

Report on Implementation of Section 1716 of the National Defense Authorization Act for Fiscal Year 2014



The estimated cost of this report or study for the Department of Defense is approximately \$3,870 for the 2014 Fiscal Year. This includes \$0 in expenses and \$3,870 in DoD labor.
Generated on 2014Apr01 RefID: 3-C5D834D

Prepared by the Department of Defense in coordination with the Department of Homeland Security with respect to the Coast Guard

April 4, 2014

Report on Implementation of Section 1716 of the National Defense Authorization Act for Fiscal Year 2014

In accordance with section 1716(c) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2014 (P.L. 113-66), the Department of Defense provides this report, prepared in coordination with the Department of Homeland Security with respect to the Coast Guard, describing how the Armed Forces will implement the requirements of section 1044e of title 10, United States Code.

The Air Force initiated a Special Victims' Counsel (SVC) pilot program on January 28, 2013 to provide judge advocates to form attorney-client relationships with adult sexual assault victims who were eligible to receive legal assistance. Preliminary assessments of the program were extremely positive, including results of surveys of sexual assault victims who had been represented by SVCs. On August 14, 2013, Secretary of Defense Chuck Hagel directed each of the Secretaries of the Military Departments to establish a program to provide legal advice and representation to sexual assault victims throughout the military justice process. He ordered each Service to establish an initial SVC operating capability not later than November 1, 2013 and a fully operational program by January 1, 2014. Each of the Services met or exceeded those requirements.

Independently, the Coast Guard Judge Advocate General established an SVC program on July 12, 2013. That program was expanded on January 13, 2014 to authorize the full provision of services, including the formation of attorney-client relationships between SVCs and victims.

Section 1716 of the NDAA for FY 2014, enacted on December 26, 2013, codified the authorization for the special victims' counsel programs.

Section 1: Army Report

- This section addresses how the Army is implementing the Special Victim Counsel Program.
- On October 15, 2013, The Judge Advocate General of the Army (TJAG) announced the establishment of the Army's SVC Program. The program was implemented on November 1, 2013, by Office of The Judge Advocate General Policy Memorandum #14-01. Army Staff Judge Advocates (SJAs) were directed to appoint Judge Advocates to serve as SVC as a part of the SJA's Legal Assistance Office. Counsel appointed as SVCs have trial or defense counsel experience and the maturity and good judgment to handle SVC responsibilities. The Chief of Staff of the Army authorized the mobilization of 20 US Army Reserve (USAR) Judge Advocates to back-fill some of these Active Component Legal Assistance Offices while the Army determines the work load for future requirements.
- Prior to certification as a SVC by TJAG, each SVC was required to attend a rigorous training course conducted by The Judge Advocate General's Legal Center and School (TJAGLCS). The school conducted three separate face to face week long training courses and one on-line course. The courses, taught by the Criminal and Administrative Law Departments at TJAGLCS, consisted of in depth instruction on the Rules for Courts-Martial, Military Rules for Evidence,

Parole and Clemency, investigative techniques for interviewing a victim of sexual assault, professional responsibility, victim advocates' and victim witness liaisons' roles, victim services in the Army, forensic medical examinations, classes in understanding victim trauma and victims and problem-solving breakout sessions. The course materials included a comprehensive SVC Handbook with templates and specific guidance in working with victim witness liaisons, victim advocates, trial counsel, special victim prosecutors, commanders, trial defense, and medical professionals. In addition to the curriculum listed above, the USAR and Army National Guard (ARNG) SVC Course, conducted on March 4-7, 2014, added special classroom instructions discussing the rules and caveats for the USAR and ARNG programs.

- Presently the Army has 91 Active Component Judge Advocates, 70 USAR Judge Advocates, and 47 ARNG Judge Advocates to provide SVC services to victims of sexual assault. These SVCs are located worldwide, including the CENTCOM area of responsibility. The Army is moving to fully implement the SVC program for the USAR and ARNG by April 2014. The Office of The Judge Advocate General is drafting an Army Directive which will provide regulatory authority for the ARNG and USAR programs, and is gathering data to determine the emerging manpower requirements for both the Active and Reserve Force.
- Between November 1, 2013, and February 14, 2014, 536 victims received SVC assistance. During this period, SVCs conducted 1,587 counseling sessions with victims, accompanied victims to over 393 interviews and pretrial meetings, and made 49 appearances at courts-martial.
- Feedback from the field shows the SVC Program is having a positive impact with victims and has been well-received by all parties to include commanders. The Army JAG Corps continues to work with the Office of the Chief of Public Affairs to leverage Army and public media coverage to advertise the existence of the program to Soldiers.

Section 2: Navy Report

- The Navy established a Victims' Legal Counsel (VLC) Program in October 2013 to provide independent legal counsel to eligible sexual assault victims. Specifically, VLC advise and assist victims regarding:
 - The nature and effect of sexual assault reporting options;
 - The military justice system, its proceedings, and each participant's role;
 - The Government's authority to compel testimony and cooperation;
 - The victim's duties to the court, responsibility to testify, and proceedings the victim may observe or participate in;
 - The rights afforded to victims under the Victim Witness Assistance Program;
 - The role of Sexual Assault Response Coordinators (SARCs), Victim Advocates (VAs), and other support providers, and any privileges that exist between the victim and those providers;
 - The scope of representation provided by VLC;
 - Criminal liability of the victim and right to seek defense services;
 - Services available for medical support, including emotional/mental health counseling;

- Eligibility for military/veteran benefits and availability of legal assistance counsel to assist with personal civil legal matters or in obtaining military/veteran benefits;
 - Legal representation and advice during the investigative and court-martial processes;
 - Advocacy on the victim's behalf with investigative, prosecutorial, and command authorities;
 - The availability and utility of obtaining a civilian or military protective order;
 - The possibility of pursuing civil litigation against an offender;
 - The potential of securing an expedited transfer; and
 - Other legal advice and services connected with a report of sexual assault.
- VLC are certified by the Judge Advocate General of the Navy following completion of specialized, victim-focused training. VLC report independently to Commander, Naval Legal Service Command through the Chief of Staff, VLC.
- Twenty-nine judge advocates are assigned as VLC at 23 naval installations around the world. VLC are currently located in Annapolis, MD; Washington, D.C.; Oceana, VA; Norfolk, VA; Groton, CT; Mayport, FL; Jacksonville, FL; Pensacola, FL; San Antonio, TX; Great Lakes, IL; Coronado, CA; San Diego, CA; Lemoore, CA; Ventura, CA; Bremerton, WA; Everett, WA; Pearl Harbor, HI; Guam; Naples, Italy; and Rota, Spain. By July 2014, VLC will also be located in Gulfport, MS, and Yokosuka, Japan.
- VLC may form an attorney-client relationship with eligible victims. Accordingly, communications between VLC and the client are confidential and privileged.
- VLC complement the care and support victims receive through other resources, such as the Sexual Assault Prevention and Response Program, the Family Advocacy Program, the Victim-Witness Assistance Program, and services provided by VAs, chaplains, and healthcare providers. SARC, VAs, Naval Criminal Investigative Service agents, Victim-Witness Liaisons, trial counsel, and healthcare providers are required to inform sexual assault victims of the availability of VLC services.
- Sexual assault victims eligible for VLC services include Navy members on active duty; Navy Reserve personnel on active duty or on inactive-duty training at the time of the assault; other Service personnel and retirees when assaulted by an active-duty Navy member; adult dependents, including spouses of active-duty Navy members when assaulted by an active-duty Navy member; and some overseas Department of the Navy civilians. In accordance with the NDAA for FY 2014, eligibility for VLC services will be expanded to victims of child sexual offenses no later than June 24, 2014. Other personnel may be eligible on a case-by-case basis.
- Victims can seek assistance from a VLC at any point following a sexual assault. VLC services are optional and may be declined, in whole or in part, at any time regardless of whether the victim elects restricted or unrestricted reporting. Declining such services does not preclude a victim from subsequently requesting VLC services at a later time.

- VLC services are provided free of charge to victims. Contact information for local VLC can be found on the Navy JAG Corps website and from SARCs, VAs, trial counsel, NCIS agents, staff judge advocates, chaplains, and healthcare providers.
- To date, Navy VLC have assisted over 300 sex assault victims and conducted educational outreach to the Fleet on VLC services, giving over 360 briefs to more than 8,400 personnel.

Section 3: Marine Corps Report

A. Development and Implementation of the Victims' Legal Counsel Organization

- The Marine Corps established the Victims' Legal Counsel Organization (VLCO) and reached initial operating capability (IOC) on November 1, 2013, and full operational capability (FOC) on January 1, 2014.
 - MARADMIN 583/13 published October 31, 2013, announced the establishment of VLCO.
 - Marine Corps Order (MCO) P5800.15A (Ch 1-7), the Marine Corps Legal Administration Manual (LEGADMINMAN), was revised in February 2014 to add a chapter on the VLCO, describing the organization, roles, and responsibilities.
- VLCO services are primarily for active duty military members and reservists on active duty who are victims of sexual assault; however, eligible victims of other crimes in violation of the Uniform Code of Military Justice (UCMJ) may seek assistance from VLC as permitted by 10 U.S.C. § 1044, 10 U.S.C. § 1056b, and JAGINST 5800.7F, including military dependents. VLCO extends services to eligible victims of ALL crimes under the UCMJ and to eligible victims under the age of 18.
- During IOC from November – December 11, 2013, there were 114 eligible victims that used VLCO services, including five minors. 87% of those seeking VLCO services during IOC were victims of sexual assault. The second most common crime was assault in violation of Article 128 of the UCMJ, which includes domestic violence offenses.
- The VLCO reached FOC on January 1, 2014. The most recent statistics available cover the FOC period between January 1 and February 21, 2014. During this timeframe there were 113 new victim intakes across VLCO, including 71 (53%) for sexual assault and 37 (28%) for assault in violation of Article 128 UCMJ. Fifty-eight of the 133 cases (44%) required a VLC to be detailed to actively represent the victim and advocate for their legal interests during the investigative and military justice process. Of those, 52 (90%) involved sexual assault offenses. Clients also included 10 minor dependent victims, and 42 victims of domestic violence.
- For outreach, the OIC VLCO traveled to all four Marine Corps regions, from October 2013 to February 2014, to personally meet with commanders (to include general officers), SARC and victim advocates, Family Advocacy personnel, VWAP personnel, military criminal investigators,

and all Marine Corps judge advocates (including staff judge advocates, trial counsel, defense counsel, and legal assistance attorneys) to discuss the VLCO program.

B. Structure and Staffing of the VLCO

- The approved personnel structure for the VLCO is for 15 active duty Marine Corps judge advocates (JA), supported by nine paralegal specialists, plus four part-time active duty Marine Corps JAs as Auxiliary Victims' Legal Counsel (AVLC). AVLC have a separate primary duty assignment and serve as VLC only when needed to handle conflict cases or high case volume.
- Currently VLCO is staffed with 15 active duty JAs, eight enlisted Marine Corps Legal Services Support Specialists, and three AVLC. The enlisted personnel will be replaced by civilian paralegals during FY14, which will help provide long-term continuity to the program. The 15 full-time JAs now assigned include:
 - One active duty Marine Corps O-6 JA as officer-in-charge supported by one active duty Marine Corps O-4 JA as deputy officer-in-charge. VLCO headquarters element is located in the National Capital Region.
 - Four active duty Marine Corps O-4 JAs are assigned as Regional Victims' Legal Counsel, one at each of the four Marine Corps Legal Services Support Sections, located at MCB Quantico, VA, Camp Lejeune, NC, Camp Pendleton, CA, and Camp Butler, Okinawa. RVLC both assist victims and supervise VLC assigned at bases within their respective region.
 - Nine active duty Marine Corps O-3 JAs assigned as VLC at one of the VLCO offices now established at MCB Quantico, VA, Camp Lejeune, NC, MCRD Parris Island, SC, MCB Camp Pendleton, CA, MCAGCC 29 Palms, CA, MCAS Miramar, CA, MCB Hawaii, and Camp Butler (Okinawa).

C. Training and Certification

- JAs selected for assignment to VLCO must have military justice experience and complete a certified victims' advocacy course offered by one of the Services' Judge Advocate General schools. All JAs who complete this training are then certified by the Judge Advocate General of the Navy per 10 U.S.C. § 1044e(c).

Section 4: Air Force Report

Implementation of Air Force Special Victims' Counsel Program:

- On January 28, 2013, the Air Force implemented an SVC program as a pilot program for the Department of Defense, providing qualified judge advocates to represent sexual assault victims.

- Sixty judge advocates initially served as SVCs part-time while continuing to perform installation-level duties when the SVC Program was implemented on 28 January 2013 to allow the Air Force to immediately field the program as a pilot program.
- On June 1, 2013, the SVC Program stood up as an independent organization in the Air Force Legal Operations Agency (AFLOA), Special Victims' Counsel Division (CLSV) under the Community Legal Services Directorate. The division headquarters element is staffed with an O-6 division chief, a projected GS-14 deputy chief (currently filled by an O-4), and an E-7 special victims' paralegal manager. The remainder of the division includes 24 SVCs and 10 special victims' paralegals (SVP) in regional and satellite SVC offices at 22 locations worldwide. The Air Force will add five additional SVCs no later than July 31, 2014.
- Twenty of the original part-time SVCs continue to represent their existing clients until case conclusion. Once their representation is completed, they will no longer serve as SVCs.
- On August 14, 2013, the Secretary of Defense directed the Secretaries of the Military Departments to "establish a special victim's advocacy program best suited for that Service that provides legal advice and representation to the victim throughout the justice process." The Air Force's SVC Program is in full compliance with that directive.

Policy Documents:

- SVC Rules of Practice and Procedure. The SVC Rules were initially published on January 28, 2013, and revised on July 1, 2013. The SVC Rules provide guidance on: victim eligibility and the referral and detailing process for requesting an SVC; roles and responsibilities of SVCs, including functional relationships with sexual assault response coordinators, Family Advocacy Program personnel, and Victim and Witness Assistance Program personnel; the scope of the SVC representation; training and certification requirements; and information on the structure of the program. The SVC Rules will be amended to include representation for eligible victims of Articles 120a, 120b and 120c offenses under the UCMJ and any additional consultation areas required by section 1716 of the NDAA for FY 2014.
- SVC Charter. The SVC Charter was published on January 28, 2013, and addresses the scope of eligible services. The SVC Charter lays out that SVCs may advocate to those in the military justice system, Air Force and Department of Defense agencies, and civilian agencies. The SVC Charter also addresses areas for which an SVC is not authorized to represent victims, but may provide them with advice and referral services.
- Air Force Guidance Memorandum (AFGM) to AFI 51-504, Legal Assistance, Notary, and Preventive Law Program. AFI 51-504 implements 10 U.S.C. § 1044 and the AFGM established eligibility requirements for the SVC Program as well as the general scope of SVC representation. AFI 51-504 will be amended to include representation for eligible victims of Articles 120a, 120b and 120c offenses under the UCMJ.

SVC Certification and Training Requirements:

- In order to serve as an SVC, a judge advocate must be certified as trial counsel under Article 27(b) of the UCMJ, which requires graduation from the Judge Advocate Staff Officer Course, serving proficiently as trial counsel in courts-martial, and being recommended for certification by their staff judge advocate and a military judge.
- All SVCs are hand-selected by The Judge Advocate General of the Air Force (TJAG) and must successfully complete a TJAG-approved SVC course. An inaugural three-day Air Force SVC Course was held at the Air Force Judge Advocate General School in December 2012 focusing on the role of a victim's counsel. The course featured presentations from a civilian expert from the National Crime Victims' Law Institute (NCVLI). A second five-day training course was held in May 2013 to train the 24 SVCs and 10 SVPs who moved into full-time billets. This course featured presentations from NCVLI and the Crime Victims' Law Center, and expanded the practical exercise portion of the course. A third Joint Service SVC Course was held in October 2013 providing training to over 60 judge advocates from the Navy, Marine Corps, Coast Guard and Air National Guard.
- SVC training is continuously supplemented, through internal division training, other formal courses within the Air Force and with external training opportunities, such as the International Conference on Sexual Assault, Domestic Violence, and Stalking and the Crime Victim Law Conference sponsored by NCVLI.
- A fourth SVC Course is scheduled for May 2014 to train new SVCs and SVPs. A separate training curriculum is in development for training a core cadre of experienced SVCs and SVPs on representing child victims of sexual assault. The Air Force intends to utilize the expertise of the National Children's Advocacy Center and other outside experts for this highly specialized area of practice.

Notifying Victims of the Availability of SVC Services:

- The first individual to make contact with the victim, such as the sexual assault response coordinator, sexual assault prevention and response victim advocate, Family Advocacy Program provider, investigator, victim liaison or trial counsel, is required to inform the victim of the availability of Special Victims' Counsel services, as an extension of legal assistance for crime victims, in accordance with Section 1565b of title 10, United States Code, utilizing an overprint to the DD Form 2701, *Initial Information for Victims and Witnesses of Crime*.

SVC Workload as of February 21, 2014:

- SVCs have represented 712 victims of sexual assault since program implementation.
- SVCs have represented victims at 112 courts-martial and 125 Article 32 hearings.
- SVCs have attended 973 client interviews with law enforcement personnel and defense and trial counsel.

Victim Impact Survey:

- In order to measure the effectiveness of the SVC Program as well as the Victim Witness Assistance Program, a victim impact survey was fielded on March 20, 2013, with feedback from several civilian subject matter experts incorporated into the questions and format:
 - 90% were “extremely satisfied” with the advice and support the SVC provided during the Article 32 hearing and court-martial;
 - 98% would recommend other victims request an SVC;
 - 91% indicated their SVC advocated effectively on their behalf; and
 - 94% indicated their SVC helped them understand the investigation and court-martial processes.

Section 5: Coast Guard Report

- The Coast Guard Judge Advocate General (TJAG) established the SVC program on July 12, 2013, and it was announced in a Service-wide message on July 15. Initially SVC, trained as victim advocates, provided telephonic consultations with victims. On January 13, 2014, TJAG authorized the full provision of services, including the formation of attorney-client relationships between SVCs and victims, as authorized by the statute.
- The SVC program is currently administered by a full-time reserve O-6 judge advocate supported by an O-3 SVC Coordinator. Seventeen collateral-duty judge advocates, located at various Coast Guard units across the continental United States, support victims. A permanent organizational structure has been approved, and will be implemented later this year. The SVC program will be located in the Member Advocacy Division of the Office of Member Advocacy and Legal Assistance and will be led by a GS-15 civilian attorney. Services will be provided by six active duty SVC lawyers: one O-4 and five O-3 judge advocates, with support from an enlisted yeoman. In addition, a GS-8 administrative assistant position was created to support the SVC program. Three of these six judge advocates will be assigned to a detached office, co-located with Coast Guard activities in Alameda, California. Judge advocates have been selected and will be assigned to these billets starting in the summer of 2014. Recruiting for the civilian (GS-15) leadership position will commence this spring.

- As of March 8, 2014, the Coast Guard has provided SVC services to 56 victims.
- Each SVC has received specialized victim advocate training and has been certified by TJAG. Additional victim-focused training including specialized SVC legal and investigative training is planned for the future, leveraging sister service training.
- SVCs provide legal assistance services to eligible victims. These services are designed to ensure victims understand and are able to exercise their rights from the time they report the assault through the investigation, prosecution and sentencing phases, to allow victims a meaningful right to be heard during the process.
- Eligible individuals are those active duty military members, retired members, and reserve members on active duty who are victims of sex-related crimes. Adult military dependents who are victims of sex-related crimes may also seek assistance from SVCs. Sex-related military offenses are those offenses under Article 120, 120a, 120b, 120c, Article 125, and attempts thereof under Article 80.
- Eligible victims are entitled to services regardless of whether their report is restricted or unrestricted and SVCs establish an attorney-client relationship with victims. The option for services is offered at the earliest reporting of the crime.
- SVCs provide counsel regarding civil legal issues, collateral misconduct issues and right to seek defense counsel, victim witness rights, SARC and VA issues, military justice process including rights and privileges under the Military Rules of Evidence (MRE), specifically, MREs 412, 513, 514 and 615, civil litigation issues, medical and mental health issues, military protective orders, civilian protective orders, veterans benefits and transitional compensation.
- Various issues have been revealed during the implementation of this new requirement:
 - Travel costs for military justice matters are projected to be high. The statute requires SVCs to accompany victims, at the victim's request, to any military proceedings from the date of the report which may include attending investigative interviews, pre-trial interviews with trial and defense counsel, pre-trial hearings, conferences and military justice trials, sentencing, and clemency matters. While in-person appearances are preferred, Coast Guard SVCs have employed cost-saving measures like VTC, telephonic appearances and Skype to provide services to clients.
 - Eligibility gaps have been identified. Some victims participating in the military justice process are not addressed by the statute. These include reservists in a drilling status, prior military personnel who are no longer in the service, dependents who have divorced their service member spouse, and victims not affiliated with the military.
 - Current law does not provide guidance concerning the role of SVC during military justice proceedings or SVC requests for documents.

- Section 1701 of the NDAA for FY 2014's requirement that military judges appoint legal guardians for certain victims requires additional guidance. It is not clear whether military attorneys or Legal Assistance attorneys qualify as "suitable" legal guardians and are therefore expected to be assigned as legal guardians.
- The establishment of the Coast Guard SVC program meets the implementation requirements of section 1716 of the of the NDAA for FY 2014.