Special Victim Counsel Program

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Policy Division

SECDEF Policy Memorandum

- Air Force SVC Pilot Program est. 28 Jan 13
- 14 AUG 13: SECDEF Publishes DoD Guidance for Sexual Assault Prevention and Response, including a “special victim’s advocacy program best suited for that Service”
- Required to provide “advice and representation to the victim throughout the justice process”
- IOC: 1 NOV 13
- FOC: 1 JAN 14
2014 NDAA

- Signed December 26, 2013
- Section 1716 directs establishing a “Special Victims’ Counsel for Victims of Sex-Related Offenses”
  - Effective June 24, 2014
  - Creates a new 10 U.S.C 1044(e) establishing a Special Victim Counsel:
    - For “an individual eligible for military legal assistance under [10 USC 1044] who is the victim of an alleged sex-related offense”
    - Counsel must receive specialized training and be certified by the ServiceTJAG
    - Lists 8 areas of services to be provided

8 Services to be Provided

- Legal consultation regarding potential collateral misconduct;
- Legal consultation regarding the Victim Witness Assistance Program;
- Legal consultation regarding SARC and VA;
- Legal consultation regarding 3rd party liability;
- Legal consultation regarding the military justice system;
- Accompany the victim to military prosecution proceedings;
- Legal consultation regarding emotional & mental health services; and
- Legal consultation & assistance regarding traditional legal assistance, in any military justice proceeding & MPO/CPOs

- Other Legal Assistance as authorized by the Secretary
Other Provisions of the NDAA

- Section 1701 incorporates the Federal Crime Victims' Rights Act into Article 6b UCMJ.
- Section 1701 allows a military judge to “designate a legal guardian...to assume the victim’s rights” on behalf of a minor, incompetent, incapacitated, or deceased victim.
- Section 1706 establishes the right of a victim to submit matters for the consideration by the convening authority prior to taking post-trial action.

Federal Crime Victims’ Rights Act

- 8 Rights
  - The right to be reasonably protected from the accused;
  - The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or any release or escape of the accused;
  - The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at the proceeding;
  - The right to be reasonably heard at any public proceeding in the district court involving release, plea, [or] sentencing, or any parole proceeding;
  - The reasonable right to confer with the attorney for the government in the case;
  - The right to full and timely restitution as provided in law;
  - The right to proceedings free from unreasonable delay, and
  - The right to be treated with fairness and with respect for the victim’s dignity and privacy.
LRM v. Kastenburg
72 M.J. 364 (C.A.A.F 2013)

Special Victims' Counsel Can Speak for victim and access court filings
A victim of sexual assault has a right to be heard through counsel on
issues implicating MRE 412 (rape shield) MRE 513 (psychiatrist-patient
privilege) and MRE 514 (victim advocate – victim privilege). The right to
be heard necessarily involves access to court documents and legal and
factual presentation relevant to the issues.

• Take aways:
  • (1) Where a statute or rule grants a "right to be heard," it means a right to legal and factual
    argument either personally or through counsel about that issue.
  • (2) Where a statute or rule grants a privilege to an individual, that person has a right to legal and
    factual defense of that privilege.

Current Environment
Sister Service Statistics

DoD FY12 Sexual Assault Data

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Service Implementation

- Air Force SVC Program established January 28, 2013
- Army, Navy, Marines and Coast Guard established programs by November 1, 2013 pursuant to SECDEF Memo
- All Services adapting programs to meet NDAA enactment

Army SVC Program
Role of SVC

- To provide “advice and representation to the victim throughout the justice process”
  - During investigation
  - During Preferral/Referral/Negotiations
  - During the Article 32
  - During Trial
  - Post Trial

Eligible Clients

- Soldier Victims of a Sexual Assault
- Other Servicemembers where accused is a Soldier
- Other adult Victims eligible for Legal Assistance where accused is a Soldier
- In the process of expanding the program to the Army Reserve Components
**Scope of Services**

**VWL and SVC Responsibilities**

- Primary POC through which victims obtain info/assistance in securing victim services at earliest opportunity.
- Acts ICW unit VA responsible for crisis intervention, referral, and ongoing nonclinical support to SA victim.
- Inform and assist with transportation, parking, childcare, lodging, and translators/interpreters.
- Inform of entitlement to reimbursement for expenses of appearing at Art. 32 or court-martial.
- Assist with obtaining payment of witness fees and related costs.
- Provides assistance to non "special victims"

**VWL**

1. Inform on reporting options
2. Inform on victim rights
3. Inform on military and VA benefits
4. Inform on expedited transfer requests
5. Inform on MPO and civilian protective orders
6. Inform on the MJ System and victim's rights/duties

**SVC**

7. Advise victim in collateral civil issues arising from crime
8. Advocate victim's interests with TC on disposition options
9. Referral to TDS, as necessary
10. Advise victim on victim impact statement
11. Accompany victim to all pre-trial interviews, hearings and court-martial proceedings
12. Discovery motions regarding medical records
13. Motions/appearances/appeals on MRE 412 and 513 issues
14. Assist victim in post-trial submissions
15. Traditional Legal Assistance

**SVC Attorneys**

- Program will reside in the SJA Legal Assistance Office
- Uniformed JAs will serve as SVCs
- LA Chiefs (Uniformed & Civilian) will provide oversight & guidance to SVCs
Impact on Legal Assistance

- SVC Assets coming out of the SJA Office.
- TJAG authorized SJAs to limit Legal Assistance to retirees.
  - Must make efforts to minimize impact.
- Some decrement to other parts of SJA Offices.
- 20 USAR JAs mobilized to backfill Legal Assistance at some installations.

Training and Clients

- 4 Training Courses conducted
- 81 Trained SVCs
- 536 Clients seen
- 49 - # of courts-martial
SVC Personnel

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Questions?