



Victim Services Subcommittee

Report to the Response Systems Panel

The Response Systems Panel has not yet considered or deliberated on the contents of this report.

Victim Services Subcommittee



Introduction

Mission: Assess the adequacy of military systems and proceedings for providing support and protection to victims in the investigation, prosecution, and adjudication of crimes involving adult sexual assault

Result: 37 Findings and 38 Recommendations on Victim Services, Victim Counsel, and Victim Rights

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Victim Services Subcommittee



Subcommittee Members

- Mai Fernandez, Executive Director, National Center for Victims of Crime, Subcommittee Chair
- Former Representative Elizabeth Holtzman
- BG Colleen McGuire, U.S. Army (Retired)
- Michelle J. Anderson, Dean and Professor of Law, CUNY School of Law
- Lisa M. Schenck, Associate Dean for Academic Affairs, The George Washington University Law School, U.S. Army (Retired)
- Honorable Barbara S. Jones, U.S. District Court for the Southern District of New York (Retired)
- Judge Christel E. Marquardt, Kansas Court of Appeals
- Meg Garvin, Executive Director of the National Crime Victim Law Institute and Clinical Professor of Law at Lewis & Clark Law School
- William E. Cassara, Attorney at Law, U.S. Army (Retired)

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Terms of Reference

- Assess the adequacy of military systems and proceedings to support and protect victims in all phases of the investigation, prosecution, and adjudication of adult sexual assault crimes;
- Assess whether military systems and proceedings provide victims the rights afforded by 18 U.S.C. § 3771, Department of Defense Directive 1030.1, and Department of Defense Instruction 1030.2;
- Assess differences between military and civilian systems in providing support and protection to victims of adult sexual crimes;
- Identify best practices for victim support and protection from civilian jurisdictions that may be incorporated into any phase of the military system; and
- Assess the effectiveness of proposed legislative initiatives modifying military justice processes in providing support and protection to victims of adult sexual assault crimes.
- Assess whether the roles, responsibilities, and authorities of Special Victims' Counsel to provide legal assistance under section 1044e of title 10, United States Code, as added by section 1716, to victims of alleged sex-related offenses should be expanded to include legal standing to represent the victim during investigative and military justice proceedings in connection with the prosecution of the offense; and
- Assess the feasibility and appropriateness of extending to victims of crimes covered by the UCMJ the right afforded a crime victim in civilian criminal legal proceedings under subsection 17 (a)(4) of section 3771 of title 18, United States Code, and the legal standing to seek enforcement of crime victim rights provided by subsection (d) of such section.

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Methodology

MEETINGS

- 22 Public Meetings, Subcommittee Meetings, and Preparatory Sessions
- 150 Presenters including crime victim rights advocates; survivors of sexual assault; commanders; military justice practitioners; civilian criminal practitioners; sexual assault victim advocacy groups; victim advocates; military sexual assault response coordinators; academicians; medical professionals; United States Senators

MILITARY SITE VISITS

- Fort Hood, Texas
- Joint Base San Antonio-Lackland, Texas

REQUESTS FOR INFORMATION

- RSP Chair sent letters with more than 150 Requests for Information to SECDEF and Secretaries of Military Departments
- DOD and the Services have submitted more than 15,000 pages of narrative responses and documents
- RSP Chair also sent letters to 18 advocacy organizations
- POD, SWAN, and RAINN, the National Organization for Victim Assistance, and the National Alliance to End Sexual Violence submitted materials

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Methodology

DOCUMENT REVIEW

- Government reports and policy memoranda on victims service programs
- Transcripts of hearing testimony
- Statistical data, training videos,
- Military, federal, and state court opinions & law review articles

REPORT WRITING

- Used subcommittee meetings to make major decisions on the direction of the report and additional evidence needed
- Findings and recommendations were based on information received from witnesses, documentary submissions, site visits, and the Service and DoD responses to requests for information
- Careful attention was placed on making sure the findings and recommendations addressed the Terms of Reference

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Findings and Recommendations

Victim Services	18 Findings 19 Recommendations
Victim Counsel	11 Findings 11 Recommendations
Victim Rights	8 Findings 8 Recommendations
Total	37 Findings 38 Recommendations

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Recommendations

- **VICTIM SERVICES**
- VICTIM COUNSEL
- VICTIM RIGHTS

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Recommendations Victim Services -Assessment-

Recommendation 1: The Secretary of Defense direct the Military Services to fully implement all of the currently mandated programs, initiatives, and other requirements Congress directed in the FY14 and prior year NDAs and capture enough data to adequately assess the effectiveness, efficiency, and value of all existing programs with the goal to streamline or eliminate those that are not successful, and to continue, expand, and preserve the programs that are successful.

Recommendation 1a: The Secretary of Defense direct SAPRO to evaluate and assess all programs and initiatives and measure the effectiveness of each to determine which programs and initiatives are effective, which should be continued, expanded, and preserved, and how best to allocate funding for the effective programs and initiatives.

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Recommendations Victim Services -Posting Information at MEPS-

Recommendation 3: The Secretaries of the Military Departments direct Commanders of Military Entrance Processing Stations (MEPS) to provide sexual assault prevention information to new recruits that include the definition of sexual assault, possible consequences of a conviction for sexual offenses in the military and information about the DoD Safe Helpline and other avenues for assistance.

This recommendation expands upon the Defense Task Force on Sexual Assault in the Military Services' recommendation to make available, and to visibly post, sexual assault prevention and awareness campaign materials at MEPS.

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Recommendations Victim Services -8 Day Incident Report/Victim Care-

Recommendation 4: The Secretary of Defense direct the Services to require written incident reports no later than eight days following a restricted or unrestricted report detailing the services provided to the victim, when a member of the Armed Forces is the victim.

Recommendation 4a: When restricted reports are made, SAPRO should work with the Services to ensure adequate measures are in place to protect the identity of the victim while providing sufficient information to track the victim's care.

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Recommendations Victim Services -Expedited Transfer-

Recommendation 5: Service Secretaries should ensure that command orientation and training address the commander's authority to make duty or living assignment transfers based upon the recommendation of medical personnel, even if the specific underlying reason for the request for transfer is protected and cannot be disclosed.

Recommendation 5a: Training for medical personnel, SARC's, and VAs, should include the options that a commander has available to make or effect transfers based on recommendations from medical personnel.



Recommendations Victim Services -DoD Safe Helpline-

Recommendation 6: The Secretaries of the Military Departments set forth clear guidance that DoD Safe Helpline is the single 24/7 sexual assault crisis hotline for military service members.

Recommendation 6a: The DoD Safe Helpline establish an easily remembered number similar to its website name of SafeHelpline.org.

Recommendation 6b: DoD require the Services to provide the Safe Helpline with sufficient contact information at each installation or deployed location so that local victim service providers can be reached on a 24/7 basis.



Recommendations Victim Services -Evaluate SARC and VA Training-

Recommendation 7: The Secretary of Defense direct that the periodic evaluations of training provided for Services' SARC and VA be conducted and include an assessment as to whether the training and curriculum across the Services is uniform, is effective, and reflects all existing initiatives, programs, and policies.

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Recommendations Victim Services -Assess SARC, VA, VWL, FAP-

Recommendation 8: The Secretary of Defense direct SAPRO or the DoD IG to assess the roles and responsibilities of SARC, VA, VWL, and FAP personnel, to ensure advocacy personnel are effectively utilized, they are properly delineated; overlap is minimized; and to determine whether their roles should be modified, and whether all current victim assistance related programs should be sustained in this resource constrained environment.

Such review should factor the new SVC program recognizing that the Service Judge Advocate Generals are the sole supervisory chain for judge advocates.



Recommendations Victim Services -Caseload and Proficiency for VAs-

Recommendation 9: The Secretary of Defense direct SAPRO to determine an appropriate caseload and number of advocates, and to ensure that VAs become and remain proficient in their duties.

Victim advocate duties should include partnering with or observing other professionals who provide victim services (including community providers) or other experiential work to gain further practical skills and confidence while awaiting assignment to a case.

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Recommendations Victim Services -Evaluate SARC Duties-

Recommendation 10: The Secretary of Defense direct SAPRO to evaluate the duties and responsibilities of the SARC position required by SAPR policy and to ensure that there are sufficient positions created with defined roles that allow for excellence.

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Recommendations Victim Services -Mental Healthcare-

Recommendation 11: The Secretaries of the Military Services evaluate the availability of and access to adequate and consistent mental healthcare for victims of sexual assault; and to evaluate the option of incorporating counselors into the SAPR program in a manner similar to the integration in the FAP Program.

Additionally, the Secretaries of the Military Services establish policies to ensure that mental health treatment for sexual assault victims will not have negative implications on such victims' eligibility for career advancement or promotion.



Recommendations Victim Services -FAP and SAPRO Reporting Overlap-

Recommendation 12: The Secretary of Defense direct that adult unwanted sexual contact reports handled by FAP and recorded in its database be included in the annual SAPRO report of adult unwanted sexual contact cases.

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Recommendations Victim Services -Revictimization Services and Prevention-

Recommendation 13: The Secretary of Defense direct SAPRO to work with the Centers for Disease Control and other appropriate agencies to develop services for military members who have previously experienced sexual abuse, and to develop strategies to encourage utilization of these services in order to prevent revictimization and develop or maintain skills necessary to fully engage in military activities and requirements.

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Recommendations Victim Services -Retaliation and Harassment Training-

Recommendation 14: To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, that retaliation or harassment by service members in response to an allegation of sexual assault violates good order and discipline.

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Recommendations Victim Services -Training on Commander/Superior Interaction-

Recommendation 15: To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, explaining that implicit or explicit invitations or demands for sex or sexualized interactions from commanders or superiors are not lawful orders, should not be obeyed, violate the code of military conduct, and will be punished.

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Recommendations Victim Services -Training on the Importance of Reporting-

Recommendation 16: To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, emphasizing that reporting instances of sexual assault is essential for good order and discipline and protects rather than undermines morale.

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Recommendations Victim Services -Male Victim Training-

Recommendation 17: To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, with examples of male on male sexual assault, including hazing and sexual abuse by groups of men. The training should emphasize the psychological damage done by sexual assault against male victims.

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Recommendations Victim Services -Addressing Career Repercussions-

Recommendation 19: The Secretary of Defense implement policy that protects victims of military sexual assault from suffering damage to their military careers (including but not limited to weakened performance evaluations or lost promotions, security clearances, or personnel reliability certifications) based on having been a victim of sexual assault, having reported sexual assault, or having sought treatment for sexual assault.

Additionally, the DoD promulgate regulations that ensure the SVC advise their clients of the means by which they can challenge any inappropriate personnel action based on having been a victim or seeking treatment.

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Recommendations Victim Services -The Right to Speak With SVC-

Recommendation 2: The Secretary of Defense develop and implement policy and regulations such that sexual assault victims have the right and ability to consult with an SVC before deciding whether to make a restricted or unrestricted report, or no report at all. Communication made during this consultation would be confidential and protected under the attorney-client privilege.

Recommendation 2a: The Secretary of Defense develop and implement policy that, when information comes to military police about an instance of sexual assault by whatever means, the first step in an investigation is to advise the victim that s/he has the right to speak with an SVC before determining whether to file a restricted or unrestricted report, or no report at all.

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Recommendations Victim Services -Study on Collateral Misconduct-

Recommendation 18: The Secretary of Defense direct a study of what constitutes low-level collateral misconduct in sexual assault cases and assess whether to implement a policy in which commanders will not prosecute low-level collateral misconduct.

** Additional Statement by Dean Michelle J. Anderson, Professor Meg Garvin, and Judge Christel E. Marquardt*

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Recommendations

- VICTIM SERVICES
- VICTIM COUNSEL
- VICTIM RIGHTS

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Recommendations Victim Counsel -Sustain a Robust SVC Program-

Recommendation 20: Congress appropriate sufficient funds annually to DoD to ensure the Services are able to sustain a robust SVC program.



Recommendations Victim Counsel -Measure SVC Program Effectiveness-

Recommendation 21: The Secretaries of the Military Departments develop a standard evaluation mechanism with appropriate metrics, when appropriate, to measure the effectiveness of the SVC program in each Service on an annual basis.

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Recommendations Victim Counsel -SVC Inter-Service Working Group-

Recommendation 22: The Secretary of Defense establish a mandatory inter-service working group to assess the practices of all Military Service SVC programs.

The inter-service working group should discuss, deliberate, and decide upon the best practices being utilized by all the Military Services. The working group should then ensure each Military Service implement the best practices of the SVC programs and SVC receive adequate training on these practices. The working group should consist of, at a minimum, the SVC Program Heads from each Military Service.

The first meeting should occur within twelve months from the date of this report. Thereafter, the working group should meet at least annually.



Recommendations Victim Counsel -Information and Training Dissemination-

Recommendation 23: The Secretaries of the Military Departments establish collaborative methods to disseminate information and training of SVC between the Services, including an inter-service website where SVC can access training materials and resources from each Service.

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Recommendations Victim Counsel -SVC Should Have Courtroom Experience-

Recommendation 24: The Secretary of Defense direct the Military Services to implement additional selection criteria for their individual Special Victim Counsel Programs to require that counsel have appropriate trial experience prior to being selected as Special Victim Counsel. The criteria should include special emphasis on the unique selection of SVC and require actual courtroom experience rather than simply requiring service in a military justice billet for a certain period of time.

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Recommendations Victim Counsel -SVC Representation Duration-

Recommendation 25: The Secretary of Defense direct the Military Services to extend the opportunity for SVC representation to a victim so long as a right of the victim exists and is at issue.

This includes any time following final action by the convening authority and during appellate review.

While it may not be feasible, due to mission requirements, for the victim to maintain the same SVC throughout the duration of the process, the policy should permit for appointment of an alternate SVC to advise the victim and assert any right or interest still at issue following final action.



Recommendations Victim Counsel -Access to Documents-

Recommendation 26: The Secretary of Defense implement policy clarifying the victim's right to access records which are relevant to the assertion of a victim's particular right through his or her SVC.

The policy should include language establishing that once the SVC makes a request for information that is subsequently denied by the trial counsel, the SVC may petition the court for access to the relevant information.

Furthermore, it should permit the military judge to then perform an in-camera review to determine what documents, if any, are relevant and necessary to the asserted right to release to the SVC as well as the appropriate method for disclosing those relevant documents to the victim. If the military judge declines to disclose the records, the reasons should be made on the record in order for the victim to seek further review.

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Recommendations Victim Counsel -Separate and Distinct Army SVC Division-

Recommendation 28: The Secretary of the Army create a “separate and distinct” Special Victim Counsel Division with its own chain of command and support personnel to alleviate any actual or potential conflict of interest between the SVC and the local Office of the Staff Judge Advocate and ensure SVC independence.

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Recommendations Victim Counsel -Congress Defer Adopting 2014 VPA-

Recommendation 29: Congress defer adopting §1917 (Section 3) of the Victims Protection Act of 2014 until Congress obtains further evidence and information about the potential impact of such legislation on victims and the military justice system.

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Recommendations Victim Counsel -SVC Representation for Entry Level Personnel-

Recommendation 30: The Navy, Marine Corps, and Coast Guard implement or amend their individual SVC policies to provide for SVC representation for entry level personnel who are alleged to have been involved in a relationship that involves sexual contact with an instructor or staff member, even though a crime has not been alleged.

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Recommendations

- VICTIM SERVICES
- VICTIM COUNSEL
- VICTIM RIGHTS

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Recommendations Victim Rights -Right to Confer-

Recommendation 31: The Secretary of Defense direct the creation and implementation of mechanisms, where not currently in place, requiring trial counsel to convey the victim's specific concerns and preferences regarding case disposition to the convening authority, so the convening authority may consider the victim's concerns and preferences prior to making a decision on case disposition.

These procedures will account for the convening authority's role in the disposition of cases under the military justice system and create a process more analogous to a victim conferring with a prosecutor under the CVRA.

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Recommendations Victim Rights -Right to be Heard on Plea Agreement-

Recommendation 32: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations that provide victims a right to be heard regarding a pretrial agreement.

Recommendation 32a: The proposed changes should provide victims the right to be heard regarding a plea, with appropriate consideration to account for military pretrial agreement practice.

Recommendation 32b: The recommended changes include the right to be heard before the convening authority decides to accept, reject, or propose a counteroffer to a pretrial agreement offer submitted by an accused. The convening authority should retain discretion to determine the best means to comply with this right and consider the victim's opinion (e.g., submission in writing, in person).

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Recommendations Victim Rights -Standing to Enforce Victim Rights-

Recommendation 33: The Secretary of Defense clarify that victims have legal standing to enforce their rights listed in Article 6b, UCMJ, at trial and appellate courts.

Specifically, the Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to expressly provide for a victim's ability to assert a violation of his or her rights in the trial court, in which the crime occurred, at any relevant time in the proceedings, including pretrial, during trial, and post-trial.

The Secretary of Defense will provide procedures for a victim to seek mandatory expedited review of any alleged violation of those rights listed in Article 6b, UCMJ from an appellate court.

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Recommendations Victim Rights -Mechanisms for Rights Notification-

Recommendation 34: Implement mechanisms to ensure that victims are notified of and accorded the rights provided by Article 6b, UCMJ.

Recommendation 34a: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to ensure that military investigators, prosecutors and other DoD military and civilian employees engaged in the detection, investigation, or prosecution of crime notify and accord victims the rights specified in Article 6b, UCMJ.

Recommendation 34b: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe mechanisms that make military courts responsible for ensuring compliance with the rights afforded to crime victims in court proceedings under Article 6b, UCMJ.

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Recommendations Victim Rights -Time Limit for Contesting Rights-

Recommendation 35: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations establishing the time period under which a victim may petition to assert the rights to reopen a courts-martial plea or sentencing hearing, to ensure clarity regarding when a court-martial hearing can be reopened based on the request of a victim or victim's counsel and to ensure the finality of court-martial proceedings.

This time period should be sufficient so as not to limit or interfere with the victim's right to present matters to the convening authority prior to his or her taking action on the case.

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Recommendations Victim Rights -One DoD Entity To Investigate Complaints-

Recommendation 36: Congress enact legislation to require the Secretary of Defense designate one entity within the Department of Defense to receive and investigate complaints relating to violations of or failures by military and civilian employees from all of the Military Services to provide the rights guaranteed by Article 6b, UCMJ.

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Recommendations Victim Rights -The Right to be Heard Through Counsel-

Recommendation 38: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to clarify that all victim rights that include a right for the victim to be heard include the right to be heard through counsel.

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Recommendations Victim Rights -Victim Unsworn Statement During Sentencing-

Recommendation 37: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to provide victims the right to make an unsworn victim impact statement, not subject to cross examination during the presentencing proceeding, with the following safeguards:

- The members should be instructed similarly to the instruction they receive when the accused makes an unsworn statement;
- If there is “new matter” brought up in the victim’s unsworn statement, sentencing should be delayed so the defense can respond; and
- The unsworn statement should be subject to the same objections available to the government regarding the accused’s unsworn statement.

** Additional Statement by William E. Cassara, Defense Counsel*