A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Phil Mendelson and Councilmember Tommy Wells introduced the following bill which was referred to the Committee on ________________.

To amend the Office of Citizen Complaint Review Establishment Act of 1998 to specify that the jurisdiction of the Police Complaints Board and Office of Police Complaints includes the Metropolitan Police Department’s handling of complaints of sexual assault; to amend Title 23 of the District of Columbia Official Code to provide that a sexual assault victim shall have the right to have a sexual assault victim advocate present at medical examinations and at interviews with law enforcement, prosecutors, and defense attorneys; to amend Title 14 of the District of Columbia Official Code to provide that communications between a sexual assault victim and a sexual assault victim advocate are confidential and privileged; to require that the Metropolitan Police Department process sexual assault forensic examination kits in a timely manner; and to provide that hospitals in the District of Columbia shall not bill a sexual assault victim for a sexual assault forensic examination kit.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Sexual Assault Victims’ Rights Amendment Act of 2013”.

TITLE I – JURISDICTION FOR POLICE COMPLAINTS

Sec. 101. The Office of Citizen Complaint Review Establishment Act of 1998, effective March 26, 1999 (D.C. Law 12-208; D.C. Official Code § 5-1101 et seq.), is amended as follows:
(a) Section 4 (D.C. Official Code § 5-1103) is amended by adding a new paragraph (5) to read as follows:


(b) Section 5 (D.C. Official Code § 5-1104) is amended by adding a new subsection (d-2) to read as follows:

“(d-2) The Board may, where appropriate, monitor and evaluate MPD’s handling of, and response to, complaints of sexual assault.

(c) Section 8(a) (D.C. Official Code § 5-1107(a)), is amended as follows:

(1) Paragraph (5) is amended by striking the word "or" at the end.

(2) Paragraph (6) is amended by striking the period at the end and inserting a semicolon followed by the word "or" in its place.

(3) A new paragraph (7) is added to read as follows:

“(7) Failure to follow MPD policy or protocol with regard to the handling of complaints of sexual assault.”.

TITLE II—VICTIMS’ RIGHTS; CONFIDENTIAL COMMUNICATIONS

Sec. 201. Title 23 of the District of Columbia Official Code is amended as follows:

(a) The table of contents for Chapter 19 is amended by adding the following after “23-1903. Crime victim privacy and security.”:

“23-1903a. Rights for sexual assault victims.”.

(b) A new section 23-1903a is added to read as follows:

“(a) For the purposes of this section, the term:

“(1) “Sexual assault” means any offense set forth subchapter II of Chapter 30 of Title 22.

“(2) “Sexual assault victim” means a person against whom sexual assault has been committed or is alleged to have been committed.

“(3) “Sexual assault victim advocate” means an employee, contractor, or volunteer of a sexual assault program who:

“(A) Is rendering support, counseling, or assistance to a victim;

“(B) Has undergone not less than 40 hours of sexual assault victim advocate training conducted by a sexual assault program that includes dynamics of sexual assault, trauma resulting from sexual assault, crisis intervention, personal safety, risk management, criminal and civil court processes, and resources available to victims; and

“(C)(i) Is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or

“(ii) Is or is under the supervision of a person who has a minimum of 5 years of experience rendering support, counseling, or assistance to persons against whom sexual assault has been committed or is alleged to have been committed, of which at least 2 years of experience involves victims.

“(b) A sexual assault victim shall have the right to have a sexual assault victim advocate present at any:

“(1) Medical, evidentiary, or physical examination; and

“(2) Interview with law enforcement, prosecutors, or defense attorneys.

“(c) Prior to the commencement of any initial medical, evidentiary, or physical
examination arising out of a sexual assault, the hospital personnel or the certified forensic sexual
assault nurse examiner assigned to the case shall immediately summon a sexual assault victim
advocate to be present, unless:

“(1) The sexual assault victim declines the presence of such an advocate; or
“(2) The hospital personnel or the certified forensic sexual assault nurse examiner
determines that the sexual assault victim advocate will be detrimental to the purpose of the
examination.

“(d) Prior to the commencement of any initial interview with law enforcement,
prosecutors, or defense attorneys arising out of a sexual assault, the law enforcement official,
prosecutor, or defense attorney shall immediately summon a sexual assault victim advocate to be
present, unless:

“(1) The sexual assault victim declines the presence of such an advocate; or
“(2) The law enforcement official, prosecutor, or defense attorney determines
that the sexual assault victim advocate will be detrimental to the purpose of the interview.

“(e) If after declining the presence of such an advocate, a sexual assault victim requests
that such an advocate be present at any later time, including at any subsequent interview with
law enforcement, prosecutors, or defense attorneys, the sexual assault victim advocate shall be
permitted to be present with the victim during such interview, unless the law enforcement
official, prosecutor, or defense attorney determines that the advocate will be detrimental to the
purpose of the interview.”.

Sec. 202. Title 14 of the District of Columbia Official Code is amended as follows:

(a) The table of contents for Chapter 3 is amended by adding at the end the phrase “14-
312. Sexual assault victim advocates.”.
(b) Section 14-307 is amended by striking the phrase "or a human trafficking counselor as defined in § 14-311(a)(2)" and inserting the phrase "a human trafficking counselor as defined in § 14-311(a)(2), or a sexual assault victim advocate as defined in § 14-312(a)(4)" in its place.

(c) A new section 14-312 is added to read as follows:

"14-312. Sexual assault victim advocates.

"(a) For the purposes of this section, the term:

"(1) "Confidential communication" means information exchanged between a victim and a sexual assault victim advocate during the course of the advocate providing counseling, support, and assistance to a victim, including all records kept by the advocate and the sexual assault program concerning the victim and services provided to the victim.

"(2) "Sexual assault" means any offense set forth subchapter II of Chapter 30 of Title 22.

"(3) "Sexual assault program" means a nonprofit, non-governmental organization that supports, counsels, and assists victims of sexual assault, including a rape crisis center.

"(4) "Sexual assault victim advocate" means an employee, contractor, or volunteer of a sexual assault program who:

"(A) Is rendering support, counseling, or assistance to a victim;

"(B) Has undergone not less than 40 hours of sexual assault victim advocate training conducted by a sexual assault program that includes dynamics of sexual assault, trauma resulting from sexual assault, crisis intervention, personal safety, risk management, criminal and civil court processes, and resources available to victims; and

"(C)(i) Is or is under the supervision of a licensed social worker, nurse, physician, psychologist, or psychotherapist; or
“(ii) Is or is under the supervision of a person who has a minimum
of 5 years of experience rendering support, counseling, or assistance to persons against whom
sexual assault has been committed or is alleged to have been committed, of which at least 2 years
of experience involves victims.

“(5) “Victim” means a person against whom sexual assault has been committed
or is alleged to have been committed.

“(b)(1) A sexual assault victim advocate shall not disclose a confidential communication
except:

“(A) As required by statute or by a court of law;

“(B) As voluntarily authorized in writing by the victim;

“(C) To other individuals employed at the sexual assault program and
third party providers when and to the extent necessary to facilitate the delivery of services to the
victim;

“(D) To the Metropolitan Police Department or other law enforcement
agency to the extent necessary to protect the victim or another individual from a substantial risk
of imminent and serious physical injury;

“(E) To compile statistical or anecdotal information, without personal
identifying information, for research or public information purposes; or

“(F) For any confidential communications relevant to a claim or defense
if the victim files a lawsuit against a sexual assault victim advocate or a sexual assault program.

“(2) Unless the disclosure is public, confidential communications disclosed
pursuant to paragraph (1) of this subsection shall not be further disclosed by the recipient except
as authorized in paragraph (1) of this subsection.
“(3) Confidential communications are not waived by the presence of a sign
language or foreign language interpreter. Such an interpreter is subject to the same disclosure
limitations set forth in paragraph (1) of this subsection and the same privilege set forth in
subsection (c) of this section.

“(c)(1) Except as provided in paragraph (2) of this subsection, when a victim is under 12
years of age, has been adjudicated incompetent by a court of competent jurisdiction for the
purpose of asserting or waiving the privilege established by this section, or is deceased, the
victim’s parent, guardian, or personal representative may assert or waive the privilege.

“(2) If the parent, guardian, or personal representative of a victim described in
paragraph (1) of this subsection has been charged with an intrafamily offense, sexual assault, or
has had a protection order or a neglect petition entered against him or her at the request of or on
behalf of the victim, or otherwise has interests adverse to those of the victim with respect to the
assertion or waiver of the privilege, the court shall appoint an attorney for purposes of asserting
or waiving the privilege.

“(d) The assertion of any privilege under this section is not admissible in evidence.”.

TITLE III – SEXUAL ASSAULT FORENSIC EXAMINATION KITS

Sec. 301. Definitions.

For the purposes of this title, “sexual assault” means any offense set forth in title II of the
22-3002 et seq.).

Sec. 302. Processing by the Metropolitan Police Department.

All sexual assault forensic examination kits shall be processed by the Metropolitan Police
Department in a timely manner, at a maximum 90 days from the date the evidence was collected
from a victim of alleged sexual assault.

Sec. 303. Payment for sexual assault forensic examination kits.

Hospitals in the District of Columbia shall not bill a victim of sexual assault for the administration of a sexual assault forensic examination kit or for the kit itself. The hospital may submit a bill to the D.C. Crime Victims Compensation Program, pursuant to the Victims of Violent Crime Compensation Act of 1996, effective April 9, 1997 (D.C. Law 11-243; D.C. Official Code § 4-501 et seq.).

TITLE IV – FISCAL IMPACT; EFFECTIVE DATE

Sec. 401. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 402. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.