



Report: Feasibility of Expanding Services of the Special Victims' Counsel and Victims' Legal Counsel to Victims of Domestic Violence

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EXECUTIVE SUMMARY

Section 534 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19) (Public Law 115-232), requires the Secretary of Defense, in consultation with the Secretaries of the Military Departments, to submit a report on the feasibility and advisability of expanding eligibility for Special Victims' Counsel (SVC) and Victims' Legal Counsel (VLC) Programs to include victims of domestic violence (DV) to the congressional defense committees no later than February 1, 2019. The Department provided an interim response on January 20, 2019.

The term "SVC Programs" encompasses the Army and Air Force's SVC Programs, and the term "VLC Programs" encompasses the Navy and Marine Corps' VLC Programs.

Section 534(b) also requests that the report include current SVC/VLC Programs workload; an analysis of current personnel authorizations for the SVC/VLC Programs; a statement of optimal personnel levels for SVC/VLC Programs; and an analysis of how expanding SVC/VLC services to DV victims would affect SVC/VLC Programs (to include information regarding an increased workload, additional personnel required to meet any increased workload, and the ability of the Military Departments to fill any additionally authorized SVC/VLC program billets with qualified judge advocates). The Department consulted with the Secretaries of the Military Departments. Each Service provided input and data responsive to section 534(b) regarding their SVC/VLC Programs, which is reflected in this report.


In sum, expanding SVC/VLC eligibility to include victims of all DV will significantly increase the caseload of SVC/VLC Programs across the board. In order to maintain optimal caseloads and ensure SVC/VLCs can effectively support the current mission, each Service would require additional SVC/VLC authorizations and sufficient time to train personnel to implement new mission requirements.

BACKGROUND

Section 534, "Report on Feasibility of Expanding Services of the Special Victims' Counsel to Victims of Domestic Violence[.]" of NDAA FY19 provides, in full:

(a) **REPORT REQUIRED.**—Not later than February 1, 2019, the Secretary of Defense, in consultation with the Secretaries of the military departments, shall submit a report to the Committees on Armed Services of the Senate and House of Representatives regarding the feasibility and advisability of expanding eligibility for the Special Victims' Counsel programs under section 1044e of title 10, United States Code (hereinafter referred to as "the SVC programs"), to include victims of domestic violence.

(b) **ELEMENTS.**—The report under this section shall include the following:

- 
- (1) The current workload of the SVC programs.
 - (2) An analysis of the current personnel authorizations for the SVC programs.
 - (3) The optimal personnel levels for the SVC programs.
 - (4) An analysis of the effects that the expansion described in subsection (a) would have on the SVC programs, including—
 - (A) the estimated increase in workload;
 - (B) the estimated number of additional personnel that would be required to accommodate such increase; and
 - (C) the ability of the military departments to fill any additionally authorized billets for SVC programs with qualified judge advocates who possess military justice experience.

Section 1044e of title 10, U.S. Code, “Special Victims’ Counsel for victims of sex-related offenses[,]” provides, in relevant part, the following:

(a) Designation; purposes.

(1) The Secretary concerned shall designate legal counsel (to be known as “Special Victims’ Counsel”) for the purpose of providing legal assistance to an individual described in paragraph (2) who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.

(2) An individual described in this paragraph is any of the following:

(A) An individual eligible for military legal assistance under section 1044 of this title.

(B) An individual who is--

(i) not covered under subparagraph (A);

(ii) a member of a reserve component of the armed forces; and

(iii) a victim of an alleged sex-related offense as described in paragraph (1)--

(I) during a period in which the individual served on active duty, full-time National Guard duty, or inactive-duty training; or

(II) during any period, regardless of the duty status of the individual, if the circumstances of the alleged sex-related offense have a nexus to the military service

of the victim, as determined under regulations prescribed by the Secretary of Defense.

(C) A civilian employee of the Department of Defense who is not eligible for military legal assistance under section 1044(a)(7) of this title, but who is the victim of an alleged sex-related offense, and the Secretary of Defense or the Secretary of the military department concerned waives the condition in such section for the purposes of offering Special Victims' Counsel services to the employee.

...

(d) Qualifications.

(1) An individual may not be designated as a Special Victims' Counsel under this section unless the individual--

(A) meets the qualifications specified in section 1044(d)(2) of this title; and

(B) is certified as competent to be designated as a Special Victims' Counsel by the Judge Advocate General of the armed force in which the judge advocate is a member or by which the civilian attorney is employed, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.

(2) The Secretary of Defense shall--

(A) develop a policy to standardize the time period within which a Special Victims' Counsel receives training; and

(B) establish the baseline training requirements for a Special Victims' Counsel.

...

(g) Alleged sex-related offense defined. In this section, the term "alleged sex-related offense" means any allegation of—

(1) a violation of section 920, 920a, 920b, 920c, or 925 of this title (article 120, 120a, 120b, 120c, or 125 of the Uniform Code of Military Justice); or

(2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice).

[REDACTED]

The aforementioned sections of title 10, U.S. Code are section 920: Rape and sexual assault generally; section 920a: Mails: deposit of obscene matter; section 920b: Rape and sexual assault of a child; section 920c: Other sexual misconduct; and section 925: Kidnapping.

Section 651 of the Department of Defense Authorization Act, 1985, codified at section 1044 of title 10, U.S. Code, gave express discretionary authority to the long-standing practice of the Secretaries of the Military Departments to provide legal assistance to certain eligible beneficiaries. Section 1044, as amended, provides, in relevant part, the following:

subject to the availability of legal staff resources, the Secretary [of the Military Department] concerned may provide legal assistance in connection with [eligible persons'] personal civil legal affairs[.]

FEASABILITY REPORT

Current Workload of the SVC/VLC Programs

In terms of workload, each Service reports that its SVC/VLC Program is operating at or beyond capacity. The Service SVC/VLC Program managers agree that an optimal caseload per SVC/VLC is between 20 and 25 cases or clients at any given time. The optimal number of open cases is slightly less for supervisory SVC/VLCs. The Navy and Army report average caseloads of 32-33 per SVC/VLC, while the Air Force and Marine Corps average roughly 22-25 cases per SVC/VLC, respectively. The Marine Corps' VLC Program, in accordance with the aforementioned authorities, in certain domestic violence cases involving serious physical injury, recurring emotional abuse, and/or other significant issues, details VLCs to victims. These cases constitute 10% of the Marine Corps VLC Program overall caseload.

Analysis of Current Personnel Authorizations for the SVC/VLC Programs

Each Service annually prioritizes filling and training SVC/VLC billets with qualified judge advocates possessing the requisite experience and skill sets required under section 1044e(d)(2) of title 10, U.S. Code. Authorized SVC/VLC billets are currently fully staffed in the Army and Navy (at 48 and 33 authorizations, respectively). The Air Force currently fills 46 of the authorized 49 billets. The Marine Corps has 18 VLCs, despite having 21 authorized VLC billets. The Marine Corps obligated funds to 12 of the 21 authorized VLC billets and fills six additional VLC billets with qualified counsel assigned to other billets.

The Army advises it does not have a sufficient number of authorized personnel to meet current Program requirements. To meet mission demand, the Army pulls 27 judge advocates from other billets, training and certifying them, to supplement its 48 authorized SVC billets.

While the Navy's authorized 33 VLC billets are currently filled, the active duty pool of judge advocates available to fill these billets is inadequate to support the number of approved

[REDACTED]

billets. To meet mission demand, the Navy relies upon the activation of Navy Reserve judge advocates to supplement and fully staff the VLC Program.

Optimal Personnel Levels for the SVC/VLC Programs

The Navy and Marine Corps VLC Programs are currently at an optimal level of authorized personnel to fulfill the current VLC Program mandate (33 and 21 authorizations, respectively). (Note: 21 VLC billets would be optimal staffing for the Marine Corps present-day VLC mission requirements. With only 12 authorizations funded and filled, the Marine Corps needs to obligate funds to fill 9 additional VLC billets.)

Given current mission requirements, the optimal personnel level for Army's SVC Program would be 60 SVC authorizations, which is an increase of 12 authorizations.


Although the Air Force SVC Program currently meets its targeted optimal SVC workload, the Program requires additional personnel to effectively cover the Air Force population. For example, not every installation has an SVC stationed on-site and, in order to maximize the number of clients who are served by local SVC offices, the Air Force currently requires five additional SVC and offices for each, bringing its total to 54.

Analysis of the Effects of Expanding Provision of SVC/VLC Services to DV Victims

Based upon the average number of annual DV incidents reported over several years and a reasonable expectation of the number of victims who would elect to avail themselves of SVC/VLC representation, all Services would experience an increase in SVC/VLC Program workload and would require additional authorized personnel (above and beyond present optimal levels) to accommodate the increase. Estimates from across the Services predict an increase of 60-80 percent in workload. Consequently, the Services would require corresponding increases in authorized SVC/VLC personnel.

In the short term, the Services report that it would be difficult to fill any additional authorizations with qualified personnel, as current critical military justice mission requirements already stress the pool of experienced qualified practitioners. Adding additional judge advocate billets across the Services will not immediately translate into the corresponding number of qualified judge advocates capable of filling SVC/VLC billets. Qualified judge advocates are built through exposure to military justice and the opportunity to practice in front of courts; these opportunities are finite. It would take time to properly train and cultivate the necessary pool of judge advocates to fulfill the new authorizations. If expansion is mandated, it would be advisable to allow the Services to phase-in DV representation over several years to allow for proper training and development of SVC/VLCs capable of representing this new category of client.

Additionally, the certification and training processes would require restructuring as Air Force, Army, and Navy SVC/VLC training currently focuses on issues germane to victims of sexual assault. DV cases present unique factors, such as risk of lethality, threats of violence, length of time of abuse, number and types of assaults, reconciliation of the abuser and abused,



recantation of allegations of abuse, child custody matters, civilian separation/divorce proceedings, and support issues.

Conclusion

The DoD and each Service's SVC/VLC Program remain committed to providing our Airmen, Marines, Sailors, and Soldiers with professional and knowledgeable advice and representation throughout the investigation and prosecution of sexual violence offenses. If mandated to expand SVC/VLC services to victims of DV, the Services would experience a considerable workload increase and require a significant increase of personnel authorizations.