

Protecting Our Service Members:

Sexual Assault Response Reform in the US Military

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Rampant sexual assault is a dark stain on the prestige of the United States military. Reported cases of sexual assault have risen year-after-year over the past decade, and the statistics make it abundantly clear that the systems currently in place to protect those who have sworn to defend us have failed (Baldor 2020). In the months since the horrific and highly publicized death of Army Specialist Vanessa Guillen, the American public has seen an increasing number of calls for sweeping change to the ways that sexual harassment and sexual assault are handled in the military, but there are a number of barriers that stand in the way of sustainable reform (Diaz, Cramer, and Morales 2020). Foremost among these challenges is the chain of command involvement in the reporting and prosecution process, which is often avoided by victims out of a legitimate fear of workplace retaliation.

PREVALENCE OF SEXUAL ASSAULT IN THE US MILITARY

According to the Department of Defense's (DOD) Annual Report on Sexual Assault in the Military (US DOD 2020), the military received 7,825 reports of sexual assault in 2019 (US DOD 2019a). Yet a significant portion of sexual assaults in the military go unreported, and the DOD report estimates that closer to 20,500 assaults occurred last year. The data from the DOD further estimates that an astounding 6.2 percent, or 1 in 16 women in the armed services experienced some form of sexual assault in 2019. These statistics represent a three percent increase from the previous year, and an 18 percent increase from the reported 2017 numbers.

SAPRO AND ITS SHORTCOMINGS

In 2004, the Department of Defense created the Sexual Assault Prevention and Response Office (SAPRO) to provide relevant treatment, support, and education to service members. The SAPRO office releases annual reports on sexual assault in the military, and the data from these reports indicates a clear increasing year-over-year trend of reported incidences of sexual assault

(US DOD 2019a). While some may argue that increased reporting numbers imply a positive shift in command climate in which victims are more comfortable reporting incidents, these numbers reveal that SAPRO's efforts to prevent sexual assaults in the military before they occur have failed over the last two decades. The inability to reduce sexual assault rates in the military is not simply an outcome of the shortcomings of SAPRO, rather it reflects much deeper issues within the American military justice system that both military officials and policymakers must address in order to curb this ongoing issue.

COMMAND CLIMATE DISTRUST

One of the largest challenges to reform is the military's unique justice system. The United States military has its own internal justice system called the Uniformed Code of Military Justice or the UCMJ (US DOD 2019b). The UCMJ differs from the civilian justice system in a number of ways, but key among them is who makes the ultimate decision of whether or not to bring charges in a criminal case. In the civilian justice system, when a sexual assault case is reported, following an investigation, the decision to prosecute lies with a Federal, State or local prosecutor.

In the military justice system, the authority for determining whether to press charges when a sexual assault is reported lies with the commanding officer. These commanders are military officers who may have experience as aviators, supply experts, or infantry officers, but most commanders do not have a professional legal background. A commander's decisions are not made in a vacuum as the commander receives input and advice from Judge Advocates (military lawyers), but ultimately, the decision to move a case forward does fall solely to the discretion of the commander.

Command involvement in the reporting and prosecution process can create a climate of distrust and deter victims from coming forward. This traditional practice raises significant concerns of victims experiencing workplace retaliation following the reporting of a sexual assault. The military's most recent sexual assault data shows that 64 percent of women who report experience some type of workplace retaliation following a formal sexual assault report (US DOD 2019c). A separate report from the Department of Defense's Office of the Inspector General found that 34 percent of service members were discharged following the reporting of a sexual assault (DOD 2016). These figures are particularly concerning as the threat of retaliation discourages sexual assault victims in the US military from seeking and receiving the support services they need.

LEGISLATIVE REFORM

Over the last few years, policymakers have introduced several legislative efforts in an attempt to address the issue of sexual assault in the military. In 2019, Senator Kirsten Gillibrand introduced the Military Justice Improvement Act (US Senate 2019). This act would remove the chain of command from the prosecution process in cases of sexual assault and place the decision-making power in the hands of military prosecutors. This bill has stalled in the Senate and has not yet seen a floor debate.

In September 2020, a bipartisan group introduced the I am Vanessa Guillen Act in the House of Representatives (US House 2020). Among its proposed changes, this bill would move prosecution decisions from the chain of command to a military prosecutor, establish trained sexual harassment investigators also outside of the chain of command, and implement a process for victims of sexual harassment or assault to file compensatory claims for damages. This bill has 180 cosponsors and is expected to see a vote in the House of Representatives in the coming months.

The lack of progress in reducing the number of sexual assaults in the military over the last two decades makes it clear that incremental advocacy changes focused on awareness and prevention are not enough. Large scale reforms are needed to address how the military justice system handles reports of sexual assault, and both of these Federal bills offer hope for real progress on this front.

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