

Personal Security

Utah Citizens' Counsel Personal Security Committee

Article 5. All Utahns have the right to security of person, especially freedom from physical harm and psychological abuse, whether experienced within the family or in the community at large.

Introduction

The 2014 Committee Report on the right to personal security focused on the victims of domestic violence and domestic violence-related homicides (with an emphasis on the role of firearms in such homicides). Nationally, firearms continue to be the most commonly used weapon by males to murder females, and 15 times as many women were killed by men they knew as were killed by male strangers.¹ Utah's rate of domestic violence-related homicides as a percentage of all Utah homicides continues to be a concern. Little progress was achieved in alleviating the overburden at Utah's crisis shelters, despite ongoing and one-time funding from the state legislature. No legislative progress was achieved on background checks for every firearms sale, or enhanced training for concealed-carry permit owners. Parents are still not provided notification if their child's teacher is carrying a weapon in the classroom, or allowed to request their child's transfer to another classroom. The 2015 Committee Report updates issues and policies regarding domestic violence, and introduces rape as a subject under Article 5.

Background: Domestic Violence

Utah's criminal violence rate (including homicide, robbery, and aggravated assault) has historically been lower than the national average by as much as half to one-third. Utah's homicide rate has also been significantly below the national average.² Over the last ten years, however, Utah's domestic violence-related homicides have constituted 42% of all Utah homicides, while the national figure for domestic violence-related homicides rates stood at 30% of all homicides.³

Utah agencies have confirmed 264 domestic violence-related homicides from 2000-2013, averaging 19 deaths a year.⁴ In 2014, domestic violence-related deaths reached a five-year peak, with 29 women, men, and children losing their lives. Under federal law, Protective Orders bar abusers from possessing or purchasing firearms. In Utah, however, firearms are not confiscated for the duration of a Protective Order unless the individual violates the Protective Order or another law,⁵ leaving the abused person in considerable danger.

The multifaceted consequences of domestic violence can devastate a family's economic, social, and emotional well-being, as well as create a preeminent physical danger. One indication of the number of families affected comes from *Salt Lake City Weekly's* report that approximately 3,000 people gained protection in one of Utah's 15 crisis shelters in 2014, while an equal number of women, children, and men were turned away for lack of space.⁶

The Lethality Assessment Protocol (LAP) was first implemented in Maryland where it has been credited with reducing intimate partner (IPV) homicides by 40% since 2005. LAP teaches police officers how to conduct a "lethality assessment" during domestic violence calls. Participants are separated while the complainant is presented with a series of 11 questions designed to help the victim (as well as the police) determine the level of danger. When indicated, police officers can immediately put the at-risk person on the phone with a local shelter or transport them to a local shelter, if the victim so desires. LAP has become standard practice in multiple police departments in approximately 30 states.⁷

After obtaining a 2013 grant to train its police officers in the purpose and procedures of LAP, the Woods Cross police department reports that it has significantly reduced repeat calls, and most likely averted tragedy for at least one Woods Cross family. Currently, four Utah law enforcement agencies are employing LAP.⁸

Many Utah women who comprehend the danger of their domestic situation still are reluctant to leave an abusive relationship. According to a 2015 study by WalletHub, Utah women were ranked 50th in a state-by-state comparison using 11 factors that reflect women's status in their work place environment, educational attainment, and political empowerment.⁹ This mirrors the 50th ranking assigned to Utah women in 2014 by 24/7 Wall St. (and published in *USA Today*) based on the daily realities of economy, leadership, and health.¹⁰ These realities may help explain why many of them do not leave abusive relationships.

Utah addresses its domestic and sexual violence problems through its "No More Secrets: Utah's Domestic and Sexual Violence Report" (available for 2004-14). These annual reports can be found online at the web site for the Utah Office on Domestic and Sexual Violence.¹¹

Background: Rape

Rape is a fundamental violation of personal security. Although Utah's rate of overall violent crime remains below the national average, one in three Utah women suffers sexual assault, and one in eight has been raped. Based on the Uniform Crime Reports, Utah's rape rate has been significantly higher than the national rate since 2000. In 2012, the national crime rate for rape stood at 52 women per 100,000, while in Utah that figure stood at 68 per 100,000.¹² In 2012, 971 rapes were reported to Utah law officials, and in 2013 the figure fell to 895.¹³

While some police officers and prosecutors argue that at least 10% of rape claims are false,¹⁴ some victim advocates estimate that as many as 88% of rapes are unreported.¹⁵ Approximately four out of five rapes are committed by someone the victim knows.¹⁶ Stranger rapes are disproportionately committed by serial rapists, with perhaps between 5.8 and 11.7 individual victims per serial rapist.¹⁷

In response to the common complaint that sexual assaults are a low priority to police departments, victim advocates propose that police should use the "48 hour" rule before interviewing sexual assault victims. Two sleep cycles are typically given to police officers involved in shootings and to children who have suffered violence in order to mitigate the often

confusing and contradictory statements made in a flood of emotions and hormones in the immediate aftermath of an assault which can lead police officers to discount allegations.¹⁸

A prime illustration of the frustration often suffered by rape victims lies in the handling of "Code R" rape kits. The kits are assembled in the emergency room by Sexual Assault Nurse Examiners (SANE), who take photographs, swabs, and gather other evidence in an hours-long process to capture DNA samplings that help identify rapists. With stunning regularity, rape kits are not forwarded for the follow-up lab process that establishes the forensic foundation for a legal charge and helps identify repeat offenders (through the FBI's CODIS data base). Police and prosecutors argue that this reflects, in part, the nearly \$1,000 average cost for testing each rape kit.¹⁹

Using open-record sources, *USA Today* investigated 1,000 police departments across the nation and found at least 70,000 untested rape kits. It further speculated that the total number of untested kits in the 18,000 police departments across the U.S. would be in the hundreds of thousands. In addition, *USA Today* found few consistent procedures across or even within police departments. Many departments simply kept no inventory regarding rape kits.²⁰

Utah shares this problem. Recent research on a random selection of rape kits collected between 2003 and 2011 found that only 9% of reported sexual assaults in Salt Lake County resulted in criminal charges. Some 2,700 untested rape kits were found across the state. The Salt Lake City Police Department, for example, held 1,001 rape kits, of which 788 were untested.²¹

A coalition of legislators, state agency and non-profit personnel, as well as health professionals persuaded the Utah Legislature to allocate \$750,000 to work on the unprocessed kits.²² Recently, jurisdictions in 27 states were designated as recipients of \$41 million from the federal government and \$38 million from the city of New York to facilitate testing of tens of thousands of backlogged rape kits.²³ As one of the beneficiaries, Utah should be able to clear its own backlog.²⁴

Utah is one of four states that remains out of compliance with federal guidelines in the Prison Rape Elimination Act (PREA), which aims to prevent the approximately 216,000 sexual assaults committed annually on adult and juvenile inmates. Passed unanimously in Congress in 2003 and implemented on August 20, 2012, PREA includes requirements such as an option for inmates to report an alleged rape outside the prison system, and increased staff training to screen new inmates to identify the most likely abusers and victims.²⁵

While ten states had met PREA standards and 25 states were in the process of doing so in 2014, Utah lost \$142,000 in federal funding for its noncompliance.²⁶ Governor Herbert maintains that Utah follows most PREA practices and works for the same goals. However, he believes that aspects of PREA are counterproductive, as well as too costly.²⁷

Commendations

- **Governor Herbert's indication that he would again veto any bill that would eliminate the requirement for a state-issued permit to carry a concealed weapon.**

- **The Woods Cross Police Department's initiative** to obtain grant monies to implement the Lethality Assessment Protocol (LAP) approach to domestic violence cases.
- **The Utah Legislature's allocation of \$693,000 to pilot the Lethality Assessment Protocol** in four Utah jurisdictions (Davis County, Logan, West Jordan, and Cedar City) in response to the significant and verified impact of LAP in reducing domestic violence homicides.
- **The Utah Legislature's allocation of \$750,000 to help clear the substantial backlog of rape kits** to facilitate a greater number of successful prosecutions, and help identify serial rapists.
- **The Utah Legislature's passage of House Bill 74 (2015)**, which states that an incapacitated person who is unconscious, unaware, or physically unable to resist has not given consent to sex. Therefore, the victim no longer must prove lack of consent under these circumstances.
- **The Utah Legislature's passage of House Concurrent Resolution 1 (2015)**, designating April 1st as "Believing Day," to encourage police, prosecutors, and the public to take claims of sexual violence seriously.
- **The West Valley Police Department's implementation of the "48 hour" rule** to promote effective police procedures before interviewing sexual assault victims.

Recommendations

- **Firearms should be systematically collected from the person constrained by the Protective Order for its duration**, rather than leaving court orders dealing with weapons to individual compliance.
- **State funding should be sufficient to allow the Utah Domestic Violence Coalition to provide adequate facilities for the nearly 3,000 women, children, and men turned away in 2014 from overburdened crisis shelters.**
- **All rape kits should be held in law enforcement labs or the state Department of Public Safety** rather than left in various locations, to systematize rape kit procedures and thus help assure legal forensic lab work.
- **The Governor and the Utah Department of Corrections should accept the additional procedures and costs of the Prison Rape Elimination Act** to join in the national effort to secure human rights to personal security for all people, including prisoners.

Notes

¹ Violence Policy Center, "When Men Murder Women: An Analysis of 2013 Homicide Data," 3, September 2015, accessed September, 15, 2015 <http://www.vpc.org/studyncdx.htm>. Appendix One demonstrates that the 2013 national homicide rate for a single female victim murdered by a single male was 1.09 per 100,000 females. Utah tied at 36th among the 50 states with .76 female murder victims killed by a single male.

² Using FBI Uniform Crime Reports, the Death Penalty Information Center reports the national murder rate at 4.5 people per 100,000 in comparison with the Utah murder rate of 1.7 people per 100,000, accessed May 20, 2015, <http://deathpenaltyinfo.org/murder-rates-nationally-and-state>.

³ Carly Figueroa, "Utah Above National Average for Domestic Violence Homicides; Victim Advocates Seek More Resources," *Fox News*, March 4, 2015, accessed May 15, 2015, <http://fox13now.com/2015/03/04/utah-above-national-average-domestic-violence>.

⁴ Utah Administrative Office of the Courts; Utah Children's Justice Centers; Utah Coalition Against Sexual Assault; Utah Commission on Criminal and Juvenile Justice; Utah Department of Health, Violence and Injury Prevention Program; Utah Department of Human Services, Division of Child and Family Services; Utah Domestic Violence Coalition; Utah Office for Victims of Crime; "No More Secrets, Utah's Domestic and Sexual Violence Report - 2014," 8, accessed October 11, 2014,

http://www.nomoresecrets.utah.gov/Annual%20Reports/nms_annualreport_2014.pdf.

⁵ "Utah: State Gun Laws," WomensLaw, a project of the National Network to End Domestic Violence, accessed September 15, 2015, http://www.womenslaw.org/laws_state_type.php?id=303&state_code=UT&open_id=9895.

⁶ Stephan Dark, "Powerless: While State Funds for Domestic Violence Dwindle, the Cost in Lives Climbs," *Salt Lake City Weekly*, January 7, 2013, accessed May 23, 2015,

<http://www.cityweekly.net/utah/powerless/Content?oid=2652399&mode=print>.

⁷ "Maryland's Lethality Assessment Program: From Research into Practice," Battered Women's Justice Project, accessed June 8, 2015, <http://www.bsjp.org/resource-center/resource-results/maryland-s-lethality-assessment-program>. LAP is based on 25 years of research by Dr. Jacquelyn Campbell (The Johns Hopkins University, School of Nursing). Campbell's research has also determined that 1) only 4% of domestic violence murder victims nationwide had ever availed themselves of the services of domestic violence programs; 2) officers had previously responded to domestic violence calls in 50% of homicide cases; 3) re-assault of domestic violence victims in 'high danger' was reduced by 60% if they went into a shelter. See the "Domestic Violence Lethality Screen for First Responders" list of 11 questions, 5, Maryland Network Against Domestic Violence, accessed June 8, 2015, <http://mnadv.org/mnadvWeb/wp-content/uploads/2011/10/LAP-Info-Packet-as-of-12-8-10/pdf>. (Intimate Partner Violence (IPV) refers to marriage, divorce, or dating relationships.)

⁸ Andrea Smardon, "New Project Aims to Prevent Domestic Violence Deaths in Utah," *KUER*, July 9, 2015, accessed July 14, 2015, <http://kuer.org/post/new-project-aims-prevent-domestic-violence-deaths-utah>.

⁹ Richie Bernardo, "2015's Best and Worst States for Women's Equality," *Wallethub*, accessed July 14, 2015., <http://wallethub.com/edu/best-and-worst-states-for-women-equality/5835/>. The study compared the state-by-state gender gaps in three broad categories explained below. Ranked 50th overall, Utah came in 45th in Workplace Environment, 49th in Education, and 36th in Political Empowerment.

1) Workplace Environment - pay (median weekly earnings) / number of executives / average work hours / number of minimum wage earners / unemployment rate / entrepreneurship

2) Education - percentage of residents aged 25 & older with a Bachelor's Degree or higher / math test scores

3) Political Empowerment - percentage of female lawmakers in U.S. Senate / percentage of female lawmakers in U.S. House / percentage of female lawmakers in state legislature.

¹⁰ Thomas Frohlich, Alexander Kent, and Alexander Hess, "The Ten Worst States for Women," *USA Today*, October 19, 2014, accessed May 17, 2015, <http://www.usatoday.com/story/money/business/2014/10/19/24-7-wall-st-worst-states-women/17344861>.

¹¹ <http://nomoresecrets.utah.gov/>.

¹² Utah Department of Health, Violence and Injury Prevention Program, "Rape and Sexual Assault," 2, accessed May 18, 2015, <http://health.utah.gov/vipp/topics/rape-sexual-assault>.

¹³ "No More Secrets - 2014," 17.

¹⁴ Stephan Dark, "Rape in Utah," *Salt Lake City Weekly*, December 31, 2013, accessed April 27, 2015, <http://www.cityweekly.net/utah/rape-in-utah/Content?oid=2306088&mode=print>.

¹⁵ "Rape and Sexual Assault," 2.

¹⁶ "The Offenders: The Rapist Isn't a Masked Stranger," RAINN (Rape, Abuse, Incest National Network), accessed October 19, 2015 <http://rainn.org/get-information/statistics/sexual-assault-offenders>. RAINN cites the U.S. Department of Justice's "National Crime Victimization Study: 2009-2013" as its source for this figure.

¹⁷ David Lisak and Paul Miller, "Repeat Rape and Multiple Offending Among Undetected Rapists," *Violence and Victims*, Vol. 17, No. 1 (2002): 73-84, accessed September 13, 2015, <http://www.davidlisak.com/wp-content/uploads/pdf/RepeatRapeinUndetectedRapists.pdf>.

¹⁸ Rebecca Campbell, "Neurobiology of Sexual Assault: Implications for First Responders in Law Enforcement, Prosecution, and Victim Advocacy," *National Institute of Justice*, December 3, 2013, accessed September 26, 2015, <http://nij.gov/multimedia/presenter/presenter-campbell/pages/presenter-campbell-transcript>. Christopher Smart, "Rape Trauma: Why Cops May Think Victims are Lying," *Salt Lake Tribune*, July 7, 2013, accessed May 6, 2015, <http://archive.sltrib.com/printfriendly.php?id=58142434&itype=cmsid>.

¹⁹ "What is a Rape Kit?" RAINN, accessed September 11, 2015, <http://rainn.org/get-information/sexual-assault-recovery/rape-kit>. CODIS stands for Combined DNA Index System.

²⁰ Steve Reilly, "Tens of Thousands of Rape Kits Go Untested Across USA: Exclusive Nationwide Count by USA Today Reveals Abandoned Rape Evidence," *USA Today*, July 16, 2015, accessed September 12, 2015, <http://www.usatoday.com/story/news/2015/07/16/untested-rape-kits-evidence-across-usa/29902199/>.

²¹ Christopher Smart, "Salt Lake City Moves to Update Investigation Strategy for Sex Assaults," *Salt Lake Tribune*, December 3, 2014, accessed May 6, 2015,

<http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=1900776>. The research, conducted by SANE nurse and BYU Nursing faculty member Julie Valentine employed a random selection of 30 "Code R" rape kits from Salt Lake County for each year from 2003-2011. Follow-up on the 270 cases confirmed that only 9% resulted in criminal charges. The publicity from this finding helped prompt widespread awareness and responses by the Salt Lake City Council, Salt Lake City Police Department, Salt Lake District Attorney, Salt Lake County Council, and Salt Lake County Law Enforcement. Accounts can be found in the archives of the *Salt Lake Tribune* and *Deseret News* (2014-2015).

²² Christopher Smart, "Group Urges Utah Lawmakers to Fund DNA Analysis of all Rape Kits," *Salt Lake Tribune*, October 17, 2014, accessed May 6, 2015,

<http://www.sltrib.com/csp/mediapool/sites/pages/printfriendly.csp?id=1709236>. Former Representative Jennifer Seelig is widely credited for organizing this legislative effort.

²³ James McKinley, Jr., "New York City Prosecutor Using Millions Taken from Banks for Rape-Kit Testing," *New York Times*, September 10, 2015, accessed September 30, 2015, <http://www.nytimes.com/2015/09/11nyregion/city-prosecutor-using-millions-seized-from-banks>. The U.S. Justice Department is contributing \$41 million in grants to assist 20 jurisdictions in clearing their inventory of kits, and New York City District Attorney Cyrus Vance, Jr., is adding \$38 million to various jurisdictions in 20 states, including Utah, for the same purpose. (Mr. Vance's office has amassed some \$800 million in settlements from international banks charged with violating U.S. sanctions. He is contributing it to this cause, believing it will enhance confidence in the U.S. criminal justice system.)

²⁴ Associated Press, "New National Funding Will Clear Utah's Backlog of Untested Rape Kits," *Salt Lake Tribune*, September 10, 2015, accessed October 22, 2015,

<http://www.sltrib.com/csp/mediapool/sites/sltrib/pages/printfriendly.csp?id=2935573>.

²⁵ Rebecca Boone, "Utah Among Just 4 States that Reject Federal Guidelines to Prevent Prison Rape," *Salt Lake Tribune*, June 15, 2015, accessed June 16, 2015, <http://www.sltrib.com/home/2628041-155/utah-among-just-4-states-that>. (Idaho, Arkansas, and Alaska are the other three, as of May, 2015.)

²⁶ Kimberly Scott, "Utah Among 4 States Rejecting Federal Rules to Prevent Prison Rape," *St. George News*, July 16, 2015, accessed September 24, 2015, <http://www.stgeorgenewsutah.com/news/archive/2015/07/16/-utah-among-4-states-rejecting>.

²⁷ Associated Press, "Utah Opts out of Prison Rape Law Requirements," *Washington Times*, May 23, 2014, accessed July 12, 2014, <http://www.washingtontimes.com/news/2014/may/23/utah-opts-out-of-prison-rape-law-requirements/>.

Although he agrees with the law's purpose, Governor Herbert objects to the expense of auditing the various aspects of PREA, which is beyond current Utah auditing capacity. He also rejects the requirement that guards announce their entrance into opposite sex housing areas. Although intended to limit sexual harassment and exploitation by guards, Herbert believes it actually creates potential dangers for guards, and limits their ability to prevent sexual abuse among prisoners. See the National PREA Resource Center web site for a detailed examination of its contents <<http://www.prearesourcecenter.org/frequently-asked-questions>>.