

**STATEMENT OF CHIEF TERENCE A. MONAHAN
CHIEF OF DEPARTMENT
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEES ON WOMEN AND PUBLIC SAFETY
COUNCIL CHAMBERS, CITY HALL
APRIL 9, 2018**

Good morning Chair Rosenthal, Chair Richards, and Members of the Council. I am Chief Terence Monahan, the Chief of Department for the New York City Police Department (NYPD). I am joined here today with my NYPD colleagues, Chief Robert Boyce, the Chief of Detectives, Susan Herman, our Deputy Commissioner for Collaborative Policing, and Oleg Chernyavsky, our Director for Legislative Affairs. On behalf of Police Commissioner James P. O'Neill, I am pleased to testify before your committees today to discuss the NYPD's response to sex crimes.

I have served in the NYPD for over 36 years. I have seen many changes to the city and the Department over that time. When I began my career in January 1982, the city was engaged in what many considered an unwinnable battle against crime and disorder. Gunfire erupted on our streets with unfortunate regularity, homicides and other index crimes were at all-time highs, and patrol officers were relegated to their radios – running as fast as possible to an unending litany of 911 jobs. It was a much different city at that time. In looking at where the city is today, crime-levels at their lowest since the 1950s and the implementation of a comprehensive neighborhood policing philosophy, it is truly remarkable.

What I have also learned during my career is that out of the many different roles our police officers and investigators are asked to fulfill each day, the most important is to be that of an advocate for victims of crime.

This is especially true for survivors of sexual assault. The complexities of such crimes warrant the full attention and empathy of law enforcement and the criminal justice system. If there is one message that I want to convey at today's hearing, it is this: **the NYPD stands ready, each and every day, to support the survivors of these crimes, to hold offenders accountable, and prevent future acts of violence.** Every case we receive is not a number, it is a person, a victim, a survivor. I want to assure every New Yorker that the NYPD takes rape and sexual assault seriously, and the Department investigates every report thoroughly. It is hard enough for the victims of these heinous crimes to come forward to report these traumatic incidents; I want them to know that the NYPD is here to support them in every way possible.

I want to spend the bulk of my testimony today discussing the hard work of the men and women who serve in the NYPD's Special Victims Division (SVD), but I believe it is important to acknowledge the backdrop of this hearing and the amount of public attention this topic has received as a result of a recent Office of the NYPD Inspector General (OIG) report. While the NYPD will issue a formal response to this report over the next 90 days – the time allotted by local law – I want to address some of the criticisms that have been raised and also note that we are internally evaluating OIG's recommendations.

At the beginning of my testimony, I mentioned that I have seen many changes in policing over my career. I believe this is certainly the case when it comes to the investigation of sex crimes by the NYPD.

Much of the report focuses on events, policies, and decisions that were made prior to 2014. I want to talk about what the NYPD has done under the de Blasio Administration and the leaderships of Police Commissioner Bratton and Police Commissioner O'Neill. Over the last several years, the NYPD has

streamlined its policies to make reporting easier, to train our officers in victim-sensitive response, promote transparency about the work of our investigators, and provide precinct-based victim assistance.

The NYPD's Special Victims Division's responsibilities include the investigation of sex crimes (Penal Law Article 130 crimes) and cases of alleged child abuse. The Division works in partnership with victim advocates and other city agencies to carry out its mission. Deputy Commissioner Herman will speak next about the depth and scope of our collaborative work. SVD comprises 18 specialized sub-units. Each of the city's five boroughs has a separate Special Victim's Squad devoted solely to the investigation of sex crimes against adult victims. In addition, the Division has separate investigative units to address DNA cold cases, transit system cases, child abuse, monitoring of registered sex offenders, and stranger cold cases, among others.

No other large municipal police department's sex crimes unit compares to that of NYPD's in terms of size, investigative scope, and, most importantly, expertise across multiple specialized fields. Since 2010, the Department has increased the uniformed headcount of the Special Victims Division by approximately 47% from 149 to 218 – notably three-quarters of that increase occurred over the last four years. Furthermore, as of this morning, an additional twenty uniformed members have been transferred into the Division, bringing its overall headcount to 238. Like each one of their counterparts, these newly assigned investigators will undergo comprehensive specialized SVD training in the coming weeks, which I will discuss in a moment, before being individually assigned any cases.

We have also been careful to recruit the right individuals for this highly complex and sensitive work. We accept only 20% of those applying to SVD. We are looking for detail-oriented, proactive individuals that have the temperament to communicate with and empower survivors. Recognizing that there are always individuals getting promoted, transferred or retiring, SVD has done a reputable job retaining their talent which is demonstrated by the fact that in 2017 twice as many uniformed members were transferred into the Division than those leaving. Furthermore, supervisors and investigators assigned to SVD adult sex crimes squads have an average of 8.1 and 6.6 years of experience, respectively.

The Special Victims Division investigates both misdemeanor and felony sex crimes. The Division has adopted a survivor-centered model of investigation of adult sex crimes. In this regard, investigators work to honor decisions and preferences of sexual assault survivors at each stage of an investigation, allowing survivors to choose how far to pursue a case; electing to report information only, to have the investigators conduct a partial investigation, or to pursue a complete investigation of the crime. Investigators provide clear explanations of the reporting process and investigative procedures, encourage survivors to consult a sexual assault advocate who counsels the survivor and can accompany the survivor during the investigative process. Investigations are conducted at a pace set by the victim, not the investigating officer. These and other measures are designed to treat survivors with dignity and sensitivity while providing them with the sense of control that having been sexually assaulted has compromised.

Much of the OIG Report's attention fixated on the focused work of the investigators in the Division's Special Victims Squads. In 2017, these squads handled a case load of approximately 5,650 cases. During this period, investigators assigned to these squads managed approximately 8-10 active cases per month. Comparatively, this case load is nearly half of that of a typical detective assigned to a local precinct detective squad. Moreover, it is a lower monthly caseload than that of sex crimes detectives who work in much smaller-populated cities. The majority of sex crimes that NYPD Special Victims Division receives are misdemeanor cases, approximately one-third are felony cases.

The NYPD remains committed to ensuring that these investigators are able to comprehensively perform these complex investigations. In 2018, an additional 8 investigators began regularly being assigned new cases, and as I mentioned before, another 20 investigators will be supplementing these ranks as of today.

The addition of these investigators will bring the number of active cases being handled by any one investigator at any given time to approximately 5-6 cases. There are also an average of 14 supervisors who are intimately involved in the investigator's cases. The supervisors in the Division play a vital role by ensuring accurate, thorough and comprehensive work by the investigators they supervise. For example, in taking a rape complaint, the complaint cannot be designated as "unfounded" without the approval of a Special Victims captain. I also want to highlight the vital role of the SVD Sex Crime Complaint Review Unit, which reviews every sex crime report received citywide within 24 hours of receipt to ensure proper classification.

It is also important to mention that particularly complex, long-term investigations can be assigned to the Division's DNA Cold Case Squad which possesses additional investigators. SVD's Cold Case Unit, created in the Fall of 2015, has reviewed and closed approximately 1,400 cases since its inception. Additionally, Commissioner O'Neill has overseen the creation of the Stranger Rape Cold Case Unit, earlier this year, to review unsolved sex crimes dating back decades in some cases.

We know that responding properly to sexual assault requires special skills. Simply put, Special Victims investigators are the best-trained sex crimes investigators in the country. Beginning in January 2017, every member of the Division who handles adult sex crimes has received Forensic Experiential Trauma Interview ("FETI") training. While Deputy Commissioner Herman will further elaborate on this training in her testimony, FETI imparts groundbreaking interviewing techniques to law enforcement officers based on the neurobiology of trauma and how it affects survivors' recollection of the crime.

In addition, all members of the Special Victims Division complete a two-week Criminal Investigation Course which provides investigators with comprehensive, high-quality instruction in investigative fundamentals, techniques, and current detection trends. The Division also undertakes a 5-day special victims investigator course and provides selected detectives with additional training on topics such as the science of DNA, drug-facilitated sexual assault, and the investigation of complex cases. Other SVD training includes, peer based investigative process scenario training, cross investigative process training, cohort-based learning, neurobiology of sexual assault, instant response tracking process training, experiential learning, abusive head trauma training, zone captain training, district attorney-based training, and the NYS police sex crimes and child abuse courses. Five local hospitals have also partnered with the Special Victims Division to offer their rape crisis counselor training to our investigators as well as to victim advocates. Furthermore, SVD investigators cycle through the various SVD sub-units enabling them to learn new techniques and apply them to their specialized field. This is not to say that an SVD investigator's training will end here. The Department not only provides refresher training as needed, but is also constantly keeping up-to-date on new investigative tools, techniques and disciplines and evaluating their benefit to the work we are doing. If we identify methods that will improve our ability to interact with survivors or solve these despicable crimes, as was the case with FETI, we will provide additional training to our officers.

It is also important for me to stress the training that patrol personnel receive regarding sex crimes. Both recruits and in-service uniformed members receive significant training on responding to sex crimes and interacting with sex crime survivors. At the Police Academy, recruits are trained on complaint and report taking for sex crimes with instruction given on the effects of trauma, how to conduct an interview with a victim, collect evidence, and provide information on available resources and services. Moreover, recruits also receive training on crisis management and interaction concerning victims of sex crimes. Through promotional classes, patrol supervisors are also trained by investigators from the Special Victims Division on how to properly interact with survivors of sex crimes.

I would be remiss if I did not touch upon how we leverage technology to help the Detective Bureau, including the Special Victims Division, more efficiently track and manage their cases. Over the last four years, the Department has expanded the use of its Enterprise Case Management System (ECMS). The

system permits investigators to document investigative steps and organize electronic evidence and communications. We have seen firsthand the benefits of collaboration between law enforcement agencies and the detriment of working in silos. Having an integrated case management system and providing the highest levels of security for information within that system are not mutually exclusive concepts. For example, anyone who accesses a case in the ECMS system leaves a footprint. In documenting sex crime cases, the system will be automatically restricted and will limit access to such files.

As Police Commissioner O'Neill recently stated: "In most areas of policing the NYPD is very good, in some areas we are the best, but in all areas we can get better. We have been working, and will continue to work, with sexual-assault victim advocates and national experts to improve our practices to enable us to better respond to victims of sexual assault, make every victim feel safe to come forward, and reduce the overall instances of these assaults over time." There is always more to do and the Department remains committed to constantly improving how we respond to sex crimes. Over the next 90 days, the Department will continue to examine the findings and recommendations of OIG that may help improve the Special Victims Division.

I will now turn it over to Deputy Commissioner Susan Herman who will discuss the Department's outreach to the victim advocacy community as well as improvements that have been made with respect to the way we interact with survivors.

**STATEMENT OF SUSAN HERMAN
DEPUTY COMMISSIONER, COLLABORATIVE POLICING
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
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We know from national research that only a fraction of rape and sexual assault victims report to the police. In fact, according to the most recent US Justice Department's National Crime Victimization Survey, only 23% percent of rapes and sexual assaults were reported to the police. This figure pales in comparison to the reporting rates of other violent crimes, such as robbery and aggravated assault, and is in fact a decrease in reporting of nearly 10% from the previous survey. The research tells us that we all have more work to do in bringing survivors of sexual assault forward and to encourage reporting.

Part of the mission of Collaborative Policing is to enhance the Department's response to all victims of crime – including victims of sexual assault. During the last four years, the NYPD has made a focused and concerted effort to increase the reporting of sexual assaults, promote transparency about our work, build stronger cases, and improve the experience of survivors when they engage with our personnel. While I will explain these efforts in more detail, I will note that some of our work is already yielding results. For example, in the first quarter of this year, out of the 382 rape complaints the Department received, 130 of the complaints are about incidents that occurred before 2018. In fact, approximately 35 of those complaints are of rapes that occurred more than five years ago. This is a significantly higher proportion of older cases being reported than we've seen in the past. Based on the increased number of these types of complaints, and the greater complexity in investigating and solving them, Police Commissioner O'Neill has decided to increase the staffing levels of the Special Victims Division, as Chief Monahan just mentioned.

Over the last four years, the Department has gone to great lengths to encourage survivors to come forward. We have collaborated with victim advocates and prosecutors in all five boroughs to create outreach material which explains what sexual assault is, how to report it, and where to get assistance. The Department has distributed 36,000 copies in 8 languages to hospitals, Family Justice Centers, Borough Presidents Offices, and to colleges throughout the city. We have also leafleted 6,000 subway riders with subway-specific information explaining how they can report any level of sexual misconduct. Additionally, auxiliary officers distributed another flyer at twenty major subway hubs around the city emphasizing resources for victims of crime. A total of 76,000 of these flyers went out to the public in English and Spanish.

Moreover, in 2017, the Department, for the first time, launched a Victims of Crime Section on the Department website. It helps the public become more familiar with reporting a crime, the criminal justice process, information about various types of courts, resources and services available to victims, the U Visa certification process, frequently asked questions, and a glossary of terms. This webpage was developed in conjunction with the victim advocacy community.

To reach college students, the Department first conducted focus groups with students to understand their perspectives on the issue. It was clear that students want to hear from other students. So for three years we have partnered with the New York City Police Foundation to sponsor annual poster contests for students to encourage their peers to report sexual assault to the NYPD. Each of the winning posters have been distributed to over 100 colleges and universities in the city. Perhaps, most importantly, we have also created new agreements with local colleges to reinforce their legal obligation to report a campus rape to the police within 24 hours, unless the victim does not want to report to the police. And, to make it less burdensome to

report, school officials are encouraged to call our rape hotline so that victims of rape or sexual assault can speak directly to the Special Victims Division.

To improve interactions between our investigators and victims, the Department now provides the Forensic Experiential Trauma Interview training ("FETI"). This seven-day, comprehensive training specifically tailored to the NYPD's needs is taught by nationally recognized experts. It covers a range of topics including the neurobiology of trauma, common misperceptions about sexual assault and survivor behaviors, key principles of memory encoding, storage, and retrieval, and how to more effectively communicate with sexual assault survivors. Essentially, we are training our investigators to recognize the limitations of traditional who, what, when and where, just-the-facts questions and instead ask more open-ended questions about what victims experienced. It emphasizes survivor control of the interview and gives investigators skills to help victims retrieve more details about the assault. In addition to training *every* member of our Special Victims Division, the Department has also trained 14 prosecutors and 21 Sexual Assault Response Team examiners and victim advocates. According to FETI training experts, the NYPD is the only police department that has trained its entire special victims division. We believe it is a critical addition to the training SVD receives.

Patrol officers are trained on how to study behaviors and patterns of offenders and are taught to emphasize patience and respect when interacting with crime victims. We have partnered with Hollaback! to train transit officers, twice a year, on sexual harassment in the subway system. Additionally, the NYPD Transit Bureau has created a curriculum to train officers in identifying and reducing the incidence of sex crimes in the subway.

In order to improve outcomes and hold offenders accountable, the Transit Bureau, in conjunction with the Manhattan District Attorney's Office, developed a supporting deposition form for victims of sex crimes committed in the subways. It captures an accurate description of events, as well as a contemporaneous victim statement. Victims can now report the exact details of the crime in their own words and native language. Previously, victims were directed to report to the stationhouse for a further interview; which could take place days or weeks later and frequently led to victims declining to participate. This form can be completed by a victim at the scene of the incident, providing a more convenient way for victims to quickly and accurately report crimes and proceed to their intended destination. Because so many people riding the subway are commuting or visiting from other states or countries, the form allows victims to participate even if they will be unavailable for further involvement in the criminal justice system.

In addition, we have created a new level of transparency regarding incidents of sexual assault in New York City. In 2016, we launched CompStat 2.0. For the first time, the public can conveniently access information about when major crimes, including rape, are reported and the nearest intersection to where it occurred, all while protecting the identity of the victims.

The Department is also committed to transparency regarding our investigation of sexual assaults. In 2017, the Department instituted a semi-annual sex crimes case review in which victim service agencies review closed SVD cases. The goal of this review is two-fold – to receive constructive feedback in order to improve the Department's handling of sexual assault cases, and to provide participating organizations with a greater understanding about how the NYPD conducts sexual assault investigations. We believe we are only the second Department in the country undertaking such a review.

At the core of the Department's Neighborhood Policing strategy is the principle that the NYPD will do everything it can to help victims of crime rebuild their lives. In 2016, the Department launched the Crime Victim Assistance Program (CVAP). Working with Safe Horizon, the Department has placed two advocates in our precincts to assist crime victims. The advocates help to mitigate trauma in the aftermath of a crime; provide information to victims about the criminal justice process; and help victims develop

safety plans to prevent repeat victimization. They also advocate for needed services, such as safe affordable housing, emergency NYCHA transfers, victim compensation, medical care, or public benefits; and link victims to other local service providers for additional and more specialized assistance. CVAP is currently operating in over two-thirds of our precincts, and will be in every precinct and PSA by the end of this summer.

Given the national research about persistent under-reporting, the Department has also launched a multimedia campaign, entitled "The Call is Yours," emphasizing that reporting is the victim's choice to make, and that doing so can stop a perpetrator and connect the victim to important resources and services. A week ago we launched the social media portion of this campaign and soon you will see posters on subways, buses, and a motion graphic in our taxis.

This is a time of great challenge when it comes to investigating sex crimes – but it is also one of great opportunity. **Our goal is simple – support victims, hold offenders accountable, and prevent further crime.** The initiatives I have discussed are only a few of the many changes we have made over the last four years to benefit all victims of crime – including sexual assault victims. The Department welcomes an open dialogue with the Council on how to further improve.

External assessments of the Department's work, such as the OIG Report or hearings such as this, present opportunities for improvement. Any such external assessment, however, must be done in a comprehensive, accurate, and responsible manner. The worst consequence of not doing so is that victim confidence in the police – which has steadily increased over recent years – could be eroded.

I will now turn it over to Director Oleg Chernyavsky who will discuss the legislation being considered today.

**STATEMENT OF OLEG CHERNYAVSKY
DIRECTOR, LEGISLATIVE AFFAIRS
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL
COMMITTEES ON WOMEN AND PUBLIC SAFETY
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APRIL 9, 2018**

I would like to first note that pursuant to Local Law 70 of 2013, which created the Office of the NYPD Inspector General (OIG), the Police Department was provided with 90 days within which to review and formally respond to allegations, findings and recommendations contained in a report issued by the OIG. We were disheartened that the OIG omitted necessary information in exploring the topic of sex crime investigations by our Department before coming to their conclusions and recommendations. For example, had OIG spoken with our Deputy Commissioner for Information Technology, they may have gained a better understanding of the capabilities of our case management system. Had the OIG contacted our Chief of Strategic Initiatives, they may have received greater clarity with respect to Department staffing decisions. If the Chief of Detectives was approached by OIG, he would have informed them about relevant investigative methods. Or, had the Deputy Commissioner of Collaborative Policing been interviewed, she would have spoken about the great work this Department has done to improve our response to victims of crime. Unfortunately, these and other necessary investigative steps, as well as the myriad positive steps undertaken by this Department in this area were absent from the report.

We are likewise concerned that the Council chose to pre-introduce some of OIG's recommendations as legislative proposals only 48-hours after the report was published without allowing the Department to avail itself of the statutory 90 day review period enacted by this body. We intend on using the review period to study the data analysis and methodology employed by the OIG. For reasons we intend to more thoroughly set out in our formal response due at the end of May, we respectfully oppose the legislation being heard today for the following reasons:

Preconsidered Intro. T2018-1709 requires a case management system be created with specific criteria, as well as a policy that limits access. Such policy is required to be published on our website. The bill requires that the system be able to search and track investigations of the Special Victims Division (SVD) and be able to conduct automated analysis of the performance of the SVD as a whole, as well as the performance of personnel assigned to SVD and the timeliness of investigations. The Department's current case management system, called the Enterprise Case Management System (ECMS), provides assigned case investigators with the ability to conduct such searches and track cases. Furthermore, access to the most sensitive cases, including those being investigated by SVD and Homicide Squads are restricted and can only be viewed by a limited number of personnel.

The Department places a great deal of emphasis on ensuring a high level of performance in its ranks. Over the last four years, we have revamped our performance evaluations by removing quantitative standards and replaced them with qualitative standards. This quality-driven approach has enabled us to reduce crime to levels not seen in 70 years, bucking national trends, while at the same time reducing the number of arrests and summonses.

Although personnel evaluations occur on a daily basis, legislated integration of this responsibility into an investigative case management system is inappropriate. Furthermore, placing a clock that dictates the "timeliness" of investigations is antithetical to this quality-driven model, and more importantly, ignores the great work we have done with our advocate partners for the benefit of survivors of sex crimes. Our

investigations follow a survivor-centered approach, where a survivor controls the pace of our investigation through their level of participation, without pressure, and on their timeline – not that of a mandated countdown in a computer.

Preconsidered Intro. T2018-1710 presumably requires SVD investigators to complete at least ten weeks of specialized training, such as Forensic Experiential Trauma Interview (FETI), before interacting with victims. In fact, the bill prohibits any engagement with victims prior to completion of this ten week course. As Deputy Commissioner Herman has indicated in her testimony, not only does the Department employ the FETI training method and has trained all SVD investigators and supervisors in this discipline, there is also significant amounts of general investigative training and special victim-specific training that takes place. We believe in FETI, but FETI builds on many weeks of relevant training that all of our officers receive, and the enhanced level of training that our Special Victims investigators undergo.

It is unclear why the bill chooses to dilute the Police Commissioner's authority by dictating a particular method and duration of training. This type of day-to-day oversight must remain in the discretion of the agency head so that he/she can ensure the most current and accepted methods are employed – especially in the most sensitive of cases. Likewise, although the Department should in fact continue to have every special victims investigator trained in the most advanced disciplines, it is inconceivable that a survivor should languish because the only investigators available at the moment are ones that have not been trained pursuant to a local law.

Preconsidered Intro. T2018-1711 requires the Department use an evidence-based staffing model to determine staffing in SVD and specifies factors that must go into this model. The bill further requires that the Department prepare an annual report that requires, among other things, disclosure of staffing and case load, broken down by hours spent on a case.

The “investigative time spent” tracking models employed in this bill and T2018-1709, are troubling given the survivor-centered approach both we and advocates have worked so hard to embed within Department policy and practices.

The Department appreciates our partnership with the Council thus far in ensuring adequate funding for our growing staffing needs. The requirements of this bill, however, erode and encroach upon the most basic responsibilities of the Police Commissioner to manage this agency and its personnel. SVD cases are complex and each have unique variables that cannot be easily quantified. Therefore, the determination of proper staffing levels must be based on an ongoing assessment of such unique and case-specific factors – not models employed in less than a handful of smaller jurisdictions with significantly fewer supplemental resources that can be called upon. As the head of the largest police department in the nation, tasked with protecting the millions that live, work and visit this city, it is the Police Commissioner's duty to determine the proper staffing levels of the various regular and specialized investigative units that comprise this agency. This responsibility cannot, and should not, be legislated and an agency head cannot be so constrained.

Intro. 444 requires the Department to provide new recruits with sensitivity training when responding to survivors of gender-based street harassment and sexual assault. Additionally, the legislation calls for the provision of biennial training for all police officers on responding to survivors of gender-based street harassment and sexual assault.

Chief Monahan and Deputy Commissioner Herman have both provided detailed descriptions of the type of sex crimes training uniformed members of this Department receive. I would also like to supplement that by adding that our recruit curriculum at the Police Academy includes a lecture and scenario-based instruction on LGBTQ issues, which ensures participants recognize and appreciate the diversity and concerns of this community, and how to provide culturally competent service with courtesy,

professionalism and respect. Fair and impartial policing is also covered, and recruits are educated on the effects of bias and prejudice in the police profession. Moreover, other relevant sections in the Academy cover investigative report writing, sex offenses, and other crimes against persons. These sections teach recruits interview techniques and report preparation, including for sex crimes, the elements of Penal Law sex crimes and harassment, as well as the proper response to crime victims with a significant focus on responding to sex crimes.

As for our existing officers, in 2017, our Training Bureau created a training module that addresses survivors of sex assault. This video-based lesson, presented by the Police Commissioner was developed in conjunction with victim advocates, emphasizes the importance of building strong cases, but more importantly, treating sexual assault victims with compassion and respect. It also emphasizes in no uncertain terms that **rape is rape, whether it is committed by a stranger or non-stranger**. Given the sheer importance of this topic, the Police Commissioner directed that the viewing of this video is mandatory for all uniformed officers.

We are ready to engage with the Council, as we have done in the past, and as we have already done with advocates, to elicit input and recommendations with respect to the content and frequency of our existing training. We do, however, have concerns about the mandates in this legislation. The law also seems to redefine the definition of what is a state law charge, and requires training on how to detect such behavior. We recognize the importance of gender-based harassment wherever it occurs, and currently accept complaints from victims and conduct investigations in regards to allegations of this illegal behavior.

Although we do not agree with the approach taken in the four bills being heard today, we look forward to a continued dialogue with members and advocates in regards to this vitally important topic. There remains much work to be done and we are seeking the Council's partnership on ideas for more programming to further encourage survivors to report and on making our facilities more survivor-centered.

Thank you and we look forward to answering any questions you may have.



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**Testimony Submitted to The New York City Council
Committee on Public Safety, jointly with the Committee on Women
Oversight Hearing: Examining NYPD's Response to Sex Crimes**

April 9, 2018

This testimony is submitted on behalf of Beverly Tillery, the Executive Director of the New York City Anti-Violence Project (AVP). At AVP, we empower lesbian, gay, bisexual, transgender, queer and HIV-affected communities and allies to end all forms of violence through organizing and education and we support survivors of violence through counseling and advocacy.

You will probably hear testimony all throughout the day, correctly naming the way women should not be shamed or blamed for the sexual violence they survive. The NYPD knows well enough at this point not to blame it on the clothes the survivor is wearing or that anyone ever “asks” for it. AVP and the survivors we serve recognize that this is not enough, and we need support for all survivors of sexual violence to be rooted in respect, empathy, and cultural responsiveness to survivors across the spectrum of gender identity and sexual orientation.

With the #metoo and #timesup movement gaining momentum over the last few months, some may begin to feel as if, finally, American society seems to be moving in the right direction, addressing sexual violence through accountability and broader social change. While there have been some decisive responses to the Hollywood celebrities and even public outcry over certain politicians and other high profile figures, there are many voices that this movement has missed.

Too often, the LGBTQ and HIV-affected communities remain unrecognized within this public conversation. Sexual violence is as serious and prevalent of a problem in LGBTQ and HIV-affected communities as it is in others, with rates of sexual violence at the same or higher levels as heterosexual and cisgender people.¹ We know that all survivors of sexual violence face many barriers to accessing safety, support, and services, including challenges when reporting to NYPD or having their cases investigated, due to a lack of training and understaffing. Calls go unreturned. Cases are

¹ Centers for Diseases Control and Prevention, National Center for Injury Prevention and Control, *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Findings on Victimization by Sexual Orientation* (Jan. 2013). Avail. at http://www.cdc.gov/ViolencePrevention/pdf/NISVS_SOfindings.pdf and *Intimate Partner Violence and Sexual Abuse among LGBT people, Williams Institute (Nov.2015)*. University of California School of Law. Avail at [Intimate-Partner-Violence-and-Sexual-Abuse-among-LGBT-People - Williams Institute 2015 \(002\).pdf](http://Intimate-Partner-Violence-and-Sexual-Abuse-among-LGBT-People-Williams-Institute-2015-(002).pdf) “The Centers for Disease Control (CDC) reported that LGB people experienced intimate partner violence (IPV) and SV at the same or higher rates as heterosexual people: ¹ nearly 44% of lesbians and 26% of gay men have been the victim of rape, physical violence, and/or stalking by an intimate partner in their lifetime. ¹ 46% of lesbians, 75% of bisexuals, 40% of gay men, and 47% of bisexual men reported sexual violence. ¹The National Coalition of Anti-Violence Programs (NCAVP) reported that transgender and gender non-conforming (TGNC) people of color (POC) were 3.3 times more likely than other survivors to experience IPV and SV.”

closed without notice. Survivors are left without answers or resources. Survivors of all genders and sexual orientations have been shamed by SVD detectives when they are too fearful or traumatized to engage in controlled calls or ride-alongs to identify the person who raped them.

As New York State's only LGBTQ-specific rape crisis program, AVP sees firsthand the additional barriers faced by LGBTQ survivors, who often face bias, discrimination, and violence from mainstream service providers and first responders, including NYPD. The stories survivors share with AVP of egregious treatment by NYPD in the wake of sexual violence are chilling. Transgender survivors share that the police refuse to use their personal pronouns or names, and refuse to take their reports, stating that people "like them" can't be raped. Gay and bisexual men share that their experiences of sexual violence are minimized by police, who tell them to "man up" and "what can you expect when you choose this lifestyle?" Lesbian and bisexual women are told they could not have been raped by women, that it isn't "physically possible." One lesbian-identified survivor who reported a brutal rape by a neighbor in her building, was told by an SVD detective that "remorse isn't the same as rape," implying that she had consented to have sex with this neighbor, but regretted it later. Another bisexual woman who experienced date rape from a man, was told by the investigating SVD detective that his perspective was that she was a lesbian who had experimented by having sex with a man, was rejected by him, and falsely accused him of rape.

AVP knows that LGBTQ and HIV-affected people hold multiple and intersecting identities, and that when one or more of these identities are marginalized, that impacts the way they experience violence and what happens when they reach out for help. In particular, LGBTQ people of color, LGBTQ youth and young adults, and transgender and gender non-conforming (TGNC) people all have disproportionately high rates of severe and pervasive violence,² which has immediate and long-term negative impacts on survivors' physical, emotional, and financial safety, health, and wellness. When LGBTQ survivors face insensitive, biased responses from NYPD, the trauma of the sexual violence they have experience is compounded.

All of this is escalated as LGBTQ people in this country experience heightened rates of violence of all kinds, particularly hate violence in our current socio-political climate. As much as we pride ourselves in New York City for being a welcoming and affirming city for LGBTQ and all people, rates of violence are at a high here as well. AVP's bilingual hotline experienced a 34% increase in calls from survivors of violence in 2017 as compared to 2016, reflecting the turbulent times impacting LGBTQ communities. 2017 was also a year in which nationally we saw an 86% increase in LGBTQ hate violence homicides. Three of those homicides happened on our city's streets.

Our community members and clients are reporting more incidents of hate violence across the city — at their workplaces, in their homes, on the subways and buses they

² National Coalition of Anti-violence Programs (NCAVP) Lesbian, Gay, bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2015, available at: http://avp.org/wp-content/uploads/2017/04/ncavp_hvreport_2015_final.pdf and NCAVP Lesbian, Gay, bisexual, Transgender, Queer and HIV-Affected Intimate Partner Violence in 2015, available at: http://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf

take every day. Since the Presidential election, not only have we seen a spike in hate violence, we've also seen increases in other kinds of violence: intimate partner violence, sexual violence, and dating violence. Those in our community who are who are the most marginalized -- people of color, immigrants, undocumented people, and TGNC people are disproportionately impacted by violence. Many have told us they have become afraid to travel throughout the city for fear of being attacked or harassed.

Compounding the problem is the fact that survivors often feel they have very few places to turn for support and services. AVP's reports show a lack of trust in the police among LGBTQ survivors. In 2016, only 26% of survivors of hate violence in New York City reported that they went to the police, representing a 53% decrease in police interaction over two years. Of those who did interact with the police, 45% reported indifferent or hostile attitudes from the police. This problem is not confined to law enforcement. Because sexual violence is too often seen only in terms of cisgender women assaulted by cisgender men, LGBTQ survivors are often met with suspicion, insensitivity, bias, and discrimination when seeking support from mainstream rape crisis centers, hospitals, clinics, or victim service agencies.

AVP's professional training reached 5,000 people last year, from hospitals, clinics, mainstream victim services programs, around all forms of violence. We train Sexual Assault Examiners, medical personnel who complete forensic exams in the wake of sexual violence, all across New York City, increasing cultural responsiveness among service providers. We strongly urge the Council and NYPD to work collaboratively with the public, specifically the City's rape crisis programs, including AVP, and the survivors of sexual violence we serve and support, to promote increased accountability within the NYPD. We need strong policies that are fully implemented to ensure that NYPD is culturally responsive, affirming, survivor-centered, and inclusive of survivors of all identities. With regards to the specific measures being proposed in the bills before the Council, we strongly urge the Council and NYPD to ensure that training for NYPD, especially SVD detectives on sexual violence is explicitly inclusive of the ways in which LGBTQ and HIV-affected survivors experience sexual violence, and what happens to them when they reach out for help. AVP is available and committed to working with NYPD and the Council to create and implement trainings that ensure responses to LGBTQ survivors are culturally responsive, affirming, and inclusive.

AVP not only provides critical services, but helps advocate for our clients so they can receive the services they need outside our offices. Our programs include:

- **A 24 hour Spanish/English crisis intervention hotline.** Last year, we answered over 4,500 calls, that's about one call every two hours.
- **One-on-one Counseling and support groups,** reaching over 1,100 community members in all 5 boroughs.
- **Our Economic Empowerment** program to help survivors deal with the economic impact of violence with individualized sessions and workshops on topics such as taxes, credit repair and debt, resumes and cover letters.

- **AVP's Legal Services** represents LGBTQ survivors of violence in all civil legal matters, including immigration, family, housing, and public benefits. We have seen a 24% increase in overall clients seeking legal services since the 2016 election.
- **Leadership Development**, including job readiness and paid internships, a Speakers' Bureau, and more.
- **Community Outreach, Organizing** activities that reach more than 43,000 people each year in all 5 boroughs with information on staying safe. This includes know-your-rights trainings, bystander intervention trainings, and more.
- **Policy Advocacy** work with City Council bringing together community members to identify policy solutions to violence.

AVP appreciates our partnership with the City Council to ensure that all survivors of sexual violence, across the spectrum of gender identity and sexual orientation, have access to culturally responsive, affirming, and inclusive safety, support, and services.

Testimony for 4/9 Committee on Women

During a neighborhood political campaign in 2016, my inquiries about women's neighborhood concerns turned into a repetitive chorus—women told me, "we are scared of being assaulted or raped because we know the 94th precinct won't do anything." I was also a member of a number of local online groups for women, and posts about rapes and assaults were shared at least biweekly-- always with a debate of whether or not it was worth it to report. Cab drivers, dates, and co-workers, but very few strangers-- I know the majority of rape is done by acquaintances. In September 2016, I was put in touch via Facebook chat with a local rape victim who had reported to the police and had felt shunned, judged and ashamed. She told me that the police had more questions about her than her rapist-- they appeared to be skeptical about details of her story and their insensitive reactions made her feel ashamed and confused. She was so overwhelmed with trauma, confusion and embarrassment that she decided to stop her process of reporting. Having heard this over and over, I organized a community meeting-- specifically about the police's relationship to sex crime victims. To my surprise, an inter-generational meeting of around 82 people confirmed that a large population believed that "the police don't care about rape or domestic violence." There was a string of sexual crimes that September, and also some physical violence, in the area around my home in Greenpoint. It was a scary time, especially as I began to understand that many more rapes and assaults were occurring with no reporting, because everyone had a friend or a relative who had been re-traumatized by the process of reporting and was privately deciding not to bother. This creates a false record of low crime, because these private, life destroying violations remain in the shadows.

RAINN statistics show that only one in three rapes are reported to the police. Of those reported, only 6 rapists out of every 1000 serve any sentence. Time and again the message I've received is that reporting only ultimately hurts the victim, and my friends who have reported show the validity of this-- because when you are treated badly while trying to report a crime, interrogated over and over in a roughshod way, it not only permanently damages your ability to talk about your rape but also makes you permanently distrust the police.

I have been so disturbed by this issue that I created a group called the Greenpoint Sexual Assault Task Force. I started thinking differently about the realities of rape during those community-based meetings, when I was surrounded by neighbors my grandmother's age, my mother's age, my

brother's age, my age, and younger, all telling similar stories, with varied levels of violence. Some of our work is about empowering women. Some of our work is about a culture shift with men. Most of our work is about changing relationships with the police. Our very own former police captain, Peter Rose, made international headlines when he confirmed that he prioritized only "real rapes," not "tinder rape" or acquaintance rape. However, the community was quite upset when the Captain was not fired for his diminishing views of rape and violence against women—instead he was kept on, eventually he was promoted and received a raise. Brooklyn North Police Chief Maddrey and our new police captain have been extremely supportive and great allies in our work so far. They have gained my trust, but I know it takes funding and real in depth training at the precinct level done by professionals to make a real difference, and the City must fund that and make it mandatory.

Emily Gallagher



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**NEW YORK CITY COUNCIL TESTIMONY
SPECIAL VICTIMS DIVISION, NYPD**

April 9, 2018

Good morning, I am Mary Haviland, Executive Director at The New York City Alliance Against Sexual Assault (hereafter, the Alliance). Thank you to the Committees on Public Safety and Women's Issues for allowing us to address you on this crucial area.

We have an excellent well-researched report by the Inspector General's Office exposing a serious lack of staffing resources for the Special Victims Division (SVD) at the New York City Police Department. This is a serious issue for survivors of sexual violence in New York City. However, before I start I do want to acknowledge that we also have a dedicated leader in SVD, Deputy Chief Osgood, who is trying very hard to improve the performance of his Division. Deputy Commissioner Susan Herman of Collaborative Policing is a serious reformer who is making significant advances in the treatment of crime victims. And Commissioner O'Neill is beginning to take steps to dedicate a higher level of resources to sexual assault. These are positive steps forward in the transformation of the culture surrounding sexual assault and its investigation by the New York Police Department (NYPD).

You have heard about some the strides made this morning by SVD and Collaborative Policing. I would like to focus my testimony on my recommendations for moving forward with improvements to the NYPD response to sexual violence.

First, I recommend doubling of the SVD detectives. There are currently 67 detectives handling adult sexual assault cases to handle 5,661 cases.¹ Sexual assault crime reports have increased by 65.3% since 2009, yet there have been no comparable increases in staff. I want to unpack this increase a bit. Here are some of the major events that have taken place over the last

¹ An Investigation of NYPD's Special Victims division-Adult Sex Crimes, New York City Department of Investigation's Inspector General for the NYPD, March 27, 2018.

8 years that have greatly increased the caseloads for the detectives of the adult Sex Crimes Division:

A Working Group created by Commissioner Kelly, in part as a result of pressure from this advocacy organization and others, imposed the following additional tasks on SVD:

- Creation of a Data Analysis Group that scrubs all incoming complaints to check for proper charging on cases. In 2016, this group found 63 rape cases that were not charged as such.
- Transfer of all misdemeanor sex offenses from the precinct detective squads to SVD: more than 2,000 case per year.
- Creation of SVD Nightwatch team that responses to calls from hospital Emergency Departments when they are conducting a forensic exam. In 2016, there were 500 hospital responses.

These were all very positive initiatives that improved investigations of sex crimes, however, previous NYPD Commissioners and top NYPD leaders did make commensurate staff increases as is very carefully demonstrated by the Inspector General's report. In addition, there have been 4 other major events that have lead to increases in caseload.

- In 2012 New York State passed a DNA recovery law that requires samples from most of those convicted of misdemeanor and felony crimes. This has increased DNA hits that necessitate investigation.
- In 2014, Transit sex crimes were transferred to SVD.
- An almost 4 fold increase in sex assault offenders monitored by the Offender Unit since 1997.
- Finally, with passage of the campus sexual assault law in 2015, more students are reporting sexual assault

Incredibly after all of this, the Inspector General's report states that there were more adult SVD detectives in 1979 (72) than there were as of March, 2018. In a recent meeting with the NYPD, leadership indicated that SVD detectives have an average caseload of 93 cases per year. This caseload is nearly double that of other police departments.² SVD detective caseloads are 31 times

² A 2007 report found that the median caseload for sexual assault detectives in nine cities was 54. *Sexual Assault Response and Investigation: Portland efforts fall short of a victim-centered approach*, Office of the City Auditor, Portland, Oregon (June 2007).

higher than that of homicide detectives.³ Granted the public has a strong interest in quality homicide investigations. But this difference is unacceptable. Sexual assault investigations involve time consuming interviewing, remaining in contact with victims, pulling video camera footage, text and social media communications, photos, forensic evidence, taxi and car service records, interviewing witnesses, and conducting controlled contact with accused perpetrators. The Inspector General's careful analysis of staffing records using an evidence based staffing analysis found that an additional 73 detectives were needed to reach the minimum number of investigative hours needed for each case. **The feedback we receive from survivors corroborates the conclusions of the Inspector General's report and the research that has been done to establish maximum caseloads. Our most common complaint is that a survivor has not heard from the SVD detective in several weeks and that repeated attempts to contact the detective are not successful. We also hear of evidence that is not pursued, cases that a dropped without explanation and inexperienced detectives asking insensitive and victim blaming question.**

This leads me to my second recommendation and that is to transform the Special Victims Division into a first class, trained investigative body that can adequately handle the complicated cases that it receives. Its Chief, Deputy Chief Osgood, has been on a quest to do just this. We support his efforts to:

- **Increase the number of seasoned, trained investigative detectives in his Division and create promotional opportunities for SVD detectives.** Currently, one third of hires are from patrol and have no training in investigations. Many are unable to get the training they need in their first year of service because it is not offered frequently enough. The mix of detective grades recommended by the Inspector General Report is 20% first grade, 40% second grade and 40% third grade. Currently, the composition is: 13% have not achieved detective status, 70% third grade, 9% second grade and 7% first grade. 37% of the homicide unit is composed of first grade detectives.
- **Significantly increase training of unit.** Chief Osgood has brought Forensic Experiential Trauma Interviewing or FETI to NYC. This is an intensive, comprehensive training on

³ In March 2018, NYPD's homicide squad had 101 detectives for 282 homicides in 2017. Inspector General's report, page 1.

the effects of trauma on brain functioning, response and encoding of memory. The training takes these scientific findings and lays out a method for effective interviewing. This training is an excellent beginning to more sensitive and competent interviewing of a sexual violence survivor. However, it must be supplemented with training in other aspects of sexual violence investigations including: successful engagement of survivors in the investigation, successful and sensitive controlled contact with alleged perpetrators, drug-facilitated assaults and other specific evidence gathering. In addition, all SVD detectives must undergo implicit bias training that covers racial, gender, anti-LGBTQ, anti-immigrant, and anti-disability biases- all of which are crucial to ensure fairness and empathy in first responders.

My third recommendation is to improve the physical plant of the borough SVD commands. The Inspector General report describes deplorable conditions in the borough SVD office. This conveys a lack of concern for survivors, may make a survivor feel unsafe and sends a signal to SVD staff that their work is less important.

Finally I ask that the NYPD leadership, the Commissioner and his leadership team, collaborate with NYC rape crisis providers in NYC on bringing about this transformation of SVD. We can assist with training, support to survivors and expert guidance. But we need more transparent and honest leadership. I recommend that the Commissioner create a separate budget for SVD that he oversees and that he report periodically on improvements in SVD to these committees of the City Council. For the first time in NYPD's history, there is a group of advocates looking at closed sexual assault cases and giving detailed advice on investigator approaches and conduct. This helps advocates understand the role of law enforcement but also pushes an internal culture change regarding attitudes towards survivors. This is only one of several innovations that puts SVD ahead the country. Rather than hide the inner workings of SVD, the NYPD leadership needs to embrace the changes that are taking place and support them.

In conclusion, New York City owes the following to survivors of sexual violence:

- **To be believed when they report a crime of sexual violence**
- **For the investigative interviews to be carried out in a way that understands the biological effects of trauma**
- **For investigations to be completed thoroughly and competently, showing probable cause in every case passed to the District Attorney's office**
- **Detective skills that keep the survivors up-dated, engaged and willing to cooperate in the investigation of their case.**



**Girls for Gender Equity Testimony
The New York City Council's
Committee on Public Safety and Committee on Women
T2018-1641, T2018-1709, T2018-1711, and T2018-1710**

**Léa Jean-François
April 9, 2018**

Good Afternoon, Committee Chair Rosenthal and Richards and members of the Committee on Women and Public Safety. My name is Léa Jean-François I am 18-years-old and a first year at Barnard College of Columbia University. Today, I represent the Young Women's Advisory Council at Girls for Gender Equity. Girls for Gender Equity (GGE) is a Brooklyn-based coalition-building and youth development organization that acts as a catalyst for change to improve gender and race relations and socio-economic conditions for our most vulnerable youth and communities of color.

Through challenging structural forces that work to obstruct the freedom, full expression, and rights of cis and trans young women of color and gender non-conforming youth of color, we are committed to ensuring the rights of sexual assault and gender-based violence survivors while also ensuring police accountability.

Women of color experience higher rates of sexual violence than their white counterparts and it has been well-documented that trans and cis Black women, girls, & gender non-conforming (GNC) people are disproportionately criminalized for self-defense. After experiencing sexual abuse for multiple years I decided to go to the NYPD when I was fourteen. I walked up to an officer on the sidewalk in midtown and asked where should I go to report this, and was told by one officer that if I do not share in detail to him everything that happened there was no point in going to the NYPD – he did not help me.

Then later during the school year while I was at Curtis High School, which is a highly policed inner city public school, I gained enough confidence to reach out to one of the NYPD officers



that was in the school. I was told to figure something out or talk to my parents and then the officer told me to go to class. **A move to expand the number of Special Victims Division detectives must be couched in a broader commitment from the New York Police Department to *prioritize* sexual and gender-based violence.**

There is also little to no transparency or accountability for NYPD officers who commit sex crimes. Who are survivors supposed to go to when the person who has hurt them is an NYPD officer? The lack of responsiveness from patrol officers and the downgrading of cases or refusal to send cases to the Special Victims Division is an opportunity to call for greater NYPD transparency and accountability for officers who harm people in communities. Funding for proposed trainings should come from reallocating funds within the New York Police Department (NYPD), **not by securing more** funds for the agency. Increasing resourcing to an agency with a budget of ~~\$6.2~~ ^{\$5.57} billion dollar agency has not demonstrated evidence of increased safety for women & people of TGNC experience and/or communities of color.

The report from the Office of Inspector General, An Investigation of NYPD's Special Victims Division - Adult Sex Crimes, demonstrates that there is a lack of leadership and commitment to taking sexual assault seriously in the New York Police Department and we ask you to please help change that so we can grow up safely in our communities.

**New York City Council Hearing
Committee on Women
and
Committee on Public Safety
Oversight - Examining NYPD's Response to Sex Crimes
April 9, 2018**

**Testimony Submitted by
Lynn Hecht Schafran, Esq.
Senior Vice President of Legal Momentum:
The Women's Legal Defense Fund
and
Director, National Judicial Education Program
to Promote Equality for Women and Men in the Courts**

My name is Lynn Hecht Schafran. I am an attorney and Senior Vice President of Legal Momentum: The Women's Legal Defense Fund. For more than thirty years I have been Director of Legal Momentum's National Judicial Education Program to Promote Equality for Women and Men in the Courts, known as NJEP.

Many years ago I was Vice Chair and Counsel of the New York City Commission on the Status of Women.

Legal Momentum, established in 1970, is the nation's oldest, non-profit legal advocacy organization for women, www.legalmomentum.org. Legal Momentum advances the rights of all women and girls by using the power of the law and creating innovative public policy. For example, beginning in 1990, Legal Momentum worked closely with then-Senator – now former Vice President -- Joseph Biden to draft and pass the landmark Violence Against Women Act and its subsequent reauthorizations, which seek to redress the historical inadequacy of the justice system's response to sexual assault and domestic violence.

Legal Momentum's National Judicial Education Program, www/njep.org, of which I am Director, was established in 1980. NJEP provides education about gender bias in the courts and the justice system for judges and justice system professionals nationwide, with a particular focus on sexual assault, the intersection of sexual assault and domestic violence, and the neurobiology of trauma.

Thank you to the New York City Department of Investigation (DOI) for its investigation and its report, “An Investigation of NYPD’s Special Victims Division—Adult Sex Crimes,”¹ that prompted this hearing. Thank you to the New York City Council Committee on Women’s Issues and Committee on Public Safety for convening this hearing and for proposing much needed legislation in response to DOI’s recommendations, which build on those of the Police Commissioner’s 2010 Sex Crimes Working Group.

I explained earlier that NJEP provides education for judges and justice system professionals about gender bias in the courts and about sexual assault, the intersection of sexual assault and domestic violence, and the neurobiology of trauma. It is in the context of these aspects of NJEP’s work that I will comment on DOI’s report, on NYPD’s response to sex crimes, and on the legislation that the Committee on Women and the Committee on Public Safety is proposing.

Gender Bias, and the Department of Justice 2015 Guidance, Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence

To begin with the issue of gender bias, I want to place DOI’s report in a larger context.

On December 15, 2015 the U.S. Department of Justice, then headed by Attorney General Loretta Lynch, former U.S. Attorney for the Eastern District of New York, issued a guidance titled *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*, <https://www.justice.gov/opa/file/799366/download>

The history of this guidance shows how profoundly concerned people are about this issue. In 2009 representatives from a small group of women’s rights organizations – many of us from New York -- began meeting with representatives from the Justice Department to urge DOJ to issue a guidance to law enforcement about how gender bias undermines the policing of domestic violence and sexual assault. Ultimately, in July 2015, we delivered to Attorney General Lynch a letter signed by 186 local, state, and national organizations, once again urging the Department of Justice to issue a guidance on gender-biased policing, which, later that year, it did.

¹ Published on March 27, 2018.

“Gender-biased policing” is a term used to capture certain law enforcement practices that are rooted in conscious or unconscious gender stereotypes, have a discriminatory and disproportionate impact on women, and subject women and LGBT individuals to harassment, violence, or hostility by police officers.

Gender-biased policing is most often a problem in cases of domestic violence and sexual assault. Examples include:

- Failing to properly investigate or misclassifying sexual assault complaints
- Failing to test sexual assault kits timely or at all
- Discounting intimate partner sexual violence in same-sex couples
- Failing to hold accountable police officers who used their position to sexually harass or assault

Gender-biased policing often results from a lack of accurate, substantive knowledge about the many aspects of sexual violence. For example, a detective who did not order a particular rape kit analyzed because he assumed that a woman who did not scream for help while being gang raped at a college party wanted it. He had never heard of a trauma-induced brain state called tonic immobility in which the victim is aware of what is happening but paralyzed by fear, incapable of speech or movement.

Staffing the Special Victims Division:

Police departments in several cities have entered into consent decrees with the Department of Justice when federal investigations revealed unconstitutional policing practices with respect to sex crimes, some caused in part by staffing deficiencies.

According to DOI’s report, NYPD has under-staffed and under-resourced the Special Victims Division (SVD) for at least nine years, and directed SVD to not investigate all misdemeanor sexual assaults. This is a shocking directive given that misdemeanor sexual assaults include such serious crimes as sexual intercourse and oral and anal sexual contact with another person without that person’s consent.²

In a section of its report titled “De-prioritization of Certain Kinds of Sex Crime Investigations” DOI states:

² New York State Penal Law, Sec. 130.20

“As a result of chronic understaffing, SVD does not have the resources to change a longstanding, but problematic, Detective Bureau policy that “acquaintance” and “domestic” rape cases be enhanced [i.e., investigated] by local precincts – not SVD – if a summary arrest is made by patrol personnel. This is despite acquaintance and domestic rapes making up almost 90% of the reported rapes each year in New York City.” (page 28)

Cases investigated by local precincts are investigated by police personnel with no specialized training in the unique aspects of sexual assault crimes and how to conduct the kind of victim-centered, trauma-informed investigations that develop the most useful information and keep the victim engaged in the investigation, which promotes public safety. Even before the investigation, *patrol officers are often the first responders*. They may subscribe to the kinds of gender-based stereotypes that the Department of Justice guidance specifically condemns.

The importance of providing training for patrol officers, as recommended by DOI in Recommendation #5 and as required in Intro 0444-2018, proposed by Councilwomen Cumbo, is demonstrated by the widely reported 2014 case of Emma Sulkowicz, the Columbia University student who, dissatisfied with the school’s handling of her rape complaint against another student, carried around a mattress in protest.

After being repeatedly asked why she did not go to the police, she made that call. The comments made by the first responder officers, assuming they were accurately reported, are extremely concerning.³ According to the press reports, the responding officers demonstrated a total lack of respect for the victim, a lack of knowledge of the dynamics of sexual assault, and overt hostility to women who report sexual assault.

³ Al Jazeera America, Claire Gordon, “Why College Rape Victims Don’t Report to the Police,” May 19, 2014, <http://america.aljazeera.com/watch/shows/america-tonight/articles/2014/5/19/why-college-rapevictimsdonatgotothepolice.html>; The Columbia Spectator, Emma Bogler, “Frustrated by Columbia’s Inaction, Student Reports Sexual Assault to Police,” May 16, 2014, <https://www.columbiaspectator.com/news/2014/05/16/frustrated-columbias-inaction-student-reports-sexual-assault-police/>

Their comments were reported to include, “You didn’t call the police? Most women would have called the police.” “You invited him into your room. That’s not the legal definition of rape.” “So you don’t remember what shoes he was wearing? Oh, most women do.” One officer, speaking to the friend who accompanied Ms. Sulkowicz to the station, reportedly stated, “Of all these cases, 90 percent are bullshit, so I don’t believe your friend.”

With respect to NYPD’s attitude toward so-called “domestic” rape, this is apparently rape in the context of domestic violence. As co-author of the National Judicial Education Program’s extensive web course, *Intimate Partner Sexual Abuse: Adjudicating This Hidden Dimension of Domestic Violence*, available free at www.njep-ipsacourse.org, I want to explain what a serious mistake it is not to treat intimate partner sexual violence with the utmost seriousness

Why does NYPD leadership minimize the importance of intimate partner sexual violence? Do they subscribe to the mistaken assumption that because couples in intimate relationships are used to having consensual sex, forced sex does little psychological damage? In fact, intimate partner sexual assault inflicts the greatest psychological damage because it is a profound betrayal of trust by the person whom the victim feels she should be able to trust the most. Additionally, intimate partner rape, is usually repeated rape, and often results in significant physical injury not only in the short term, but as chronic, long term pain and ill-health.

Intimate partner rape should be of particular concern to law enforcement because it is an important predictor of lethality and near lethality. John Hopkins Professor Jacquelyn Campbell, the country’s leading authority on domestic violence femicide, has found that a batterer who subjects his partner to forced sex as well as physical violence is more likely to kill her than the batterer who inflicts physical violence only.⁴ Professor Campbell’s Danger Assessment, utilized by victim advocates and law enforcement across the country, includes a question about forced sex. The short form risk assessment instruments that communities are developing for law enforcement to utilize when called to a domestic violence case increasingly include a question about forced sex because it is understood to presage lethality for the victim. and possibly for her children and others.

In sum, as recommended by DOI, nonstranger and intimate partner rape must be investigated by the SVD, by personnel with the kind of training repeatedly

⁴ Jacquelyn Campbell, *Danger Assessment: Validation of a Lethality Risk Assessment for Intimate Partner Femicide*, (2009) 24 J. Interpersonal Violence 653, John Hopkins University.

emphasized as necessary in DOI's report, and that training must include specific training about so-called "domestic" rape. See DOI Recommendation #7.

Intimate partner rape must also be addressed in the police academy training mandated by Intro 0444-2018, proposed by Councilwomen Cumbo. Making culturally-competent training about trauma-informed interactions with victims of sex crimes an integral part of police academy training is essential. See DOI Recommendation #6.

DOI's report states, "*The failure to treat acquaintance rape and domestic rape as crimes on par with stranger rape is unacceptable in modern law enforcement.*" ((Page 2). Given that "acquaintance and domestic rapes mak[e] up almost 90% of the reported rapes each year in New York City," and that the significant majority of adult sex crimes victims are women, when these categories of crime are treated so dismissively by NYPD leadership, this is gender-biased policing, exactly the kind of police response to sex crimes decried in the DOJ guidance on *Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence*.

The Neurobiology of Trauma and Its Implications for Sex Crimes:

Turning to the neurobiology of trauma, neuroscience is a subject that has long interested me. In 2000, which is nearly twenty years ago now, I introduced a unit on the neurobiology of trauma into the National Judicial Education Program's model training curriculum, *Understanding Sexual Violence: The Judicial Response to Stranger and Nonstranger Rape and Sexual Assault*, which I had co-authored in the early 1990s. By 2000 I saw that there was enough information from neuroscience that NJEP could go beyond providing judges with factual information from the social sciences – e.g., the vast majority of rapes are committed by someone known or related to the victim – and provide them with information from a "hard science," that explains the behavior of sex crime victims that baffles those without an understanding of how trauma impacts the brain.

And I always note that this impact is not specific to women or to victims of sexual assault. The impact is the same for anyone in a traumatic situation or being subjected to extreme high stress, such as a police officer in the midst of a critical incident.

Neuroscience explains what appear to be counterintuitive behaviors. Why do many rape victim freeze rather than fighting and yelling? What is happening when a

victim says she felt like a ragdoll as the perpetrator did whatever he wanted, and afterward felt sleepy? What is happening when victims report experiencing the assault as if they are watching it from a distance? Why do some victims have a flat affect? Why can't every victim recite a minute-by-minute, detailed narrative of every aspect of the assault, and recite the identical narrative every time she has to repeat it? After all, aren't inconsistent statements hallmark evidence of lying? Judges have found this information fascinating. For those interested in learning more about these questions I have attached a resources sheet with references to easily accessible articles and YouTube videos.

I commend the Special Victims Division for bringing this information to its personnel by providing training from the Certified Forensic Experiential Interview (FETI) team mentioned in DOI's report. I can attest to the capability of FETI's faculty because some of them first taught this material for the National Judicial Education Program, and others I have heard present on many occasions. FETI training is not presented in the abstract. Participants practice trauma-informed interviewing during the training.

FETI's Director of Training, former Detective Carrie Hull who developed the You Have Options program also mentioned in the DOI report, tells me that, like judges, police officers find this information fascinating. Many have emailed her to report that when they put this trauma-informed interviewing technique into practice in the field it makes their job easier, because victims are able to remember so much more than when they are interrogated as if they were suspects, which has long been the standard approach of police and detectives everywhere.

As the DOI report observes, FETI training is not all that is needed, but it is a critical step. Per DOI Recommendation #5, Councilwoman Helen Rosenthal's bill T2018-1710 requires NYPD to provide comprehensive training for the SVD on the most effective means of investigating sex crimes, which involves understanding the specific needs of sexual assault victims. FETI training is an excellent beginning.

Conclusion:

DOI's report frequently references the NYPD 2010 Sex Crimes Working Group and attaches the Working Group's Final Report to DOI's 2018 report as Appendix A. Several of the Working Group's 2010 recommendations are repeated in DOI's 2018 report:

- assign all sex crimes to SVD
- increase SVD staffing to meet the need
- enhance training.

It is dispiriting to learn that NYPD has utterly failed to implement the recommendations of its own 2010 Sex Crimes Working Group, so that eight years later we must revisit them. I hope that DOI's investigation and report, coupled with the legislation proposed by the City Council Committee on Women and Committee on Public Safety, will lead to full implementation of these vital recommendations. New York City's sex crimes victims deserve no less.

Resources list is on pages 9-10

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Lynn Hecht Schafran, Esq., Director
National Judicial Education Program (NJEP) – Legal Momentum
New York City Council Hearing - Committee on Women and Committee on Public Safety
Oversight – Examining NYPD’s Response to Sex Crimes
April 9, 2018

RESOURCES

Neurobiology of Trauma and the Implications for Sexual Assault Cases

1. End Violence Against Women International, *Understanding the Neurobiology of Trauma and Implications for Interviewing Victims*, Christopher Wilson, Psy.D. Kimberly A. Lonsway, Ph.D. Sergeant Joanne Archambault (Ret.), Contributions by James Hopper, Ph.D. (November 2016), <http://www.evawintl.org/Library/DocumentLibraryHandler.ashx?id=842>.
2. Dr. James Hopper, *Neurobiology of Trauma and Sexual Assault*, https://www.youtube.com/watch?v=dwTQ_U3p5Wc&t=57s.
3. Dr. David Lisak, *Neurobiology of Trauma*, <https://www.youtube.com/watch?v=py0mVt2Z7nc&t=868s>.
4. Dr. James Hopper, “Why Many Rape Victims Don’t Fight or Yell,” *The Washington Post* June 23, 2015, https://www.washingtonpost.com/news/grade-point/wp/2015/06/23/why-many-rape-victims-dont-fight-or-yell/?utm_term=.58d514979d28.
5. Dr. James Hopper and Dr. David Lisak, “Why Rape and Trauma Survivors Have Fragmented and Incomplete Memories,” *TIME*, December 9, 2014, <http://time.com/3625414/rape-trauma-brain-memory/>.
6. *Sexual Assault: A Trauma Informed Approach to Law Enforcement First Response*, <https://www.youtube.com/watch?v=gtWD1XJrhNo>. An instructional video in two parts: “Part I – How Trauma Impacts Victims’ Behaviors, Memory and Cognitive Abilities” and “Part II – How to Use What We’ve Learned to Respond More Effectively in Sexual Assault Cases.”

Intimate Partner Sexual Abuse (“Domestic” Rape per NYPD Terminology)

1. Lynn Hecht Schafran, “Risk Assessment and Intimate Partner Sexual Abuse: The Hidden Dimension of Domestic Violence,” *Judicature*, January-February 2010, at 161, <http://www.legalmomentum.org/resources/risk-assessment-and-intimate-partner-sexual-abuse-hidden-dimension-domestic-violence>

2. National Judicial Education Program Web Course – *Intimate Partner Sexual Abuse: Adjudicating This Hidden Dimension of Domestic Violence Cases*, <http://www.njep-ipsacourse.org>. A flyer explaining the web course's content, modules, and interactive exercises can be found at <https://www.legalmomentum.org/sites/default/files/reports/IPSAflyer9%206%2012pdf.pdf>.

Judicial and Multidisciplinary Education Resources

1. *Judges Tell: What I Wish I Had Known Before I Presided in an Adult Victim Sexual Assault Case*, the National Judicial Education Program at Legal Momentum (2011, 2016) <https://www.legalmomentum.org/resources/judges-tell-what-i-wish-i-had-known-i-presided-adult-victim-sexual-assault-case>.
2. National Judicial Education Program Sexual Assault Resources Flyer, which provides detailed descriptions of and links to NJEP's suite of online model curricula about adult victim sexual assault and related resources, <http://www.legalmomentum.org/resources/national-judicial-education-program-resources-and-materials-adult-victim-sexual-assault>.
3. National Judicial Education Program Resources on Sexual Assault and the Intersection of Sexual Assault and Domestic Violence, which provides links to NJEP's Teen Dating Violence Information and Resources Sheets, recent NJEP publications, DVDs available for purchase, and webinars <http://www.vawaandcourts.org/~media/Microsites/Files/VAWAWorkshop%202015/NCSC%20Website%20Flyer%20-%20NJEP%20Resources.ashx>.

Impact of Language Choices When Describing Sexual Violence

1. National Judicial Education Program online curriculum on language usage: "Raped or 'Seduced'? How Language Helps Shape Our Response to Sexual Violence," <http://www.legalmomentum.org/raped-or-seduced-how-language-helps-shape-our-response-sexual-violence>.



**Mount
Sinai**

SAVI

Sexual Assault and Violence Intervention Program

April 9, 2018

Mount Sinai's Sexual Assault and Violence Intervention (SAVI) Program respectfully submits the following testimony regarding criminal justice response to sexual assault crimes in New York City.

My name is Angela Fernandez and I am the Assistant Director of Mount Sinai's Sexual Assault and Violence Intervention (SAVI) Program. SAVI has been providing support to survivors of sexual assault, intimate partner violence (IPV), and trafficking in New York City (NYC) for more than thirty years through free and confidential trauma-informed therapy, emergency room advocacy, and community outreach and training.

I would like to thank you both, Chairs Rosenthal and Donovan, as well as the esteemed Council Members of the Committees on Women and Public Safety, for providing this opportunity to share our thoughts with you about the recent OIG Report and bills being raised today in response to the report's findings related to the New York City Police Department (NYPD) and Special Victims Division (SVD), specifically.

As a survivor-centered advocacy program, we understand how the complexities of trauma can impact a person over a lifespan. It is why, very often, a person does not necessarily seek out services, file a police report, or present in the emergency department right after an assault. When you also consider the infinite number of other life circumstances that influence the decisions any of us make on a daily basis, it becomes even more complex and confusing, not just for the survivor, but for all of us who are trying to improve upon the systems that directly impact survivor's experiences and outcomes. Even with all of the variables that makes each person's experience unique, we know that trust is a key component when helping someone on the path to healing - trust with oneself, trust with others, and trust in those aforementioned systems.

Under the Special Victims Division (SVD) leadership of Deputy Chief Michael Osgood, there have been vast improvements in bridging the historical gaps that have existed between advocacy programs and law enforcement, thus improving the trust and collaborative relationships among systems that normally worked in silos. A few examples, but not an exhaustive list, of these improvements are as follows:

- Implementation of the Forensic Experiential Trauma Interview (FETI) Training Program for all SVD Detectives
- Inviting various advocacy group members to participate in a closed case sex crimes review
- A review process to ensure correct complaint classification
- SVD/Advocate partnership committee meetings
- Embedded protocols to ensure all “unfounded” cases are accurately classified
- Allowing SVD Detectives to participate in 40-hour DOH-certified Volunteer Advocacy Training, hosted by various advocate programs in NYC

In less formal ways, Chief Osgood has changed the culture in which detectives have interacted with members of outside organizations in the past, by being available to survivor support organizations, 24/7, with any concerns, questions, or issues that arise involving law enforcement/survivor interactions. This has been an example from which other SVD detectives have taken, so there is now on-going communication across the various disciplines serving survivors that transpires organically, benefiting all involved. We are grateful to the many dedicated men and women in the Special Victims Division who work tirelessly, sometimes for days on end, for an issue they deeply believe in.

With all of this said, we are here today because there is much more work to be done for survivors of sexual assault in NYC and for the NYPD division that has been tasked with the challenge of responding to these cases. SAVI respectfully makes the following recommendations to improve upon the criminal justice response that currently exists:

- We fully support the recommendation made in the OIG report regarding the need for an increase in staffing in all SVD adult squads and want to emphasize the necessity that *all* sexual assault cases receive the investigatory expertise and trauma -informed approach SVD detectives provide as opposed to precinct officers.
- Management of caseloads by establishing best practices within the NYPD for SVD detectives is imperative for the survivors they are serving and for sustaining a robust Special Victims Division. This would allow for the attention to detail that is required for these cases, the extra time it takes to work with someone that has experienced trauma and reduces the likelihood of burn out (and vicarious

trauma) experienced by detectives. These issues can sometimes create a barrier to being able to establish the trust that is crucial for survivors to be able to participate in the criminal justice process.

- Focused and targeted training and upgraded technology would be very beneficial to survivors in order to ensure the protection of privacy, provide realistic expectations by an accurate case management system, and further transparency about statistics on sex crimes in NYC.
- Incorporate a comprehensive core training program on sexual assault in the Police Academy to ensure all officers receive a baseline knowledge on the complexities of these crimes.
- Identify the necessary funding streams to allow for the recommendations made in the OIG report as a baseline for improvements. Without the necessary resources to support the recommendations made in the OIG report and the bills being proposed today, it would be unrealistic to think we can make much progress without a cost to survivors and the detectives called upon to provide criminal justice in our city.

In closing, I'd like to thank you for your time and commitment to ensuring the criminal justice response for survivors of sexual assault receives the necessary support and resources needed to advance forward.

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Testimony before the New York City Council

April 9, 2018

Jane Manning – Director of Advocacy, Women’s Justice NOW

My name is Jane Manning, and I represent Women’s Justice NOW. We provide direct services to survivors of sexual assault, and we collaborate with our partner organization the National Organization for Women. I am also a former sex crimes prosecutor.

We want to thank the NYC Department of Investigation, which did New York City a profound service with its exhaustively researched (3/27) report. Based on my day-to-day experience working for survivors, the Department of Investigation report got it exactly right. The NYPD Special Victims Division is understaffed and underresourced, and too many of its investigators have little to no experience. Victims are paying the price, and so is public safety.

Why isn’t sexual assault being addressed with more adequate resources? The best answer to that question was suggested by a retired Special Victims detective who said to me, *if you’ve never worked on these cases, you have no idea how labor intensive they are*. He’s exactly right. The work involved in properly investigating a rape case is not comparable to a robbery case or a burglary case, it’s comparable to a homicide. And rape cases should be staffed accordingly. Yet, as the DOI report reveals, the caseloads in Special Victims are 20 times higher than the caseloads in homicide! We’re not talking about caseloads that are a little too high, we’re talking about caseloads that are exponentially too high.

Moreover, the investigators sent to Special Victims are often not experienced investigators. In our day-to-day work, we see the consequences of this. In one of my cases, the investigator failed to show a photo array to three key eyewitnesses who saw the suspect shortly before the victim was attacked and could probably have led investigators to him. In another case, crucial video footage was not secured. In another, the detective failed to spot classic signs of a drug-facilitated sexual assault, which is a growing scourge in our city. In all of those cases, the investigators were sent to Special Victims without adequate experience and training.

These problems are fixable. And the good news is, the makings of that solution are already there. The DOI report makes this critical point: that the sources interviewed by the DOI “spoke highly of the personal dedication and work ethic of Special Victims Division officials, detectives, and investigators,” and added that “Special Victims Division leadership was doing its utmost in the face of unrealistic demands.” This good news, which will be verified by any knowledgeable advocate in New York City, means that the potential for vast improvement is already there, right in the Division, if the Division gets the influx of support and resources it needs.

First, the NYPD must increase the number of detectives assigned to Special Victims by at least the numbers called for in the DOI report, which would more than double the number of detectives assigned to adult sex crime squads. Second, the NYPD must ensure that all detectives assigned to Special Victims are experienced detectives who are strongly motivated to investigate sexual assault. Third, the NYPD must enhance opportunities for grade promotion within Special Victims, in keeping with an elite bureau, so that the Division will be an attractive assignment drawing the best detectives. The DOI report suggests a ratio of 20% first grade detectives, 40% second grade detectives, and 40% third grade detectives. And fourth, the NYPD must increase the quantity and quality of training provided to Special Victims detectives, including training on best practices, forensic interviewing, countering rape myths, and dispelling implicit bias including biases based on gender, race, LGBTQ identity, and immigration status. Because the most marginalized groups are the least likely to report sexual assault and the most likely to have negative encounters when they do.

New Yorkers deserve an NYPD Special Victims Division that stands with survivors, keeps all New Yorkers safe, and wins the confidence of all our communities. Thank you to the New York City Council for holding this hearing today, to engage all of us in a citywide collaboration to build a Special Victims Division we can be proud of.



Committee on Women's Issues
Christopher E. Bromson Testimony
April 9, 2018

Council member Rosenthal and members of this committee, thank you first and foremost for your commitment to improving the lives of women in our city, and specifically for your attention to the needs of sexual assault survivors.

The Crime Victims Treatment Center was the first rape crisis program in New York City, and since 1977 has led the way in the progressive treatment of survivors of sexual violence. There are few things in this world more horrifying than a sexual assault. It is a violation of the most intimate parts of one's self.

And so when a survivor makes the courageous decision to report this most devastating crime, this crime that nearly always carries with it an undeserved yet overwhelming sense of shame, those who respond have a responsibility to do so with respect, with openness, and with a knowledge of what happens to a person and their body after they are violated in the deepest of ways.

At the Crime Victims Treatment Center, we work with nearly one thousand survivors of sexual violence each year, many of whom choose to make a report to law enforcement. We are with them through that process, and thus we are given unique access to all aspects of their experience. There is no doubt that the New York City Police Department's response to sexual assault has a long way to go before the community of advocates and survivors can say with full confidence that every survivor will have the experience they deserve when making a report. The number of detectives assigned to the Special Victims Division is too low. Though the division is staffed with many good detectives, an average case load of 93 renders it impossible to give each survivor the attention necessary. Detectives and officers also need more training about how trauma manifests in a person. Asking her if she's sure she's "not making a mistake" after she shares her story for the first time does not display an understanding of even the most basic levels of trauma.

Things like this are still happening, but they're happening less and less thanks to eight years of the leadership from Chief Michael Osgood. Chief Osgood has cultivated a strong and mutual respect between advocates and law enforcement, which was not there before. He has instituted regular meetings with advocates, is a consistent presence at borough-wide sexual assault task forces, and has created an open door policy for feedback, both positive and negative.

Over the past three years, CVTC has hosted twelve Special Victims Detectives at our annual Rape Crisis and Domestic Violence Advocate Training. Three years ago, Chief Osgood called asking that his detectives be allowed to attend— an unprecedented gesture of collaboration from an SVD Chief. We agreed, on the condition that they participate as fully as every other Advocate in training. That meant LOTS of role play, acting as both survivor and advocate. And for three years they've done it fully. That training has a way of forging bonds, and after 40 hours being side by side, our Advocates have a better understanding of how the detectives work, and those detectives embrace the importance of a Rape Crisis Advocate's presence. The result has been a better experience for survivors in a moment of crisis.

This idea is simple, but its effects have been profound. Survivors of sexual assault benefit from collaboration. When the systems they have no choice but to interact with, know how to interact with each other, the journey from hospital, to precinct, to rape crisis program, to the DA's Office can become one focused on allowing that person to heal.

The Special Victims Division needs the full support of NYPD leadership. We are at a turning point, and NYPD has the opportunity to revolutionize the way a police department responds to the needs of sexual assault survivors. An increase in reports of sexual assault means that we are doing something right; it means that the police department is earning the trust of survivors. Continuing to use FETI training, hiring more detectives, and broadening the department's understanding of trauma will increase that trust.

CVTC supports the intros of Council members Cumbo, Rivera and Rose, and we appreciate the leadership of this committee. We look forward to continuing our work together, improving the experience of survivors in the City of New York. Thank you.

Testimonial to the NYPD: On Sexual Assault
Desdemona Dallas Meck
April 9th, 2018

In the summer of 2010, three months after moving to New York City, two men attempted to rape me in the Bronx. At the time I was just 22 years old. A few hours after the assault I received a rape kit and went to the Harlem precinct to report the crime.

The detective at the precinct asked me a number of routine questions, and wrote down my statement. She told that I'd have to learn to be smarter in New York City, that I should toughen up, and in the future not be so nice to strangers. She went on to ask me if I was positive I hadn't somehow made it seem as though the sex was something I had wanted.

From the beginning the detective's reaction made me feel shameful, she treated this violent crime as though it was simply a consequence of a young woman living in a dangerous city. Her view of the case also affected the perception my close friends had of the incident. They began to believe the violence I endured must have somehow been of my own creation.

A few days after my initial statement she called me into her office. There, I identified both assaulters from a number of mug shots. Over speakerphone, while the detective listened in on a controlled call, I talked to the men who had attempted to rape me.

After hearing the two phone conversations, the detective deterred me from bringing the men to court. She explained to me that without hard evidence from cameras or otherwise, and no clear confession, it would be a challenging case. She seemed confident in her belief that spending more time on the case would be a waste.

At the time, when the detective told me this, I was in no position to fight for myself. I was young, traumatized and exhausted. I was tired of talking about what had happened to me, knowing there was no one standing on my side. The detectives' response to my case left me feeling alone, and without a sense that there was anyone who could help me bring justice to this violence.

Shortly after my experience with the NYPD I left New York and tried to forget everything that had happened. For years I never talked to anyone about the assault, I kept silent, holding onto the shame the detective had instilled in me from the beginning.

As time went by I felt more and more curious about the case. I began wondering why the detective had seen my case this way. I wanted to know if something more could have been done.

In April of 2016 I went to the NYPD office and requested my records, they denied me access and told me I would need a lawyer. About a month later I found a lawyer who agreed to work with me. He sent the NYPD office a letter, requesting the records. Their response stated that

under Section 50(b) of the New York Civil Rights law, there would be no third parties given access to these documents. I then went on to write my own letter to the NYPD, which received the same response. In July of 2017 I submitted a F.O.I.L application. The response to this application stated that I would receive my files within 90 days, however I still have seen nothing.

I would like clarity around my case. I would like to know if the detective was correct in her assumptions, and if not, I'm curious what else could have been done. Until I can access my own case files I will never know. I will never understand why she made the decisions she did and if she was justified in her actions.

In 2010 and again over the past two years my interactions with the NYPD have been triggering and retraumatizing. The lack of training, sensitivity, and the underlying assumption that these cases are in some way the fault of the victim, results in devastating consequences for survivors. It shouldn't be the role of traumatized victims to ask the NYPD to do their job correctly. But here I am telling my story yet again in hopes that someone else will be saved from the emotional trauma I experienced while working with the NYPD.

This is the written testimony of Racheal, a survivor of sexual assault.

In 2014, I was sexually assaulted by a man I was casually seeing. The night I broke things off, he became extremely violent. For 8 hours, I was held captive in my own room, surrounded by shards of broken glass. For 5 of those hours, I was repeatedly beaten and sexually assaulted. By the time he relented, I had a sprained hip, broken rib, and a severe concussion.

When I met with the detective at the SVU, he was immediately skeptical—even AFTER I extracted a full confession from my rapist. That should have been enough to make an arrest. But it wasn't.

Instead, the police scoffed and told me, "He's not going to jail for this." I assured them that if he hurt me, there's nothing stopping him from hurting someone else. They put out a warrant, but never arrested him. That is, until one month later, when he attacked another woman. Throughout that month, the police told me my rapist was a hard guy to catch. But when he attacked another woman—a stranger—they were miraculously able to identify, locate, and apprehend him the very next day.

In the following months, I learned that my detective was being investigated for, and admitted to, molesting another rape victim. The NYPD was aware of this, and still assigned this sexual deviant to work on sexual assault cases.

After requesting my case files, I saw that, despite telling me he made several arrest attempts, the detective had only made one. And this attempt wouldn't have happened had I not called his supervisor asking why my rapist was still freely roaming the streets—3 weeks after my assault.

Also in my case files, the detective left out crucial information from my statement. Because of this, the sentencing followed a similar lack of urgency. By the time I faced my rapist in court, my trauma had been watered down to the same legal classification as an unwanted groping. This matters because my rapist isn't serving additional time in prison for what he did to me. And he left that courtroom believing what he did to me wasn't wrong. The justice system proved him right

When I voiced my concerns to the NYPD, they told me, "This is just how things work." In other words, this was normal to them. That's not okay.

The point isn't to shame the NYPD. We are all on the same side. Our point is to provide purposeful feedback so we can affect meaningful reform. After meeting with Commissioner O'Neill last January, I'm confident that he does want to bring positive change to the force. But as seen in the recent DOI report—and from the accounts of countless victims whose cases have been botched—there's still so much to be done. Together, we can make sure no other survivor has to go through this mess. This is the only outcome we can accept. Thank you for your time.

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Thank you Committee Chair Rosenthal and members of the Committee on Women for all you do.

The Problem

#MeToo and #TimesUp have focused a glaring light on sexual assault and sexual harassment. Now, it's time for the solution!

New York's laws are not clear on consent, and this confusion contributes to rape mentality. Rape mentality is the upside down notion that sex is an entitlement and consent is a privilege. In fact, sex is a privilege and consent is an entitlement.

Most folks, including NYPD, believe that the word, "consent," means agreement. In fact consent is one very specialized type of agreement... it's freely given, knowledgeable and informed agreement, #FGKIA. **And consent is the only form of agreement that has the weight to make sexual conduct legal.**

There are other forms of agreement that often take place in sex that don't carry the same weight. Our police, prosecutors, judges and juries need to know the difference.

There's ASSENT- which means *agreement on the face of it*.

Larry Nassar, the doctor for the US Olympic Women's Gymnastics team, pretended to medically treat his patients in order to molest their private parts for his sexual pleasure. Many of his victims were under age, therefore, capable only of assenting, not consenting to his actions, and his actions, themselves, were made without freely given, knowledgeable and informed agreement, therefore, no victim, regardless of their age could be said to have consented.

There's ACQUIESCENCE- which means *agreement under duress*.

Harvey Weinstein is accused of using his high position, in which he had control over the careers of many actresses, to expose himself and demand sexual favors. They were afraid of what he could do to them. While they could acquiesce, they could not consent because their agreement was coerced, not freely given.

Brock Turner, a Stanford University swimmer, forced sex on an intoxicated woman. Someone drunk or drugged is not capable of consent, only acquiescence. They would be incapable of freely giving agreement while their decisions are influenced by drugs or alcohol.

Donald Ward, a student at Purdue University in Indiana, climbed in bed with a woman who'd fallen asleep in her boyfriend's dorm room. The room was dark. In her semi-conscious state, she mistook Ward for her boyfriend. Ward engaged her in sex. When she discovered the truth, she felt horrible defiled and went to the police. Ward admitted he'd tricked her into sex, and he was arrested for rape. The jury acquitted him because rape by fraud or impersonation is not a crime in Indiana.

In Tennessee, Ward would have been convicted. If he'd done the same thing at Cornell, St. John's, Columbia, or Marymount Manhattan, he would not have even been arrested. I advocate for sexual assault victims and have gone to the police with similar cases. Approximately six months ago, NYPD defended doing nothing for a victim by saying, "Did he hold you down and make you do it?" In an instance when the victim knew the offender, the NYPD Sergeant said, "It's just bad sex with an acquaintance, it's not a crime." The precinct refused to take the report.

The Solution

The ItsOnUs Pledge was created in 2014 by President Obama and Vice President Biden in order to prevent sexual assault. It says, "Non-consensual sex is sexual assault." Unfortunately, this language is not the law, but it should be.

The ItsOnUs Pledge does not tell us what "consensual" and "non-consensual" means. In 2016, the American Law Institute created Model Penal Code, (MPC) which states "Consent is *ineffective* when induced by force, duress or deception." This language has been adopted into the laws of many states but the word, *ineffective* tells us what consent is not, not what it is. We need to clearly state both the language from the ItsOnUs Pledge, AND the actual definition of consent, freely given, knowledgeable and informed agreement, in the laws of NY City and NY State. Doing so will combat rape mentality today, and for generations to come.

Non-consensual sex is sexual assault;

Consent is freely given, knowledgeable and informed agreement.

Push Back

1. *"Violent rape is nothing like non-violent sexual assault."* All sexual assaults are defilement. They are the undermining of the person's right to self-determination over their reproductive organs or sexual autonomy. Violent rape is a form of sexual assault, in fact, it's the most heinous form of sexual assault.

All crimes provide stiffer penalties when violence occurs. They are considered "aggravated" offenses. For example, if an offender beats up a person to steal their wallet, the crime is charged at a higher degree than if they broke into a school locker and stole the same wallet. But in each case, a crime is charged and the victim can secure justice.

2. *"If you enforce the real meaning of consent, than even little lies become a crime." And "Puffery" is normal in attracting someone."* Fraud is the act of harming someone with lies. Until a person actually conducts sex through the use of fraud, no crime has been committed.

The size of the gun that murders someone does not determine whether a crime was or was not committed. And the type or size of the weapon of force, duress or deception, that is used to defile a victim, does not alter the fact that the victim was harmed.

In all cases in which fraud takes place, significant proof is required in order to prosecute, eliminating *de minimus* claims. And the victim needs to have a "reasonable" basis for believing the lies.

3. *But if we enforced what consent actually is, our courts would be overwhelmed with cases!"* Laws change morality! Anti-slavery laws changed society's views and today we find slavery morally reprehensible. Enforcing what "consent" actually means will do the same thing for sexual

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assault. It will enlighten society and alter society's behavior. We don't fail to deal with theft crimes at all levels and we shouldn't fail to deal with sex crimes at all levels. The only crime we overlook in our judicial system is the crime of defilement.

New York's Penal Statutes contains a specific law by which sexual assault by fraud charges should be prosecuted, but the police refuse to write reports on these cases. New York Consolidated Laws, Penal Law - PEN § 130.20 "Sexual misconduct" states: A person is guilty of sexual misconduct when he or she engages in sexual intercourse with another person without such person's consent. "Engaging in" does not require that the victim must have suffered being violently overwhelmed. But this statute is not being enforced by NYPD. I accompanied a victim to the precinct to file this type of claim, and she was refused. Sexual misconduct is a Class A misdemeanor.

On Consent

My body's not a token, not a prize,

Don't defile me with coercion, force of lies.

My body's not yours to take, it's mine to give.

My body's not your entitlement; it's where I live!

Consent is not a privilege, it's a must,

Mo matter how intensely you feel lust.

#FGKIA- Keep your rape mentality away.

#FGKIA- Sign it into law today!

Freely given, knowledgeable and informed agreement!

Good morning my name is Michael Bock. I retired from the New York City Police Department July 31, 2017. My career began June of 1992. After completing the Police Academy in January 1993, I was assigned to the 46 Precinct, patrol in the Bronx. In August of 1998 I was assigned to OCCB, Narcotics Division working in the South Bronx Initiative and was promoted to detective third grade in January 2000. In August of 2005, I was promoted to Sergeant and worked as a patrol supervisor in the 50th precinct. In April of 2006 I was transferred into Internal Affairs, Group 11 covering Upper Manhattan various precincts and units. In May of 2008 I was assigned to Manhattan Special Victims. I was given a discretionary promotion of Sergeant Detective Squad Supervisor in September 2012. In October of 2015 I was then assigned to Special Victims Cold Case DNA squad where I remained until I retired July 31, 2017.

Throughout my tenure as a Police Officer and Detective I effected over 700 arrests and conducted narcotic related investigations. As a supervisor in Internal Affairs I conducted investigations against members of the police department and participated in investigations some of which were high-profile. None of which ever prepared me for my next 9 1/2 years in Special Victims.

I just thought Special Victims was going to be like any other investigations. I quickly realized I was wrong. My thinking and perception of sexual assault investigations was not much different than how members assigned to the NYPD think today. Its part of the culture that believes the assault is either very serious or nonsense. Part of the reason for this belief can come from the disbelief of the survivors account of what occurred. To a logical person, most of the actions or inactions may not seem like reasonable reactions to the situation thus helping forge the culture of thinking. Additionally, the training for the entire department lacks explaining why this defies logic. Accusatory questions and insensitive words used while taking a preliminary report is not because officers are intentionally being disrespectful, but just part of how officers logically think and extract facts during taking crime reports quickly and efficiently. Any case that an officer is taking a report and can not see tangible evidence that a crime has occurred is treated with some skepticism, regardless of the crime. Most of sexual assaults do not involve a weapon and no visible injuries or witnesses. Therefore, uniformed training is so essential. I do not know how much training is enough to get them started, but it needs to be a continuing process to refresh and reinforced to keep them grounded.

While I was signed to Manhattan Special Victims Squad my duties at times included Citywide supervisory coverage for all five boroughs. Which means I have physically worked in each office. During my tenure, I supervised in excess well over 15,000 cases most of which have been adult sex crimes squad cases. By the mere fact I was assigned to Manhattan Special Victims, I also had the privilege of supervising some of the most sensitive high-profile cases in Special Victims. Make no mistake about it, all investigations are important and involve highly dedicated and motivated detectives and supervisors. Cases are resolved as part of a team effort with an investigative process. The dedication of

the members assigned to Special Victims in my opinion is unmatched throughout the NYPD. The example has been set with Chief Osgood and has been followed by his personnel. I personally witnessed the dedication in various forms. Examples are members continuing investigating even while off the clock. Many times, I would have investigators on their own time sitting at their desks still working on their cases. I also have witnessed investigators typing reports while off duty in their homes so as not to fall behind in their investigations. Anytime I needed to speak with another supervisor or Detective regarding cases, they've always answered their phone regardless of where they were and what they were doing. All investigators and supervisors have two to three days' worth of clothing and personal necessities in the event they catch a case that requires absolute dedication and time. I recall times where I had to force people to go home, get some rest, see their family and recharge their batteries. All of the personnel assigned to Special Victims understands the dedication level needed to investigate these cases.

The New York City Police Department attempts to make strides improving on a constant basis. In fact, I applaud some recent comments that are encouraging victims to report and the acknowledgement that sexual assaults are vastly under reported. However, I do feel the NYPD can do tremendously better in the work of sexual assaults. I have included for you to review a copy of a consent decree against the Baltimore Police Department and the University of Montana Public Safety which changes have been mandated by the Department of Justice to policy with victim sentiment management considerations. Also included are some reforms that have recently come to light in Chicago regarding sexual assaults. The progressive approach to investigating sexual assaults is not a new phenomenon but thrust into the spotlight by recent high-profile cases and many advocacy groups.

I had worked under the Commanding Officer Chief Osgood for seven years and I personally observed his positive progressive thinking on change towards victim management approached and stressing a disciplined investigative process. Numerous recommendations had been requested during his tenure to improve the overall investigative process and survivor participation. Chief Osgood has done what he can with the tools he has control over. However, a large portion of his requested improvements are beyond his control. Some of the improvements that were implemented by Chief Osgood are noted in the AG DOI report. Also noted are numerous request for additional improvements that were not met which were beyond his control to obtain. One of the current ongoing improvements is FETI training. I along with Chief Osgood attended FETI training and evaluated its validity. We both agreed that this training was necessary to enhance interviews and the overall experience of sexual assaults survivors. Until this training, there was no other training given for interviewing victims of traumatic crimes. This technique can also be used for other traumatic victims or witnesses related to other crimes. One example is the doctor shooting in Bronx Lebanon Hospital. After the incident, a Homicide Detective approached me and explained how during a witness statement he was unable to get an account from the witness due to the high level of trauma experienced. This Detective attended the FETI course and utilized it during his interview and was then able to successfully obtain detailed facts.

Under the direction of Chief Osgood, he has required working relationships between the Squads, District Attorneys, Advocacy Groups and SAFE examiners regarding cooperatively working together to solve cases. All of the parties have a vested interest in Special Victims cases and they are part of the multi discipline approach to case correctness and proactively seek the best possible outcome. All of the groups do not always agree with certain aspects of an investigation but need to

cooperatively work together for it to be successful. Chief Osgood has always reinforced this. It should be noted that the DOI AG report was not critical of the internal Special Victims management team. They were critical of the countless request from Chief Osgood to correct the external problems beyond his control.

However, one of the other vested interest areas we lack greatly is the survivors interest. We can improve the survivors experience by implementing all the recommendations. I can sit here for hours and talk about the operational aspect of Special Victims but unless you do this work you will never fully understand the complexity of issues at hand or the necessary tools needed to complete the job. I think the AG DOI report has a very good understanding of the issues after a one-year investigation. Our cases are grey and complex. They are not black and white in comparison to other crimes such as robberies and homicides. A complete investigation is often needed to determine if it even fits the definition of a penal law crime. Sadly, a portion of our investigations either do not or are hard pressed to reach probable cause.

I have fully read the AG DOI report and recommendations they have requested. I believe the recommendations are very good and will vastly improve the operational aspect, survivors experience and case correctness. The survivor experience should be a victim sentiment management model. This should improve the victim participation rate in Special Victims cases while also meeting case correctness. Meaning, investigations are thoroughly and properly conducted without shortcuts. Although the work gets done, it can be done much better if the recommendations are implemented.

There will always be cases that are not viable for an arrest or prosecution but implementing the changes will help survivors come forward and report with higher continued participation rates. I had a case many years ago that involved a woman who was bi-polar and schizophrenic. She believed she was raped and described the encounter in detail while she sobbed. Video of her residence was able to prove it did not occur, but it did not lessen the traumatic experience. After rationalizing her experience and grounding her she was able to understand since she was off her medicine the event did not occur. But it was just as real as if it had happened to her. The woman felt good that investigators still invested the time and that she mattered. This can be said for other cases that cannot go forward if these recommendations are implemented.

All the recommendations relate to one another. That means implementing one without the other will not give you a full benefit of the recommendations. I don't understand how anyone can argue with these recommendations. None will be detrimental to investigations. What are we afraid of? The Police Department has a chance and an obligation as the largest police department in the country to be the example. A choice to lead or play catch up is in the cities hands. Although I am no longer employed in the NYPD I do miss the work. I think sexual assaults are the most important and challenging investigations the NYPD handles. My only interest now is to ensure the NYPD is the leader and model for all other agencies in sexual assault investigations.

If money is the issue to correct the issues in Special Victims, maybe consider a five-cent tax on all alcoholic beverages sold in NYC since a large portion of sexual assaults do involve alcohol. If the recommendations are going to be implemented, a 3 years business plan

is needed. Making facilities and adding qualified investigators the top priority in order to accommodate and successfully implement all the recommendations.

One thing regarding rapes; The police department seems to struggle when describing stranger rapes vs. acquaintance rape. Both are very serious. Both are highly traumatic. Both are extremely complicated. Both are equally important to Special Victims. The importance of solving both types of cases are the same to the unit and investigators.

1. NYPD should immediately increase the staffing level in SVD's adult sex crime units to meet the minimum investigative capacity required by an evidence backed and nationally-accepted staffing analysis model. To appropriately handle a caseload as seen in 2017, that model would require an additional 21 detectives in Manhattan SVS, 11 detectives in Bronx SVS, 16 detectives in Queens SVS, 21 detectives in Brooklyn SVS, and four detectives to in Staten Island SVS

-More qualified investigators will allow for victim centered management, improving victim participation and case correctness.

-Investigators should be experienced detectives and to achieve this, a fair grade proportion is needed to match Homicide. That will show detectives that the department takes these crimes very seriously and will open the applicants beyond white shields. Homicide does not have a recruitment problem because after detectives get transferred to Homicide Squads they will most likely will obtain grade. Homicide Squads have the ability to pick only the best applicants. Homicide does not take white shields and Special Victims should not either if these crimes are equally important.

-White shield can take up to five years to become experienced investigators. While still having a learning curve because of the complexity of these crimes, detectives from squads already have some skill sets thus saving time to gain experience.

-Facilities are needed and adding investigators without new offices could make the squads even more deplorable. Adiquate space is needed if adding additional investigators.

2. In order to prevent a recurrence of understaffing, NYPD should adopt an evidence-based investigative staffing model that relies on actual investigative hours available and projected caseload (not caseload alone) and continuously monitor SVD caseloads and staffing levels to ensure the appropriate number of staff are available for the assigned caseloads.

-SVD cannot be rolled into the same formula for staffing levels compared to precinct squads. The work is more complicated. Look at the average work put into Special Victims cases and compare them to precinct squad cases. Compare the quality of work performed. Look at average reports generated per case. One average Special Victims case is equal to ten average precinct squad cases.

-I have had the opportunity to travel throughout the United States and visit other Special Victims units in various states. One common denominator with all the different states is after 50 cases per year per investigator the services begin to break down with regards to the investigative process and victim centered management.

3. Since staffing deficiencies are not unique to adult sex crime units alone, NYPD should use the staffing model adopted in Recommendation 2 to appropriately staff the other SVD sub-units

-This is an area best left to experts in the sub units, but I do believe this can be applied to child abuse squads. These cases are potential time bombs and are also complicated because of the victims ages present complex problems that are different than adult squad cases.

4. NYPD should immediately take steps to improve SVD's ability to recruit and retain experienced detectives by making SVD a "graded" division. Once completed, NYPD should end the practice of transferring officers to SVD without extensive investigative experience.

-The DOI AG report points out the grade disparity between Homicide and Special Victims. These are real numbers creating real problems. Special Victims has had a 12-month period that no investigator received grade back around 2014-2015. This is a problem when trying to keep investigators motivated. The investigators do not believe the department feels this work is important.

-Precinct Detectives will not apply for Special Victims and a large reason is related to the grade disparity and chances are better they will get grade in precinct squads.

-There is no upside for Detective Borough Commanders to encourage detectives to apply for positions within Special Victims. They don't want to lose their top performers and they do not have a vested interest in our cases because we are a division.

5. NYPD should increase in-house training opportunities for SVD staff in order to better prepare them for the rigors and unique nature of SVD work. The depth and rigor of this training should be equivalent to the training provided to other specialized units in NYPD.

-Should have a six-week training course. ESU is a highly trained unit with an extensive academy. Investigators need thorough well-rounded training such as; FETI, advocacy, medical/OCME, DA office trial preparation specific to sexual assaults.

6. To the extent that it is inevitable that patrol officers may be the first to respond to sexual assaults in exigent circumstances, NYPD should expand existing training, both in-service and at the academy, to include trauma-informed care and best practices regarding sexual assault.

-This was touched on in opening statement. Training will vastly improve the survivor experience thus making it easier for the investigator and deter survivor's non-participation rate. Emphasis needs to be put on the fact the survivor may not have the answers to questions and that responsibility should rest with the investigator not them. Need to streamline getting the survivor medical attention and or to Special Victims investigators. Precincts can't allow delays such as change of tours. Survivors should never be transported in cage RMP's. For safety reason, there will be times when uniformed members must remain with the survivor while they obtain medical attention. Even with an increase of investigators their time is better spent starting the investigation.

7. NYPD should formally end the "triaging" process for sex crimes—instead, all sex crimes should be investigated and enhanced by SVD detectives, including patrol arrests for "domestic rape" and "acquaintance rape." The implementation of this recommendation will have staffing implications that are not accounted for in Recommendation 1 above, and NYPD should, therefore, include appropriate staffing increases in implementing this recommendation

-Typical enhancements of this type require a minimum of 8 to 16 hours of work that includes the investigation and administrative follow up. Additionally, it can require two investigators thus taking more productive hours.

-These cases should be assigned to Special Victims but also appropriately calculated as to not adversely affect staffing levels.

8. NYPD should find new physical locations and/or completely renovate all five SVD adult sex crime unit locations. These new physical locations should be easily accessible from public transportation and built out in the model of the Children's Advocacy Centers now operational in New York City

-Think about this from a survivor's perspective. You were just sexually assaulted and experienced a high level of trauma. First you may end up in a precinct. None of which are welcoming. More stress is already added to the survivor. Now you are brought to an adult sex crime squad. Take Manhattan for instance. You are brought up the cold dark stairwell of PSA #5. The waiting area is on the second floor in a dark narrow hallway just outside the men's room. The chairs consist of hard plastic. Every time an officer passes you in the hall way you must pull your feet in for them to pass. On occasion a prisoner or suspect is brought in and passes by the survivor. The survivor thinks that every passing person knows "I was assaulted." More stress. Then you are greeted by your investigator that brings you to your interview room. On the way to the room you pass through a very busy open squad room and you can see all the investigators in the room and hear various conversations. The phones are ringing, and work is being conducted. Very chaotic. Its dirty and cramped. You see mouse traps in the corners of the room and under investigators desk. The survivor glances across the squad room and observes a cell. Sometimes it has a prisoner. Often the video interrogation room doubles as an interview room because Manhattan only has one and it's not much better than the interrogation room. In the summer, the rooms are not airconditioned and are sweltering. Sometimes all the rooms are in use for interviews or controlled calls. The lunch room is then utilized. This room is just as bad as the others. Investigators rarely eat in the room and usually eat at their desk while typing cases. There have also been times when we needed to utilize supervisor's office as an interview room as well. After the interview, the survivor may need to go online or view photos. This

is done at the investigators desk. Think maybe the survivor stress level is a 10? All of you should visit the adult squads accompanied by a survivor and see for yourselves. None of the other adult squads are any better.

-Facilities need to be off Police Department property. The NYPD is in the business of crime not building maintenance. No matter how new a facility is, it is never highly maintained. CAC centers are good starting blueprints.

-Need to have facilities with “welcoming” waiting areas that are not accessible to general public.

-Need a minimum of five interview rooms and another room equipped with a computer station.

-Should have full time advocates assigned.

-Should have a medical facility with a doctor assigned

-Should have the on-call DA assigned

-Should have a conference room for major case/pattern investigations.

-Most importantly listen to the investigators when constructing the facility. They know what is best needed. Not someone at headquarters.

9. NYPD should invest in a new case management system for SVD that would replace ECMS. The new system should have the highest security protocols and limit access to the case detective and their immediate supervisors within SVD. In addition, any new system should have advanced caseload, staff management, and data analysis capabilities.

-Special Victims has had many instances of media leaks, ECMS has holes in the program and when conducting searches our cases can come up. Anyone with citywide access can view our cases. Special Victims has locked some high-profile cases, but this always required approval from Chief of Detectives Office on a case by case basis.

-Often statistical data is requested from headquarters. Such as; alcohol/drug cases, college cases, undomiciled cases, taxi cases, club cases etc. This requested data can take enormous amounts of hours to compile but can only be done by physically going into each case. Special Victims needs input on the creation of a system allowing them to put case attributes in a database so as they are able to compile better statistical data related to requests from headquarters.

-Often Precinct commanders would call and question the allegations after they have viewed the investigation in ECMS. Usually around CompStat time.

10. NYPD should take steps to safeguard the identifying information of sex crimes victims, including conducting a review of the various reports, forms, and memoranda generated during the course of a sex crimes investigation that unnecessarily require the victim's name, address, or other contact information.

-Need to find a solution to not listing survivors on complaint report, aided report or DIR to ensure privacy. These are simple databases with unlimited access to most of the police department.

-Limited PIW distribution (That had been ongoing)

11. NYPD should review the use of CompStat as the oversight mechanism for SVD.

-All units need oversight. Special Victims included. However, discussing sexual assault investigations in an open forum such as CompStat is not productive.

-CompStat by nature does not want crime numbers. Sexual assault reporting needs to increase. This must be considered in the overall crime number. Pressure of CompStat does not encourage case correctness. It encourages arrests to be made quickly and unlikely to be prosecuted or cases not fully investigated. It can also cause pressure for unfounded cases.

-Need multi discipline approach to case reviews with our partners.

12. NYPD should increase and publicize existing efforts to encourage victims of sex crimes to come forward and report these crimes to law enforcement. At the same time, NYPD should take new steps to advise policy makers and the public that success in this area will result in an apparent rise in the "index crime numbers" for sexual assault cases, even if the "true" rate of sex crimes remains unchanged.

-Recent publicized efforts in this area is a good start.

-Need to also publicize the survivor has options such as participation level and no pressure when they decide to not continue. NYPD should consider an online complaint system where they can leave as much or as little information they choose. The choice is theirs.

Illinois law requires cops to take reports for every sexual assault allegation, get training for sensitivity toward victims

Detective Bryan Barlow teaches a class at the Chicago Police Academy about responding and investigating criminal sexual assaults. (Zbigniew Bzdak / Chicago Tribune).

By **Annie Sweeney**
Chicago Tribune

APRIL 2, 2018, 5:00 AM

From the start, the 28-year-old woman sensed doubt.

Inside her North Side apartment, still unsteady and terrified, she explained to a Chicago police officer that she had just been repeatedly sexually assaulted by her former boyfriend. The tone of his questions, she remembers thinking, seemed troubling.

“You were together nine years,” she recalled officers repeatedly asking during the 2016 interview, “and you are reporting a rape?”

“Right then and there, I knew what I was up against,” the woman recalled recently to the Tribune. “I could easily see how someone wouldn’t speak up.”

Advocates and law enforcement officials say such fear and doubt about how their allegations will be investigated has long deterred sexual assault victims from coming forward. As few as 1 in 5 rapes are reported, they say.

In an attempt to close that gap, a little-known change in Illinois state law is trying to improve how police respond to victims of rape, mandating police officers across the state undergo new training that not only emphasizes the need for sensitivity to the difficult cases but also teaches the science behind how a brain reacts to trauma.

The law also requires that police must take a report for every allegation of rape — no matter how long ago it might have occurred or what jurisdiction it occurred in.

For Chicago police, the new training is already underway for recruits and will begin soon for detectives. Officers who investigate sex crimes should receive the training over the next two years. The state training board has held three statewide trainings for other departments as well.

The training is considered critical for the Chicago department, slammed last year by a U.S. Department of Justice investigation for its inadequate preparation of officers — namely that internal investigators fail to interact with rape victims in a manner “that encourages their participation in the investigation.”

Chicago police did not respond to requests for comment on the 28-year-old woman’s allegations about how officers treated her.

But in a statement the department said it recognized the need to improve interactions with victims and that this is what the training tries to achieve.

“Survivors of criminal sexual assault and sexual violence deserve to be treated with respect and dignity as they pursue justice and attempt to seek some level of closure,” a statement read. “The goal of these classes is to provide police officers with the most up to date understanding of the impact sexual assault has on survivors to minimize any additional trauma associated with the investigatory and prosecutorial process.”

The law’s new reporting requirements took effect in 2017, but its impact on rape investigations is hard to measure just yet. Still, citing the #MeToo movement, the law’s proponents say it couldn’t have come at a more propitious moment.

“We are not asking police officers to be social workers,” said Polly Poskin, executive director of the Illinois Coalition Against Sexual Assault. “We are asking police officers to be good investigators — which is ‘Tell me more.’”

National conversation and reporting spikes

Reports of criminal sexual assaults have been increasing in Chicago over the past five years, up from 1,401 in 2013 to 1,738 in 2017.

No one is certain whether the new reporting law is having an impact on the number of reports taken by the Chicago police. But advocates say there is no doubt increased conversation on the issue has led to more calls for help over the past few years.

“Definitely having this in the news is a trigger (to ask for help),” said Anacany Barrera, the coordinator of crisis lines and volunteer services at the YWCA Metropolitan Chicago. “The more our culture says there is actually going to be consequences to these actions, the more people are ready to talk to law enforcement.”

Victims have been held back, advocates say, because of failures at just about every step of the reporting process. The first officers who respond often don’t take reports, and detectives sometimes don’t know how to build strong cases. When they do seek charges, prosecutors often decline the request, victim advocates say.

Part of the problem, advocates say, is that law enforcement officers haven’t been trained in how victims of sexual assault react to the trauma. Research shows that the brain’s responses affect memory in a way that may prompt investigators to doubt, dismiss or repeatedly question victims. That could inflict more harm, and ultimately contribute to fewer cases being charged, experts say.

In an interview with the Tribune, Illinois Attorney General Lisa Madigan, who led the effort for the new law, took aim at how the justice system has responded to victims who come forward.

“Twenty percent of women will experience an assault or an attempted (assault),” Madigan said. “Yet almost no one reports sexual assault to law enforcement because everyone knows you are more likely to be re-victimised than receive justice.”

Among the changes in the law is that victims now have five years from the date evidence was collected or, if the incident occurred when they were a juvenile, five years from their 18th birthday, to tell police they want their rape kit tested. Under the previous law, victims had 14 days to make this decision.

Another notable change is that officers are also required now to take a report of alleged assault from every victim who comes forward — even if the general 10-year statute of limitations on charging the case has passed.

That change, advocates said, recognizes the fact that many rapists are repeat offenders. Gathering evidence could help identify potential assailants, even if charges in an individual case can't be pursued.

"We heard time after time people would go to the police and want to file a report because they were sexually assaulted (and) they were told to go think about it. They were being blamed for what had happened," Madigan said. "So we said: You have to mandate the taking of a report."

Critical is what advocates say is a long overdue re-education of law enforcement across the state on how to investigate the cases with more sensitivity. That training has begun in earnest at Chicago's academy on the city's Near West Side.

Training focuses on understanding trauma

On a recent Monday morning in a lecture room at the Chicago police training academy, Detective Bryan Barlow watched as 100 or so police recruits in uniform filed into the classroom for the start of the newly mandated six-hour Sexual Assault Investigations course.

"This is a new thing in the world of law enforcement," Barlow told the group at the start. "Why do we need to understand trauma? So we can understand trauma victims."

Barlow began teaching the new curriculum, which he wrote, to recruits last July and is developing a longer two-day course for detectives. The 10-year-veteran detective worked off directives from the Illinois Law Enforcement Training and Standards Board, which trains and certifies officers across the state.

Barlow started with statistics — 1 in 6 women and 1 in 33 men experience rape or attempted rape, he told the recruits, as many took notes. An overwhelming 75 percent of victims know their attackers. Yet many rapes go unreported, Barlow told the class. Victims fear they won't be believed, or they feel shame, are related to or intimidated by their attacker, have a criminal record or were intoxicated at the time of the assault.

Barlow debunked myths about rape, such as that offenders are driven by sexual gratification. Assaults are about power, he told the group. Or that victims did something to cause the attack — wear certain clothing, drank too much or wound up some place unsafe.

“Doesn’t matter,” Barlow told the group.

Then Barlow knocked down one of the biggest myths — that victims make up allegations. In reality, between 2 and 8 percent of reported rapes are false, roughly in line with any other major crime, he said.

The question remained, though, why so few rapes are reported or when they are, why investigators fail to believe victims and the courts fail to build cases. For this, Barlow turned to science.

Trauma and the brain

An image of the brain flashed on the screen overhead as Barlow headed into the third hour of training. Research has shown that when a victim is traumatized, the brain itself is impacted, affecting memory, behavior and thinking, Barlow told the class.

Much of what Barlow would teach next has been developed from wider research on stress and trauma, and applied to sexual assault investigations over the past two decades. Jim Hopper, a teaching associate at Harvard Medical School, teaches widely on the subject, and explained in an interview what that research has found.

When the brain’s “defense circuitry” detects an attack, it instantly stops all body movement so it can assess danger and the possibility for escape. These are automatic, involuntary reactions — like what police and soldiers experience when under attack, Hopper explained.

At the same time, stress chemicals surge to the part of the brain that controls rational thought, often leaving victims to rely instead on habits and reflexes. The way a combat soldier will rely on training to navigate a firefight, a sexual assault victim might fall back on habits developed over years to survive an attack — such as passive resistance. In extreme cases, a victim may even become paralyzed or pass out, Hopper said. This explains why some victims don’t fight back, and shouldn’t be expected to.

Meanwhile, the brain’s “defense circuitry” focuses more attention on some parts of the attack than others, burning parts of it into memory while not recording others. This is why victims of a sexual assault, similar to soldiers in combat, often remember an attack in fragments, and frequently out of order.

Back in the training class, Barlow acknowledged that the memory problems sexual assault victims face can conflict with what young officers are typically taught about taking reports — including to watch for inconsistencies.

“We want to put together a timeline,” he said. “(Trauma victims) can’t tell you a coherent story. They can’t tell you this is what happened at Point A. This is what happened at Point B. ... They may leave out B and tell several weeks later. They may tell you about this terrible tale like they’re talking about the kind of cereal they had this morning. Or they might ... not be able to get a word out without going into hysterics.”

“That’s trauma. ... Once you understand how a victim’s brain works, a lot of this behavior that we used to think was indicative of deception makes a lot of sense.”

Barlow instructed that during their first interviews with victims, officers should “start by believing.” Don’t ask for a chronological accounting, he said, but listen to whatever details they provide. If they need a break, don’t push.

“I can’t emphasize enough how much of a role that we as police officers have in this,” he said, then paused. “It’s vital. ... When you get one of these (cases), slow down. Slow the hell down.”

Barlow also told the group several times to keep in mind that the person who is likely to feel the most doubt as they work to piece it all together is the victim.

An alleged victim’s experience

That was the case with the 28-year-old woman who told the Tribune about the attacks she said her former boyfriend committed. Four hours of difficult questioning from police in 2016, she said, left her initially doubting her own recollections, even whether she had actually been raped.

“There was a lot of ‘Why didn’t you ... ’,” the woman recalled.

The detective’s report cited insufficient evidence, lack of injury and that “she made statements agreeing to the sex acts.” Ultimately, prosecutors declined to charge the case. The woman remains adamant the sex acts were not consensual, and the detective’s reports do not reflect what happened.

After law enforcement wouldn’t pursue the criminal case, the woman sought and was granted a civil no-contact order against her former boyfriend by a Cook County domestic violence court judge. In granting the civil no-contact order, the judge agreed that it was nonconsensual sex.

Talking about her experience is still painful today. While she says she understands how hard detectives work, she still feels they unfairly dismissed her.

“It made me feel so small,” she said. “So insignificant.”

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DISTRICT OF MARYLAND**

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v.

POLICE DEPARTMENT OF BALTIMORE
CITY, et. al.,

Defendants.

Civil Action No. ____

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F. Ongoing Assessment and Improvement

255. BPD will conduct annual assessments of its practices related to First Amendment protected activity, which will include, at a minimum:

- a. Review and analysis of complaints alleging misconduct related to First Amendment protected activity; and
- b. Analysis of law enforcement responses to public protest or assembly.

256. As part of this assessment process, BPD will identify deficiencies and opportunities for improvement; implement any appropriate corrective action or improvement measures; and document measures taken.

XI. HANDLING OF REPORTS OF SEXUAL ASSAULT

257. To increase the trust of victims¹ of sexual assault in BPD, strengthen BPD's response to and investigations of reports of sexual assault, and to combat gender bias, BPD shall implement the below measures.

A. Policy and Training

258. BPD shall ensure its sexual assault policy and protocols:

- a. Identify procedure and practice guidelines for a trauma-informed, victim-centered, multi-disciplinary response to sexual assault cases and thorough investigation of the crime;
- b. Articulate the significant role and responsibilities of all officers throughout the sexual assault response and investigation;

¹ The Parties respect that individuals who have been subjected to sexual assault are survivors. Because the context of this Agreement refers to the role of police interactions with people as victims of crimes, it refers to them as "victims".

- c. Articulate the opportunity for forensic examination and comprehensive medical care to the sexual assault victim; and
- d. Ensure all victims are offered access to free and confidential support, social service referrals, and information from a trained sexual assault victim advocate.

259. BPD shall provide initial and on-going annual training to all BPD detectives in the Sex Offense, Family Crimes, and Child Abuse Units about its policies and practices applicable to law enforcement response to sexual assault. This initial and annual in-service training shall ensure that these BPD detectives can perform their duties pursuant to this Agreement and include:

- a. Guidance to patrol on how to respond to reports of sexual assault, including cases presenting co-occurring crimes such as domestic violence or stalking;
- b. Guidance to detectives on strategies that postpone judgment regarding the validity of a case until a thorough investigation is completed;
- c. Highlighting methods to minimize further physical and psychological trauma to victims of sexual violence by creating a respectful, objective response;
- d. Identification of strategies to keep the investigation focused on the behavior and actions of the suspect;
- e. The impact of trauma on victims and adjustments to interview practices to allow sensitivity to victims' needs and the dynamics of sexual assault, and thus increase the likelihood of continued victim participation with law enforcement, improve the experience for victims cooperating with law enforcement, and strengthen sexual assault investigations;

- f. The dynamics of and relevant core scientific concepts related to sexual assault including trauma-related behavior, tonic immobility, and the effects of trauma on memory;
- g. Guidance on working with vulnerable populations, including homeless people, sex workers, people with Behavioral Health Disabilities, and LGBT individuals;
- h. Law enforcement response to non-stranger sexual assault, alcohol and drug-facilitated sexual assault, sexual assault where the victim is incapacitated or otherwise unwilling or unable to clearly describe the assault;
- i. Report writing and documentation of the investigation undertaken, techniques for investigations of sexual assault, and classification of reports of sexual assault;
- j. Trauma-informed interviews of individuals reporting sexual assault;
- k. Taking statements from, interviewing, and interrogating suspects, including training about interrogating suspects in non-stranger or drug/alcohol-facilitated sexual assaults; and
- l. For those detectives with supervisory responsibilities, supervision of sexual assault cases, including sexual assault case reviews and other mechanisms to detect and prevent gender bias in the response to reports of sexual assault.

B. Sexual Assault Investigations, Supervision, and Internal Oversight

260. BPD will:
- a. Assign all reports of sexual assault that meet the criteria outlined in BPD policy to detectives for follow up investigation;
 - b. Thoroughly investigate reports of sexual assault, including any assaults that appear to be non-stranger assaults, assaults facilitated by alcohol or drugs, or

assaults involving victims who were incapacitated or otherwise unable or unwilling to clearly describe the assault;

- c. Consult with forensic examiners to obtain and discuss the results of medical/forensic examinations, and include a summary of the findings of the forensic examinations, including findings related to all injuries, in case reports;
- d. Ensure that investigators of sexual assaults do not have a history of complaints of bias relating to gender or complaints of sexual misconduct that could impair their ability to investigate sexual assault in accordance with BPD policy and training;
- e. If the victim consents, BPD shall enable advocates to be present during victim interviews, unless doing so would compromise the evidentiary value of the interview;
- f. Continue to provide a "soft" interview room, equipped with audio and video recording capabilities, for conducting victim interviews;
- g. Ensure that officers introduce sensitive lines of questioning by first explaining why those questions are relevant to the investigation; and
- h. Ensure that if there is a specific and articulable investigative purpose, detectives can ask the victim about their desire to prosecute the assailant, but the victim's responses should not be a determinative factor in law enforcement decisions about whether or how to pursue investigation.

261. BPD will ensure that officers transport victims to the designated medical facility for a forensic exam in all instances in which a forensic exam is warranted and the victim consents to the transport.

262. BPD shall establish and implement measures to ensure supervision and internal oversight of sexual assault investigations. These measures should include but not be limited to:

- a. Developing a system of automated alerts to trigger supervisory review of open sexual assault investigations, and a protocol governing the supervisory review.

This system and protocol shall include:

- i. Supervisory review of all sexual assault reports, that fall under the investigative criteria for the Sex Offense Unit or Child Abuse Unit, within 48 hours of the report being taken in order to ensure consistency with BPD policy for initial officer response and documentation; and
 - ii. Supervisory evaluation of the thoroughness of the investigation in sexual assault cases when: (1) the victim has not been interviewed within one week of BPD receiving the report of sexual assault; (2) a case has been classified as “open,” without any investigative activity, for longer than six months.
- b. Before an investigation of a report of sexual assault is closed or a report of sexual assault is classified as “unfounded,” a supervisor shall assess whether a comprehensive investigation has been conducted and whether appropriate follow-up has been completed.

263. With the goal of better identifying serial offenders, BPD shall collect, share, and track crime-specific information about unresolved investigations of reports of sexual assault, including, to the extent possible, with law enforcement agencies in neighboring or with

overlapping jurisdictions who are willing to cooperate, to identify similarities between reported sexual assaults and unresolved cases.

264. BPD will continue to enhance its data collection, analysis, and reporting. The data to be collected and analyzed should include the following:

- a. The numbers of sex offenses, broken down by crime category, that are reported to BPD, identifying, where applicable, incidents involving co-occurring crimes (i.e., sexual assaults involving domestic violence or stalking);
- b. The number of offenders, both the totals and broken down by gender (i.e., male, female, transgender, queer or non-binary) and the relationship of the offender to the victim (i.e., stranger or non-stranger);
- c. The number of victims/complainants, both the totals and broken down by gender, race, and age (i.e., under 18 and 18 and older);
- d. The total number of sex offense reports categorized as founded and unfounded, broken down by the BPD unit categorizing the report;
- e. The total numbers of sex offense reports, broken down by the BPD unit handling the report, that (1) were cleared by arrest, (2) were cleared by exceptional clearance, including by clearance category, (3) remain open and inactive, and (4) were referred to the Baltimore City State's Attorney's Office for the filing of charges; and
- f. Data about the processing of forensic medical exams (often referred to as "rape kits"), including: (1) date of reported incident; (2) date of SAFE exam; (3) date detectives request lab analysis of SAFE exam; (4) date detectives receive lab analysis results.

C. Community Collaboration and External Oversight

265. In a manner permitted by law, BPD shall share the information in Paragraph 264 with the public, and with its community and law enforcement partners and the Sexual Assault Response Team (“SART”), to promote public safety and better support the needs of sexual assault victims.

266. To promote a coordinated, multidisciplinary, and victim-centered response to victims of sexual assault, the City and BPD will evaluate and revise as necessary the policies and protocol governing the functioning of Baltimore’s SART to ensure that it is empowered to engage in periodic systems reviews to improve services provided to victims of sexual assault and ensure they are victim-centered, subject to the limits of applicable law. The SART will continue to be permitted to review cases in accordance with the MOU, including samples of open cases and cases that are classified as “unfounded”.

XII. TECHNOLOGY

A. Development and Implementation of Updated Technology

267. BPD will provide its officers with the Technology necessary to implement the Material Requirements of this Agreement, as set forth in this Section. The Parties agree that the data collection and review required by this Agreement is dependent upon BPD acquiring or developing the appropriate technology for such data collection and review.

268. Within the first year of the Effective Date of the Agreement, BPD will complete a comprehensive study of the Technology (the “Resource Study”) necessary to satisfy the Material Requirements of this Agreement. The design, objectives, and deadline for completion of the Resource Study shall be set forth in the Monitoring Plan.

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES
DEPARTMENT OF JUSTICE AND THE UNIVERSITY OF MONTANA
REGARDING THE UNIVERSITY OF MONTANA OFFICE OF PUBLIC
SAFETY'S RESPONSE TO SEXUAL ASSAULT**

I. RECITALS

The United States Department of Justice initiated a public investigation of the University of Montana's Office of Public Safety ("OPS"), pursuant to its authority under the Violent Crime and Control Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), on May 1, 2012. The United States has provided the University of Montana (the "University") with preliminary feedback indicating areas of concern. The University has engaged with the United States in open dialogue about concerns raised by the United States regarding OPS' response to sexual assault.

The University of Montana and the United States (collectively, the "Parties") acknowledge that by entering into this Agreement, the University does not admit to the truth or validity of any claim made against it by the United States. DOJ agrees to forego the filing of any claim relating to OPS' response to sexual assault under Section 14141. The Parties acknowledge that nothing in this Agreement shall preclude DOJ from filing any other claims, including claims under Section 14141.

The Parties recognize that the University's Office of Public Safety ("OPS") plays an integral part in the University response to reports of sexual assault as well as in the overall Missoula community response to reports of sexual assault. The Parties recognize that public safety, even-handed and well-trained policing, and the community's trust in law enforcement are interdependent. The Parties recognize that OPS must respond to reports of sexual assault in accordance with applicable non-discrimination laws and University policies. The Parties' mutual intent is to ensure adherence to the Constitution and laws of the United States; improve the safety and security of victims of sexual assault on the University of Montana's campus and in Missoula; and increase public confidence in OPS's response to sexual assault.

The United States acknowledges that, by already taking proactive steps to help effectuate the intent of this Agreement, the University and OPS have demonstrated their commitment to improving OPS' response to reports of sexual assault within OPS' jurisdiction. The Parties intend that OPS will continue to implement improved policies, provide increased training, and modify practices, in order to further improve its response to sexual assault and ensure that there is no gender bias. The Parties recognize the benefit of collecting and analyzing data regarding the incidence and outcomes of reports of sexual assault; of working

with an Independent Reviewer, community-based organizations, and other stakeholders to develop and implement the improvements described in this Agreement; and of evaluating the effect of OPS' efforts described in this Agreement.

The Parties acknowledge that this Agreement is intended to ensure the success of the University's efforts to improve its response to sexual assault, and that entry of this Agreement does not constitute an admission that the University has committed any wrongdoing.

Based on the intent described in the above Recitals, the University of Montana agrees to undertake the measures set forth below.

II. DEFINITIONS AND ABBREVIATIONS

- I. The following terms and definitions shall apply to this Agreement:
 - a) "OPS" means the University of Montana's Office of Public Safety and its agents, officers, detectives, supervisors, command staff, employees (both sworn and unsworn), and contractors.
 - b) "DOJ" means the United States Department of Justice's Civil Rights Division and its agents and employees.
 - c) "Effective Date" means the day the parties sign this agreement.
 - d) "Implement" or "implementation" means the development or putting into place of a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure in actual practice.
 - e) "Include" or "including" means "include or including, but not limited to."
 - f) "Independent Reviewer" means a person or team of people, independent from the University, who shall be selected to assess and report on the University's implementation of this Agreement.
 - g) "MCAO" means the Missoula County Attorney's Office.
 - h) "MPD" means the Missoula Police Department.
 - i) "MOU" means the Memorandum of Understanding currently in effect between OPS and MPD addressing the transfer of certain felony criminal investigations from OPS to MPD, and any future similar agreement.
 - j) "On campus" means anywhere that OPS officers have jurisdiction to investigate an alleged crime, as defined by Montana state law and/or any private agreements between

- law enforcement agencies entered into consistent with state law;
- k) “OPS personnel” or “OPS employee” means all OPS employees, contractors, and volunteers, including command staff, supervisors, officers, detectives, and civilian employees.
 - l) “Policy” or “protocol” means a written regulation or directive, regardless of the name of the regulation or directive, describing the duties, functions, and obligations of OPS
 - m) personnel, and providing specific direction in how to fulfill those duties, functions, or obligations.
 - n) “Sexual assault,” for the purposes of this Agreement, means both rape and other types of sexual assault as defined by Montana Code Annotated §§ 45-5-502 (sexual assault) and 45-5- 503 (sexual intercourse without consent), exclusive of child sexual assault.
 - o) “Shall” means that the provision imposes a mandatory duty.
 - p) “Supervisor” means a sworn OPS employee at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn personnel with oversight responsibility for OPS personnel.
 - q) “University” and “UM” mean the University of Montana.

III. IMPROVING OPS’ RESPONSE TO SEXUAL ASSAULT

In accordance with the Recitals set forth above, OPS shall develop and implement the following measures:

A. Sexual Assault Policies and Protocols

2. In consultation with an expert in police response to sexual assault, OPS shall develop a detailed and victim-centered sexual assault response policy that incorporates the requirements of this Agreement and comports with best practices and current professional standards. OPS’ sexual assault policy should include guidance on responding to sexual assault and incorporate the requirements of the International Association of Chiefs of Police Model Policy (see Attachment A) on Investigating Sexual Assaults on at least the following topics:

- a. Initial officer response to a report of sexual assault, including requirements specific to assisting the victim, evidence collection, and the identification and location of witnesses;
- b. Response to stranger and non-stranger sexual assault;

- c. The preliminary victim interview, including the development of a victim- interview protocol, and the comprehensive, follow-up victim interview;
- d. Contacting and interviewing suspects;
- e. Medical forensic examinations and coordination with the forensic examiner;
- f. Participation of victim advocates;
- g. Investigative considerations regarding alcohol and drug-facilitated sexual assault, including requirements specific to evidence collection and the forensic examination of victims;
- h. The role of the supervisor; and
- i. Procedures for blind-reporting of sexual assault.

B. Sexual Assault Response Training

3. OPS shall provide initial and ongoing annual in-service training to all OPS officers and detectives, and recruits about law enforcement response to sexual assault. This initial and annual in-service training shall ensure that all OPS officers and detectives understand and can perform their duties pursuant to this Agreement, and shall reflect and incorporate any developments in applicable law, best practices, and professional standards. Annual in-service training shall address also any training needs identified throughout the previous year. The initial and in-service training shall be of sufficient length and scope to include the following topics:

- a. OPS' new sexual assault policy, developed pursuant to this Agreement;
- b. Effective law enforcement response to reports of sexual assault;
- c. Effective law enforcement response to non-stranger sexual assault; drug and alcohol-facilitated sexual assault; and sexual assault where the victim is incapacitated or otherwise unwilling or unable to clearly describe the assault;
- d. The dynamics of and relevant core scientific concepts related to sexual assault including counterintuitive behavior, tonic immobility, and the effects of trauma on memory;
- e. Crime scene preservation;
- f. Taking statements from individuals reporting sexual assault;
- g. The impact of officers' and detectives' attitudes towards victims on investigative outcomes; and

- h. The impact of bias in law enforcement agencies' response to sexual assault and strategies to ensure that bias does not undermine investigations, damage rapport with victims reporting sexual assault, or re-traumatize victims.
4. This training shall include presentations by victims of sexual assault, if available, or presentations which adequately convey victims' experiences and shall include victims' advocates in order to provide officers with the unique perspectives of those who have been victimized by sexual assault and/or those who work with sexual assault survivors.
 5. OPS shall provide additional in-depth training in sexual assault investigations to all OPS detectives who conduct such investigations. This training shall include the following topics:
 - a. The elements of sexual assault offenses under Montana law;
 - b. Forensic and investigative steps to be taken in response to sexual assault allegations, including focused training on the forensic and investigative steps specific to non-stranger sexual assault, alcohol and drug-facilitated sexual assault, and sexual assault involving victims who are incapacitated or otherwise unable or unwilling to clearly describe the assault;
 - c. Taking statements from and interviewing individuals reporting sexual assault; and
 - d. Taking statements from, interviewing, and interrogating suspects in non-stranger and alcohol and drug-facilitated sexual assault.
 6. OPS personnel who provide direct supervision of officers who respond to reports of sexual assault and detectives who investigate sexual assault allegations shall receive training on how to review sexual assault response and investigations for comprehensiveness and to detect indications of bias, including how to implement the supervisory reviews and responsibilities contained in this Agreement.
 7. Training pursuant to this Agreement shall be provided in accordance with best practices and include adult-learning methods that incorporate role-playing scenarios and interactive exercises, as well as traditional lecture formats. Training shall also include testing and/or writings that indicate that OPS personnel taking the training comprehend the material taught.

C. Review of Policies and Training

8. Each of the requirements of this Agreement shall be incorporated into OPS policy, and

all applicable OPS officers and employees shall be trained on how to meet the requirements of this Agreement. OPS shall submit new and revised policies and protocols related to sexual assault and/or the terms of this Agreement, and all curricula for trainings developed pursuant to this Agreement, to the Independent Reviewer and DOJ for review and comment prior to implementation and/or training delivery. OPS will seek to address all reasonable concerns raised by the Independent Reviewer or DOJ. If these concerns cannot be resolved, either Party may seek resolution by the Court. Upon resolution, OPS shall publish and/or implement the policies, protocols, and/or curricula within 30 days.

9. OPS' sexual assault related policies shall be publicly available.

D. Investigating Alcohol- or Drug-Facilitated and Non-Stranger Sexual Assault

10. OPS shall enhance and improve policy, training, and oversight to ensure that officers : 1) recognize the prevalence of non-stranger and alcohol- or drug-facilitated sexual assault, and the relative infrequency of false reporting, and 2) accordingly take all appropriate investigative steps when investigating non-stranger sexual assault, sexual assault facilitated by alcohol or drugs, and sexual assault involving victims who were incapacitated at the time of the assault or otherwise unable or unwilling to clearly describe the assault.

E. Victim-Centered Response to Sexual Assault

11. OPS shall enhance and improve policy, training, and oversight to ensure victim-centered practices in the areas of sexual assault response, interviews, and investigations in order to increase the likelihood of victims' continued participation with law enforcement; improve the experience for victims; and strengthen sexual assault investigations. These practices shall include the following:

- a. Inviting and encouraging advocates to be present during interviews, if consistent with the victim's wishes;
- b. Conducting interviews at times and locations considerate to the victim, wherever possible;
- c. Introducing particularly sensitive lines of questioning by first explaining why those questions are important to the investigation;
- d. Instructing detectives and officers not to ask victims whether they wish the assailant to be prosecuted;

- e. Ensuring that officers describe the process of taking forensic exams and working with law enforcement and the courts in a manner that is both sensitive to the needs of victims and supports their participation in the criminal justice process;
- f. Documenting reports of sexual assault using the language of non-consensual sex, as appropriate, and using the victim's own language as much as possible; and
- g. Transporting the victim or obtaining appropriate transport for the victim to the designated medical facility for a forensic exam where such an examination is warranted and the victim consents.

F. Close Supervision and Internal Oversight

12. OPS shall establish and implement measures to ensure close supervision and internal oversight of all sexual assault investigations. These measures shall include:
- a. Developing and implementing measures, including a survey designed and administered consistent with best practices, to obtain feedback on the treatment of victims from victims and advocates;
 - b. The treatment of sexual assault victims, especially the treatment of victims of non-stranger sexual assaults, shall be included as a factor in evaluating OPS officers;
 - c. Non-stranger and alcohol or drug-facilitated sexual assault investigations shall be assigned only to those officers with the demonstrated skills, interest, and training to conduct those investigations effectively and without bias.
 - d. Supervisors shall approve in writing the decision not to refer for prosecution any sexual assault investigation conducted by OPS;
 - e. A supervisor shall review all sexual assault reports within 24 hours of the report being taken to ensure consistency with OPS policy for initial officer response and documentation;
 - f. A supervisor shall review all sexual assault investigations undertaken by OPS to ensure that a comprehensive investigation has been conducted and all indicated follow up has been completed or the case has been referred to MPD, as appropriate, before they are closed or referred to the prosecutor; and
 - g. OPS supervisors shall conduct a periodic review of closed cases and cases where victims declined to participate in the investigation to identify any systemic problems.

Periodic reviews shall include a review of case files, recorded interviews, and victim and advocate feedback for investigative comprehensiveness and indications of bias.

G. Coordination with Law Enforcement and Community Partners

13. To improve the reporting and participation experience for victims of sexual assault, OPS shall increase and improve its communication, coordination, and collaboration with community and law enforcement partners, including the University, MPD, prosecutors, and University, community, and systems advocates. OPS shall:

- a. Take affirmative steps to clarify, through policies, procedures, and/or training, the respective roles and responsibilities of MPD and OPS pursuant to the MOU between those two agencies. These steps shall clarify OPS' responsibilities between the time a sexual assault report is received and the time MPD assumes responsibility for a referred sexual assault investigation.
- b. Take affirmative steps to ensure effective communication and coordination between OPS and UM and MPD;
- c. Increase coordination and communication with medical staff and forensic examiners interacting with individuals reporting sexual assault to improve sexual assault investigations and reduce unnecessary burdens on individuals reporting sexual assault.

Increased coordination shall include:

- i. briefing the medical staff about the reported assault prior to the exam;
 - ii. where OPS remains the investigative agency, receiving a briefing following the exam from the medical staff regarding their findings, including the results of the forensic examination; and
 - iii. where OPS remains the investigative agency, including a summary of the findings of the forensic examinations, including findings related to all injuries, in the case report; and
- d. Further strengthen the partnership and improve the cooperation between OPS and agencies involved in the First Step Resource Center Multidisciplinary Team and other community and systems advocates by facilitating opportunities for officers to meet with and learn about these agencies and advocates; and soliciting feedback from the agencies and advocates, identifying barriers, and implementing remedies in order to

increase victim participation in sexual assault investigations and prosecutions; improve the experience for victims who participate in sexual assault investigations and prosecutions; and otherwise improve sexual assault investigations.

H. Data Collection and Reporting

14. To identify shortcomings, assess improvement, and increase community confidence in the University's response to sexual assault, OPS shall enhance its data collection, analysis, and reporting. Data collection shall include the following:

- a. Collect and record information about rates of reports of sexual assault on campus and track reports of sexual assault received by OPS through their outcomes in the court system, where applicable. OPS shall collect and record the number of cases reported to OPS; the number of cases referred by OPS to MPD; and the number of cases in which OPS assisted in transporting or obtaining transport for a victim to a medical facility equipped to perform a medical forensic exam. To the extent that OPS can reasonably obtain this information, it shall collect and record the number of reported sexual assaults on campus, regardless of the entity to whom the sexual assault was reported; and the number of cases referred to OPS by Missoula 911 or the YWCA Rape Crisis Hotline.
- b. To the extent permissible by applicable law, OPS shall share this information with the public, and with its University, community, and law enforcement partners to allow them to increase public safety and respond to and support the needs of sexual assault survivors; and
- c. The use of a database to collect crime-specific information in order to identify similarities between reported sexual assaults and previous, unsolved cases.

IV. EXTERNAL REVIEW OF SEXUAL ASSAULT CASES

15. The Parties shall jointly select and establish a group of qualified representatives, including experienced sexual assault prosecutors, legal providers, experienced sexual assault investigators, and/or advocates, to serve as an external review group for sexual assault cases. Beginning three months after the Effective Date, the external review group shall review, on a semi-annual basis, all reports of sexual assault received by OPS, and all investigations of those reports opened by OPS, since the Effective Date. Thereafter, this external review group shall

review all reports of sexual assault received by OPS and investigations of those reports opened by OPS, since the external review group's last such review.

16. The external review group shall, in conjunction with OPS, develop a protocol to guide their review and ensure consistency. This protocol shall set out a methodology and outcome measures for examining sexual assault investigations for comprehensiveness and indications of bias through a review of written reports and recorded interviews, where they exist, and to review feedback collected by OPS from advocates and victims. The protocol shall include appropriate safeguards to protect ongoing investigations, confidential or privileged information, and personal information protected from disclosure by applicable laws. This protocol shall be approved by DOJ and the Independent Reviewer.

17. OPS shall develop a protocol to ensure that feedback and recommendations from this external review group are shared with OPS supervisors and command staff and incorporated into policies, general training, and targeted training for specific officers or detectives; the decision to reopen, reexamine, or re-categorize cases; and the decision to pursue additional avenues of investigation, where warranted.

V. COMMUNITY-CONDUCTED SEXUAL ASSAULT RESPONSE SAFETY AND ACCOUNTABILITY AUDIT

18. The University shall participate in and cooperate with any effort by the City of Missoula to organize and lead a sexual assault safety and accountability audit ("Audit") designed to assess how Missoula City, Missoula County, and the University of Montana respond to and collaborate to address sexual assault, with a focus on enhancing victim safety, support, and participation in the law enforcement process.

VI. INDEPENDENT OVERSIGHT

A. Selection of the Independent Reviewer

19. The parties have jointly selected Thomas R. Tremblay to serve as the Independent Reviewer to oversee the terms of this Agreement.

20. The Independent Reviewer shall continue in the role as described in this Agreement until the University demonstrates compliance with the entire Agreement. The Parties anticipate that compliance can be demonstrated no later than June 30, 2015.

21. The University shall bear all fees and costs of the Independent Reviewer. In selecting

the Independent Reviewer, DOJ and the University recognize the importance of ensuring that the fees and costs borne by the University are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Independent Reviewer. In the event that any dispute arises regarding the reasonableness or payment of the Independent Reviewer's fees and costs, the University, DOJ, and the Independent Reviewer shall attempt to resolve such dispute cooperatively.

22. The University shall provide the Independent Reviewer with office space and reasonable office support such as office furniture, secure internet access, telephones, secure document storage, and photocopying, faxing, and scanning equipment, that the Independent Reviewer may use while on-site in Missoula.

B. Role of the Independent Reviewer

23. During the term of this Agreement, the Independent Reviewer shall not have duties, responsibilities, or authority for either Party other than those conferred by this Agreement.

24. The Independent Reviewer will assess and report whether the requirements of this Agreement have been implemented. The Independent Reviewer will also analyze the data collected pursuant to this Agreement and report on all measurable changes in OPS' response to, and investigation of, reports of sexual assault.

25. The Independent Reviewer shall conduct regular compliance reviews, outcome assessments, and investigation reviews specified by this Agreement, and such additional reviews and assessments as the Independent Reviewer or the Parties deem appropriate to assess and report whether this Agreement has been implemented and is having the intended effect.

26. If the Independent Reviewer ends his or her position as Independent Reviewer, the former Independent Reviewer may not enter into any contract with DOJ or the University on a matter related to the Agreement without the written consent of the other Party while the Agreement remains in effect.

C. Compliance Reviews and Outcome Assessments

27. The Independent Reviewer shall conduct compliance reviews to determine whether OPS has implemented and continues to comply with the material requirements of this Agreement. Compliance with a material requirement of this Agreement requires that OPS has: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to

fulfill their responsibilities pursuant to the requirement; (c) ensured comprehension of all training received; and (d) ensured that the requirement is being carried out in actual practice. Compliance reviews shall contain both qualitative and quantitative elements as necessary for reliability and comprehensiveness.

28. In addition to compliance reviews, the Independent Reviewer shall conduct periodic outcome assessments with the intent of determining whether OPS' implementation of this Agreement is having its intended effect, and whether the implementation of this Agreement has had any unintended negative impacts. Individual outcome assessments shall not be determinative of whether this Agreement is having its intended effect, as each outcome measure is not designed to be considered in isolation. These outcome assessments shall include collection and analysis, both quantitative and qualitative, of the following outcome data:

- a. Number of sexual assault reports made to OPS;
- b. Rate of victim participation in OPS sexual assault investigations;
- c. Sexual assault victims' experience with OPS, including those victims who declined to participate in an investigation;
- d. OPS detectives' perceptions of their own sexual assault investigations, including whether those investigations result in: a higher rate of victim participation, improved evidence collection, more frequent discovery of similar acts by the same perpetrator, and more information elicited from interviews;
- e. Clearance codes assigned to closed sexual assault cases;
- f. To the extent that OPS can reasonably obtain such information, prosecutors' stated reasons for declining to charge sexual assault cases referred by UM/OPS for prosecution;
- g. To the extent that OPS can reasonably obtain such information, rate of declination of sexual assault cases referred by UM/OPS for prosecution;
- h. First Step multi-disciplinary team experience with OPS;
- i. UM's Student Assault Resource Center's experience with OPS;
- j. UM'S Title IX Coordinator's experience with OPS;
- k. Residence Life Assistants' experience with OPS;
- l. Outcome measures developed by the external review group and/or any resulting from any Missoula City Safety and Accountability Audit.

29. In conducting these compliance reviews and outcome assessments, the Independent Reviewer may use any relevant data collected and maintained by the University that the Independent Reviewer and DOJ deem reliable and sufficiently complete.

D. Access and Confidentiality

30. The Independent Reviewer shall have timely, full, and direct access to all individuals, facilities, data, and documents, including both open and closed sexual assault investigative files, the Independent Reviewer reasonably deems necessary to carry out the duties assigned to the Independent Reviewer by the Agreement. To facilitate his or her work, the Independent Reviewer may conduct on-site visits and assessments without prior notice to the University. The Independent Reviewer will cooperate with the University to access personnel, facilities, and documents in a reasonable manner that, consistent with the Independent Reviewer's responsibilities, minimizes interference with daily operations, and will not compromise the integrity of any ongoing criminal investigation.

31. DOJ and its consultants, experts, and agents will have full and direct access to all University staff, employees, facilities, data, and documents, including both open and closed sexual assault investigative files, reasonably necessary to review OPS' compliance with and enforce this Agreement. DOJ and its consultants, experts, and agents will cooperate with the University to access involved personnel, facilities, and documents in a reasonable manner that, consistent with DOJ's responsibilities to enforce the Agreement, minimizes interference with daily operations.

E. Independent Reviewer Plan and Review Methodology

32. Within 45 days of the Independent Reviewer's appointment, the Independent Reviewer will develop a review plan, including proposed interim deadlines for OPS' implementation of the requirements of this Agreement. The review plan will set out a schedule for conducting the compliance reviews and outcome assessments that is consistent with the interim deadlines for implementation of this Agreement. The Independent Reviewer shall submit the plan to the Parties for review and comment.

33. At least 45 days prior to the initiation of any outcome measure or compliance review, the Independent Reviewer shall submit a proposed methodology for the assessment or review to the Parties. The Parties shall submit any comments or concerns regarding the proposed

methodology to the Independent Reviewer within 15 days of the proposed date of the assessment or review. The Independent Reviewer shall modify the methodology as necessary to address any concerns or shall inform the Parties in writing of the reasons s/he is not modifying the methodology as proposed.

34. Where the Independent Reviewer recommends and the Parties agree, the Independent Reviewer may refrain from conducting a compliance review of a requirement previously found to be in compliance by the Independent Reviewer, or where outcome assessments indicate that the outcome intended by the requirement has been achieved.

F. Independent Reviewer Recommendations and Technical Assistance

35. The Independent Reviewer may make recommendations to the Parties regarding measures necessary to ensure timely, full, and effective implementation of this Agreement and its underlying objectives. Such recommendations may include a recommendation to change, modify, or amend a provision of the Agreement, a recommendation for additional training in any area related to this Agreement, or a recommendation to seek technical assistance. In addition to such recommendations, the Independent Reviewer may also, at the request of the University or DOJ, provide technical assistance consistent with the Independent Reviewer's responsibilities under this Agreement.

G. Comprehensive Assessment

36. Upon the Independent Reviewer's determination that the University has attained compliance with this Agreement, the Independent Reviewer shall conduct a comprehensive assessment to determine whether and to what extent: (1) the outcomes intended by this Agreement have been achieved, and (2) any modifications to the strategies set forth in this Agreement are necessary for continued achievement in light of changed circumstances or unanticipated impact (or lack of impact) of a requirement. This assessment shall also address areas of greatest achievement and the requirements that appear to have contributed to this success, as well as areas of greatest concern, including strategies for maintaining achievement. Based upon this comprehensive assessment, the Independent Reviewer shall make recommendations for achieving and sustaining intended outcomes.

H. Independent Reviewer Reports

37. The Independent Reviewer shall produce quarterly written, public reports covering the reporting period that shall include:

- a. A description of the work conducted by the Independent Reviewer during the reporting period;
- b. A listing of each Agreement requirement indicating which requirements have been: (1) incorporated into implemented policy; (2) the subject of adequate and appropriate training for all relevant OPS personnel; (3) reviewed by the Independent Reviewer to determine whether they have been fully implemented in actual practice, including the date of the review; and (4) found by the Independent Reviewer to have been fully implemented in practice;
- c. The methodology and specific findings for each review conducted. An unredacted version of the report shall be provided to the Parties. The underlying data for each review shall not be publicly available but shall be retained by the University for at least three years after the Independent Reviewer's Comprehensive Assessment Report and provided to either or both Parties upon request;
- d. For any requirements that were reviewed and found not to have been fully implemented in practice, the Independent Reviewer's recommendations regarding necessary steps to achieve compliance;
- e. The methodology and specific findings for each outcome assessment conducted;
- f. A qualitative assessment of OPS' progress in achieving the desired outcomes for each area covered by the Agreement, noting issues of concern or particular achievement; and
- g. A projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of the Agreement.

38. The Independent Reviewer shall provide a copy of each report to the Parties in draft form at least ten business days prior to finalizing the report and releasing it publicly, to allow the Parties to informally comment on the report. The Independent Reviewer shall consider the Parties' responses and make appropriate changes before issuing the report.

39. The reports shall be public with the exception of material covered by applicable privacy laws, and, to facilitate public access to the reports, the University shall post the reports to the University's public website.

40. The Independent Reviewer will not issue statements or make findings with regard to any act or omission of any Party, or their agents or representatives, except as required by the terms of this Agreement. The Independent Reviewer may testify in any enforcement proceedings regarding provisions of the Agreement and the Parties' compliance. The Independent Reviewer will not testify in any other litigation or proceeding with regard to any act or omission of any Party, or any of their agents, representatives, or employees, related to the Agreement or regarding any matter or subject that the Independent Reviewer may have learned of as a result of his/her performance under the Agreement. This restriction does not apply to any proceeding before a court related to performance of contracts or subcontracts for Independent Review of the Agreement.

41. Unless such conflict is waived by the Parties, the Independent Reviewer shall not accept employment or provide consulting services that would present a conflict of interest with the Independent Reviewer's responsibilities under the Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the University or its departments, officers, agents, or employees.

I. Independent Reviewer Budget

42. Within 30 days of appointment, the Independent Reviewer shall submit to the Parties a proposed budget for University Fiscal Year 2014. Using the proposed budget for University Fiscal Year 2014, the Independent Reviewer shall also propose an equivalent amount prorated through the remainder of the University Fiscal Year 2013.

43. The Parties shall raise with the Independent Reviewer any objections they may have to the proposed budget within 10 business days of receipt.

44. Thereafter, the Independent Reviewer shall submit annually a proposed budget to the Parties for their review by April 1 in accordance with the process set forth above.

45. At any time, the Independent Reviewer may submit to the Parties for approval proposed revisions to the budget, along with an explanation of the reasons for the proposed revisions.

46. The Independent Reviewer will submit monthly statements to the Parties, detailing all expenses the Independent Reviewer incurred during the prior month. The Parties will review such statements for reasonableness. Upon completion of the Parties' review, but in no case

more than 10 days after submission of the statements by the Independent Reviewer, the Parties will notify the Independent Reviewer of their approval of the statement. The University shall pay the full amount of the statement to the Independent Reviewer within 30 days of the Parties' approval of the statement.

VII. AGREEMENT IMPLEMENTATION AND ENFORCEMENT

A. Modification and Enforcement of the Agreement

47. DOJ reserves its right to seek enforcement of the provisions of this Agreement, through specific performance in the United States District Court for the District of Montana, if it determines that the University has failed to fully comply with any provision of this Agreement. Prior to initiating any court proceeding, DOJ agrees to provide written notice of the failure to the University. The University shall have 30 days from receipt of such notice to cure the failure. During the 30-day period, the Parties shall meet and confer to resolve any disputes regarding the failure or to otherwise explore a joint resolution. The Independent Reviewer shall assist the Parties in reaching a mutually agreeable resolution to the compliance failure or dispute, including by facilitating discussions and providing relevant factual assessments. If the Parties are not able to reach a mutually agreeable resolution to the compliance failure or dispute within the 30-day period, DOJ may, without further notice to the University, file an action in the United States District Court for the District of Montana (the "Federal Court Action") against the University for breach of contract and may seek specific performance and any other appropriate form of relief.

48. In connection with the Federal Court Action:

- a. The University shall stipulate to in personam jurisdiction and venue in the United States District Court for the District of Montana (the "Court").
- b. The University agrees that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the Legal Counsel for the University, with a copy to OPS, will be deemed good and sufficient service upon the University;
- c. The Parties agree to an expedited trial of the Federal Court Action.

49. In the event the Court finds that the University has engaged in a material breach of the Agreement, the parties hereby stipulate that they will move jointly for the Court to enter the

Agreement and any modifications as an order of the Court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement.

50. Should the Independent Reviewer determine that any portion of the Agreement is ineffective at achieving the desired outcomes, or causing unintended negative consequences, he or she may recommend modifications to the Agreement. Where the Parties agree with the Independent Reviewer's recommendations, the Parties shall modify the Agreement accordingly.

51. The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement. In the event any provision of this Agreement is challenged in any state, county, or municipal court, the Parties shall seek removal to federal court.

52. If any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, that finding shall not affect the remaining provisions of this Agreement.

53. This Agreement constitutes the entire integrated agreement of the Parties. No prior drafts or prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or other proceeding.

54. The University shall require compliance with this Agreement by the University's respective officers, employees, agencies, assigns, or successors.

55. The Agreement is enforceable only by the Parties. No person or entity is intended to be a third-party beneficiary of the provisions of the Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under the Agreement.

56. Nothing in this Agreement shall be construed as an acknowledgement, an admission, or evidence of liability for violations of any legal responsibility by the University, and this Agreement may not be used as evidence of liability in this or any other civil or criminal proceeding.

57. The University agrees to promptly notify DOJ if any term of this Agreement becomes subject to collective bargaining consultation and to consult with DOJ in a timely manner regarding the position the University and OPS take in any collective bargaining consultation connected with this Agreement.

58. All Parties agree that, as of the date of entry of this Agreement, litigation is not “reasonably foreseeable” concerning the matters described in this Agreement. To the extent that either Party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described in this Agreement, the Party is no longer required to maintain such a litigation hold.

VIII. TERMINATION OF THE AGREEMENT

59. The Parties anticipate that the University will have complied with all provisions of this Agreement by June 30, 2015.

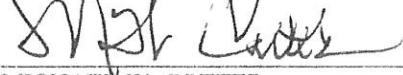
60. The Agreement shall remain in effect until June 30, 2015 unless any of the following occur:

- a. The Parties jointly agree, in writing, to terminate the Agreement before June 30, 2015, on the grounds that the University has complied with this Agreement and maintained compliance for one year; or
- b. The United States disputes that the University is in compliance with the Agreement by June 30, 2015 and has maintained compliance for one year. Such a dispute will be addressed through negotiation between the Parties or, if the Parties are unable to reach a mutually agreeable resolution, through civil enforcement proceedings, as described in above ¶ 47.

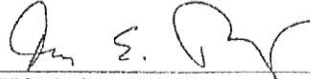
61. “Compliance” shall be defined to require both sustained compliance with all material requirements of this Agreement and sustained and continuing improvement in the response to and investigation of reports of sexual assault, as demonstrated pursuant to the outcome measures determined by the Independent Reviewer. Compliance shall be achieved where any violations of the Agreement are minor or incidental and not systemic. Noncompliance with mere technicalities, or temporary or isolated failure to comply during a period of otherwise sustained compliance, will not constitute failure to maintain compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance will not constitute compliance.

Respectfully submitted, this 9th day of May, 2013

For the UNITED STATES OF AMERICA:



MICHAEL W. COTTER
United States Attorney
District of Montana



THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

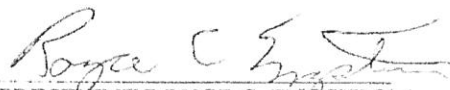
ROY L. AUSTIN, JR.
Deputy Assistant Attorney
Civil Rights Division

JONATHAN M. SMITH
Section Chief
Special Litigation Section

CHRISTY E. LOPEZ
Deputy Chief
Special Litigation Section

SAMANTHA K. TREPEL
JENNIFER L. MONDINO
Trial Attorneys
United States Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Avenue, NW
Washington, DC 20530
Tel. (202) 514-6255
Fax. (202) 514-4883

For the UNIVERSITY OF MONTANA



PRESIDENT ROYCE C. ENGSTROM

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4-9-18

(PLEASE PRINT)

Name: Christopher Bromson

Address: _____

I represent: Exec Director, Crime Victims Treatment Ctr.

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: Kylynn Grier

Address: _____

I represent: Girls for Gender Equity

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/9/2018

(PLEASE PRINT)

Name: Amy Gong, Law Advocate for Women

Address: 100 W 12th St, NY, NY 10011

I represent: NOV NYC

Address: 100 W 12th St, NY, NY 10011

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Re: NYPD Special Victims Date: 4-9-2018

(PLEASE PRINT)

Name: Jane Manning → Victim Advocate

Address: 1510 Gillespie Ave / Bronx, NY

I represent: Women's Justice Now

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: Angela Fernandez

Address: 1 Gustave L. Levy Pl. NY, NY

I represent: H. Sinai Sexual Assault + Violence Intervention Program

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4-9-18

(PLEASE PRINT)

Name: Joyce Short

Address: 540 Main St. 1604

I represent: Author - Coronal Abuse by Deceit +

Address: Combating Romance Scams - Why Lying to Get Laid is a Crime

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 0444-2018 Res. No. _____

in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: LYNN HECHT SCHAFFAN

Address: Legal Momentum 16 E 34 St NY NY

I represent: Legal Momentum / Nat'l Judicial

Address: 16 E 34 St NY NY Education Program

Admin. **THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Chief of Dept Monahan

Address: _____

I represent: _____

Address: _____

Admin. **THE COUNCIL
THE CITY OF NEW YORK**

Admin. Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Chief of Dept Monahan Robert Boyce

Address: _____

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Admin.
Admin.
Admin.

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Dep. Commissioner for Collab + Policing

Address: Susan Herman

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Admin.
Admin.
Admin.

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: Deleg. Cheryn Gausman

Address: SUPV OF Hologan Affairs

I represent: _____

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: Michael Boch Ret NYPD SVD.

Address: Putnam County N.Y.

I represent: Self.

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Admin.
Admin.

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: Sergeant-at-Arms

Address: Chief of Legal Affairs

I represent: Million Bodies movement for justice

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: Director of Legislative Affairs Oleg Chernyavsky

Address: _____

I represent: NYPD

Address: _____

THE COUNCIL
THE CITY OF NEW YORK

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____
 in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: Chief of Department Terence Monahan

Address: _____

I represent: NYPD

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: Chief of Detectives Robert Boyce

Address: _____

I represent: NYPI

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: Deputy Comm for Collaborative Pol. of Sgt. Herman

Address: _____

I represent: NYPD

Address: _____

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 4/9/18

(PLEASE PRINT)

Name: Mary Haviland

Address: 32 Broadway

I represent: New York City Alliance Against Sexual Assault

Address: 32 Broadway

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

would like to be on a panel with Jane Manning Date: 4/9/18

(PLEASE PRINT)

Name: Desdemona Meck

Address: 780 Madison St, Apt 3

I represent: _____

Address: _____

Please complete this card and return to the Sergeant-at-Arms