

Overview: Tribal Sexual Assault Victim Advocacy¹

Introduction

There are two main types of victim service providers who may assist victims of sexual assault in American Indian/Alaskan Native (AI/AN) communities.

- Victim advocates are typically employed by tribal-based sexual assault programs, battered women's shelters or other victim service departments or nonprofit programs to provide advocacy and other services to victims of sexual assault. Sometimes victim advocacy offices are co-located or connected in some fashion with a governmental social service, health, mental health or criminal justice agency; however, advocates must be able to operate independently from the regulations of those programs so they can truly serve victims' interests (discussed below).
- Advocates are distinguished from government-based victim witness specialists, who may also be available to assist victims in cases in which the sexual assault was reported. For example, the FBI has victim witness specialists that serve different regions of the country. County governments sometimes have victim witness specialists in their law enforcement or prosecution offices. (Sometimes government-based victim witness specialists have the title "victim advocate," which can be misleading to both victims and responders.)

It is strongly recommended that AI/AN communities have advocacy programs in place that can provide 24/7 assistance to victims in the immediate aftermath of a disclosure of sexual assault and beyond. While government-based victim witness programs play important roles in providing specific assistance to victims (e.g., during investigative and court proceeding and in obtaining victim compensation), it is the advocate who can support Native victims at every step along their healing path, if victims so choose. While all those involved in community response to sexual assault may offer help to victims, the help each provides is usually specific to the mission of their agency (to conduct a medical forensic examination, provide protection, investigate or prosecute a case, etc.). It is only the advocate whose role it is to (1) help individual victims identify their needs and wishes related to safety, justice and healing from the sexual assault and then (2) assist victims in getting their needs and wishes met in a respectful and culturally sensitive manner.

The advocate's role, as thoughtfully described in *The Principles of Advocacy: A Guide for Sexual Assault Advocates* (Mending the Sacred Hoop, 2004), is to act as the biased supporter of Native victims experiencing sexual violence, advocating for their expressed interests, including resources to regain control over their lives; to provide expertise founded on Native victims' experiences within justice, social service and medical systems; and to prioritize

victims' safety and offender accountability in all aspects of advocacy, including maintaining confidentiality.

As Ruth Oja, an advocate with the Hannahville Indian Community noted, when a Native woman who has just been sexually assaulted calls in desperation at 3 a.m., she is just going to feel more comfortable with a local, Native advocate who understands her life experiences and is her “biased supporter” rather than a government representative who she may view as an outsider and approach with caution, even fear.²

Benefits to Victims and the Community

The following summarizes some key ways that sexual assault victim advocates are beneficial to AI/AN victims and their communities. It also provides some further explanation of differences between advocates and government-based victim service providers:

- **Tribal advocacy programs often were created by Native survivors of sexual violence committed to empowering other Native survivors in their communities to get their basic needs met and regain their voice, their strength, their wholeness.** Advocates support survivors in their personal healing journeys. They become the keepers of their stories, “entrusted with the task of holding these stories in confidence and not using this confidence to do harm.”³ Ida Hildebrand, an advocate for the Athabascan tribe of Alaska, noted that those she worked with who experienced sexual violence needed “to get instruction or help to go beyond victimhood...”⁴ Advocates are well positioned to help victims make the transition from victims to survivors to thriving members of their communities.

In addition, advocates encourage survivors to identify problems in their community's response, seek their input on what changes are needed to address problems, and even mobilize them to help facilitate positive change (if survivors feel they are ready or interested).

- **Advocates serve victims of sexual assault regardless of whether they have made a report to law enforcement.** In contrast, most government-based victim service programs require a report to law enforcement as criteria for receiving services.
- **Advocates “advocate” on behalf of victims in individual cases and across community systems,** as opposed to simply providing services. In individual cases, their focus is on (1) helping victims articulate their needs and identify options for addressing those needs; (2) advocating for their decisions to be respected and their needs to be met by all responders in a coordinated, streamlined, culturally appropriate and culturally sensitive manner; and (3) encouraging communications and problem-solving as needed among responders to maximize benefits to victims.

On a systemic level, advocates encourage community and government agencies to work

together to reduce fragmentation of services and improve effectiveness of their collective response to sexual assault victims. They challenge practices of agencies that could harm victims and promote institutional change that supports victim self-determination. Native advocates are also usually involved in educating community leaders, professionals and the public about sexual violence, particularly against Native women, urging them to take steps to reject sexual violence, prevent it and ultimately reclaim women's sacredness in their tribes and villages.

See *The Principles of Advocacy: A Guide for Sexual Assault Advocates* for core concepts for advocates to uphold when advocating for Native women who are survivors of sexual assault. This publication can be accessed through <http://www.msh-ta.org> (go to resources).

- **Advocacy agencies can be a source of short and long-term support for victims and their families**, whereas government-based victim service programs often offer more time limited assistance (e.g., during participation in criminal justice proceedings). For example, during immediate response and beyond, advocates often offer victims:
 - In all interactions, advocacy to ensure that their choices are respected and they receive appropriate and culturally sensitive services from all responders;
 - 24-hour crisis intervention services;
 - One-to-one support during initial contact, medical forensic examinations, legal proceedings, related follow-up appointments, etc.;
 - Explanation of their options and rights, relevant procedures (medical forensic, investigative, etc.), and common victim reactions to sexual assault and concerns;
 - Basic assistance as identified by victims such as arranging for food, clothing, shelter, transportation, child care, financial aid/crime victim compensation, etc.;
 - Assistance in identifying safety options and developing a safety plan;
 - Assistance in identifying/arranging for other resources to reduce the harm/stress encountered in the aftermath of the sexual assault (e.g., identification of spiritual support, counselor or support groups as requested by the victim); and
 - Support and ancillary services to their family and friends.
- **Advocates strive to maintain confidentiality of victim communications.**⁵ In contrast, information that victims share with government-based victim assistance providers usually becomes part of the criminal justice record. To allow for confidential communications between advocates and victims, advocacy programs need to operate independent of government requirements to share victim information. The support of their tribal council is typically essential to ensure advocates the autonomy they need to serve victims in a confidential manner. Tribal codes on sexual assault should incorporate strict confidentiality of the advocate-victim communication.
- **Advocates, both paid and volunteer staff, typically receive specialized sexual assault**

advocacy training, including how to respond during the SAFE process according to the policies of their agencies. Completion of this training is often a prerequisite for claiming the advocate-victim privileged relationship in regards to confidentiality.⁶

Benefits to Other Responders

Not only can advocates be of great value to victims and the community, other responders can benefit from their involvement in the SAFE process and beyond. Some examples of benefits are listed below.

Benefits to Health Care Providers

- **Victims connected with advocates are more likely to seek medical attention.** Advocates involved in the initial contact with victims can explain to them why medical attention in the aftermath of a sexual assault is important, even if they do not have obvious injuries.
- **When health care providers and advocates work together to embrace victims with medical and emotional care in the immediate aftermath of a sexual assault, it can ease their pain and speed their healing.** Note that it is not a violation of the Health Insurance Portability and Accountability Act (HIPAA) for health care providers to activate an advocate when a sexual assault patient presents at their health facilities. Patient personal information does not need to be provided when making the call to activate the advocate and patients can make the decision whether or not they would like to meet with an advocate, have the advocate explain the advocacy role, and take advantage of advocate support.
- **Victims connected with advocates are more likely to allow the medical forensic examination.** Advocates can explain the potential importance of medical forensic documentation and evidence collection to a criminal case, describe generally what will occur during the exam, and answer their related questions. They can be present to emotionally support victims during the examination and encourage them to let the health care examiner know their wishes and if they have questions or concerns.
- **Access to evidence collection kits.** Advocates can assist health facilities in ensuring they have an adequate supply or immediate access to evidence collection kits.
- **Advocate presence allows health care provider to focus on medical forensic tasks.** Having advocates present to provide emotional support to victims during the exam also allows the health care examiner to fully focus on the tasks of providing medical care, conducting the medical forensic exam in an objective manner, and collecting and preserving evidence.
- **Advocates can encourage and even assist victims in addressing their follow-up medical needs.** For example, they may be able to transport and accompany them to a follow-up medical appointment.

Benefits to Law Enforcement

- **Victims connected with advocates are more likely to report the offense in the first place.** Victims who meet with advocates before deciding whether to report to law enforcement will receive far more information about the criminal process and their options than if they had not met with advocates. With accurate information, rather than myths based on television or movies, many victims decide that they can handle the criminal justice system and do report to law enforcement.
- **Victims connected with advocates are more likely to allow forensic evidence collection.** Again, advocates can explain the potential importance of forensic evidence collection to a criminal cases, answer any questions and address concerns that victims may have (e.g., victim can let them know that if they are concern about providing hair evidence, the lab may be able to return it after it has been analyzed).
- **More comfortable victims make better witnesses.** When law enforcement ensures early on that advocates are present during interviews with victims (if victim permits), advocates have a chance to calm nerves and help victims stay focused in ways that law enforcement are not trained to do. Victims who feel more comfortable speaking to an investigator will also come across better on the interview tape, will recall and disclose more information during the interview, and will be more helpful in providing other witness names or information which will assist the investigation. Also, officers can count on advocates to support victims in dealing with stress they feel related to responding to an investigator's questions, as it can result in a lack of clarity or memory.
- **Keep current contact information for victims.** Law enforcement will have a better chance of staying in touch with victims if the victims are involved with advocates.
- **Fewer phone calls, shorter interviews.** A victim advocate saves time for the law enforcement officer by providing a description of the criminal justice process, answering basic questions for victims, and providing information that the investigator may not have time to provide (resources for safety, referrals for community services, etc.).

Benefits to Prosecutors

- **Fewer phone calls from victims.** A part of the advocate's job may be to answer questions, explain the criminal process, provide emotional support, inform the victim of court hearings, and generally usher the victim through the proceedings in ways that the prosecutor does not have time to do for each individual victim. If there are victim-witness specialists in the prosecutor's office, advocates can work with them to coordinate their efforts.
- **No discovery issues for victim's statements.** When a private, outside victim advocacy agency is assisting the victim, statements made to advocates and questions victims ask

advocates are not information the prosecutor must disclose to the defense.

- **Keep current contact information for victims.** Victims who are invested in keeping in contact with supportive advocates, with whom victims has spent time with and have come to trust, are far more likely to keep the advocacy agency advised of a current address and phone number where they can be located. Victims may also be more willing to give the address of a family member as an alternative if they are connected with an advocacy agency that is providing services to that victim.
- **Overall more cooperation by the victim.** Even in situations where victims are supportive of prosecution, but certainly when they do not support prosecution, the emotional support and connection provided by advocates can increase victims' willingness to be involved with prosecution. Especially when the criminal proceeding takes a long time to resolve, victims who are involved with the advocacy agency are far more likely to continue to stay involved with prosecution than if there is an advocate involved.
- **Meetings with the victim can be shorter and less intense.** Victims who have been properly advised by advocates about the criminal process, the frequency of delays and the realistic sentencing for the charges comes to their first meeting with the prosecutor knowing the realities of the situation and not necessarily expecting more than can be delivered. Advocates can shorten meeting time with the prosecutor by explaining criminal process basics ahead of time, and decreases emotional intensity by making victims aware early on that the prosecutor only has so much control over issues like timing, sentencing, evidence decisions, etc.

Use of Advocates: Some Dos and Don'ts

- **Do support advocacy programs in your community.**
- **Do involve advocates in interactions with victims as the earliest possible point.**
- **Don't demand that advocates disclose confidential information victims shared with them.**
- **Don't involve advocates in assisting with evidence collection, interviews or translation.** If do, then they will be subject to being subpoenaed and lose their confidentiality privileges.
- **When working with volunteer advocates, don't assume they are less knowledgeable or professional because of their volunteer status.** Instead, be grateful for their unpaid assistance to victims and to your case.
- **Do look to advocates to help assess and respond to the cultural needs of each victim.** More systemically, advocates also can encourage responders and their agencies to think about how to incorporate spirituality aspects into response to victims, while being sensitive to traditional/Christian differences or melding the two.

Starting a Tribal Sexual Assault Advocacy Program

Unfortunately, many tribes do not have access to sexual assault victim advocates. Those communities that do not have advocates should consider how they could establish their own advocacy program. Such a program does not need to be complex or even have paid staff to get started (although financial support helps). Remember, most grassroots efforts in the anti-violence against women movement began with just the dedication and passion of a small group of survivors who wanted to make a difference for and stand with other survivors in their communities.

¹ Adapted in part from *Benefits of Advocates*, Mille Lacs Band Women’s Project, Minnesota, 2009.

² Drawn from 10/6/09 communications with Ruth Oja, We’We’Netth e ge’ VOCA advocate for the Hannahville Indian Community, Wilson, MN.

³ *The Principles of Advocacy: A Guide for Sexual Assault Advocates*, Mending the Sacred Hoop, Wilson MN: 2004: 50, <http://www.msh-ta.org>.

⁴ Comments in response to an inquiry from Cordelia Clapp as she prepared for the first Focus Group meeting of the Tribal SAFE Protocol project, 1/2009.

⁵ With exceptions, such as if there are tribal, state or federal mandatory reporting requirements for professionals related to the specific types of sexual assault (e.g., child or elder abuse), if the victim is in imminent danger or there is a danger of the victim harming others. Also, if advocates do not have privileged communication as per applicable law, victim-advocate communications may be subject to disclosure if subpoenaed (note that subpoenas may be able to be appealed). “Privileged communication” means communications with clients are protected by law for specified professionals who are not required to release information without the written consent of the client, even upon some court mandates. A privileged communication is specifically protected from disclosure by established legal safeguards. Tribal, state or/and federal laws can establish these legal privileges. (Adapted from unpublished draft of *Sexual Assault 101: Confidentiality*, West Virginia W.V. S.A.F.E Training and Collaboration Toolkit—Serving Sexual Assault Victims with Disabilities, anticipated Internet availability in 2010 through <http://www.fris.org/>).

⁶ See above explanation of privileged communications.