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MILITARY DEPENDENTS

Services Provide Limited Confidentiality in Family Abuse Cases

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Congressional Committees

Because of concern that spouses and children of military personnel may not have the same level of confidentiality as they would in the civilian community, Congress directed us to review the confidentiality of military dependent communications in family abuse cases. Section 585 of the National Defense Authorization Act for Fiscal Year 2000 (P.L.105-65, Oct. 5, 1999), required us to examine the policies, procedures, and practices of the military departments for protecting the confidentiality¹ of communications between military dependents and counselors, therapists, and other service providers regarding family abuse. To respond to this mandate, we determined (1) the extent of reported spousal and child abuse within the military, (2) the degree to which dependent conversations about family abuse are subject to disclosure, and (3) the nature of Department of Defense (DOD) efforts to address the confidentiality of dependent communications.

The DOD Family Advocacy Program defines spousal abuse as assaults, threats, and other acts of force or violence and as emotional and financial maltreatment, including any actions that harm or limit the spouse's freedom of choice. Child abuse includes physical or emotional injury; sexual maltreatment; and neglect by parents, guardians, or other persons responsible for providing care. Each of the military services has established a Family Advocacy Program to provide family counseling and to help ensure the safety of alleged spousal and child abuse victims.

¹In this report, confidentiality is defined as the nondisclosure of any information provided by military dependents, whether written or spoken, concerning domestic abuse.

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Results in Brief

During fiscal years 1997 through 1999, the services investigated about 64,000 alleged incidents of spousal abuse and approximately 50,000 child abuse incidents.² Of these, about 43,000 spousal abuse and 26,000 child abuse incidents were substantiated.³ DOD officials estimate that a great number of spousal and child abuse incidents are not reported.⁴ One key reason for underreporting is that spouses fear that reporting spousal abuse would affect the military member's career. Data on spousal and child abuse incidents in the civilian community cannot readily be compared to the statistics maintained by the military because of such differences as the types of offenses included in the statistics. For example, the Department of Justice includes in its domestic violence statistics offenses committed by former spouses as well as current and former girlfriends or boyfriends.

Military dependents are provided limited confidentiality in reporting spousal or child abuse. A military dependent seeking counseling services cannot be assured that the information provided will not be disclosed. DOD officials told us that commanders are held accountable for the safety of alleged victims of family violence and would be unable to fulfill this responsibility unless they are informed about the incidents. DOD's Family Advocacy Program was designed to ensure the safety of spousal and child abuse victims and to provide commanders the information necessary to evaluate whether servicemembers are able to perform their military duties. Therefore, counselors in all services generally provide summaries of reported family abuse to commanders of the servicemembers involved. However, there are some differences by service. While the Army, the Air Force, and the Marine Corps provide summaries to commanders for all reported instances, the Navy does not provide information on cases of family abuse where there were no physical injuries and no likelihood of further abuse. The Marine Corps also provides actual case files to commanders if requested.

²The number of active duty military members who were either married or had one or more dependent children totaled approximately 938,000 during fiscal year 1999.

³Substantiated incidents are those that have been fully investigated and assessed and for which the preponderance of available information indicates that abuse occurred.

⁴According to a 1996 study performed for the Office of the Assistant Secretary of Defense, Office of Family Policy, by Caliber Associates, various government and private sector studies addressing underreporting of family abuse are in agreement that underreporting is prevalent. However, the incidence of underreporting cited by these studies varies widely.

Section 585 of the National Defense Authorization Act for Fiscal Year 2000 directed DOD to establish policies and procedures that the Secretary considers appropriate to provide maximum protection for the confidentiality of dependent communications with service providers and submit a report to Congress by January 21, 2000, on the actions taken. DOD did not meet the reporting date. Before it can prepare the required report, DOD believes it must first address a number of issues such as the privacy of electronic medical records and conversations between patients and psychotherapists. In addition, DOD recognizes the difficulty of striking the proper balance between providing commanders with the information they need to carry out their missions and maintaining confidentiality. DOD is undertaking several studies dealing with family abuse as a basis for making necessary policy decisions concerning confidentiality. One of these is a 3-year, congressionally mandated study concerning domestic violence that is scheduled for completion during 2002. Until these studies are finalized, DOD officials are hesitant to implement any changes to their confidentiality policies.

Background

Family Advocacy Program units are generally located at each military installation, including those overseas. Depending on size of the installations, program officers may have one or more counselors and other service providers. DOD's policy is to be actively involved with civilian law enforcement and community service agencies, especially in cases of abuse of military dependents occurring outside military installations. At some locations, DOD has made arrangements with local organizations such as civilian police and Child Protective Services to assist them in dealing with spousal and child abuse cases.

Family Advocacy Program representatives generally inform commanders of an alleged incident of spousal or child abuse and then investigate the incident. Subsequently, a multidisciplinary Case Review Committee convenes to evaluate the circumstances surrounding the alleged incident. This committee includes individuals knowledgeable of the incident, such as military hospital staff, military police, counselors, and the commander involved. To provide a more complete picture of the alleged abuser, the commander of the servicemember involved has the opportunity to discuss the quality of the military member's job performance and any other pertinent factors. Upon completion of the evaluation, the committee summarizes the information presented and recommends treatment or disciplinary action for the alleged abuser. We were told by Family

Advocacy Program officials that commanders generally implement the committee's recommendations.

Extent of Reported Spousal and Child Abuse Incidents in Military Families

During fiscal years 1997-99, the services investigated about 64,000 reported incidents of spousal abuse and approximately 50,000 child abuse incidents (see table 1). Of these, about 43,000 spousal abuse and 26,000 child abuse incidents were substantiated. The remaining reported cases include those where (1) the investigation found insufficient information to determine whether the alleged abuse occurred or (2) the evidence indicated that the alleged abuse did not occur.

Table 1: Spousal and Child Military Family Abuse Incidents (fiscal years 1997-99)

Category of abuse	Fiscal year		
	1997	1998	1999
Spousal abuse			
Reported	23,232	21,650	18,869
Substantiated	16,613	14,692	12,043
Substantiation rate per 1,000 military couples	19.8	17.6	17.0
Child abuse			
Reported	18,082	16,667	15,682
Substantiated	9,375	8,728	7,619
Substantiation rate per 1,000 dependent children	7.6	7.3	6.5

Note: Although investigations of incidents may be reported late in the fiscal year, the statistics shown in the table were compiled after the investigations were complete and include all substantiated cases.

Source: DOD.

DOD guidance directs the services to categorize reported spousal and child abuse incidents as severe, moderate, or mild depending on the gravity. The reported spousal and child abuse incidents shown in table 1 that were categorized as severe ranged from 2 percent to 12 percent. Severe incidents of spousal or child abuse often result in physical injury requiring inpatient medical treatment or temporary or permanent disfigurement. In addition, severe child abuse includes the vast majority of substantiated sexual abuse incidents. Incidents designated as moderate involve one or more minor injuries requiring outpatient visits or emotional maltreatment. Mild

incidents usually involve no injuries or emotional maltreatment and no treatment is required.

DOD officials estimate that a great number of spousal and child abuse incidents are not reported. These officials said that due to state laws and spousal concerns, the level of unreported child abuse is not believed to be as great as unreported spousal abuse. Section 536 of the National Defense Authorization Act for Fiscal Year 1995 (P.L. 103-337) required DOD to conduct a study concerning spousal abuse in the military. According to this study,⁵ spouses are hesitant to report abuse because of the fear of the military service's reaction. In particular, spouses fear that reporting the abuse would adversely affect the military members' careers. Specifically, spouses expressed concern that the servicemember would be punished or separated from the service. The study cited additional reasons for not reporting, such as the possibility of further deterioration of family life, physical harm, loss of income, and public embarrassment. Furthermore, spouses often believe that they can handle the problem themselves or that the problem is not that serious.

We did not find comparable statistics on spousal and child abuse incidents for the civilian community. The Department of Justice periodically performs surveys and reports on the incidence of violent and other crimes in the United States. However, unlike DOD, which collects data on children until they reach the age of 18, the Department of Justice reports combined data on spouses and children beginning at age 12. Further, Department of Justice statistics include offenders and victims outside the family unit (such as former spouses as well as current and former girlfriends or boyfriends), whereas DOD's statistics includes abuse only by family members. Similar data comparability problems were present in other studies of spousal and child abuse we reviewed.⁶

⁵Final Report on the Study of Spousal Abuse in the Armed Forces, September 1996.

⁶The Department of Human Services develops statistics concerning child abuse, but the data were not yet available for fiscal years 1998 and 1999.

Degree of Confidentiality Granted by Services

According to DOD, the Privacy Act of 1974⁷ is the foundation for confidentiality and privacy programs for DOD and the military services. In general, the Privacy Act seeks to protect an individual's confidentiality but also recognizes the legitimate needs of the federal government for information. The act specifies that personal information cannot be disclosed without written request or prior written consent of the subject of the information unless its release would fit within the 12 enumerated disclosures in the act. One of the exceptions applicable to DOD is disclosure of information to officers and employees who have a need to determine an individual's suitability for military duty. A military dependent seeking counseling services cannot be assured that the information provided will not be disclosed. According to DOD, its Family Advocacy Program was designed to be consistent with the Privacy Act and to ensure that commanders have the information they need to protect the safety of spousal and child abuse victims and to evaluate whether servicemembers can perform their military duties. Thus, military dependents have limited confidentiality in their discussions with counselors and other service providers.

DOD and the services have issued regulations implementing the Family Advocacy Program. Generally, the services do not disclose information concerning dependent communications with counselors and other service providers except in limited circumstances. However, such information may be released to outside entities such as law enforcement agencies or to officials within DOD who need this information in the performance of their duties.

DOD officials told us that commanders are held accountable for the safety of alleged victims of family violence and are unable to fulfill this responsibility unless they are informed. Therefore, DOD's Family Advocacy Program counselors provide commanders the information necessary to ensure the safety of family abuse victims and to evaluate whether servicemembers are able to perform their military duties.

The extent to which information regarding family abuse is protected varies somewhat by service. Family Advocacy Program officials in all services generally provide summaries of reported family abuse incidents to commanders. While the Army, the Air Force, and the Marine Corps provide

⁷Public Law 93-579, 5 USC 552a, December 31, 1974.

summaries of all reported incidents, the Navy does not provide summaries on cases of abuse in which there were no physical injuries and no likelihood of further abuse. The Navy keeps separate files on each person involved in reported family abuse incidents to protect against the unintended disclosure of information. The Navy has standards and criteria for its counselors to use in making these nondisclosure determinations. Navy officials told us that they are not able to determine whether incidents not reported to commanders later escalate into reportable incidents. Marine Corps Family Advocacy officials provide actual case files to commanders if requested.

DOD Efforts to Address Confidentiality

In addition to mandating this report, the fiscal year 2000 National Defense Authorization Act requires the Secretary of Defense to prescribe regulations including policies and procedures that the Secretary considers appropriate to provide the maximum protection for the confidentiality of dependent conversations with counselors or other service providers. Although the act required that DOD report its actions to Congress by January 21, 2000, DOD has not yet submitted that report. DOD anticipates that efforts such as those of its Defense Task Force on Domestic Violence will be essential in determining what the new DOD confidentiality policy should be. Family Advocacy officials recognize that developing guidance on disclosure of dependents' communications regarding spousal and child abuse requires a major policy decision. These officials stated that they do not see a compelling reason to issue new regulations covering dependent confidentiality prior to completion of these other ongoing efforts.

A number of factors make formulation of DOD's confidentiality policy on reporting spousal and child abuse difficult. The extent to which information provided to program counselors is protected from disclosure involves balancing sensitive, often complex issues. For example, commanders need information concerning domestic violence incidents so that they can take appropriate action to protect the safety of alleged victims and determine whether military members are fit for duty. On the other hand, dependents involved in domestic violence incidents may not want the results of their conversations with counselors and other service providers disclosed to military commanders or others. Consequently, some cases are likely to go unreported. Department officials believe that they must maintain a balance between such factors as national security, the safety of dependents, and protecting individual dependent rights.

According to Family Advocacy officials, confidentiality related to spousal and child abuse represents a relatively small segment of the general issue of confidentiality and family violence within DOD, and several broader efforts within the Department will address these related issues. The Department, for example, has several efforts underway, including a 3-year effort concerning domestic violence and a joint effort with the Department of Health and Human Services relating to electronic medical records. The Defense Task Force on Domestic Violence, established pursuant to section 591 of the fiscal year 2000 National Defense Authorization Act, has been given until March 2001 to develop a strategic plan by which DOD may address matters related to domestic violence more effectively. The task force is also required to make recommendations to address domestic violence within the military.

In November 1999, the Department of Health and Human Services published draft regulations concerning the confidentiality of electronic medical records which DOD officials believe could be useful in its efforts. Family Advocacy officials believe that until these regulations are issued in final form and other efforts are completed, any policy decisions concerning dependent confidentiality would be premature. These officials believe that DOD should spend whatever time and effort necessary to ensure that standardized confidentiality policies and procedures are developed across the Department.

Agency Comments and Our Evaluation

Officials from the Office of the Assistant Secretary of Defense, Offices of Health Affairs and Family Programs provided oral comments on a draft of this report. These officials, including the DOD Family Advocacy Administrator and the Assistant Director for Health Affairs, generally agreed with the information presented and emphasized that formulation of DOD's policy concerning confidentiality was difficult. They noted they had several broader efforts underway that will address dependent confidentiality and related issues. DOD officials said that waiting until these ongoing efforts are complete before issuing new confidentiality regulations would allow them to monitor differences among service Family Advocacy Programs and develop policies and procedures that provide the optimum level of confidentiality. DOD officials also emphasized that it was important to take the time necessary to ensure that an appropriate confidentiality policy is established.

Given the number of issues that DOD needs to consider in formulating its confidentiality policy, we agree that it will take time to ensure that

appropriate confidentiality policies and procedures are established. In the meantime, we agree that DOD's monitoring of the differences among services' Family Advocacy Programs should provide important information for formulating disclosure practices.

In response to DOD comments, we made technical changes to our report as appropriate.

Scope and Methodology

To determine the extent of reported spousal and child abuse within the military, we obtained DOD statistics on reported incidents of family abuse. To gain insight into the level of confidentiality provided within the civilian community, we met with officials from the Department of Justice, Office on Violence Against Women. The officials provided us with a 1995 study and other information concerning domestic violence and statistics concerning the incidence of such abuse.

We held discussions with Family Advocacy Program officials including the DOD and service Family Advocacy policy and program managers and counselors to determine the degree to which dependent communications about family abuse are subject to disclosure. These officials provided us with copies of their policies and procedures concerning the confidentiality granted to military dependents. We met with DOD legal officials and discussed the level of confidentiality and the applicability of pertinent rules and regulations concerning military members and their dependents. While the legislation mandating this review mentions communications regarding sexual harassment, we did not include this issue because such abuse would likely be outside the immediate family and therefore not within the purview of the Family Advocacy Program.

To determine the status of DOD efforts to address the confidentiality of dependent communications, we met with DOD and service Family Advocacy officials to obtain their views concerning the need for additional policies and procedures concerning confidentiality. We also reviewed legislation requiring DOD to establish policies and procedures that provide maximum protection for dependent communications. In addition, we discussed the status of DOD's efforts to address confidentiality issues.

We performed our review at the Office of the Secretary of Defense, DOD's Office of Health Affairs, Office of Family Programs, and the Office of the General Counsel. We also discussed DOD's planned actions regarding its

congressional mandate with an official from the Office of the Under Secretary of Defense, Personnel and Readiness.

We interviewed headquarters officials and obtained information about existing confidentiality policies and procedures during our visits to the Office of the Surgeon General, U.S. Air Force, and the Bureau of Medicine, U.S. Navy. We met with Family Advocacy Program officials responsible for the Air Force and the Army programs in San Antonio, Texas. We also met with Navy program officials in Millington, Tennessee, and Marine Corps officials in Quantico, Virginia.

We conducted our review from September 1999 through March 2000 in accordance with generally accepted government auditing standards.

We are sending copies of this report to the Honorable William S. Cohen, Secretary of Defense; the Honorable Louis Caldera, Secretary of the Army; the Honorable Richard Danzig, Secretary of the Navy; General James Jones, Commandant of the Marine Corps; the Honorable F. Whitten Peters, Secretary of the Air Force; and the Honorable Jacob Lew, the Director, Office of Management and Budget; and other appropriate congressional committees. Copies will also be made available to others upon request.

Please contact me at (202) 512-5140 if you or your staff have any questions concerning this report. Major contributors to this report were William E. Beusse; Harry E. Taylor, Jr.; Robert L. Coleman; and Ernie E. Jackson.



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