

Research & Advocacy Digest

VOLUME 13
WINTER 2012

Linking Advocates & Researchers

Child & Teen Survivors in the Criminal Justice System

Letter From The Editor

KELLEY RICHARDSON – ADVOCACY SPECIALIST, WCSAP

Inside

Interview:

Meg Garvin, MS, JD and
Rebecca S.T. Khalil, JD
pages 1-4

Research Reviews
pages 5-9

References and Resources
page 10

Contributors

Leah Holland | WCSAP

Logan Micheel | WCSAP

Kelley Richardson | WCSAP

This issue of the *Digest* focuses on research about children and teens that have come into contact with the criminal justice system because they are victims of crime. We know that one in four girls and one in six boys are sexually abused before the age of 18. When these crimes are reported, those individuals typically become involved with the criminal justice system.

As advocates, we recognize that the justice system can be complex, confusing, and often unpredictable. These concerns are particularly relevant for our already vulnerable children and teen survivors. One of our roles is to help these survivors understand the system and provide support as they move through it, including advocating on their behalf with other professionals. We know how important that role is, and how necessary it is to have accurate, up-to-date resources and information to assist us in performing it.

In the interview segment of this issue, Meg Garvin, Executive Director of the National Crime Victim Law Institute (NCVLI) and Rebecca Khalil, head of NCVLI's Safeguarding Child-Victims' Rights Initiative team, share their insights about victims' rights. Following the interview, we review research articles that offer practical considerations for advocates working with children or teens represented by attorneys, provide support for advocates working with Sexual Assault Nurse Examiners and Sexual Assault Response Teams, and discuss the importance of best practice interviews with child victims.

Finally, it is important to note that the word "victim" is used intentionally in places in this issue, rather than the word "survivor," to denote the legal significance of being a victim of a crime and to reflect the language used in the applicable research. Victims of crime are afforded certain rights in our state, by the Washington State Constitution in [Article 1, Section 35](#) and the Revised Code of Washington in [RCW 7.69.030](#) and [RCW 7.69B.020](#). Child victims of crime are afforded additional, specific rights under state law in [RCW 7.69A.030](#). Many of these rights involve advocates, such as the right to have an advocate present in court for the child's testimony, to provide support.

We hope these resources, and those provided for further reading in the References & Resources section, will help you in your work with child and teen survivors involved with the criminal justice system. ■

Interview with Meg Garvin, MA, JD and Rebecca S.T. Khalil, JD of the National Crime Victim Law Institute

KELLEY RICHARDSON – ADVOCACY SPECIALIST, WCSAP

Meg Garvin, MA, JD, is the executive director of the National Crime Victim Law Institute (NCVLI) and a clinical professor of law at Lewis & Clark Law School. Ms. Garvin is recognized as a leading expert on victims' rights. She regularly presents on victims' rights and participates in national forums to develop policy on victims' rights. She has testified before Congress and the Oregon Legislature on the current state of victim law. She serves on the Legislative & Public Policy Committee of the Oregon Attorney General's Sexual Assault Task Force, and co-chairs the Oregon Attorney General's Crime Victims' Rights Task Force. She served as co-chair of the American Bar Association's Criminal Justice Section Victims Committee from 2005-2010, and has served as a member of the board of directors for the National Organization of Victim Assistance. Prior to joining NCVLI, Ms. Garvin practiced law in a private firm in Minneapolis, Minnesota and clerked for the Honorable Donald P. Lay of the Eighth Circuit Court of Appeals. She received her Bachelor of Arts degree from the University of Puget Sound, her Master of Arts degree in communication studies from the University of Iowa, and her Juris Doctorate from the University of Minnesota.

Rebecca Khalil, JD, is an attorney with NCVLI and is the head of its the Safeguarding Child-Victims' Rights Initiative team. Before joining NCVLI, Ms. Khalil was a litigation associate with Baker & Hostetler LLP in New York City, where she worked on a number of complex commercial and business litigations, including trade secret, securities, and contract cases, as well as white collar criminal defense, governmental and quasi-governmental matters, and corporate investigations. During law school, Ms. Khalil was an extern with the Criminal Division of the U.S. Attorney's Office in San Jose, California. Ms. Khalil holds a Bachelor of Arts in History from Seattle University and earned her Juris Doctorate from Stanford Law School, where she was elected to the Order of the Coif.

WCSAP: Can you share with readers a bit about yourself and your work in the area of victims' rights?

Victims' rights are all about empowering victims, ensuring that they are not merely pieces of evidence in the case, and ensuring they have access to justice and to the tools they need to become survivors.

MG: I joined NCVLI in 2003 as a staff attorney and at the time I knew very little about victims' rights even though I had been a victim of a crime. Victims' rights were appealing to me because I believe that individuals, no matter who they are, should have an independent and powerful voice in our justice systems. Victims' rights are all about empowering victims, ensuring that they are not merely pieces of evidence in the case, and ensuring they have access to justice and to the tools they need to become survivors. So NCVLI was a natural fit.

RK: I graduated from law school in 2007, worked for Baker & Hostetler LLC in New York as an associate, and, after my son was born in 2010, my husband and I moved back to the West Coast, and I began working for NCVLI. I have long had an interest in criminal law, which began when I was an undergraduate volunteering my time to work with “lifers” through the Seattle University Prison Program, and was solidified during a year working as a Bailiff and Jury Coordinator in Clark County, Washington before law school and then while working as a student-practice-certified law clerk for the Criminal Division of the U.S. Attorney’s Office for the Northern District of California in San Jose. Victims’ rights are not something that was taught when I was in law school, but they are as important in the criminal justice process as the role of prosecutors and defendants’ rights, and I am passionate about helping child victims and other victims empower themselves and take ownership over their role and their rights in a criminal proceeding.

WCSAP: Can you talk about your organization, the National Crime Victim Law Institute (NCVLI), and what it does, including the Safeguarding Child-Victims’ Rights Initiative?

NCVLI: The National Crime Victim Law Institute (NCVLI) is a nonprofit educational and advocacy organization based in Portland, Oregon that works in close partnership with Lewis & Clark Law School. NCVLI was founded on the ideas that victims’ rights, like other civil and human rights, are made meaningful when individuals are provided effective legal representation and that effective representation requires strong laws and well trained attorneys. We use a three-prong approach. We train law students, attorneys, and advocates all across the country on the “how to” of effective representation of crime victims, focusing on criminal courts. We litigate, either as amicus curiae or by providing technical assistance to partners, to protect individual victim’s rights and to establish positive precedent so future victims don’t endure the same challenges as today’s victims. We work to ensure that legislation is informed by victims’ needs.

Since NCVLI’s founding, we have worked with all victim populations – adults, children, elders, victims of homicide, sexual assault, domestic violence, fraud, stalking – literally all populations. But, we have always recognized that child victims face unique hurdles to accessing justice and to being heard and that the attorneys who represent child victims also face unique challenges in their practice. So, over the years we have worked to be responsive to those needs. We began to focus this work in 2008-09. As co-chair of the American Bar Association’s Criminal Justice Section’s Victims Committee, I worked to help draft and then pass the ABA Resolution on Child Victims <http://www.abanet.org/crimjust/policy/my09101d.pdf>, which states that “the American Bar Association urges federal, state, tribal, local, and territorial governments to ensure that child victims of criminal conduct have prompt access to legal advice and counsel.” We also created the Safeguarding Child-Victims’ Rights Initiative. Through this Initiative we dedicate legal resources on technical assistance, litigation, and education to help child victims. A key part of the Initiative over the past year has been working with an eleven-member multidisciplinary curriculum committee to develop an intensive two-day, skills-based training on how to provide effective rights enforcement representation to child victims of crime. In the first six months of 2012 we will host this training three times across the country.

We have always recognized that child victims face unique hurdles to accessing justice and to being heard.

WCSAP: What does research say about why it is important to have specific victims' rights for children?

What is clear from the literature is that victim interaction (whether an adult or child victim) with our justice systems can cause secondary victimization that has serious physical and psychological ramifications for the victim or the interaction can be beneficial, leading to healing, improvement in depression, and other quality of life improvements.

NCVLI: What is clear from the literature is that victim interaction (whether an adult or child victim) with our justice systems can cause secondary victimization that has serious physical and psychological ramifications for the victim or the interaction can be beneficial, leading to healing, improvement in depression, and other quality of life improvements. Among the keys to ensuring the experience is of the latter type is empowering victims to participate to the degree and in the manner they choose, validating the victim's experience, and allowing victims to own the story of their own victimization. So while there is not a lot of study of child victims' rights specifically, we can extrapolate from the literature that does exist and know that when a child victim's rights are protected the outcomes are better for the child.

WCSAP: Can you share some best practices for community sexual assault program advocates working with child victims of sexual assault who are involved with the legal system?

NCVLI: First, at the core of all of NCVLI's work is that victims fare better in the system when they have independent legal representation. Helping to pair victims with free attorneys is truly a best practice. NCVLI is happy to train lawyers to do the work; we just need help finding those lawyers! Second, among the keys for all victims of sexual assault is privacy. Whether the victim is an adult or child, protecting that victim's privacy is critical. Unfortunately, all too often privacy is among the first things sacrificed when someone is victimized. Subpoenas issue for victim records daily – whether those are school records, juvenile records, phone records (for calls or texts), Google search histories, Facebook, or Twitter. Fortunately, victims' rights afford a number of excellent legal bases to quash these subpoenas – but we need to know about the subpoenas. Advocates should talk to their clients about privacy, about the types of subpoenas that might issue, and then know who to reach out to for legal assistance when a subpoena does issue.

WCSAP: Can you share any new resources, promising practices or must-know information?

NCVLI: There are five resources NCVLI provides that are fantastic.

- Our Safeguarding Child-Victims' Rights Initiative is publishing Bulletins on emerging legal issues. The first Bulletin, *Child-Victims: Better Served By A Traditional Attorney Or By A Guardian Ad Litem?* is available on our website [Editor's note: this resource is reviewed following the interview]. A second Bulletin, *Confronting the Confrontation Clause: Finding the Use of Closed Caption Television to be "Necessary" under Maryland v. Craig*, will be published in spring 2012 and will be available on our website then.
- The intensive trainings mentioned earlier will be a great resource, and for those who cannot attend in person we will be creating spin-off webinars so check our website – www.ncvli.org!
- Our monthly electronic Child-Victim Digest, which summarizes significant cases in the country impacting child victims and also collects top news stories; this is a free resource you can sign up for on our website.
- NCVLI's legal team will do research and writing and provide strategic advice to any advocate in the country – just ask!
- Our National Alliance of Victims' Rights Attorneys and Advocates (NAVRA) is essentially a bar association that provides allows members to access all the latest cases, sample briefs, online discussion, trainings and more. There are paid and unpaid membership options but we would really encourage folks to look into it at www.navra.org. ■

Research Reviews

Child-Victims: Better Served By A Traditional Attorney Or By A Guardian Ad Litem?

GARVIN, M., KHALIL, R., & LECLAIR, S. (2011). *CHILD-VICTIMS: BETTER SERVED BY A TRADITIONAL ATTORNEY OR BY A GUARDIAN AD LITEM?* LEGAL PUBLICATIONS PROJECT OF THE NATIONAL CRIME VICTIM LAW INSTITUTE AT LEWIS & CLARK LAW SCHOOL. RETRIEVED FROM: [HTTPS://WWW.LCLARK.EDU/LIVE/FILES/8373-CHILDVICTIM-WHITE-PAPERAPRIL-2011.PDF](https://www.lclark.edu/live/files/8373-childvictim-white-paperapril-2011.pdf)

Every state has enacted victims' rights laws and some states, including Washington State, have specific victims' rights for children. However, many victims do not know that these rights exist or how to assert them.

This research paper analyzes whether a traditional attorney or an attorney serving as a guardian ad litem is the best representative for a child victim. Guardians ad litem are appointed by the court to advocate for what they believe is in the best interests of parties or victims in a case, who are unable to represent their own interests. Every state has enacted victims' rights laws and some states, including Washington State, have specific victims' rights for children. However, many victims do not know that these rights exist or how to assert them. This issue is of special

concern with child victims, who are particularly vulnerable and are, by virtue of a crime committed against them, "thrust into a myriad of unfamiliar justice systems and court processes" (p. 1). The authors draw on statistics and interviews with traditional attorneys and attorney guardians ad litem to conclude that in most cases, a traditional attorney is the best representative to assist a child victim with asserting these rights.

The authors cite a few key reasons why a traditional attorney-client relationship is best for child victims. In 2009, the American Bar Association (ABA) recommended that child victims have their own attorneys to assist them with victims' rights issues. The National Associate of Counsel for Children is in agreement. In addition to support from these key organizations, the authors argues that an attorney-client relationship empowers child victims to participate and be heard. An attorney must advocate for her client, including a child client, according to the client's wishes and is bound by all applicable ethical rules. This gives the child autonomy to direct the litigation and to have a voice in the system. Finally, a key advantage of this option is that a child victim who is represented by an attorney, rather than a guardian ad litem, is considered a represented party under any applicable ethical rules. This protects the child from unauthorized direct contact by the perpetrator's attorney.

There are a few drawbacks to this approach. First, since litigation is directed by the child client, the attorney may have to advocate for something she personally believes may be harmful to the child. Second, there are concerns that younger children may not be able to direct their own litigation. Third, if an attorney representing a child comes to the conclusion that the child is unable to direct an aspect of the litigation, the attorney may substitute her judgment for the child's, which gives the attorney too much discretion.

The authors discuss the benefits of having an attorney serve as guardian ad litem, rather than representing a child victim in a traditional attorney role. Proponents of this view believe having a guardian ad litem represent the child victim's interests will better protect children from their own bad choices, bad actors in their life and other outside influences. This view stems from a belief that children lack good judgment or the ability to make decisions and that society has an obligation to protect children more than it protects adults.

In the drawbacks column, guardians ad litem are held to less strict ethical standards than traditional attorneys, because they are not acting in the role of the child's attorney. In addition, attorneys who are not well trained will not have a basis for determining what is in a child's best interests, and this may allow individual biases and subjective reasoning to take the place of objective analysis. Opponents of this view believe that it is paternalistic and does not acknowledge the ability of child victims to direct their own litigation. In order to mitigate these concerns, the authors suggest attorneys serving as guardians ad litem should use objective standards to determine what is in a child's best interests and should seek guidance from other experienced professionals.

Legal advocacy for survivors of sexual assault requires understanding the justice system and interacting with legal professionals. Advocates working with a child victim client who is represented by an attorney or has an attorney appointed as guardian ad litem can be available to answer questions if the attorney does not have experience working with children or with sexual assault survivors. Advocates can also help a child understand the attorney's role in their case and how it differs from the advocate's role. The authors point out that, in order for a child victim to really understand an attorney's role, it will often take more than a conversation. An advocate can encourage an attorney to make time to model or role-play the courtroom setting and the attorney's role. Some courts even have programs for this purpose. One such program, cited as a reference for this paper, is Washington's own King County Kids' Court <http://www.kingcounty.gov/prosecutor/kidscourt.aspx>. ■

Legal advocacy for survivors of sexual assault requires understanding the justice system and interacting with legal professionals.

Do Best Practice Interviews with Child Sexual Abuse Victims Influence Case Processing?

PIPE, M., ORBACH, Y., LAMB, M., ABBOTT, C., & STEWART, H. (2008). *DO BEST PRACTICE INTERVIEWS WITH CHILD SEXUAL ABUSE VICTIMS INFLUENCE CASE PROCESSING?* NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE. RETRIEVED FROM: [HTTPS://WWW.NCJRS.GOV/PDFFILES1/NIJ/GRANTS/224524.PDF](https://www.ncjrs.gov/pdffiles1/nij/grants/224524.pdf)

Decisions as to whether a child sexual abuse case will go forward in the criminal justice system are often based on the quality and accuracy of the information gathered in such interviews.

The formal interview process, in which investigators gather essential information from a sexual assault victim, is especially complex in cases involving children because of developmental considerations and barriers. Nonetheless, due to the frequent lack of corroborating evidence, decisions as to whether a child sexual abuse case will go forward in the criminal justice system are often based on the quality and accuracy of the information gathered in such interviews.

Citing the impact of the child interview on the processing of these cases in the criminal justice system, the authors of this study examined whether the use of a structured interview protocol (which is a set of standardized interview questions) influenced the outcomes of child sexual abuse cases. Their research specifically focused on the use of the National Institute of Child Health & Human Development (NICHD) protocol, as this was the only structured forensic interview protocol that had been evaluated for its effectiveness in eliciting accurate and thorough information. The researchers compared outcomes of cases in which interviewers used the NICHD protocol with the outcomes of earlier cases involving the same interviewers, but without a formal interview protocol. In total, 1280 cases involving children aged 2.80 to 13.97 years from Salt Lake County, Utah were included in the study.

Data analysis revealed that cases in which the interview protocol was used were 52% more likely to result in charges being filed by the prosecutor compared to cases in which the interview protocol was not utilized. Statistical analysis also found that cases involving penetration, male suspects, juvenile suspects, and familiar but unrelated suspects were more likely to have charges filed. Finally, the study results indicated that regardless of whether the interview protocol was used, cases involving children ages 2.8 to 4 years were the least likely to be filed. Once charges were filed, both pre-protocol and post-protocol cases, the most common result was a guilty plea. However, in the few cases that subsequently proceeded to trial, the use of the interview protocol was associated with a higher rate of conviction.

Though the authors caution that these findings cannot be applied to other interview protocols or approaches, their study is a valuable resource for advocates and multidisciplinary teams striving to increase child safety and offender accountability. This research can validate the continued use of the NICHD protocol or support new implementation efforts. ■

Adolescent Sexual Assault Victims' Experiences with SANE-SARTs and the Criminal Justice System

CAMPBELL, R., GREESON, M., BYBEE, D., KENNEDY, A., & PATTERSON, M. (2011). *ADOLESCENT SEXUAL ASSAULT VICTIMS' EXPERIENCES WITH SANE-SARTs AND THE CRIMINAL JUSTICE SYSTEM*. NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE. RETRIEVED FROM: [HTTPS://WWW.NCJRS.GOV/PDFFILES1/NIJ/GRANTS/234466.PDF](https://www.ncjrs.gov/pdffiles1/nij/grants/234466.pdf)

In this project, researchers conducted two studies to look at adolescent sexual assault survivors' help-seeking experiences with the legal and medical systems with two different Sexual Assault Nurse Examiner-Sexual Assault Response Team (SANE-SART) sites and their associated criminal justice systems. One site followed a more formalized model, which included separate Child Advocacy Center multi-stakeholder meetings in alignment with guidelines from the National Children's Alliance.

The two studies had separate objectives. The first study's objective was to see if the survivors' sexual assault disclosures were voluntary or involuntary and how that affected the survivors' help-seeking experiences with legal and medical providers and ongoing engagement with the criminal justice system. The second study's objective was to attempt to find out what factors could predict a guilty plea or conviction in the prosecution of adolescent sexual assault cases.

In order to better explain success, defined as a guilty plea or conviction, within "the system" (Study 2), the researchers felt it was important to talk to teen survivors about how they entered the system and their willingness to stay involved with the system as their case progressed (Study 1).

For Study 1, researchers interviewed 20 adolescent female survivors between the ages of 14 and 17, three to four weeks after having a forensic exam. Survivors whose initial peer disclosure was voluntary, and whose subsequent disclosures to an adult, and to legal and medical systems were voluntary, were more likely to remain engaged in the legal system through the conclusion of the legal process. Survivors whose initial peer disclosure was voluntary, but whose subsequent disclosures to an adult and to legal and medical systems were involuntary, were only sometimes willing to

SART training curricula should include information on teens as a special population and how to engage friends and family as support systems, as this will increase the teens' likelihood of maintaining involvement with the legal system.

remain engaged in the legal systems. The researchers state, "Research with adult sexual assault survivors has found that negative social reactions from friends and family are remarkably strong determinants of survivors' short-term and long-term well-being" (p. 81). This research highlights what we know about the importance of adolescents' peer groups at this stage of their development. Advocates and educators can use this information when talking to groups of teens about sexual assault awareness and prevention and how they can help a friend who was assaulted. The findings of this first study emphasize the importance of teen survivors receiving validation and support from all members of the SART team, not just advocates and nurses, as well as from friends and family. SART training curricula should include information on teens as a special population and how to engage friends and family as support systems, as this will increase the teens' likelihood of maintaining involvement with the legal system.

For Study 2, researchers completed a records review of SANE, police, prosecutors, and crime lab programs of adolescent (13-17 years old) sexual assault cases when the survivor received a complete forensic exam from the SANE program. Of the 392 cases reviewed, 40.3% resulted in a guilty plea or trial conviction. Factors that contributed to cases moving forward through the system included: younger survivors (ages 13-15 years old) , assaults against survivors with developmental delays, if the survivor and offender knew each other, the total number of assaultive acts, survivors quickly seeking a forensic exam, and positive DNA evidence. With regard to the two different SANE-SART sites, the researchers noted “whether a community follows a more formalized or informal model of SANE-SART integration may not be nearly as important as how a community’s resources and attentions can be focused – or divided – among the many victims who want justice for the crimes they have suffered” (p. 85). ■

References & Resources

WCSAP Trainings:

Child Sexual Abuse and Legal Advocacy

Recorded Webinar

Using Ethics to Enhance Services for Crime Victims

Recorded Webinar

WCSAP Online Resources:

Children are Victims and Witnesses of Crime

From Hurt to Hope: A Child Sexual Abuse/Assault Advocacy Guide

Teen Sexual Assault Survivors: Legal Impacts and Considerations

Other Online Resources:

National Center for Victims of Crime: Teen Victims Project

National Crime Victim Law Institute

Victim Rights Law Center

The WCSAP Library:

Beyond the Criminal Justice System: Transforming Our Nation's Response to Rape

by the Victim Rights Law Center

First Response to Victims of Crime

by the National Sheriff's Association

Sexual Assault and the Justice Gap: A Question of Attitude

by Jennifer Temkin and Barbara Krahe

Victim Impact: Listen and Learn

by the Office for Victims of Crime

Washington State Child Interview Guide

by the Harborview Center for Sexual Assault and Traumatic Stress



WCSAP
Washington Coalition of
Sexual Assault Programs

Washington Coalition of
Sexual Assault Programs
4317 6th Ave SE, Suite 102
Olympia, WA 98503

360.754.7583
360.709.0305 TTY
360.786.8707 FAX
www.wcsap.org

OPPORTUNITY FOR INPUT

WHAT TOPICS WOULD YOU LIKE TO SEE COVERED IN
UPCOMING ISSUES OF *RESEARCH & ADVOCACY DIGEST*?

SEND YOUR IDEAS TO: ADVOCACY@WCSAP.ORG

DID YOU READ OR AUTHOR AN ARTICLE YOU'D LIKE
TO CONTRIBUTE FOR REVIEW IN THE *RESEARCH &
ADVOCACY DIGEST*?

CONTACT **KELLEY RICHARDSON** FOR MORE
INFORMATION ABOUT SUBMISSION GUIDELINES.