Victim/Survivor Subcommittee Recommendations

Criminal Sexual Conduct
Statutory Reform Working Group
15th August 2019

DESIRED OUTCOMES FROM SUBCOMMITTEE MEMBERS

- Create a new attitude in the MN criminal justice system toward survivors of sexual violence.

- Be part of systemic and sweeping changes regarding sexual assault and its impact on the community.

- Lift up the historically silenced voices of people of color, indigenous/native people, people who identify as LGBTQIA+, people who are disabled, and other Minnesotans who have not had equal access to the criminal justice system.

- To get involved and learn how to affect change in the legal system so we can better help others in the community dealing with sexual violence.

BARRIERS TO REPORTING SEXUAL ASSAULT

Law Enforcement

-Laws and technical language in the statute are so complicated that initial responding officers are unable to tell victim survivors whether what happened to them was an actual criminal offense or not according to the statutes.

- The current impression is that many officers feel as though it is not in their scope to determine whether a crime has occurred or not.

- For victim survivors, knowing that your assault was technically defined as a criminal offense is extremely empowering to some, even if they are not able to move their case forward in the legal system.
There is perceived and real bias (from law enforcement, healthcare providers, systems staff, and the general public) towards certain groups (sex workers, minority groups, LGBTQIA+, male or masculine presenting victim survivors, etc.) who choose to report to law enforcement.

There is the very real possibility of re-victimization by responding officers for a number of reasons.

In many law enforcement departments, there is a culture that says that those officers who respond to sexual assault calls are “drawing the short straw”, being inconvenienced, or otherwise ashamed or annoyed at having to deal with these cases.

Victim survivors have reported inappropriate aggressiveness toward the reporting victim survivors. Some specific examples of this that we can provide include:

- Interview techniques that are unsuited for sexual assault victims (direct forceful questioning, a firm/loud tone of voice, standing over the victim survivor and not writing anything down instead of sitting down with them and taking notes, if victim survivor is a teenage minor-giving them a lecture based on information the parent gives them on what they “should have done” instead of being supportive of the victim survivor).

- Making it known to the victim survivor that they are in a hurry to get to other calls through their body language. Examples are pacing around, acting agitated and in a rush, asking the victim survivor “So-do you wanna make a report or not!? We have other calls to get to!”, acting as if they victim survivor has terribly inconvenienced the officer.

-There is a habit of direct and indirect blame placed on victim survivors, expecting the victim survivors to “prove” to the officers that the crime “actually” happened, even minimization of the seriousness of an assault in a report so a formal report does not have to be taken.

Many, if not all, of the victim survivors in this subcommittee stated that we are not comfortable confidently telling other victim survivors that reporting their assault to law enforcement is the best path for them.

We have either personally been re-victimized by reporting or have witnessed it. Re-victimization in reporting sexual assaults can come in many forms, such as being accused of lying, law enforcement or other systems staff “downplaying” the incident(s), and disrespect shown for the victim survivor’s story or time. It was made known that if some of us were sexually assaulted again, we would not report due to fears of re-victimization or would be extremely hesitant to do so.
Solving Barriers of Reporting to Law Enforcement

-Law enforcement officers must be more competent and comfortable engaging with victim survivors of sexual assault.

-Change must begin from within: leaders in departments can and should start encouraging their officers to stop perpetuating the idea that being assigned a sexual assault case is “inconvenient”, “emasculating”, or otherwise a “lesser crime”, compared to other calls that may come in.

-Incentivize officers to take trauma-informed training when offered, to them, participate in the 40-hour sexual assault advocate training as a way to better be an ally to the victim survivor, or engage in other extra training and learning as a way to better investigate and prepare to deal with sexual assault victim survivors and their cases.

-Individual officers and departments who are not sufficiently investigating sexual assaults must be held accountable. Victim/survivors should not be responsible for ensuring ethical practices.

-When a victim survivor who has reported feel that they were mistreated by an officer or department, the ringing consensus among subcommittee members was that there was no real route to filing a complaint about this.

STATUTE CONCERNS

Clarity and Consistency

-The language in the statute should read clearly enough that a layperson could understand what is a criminal offense. There are contradictions in the statute that need to be fixed.

-Minn. Stat. 609.342, Subd. 1: “A person who engages in sexual penetration with another person, or in sexual contact with another person....”

-Minn. Stat. 609.343, Subd. 1: “A person who engages in sexual contact with another person....”

-Minn. Stat. 609.344, Subd. 1: “A person who engages in sexual penetration with another person....”

-Why is sexual penetration a requirement for only two out of the five degrees of criminal sexual conduct? Why not eliminate sexual penetration from all five degrees, as the definition of sexual contact covers sexual penetration in its definition already?
-It is redundant, confusing, and a possible existing loophole for abusers to circumvent proper sentencing and accountability.

Updates to Reflect the Increasingly Diverse Populations of MN

-Gendered language needs to be updated.

-Minn. Stat. 609.341, Subd. 15(2): “any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt.”

-Eliminate the gendered language following the colon to better reflect Minnesotans who are transgender, non-binary, gender queer, gender fluid, or otherwise gender non-conforming. It is important to recognize non-binary and non-cisnormative identities, even among abusers.

-The terms “mentally impaired”, “inadequately developed”, and “impaired intelligence” in 609.341, Sub. 6 should be updated to better respect and protect the disabled communities in the state.

**“Mentally impaired.”** "Mentally impaired" means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration."

-This language currently presumes that all disabled people do not have agency, independence, and ownership over their bodies and sexuality. Disabled Minnesotans are asking to have their agency and ability recognized while also protecting them from abuse and assault as equal citizens.

-There must be a way to adjust the language that does not make any sexual contact that a disabled person has consensually a crime.

-“Intimate parts”, as is currently defined, is reflective of what are considered intimate by Western culture. As Minnesota becomes one of the most welcoming diverse communities for immigrants, our statutes should leave space for victim survivors who come from non-Western cultures whose definitions of "intimate parts" differs on the basis of culture, religion, spirituality, and other forms of difference. We recommend shifting this language to be specific for the purposes of clarity and interpretation of the statute.

-Minn. Stat. 609.341, Subd. 5: “Intimate parts’ includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.”
If we intend to keep the language of "intimate parts" to be inclusive of diverse perspectives on sexuality and modesty, we recommend that specific religious, spiritual, and cultural groups are consulted regarding the statute's language. Communities that are negatively impacted or may be negatively impacted by the statute's current language should always be consulted.

In the same vein re: "intimate parts", the sub-committee feels it important to keep the language of intimate parts gender-neutral as the statutory language evolves. We appreciate the current gender-neutral language under this definition, and hope to maintain this balanced with needed specificity of the statutes.

Consent

Among subcommittee members, there was a sense that the legal definition of consent needs clarification for enabling consistent practice by lay persons, professionals, and law enforcement personnel.

-Minn. Stat. 609.341, Sub. 4 (a) ‘‘Consent’ means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.’’

-It is possible the current language leaves opportunities for loopholes, where an offender could state they “thought it was consensual.” Should this definition be updated to close any gaps in statutory language?

-Freely given consent differs for people with different communication skills or barriers (non communicative, autism spectrum, mental illnesses, etc.).

-There are different perspectives on the definition of consent within these communities and different perspectives from people who are not within these communities; someone who could be easily suggestible versus someone who has agency. This is a dual issue.

-What does not understanding consent versus not understanding the incapacity to give consent look like in the legal system?
CRIME VICTIMS REPARATIONS FUND

-Definition of “cooperative” with law enforcement should be looked at in regards to eligibility for the fund.

-There are not equal reporting opportunities for all victim survivors.

-With the current barriers to reporting mentioned above, some victim survivors feel it may not be worth it to report.

-Often, victim survivors are left dealing with financial instability or financial ruin due to their sexual assaults. They have to deal with large medical bills, relocation costs, etc. The Crime Victims Reparations Fund leaders need to do some introspection as to how accessible they want the available funds to be.

BRINGING RESTORATIVE JUSTICE TO ALL

Things to Keep in Mind:

-Communication to the victim survivor is important to them being able to feel empowered and respected throughout the process. They need regular updates from law enforcement and the court system.

-Victims are faced with insurmountable bureaucracies. They don’t have the internal language, knowledge, and power to move their case forward without assistance from someone privy to the system.

-There is no “perfect” victim. Anyone can be a victim of sexual assault and should be treated equitably and have their unique barriers recognized.

-Officers should be trying to prevent re-traumatization of the victim.

-PTSD already impacts the way that memories are formed, a person behaves, and completely disrupts a victim survivor’s entire life.

-Seeking counsel from other trauma-informed trained officers, department-trusted mental health professionals, or even prosecutors who are experienced in prosecuting sex crimes may help to dilute the initial frustration for the often overwhelmed victim survivor.
**Common Short Term and Long Term Impacts of Sexual Assault on Victim/Survivors**

- Short Term: Loss of employment, issues with school/universities (ability to continue education/graduate, forced to continue academic program with perpetrator), a general feeling of unsafety, feeling unsafe in certain areas or situations, financial loss, suicidal ideation, isolation, distrust of professionals.

- Long Term: Mental illnesses, disability, medical bills from physical and psychological injuries, long-term financial loss, relationship impacts, feelings of loss of dignity and privacy.

**FINAL THOUGHTS TO MAKE MEANINGFUL CHANGE**

**Common Values**

- Preventing re-victimization by the criminal justice system and system staff.

- Empower the victim survivor and help them feel confident that they are the last person to be victimized by their perpetrator through restorative justice efforts.

- When the accused is a law enforcement officer, the agency for whom the officer works **cannot** be in charge of the investigation into their misconduct.

- We want perpetrators to know the impact that their actions had on the victim survivor and the community. We also feel that it is important to convey how we can all prevent sexual assault moving forward.

- We do not just want a reactive criminal justice system, we want a proactive community, ready to believe victim survivors. We want to keep perpetrators accountable and rehabilitate them.

**QUESTIONS WE HAVE**

- What is our scope of influence in this working group (are we restricted to only working on the CSC statutes)?

  - Can we begin to introduce suggestions for prevention?

  - What about looking at what offenders are doing in prison (do they have some sort of treatment plan other than just a “punishment plan”)? For example: comprehensive mental health treatment, etc.
What programs and assistance are available for offenders upon re-entry into the community? Helping released offenders feel as though they are a part of a community is a huge deterrent to recidivism. Getting access to things like a job and housing are very important.

Are we able to address sexual harassment laws? Several members of our subcommittee expressed concerns about this as a sub-set, but important, aspect of addressing criminal sexual conduct.

Are there non-prision options available for offender sentencing/treatment? What is best for the victim, offender, and community is not always prison time. Many victim survivors fear anyone being victimized in the way that they were, their perpetrator included. Given the current epidemic of prison rape, our subcommittee members felt insecure about harsher sentencing or prolonged jail time for their perpetrators.

How can we involve education, psychotherapy, and community based help as a treatment for offenders?