

Congress of the United States
Washington, DC 20515

June 14, 2021

The Honorable Lloyd J. Austin III
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301

Dear Secretary Austin,

Since the program's creation in 2013, the Special Victims' Counsel program has provided much-needed access to support to survivors of military sexual trauma. Special Victims' Counsel (SVC) and Victims' Legal Counsel (VLC) assist survivors in navigating their rights in the military justice system, and military entitlements more generally, in their hour of need. The military owes these survivors consistent, high-quality advocacy to begin to address the harm that has been done to them under the military's watch.

There are uniform statutory requirements for the SVC/VLC programs that cover minimum services to be provided and basic qualification requirements, but the services have retained the ability to shape many aspects of their program implementation. While this no doubt allows the services to address some unique needs and challenges, these service differences have also revealed gaps and best practices.

Additionally, in our oversight work as the leaders of the House Armed Services Military Personnel Subcommittee and the Senate Armed Services Personnel Subcommittee and in serving constituents, we have heard from many survivors about their experiences with their SVCs/VLCs. Through these conversations there have been several consistent concerns regarding the independence and continuity of counsel, which varies between military services with disparate results for clients.

Further examination into these concerns reveals the vastly different approaches and outcomes in the services. For example, the SVC/VLC in the Army and the Marine Corps maintain closer relationships with installation legal offices, whereas those in the Air Force and Navy have more independence in terms of supervision and support.

While we certainly appreciate the need to retain some flexibility to adapt to the unique considerations of each service, we also firmly believe that there is room for more uniform implementation across military services that will improve the service provided to military sexual trauma survivors. In that spirit, we offer the following suggestions for where you, at the department level, can enhance uniformity and better meet the needs of survivors.

1. Establish Uniform Guidance Mandating a Minimum 2-year assignment duration for SVC/VLC.

One of the top complaints we have heard from military sexual trauma survivors is that they had to work with multiple SVC/VLC on their case due to personnel turnover. Each time a survivor has to change counsel, they have to re-tell their story and suffer the learning curve of a new advocate as they become acquainted with the case. There is also a loss of continuity with ongoing actions, since many military justice proceedings for sex-related offenses take more than one year.

While the services have all taken steps to ensure a thorough transition between incoming and outgoing SVC/VLC, not all have done enough to reduce the amount of turnover. For example, in the Navy and the Air Force the average assignment duration for an SVC/VLC is two to three years, while in the Army and the Marine Corps the average assignment duration is twelve to fifteen months. Further, the common practice in the Army and Marines is to treat SVC/VLC assignments as part of a rotation while assigned to an installation, rather than a dedicated tour. We understand the need to rotate personnel for various reasons, but twelve to eighteen months is simply not enough time for a counsel to build relationships, develop experience and see actions through to completion. We ask you to direct the military services to revise their SVC/VLC assignment policies and procedures with the objective of 2-year minimum assignment lengths, in most cases, for these critical client-focused positions. While the Army and Marine Corps currently treat SVC/VLC assignments as but one of multiple assignments within a tour, generating shorter times in the position, we ask that you challenge them to think creatively about treating SVC/VLC positions as independent tours without another job to fit in, or about extending some tour lengths to allow for longer durations in both an SVC/VLC role and any other roles within the tour. A lack of creativity about how to approach assignment lengths should not hinder the assistance available to victims.

2. Establish Uniform Guidance Mandating Independent Supervisory Chains for SVC/VLC.

The SVC/VLC program exists to represent the interest of military sexual trauma survivors, even when those interests are at odds with the interests of the chain of command. In this respect, SVC/VLC are similar to military Trial Defense Counsel who are charged to represent their clients against the government's prosecution. While Trial Defense Counsel are uniformly assigned to independent chains of command to preserve their independence from local chains of command, the same is not always true for SVC/VLC.

The Air Force, Navy, and Marines have established independent supervisory chains for the SVC/VLC. Though unique in specifics, all share the key characteristic that (1) SVC/VLC are supervised for guidance and evaluative purposes through a legal services chain that is centralized within the service, and (2) the individual SVC/VLC does not rely on any member of the chain of command at their installation for performance evaluations. The Army is an outlier in this regard because Army SVC are evaluated by local Staff Judge Advocates, who in turn are evaluated by the chain of command. We are concerned that this arrangement creates the potential to constrain the independence of SVC and their ability to zealously advocate for their survivor clients. We ask that you issue uniform guidance mandating a minimum amount of independence for SVC/VLC that prohibits the local chain of command from being in the rating chain of an SVC/VLC, or that counsel's supervisor.

We hope that you share our concern with improving the quality of the SVC/VLC program that is such an important resource for those who have already had to endure the betrayal of trust and trauma of military sexual violence. The steps we propose are simple and will address the concerns from many survivors and advocates. Thank you for your attention to this important issue.

Sincerely,

A handwritten signature in blue ink that reads "Jackie Speier". The signature is fluid and cursive, with a large initial "J".

Jackie Speier
Member of Congress

A handwritten signature in blue ink that reads "Kirsten Gillibrand". The signature is fluid and cursive, with a large initial "K".

Kirsten Gillibrand
United States Senator