the SAU detective shall pick up the Sexual Assault Evidence Collection Kit, and deliver it to the Crime Scene Investigations Branch, FSSD.

- (8) The SAU detective shall document the name of the nurse who conducts the SANE examination on the PD Form 854 (WACIIS Report).
  - n. Obtain a statement of facts from the victim when time, location, and conditions permit.
  - o. Schedule a follow-up interview with the victim at the SAU's office as soon as possible, but in all cases within seventy-two (72) hours.
  - p. Review the completeness of the preliminary investigation to determine the scope and direction of the follow-up investigation in accordance with the SAU SOP.
  - q. After completion of the preliminary investigation, complete all necessary paperwork, to include the PD Form 854 and the case jacket prior to the end of his/her shift.
  - r. Submit all paperwork to an SAU official for review.
  - s. Electronically record custodial interrogations of persons suspected of committing a sexual offense in accordance with GO-SPT-304.16 (Electronic Recording of Custodial Interrogations).
  - t. If the suspect agrees to provide a statement, attempt to obtain a consensual buccal swab.
  - u. If the suspect resides in another jurisdiction, notify the police department in that jurisdiction of the sexual assault.
  - v. If the suspect is arrested, follow the SAU SOP and General Order 601.1 (Recording, Handling and Disposition of Property Coming into the Custody of the Department) for collecting physical evidence.
6. SAU supervisors shall:
- a. Respond to the scene of felony sexual assault cases when necessary.
  - b. Ensure that proper control has been maintained of the crime scene, or take control of the crime scene if no SAU detective is on the scene.

- c. Ensure that all necessary and available resources required to process the scene have been received.
  - d. Resolve all legal issues, including whether a search warrant, or consent, is necessary to process the scene.
  - e. Coordinate with FSSD personnel to make sure all evidence is properly identified and processed.
  - f. Notify the Watch Commander, Criminal Investigations Division, of all sexual assaults.
  - g. Notify the Watch Commander, CIC, of all felony sexual assaults.
  - h. Brief command officials, the District Watch Commander and the Watch Commander, Criminal Investigations Division (CID), as they arrive on the scene regarding information gathered from the preliminary investigation and provide them with additional information as significant updates occur.
7. The CIC shall notify the SAU to respond when a hospital notifies the CIC of an alleged sexual assault.

NOTE: Patrol members are not required to respond in these situations. The SAU will prepare all required paperwork.

8. The SAU Victim Specialist shall:
- a. Follow up with sexual assault victims to ensure a victim assistance package was provided to the victim at the hospital by the SANE nurse.
- NOTE: Members are required to prepare a victim assistance package within three (3) days of a crime being reported to the police, in accordance with GO-OPS-204.06 (Victim/Witness Services). However, in sexual assault cases, the victim compensation form is typically provided by the SANE nurse to the victim, and the form is completed at the hospital when the victim receives the forensic exam through the SANE program.
- b. For victims who do not go through the SANE program, follow up to ensure the victim receives a victim assistance package. If the victim has not received a victim assistance package, the SAU victim specialist shall prepare one, and ensure the package is delivered to the victim in accordance with the required timeline.
  - c. Be available for any additional questions from the victim.

9. FSSD technicians shall:
  - a. Respond to all felony sexual assault scenes for the collection and processing of all evidence.
  - b. Debrief the crime scene detective to determine known facts and circumstances.
  - c. Conduct an initial crime scene canvass to identify all evidence.
  - d. Photograph the crime scene.
  - e. Sketch the crime scene.
  - f. Conduct a thorough search of the entire crime scene to collect all potential evidence.
  - g. Conduct the appropriate tests for the discovery and recovery of trace evidence (e.g., bloodstain, semen, vaginal fluid, saliva, and hair samples).
  - h. Brief the SAU detective regarding known evidence observed and collected at the crime scene.
  - i. Prior to clearing the crime scene, re-canvass the area with the SAU detective to ensure all evidence has been collected.
  - j. Process the Sexual Assault Evidence Collection Kit and, in consultation with the SAU detective and the USAO, and forward the kit to the designated laboratory for forensic testing.
  
10. The Watch Commander, CID, shall respond to and take control of the scene of all first degree sexual assaults with active crime scenes; and shall ensure that:
  - a. All necessary resources are made available.
  - b. All required administrative notifications are made.
  - c. The CIC has been notified by the SAU supervisor.
  - d. All responding patrol members have provided all necessary notes, statements, and information to the SAU detective prior to their check-off.

- e. All on-scene media requests are handled in accordance with GO-SPT-204.01(Media), to include release of any information to the media.
- B. Handling Combined DNA Index System (CODIS) Hits in Cases
1. The MPD Crime Laboratory shall provide notification to the SAU, in writing, when they are notified of a CODIS hit.
  2. When necessary, the SAU detective shall collect a **court-authorized** confirmatory DNA sample (e.g., blood card or buccal swab) from the named suspect in the CODIS hit, and deliver the DNA sample to the Crime Scene Investigations Branch.
  3. The case shall be assigned to the SAU detective who previously handled the case, if available, or to a Cold Case Sexual Assault (CCSA) detective.
  4. If the original detective is no longer assigned to the SAU, the CCSA detective shall make every effort to work with the original detective.
  5. The assigned detective shall conduct the investigation in accordance with the following procedures:
    - a. As part of the initial investigation, the statute of limitations will be assessed to ensure that cases are in accordance with prosecution guidelines.
    - b. It is important to consider early in the investigation the willingness of the victim(s)/witness(es) to proceed with the case. Reinvestigating a case may cause renewed psychological trauma to the victim, and the victim's family. The assigned detective shall:
      - (1) Review the case with the USAO before contacting the victim or other witnesses involved in the case. The USAO and SAU detective shall decide how to proceed with the case.
      - (2) Make every effort to notify the victim of a CODIS hit, and:
        - (a) Provide the victim with counseling resources (e.g., rape hotline number).
        - (b) Utilize a team consisting of detectives from the SAU, and victim services advocates within MPD,

as well as the USAO, to make face-to-face contact with the victim when possible.

**C. Sex Offender Registry**

1. Failure to register under the Sex Offender Registration Act of 1999 as a sex offender is a crime.
2. The Sex Offender Registry Unit (SORU), Criminal Investigations Division (CID), is responsible for facilitating and coordinating the dissemination of sex offender registration information.
3. All complaints of harassment, threats, intimidation, or violence committed against sex offenders shall be referred to the SORU for tracking and investigation, in conjunction with the appropriate patrol district personnel.
4. SORU shall provide to each police district, substation, PSSSB, Special Operations Division, and Youth Investigations Division each month:
  - (a) A current copy of the Sex Offender Registry ("registry") including information available for public inspection concerning all currently registered sex offenders; and
  - (b) A transmittal letter listing all new sex offenders, sex offenders whose information has changed (e.g., address, photo) and all sex offenders who should be removed from the registry. Attached to the transmittal for District Commanders shall be a second transmittal for each of the PSA Lieutenants regarding information on all sex offenders within their PSA.
5. Each element that has a copy of the registry shall maintain a separate logbook to record the names and addresses of all persons reviewing the registry, and the date on which they viewed the registry.
6. Members of the SORU shall provide periodic training to PSA Lieutenants on community education and notification procedures, pursuant to the Sex Offender Registration Law.
7. Information about sex offenders with a classification of A (the most serious offender with a lifetime registry) or B (offender with a ten year registry) shall be posted on the MPD website for public viewing.
8. Upon request, SORU members shall use Advisory Neighborhood Commission (ANC) and Citizens Advisory Council (CAC) meetings to inform the community about the Sex Offender Registration Law.

Citizens shall be advised of the locations where open registries are located, and the availability of the online registry.

9. Element commanders shall ensure their Sex Offender Registry is updated with information provided monthly by the SORU.
10. PSA lieutenants shall:
  - a. Notify the community of newly registered sex offenders during scheduled monthly community meetings, (e.g., PSA, ANC and CAC meetings);
  - b. Document on the transmittal provided by the SORU, the community meetings they attended; and
  - c. Return the completed transmittal to the SORU, within thirty (30) days.
11. Element commanders (or their designee) shall sign the transmittal acknowledging receipt of the information, and ensure the transmittal is returned to the SORU. This updated information shall be added to the registry.

## **VI. CROSS REFERENCES**

- A. GO-PER-201.26 (Duties, Responsibilities, and Conduct of Members of the Department)
- B. GO-SPT-204.01 (Media)
- C. GO-OPS-204.06 (Victim/Witness Services)
- D. GO-SPT-302.02 (Radio Broadcasts and Look-Outs)
- E. General Order 304.8 (Collection of Physical Evidence; Utilization of the Crime Scene Examination Section and Crime Scene Search Officers)
- F. GO-OPS-304.11 (Intrafamily Offenses)
- G. GO-OPS-304.14 (Deaf or Hearing-Impaired Arrestees)
- H. GO-SPT-304.16 (Electronic Recording of Custodial Interrogations)
- I. GO-SPT-304.18 (Language Access Program)
- J. General Order 601.1 (Recording, Handling and Disposition of Property Coming into the Custody of the Department)

- K. SO-06-03 (Records Retention and Evidence Preservation [Millicent Allewelt Act of 2004])
- L. SAU Standard Operating Procedures



Cathy L. Lanier  
Chief of Police

CLL:PAB:MOC

# McDermott Will & Emery

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April 20, 2011

## *Via Email & Certified Mail*

Natasha Cenatus  
Office of Unified Communications/Metropolitan Police Department  
300 Indiana Avenue NW  
Room 4153  
Washington, DC 20001

Re: Human Rights Watch FOIA Request

Dear Ms. Cenatus:

We write on behalf of our client, Human Rights Watch (“HRW”). HRW is an independent not-for-profit organization dedicated to protecting the human rights of people around the world.

We understand that the public records of the District of Columbia Metropolitan Police Department (“MPD”) and the Office of Unified Communications are available to the public for inspection or copying at any time. D.C. Code § 2-532. This letter constitutes a request for information (“FOIA Request”) pursuant to the District of Columbia Official Code § 2-531 *et seq.* (“the Act”). HRW looks forward to your cooperation because the public policy of the District of Columbia provides that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Code § 2-532.

### **A. Definitions**

For the purposes of this FOIA Request, the following terms shall have the following meanings:

1. “Document” shall be interpreted as broadly as necessary to assure that HRW obtains the information and data it is seeking. The term “document” shall include the WACIIS Sex Summary Sheet, WACIIS Sex Summary Cover Sheets, WACIIS PD 854, PD 123, PD 251, PD 252 reports, master case jackets, working case jackets, and field notebooks. To the extent that the requested information cannot be obtained from the foregoing reports, the term “document” shall be interpreted more broadly to include any designated documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations — stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.

2. “Notice of Assault” shall mean communications to the MPD that an alleged Sexual Assault Crime has been committed, including but not limited to communications made through the 911 system, direct communications to police officers, or communications arising from the Medstar program.
3. “Public Records” shall have the meaning as contained in D.C. Code § 2-502(18), including but not limited to all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics prepared, owned, used in the possession of, or retained by a public body. Public records include information stored in an electronic format.
4. “Sexual Assault Crimes” shall mean: First Degree Sexual Abuse pursuant to D.C. Stat. § 22-3002, Second Degree Sexual Abuse pursuant to D.C. Stat. § 22-3003, Third Degree Sexual Abuse pursuant to D.C. Stat. § 22-3004, Fourth Degree Sexual Abuse pursuant to D.C. Stat. § 22-3005, Misdemeanor Sexual Abuse pursuant to D.C. Stat. § 22-3006, and/or fact and circumstances alleged by alleged victims that might lead to a finding of First, Second, Third, Fourth or Misdemeanor Sexual Abuse, regardless of the ultimate outcome of a complaint, investigation or case.

**B. Instructions**

1. HRW wishes to obtain the desired information and statistical data with as little inconvenience as possible to the MPD. To the extent that *the identical* information is contained in more than one form, report or other document, the information may be produced in the form most convenient to the MPD. For example, if a witness statement is initially prepared in handwritten form, but is later typed verbatim or entered verbatim into a database, it is not necessary to produce the handwritten version. Human Rights Watch reserves the right to seek additional information once it reviews the production.
2. To the extent that documents are provided in electronic format, the MPD shall provide them in tab-delimited, Microsoft Excel, SPSS, or Microsoft Access files rather than in a proprietary form.
3. Electronic documents shall be produced on a USB drive and/or a CD. Upon request, HRW will produce a USB drive or CD to the MPD to facilitate the production of materials.
4. To the extent that privacy laws prevent disclosure of names or other identifying information of individuals, we request disclosure of all other portions of the records excepting such names or other identifying information.
5. A representative of the MPD may contact the undersigned to discuss the requests or to propose reasonable alternatives for obtaining the same information or data in other formats.

**C. Requests**

Unless otherwise specified, HRW requests that the MPD provide all Public Records related to the following information for the period from January 1, 2008 to the present (the “Relevant Years”):

1. Logs, documents or summaries that record or document each Notice of Assault, including but not limited to all documents constituting or related to 911 calls regarding to Sexual Assault Crimes. This includes:
  - Documents sufficient to show the number of 911 calls related to Sexual Assault Crimes; DONE .
  - All dispatch logs and records, including disposition, by month, of all 911 calls related to Sexual Assault Crimes;
2. All incident-based event reports (P-251) created in response to Notices of Assaults, whether or not it was classified as a Sexual Assault Crime; DONE .
3. All documents constituting or showing policies, procedures, rules, staff manuals or instructions to staff relating to the receipt, recording, and investigation of a Notice of Assault; DONE
4. To the extent that a record is not entered into a log or summary for each Notice of Assault, please produce all policy or procedure manuals or other documents that permit this practice or that explain the circumstances under which no record is made; DPNE .
5. With respect to each Notice of Assault, please produce:
  - The WACIIS Sex Summary Sheet, the WACIIS Sex Summary Cover Sheet, the WACIIS PD 854, the PD 123, the PD 251, and the PD 252 reports, any PD 119s or PD 193s; DONE .
  - Documents recording or reflecting communications between the alleged victim and the MPD, including but not limited to victim statements, interview notes in field notebooks or otherwise or logs of telephone conversations, and written or electronic communications;
  - Documents recording or reflecting communications between any suspects and the MPD, including but not limited to statements, interview notes or logs of telephone conversations, and written or electronic communications;
  - Documents recording or reflecting communications between any witnesses and the MPD, including but not limited to statements, interview notes or logs of telephone conversations, and written or electronic communications;

- Documents recording or reflecting the collection and disposition of Sexual Assault Victim Evidence Collection Kits (“Rape Kits”), including but not limited to information on whether the contents of the Rape Kit were subject to laboratory analysis and whether DNA results of the kit were compared to information in the Combined DNA Index System (CODIS) or other pre-existing database of DNA information;
  - Documents or reports containing any analyses, subjective comments, or evaluations of the case by members of the MPD;
  - Any documents relating to the reasons no charges were brought;
6. All documents constituting or related to calls made to or from Medstar regarding Sexual Assault Crimes, including but not limited to: OUC
- Documents sufficient to show the number of calls made to or from Medstar regarding Sexual Assault Crimes;
  - All supporting logs and record of all calls made to or from Medstar regarding Sexual Assault Crimes, including those indicating all incidents in which police officers were dispatched to hospitals where a sexual assault victim was taken for a forensic examination;
7. All documents constituting or related to any regional coordination meetings on Sexual Assault Cases, including but not limited to: ISB/SAU
- Documents showing the number of meetings in a year;
  - Documents showing the persons required to attend such meetings;
  - Documents showing the persons who voluntarily attend such meetings;
  - Documents showing the counties attending such meetings, including Prince George County, MD, Montgomery County, MD and Fairfax County, VA;
  - All documentation related to the discussion or investigation of Sexual Assault Crimes at such meetings;
8. All documents constituting or showing policies, procedures, rules staff manuals, or instructions to staff with respect to receipt, collection and storage of Rape Kits; ISB/SAU
9. All documents pertaining to loss or destruction of Rape Kits, including but not limited to any documents relating to the investigation of the loss or destruction of Rape Kits by the Inspector General; ISB/SAU
10. “The Daily Summary of Crimes” based on DC Code Crime Data reported to the Department’s Criminal Intelligence and Tactical Crime Analysis Division, including but HSB

not limited to data for Sexual Assault Crimes for the relevant years by month and by calendar year;

11. All documents constituting or related to training materials, staff manuals, and instructions to staff used in training officers of the MPD in relation to Sexual Assault Crimes at the Police Academy or elsewhere, including but not limited to: PDB/ACAD
  - Presentations, handbooks, and videos;
  - Materials related to in-service training on how to handle Sexual Assault Crimes, whether taught by an internal MPD or Sexual Assault Unit (SAU) employee or an outside facilitator;
  - Materials related to training on how to handle drug-facilitated Sexual Assault Crimes;
  - All general orders pertaining to how the SAU or MPD handles or is supposed to handle Sexual Assault Crimes, including but not limited to drug-facilitated Sexual Assault Crimes;
  - All special orders pertaining to how the SAU or MPD handles or is supposed to handle Sexual Assault Crimes, including but not limited to drug-facilitated Sexual Assault Crimes;
  - All Circulars, teletypes, training bulletins, staff manuals and instructions to staff regarding Sexual Assault Crimes, including but not limited to drug-facilitated Sexual Assault Crimes;
  - All standard operating procedures pertaining to how the SAU or MPD handles or is supposed to handle Sexual Assault Crimes, including but not limited to drug-facilitated Sexual Assault Crimes;
  - Any documents and calendars that would indicate the frequency with which trainings on Sexual Assault Crimes are held at the police academy or as part of in-service training or for members of the SAU;
12. All written guidelines/protocols for handling sexual assault cases, including community-wide protocols created as part of DC SART (Sexual Assault Response Team); ISB/SAU
13. All documents relating to any investigation, analysis, evaluation, or review of: ISB/SAU
  - The policies, procedures, rules, staff manuals, or instructions to staff by the MPD with respect to handling of Sexual Assault Cases; and
  - The manner in which specific allegations of sexual assault were handled by the MPD;

14. All documents showing MPD and SAU hiring and promotion standards and information, including but not limited to: ISB/SAU
- Documents constituting or related to selection criteria for SAU detectives;
  - Documents sufficient to show the SAU organization and hierarchy;
  - Documents relating to training of detectives assigned to the SAU;
  - Documents showing the weekly on-call rotation schedule (or shifts) of members of the SAU;
15. All documents constituting or related to complaints made or filed by alleged victims of Sexual Assault Crimes against the SAU or any other department or division of the MPD; DONE .
16. All documents constituting or related to legal complaints or lawsuits filed by alleged victims of Sexual Assault Crimes against the SAU or any other department or division of the MPD; DONE .
17. All documents showing or related to disciplinary action against former or current SAU detectives or uniformed police officers in relation to handling of sexual assault cases, including but not limited to any disciplinary action taken against Elgin Wheeler, Tandreia Green, Ginette Leveque, George Maradiaga, Michael Minor, Ronald Reid, Kevin Steven Rice, and/or Vincent Spriggs; DONE .
18. All documents constituting or related to public outreach about Sexual Assault Crimes, including but not limited to brochures and information regarding prevention, investigation, crime victim compensation, services for both reporting and non reporting victims, and public relations and public service announcements; ISB/SAU
19. Minutes from monthly DC SART (Sexual Assault Response Team) meetings; ISB/SAU
20. Data collected as part of the Making a Difference (MAD) Project, including pre-conference data collection (the breakdown of the sexual assault caseload from January through June of 2004) and all data tracking forms (“sexual assault case tracking forms”) submitted to End Violence Against Women International (EVAW) as part of the MAD project from the project’s inception in 2003; ISB/SAU
21. All documents, including results or analysis of research, recommendations and training materials received or generated as part of the MAD project. ISB/SAU

**C. Fee Waiver Request**

HRW respectfully requests, pursuant to D.C. Code § 2-532(b), that the documents related to the above requests be furnished without charge.

HRW qualifies for a fee waiver because this FOIA Request is in the public interest. Fees related to a FOIA request are waived if a request is in the public interest and benefits the general public. *Id.* The principal purpose of HRW's FOIA Request is to enable it to make an objective evaluation of the efforts of the MPD to investigate and resolve allegations of sexual assault and to compare these efforts with best practices in the field. It will also request an opportunity to discuss its findings with leaders of the MPD. This program is in the public interest and will benefit the general public because sexual assaults have long-term personal and societal costs. Any effort that might lead to improvements in law enforcement in this area is clearly in the public interest.

HRW also qualifies for a fee waiver because of its status as a representative of the news media. *See Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989), *cert denied*, 494 U.S. 1029 (1990). The HRW project is part of a research program encompassing two other cities. Once HRW compiles and analyzes the data it receives through this FOIA Request, it will publish a report on its findings and will also display its report on its website.<sup>1</sup> HRW has created and disseminated many reports in the past.

Finally, HRW does not seek the requested information for commercial benefit. As previously noted, HRW is a not-for-profit charity dedicated to accessing and disseminating information related to human rights to the public. HRW has been granted a fee waiver under the federal FOIA statute, 5 U.S.C. § 552(4)(A)(iii). For the reasons stated above, any fee associated with the above request should be waived.

\* \* \*

Pursuant to D.C. Code § 2-533, if you chose to deny any part of this request, please provide a written explanation for the denial, including but not limited to the reasons for the denial, the references to the specific statutory exemption(s) upon which you rely, and the name(s) of the public employee(s) or official(s) responsible for the decision to deny any part of this request.

We thank you for your prompt attention to this matter. As provided in D.C. Code § 2-532(c), we look forward to your response within fifteen (15) business days after receipt of this request.

Sincerely,



Marc E. Sorini

Shauna Moser, 202.756.8684

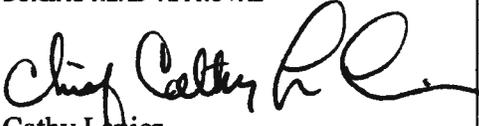
McDermott Will & Emery LLP

Sara Darehshori

Human Rights Watch

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<sup>1</sup> See <http://www.hrw.org/en/publications>. HRW typically publishes its reports on its website and in print.

1. REQUEST FOR <input type="checkbox"/> LOCAL LOOKOUT <input type="checkbox"/> INTERSTATE TT <input type="checkbox"/> ADMINISTRATIVE TT <input type="checkbox"/> DETAIL (See Reverse)	2. TYPE <input type="checkbox"/> ORIGINAL <input type="checkbox"/> EXPEDITE <input type="checkbox"/> ADDITIONAL <input type="checkbox"/> CANCEL <input type="checkbox"/> CORRECTION <input type="checkbox"/> REPEAT <input type="checkbox"/> REPLY	3. COMPLAINT NUMBER	6. DATE OF REQUEST June 8, 2012
		4. UNIT NUMBER 727-4218	7. REQUESTING ELEMENT EOCOP
		5. <input type="checkbox"/> NOT FOR THE PRESS	8. <input type="checkbox"/> FLASH TT REQUESTED
9. TO THE FORCE <p style="text-align: center;"><b>Sexual Assault Investigations</b></p>			
10. NAME OF WANTED PERSON	11. WANTED BY	12. CHARGE	
13. COMPLAINANT=S NAME		14. COMPLAINANT=S ADDRESS	
15. DESCRIPTION OF WANTED PERSON OR MESSAGE  <p style="text-align: center;"><b><u>Reminder to Members Regarding Sexual Assault Investigations</u></b></p> <p>In accordance with GO-OPS-304.06 (Adult Sexual Assault Investigations), <b><u>for all alleged sexual assaults and assaults with sexual overtones, regardless of the circumstances</u></b>, members shall contact the Office of Unified Communications (OUC) to request that an on-duty Sexual Assault Unit (SAU) detective respond to the scene.</p> <p>The SAU detective shall determine whether a sexual assault offense report or a sexual assault allegation incident report shall be taken.</p> <p>In all instances when a SAU detective is called to the scene, central complaint numbers shall be generated and a PD Form 251 (Incident-Based Event Report) completed.</p>			
SENDER-BADGE-ORG. ELM.	AUTHORIZED BY-BADGE-ORG.ELM.	BUREAU HEAD APPROVAL   Cathy Lanier Chief of Police	
COMMUNICATIONS DIVISION USE ONLY			
REMARKS		DATE AND TIME	
		FILE	
		TELETYPE NUMBER	