

**UNITED STATES COAST GUARD
SPECIAL VICTIMS' COUNSEL PROGRAM
EOC CONCEPT OF OPERATIONS**

1.0 Overview

1.1 The following revised concept of operations (CONOP) launches the Enhanced Operational Capability (EOC) phase of the Special Victims' Counsel (SVC) program. This includes providing additional support to victims while also creating the foundation for embedding the SVC program within a CG-094M Member Advocacy Division. This CONOP also incorporates requirements in the National Defense Authorization Act for Fiscal Year 2014 (NDAA 2014). The CONOP replaces the IOC phase of the SVC program, which began 15 July 2013.

1.2 The SVC program was designed to use a phased-in approach to incrementally increase the range of support provided to victims of sex-related offenses. During IOC, an SVC was authorized to consult with victims in a Victim-Advocate (VA) relationship and assist Sexual Assault Response Coordinators (SARCs).

1.3 In EOC, SVCs will establish an attorney-client relationship as well as more robustly respond to victim needs. During EOC, the SVC program will continue to be administered by the Office of SVC (OSVC) in the Office of the Judge Advocate General until transferred to CG-094M. The SVC Working Group will continue to assist OSVC as well as CG-094M with developing the FOC and creating an action plan to implement FOC. Unless otherwise stated, references to OSVC in this CONOP will apply to the CG-094M Member Advocacy Division once the SVC program is transferred.

2.0 Mission

2.1 The SVC program implements 10 U.S.C. § 1044e that requires designation of SVC to provide legal assistance to a person otherwise eligible for legal assistance who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

2.2 The SVC program will supplement the wide range of existing services and support Coast Guard members who are victims of sex-related offenses by providing appropriate legal counsel. This program is designed to develop a victim's understanding of the investigatory and military justice processes and to provide limited advocacy to victims of sex-related offenses within the military justice system. The goal is to empower the victim with knowledge of the criminal justice system and to ensure the victim understands his or her rights in that system; to promote increased reporting of sex-related offenses by reducing barriers, fears, and anxieties about the

military justice system and other legal processes; and to provide an advocate who will voice the victim's concerns in the process, thereby strengthening support to our military victims.

3.0 OSVC Objectives & Responsibilities During EOC

3.1 Develop and obtain approval for the FOC.

3.2 Develop an action plan that implements the TJAG Decision Memo 5800 of 26 Nov 2013 regarding Organizational Structure for Special Victims' Counsel and Legal and Defense Services and the VCG Decision Memo 5300 of 16 Aug 2013 regarding SAPR and SVC Resources.

3.3 Provide immediate, direct support to victims of sex-related offenses by detailing SVCs upon request.

3.4 Develop a training plan to ensure SVCs are appropriately prepared to handle expected victim related issues. Such training will rely primarily on Coast Guard victim advocacy training and training offered by other services, and will meet the requirements of section 1716(b), NDAA 2014.

3.5 Provide support and supervisory guidance to SVCs, as necessary, in their support of victim clients.

3.6 Develop guidelines for SVCs regarding consulting with a potential victim.

3.7 Develop a post-representation survey to provide to clients at the end of representation.

3.8 Coordinate regularly with armed service program directors to address common issues including any concerns about existing law or policy.

3.9 Maintain regular contact with CG-0946 and the Sexual Assault Prevention and Response (SAPR) Military Campaign Office concerning matters related to the SVC program.

3.10 Maintain frequent contact with the SAPR Coordinator to facilitate implementation of the SVC program and coordinate the activities of SVCs and SARCs.

3.11 Maintain regular contact with Coast Guard Investigative Service (CGIS) regarding the development of the SVC program.

3.12 Develop a plan for an informational campaign about the SVC program and the services that can be provided by an SVC.

3.13 Identify existing Coast Guard policy that requires modification to facilitate full implementation of the SVC program.

3.14 Develop guidance on identifying and responding to situations in which the SVC has a conflict of interest in representing a member, and otherwise oversee professional responsibility of SVCs in coordination with CG-0948.

3.15 Develop real-time and other reporting guidelines for SVC and OSVC.

3.16 Review and modify as appropriate performance reporting metrics. Respond to requests for guidance from SARCs and VAs with respect to the SVC Program.

3.17 Initiate discussions with the DHS Office of General Counsel, in coordination with CG-0948, regarding a mechanism to periodically evaluate the SVC program as required by 10 U.S.C. § 1044e.

3.18 In coordination with CG-0946 and SAPR Military Campaign Office prepare Coast Guard input to the 90-day report to Congress required by section 1716(c), NDAA 2014.

3.19 Provide the Deputy Judge Advocate General (DJAG) with periodic progress reports.

4.0 Background

4.1 The Coast Guard provides a wide range of services and support to victims of sex-related offenses through a variety of agencies and programs; including but not limited to, unit commanders, the SAPR Program, the Coast Guard's Work-life Program, the Employee Assistance Program (EAP), Family Advocacy initiatives, CGIS, Chaplains, and judge advocates.

4.2 Throughout the military justice process, trial counsel represent the interests of the government, and defense counsel represent the accused at court-martial proceedings. Victims are not typically represented by an attorney. Although the interests of the government and victims frequently align, each party may have independent interests and concerns. Even when interests coincide, trial counsel does not provide legal representation nor do they provide legal advice to victims. The SVC program fills this gap.

4.3 SVCs have a duty to represent the interests of the victim from the initial stages of an inquiry or investigation through military justice proceedings. The objective is for an SVC to provide independent representation to a victim, but not to establish an adversarial relationship with trial counsel or defense counsel.

5.0 Nature of the Relationship Between SVC and Victim

5.1 Detailed SVCs will form an attorney-client relationship (ACR) with victims. A Scope of Representation Letter will guide the initial conversations regarding the ACR. Initially the SVC may provide consultative services not involving privileged attorney-client communications without being detailed. However, once an SVC is detailed, the SVC will form an ACR, the SVC will receive a detailing memo, and the SVC will send the client a Scope of Representation Letter. An SVC may enter into an ACR before being detailed when the SVC believes that the circumstances require it.

5.2 Because SVC services implement 10 U.S.C. § 1565b and 10 U.S.C. § 1044e, the responsibilities and protections in Section 1044 apply. Communications between an SVC and a victim will be treated as confidential and privileged under the attorney-client privilege described in Military Rule of Evidence 502. SVCs will report directly to the OSVC for all matters related to the attorney's role as SVC.

6.0 Victim Eligibility During EOC

6.1 **Member Status:** All Coast Guard Active Duty and Reserve members who are, or were, in an active duty or drilling status at the time of the sex-related offense, or family members who were a victim of sex-related offenses, are eligible for legal assistance pursuant to COMDTINST 5801.4E, Legal Assistance Program, and are thus eligible to be assigned an SVC. The OSVC may grant eligibility exceptions, with the approval of DJAG, in appropriate circumstances and on a case-by-case basis.

6.2 **Sex-Related Offense Defined:** A person reports (either by a restricted or unrestricted report) that he or she is a victim of a sex-related offense. Sex-related offenses are those enumerated in Article 120, UCMJ (rape, sexual assault, and other unwanted sexual contact that is aggravated, abusive, or wrongful, including unwanted and inappropriate sexual contact), Article 120a (stalking), Article 120b (rape and sexual assault of a child), Article 120c (other sexual misconduct), and Article 125 (sodomy). Offenses include attempts under Article 80. Although not required by 10 U.S.C. § 1044e, offenses include sexual offenses under previous versions of Article 120 and Article 134 (indecent acts), and similarly egregious offenses under state and federal laws criminalizing analogous offenses.

6.3 **Stage of Case:** SVC services are available to all eligible Coast Guard victims regardless of whether they have filed a restricted or unrestricted report. If resource constraints or other demands require setting priorities in assigning SVCs, the OSVC will decide them. Should demand outweigh resources, that information will be used to support a request for additional resources.

6.4 Conversion of Restricted Reports to Unrestricted Reports: An SVC will be assigned upon request whether the report is restricted or unrestricted. In cases where a victim chooses to change a restricted report to unrestricted, the SVC will continue to represent the victim and the SVC shall notify the OSVC of the altered status so that the conversion can be recorded for reporting purposes.

7.0 Referral Process

7.1 The authority for the SVC program is 10 U.S.C. § 1044e and is also derived, in part, from 10 U.S.C. § 1565b, which requires that service members and their dependents, who are victims of sex-related offenses, be informed of the availability of legal assistance as soon as the member or dependent seeks assistance from a SARC, VA, military criminal investigator, victim/witness liaison, or trial counsel.

7.2 SARCs will notify eligible victims of sex-related offenses that they may consult an SVC. OSVC will work with responsible activities to ensure that their procedures ensure that an offer of SVC representation is made by a VA, a CGIS investigator, a victim/witness liaison, a trial counsel, or a healthcare provider if not already made by the SARC.

7.3 When a victim requests to speak with an SVC, the SARC will forward that request to the OSVC. The OSVC will conduct a conflict check and identify a qualified SVC. The SVC will then coordinate communication with the victim via the SARC. During the initial conversation with the victim, the SVC should describe the scope of services and forward a copy of the Scope of Representation letter to the victim within 24 hours either electronically or by mail. After signing and dispatching the letter, the SVC will retain a copy and should attempt to obtain a signed copy from the client.

7.3 Typically the OSVC will assign an SVC within 48 hours of the request. Once an SVC has been assigned, the OSVC will provide counsel's name to the SARC, and trial counsel if charges have been preferred, within 48 hours of assignment.

7.4 A victim may indicate he or she does not desire a SVC. The OSVC will recommend to the Coast Guard SAPR Program Coordinator that SARCs maintain internal documentation of declinations. Initial declination does not preclude future requests for SVC. Victims may change their mind at any point in the process and request SVC, even after declining SVC services.

7.5 SVCs will not solicit clients.

8.0 SVC Role in Relation to Other Services The Coast Guard provides a wide range of services and support to victims of sex-related offenses through a variety of agencies and programs, including unit commanders, the SAPR Program, Work-life, the EAP, Family Advocacy Personnel, CGIS, Chaplains, and the Victim Witness Assistance Program

(VWAP). Each of these services provides necessary support to victims of sex-related offenses. While there may be areas that overlap in the objectives of the SVC program and VWAP, the SVC program is a distinct program designed to assist the victim in navigating the complexities of the military justice system. In performing their duties, SVCs must understand the other services and support available to victims and coordinate their activities appropriately.

9.0 SVC Designation, Qualifications, Training

9.1 OSVC will assign clients to SVCs.

9.3 TJAG will certify attorneys as competent to serve as SVCs and designate them. Attorneys designated as collateral duty SVCs during EOC can expect a one-year appointment unless sooner terminated or voluntarily extended.

9.4 SVCs will be Article 27(b) certified and have received specialized training as a victim advocate. OSVC will direct additional training (such as the 2-week Army SVU Investigations Course, the Air Force SVC Course, or the Navy/Marine Corps VLC Course (anticipated in FY14).

9.5 SVCs will not provide SVC services within their parent organization or within the geographical area of responsibility of their command; OSVC may grant exceptions in limited and appropriate cases.

10.0 SVC Responsibilities

10.1 Consultations. SVCs may provide telephonic consultations without being detailed, but should take care to ensure that the victim understands that the consultation does not create an ACR. (But see section 5.1 above.)

10.2 Initiating representation once detailed; terminating representation.

10.2a During EOC, contact between an SVC and victim will normally be telephonic.

10.2b Upon development of an ACR, the SVC will describe the scope of services.

10.2c SVCs will forward the Scope of Representation Letter and obtain an acknowledgment (providing services can begin once there is oral acknowledgement; forwarding the scope of representation letter and obtaining signed copy can follow).

10.2d SVCs will assess whether in-person contact is warranted. Written requests for travel will be submitted prior to any travel and include sufficient background information and a short justification. Requests will be submitted to Chief, OSVC for approval.

10.2e Upon the preferral of charges or as soon thereafter as practicable, SVCs shall inform trial counsel and defense counsel when detailed as the SVC for the victim.

10.2f SVCs will ensure the client understands that the ACR terminates when a verdict is reached, or when the charges are dismissed with no apparent intent to re-prefer. If the matter goes to trial, the relationship terminates upon final action by the convening authority. If, prior to the conclusion of military justice proceedings, an SVC must terminate the relationship with a victim, the SVC will notify the OSVC and obtain the consent of the victim. OSVC is then responsible for assigning a replacement SVC.

10.2g The OSVC will provide counsel with a voluntary victim survey that counsel shall provide to the client at the termination of the SVC-client relationship.

10.2h Once an ACR is formed, the SVC may only engage SARCs, VAs, Health Care Professionals (HCP), and FAS (Family Advocacy Specialists) with the consent of the victim. SVCs are not a resource for these professionals except to the extent that it serves the interest of the represented victim.

10.2i SVCs may provide input to the OSVC regarding ethical issues, lessons learned, and training or programmatic improvements.

10.2j SVCs will provide data as requested by the OSVC. The OSVC will compile relevant metrics to include the date of the initiation of the victim's case, the date of notice to OSVC, the date a SVC is detailed in a case, and the date of initial contact between the SVC and the victim.

10.2k Maintenance of SVC files relating to representation is the responsibility of the SVC and not the U.S. Coast Guard. The OSVC will retain copies of detailing memorandum and administrative documentation.

10.3 Authorized legal assistance to victims once detailed:

10.3a Consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services. While SVCs may discuss issues of collateral misconduct with the victim, SVCs will not undertake activities to represent the victim with respect to collateral misconduct because they are not detailed defense counsel but will facilitate interaction with Defense Service Offices. OSVC will consider exceptions in coordination with CG-094M.

10.3b Consultation regarding the VWAP, including the rights and benefits afforded the victim; the role of the VWAP liaison and what privileges do or do not exist between the victim and the liaison; and the nature of communication made to the liaison in comparison to communication made to an SVC or a legal assistance attorney under 10 U.S.C. § 1044.

10.3c Consultation regarding the responsibilities and support provided to the victim by the SARC and VA to include any privileges that may exist regarding communications between those persons and the victim.

10.3d Consultation regarding the potential for civil litigation against other parties (other than the United States).

10.3e Consultation regarding the military justice system, including (but not limited to) the roles and responsibilities of the trial counsel, the defense counsel, and investigators; any proceedings of the military justice process which the victim may observe; the Government's authority to compel cooperation and testimony; and the victim's responsibility to testify, and other duties to the court.

10.3f Accompanying the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense (subject to approval of travel expenses by OSVC).

10.3g Consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.

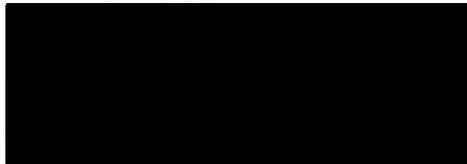
10.3h Consultation and assistance in personal civil legal matters in accordance with 10 U.S.C. § 1044, in any proceedings of the military justice process in which a victim can participate as a witness or other party; in understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders; and in understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in 10 U.S.C. § 1059 and other State and Federal victims' compensation programs.

11.0 Organization & Location of the OSVC during EOC

11.1 While CAPT [REDACTED] is on EAD, the OSVC will be led by her and one 0-3 collateral duty or full-time judge advocate. Upon her completion of her EAD orders, CG-094M Member Advocacy Division will assume responsibility for overseeing the SVC program, unless DJAG directs otherwise.

11.2 Currently, 14 trained attorneys are available to be assigned as SVC. These SVC are geographically dispersed and provide services on a voluntary basis as a collateral duty.

By Direction:

A large black rectangular redaction box covering the signature of the Deputy Judge Advocate General.

C. M. LEDERER
Deputy Judge Advocate General

Dated: 13 January 2014