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Military Sexual Assault: A Framework for Congressional Oversight

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Summary

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 of the Armed Forces.

Prevention and response to sexual violence in the military is not a new concern, nor is sexual violence a problem confined to the military. While prevalence is difficult to estimate, some surveys suggest that up to 19.3% of women and 1.7% of men in the United States have been a victim of sexual assault at some point in their lives. There is a continued national dialogue with regard to sexual violence at universities and other government and private organizations. Sexual assault can have both deleterious physical and psychological effects on the victim and, when an assault occurs in or around the workplace, it can harm the working environment and function of the organization. In the military context, when an assault occurs it impairs the unit's ability to work effectively; it can have an impact on cohesion, stability, and ultimately, mission success. Thus, concern about sexual assault in the military stems from complementary imperatives: protecting the individual health and welfare of military servicemembers, and ensuring preparedness and effectiveness of military units.

Congressional efforts to address military sexual assault, pursuant to its Constitutional authority, have intensified over the past two decades in response to rising public concern about incident rates and perceptions of a lack of adequate response by the military to support the victims and hold perpetrators accountable. Since 2004, Congress has enacted over 100 provisions intended to address some aspect of the problem as part of the annual National Defense Authorization Act (NDAA). In addition, 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 framework for analysis and oversight. This report provides such a framework to help congressional staff **understand the legislative and policy landscape, link proposed policy solutions with potential impact metrics, and identify possible gaps that remain unaddressed.**

Congressional oversight and action on military sexual assault can be organized into four main categories**: (1) Department of Defense (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. Finally, the last category addresses bringing perpetrators to justice through military investigative and judicial processes.

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Introduction

The U.S. Constitution provides Congress with powers over the Armed Forces, including the power "to make Rules for the Government and Regulation of the land and naval Forces." As such, Congress has oversight of Department of Defense (DOD) policies and programs. Congressional efforts to address military sexual assault intensified in 2004 in response to rising public concern about the rate and number of assaults and perceptions of an inadequate response by the military to support the victims and to hold perpetrators accountable. In February of 2004, the Senate Armed Services Committee Subcommittee on Personnel held a hearing on Policies and Programs for Preventing and Responding to Incidents of Sexual Assault in the Armed Services. In his opening statement, the ranking member, Senator E. Benjamin Nelson, stated,

> We're greatly alarmed at reports of sexual assaults on our service women and the apparent failure of the military systems to respond appropriately to the needs of the victims. Women who choose to serve their Nation in military service should not have to fear sexual attacks by their fellow servicemembers. When they are victims of such an attack, they absolutely must have effective victim intervention services readily available to them, and they should not fear being punished for minor offenses when they report the attack, or being re-victimized through the investigative process.[1]

In the same year, Congress enacted law requiring the Secretary of Defense to develop a comprehensive policy on the prevention of sexual assaults involving servicemembers and to begin annual reporting on statistics and metrics related to sex-related violence in the military. Since 2004, Congress has enacted over 100 provisions intended to address various aspects of the problem as part of the National Defense Authorization Act (NDAA).

The potential threat of sexual violence against military servicemembers has been part of the debates 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 be subject to a military draft. In these debates, a frequently cited concern has been the possibility that women could be captured, exposing them to potential sexual violence from enemy forces. However, the threat of sexual assault does not only come from enemy forces, nor is it only a threat for women in the military.

In the 1990s, several military sexual misconduct incidents (e.g., the Navy's 1991 Tailhook Conference, and the Army's Aberdeen Proving Ground scandal) garnered congressional attention.[2] These events highlighted the internal threat of assault perpetrated by one servicemember on another. In 2003, a sexual assault scandal at the Air Force Academy again brought public attention to sexual assault in a training environment and called into question senior military leaders' efforts to establish an appropriate culture for prevention of and response to sexual assault. Shortly thereafter, allegations of sexual assaults by servicemembers on fellow servicemembers deployed to combat theaters in Iraq and Kuwait raised concerns that the prevalence of sexual violence in theater could have a negative effect on the morale and effectiveness of deployed units.[3] More recently, statistics have shown that in absolute numbers,

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[1] 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, 108-799 (Washington: GPO, 2005).

[2] See U.S. Congress, Senate Committee on Armed Services, *Army Sexual Harassment Incidents at Aberdeen Proving Ground and Sexual Harassment Policies within the Department of Defense*, 105th Cong., 1st sess., February 4, 1997, S. Hrg. 107-76 (Washington: GPO, 1997).

[3] "Acknowledgment by the Army of over 80 complaints of rape or sexual assault against female soldiers in connection

more men than women in the military report experiences with unwanted sexual contact. This has raised the profile of male sexual assault and DOD policies and programs to support male victims.[4] Finally, the exposure of sexist comments and nonconsensual sharing of sexually explicit/intimate images among the *Marines United* social media group led many in Congress to question the impact of service culture on sexism and sexual violence.[5]

Sexual violence is not a problem confined to the military. Actual prevalence in the civilian sector is difficult to estimate as many experts believe sexual assault is an underreported crime. Some national surveys suggest that up to 19.3% of women and 1.7% of men in the United States have been victims of sexual assault at some point in their lives.[6] There is a continued national dialogue with regard to sexual violence at universities, and other government and private organizations. Congress also has shown an interest in addressing society-wide issues through broad legal reforms. Nevertheless, there are particular aspects of military service (e.g., the possibility of remote assignments, the command structure, and the unique justice system) that may require different policy solutions than those that might apply in the civilian workplace.

Sexual assault can have both deleterious physical and psychological effects on the victim. This is particularly true if the alleged victim and perpetrator are in the same unit.[7] 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."[8]

When an assault occurs in or around the workplace it can negatively affect the working environment and organizational functioning. In the military context, when the ability of a unit to work together effectively is impaired, it can ultimately impact mission success. Survey data from 2016 indicates that among those servicemembers who experienced sexual assault in the previous year, 73% of the incidents occurred at a military location.

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with Operation Iraqi Freedom and by the Air Force of scores of such cases in the Air Force training command and in various units in the Air Force's Pacific Command have demonstrated that this problem, at a minimum, is widespread and poorly understood, and that corrective action must be taken." U.S. Congress, Senate Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2005*, report to accompany S. 2400, 108th Cong., 2nd sess., May 11, 2004, S.Rept. 108-260.

[4] In 2014, DOD reported that an estimated 4.3% of active duty women and 0.9% of active duty men experienced unwanted sexual contact in the previous year. Female victims account for a higher percentage of victims; however, as there are more men in the military, the absolute number of men affected (~10,500) is greater than the number of women (~8,500). DOD Sexual Assault Prevention and Response Fact Sheet.

[5] See hearing transcript for U.S. Congress, Senate Committee on Armed Services, *Information Surrounding the Marines United Website*, 115th Cong., March 14, 2017.

[6] Breiding, Matthew J. et al., "Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization - National Intimate Partner and Sexual Violence Survey," *Morbidity and Mortality Weekly Report (MMWR)*, vol. 63, no. 8 (September 2014).

[7] 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 preferred by some who have experienced and are recovering from sexual violence. For simplicity, this report will use the term victim when discussing the response, investigation, and judicial processes related to sex crimes.

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

What is Military Sexual Assault?

Major criminal sexual violence offenses in the military are defined in in the Uniform Code of Military Justice (UCMJ), Chapter 47, Title 10 United States Code.[9] Since 2006, Congress has made substantial changes to the UCMJ articles regarding these offenses. DOD policies further define sexual assault 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. While some of DOD's sexual violence policies and programs may apply to DOD civilians and military dependents, this report will focus primarily on sexual assaults involving uniformed servicemembers as alleged victims or perpetrators. 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.[10] Intimate partner and child sexual assaults involving military family members are typically handled by the DOD Family Advocacy Program.

The Department of Veterans Affairs 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.[11] 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 the Coast Guard Academy.[12] Finally, this report does not address sexual assault at the Merchant Marine Academy, which falls under the Department of Transportation.[13]

Because sexual harassment can be associated with community risk factors for sexual assault, congressional efforts to combat sexual harassment in the military form part of this analysis. 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 sex discrimination and falls under DOD military equal opportunity policies.[14] DOD's Office of Diversity Management and Equal Opportunity oversees these issues.[15]

How are Sexual Assault and Sexual Harassment Defined in the Military?

Sexual Assault in the military is defined in DOD Instruction 6495.02 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.[16] As used in this Instruction, the term includes a broad category of sexual offenses consisting of the following specific UCMJ offenses (Articles 120 and 125): **rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, or attempts to commit these offenses** (Article 80).

[9] DODI 6495.01, Sexual Assault Prevention and Response (SAPR) Program, and DODI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures.

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

[11] For more information, see VA's Military Sexual Trauma site: http://www.mentalhealth.va.gov/msthome.asp.

[12] For more information, see Coast Guard SAPR Resources: https://www.uscg.mil/worklife/sapr_resources.asp.

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

[14] Department of Defense, *Military Equal Opportunity (MEO) Program*, DODI 1350.02, November 21, 2003.

[15] 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.

[16] 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."

Article 120 of the UCMJ (10 U.S.C. §920(b)) defines sexual assault punishable by court-martial for a servicemember who,

(1) commits a sexual act upon another person by--
(A) threatening or placing that other person in fear;
(B) causing bodily harm to that other person;
(C) making a fraudulent representation that the sexual act serves a professional purpose; or
(D) inducing a belief by any artifice, pretense, or concealment that the person is another person;
(2) commits a sexual act upon another person when the person knows or reasonably should know that the other person is asleep, unconscious, or otherwise unaware that the sexual act is occurring; or
(3) commits a sexual act upon another person when the other person is incapable of consenting to the sexual act due to--
(A) impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the person; or
(B) a mental disease or defect, or physical disability, and that condition is known or reasonably should be known by the person.

Sexual Harassment in the military is defined in 10 U.S.C. §1561[17] 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.

A Framework for Congressional Oversight

Given the extensive legislative and policy reform in this arena, CRS offers this framework for analysis and oversight. This framework may help congressional staff understand the legislative and policy landscape, link proposed policy solutions with potential impact metrics, and identify possible gaps that remain unaddressed. Congressional oversight and action on military sexual assault can be organized into four main categories.

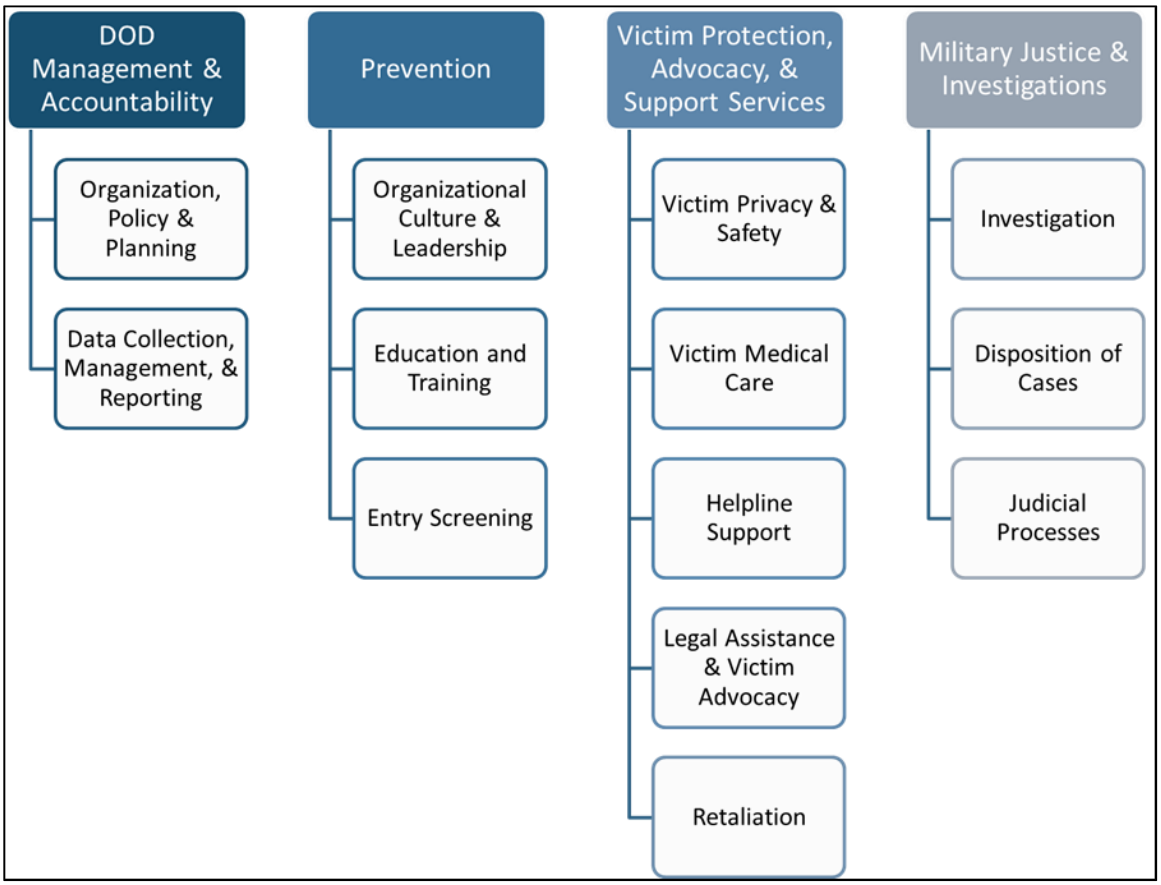
1. DOD management and accountability.
2. Prevention.
3. Victim protection and support.

[17] 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.

4. Military justice and investigations.

DOD management and accountability pertains to organization, monitoring, and evaluation of DOD's efforts in sexual assault prevention and response. *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."[18] *Victim protection and support* focuses on DOD's response once an alleged assault has occurred, including actions to protect and support the victim. Finally, *military justice and investigations* addresses holding perpetrators accountable through military investigative and judicial processes.

Figure 1. Military Sexual Assault: Areas for Congressional Oversight



Source: CRS.

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."[19] This authority allows the Secretary to develop military personnel policies and programs. Congress, under its authority to regulate the armed forces, has taken considerable interest over the past 15 years in the effectiveness of DOD's sexual assault prevention and response initiatives, and in the disposition of military sexual assault

[18] P.L. 111-383 §1601(a)(1).

[19] 10 U.S.C. §113.

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 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. This Task Force's report was released in April 2004. At this time, military departments and services had primarily managed sexual assault regulations and programs. 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.[20] 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.[21] This Joint Task Force took responsibility for developing a new DOD-wide sexual assault policy as directed by Congress in the FY2005 NDAA (P.L. 108-375 §577). It delivered the new policy on January 1, 2005.[22] 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.[23]

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 improvement in staff experience levels. 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;

[20] Department of Defense, *Task Force Report on Care for Victims of Sexual Assault*, April 2004, p. ix.

[21] Memorandum from David S. C. Chu, Under Secretary of Defense for Personnel and Readiness to the Commander, Joint Task Force (Sexual Assault Prevention and Response), August 20, 2004.

[22] *DoD Announces New Policy on Prevention and Response to Sexual Assault*, January 4, 2005. The current DOD policy is reflected in DOD Instruction (DODI) 6495.02.

[23] 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).

- 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.[24]

Following this report, Subtitle A of the FY2011 NDAA formalized the role and functions of the SAPR office and programs. Section 1611 of the act provided statutory requirements and roles for the inspector general, SAPRO staff, and the director. Operating under the oversight of an Advisory Working Group 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.[25]

In particular, this provision required DOD to assign at least one officer from each of the Services (Army, Navy, Marine Corps, and Air Force) to the SAPRO office, and required those assigned officers to be in the grade of O-4 (Lieutenant Commander or Major) or above. The law also required at least one of the four officers assigned to be in the grade of O-6 (Captain or Colonel) or above. The FY2012 NDAA further required that the SAPRO director be a general or flag officer (GFO) or equivalent civilian employee.[26]

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 Services.[27] Subsequent provisions in the FY2011 NDAA (P.L. 111-383) 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.

In May 2013, DOD released its first Sexual Assault Prevention and Response (SAPR) strategic plan including five distinct lines of effort:

1. Prevention: deliver consistent and effective methods and programs.
2. Investigation: achieve high competence in the investigation of sexual assault.
3. Accountability: achieve high competence in holding offenders appropriately accountable.
4. Victim Assistance and Advocacy: deliver consistent and effective victim support, response, and reporting options.

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[24] Department of Defense, *Report of the Defense Task Force on Sexual Assault in the Military Services*, December 2009.

[25] P.L. 111-383.

[26] 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.

[27] Department of Defense, *Report of the Defense Task Force on Sexual Assault in the Military Services*, December 2009, p. 58.

5. Assessment: effectively standardize, measure, analyze, assess, and report program progress.[28]

DOD updated the strategic plan in January 2015 and again on December 1, 2016, for 2017-2021.[29]

Assessment: 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**).[30] *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.[31] 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. These non-metrics may still be useful for congressional oversight, as they can indicate potential issues or trends within the military justice system.

Table 1. DOD Metrics and Non-Metrics for Assessing SAPR Programs

Metrics	Non-Metrics
Metric 1: Past-year 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: Command Climate Index – Addressing Continuum of Harm	Non-metric 4: Time Interval from Report of Sexual Assault to Nonjudicial Punishment Outcome
Metric 5: Investigation Length	Non-metric 5: Time Interval from Report of Investigation to Judge Advocate Recommendation
Metric 6: All Full-time Certified Sexual Assault Response Coordinator and SAPR Victim Advocate Personnel Currently Able to Provide Victim Support	

[28] A full list of all current DOD and Service-level policies related to military sexual assault can be found at: http://www.sapr.mil/index.php/dod-policy/dod-and-service-policy.

[29] Department of Defense, *Sexual Assault Prevention and Response Strategic Plan, 2017-2021*, December 1, 2016.

[30] DOD Annual Report on Sexual Assault in the Military, FY2016, Appendix C, p. 4. The term *non-metric* was coined by DOD.

[31] 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 and School, United States Army, *2015 Commander's Legal Handbook*, Misc. Pub 27-8, 2015, p. 17.

Metrics	Non-Metrics
Metric 7: Victim Experience – Satisfaction with Services Provided by Sexual Assault Response Coordinators, SAPR Victim Advocates, and Special Victims' Counsel/Victims' Legal Counsel during the Military Justice Process	
Metric 8: Percentage of Subjects with Victims Declining to Participate in the Military Justice Process	
Metric 9: Perceptions of Retaliation	
Metric 10: Victim Experience – Victim Kept Regularly Informed of the Military Justice Process	
Metric 11: Perceptions of Leadership Support for SAPR	
Metric 12: Reports of Sexual Assault over Time	

Source: DOD Annual Report on Sexual Assault in the Military, FY2016, Appendix C.

DOD Plan of Action for Male 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, in the FY2016 NDAA, also required DOD to develop a plan to prevent and respond to cases of male sexual assault. 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 has put together a working group to oversee progress toward these objectives and intends to reevaluate outreach, response, and prevention efforts within three years of completion of the plan's objectives.[32]

Data Collection, Management, and Reporting

The availability 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.[33] In 2009, the SAMS Task Force report noted a lack of precision and reliability in annually reported data.[34] 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

[32] Department of Defense, *Plan to Prevent and Response to Sexual Assault of Military Men*, August 30, 2016.

[33] P.L. 111-383 §1631, 10 U.S.C. 1561 note.

[34] Department of Defense, *Report of the Defense Task Force on Sexual Assault in the Military Services*, December 2009, p. 78.

response to the 2009 Task Force recommendations and other information needs. For example, the FY2013 NDAA required reporting of additional case synopsis details (i.e., alcohol involvement, existence of moral waivers for offenders, etc.) and FY2015 NDAA required an analysis of the disposition of sexual assault offenses.[35]

DOD, Congress and other stakeholders use information from this 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 is challenging for a number of reasons. For one, sexual assault is widely considered to be 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 34% of rapes and other sexual assaults were reported to police in 2014. This compares to robberies, of which roughly 61% were reported to the police, or domestic violence incidents, of which roughly 56% were reported.[36] 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.[37]

Some 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." [38] 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 forcible rape as "the carnal knowledge of a female forcibly against her will."[39] This definition excluded male victims and other sexual offenses that are criminal in most jurisdictions.[40] 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 Department of Justice. 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.[41]

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

[35] P.L. 112-239 §572, P.L. 113-291 §542.

[36] Jennifer Truman and Lynn Langton, U.S. Department of Justice, Bureau of Justice Statistics, "Bulletin: Criminal Victimization, 2014," September 29, 2015.

[37] National Institute of Justice, Office of Justice Programs, *Reporting of Sexual Violence Incidents*, 2010.

[38] Morral, Andrew R., 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.

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

[40] The new FBI definition of rape that went into effect on January 1, 2013 was "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."

[41] U.S. Government Accountability Office, *Sexual Violence Data: Actions Needed to Improve Clarity and Address Differences Across Federal Data Collection Efforts*, GAO-16-546, July 2016.

FY2005 NDAA 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) (see below). While some surveys are used to *estimate* prevalence of reported and unreported incidence of sexual violence and harassment, DSAID is used for recording *actual* 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.[42]

The provision required that this database be used to create the sexual assault-related congressional reports mandated in previous and subsequent NDAAs. 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.[43] It is the primary mechanism for tracking reported incidents, the associated circumstances, and the disposition of cases.[44] 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.[45]

The Defense Assault Incident Database Form is used to collect sexual assault incident data.[46] This form is typically completed by a SAPR responder. The victim may choose to submit a *restricted report,* in which case no personally identifiable information for the victim or subject is captured on the report. If a victim selects to submit an *unrestricted report,* the form will include personally

[42] P.L. 109-364.

[43] U.S. Government Accountability Office, *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.

[44] 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.[44] This database does not include sexual harassment complaints.

[45] Judicial Proceedings Panel, *Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses*, Arlington, VA, April 2016.

[46] 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.[47] See **Table 7** for selected aggregate incident data from FY2013 to FY2017.

In 2016 the GAO conducted a separate review of DSAID to examine the extent to which the database has met the mandated requirements.[48] According to a 2017 GAO report, DOD has plans 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.[49]

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. These data are used for program assessment metrics and non-metrics. The Department has recently introduced additional surveys specifically for victims of sexual assault to better understand their experiences with sexual assault support programs and the military investigative and judicial processes.

Table 2. Recurring SAPR Surveys and Focus Groups

as of May 2017

Surveys and Focus Groups	Target Population	Frequency
Workplace and Gender Relations Survey—Reserve Component (WGRR)	Reserve Component servicemembers	Biannual (even years)
Workplace and Gender Relations Survey—Active Component (WGRA)	Active Component servicemembers	Biannual (odd years)
Focus Groups on Sexual Assault Prevention and Response (FGSAPR)	All servicemembers	Biannual (odd years)
Military Service Academy Survey	Service Academy personnel	Annually (academic program year)
Service Academy Gender Relations Focus Groups (SAGR)	Service Academy personnel	Biannual (odd 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)	Military servicemembers who made a formal report of sexual assault and have a closed case	Annual, first survey complete in 2015
QuickCompass of Sexual Assault Prevention and Response-Related Responders (QSAPR)	Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VAs)	Surveys completed in 2009, 2012, and 2015

[47] Ibid. For a more comprehensive discussion of restricted v. unrestricted reporting, please see "Restricted vs. Unrestricted Reporting."

[48] U.S. Government Accountability Office, *Sexual Violence Data: Actions Needed to Improve Clarity and Address Differences Across Federal Data Collection Efforts*, GAO-16-546, July 2016.

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

Surveys and Focus Groups	Target Population	Frequency
Defense Equal Opportunity Management Institute's Organizational Climate Survey (DEOCS)	All servicemembers	Rolling basis

Source: Department of Defense Sexual Assault Prevention and Response Office, Reports.

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

Workplace and Gender Relations Survey

The NDAA for FY1997 (P.L. 104-201) first required DOD to include gender in mandated servicemember surveys on issues of harassment and discrimination in the military. In the FY2013 NDAA, Congress added assault to the survey requirements and mandated surveys of active duty and reserve component servicemembers every two years in alternating years beginning in 2014.[50] DOD's Office of People Analytics (OPA) currently administers the Workplace and Gender Relations Survey (WGR) 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 the prevalence of self-reported "gender-based harassment, assault, and discrimination".[51]

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

> […] 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.[52]

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 it is assumed 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.[53]

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.[54] RAND fielded two surveys; the first used the same questions as

[50] P.L. 112-239 §570.

[51] 10 U.S.C. §481.DOD conducted WGRA surveys of active-duty forces in 2002, 2006, 2010, 2012, 2014, and 2016. DOD conducted surveys of Reserve component forces (WGRR) in 2004, 2008, 2012, and 2015.

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

[53] Defense Manpower Data Center, Frequently Asked Questions: 2012 Workplace and Gender Relations Survey of Active Duty Members, at https://www.dmdc.osd.mil/appj/dwp/rest/download?fileName=WGRA1201_FAQ.pdf&groupName=pubGenderActive.

[54] Morral, Andrew R., 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.

in the previous WGR survey. The second, the RAND Military Workplace Survey (RMWS) used a newly constructed crime victimization measure with more explicitly and anatomically defined terms.[55] 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."[56]

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).[57]

Selected results from the FY2016 survey by service are shown in **Figure 2**. In 2016, estimated prevalence rates across the active-duty population in DOD were 4.3% for women and 0.6% for men. These estimated prevalence rates were slightly lower than reported prevalence rates in 2014 (4.9% and 0.9% respectively).

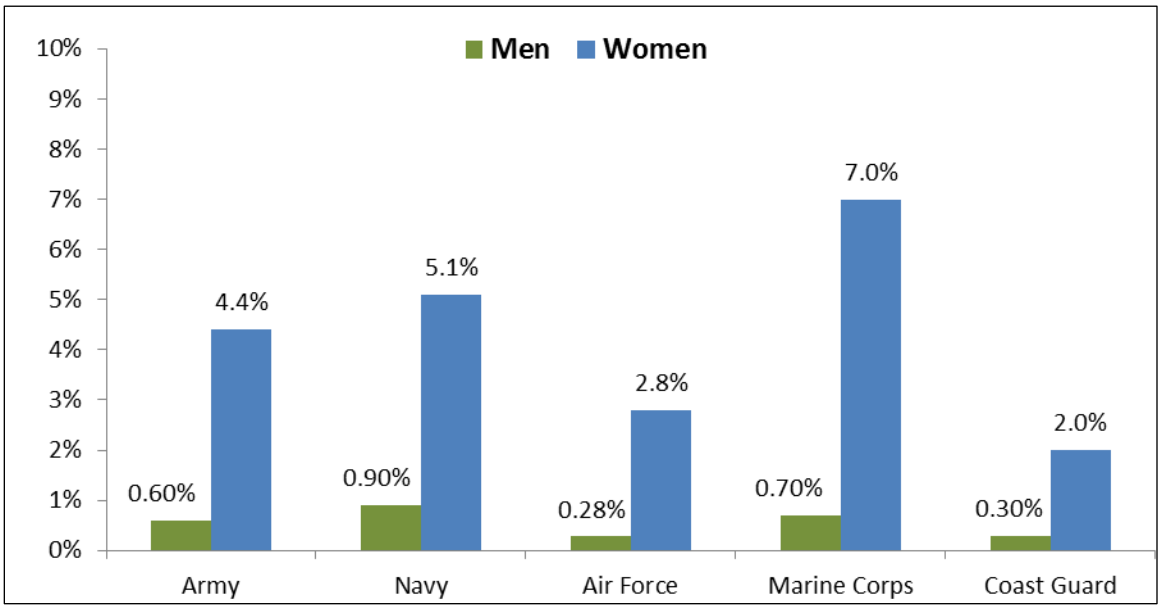
[55] For example, instead of the 2012 question whether someone, "attempted to make you perform or receive oral sex, anal sex, or penetration by a finger or object, but was not successful," the 2014 revised survey asked whether someone "attempted to put a penis, an object, or any body part into their vagina, anus, or mouth, but no penetration actually occurred."

[56] Results of the 2014 survey that used the same methodology as the 2012 WGR showed lower rates of sexual assault for some branches of the service.

[57] Department of Defense, *2016 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2016-050, May 2017,

Figure 2. Estimated Prevalence of Sexual Assault among Active Duty Servicemembers

Percentage experiencing sexual assault in the previous year (FY2016)



Source: Department of Defense, *2016 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2016-050, May 2017, pp. 34 & 36.

Notes: Women in the Navy and Marine Corps were statistically more likely to indicate experiencing sexual assault than women in the other services. Men in the Navy were statistically more likely to indicate experiencing sexual assault than men in the other services.

To address findings from related civilian studies that showed higher rates of sexual assault in populations that identify as lesbian, gay, bisexual, and transgender (LGBT), DOD incorporated additional questions on sexual orientation in the 2016 WGRA survey.[58] DOD's findings were consistent with civilian literature, indicating that LGBT members are statistically more likely to experience sexual assault than members who do not identify as LGBT (see **Table 3**).

Table 3. Estimated Sexual Assault Prevalence Rates for LGBT Servicemembers

2016 WGRA data

Active Duty Servicemembers	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.

Notes: Data in this table does not include the Coast Guard.

[58] Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, May 1, 2017, p. 15.

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.[59] 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.

Focus Groups on Sexual Assault Prevention and Response

Starting in 2015, DOD began including focus groups for active duty servicemembers in its assessment cycle. Like the service academy focus groups, the servicemember 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."[60] In the 2015 focus groups, 459 active duty members across the four services participated.

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),
- victims' advocates (VAs), and
- medical and mental health services.[61]

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.[62]

Military Investigation and Justice Experience Survey

The Military Investigation and Justice Survey (MIJES) is an anonymous survey first administered by DOD between August 31 and December 4, 2015. The purpose of this survey is 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

[59] P.L. 109-364 §532.

[60] Dippold, Kathleen E., 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.

[61] For more information on these services, see the section in this report on "Victim Protection, Advocacy and Support Services."

[62] Van Winkle, Elizabeth P., 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.

areas of support."[63] The MIJES is 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.[64] The survey excludes those victims whose alleged assailant was not a military member.

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). This is the third survey to be administered to the responder population with previous surveys in 2009 and 2012.[65] 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."[66]

Prevention

DOD uses the U.S. Centers for Disease Control and Prevention (CDC) terminology to define prevention and prevention strategies as they apply to sexual violence.[67] 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.[68]

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 and acceptance of violence, alcohol/drug use); (2) relationship risk factors (e.g., association with sexually aggressive, *hypermasculine,*[69] and delinquent peers); (3) community risk factors (e.g., general tolerance of

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[63] Namrow, Natalie A., 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.

[64] This included the Active and Reserve Components.

[65] Cook, Paul J., 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.

[66] Ibid., p. 171.

[67] Ibid., p. 2.

[68] 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.

[69] 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. Mosher, Donald L. 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. Brown, Melissa, *Enlisting Masculinity: The Construction of Gender in U.S. Military Recruiting and Advertising During the All-Volunteer Force* (New York: Oxford University Press, 2012).

sexual violence, lack of institutional support); and (4) societal risk factors (e.g., weak gender-equity laws/policies).[70] A full list of these risk factors is displayed in the Appendix in **Table A-2**.

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,

> "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."[71]

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?

Organizational Culture and Leadership

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."[72] The military's organizational culture varies both across the services (Army, Navy, Marine Corps, and Air 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 many of the policy changes to improve organizational culture are often initiated at a DOD-wide level, implementation of change is typically the responsibility of commanders at the unit level. These commanders may face unique community risk factors for sexual violence. For example, as stated by an Army representative:

> 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."[73]

Identifying and Mitigating Community Risk Factors for Assault

Among active duty servicemembers who reported experiencing a sexual assault in 2016, 73% of all men and women reported that assault occurred at a military location, while 12% of women and

[70] Department of Defense, *2014-2016 Sexual Assault Prevention Strategy*, April 30, 2014, p. 19.

[71] Department of Defense, *2014-2016 Sexual Assault Prevention Strategy*, April 30, 2014, p. 8.

[72] Schein, Edgar H., *Organizational Culture and Leadership*, 4th ed. (San Francisco: Jossey-Bass, 2010).

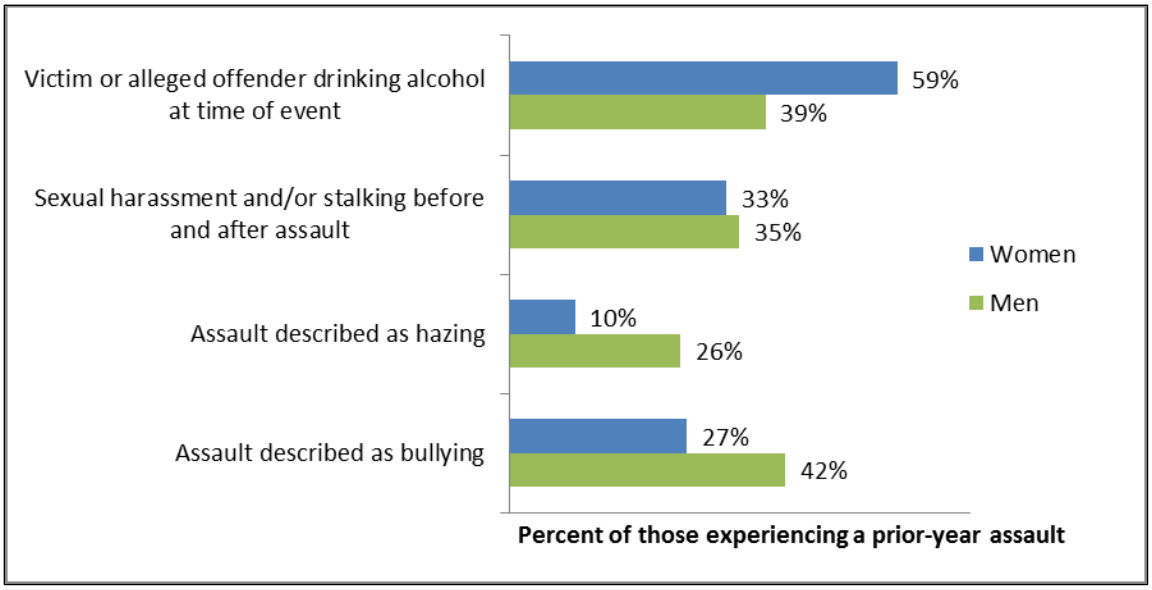
[73] Myers, Meghann, "Fanning: It's time to do a better job of preventing sexual assault," *Army Times*, October 1, 2016.

18% of men indicated that the assault occurred "while at an official military function."[74] Research suggests that workplace culture is important in sexual assault prevention.[75] 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 are 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 or support an environment which tolerates these actions."[76] By using existing data collected through the WGRA 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 (for selected indicators see **Figure 3**).

Figure 3. DOD Sexual Assault Victims and Selected Circumstances of Assault

Percentage experiencing sexual assault in the previous year (FY2016)



Source: Department of Defense, *2016 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2016-050, May 2017.

Notes: Hazing refers to things done to humiliate or "toughen up" people before accepting them into a group, whereas bullying refers to repeated verbally or physically abusive behaviors that are threatening, humiliating, or intimidating. Above data do not include the Coast Guard.

Sexual Harassment and Sexism

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

[74] Department of Defense, *2016 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2016-050, May 2017, p. 76.

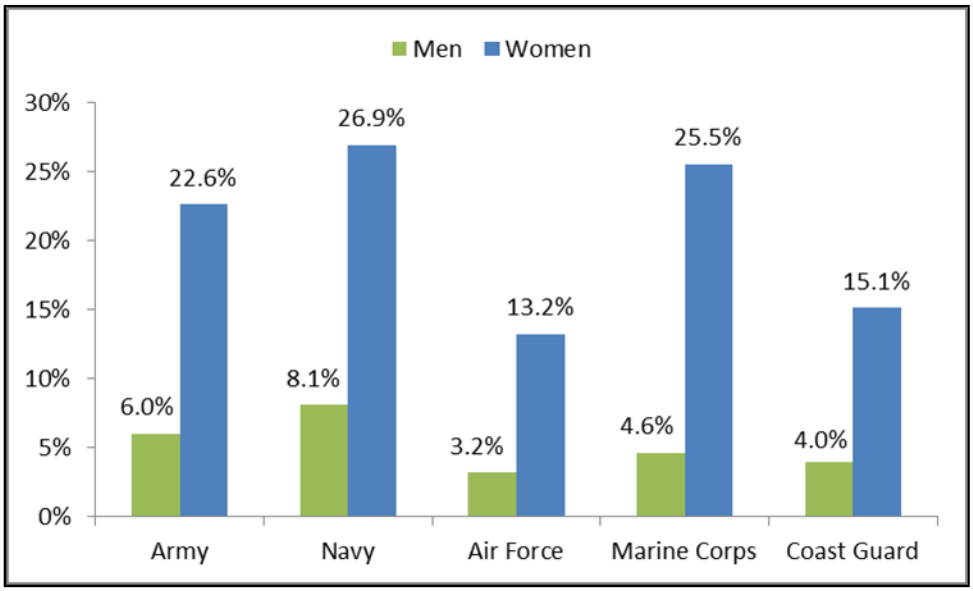
[75] See for example, Harris, Richard, *Sexism, Sexual Harassment and Sexual Assault: Toward Conceptual Clarity*, Defense Equal Opportunity Management Institute, Report No. 07-01, 2007, and Factors Associated with Women's Risk of Rape in the Military Environment, American Journal of Industrial Medicine,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

[76] Department of Defense, *2014-2016 Sexual Assault Prevention Strategy*, April 30, 2014.

military study found that women reporting sexually hostile work environments had approximately six-fold greater odds of rape.[77] 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. In 2016, DOD reported that 8.1% of active duty members indicated experiencing a sexually hostile work environment in 2016, with women experiencing a sexually hostile work environment at over three times the rate as men (see **Figure 4**).[78]

Figure 4. Sexually Hostile Work Environment: Estimated Prevalence Rates

Active Duty, 2016



Source: Department of Defense, *2016 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2016-050, May 2017.

The prevalence of sexual harassment in the military is estimated through survey responses and data on formal complaints. Results from the WGR surveys suggest that servicemembers experience a higher rate of sexual harassment than is actually reported. According to SAPRO data, in FY2016, there were a total of 601 formal complaints of sexual harassment across the active and reserve component;[79] however, estimated prevalence rates would indicate that approximately 8% (over 100,000) servicemembers experienced sexual harassment.[80] 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."[81]

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

[78] DOD defines a *sexually hostile work environment* as one that includes, "unwelcome sexual conduct or comments that interfere with a person's work performance or creates an intimidating, hostile, or offensive work environment."

[79] Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, May 1, 2017, p. 15.

[80] Department of Defense, *2016 Workplace and Gender Relations Survey of Active Duty Members; Overview Report*, OPA Report No. 2016-050, May 2017, Appendix H, p. 1.

[81] U.S. Government Accountability Office, *Preventing Sexual Harassment: DOD Needs Greater Leadership Commitment and an Oversight Framework*, GAO-11-809, September 21, 2011.

In 2010, in response to GAO questions about command climate and sexual harassment, a majority of servicemembers (75%) believed that their immediate supervisor made "honest and reasonable" efforts to stop sexual harassment. However, GAO also reported that 41% of servicemembers indicated that people in their workgroup would be able to get away with sexual harassment to some extent, even if it were reported. In addition 16.6% of women and 24% of males surveyed did not believe, or were unsure of whether their direct supervisor created a climate that discourages sexual harassment from occurring.[82]

Congress and DOD have taken actions to improve monitoring of sexual harassment. Section 579 of FY2013 NDAA (P.L. 112-239) 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. Congress has also sought to encourage commanders' visibility of unacceptable behavior at an early stage by requiring commanders to include documentation of substantiated sexual harassment incidents in a servicemember's performance evaluation.[83]

Stalking

DOD survey results from FY2014 indicated that approximately 9% of both male and female servicemembers who had experienced a sexual assault also experienced stalking prior to assault. Stalking or "grooming" behaviors are often associated with sexual harassment and sexual violence. Stalking is defined as

> a pattern of repeated and unwanted attention, harassment, contact, or any other course of conduct directed at a specific person that would cause a reasonable person to feel fear.[84]

Outside of the military, both federal and state laws prohibit stalking. Those who violate federal stalking laws may be subject to certain criminal penalties.[85] States' civil and criminal stalking laws 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 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.[86]

In the FY2006 NDAA (P.L. 109-163), Congress added stalking to the punitive articles in the Uniform Code of Military Justice (UCMJ) to "enhance the ability of the Department of Defense to prosecute offenses relating to sexual assault."[87] 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

[82] Ibid.

[83] P.L. 113-66 §1745.

[84] RAINN, "Stalking," at https://www.rainn.org/articles/stalking.

[85] 18 U.S.C. §§2261 & 2261A.

[86] Ibid.

[87] H.Rept. 109-1815 p. 314. 10 U.S.C. §920a.

> 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.[88]

Hazing

Survey data also point to an association between hazing and sexual assault. For example, in recent surveys, 34.2% of male victims and 5.7% of female described a sexual assault they experienced as "hazing."[89] In 2015, DOD defined hazing as

> any conduct through which a military member or members, or a Department of Defense civilian employee or employees, without a proper military or other governmental purpose but with a nexus to military service or Department of Defense civilian employment, physically or psychologically injure or create a risk of physical or psychological injury to one or more military members, Department of Defense civilians, or any other persons for the purpose of: initiation into, admission into, affiliation with, change in status or position within, or as a condition for continued membership in any military or Department of Defense civilian organization.[90]

Hazing is prohibited by DOD policy and by law.[91] Hazing has been associated with various 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"[92] 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 situations in which individuals may sustain physical and psychological injuries.[93]

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.[94]

Recently, Congress has taken measures to address hazing in the military. A provision in the FY2013 NDAA required service secretaries to report to the Armed Services Committees on

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[88] 10 U.S.C. §920a.

[89] Morral, Andrew R., Kristie L. Gore, and Terry L. Schell, et al., *Sexual Assault and Sexual Harassment in the U.S. 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.

[90] Robert O. Work, Deputy Secretary of Defense, "Hazing and Bullying Prevention and Response in the Armed Forces," memorandum, December 23, 2015. This definition updated the definition in a 1997 memo from then-Secretary of Defense, William Cohen. Cohen, William A., "Hazing," memorandum for the Secretaries of the Military Departments et al., Washington, DC: U.S. Department of Defense, August 28, 1997.

[91] 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 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.

[92] Weissman, Cale, "Behind the Strange and Controversial Ritual When You Cross the Equator At Sea," *Atlas Obscura*, October 23, 2015.

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

[94] U.S. Government Accountability Office, *Military Personnel: Actions Needed to Address Sexual Assaults of Male Servicemembers*, GAO-15-284, March 2015.

hazing in their respective services to include any recommended changes to the UCMJ.[95] 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.[96]

The FY2015 NDAA included a provision requiring a GAO report on hazing in the armed services.[97] 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.[98] To address some of these shortfalls, Congress included a provision in the FY2017 NDAA that required DOD to establish a hazing database, improve training, and submit annual reports on hazing to the Armed Services Committees.[99]

Alcohol Use

The CDC indicates alcohol use is an individual risk factor for potential perpetrators and is correlated with risk of victimization.[100] 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.[101] It is important to note that alcohol use raises the risk of an assault occurring, but *is not* considered a defense for perpetrators of sexual assault under the UCMJ.[102] Consumption of alcohol can impair an individual's ability to consent to sexual activities and can impair witness and bystander judgement in recognizing nonconsensual activities. In some instances alcohol may also be used as a weapon by sexual predators to reduce a victim's resistance or to fully incapacitate a victim.[103]

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.[104] In 2014, nearly half of all military women and one-fourth of all military men who reported experiencing a sexual assault indicated that alcohol consumption

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[95] P.L. 112-239 §534.

[96] S.Rept. 112-173.

[97] P.L. 113-291.

[98] U.S. Government Accountability Office, *Actions Needed to Increase Oversight and Management Information on Hazing Incidents Involving Servicemembers*, 16-226, February 2016.

[99] P.L. 114-328 §549.

[100] Centers for Disease Control and Prevention, at https://www.cdc.gov/violenceprevention/sexualviolence/riskprotectivefactors.html.

[101] Wechsler, H., Davenport, A., Dowdall, G. W., Moeykens, B., & Castillo, S. (1994). Health and behavioral consequences of binge drinking in college: A national survey of students at 140 campuses. JAMA, 272, 1672-1677.

[102] According to 10 U.S.C. §920(b)(3), 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 punished as a court-martial may direct.

[103] Department of Defense, *2014-2016 Sexual Assault Prevention Strategy*, April 30, 2014.

[104] Bray, R. M., Pemberton, M. R., Lane, M. E., Hourani, L. L., Mattiko, M. J., & Babeu, L. A. (2010). Substance use and mental health trends among U.S. military active duty personnel: Key findings from the 2008 DOD health behavior survey. Military Medicine, 175,390. 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.

(by the perpetrator, victim, or both) was involved in the incident.[105] In addition, military service-reported sexual assault case synopses and assessments from FY2015 indicate that across DOD, alcohol use was associated with 43% of reported incidents of sexual assault. [106]

DOD and the services encourage commanders to address alcohol use as part of their prevention strategies.[107] 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 liberty policies and strategies that limit opportunities for servicemembers to abuse alcohol. [108] 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.[109]

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.[110] 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.[111]

Command Climate and Commander Accountability

Congress has taken some actions to hold military leadership accountable for their 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.[112] DOD

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[105] Morral, Andrew R., Kristie L. Gore, and Terry L. Schell, *Sexual Assault and Sexual Harassment in the U.S. Military*, RAND Corporation, Annex to Volume 2. Tabular Results from the 2014 RAND Military Workplace Study for Department of Defense Service Members, Santa Monica, CA, 2015, p. 74.

[106] CRS analysis of data from the service branch enclosures of the Department of Defense, *Annual Report on Sexual Assault in the Military: Fiscal Year 2015*, May 2, 2016.

[107] Department of Defense, *Sexual Assault Prevention and Response Strategic Plan*, January 26, 2015, p. 5.

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

[109] 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).

[110] 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. Department of Defense, *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.

[111] Department of Defense, Annual Report on Sexual Assault in the Military: Fiscal Year 2015, May 2, 2016.

[112] P.L. 112-239 §572.

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.[113]

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 higher level in the chain of command;
- Inclusion of evidence of compliance with command climate assessment in commanders' performance evaluations; and
- Departmental tracking of compliance with required assessments.[114]

Another provision in the FY2014 NDAA expressed a sense of Congress that

> (1) commanding officers in the Armed Forces are responsible for establishing a command climate in which sexual assault allegations are properly managed and fairly evaluated and in which a victim can report criminal activity, including sexual assault, without fear of retaliation, including ostracism and group pressure from other members of the command;
>
> (2) the failure of commanding officers to maintain such a command climate is an appropriate basis for relief from their command positions; and
>
> (3) senior officers should evaluate subordinate commanding officers on their performance in establishing a command climate as described in paragraph (1) during the regular periodic counseling and performance appraisal process prescribed by the Armed Force concerned

[113] 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

[114] P.L. 113-66 §§587 and 1721.

for inclusion in the systems of records maintained and used for assignment and promotion selection boards.

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."[115] 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 the same 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.[116] 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 have addressed 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.[117] 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.[118]

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 the following year expanded certain sexual assault prevention training requirements to service academy cadets and midshipmen within 14 days after initial arrival and annually thereafter.[119] In addition, Section 540 of the FY2016 NDAA required regular SAPR training for Reserve Officers' Training Corps (ROTC) instructors and administrators.

[115] Department of Defense, Sexual Assault Prevention and Response Office, Prevention Program Elements, at http://www.sapr.mil/index.php/prevention/prevention-program-elements.

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

[117] P.L. 112-81.

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

[119] P.L. 113-66 §1746.

Table 4. 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
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: 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.

Commanders are responsible for ensuring that training is complete 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 clear up any misconceptions with regard to reporting processes and outcomes.[120] In addition, the services have processes in place to monitor and report on the status of completing mandated SAPR training.[121]

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.[122]

For new commanders, statutory training requirements related to prevention include

> (1) Fostering a command climate that does not tolerate sexual assault.
>
> (2) Fostering a command climate in which persons assigned to the command are encouraged to intervene to prevent potential incidents of sexual assault.

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

[121] See for example, Army regulations AR 350-1 and AR 600-20.

[122] DODI 6495.02, Incorporating Change 2, Effective July 7, 2015, Enclosure 10, p. 82.

> (3) Fostering a command climate that encourages victims of sexual assault to report any incident of sexual assault.
>
> (4) Understanding the needs of, and the resources available to, the victim after an incident of sexual assault.
>
> (5) Use of military criminal investigative organizations for the investigation of alleged incidents of sexual assault.
>
> (6) Available disciplinary options, including court-martial, non-judicial punishment, administrative action, and deferral of discipline for collateral misconduct, as appropriate.[123]

DOD incorporated specialized leadership sexual assault prevention training for all military services and components as part of its 2015 strategic plan.[124] Other selected elements included in annual training, new accession training, and professional military education, and, are below:

- Definitions of sexual assault and sexual harassment.
- Tips on how to recognize sexual assault.
- Strategies for bystander intervention.
- Penalties for offenders.
- 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.[125]

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.[126]

What Are "Rape Myths"?

Studies on risk factors for sexual assault perpetration have found correlations with endorsement or acceptance of "rape myths."[127] Rape myths are widely and persistently held attitudes or beliefs that are sometimes used to justify or excuse sexual aggression.[128] 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.

[123] P.L. 112-239 §574.

[124] Department of Defense, *Sexual Assault Prevention and Response Strategic Plan*, January 26, 2015, p. 5.

[125] Department of Defense, Sexual Assault Prevention and Response Office, *Accessions SAPR Training – Core Competencies and Learning Objectives*, August 9, 2013, p. 4.

[126] Department of Defense, Sexual Assault Prevention and Response Office, *Pre-Deployment SAPR Training – Core Competencies and Learning Objectives*, August 9, 2013.

[127] Greathouse, Sarah Michal, 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.

[128] Lonsway, Kimberly A. and Louise F. Fitzgerald, "Rape Myths; In Review," *Psychology of Women Quarterly*, vol. 18, no. 2 (June 1994).

Evaluating Training Effectiveness

There is very little literature that evaluates the quality or effectiveness of military sexual assault training programs. 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.[129]

Principles of Effective Prevention Programs[130]

Comprehensive. Multicomponent interventions that address critical domains (e.g., family, peers, and community) that influence the development and perpetuation of the behaviors to be prevented.

Varied teaching methods. Programs involve diverse teaching methods that focus on increasing awareness and understanding of the problem behaviors and on acquiring or enhancing prevention skills.

Sufficient dosage. Programs provide enough intervention to produce the desired effects and provide follow-up as necessary to maintain effects.

Theory driven. Programs have a theoretical justification, are based on accurate information, and are supported by empirical research.

Positive relationship. Programs provide exposure to adults and peers in a way that promotes strong relationships and supports positive outcomes.

Appropriately timed. Programs are initiated early enough to have an impact on the development of the problem behavior and are sensitive to the developmental needs of participants.

Socio-culturally relevant. Programs are tailored to the community and cultural norms of the participants and make efforts to include the target group in program planning and implementation.

Outcome evaluation. Programs have clear goals and objectives and make an effort to systematically document their results relative to the goals.

Well-trained staff. Program staff support the program and are provided with training regarding the implementation of the intervention.

Entry Screening

Some academic literature suggests that those with a history of coerciveness or assault are at high risk of committing future assaults.[131] 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.[132] DOD acknowledges there may be some servicemembers that may be at risk of "sexually coercive behavior." One of the goals of training is to help those individuals who may have coercive tendencies to identify appropriate

[129] Gedney, Christine R., 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).

[130] Nation, Maury et al., "What Works in Prevention; Principles of Effective Prevention Programs," *American Psychologist*, June/July 2003, p. 452.

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

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

behavior, recognize consequences of their actions, and 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 remove potential perpetrators from the applicant pool.[133]

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*.[134]

As military end-strength was increased 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 FOIA request, approximately 18% (127,524) of new enlistees were granted a moral waiver between 2003 and 2007.[135] 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.[136] These statistics raised concerns that, by enlisting those with a history of criminal activity, the military was unnecessarily putting the safety of other servicemembers at risk. Nevertheless, a 2009 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."[137]

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 enacted a new 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.[138]

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 analysis 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

[133] Department of Defense, Sexual Assault Prevention and Response Office, "2014-2016 Sexual Assault Prevention Strategy – Appendix B: Defining the Threat and Environment," April 30, 2014.

[134] Department of Defense, *Qualification Standards for Enlistment, Appointment, and Induction*, DODI 1304.26, March 23, 2015, Incorporating Change 1, Effective April 6, 2015.

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

[136] Ibid., Table 4, p. 43.

[137] 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.

[138] P.L. 113-66. See also Department of Defense, *Qualification Standards for Enlistment, Appointment, and Induction*, DODI 1304.26, March 23, 2015, Incorporating Change 1, Effective April 6, 2015.

focuses on DOD services to victims of sexual assault, servicemembers may also be eligible for Department of Justice-funded programs in their respective states of residence.[139]

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.[140] Victims also cited concerns about the impartiality of the command's response and the potential 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 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 officials and may then gain confidential access to medical health, mental health, and victim advocacy services. Incident data is then reported by the official to SAPRO for inclusion in DOD sexual assault statistics. However, the individual's commander and law enforcement agents are not notified, nor is an official investigation initiated.[141]

Either initially or after making a restricted report, victims may choose to make an *unrestricted report* of a sexual assault incident. When an unrestricted report is made, the servicemember's commanding officer is notified and a Military Criminal Investigative Office begins a formal investigation. Processes following a restricted or unrestricted report are shown in **Figure 5**.

DOD has deemed restricted reporting "critical" to the SAPR program.[142] In addition, the availability of a restricted reporting option has generally garnered positive feedback from victims,

[139] 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.

[140] 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.

[141] The victim has the right to receive counseling on these two options from a victim advocate prior to selecting an option, and then will be provided an opportunity to review and sign a DD Form 2910, "Victim Reporting Preference Statement."

[142] 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.

health practitioners, and advocates. As stated by a rape victim advocate 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.[143]

Some of the challenges that DOD has faced with protecting the victim's right to pursue the restricted reporting option include state mandatory reporting laws and other jurisdictional challenges. The FY2016 NDAA included a provision (Section 536) preempting state laws that require an individual who is a victim of sexual assault to disclose personally identifiable information except in cases when reporting "is necessary to prevent or mitigate a serious and imminent threat to the health or safety of an individual."[144]

Expedited Transfers and Military Protective Orders

In order to protect the safety and well-being of sexual assault victims, Congress has enacted a statute to encourage the development of policies and guidance for use of humanitarian transfers and military protective orders. Currently, when a victim makes a *restricted report*, he or she cannot receive a military protective order 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 military protective order (MPO).[145]

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 victim's chain of command.[146] The issue of transfers for victims of sexual assault was again raised by Representative Jane Harman in a 2010 hearing as a possible way to protect victims from retaliation and encourage victim reporting.[147] In the FY2011 NDAA, Congress added a provision that required the Secretary concerned to provide timely consideration of an application for

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[143] Statement by Robert Coombs, Director of Public Affairs, California Coalition Against Sexual Assault. 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, p. 41.

[144] 10 U.S.C. §1565b(b)(3).

[145] Department of Defense Sexual Assault Prevention and Response Office, "Unrestricted Reporting," accessed August 2016: http://www.sapr.mil/index.php/unrestricted-reporting.

[146] 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.

[147] Representative 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).

permanent change of station or change of duty assignment by a victim of sexual assault or related offense.[148] DOD implemented this "expedited transfer" policy in February 2012[149] 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.[150]

Under DOD policies, 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.[151] In addition, some of the same groups have raised concerns that the transfer might actually be perceived as punishing the victim verse 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 he leave?[152]

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 and approved expedited transfers for victims has been growing since FY2012 (see **Table 5**).

Table 5. Expedited Transfers and Denials

FY2012 – FY2016

Transfer Type	Victims	FY2012	FY2013	FY2014	FY2015	FY2016
	Number requesting	57	99	44	71	62

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

[149] 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.

[150] DOD Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, March 28, 2013, Incorporating Change 2, Effective July 7, 2015, p. 51.

[151] King, Karisa, "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.

[152] 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.

Transfer Type	Victims	FY2012	FY2013	FY2014	FY2015	FY2016
Change of unit/duty assignment (within installation)	Number denied	2	3	0	2	3
Permanent change of station	Number requesting	161	480	615	663	684
	Number denied	0	11	15	12	16

Source: Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, Appendix B: Statistical Data on Sexual Assault, p. 26.

Notes: The FY2016 report does not include data on the number of transfers for alleged perpetrators.

Military Protective Order

A military protective order (MPO) is typically issued by a commanding officer, and informs the accused servicemember that contact or communication is prohibited with the protected person or members of the protected person's family/household.[153] A victim of sexual assault may also receive a civilian protection order (CPO) from local authorities. By statute, a CPO has full force and effect on military installations within the jurisdiction of the court that issues the order.[154] However, MPOs are not enforceable by civilian law authorities. Therefore, a victim of sexual assault – particularly a reservist or dual status technician[155] - may work in a civilian office with his or attacker where the MPO cannot be enforced.

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.[156] The installation commander may also develop a memorandum of understanding with local police to detain an individual who may have violated an MPO until military police can respond.[157] Since FY2010, Congress has required DOD to track, for each sexual assault case, whether a military protective order was issued (involving either the victim or alleged perpetrator) and whether any military protective orders were violated.[158]

Victim Medical Care

While serving, military members are eligible to receive a broad range of medical and mental health services through TRICARE, the military health system.[159] 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. Those who are discharged from the military before retirement eligibility may be eligible to receive health care

[153] Military Protective Order, Form DD 2873, at http://www.dtic.mil/whs/directives/forms/eforms/dd2873.pdf.

[154] 10 U.S.C. §1561a.

[155] 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.

[156] P.L. 110-417 §562.

[157] Department of Defense Instruction 6400.06, Domestic Abuse Involving DOD military and Certain Affiliated Personnel.

[158] P.L. 111-84 §567(c).

[159] For more information on military medical care see CRS Report RL33537, *Military Medical Care: Questions and Answers*, by Don J. Jansen.

services from the VA.[160] 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 populations?
- Do the types of military medical and mental health services provided to victims reflect evidence-based best practices for victim treatment and rehabilitation?
- Are appropriate medical services broadly available and accessible to victims of assault, particularly when the assault occurs in a deployed or operational setting?

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. 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 will provide the victim with urgent medical assistance and may, with the victim's permission, administer a sexual assault forensic examination (SAFE).[161] 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."[162] In 2006, Congress authorized TRICARE coverage for forensic examinations following a sexual assault or domestic violence.[163] The evidence from the SAFE is required to be saved for five years in case of an investigation.[164]

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 sexually transmitted diseases, anxiety, depression, and Post-Traumatic Stress Disorder (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 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."[165] 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.[166] The resulting GAO report found some availability and standardization issues. In particular, GAO noted challenges across the services in providing comprehensive and consistent

[160] 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.

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

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

[163] P.L. 109-364

[164] 32 C.F.R. §105.12, SAFE Kit Collection and Preservation.

[165] P.L. 111-383 §1621.

[166] P.L. 112-81 §725.

medical and health services in deployed environments. It recommended improved guidance for care providers. 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, SAFE providers, and those victims of sexual assault, regardless of reporting status, are medically evacuated to such facilities as soon as possible (within operational needs) of making a report, consistent with operational needs.[167]

Concerns about male victims of sexual assault prompted the House in 2012 to call for a review of DOD's policies and protocols for the provision of medical and mental health care for male servicemembers.[168] 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."[169] 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, in 2013, as part of the FY2014 NDAA, Congress required that at least one full-time sexual assault forensic examiner be assigned to each military medical treatment facility (MTF) that operates a 24-hour emergency room.[170] In addition, the law, as amended, requires that the secretary of the military department concerned make a sexual assault forensic examiner available to patients at other facilities when needed.

Recent survey data from DOD suggests that there are generally high levels of satisfaction with military medical and mental health care for sexual assault survivors. The 2014 *Survivor Experience Survey* reported over 75% of the 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.*[171] In addition, a majority of the respondents treated at MTFs had positive and professional experiences with their medical or mental health provider.

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.[172] The helpline provides

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[167] Department of Defense, *Sexual Assault Prevention and Response (SAPR) Program Procedures,* DODI 6495.02, March 28, 2013, Incorporating Change 2, Effective July 7, 2015, p. 72.

[168] H.R. Rep. No. 113-102.

[169] U.S. Government Accountability Office, *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.

[170] P.L. 113-66 §1725(b).

[171] 24% of the survey respondents received medical care at a military hospital, medical center or another military medical treatment facility. Van Winkle, Elizabeth P., 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.

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

"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.[173]

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). 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. During FY2011, the first year in which the Helpline operated, the Defense Human Resources Activity (DHRA) obligated $780,000 for associated services. In the following year—during which the Safe Helpline app was developed—this figure rose to $2.8 million. In recent fiscal years, DHRA has obligated approximately $4 million to operate the Helpline each fiscal year.

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 24-hour helpline, and 33% were aware of a local civilian 24-hour helpline.[174] In 2016, overall usage of the helpline increased by 67% following expanded DOD outreach efforts.[175] Roughly half of those who reported an assault on the Helpline in 2016 reported that they had not yet disclosed the event to a military authority, and men were more likely than women to make their first disclosure on the Helpline.[176]

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 service can be challenging and time-consuming for victims of sexual assault, who often have to repeat their story several times and must navigate unfamiliar legal processes while dealing with the physical and emotional after-effects of the assault.[177]

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 valuable victim support, concerns remained that it was unevenly implemented with lower levels of support available for deployed units, victims were unaware of their rights to support,

[173] See https://www.safehelpline.org/about-dod-safe-helpline, for additional details.

[174] Van Winkle, Elizabeth P., 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.

[175] 16,913 users contacted the Safe Helpline by phone or online sessions. Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, May 1, 2017, p. 23.

[176] Ibid., p. 1.

[177] "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." https://www.gpo.gov/fdsys/pkg/CHRG-111hhrg49634/pdf/CHRG-111hhrg49634.pdf, p. 46.

SARC/SAPR-VA training was not fully standardized, and challenges remained in soliciting volunteers to act in these roles as a collateral duty.

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

Special victims' counsel (SVC). 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 SVC 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 non-clinical 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.

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 special victims' counsel (SVC)—sometimes called victims' legal counsel (VLC)[178], (2) assistance provided by a SARC, and (3) assistance provided by a SAPR-VA.[179] 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 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.[180] A 2015 survey of SARCs and SAPR-VAs found that the average number of military personnel served by a SARC is 4,109 and the average for a SAPR-VA is 1,409.[181] There is broad variability between the services with more Army SARCs and VAs per servicemember than the other services.

Victim Assistance Standards

The FY2012 NDAA (Section 584) requires standardized training for SARCs and victim advocates across DOD to help improve the quality of services received by sexual assault victims. 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 with an annual obligation of approximately $1 million.[182]

[178] 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.

[179] P.L. 112-81 §581.

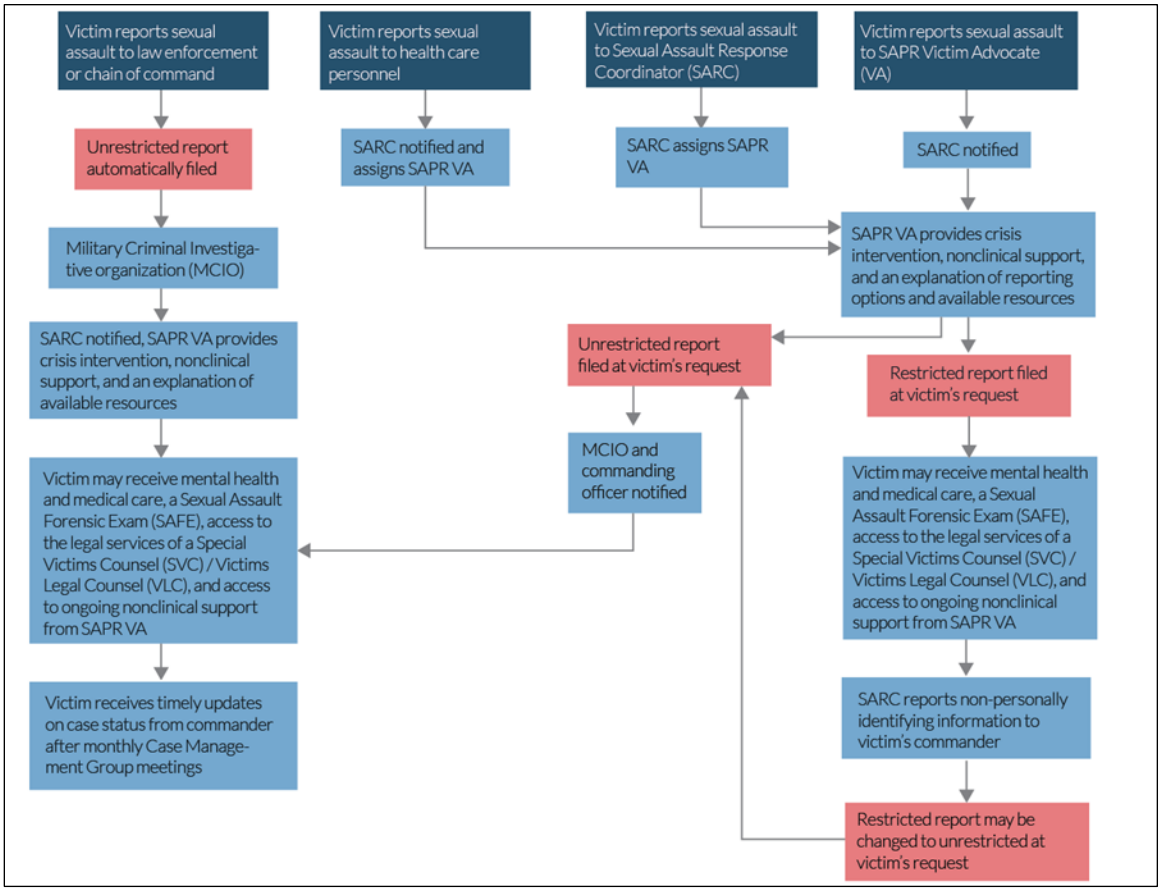
[180] P.L. 112-81 §583. A brigade is an Army unit with 3,000 to 5,000 assigned individuals.

[181] Cook, Paul J., 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. 17.

[182] Data from Federal Procurement Data System (FPDS), accessed September 2016.

In 2013, the Department also established the Victim Assistance Leadership Council. 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."[183] 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).[184]

Figure 5. DOD Actions Following Restricted & Unrestricted Reports



Source: CRS, derived from DOD materials.

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

Enhancing SVC Training, Services, and Eligibility for Support

The Judicial Proceedings Panel (JPP) reviewed special victims counsel programs in 2014. In the panel's February 2015 report they expressed concerns about the following:

[183] Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, Appendix A: FY16 Line of Effort Highlights, May 1, 2017, p. 4.

[184] Department of Defense, *Standards for Victim Assistance Services in the Military Community*, DODI 6400.07, November 25, 2013, Incorporating Change 1, April 3, 2017.

- Statutory requirements linking SVC services to entitlement for legal assistance services, potentially excluding some reserve component servicemembers from SVC program eligibility;
- Lack of standardized reporting structures across the services—with particular concern about the independence of the SVC structure in the Army;
- Lack of uniform quality standards for SVC training;
- Geographic availability of face-to-face SVC services; and
- Lack of standardized metrics for evaluating the operation of the SVC program.[185]

In response to some of these concerns, Congress enacted a number of changes to the SVC program through the FY2015 and FY2016 NDAAs. In the FY2015 NDAA Congress expanded eligibility for SVC services to certain reserve component members who might otherwise not be eligible for legal assistance.[186] In the following year, Congress authorized access for certain DOD civilians.[187] The FY2016 NDAA also required DOD to establish standardized training time and baseline training requirements for SVCs, as well as other SVC program enhancements. These include

> (A) guiding principles for the Special Victims' Counsel program, to include ensuring that—
>
> (i) Special Victims' Counsel are assigned to locations that maximize the opportunity for face-to-face communication between counsel and clients; and
>
> (ii) effective means of communication are available to permit counsel and client interactions when face-to face communication is not feasible;
>
> (B) performance measures and standards to measure the effectiveness of the Special Victims' Counsel program and client satisfaction with the program; and
>
> (C) processes by which the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating will evaluate and monitor the Special Victims' Counsel program using such guiding principles and performance measures and standards.[188]

Section 533 of the FY2016 NDAA also expanded the role of SVC to provide legal consultation and assistance to victims with complaints against the government, Freedom of Information Act requests and correspondence with Congress.

Retaliation

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.[189] Experts have reported that retaliation can have negative psychological impacts on sexual assault victims and that a lack of

[185] Judicial Proceeding Panel, Initial Report, February 2015, p. 4-5.

[186] P.L. 113-291 §533.

[187] P.L. 114-92 §532.

[188] P.L. 114-92 §535.

[189] 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.

social support leads to a higher likelihood of developing post-traumatic stress disorder (PTSD).[190] 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 or someone in their chain of command.[191] 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.[192]

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.[193] 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."[194] 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

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

[191] Morral, Andrew R., 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.

[192] Department of Defense, *DOD Retaliation Prevention and Response Strategy: Regarding Sexual Assault and Harassment Reports*, April 2016.

[193] National Defense Authorization Act, Fiscal Year 1989, P.L. 100-456, §846 (1988), codified at 10 U.S.C. §1034, as amended.

[194] 10 U.S.C. §892.

> (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.[195]

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."[196] DOD's strategy currently adheres to three types of retaliation that are defined in law and policy: reprisal, ostracism, and cruelty, oppression and maltreatment (see **Table 6**).

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%).[197]

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 only confined to acts taken by the chain of command, but 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. Current definitions of ostracism vary between the military departments; however, most define it as "the 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."[198] According to DOD, the *intent* requirement in the definition is included as to not violate First Amendment rights to freedom of association.[199] There may be some challenges to identifying and proving ostracism, since commanders and NCOs may have limited information about the cases while the cases are under investigation.

Maltreatment is also defined in military department-level regulations as a form of social retaliation that includes

[195] P.L. 113-66 §1709(b)(1).

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

[197] GAO-12-362, p. 62.

[198] 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).

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

> treatment by peers or other persons that, when viewed objectively under all the circumstances, is abusive or otherwise unnecessary for any lawful purpose, that is done with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering.[200]

A 2016 report on retaliation by the Judicial Proceedings Panel (JPP) found this definition of maltreatment problematic because it was not consistent with other law and regulations prohibiting similar misconduct (e.g., hazing, and Article 93 of the UCMJ which specifically defines these concepts). The JPP recommended that the military departments revise their definitions of maltreatment. The JPP's recommended definition would include "behaviors that are cruel, abusive, humiliating, oppressive, demeaning, or harmful."[201]

Other forms of retaliation may by punishable under the UCMJ, and these are typically considered to be *criminal retribution.* This may include actions like cruelty or maltreatment (Article 93), assault (Article 128), stalking (Article 130), or obstruction of justice (Article 131b) (see **Table 6**). 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.[202]

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

In the FY2014 NDAA[203] Congress enhanced protections for military whistleblowers and also added a requirement for 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."[204] 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."[205] In addition, the report noted substantial delays in the

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[200] See for example, Air Force Guidance Memorandum 2015-01 to Air Force Instruction (AFI) 36-2909.

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

[202] Ibid., p. 66.

[203] P.L. 113-66 §§1714 & 1715.

[204] 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).

[205] U.S. Government Accountability Office, *Whistleblower Protection: DOD Has Improved Oversight for Reprisal Investigations but Can Take Additional Actions to Standardize Process and Reporting*, GAO-16-860T, September 7,

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.[206] 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.

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

Table 6. Types of Retaliation and Investigative Authority

Type of Retaliation	What is it, and what does it include?	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)

2016.

[206] P.L. 114-328 §§531 & 532.

Type of Retaliation	What is it, and what does it include?	Defining Statute or Policy	Investigative Authority
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 • Victim not invited to/ excluded from social activities or interactions • 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: Derived from http://jpp.whs.mil/Public/docs/08-Panel_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

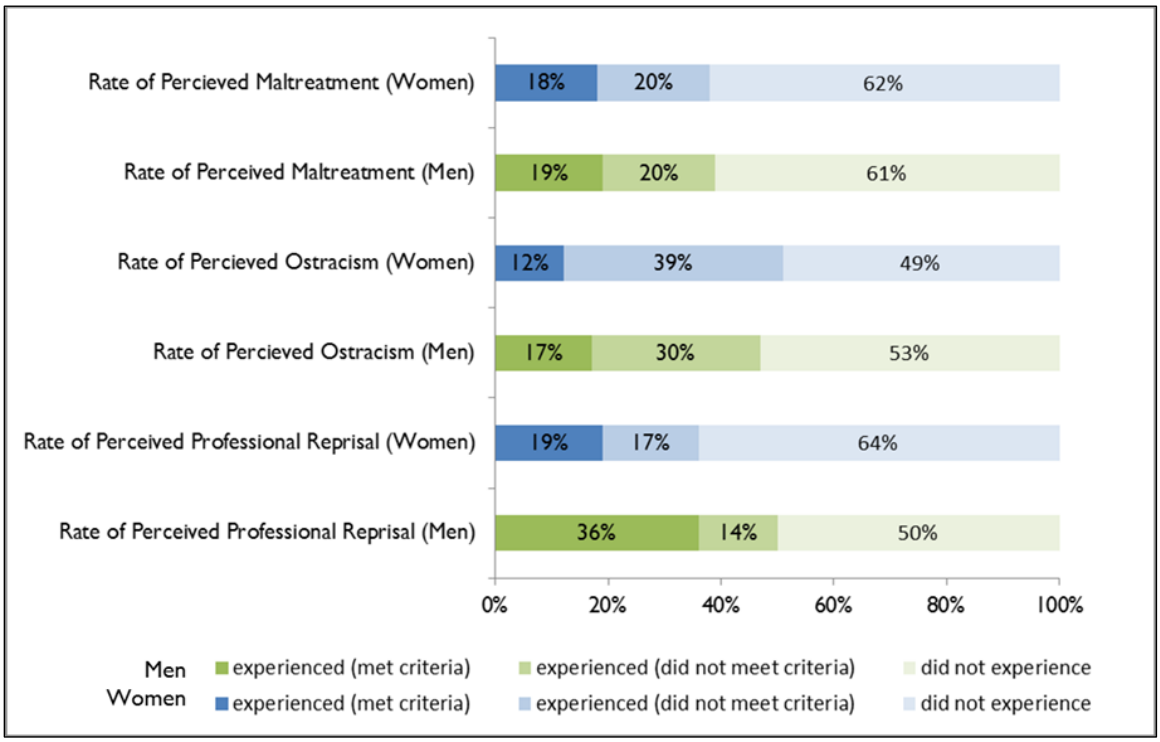
Existing information on retaliation in DOD is mainly derived from *self-reported perceptions* from victims of sexual assault. DOD surveys and focus groups conducted between 2012 and 2014 revealed that roughly two-thirds of female members who reported a sexual assault perceived some sort of retaliation either by peers, coworkers or their chain of command.[207] However, estimates from these surveys are considered imprecise due to terms that were inconsistent with terminology in law.[208] Methodology changes in the 2016 WGRA allowed for more precise data. The 2016 survey data suggested that while approximately half of those reporting sexual assault perceived some form of retaliation, less than one-third perceived retaliation that met definitional criteria (see **Figure 6**).

[207] These surveys include the 2012 Workplace and Gender Relations Survey (WGRA), the 2014 RAND Military Workplace Study (MWS), the 2014 Survivor Experience Survey (SES), the DEOMI Equal Opportunity Climate Survey, and the 2015 Military Investigation and Justice Experience Survey. DOD did not report data for men due to the small number of respondents in this area.

[208] Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, May 1, 2017.

Figure 6. Outcomes Associated With Reporting Sexual Assault by Gender

DOD, 2016 Survey Data



Source: Department of Defense, *2016 Workplace and Gender Relations Survey of Active Duty Members*, data collected between July 22 and October 14, 2016.

Notes: Data includes those who indicated experiencing a sexual assault in the past year and reported the assault to a military authority. Reported rates include only instances where retaliation met additional motivating factors consistent with officially prohibited actions. Data does not include U.S. Coast Guard.

The data reported in Figure 6 are *estimates* based on survey data. Until recently, DOD has not had centralized, systematic processes in place for monitoring and reporting *actual* instances of retaliation against sexual assault victims.[209] The first major effort by DOD to collect data on the nature and *disposition* of retaliation cases began in March 2015 when the Undersecretary 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.[210] 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.

[209] Judicial Proceedings Panel, *Report on Retaliation Related to Sexual Assault Offenses*, February 2016.

[210] Department of Defense, 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).

- Whether the alleged retaliator was also the alleged perpetrator of the crime.
- The gender of the retaliator and victim.
- The retaliation report outcome.

In May of 2015, the Judicial Proceedings Panel (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.[211] A 2016 report by the Judicial Proceedings Panel stated that although the Services were unable to provide this information, the Army, Air Force, and Marine Corps have independently taken steps to track retaliation data.[212]

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. 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).[213] 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 the national security of the United States."[214] 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.[215] Under the military justice system, members of the Armed Forces are subject to different rules, orders, proceedings, and consequences than their civilian counterparts.[216]

Much of the sexual assault legislation that Congress has proposed and/or has been enacted over the past decade has been directed at reforming the military's relevant investigative and judicial processes.

The following sections summarize selected issues that have been on the forefront of congressional interest since 2004.

Investigation

The investigation and disposition of military sexual assault cases is complicated by questions of jurisdiction between civilian law enforcement agencies and military law enforcement organizations on installations. In some instances, cases are entirely under Federal jurisdiction and handled only by military authorities; in others, coordination with civilian authorities is required. Some cases fall outside DOD's jurisdiction. In reported sex-related offenses that fall within the

[211] Ibid., p. 32.

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

[213] 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.

[214] Department of Defense, *Task Force Report on Care for Victims of Sexual Assault*, April 2004, p. 5.

[215] For additional background discussion, see Smith, Mitsie, "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.

[216] For more information on this topic, see CRS Report R41739, *Military Justice: Courts-Martial, an Overview*, by R. Chuck Mason.

military's jurisdiction, Military Criminal Investigative Organizations (MCIOs) lead the investigations.[217]

Types of Jurisdiction in Military Sexual Assault Cases

Congressional testimony in 2003 identified four types of jurisdiction for military sexual assault cases.

- **Exclusive federal jurisdiction.** The Federal Government holds all authority (18 U.S.C. 13). Offenses are handled only by the military or other elements of the Federal justice system. Civilian authorities may only enter upon invitation of the installation commander.
- **Concurrent jurisdiction.** State and Federal Governments share authority over the case; either entity may be a first responder or prosecute offenders.
- **Partial jurisdiction.** States may give the Federal Government authority in some areas of law and reserve authority in others.
- **Proprietary-interest jurisdiction.** Proprietary interest jurisdiction maintains the right of ownership and use of the land with the Federal Government, however, all legal authority is assigned to the State.[218]

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?
- Are the alleged victim's rights 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 reports of sex-related offenses involving members of their command to MCIO investigators.[219] 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.[220]

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 a period of 50 years, and making data available for use in the Defense Sexual Assault Incident Database.[221]

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

[218] 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. 200.

[219] P.L. 113-66 §1742.

[220] P.L. 113-66 §§1742 & 1743.

[221] 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.

Some Members of Congress, advocacy organizations, and the news media have raised concerns that the military uses flawed processes to conduct some sexual assault investigations.[222] The DOD Inspector General (DODIG) has investigated individual claims and has also conducted broader evaluations of investigative processes.[223] 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.[224] This was an improvement over a 2013 DODIG evaluation that found significant deficiencies in 11% of cases completed in 2010.[225]

Disposition of Cases

Once the MCIO has completed an investigation, he or she will share a report documenting the evidentiary finding with the servicing military lawyer, known as a *staff judge advocate* (SJA). The SJA will review the report and recommend appropriate legal or other action to the disposition authority. The disposition authority is typically a military commander in the accused's chain of command and may also be in the victim's chain of command. Section 574 of the FY2005 NDAA (P.L. 108-375) included a provision that prohibited interference with the SJA's ability to provide independent legal advice to commanders.

In some cases, the investigation will determine that the commander lacks legal authority to prosecute a crime, for example, when the subject of the investigation is unknown, has died or deserted, or is a civilian or foreign national. 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. The military commander has the authority to review results of an investigation and decide on the disposition of the case—whether to submit the case for court-martial proceedings, to dismiss the charge without further action, or to undertake other actions, such as nonjudicial punishment (also known as *NJP* or an "*Article 15*"), administrative discharge, or other adverse administration actions.[226] If the commander determines that there is sufficient evidence to support

[222] 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.

[223] 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.

[224] 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.

[225] Department of Defense Inspector General, *Evaluation of Military Criminal Investigative Organizations' Adult Sexual Assault Investigations*, DODIG-2015-094, Alexandria, VA, March 24, 2015.

[226] The initial disposition authority may refer the charges to a form of court-martial that he or she is authorized under the UCMJ to convene, forward the charges to a higher convening authority, dismiss the charges, or choose an alternate disposition for the case. Judicial Proceedings Panel, *Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses*, Arlington, VA, April 2016, p. 20.

a finding of probable cause, he or she may prefer court-martial charges and forward those charges to a convening authority.

The FY2014 NDAA included a provision that requires an Article 32 (pre-trial) hearing before proceeding to a general court-martial (unless waived by the accused).[227] 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.[228]

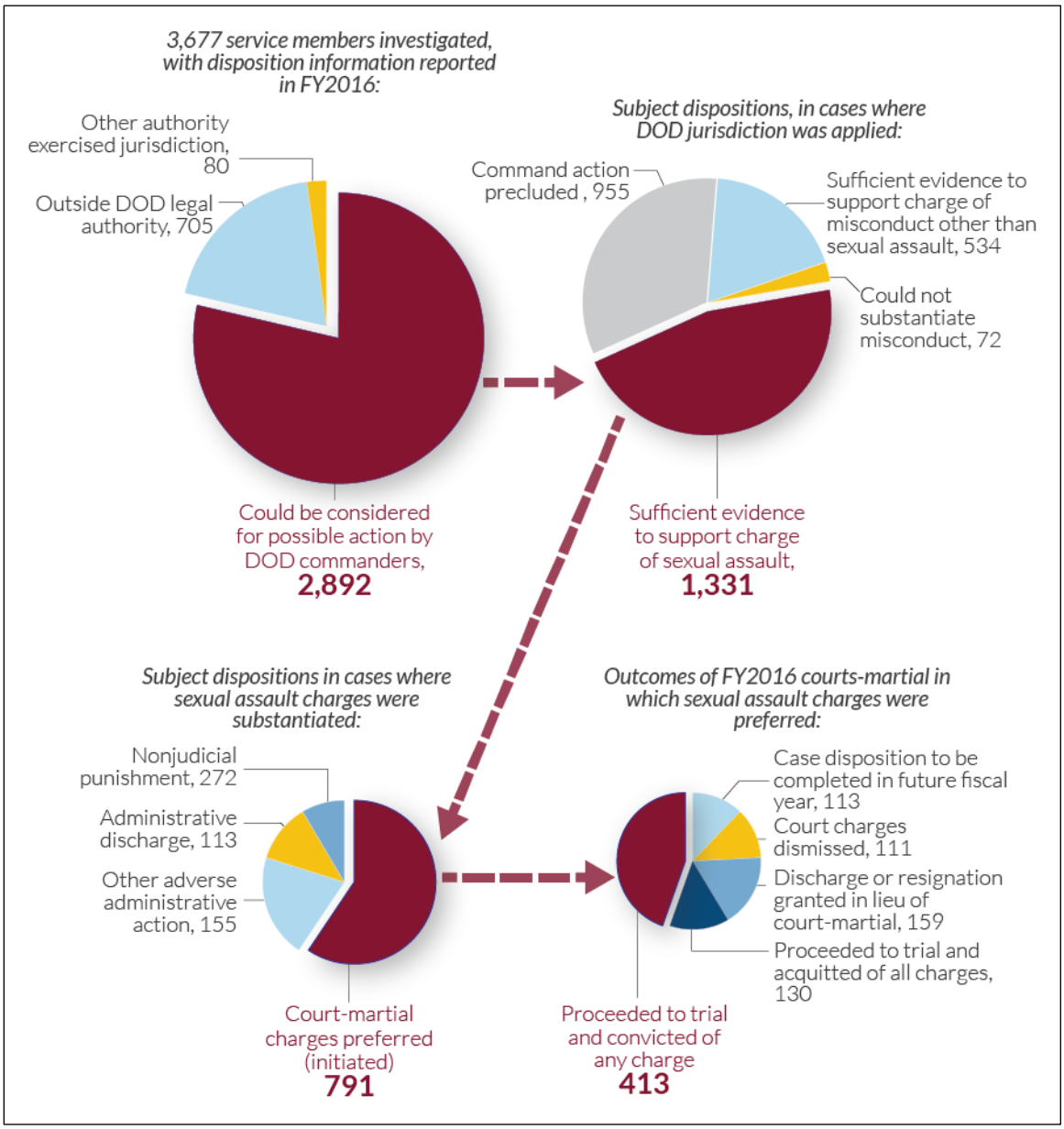
In cases that proceed to court-martial, the case may proceed to a completed trial, charges may be dismissed, or the perpetrator may be discharged or resign in lieu of court-martial. **Figure 7** shows the dispositions and outcomes of sexual assault allegations for FY2016. These data indicate that a court-martial was initiated for 59% of sexual assault cases that were deemed to have sufficient evidence to support a sexual assault charge. Of those cases that went to trial, 33% were convicted on any charge.

[227] 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.

[228] Ibid.

Figure 7. Outcomes of Sexual Assault Investigations

FY2016



Source: SAPRO FY2015 Report Appendix B: Statistical Data on Sexual Assault, http://www.sapr.mil/public/docs/reports/FY15_Annual/Appendix_B_Statistical_Data_on_Sexual_Assault.pdf.

Notes: Cases fall outside DOD legal authority when the subject of the investigation, is unknown, has died or deserted, or is a civilian or foreign national.

Commander's Discretion

The commander's authority to decide on punitive or administrative actions 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 investigations.

Some of the questions raised by Congress in recent years include:

- Does the commanding officer/disposition authority have the requisite information, experience and objectivity to make disposition decisions?
- Are appropriate procedures in place to ensure that the disposition decision is transparent and based on sound legal advice?

In certain cases, the commanding officer supervises both the victim and the accused, a situation that could lead to unfair bias or the perception of unfair bias in favor of one or the other that would affect the commander's disposition decision. The FY2014 NDAA, includes a provision to help address this last concern by modifying 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.[229]

In past years, Congress questioned whether the discretion afforded to commanders was too broad and if commanders have the right qualifications to make these decisions.[230] Some in the military and the academic community argue that the commander's authority in this matter supports his or her ability to maintain good order and discipline.[231] They further argue that individuals assigned to command positions are fully qualified, carefully screened and have many years of experience. 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."[232]

Congress has raised concerns that commanders may be more inclined to use their authority to dispose of cases through non-judicial punishment or administrative action, or to discharge the alleged offender rather than to hold him or her accountable for more serious penalties through the court-martial process. On the other hand, some have argued that the political focus and high visibility of military sexual assault cases encourages commanders to pursue courts-martial and prosecutions when not warranted by the evidence. Some in the legal community have pointed to cases where involvement by commanders 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."[233] This can compromise an accused servicemember's presumption of innocence, right to fair investigation and disposition, and access to witnesses or evidence. As noted in Judicial Proceedings Panel discussions,

> 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.[234]

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[229] P.L. 113-66 §1708.

[230] 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).

[231] Stimson, Charles, *Sexual Assault in the Military: Understanding the Problem and How to Fix It*, The Heritage Foundation, November 6, 2013.

[232] Law Professors' Statement of Reform of Military Justice, June 7, 2013.

[233] The Judge Advocate General's Legal Center and School, United States Army, *2015 Commander's Legal Handbook*, Misc. Pub 27-8, 2015, p. 17.

[234] Judicial Proceedings Panel, *Public Meeting*, Transcript, December 12, 2004, p. 36.

SAPRO has noted that legislative change over the past few years has "sharply constrained" military commanders' discretion over cases.[235] Indeed, several pieces of legislation have curbed commanders' discretion or shift decisionmaking power to a higher-level authority. Since June 28, 2012, DOD policy has required that all unrestricted reports of adult sexual assault offenses must be reviewed by a special court-martial convening authority (SPCMCA) for the initial disposition decision.[236] The SPCMCA is a senior military commander (typically in the grade of O-6—colonel or Navy captain), and generally has at least 20 years of experience. In the FY2014 NDAA Congress enacted several provisions that limited commander discretion. This bill also expressed the sense of Congress that sexual assault offenses, "should be disposed of by court-martial, rather than by non-judicial punishment or administrative action," and that that commanders should be "exceedingly sparing" in discharging alleged offenders in lieu of court-martial.[237] The bill (Section 1744) also required secretaries of the military departments to review decisions *not* to refer charges for trial by court-martial in cases in which a sex-related offense has been alleged by a victim.[238]

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 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.[239]

In addition, the panel also recommended repealing Section 1744 of the FY2014 NDAA which required Secretary-level review of decisions not to 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."[240] 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.[241]

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[235] Department of Defense, Sexual Assault Prevention and Response Office, "Annex 4: Analysis of Military Justice Reform," October 30, 2014.

[236] Department of Defense, Memorandum from the Secretary of Defense on Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases, April 20, 2012.

[237] P.L. 113-66 §§1752 & 1773.

[238] P.L. 113-66 §1744.

[239] Response Systems to Adult Sexual Assault Crimes Panel, *Report of the Response Systems to Adult Sexual Assault Crimes Panel*, June 2014, p. 6.

[240] Ibid., p. 7.

[241] P.L. 113-291 §541.

Judicial Processes

Between 2012 and 2015, much of the congressional action related to sexual assault has focused on judicial processes, especially in increased protections and rights for victims in the court-martial proceedings. Some of the areas of reform have been:

- Increasing requirements for retention of evidence and records;
- Eliminating statute of limitations for certain offenses;
- Minimum sentences for sex-related offenders; and
- Other changes to the Military Rules of Evidence related to admissibility and privileged communications.[242]

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.[243] 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."[244] Oversight of these issues continues to be supported by congressionally mandated panels and advisory committees.

Judicial Proceedings Panel

In 2012, Congress directed the establishment of the Judicial Proceedings Panel (JPP) to "conduct an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offences."[245] The panel's scope of work more specifically included evaluating trends in the,

- Type, consistency, and appropriateness of punishments rendered for sexual assault offenses;
- Training and experience levels of military defense and trail counsel; and
- Development, utilization and effectiveness of special victims capabilities.

In 2016 the JPP provided the results of analysis of 1,761 judicial cases, spanning the time period of FY2012-FY2014 and involving at least one count of a sexual assault offense.[246] The JPP's statistical analysis of sexual assault conviction rates measured the relationship between the likelihood of conviction and various other factors (such as the gender of the victim, the rank of accused, and the fiscal year of the proceedings). The JPP found that in general, "the likelihood of

[242] 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.

[243] Department of Defense, *Report to the President of the United States on Sexual Assault Prevention and Response, Annex 4: Analysis of Military Justice Reform*, 2014, p. 1.

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

[245] P.L. 112-239 §576.

[246] Department of Defense Judicial Proceedings Panel website with 2016 reports available at: http://jpp.whs.mil.

conviction for any charge was not affected by the military service of the accused, the rank of the accused, or the status of the victim."[247] The termination date for this panel is September 30, 2017.

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)

Section 546 of the FY2015 NDAA called for the establishment of a 20-member Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces. This panel was originally to be established upon termination of the JPP; however, the FY2016 NDAA (Section 537) required its establishment within 90 days of enactment. The committee was established on February 18, 2016.[248]

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.

Congressional Outlook and Considerations

Members of Congress may question if the reforms in this space have had any impact on the problem of sexual assault in the military. As discussed at the beginning of this report, Congress's desired outcomes for DOD's SAPR program are (1) continued preparedness, effectiveness and good order of military units, and (2) health and well-being of military servicemembers. However, given the vast number of legal and policy changes in the military's approach to sexual assault over a relatively short period of time, evaluating the impact of these changes can be challenging.

Are Sexual Assault Rates Increasing or Decreasing?

As Congress and others attempt to verify whether sexual assault rates are increasing or decreasing, some may look at the rates of actual reported incidents (**Table 7**) to identify trends. Some caution should be taken in this approach for several reasons. First, it is only in the past few years that DOD has begun collecting and reporting detailed incident data in a systematic, consistent, and comparable way across the Armed Forces. This makes it challenging to validate any conclusions about the effects of recent reform efforts compared to past performance. Second, as previously discussed, it is assumed that a significant number of sexual assault incidents that occur are *not* reported. Therefore, analysis of self-reported anonymous survey data is considered to be a more accurate indicator of the actual rate of sexual assault in the military. It should be noted, however, that changes in survey methodology limit the ability to observe trends over a longer period of time since prevalence rates from the FY2014 and FY2016 surveys are not directly comparable to prevalence data from previous years.[249]

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[247] Department of Defense Judicial Proceedings Panel, "Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses."

[248] Department of Defense, "Charter Establishment of Department of Defense Federal Advisory Committees," February 23, 2018.

[249] Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, Appendix C: Metrics and Non-Metrics on Sexual Assault, May 1, 2017.

Table 7. Sexual Assault Incident Data for Unrestricted Reports

FY2013-FY2016

	FY2013	FY2014	FY2015	FY2016
Total Reports (Unrestricted & Restricted)	5.518	6,131	6,083	6,172
Number of Unrestricted Reports*	4,225	4,611	4,510	4,499
Number of Servicemember Victims (Unrestricted Reports)	3,341	3,802	3,701	3,720
Number of Servicemember on Servicemember Incidents	2,310	2,502	2,379	2,232
Number of Male Servicemember Victims	627	929	821	887
Number of Female Servicemember Victims	2,714	2,873	2,880	2,833

Source: SAPRO Annual Reports for FY2013-FY2016.

Notes: *Number of unrestricted reports does not include restricted reports from current or prior fiscal years that were converted to unrestricted reports. Incident data differ from prevalence estimates.

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. Therefore, incident rates need to be viewed in the context of estimated prevalence rates from survey data (see **Figure 2**). If the rate of reported incidents increases in the short term, it could indicate negative *or* positive change. On one hand, it could mean that there are more sexual assaults occurring. However, given that estimated prevalence rates are higher than reported incident rates, it could mean that unreported incident rates are actually the same or lower. This might be an indication *not* that more crime is occurring, but instead more individuals who have experienced assault feel comfortable about reporting. For example, in FY2013, DOD reported 627 incidents involving male victims (see **Table 7**). The number of reported incidents for FY2014 and FY2015 were 921 and 821 respectively. However, the estimated prevalence of male sexual assault in 2014 was about 10,500 members.[250] In the long run, Congress might look for *both* estimated prevalence and incident rates to decrease. However, in the short term, convergence of incident reporting and prevalence estimates might also be an indicator of positive change in command climate, confidence in the system, and/or victim awareness of his or her reporting processes and rights.

Are Prevention Activities Effective?

It is nearly impossible to determine how many sexual assaults may have *not happened* due to reforms that are intended to improve prevention programs. In addition, it would be difficult to attribute any reduction in assault rates directly to such programs. Nevertheless, Members of Congress and their staff can monitor some indicators to determine whether prevention activities are being implemented in a manner consistent with best practices.

DOD reports that it has implemented a standardized sexual assault training curriculum in accordance with statutory requirements. There is some evidence to suggest that the services'

[250] DOD Sexual Assault Prevention and Response Fact Sheet, 2014.

training curricula and delivery generally complies 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.[251] In addition, feedback from servicemembers on effectiveness and relevancy of the training was overwhelmingly positive.[252] While data on implementation suggests that training programs are generally reaching the targeted audiences, there is less data and evidence-based research on training program outcomes.

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). For example, the services have all adopted active bystander training, but each service and the National Guard Bureau have adopted slightly different training programs.[253] Survey data from 2016 suggests that Navy women and men were generally more likely than those from the other services to cite bystander training as influencing their decision to intervene in a situation that was believed to be sexual assault.[254] Additionally, Congress could direct funding to support additional research on effective sexual violence prevention programs.

Many in DOD and Congress have recognized 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). Analysis of 2016 survey data indicates 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.[255] This suggests that policies and programs to encourage open dialog and trust in leadership may support positive cultural changes.

Congress may continue to monitor DOD programs and progress for other associated risk factors. For example, some of the services indicated in 2015 that they are funding research on the role of alcohol in sexual assault cases with a view for developing additional interventions.[256] As potential interventions are applied, it would be expected that the number of reported incidents associated with alcohol use or other risk factors would decline.

Are Victim Support Services Satisfactory?

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

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

[252] Ibid., p. 221.

[253] For more details on these programs see Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, May 1, 2017, pp. 17-18.

[254] Department of Defense, Office of People Analytics, *2016 Workplace and Gender Relations Survey of Active Duty Members*, Overview Report, May 2017, p. 247.

[255] Ibid., p. 307. 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.

[256] Department of Defense, *Annual Report on Sexual Assault in the Military: Fiscal Year 2015*, May 2, 2016.

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 (see **Table 8**).

Table 8. Restricted to Unrestricted Report Conversions

FY2014-FY2016

	FY2014	FY2015	FY2016
Average days to conversion from restricted to unrestricted	36	30	27
Percent of restricted reports converted to unrestricted reports	20%	21%	21%

Source: SAPRO Annual Reports for FY2014-FY2016.

In 2016, over 73% of servicemembers who made unrestricted reports of sexual assault reported being *satisfied* with their interactions with the SARCs, SAPR VAs, and SVCs during the military judicial process.[257] In addition, 83% of victims felt that SVCs kept them adequately informed them about the status or progress of their case during the judicial process, while less than 50% reported that their unit commander/director or enlisted advisor/supervisor kept them informed.[258] These figures are roughly equal to prior year (2015) metrics and suggest that victims perceive value in continuing or enhancing the SVC programs.[259] An area for congressional oversight remains the training, professionalization, and standardization of victim support functions across the services and geographical locations.

[257] Department of Defense, *Annual Report on Sexual Assault in the Military Fiscal Year 2016*, Appendix C: Metrics and Non-Metrics on Sexual Assault, May 1, 2017.

[258] Ibid.

[259] The Survivor Experience Survey which collects feedback on victim experiences was first initiated in 2014.

Appendix. Abbreviations

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
D-SAACP	Department of Defense Sexual Assault Advocate Certification Program
DSAID	Defense Sexual Assault Incident Database
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	Medical Treatment Facility
NDAA	National Defense Authorization Act
NCO	Non-commissioned Officer
NCVS	National Criminal Victimization Survey
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
SPCMCA	Special Court Martial Convening Authority
SJA	Staff Judge Advocate
SVC/LVC	Special Victims' Counsel/Legal Victims' Counsel
UCMJ	Uniform Code of Military Justice
WGR	Workplace and Gender Relations

Table A-1. Selected Military Sexual Assault Task Forces, Committees, and Panels

Established between 2004 and 2016

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.

Sources: DOD reports and memoranda. National Defense Authorization Acts for FY2003-FY2017. Federal Advisory Committee Act (FACA) Database, at http://www.facadatabase.gov/committee/charters.aspx?cid=2560&aid=41.

Table A-2. 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

Risk Factor Category	Types of Risk Factors
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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