
2001-2002 MARIN COUNTY GRAND JURY

TITLE OF REPORT: The Marin Victim Witness Program

Date of Report: April 12, 2002

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THE MARIN VICTIM WITNESS PROGRAM

SUMMARY

Victims of crime were once the stepchildren of the justice system. After having their lives dramatically changed by the criminal act itself, the system then victimized them a second time by forcing them to re-tell the story of the crime in open court and, in so doing, subjecting them to often brutal cross examination and unwanted media attention.

During the 1960s and 1970s, a groundswell of interest in the plight of victims led to the passage of laws designed to provide assistance and protection to victims and witnesses. One such law, the Victims of Crime Act (VOCA), passed in 1984, resulted in the establishment of Victim Witness Programs in all 58 counties of California.

In Marin County, the Victim Witness Program (the Program) operates as a division of the District Attorney's office and is staffed by dedicated professionals (called advocates) whose background is in social services, psychology and/or criminal justice, rather than law enforcement. These advocates provide victims and witnesses with comfort, encouragement, an understanding of the justice system, and court accompaniment. They also arrange for medical and psychological care as appropriate. In addition, they help victims to obtain restitution for medical expenses, loss of income, relocation expense (where necessary) and other forms of compensation for which recovery is available under the State Victim of Crime Act.

The Grand Jury congratulates the Marin County Victim Witness Program for the excellence of the services it provides and for the dedication and expertise of its staff. We do, however, believe there are some areas where improvements could be made. These relate mostly to how law enforcement departments and other client agencies perceive the Program and understand its workings. We also found several areas where outreach and infrastructure could be improved in order to make the Program more effective and responsive to the needs of its clientele. These include greater outreach to smaller towns and communities in the County, the establishment of a manned hotline, the creation of a crisis response team, publication of a pocket sized informational brochure for use by peace officers in the field, and greater use of the District Attorney's waiting room for the comfort of victims and witnesses during court proceedings.

BACKGROUND

The Marin Victim Witness Program has not been reviewed by prior Grand Juries. Because we believe the people of Marin County are generally unaware of its operations, functions and responsibilities, the Grand Jury conducted a general review of the Program.

METHODOLOGY

To understand the function and duties of the Marin Victim Witness Program, The Grand Jury conducted several interviews of Program staff as well as interviews of members of the staff of the District Attorney' office.

To understand how the Program interacts with other agencies and how they perceive its effectiveness, we interviewed representatives from both the Child Protective and Adult Protective Service divisions of the Marin County Department of Health and Human Services. We also spoke with representatives from Marin Abused Women's Services (MAWS) and Rape Crisis Center and with a representative of the County's Sexual Assault Response Team (SART).

To understand how the Program interacts with law enforcement and how they perceive its effectiveness, we interviewed officers from several city police departments, as well as the County Sheriff's office.

The Grand Jury also reviewed the Program's operating and training manual, the statutes and regulations governing the Program, and numerous other related documents and materials.

DISCUSSION

Victim Witness Programs in General

California has a population of approximately 34.5 million people. During the year 2000, approximately 210,000 violent crimes were reported statewide.¹ These included 2,074 homicides, 9,785 forcible rapes, 60,243 robberies, and 138,390 cases of aggravated assault. Most crimes leave multiple victims, including children, parents, grandparents, siblings and other members of the victims' extended families. Often whole communities suffer from criminal acts directed at neighbors and close friends.

¹ These statistics were compiled by the Office of the California Attorney General and may be found at: www.caag.state.ca.us/cjsc.

During the 1960s behavioral experts began to conduct research to try to understand why many victims were not reporting crimes and why others who did report a crime were not cooperating with prosecutors. They found that many victims believed the criminal justice system would not treat them fairly or sympathetically. Victims reported feeling further traumatized by the system and having a sense of isolation and of being cast aside without practical advice or support. Not knowing what they would face in the Courtroom or how to handle intrusive media coverage caused resentment and frustration.

In response to those studies, politicians began to focus on developing methods to reduce the trauma and insensitive treatment that victims and witnesses often experience in the wake of a crime. California became a national leader by establishing, in 1965, the first victim compensation program in the nation.² During the 1970s the movement gained significant momentum.³ In 1982 California voters passed Proposition 8, the first "Victims' Bill of Rights" established in the nation. The following year, the California Legislature enacted its own Victims of Crime Act (VOCA), which is codified in Penal Code §§13835, *et seq.* That act created local comprehensive programs for victim and witness assistance. Funds were appropriated from the state's Victim Witness Assistance Fund⁴ in order to establish county-based assistance programs to be operated through either public or private non-profit agencies. In order to qualify, each local program is required to provide the following mandatory services:

1. Crisis intervention with a victim who has been emotionally traumatized as a result of a crime;

² California Department of Corrections, Office of Victim Services and Restitution, Historical Overview (www.cdc.state.ca.us/ovsr/historical_overview.htm)

³ Rape Crisis centers, for example, began to be established, the first in San Francisco in 1972. In 1975 the National Organization for Victim Assistance (NOVA) was founded in Fresno in order to raise awareness of the plight of victims and to advocate for national and states rights for victims. In 1976 the National Organization for Women formed a task force to study the problem of spousal battery. In 1980 Mothers Against Drunk Driving (MADD) was founded, and in 1982 President Reagan appointed a presidential task force on Victims of Crime. That task force recommended, among other things, amending the 6th Amendment of the U.S. Constitution to guarantee that "...the victim, in every criminal prosecution, shall have the right to be present and to be heard at all critical stages of judicial proceedings." Although that proposed amendment has still not become part of the U.S. Constitution, 33 states have since passed their own versions of the act in their respective legislatures, and the national effort to obtain passage has spawned widespread interest and a host of new laws throughout the country designed to protect victims and to provide comfort and restitution to them and to their family members.

This material was obtained from the California Department of Corrections, Office of Victim Services and Restitution, Historical Overview. Credit is given by that organization as follows: Compiled by the National Center for Victims of Crime with the support and assistance of the US Department of Justice Office for Victims of Crime, Victims' Assistance Legal Organization, Inc. (VALOR), and the many national, state and local victim service providers who offered documentation of their key victims' rights landmark activities.

⁴ The Victim Witness Assistance Fund is administered by the California Office of Criminal Justice Planning (OCJP) and is funded by a combination of federal grants and by confiscated property and fines imposed on convicted offenders,

2. Emergency assistance by providing, directly or indirectly, food, housing, clothing, help with relocation and, when necessary, cash assistance;
3. Resource and referral counseling to appropriate local agencies;
4. Direct counseling of victims at a level not requiring licensed professional services;
5. Assistance in the processing of victim claims for compensation with the California Victim Compensation and Government Claims Board (VCGC Board);
6. Assistance in obtaining the return of the victim's property held as evidence by a law enforcement agency;
7. Orientation, for both victims and witnesses, to the criminal justice system.
8. Upon request, court escort services⁵;
9. Presentations to and training of local criminal justice system agencies;
10. Presentations to promote public awareness of the agency's services through the public media;
11. Monitoring of appropriate cases to keep victims and witnesses apprised of the progress and outcome of their cases;
12. Notification to a victim's family, friends and employer of the occurrence of the crime and the victim's condition;
13. Upon request, intercession with employers in an attempt to minimize any loss of pay or other benefits which may result because of the crime or the employee's participation in the criminal justice system; and
14. Upon request, assistance to the victim in obtaining restitution through the criminal justice system for any economic loss.

Victim Witness Programs may also provide the following optional services:

1. Employer and creditor intervention;

⁵ The court accompaniment service is extremely important. However, there are also other agencies which, too, provide court accompaniment services to specific classes of victims whom they serve, such as those involved in domestic and/or sexual crimes. We were told by a representative of the Marin County District Attorney's office that occasionally multiple agencies send representatives to court in support of certain victims, particularly children, and that the sheer force of numbers can sometimes be detrimental to the prosecution.

2. Childcare assistance while the victim or witness is appearing in court or otherwise participating in the criminal justice system;
3. Witness notification of any changes in the court calendar;
4. Assistance with funeral arrangements;
5. Crime prevention information to victims or other interested persons;
6. Arrangements for law enforcement protection for a victim or witness whose safety is threatened;
7. Assistance in the obtaining of restraining orders;
8. Assistance with arranging transportation for victims and witnesses; and
9. Providing or arranging for a separate and secure Victim Witness waiting room.

Pursuant to this legislation, all California counties, including Marin, have established Victim Witness Programs. In Marin the Program is operated as a part of the District Attorney's Office.⁶

Rights and Limitations under the State Victims of Crime Act (VOCA)

One of the more important functions of the Program is to assist victims to recover out-of-pocket expenses in obtaining compensation from the State of California under the Victims of Crime Act (VOCA). Under California law (Government Code §§ 13959, *et seq.*) qualifying victims may receive payments for unreimbursed losses resulting from a

⁶ Although the law does not specify how any county should run its program, the vast majority (at least 35 out of 58 counties) have attached it to the District Attorney's office. Of all interviews conducted, only one person (a representative from the Public Defender's Office) voiced any concern over this affiliation. Indeed, to the contrary, all others interviewed felt that the District Attorney's office was the logical place for the program to function both in terms of immediacy of notice for quick response and also access to information regarding court appearances and ease of negotiating the criminal justice system. The one major drawback caused by this affiliation is the absence of confidentiality between victim and advocate since the District Attorney is ethically bound to report to defense counsel any potentially exculpatory statements or information. The District Attorney feels strongly that any exculpatory statements should be brought out in the open in any case in order to assure that justice is served. Accordingly, she does not see this concern as an issue.

Twelve Counties have affiliated their Victim Witness programs with their county probation offices, and approximately 8 others are non-affiliated – that is to say that they operate independently as non-profit agencies.

crime.⁷ To receive this assistance, the victim must satisfy the following eligibility requirements:

1. The victim must have been a California resident at the time of the crime. A nonresident may also apply if the crime occurred while the nonresident was in California.
2. The crime must have been reported to an appropriate law enforcement agency. The applicant must cooperate with law enforcement in the investigation of the crime and prosecution of any known suspect.⁸
3. The applicant must have had no involvement or participation in the crime.
4. An applicant who is injured as a result of a qualifying crime is eligible, as is anyone who pays for the medical and/or funeral/burial expenses of a deceased victim. In addition, eligibility extends to California residents who are related to or living with the victim or are the victim's primary care giver.

Importantly, eligibility for services requires only that the victim cooperate in the investigation and prosecution of the purported crime. So long as the District Attorney is satisfied that a crime has been committed, and that the victim or witness has cooperated, then eligibility is established and is not affected by either a later decision not to prosecute or by the outcome of a trial.

Expenses eligible for reimbursement include medical costs, lost wages/income, lost support to family members, moving and relocation costs for domestic violence victims, funeral/burial costs and the expense of job retraining. Personal property losses, including cash, are not eligible for reimbursement. There is no payment for pain and suffering.

⁷ In larger counties, normally those having a high crime index, the local Victim Witness Program enters into a "joint powers" agreement with the California Victim Compensation and Government Claims Board (VCGC Board) whereby funds are made available to the local program under a grant process. Claims are paid directly by the local program and the VCGC Board has no direct involvement. Smaller counties, such as Marin, act as "agents" for the victim in securing state funds. These programs offer help to the claimant by providing them with forms and advice on the merits of their claim. They also assist the claimant in the completion of the claim form and in gathering the necessary supporting materials for submittal to the VCGC Board.

⁸ Citizenship is not a prerequisite to entitlement to services. Non-citizen residents, even those who are illegally in this country, are eligible for the same services.

There are limits on the amount of assistance that will be provided, and obtaining restitution awards is often a long, slow process.⁹

The Victim Witness Program in Marin County

Marin County has a population of approximately 240,000 people. In 2000, 642 violent crimes were reported countywide, including 5 homicides, 42 forcible rapes, 109 robberies, and 486 cases of aggravated assault.¹⁰ In addition, there were 1,100 cases of burglary and 493 car thefts reported. About 600 cases of domestic abuse are reported in Marin each year, and it has been estimated that the actual number is many times higher.¹¹ Similarly, it has been estimated that only a very small percentage of cases of elder abuse are ever reported.¹² It bears repeating that nearly all crimes leave multiple victims in their wakes, including children, parents, grandparents, siblings and other members of the victims' extended families.

⁹ For crimes committed before January 1, 2001, the total of all payments to or on behalf of a direct victim cannot exceed \$45,000 per claim. For crimes committed on or after January 1, 2001, the total has been raised to \$70,000. There are also specific limitations for various types of loss. For example, funeral/burial expenses are limited to \$5,000, lost wages may be reimbursed for no more than five years, in-patient hospital expenses are reimbursed at 75% of billed charges, and there are other limitations placed on mental health counseling expenses.

Timing of the compensation payment seems to depend on the funding method under which the local center operates (see footnote 6 *supra*). For those centers who act as the agent for the victim, the turnaround time with the VCGC Board is 60-90 days for approval, with another 30 days for payment to be made. The process is much faster in counties that operate under the joint powers arrangement. In Marin County the District Attorney also administers a small emergency fund that can, in the rare times it is used, make an emergency advance of up to \$2,000 for wage/income loss, funeral/burial expenses, emergency medical expenses, and domestic violence relocation expenses.

Even in a non-joint powers county like Marin, there are certain needs, such as burial expenses and victim relocation assistance, which can be expedited by telephone contact between the advocate and the VCGC Board representative assigned to Marin

¹⁰ These statistics may be found at:

www.caag.state.ca.us/cjsc/publications/advrelease/ad/ad00/tabs/0021.pdf

¹¹ This opinion was provided by a representative of a non-profit agency during an interview. The opinion was based upon an extrapolation of known national averages to Marin's population base.

¹² The District Attorney has reported that in 1998 the County's Department of Health and Human Services received 63 confirmed complaints of elder abuse, of which only 15 were referred to the District Attorney. Of those 15, 8 cases were filed, and convictions were obtained in 5 of those 8. Interviews with representatives of the Adult Protective Services division of H&HS suggest that there are actually many more cases than that. For example, one APS interviewee reported handling approximately 10-18 new cases of elder abuse each month. Another estimated that 2/3 of her monthly total of new cases involved elder abuse. They both stated that generally elders do not want to prosecute their abusers. Many of the abusers are either their own adult children or other family members. Non-family member abusers are often caregivers without whose involvement in their lives the senior might well have to be institutionalized.

The Victim Witness Program of Marin County is affiliated with the District Attorney's office. It currently has a staff of seven employees plus an intern from the College of Marin and one volunteer. Three members of the staff are bilingual in Spanish. Staff members generally have backgrounds in human behavior, psychology and sociology. All staff members go through extensive training in human behavior, grief counseling and other issues relevant to their mission. The staff is also trained in criminal law, legal ethics, and criminal justice procedures so that they can help their clients navigate through the maze of the court system.

Cases come to the attention of the Program in a number of different ways. Most commonly, the assignment comes from the District Attorney's Office once that office has received a copy of the police report. If the report is received on a weekday and during normal business hours, and assuming an arrest has been made, then notification is immediate. If no arrest is made pending an investigation, then referral can be delayed as the incident goes through the police investigative phase. Similarly, if the crime is committed after hours or on the weekend, then as matters currently stand¹³ notification is likely to be delayed until the District Attorney's office opens for business (see page 8).

Another referral source is from information cards given out to victims and witnesses by police officers at the scene of the event. Referrals also come from other counties where a crime has been committed which affects a local victim or witness. Occasionally, notification comes directly from an individual who has been victimized, but has not yet decided to report the crime.

The Program typically handles approximately 1,700 cases per year. Each staff member (advocate) receives about 35 assignments a month, and each assignment lasts, on average, about four months until it is resolved. A typical advocate caseload consists of approximately 100 active matters. Of the total administered cases, approximately 600-700 involve domestic violence, some 200 involve aggravated assault, about 300 involve child abuse, endangerment, etc., and 60-100 are rape cases. There are also a number of other serious crimes, such as homicide, robbery, assault, arson, etc. to which advocates are assigned, and, finally, their caseloads also include serious crimes involving vehicles, such as hit-and-run and road rage.

Marin County's Victim Witness Program is universally respected by those agencies with which it deals. Having said that, many of those agencies are not well informed about its programs and the benefits it is set up to deliver. Several people interviewed, for example, were under the impression that the sole purpose of the Program was to help victims obtain restitution for monetary losses. Others felt that victims of elder abuse were underserved because of a perception that the District Attorney's office rarely prosecutes such crimes and that eligibility for benefits is dependent upon active prosecution. Others interviewed were under the mistaken impression that services

¹³The Victim Witness Program Coordinator as well as the District Attorney and several law enforcement officials interviewed all expressed interest in addressing this problem. At the conclusion of this report, the Grand Jury makes a recommendation covering this issue.

offered by the Program only last for as long as a criminal case is open. The fact that these misperceptions exist is a function of shortcomings, both by the Program to perform adequate outreach to the community and also by non-profits and agencies of County government to seek out and understand the various resources available to their own clients.

Another area of concern relates to information provided at the crime scene to victims. State law (Penal Code §13701 *et seq.*) mandates that peace officers carry and distribute materials containing information for victims of domestic violence. While all law enforcement agencies interviewed were aware of this requirement, they have a choice of materials which they can carry into the field, some provided by the Program and some by other agencies such as Marin Abused Women's Services (MAWS). MAWS, for example, publishes and provides breast pocket sized information cards for use by officers in the field. These cards list various victims' service agencies, but emphasize the services provided by MAWS. The MAWS brochures are small enough that officers in the field find them more convenient to carry than the larger and more comprehensive brochures prepared by the Program. The result is that, while victims of crimes of domestic violence receive appropriate information, victims of other crimes do not always receive the information they need.

A number of people with whom we spoke expressed concern over waiting facilities at court which are less than optimal for victims and witnesses. The configuration of the court floor of the Hall of Justice at the Civic Center is such that victims and witnesses are placed in a position where confrontation with a criminal defendant or such person's support group is inevitable. This can be intimidating and cause victims and witnesses to be very uncomfortable. Unlike many other county courthouses, there are no waiting rooms on the court floor where victims and witnesses can wait in a secure place. While the District Attorney has a waiting room in its offices for the use of victims and witnesses, this space is located one floor above the court floor. We were told by a representative of the District Attorney's office that some judges, because of a desire to speed up their trials, take the view that use of this waiting area causes unacceptable delay.

There is also another group of victims underserved by the Program in its present state. When a crime is committed after hours or on a weekend, the District Attorney's office is closed and there is no alert procedure in place to dispatch advocates for immediate assistance. Those first few hours following the commission of a crime can often be critical to the emotional health and well being of a victim. It is also a time when media attention can be highly intrusive and where victims can be most vulnerable. One solution that has been discussed but which has not yet found a funding source is a hotline. If a hotline were in place to which a law enforcement agency could report the crime, an advocate could be contacted by the hotline operator and would be able, if necessary, to respond to the scene and provide comfort and support to the victim. The San Rafael Police Department has estimated that it, alone, might use such a hotline as often as 10-15 times a week.

Three of Marin's advocates have received Crisis Response Team training given by the National Organization for Victim Assistance (NOVA). The Marin Program Coordinator hopes to have its remaining advocates similarly trained in the future. A Crisis Response Team would be unique to the county in which it operates. A team would be composed of an advocate, a law enforcement representative and others as needed. The team's initial effort would be to assist in cases of homicide, serious aggravated assault, and cases involving multiple victims. The team could also travel to a nearby county in time of great need to provide mutual aid. While the Program's current staff is sufficient to supply advocates for a Crisis Response Team, additional funding and support from the County (including sufficient interest from law enforcement agencies) will be required for implementation. Two local law enforcement agencies have already expressed a strong interest in such an approach.

From the various interviews conducted, the Grand Jury found many reasons to congratulate the Victim Witness Program on a job well done. At the same time, it also found areas for improvement. While recognizing excellence on the one hand, the following findings and recommendations will hopefully point out opportunities where the Program can improve its performance and provide the very best possible service to a community of people with real and serious needs.

FINDINGS

1. The Victim Witness Program provides a broad array of services which can be of immediate and immense help to victims of crimes, both in terms of dealing with the changes in their own lives caused by the traumatic events that have befallen them, and also in terms of providing education and comfort as they are taken through the investigative and prosecutorial maze of the criminal justice system.
2. After regular business hours, there are no services available to victims or witnesses. The delay can continue for as long as several days, as in the case of a crime occurring late on a Friday night. Delays in advocate involvement can also result from extended police investigations which postpone the filing of a police report.
3. The establishment of a crisis response team would be of assistance to law enforcement and to victims and witnesses alike. There is strong support from law enforcement personnel interviewed and also from the Program's Coordinator to the establishment of such a team.
4. The Program's outreach has been excellent in certain high-risk communities in the County. The Program has been less effective in communicating its mission and available services to lower risk neighborhood groups and police departments, as well as non-profit agencies, sheriff's officers, and other departments of County government such as Child and Adult Protective Services.
5. Although the Program publishes a brochure which contains information of value to victims, the brochure is too large to fit comfortably into any pocket of a peace

officer's uniform. Several other agencies, most notably Marin Abused Women's Services (MAWS), also publish similar brochures which are more limited in scope, emphasizing information for use by victims of domestic abuse and/or sexual crimes. Because the MAWS brochures are sized better to fit in uniform pockets, they are often the ones which are carried by peace officers in the field. The result of this is that victims of crimes which are neither domestic nor sexual are often not provided at the scene with information which is relevant to their needs.

6. There is a perception among those who serve the elderly that the District Attorney is not interested in prosecuting crimes against seniors. The Grand Jury is satisfied that this is a misperception and that The District Attorney's office is committed to bringing elder abusers to justice. These cases are often complex and difficult to prove, and the District Attorney has submitted grant applications to the State Office of Criminal Justice Planning seeking funding for additional staff to investigate and prosecute these crimes.
7. Certain classes of victims, most notably children, are generously served by a number of agencies (both County Government and non-profit). Among the services offered by nearly all of these agencies is court accompaniment. This sometimes results in the victim being surrounded by numerous well-meaning people while at court, and that very fact can be detrimental to the efforts of the prosecution.
8. The Court floor of the Hall of Justice does not have adequate facilities for victims and witnesses while they are waiting to give testimony in court. Although there is a waiting room in the District Attorney's office, its location is one floor above the Court floor which is considered too far away by some judges who emphasize the expeditious flow of witnesses for the sake of efficiency.

RECOMMENDATIONS

1. A manned hotline should be established for the exclusive use of law enforcement agencies to request immediate Victim Witness assistance. Conceivably this could be handled through police dispatch. The hotline should be manned by advocates or trained volunteers.
2. A longer-term goal should include the formation of a Crisis Response Team that would be activated upon notice of crimes of a particularly serious nature. This team would function with coordination and cooperation from local law enforcement agencies.
3. The Victim Witness Program should take steps to improve its outreach program/training for client agencies in order to increase awareness of the array of services it provides. These steps should include:

- a. More frequent attendance at law enforcement roll calls and other briefing sessions, particularly in smaller towns which are typically less aware of the Program, in order to train beat officers about the array of services offered.
 - b. Improved communications with agencies serving elder populations, to inform them about program services and eligibility requirements and also to correct the misperception about disinterest on the part of the District attorney in prosecuting crimes against the elderly
4. The Victim Witness Program should assume an oversight role and coordinate with other agencies with the goal of limiting the number of agency advocates accompanying victims and/or witnesses to court proceedings
 5. The Victim Witness Program should publish an informational brochure that is sized to fit comfortably in the breast pocket of a peace officer's uniform. Such a brochure should include not only the information required by Penal Code §13701 but also more comprehensive information including sources available for the assistance of all victims, regardless of the type of crime.
 6. The District Attorney's Office should encourage all law enforcement personnel to carry, at all times while on duty, and hand out to all victims regardless of the type of crime committed, the breast pocket sized brochure referred to in the preceding recommendation. This recommendation is not intended to detract from the use of other brochures prepared by MAWS and other agencies. Rather, it is intended to encourage the use by all law enforcement personnel of the Program's brochure as their primary victim information handout.
 7. Victims and witnesses for the prosecution should be encouraged to use the waiting room in the District Attorney's suite of offices on the first floor of the Civic Center. Problems associated with the distance between the court floor and that waiting room can be solved through coordination and the use of modern communications equipment.

REQUEST FOR RESPONSES

Pursuant to Penal Code §933.05, the Grand Jury requests responses as follows:

- From the Marin County District Attorney to Findings 1 through 8 and Recommendations 1 through 7.
- From the Marin County Board of Supervisors to Findings 2 and 3 and Recommendations 1 and 2.