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**Department on the Status of Women**



Mark E. Farrell  
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**Date:** June 14, 2018  
**To:** Supervisors Ahsha Safai, Norman Yee, & Catherine Stefani  
**From:** Emily Murase, PhD, Director  
**Subject:** Office of Sexual Harassment and Assault Response and Prevention Ordinance

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The Department on the Status of Women welcomes the attention of the Board of Supervisors to improving the City's response to sexual assault and sexual harassment, and appreciates Supervisor Hillary Ronen's leadership on this issue. We offer the following feedback on the ordinance creating the Office of Sexual Harassment and Assault Response and Prevention Ordinance, which we have shared with Supervisor Ronen.

### **Building on Prior Initiatives to Address Sexual Assault**

#### **Sexual Assault Response Team (SART)**

The existing SART meets to coordinate on specific sexual assault cases and identify system issues. Current members of the SART are the Police Department, District Attorney, San Francisco Women Against Rape, Rape Trauma Center and the Medical Examiner. The SART has not had dedicated staffing to work on systemic reform. Rather than creating a new initiative based at Human Rights Commission, it makes more sense to build out the existing SART, adding extra seats to allow for participation from survivors and other agencies, and give them staff to enable the deeper system reform work. The tasks envisioned in Sec. 12A.18, paragraphs (b)(5)-(6) at pages 4-5 of the Ordinance could all be performed by a staffed SART.

#### **Safer Schools Sexual Assault Task Force**

The Safer Schools Sexual Assault Task Force met for one year in 2016-2017, and published a report with 47 recommendations to the Board of Supervisors. Although the Department on the Status of Women requested to present the findings of the report to the Board in December 2017, the hearing has not yet been set. The primary recommendation of the Task Force was to fund staff so that an ongoing Task Force could meet to work on implementation of the recommendations. No such funding has yet been appropriated. The Office of Sexual Harassment and Assault Response (SHARP) Ordinance nowhere references the recommendations of the Safer Schools Sexual Task Force. One of the main functions of any City initiative to respond to sexual assault should start with the work that has been done, and strive to implement the Task Force recommendations.

### **Confidentiality Issues**

While the ordinance attempts to address confidentiality for the SHARP office staff, it would be impossible for the City employees at Human Rights Commission to meet the qualifications of a “sexual assault counselor” pursuant to Evidence Code section 1035.2. Defense counsel would be able to subpoena SHARP records, and sunshine laws might require SHARP staff communications to be made public, as they do not meet the definition of working at an “office, hospital, institution, or center commonly known as a rape crisis center, whose primary purpose is the rendering of advice or assistance to victims of sexual assault.” It would be problematic for survivors to have communications they believe are confidential but are not protected under the law.

### **Compromising Ongoing Investigation and Prosecution**

By requiring an officer of the Police Department or a member of the District Attorney’s office to attend a meeting with the SHARP office and the complainant while an investigation is ongoing, the SHARP office may unintentionally compromise an ongoing investigation. SHARP meetings might be discoverable by defense counsel, which could compromise a prosecution case. Defendants would be able to cross examine survivors on their complaints to SHARP, which might also weaken a prosecution.

### **Need to Avoid Duplication and Multiple Systems for Survivors**

One of the traumatizing aspects in the wake of a sexual assault can be the number of different systems that assault survivors must navigate to get support and justice. The proposed duties of the new Office of Sexual Harassment and Assault Response (SHARP) overlap with the existing responsibilities of several City Departments, and may create a confusing set of parallel processes for survivors. For example, the SHARP Office would have the power to receive complaints regarding any City Department’s response to sexual assault or sexual harassment, which would include complaints against the Police Department. The Department of Police Accountability (DPA) is responsible for investigating complaints against San Francisco police officers, making policy recommendations regarding police practices, and conducting periodic audits of the San Francisco Police Department. There are benefits to having all complaints against the Police Department tracked at DPA, so they can identify repeat complaints against the same officer, or trends in complaints. There should be some mechanism for require that DPA be notified of any complaints, while also avoiding duplicate interviews, etc. for survivors.

Similarly, the Department of Human Resources (DHR) is responsible for investigating complaints of sexual harassment committed by City employees, and SHARP would have overlapping powers to take complaints regarding sexual harassment. The DHR is required to report complaints of discrimination against women and sexual harassment to the Commission and Department on the Status of Women on a quarterly basis. The Commission and Department are responsible for monitoring reports of sexual harassment claims, making recommendations to the DHR concerning such complaints, and receiving regular reports of settlements involving employment discrimination, including sexual harassment from the City Attorney.

### **Conflicts with State Law**

There are state laws that govern police officers and district attorneys that may conflict with provisions of this ordinance. This could set survivors up for false hopes that a City employee might be compelled to come to a meeting, when that employee could not be compelled to actually participate in a meaningful way.

### **Involvement of Commission/Department on the Status of Women**

The Commission and Department on the Status of Women has a 40-year history addressing violence against women. The Commission and Department have the power to coordinate the City's efforts to establish a comprehensive response to violence against women and girls and to make recommendations and work with law enforcement agencies, the Board of Supervisors, Mayor, and City agencies and officials to develop programs and practices with respect to violence against women, sexual harassment, and discrimination against women and girls. The Commission and Department can also investigate and mediate incidents of discrimination against women. The responsibilities, powers, and duties of the Commission and Department specifically identify issues of sexual harassment and rape as under our jurisdiction due to their having a particular impact on women and girls, yet do not restrict our efforts based on sex and gender. Recent work by the Commission and Department on issues of human trafficking have been inclusive of men, trans, and gender-nonconforming individuals.

The Department has successfully helmed several interagency initiatives to improve San Francisco's criminal justice response to domestic violence; the Family Violence Council; and the Mayor's Task Force on Anti-Human Trafficking. Our Department has expertise working with other City agencies and community based agencies to improve our responses. We have expertise in publishing thorough reports which include data from various agencies on domestic violence, human trafficking, and most recently our Safer Schools Sexual Assault Task Force report. We admittedly have not had capacity to focus more on sexual assault, due to our small staff, and have requested additional staff to be able to concentrate on this issue.