



## Chapter 1

### Legal Advocacy: Direct Responsibilities to the Survivor

#### ***In this chapter, you will find information on...***

- *The Legal Advocates' Responsibilities to the Survivor*
- *Traits of the Effective Advocate*
- *The Difference Between Advocating and Counseling*
- *Rights of Sexual Assault Survivors*
- *The Survivor's Rights as a Crime Victim*

For a survivor of sexual assault, the legal system can be frightening, frustrating, and confusing. The survivor may be dealing with the criminal justice system for the first time and dealing with law enforcement, district attorneys, and judicial officials can be intimidating. A survivor may feel anxious or uncertain in dealing with investigators, stressed at meeting with prosecutors or overwhelmed at the thought of court appearances. The required time and effort it takes for a case to go through the legal system can also make a survivor reluctant to pursue her case.

The advocate provides objective, knowledgeable, and supportive intervention on behalf of the survivor. It is also the responsibility of the advocate to ensure that the survivor has the necessary information about the legal justice system to make critical decisions. The advocate also ensures survivor's rights are upheld in the various systems that may be encountered.

## Basic Legal Advocacy Responsibilities to the Survivor:

### 1. To serve as a liaison between the survivor and the legal system

The advocate acts as liaison/facilitator between the survivor and all criminal or civil justice agencies. These agencies include police/law enforcement, district attorney's offices, the courts, probation, parole, and corrections. The advocate strives to ensure that each agency has the proper contact information for the survivor, and that the survivor is treated with sensitivity and respect throughout her dealings with criminal, family, and civil court personnel.

### 2. To facilitate the survivor's decision-making

After a sexual assault, the survivor will have to make a number of immediate and important decisions that will affect her treatment, and whether or not she chooses to move towards an investigation. The advocate ought to be aware that the survivor may be in crisis during this process. The advocate's role while the survivor is making decisions is:

- to provide necessary information that will assist the survivor in making informed decisions about her case
- to make all options available and known to the survivor regarding her case and concerns
- to provide her with support during the time the survivor is making critical decisions.

Once decisions have been made, the advocate is responsible for supporting the survivor throughout the survivor's experiences.

**Advocates must remember not to suggest or make decisions for the survivor.**

### 3. To inform the survivor of her rights

The rights of a sexual assault survivor must be reviewed with her verbally as well as in writing. The advocate must consider that not all survivors read or speak

English fluently or at all. Information about the survivor's rights should be made available to her in the survivor's primary language. The advocate should answer any questions that the survivor has, and to the advocate's best understanding. The advocate must also ensure that the survivor understands the information she has been presented. Programs, therefore, need to have multilingual materials available and resource information on signers/translation services.

**4. To prepare the survivor for her legal justice experience by providing her with necessary information**

By informing the survivor about what to expect through the legal proceeding in advance, the advocate is providing a way for the survivor to regain some form of control over her life. The advocate should be familiar with police and court procedures and make the survivor prepared for the possibilities ahead. The advocate should help the survivor sort out her thoughts on the many difficult decisions that need to be made. She should also prepare the survivor for all possible outcomes during court proceedings, including an announcement of "no bill" from the grand jury due to insufficient evidence or a "not guilty" finding. The survivor may have questions, and an effective advocate should be willing to get the answers to those questions. The advocate should become familiar with the people who can provide information, on the various court systems. An effective advocate will not try to protect the survivor by withholding information that may be emotionally difficult. If the survivor finds that the advocate has not been completely honest, credibility and trust will diminish.

**5. To accompany the survivor as she moves through the criminal justice systems**

The advocate may offer compassion, companionship, and reassurance to the survivor during the police interview, court procedures, and trial. The advocate should be responsive to the survivor's needs and act accordingly, by following the survivor's verbal and non-verbal cues. Some survivors may want to talk; others may choose to be silent. In some instances, the survivor may want to be left alone. The advocate's role is to be available when needed, responsive to the survivor's needs, and provide a supportive presence.

**6. To inform the survivor of other services available to her in her community**

The advocate should be aware of the survivor's diverse and multiple needs and link her with other services provided by the rape crisis program and local providers. The advocate should pay particular attention to the need for a safety plan, shelter, counseling, and health care services. The survivor also will need follow-up care. The advocate ought to have a resource guide available for the survivor showing what community services are available to meet the survivor's needs.

**7. To document services provided according to program requirements**

Advocates must document and maintain program statistics that show what services the advocates provide to the survivor.

**8. To be fully informed of their program's policies and protocols**

Advocates must know the procedures and policies for conducting interactions with survivors, transportation, telephone use, etc. along with New York State's confidentiality laws for certified rape crisis counselors.

**9. To reach out for assistance and support when necessary**

As advocates carry out the role of providing assistance to survivors, advocates may need to seek support for themselves also. It is important for advocates to share with their supervisors, other advocates, or program mental health consultant questions or concerns regarding the advocate's experiences, reflect on insights, and engage in problem-solving activities. In order for advocates to provide clear, supportive and effective services, the advocates must be receptive to receiving support themselves.

## Overview of the Advocate's Interactions with the Legal System on Behalf of the Survivor

In addition to being a source of information, compassion, and support for survivors, the advocate may act as an agent for the survivor. In order for the advocate to act as an agent, she must have the survivor's written consent. After receiving consent, the advocate may be meeting with the survivor and personnel in a variety of criminal justice settings to make sure that the survivor's rights are being protected and that she is informed of how her case is being handled. While the advocate is clearly not an attorney and should not represent themselves as one, the advocate may help the survivor access appropriate information and voice the survivor's needs to others specified on a signed consent. Here is a summary of the types of agencies and interactions in which an advocate may be involved:

May contact the	Concerning these issues
Police Department	Inquiries about progress of the case; requests for orders of protection; requests to keep the investigation open; requests for the return of property; compliments or complaints about officers.
Prosecutor's Office	Survivor's desire to press or drop charges, survivor's input into plea negotiations, requests for restitution, requests for orders of protection, notification of hearing dates and times, requests for the return of recovered property, requests for speedy resolution of the case, preparation for court, compliments or complaints about assistant district attorney's behavior.
Judges	Requests that "no contact" be a condition of bail, obtaining orders of protection, recommendations concerning restitution, offender sentencing or rehabilitation.
Probation Department	Completion of the victim impact statement, inclusion of opinion into pre-sentence report, issues about probationer harassment or failure to pay restitution.
Corrections Department	Inquiries about the prisoner's location and release the VINE system, (victim information and notification everyday), complaints about telephone harassment
Parole Department	Notice of parole hearings, presentation of views to parole board, complaints about parolee's harassment, complaints about parolee's failure to pay restitution
Crime Victims Board	Assistance in filing an application, appeal over rejections or the amount of compensation
Legal Project or Civil Court	Referral to a lawyer specializing in civil lawsuits, assistance in the preparation of cases for small claims court, assistance in collection of judgments

Chart adapted from "Towards the Institutionalization of a New Kind of Justice Professional: The Victim Advocate," Andrew Karmen, Ph.D. *The Justice Professional*, Winter 1995.

## Traits of the Effective Advocate

### **Being Aware of the Individual**

Advocates should be aware and sensitive to the survivor's personal identity, especially in regard to the survivor's race, culture, primary language, sexual orientation, employment history, and personal beliefs. It is extremely important not to make judgments or assumptions based on generalizations and stereotypes. The advocate may want to discuss with the survivor her background and culture, in order to gain a better understanding of how the survivor may be affected by the sexual assault.

### **Concreteness**

One of the common reactions to sexual assault or violence is a feeling of disorientation, which can lead to a sense of powerlessness and confusion. Therefore, the advocate needs to be supportive and provide clear, concise and accurate information. The advocate should avoid being direct in giving unsolicited advice or instruction, but provide detailed information in relevant, understandable terms. Part of the advocate's role is to keep the survivor focused on the present.

### **Empathy**

Advocates need to be conscious of the survivor's emotional state. The advocate should be empathetic and provide support to the survivor, regardless of the survivor's life circumstances, socioeconomic status, race, ethnicity, and sexual orientation. The focus of the advocate should be on exhibiting interest and concern for the survivor's particular situation.

### **Genuineness**

Authentic concern and emotional support help establish a bond between the survivor and the advocate. The advocate is also able to relax and focus on the survivor's needs when they are not worrying about how best to portray themselves.

## Potency

The advocate should exhibit confidence, knowledge and a willingness to work on the survivor's behalf. By exhibiting these characteristics, the advocate shows how they can effectively contribute to the survivor's needs.

## Respect

Respect is a fundamental element in helping the survivor recover her sense of self-worth. By respecting and showing an appreciation of the survivor, the advocate is recognizing the survivor's worth as a person. This includes protecting the survivor's right to make her own decisions, and believing in the survivor's ability to overcome the crisis she is facing.

## Warmth

The advocate should provide a comforting and reassuring presence to a survivor of a sexual assault. This can be exhibited through non-verbal cues, such as body language, eye contact, and facial expressions.

## The Differences Between Advocating and Counseling

There are several similarities and differences between what support a counselor provides and support an advocate provides.

- ❑ The *counselor* works to provide a sense of safety and security for the survivor.
- The *advocate*, with permission from the survivor, takes risks on her behalf.
- ❑ The *counselor's* role is to focus on the survivor and her internal needs. The counselor focuses on effective communication with the survivor.
- The *advocate's* role is to act as a liaison and effectively communicate the survivor's needs outwardly to law enforcement, the prosecutor's office, or others.
- ❑ The *counselor* provides a non-judgmental environment for the survivor, during their sessions.

- The *advocate* assists in making the survivor's decisions and needs known.
- The *counselor* is supportive and non-threatening to survivors.
- The advocate remains compassionate and understanding to the survivor herself, but the *advocate* may need to be assertive with agencies—on the behalf of the survivor. The advocate may also need to educate law enforcement or other professionals to see the survivor's point of view.

## Rights of Sexual Assault Survivors

It is the advocate's responsibility to see that the rights of every survivor are respected and honored.

Some of the rights listed below are also rights given, by law, to all crime victims by New York State's Fair Treatment Standards Act (*See Appendix B*). These have been marked with an asterisk\*.

Each survivor of a sexual assault has the right:

- to choose whether or not to report the assault to the police
- to be treated with dignity and respect by institutional and legal personnel\*
- to be given as much credibility as the victim of any other crime
- to be considered a victim of sexual assault when any unwanted act of sex is forced upon her through any type of coercion, violent or otherwise
- to make her own decisions and to have the option to change her mind
- to be asked only those questions that are relevant to the court or her medical treatment
- to receive medical and mental health treatment, and participate in legal procedures only after giving her informed consent
- not to be asked questions about prior sexual experience except in regards to the perpetrator
- to be treated in a manner that does not usurp her control, but enables her to determine her own needs and how to meet them

- to have access to support people, such as advocates, friends, partners, and family when needed
- to receive prompt medical and mental health services, whether or not the sexual assault is reported to the police
- to be protected from future assault
- to be provided with information about all possible options related to legal and medical procedures
- to have her name kept from the news media
- to be considered a victim of sexual assault regardless of the perpetrator's relationship to her
- to be provided with information about her rights\*
- to have access to peer counseling\*
- to receive medical treatment without parental consent if she is a minor
- to have the best possible collection of evidence for court
- to have legal representation
- to have a preliminary hearing in each case when an arrest has been made
- to be advised of the possibility of filing a civil suit

Although all sexual assault survivors should be given the rights enumerated below, many are not.

***It is the advocate's responsibility to see that the rights of every survivor are respected and honored.***

### The Survivor's Rights as a Crime Victim

In 1984, the Fair Treatment for Crime Victims Act, Article 23 of the New York Executive Law was passed giving all crime victims specific legal rights. The most current information on Crime Victim's Bill of Rights can be found at [http://www.oag.state.ny.us/crime/bill\\_of\\_rights.html](http://www.oag.state.ny.us/crime/bill_of_rights.html). Thanks to vocal survivors of crime and determined advocates, the voices of survivors are allowed to be heard at all levels

of the criminal justice process including sentencing and at parole hearings. Rights given to all crime victims in New York include the right to:

**Information:**

Pursuant to § 646 of the Executive Law, crime victims are entitled to receive a free copy of the police report relating to the crime. Crime victims should be informed of the availability of appropriate public or private programs that provide counseling, treatment, or support for crime victims. These programs can include but are not limited to rape crisis programs, victim/witness assistance programs, elderly victim services, victim assistance hotlines, domestic violence shelters, and child advocacy centers.

**Consultation:**

Under Executive Law § 642(1), crime victims and their families have the right to consult with the prosecutor, to provide their views about the disposition of the case, the defendant's release and sentencing including restitution from the defendant.

**Notification:**

- Entitles victims to notification of judicial proceedings relating to their case, including the accused's arrest, arraignment, pre-trial release, entry of a guilty plea, trial, sentencing, final disposition, and terms of imprisonment, parole, release, and escape. The survivor needs to keep the district attorney informed of address and phone number changes.
- *Victim Information and Notification Everyday (VINE)*  
Crime victims can access information about custody and release data on all prison inmates by calling the Department of Correctional Services' (DOCS) toll-free Victim Information and Notification Everyday (VINE) number at 1-888-VINE4NY.
- *Sex Offender Registration Act--Megan's Law*  
Article 6-C of the Correction Law, entitled the Sex Offender Registration Act, requires anyone on parole or probation or imprisoned for specific sex offenses to

register annually, with the Division of Criminal Justice Services (DCJS). The Act also provides for the establishment of the Sex Offender Registry Information Line at 1-900-288-3838, which crime victims as well as the general public can call to determine whether an individual is a convicted sex offender.

Callers, who must be at least 18 years old, may access information about the status of a particular offender by providing the name and at least one of the following identifiers: the offender's street address and apartment number, driver's license number, social security number, or birth date. For a fee of \$.50 (fifty cents), crime victims can inquire about five offenders.

- Section 168-q of the Correction Law also requires DCJS to maintain and provide to law enforcement a subdirectory of sexually violent predators, entitled the *Subdirectory of High-Risk Sex Offenders*. Crime victims can access the *Subdirectory* via the Internet at the Division of Criminal Justice Service's website ([www.criminaljustice.state.ny.us](http://www.criminaljustice.state.ny.us)) or by contacting their local police authorities.
- *HIV Testing*  
Pursuant to § 390.15 of the Criminal Procedure Law, a crime victim or family member, where appropriate, may file a written request for the court to order the defendant, convicted of a felony sexual offense, to submit to human immunodeficiency (HIV) related testing. Test results are only communicated to the offender and the victim.

### **Speak out:**

Crime victim's have the right to:

- testify against a perpetrator
- speak out about the impact that a violent criminal act has had on their life
- provide written and oral testimony at the time of sentencing, or to a member of the state parole board prior to a criminal's release

### **Be Made Whole:**

Restitution, compensation, reimbursement or reparation is available to victims of crime based on CVB guidelines and the courts. Expenses include lost wages,

medical or mental health expenses, damaged property, funeral bills, and fee waivers from the Department of Motor Vehicle for replacement of driver's license, permit, registration, and number plates that are lost or destroyed as a result of a crime. The amount of restitution or reparation required by the court shall not exceed \$15,000 in the case of a conviction for a felony or \$10,000 in the case of a conviction for any other offense.

**Protection:** Includes a private setting to be interviewed and a secure waiting area separate from defendant and other witnesses during a trial.

**Help:** Includes return of personal property held for evidentiary purposes, creditor intercession by law enforcement to explain why a survivor may not be able to meet financial obligations due to a crime, or speaking with an employer to explain a need to take time off while testifying during a trial. § 215.14 protects victims from being intimidated or fired due to absences while testifying and § 215.15-17 provides protection from personal harassment or property damage while testifying in a criminal case.