Justice is More Than Jail: 
The Role State Coalitions and RCCs Can Play In Addressing Victims' Most Urgent Needs through the Civil Legal System

Laura Mahr, Esq.
Jessica Mindlin, Esq.
The Victim Rights Law Center
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Overview of Presentation

- What is justice?
- What are the realities of the criminal justice system?
- What else is there? Beyond the Criminal Justice System
- How can coalitions and programs support victims seeking civil justice?
- How to achieve justice
  - Privacy
  - Safety
  - Housing
  - Employment
  - Educational settings
  - Immigration
  - Financial
- Advocacy within the criminal justice system

Part One: What is Justice?

JUSTICE

- **Justice** is the concept of moral rightness based on ethics, rationality, law, natural law, religion, fairness, or equity. [Wikipedia]

- **Justice:**
  1. a: the maintenance or administration of what is just especially by the impartial adjustment of conflicting claims or the assignment of merited rewards or punishments
  b: judge
  c: the administration of law; especially: the establishment or determination of rights according to the rules of law or equify. [Merriam-Webster Dictionary]
Justice for whom?

- Victim?
- Perpetrator?
- Society?

Part Two:
Realities of the Criminal Justice System

SURVIVORS AND THE LAW:

- How Society Thinks About Sexual Assault
- The Criminal Justice Paradigm
- The Realities for Survivors
Part Three: What Else is There?

Beyond the Criminal Justice System

WHAT ARE VICTIMS’ MOST URGENT NEEDS POST ASSAULT?

Walk a day in my shoes...

The Survivor's Perspective: What is needed?
Part Four:

How do I work with victims to pursue civil justice?

It is our job as sexual assault providers to help victims understand that there are solutions to their life’s challenges post assault, and to help survivors achieve them.
Concrete solutions to everyday problems

LAWS TO HELP SURVIVORS

- What laws are there in your jurisdiction specifically to help DV survivors?
- What laws are there in your jurisdiction specifically to help SA survivors?

Survivor Perspective:
I need solutions to problems arising in these areas:

- School/University
- Immigration
- Housing
- Employment
- Physical Safety
- Financial
- Privacy
- Criminal Justice
Part five: How to achieve justice

Privacy
Safety
Housing
Employment
Education
Immigration
Financial

Identify Privacy Concerns

Protecting Victim Privacy

- Educate victims about privacy and confidentiality
  - Electronic communications (facebook, email, texting, etc.)
  - What info is in the public sphere/what info want to keep private?
- Request notice from 3rd party if subpoena received
- Challenge subpoenas received by 3rd party or victim
- Contact providers (with victim’s consent) to explain laws governing privacy
- Write letters to all service and medical providers about non-disclosure of private records
Comply with VAWA 2005

- Confidentiality is a grant condition for every state, tribe, or territory receiving VAWA $.
- Grantees are required to protect the confidentiality and privacy of those receiving services.
- Grantees may not disclose personally identifying information or individual information or reveal individual client information unless:
  - (a) secure informed, written, reasonably time-limited consent or
  - (b) release is compelled by statute or court mandate.

Important Considerations

- Ensure staff understand definition of “personally identifying information”
- Release of information must be:
  - given with informed consent
  - Narrow
  - Reasonably time-limited
  - Written
- If information must be released per court or statutory mandate, must comply with the 2 release conditions VAWA requires:
  - Make reasonable attempts to notify victim
  - Take steps necessary to protect the privacy and safety of the persons affected by the release of information
- It’s not just VAWA – FVPSA, VOCA, and other state and federal laws, too.

Identify Physical Safety Concerns
Protecting Victims' Physical Safety

- Do safety planning with the survivor
- DV safety plans may not be appropriate for SA survivors
- No civil protection order may be available in your state if not IP
- If there is a criminal prosecution, consider no contact order as a condition of release
- School or employer based no contact order?
- Work with employers, housing authorities, schools, etc. to implement safety plan

Identify Housing Concerns

- Negotiate with landlords:
  - Additional security (locks, lighting, parking, service animals)
  - Early lease termination
  - Educate LL’s about sexual assault protections
- Any laws specific to VAW survivors?
  - Ex: early lease termination; prohibit housing discrimination based on victimization; right to lock change, etc.
- LL warranty of habitability may be implied in all leases:
  - Landlords may be liable if they fail to take reasonable measures to protect tenants against foreseeable criminal acts
Protecting Housing, cont.

- Tort claims against LL for negligence/failure to provide safe housing
  - Refer victims to tort lawyer/pro bono counsel

- Fair housing laws apply to most landlords, regardless of whether they are subsidized:
  - Federal Fair Housing Act, known as the FHA (42 U.S.C. § 3601 et seq.)
  - Most states have anti-discrimination laws that mirror the FHA’s protections
  - Prohibits LL from discriminating against applicant or tenant based on sex (including sexual harassment), disability, race/color, national origin, familial status, or religion
  - Once LL has become aware of sexual harassment, must take reasonable steps to end it.
  - Anti-retaliation clause (LL cannot retaliate against tenants who enforce or threaten to enforce fair housing rights)

Protecting Housing, cont.

- VAWA protections
  - To date, VAWA only covers survivors of DV, dating violence and stalking
  - Only covers public housing, Section 8 Voucher housing, Project-Based Section 8 Housing and supportive housing for elderly or disabled
  - Individual cannot be denied housing or housing assistance based on her status as a victim of DV, dating violence or stalking
  - Incident of actual or threatened DV does not constitute a “serious or repeated lease violation” or “good cause” for evicting the victim or terminating the rental subsidy.
  - VAWA provides an exception for DV survivors who must move for safety to the Section 8 rule that says a family must stay in place for one year before moving.

Identify Employment Concerns
Protecting Employment Rights

- Advocate so client can receive:
  - Disability leave
  - Unemployment insurance
  - Vacation / Sick time / Personal leave

- Help victim negotiate with the employer for:
  - Reasonable accommodations
  - Time off (for apt’d, short- or long-term leave, etc.)
  - Transferring perpetrator
  - Firing of perpetrator
  - Safer work environment (shift, parking, access by public)
  - Transfer to another work site

- Represent victim in Federal Discrimination (Title VII) or State Discrimination (charge/lawsuit)

- Refer client to tort lawyer for lawsuit against employer or employee (if applicable)

Same Sex Sexual Harassment

- Sexual harassment is not limited to a male harasser and a female victim.
  - It can also occur between two men or two women and is actionable under Title VII.
    - A woman can also be the harasser.

Identify Education Concerns
SPECIFIC HARMs
IN THE EDUCATIONAL CONTEXT

- School Absences
- Dropping Grades
- Drop out/Fail out—long term effects
- Class schedule, elective choices, clubs, extra-curricular activities
- Financial Aid/Tuition Loss
- Interference with academic, social and cultural experience
- Housing/Safety Issues
- Post Academic Career

Advocate or Lawyer's Role in Education

- Assist/Represent victims in disciplinary actions
- Advocate with school officials re accommodations
  - Add/drop classes
  - Leaves of absence
  - Modified exam schedule
  - Student loans/tuition concerns
  - Student housing
  - Work-study concerns
- If perpetrator is a classmate/staff, help:
  - Maintain confidential & private information
  - Contain gossip
- Bring complaint against school to Department of Education
- Tort case against school (negligence, negligent hiring, etc.)
- Tort case against perpetrator (assault, battery, IIED, etc.)

THE LEGAL FRAMEWORK:

- No Child Left Behind (not for post-secondary)
  - Provides safety transfers when school environment is unsafe (Unsafe Schools Choice Option).
- IDEA/Section 504 (disability based; not for post-secondary)
- The Family Education Rights and Privacy Act (FERPA)
- Clery Act
- Title IX & Dept. of Ed. Regulations
- Advocacy with school re accommodations
Identify Immigration Concerns

Addressing Immigration Issues

- Educate/represent/refer re: immigration laws/remedies:
  - T and U visa remedies
  - Self petitions
  - Adjustment of Status
  - Asylum application
  - Assist with collecting documentation for applications

Identify Financial Loss Issues
**Financial Recovery**

- Assess victim’s eligibility for benefits and tort remedies – provide referral if needed
- Help V apply for public benefits, if appropriate
- Other possible sources for $ recovery
  - Crime Victim Comp
  - Restitution
  - Insurance
  - Civil lawsuit against perp or 3rd party
  - Civil compromise (only allowed in some jurisdictions)

**Identify Criminal Justice Issues**

- The victim is trying to decide whether to report the crime to the police.
- The victim wants to report to police but she is worried about who will know and what will be revealed in the criminal justice process.
- The victim has already reported and needs help navigating the system.

**Advocate’s/Civil Attorney’s Role in the Criminal Justice System**

- Answer the victim’s common questions about the criminal justice system.
- Assist with decision-making about reporting.
- Help navigate through criminal case
- Help enforce crime victims’ rights laws
- Address privacy concerns
- Work with District Attorney’s Office for u
RCCs and Coalitions: Barriers and Strategies to Overcome Them

- **Rape Crisis Centers:**
  - What do these (civil/non-criminal) remedies mean for the work of the RCCS?
  - What do RCCs need to better address and respond to survivors’ civil needs?
  - What are the barriers to RCCs meeting these needs?
  - What are some strategies for RCCs to overcome the barriers?
    - How can Coalitions help?
    - How can VRLC help?

- **State Coalitions:**
  - What do these (civil/non-criminal) remedies mean for you and your work?
  - What do Coalitions need to help programs better address and respond to survivors’ civil needs?
  - What are the barriers Coalitions will likely encounter?
  - What are strategies to overcome the barriers?
  - What can the VRLC do to help you – and the programs you serve – address these issues?