

Military Sexual Assault: A Framework for Congressional Oversight

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Summary

The rate of sexual assault in the military has garnered significant attention over the past decade from policymakers. While there have been several efforts to improve prevention, response, and accountability for sex-related offenses within the Department of Defense (DOD), there has not been a concomitant decrease in either estimated prevalence or sex-assault reports among military servicemembers. In addition, there is some evidence that a majority of sexual offenses are not being reported, as estimated prevalence of sexual assault from survey data consistently exceeds the number of incidents that are reported. DOD encourages sexual assault reporting for two reasons, 1) to allow victims to get access to support services (e.g., legal, medical, and health counseling), and 2) to hold perpetrators accountable through the military justice system.

Congress has the Constitutional authority to enact military criminal law applicable to members of the Armed Forces. Congress has determined that sexual assault is a criminal act under the Uniform Code of Military Justice (UCMJ) in Title 10 of the United States Code. Since 2004, Congress has enacted over 100 provisions intended to address different aspects of the problem as part of the annual National Defense Authorization Act (NDAA) and as stand-alone legislation affecting veterans and civilians. In addition, DOD and other federal agencies have devoted significant resources to the issue in terms of funds, personnel, and training time. Given the scope and complexity of this issue, it is helpful to apply a framework for analysis and oversight. This report provides such a framework to help congressional staff understand the legislative and policy landscape, and to link proposed policy solutions with potential impact metrics.

Congressional oversight and action on military sexual assault can be organized into four main categories: (1) DOD management and accountability, (2) prevention, (3) victim protection and support, and (4) military justice and investigations. The first category deals with actions to improve management, monitoring, and evaluation of DOD's efforts in sexual assault prevention and response. The second category includes efforts to reduce the number of sexual assaults through screening, training, and organizational culture. The third category focuses on DOD's response once an alleged assault has occurred, including actions to protect and support the victim. The last category addresses the application of justice through military investigative and judicial processes.

Some of the reforms to military sexual assault prevention and response programs over the past decade have shown positive results, particularly in the areas of increased transparency, a more robust victim support system, and heightened awareness among servicemembers. Nevertheless, existing data indicates that problems still exist and that specific demographics within the military (e.g., LGBT and junior enlisted) might be more vulnerable to harm. Victim advocates have argued for additional reforms, particularly in the area military justice and commander accountability for establishing a positive and responsive organizational climate. Congress may consider these and other arguments in its oversight role.

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Introduction

Sexual violence is a society-wide issue that affects individuals in the workplace, at colleges and universities, and in both public and private spaces. The Centers for Disease Control and Prevention (CDC) estimates that in the United States, one in three women and one in four men experienced some form of sexual violence involving physical contact during their lifetimes.¹ Some data indicate that young adults are a particularly high-risk demographic. For example, the Department of Justice (DOJ) has reported that women ages 18 to 24 have the highest rate of rape and sexual assault victimizations compared to females in all other age groups.² In addition, the Rape, Abuse & Incest National Network (RAINN) reports that 13% of all undergraduate and graduate students experience rape or sexual assault through physical force, violence, or incapacitation.³ Studies have also found that sexual assault is costly to society. The effects of such crimes reduce economic productivity (due to absenteeism and employee turnover), reduce the lifetime earnings of victims, and places additional burdens on the health care and criminal justice system.⁴

Recent advocacy campaigns, like the #MeToo movement which emerged in 2017, have sought to raise awareness of the prevalence of sexual violence and harassment in the workplace and hold offenders accountable.⁵ While state and federal lawmakers have taken some actions to address these broader societal concerns, particular aspects of military service (e.g., young demographic, remote assignments, hierarchal command structure, and the unique justice system) may require a distinct set of policy solutions. The threat of sexual violence against female military servicemembers has been part of the historical debate over whether women should be allowed to serve in the military and in certain combat roles and whether they should be required to register for the selective service and subject to a military draft.⁶ In these debates, a frequently cited concern has been the possibility that captured U.S. servicewomen could be exposed to sexual violence from enemy forces. Nonetheless, data has shown that the threat of sexual violence does not come only from enemy forces or strangers, but also from fellow servicemembers. More often than not, sexual violence in the military is committed by someone known to the victim.⁷

Sexual violence is not only a threat for women serving in the military. Data from FY2014 indicated that while military men experience lower rates of sexual assault than women, the total number of men affected in the military was higher than the number of women affected (due to a

¹ Centers for Disease Control and Prevention, *Preventing Sexual Violence*, 2019, <https://www.cdc.gov/violenceprevention/pdf/sv-factsheet.pdf>.

² Sofi Sinozich and Lynn Langton, *Rape and Sexual Assault Victimization Among College-Age Females, 1995–2013*, Department of Justice, Bureau of Justice Statistics, December 2014, <https://www.bjs.gov/content/pub/pdf/rsavcaf9513.pdf>.

³ RAINN, *Campus Sexual Violence: Statistics*, <https://www.rainn.org/statistics/campus-sexual-violence>.

⁴ National Sexual Violence Resource Center (NSVRC), *Sexual Violence in the Workplace; Overview*, 2013, https://www.nsvrc.org/sites/default/files/2013-04/publications_nsvrc_overview_sexual-violence-workplace.pdf.

⁵ Andrea Johnson et al., *Progress in Advancing Me too Workplace Reforms in #20Statesby2020*, National Women's Law Center, July 2019.

⁶ See, CRS Report R44321, *Diversity, Inclusion, and Equal Opportunity in the Armed Services: Background and Issues for Congress*, by Kristy N. Kamarck, CRS Report R42075, *Women in Combat: Issues for Congress*, by Kristy N. Kamarck, and CRS Report R44452, *The Selective Service System and Draft Registration: Issues for Congress*, by Kristy N. Kamarck.

⁷ For more on intimate partner violence in the military, see CRS Report R46097, *Military Families and Intimate Partner Violence: Background and Issues for Congress*, by Kristy N. Kamarck, Alan Ott, and Lisa N. Sacco.

higher percentage of men serving). Subsequent surveys have shown higher numbers of women affected.⁸

Sexual violence affects the physical and psychological well-being of victims, particularly when they must remain in close proximity to the perpetrator following an assault (e.g., both victim and perpetrator are serving in the same military unit).⁹ According to a psychologist specializing in military sexual assault,

When you are raped by a stranger, you don't have to deal with that in day-to-day life. [In the military, the victim] deals with the rape and the impact on her community and also the ongoing influence of the offender on her life outside of that specific assault.¹⁰

Sexual violence in the military workplace can impact unit cohesion, stability, and ultimately, mission success. Recent research has also found that those exposure to sexual assault and harassment is associated with higher rates of premature separation from the service; associated with a cost to the military in manpower investments and a loss of potential lifetime compensation for servicemembers who are affected.¹¹ Hence, congressional concerns about sexual violence in the military reflect complementary imperatives: protecting the individual health and welfare of military servicemembers, and ensuring preparedness and effectiveness of military units.

A Framework for Congressional Oversight

Article I, Section 8 of the U.S. Constitution gives Congress the power to raise and support armies, provide and maintain a navy, and make rules for the governance of those forces. Under this authority, Congress determines military criminal law applicable to members of the Armed Forces. Congress has determined that sexual assault is a criminal act under the Uniform Code of Military Justice (UCMJ). As such, Congress has an interest in overseeing the implementation and enforcement of these laws in order to provide for the health, welfare, and good order and discipline of the Armed Forces.

Congressional efforts to address military sexual assault, pursuant to its Constitutional authority, have intensified over the past two decades. This has largely been in response to rising public concern about incident rates and perceptions of a lack of adequate response by military leaders to support the victims and hold perpetrators accountable. Since 2004, Congress has enacted over

⁸ The estimated number of military sexual assaults is based on survey data and estimates vary from year to year. For example, analysis of FY2014 WGRA data estimated that 10,600 men and 9,600 women experienced past-year sexual assault. Andrew R. Morral, et al, *Sexual Assault and Sexual Harassment in the U.S. Military: Volume 2. Estimates for Department of Defense Service Members from the 2014 RAND Military Workplace Study*, RAND Corporation, Santa Monica, CA, p. 90, https://www.rand.org/pubs/research_reports/RR870z2-1.html. In FY2016, DOD's estimated prevalence was 6,300 for men and 8,600 for women. DOD, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, p. 26. In FY2018, DOD estimated 13,000 sexual assault victims were women, and 7,500 were men. DOD, *Annual Report on Sexual Assault in the Military Fiscal Year 2019*, Appendix C.: Metrics and Non-Metrics on Sexual Assault, p. 11.

⁹ References to victims and perpetrators throughout this report should be understood as alleged victims and alleged perpetrators prior to a determination of guilt or innocence. The term *survivor* is preferable to some who have experienced and are recovering from sexual violence. In DOD sexual assault policy documents, the term *survivor* is undefined. DOD defines a *victim* as "A person who asserts direct physical, emotional, or pecuniary harm as a result of the commission of a sexual assault" (DODD 6495.01). For simplicity, this report uses the term *victim* when discussing the response, investigation, and judicial processes related to sex crimes.

¹⁰ Judicial Proceedings Panel, *Report of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel: Retaliation Related to Sexual Assault Offense*, February 2016.

¹¹ Andrew R. Morral et al., *Effects of Sexual Assault and Sexual Harassment on Separation from the U.S. Military*, RAND Corporation, Findings from the 2014 RAND Military Workplace Study, Santa Monica, CA, 2021, https://www.rand.org/pubs/research_reports/RR870z10.html.

100 provisions intended to address some aspect of the problem as part of the annual National Defense Authorization Act (NDAA). In addition, the Department of Defense (DOD) has devoted significant resources to the issue in terms of funds, personnel, and training time.

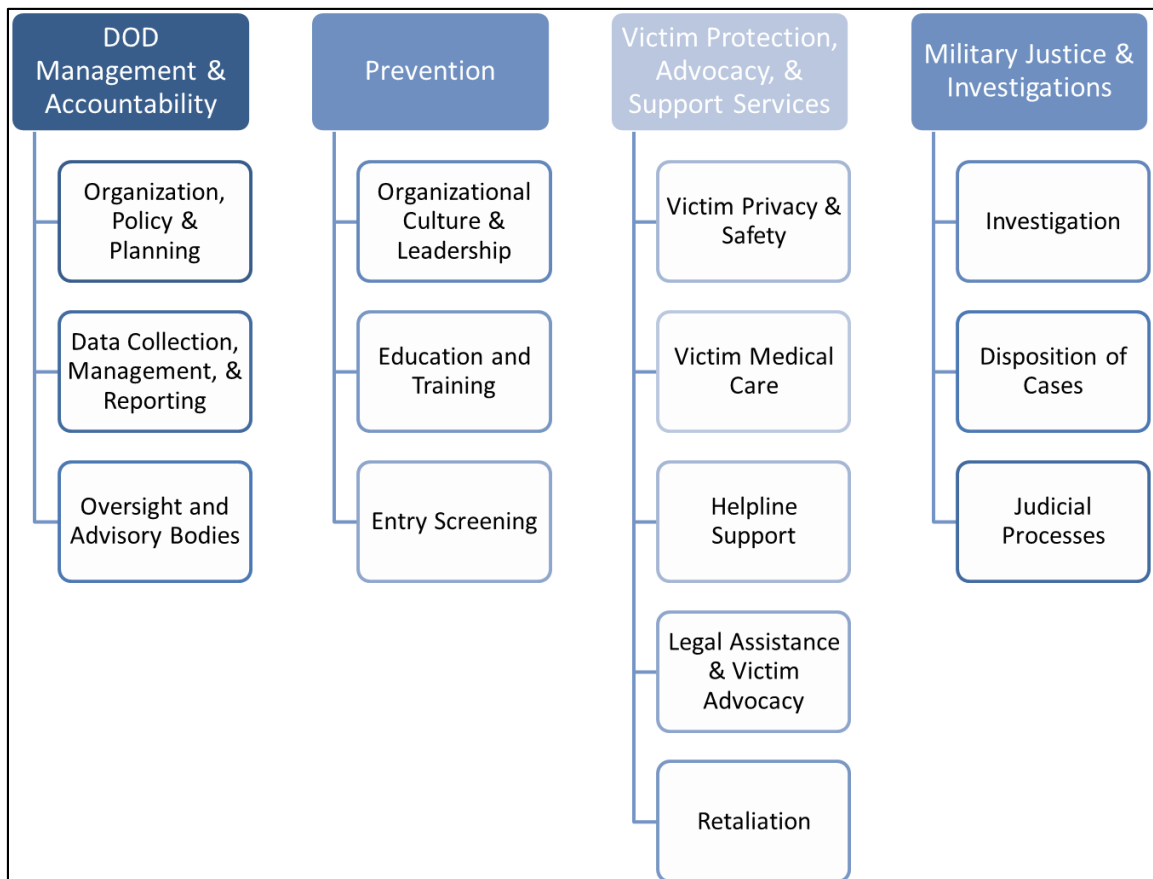
Given the scope and complexity of this issue, it is helpful to apply a categorical framework for analysis and oversight. **Figure 1** illustrates such a framework for areas of congressional interest and action. It may help congressional staff understand the legislative and policy landscape, link proposed policy solutions with potential impact metrics, and identify potential gaps.

Congressional oversight and action on military sexual assault can be organized into four main categories.

1. DOD management and accountability.
2. Prevention.
3. Victim protection and support.
4. Military justice and investigations.

DOD management and accountability pertains to DOD's internal organization, data collection, reporting and evaluation of its sexual assault prevention and response policies, programs and plans. *Prevention* efforts are aimed at "reducing the number of sexual assaults involving members of the Armed Forces, whether members are the victim, alleged assailant, or both."¹² *Victim protection and support* focuses on DOD's response once an alleged assault has occurred, including actions to protect and support servicemember victims. Finally, *military justice and investigations* pertains to actions to ensure fair military investigative and judicial processes for alleged perpetrators and victims, and the oversight bodies Congress has established to evaluate these processes.

¹² P.L. 111-383 §1601(a)(1).

Figure 1. Military Sexual Assault: Areas for Congressional Oversight

Source: CRS.

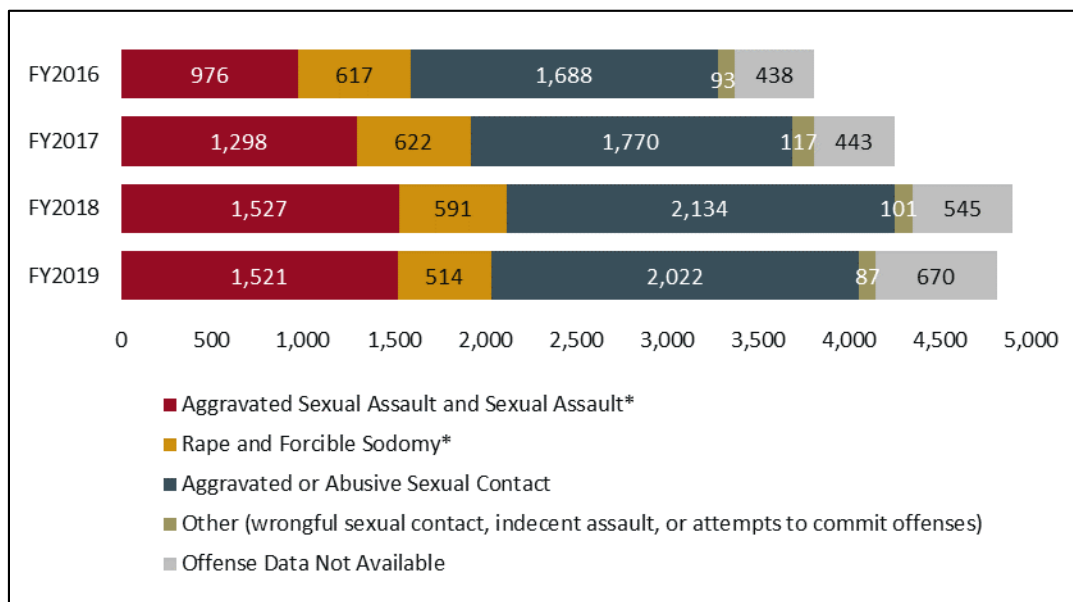
What is Military Sexual Assault?

Major criminal sexual violence offenses in the military are defined in the Uniform Code of Military Justice (UCMJ), Chapter 47, Title 10 United States Code. Since 2006, Congress has made substantial changes to UCMJ articles with regard to nature of sexual offenses and how they are investigated and adjudicated. DOD's definition of sexual assault is derived from the UCMJ and is "intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent."¹³ The definition includes both contact offenses (e.g., groping) and penetrative offenses (e.g., rape).¹⁴ Available data indicate that contact offenses account for approximately half of the sexual assault offenses reported by military servicemember victims (see **Figure 2**).

¹³ DODI 6495.01, Sexual Assault Prevention and Response (SAPR) Program, p. 122, and DODI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures.

¹⁴ Sexual contact is defined under 10 U.S.C. §920 as touching, or causing another person to touch, either directly or through the clothing, the vulva, penis, scrotum, anus, groin, breast, inner thigh, or buttocks of any person, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person. Touching may be accomplished by any part of the body or an object.

Figure 2. Unrestricted Reports of Sexual Assault by Type of Offense
FY2016-FY2019; Servicemember Victims



Source: DOD, Annual Reports on Sexual Assault in the Military, Statistical Appendices for FY2016-FY2019

Notes: These data do not include restricted reports of sexual assault or assaults reported to DOD where the victim is not a servicemember. Data may include assaults that happened prior to victim's service.

Because sexual harassment is associated with community risk factors for sexual assault, congressional efforts to combat sexual harassment in the military are included in this report. However, within DOD the process for handling sexual harassment complaints is separate and distinct from sexual assault allegation processes. Sexual harassment is considered a form of workplace sex discrimination and falls under DOD military equal opportunity policies.¹⁵ DOD's Office for Diversity, Equity, and Inclusion (ODEI) oversees these issues.¹⁶

How does DOD Define Military Sexual Assault and Sexual Harassment?

Sexual Assault is defined by DOD policy as intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent.¹⁷ The term includes a broad category of sexual offenses or attempts to commit these offenses defined under the UCMJ punitive articles. (Articles 120 and 80). Article 120 includes rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, or attempts to commit these offenses.

Other sexual misconduct is also defined in the UCMJ is a separate article (10 U.S.C. §920c; Article 120c) that includes nonconsensual indecent viewing, visual recording, or broadcasting, of the private area of another individual. This Article also includes prostitution and forcible pandering¹⁸, and indecent exposure.

¹⁵ DOD, *Military Equal Opportunity (MEO) Program*, DODI 1350.02, September 4, 2020.

¹⁶ This office was formerly known as the Office of Diversity Management and Equal Opportunity. For more information on military equal opportunity, see CRS Report R44321, *Diversity, Inclusion, and Equal Opportunity in the Armed Services: Background and Issues for Congress*, by Kristy N. Kamarck.

¹⁷ Article 120 of the UCMJ defines consent as "words or overt acts indicating a freely given agreement to the sexual act at issue by a competent person."

¹⁸ Forcible pandering is compelling another individual to engage in an act of prostitution.

Sexual Harassment in the military is not a punitive article under the UCMJ. It is defined in 10 U.S.C. §1561¹⁹ to include

(1) Conduct that—

(A) involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when—

(i) submission of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;

(ii) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(iii) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive environment; and

(B) is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive.

(2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the armed forces or a civilian employee of the Department of Defense.

(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature by any member of the armed forces or civilian employee of the Department of Defense.

While some of DOD's sexual violence policies and programs may apply to DOD civilians and military dependents, this report focuses primarily on sexual assaults involving uniformed servicemembers of the Army, Navy, Marine Corps, Air Force, and Space Force as alleged victims or perpetrators.²⁰ This includes active component members, cadets and midshipmen, and Reserve Component members who are involved in an incident while performing active service or inactive duty training.²¹ Sexual assaults involving military family members, including spouses or former spouses, dependent children, and current or former intimate partners sharing a domicile or parentage, are typically handled by the DOD Family Advocacy Program (FAP).²²

The Department of Veterans Affairs (VA) handles health care needs for former servicemembers with trauma related to military sexual assault, often termed Military Sexual Trauma (MST), therefore veterans' programs are beyond the scope of this report.²³ Also not discussed in this report are policies and programs specific to the U.S. Coast Guard (while operating under the Department of Homeland Security), although much of the statute that applies to DOD servicemembers also applies to uniformed members of the Coast Guard and students at the Coast

¹⁹ Section 548 of the National Defense Authorization Act for FY2017 (P.L. 114-328) modified this definition. In its report accompanying the bill, the Conference Committee noted with concern that, "the existing definition of sexual harassment has caused the military services to consider sexual harassment as a violation of equal opportunity policy instead of an adverse behavior that data have demonstrated is on the spectrum of behavior that can contribute to an increase in the incidence of sexual assault." H.Rept. 114-840, p. 1027.

²⁰ A 2021 GAO report found several gaps in how sexual misconduct is handled for DOD civilian employees, see U.S. Government Accountability Office, *Sexual Harassment and Assault: Guidance Needed to Ensure Consistent Tracking, Response, and Training for DOD Civilians*, GAO-21-113, February 9, 2021, <https://www.gao.gov/products/GAO-21-113>.

²¹ Active service and inactive duty training are defined in Section 101(d)(3) of Title 10 United States Code.

²² DOD collects data on reports of sexual assault prior to entry into the service. In some cases the member may have been under the age of 18 at the time of the incident. For more on DOD response to intimate partner violence, see CRS Report R46097, *Military Families and Intimate Partner Violence: Background and Issues for Congress*, by Kristy N. Kamarck, Alan Ott, and Lisa N. Sacco.

²³ For more information, see VA's Military Sexual Trauma site: <http://www.mentalhealth.va.gov/msthome.asp>.

Guard Academy.²⁴ Finally, this report does not address sexual assault at the Merchant Marine Academy, which falls under the purview of the Department of Transportation.²⁵

DOD Management and Accountability

Subject to the direction of the President, the Secretary of Defense has “authority, direction, and control over the Department of Defense,” giving the Secretary responsibility for developing military personnel policies and programs, including those related to prevention of and response to sex-related misconduct.²⁶ Congress, under its authority to regulate the armed forces, has taken considerable interest over the past two decades years in the effectiveness of DOD’s sexual assault prevention and response initiatives, and in a military commander’s scope of authority over military sexual assault investigations. Congress has raised questions about accountability and organization, which can generally be summarized as

- Is DOD organized to manage and oversee sexual assault prevention and response programming effectively?
- Are appropriate policies and procedures in place and are they adequately communicated to the military departments?
- Do sufficient, rigorous, and objective data-collection processes and metrics exist to measure the extent of the problem and to evaluate DOD progress in addressing the issue?

DOD Organization, Policy, and Planning

On February 5, 2004, following a series of allegations of sexual assault from servicemembers deployed to Iraq and Kuwait, the Secretary of Defense directed the establishment of the Care for Victims of Sexual Assault Task Force,

to review how the Department handles treatment of and care for victims of sexual assault, with particular attention to any special issues that may arise from the circumstances of a combat theater.²⁷

The Task Force released its final report in April 2004. At this time, there was little centralized oversight, and military departments and services were primarily managing sexual assault regulations and programs independently. One of the main findings from this report was that definitions, policies, and processes for sexual assault prevention and reporting across services were inconsistent and incomplete.²⁸ This led the Task Force to recommend a single defense-wide point of accountability.

In response to this recommendation, DOD established the Joint Task Force for Sexual Assault Prevention and Response in October 2004.²⁹ This Joint Task Force took responsibility for

²⁴ For more information, see Coast Guard SAPR Resources: <https://www.dcms.uscg.mil/Our-Organization/Assistant-Commandant-for-Human-Resources-CG-1/Health-Safety-and-Work-Life-CG-11/Office-of-Work-Life-CG-111/Sexual-Assault-Prevention-Response-and-Recovery-Program/SAPR-Resources-Office-of-Work-Life-CG-111/>.

²⁵ The FY2017 NDAA (P.L. 114-328) includes a series of provisions related to sexual assault at the Merchant Marine Academy (Sections 3510-3514).

²⁶ 10 U.S.C. §113.

²⁷ DOD, *Task Force Report on Care for Victims of Sexual Assault*, April 2004, p. v.

²⁸ DOD, *Task Force Report on Care for Victims of Sexual Assault*, April 2004, p. ix.

²⁹ Memorandum from David S. C. Chu, Under Secretary of Defense for Personnel and Readiness to the Commander,

developing a new DOD-wide sexual assault policy as directed by Congress in the FY2005 NDAA.³⁰ DOD delivered the new policy on January 1, 2005.³¹ At that same time, the Joint Task Force transitioned into the permanent structure that is now the Sexual Assault Prevention and Response Office (SAPRO) under the Office of the Secretary of Defense. The FY2005 NDAA also included a provision that established the Defense Task Force on Sexual Assault in the Military Services (SAMS) that renamed, expanded the scope, and extended the timelines of the existing Task Force on Sexual Harassment and Violence at the Military Service Academies.³²

Sexual Assault Prevention and Response Office (SAPRO) Structure, Functions and Roles

The SAMS Task Force's December 2009 report made 30 recommendations for enhancing DOD SAPR programs and policies. In the area of SAPRO functions and structure, the task force noted the need for better coordination among stakeholders and more experienced staffing. As such, the task force recommended

- revising the SAPRO structure to reflect the expertise necessary to lead and oversee its primary missions of prevention, response, training, and accountability;
- appointing a SAPRO director at the general or flag officer level, active duty military personnel from each Service, and an experienced judge advocate; and
- establishing a Victim Advocate position whose responsibilities and authority include direct communication with victims.³³

Following this report, Subtitle A of the FY2011 NDAA formalized the role and functions of the SAPR office and programs.³⁴ Section 1611 of the act provided statutory requirements and roles for the inspector general, SAPRO staff, and the director. By law, the SAPRO Director must be a general or flag officer or a DOD civilian in the Senior Executive Service. Operating under the oversight of the Advisory Working Group of the Deputy Secretary of Defense, the statutory duties of the SAPRO Director are to

- (1) oversee implementation of the comprehensive policy for the Department of Defense sexual assault prevention and response program;
- (2) serve as the single point of authority, accountability, and oversight for the sexual assault prevention and response program; and
- (3) provide oversight to ensure that the military departments comply with the sexual assault prevention and response program.³⁵

This provision required DOD to assign at least one officer in the grade of O-4 or above (Lieutenant Commander or Major) from each of the Armed Forces to the SAPRO office. Of these

Joint Task Force (Sexual Assault Prevention and Response), August 20, 2004.

³⁰ P.L. 108-375 §577.

³¹ DOD, *DOD Announces New Policy on Prevention and Response to Sexual Assault*, News Transcript, January 4, 2005, <http://www.ncdsv.org/images/NEWSTRANSSCRIPTDODNewsBriefingJanuary42005.pdf>. The current DOD policy is reflected in DOD Instruction (DODI) 6495.02.

³² The Task Force on Sexual Harassment and Violence at the Military Service Academies was mandated by Section 526 of the FY2004 NDAA (P.L. 108-136).

³³ DOD, *Report of the Defense Task Force on Sexual Assault in the Military Services*, December 2009.

³⁴ P.L. 111-383.

³⁵ P.L. 111-383.

officers assigned, at least one is required to be in the grade of O-6 (Captain or Colonel) or above.³⁶

Strategic Planning and Evaluation

The SAMS Task Force 2009 report also recommended that DOD create a comprehensive sexual assault prevention strategy to aid in standardization and coordination across the military services.³⁷ Subsequent provisions in the FY2011 NDAA required DOD to develop and implement a plan to evaluate sexual assault prevention and response programs and establish standards to assess progress on strategic goals.³⁸ In May 2013, DOD released its first Sexual Assault Prevention and Response (SAPR) strategic plan. DOD updated the strategic plan in January 2015 and again on December 1, 2016, for 2017-2021.³⁹

DOD Metrics and Non-Metrics

In 2014, in collaboration with subject matter experts, researchers and policy-makers, DOD developed a series of measurable metrics and *non-metrics* to “help illustrate and assess DOD progress in sexual assault prevention and response” (see **Table 1**).⁴⁰ *Metrics* are included in DOD’s data gathering and reporting as discussed in the next section. DOD leaders and Congress may use metrics to support oversight and to gauge whether outcomes are being met. For example, metrics such as “estimated prevalence versus reporting” may help Congress to assess whether reforms to support and protect victims of sexual assault are increasing the percentage of individuals willing to make reports and initiate investigative processes.

Non-metrics differ from metrics in that they are intended to be descriptive in nature only. These items address the military justice process. Any effort by military commanders to direct aspects or outcomes of the judicial process may constitute *unlawful command influence* in the military justice system.⁴¹ For example, if a military commander were observed trying to reduce the “time interval from report of sexual assault to nonjudicial punishment outcome” (non-metric 4), it could be perceived as pressuring investigators to forgo a thorough investigation in the interest of speed.⁴² These non-metrics may still be useful for congressional oversight, as they can indicate potential issues or trends within the military justice system.

³⁶ GFOs are in the paygrades O-7 (Brigadier General or Rear Admiral Lower Half) through O-10 (General or Admiral). The civilian equivalent would be a member of the Senior Executive Service (SES). For more on GFOs see, CRS Report R44389, General and Flag Officers in the U.S. Armed Forces: Background and Considerations for Congress, by Lawrence Kapp.

³⁷ DOD, *Report of the Defense Task Force on Sexual Assault in the Military Services*, December 2009, p. 58.

³⁸ P.L. 111-383.

³⁹ DOD, *Sexual Assault Prevention and Response Strategic Plan, 2017-2021*, December 1, 2016.

⁴⁰ DOD, *Annual Report on Sexual Assault in the Military*, FY2018, Appendix C. Metrics and Non-Metrics on Sexual Assault. The term *non-metric* was coined by DOD.

⁴¹ Unlawful command influence is defined as “the improper use, or perception of use, of a superior authority to interfere with the court-martial process.” The Judge Advocate General’s Legal Center & School, *Commander’s Legal Handbook*, 2019, Misc Pub 27-8., p. 17.

⁴² Nonjudicial punishment (NJP) is an authority provided to military commanders as a mechanism to implement good order and discipline through punitive actions (e.g., extra duty, forfeiture of pay, reduction in pay grade, temporary detention). NJP is permitted by Article 15 or the UCMJ (10 U.S.C §815). Receipt of nonjudicial punishment does not constitute a criminal conviction.

Table I. DOD Metrics and Non-Metrics for Assessing SAPR Programs

Metrics	Non-Metrics
Metric 1: Past-year Estimated Prevalence of Unwanted Sexual Contact	Non-metric 1: Command Action – Case Dispositions
Metric 2: Estimated Prevalence versus Reporting	Non-metric 2: Court-Martial Outcomes
Metric 3: Bystander Intervention Experience in the Past-Year	Non-metric 3: Time Interval from Report of Sexual Assault to Court Outcome
Metric 4: Immediate Supervisor Addresses the Continuum of Harm	Non-metric 4: Time Interval from Report of Sexual Assault to Nonjudicial Punishment Outcome
Metric 5: Full-time Certified Sexual Assault Response Coordinator and SAPR Victim Advocate Personnel Currently Able to Provide Victim Support	Non-metric 5: Time Interval from Report of Investigation to Judge Advocate Recommendation
Metric 6: Victim Experience – Satisfaction with Services Provided	Non-metric 6: Investigation length
Metric 7: Percentage of Subjects with Victims Declining to Participate in the Military Justice Process	
Metric 8: Perceptions of Retaliation ^a	
Metric 9: Servicemember Kept Regularly Informed During the Military Justice Process	
Metric 10: Perceptions of Leadership Support for SAPR	
Metric 11: Reports of Sexual Assault over Time	

Source: DOD FY2019 Annual Report on Sexual Assault in the Military, Appendix C: Metrics and Non-Metrics on Sexual Assault.

Notes:

- a. Metrics on retaliation are required by P.L. 114-328 §545(a).

DOD Plan of Action for Male Victims of Sexual Assault

In 2015, in response to growing concerns about the prevalence and low reporting rates for male victims of sexual assault in the military, Congress required DOD to develop a plan to prevent and respond to cases of sexual assault with male victims. DOD’s plan, released in August 2016, outlined four key objectives

1. Develop a unified communications plan tailored to men across the DOD.
2. Improve servicemember understanding of sexual assault against men.
3. Ensure existing support services meet the needs of males who experience sexual assault.
4. Develop metrics to assess prevention and response efforts pertaining to males who experience sexual assault.

In addition, DOD put together a working group to oversee progress toward these objectives and announced intentions to reevaluate outreach, response, and prevention efforts within three years of completion of the plan’s objectives.⁴³

⁴³ DOD, *Plan to Prevent and Response to Sexual Assault of Military Men*, August 30, 2016.

Data Collection, Management, and Reporting

The availability, transparency, and quality of sexual assault data are fundamental elements of accountability. DOD has provided annual reports to Congress related to sexual assault in the military since calendar year 2004—the statutory requirement for reporting was added in FY2011.⁴⁴ In 2009, the SAMS Task Force report noted a lack of precision and reliability in annually reported data.⁴⁵ In addition, the task force highlighted inconsistencies in terminology use among the services that could potentially affect data integration. As a result of these findings, the task force recommended several improvements to DOD’s annual reporting processes. Congress has amended and expanded the statutory requirements for various elements of this report over the past decade in response to the 2009 Task Force recommendations and other information needs. For example, the FY2013 NDAA required reporting of additional case synopsis details (e.g., alcohol involvement, existence of moral waivers for offenders, etc.) and FY2015 NDAA required an analysis of the disposition of sexual assault offenses.⁴⁶ In the FY2018 NDAA, Congress required annual reports to include information on incidents involving nonconsensual distribution of private sexual images, and intimate partner assaults.⁴⁷

What is required in DOD’s Annual Sexual Assault Reports⁴⁸

By statute, the Secretary of a military department for an Armed Force is required to report annually to Congress on the following information

- The number of reported sexual assaults committed *by* and *against* members of the Armed Force and the number of substantiated cases.
- A synopsis of each such substantiated case, and the action taken in the case,
- The policies, procedures, and processes implemented in response to incidents of sexual assault.
- The number of substantiated sexual assault cases in which the servicemember victim is deployed and the assailant is a foreign national, and the policies, procedures, and processes implemented to monitor the investigative processes and disposition of such cases and any actions taken to eliminate any gaps in investigating and adjudicating such cases.
- The number of permanent change of station or unit transfer applications submitted by a member of the Armed Forces on active duty who is the victim of a sexual assault or related offense, number of applications denied, and, a description of the reasons why the application was denied, if applicable.
- An analysis and assessment of trends in the incidence, disposition, and prosecution of sexual assaults by units, commands, and installations during the year covered by the report, including trends relating to prevalence of incidents, prosecution of incidents, and avoidance of incidents.
- An assessment of the adequacy of sexual assault prevention and response activities carried out by training commands during the year covered by the report.
- An analysis of the specific factors that may have contributed to sexual assault, assessment of the role of such factors in contributing to sexual assault, and recommendations for mechanisms to eliminate or reduce the incidence of such factors or their contributions to sexual assaults.

⁴⁴ P.L. 111-383 §1631. The report deadline is April 30 of every year.

⁴⁵ DOD, *Report of the Defense Task Force on Sexual Assault in the Military Services*, December 2009, p. 78.

⁴⁶ P.L. 112-239 §572, P.L. 113-291 §542.

⁴⁷ P.L. 115-91 §§537 & 538. During consideration of the defense bill, DOD asked Congress to “consider whether the information required on intimate partner assault was already provided in annual Family Advocacy Program (FAP) reports.” Office of Management and Budget, *Statement of Administration Policy, H.R. 2810—National Defense Authorization Act for Fiscal Year 2018*, Washington, DC, July 11, 2017. Congress required that the information is provided in SAPRO reports *in addition* to the annual FAP report.

⁴⁸ 10 U.S.C. §1561 note.

- An analysis of the disposition of the most serious sexual assault offenses committed by members of the Armed Force, including the numbers of reports identifying offenses that were disposed of by each of the following
 - Conviction by court-martial, including a separate statement of the most serious charge preferred and the most serious charge for which convicted.
 - Acquittal of all charges at court-martial.
 - Nonjudicial punishment.
 - Administrative action, including each type of administrative action imposed.
 - Dismissal of all charges, including reason for dismissal and by stage of proceedings in which dismissal occurred.
- Information on each claim of retaliation in connection with a report of sexual assault in the Armed Force made by or against a member of such Armed Force as follows
 - A narrative description of each complaint.
 - The nature of such complaint, (i.e., professional or social retaliation).
 - The gender of the complainant and the individual claimed to have committed the retaliation.
 - The nature of the relationship between the complainant and the individual claimed to have committed the retaliation.
 - The nature of the relationship, if any, between the individual alleged to have committed the sexual assault concerned and the individual claimed to have committed the retaliation.
 - The official or office that received the complaint.
 - The organization that investigated or is investigating the complaint.
 - The current status of the investigation.
 - If the investigation is complete, a description of the results of the investigation, including whether the results of the investigation were provided to the complainant.
 - If the investigation determined that retaliation occurred, whether the retaliation was an offense under the UCMJ.
- Formal and informal reports of sexual harassment involving servicemembers as follows
 - The number of substantiated and unsubstantiated reports.
 - A synopsis of each substantiated report.
 - The action taken in the case of each substantiated report, including the type of disciplinary or administrative sanction imposed, if any.
- Reported incidents involving the nonconsensual distribution by a person subject to the UCMJ, of a private sexual image of another person, including the following
 - The number of substantiated and unsubstantiated reports.
 - A synopsis of each substantiated report.
 - The action taken in the case of each substantiated report, including the type of disciplinary or administrative sanction imposed.

Challenges in Data Collection and Reporting

Overall, changes to data collection and reporting over the past decade have created a high degree of transparency on the scope of sexual assault reporting, prevalence, and adjudication within the military justice system. DOD, Congress and other stakeholders use information from DOD's annual report to analyze trends, evaluate SAPR program effectiveness, and develop evidence-based approaches to improve prevention and response.

However, gathering data and measuring sexual assault prevalence and trends are challenging for a number of reasons. For one, data suggest that sexual assault is consistently the most underreported type of violent crime in the United States. According to the U.S. Department of

Justice (DOJ), Bureau of Justice Statistics' National Criminal Victimization Survey (NCVS), an estimated 24.9% of rapes and other sexual assaults were reported to police in 2018. This compares to robberies, of which 62.6% were reported to authorities, and regular assault incidents, of which 43% were reported.⁴⁹ In 2018, DOD estimated based on survey results that 30% of active duty military women and 17% of men who experienced unwanted sexual contact subsequently reported it.⁵⁰ There are various reasons for underreporting, including personal embarrassment or shame, lack of trust in the criminal justice system, or fear of reprisals or stigmatization. DOD's survey found that some the main reasons for not reporting a sexual assault for women and men were "wanted to forget about it and move on", "did not want more people to know," and "felt ashamed or embarrassed."⁵¹

Some studies have found that the prevalence of sexual victimization is higher in the military than in civilian populations, while others have found that rates of sexual violence against women are not significantly different between these two populations.⁵² Other researchers have cautioned against comparisons of military sexual assault statistics with civilian data, noting that, "rates of sexual assault are likely to be sensitive to the age distribution in the population, the gender balance, education levels, the proportions that are married, duty hours, sleeping accommodations, alcohol availability, and many other sexual assault risk factors that differ between the active-duty population and various candidate comparison groups."⁵³ In addition, data collection, comparisons, and analysis of trends are difficult when different organizations use inconsistent terminology or metrics. For example, until 2013, the Federal Bureau of Investigation (FBI) defined rape as "the carnal knowledge of a female forcibly against her will."⁵⁴ This definition excluded male victims and other sexual offenses that are criminal in most jurisdictions.⁵⁵

In 2016, the Government Accountability Office (GAO) released a report that highlighted the difficulties and lack of standardization across federal agencies in defining and collecting data on sexual assault. The review included four federal agencies—DOD, Department of Education, Department of Health and Human Services, and DOJ. According to the GAO report, these agencies,

[M]anage at least 10 efforts to collect data on sexual violence, which differ in target population, terminology, measurements, and methodology. [...] These data collection efforts use 23 different terms to describe sexual violence.⁵⁶

⁴⁹ Rachel E. Morgan and Barbara A. Oudekerk, *Criminal Victimization, 2018*, U.S. DOJ, Bureau of Justice Statistics, September 2019, p. 8.

⁵⁰ DOD, Office of People Analytics, *Annex 1: 2018 Workplace and Gender Relations Survey of Active Duty Members Overview Report*, OPA Report No. 2019-027, May 2019, p. 35, https://www.sapr.mil/sites/default/files/Annex_1_2018_WGRA_Overview_Report.pdf

⁵¹ *Ibid.*, p. 36.

⁵² See the discussion in Valerie A. Stander and Cynthia J. Thomsen, "Sexual Harassment and Assault in the U.S. Military: A Review of Policy and Research Trends," *Military Medicine*, vol. 181 (January 2016, Pages 20–27), pp. 21–22.

⁵³ Andrew R. Morral, Kristie L. Gore, and Terry L. Schell, et al., *Sexual Assault and Sexual Harassment in the U.S. Military: Top-Line Estimates for Active-Duty Servicemembers from the 2014 RAND Military Workplace Study*, RAND Corporation, Santa Monica, CA, 2014, p. ix.

⁵⁴ Federal Bureau of Investigations, *Frequently Asked Questions about the Change in the UCR Definition of Rape*, December 11, 2014.

⁵⁵ The new FBI definition of rape that went into effect on January 1, 2013 is "Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim."

⁵⁶ GAO, *Sexual Violence Data: Actions Needed to Improve Clarity and Address Differences Across Federal Data Collection Efforts*, GAO-16-546, July 2016.

DOD definitions related to sexual assault have varied over time, as has the methodology for DOD's data collection. To address the issue of consistency in definitions, Section 577 of the FY2005 NDAA (P.L. 108-375) required DOD to develop a uniform definition of sexual assault that applies to all the Armed Forces. Changes to the UCMJ in 2012 also affected categorization of incidents, creating a challenge for comparisons of incident indicators over time.

DOD uses various tools to collect, record, and manage sexual assault data. These tools include surveys, focus groups, and the Defense Sexual Assault Incident Database (DSAID). While some surveys are used to *estimate* prevalence of reported and unreported incidence of sexual violence and harassment, DSAID is used for recording *documented* reported incidents. As discussed above, sexual violence is often under-reported, so there are likely to be disparities between prevalence estimates and DSAID incident data.

Defense Sexual Assault Incident Database (DSAID)

Congressional actions in 2004 and subsequent legislation required DOD to enhance the collection and management of reported sexual assault incident data. In particular, Section 583 of the FY2007 NDAA required the Secretary of Defense to

[I]mplement a centralized, case-level database for the collection and maintenance of information regarding sexual assaults involving a member of the Armed Forces; including, nature of the assault, the victim, the offender, and the outcome of legal proceedings in connection with the assault.⁵⁷

The provision required DOD to use this database to create the sexual assault-related congressional reports mandated in previous and subsequent NDAA's. The resulting database, known as the Defense Sexual Assault Incident Database (DSAID), has been in place since 2012 and was fully implemented in October 2013.⁵⁸ It is the primary mechanism for tracking reported incidents, the associated circumstances, and the disposition of cases.⁵⁹ DSAID has three primary functions: (1) to serve as a case management system for the maintenance of data on sexual assault cases and to track support for victims in each case; (2) to facilitate program administration and management for SAPR programs; and (3) to develop congressional reports, respond to ad hoc queries, and assist in trend analysis.⁶⁰

The *Defense Assault Incident Database Form* is used to collect sexual assault incident data and is typically completed by a SAPR responder.⁶¹ The victim may choose to submit a *restricted report*, in which case no personally identifiable information for the victim or subject is captured in the report. If a victim selects to submit an *unrestricted report*, the form will include personally

⁵⁷ P.L. 109-364.

⁵⁸ GAO, *Military Personnel: DOD Has Processes for Operating and Managing its Sexual Assault Incident Database*, GAO-17-99, January 10, 2017, <http://www.gao.gov/products/GAO-17-99>.

⁵⁹ The DSAID includes sexual contact crimes defined in the UCMJ by adults against adults but does not include data on sexual assaults occurring between spouses or intimate partners. This database does not include sexual harassment complaints.

⁶⁰ Judicial Proceedings Panel, *Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses*, Arlington, VA, April 2016, p. 9.

⁶¹ DD Form 2965, January 2016. Information collected for input into DSAID includes victim service and unit affiliation, demographic information, duty status, command information, incident details (e.g., time, location, characterization), actions regarding victim safety (e.g., expedited transfer or protective order), referral support provided (e.g., medical, legal, spiritual), whether a forensic exam was offered/completed, investigation status, subject (alleged perpetrator) information, and subject disposition.

identifiable information, but other document privacy controls still apply.⁶² In 2016, the GAO conducted a separate review of DSAID to examine the extent to which the database has met the mandated requirements.⁶³ According to a 2017 GAO report, DOD planned to spend \$8.5 million over fiscal years 2017 and 2018 to improve DSAID, for a total expenditure of approximately \$31.5 million on implementing and maintaining the database since its initial development.⁶⁴

DOD Surveys and Focus Groups

DOD uses a variety of surveys and focus groups to collect data on the prevalence of, and attitudes toward, sexual violence and to provide feedback from servicemembers on the effectiveness of DOD prevention and response programs. DOD also administers surveys to victims of sexual assault to better understand their experiences and satisfaction with the military judicial process and support programs. These data are also used for program assessment metrics and non-metrics. For more details on these surveys see **Table 2** and **Appendix C**.

Table 2. Recurring SAPR Surveys and Focus Groups

Surveys and Focus Groups	Target Population	Frequency
Workplace and Gender Relations Survey—Reserve Component (WGRR)	Reserve component servicemembers	Biennial (odd years)
Workplace and Gender Relations Survey—Active Component (WGRA)	Active component servicemembers	Biennial (even years)
Military Service Gender Relations Focus Groups ^a	Active component	Biennial (odd years)
Military Service Academy Gender Relations Survey (SAGR),	Service Academy personnel	Biennial (odd academic program years)
Military Service Academy Gender Relations Focus Groups (SAGR)	Service Academy personnel	Biennial (even academic program years)
Survivor Experience Survey (SES)	Sexual assault survivors who have made an unrestricted or restricted report of sexual assault at least 30 days prior	Rolling basis
Military Investigation and Justice Experience Survey (MIJES) ^b	Military servicemembers who made a formal report of sexual assault and have a closed case	Annual, first survey complete in 2015, last survey administered in 2017
QuickCompass of Sexual Assault Prevention and Response-Related Responders (QSAPR)	Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VAs)	Surveys published for 2009, 2012, and 2015
Defense Equal Opportunity Management Institute's Organizational Climate Survey (DEOCS)	All servicemembers	Rolling basis

⁶² Ibid. For a more comprehensive discussion of restricted v. unrestricted reporting, please see “Restricted vs. Unrestricted Reporting.”

⁶³ GAO, *Sexual Violence Data: Actions Needed to Improve Clarity and Address Differences Across Federal Data Collection Efforts*, GAO-16-546, July 2016.

⁶⁴ DOD has noted that these expenditures will not be funded until an analysis of alternatives is conducted in line with defense acquisition policies. GAO, *Military Personnel: DOD Has Processes for Operating and Managing its Sexual Assault Incident Database*, GAO-17-99, January 10, 2017.

Source: DOD Sexual Assault Prevention and Response Office, Annual Reports.

Notes: Participation in all surveys and focus groups is voluntary for the target population. Some metrics are captured by more than one survey.

- a. This study was referred to as Focus Group on Sexual Assault Prevention and Response Among Active Duty Members (FGSAPR). The first administration of the focus group in 2014, before the decision to alternate annually between survey and focus group data collection. It is now conducted biennially on odd years.
- b. MIJES results were not representative of the entire population of military victims that participated in the military justice system. To produce more generalizable estimates, DOD added questions to the 2018 WGRA.

Oversight and Advisory Bodies

Between 2005 and 2020, Congress and DOD have established several committees, task forces, and panels to provide review and oversight of SAPR policy implementation (see **Table B-1**). These groups have created a significant body of research and analysis, providing evidence-based policy recommendations to DOD and Congress.

In operation as of 2020 was the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD). This 20-member committee was mandated by Section 546 of the FY2015 NDAA and established on February 18, 2016 with a five-year term.⁶⁵ FY2020 NDAA extended the authority for the committee's work for an additional five years.⁶⁶

The duties of this committee, are to (1) "advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces", and (2) "review, on an ongoing basis, cases involving allegations of sexual misconduct." The committee is also required by law to submit annual reports to the Secretary of Defense and the Armed Services Committees of the House and Senate not later than March 30th of every year. In the FY2019 NDAA, Congress gave the committee additional authority to compel DOD to provide information relevant to the committee's scope as requested.⁶⁷

As part of the FY2020 NDAA, Congress requested an additional DAC-IPAD review of penetrative sexual assault cases by the race and ethnicity of the accused.⁶⁸ This review was motivated by congressional concerns about racial and ethnic disparities in the military justice system. A 2019 GAO report found that Black and Hispanic servicemembers were more likely than white servicemembers to be tried in general and special courts-martial across all military services.⁶⁹

While the DAC-IPAD primarily provides oversight and advice on matters related to the military justice system, in the FY2020 NDAA, Congress mandated the creation of another 20-member advisory committee with a new emphasis on *prevention* of sexual assault.⁷⁰ The Defense Advisory Committee for the Prevention of Sexual Misconduct (DAC-PSM) was chartered on November

⁶⁵ DOD, "Charter Establishment of Department of Defense Federal Advisory Committees," February 23, 2018. The predecessor to the DAC-IPAD was the Judicial Proceedings Panel (JPP).

⁶⁶ P.L. 116-92 §535.

⁶⁷ P.L. 115-232 §533.

⁶⁸ P.L. 116-92 §5401.

⁶⁹ GAO, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities*, GAO-19-344, May 30, 2019, <https://www.gao.gov/products/GAO-19-344>.

⁷⁰ P.L. 116-92 §550B.

30, 2020 for a five-year term.⁷¹ The role of this committee is to advise the Secretary of Defense on, “(1) the prevention of sexual assault (including rape, forcible sodomy, other sexual assault, and other sexual misconduct [including behaviors on the sexual assault continuum of harm] involving members of the Armed Forces, and 2) the policies, programs, and practices of each military department, each Armed Force, and each military service academy for the prevention of sexual assault.” Members of the committee are to be appointed by the Secretary of Defense and must include individuals with expertise in culture change in large organizations, prevention of sexual assault and behaviors on the sexual assault continuum of harm, adverse behaviors (including the prevention of suicide and substance abuse), and implementation science.⁷² The law requires the DAC-PSM to coordinate and consult with the DAC-IPAD as needed.

Prevention

This section of the report mainly discusses primary prevention of sexual assault, characterized by the CDC as,

population-based and/or environmental and system-level strategies, policies, and actions that prevent sexual violence from initially occurring. Such prevention efforts work to modify and/or entirely eliminate the events, conditions, situations, or exposure to influences (risk factors) that result in the initiation of sexual violence and associated injuries, disabilities, and deaths.⁷³

The CDC has identified four types of risk factors that are correlated with higher incidence of sexual assault: (1) individual risk factors (e.g., general aggressiveness, empathetic defects, alcohol/drug use); (2) relationship risk factors (e.g., association with sexually aggressive, *hypermasculine*,⁷⁴ and delinquent peers); (3) community risk factors (e.g., general tolerance of sexual violence, lack of institutional support); and (4) societal risk factors (e.g., weak gender-equity laws/policies).⁷⁵ **Table D-1** in the Appendix displays a full list of these risk factors.

Military leaders have repeatedly stated a “zero tolerance” philosophy toward military sexual assault. Nevertheless, DOD’s prevention strategy acknowledges that the potential for assault exists, stating that “individuals within the DOD come from a wide variety of backgrounds and their past experiences shape their attitudes and behavior in response to life events. Individuals may express themselves in different ways, and for some, violence may be a choice.”⁷⁶

⁷¹ FACA Database, Committee Detail for DOD 84609 - Defense Advisory Committee for the Prevention of Sexual Misconduct, at <https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t000000EqwoDAAR>.

⁷² DOD defines the continuum of harm as “inappropriate actions, such as sexist jokes, hazing, cyber bullying, that are used before or after the assault and or support an environment which tolerates these actions.”

⁷³ Sexual Violence Prevention: Beginning the Dialogue. Atlanta, GA: Centers for Disease Control and Prevention; 2004. The CDC also defines secondary (immediate response after sexual assault perpetration) and tertiary prevention (long-term response). Secondary and tertiary responses are discussed in the Victim Protection section of this report.

⁷⁴ Scholars suggest that hypermasculinity is generally associated with (1) the view of violence as manly, (2) the perception of danger as exciting and sensational, and (3) callous behavior toward women and a regard toward emotional displays as feminine. Donald L. Mosher and Mark Sirkin, “Measuring a Macho Personality Constellation,” *Journal of Research in Personality*, vol. 18, no. 2 (June 1984), pp. 150-163. Some have argued that the military actively and passively attracts individuals with these viewpoints and fosters a hypermasculine culture. Melissa Brown, *Enlisting Masculinity: The Construction of Gender in U.S. Military Recruiting and Advertising During the All-Volunteer Force* (New York: Oxford University Press, 2012).

⁷⁵ DOD, *2014-2016 Sexual Assault Prevention Strategy*, April 30, 2014, p. 19.

⁷⁶ DOD, *2014-2016 Sexual Assault Prevention Strategy*, April 30, 2014, p. 8.

DOD's prevention actions in this regard have been focused on reducing risk factors for sexual assault. Questions of congressional concern include

- Are military leaders adequately trained for, committed to, and held accountable for developing an organizational culture that reduces risk factors for sexual assault?
- Are sexual assault prevention training programs in the military timely, effective, and appropriate for the target audiences?
- Does DOD have the appropriate authorities and are they taking adequate actions to screen out or deter potential perpetrators?

In the FY2020 NDAA, Congress sought to “reinvigorate the prevention of sexual assault involving members of the Armed Forces” by requiring DOD to develop or enhance policy elements related to prevention.⁷⁷ The prevention elements specified in the law are education and training, promotion of healthy relationships, empowering Non-Commissioned Officers (NCOs), social courage and bystander intervention, addressing behaviors in the continuum of harm, and addressing alcohol abuse and binge drinking.

Organizational Culture and Leadership

The military's organizational culture⁷⁸ varies both across the services (Army, Navy, Marine Corps, Air Force, and Space Force) and within the services by occupational specialty (e.g., infantry, aviation, logistics). At the unit level, the organizational culture depends to a large degree on the *command climate* established by unit leadership. As such, while policies to improve organizational culture are often initiated at a DOD-wide level, implementation of policies is typically the responsibility of commanders at the unit level. These commanders may face unique community risk factors for sexual violence. For example, as an Army representative stated:

Primary prevention is looking at what are the risks. And that differs based on the installation, unit makeup, the gender makeup, what types of units they are, and other factors. We need to understand...the things that contribute to an environment for sexual harassment and sexual assault...and help those sexual assault response coordinators and victim advocates work with their commanders to understand what is the environment there, and then what they can do specifically to address those issues, to reduce incidence of sexual harassment and sexual assault.⁷⁹

Identifying and Mitigating Community Risk Factors for Assault

Research suggests that workplace culture can be a factor when it comes to sexual assault prevention.⁸⁰ Findings from DOD surveys indicate that a majority of servicemembers who have experienced past-year sexual assault were at a military location when the assault occurred. FY2018 survey data indicate that among active duty servicemembers who reported experiencing

⁷⁷ P.L. 116-92 §540D.

⁷⁸ Organizational culture is commonly defined as, “a pattern of shared basic assumptions that the group learned as it solved its problems of external adaptation and internal integration that has worked well enough to be considered valid and, therefore, to be taught to new members as the correct way to perceive, think, and feel in relation to those problems.” Edgar H. Schein, *Organizational Culture and Leadership*, 4th ed. (San Francisco: Jossey-Bass, 2010).

⁷⁹ Meghann Myers, “Fanning: It's time to do a better job of preventing sexual assault,” *Army Times*, October 1, 2016.

⁸⁰ See for example, Richard Harris, *Sexism, Sexual Harassment and Sexual Assault: Toward Conceptual Clarity*, Defense Equal Opportunity Management Institute, Report No. 07-01, 2007, and Anne G. Sadler, *Factors Associated with Women's Risk of Rape in the Military Environment*, *American Journal of Industrial Medicine*, July 2003.

a sexual assault in the prior year, 62% of women and 57% of men experienced the assault on a military installation or ship, while 26% of women and 43% of men indicated that the assault occurred “at work during duty hours.”⁸¹ Similarly, in FY2019, 66% of reserve component women who experienced sexual assault reported that the assault occurred while they were in a military status (e.g., performing full-time National Guard or Reserve duty or a drill period) and 65% reported that the worst situation of sexual assault occurred at a military location.⁸² While not all military assaults happen in the workplace, attitudes that are fostered in the workplace can influence servicemembers’ off-duty actions.

The connection between actions and circumstances leading to sexual violence is sometimes called the *continuum of harm*. DOD defines the continuum of harm as “inappropriate actions, such as sexist jokes, hazing, cyber bullying, that are used before or after the assault and support an environment which tolerates these actions.”⁸³ By using existing data collected through the WGR survey to identify the circumstances and leading indicators of sexual assaults, military commanders can take action to reduce community risk factors along this continuum and create a culture of early intervention. The following sections discuss these risk factors and behaviors in more detail.

GAO Study on DOD Efforts to Address the Continuum of Unwanted Sexual Behaviors

The Senate report to accompany the FY2017 NDAA asked the Comptroller General to review efforts by DOD to address the “continuum of offenses involving unwanted sexual behavior,” noting that behaviors described as hazing, sexual harassment, and domestic violence commonly overlap, but reporting and oversight are sometimes fragmented.⁸⁴ GAO reported that DOD and military service policies “generally include CDC’s principles regarding prevention strategies, but none address risk and protective factors, which identify conditions or behaviors that might heighten or lower the risk of sexual harassment victimization or perpetration, respectively.”⁸⁵ GAO also found evidence of collaborative efforts to address the continuum of harm among DOD offices and programs responsible for domestic violence, sexual assault, and discrimination and harassment (ODEI).⁸⁶

GAO recommended four ways that DOD could improve sexual assault policies and strategies. In reaction to GAO’s recommendations, DOD updated its harassment prevention policies (DODI 1020.03) in February 2018 to identify procedures for submitting anonymous complaints and for standardized data-reporting by the military departments.⁸⁷

⁸¹ Amanda Grifka, et al., *2017 Workplace and Gender Relations Survey of Reserve Component Members: DOD Overview Report*, Department of Defense, Office of People Analytics, OPA Report No. 2018-026, April 2018, p. 25.

⁸² Rachel A. Breslin, Ashlea Klahr, and Kimberly Hylton, et al., *2019 Workplace and Gender Relations Survey of Reserve Component Members*, DOD Office of People Analytics, Overview Report, May 2020, pp. vii and 24. Data on reserve component men was non-reportable due to small numbers.

⁸³ DOD, *2014-2016 Sexual Assault Prevention Strategy*, April 30, 2014.

⁸⁴ U.S. Congress, Senate Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2017*, Report to Accompany S. 2943, 114th Cong., 2nd sess., May 18, 2016, p. 155.

⁸⁵ GAO, *Sexual Violence; Actions Needed to Improve DOD’s Efforts to Address Continuum of Unwanted Behaviors*, GAO-18-33, December 2017, <https://www.gao.gov/assets/690/689086.pdf>. See page 15 for a breakdown by service of policy compliance with CDC principles.

⁸⁶ *Ibid.*, p. 32.

⁸⁷ DOD, *Harassment Prevention and Response in the Armed Forces*, DODI 1020.03, February 8, 2018, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/102003.pdf>.

Sexual Harassment, Sexism, and Gender Discrimination

Studies have found strong positive correlations between the incidence of sexual assault within units and an environment permissive to sexism and sexual harassment. For example, a 2003 military study found that women reporting sexually hostile work environments had approximately six-fold greater odds of rape.⁸⁸ The same study found that officers allowing or initiating sexually demeaning comments or gestures toward female soldiers was associated with a three-to-four-fold increase in likelihood of rape.

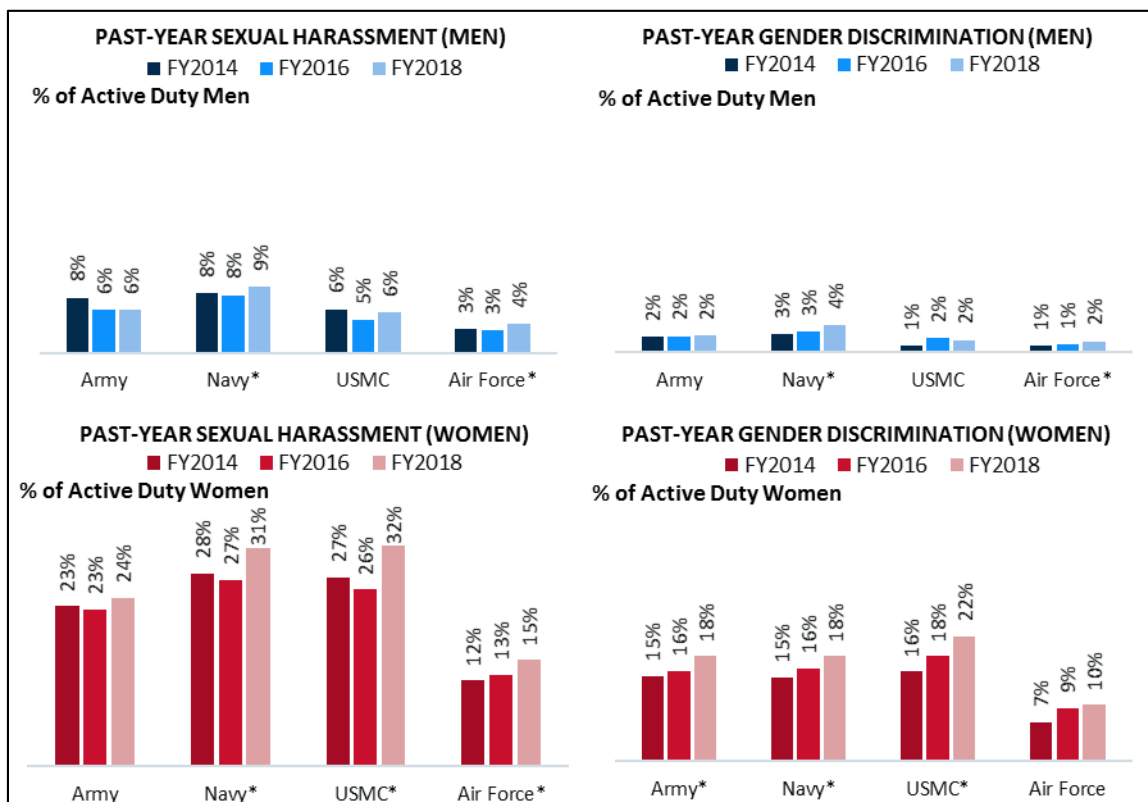
The prevalence of sexual harassment in the military is estimated through survey responses and data on formal complaints. DOD measures the prevalence of sexism in the workplace using two indicators in the WGR survey: 1) past-year experience with sexual harassment including a sexually hostile work environment or sexual quid pro quo in the military; and 2) gender discrimination including behaviors or comments directed at a person, because of their gender.⁸⁹ Estimated prevalence of sexism in the workplace is higher for military women than men. Among the services, results from the WGRA surveys between FY2014 and FY2018 show that the Navy and Marine Corps consistently have the highest estimated rates of sexual harassment for women, while the Air Force has the lowest (see **Figure 3**). Similarly, estimated prevalence of gender discrimination toward women is estimated to be higher for the Army, Navy, and Marine Corps relative to the Air Force.

⁸⁸ Richard Harris, *Sexism, Sexual Harassment and Sexual Assault: Toward Conceptual Clarity*, Defense Equal Opportunity Management Institute, Report No. 07-01, 2007. Anne G. Sadler, *Factors Associated with Women's Risk of Rape in the Military Environment*, American Journal of Industrial Medicine, July 2003, p. 268.

⁸⁹ DOD defines gender discrimination as unlawful discrimination in which there is discrimination based on sex that is not otherwise authorized by law or regulation. The WGRA survey questions related to gender discrimination seeks to ascertain whether a servicemember experienced comments and behaviors directed to the individual related to his/her gender and if these experiences harmed or limited his/her career.

Figure 3. Estimated Sexual Harassment and Gender Discrimination for Active Component

Past-year experience for men and women by service



Source: DOD, 2018 Workplace and Gender Relations Survey of Active Duty Members; Overview Report, OPA Report No. 2019-027, May 2019.

Notes: An asterisk (*) indicates that there was a statistically significant increase from the FY2016 to the FY2018 survey.

Recent survey data for the reserve component generally shows lower prevalence of sexual harassment and gender discrimination than the active component; this could be a reflection of the part-time nature of the work (see **Table 3**).⁹⁰

Table 3. Estimated Prevalence of Sexual Harassment and Gender Discrimination for Reserve Component

Past-year experience for men and women by service in FY2019

	Sexual Harassment		Gender Discrimination	
	Men	Women	Men	Women
Army Reserve	4.5%	18.0%	1.4%	9.7%
Navy Reserve	3.6%	15.7%	1.3%	9.0%
Marine Corps Reserve	2.4%	NR	0.7%	NR

⁹⁰ Rachel A. Breslin, Ashlea Klahr, and Kimberly Hylton, et al., 2019 Workplace and Gender Relations Survey of Reserve Component Members, DOD Office of People Analytics, Overview Report, May 2020.

	Sexual Harassment		Gender Discrimination	
	Men	Women	Men	Women
Air Force Reserve	3.2%	10.3%	1.3%	6.6%
National Guard	4.9%	18.8%	1.4%	11.0%

Source: DOD, 2019 Workplace and Gender Relations Survey of Reserve Component Members.

Notes: Marine Corps data for women is not reportable (NR) due to small sample sizes.

Like sexual assault, sexual harassment appears to be underreported based on comparisons between estimated prevalence rates and documented complaints. According to SAPRO data, in FY2018, there were a total of 932 formal complaints of sexual harassment.⁹¹ However, estimated prevalence rates would indicate that over 100,000 active duty servicemembers (24% of women and 6% of men) experienced sexual harassment in the past year.⁹² Previous reports suggest that a majority of individuals choose not to submit formal complaints with the belief that the incident “was not sufficiently serious to report or that the incident would not be taken seriously if reported.”⁹³

Similar patterns of under-reporting also exist in the civilian sector. The U.S. Equal Employment Opportunity Commission (EEOC) receives approximately 12,000 charges alleging sex-based harassment annually, while various surveys and studies suggest that anywhere from 25% to 85% of women report having *ever* experienced sexual harassment in the workplace.⁹⁴

How Can Servicemembers Report Harassment or Discrimination?

Servicemembers who experience harassment or discrimination may file a report or complaint with their chain of command, the Inspector General, the Military Equal Opportunity (MEO) office, or with someone in their unit assigned as a MEO representative.

A 2011 GAO report found that DOD had limited visibility into the extent of sexual harassment in the ranks due to a lack of uniformity in data collection and reporting.⁹⁵ Since that time, Congress and DOD have taken some actions to improve monitoring of sexual harassment. Section 579 of FY2013 NDAA required the Secretary of Defense to develop a comprehensive policy to prevent and respond to sexual harassment in the Armed Forces and to develop a plan to collect information and data regarding substantiated incidents of sexual harassment involving members of the Armed Forces.⁹⁶

Military commanders have a role to play in ensuring a work environment free from gender discrimination and sexual harassment. Survey data from FY2018 indicate that about half of those

⁹¹ DOD, *Fiscal Year 2018 Annual Report on Sexual Assault in the Military*, Appendix F: Sexual Harassment Assessment, p. ix.

⁹² DOD, *2018 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2019-027, May 2019, p. 32.

⁹³ GAO, *Preventing Sexual Harassment: DOD Needs Greater Leadership Commitment and an Oversight Framework*, GAO-11-809, September 21, 2011.

⁹⁴ Chai R. Feldblum and Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace*, U.S. Equal Employment Opportunity Commission, June 2016.

⁹⁵ GAO, *Preventing Sexual Harassment: DOD Needs Greater Leadership Commitment and an Oversight Framework*, GAO-11-809, September 21, 2011.

⁹⁶ P.L. 112-239. On September 19, 2014, the Under Secretary of Defense for Personnel and Readiness Policy released a memorandum, “Prevention and Response to Sexual Harassment,” available at https://www.sexualassault.army.mil/policy_directives.aspx.

who reported unwanted behavior were “encouraged to drop the issue” and in more than one-third of the cases “the person they told took no action.”⁹⁷ However, there are indications that some military leaders are taking action to respond to sexual harassment in the workplace; in FY2018, 47% of women and 40% of men who experienced sexual harassment reported that someone talked to the offender to ask them to change their behavior.”⁹⁸

DOD oversight of sexual harassment continues to be an issue. As early as 2011, GAO highlighted the lack of a rigorous oversight framework for addressing incidents.⁹⁹ In February 2018, DOD released an updated policy for sexual harassment prevention, providing new procedures. Congress has also pushed for greater oversight of sexual harassment. The FY2019 NDAA included a provision (Section 543) that required DOD to develop an oversight plan for the implementation of sexual harassment prevention and response and to report to the Armed Services Committees on the plan no later than July 1, 2019.¹⁰⁰ As of May 2020, GAO reported that DOD had yet to produce required documentation to show that it had established an oversight framework.¹⁰¹

Members of Congress have also debated whether sexual harassment should be punishable under the military justice process. In 2019, the Sexual Assault Accountability and Investigation Task Force (SAAITF), established by DOD, recommended that Congress add sexual harassment as a punitive article under the UCMJ, “to make a strong military-wide statement about the seriousness of these behaviors and the military’s zero-tolerance for them.”¹⁰² In the FY2020 NDAA, Congress required DOD to submit a report to the Armed Services Committees containing recommendations as to the appropriateness of establishing a new punitive article for sexual harassment.¹⁰³ The FY2021 NDAA did not include a provision establishing a new punitive article.

Stalking

Stalking or “grooming” behaviors are often associated with sexual harassment and sexual violence. The DOJ defines stalking as,

engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.¹⁰⁴

Federal and state laws prohibit stalking, and those who violate stalking laws may be subject to certain criminal penalties.¹⁰⁵ States’ civil and criminal stalking laws and penalties vary. Stalking activities often include repeated nonconsensual communication (e.g., texts, phone calls), frequently following an individual, or making threats against someone or that person’s family or friends. More recently, social media and technology tools have been used for stalking and

⁹⁷ DOD, Office of People Analytics, Annex 1: 2018 Workplace and Gender Relations Survey of Active Duty Members Overview Report, OPA Report No. 2019-027, May 2019, p. 50.

⁹⁸ Ibid.

⁹⁹ U.S. Government Accountability Office, *Preventing Sexual Harassment: DOD Needs Greater Leadership Commitment and an Oversight Framework*, GAO-11-809, September 21, 2011, <https://www.gao.gov/products/GAO-11-809>.

¹⁰⁰ P.L. 115-232.

¹⁰¹ GAO, *Priority Open Recommendations: Department of Defense*, GAO-20-446PR, May 4, 2020, p. 41.

¹⁰² DOD, *Sexual Assault Accountability and Investigation Task Force*, April 30, 2019.

¹⁰³ P.L. 116-92 §540E.

¹⁰⁴ United States Department of Justice, Office of Violence Against Women, at <https://www.justice.gov/ovw/stalking>.

¹⁰⁵ 18 U.S.C. §§2261 & 2261A.

grooming activities. Some examples of these are video-voyeurism—installing video cameras to give the stalker access to someone’s private activities—posting threatening or private information about someone in public forums, or using spyware or GPS tracking systems to monitor someone without consent.¹⁰⁶

Military servicemembers are also subject to stalking laws within the military justice system. In the FY2006 NDAA (P.L. 109-163), Congress added stalking to the punitive articles in the UCMJ to “enhance the ability of the Department of Defense to prosecute offenses relating to sexual assault.”¹⁰⁷ A servicemember guilty of stalking is one

- (1) who wrongfully engages in a course of conduct directed at a specific person that would cause a reasonable person to fear death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family;
- (2) who has knowledge, or should have knowledge, that the specific person will be placed in reasonable fear of death or bodily harm, including sexual assault, to himself or herself or a member of his or her immediate family; and
- (3) whose acts induce reasonable fear in the specific person of death or bodily harm, including sexual assault, to himself or herself or to a member of his or her immediate family.¹⁰⁸

Studies have found that stalking behaviors can be a precursor to sexual violence.¹⁰⁹ Similar associations have been found in the military context. According to DOD survey results an estimated 19% of active component women and 23% of reserve component women who experienced a sexual assault also experienced stalking before the assault.¹¹⁰ Both military men and women also experienced stalking behavior from the perpetrator *after* reporting an assault. Those on active duty who reported an assault experienced a higher rate of post-assault stalking than those who did not report.

Hazing

Survey data also point to an association between hazing and sexual assault. For example, based on the FY2018 WGRA survey, 38% of men and 21% of women described a sexual assault situation they experienced as hazing or bullying.¹¹¹ DOD considers hazing as a form of harassment and it is prohibited by law.¹¹² DOD policy defines hazing as

¹⁰⁶ Ibid.

¹⁰⁷ H.Rept. 109-1815, p. 314.

¹⁰⁸ 10 U.S.C. §930.

¹⁰⁹ Centers for Disease Control and Prevention; National Center for Injury Prevention and Control, *National Intimate Partner and Sexual Violence Survey: 2015 Data Brief – Updated Release*, Atlanta, GA, November 2018, <https://www.cdc.gov/violenceprevention/pdf/2015data-brief508.pdf>; and Fisher, Bonnie S. et al., *The Sexual Victimization of College Women*, National Institute of Justice; Bureau of Justice Statistics, December 2000, <https://www.ce-credit.com/articles/100186/SexualVictimizationCollege100186.pdf>. Frances P. Churcher and Marc Nesca, "Risk Factors for Violence in Stalking Perpetration: A Meta-Analysis," *FWU Journal of Social Sciences*, vol. 7, no. 2 (Winter 2013).

¹¹⁰ DOD, *2018 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2019-027, May 2019, p. 34. Rachel A. Breslin, Ashlea Klahr, and Kimberly Hylton, et al., *2019 Workplace and Gender Relations Survey of Reserve Component Members*, DOD Office of People Analytics, Overview Report, May 2020, p. 25.

¹¹¹ DOD, *2018 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2019-027, May 2019, p. vii.

¹¹² DOD hazing policies apply to all servicemembers. There are specific provisions in law against hazing for cadets and midshipmen at service academies (10 U.S.C. §§4352, 6964, and 9352). There is no specific article under the Uniform

A form of harassment that includes conduct through which Service members or DOD employees without a proper military or other governmental purpose but with a nexus to military Service, physically or psychologically injures or creates a risk of physical or psychological injury to Service members for the purpose of: initiation into, admission into, affiliation with, change in status or position within, or a condition for continued membership in any military or DOD civilian organization. Hazing can be conducted through the use of electronic devices or communications, and by other means, including social media, as well as in person.¹¹³

Hazing has been associated with various informal and unsanctioned military initiation rituals or ceremonies, for example the awarding of “blood wings” for completion of the Army’s Air Assault School or elements of Navy’s traditional “crossing the line”¹¹⁴ ceremony. While some argue that these are relatively harmless and fun traditions that help to build unit camaraderie, others argue that the rituals can quickly devolve into dangerous situations that may cause physical and psychological injuries for individuals involved.¹¹⁵

A 2015 GAO report on male servicemember sexual assault found that in a group of 122 surveyed, 20% had heard of initiation-type activities that could be construed as sexual assault and six of the respondents were able to provide first-hand accounts. Moreover, the GAO noted that two of the victim advocates they had interviewed at different installations believed that some commanders chose not to address hazing-type incidents that could have been sexual assault.¹¹⁶

Congress has taken previous measures to address hazing in the military. A provision in the FY2013 NDAA required service secretaries to report to the Armed Services Committees on hazing in their respective services to include any recommended changes to the UCMJ.¹¹⁷ The Senate report to accompany the bill noted,

The committee believes that preventing and responding to incidents of hazing is a leadership issue and that the service secretaries, assisted by their service chiefs, should be looked to for policies and procedures that will appropriately respond to hazing incidents.¹¹⁸

The FY2015 NDAA included a provision requiring a GAO report on hazing in the armed services.¹¹⁹ In February 2016, the GAO released its report, noting that although DOD and the Coast Guard have policies in place to address hazing, there is a lack of regular oversight and monitoring of policy implementation.¹²⁰ To address some of these shortfalls, Congress included a provision in the FY2017 NDAA that required DOD to establish a hazing database, improve

Code of Military Justice (UCMJ) that defines and prohibits hazing. However, hazing is punishable under various punitive articles included in the UCMJ such as Article 93, Cruelty and Maltreatment or Article 128, Assault.

¹¹³ DOD, *Harassment Prevention and Response in the Armed Forces*, DODI 1020.03, February 8, 2018.

¹¹⁴ Cale Weissman, “Behind the Strange and Controversial Ritual When You Cross the Equator At Sea,” *Atlas Obscura*, October 23, 2015.

¹¹⁵ Kirsten M. Keller et al., *Hazing in the U.S. Armed Forces: Recommendations for Hazing Prevention Policy and Practice*, RAND Corporation, Santa Monica, 2015, pp. xii, xiii.

¹¹⁶ GAO, *Military Personnel: Actions Needed to Address Sexual Assaults of Male Servicemembers*, GAO-15-284, March 2015.

¹¹⁷ P.L. 112-239 §534.

¹¹⁸ S.Rept. 112-173.

¹¹⁹ P.L. 113-291.

¹²⁰ GAO, *Military Personnel: Actions Needed to Increase Oversight and Management Information on Hazing Incidents Involving Servicemembers*, 16-226, February 2016.

training, and submit annual reports on hazing to the Armed Services Committees from January 31, 2019, through January 2021.¹²¹

According to DOD's annual report for FY2018, complaints of hazing primarily come from junior enlisted personnel with 96% of all complaints coming from E-1s to E-4s.¹²² Across DOD, approximately 81% of the substantiated offenders were in pay grades E-3 to E-5. This demographic also has the highest rates of sexual assault and sexual harassment perpetration and victimization. Notably, data in DOD's 2017 and 2018 reports show that the Marine Corps had over four times as many substantiated hazing complaints as the other services combined, while also having the fewest personnel of all the services.¹²³ The Marine Corps has also consistently had higher prevalence rates for sexual assault than the other services.

Alcohol Use

The CDC indicates that alcohol use is an individual risk factor for perpetration and also is correlated with a higher risk of victimization.¹²⁴ Some experimental research on male response to alcohol intoxication has found that it "contributes to biased perceptions of the woman's sexual arousal, sexual interest, and enjoyment of forced sex, as well as increasing men's feelings of sexual entitlement."¹²⁵ In some instances, alcohol may also be used as a weapon by sexual predators to groom individuals, reduce the victim's resistance, or to fully incapacitate a victim.¹²⁶ Alcohol use by a bystander might also impair his or her judgment in recognizing nonconsensual activities, making it less likely for him or her to intervene in a threatening situation.

Intoxication increases risk factors for victimization by impairing an individual's ability to refuse or consent to sexual activities. For example, one study found that those who consume more than five drinks in one episode on a regular basis are at higher risk for falling victim to assault and aggressive behavior.¹²⁷ Consent is a factor in prosecution of sex offenses. According to the UCMJ, one who "commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person," is guilty of sexual assault and to be punished as a court-martial may direct.¹²⁸ However, focus groups conducted with active servicemembers and SAPR personnel have found that consent is not well-understood, particularly when there is alcohol use involved, whether by the victim and/or alleged perpetrator.¹²⁹

¹²¹ P.L. 114-328 §549. For more information on hazing in the military, see CRS In Focus IF10948, *Hazing in the Armed Forces*, by Kristy N. Kamarck.

¹²² DOD, *Hazing Prevention and Response in the Armed Forces*, Summary Report for Reporting Period October 1, 2017 - September 30, 2018, p. 21.

¹²³ Ibid., Figure 1., p. 21. During the reporting period for FY2018, the Marine Corps had 91 substantiated complaints; Army, 0 complaints; Navy, 10 complaints; and Air Force, 1 complaint.

¹²⁴ Centers for Disease Control and Prevention, at <https://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html>.

¹²⁵ Rhiana Wegner, et al., "Sexual Assault Perpetrators' Justifications for Their Actions: Relationships to Rape Supportive Attitudes, Incident Characteristics, and Future Perpetration," *Violence Against Women*, vol. 28, no. 8 (August 2015).

¹²⁶ DOD, *2014-2016 Sexual Assault Prevention Strategy*, April 30, 2014.

¹²⁷ H. Wechsler, et al., (1994). Health and behavioral consequences of binge drinking in college: A national survey of students at 140 campuses. *JAMA*, 272, 1672-1677.

¹²⁸ 10 U.S.C. §920(b)(3).

¹²⁹ Lisa Davis, et al., DOD, *2019 Military Service Gender Relations Focus Groups; Active Duty*, OPA Report No.

Data suggest that military servicemembers might be more prone to binge drinking than civilian counterparts, putting this demographic at higher risk. For example, survey data from 2008 found that 26% of active duty personnel aged 18 to 25 reported heavy alcohol use compared with 16% of civilians in the same age cohort.¹³⁰ More recent survey data estimated that 11% of military women and 10% of military men experienced alcohol-impaired memory at least once in the past year, with junior enlisted (E-1 through E-4) and junior officers (O-1 through O-3) experiencing equally high rates of alcohol impairment (12%).¹³¹ FY2018 WGRA survey data indicated that 62% of military women and 49% of military men who reported experiencing a sexual assault indicated that alcohol consumption (by alleged offender, victim, or both) was involved in the incident.¹³² Finally, military service academy data indicate that while nearly half of cadets and midshipmen engage in responsible alcohol use (two or fewer drinks on a typical day when drinking), 15% of women and 32% of men indicated heavy drinking behavior (five or more drinks at a time on a typical day when drinking) (see **Table 4**).¹³³

Table 4. Problematic Alcohol Use Among Service Academy Students

Academic Program Year 2017-2018

Reported behavior	USMA		USNA		USAFA	
	Men	Women	Men	Women	Men	Women
Alcohol use consistent with heavy drinking ^a	35%	17%	38%	18%	22%	10%
At least one occasion of lost memory due to drinking in past year	31%	25%	30%	28%	23%	21%

Source: DOD, *Annual Report on Sexual Harassment and Violence at the Military Service Academies; Academic Program Year 2017-2018*, January 25, 2019, pp. 14-15.

Notes:

- a. Heavy drinking is defined as five or more drinks at a time on a typical day when drinking.

Heavy alcohol use in the services is tied to both cultural and structural issues. According to SAPRO reporting, military academy focus group participants “described alcohol use as a glorified part of the academy culture, with frequent overindulgence and engagement in binge-drinking, particularly on weekends. According to participants, cadets and midshipmen view alcohol as an acceptable coping and stress reduction strategy that is endorsed by military

2020-065, April 2020, p. vii, <https://media.defense.gov/2020/Apr/30/2002291696/-1/-1/1/15-ANNEX-1-2019-MILITARY-SERVICE-GENDER-RELATIONS-FOCUS-GROUPS-OVERVIEW-REPORT.PDF>.

¹³⁰ R.M. Bray, “Substance use and mental health trends among U.S. military active duty personnel: Key findings from the 2008 DOD health behavior survey,” *Military Medicine*, vol. 175, no. 6 (June 2010). Heavy alcohol use was defined by the study authors as drinking five or more drinks per typical drinking occasion at least once a week in the 30 days before the survey. The criterion of five or more drinks is a common standard in definitions of heavy drinking and binge drinking in other national surveys of civilians.

¹³¹ DOD, *2018 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2019-027, May 2019, p. 60.

¹³² *Ibid.*, p. vii.

¹³³ DOD, *Annual Report on Sexual Harassment and Violence at the Military Service Academies; Academic Program Year 2017-2018*, January 25, 2019.

culture.”¹³⁴ In addition, the culture of “barracks life” is cited as a risk factor for junior enlisted members. As stated by one senior enlisted member,

For the barracks you have a lot of junior Sailors that know each other. Either they work with each other, they know each other. When they're in the barracks partying, having fun they don't think anything's going to happen to them. And when the alcohol starts flowing then that's when the predators among their peers usually come by, 'Hey, let me take you back to your room.' And then that's when there's a sexual assault, either female or male.¹³⁵

DOD and the services encourage commanders to address alcohol use as part of their prevention strategies.¹³⁶ For example the Navy's Sexual Assault Prevention and Response Commander's Guide suggests setting the example for responsible alcohol consumption, deglamorizing alcohol use, and developing off-duty/liberty policies and strategies that limit opportunities for servicemembers to abuse alcohol.¹³⁷ Military commanders are also encouraged to create an environment where bystanders can recognize risky situations and are empowered to intervene. The Director of SAPRO described this type of intervention in a 2009 hearing before the House Armed Services Committee:

So what we are trying to do is to teach young people if they see predator-type behavior to intervene. Because we do know there are predators that will use alcohol as a weapon to reduce a woman's defenses in order in order to complete a sexual assault. So one of the things we were trying to do is to make young people aware if somebody is mixing really strong drinks for a young girl, stop it, intervene. Or if they walk out together and it just doesn't look like a good idea, they should take care of each other and maybe say we need to go in this direction. Let's not go home with him tonight or walk out with him tonight.¹³⁸

Other interventions by commanders include reducing the hours of alcohol sales on military installations, increasing prices, or limiting purchase quantities. Some commands have instituted other policies such as limiting the amount of alcohol that individuals can have in the barracks or banning alcohol use for deployed units in certain areas.¹³⁹ The Army and Air Force have also reported efforts to fund additional research on the role of alcohol use in sexual assault cases and on potential interventions to reduce alcohol abuse.¹⁴⁰ The 2017-2018 military service academy report on sexual assault identified the promotion of responsible alcohol choices as the number one action item to address sexual assault. Initiatives include online and in-person training programs,

¹³⁴ DOD, *Annual Report on Sexual Harassment and Violence at the Military Service Academies*, Academic Program Year 2018-2019, p. 23.

¹³⁵ Lisa Davis, et al., DOD, *2019 Military Service Gender Relations Focus Groups; Active Duty*, OPA Report No. 2020-065, April 2020, p. 54.

¹³⁶ DOD, *Sexual Assault Prevention and Response Strategic Plan*, January 26, 2015, p. 5.

¹³⁷ Department of the Navy, *Sexual Assault Prevention and Response Commander's Guide*.

¹³⁸ U.S. Congress, House Committee on Armed Services, Subcommittee on Military Personnel, *Sexual Assault in the Military: Victim Support and Advocacy*, 111th Cong., 1st sess., January 28, 2009, H. Hrg 111-4 (Washington: GPO, 2010).

¹³⁹ For example, in a few overseas locations (e.g., Qatar, Jordan, Egypt), policies are in place that limit alcohol consumption to a specific number of drinks per day and only in designated locations. In addition, General Order Number 1C prohibits consumption of alcoholic beverages or alcohol-containing substances by military personnel in Kuwait, Saudi Arabia, Afghanistan, Pakistan, and Iraq. DOD, *Annual Report on Sexual Assault in the Military: Fiscal Year 2015*, Enclosure 1: Department of the Army, May 2, 2016, p. 21. U.S. Central Command, *General Order Number 1C (GO-1C)*, May 21, 2013.

¹⁴⁰ DOD, *Annual Report on Sexual Assault in the Military: Fiscal Year 2015*, May 2, 2016.

discussion sessions, treatment and mentoring for alcohol offenders, and restrictions on the number of alcoholic beverages that may be purchased at one time in campus bars.¹⁴¹

Command Climate and Commander Accountability

Congress has taken some actions to hold military leadership accountable for its command climate. Section 572 of the NDAA for FY2013 required the commander of each military command to conduct a climate assessment for the purposes of preventing and responding to sexual assaults within 120 days of assuming command and at least annually thereafter.¹⁴² DOD uses the Defense Equal Opportunity Climate Survey (DEOCS) as a survey tool to measure factors associated with sexual harassment and sexual assault prevention and response, as well as other factors affecting organizational effectiveness and equal opportunity. The DEOCS may be administered to uniformed personnel and civilian employees of any DOD agency and is anonymous. The DEOCS is used at the unit level to establish a baseline assessment of the command climate. Subsequent surveys track progress relative to the baseline.¹⁴³

Example SAPR Question on Command Climate Survey/DEOCS

Response Scale: 1 = Strongly Disagree 2 = Disagree 3 = Agree 4 = Strongly Agree

82. To what extent does your chain of command

- a. Promote a unit climate based on “respect and trust.”
- b. Refrain from sexist comments and behaviors.
- c. Actively discourage sexist comments and behaviors.
- d. Provide sexual assault prevention and response training that interests and engages you.
- e. Encourage bystander intervention to assist others in situations at risk for sexual assault or other harmful behavior.
- f. Disseminate information on the outcomes of sexual assault courts-martial occurring within your Service.
- g. Publicize sexual assault report resources (e.g., Sexual Assault Response Coordinator contact information; Victim Advocate contact information; awareness posters; sexual assault hotline phone number).
- h. Publicize the Restricted (confidential) Reporting option for sexual assault
- i. Encourage victims to report sexual assault.
- j. Create an environment where victims feel comfortable reporting sexual assault

Source: For a full sample DEOCS survey, see <https://www.deocs.net/DocDownloads/SampleDEOCSSurvey12Jan2016.pdf>.

The FY2014 NDAA imposed additional requirements on the command climate assessment by requiring the following

- Dissemination of assessment results to the next highest level in the chain of command;
- Inclusion of evidence of compliance with command climate assessment in commanders’ performance evaluations; and

¹⁴¹ DOD, *Annual Report on Sexual Harassment and Violence at the Military Service Academies; Academic Program Year 2017-2018*, January 25, 2019, p 13-14.

¹⁴² P.L. 112-239 §572.

¹⁴³ Units with less than 50 servicemembers are surveyed with a larger unit in the command to ensure anonymity. <https://www.deomi.org/EOAdvisorToolkit/documents/SecWrightMemo.pdf>

- Departmental tracking of compliance with required assessments.¹⁴⁴

In the FY2015 NDAA, Congress took another step to hold commanders accountable by requiring that performance appraisals not only include information about whether commanders complied with required command climate assessments but also whether they had established a climate in which, (1) allegations of sexual assault are properly managed and fairly evaluated, and (2) a victim of criminal activity, including sexual assault, can report the criminal activity without fear of retaliation, including ostracism and group pressure from other members of the command.¹⁴⁵

Education and Training

Sexual assault education and training are key components of DOD's prevention activities. According to SAPRO, education and training efforts are "designed to improve knowledge, impart a skill, and/or influence attitudes and behaviors of a target population."¹⁴⁶ Oversight questions regarding military sexual assault training include the following

- Is it tailored to the roles and responsibilities of the audience (commanding officers, first responders, new recruits, etc.)?
- Does the delivery and content meet consistent and evidence-based standards across military departments?
- Is it designed based on best practices for effective training?

Standardized Training Requirements and Target Audiences

The 2009 report of the congressionally mandated Defense Task Force on Sexual Assault in the Military Services (SAMS) noted deficiencies in the curricula, design, and leadership involvement in SAPR training.¹⁴⁷ The task force recommended tailoring training courses to better address the training needs of new recruits, responders, leadership, and peers. Subsequent congressional actions and DOD policy changes sought to address many of the task force's concerns.

In Section 585 of the FY2012 NDAA, Congress required DOD to develop sexual assault prevention training curricula for specific audiences and new modules for inclusion in each level of professional military education (PME) to better tailor the training for "new responsibilities and leadership requirements" as members are promoted.¹⁴⁸ This provision also required that DOD consult experts in the development of the curricula and that training be consistently implemented across military departments. In fulfillment of the FY2012 NDAA requirements, DOD developed tailored SAPR training core competencies and learning objectives for specific audiences and coupled these with recommended adult learning strategies.¹⁴⁹

¹⁴⁴ P.L. 113-66 §§587 and 1721.

¹⁴⁵ P.L. 113-291 §508.

¹⁴⁶ DOD, Sexual Assault Prevention and Response Office, Prevention Program Elements, at <http://www.sapr.mil/index.php/prevention/prevention-program-elements>.

¹⁴⁷ *Report of the Defense Task Force on Sexual Assault in the Military Services*, December 1, 2009.

¹⁴⁸ P.L. 112-81.

¹⁴⁹ Lists of these core competencies and learning objectives can be accessed at <http://www.sapr.mil/index.php/prevention/prevention-program-elements>.

In the FY2013 NDAA, Congress enacted additional training requirements for new or prospective commanders at all levels of command and for new active and reserve component recruits during initial entry training.

Further congressional action in FY2014 expanded certain sexual assault prevention training requirements, requiring them to be taught to service academy cadets and midshipmen within 14 days after initial arrival and annually thereafter.¹⁵⁰ In addition, Section 540 of the FY2016 NDAA required regular SAPR training for Senior Reserve Officers' Training Corps (SROTC) instructors and administrators.

Table 5. Audience and Frequency of Required SAPR Training

Audience	Frequency
New recruits	Within 14 days of initial entrance into active duty or duty status with a Reserve Component
Service Academy cadets and midshipmen	Within 14 days of arrival and annually while enrolled
SROTC instructors, commanders, and other civilian employees	Regularly ^a
All active and reserve component members	Annual refresher training, pre-deployment, post-deployment (within 30 days of return), as part of regular PME and leadership development training (LDT)
Military recruiters	Annually
Responders	Initially upon selection and annual responder refresher training (in addition to regular annual refresher training)
DOD civilians who supervise servicemembers	Annually
New commanders	Prior to filling a command position
General/Flag Officers and Senior Executive Service	Initial executive level program training and annually thereafter

Source: Public Law, DODI 6495.02, <http://www.dtic.mil/whs/directives/corres/pdf/649502p.pdf>.

Notes: Covered responders include SARCs; SAPR VAs; health care personnel; DOD law enforcement; MCIOs; judge advocates; chaplains; firefighters and emergency medical technicians.

- a. Section 540 of the FY2016 NDAA (P.L. 114-92) requires "regular sexual assault prevention and response training and education" for SROTC-affiliated personnel but does not specify frequency.

Commanders are responsible for ensuring that training is completed in accordance with all requirements. The 2009 report of the congressionally mandated Defense Task Force on Sexual Assault in the Military Services found that many servicemembers felt that leadership involvement in training is important both to reinforce the commander's zero tolerance stance and to clarify any misconceptions with regard to reporting processes and outcomes.¹⁵¹ In addition, the services have processes in place to monitor and report on the status of completing mandated SAPR training.¹⁵²

¹⁵⁰ P.L. 113-66 §1746.

¹⁵¹ *Report of the Defense Task Force on Sexual Assault in the Military Services*, December 1, 2009.

¹⁵² See for example, Army regulations AR 350-1 and AR 600-20.

Core Elements of Training

Section 1733 of the FY2014 NDAA (P.L. 113-66) required DOD to review and report on the adequacy of SAPR training and education provided to members of the Armed Forces. This provision also required the department to identify “common core elements” to be included in training or education programs. Current DOD policy requires all secretaries of the military departments and the Chief of the National Guard Bureau to submit a copy of their respective SAPR training elements through SAPRO to ensure consistency and compliance with standards, upon request by USD (P&R).¹⁵³

For new commanders, statutory training requirements related to prevention include

- How to foster a command climate that does not tolerate sexual assault, encourages persons assigned to the command to prevent potential incidents of sexual assault, and encourages victims of sexual assault to report any incident of sexual assault,
- An understanding of the needs of, and the resources available to, the victim after an incident of sexual assault,
- How to use military criminal investigative organizations for the investigation of alleged incidents of sexual assault, and
- Available disciplinary options, including court-martial, nonjudicial punishment, administrative action, and deferral of discipline for collateral misconduct, as appropriate.¹⁵⁴

DOD incorporated specialized leadership sexual assault prevention training for all military services and components as part of its 2015 strategic plan.¹⁵⁵ Other selected elements included in annual training, new accession training, and professional military education include

- Definitions of sexual assault and sexual harassment.
- Tips on how to recognize sexual assault.
- Strategies for bystander intervention.
- Penalties for offenders.
- Explanation of rape myths (see box below).
- Definitions of reprisal.
- Available resources for those who have been assaulted.
- Information on the impact of sexual assault on victims, units, and operational readiness.¹⁵⁶

Pre-deployment sexual assault prevention training also includes instruction on the local history, culture, and religious practices of foreign countries and coalition partners that may be encountered on deployment.¹⁵⁷

¹⁵³ DOD, *Sexual Assault Prevention and Response (SAPR) Program Procedures*, DODI 6495.02, Incorporating Change 4, Effective September 11, 2020, Enclosure 10, p. 82.

¹⁵⁴ P.L. 112-239 §574.

¹⁵⁵ DOD, *Sexual Assault Prevention and Response Strategic Plan*, January 26, 2015, p. 5.

¹⁵⁶ DOD, Sexual Assault Prevention and Response Office, *Accessions SAPR Training – Core Competencies and Learning Objectives*, August 9, 2013, p. 4.

¹⁵⁷ DOD, Sexual Assault Prevention and Response Office, *Pre-Deployment SAPR Training – Core Competencies and*

What Are “Rape Myths”?

Studies on risk factors for sexual assault perpetration have found correlations with endorsement or acceptance of “rape myths.”¹⁵⁸ Rape myths are widely and persistently held attitudes or beliefs that are sometimes used to justify or excuse sexual aggression.¹⁵⁹ Common rape myths include beliefs that, for example, women unconsciously desire to be raped or are “asking for it,” that rape can only occur between strangers, or that the only victims of rape are women or gay men. Part of DOD’s SAPR training is focused on dispelling these myths.

The 2019 WGRR survey added questions that attempted to ascertain the extent of rape myth acceptance in the reserve component. Analysis of survey results indicated low rape myth acceptance overall; however men had significantly higher acceptance scores than women, and belief in rape myths was higher among men ages 21 and younger.¹⁶⁰ Another statistically significant finding was that men in units where women accounted for less than 10% of their military coworkers were more likely to endorse sexist beliefs than men in units with a higher percentage of women.¹⁶¹ This finding suggests that efforts to dispel rape myths could be targeted toward younger servicemembers, and those in service branches, occupational specialties, and units that have lower percentages of women.

Evaluating Training Effectiveness

There is not a wide body of literature that specifically evaluates the effectiveness, of military sexual assault and harassment training programs in achieving behavioral outcomes.¹⁶² Some research on college campuses has found that bystander intervention training increases intentions to help those at risk, and is moderately associated with lowering rape-supportive attitudes and proclivity.¹⁶³ A 2015 analysis of Air Force training programs found that military training has adopted many of the generally accepted best practices (see “Principles of Effective Prevention Programs” box below), particularly in terms of tailoring the message to the Air Force cultural context and clearly communicating relevant information. The authors also noted that the Air Force improved the program between 2005 and 2014. The study, however, also found that a lack of program evaluation processes limited the ability to judge the effectiveness of training programs and modifications to those programs.¹⁶⁴ Other studies of Navy programs designed to increase knowledge about sexual violence and rape myths have found modest increases in awareness and changed perspectives.¹⁶⁵

Learning Objectives, August 9, 2013.

¹⁵⁸ Sarah Michal Greathouse, Jessica Saunders, and Miriam Matthews, et al., *A Review of the Literature on Sexual Assault Perpetrator Characteristics and Behaviors*, RAND Corporation, Santa Monica, CA, 2015, p. 19.

¹⁵⁹ Kimberly A. Lonsway and Louise F. Fitzgerald, “Rape Myths; In Review,” *Psychology of Women Quarterly*, vol. 18, no. 2 (June 1994).

¹⁶⁰ Rachel A. Breslin, Ashlea Klahr, and Kimberly Hylton, et al., *2019 Workplace and Gender Relations Survey of Reserve Component Members*, DOD Office of People Analytics, Overview Report, May 2020, p. xi.

¹⁶¹ *Ibid.*, p. 61.

¹⁶² Lindsay M. Orchowski et al., “Evaluations of Sexual Assault Prevention Programs in Military Settings: A Synthesis of the Research Literature,” *Military Medicine*, vol. 183, no. Issue suppl_1 (March 1, 2018), pp. 421-428. Mark V. Roehling and Jason Huang, “Sexual harassment training effectiveness: An interdisciplinary review and call for research,” *Journal of Organizational Behavior*, vol. 39, no. 2 (January 8, 2018).

¹⁶³ Jennifer Katz and Jessica Moore, “Bystander Education Training for Campus Sexual Assault Prevention: An Initial Meta-Analysis,” *Violence and Victims*, vol. 28, no. 6.

¹⁶⁴ Christine R. Gedney, David Wood, and Brad Lundahl, et al., “Sexual Assault Prevention Efforts in the U.S. Air Force: A Systematic Review and Content Analysis,” *Journal of Interpersonal Violence*, vol. 1, no. 21 (2015).

¹⁶⁵ Lindsay M. Orchowski et al., “Evaluations of Sexual Assault Prevention Programs in Military Settings: A Synthesis of the Research Literature,” *Military Medicine*, vol. 183, no. Issue suppl_1 (March 1, 2018), pp. 421-428.

Identifying Risk for Perpetration

Some academic literature suggests that those with a history of coerciveness or assault present a high risk for committing future assaults.¹⁶⁶ Although few studies have been done in the military context, a study of Navy recruits based on survey data found that men who reported behavior that met the criteria for a completed sexual assault prior to their military service were over ten times more likely to commit or attempt to commit sexual assault in their first year of service than men who did not commit sexual assault prior to joining the military.¹⁶⁷ DOD acknowledges there may be some servicemembers inclined toward “sexually coercive behavior.” One of the goals of training is to help those individuals who may exhibit coercive tendencies to identify appropriate behavior, recognize consequences of their actions, and thus dissuade them from committing sexual violence. For a smaller subset of individuals, training may not be sufficient to bring about behavioral change, and other approaches may be necessary to identify and remove potential perpetrators.¹⁶⁸

Entry Screening

Section 504 of Title 10 United States Code, which has been in effect since 1968, prohibits any person who is “who is insane, intoxicated, or a deserter from an armed force, or who has been convicted of a felony,” from enlisting in any armed force. However, the statute authorizes the Secretary of Defense to authorize exceptions in certain meritorious cases. This exercise of authority has historically been referred to as a *moral waiver* but may also be referred to as a *conduct or character waiver*.¹⁶⁹

As DOD requirements for personnel increased between 2001 and 2011 to respond to conflicts in Iraq and Afghanistan, the number of moral waivers authorized for new recruits also grew—particularly in the Army and Marine Corps. According to data provided by DOD in response to a Freedom of Information Act (FOIA) request, approximately 18% (127,524) of new enlistees were granted a moral waiver between 2003 and 2007.¹⁷⁰ Over half of these waivers were for traffic or drug offenses, while serious non-traffic misdemeanors (e.g., assault and petty larceny) accounted for 35%, and those with felony convictions accounted for approximately 3% of the waivers across all military services.¹⁷¹ These statistics raised congressional concerns that, by enlisting those with a history of criminal activity, the military was unnecessarily putting the safety of other servicemembers at risk. In 2009, a congressionally-mandated report by the Defense Task Force on Sexual Assault in the Military Services found “no evidence of significantly increased disciplinary problems because of the use of waivers.”¹⁷² Nevertheless, under pressure from various

¹⁶⁶ Margaret C. Harrell, Laura Werber Castaneda, et al., *A Compendium of Sexual Assault Research*, RAND Corporation, Santa Monica, CA, 2009.

¹⁶⁷ Stephanie K. McWhorter, et al., “Reports of Rape Reperpetration by Newly Enlisted Male Navy Personnel,” *Violence and Victims*, vol. 24, no. 2 (2009), p. 218.

¹⁶⁸ DOD, Sexual Assault Prevention and Response Office, “2014-2016 Sexual Assault Prevention Strategy – Appendix B: Defining the Threat and Environment,” April 30, 2014.

¹⁶⁹ DOD, *Qualification Standards for Enlistment, Appointment, and Induction*, DODI 1304.26, March 23, 2015, Incorporating Change 1, Effective April 6, 2015.

¹⁷⁰ Michael Boucai, “*Balancing Your Strengths against Your Felonies*”: *Considerations for Military Recruitment of Ex-Offenders*, Palm Center, 2007, Tables 2 & 3, pp. 41 & 42.

¹⁷¹ Ibid, Table 4, p. 43.

¹⁷² This report was required by Section 576 of the FY2005 NDAA (P.L. 108-375). *Report of the Defense Task Force on Sexual Assault in the Military Services*, December 2009, p. J-1.

stakeholders then-Defense Secretary Robert Gates took administrative action in 2009 to prohibit waivers for those convicted of felony sexual assault.¹⁷³

In 2013, Congress enacted a provision in the FY2013 NDAA that amended 10 U.S.C. §504 to prohibit the Secretary of Defense from issuing a moral waiver for commissioning or enlistment in the armed forces of any individual who had been convicted of a felony offense of rape, sexual abuse, sexual assault, forcible sodomy, incest, or any other sexual offense. In the following year's NDAA, Congress repealed this provision and replaced it with a new stand-alone statute (10 U.S.C. §657) to prohibit the commissioning or enlistment of individuals who have been convicted of felony offenses of rape or sexual assault, forcible sodomy, incest, or of an attempt to commit these offenses.¹⁷⁴ A later 2017 study of Army administrative data on male sexual assault perpetration found that perpetration of any crime in the prior 12 to 24 months were predictors of intra-family and nonfamily sexual assault perpetration.¹⁷⁵ This study provides some evidence to support entry screening for criminal offenses and enhanced scrutiny for in-service criminal offenses, including offenses unrelated to sexual misconduct.

While entry-level background checks may screen out those convicted of criminal acts, it is more challenging to screen for high-risk behavior, tendencies, or harmful attitudes toward sexual violence. Other opportunities to screen for problematic behavior or attitudes could include entry-level attitudes surveys, interview questions for Service Academy nominations, or congressional hearing questions for senior defense position nominees requiring Senate confirmation.¹⁷⁶

Identifying Serial Offenders

In 2013, Congress sought to increase commanders' visibility of individuals with past sex-related offenses. A provision enacted as part of the FY2104 NDAA required notation in the member's service record if action had been taken against them for a sex-related offense.¹⁷⁷ The law further requires commanders to review the service record of members under their command for a history of sex-related offenses.

In light of evidence suggesting that some perpetrators commit multiple sexual assaults before getting caught, DOD took further action and launched the *Catch a Serial Offender* (CATCH) program in August 2019. The purpose of this program is to identify repeat offenders through confidential data-matching. The program is also structured in a way that is intended to encourage victims to participate in the military justice system to bring these repeat offenders to justice and prevent them from harming others. Under DOD policies, a military sexual assault victim may submit a confidential *restricted* report and receive counseling and other services without notifying his or her commander or military investigative authorities. The report may later be converted to

¹⁷³U.S. Senator Barbara Boxer, "Senate Passes Boxer Amendment to Keep Sex Offenders Out of the Military," press release, November 29, 2012, <http://www.calcsa.org/2012/12/senate-passes-boxer-amendment-to-keep-sex-offenders-out-of-the-military/>.

¹⁷⁴ P.L. 113-66. See also DOD, *Qualification Standards for Enlistment, Appointment, and Induction*, DODI 1304.26, March 23, 2015, Incorporating Change 1, Effective April 6, 2015.

¹⁷⁵ Anthony J. Rosellini et al., "Predicting Sexual Assault Perpetration in the US Army Using Administrative Data," *American Journal of Preventative Medicine*, vol. 53, no. 5 (November 2017), pp. 661-669.

¹⁷⁶ There is an adverse information reporting process for congressional nomination packages. See discussion in Margaret C. Harrell and William M. Hix, *Managing Adverse and Reportable Information Regarding General and Flag Officers*, RAND Corporation, Santa Monica, CA, 2012, <https://www.rand.org/pubs/monographs/MG1088.html>.

¹⁷⁷ P.L. 113-66 §1745. The covered actions under this provision are court-martial conviction, nonjudicial punishment, or punitive administrative action.

an *unrestricted* report, which does initiate an investigation and the military justice process (see “Restricted vs. Unrestricted Reporting”).

According to SAPRO, CATCH allows sexual assault victims who filed a restricted report to discover if the suspect in their restricted report may have also assaulted another person (a “match” in the CATCH website).¹⁷⁸ With this knowledge, the victim can then decide whether to convert their *restricted* report to *unrestricted*, thereby initiating an investigation of the serial offender suspect. Each entry in the database is maintained for 10 years. A provision in the FY2020 NDAA further protects CATCH program information from public disclosure through FOIA requests.¹⁷⁹ This FY2020 NDAA provision also ensures that transmittal or receipt of information from restricted reports to the CATCH program would not affect the report's status as restricted and thus would maintain victim confidentiality. Between the launch of the CATCH program in August 2019 and the release of the FY2019 annual report, there were 239 victim reports in the CATCH program and five matches.¹⁸⁰

Victim Protection, Advocacy and Support Services

A third area of congressional focus is the provision of protection, advocacy and support services for victims of sexual assault—those currently serving and those who have been discharged or retired from military service. Although this report does not include congressional actions with relation to veteran services for victims of military sexual assault, it does include provisions associated with military discharges and the correction of discharge paperwork. While this section focuses on DOD services to victims of sexual assault, servicemembers may also be eligible for DOJ-funded programs in their respective states of residence.¹⁸¹

Congressional actions to protect and support victims of sexual assault fall under four main categories.

- Ensuring victim privacy and safety;
- Ensuring accessible and adequate medical and mental health services;
- Developing legal assistance programs for victims; and
- Protecting victims from retaliation or other adverse actions.

Victim Privacy and Safety

The 2004 DOD task force found that military victims of sexual assault were often reluctant to report the incident. One of the main reasons cited was a perceived lack of confidentiality.¹⁸² Victims also cited concerns about the impartiality of the command's response and the potential

¹⁷⁸ DOD SAPRO, *Catch a Serial Offender (CATCH) Program Victim Info Sheet*, https://www.sapro.mil/sites/default/files/public/images/icons/SAPRO_Catch_A_Serial_Offender_Program_%28CATCH%29_Slick_Sheet_Rd06.pdf.

¹⁷⁹ P.L. 116-92 §550. For more on FOIA, see CRS Report R41933, *The Freedom of Information Act (FOIA): Background, Legislation, and Policy Issues*, by Meghan M. Stuessy.

¹⁸⁰ DOD, *FY2019 Annual Report on Sexual Assault in the Military*, p. 16.

¹⁸¹ For more information on DOJ programs, please see, CRS Report R42672, *The Crime Victims Fund: Federal Support for Victims of Crime*, by Lisa N. Sacco, and CRS Report R42499, *The Violence Against Women Act: Overview, Legislation, and Federal Funding*, by Lisa N. Sacco.

¹⁸² U.S. Congress, House Committee on Armed Services, Subcommittee on Military Personnel, *Sexual Assault in the Military: Victim Support and Advocacy*, 111th Cong., 1st sess., January 28, 2009, H.A.S.C. 111-4 (Washington: GPO, 2010), p. 68.

for retaliatory actions. Following this review, DOD implemented a number of policies and strategies to help improve confidentiality of reporting and to provide victims with a safe environment for seeking care and legal assistance. At the same time, Congress initiated a series of legislative requirements to strengthen victim support and protection.

Restricted vs. Unrestricted Reporting

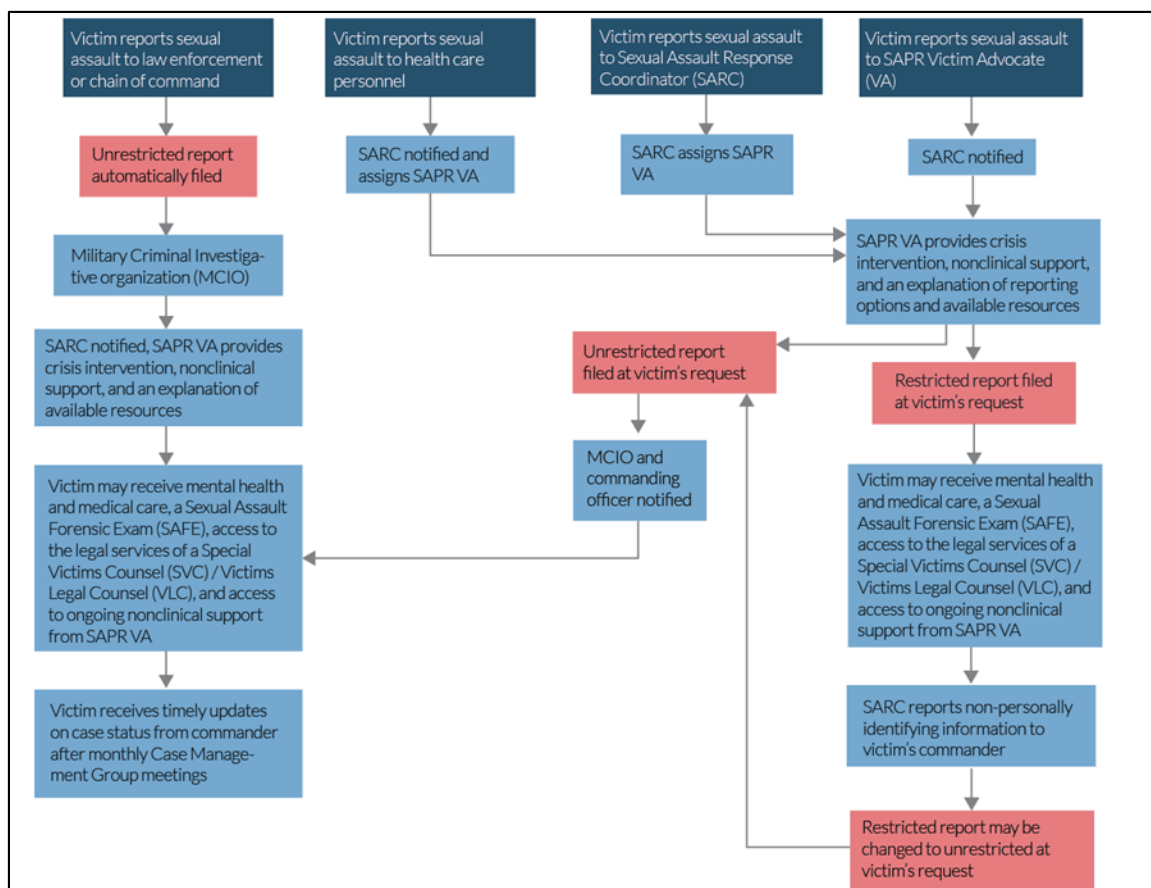
In 2005, DOD instituted a *restricted reporting* option for sexual assault victims. This option is intended to help victims receive needed support services while maintaining a certain level of privacy. When a victim chooses to make a restricted report, he or she discloses the incident to specified individuals and may then gain confidential access to medical health, mental health, and victim advocacy services. The official then reports incident data to SAPRO for inclusion in DOD sexual assault statistics. The command is notified that an alleged sexual assault occurred; however, personally identifiable information of the victim and alleged offender are not provided. Restricted reporting may not be an available option in certain jurisdictions based on state laws, or if there is a serious or imminent threat posed by the alleged offender.¹⁸³

An individual can choose to convert a restricted report to an *unrestricted report* at any time and has the right to receive counseling on these two options from a victim advocate prior to selecting an option.¹⁸⁴ When an unrestricted report is made where the victim, the subject or both are servicemembers, the respective servicemember's commanding officer is notified and a Military Criminal Investigative Office (MCIO) begins a formal investigation. Processes following a restricted or unrestricted report are shown in **Figure 4**.

¹⁸³ Section 536 of the FY2016 NDAA preempts mandatory reporting laws and preserves the restricted reporting option, provided the victim first reports to a Military Treatment Facility. 10 U.S.C. §1565b(b)(3).

¹⁸⁴ According to DOD policies, following counseling the alleged victim is given the opportunity to review and sign a DD Form 2910, "Victim Reporting Preference Statement."

Figure 4. DOD Actions Following Restricted & Unrestricted Reports



Source: CRS, derived from DODI 6495.02.

Note: Red indicates the filing of a restricted or unrestricted report. Dark blue indicates an initial action by the victim.

DOD has deemed the option for restricted reporting “critical” to the SAPR program, as a mechanism to increase the number of victims receiving support services, and to encourage conversions to unrestricted reports and subsequent participation in the military justice process.¹⁸⁵ In addition, victims, health practitioners, and advocates have generally shared positive feedback concerning the availability of a restricted reporting option. A rape victim advocate stated in a 2009 hearing of the House Armed Services Committee on Victim Support and Advocacy,

You heard earlier folks were talking about an increase in a number of reports, whether restricted or unrestricted is a good thing. ...We think that is a good thing. When those numbers are going up, those are fundamentally a positive move. Because it means that, number one, those folks are getting services. Number two, it means that there is an atmosphere and environment in which people believe that they can come forward, that they are safe in doing so. And so if restricted reporting enhances that, we are absolutely all for it.¹⁸⁶

¹⁸⁵ U.S. Congress, House Committee on Armed Services, Subcommittee on Military Personnel, *Sexual Assault in the Military: Victim Support and Advocacy*, 111th Cong., 1st sess., January 28, 2009, H. Hrg. 111-4 (Washington: GPO, 2010), p. 70.

¹⁸⁶ Statement by Robert Coombs, Director of Public Affairs, California Coalition Against Sexual Assault. U.S.

Safe-to-Report Policy

Victims of sexual assault may be hesitant to report the assault for a number of reasons, including fear of retaliation or disciplinary action for associated misconduct. For example, the alleged assault could have occurred in a situation where the victim was drinking underage or engaging in other prohibited activities. A victim may be reluctant to report an assault if there is a possibility of the investigation uncovering collateral misconduct. According to active duty survey data for 2018, 34% of women and 26% of men who experienced a sexual assault *did not* report the assault because they "thought they might get in trouble for something they had done or would get labeled a troublemaker."¹⁸⁷

Several of the military service academies have implemented what they call a *Safe-to-Report* policy.¹⁸⁸ This policy is intended to remove disincentives for alleged victims to report sexual assault incidents by protecting cadets and midshipmen from punishment for minor collateral misconduct violations that might be uncovered during an investigation. The House and Senate-passed bills for the FY2020 NDAA included provisions that would have required the Secretary of Defense to implement a Safe to Report policy across the Armed Forces.¹⁸⁹ The requirement that the Secretary of Defense promulgate a policy was not included in the final bill; however, the enacted law required a report to the Armed Services Committee "setting forth an assessment of the feasibility and advisability of expanding the applicability of the safe to report policy."¹⁹⁰

A safe-to-report provision was enacted in the FY2021 NDAA.¹⁹¹ This provision would define minor collateral misconduct as, (1) improper use or possession of alcohol, (2) consensual intimate behavior (including adultery) or fraternization¹⁹², (3) presence in an off-limits area, and (4) such other misconduct as the Secretary of Defense shall specify in the regulations.

Transfers and Military Protective Orders

In order to protect the safety and well-being of sexual assault victims, Congress has enacted laws to encourage the development of policies and guidance for use of humanitarian transfers and military protective orders (MPOs) which are similar to civilian protective orders (see discussion below). Currently, when a victim makes a *restricted report*, he or she cannot receive an MPO against the assailant or seek expedited transfer to a different unit or base. If the victim initiates an *unrestricted report* or changes his or her restricted report to an unrestricted report, he or she may then request an expedited transfer or MPO.¹⁹³

Expedited Transfers

In 2004, Congress noted that DOD did not have standard policies or protocols for removal or transfer of an alleged victim from a unit when the alleged attacker was part of the same unit or the

Congress, House Committee on Armed Services, Subcommittee on Military Personnel, *Sexual Assault in the Military: Victim Support and Advocacy*, 111th Cong., 1st sess., January 28, 2009, p. 41.

¹⁸⁷ DOD, *2018 Workplace and Gender Relations Survey of Active Duty Members*, Overview Report, May 2019, p. 36, https://www.sapr.mil/sites/default/files/Annex_1_2018_WGRA_Overview_Report.pdf.

¹⁸⁸ The U.S. Air Force Academy implemented the policy in Academic Program Year (APY) 2017-18 and modeled it after a similar Naval Academy policy. *Annual Report on Sexual Harassment and Violence at the Military Service Academies (MSAs) for Academic Program Year (APY) 2017-2018*, Appendix C: United States Air Force Academy, January 25, 2019, p. 4.

¹⁸⁹ H.R. 2500 §550 and S. 1790 §§ 527 and 528.

¹⁹⁰ P.L. 116-92 §540H.

¹⁹¹ P.L. 116-283 §526

¹⁹² Adultery and fraternization may be punishable under the general article in the UCMJ (Article 134); Manual for Courts-martial (MCM) Chapters 62 and 83.

¹⁹³ DOD Sexual Assault Prevention and Response Office, "Unrestricted Reporting," accessed August 2016: <http://www.sapr.mil/index.php/unrestricted-reporting>.

victim's chain of command.¹⁹⁴ The issue of transfers for victims of sexual assault was again raised in a 2010 hearing as a possible way to protect victims from retaliation and encourage victim reporting.¹⁹⁵ In the FY2011 NDAA, Congress added a provision that required the Secretary concerned to provide timely consideration of an application for permanent change of station or change of duty assignment by a victim of sexual assault or related offense.¹⁹⁶ DOD implemented this "expedited transfer" policy in February 2012¹⁹⁷ with the stated purpose to,

address situations where a victim feels safe, but uncomfortable. An example of where a victim feels uncomfortable is where a victim may be experiencing ostracism and retaliation. The intent behind the Expedited Transfer policy is to assist in the victim's recovery by moving the victim to a new location, where no one knows of the sexual assault.¹⁹⁸

Under DOD regulations, the commanding officer or SARC may also recommend/support a victim's transfer there is a concern over personal safety. Under the expedited transfer policy, temporary or permanent transfers may be authorized to a new duty location on the same installation, or a different installation. The servicemember's transfer may include the member's dependents and military spouse for transfers to a different installation. If a servicemember's request for transfer is disapproved by the commanding officer, the individual has the right to have the request reviewed by a general or flag officer in their chain of command (or the civilian equivalent).

Although some advocacy groups have argued that the expedited transfer option is a positive support measure for victims, they have also raised concerns about the implementation, citing cases of delays and denials.¹⁹⁹ In addition, some of the same groups have raised concerns that the transfer might actually be perceived as punishing the victim rather than the alleged perpetrator. In a 2013 Senate Armed Services Committee hearing, a witness from the organization Protect Our Defenders described this problem,

We find while it is a good thing at times, expedited transfer requests, some victims say, yes, I was offered an expedited transfer, but to a job less than what I have now. Why am I being punished for being protected and trying to be sent off base? I am now being asked to make sandwiches for the pilots when once I was on another track in a successful career. Why do I have to leave? Why can't the leave?²⁰⁰

¹⁹⁴ General Casey: "No, sir. In fact, I would tell you that we have no specific policy that dictates either the victim or the accused should be removed from that command. We don't dictate that. We leave that up to the commander on the scene to make an evaluation." U.S. Congress, Senate Committee on Armed Services, Subcommittee on Personnel, *Policies and Programs for Preventing and Responding to Incidents of Sexual Assault in the Armed Services*, 108th Cong., 2nd sess., February 25, 2004, S. Hrg. 108-799 (Washington: GPO, 2005), p. 173.

¹⁹⁵ Representative Jane Harman: "And on the safety issue, there are some specific recommendations that I think could have been in your report and weren't. For example, facilitating base transfer, which would encourage a lot of women to come forward who would otherwise be afraid to do so." U.S. Congress, House Committee on Oversight and Government Reform, Subcommittee on National Security and Foreign Affairs, *Sexual Assault in the Military Part IV: Are we Making Progress*, 111th Cong., 2nd sess., February 24, 2010, 111-73 (Washington: GPO, 2010).

¹⁹⁶ P.L. 112-81 §582, codified in 10 U.S.C. §673.

¹⁹⁷ U.S. Congress, Senate Committee on Armed Services, *Pending Legislation Regarding Sexual Assaults in the Military*, 113th Cong., 1st sess., June 4, 2013, S. Hrg. 113-320 (Washington: GPO, 2014), p., 100.

¹⁹⁸ DODI 6495.02, p. 51.

¹⁹⁹ Karisa King, "Assault Victims Struggle to Transfer to Other Posts," *mySA*, May 20, 2013, at <http://www.mysanantonio.com/twice-betrayed/article/Assault-victims-struggle-to-transfer-to-other-4532717.php>.

²⁰⁰ U.S. Congress, Senate Committee on Armed Services, *Pending Legislation Regarding Sexual Assaults in the Military*, 113th Cong., 1st sess., June 4, 2013, S. Hrg. 113-320 (Washington: GPO, 2014), p. 204.

In response to this concern, Congress sought to clarify the military commander’s ability to transfer the alleged perpetrator to another unit following an unrestricted report of a sex-related offense. The authority for DOD to establish guidelines for these transfers was enacted in the FY2014 NDAA and codified in 10 U.S.C. §674. Commanders may also take other actions to remove an accused military offender from his or her position, to place him or her in pre-trial confinement, or to issue a military protective order. The total number of requested expedited transfers for victims has trended upward since FY2012 (see **Table 6**). On average, less than 4% of requests for transfer between FY2012 and FY2019 have been denied.

Table 6. Expedited Transfers and Denials
FY2012 – FY2019

Transfer Type	Victims	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19
Change of unit/duty assignment (within installation)	Number requesting	57	99	44	71	62	74	67	89
	Number denied	2	3	0	2	3	5	2	5
Permanent change of station	Number requesting	161	480	615	663	684	760	835	810
	Number denied	0	11	15	12	16	30	30	24

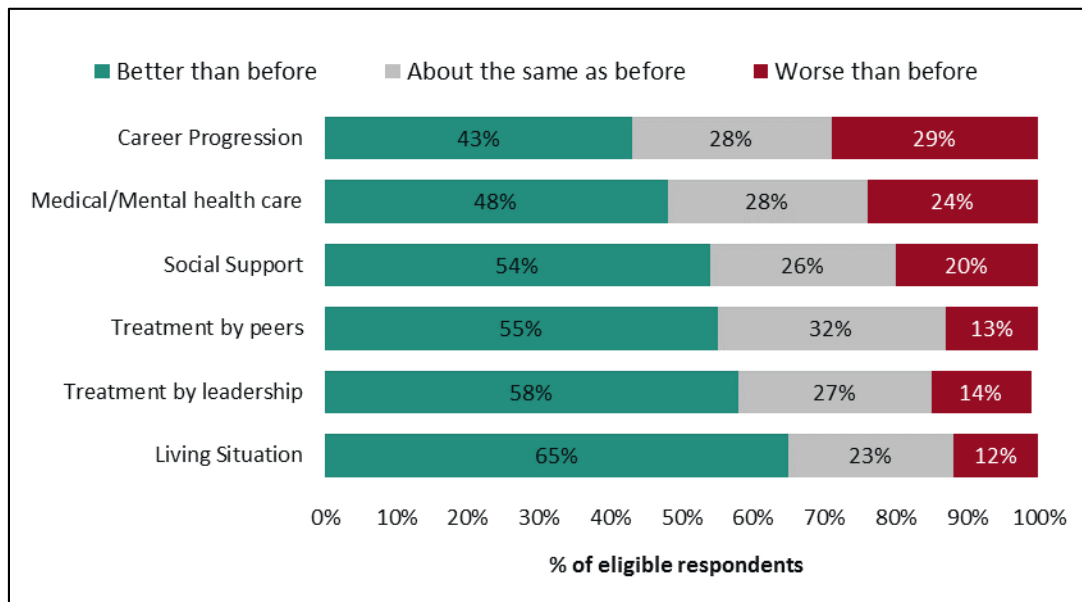
Source: DOD, *Annual Report on Sexual Assault in the Military Fiscal Year 2019*, Appendix B: Statistical Data on Sexual Assault, p. 33.

Notes: DOD reports do not include data on the number of transfers for alleged perpetrators.

According to DOD survey data from 2016-2017, about half of victim respondents indicated that certain aspects of their lives were *better than before* following a transfer – in particular, treatment by leadership and peers.²⁰¹ However, 29% reported that their career progression was worse than before the transfer (see **Figure 5**).

²⁰¹ DOD, Office of People Analytics, *2016-2017 Military Investigation and Justice Experience Survey (MIJES)*, Overview Report; OPA Report No. 2017-027, January 2018.

Figure 5. Aspects of Life Following Expedited Transfer
2016-2017 Survey Data



Source: DOD, Office of People Analytics, *2016-2017 Military Investigation and Justice Experience Survey (MIJES)*, Overview Report; OPA Report No. 2017-027, January 2018, p. 54

Notes: *Treatment by leadership* does not add to 100% due to rounding.

In February 2020, DOD issued revised expedited transfer procedures with the intent of improving victim safety measures and continuity of care. The new guidance incorporates “out-brief and intake meetings with the servicemember victim to explain the full range of support options available at the new installation, facilitate appointments with response personnel, and help answer any questions.”²⁰²

Military Service Academy Students and Transfers

Unlike those in active service, the expedited transfer authority does not apply for cadets and midshipmen who are students at the military service academies. This is in part due to the unique status of the academies as the only full-time, degree granting and commissioning program for each of the military departments. Cadets and midshipmen at the military service academies are organized into gender-integrated units of roughly 100 individuals called companies or squadrons.²⁰³ These companies and squadrons share common spaces in the dormitories or barracks and are the locus for professional military development as well as social activities. Those who are victims of a sexual assault may have the option of transferring to another company or squadron to provide some physical separation from an alleged attacker, and to avoid further distress to the victim. Additionally, academy policies allow for victim of assault to request a leave

²⁰² DOD, *Annual Report on Sexual Assault in the Military Fiscal Year 2019*, April 28, 2020, p. 19. The new policy also allows for the transfer of a servicemember when the adult dependent of the member has been sexually assaulted in a non-domestic violence case.

²⁰³ Much of the student’s military professional development is conducted within these units which are housed together in dormitories/barracks.

of absence (typically up to one year) to enable them to concentrate on physical or psychological well-being and/or to participate in any investigative or judicial processes.²⁰⁴

A proposal in the House-passed version of the FY2019 NDAA would have allowed cadets and midshipmen from the military service academies who are victims of sexual assault to apply for a transfer to one of the other service academies.²⁰⁵ While this proposal was not adopted in the final bill the conference report noted, “The Conferees believe that providing an option for a cadet or midshipman, who was sexually assaulted, to request a transfer to another academy should be explored,” and directed DOD to study the feasibility of establishing such a process.²⁰⁶ The FY2020 NDAA included a provision requiring the Service Secretaries to consider requests for transfers from cadets or midshipmen who are victims of sexual assault within 72 hours of receiving the request.²⁰⁷ Under this provision, a cadet or midshipman may request a transfer to another service academy or request to enroll in a Senior Reserve Officer Training (SROTC) program at another educational institution.²⁰⁸

Military Protective Order

A military protective order (MPO) is a lawful order issued by a commanding officer, prohibiting the accused servicemember from contact or communication with the protected person or members of the protected person’s family or household.²⁰⁹ A servicemember must obey an MPO at all times, whether inside or outside a military installation; a violation may make them subject to court martial or other punitive measures. An MPO remains in effect until the military commander terminates the order or issues a replacement order.²¹⁰ A victim of sexual assault may also seek and be awarded a civilian protection order (CPO) through the civilian judicial system. By statute, a CPO has full force and effect on military installations within the jurisdiction of the court that issues the order.²¹¹ However, MPOs are not enforceable by civilian law authorities. Therefore, a victim of sexual assault – particularly a reservist or dual status technician – may work in a civilian office, with his or alleged attacker, where the MPO cannot be enforced.²¹²

Congressional concerns about this lapse of protection have led to legislation to encourage coordination between military and civilian authorities. To encourage such coordination, a provision in the FY2009 NDAA required DOD to notify appropriate civilian authorities when a military commander issues an MPO.²¹³ The installation commander may also develop a

²⁰⁴ For the U.S. Naval Academy policy, see USNA Instruction 1050.02 at https://www.usna.edu/AdminSupport/_files/documents/instructions/1000-1999/USNAINST-1050.2-Procedures-and-Instructions-for-Victims-of-Sexual-Assault-to-Request-Leave-of-Absence.pdf.

²⁰⁵ There are three military service academies, the United States Naval Academy, United States Air Force Academy, and United States Military Academy (West Point).

²⁰⁶ H.Rept. 115-863.

²⁰⁷ P.L. 116-92 §555.

²⁰⁸ For more information on SROTC, see CRS In Focus IF11235, *Defense Primer: Senior Reserve Officer Training Corps*, by Kristy N. Kamarck.

²⁰⁹ Military Protective Order, Form DD 2873, at <http://www.dtic.mil/whs/directives/forms/eforms/dd2873.pdf>.

²¹⁰ 10 U.S.C. §1567.

²¹¹ 10 U.S.C. §1561a.

²¹² Dual-status technicians are Federal civilian employees, who are employed under Section 3101 of title 5 or Section 709(b) of title 32 United States Code and are also required to maintain membership in the Selected Reserve.

²¹³ P.L. 110-417 §562.

memorandum of understanding with local police to detain an individual who may have violated an MPO until military police can respond.²¹⁴

An MPO is only issued in the case of an *unrestricted* report of sexual assault, as restricted reports cannot be made when there is a safety risk for the victim. Since FY2010, Congress has required DOD to track, for each sexual assault case, whether an MPO was issued (involving either the alleged victim or perpetrator) and whether any MPOs were violated.²¹⁵ According to DOD data, reports of MPO violations are rare, with less than 1% of all MPOs violated in FY2019 (see **Table 7**).

Table 7. Reported Military Protective Order (MPO) Violations
FY2018 & FY2019

	FY2018	FY2019
Total MPOs issued	1,010	848
Total Violations	11	6
Violation by alleged perpetrator	8	6
Violation by alleged victim	1	0
Violation by both	2	0

Source: DOD, Annual Reports on Sexual Assault in the Military for FY2018 and FY2019, Appendix D: Aggregate DOD Data Matrices.

Victim Medical Care

While serving, military members are eligible to receive a broad range of medical and mental health services through the military health system.²¹⁶ This includes services immediately following a sexual assault and longer-term services as needed. Those who retire from the military may continue to receive military health services if enrolled in the TRICARE program. Those who are discharged from the military before retirement eligibility may be eligible to receive health care services related to military sexual trauma from the VA.²¹⁷ Questions that Congress has raised about medical care for victims of sexual assault include

- Do military medical professionals have the appropriate training and resources to respond to the health needs of different victim demographics?

²¹⁴ DOD, *Domestic Abuse Involving DOD military and Certain Affiliated Personnel*, DODI 6400.06, May 26, 2017.

²¹⁵ In some instances, the facts of the case may be in dispute and either or both of the alleged perpetrator and alleged victim may seek, or be advised to seek, an MPO from a commanding officer. P.L. 111-84 §567(c).

²¹⁶ See CRS In Focus IF10530, *Defense Primer: Military Health System*, by Bryce H. P. Mendez.

²¹⁷ Veterans may be eligible for VA health care related to military sexual trauma (MST) even if they are not eligible for other VA services. For the purpose of accessing VA treatment, Section 17020d of Title 38 United States Code defines MST as, “psychological trauma, which in the judgment of a VA mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the Veteran was serving on active duty, active duty for training, or inactive duty training.” See <https://www.mentalhealth.va.gov/msthome.asp> for more information. For more information, see CRS In Focus IF11378, *Veterans Health Administration: Behavioral Health Services*, by Victoria R. Green.

- Do the types of military medical and mental health services offered to victims, including emergency contraceptive services, reflect evidence-based best practices for victim treatment and rehabilitation?²¹⁸
- Are appropriate medical services broadly available and accessible to victims of assault, particularly when the assault occurs in a deployed or operational setting?
- Are adequate programs in place to treat Post-Traumatic Stress Disorder (PTSD) and comorbid conditions resulting from military sexual trauma?

In some cases, caregivers at a military or civilian medical facility might be the first point of contact for a victim of military sexual assault. Medical staff provide victims with urgent medical assistance and may, with the victim's permission, administer a sexual assault forensic examination (SAFE).²¹⁹ When Congress reauthorized the Violence Against Women Act in 2005, provisions were added to ensure that victims could not be charged for medical forensic exams, commonly referred to as "rape kits."²²⁰ In 2006, Congress authorized TRICARE coverage for forensic examinations following a sexual assault or domestic violence.²²¹ DOD is required to save the evidence from the SAFE for five years in case of an investigation.²²²

The FY2011 NDAA required DOD to establish "comprehensive and consistent protocols for providing and documenting medical care to a member of the Armed Forces or covered beneficiary who is a victim of a sexual assault, including protocols with respect to the appropriate screening, prevention, and mitigation of diseases."²²³ This provision noted that gender should be considered in these protocols. The FY2012 NDAA required a review of women-specific health services in DOD including the availability of services for female victims of sexual assault or abuse.²²⁴ The resulting GAO report found some availability and standardization issues. In particular, GAO noted challenges across the services in providing comprehensive and consistent medical and health services in deployed environments, and recommended improved guidance for care providers.²²⁵ DOD's current regulations include instructions for combatant commanders to:

- (a) Require that victims of sexual assault in deployed locations within their area of responsibility are transported to an appropriate evaluation site, evaluated, treated for injuries (if any), and offered SAPR VA assistance and a SAFE as quickly as possible.
- (b) Require that U.S. theater hospital facilities (Level 3, NATO role 3)...have appropriate capability to provide experienced and trained SARC and SAPR VA services and SAFE providers, and that victims of sexual assault, regardless of reporting status, are medically

²¹⁸ For more on contraception and other military reproductive health services, see CRS In Focus IF11109, *Defense Health Primer: Contraceptive Services*, by Bryce H. P. Mendez, and CRS Report WPD00029, *Military and Veteran Reproductive Health Services*, by Kristy N. Kamarck, Bryce H. P. Mendez, and Jared S. Sussman.

²¹⁹ DD Form 2911, "DOD Sexual Assault Forensic Examination (SAFE) Report" is used for documentation.

²²⁰ For more information on this legislation see CRS Report R42499, *The Violence Against Women Act: Overview, Legislation, and Federal Funding*, by Lisa N. Sacco.

²²¹ P.L. 109-364 §701.

²²² 32 C.F.R. §105.12, *SAFE Kit Collection and Preservation*.

²²³ P.L. 111-383 §1621.

²²⁴ P.L. 112-81 §725.

²²⁵ U.S. Government Accountability Office, *Military Personnel: DOD Has Taken Steps to Meet the Health Needs of Deployed Servicewomen, but Actions Are Needed to Enhance Care for Sexual Assault Victims*, GAO-13-182, January 2013, <https://www.gao.gov/assets/660/651624.pdf>.

evacuated to such facilities as soon as possible of making a report, consistent with operational needs.²²⁶

Concerns about male victims of sexual assault prompted the House in 2013 to call for a review of DOD's policies and protocols for the provision of medical and mental health care for male servicemembers.²²⁷ The resulting GAO report found that DOD's health affairs office "has not systematically evaluated, using various available sources of information, the extent to which either male or female victims of sexual assault have any gender-specific needs or whether the department's current care is sufficiently developed to ensure that such needs are met."²²⁸ In response to the GAO's report and recommendations, DOD highlighted some ongoing efforts to provide gender-specific treatment; for example, male-only therapy groups, and enhanced medical staff training on responding to and treating male victims.

To address concerns about the availability of trained forensic examiners, Congress required in the FY2014 NDAA that at least one full-time sexual assault forensic examiner be assigned to each military treatment facility (MTF) that operates a 24-hour emergency room.²²⁹ In addition, the law, as amended, requires that the secretary of the military department concerned to make a sexual assault forensic examiner available to patients at other facilities under its purview when needed.

Beyond the response to these short-term needs, victims of sexual assault often require longer-term care for associated physical and psychological effects. These may include unplanned pregnancy, side-effects of emergency contraception, sexually transmitted diseases, anxiety, depression, and PTSD. The after-effects of the incident might also be associated with negative behavioral changes in the victim, such as increased drug or alcohol use, poor work performance, or other disciplinary issues. The FY2019 NDAA authorized a pilot program to "to assess the feasibility and advisability of using intensive outpatient programs" to treat victims of sexual assault for PTSD and comorbid conditions.²³⁰ When members transition out of the military, they may also be eligible for behavioral health services through the Veteran's Health Administration.²³¹

According to DOD's 2014 Survivor Experience Survey, 49% of respondents indicated that they had interacted with a medical provider and 71% indicated that they had spoken with a mental health provider following a sexual assault incident. The survey data also suggest that sexual assault survivors generally have high levels of satisfaction with military medical and mental health care services and with the providers with whom they interact. Over 75% of the survey respondents who received care at MTFs indicated that they were *satisfied* with the medical and mental health services they received, while 8% reported that they were *dissatisfied*.²³² In addition,

²²⁶ DODI 6495.02, p. 72.

²²⁷ H.R. Rep. No. 113-102, p. 149.

²²⁸ GAO, *Military Personnel: Actions Needed to Address Sexual Assaults of Male Servicemembers*, GAO-14-284, March 19, 2015, <http://www.gao.gov/products/GAO-15-284>.

²²⁹ P.L. 113-66 §1725(b).

²³⁰ P.L. 115-232 §702; 10 U.S.C. §1092 note.

²³¹ For more on veteran services see, CRS In Focus IF11082, *Veterans Health Administration: Gender-Specific Health Care Services for Women Veterans*, by Victoria L. Elliott, and CRS In Focus IF11378, *Veterans Health Administration: Behavioral Health Services*, by Victoria R. Green.

²³² Among the survey respondents, 24% received medical care at a military hospital, medical center or another military medical treatment facility. Elizabeth P. Van Winkle, Lindsay Rock, and Margaret H. Coffey, et al., *2014 Survivor Experience Survey: Report on Preliminary Results Fiscal Year 2014, Quarter 4*, Defense Manpower Data Center, October 2014, p. ix.

a majority of the respondents treated at MTFs had positive and professional experiences with their medical or mental health provider.²³³

Helpline Support

In 2011, DOD launched the “Safe Helpline,” a 24/7 helpline accessible worldwide, to provide confidential crisis support and information for the DOD community.²³⁴ The helpline provides “live, one-on-one, specialized support and information” intended for adult servicemembers in the Active and Reserve Components as well as Coast Guard members. It offers a number of different ways to interact with Helpline staff including phone, text, a moderated online chat group (Safe HelpRoom) for sexual assault survivors, and an app for creating a personalized self-care plan.²³⁵

Safe Helpline Contact Information

The Safe Helpline is available at 1-877-995-5247, or via instant-message chat at <https://hotline.safehelpline.org>.

SAPRO oversees the operation of the helpline through a contract with the Rape, Abuse & Incest National Network (RAINN).²³⁶ Staff members serving the DOD community are trained in military-specific policies and procedures such as restricted and unrestricted reporting processes, and are able to connect victims with appropriate military resources and victim advocates. Survivor Experience Survey results from 2014 indicated that 54% of the respondents—individuals who had experienced a sexual assault—were aware of the DOD Safe Helpline prior to the assault. In addition, 49% were aware of an installation-based 24-hour helpline, and 33% were aware of a local civilian 24-hour helpline.²³⁷

Safe Helpline usage has rapidly increased since FY2014, due in part to outreach efforts by DOD.²³⁸ FY2019 data also indicate that approximately one-third of all victims disclosed the assault for the first time on the Helpline and 59% of users had not yet made a sexual assault report.²³⁹ Data have also shown that men are more likely than women to disclose their assault for the first time using the Helpline, and are more likely to express concerns about others finding out about the assault.²⁴⁰

Legal Assistance and Victim Advocacy

One of the most extensive efforts undertaken to strengthen support for sexual assault victims is the enhancement of legal assistance and victim advocate services. Pursuing accountability for perpetrators through the criminal justice system can be challenging and time-consuming for victims of sexual assault. Victims often have to repeat their story several times and must navigate

²³³ Ibid.

²³⁴ The Safe Helpline is available at 1-877-995-5247, or via instant-message chat at <https://hotline.safehelpline.org>.

²³⁵ See <https://www.safehelpline.org/about-dod-safe-helpline>, for additional details.

²³⁶ For more information see <https://safehelpline.org/about>.

²³⁷ Elizabeth P. Van Winkle, Lindsay Rock, and Margaret H. Coffey, et al., *2014 Survivor Experience Survey: Report on Preliminary Results Fiscal Year 2014, Quarter 4*, Defense Manpower Data Center, October 2014, p. v.

²³⁸ In FY2019, there were 36,966 users, an increase of 65% from FY2018. DOD, *Annual Report on Sexual Assault in the Military Fiscal Year 2019*, Appendix E., April 28, 2020, p. 1.

²³⁹ Ibid., p. 2

²⁴⁰ DOD, *Annual Report on Sexual Assault in the Military Fiscal Years 2018 and 2019*.

unfamiliar legal processes while dealing with the physical and emotional after-effects of the assault.²⁴¹

In the FY2011 NDAA, Congress enacted provisions that entitled members of the armed services and dependents who are victims of sexual assault to (1) legal assistance by a military or civilian counsel— now known as a special victim counsel (SVC) or victims’ legal counsel (VLC),²⁴² (2) assistance provided by a sexual assault response coordinator (SARC), and (3) assistance provided by a sexual assault prevention and response victim advocate SAPR-VA.²⁴³ (See shaded box below).

Under this legislation, a victim must be notified of the right to receive (or decline) these services whether he or she has made a restricted or an unrestricted report. The law also requires a minimum of one full-time SARC and one full-time SAPR-VA to be assigned to each brigade or equivalent level in the armed forces.²⁴⁴

Who is part of a sexual assault victim’s support team?

Special Victims’ Counsel/Victims Legal Counsel (SVC/VLC). A judge advocate or civilian attorney who is a member of the bar of a Federal court or of the highest court of a State and satisfies all SVCs statutory training requirements. The SVC provides legal assistance to the victim, represents the victim’s best interests, and ensures that the victim is aware of his or her rights throughout the military justice process. (10 U.S.C. §§1044, 1044e and 1565b)

Sexual assault response coordinator (SARC). An individual in the armed forces or a civilian DOD employee appointed by an installation commander or appropriate appointment authority. SARCs are required to complete specialized training and are subject to criminal background checks. The SARC serves as a single point of contact for coordinating and documenting sexual assault response and victim care and reports directly to the installation commander. The SARC also coordinates annual training and education programs. (10 U.S.C. §1565b, DODI 6495.02 & 6495.03)

Sexual assault prevention and response victim advocate (SAPR-VA). A volunteer servicemember or DOD civilian employee who has completed Defense Sexual Assault Advocate Certification Program (D-SAACP) certification requirements and reports directly to the SARC. The SAPR-VA facilitates care and provides referrals and nonclinical support to adult victims of sexual assault. SAPR-VA representatives are subject to criminal background checks. (10 U.S.C. §1565b, DODI 6495.02 & 6495.03)

Others including military chaplains, health care providers, and mental health and counseling providers.

SARCs and SAPR-VAs; Training and Standards

In 2005, DOD initiated a victim care response system that created the support roles of sexual assault response coordinator (SARC) and sexual assault prevention and response victim advocates (SAPR-VA). While there was broad agreement that this new program provided

²⁴¹ “Even if they do have an unrestricted report, it is difficult to get victims to stay with the military criminal justice process. You heard early testimony that when they tell their story if they go unrestricted, they may tell their stories 25, 30 times. It is very painful, and they drop out. So we have taken some measures, too, in terms of training SARCs to support victims throughout the military criminal justice process to get them to stay with it so we can hold the offender accountable.” See U.S. Congress, House Committee on Armed Services, Subcommittee on Military Personnel, *Sexual Assault in the Military: Victim Support and Advocacy*, 111th Cong., 1st sess., January 28, 2009, H.Hrg. 111-4 (Washington: GPO, 2010), p. 46. <https://www.gpo.gov/fdsys/pkg/CHRG-111hhrg49634/pdf/CHRG-111hhrg49634.pdf>, p. 46.

²⁴² The Navy and Marine Corps refer to this legal representative as a Victims’ Legal Counsel while the Army, Air Force, National Guard and Coast Guard refer to the representative as a Special Victims’ Counsel.

²⁴³ P.L. 112-81 §581.

²⁴⁴ P.L. 112-81 §583. A brigade is an Army unit with 3,000 to 5,000 assigned individuals.

valuable victim support, concerns remained that it was unevenly implemented. In particular there were lower levels of support available for deployed units, victims were unaware of their rights to support, SARC/SAPR-VA training was not fully standardized, and challenges remained in soliciting volunteers to act in these roles as a collateral duty.

The FY2012 NDAA required DOD to establish standardized training for SARCs and victim advocates to help improve the quality of services received by sexual assault victims.²⁴⁵ In response, DOD established the Department of Defense Sexual Assault Advocate Certification Program (D-SAACP). The National Organization for Victim Assistance, Incorporated manages this certification program for DOD. According to DOD, the D-SAACP provides 1) a credentialing structure for SARCs and victim advocates, a competencies framework, and oversight and evaluation of training. Applicants are required to complete 40 hours of initial training to become certified and 32 hours of continuing education every two years to maintain certification.²⁴⁶

In 2013, the Department also established the Victim Assistance Leadership Council.²⁴⁷ This council “advises the Secretary of Defense on policies and practices across four programs: sexual assault prevention and response, family advocacy, victim-witness assistance, and sexual harassment.”²⁴⁸ The roles of this council include promoting efficiencies, coordinating victim assistance policies and assessing the implementation of victim assistance standards (including competency, ethical, and foundational standards).²⁴⁹

DOD tracks the number of full-time, certified support staff as an annual metric for program assessment. In FY2019, there were 1,380 full-time SARCs and SAPR-VAs across DOD.²⁵⁰ Civilians accounted for 58% of these. Navy and Marine Corps only had civilians staffing these positions. The services also reported having uniformed servicemembers serving in these positions as collateral duties to their primary occupations.

Special Victims Counsel (SVC)

In 2013, Congress enacted specific criteria for the SVC program for the purpose of providing legal assistance.²⁵¹ The Judicial Proceedings Panel (JPP) reviewed the special victims counsel program in 2014. In the panel’s February 2015 report, they expressed concerns about the following

- statutory requirements linking duty status to entitlement for SVC legal services, potentially excluding some reserve component servicemembers from SVC program eligibility;

²⁴⁵ P.L. 112-81 §584.

²⁴⁶ DOD Sexual Assault Advocate Certifications Program (D-SAACP), at <https://www.sapr.mil/d-saacp>. See also <https://www.trynova.org/credentialing/d-saacp-dod/>.

²⁴⁷ DOD, *Standards for Victim Assistance Services in the Military Community*, DODI 6400.07, November 25, 2013, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640007p.pdf>.

²⁴⁸ DOD, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, Appendix A: FY1206 Line of Effort Highlights, May 1, 2017, p. 4.

²⁴⁹ DOD, *Standards for Victim Assistance Services in the Military Community*, DODI 6400.07, Incorporating Change 2, Effective July 6, 2018.

²⁵⁰ DOD, *Annual Report on Sexual Assault in the Military Fiscal Year 2019*, Appendix C.: Metrics and Non-Metrics on Sexual Assault, p. 17, https://www.sapr.mil/sites/default/files/4_Appendix_C_Metrics_and_Non-Metrics_on_Sexual_Assault.pdf.

²⁵¹ P.L. 113-66 §1716, 10 U.S.C. §1044e.

- a lack of standardized reporting structures across the services—with particular concern about the independence of the SVC structure in the Army;
- a lack of uniform quality standards for SVC training;
- geographic availability of face-to-face SVC services; and
- a lack of standardized metrics for evaluating the operation of the SVC program.²⁵²

In response to some of these concerns, Congress enacted a number of changes to the SVC program. In the FY2015 NDAA, Congress expanded eligibility for SVC services to certain reserve component members who might otherwise not be eligible for legal assistance due to his or her duty status.²⁵³ In the following year, Congress authorized access for certain DOD civilians.²⁵⁴ The FY2016 NDAA required DOD to establish baseline training requirements for SVCs and other SVC program enhancements.²⁵⁵ Section 533 of the FY2016 NDAA also expanded the role of SVCs to provide legal consultation and assistance to victims with complaints against the government, FOIA requests, and correspondence with Congress.

The FY2020 NDAA included several provisions amending the SVC program. The bill required the Service Secretaries to ensure that SVC caseloads, to the extent practicable do not exceed 25 cases at one time.²⁵⁶ It also required that SVC services be made available to victims within 72 hours of a request. Another provision required training for SVCs on state-specific laws and policies for the state in which the installation is located. The stated purpose of this training is to “assist such Counsel in providing victims of alleged sex-related offenses with information necessary to make an informed decision regarding preference as to the jurisdiction (whether court-martial or State court) in which such offenses will be prosecuted.”²⁵⁷ Finally, the bill extended SVC legal assistance to those claiming retaliation following a sexual assault.

Retaliation Protections

Retaliation is sometimes used as an umbrella term to refer to a range of illegal, impermissible, or hostile actions taken against someone as a result of their having made or being suspected of having made a protected communication, including a crime report.²⁵⁸ Experts have reported that retaliation can have negative psychological impacts on sexual assault victims and that a lack of social support leads to a higher likelihood of developing PTSD.²⁵⁹ The threat, or perceived threat, of retaliation may also influence victims’ willingness to make an unrestricted report of an incident and thus a reduced ability to hold perpetrators accountable. There is some evidence that this may be a factor in the willingness of servicemembers to report an incident. The 2014 Military Workplace Study found that among servicemembers who experienced but *did not* report a sexual assault, 32% were concerned about retaliation by the perpetrator, 28% were concerned about retaliation by their peers or coworkers, and 23% were concerned about retaliation by a supervisor

²⁵² Judicial Proceeding Panel, *Initial Report*, February 2015, p. 4-5, https://jpp.whs.mil/public/docs/08-Panels/01_JPP_InitialReport_Final_20150204.pdf.

²⁵³ P.L. 113-291 §533.

²⁵⁴ P.L. 114-92 §532.

²⁵⁵ *Ibid.*, §535.

²⁵⁶ P.L. 116-92 §§541 & 542

²⁵⁷ *Ibid.*, §550C.

²⁵⁸ Protected communications are defined in 10 U.S.C. §1034. Department of Defense Sexual Assault and Response Office, *DACOWITS DOD SAPRO Retaliation Overview*, Briefing, December 9, 2015.

²⁵⁹ Judicial Proceedings Panel, *Report on Retaliation Related to Sexual Assault Offenses*, February 2016, p. 16.

or someone in their chain of command.²⁶⁰ DOD has expressed awareness of the potential for retaliation to undermine organizational trust, as stated in the Department's prevention and response strategy,

Retaliation not only harms the lives and careers of victims, bystanders/witnesses, and first responders but also undermines military readiness and weakens the culture of dignity and respect. Without question, retaliation has no place in the Armed Forces.²⁶¹

Statutory restrictions on retaliatory actions for protected servicemember communications, sometimes called *whistleblower protection*, were enacted in the 1988 Military Whistleblower Protection Act and codified in 10 U.S.C. §1034.²⁶² Given the reported prevalence and negative impacts associated with retaliation, Congress has taken actions in recent years to

- clarify and expand the definitions of retaliation,
- enhance whistleblower protections for sexual assault victims and bystanders/witnesses, and
- enhance oversight of the investigation and reporting processes for alleged retaliatory actions.

Definitions of Retaliation

Section 1709 of the FY2014 NDAA required DOD to prescribe regulations prohibiting retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense. The law also specified that the DOD regulations must make retaliation an offense punishable under Article 92 of the UCMJ, "Failure to Obey Order or Regulation."²⁶³ The provision required the Secretary of Defense's definition of retaliation punishable under Article 92 to include, at a minimum:

(A) taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member reported a criminal offense; and

(B) ostracism and such of acts of maltreatment, as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense.²⁶⁴

In 2015, the Secretary of Defense directed the development of a "DoD-wide comprehensive strategy to prevent retaliation against military members who report or intervene on behalf of victims of sexual assault and other crimes."²⁶⁵ DOD currently adheres to three types of retaliation that are defined in law and policy: reprisal, ostracism, and cruelty, oppression and maltreatment (see **Table 8**).

²⁶⁰ Andrew R Morral, Kristie L. Gore, and Terry L. Schell, *Sexual Assault and Sexual Harassment in the Military* "Annex to Volume 2. Tabular Results from the 2014 RAND Military Workplace Study for Department of Defense Servicemembers, RAND Corporation, Santa Monica, CA, 2015, p. 129.

²⁶¹ DOD, *DOD Retaliation Prevention and Response Strategy: Regarding Sexual Assault and Harassment Reports*, April 2016.

²⁶² P.L. 100-456, §846, codified at 10 U.S.C. §1034, as amended.

²⁶³ 10 U.S.C. §892.

²⁶⁴ P.L. 113-66 §1709(b)(1).

²⁶⁵ DOD, "Department of Defense Press Briefing on Sexual Assault in the Military in the Pentagon Press Briefing Room," press release, May 1, 2015.

Reprisal, sometimes called *professional retaliation*, is currently defined in statute (10 U.S.C. §1034) as taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication or being perceived as making or preparing to make a protected communication. Examples of reprisal include: promotion interference, transfer or reassignment, poor performance evaluations, disciplinary action, or making or threatening to make significant changes in duties or responsibilities that are inconsistent with the military member's grade. A 2012 GAO report found that the most common forms of reprisal for all military whistleblower cases (not only sexual assault-related cases) were assignment or reassignment (50%), a poor performance evaluation (46%), or some sort of disciplinary action (42%).²⁶⁶

Ostracism is sometimes referred to as *social retaliation* and involves exclusion of an individual from social acceptance, friendship or privileges with the intent to discourage the reporting of a criminal offense or the due administration of justice. Unlike reprisal, ostracism is not confined to acts taken by the chain of command, but also could include acts by peers or other colleagues. Ostracism is defined in military department-level regulations and may include bullying (in person or through social media), exclusion from group activities, or denying the privilege of friendship.²⁶⁷ According to DOD, the *intent* requirement in the definition is included as to not violate First Amendment rights to freedom of association.²⁶⁸ There may be some challenges to identifying and proving ostracism, since commanders and NCOs may have limited information about the cases while under investigation.

Other forms of retaliation have historically been punishable under the UCMJ, and these are typically considered to be *criminal retribution*. These include actions like cruelty or maltreatment (Article 93), assault (Article 128), stalking (Article 130), or obstruction of justice (Article 131b) (see **Table 8**).²⁶⁹ In the FY2017 NDAA, Congress added a punitive article to the UCMJ specifically to address retaliation in the form of unfavorable personnel actions (Article 132).²⁷⁰ This change became effective on January 1, 2019.

Investigative Authority for Retaliation

Victims of sexual assault may seek assistance to report retaliation in a variety of ways, including hotlines, victim advocates, counselors, and military commanders outside of their chain of command. The investigative authority for reprisal (professional retaliation) cases is the Department of Defense Inspector General (DODIG). The military services typically lead other

²⁶⁶ U.S. Government Accountability Office, *Whistleblower Protection: Actions Needed to Improve DOD's Military Whistleblower Reprisal Program*, GAO-12-362, February 22, 2012, <https://www.gao.gov/products/GAO-12-362>, p. 62.

²⁶⁷ Navy and Air Force definition of ostracism: Exclusion from social acceptance, privilege or friendship with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice (as defined in Air Force Guidance Memorandum 2015-01 to Air Force Instruction (AFI) 36-2909; Secretary of the Navy Instruction (SECNAVINST) 5370.7D). The Army definition of ostracism is slightly different: Excluding from social acceptance, privilege or friendship a victim or other member of the Armed Forces because: (a) the individual reported a criminal offense; (b) the individual was believed to have reported a criminal offense; or (c) the ostracism was motivated by the intent to discourage reporting of a criminal offense or otherwise to discourage the due administration of justice (as defined in the Army Directive 2014-20).

²⁶⁸ Judicial Proceedings Panel, *Report on Retaliation Related to Sexual Assault Offenses*, February 2016, p. 64.

²⁶⁹ The JPP noted in its 2016 report that these UCMJ articles give commanders adequate tools for addressing social retaliation, and recommended that Congress not add a separate UCMJ offense for retaliation. Judicial Proceedings Panel, *Report on Retaliation Related to Sexual Assault Offenses*, February 2016, p. 66.

²⁷⁰ P.L. 114-328 §5450.

forms of retaliation investigations, conducted by military criminal investigative organizations (MCIOs), law enforcement, or commanders at the unit level.

In the FY2014 NDAA²⁷¹ Congress enhanced protections for military whistleblowers and added a requirement for Inspector General (IG) retaliation investigations to include those “making a protected communication regarding violations of law or regulation that prohibit rape, sexual assault, or other sexual misconduct.”²⁷² The law requires the investigating IG to be outside the immediate chain of command and/or at least one organizational level higher than both the member submitting the reprisal allegation, and the individual or individuals alleged to have taken the retaliatory action.

Oversight entities, however, continued to raise concerns about the quality and independence of DODIG investigative processes with regard to reprisal cases. A 2015 GAO review of DODIG management of whistleblower complaints found that “DODIG did not have a process for documenting whether investigations were independent and were conducted by someone outside the military service chain of command.”²⁷³ In addition, the report noted substantial delays in the average length of DODIG and service IG whistleblower reprisal investigations, failure to regularly notify servicemembers about the investigation delays, and lack of standardization in definitions and reporting between DOD and service IGs.

Congress again expanded whistleblower protections in the FY2017 NDAA and included provisions to address issues raised in the GAO report.²⁷⁴ In particular, prohibited personnel actions against whistleblowers were expanded to include

- (i) The threat to take any unfavorable action.
- (ii) The withholding, or threat to withhold, any favorable action.
- (iii) The making of, or threat to make, a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member’s grade.
- (iv) The failure of a superior to respond to any retaliatory action or harassment (of which the superior had actual knowledge) taken by one or more subordinates against a member.
- (v) The conducting of a retaliatory investigation of a member.²⁷⁵

The FY2017 NDAA provisions also required uniform conduct and training standards for DODIG investigators and required DODIG to provide periodic updates on the investigation status to the servicemember who made the allegation, the Secretary of Defense and the Secretary of the department concerned.

²⁷¹ P.L. 113-66 §§1714 & 1715.

²⁷² U.S. Congress, House Committee on Armed Services, *National Defense Authorization Act For Fiscal Year 2014, Joint Explanatory Statement to Accompany H.R. 3304*, P.L. 113-66, committee print, 113th Cong., 1st sess., December 2013 (Washington: GPO, 2014).

²⁷³ GAO, *Whistleblower Protection: DOD Has Improved Oversight for Reprisal Investigations but Can Take Additional Actions to Standardize Process and Reporting*, GAO-16-860T, September 7, 2016.

²⁷⁴ P.L. 114-328 §§531 & 532.

²⁷⁵ *Ibid*, §531.

Table 8. Types of Retaliation and Investigative Authority

Type of Retaliation	Description	Defining Statute or Policy	Investigative Authority
Reprisal (professional retaliation)	Adverse personnel actions by chain of command against the individual making a report. Includes - Interference with promotion - Unwarranted disciplinary action - Involuntary transfer or reassignment - Unwarranted negative performance evaluation - Unfair decision about pay, benefits, awards, or training - Making or threatening to make significant change in duties or responsibilities of a member not commensurate with the member's grade	10 U.S.C. §1034, and DODD 7050.06 Military Whistleblower Protection	DOD Inspector General (IG)
Ostracism (social retaliation)	Social exclusion by anyone against the individual making a report, includes - Disparate treatment by and among peers - Exclusion from social acceptance, privilege, or friendship - Workplace incivility - Individuals distancing themselves from the victim - Victim-blaming - Excluding victim from social activities or interactions, including by not inviting - Harassing comments on social media "Unfriending" on social media	P.L. 113-66 §1709, Department-level regulations	Military Criminal Investigative Organizations (MCIOs), law enforcement investigators, or commander-directed investigations
Maltreatment or Criminal Retribution	Criminal misconduct by anyone against the individual making a report. Includes - Cruelty or maltreatment - Destruction of property - Stalking - Assault - Threats - Obstruction of justice - Other state/federal crimes	UCMJ, Articles 93, 109, 102a, 128, 130, and 134.	Military Criminal Investigative Organizations (MCIOs), law enforcement investigators, or commander-directed investigations

Source: CRS table derived from Judicial Proceedings Panel, *Report on Retaliation Related to Sexual Assault Offenses*, February 11, 2016, http://jpp.whs.mil/Public/docs/08Panel_Reports/04_JPP_Retaliation_Report_Final_20160211.pdf, p. 13.

Notes: Department-level references are Secretary of the Navy Instruction (SECNAVINST) 5370.7D, Air Force Guidance Memorandum 2014-01 to Air Force Instruction (AFI) 36-2909, and Army Directive 2014-20.

Measuring the Extent of Retaliation

Information on retaliation in DOD is derived from surveys and retaliation reporting data. Surveys capture estimates of prevalence based on self-reported perceptions from victims of sexual assault. Until 2015, DOD has lacked centralized, systematic processes for monitoring and reporting

documented instances of retaliation against sexual assault victims, witnesses, and bystanders.²⁷⁶ The first major effort by DOD to collect data on the nature and disposition of retaliation cases began in March 2015 when the Undersecretary Secretary of Defense for Personnel and Readiness issued a data-call to each of the services for “alleged retaliation case synopses” from unrestricted reports of sexual assault during the time between the beginning of FY2014 and February 2015.²⁷⁷ The required data included the following

- Whether a report is professional (reprisal) or social (ostracism) retaliation,
- A narrative of the allegation,
- The authority that received the complaint (e.g., IG, MCIO, chain of command),
- Whether the retaliator(s) were in the reporter’s chain of command, peer, coworker, or other,
- Whether the alleged retaliation was actionable,
- Whether the alleged retaliator was also the alleged perpetrator of the crime,
- The gender of the retaliator and victim, and
- The retaliation report outcome.

In May 2015, the JPP requested similar data from the Services. At that time, DOD’s SAPRO office reported to the JPP that steps were needed to modernize DSAID to support collection and management of retaliation data.²⁷⁸ A 2016 report by the JPP stated that although the Armed Forces were unable to provide this information, the Army, Air Force, and Marine Corps had independently taken steps to track retaliation data.²⁷⁹ In FY2018, DOD started including information about documented retaliation reports and subsequent actions in annual SAPR reports.

Data from surveys suggest that retaliation is under-reported. According to FY2018 WGRA survey estimates, approximately 21% (1,008) of the nearly 4,800 active duty women who reported a sexual assault “experienced circumstances that met legal criteria for the kinds of retaliatory behavior prohibited by military law.”²⁸⁰ **Figure 6** shows military servicewomen assault victims’ perceptions of these three prohibited retaliatory actions, by type. Additional data show that the number of retaliation allegations the Military Services and the NGB recorded in FY2018 was 54.²⁸¹ These data suggest that about 5% of military women who experience retaliation after an assault make an official report.

²⁷⁶ Judicial Proceedings Panel, *Report on Retaliation Related to Sexual Assault Offenses*, February 11, 2016.

²⁷⁷ DOD, Memorandum from Under Secretary of Defense for Personnel and Readiness on Data Call on Retaliation for the Fiscal Year 2014 Department of Defense Annual Report on Sexual Assault in the Military (Mar. 12, 2015), https://jpp.whs.mil/Public/docs/03_Topic-Areas/06-Retaliation/20151106/01_DoD_Retaliation_DataCall_201503.pdf.

²⁷⁸ *Ibid.*, p. 32.

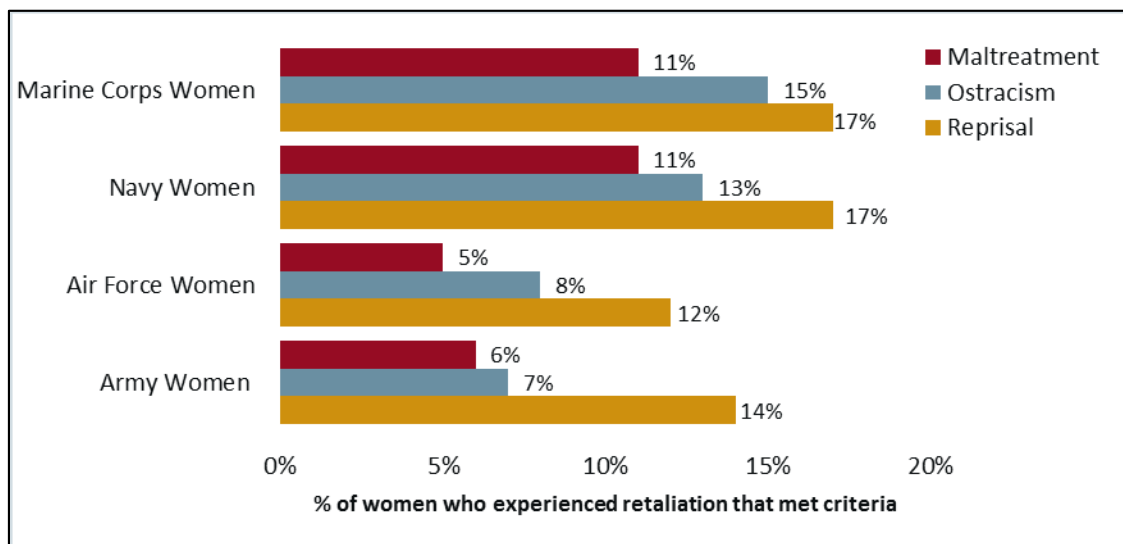
²⁷⁹ Judicial Proceedings Panel, *Report on Retaliation Related to Sexual Assault Offenses*, February 11, 2016.

²⁸⁰ Prevalence estimates based on survey data for active duty men were not reportable due to low numbers. DOD, *Annual Report on Sexual Assault in the Military*, FY2018, p. 20, https://www.sapr.mil/sites/default/files/FY18_DOD_Annual_Report_on_Sexual_Assault_in_the_Military.pdf.

²⁸¹ *Ibid.*, p. 21.

Figure 6. Perceived Retaliation Following a Report of Sexual Assault

FY2018 Survey Data, Active Component



Source: CRS, derived from DOD, Office of People Analytics, *2018 Workplace and Gender Relations Survey of Active Duty Members; Overview Report; Service-level Annexes*.

Notes: Estimates are based on the perceptions of those who experienced a sexual assault in the past year and reported the assault to a military authority. In order to be included in the *met-criteria* retaliation rates, members must indicate that they both experienced behavior(s) and motivating factors that are consistent with definitions of retaliation. Rates for perceived retaliation against military men as victims were not reportable due to low numbers.

In FY2019, the military services and the National Guard Bureau received 40 new retaliation reports against 72 alleged offenders.²⁸² Data indicate that victims of assault or harassment accounted for most of the retaliation reports (87%), while witnesses or bystanders accounted for the remaining 13%.²⁸³

Military Justice and Investigations

Uniformed members of the military services who allegedly commit sexual assault crimes are subject to prosecution under the military justice system. Under the military justice system, members of the Armed Forces are subject to a separate set of rules, orders, proceedings, and consequences than their civilian counterparts. The military justice system is embodied in a code of military criminal laws called the Uniform Code of Military Justice (UCMJ), which the President implements through the Manual for Courts-Martial (MCM).²⁸⁴ The purpose of this system is to “promote justice, to assist commanders in maintaining good order and discipline, to promote efficiency and effectiveness within the military establishment, and thereby to strengthen

²⁸² DOD, *FY2019 Annual Report on Sexual Assault in the Military*, Appendix B: Statistical Data on Sexual Assault, April 28, 2020, p. 37.

²⁸³ Ibid.

²⁸⁴ The UCMJ is found at Title 10, United States Code (U.S.C.), Sections 801 through 946. The Manual for Courts-Martial includes the Rules for Courts-Martial (RCM) and Military Rules of Evidence (MRE). The military services also promulgate and update implementing regulations.

the national security of the United States.”²⁸⁵ Prosecution of sexual assault offenders through the military justice system typically has a dual purpose: (1) to apply just punishment for illegal acts, and (2) to deter future offenders.²⁸⁶ Much of the sexual assault legislation that Congress has proposed and enacted over the past decade has been directed at modifying a military commander’s investigative and prosecutorial discretion for sex-related offenses, and enhancing scrutiny over investigation and prosecution decisions. The following sections summarize selected issues that have been on the forefront of congressional interest since 2004.

Investigation

An unrestricted report of sexual assault typically triggers an investigation by one of the Military Criminal Investigative Organizations (MCIOs).²⁸⁷ An MCIO may investigate any criminal matter with a DOD nexus.²⁸⁸ In reported sex-related offenses that have a DOD nexus, unit commanders must defer to an MCIO and are prohibited from conducting command inquiries or investigations.²⁸⁹ The most common bases for a DOD nexus are

- The crime occurred on a DOD installation, facility, or vessel.
- DOD resources or equipment were utilized in the commission of the crime.
- A DOD entity, DOD civilian employee, servicemember, or military family member was the victim of the crime.
- The person under investigation is subject to UCMJ or is affiliated with the DOD, or was affiliated with DOD at the time of the offense.

In any investigation with a DOD nexus, it is possible that other federal entities, and state and local entities, also have authority to investigate the same offense.

At military installations in the United States, an MCIO has federal investigative primacy over servicemembers, but the FBI has primacy over civilians who commit federal crimes.²⁹⁰ However, a 1984 memorandum of understanding (MOU) between DOD and the Department of Justice (DOJ) defers to the MCIOs to investigate civilians in most instances where there is a DOD nexus.²⁹¹ An MCIO may investigate an offense with a DOD nexus outside a military installation, but this activity is limited to federal matters that are governed by the DOD/DOJ MOU and is subject to other restrictions.²⁹²

State and local law enforcement agencies have exclusive investigative jurisdiction over state crimes that occur outside a military installation, but they will likely defer to an MCIO if the

²⁸⁵ Manual for Courts Martial (MCM), p. I-1.

²⁸⁶ For additional background, see Mitsie Smith, “Adding Force behind Military Sexual Reform: The Role of Prosecutorial Discretion in Ending Sexual Assault,” *Buffalo Journal of Gender, Law, and Social Policy*, vol. XIX (2010-2011), pp. 150-152.

²⁸⁷ The MCIOs are the U.S. Army Criminal Investigation Command (CID), the Naval Criminal Investigative Service (NCIS), and the Air Force Office of Special Investigations (OSI).

²⁸⁸ Department of Defense, *Instruction 5505.03, Initiation of Investigations by Defense Criminal Investigative Organizations*, February 13, 2017, p. 2.

²⁸⁹ DODI 5505.18 provides instruction on the process of investigation of allegations of adult sexual assault in DOD.

²⁹⁰ 28 U.S.C. §535. Investigation of crimes involving Government officers and employees; limitations.

²⁹¹ Department of Defense, *Instruction 5525.07, Implementation of the memorandum of Understanding Between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes*, March 5, 2020.

²⁹² 32 CFR, Subtitle A, Chapter V, Subchapter I, Part 631, Subpart C. Off-Installation Operations (Military Patrols and Investigative Activities) and Policy.

matter is also a federal offense with a DOD nexus and federal interests outweigh state interests. Whether a state or local law enforcement agency may investigate an offense that occurred on a military installation depends on the legislative jurisdiction of the federal property or any agreements between the MCIO and those agencies.

Legislative Jurisdiction²⁹³

There are three types of legislative jurisdiction that apply to federal property in a state, and they are determinative of federal or state investigative jurisdiction over a person or an offense on a military installation.

- **Exclusive jurisdiction.** The federal government possesses, by whatever means acquired, all of the state's authority to legislate without reservation, and the state concerned has not reserved the right to serve criminal or civil process. These areas are often referred to as "federal enclaves" and exclusive federal legislative jurisdiction displaces state jurisdiction.
- **Concurrent jurisdiction.** The state and federal governments both have full legislative jurisdiction. The state has reserved to itself the right to exercise, concurrently with the United States, all of the same authority.
- **Partial jurisdiction.** The state reserves some, but not all, legislative jurisdiction. For example, a state can reserve the power to tax, but cede all other powers. In another example the state cedes all legislative jurisdiction but reserves criminal jurisdiction.

The following is a framework for analyzing investigation jurisdictional matters

- **Legislative Jurisdiction (Territory).** Which entity or entities have legislative jurisdiction over the site of a crime or area of a continuing crime-federal or state, or both?
- **Personal Jurisdiction.** Which entity or entities have personal jurisdiction over the alleged perpetrator or perpetrators-DOJ/FBI, DOD/MCIO, or state law enforcement--or two or more, if so, which is primary?
- **Subject Matter Jurisdiction.** Which entity's criminal law applies to a crime-federal civilian (Title 18 USC), federal military (Title 10 USC), or state law--or if there are two or more, which is primary?
- Is the entity with primary jurisdiction able to assimilate the criminal law of any other entity and prosecute additional offenses?

Congressional concerns in the area of investigation include the following questions.

- Are investigations being initiated in a responsive manner upon notification of an unrestricted report alleging sexual assault?
- Are the rights of the alleged victim and perpetrator being protected in the investigative process?
- Are MCIOs properly trained and do they adhere to prescribed policies and procedures?
- Are investigations conducted in a fair, comprehensive, timely, and transparent manner?

In the FY2014 NDAA, Congress included provisions that require commanding officers to immediately refer unrestricted reports of sex-related offenses involving members of their command to MCIO investigators.²⁹⁴ This provision also stipulated that commanders shall not conduct internal, command-directed investigations on sexual assault allegations, and shall not delay contacting the MCIO while attempting to assess the credibility of the report. An additional provision in the FY2014 NDAA requires commanders to provide an incident report within eight days of an unrestricted report of sexual assault.²⁹⁵

²⁹³ U.S. Constitution, Art. I, § 8, cl. 17.

²⁹⁴ P.L. 113-66 §1742.

²⁹⁵ P.L. 113-66 §§1742, 1743.

MCIO investigators are required to adhere to several processes specific to cases involving allegations of sexual assault, among them ensuring a SARC is notified, avoiding disclosure of individuals' sexual orientation unless necessary for an investigation, ensuring that investigation reports are retained for 50 years, and making data available for use in the Defense Sexual Assault Incident Database.²⁹⁶

Over the past decade, some Members of Congress, advocacy organizations, and news media have raised concerns that the military uses flawed processes to conduct some sexual assault investigations.²⁹⁷ The DOD Inspector General (DODIG) has investigated individual claims and has also conducted broader evaluations of investigative processes.²⁹⁸ In a March 2015 report, DODIG found that 99% of the MCIO investigations opened on or after January 1, 2012, and completed in 2013, met existing investigative standards or had minor deficiencies.²⁹⁹ This was an improvement over a 2013 DODIG evaluation that found significant deficiencies in 11% of cases completed in 2010.³⁰⁰

Disposition of Cases

A completed MCIO report of investigation (ROI) is reviewed for legal sufficiency by a military lawyer, or Staff Judge Advocate (SJA) who determines if the investigation's findings are supported by law and fact and the case is within DOD's jurisdiction. In some cases, the investigation will reveal that the military lacks jurisdiction to prosecute a crime. Examples of this include, when the subject of the investigation is unknown, a civilian, or has died or deserted. If DOD has jurisdiction, the investigation may not yield sufficient evidence to substantiate a sexual assault charge, or command action may be precluded due to, for example, refusal of the victim to participate or expiration of the statute of limitations.

Following review of the ROI, the SJA recommend appropriate judicial, nonjudicial, or administrative disciplinary action to the initial disposition authority. Since 2013 it has been the policy of the military services that initial disposition authority for alleged sex-related offenses be limited to the first special court-martial convening authority (SPCMCA) in the chain of command

²⁹⁶ Defense Technical Information Center, "Department of Defense Instruction 5505.18: Investigation of Adult Sexual Assault in the Department of Defense," last updated June 18, 2015. The requirement that restricted reports are retained for 50 years was added in 2012, P.L. 112-239 §577.

²⁹⁷ For examples, see Office of Senator Kirsten Gillibrand, "Senator Gillibrand Calls On President Obama To Open Formal Independent Investigation," May 31, 2016; Department of Defense Inspector General, "Evaluation of United States Army Criminal Investigation Command Sexual Assault Investigation," November 10, 2015; Don Christensen, Miranda Petersen, and Yelena Tsilker, "Debunked: Fact-Checking the Pentagon's Claims Regarding Military Justice," Protect Our Defenders, April 18, 2016; and John Woodrow Cox, "A Marine's Conviction," *Washington Post*, June 21, 2016.

²⁹⁸ In response to a January 2015 request by Senator Mark Warner, DODIG evaluated the Army CID's sexual assault investigation processes in a specific case. The resulting report found that CID showed an overly "derisive and dismissive" attitude toward the individual who initially reported the incident. The report also found "significant deficiencies" in CID's investigation process—these included failure to interview the victim thoroughly, failure to interview witnesses, failure to advise the investigation's subject of his legal rights, incorrect categorization of the alleged offense, and failure to provide investigative reports to the subject's commanding officer. Department of Defense Inspector General, "Evaluation of United States Army Criminal Investigation Command Sexual Assault Investigation," November 10, 2015.

²⁹⁹ In the four cases where significant deficiencies were found, three of the cases were reopened and it was deemed impracticable to reopen the fourth case.

³⁰⁰ DOD Inspector General, *Evaluation of Military Criminal Investigative Organizations' Adult Sexual Assault Investigations*, DODIG-2015-094, Alexandria, VA, March 24, 2015.

who is an O-6 or higher.³⁰¹ After receiving the SJA's legal advice, this officer may exercise authority over the matter, dismiss the allegations with no further action, or refer the matter to the next officer in the chain of command who is a general court-martial convening authority (GCMCA).

The FY2014 NDAA included a provision that requires an Article 32 (pre-trial) hearing before proceeding to court-martial (unless waived by the accused) for sex-related offenses.³⁰² By statute, the purpose of this hearing is limited to

(A) Determining whether there is probable cause to believe an offense has been committed and the accused committed the offense. (B) Determining whether the convening authority has court-martial jurisdiction over the offense and the accused. (C) Considering the form of charges. (D) Recommending the disposition that should be made of the case.³⁰³

Cases that proceed to court-martial may proceed to a completed trial, charges may be dismissed, or the perpetrator may be discharged from service in lieu of court-martial.

Commander's Discretion

The commander's authority to determine what action to take based on the result of an investigation is often termed *commander's discretion* and has been one of the more frequently debated aspects of military sexual assault adjudication. Some of the questions raised by Congress in recent years include

- Are appropriate procedures in place to ensure that the disposition decision is transparent and based on sound legal advice?
- Does the commanding officer/disposition authority have the requisite information, experience and objectivity to make disposition decisions?
- Should disposition authority be removed from commanding officers and given to (military or civilian) career prosecutors?

Several pieces of legislation in recent Congresses have sought to remove potential sources of bias, and otherwise constrain or transfer the commander's decision-making authority with respect to sexual assault (see **Table 9**).

³⁰¹ These alleged offenses include rape, sexual assault, forcible sodomy and attempts to commit any of these offenses. The policy also applies to the disposition authority for alleged offenses arising from or relating to the incident committed by the accused or the victim. Judicial Proceedings Panel, *The Services' Directives Withholding the Initial Disposition Authority in Sexual Assault Cases*, 2016, http://jpp.whs.mil/Public/docs/03_Topic-Areas/09-Withholding_Authority/20160408/03_Services_Directives_WithholdingAuthority.pdf. Convening authorities are defined in the UCMJ, 10 U.S.C. §§822 (general court-martial), 823 (special court-martial), & 824 (summary court-martial).

³⁰² P.L. 113-66 §1702. An Article 32 hearing is a preliminary hearing similar to a civilian grand jury and allows evidence to be presented by the defense and the witness. For more information see CRS In Focus IF10504, *Defense Primer: The Uniform Code of Military Justice (UCMJ)*, by R. Chuck Mason.

³⁰³ Ibid.

Table 9. Selected Legislative Reforms Related to Commander's Disposition Authority

Legislation	Description
FY2013 NDAA (P.L. 112-239)	Section 572 requires that the Secretary of each military department establish a record on the disposition of any unrestricted report of sexual assault involving a member of the Armed Forces, whether such disposition is court-martial, nonjudicial punishment, or other administrative action. Section 575 expands requirements in DOD's annual report to include additional details in sexual assault case synopsis, including the reason for dismissal of charges, and characterization of discharge for offender.
FY2014 NDAA (P.L. 113-66)	Section 1702 requires a preliminary hearing (Article 32) before a charge can be referred to a general court-martial and eliminates unlimited discretion of commanders to modify court-martial findings and sentences. Section 1706 requires that a victim be provided an opportunity to submit matters for consideration by the convening authority before the convening authority takes action on the findings or sentence of a court-martial that involved the victim, and provides that the convening authority shall not consider any submitted matters that relate to the character of a victim unless such matters were presented as evidence at trial and not excluded at trial. Section 1708 modifies Rule 36 of the Manual for Courts-Martial to strike the character and military service of the accused from the matters a commander should consider in deciding how to dispose of an offense. Section 1744 requires higher level review of convening authority decisions to not refer charges to court-martial for certain sex-related offenses if the chief prosecutor recommends charges. (as amended by P.L. 113-291 §541) Section 1715 requires the Inspector General (IG) to review and investigate allegations of retaliatory personnel actions for making a protected communication regarding violations of law or regulation that prohibit rape, sexual assault, or other sexual misconduct. Section 1743 requires commanding officers to provide an incident report within 8 days of an unrestricted report of sexual assault. Section 1742 requires commanding officers to immediately refer to the appropriate military criminal investigation organization reports of sex-related offenses involving members of the commander's chain of command.
FY2015 NDAA (P.L. 113-291)	Section 536 amends Military Rules of Evidence to provide that the general military character of an accused is not admissible for the purpose of showing the probability of innocence of the accused for certain offenses. Section 542 requires an analysis of the disposition of the most serious offenses occurring during sexual assaults committed by members of the Armed Force Section 534 requires DOD to establish a process for consulting with the victim on the prosecution venue (i.e., court-martial or civilian court with jurisdiction).
FY2019 NDAA (P.L. 115-232)	Section 535 Requires Secretary of Defense to establish a uniform <i>command action form</i> for reporting the final disposition of cases of sexual assault in reported cases where the alleged offender is a member of the Armed Forces.

Source: Compiled by CRS from multiple sources.

In 2014, a congressionally mandated panel was tasked with conducting a review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses. Upon reviewing the commander's authority in sexual assault cases, as well as the practices of allied militaries and available civilian statistics, the Response Systems to Adult Sexual Assault Crimes Panel cautioned against further limitations of convening authorities under the UCMJ, stating,

The evidence does not support a conclusion that removing convening authority from senior commanders will reduce the incidence of sexual assault, increase reporting of sexual assaults, or improve the quality of investigations and prosecutions of sexual assault cases in the Armed Forces. In addition, proposals for systemic changes to the military justice systems should be considered carefully in the context of the many changes that have recently been made to the form and function of the military justice system. The numerous and substantive changes recently enacted require time to be implemented and then assessed prior to enacting additional reforms.³⁰⁴

In addition, the panel also recommended repealing Section 1744 of the FY2014 NDAA, which required Secretary-level review of decisions to not refer charges to court martial, suggesting that this requirement “may cause undue pressure on convening authorities and their legal advisors to refer cases to trial in situations where referral does not serve the interests of victims or justice.”³⁰⁵ In response to this recommendation, Congress amended this requirement in the FY2015 NDAA to require review by the Secretary *if requested* by the chief prosecutor.³⁰⁶

One proposal, first introduced as the Military Justice Improvement Act of 2013 (MJIA 2013, S. 967) sought to remove decisions about the handling of sexual assault cases from the military chain of command. The most recent iteration of this bill is the Military Justice Improvement Act of 2019 (MJIA 2019, S. 1789, 116th Congress). Under the MJIA 2019 provisions, an officer in the chain of command for the accused would have no longer been the primary disposition authority for referring certain sex-related offenses to general or special court martial.³⁰⁷ Instead this authority would be granted to a military trial counsel in the grade of O-6 or higher who has “significant experience in trials by general or special court-martial”, and is outside the chain of command of the alleged offender. Under the MJIA 2019, the counsel’s decision to refer to court-martial and the type of court-martial would be binding on the court-martial convening authority. Nevertheless, this proposed legislation included a provision that would allow the commanding officer to refer the case or take other administrative actions if the disposition authority (trial counsel) decided not to refer the case to court-martial.

Some veterans’, victims’, and women’s advocacy groups, as well as some DOD officials and legal scholars, support MJIA or similar legislative initiatives.³⁰⁸ They have argued that removing the commanding officer’s involvement in the decision-making process could remove the potential for bias in that process. In some military sexual assault cases, both the victim and the accused may be in the same unit or within the same chain of command. Commanders may be predisposed to bias based on factors such as, personal knowledge of the alleged victim or perpetrator’s performance record or character. Even if there is no actual bias, the perception of bias could

³⁰⁴ Response Systems to Adult Sexual Assault Crimes Panel, *Report of the Response Systems to Adult Sexual Assault Crimes Panel*, June 2014, p. 6. Comparatively, but in no way binding on the United States, the panel’s view is in contrast to the European Court of Human Rights ruling 23 years ago that a *court martial convening officer* does not provide an impartial and independent hearing [Right to a fair trial] for the purposes of Article 6(1) of the *Convention for the Protection of Human Rights and Fundamental Freedoms (Findlay v. The United Kingdom 22107/93 [1997] ECHR 8 (25 Feb 1997))*.

³⁰⁵ Ibid, p. 7.

³⁰⁶ P.L. 113-291 §541.

³⁰⁷ Covered offenses under this provision include, offenses for which maximum punishment includes confinement for more than one year (e.g., sexual assault, murder, manslaughter), obstructing justice (UCMJ Article 131b), and retaliation for reporting a crime (UCMJ Article 132). This provision would also cover attempts, solicitations, or conspiracies to commit the above offenses.

³⁰⁸ Other groups include the Service Women Action Network, Vietnam Veterans of America, National Women’s Law Center, Protect Our Defenders, Defense Advisory Committee on Women in the Services (DACOWITS), and the National Research Center for Women and Families.

reduce victim confidence in the military justice system and dissuade sexual assault victims from making an unrestricted report.³⁰⁹

Some in the legal community have also pointed to cases where commanders' involvement in the judicial process has resulted in *unlawful command influence* (UCI), generally defined as "the improper use, or perception of use, of a superior authority to interfere with the court-martial process."³¹⁰ This can compromise an accused servicemember's presumption of innocence, right to fair investigation and disposition, and access to witnesses or evidence.³¹¹

Supporters of the MJIA provisions also argue that conflict of interest may lead commanders to make decisions that are not solely based on the legal merits of the case, or cases may be "swept under the rug" for the purposes of administrative expediency, or evasion of scrutiny.³¹² Some have expressed concerns that in cases where sufficient evidence exists, commanders may, nevertheless, be more inclined to use their authority to dispose of cases through nonjudicial punishment or administrative action, or to discharge the alleged offender rather than hold him or her accountable for more serious penalties through the court-martial process.³¹³ Finally, MJIA supporters have contended that most commanders do not have sufficient expertise to determine the legal merits of a case.³¹⁴

Other DOD officials, legal scholars, and think tanks have opposed the changes to disposition authority proposed in the bill.³¹⁵ Those who oppose the MJIA have argued that commanders' discretion within the military justice system is "essential to their ability to lead the development, readiness, and performance of their organizations."³¹⁶ They contend that commanders dealing with sexual assault cases are also faced with operational, readiness, cohesion, and logistical concerns that can be better managed within the command than by an outside representative. They further contend that individuals assigned to command positions are fully qualified to make disciplinary decisions, carefully screened and have many years of experience.

³⁰⁹ Reprisals may include failure to promote, poor performance ratings, or disciplinary action for collateral offenses. Protect Our Defenders, *To Professionalize the Military Justice System and Reduce Sexual Assault*, How the SASC FY14 NDAA Falls Short and Why the Military Justice Improvement Act Must be Passed, Washington, DC http://protectourdefenders.com/downloads/Professionalize_Military_Justice_System-Addressing_Opposition_Arguments_130725_Updated.pdf.

³¹⁰ The Judge Advocate General's Legal Center and School, United States Army, *2019 Commander's Legal Handbook*, Misc. Pub 27-8, 2019, p. 17.

³¹¹ As noted in discussions by the congressionally-mandated (P.L. 112-239 §526) Judicial Proceedings Panel, "It is very difficult for a commander to be very strong in his message or her message about how she feels or he feels about sexual assault. We saw General Amos come out, go around to a number of Marine Corps bases, and talk strongly about how we need to support victims, how we need to hold people accountable. As a result of the General showing the leadership that you would expect him to show, we are now having cases thrown out by the appellate courts because of unlawful command influence." Judicial Proceedings Panel, *Public Meeting*, Transcript, December 12, 2004, p. 36.

³¹² McVeigh, Karen, "Senator Kirsten Gillibrand Gains Support for Army Sexual Assault Reform," *The Guardian*, September 24, 2013, (Statement of Army Lieutenant General Claudia Kennedy). "The system in which a commander can sweep his own crime or the crime of a decorated soldier or friend under the rug, protects the guilty and protects serial predators."

³¹³ Senator Kirsten Gillibrand, "Military Justice Improvement Act: Allies Testimony," <https://www.gillibrand.senate.gov/mjia/allies-testimony>.

³¹⁴ See Senator Gillibrand's Testimony to Response Systems Panel on the Military Justice Improvement Act at <https://www.gillibrand.senate.gov/mjia/gillibrand-testimony>.

³¹⁵ See, e.g., Law Professors' Statement of Reform of Military Justice, June 7, 2013, at <http://www.gillibrand.senate.gov/imo/media/doc/MJIA-%20Law%20Professors.pdf>; Stimson, Charles, *Sexual Assault in the Military: Understanding the Problem and How to Fix It*, The Heritage Foundation, November 6, 2013.

³¹⁶ *Ibid.*

Still others in the legal community contend that modifying commander disposition authority solely for sex-related cases would create separate legal processes that could be “wasteful, confusing, and potentially counter-productive.”³¹⁷ Those who have studied sexual assault and the military justice system have also noted that there have been a considerable number of reforms to the military justice system in recent years that have substantially constrained commanders’ disposition and convening authority and that caution is warranted in enacting further reforms without additional assessments.³¹⁸

DAC-IPAD’s 2020 Findings on Disposition Authority³¹⁹

In October 2020, the DAC-IPAD, and independent advisory panel released its findings from a 3-year review of 1,094 investigative military sexual assault case files that were closed in FY2017. With respect to commander’s discretion, a panel of experts reviewed these cases to assess whether military commanders’ initial disposition decisions were reasonable. The particular focus was on the commanders’ decisions either to prefer charges of penetrative sexual offense against a servicemember or to take no action against the servicemember on that offense. The committee found that

- There is not a systemic problem with the initial disposition authority’s decision either to prefer a penetrative sexual offense charge or to take no action against the subject for that offense. In 94.0% and 98.5% of cases reviewed, respectively, those decisions were reasonable.
- There is a systemic problem with commanders referring penetrative sexual offense charges to trial by general court-martial when there is not sufficient admissible evidence to obtain and sustain a conviction on the charged offense. In 31.1% of cases reviewed that were tried to verdict on a penetrative sexual offense charge, the evidence in the materials reviewed did not meet that threshold.

These findings indicate that if there is bias in the commander’s disposition decision, it is in the direction of referring more cases to court martial than warranted by the evidence. In its report, the committee stated,

the Committee recognizes that staff judge advocates and convening authorities are doing what the military justice system allows; however, the Committee criticizes the military justice system itself for allowing the referral of charges that are not supported by sufficient admissible evidence to obtain and sustain a conviction. In the Committee’s view, the decision to refer charges to trial by general court-martial in the absence of sufficient admissible evidence to obtain and sustain a conviction has significant negative implications for the accused, the victim, and the military justice process.

Judicial Processes

In the past decade, much of the congressional action related to sexual assault focused on judicial processes under the UCMJ and the Manual for Courts Martial (MCM). There has been a particular focus on rights for victims in the court-martial proceedings. Some of the areas of reform were

- Increasing requirements for retention of evidence and records;

³¹⁷ Law Professors’ Statement of Reform of Military Justice, June 7, 2013.

³¹⁸ In 2014, a congressionally-mandated panel, the Response Systems to Adult Sexual Assault Crimes Panel reported, “The evidence does not support a conclusion that removing convening authority from senior commanders will reduce the incidence of sexual assault, increase reporting of sexual assaults, or improve the quality of investigations and prosecutions of sexual assault cases in the Armed Forces. In addition, proposals for systemic changes to the military justice system should be considered carefully in the context of the many changes that have recently been made to the form and function of the military justice system. The numerous and substantive changes recently enacted require time to be implemented and then assessed prior to enacting additional reforms.” Report of the Response Systems to Adult Sexual Assault Crimes Panel, June 2014, p. 6.

³¹⁹ Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, *Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017*, October 2020.

- Eliminating the statute of limitations for certain offenses;
- Requiring minimum sentences for sex-related offenses; and
- Making other changes to the Military Rules of Evidence related to admissibility and privileged communications.³²⁰

Some within DOD and outside legal professionals have been concerned about the magnitude of change to the military justice system and the complexity of implementing these changes. In its FY2014 assessment of the military judicial system and its treatment of sexual assault cases, SAPRO noted that legal and regulatory changes over the course of the previous three years had so greatly altered the trial process for sexual assault crimes that “virtually every portion of the military justice system” had seen modifications.³²¹ In its 2015 initial report, the Judicial Proceedings Panel (JPP) noted that “the numerous and substantial changes in sexual assault laws have created a confusing landscape for victims and practitioners at all levels of military judicial proceedings.”³²² Oversight of these issues continues to be supported by congressionally-mandated panels and advisory committees.

Outlook and Congressional Considerations

DOD annually produces a vast amount of publicly-reported data and analyses on the perceptions, incidents, processes, and military justice outcomes for sex-related offenses. Despite this transparency, congressional concerns about servicemember well-being and DOD’s accountability for preventing and responding to sexual assault incidents remain. Given the extent of statutory and policy reforms in military sexual assault prevention and response policies over the past decade, one might expect to see improvements along certain metrics. While there have been some positive signs, particularly in the areas of victim support, confidence in the system, and overall awareness, the prevalence of sex-related offenses in the military does not appear to be decreasing, and actually increased between 2016 and 2018. In addition, reviews by independent committees continue to find deficiencies in the military departments’ implementation of prevention and response programs.

The next sections will highlight some observations and considerations for the 117th Congress as they continue oversight of DOD.

Military Sex Offenses Continue to be Under-reported

Some of the reforms that have been implemented (e.g., improving command culture and training, provisions for restricted reporting) are intended, in part, to encourage those who have been assaulted to make an incident report and engage in the military justice process to hold perpetrators accountable. Therefore, a comparison between incident rates estimated prevalence rates from survey data can provide information about whether victims feel confident to come forward with unrestricted reports. For example, in FY2018, DOD received 6,053 reports of sexual

³²⁰ See P.L. 112-81 §586; P.L. 112-239 §577; P.L. 113-66 §§1701, 1703, 1704, 1705 & 1706; P.L. 113-291 §§535, 536, 537 & 538.

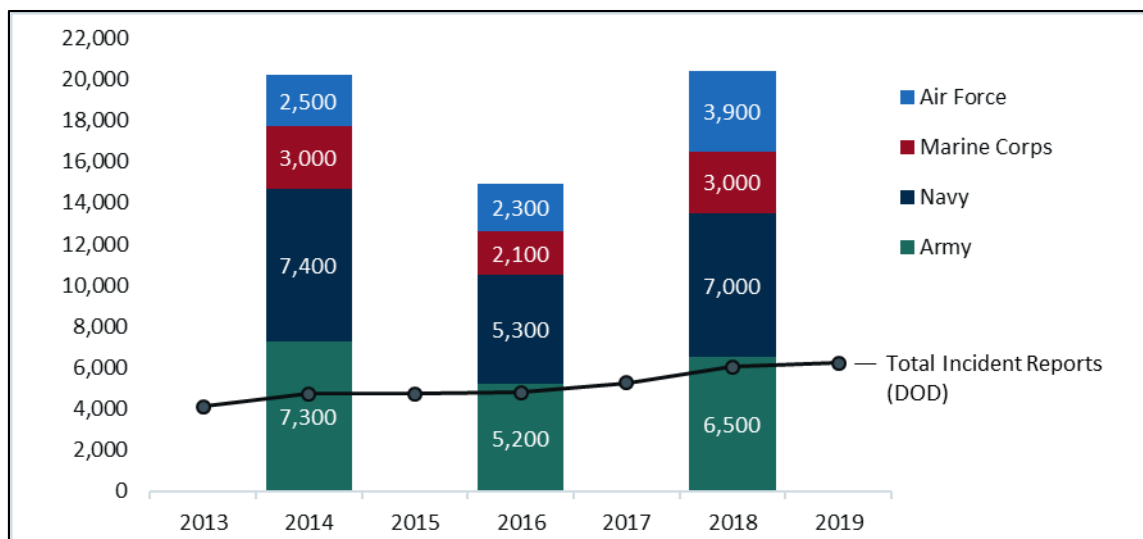
³²¹ DOD, *Report to the President of the United States on Sexual Assault Prevention and Response, Annex 4: Analysis of Military Justice Reform*, 2014, p. 1.

³²² Judicial Proceedings Panel, *Report of the Judicial Proceedings Since Fiscal Year 2012 Amendments Panel*, Initial Report, February 2015, p. 8.

assault (for assaults that happened while in the service).³²³ In the same year, the estimated prevalence of sexual assault (6.2% for women and 0.7% for men) would have predicted approximately 20,500 reports.³²⁴ This suggests that under-reporting of sexual assault continues to be an issue.

In the short term, convergence of incident reporting and prevalence estimates might be an indicator of positive change in command climate, confidence in the system, and/or victim awareness of reporting processes and rights. In previous years, DOD has pointed to convergence trends as an indication that policies that support unrestricted reports are working. In the long run, progress toward achieving policy issues could be defined as a decrease in *both* estimated prevalence and incident rates. However, this is not a trend that is discernable in short-term data. Both incident reports and estimated prevalence rates appear to be rising. Active duty reports of sexual assault have increased year on year between FY2012 and FY2019, while prevalence estimates have increased in a statistically significant way from the FY2016 and FY2018 survey across all services (see **Figure 7**).³²⁵

Figure 7. Estimated Prevalence v. Incident Reporting Trends for Sexual Assault of Active Duty Servicemembers
FY2013 – FY2019



Source: DOD, DOD, Annual Report on Sexual Assault in the Military: Fiscal Year 2019, Appendix C: Metrics and Non-Metrics on Sexual Assault.

Notes: Bars show estimated prevalence for active duty members by service based on biennial survey data. The line shows the number of reports of sexual assault by servicemembers for incidents that occurred during military service. The DOD Office of People Analytics (OPA) reports that the increases in estimated prevalence from FY2016 to FY2018 are statistically significant for all services. Incident data is collected and reported annually while prevalence data is estimated from biennial surveys.

³²³ DOD, *Annual Report on Sexual Assault in the Military: Fiscal Year 2019*, April 8, 2020, pp. 6 and 12.

³²⁴ Ibid.

³²⁵ Ibid., Appendix C, pp. 5-11.

Command Climate Flagged as an Area for Improvement

Many in DOD and Congress have argued for the importance of organizational culture and prevention of risk factors along a continuum of harm (including, for example, sexual harassment and sexism, hazing, stalking, and alcohol use). In November 2020, the Army released a report by the Fort Hood Independent Review Committee which examined the command climate and other aspects of the Army's Sexual Harassment and Assault Response Program (SHARP). The committee identified several shortcomings, but in particular noted that "the implementation of the SHARP program at Fort Hood has been ineffective, due to a command climate that failed to instill SHARP program core values below the brigade level."³²⁶ Other evidence, including feedback from surveys and focus groups, suggest that culture is an area where improvements can be made. Survey data indicate that when servicemembers perceive that their command climate is more supportive, or where they can speak more openly about sexual harassment issues, they are more willing to act to prevent sexual harassment.³²⁷ This suggests that policies and programs to encourage open dialog and trust in leadership may support positive cultural changes. Analysis of FY2019 military focus group responses found that participants viewed leadership's approach to enforcement as important. Leadership's willingness to enforce behavioral standards, even for minor infractions, can prevent escalation along the continuum of harm. As stated by one Marine Corps female participant,

Reminding leadership across the board that every time you pass something that you know is wrong and you don't correct it, you lower the bar... Every time you don't correct something, you lower the bar, you lower the standard. Every time that standard gets lowered, it's just the norm, and that's the new expectation.³²⁸

Congress may continue to monitor DOD programs and progress for risk factors associated with military culture. For example, alcohol use continues to be a contributing factor in a large percentage of reported assaults.³²⁹ Focus group participants noted that the rise in ride-share applications (e.g., Uber and Lyft) have reduced the need for a designated driver, and thus reduces the possibility of a sober friend to be present to intervene. Some of the services indicated that they are funding research on the role of alcohol in sexual assault cases with a view for developing additional interventions.³³⁰ As evidence-based interventions are applied, it is expected that the number of reported incidents associated with alcohol use or other risk factors would decline.

Some Demographics are At Higher Risk

Data indicate that certain demographic groups within the military are at higher risk for sexual assault perpetration and/or victimization. This suggests that there are opportunities to target policy solutions toward vulnerable groups.

³²⁶ *Report of the Fort Hood Independent Review Committee*, Executive Summary, November 6, 2020, p. iii. https://www.army.mil/e2/downloads/rv7/forthoodreview/2020-12-03_FHIRC_report_exsum.pdf.

³²⁷ Note that Army men were more likely than men in the other services, to indicate that bystander training and other training related to sexual assault influenced a decision to intervene.

³²⁸ DOD, Office of People Analytics, Annex 1: 2018 Workplace and Gender Relations Survey of Active Duty Members Overview Report, OPA Report No. 2019-027, May 2019, p. 10.

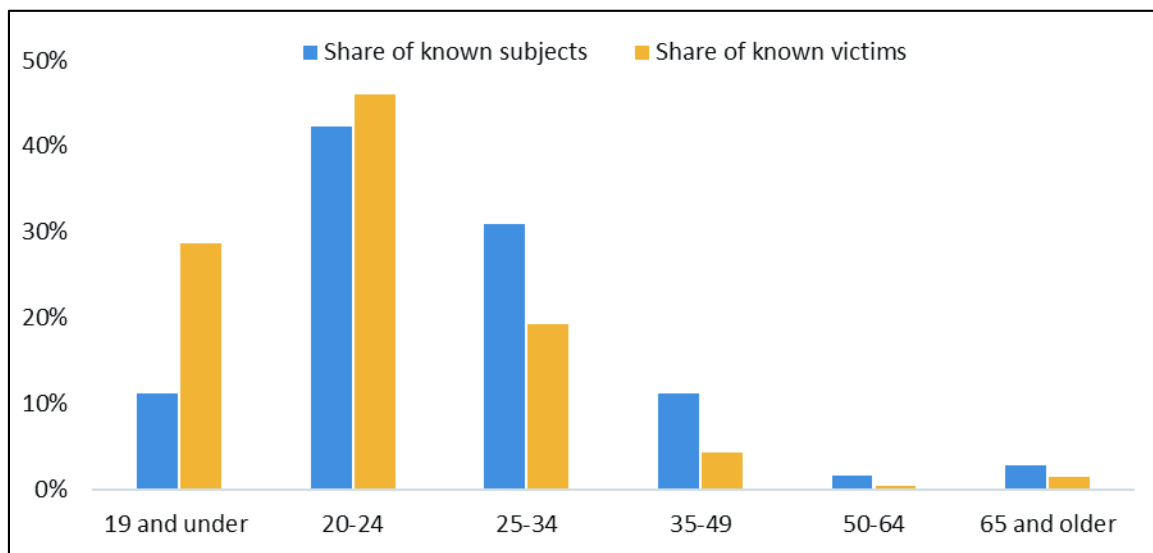
³²⁹ Results from the 2018 WGRA demonstrate that alcohol was involved in about two-thirds of sexual assault incidents involving DOD women and about half for DOD men. DOD, Office of People Analytics, Annex 1: 2018 Workplace and Gender Relations Survey of Active Duty Members Overview Report, OPA Report No. 2019-027, May 2019, p. 48.

³³⁰ DOD, *Annual Report on Sexual Assault in the Military: Fiscal Year 2015*, May 2, 2016.

Young, Junior Enlisted

The military population skews young as it recruits from high schools and colleges for first-term enlistments and appointments. Those 25 and younger account for approximately 41% of the force across the active and reserve components.³³¹ Generally this demographic in the civilian population is at higher risk for sexual assault, which is also reflected in DOD data. Of the sexual offense investigations completed in FY2019, 75% of sexual assault victims were age 24 or under, and 53% of the perpetrators were in this demographic (see **Figure 8**). In addition, a majority of the victims were in the grade of E-1 to E-4 (79%) and junior enlisted in these grades also accounted for 61% of the subjects of investigations.³³²

Figure 8. Age Demographics for Reported Subjects and Victims of Sexual Offenses
Investigations Completed in FY2019



Source: DOD, *Annual Report on Sexual Assault in the Military FY2019*, Appendix D: Aggregate DOD Data Matrices, pp 5-6.

Note: “Subjects” are those being investigated as an alleged offender.

Servicemembers Who Identify as Lesbian, Gay, Bisexual, or Transgender (LGBT)

Although DOD generally does not collect information on sexual orientation or gender identity, the 2016 Workplace and Gender Relations surveys did include questions aimed at assessing the magnitude of the issue among this demographic. One of the findings in civilian research is that individuals who identify as lesbian, gay, bisexual, and transgender (LGBT) may experience higher rates of sexual assault victimization.³³³ DOD analysis of military survey data reached

³³¹ DOD, *2018 Demographics: Profile of the Military Community*, pp. 37 and 92, <https://download.militaryonesource.mil/12038/MOS/Reports/2018-demographics-report.pdf>. In the active component, 46% are 25 and under and in the reserve component 32% are in this age demographic.

³³² DOD, *Annual Report on Sexual Assault in the Military FY2019*, Appendix D: Aggregate DOD Data Matrices, pp 5-6.

³³³ E.F. Rothman, et. al, “The Prevalence of Sexual Assault against People Who Identify as Gay, Lesbian, or Bisexual in the United States: A Systematic Review,” *Trauma, Violence, and Abuse*, vol. 12, no. 2, 2011. pp. 55-56.

similar findings; servicemembers who identify as LGBT are statistically more likely to experience sexual assault and sexual harassment than those who do not identify as LGBT.

Table 10. Estimated Past-Year Sexual Assault Prevalence Rates for LGBT Servicemembers

2016 WGRA survey data

Active Duty Servicemembers	Sexual Assault Prevalence Rates	
	Identify as LGBT	Do Not Identify as LGBT
Men	3.5%	0.3%
Women	6.3%	3.5%
Total	4.5%	0.8%

Source: DOD Annual Report on Sexual Assault in the Military, FY2016, p 15.

Notes: Five percent of survey respondents indicated that they identify as either lesbian, gay, bisexual, and/or transgender. Incident data do not include information on whether alleged victims or offenders identify as LGBT. Data in this table does not include the Coast Guard.

Installation and Command-Level Risk

Some Members of Congress have questioned whether some military installations or commands have higher risk for sexual assault. In 2018, the RAND Corporation released a report that used FY2014 WGRA survey data to estimate installation-specific risk, and identified some patterns. The results of this study generally indicated that sexual assault risk was higher in shipboard environments for both Navy women and men.³³⁴ The report authors acknowledged that further study would be needed to determine the root causes for higher prevalence onboard Navy ships. Among the lowest risk environments were medical commands and installations in the National Capital Region. While these findings present opportunities to dig deeper into differences in patterns of assault, it is merely a snapshot of risk at one year. As such, this is a lagging analysis and caution should be taken in applying these past risk profiles to individual installations and commands.

Training is Being Implemented but Impact is Uncertain

DOD reports that it has implemented a standardized sexual assault training curriculum in accordance with statutory requirements. There is some evidence to suggest that training is being provided as required by law, and that the services' training curricula and delivery generally comply with best practices in adult learning. In addition, across the services, 2016 data indicate that 95% or more of men and women received training on topics related to sexual assault within the previous 12 months.³³⁵ Survey feedback from servicemembers on the effectiveness and relevancy of training has been generally positive.³³⁶ However, other focus groups that were conducted with military men and women found that sexual assault prevention and response

³³⁴ *Sexual Assault and Sexual Harassment in the U.S. Military*, Volume 5. Estimates for Installation- and Command-Level Risk of Sexual Assault and Sexual Harassment from the 2014 RAND Military Workplace Study, p. 30, https://www.rand.org/pubs/research_reports/RR870z7.html.

³³⁵ Department of Defense, Office of People Analytics, *2016 Workplace and Gender Relations Survey of Active Duty Members*, Overview Report, May 2017, p. 218.

³³⁶ *Ibid.*, p. 221.

training can also lead to negative responses, with some men expressing a general fear of interacting with women and women observing that training events created tension between men and women.³³⁷ While data on implementation suggest that training programs are generally reaching the targeted audiences, there is less data and evidence-based research on training program outcomes.

According to SAPR and other focus group responders, a potential areas of improvement is to fine-tune training programs to better help members understand consent, to recognize inappropriate behaviors, and to understand rights and responsibilities of bystanders. Congress may continue monitoring servicemember awareness, participation, learning, and satisfaction with existing training and future programs. There may also be an opportunity to compare the implementation of prevention programs and share best practices among the services within DOD and also across other federal, state, or civilian programs (e.g., colleges and universities). Additionally, Congress could direct funding to support additional research on effective sexual violence prevention programs.

Victims are Largely Satisfied with Support Services

A large portion of the congressional reforms over the past decade have focused on ensuring that military victims of sexual violence have access to adequate and confidential support services immediately following the incident, throughout the investigative and judicial process, and in the longer term along the path to recovery. Servicemember confidence and satisfaction with these services may encourage victims to report sexual violence, to gain access to additional mental health services, and to engage with the investigative and/or judicial process to bring perpetrators to justice.

DOD has noted positive trends in the rate of restricted reports converted to unrestricted reports and the rate of conversion. DOD considers these positive indicators of the robustness of the support structure in place and servicemember trust in the reporting system. The percent of conversions was stable at 15% between FY2007 and FY2013, but rose to 20% in FY2014 and has consistently been above 20% since then (see **Table 11**).

Table 11. Restricted to Unrestricted Report Conversions
FY2014-FY2019

	FY2014	FY2015	FY2016	FY2017	FY2018	FY2019
Percent of restricted reports converted to unrestricted reports	20%	21%	21%	24%	23%	23%

Source: DOD, Annual Reports on Sexual Assault in the Military for FY2014-FY2019.

Servicemembers have consistently reported a relatively high level of satisfaction with SARCs, SAPR VAs, and SVCs. In 2019, over 72% of servicemembers who made unrestricted reports of sexual assault reported being *satisfied* with their interactions with these support staff.³³⁸ These figures are roughly equal to prior year metrics and suggest that victims perceive value in continuing or enhancing victim support programs. An area for congressional oversight remains

³³⁷ Alesha Doan et al., *Executive Summary Project Diane: University of Kansas Research Team*, The University of Kansas, 2016, p. 10, <https://dod.defense.gov/Portals/1/Documents/wisr-studies/SOCOM%20-%20University%20of%20Kansas%20-%20Project%20Diane.pdf>.

³³⁸ DOD, Annual Report on Sexual Assault in the Military, FY2019, Appendix C. Metrics and Non-Metrics on Sexual Assault.

the training, professionalization, and standardization of victim support functions across the services and geographical locations.

Questions Remain about Military Justice Processes

Congress has made significant legislative changes to the military justice system over the past two decades. Many of these changes have been motivated by a desire to increase military sexual assault victim confidence in investigative and adjudicative processes, protect the rights of alleged victims and the accused, and to hold those who commit sexual crimes accountable through punitive actions. Some outstanding questions that Congress has sought to address include

- Should offenses like sexual assault (and other serious felonies) be the jurisdiction of military courts, or should these types of offenses be prosecuted in civilian or federal courts?
- Should military commanders continue to have input in charging and referral decisions for accused servicemembers?
- Would the creation of an Office of the Chief Prosecutor for each branch of the services for the purpose of convening and staffing general and special courts-martial help to reduce real or perceived bias in the justice system?³³⁹
- Should actions along the continuum of harm, like sexual harassment, be a criminal offense under the UCMJ?³⁴⁰
- Should victims of sexual assault be able to sue the government for personal injury and/or negligent failure to prevent or report an offense?³⁴¹

Congress may consider these and other questions with respect to treatment of sexual offenses in the military justice system.

³³⁹ Section 2 of the I Am Vanessa Guillen Act, H.R. 8270, 116th Congress, proposes the creation of such an office. Similar provisions were proposed in the Senate and House versions of the FY2020 (S. 1790) and FY2021 (H.R. 2500) National Defense Authorizations Acts.

³⁴⁰ In April 2019 a report by DOD's Sexual Assault Accountability and Investigation Task Force (SAAITF) recommended making sexual harassment a criminal offense for uniformed personnel by adding a specific punitive article to the UCMJ, to "make a strong military-wide statement about the seriousness of these behaviors and the military's zero tolerance policy for them." Section 540E of the FY2020 National Defense Authorization Act adopted a provision requiring DOD to submit a report within 180 days of enactment on recommended legislative and administrative actions required to establish a separate punitive article for sexual harassment in the UCMJ. Section 3 of H.R. 8270 would add a punitive article for sexual harassment.

³⁴¹ The Supreme Court's 1950 decision in *Feres v. United States* generally bars servicemembers from pursuing tort lawsuits against the United States for injuries that arise out of military service. See CRS Legal Sidebar LSB10305, *The Feres Doctrine: Congress, the Courts, and Military Servicemember Lawsuits Against the United States*, by Kevin M. Lewis. Section 5 of H.R. 8270 proposes this change.

Appendix A. Abbreviations

CDC	Centers for Disease Control and Prevention
CID	Criminal Investigation Command
DAC-IPAD	Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces
DEOCS	Defense Equal Opportunity Climate Survey
DHRA	Defense Human Resources Activity
DMDC	Defense Manpower Data Center
DOD	Department of Defense
DODIG	Department of Defense Inspector General
DOJ	Department of Justice
D-SAACP	Department of Defense Sexual Assault Advocate Certification Program
DSAID	Defense Sexual Assault Incident Database
FAP	Family Advocacy Program
FBI	Federal Bureau of Investigation
GAO	Government Accountability Office
GFO	General and/or Flag Officer
JPP	Judicial Proceedings Panel
MCIO	Military Criminal Investigative Organization
MIJES	Military Investigation and Justice Experience Survey
MPO	Military Protective Order
MTF	Military Treatment Facility
NDAA	National Defense Authorization Act
NCO	Non-Commissioned Officer
NCVS	National Criminal Victimization Survey
NGR	National Guard Bureau
ODEI	Office of Diversity, Equity, and Inclusion
PTSD	Post-Traumatic Stress Disorder
QSAPR	QuickCompass of Sexual Assault Prevention and Response-Related Responders
RAINN	Rape, Abuse & Incest National Network
SAFE	Sexual Assault Forensic Examination
SAGR	Service Academy Gender Relations Focus Groups
SAMS Task Force	Defense Task Force on Sexual Assault in the Military Services
SAPRO	Sexual Assault Prevention and Response Office
SARC	Sexual Assault Response Coordinator
SES	Survivor Experience Survey
SIAAITF	Sexual Assault Accountability and Investigation Task Force

SJA	Staff Judge Advocate
SPCMCA	Special Court Martial Convening Authority
SROTC	Senior Reserve Officer Training Corps
SVC/VLC	Special Victims' Counsel/ Victim Legal Counsel
UCMJ	Uniform Code of Military Justice
VWAC	Victim and Witness Assistance Council
WGR	Workplace and Gender Relations

Appendix B. Selected Committees, Task Forces, and Panels

Table B-1. Selected Military Sexual Assault Task Forces, Committees, and Panels
Established between 2004 and 2019

Name	Authority	Reporting Timeline
Care for Victims of Sexual Assault Task Force	Directed by Secretary of Defense	Established February 5, 2004. Final Report April 2004.
Joint Task Force for Sexual Assault Prevention and Response	Directed by Secretary of Defense	Established October 2004. Delivered sexual assault policy January 4, 2005.
Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy	Section 501 of the Emergency Wartime Supplemental Appropriations Act of 2003 (P.L. 108-11)	Established April 16, 2003. Final Report September 2003.
Task Force on Sexual Harassment and Violence at the Military Service Academies	Section 526 of FY2004 NDAA (P.L. 108-136)	Transitioned to the Defense Task Force on Sexual Assault in the Military Services.
Defense Task Force on Sexual Assault in the Military Services	Section 576 of FY2005 NDAA (P.L. 108-375)	Established October 3, 2005. Final Report December 2009.
Judicial Proceedings Panel (JPP)	Section 576 of FY2013 NDAA (P.L. 112-239)	Established January 2, 2013. Initial Report February 4, 2015. Termination of Panel, September 30, 2017.
Response Systems to Adult Sexual Assault Systems Panel	Section 576 of FY2013 NDAA (P.L. 112-239)	Established January 2, 2013. Final Report June 2014.
Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces	Section 546 of FY2015 NDAA, as modified by Section 437 of the FY2016 NDAA (P.L. 114-92)	Established February 18, 2016. Annual reports due March 30.
Sexual Assault Accountability and Investigation Task Force	Directed by Acting Secretary of Defense	Established at the request of Senator Martha McSally on March 14, 2019. Reported on April 30, 2019.
Defense Advisory Committee for the Prevention of Sexual Misconduct	Section 550B of FY2020 NDAA (P.L. 116-92)	Required by December 20, 2020.

Sources: DOD reports and memoranda. National Defense Authorization Acts for FY2003-FY2020. Federal Advisory Committee Act (FACA) Database.

Appendix C. DOD Surveys and Focus Groups

Workplace and Gender Relations (WGR) Surveys and Focus Groups

Congress, as part of the NDAA for FY1997, first required DOD conduct surveys that measured the extent of racial, ethnic, and gender discrimination.³⁴² In 2002, Congress required that DOD conduct gender discrimination surveys separate from surveys that assessed racial and ethnic issues.³⁴³ These surveys are called the *Armed Forces Workplace and Gender Relations Surveys (WGRs)*. In the FY2013 NDAA, Congress added sexual assault to the survey requirements and mandated surveys of active duty and reserve component personnel every two years in alternating years beginning in 2014.³⁴⁴ While DOD had administered its own survey for FY2012, in response to congressional calls for an independent assessment, DOD contracted with the RAND Corporation for a redesign and fielding of the FY2014 survey.³⁴⁵

DOD's Office of People Analytics (OPA) currently administers the WGR to active and reserve component members in alternate years to measure the past-year prevalence of sexual assault, sexual harassment and gender discrimination. This survey is administered to random samples of active duty and reserve component members and used to assess "annual prevalence rates of self-reported "sexual assault, sexual harassment, and gender discrimination."³⁴⁶

WGR Redesign for FY2014

In 2014, a congressionally mandated panel, the Response Systems to Adult Sexual Assault Crimes Panel, recommended that DOD update its sexual assault survey language and metrics to align better with the UCMJ Article 120 definitions of rape and sexual assault. In response, DOD contracted with the RAND Corporation to review the survey methodology for the WGR and to conduct an independent assessment of sexual assault, sexual harassment, and gender discrimination in the military. RAND fielded two surveys for FY2014; the first used the same questions as in the previous WGR survey in order to allow comparisons to DOD's FY2012 survey data. The second, the RAND Military Workplace Survey (RMWS) used a newly constructed crime victimization measure with more explicitly and anatomically defined terms. In particular, the new definitions removed the terms sex or sexual when describing an act, as the act does not need to be associated with sexual gratification to qualify as a crime under the UCMJ, but instead might be designed to humiliate or debase the person that is assaulted. RAND found that under the new survey methodology, the estimated number of self-reported assaults was higher than in previous surveys particularly in those classified as penetrative sexual assaults. The survey also pointed to a notably large difference from previous surveys in the number of assaults men reported. One of the clear findings from this survey was that men were more likely to describe a sexual assault as "hazing."

There are some limitations to this survey. As noted by the Adult Sexual Crimes Panel in its 2014 report,

³⁴² P.L. 104-201 §571; 10 U.S.C. §481

³⁴³ P.L. 107-314 §561.

³⁴⁴ P.L. 112-239 §570. DOD conducts WGR surveys of active-duty personnel in even years and surveys of reserve component personnel in odd years. DOD conducted prior versions of the surveys every two years between 2002 and 2012.

³⁴⁵ Andrew R Morral, Kristie L. Gore, and Terry L. Schell, et al., *Sexual Assault and Sexual Harassment in the U.S. Military: Top-Line Estimates for Active-Duty Servicemembers from the 2014 RAND Military Workplace Study*, RAND Corporation, Santa Monica, CA, 2014.

³⁴⁶ Rachel A. Breslin, Ashlea Klahr, and Kimberly Hylton, et al., *2019 Workplace and Gender Relations Survey of Reserve Component Members*, DOD Office of People Analytics, Overview Report, May 2020, p. iii,

this survey is not meant to—and does not—accurately reflect the number of sexual assault incidents that occur in a given year, nor can it be used to extrapolate crime victimization data. For example, the definition of unwanted sexual contact used in the survey covers a wide range of conduct that may not rise to the level of a crime.³⁴⁷

In particular, the survey measures “unwanted sexual conduct” and does not use the same definitions of sexual assault as those in the UCMJ. The reason for this approach is that the average servicemember completing the survey may not be familiar with the more technical UCMJ terms, and thus might not be able to accurately categorize the offense that they experienced.³⁴⁸ To be measured as a sexual assault in the survey data, three requirements must be met. The member must indicate experiencing the following UCMJ-based actions by the perpetrator

- At least one sexual assault behavior (i.e., rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, or attempts to commit these offenses)
- At least one intent behaviors (i.e., sexual gratification, abuse, or humiliation), and
- At least one coercive mechanism (e.g., threats, use of force, inability to consent).³⁴⁹

Starting in 2015, DOD began including focus groups for active duty servicemembers in its assessment cycle. Active duty focus groups are conducted in alternate years to the WGRA survey to “provide deeper insights into the dynamics behind survey results and help better understand potential emerging trends.”³⁵⁰

Service Academy Gender Relations Survey and Focus Groups

Section 532 of the FY2007 NDAA, required the military departments to conduct annual assessments of the effectiveness of service academy policies, training, and procedures with respect to sexual harassment and sexual violence involving academy personnel.³⁵¹ This law requires surveys be conducted in odd-numbered years. The military departments conduct focus groups at the academies in even-numbered years to supplement the annual assessment requirements.

Survivor Experience Survey

The Survivor Experience Survey (SES) began in 2014 in response to a Secretary of Defense directive. DMDC’s Survey Design, Analysis and Operations Branch, designed this survey in coordination with SAPRO experts. The survey gathers information related to a sexual assault survivor’s awareness of, and experience with, DOD’s reporting process and support services, including

- sexual assault response coordinators (SARCs),

³⁴⁷ *Report of the Response Systems to Adult Sexual Assault Crimes Panel*, June 2014, p. 4.

³⁴⁸ Defense Manpower Data Center, *Frequently Asked Questions: 2012 Workplace and Gender Relations Survey of Active Duty Members*.

³⁴⁹ DOD, *2016 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2016-050, May 2017.

³⁵⁰ Kathleen E. Dippold, Elizabeth P. Van Winkle, and Maia M. Hurley, *2015 Focus Groups on Sexual Assault Prevention and Response Among Active Duty Members*, Defense Manpower Data Center, Alexandria, VA, 2015, p. iii.

³⁵¹ P.L. 109-364 §532.

- victims' advocates (VAs), and
- medical and mental health services.³⁵²

This survey was the first survey of survivors to be conducted across the active and reserve components. To maintain anonymity, the SES was distributed primarily through the SARCs, VAs, and legal counsels to all sexual assault survivors who had made an unrestricted or restricted report of sexual assault at least 30 days prior. The survey continues to be administered on a rolling basis.³⁵³

Military Investigation and Justice Experience Survey

The Military Investigation and Justice Survey (MIJES) is an anonymous survey that was administered by DOD from 2015 through 2017. The purpose of this survey was to “provide the sexual assault victim/survivor the opportunity to assess and provide feedback on their experiences with SAPR victim assistance, the military health system, the military justice process, and other areas of support.”³⁵⁴ The MIJES was focused only on those military servicemembers who made a formal (unrestricted) report of sexual assault and had the case closed during a specified time period.³⁵⁵ In 2018, MIJES questions were incorporated into the WGRA survey to ensure that the resulting data was more representative of the entire population of military victims that participated in the military justice system.³⁵⁶

QuickCompass of Sexual Assault Prevention and Response-Related Responders

The QuickCompass of Sexual Assault Prevention and Response-Related Responders (QSAPR) survey is an evaluation tool administered by DMDC to provide insights on the effectiveness of DOD's sexual assault responder programs. The 2015 QSAPR was administered to all certified Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VA).³⁵⁷ The survey is intended to capture the experiences and perspectives of sexual assault responders. DOD uses the results of this survey to identify additional resource needs for responder programs, assess the degree of SAPR policy implementation across the services, and complement other surveys in understanding issues that “may discourage reporting or negatively affect perceptions of the SAPR program.”³⁵⁸

³⁵² For more information on these services, see the section in this report on “Victim Protection, Advocacy and Support Services.”

³⁵³ Elizabeth P. Van Winkle, Lindsay Rock, and Margaret H. Coffey, et al., *2014 Survivor Experience Survey, Report on Preliminary Results, Fiscal Year 2014, Quarter 4*, Defense Manpower Data Center, Report No. 2014-037, Alexandria, VA, October 2014.

³⁵⁴ Natalie A. Namrow, Maria M. Hurley, and Elizabeth P. Van Winkle, *2015 Military Investigation and Justice Experience Survey (MIJES): Overview Report*, Defense Manpower Data Center, Alexandria, VA, March 2016.

³⁵⁵ This survey included the Active and Reserve Components.

³⁵⁶ DOD, *Annual Report on Sexual Assault in the Military*, FY2018, Appendix C: Metrics and Non-Metrics.

³⁵⁷ This is the third survey to be administered to the responder population with previous surveys in 2009 and 2012. Paul J. Cook, Shoshanna Magazine, and Lisa Davis, *2015 QuickCompass of Sexual Assault Prevention and Response-Related Responders*, Defense Manpower Data Center, Report No. 2016-013, Alexandria, VA, March 2016, p. iv.

³⁵⁸ *Ibid.*, p. 171.

Appendix D. CDC Sexual Violence Risk Factors

Table D-1. CDC Sexual Violence Risk Factors

Risk Factor Category	Types of Risk Factors
Individual Risk Factors	Alcohol and drug use Delinquency Empathic deficits General aggressiveness and acceptance of violence Early sexual initiation Coercive sexual fantasies Preference for impersonal sex and sexual risk taking Exposure to sexually explicit media Hostility toward women Adherence to traditional gender role norms Hypermasculinity Suicidal behavior Prior sexual victimization or perpetration
Relationship Risk Factors	Family environment characterized by physical violence and conflict Childhood history of physical, sexual, or emotional abuse Emotionally unsupportive family environment Poor parent-child relationships, particularly with fathers Association with sexually aggressive, hypermasculine, and delinquent peers Involvement in a violent or abusive intimate relationship
Community Risk Factors	Poverty Lack of employment opportunities Lack of institutional support from police and judicial system General tolerance of sexual violence within the community Weak community sanctions against sexual violence perpetrators
Societal Risk Factors	Societal norms that support sexual violence Societal norms that support male superiority and sexual entitlement Societal norms that maintain women's inferiority and sexual submissiveness Weak laws and policies related to sexual violence and gender equity High levels of crime and other forms of violence

Source: Centers for Disease Control and Prevention, at <https://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html>.

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