

Study of Sexual Assault Prosecution and Services in the Civilian Justice System

by

The Joint Services Committee
Sexual Assault Subcommittee
(JSC-SAS)

Agenda

- The 5 W's of the JSC-SAS Study and Background Information
- Evolution of the JSC-SAS and RSP tasks
- Summary of Interviews
 - Police, Prosecution Offices & Public Defenders
 - Experts, NGO's, & Victim Advocates, Victim attorneys
- Findings

5 W's of the JSC-SAS Study

- Who: (1) JAG Representative from Each Service
- What: Collect information regarding the investigation, prosecution and adjudication of sexual assault in civilian justice system, victim support and services
- Where: 18 Jurisdictions, 14 states across the country
- When: February – September 2013
- Why: To conduct a study of civilian prosecution, defense, and victim service organizations around the country to identify best practices for consideration by DoD and to inform the RSP's assessment of the military's response to sexual assault

JSC-SAS Overarching Tasks

- Gather facts in order to conduct a comprehensive assessment of the investigation, prosecution and adjudication of sexual assault cases in civilian jurisdictions
- Collect information regarding federal and state victim rights and legal representation
- Develop report with findings to improve the legal response to sexual assault in the military and provide the information to JSC, DOD General Counsel, HASC, SASC, and the RSP

Evolution of JSC-SAS & RSP

- 13 September 2012: Rep. Buck McKeon's Letter to Sec Def
 - Requested SecDef's input for a NDAA FY13 Commission/Panel to focus on sexual assault in the military
- 8 November 2012: Sec. Panetta's Letter to Rep. McKeon
 - SecDef stated he would direct the JSC to do a study to address concerns to gather materials regarding the investigation, prosecution, and adjudication of sexual assault in civilian jurisdictions
 - JSC WG's information would go to independent panel to write a report
 - Requested Rep. McKeon's input to determine the best the jurisdictions to compare for the study
- 2 January 2013: FY13 NDAA Section 576 became effective
 - Response Systems Panel (RSP) to compare military and civilian justice systems for sexual assault
 - Assess / Compare military and civilian justice systems, role of the commander, victim support and services, and legislative proposals
- January – February 2013: JSC-SAS Established by HASC and DOD
 - Met with HASC to determine jurisdictions
 - 2 prong goal:
 - Gather materials that would support SecDef's intent and
 - Meet many of the information needs of RSP to compare civilian and military jurisdictions
- March – May 2013: Researched Materials and Developed Methodology
- June – September 2013: Conducted interviews nationwide
- September – October 2013: Completed follow-up, Finalized Research, and Developed Report

Program Highlights

Jurisdiction	State Sexual Assault Program
Dover, DE	VWL heavily involved, move cases along relatively quickly
Arlington, VA	Consolidated prosecutor, investigator, VWL
NYC – Bronx	SART program, specialized investigators, therapy offered in house
NYC – Brooklyn	Victim centric program, VWL very involved, outreach activities
NYC – Manhattan	1 st Sex Assault Program 30 years ago; Experienced DA's & Defenders
NYC - Queens	“Riding” Program – Specialized Prosecutors involved at the start
Snohomish County, WA	Dawson place – one stop shop, multidisciplinary approach
Portland, OR	NCVLI; Victims rights advocacy and services are benchmark
Yamhill Co., OR	Smaller jx; uses experienced prosecutors and victim advocates
Anchorage, AK	Office of Victim Rights attorneys work with Prosecutors
Austin, TX	Active VA, VC program; prosecutor sits at APD 3 times / week
Baltimore, MD	SARC audit program and close ties between NGO, PD, Prosecutors
Grand Rapids, MI	YWCA – one stop shop, multidisciplinary approach

Program Highlights

Jurisdiction	State Sexual Assault Program
Washington D.C.	Close working relationship between Victim Attorney and AUSA
San Diego, CA	One of oldest/most comprehensive SART; strong ties with military
Maricopa Co, AZ	Active Victim lawyers, victim rights attorney in DA Office
Philadelphia, PA	Multidisciplinary approach, strong victim advocate agencies, audit
Athens-Clarke Co., GA	Multidisciplinary approach at Family Protection Center & the Cottage

NGOs and Victim Advocate Services

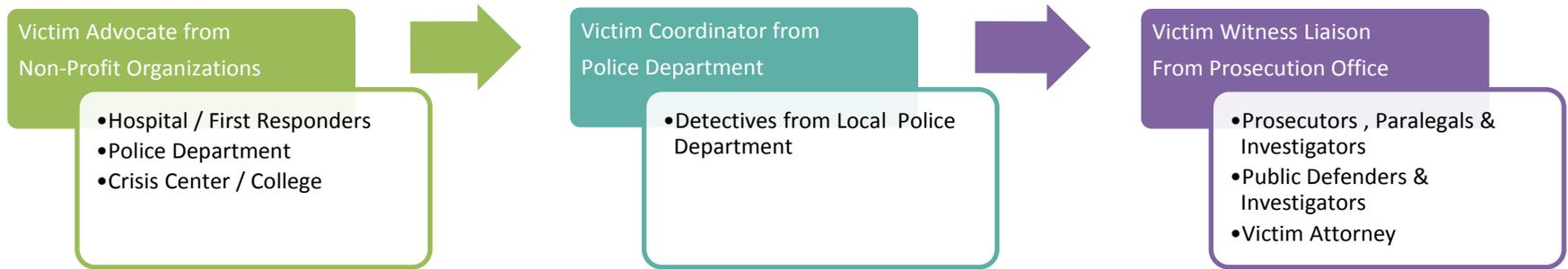
- Alaska Office of Victims' Rights – Anchorage, AL
- Standing Together against Rape (STAR) – Anchorage, AL
- Arizona Voice for Crime Victims (AVCV) – Scottsdale, AZ
- Center for Community Solutions – San Diego, CA
- The Cottage – Athens, Georgia
- TurnAround Inc. (Rape Crisis Center) – Baltimore, MD
- Maryland Crime Victims' Resource Center (MCVRC) – Upper Marlboro, MD
- YWCA of West Central Michigan – Grand Rapids, MI
- D.C. Crime Victims' Resource Center (DCCVRC) – Washington, DC
- Center for Court Innovation (New York)
- National Crime Victims Legal Institute (NCVLI) – Portland, Oregon
- Oregon Crime Victims Law Center (OVLC)
- Oregon Coalition Against Domestic and Sexual Violence (OCADSV)
- Oregon Sexual Assault Task Force
- Women's Law Project (WLP) – Philadelphia, PA
- Women Organized Against Rape (WOAR) - Philadelphia, PA
- Women Against Abuse (WAA) – Philadelphia, PA
- Texas Association Against Sexual Assault (TAASA) – Austin, TX
- Texas Legal Services Center – Austin, TX
- SafePlace (Austin Rape Crisis Center) – Austin, TX

Topics

- Organizational Structure
- Training: Prosecutors, Defenders, Investigators, Victim Advocates & Victim Attorneys
- Victims' Rights Statutory Schemes and Enforcement Mechanisms
- Role of Victim Advocates & Attorneys
 - Process
 - Reporting
 - Charging Decision
 - Investigations
 - Trial Preparation
 - Guilty Plea Negotiations
 - Sentencing
 - Post-Trial
- Defenders' Perspective
- Challenges

Findings

Organizational Structure



- Civilian Full Menu

- Victim Advocates (VA), Victim Coordinators (VC), Victim-Witness Liaisons (VWLs)
- Specialized Sex Crime Prosecutors, Specially Trained Investigators, Paralegals, Public Defenders with Investigators, and Victim Attorneys
- Multidisciplinary Approach

Types of Victim Support Services

- Titles vary in every jurisdiction
- Community Based Victim Support Personnel
 - **Victim Advocate (VA)**: NGO's located in hospitals & rape crisis centers
 - Depending on jurisdiction, may work with police or prosecutors and fulfill the role normally filled by system based victim support personnel
 - Usually present at beginning of investigation
- System Based Victim Support Personnel
 - **Victim Coordinator (VC)**: Work within police departments and show up right away
 - **Victim Witness Liaison (VWL)**: Work within prosecution office and develop strong relationship with prosecutor with power to tell prosecutor when victim rights are at issue, however there may be lag time between incident and first meeting
- **Victim Attorneys**
 - Government funded through grants (free for victim)
 - Pro-Bono attorneys (free for victim)
 - Private attorneys (paid by victim)

Summary of Civilian Jurisdictions

Training & Experience

- Prosecutors: 5-30 years experience for felony level sexual assaults
- Defenders: Usually very experienced, although level may depend on pay scale equivalent to the prosecution office
- Investigators: Trauma training, victim interviewing skills
- Victim Advocates: 40 hour training course regarding trauma, role of each government actor and justice system, OJT
- Victim Attorneys: Often former prosecutors or legal aid work who attend annual NCVLI training for CLE

Common Progression for Sex Crimes Attorneys

- Misdemeanors (Horizontal prosecution)
 - All misdemeanor crimes (including sexual assaults)
 - Civil commitment hearings
 - Juvenile court
- Property, Drugs, Guns, Domestic Violence
- Serious Felony Offenses (Vertical prosecution)
 - Felony Sexual Assaults, Rape, Child Sex Abuse
 - Violent Felonies/Robberies
 - Homicide

Reporting

- Military
 - Restricted report: Victim advocate, health professional
 - Unrestricted report: all other reports
- Multiple Avenues in Civilian Jurisdictions
 - Types of Reports
 - “No report” modeled after military’s restricted report
 - Report to law enforcement (same as DOD unrestricted report)
 - Anonymous report available in a few jurisdictions
 - Some jurisdictions permit limited law enforcement involvement to collect rape kit, but not investigate case fully until victim requests/agrees (e.g. serial offender situations)
 - No duty to report to police – VA’s focus on informing victim
 - Difficult to determine actual number of sexual assaults that occur because there are multiple hospitals, police departments, Colleges with each prosecutor’s jurisdiction

Investigation

- Civilian Standard Practice
 - Initial patrolman's checklist obtains limited information to determine if arrest is necessary
 - Referred to sex crimes Detective/investigator
 - Victim interviews audio/videotaped (sometimes)
 - Suspect interviews usually videotaped
 - Investigators search for collateral evidence
 - Detective coordinates with victim advocate or victim coordinator extensively throughout investigation phase
 - Lead investigator may sit at prosecution table in some jurisdictions (depends on sequester rules)
- Unique Programs
 - Separate set of investigators in prosecution office to do follow-up
 - Investigators in public defenders offices

Collateral Misconduct

- Collateral misconduct present in most cases
- Where relatively “minor” will typically not be charged (drug possession, alcohol, prostitution)
- Occasional grant of immunity
- Where victim is charged with a crime, case is kept separate from the sexual assault prosecution

Charging Decisions

- Military:
 - Investigator, JAG, Command decision for preferral/referral
 - Charges subject to change after Article 32 investigation
 - Charges subject to change with guilty plea
- Civilian:
 - Weight of PD's initial charges varies among jurisdictions
 - Point at which a prosecutor gets involved varies among jurisdictions
 - Generally:
 - Initial Patrol assessment
 - If arrested, then consult with prosecutor for PC
 - If not arrested, investigator will develop charges
 - Charges reviewed/revised prior to and after Grand Jury
 - Charges subject to change with guilty plea

Decision to Decline Cases

- Prosecutors Advice:
 - Be honest, up front. Start by believing victim.
 - Explain decision is evidence based, go through elements
 - Do not want to put victim on stand if not enough corroboration
 - Have a VA/VC/VWL present at “break up” meeting
- Police
 - Unfounded Cases / Clearance Rates – discretion varies among jurisdictions
 - Definitions vary for false or made-up reports (unfounded) versus insufficient evidence to prove beyond a reasonable doubt
 - Some jurisdictions now require form to be completed and approved by supervisor
- Prosecutors Before Indictment
 - Refer it back to PD to close case due to lack of evidence
- Prosecutors Before After Indictment/Before Trial
 - Prosecutor notes on record, but do not detail reasons for public review to avoid victim blaming
 - Note goes in prosecutors file (Attorney work product)
 - Written declinations sometimes subject to public disclosure

Preparation for Trial

- Civilian Standard Practice
 - VWL & Prosecutor meet victim before Grand Jury proceeding
 - Explain justice process, strengths & weakness of case
 - Victim may testify before Grand Jury
 - Review victim's original statement
 - Visit court room
 - Victim advocate/liaison involved to provide emotional, non-trial preparation to help manage expectations
- Other matters handled by other personnel
 - Security/protection usually civil matter (protective orders)
 - Landlord-tenant, employment, or other personal issues handled by civil attorney or victim attorney

Guilty Plea Negotiations

- Civilian
 - Some jurisdictions have formal plea offer standards
 - Other jurisdictions require line officer to obtain approval
 - Mandatory minimums affect plea negotiation
 - Meet with victim before making plea offer
 - Victim does not need to “approve” of plea offer, but most try to explain reasons for offer

Sentencing

- **Military**
 - 0 to Max. Punishment established by the President
- **Civilian**
 - Sentencing guidelines are the norm
 - Truth in sentencing initiatives
 - High mandatory minimums impacting plea negotiations and charging decisions

Post Trial

- **Military**
 - Right to appeal for clemency from GCMCA
 - Each service's court of appeals
 - Court of Appeals of the Armed Forces (CAAF)
- **Civilian**
 - State appellate process
 - Clemency from Governor

Common Victim Rights

- Protection from the accused
- Victim input on bail/release from confinement
- Notice to victim of hearings/proceedings
- Victims not excluded from court proceedings
- Victim right to be reasonably heard at hearings
- Restitution
- Victim informed & given opportunity for input regarding plea agreement/case disposition
- Fairness and respect for victim's dignity and privacy
- Victim impact statement offered before sentencing
- Proceedings free from unreasonable delay

Enforcement

- Most victim rights advocates agree enforcement mechanisms are necessary
 - Prosecutor sanctions
 - Required training/re-training
 - Trial delay
 - Set aside plea/sentence
- All agree that the BEST way and place to enforce victim rights is during the initial investigation and trial proceedings

Victims' Rights Statutory Schemes & Enforcement Mechanisms

- Best Practice: Incorporate into Judge's Script to ensure prosecution has consulted with victim and the Judge asks for the victim's position regarding the delay request, plea agreement, sentencing, etc.
- Military: DoD Policy details victims' rights which is modeled after the Federal Victim Rights Statute, currently no enforcement mechanism
- Civilian Jurisdictions:
 - Traditional Approach 1: Notification primary concern
 - Supportive Approach 2: Statutory rights, no enforcement mechanism which focuses more on compliance efforts (training, sanctions)
 - Progressive Approach 3: Statutory rights with enforcement mechanism

Role of Victim Advocates

- Military: Victim Advocate & Victim Witness Liaison
 - Victim advocate part of first responders to refer for support and services for restricted & unrestricted reports
 - Victim Witness Liaison is part of SJA's office / prosecution team and they help facilitate the prosecution
- Civilian Jurisdictions Victim Advocates/Coordinators/Witness Liaisons
 - Local Victim Advocates
 - NGOs with volunteers & staff from rape crisis center
 - No victim advocate privilege in most states
 - Police Department Victim Coordinators: social workers to coordinate interviews throughout investigative phase
 - Prosecutor's Office: social workers or advocates as witness liaisons to help facilitate the prosecution and obtaining the victim's input for charging, pleas, and impact statements
 - Victims' Attorneys in criminal cases: limited to motions & appeals regarding specific victims' rights issues
 - Consolidated Multi-disciplinary Facility
 - One stop shop, often part of child sex crimes
 - SANE, victim advocate, counselors, investigator, prosecutor co-located

Prosecution Based Victim Advocate

- Educate victims about criminal justice process
- Address victim concerns or questions with prosecutor
- Advocate victim desires prosecutor
- Referrals to counseling/supportive services
- Intimate knowledge of prosecutor strategy, decision making
- Facilitate trust between prosecutor and victim

Role of Victim Attorney

- **Military**
 - Air Force Pilot Program
 - Other services more recent implementation
 - Informed of right to attorney immediately
- **Civilian Jurisdictions**
 - Involvement varies among states/jurisdictions
 - Not all have standing to appear in court
 - Enforcement mechanisms vary
 - Usually involved late in the process
 - Represent victims of all types of crimes
 - Represent a very small percentage of victims

Victim Attorney Involvement

- Work in conjunction with non-lawyer advocates, not instead of
- Only active in a few states at this time
- More involvement in states with codified enforcement mechanisms
- Support victim through trial process, or support victim who does not want involvement of criminal justice system
- Represent victims of all types of crime

Common areas of assistance for Victim Attorneys/Victim Legal Counsel

- Victim Safety
- Victim's Privacy Rights
 - Medical records
 - Mental health records
 - Rape shield/prior sexual history
- Sentencing
- Specific Codified Rights
- Referrals and resources

Prosecutor's Perspective

- States without victim legal counsel involvement – general belief of prosecutors is that VLC unnecessary/interference in case
- States where victim legal counsel more active – feedback more positive, belief that VLC may enhance process
- VLC typically involved in “problem” cases

Defenders' Perspective

- Victims' Rights impacting Defendants' Due Process Rights
 - “The prosecution screws up and the defendant pays the price”
- Victim Advocates & Attorneys
- Different interpretation of *Brady* obligations

Challenges for Sexual Assault Cases

- These Are Difficult Cases:
 - Cases often involve drugs, alcohol, prostitution or acquaintance
 - Evidence requires immediate reporting – need to collect evidence quickly
 - Special toxicology kit required for date rape drugs with short half life
 - Surveillance video
 - Controlled phone call the day after the incident occurred
 - Lack of corroborating evidence, especially in delayed reports
 - Success depends on how many blanks can be filled in and determining if a “crime” occurred
 - Identification issues if drugs or alcohol involved
 - Consent issues (pass out vs. black out)
 - Most states require some level of force
- Ensuring the coordination among all services and supporters
- Limiting the number of victim interviews
 - Police, investigators, prosecutors, defense, and victim attorneys
 - Memory recollection in trauma victims
 - Information to SANE, victim advocates
- Juries want DNA, forensic evidence, squad car videos
- Prosecutor has to overcome jury bias / victim blaming – cultural barriers
- Victim fatigue because these cases can take up to a year to get to trial

Questions & Concerns