



CHALLENGING MILITARY SEXUAL VIOLENCE

A Guide to Sexual Assault and Sexual Harassment Policies in the US Armed Forces for Servicemembers, MSV Survivors and Their Advocates

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Military regulations and documents undergo frequent changes, affecting legal advice and GI Rights counseling, and thus the information and links in this document. Please note the date on our material and search for the most recent material before taking action. Visit MLTF on the web at nlgmltf.org and militarylawhelp.com.

Introduction

Sexual assault and sexual harassment have long been serious problems in the armed forces. In recent years, the issue has received far more notice and it is now generally acknowledged that the problem is – and likely always has been -- epidemic. DoD's own reports reveal that over 4,700 service members, both men and women, reported they were assaulted in 2015. Experts point out it is likely that only one in ten people report their assaults. The DoD reports show that many members are afraid to report assaults or harassment. This is often out of fear of command retaliation. When reports are made, they are often ignored or retaliation does, in fact, occur. This phenomenon, too, has been longstanding but has only recently come to public attention.

This publication gives an overview of the policy for reporting sexual assault and harassment, along with remedies for retaliation and harassment -- critical information everyone in the military should have *before* they need it. It is written for assault and harassment victims/survivors, but it is just as useful for other servicemembers and for lay counselors or attorneys assisting victims in securing their rights.

Because of the increasing attention, public outrage, and congressional scrutiny, this area of military law is in flux. Before taking action, it is important to talk with a counselor or attorney, and to look at the current regulations. We recommend consulting one of the groups listed under the Resources section, or visiting our website at nlgmltf.org for any recent policy changes. These groups can also provide referrals to military counselors or attorneys to assist a victim in making a complaint and avoiding reprisals.

Sexual Assault Policy

All service members, men and women, should become familiar with the DoD's and their respective service's sexual assault policy, whether or not there's an immediate need. By learning about the policy, the correct procedures, and some sources of help, you can protect not only yourself but other service members.

The Department of Defense defines sexual assault as follows:

“For the purposes of this Directive and SAPR [the Sexual Assault Prevention and Response Program] awareness training and education, the term “sexual assault” is defined as intentional sexual conduct, characterized by use of force, threats, intimidation, abuse of authority, or when the victim does not or cannot consent. Sexual assault includes rape, forcible sodomy (oral or anal sex), and other unwanted sexual conduct that is aggravated, abusive, or wrongful (to include unwanted and inappropriate sexual contact), or attempts to commit these acts. “Consent” means words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission does not constitute consent. A current or previous dating relationship by itself or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent.” (DoD 6495.01, encl. 2, sec. E2.1.13.)

Basics of the Policy

DoD policy requires that all commands act to prevent sexual assaults, to punish offenders and to treat survivors with dignity and with respect for their privacy. Several years ago, a DoD-level Sexual Assault Prevention and Response Office (SAPRO) was established, with parallel offices in each of the service branches. These offices are supposed to oversee service-wide education programs to prevent assaults. Each local command must have a Sexual Assault Response Coordinator (SARC) and a Sexual Assault Victim's Advocate (SAVA or VA). The SARC and SAPR VA must be credentialed by the DoD Sexual Assault Advocate Certification Program.

Despite these policies and programs, assaults are still commonplace, with many commands ignoring or downplaying them. Some commands use creative methods to claim that assaults didn't really occur, and some harass or punish those who report assault.

Sexual assault is punishable under the Uniform Code of Military Justice (UCMJ). Article 120 covers rape, aggravated sexual assault and similar offenses. Forcible sodomy is punishable under Article 125. Some offenses are crimes under Article 134, the general article. Congressional and DoD policy encourage courts-martial of assaulters, but convening authorities have a great deal of discretion in deciding whether, and how, to punish them. As a result, some assaulters just receive non-judicial punishment under Article 15 (called captain's mast in the Navy and office hours in the Marine Corps), some are given

Useful Regulations on Sexual Assault

Department of Defense: [DoD Directive 6495.01](#) (PDF), *Sexual Assault Prevention and Response (SAPR) Program* and [DoD Instruction 6495.02](#) *Sexual Assault Prevention and Response Program Procedures*

<www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/649501p.pdf>
<www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649502p.pdf>

Army: [AR 600-20](#) (PDF), *Army Command Policy*, Chapter 8, "Sexual Assault Prevention and Response Program"
<armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r600_20.pdf>

Navy: [SECNAVINST 1752.4B](#) (PDF), *Sexual Assault Prevention and Response*
<doni.daps.dla.mil/Directives/01000%20Military%20Personnel%20Support/01-700%20Morale,%20Community%20and%20Religious%20Services/1752.4B.pdf>

Marine Corps: [MCO 1752.5B](#) (PDF), *Sexual Assault Prevention and Prevention Program*
<marines.mil/portals/59/MCO%201752_5B.pdf>

Air Force: [Air Force Policy Directive 36-60](#) (PDF), *Sexual Assault Prevention and Response Program* and [Air Force Instruction 36-6001](#) (PDF), *Sexual Assault Prevention and Response Program*
<www.usa-federal-forms.com/us-air-force-forms-pdf-optimized-version-b/afpd36-60.pdf>
<responsesystemspanel.whs.mil/public/docs/meetings/20131107/Background_Materials/AF/AF_Instr_36_6001_SAPR_20080929.pdf>

NOTE: Regs. in this area are subject to update; check MLTF's web site for the latest links

administrative discharges, and some receive administrative reprimands instead of discipline. Some, of course, receive no punishment at all. Sexual assault policies have improved in the last few years, but they still have weaknesses, and commands are not consistent in enforcing them.

Making a decision about reporting an assault can be difficult. The Military Law Task Force (MLTF) urges any victim to get legal assistance and personal support quickly to secure your safety as much as possible. With that assistance, a decision can be made. Among the considerations about whether to report an assault are the attitude of your command, the necessity of reporting to address the problem, the potential for retaliation and damage to your career, and whether you want to maintain a career in an institution that does not protect you. Help is available from the MLTF and other groups listed in the resource section. These groups can help you use the military's assault reporting system and military services more effectively, and can help to protect you against reprisals or harassment for making reports. Support is also available from local rape crisis centers.

DoD is required to maintain a Safe Helpline to ensure that military personnel are provided with specialized hotline assistance whenever and wherever needed.

Reporting Sexual Assault

The current policy on sexual assault is designed to encourage survivors to report assaults. Reports can be made by service members and their military dependents. They can be either confidential (restricted) or non-confidential (unrestricted). *Only with unrestricted reports can the assault be investigated and the assaulter be prosecuted.* Either way, if you report a sexual assault, a SARC or VA should respond at once to ensure you get immediate medical care and any needed follow-up care and counseling. They should explain restricted and unrestricted reporting and your rights. They should tell you that you have the right to consult a military attorney, called Special Victims Counsel (SVC) or Victim's Legal Counsel (VLC). You can also use a civilian victim's advocate or attorney but, if you do so, will have to bear any expense. Both the SARC and the SAVA are supposed to assist in maintaining as much privacy for you as possible, whether the report is restricted or unrestricted.

Although, under current regulations, the SARC or VA must offer to provide information and help, you are not required to use them. You have no obligation to speak with either a SARC or a SAVA, and they should leave if you make that desire known. While these personnel can be helpful, remember that most VAs have limited experience and training on these issues and regs, as they are generally performing these duties in addition to their primary MOS or rate. They bring as much or as little support to the job as their own character and incentive require. They are not advocates in the legal sense and are not likely to argue on your behalf if the command or investigators ignore your rights. But SAVAs are supposed to provide all the information you need in order to make decisions about the case and to be your own advocate.

If you approach a SARC, SAPR VA or healthcare provider about a sexual assault, begin to make a report and then change your mind or leave without signing a DOD form 2910, the "Victim Reporting Preference Statement," the person you approached is not under any duty or obligation to inform investigators or the command about the report. Even if an independent investigation has been started they are prevented from disclosing confidential communications under restricted reporting. There are some

exceptions to restricted reporting, such as when it is necessary to ensure the safety and security of military personnel (including the victim), military dependents, military property, classified information, or the accomplishment of a military mission.

Even with restricted reporting, SARCs may disclose information to the command if they feel that it is necessary “to prevent or lessen a serious and imminent threat to the health or safety of the victim or another person.” (DoD 6495.01, section E3.1.8.2) And health care providers may reveal information to the CO if they feel there is “any possible adverse duty impact related to the victim’s medical condition and prognosis.” (DoD 6495.01, section E3.1.10). If necessary the medical authority will inform the certifying official that you should be suspended or temporarily decertified from PRP status. The SARC will disclose the confidential information only after consulting the Staff Judge Advocate (SJA) or other legal advisor concerned who will advise the SARC as to whether an exception to restricted reporting applies. The SARC is required to ensure that a safety assessment is conducted.

Health care providers, SARCs and VAs are required to respond when you make a report. If you’ve made an unrestricted report, an investigator should respond as well. Under the DoD Directive, sexual assault cases are to be designated as “emergency cases” requiring expedited response and medical treatment, regardless of whether or not physical injuries are evident.

Unfortunately, one important person is left out of this first-response team — an attorney. The policy doesn’t trigger automatic advice or assistance from a JAG. But whether you make a restricted or unrestricted report, you should be told by the SARC or SAVA that you have the right to consult with a JAG under a new special victim’s counsel (SVC) program, and it is valuable to do so, whether or not you have civilian legal help. Like civilian attorneys, JAGs can give you advice about your rights and intervene with the command if the policy isn’t followed or if the proper level of confidentiality is not maintained. The SVC program is relatively new, and varies a little from branch to branch, so it is not yet clear how much assistance and representation these specially-trained JAGs will be able to provide.

Restricted Reporting

A restricted (confidential) report is only available to service members and adult dependents. You have the right to make a restricted report by reporting the assault directly to a SARC, SAVA or to health care personnel, but not to other command or law enforcement personnel. Health care personnel include “persons assisting or otherwise supporting healthcare providers in providing healthcare services,” such as administrative personnel in medical treatment facilities. Some branches of the service have added to this list — the Marine Corps uses Uniformed Victims Advocates in addition to the VAs available through its family services programs. Attorneys, chaplains and SVCs/VLCs cannot take official reports because of the privileges associated with speaking to them but they should advise you to consult with a SARC or facilitate, with your consent, contact with one.

When they receive a report, health care personnel must immediately contact the SARC or SAPR VA to complete a DD form 2910. An official report is made only when this “Victim Reporting Preference Statement” is completed, signed and filed with a SARC or SAPR VA. The SARC, VA or medical personnel are required to assist you in completing the form, but you must fill it out yourself. The form explains your rights regarding restricted and unrestricted reports, the limits of restricted reporting, and some of the circumstances in which you might lose confidentiality. SARCs and SAVAs may encourage you to

make an unrestricted report, which the military favors, but they are not supposed to pressure you to do so. The SARC must inform you that you have the right to consult with SVC or VLC when deciding whether or not to make a restricted report.

If you initially ask for assistance at a medical care facility, SARC notification must not delay emergency care. If there is no properly trained DoD health care provider available, you may be offered the option of being transported to a non-military provider for a medical examination.

A restricted report provides the greatest privacy, as only the individuals mentioned above should know that you have been assaulted. You are not prevented from making a restricted report if you have already revealed the assault to someone like a friend or family member—but that is not the case for anyone in your officer or non-commissioned officer chain of command, or in DoD law enforcement.

While the CO will be told that an assault has occurred, he or she should not be given your name, or that of the assaulter, if you make a restricted report. But this confidentiality also means the assaulter will not be investigated or prosecuted unless independent evidence exists.

You have the right to refuse to disclose and to prevent any other person from disclosing a confidential communication between you and a SARC or SAPR VA if such communication is made in order to get advice or assistance.

With restricted reporting, you receive full medical and psychological care. You can request (or refuse) a “sexual assault forensic exam” (SAFE), or rape kit, to document the assault. The information and evidence you give will be identified by a number rather than your name. Physical evidence must be retained for five years, and documentary evidence (such as the sexual assault report form) must be kept for 50 years.

There will be a safety assessment for the purpose of ensuring that you and possibly others are not in physical jeopardy. This assessment is available to all service members, adult military dependents and civilians who are eligible for SAPR services, even if the victim is not physically located on the installation. Individuals asked to conduct safety assessments must occupy positions that do not compromise the victim’s reporting options. This assessment must be conducted as soon as possible.

You can change a report from restricted to unrestricted at any time within a year, so some service members choose to file a restricted report to start and then take time to consider their options. However, once a report is designated as unrestricted, it cannot be changed to restricted. The conversion to unrestricted requires the signature of the victim, the SARC and the SAPR VA on the DD form 2910.

With a restricted report, you are not required to talk to investigators or other law enforcement personnel, or to anyone from the command. If information wrongly travels to supervisors, division officers, or others in the command, though, they may want to question you. Similarly, investigators or your command may want to question you if they hear anything at all about the assault from other sources. You do not have to answer their questions or respond to their comments. You can ask the VA, SARC or SVC to stop any unwanted questioning or comments. Not participating in the investigation will not affect your access to such services as SARC, SAPR VA and medical. These are available to all eligible sexual assault victims.

Information regarding restricted reports should only be released to those authorized by law or by DoD regulation. However, it's important to remember that there are exceptions to restricted reporting, and what starts out as a restricted report might become unrestricted without your permission. If the command receives independent evidence of the assault, it can review the case and take disciplinary action.

A report to military law enforcement personnel, or to NCO- or officer-level command personnel will normally be sent in full to the CO. Civilian law enforcement agencies often forward their reports to your command or base/ship security, and confidentiality is lost. And if the command receives information about the assault from an independent source (for example, a witness or a friend of the assaulter), it may take action on the basis of that information.

If a SARC is notified of an ongoing independent investigation and you have not yet signed the DD form 2910 then you no longer have the option of filing a restricted report. However, if an independent investigation is started after you sign the DD form 2910 it will not affect your restricted status.

Unrestricted Reporting

An unrestricted report may be made to anyone. If you report the assault to military law enforcement personnel or to someone in your unit with any authority at all, they should notify the SARC as well as the command. The SARC or VA should respond immediately with the same assistance as in a restricted report and should advise you of your right to talk with a SVC lawyer. You will also be allowed to obtain medical treatment. You'll be asked to fill out the same Victim Reporting Preference Statement.

Information about the report will be provided to your CO and to your branch's military criminal investigative organization (MCIOs, which include CID, OSI, and NCIS). *Under current regs, these agencies, and not your command, should conduct the investigation of the assault.* Many commands have a hard time understanding this, and think it is their job to question you and others about the assault. You do not have to cooperate with their efforts.

With unrestricted reporting, you can ask the command for some protection from your assaulter. The SARC or Victims Advocate, as well as the SVC, should explain the process for requesting a military protective order or a fast safety move to keep the assaulter away from you, and the possibility of moving or transferring you or the assaulter — and he or she should assist you in making the request to the command. Thanks to a recent congressional change, you have the right to request a temporary or permanent expedited transfer either within your assigned command or installation or to a different one.

The command is required to respond to a request that you be transferred within 72 hours, though it isn't required to grant the request. If the request is disapproved because the commander believes there was no "credible" report, the grounds on which it was disapproved must be documented. If it isn't approved then you can appeal to higher command, which must also respond within 72 hours. This process is set out in DoD Instruction 6495.02. It includes a presumption in favor of transfer following a "credible" report of sexual assault, though commands are required to advise you about the potential career implications of a transfer. If you encounter difficulty with this, a SVC or civilian legal help may be useful in persuading the command to provide necessary protection. Under a new policy, you may request that the assaulter be transferred away from you. Granting or denying this request is also up to the command.

A commander may also transfer you on other grounds, although not on an expedited basis, through regular command processes.

When the alleged perpetrator is the commander or above you in your chain of command, you should be informed of the opportunity to go outside the chain of command to report the offense to other commanding officers or to an Inspector General. You can also go to the DoD Helpline.

Although an unrestricted report gives you less confidentiality than a restricted report, the policy still requires that your privacy be respected. Information about the assault is supposed to be limited to those with a need to know. Unnecessary and repetitive questioning is not allowed under the regs, which also require that gossip and rumors be dealt with firmly. The SARC and CO are responsible, in theory, for making sure that information about the assault is shared only on a need-to-know basis. A note of caution: some commands interpret this very broadly, assuming that senior enlisted personnel and officers in your immediate chain of command should be informed, along with personnel or admin officers, and maybe the chaplain and corpsman, and so on. You can sometimes limit this by stressing to the people who respond to your complaint, and to your command, that you want to keep your privacy.

Investigations and Prosecutions

The Military Criminal Investigative Organizations (MCIOs) are now charged with investigating sexual assaults, and a unit commander who receives an unrestricted report of sexual assault must immediately refer the matter to the appropriate MCIO. Under MCIO regs, they should investigate all sexual assaults brought to their attention, regardless of the “severity” of the assault, and they should also investigate any threats made against the survivor. You are not required to cooperate in an investigation, though you should expect to get some pressure to do so.

Reporting a sexual assault and cooperating in legal proceedings can help you protect yourself and others, but it can also be a painful experience, even if the military follows all its rules.

DoD policy requires specialized sexual assault response training for investigative agencies, commands, and legal personnel. Training materials tell investigators to be sensitive about the trauma caused by an assault and to avoid “re-victimization” with unnecessary, repetitious or humiliating questions. *You should not be questioned about unrelated sexual behavior or your personal sexual preferences or orientation.* If any of this occurs, or if the investigators are hostile, you can, and should, halt the interview and demand to speak with a JAG or a civilian attorney or advocate before deciding whether to continue. And you may choose to have an SVC, a civilian attorney, a SAVA or an independent advocate present during questioning by law enforcement or trial counsel (prosecutors). Military investigators or others who violate these provisions of the regs are subject to disciplinary action. Under Article 46 of the UCMJ you also have the right to have a SARC, SAPR VA, counsel for the government, SVC or VLC present when you are interviewed by defense counsel (counsel for the assailter).

MCIOs do not decide whether or how to prosecute the offender. Because of a recent change in the policy, most of those decisions are not to be made by your immediate commander, but by the officer above the officer with general court martial convening authority. These officers have wide discretion in deciding whether or how to punish an offender. In some cases, they may decide that the sexual assault report is not “credible” or “substantiated,” and do nothing. Even where complaints are deemed

credible, court-martial is only one option available to the command. In some cases, minor punishments such as an Article 15 or administrative action (anything from an administrative discharge to an administrative record entry) may be ordered. Congress has made clear it wants cases to go to court-martial, and has placed some limits on command discretion, but has not made court-martial a requirement.

Going to court

If the offender is court-martialed or processed for a misconduct discharge, you may be asked to testify as a witness. A VA, a civilian attorney, or another support person of your choice may accompany you to meetings and interviews with trial counsel and to any legal proceedings. SVC JAG attorneys can also be present, particularly at courts-martial, though the services are still working out what role they can play there. Civilian rape crisis centers often have trained volunteers who can support and advocate for you during investigations and prosecutions. Legal proceedings are difficult and stressful, and having an advocate through the process may help.

While attorneys for the accused have some leeway in trying to disprove your report, Congressional mandate and SAPR policy should keep them from raising unrelated personal issues or badgering or humiliating you in interviews or in court. Nonetheless, they will normally try to discredit you. It is important to remember here that the prosecutor may not be responsive to your situation and your needs — his or her duty is to prosecute the case, not to protect your interests. Having your own JAG and/or civilian attorney, along with an independent advocate, provides important legal and moral support, and may help to hold the defense attorney and prosecutor to the policy. You do have certain rights, including the right not to testify at some proceedings. You should make sure they are fully explained to you.

Throughout the investigation and legal proceedings, you are entitled to monthly updates from the SARC about the status of the case. If you feel the case is being ignored or handled improperly, you can complain to your command, the general court-martial convening authority, or higher authority. If you testify in a court-martial proceeding, you are also entitled to a copy of the transcript (record of trial).

Reprisals and Retaliation

Reprisals and retaliation are specifically prohibited under the sexual assault regulations, and under the [Military Whistleblower Protection Act](http://www.dodig.mil/programs/whistleblower/index.html) <www.dodig.mil/programs/whistleblower/index.html> ([10 US Code 1034](http://www.gpo.gov/fdsys/granule/USCODE-2010-title10/USCODE-2010-title10-subtitleA-partII-chap53-sec1034/content-detail.html) <www.gpo.gov/fdsys/granule/USCODE-2010-title10/USCODE-2010-title10-subtitleA-partII-chap53-sec1034/content-detail.html>) and [DoD Directive 7050.06](http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/705006p.pdf) <www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/705006p.pdf>. Nonetheless, these problems are common. Reprisals can range from informal harassment by the assaulter's friends or the command to poor performance evaluations, involuntary psychiatric evaluations, loss of promotions and even involuntary discharges.

A sexual assault report or investigation may reveal that you violated some regulation or local order prior to the assault (illegal drinking, for example, or violation of barracks' rules). Information you provide when you make an unrestricted report can be used against you. Under the current policy, commanders have the option to postpone disciplinary action against you for such "collateral" misconduct until the

assault case is concluded. CO's are encouraged to consider this option, but are not required to follow it. And this gives you only a postponement of disciplinary action; the regulations don't suggest that the command drop legal action against you permanently.

If the command is hostile to you, superiors may exaggerate or invent collateral misconduct, or accuse you of unrelated misconduct in order to give you command "counseling" or non-judicial punishment under Article 15. This can be both a reprisal for making a report and a way to undermine your credibility (and therefore the credibility of the report you made). In some cases, where commands don't consider sexual assault reports credible, survivors have been charged with making false official statements. These problems don't arise in every case, but it is best to be prepared for the possibility that they will.

Reprisals can also include an unfavorable personnel action (such as a poor performance evaluation, inappropriate counseling entries or involuntary separation) or denial of favorable personnel action (such as a promotion or a desirable assignment).

Involuntary discharge can be a form of reprisal in sexual assault cases. It may be a misconduct discharge, based on allegations of collateral misconduct or other alleged misconduct, or may be a discharge for other designated physical or mental conditions (also called condition not a disability) for minor psychological problems. In some cases, victims who develop Post-Traumatic Stress Disorder or other serious psychological conditions as the result of sexual assault are under-diagnosed with adjustment disorders or personality disorders, and administratively discharged without full military benefits. As a result of Congressional action, victims of this form of reprisal are entitled to review of involuntary discharges by a general or flag officer if discharge proceedings are initiated within a year of an unrestricted sexual assault complaint and they request review on the ground that the discharge is retaliatory.

The sexual assault regulations have specific provisions for complaints against harassment and reprisals. These complaints can be made through the SARC, an SVC, the CO, commanders higher in the chain of command, or the IG. SARCs and SAPR VAs are required to advise victims who reported a sexual assault or who sought mental health treatment as a result of sexual assault of the opportunity to communicate with a general or flag officer regarding issues relating to your military career that you believe are related to the sexual assault. SARCs or SAPR VAs are required to inform victims of retaliation, ostracism, maltreatment or reprisal that they can report these problems, or request a transfer, Military Protective Order (MPO) or Civilian Protective Order (CPO), or consult with an SVC/VLC.

The sexual assault Directive states that "[v]ictims of sexual assault shall be protected from coercion, retaliation, and reprisal in accordance with DoD 7050.06 [the whistleblower regulation]." Complaints to the Inspector General (IG) made under the *Military Whistleblower Protection Act* trigger not only an investigation of the reprisals, but also investigation of the underlying sexual assault complaint, if it has not been investigated or the investigation was inadequate or biased. In addition to these complaint procedures, you can complain about reprisals using the methods discussed in the Other Complaint Procedures section, below.

If you are a victim of reprisals or harassment, documentation of the problem is important for any complaint procedure. Civilian advocates often recommend that victims of reprisals keep a journal to record incidents of harassment, including dates and names of harassers and witnesses. Nor would it hurt

to get signed statements from witnesses if they will provide them. Documentary evidence, such as email traffic, should be saved if it shows the harassment or a motive for harassment. Witnesses to harassment or reprisals can be asked to write statements describing what they observed (it is sometimes helpful to have assistance from an SVC or civilian attorney or counselor in preparing witness statements). Such documentation can be submitted with any complaint of harassment.

One of the best ways to protect your safety and your rights is to learn about the sexual assault policy when you don't need it. You can jot down SARC and other sexual assault prevention hotline numbers and websites. You can find out who the local SARC and SAVA are, and locate civilian legal groups and the closest rape crisis center. If your command is falling down on the job, and not publicizing the policy and training personnel in sexual assault prevention, or hasn't set up a real SARC and SAVA system, you can request that they do so, make a formal complaint about the problem, or ask a civilian group to complain about it. If the command permits inappropriate language, sexually degrading comments or pictures, or any sort of sexual harassment — an indication that sexual abuse may be tolerated — you can make formal or informal complaints. This pro-active approach will help you if you later need it, and will also help other potential victims of assault.

Sexual Harassment

Sexual harassment continues to be one of the most serious problems facing women in the military. Despite an official policy of ‘zero tolerance,’ harassment is often ignored and sometimes condoned in military culture. The Department of Defense (DoD) considers sexual harassment a form of sexual discrimination, prohibited under its Equal Opportunity (EO) policy, which is set out in DoD Directive 1350.2. The Directive defines harassment as:

“[a] form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

“Submission to such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay, or career, or

“Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or

“Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment.”

Each branch of the service is required to follow DoD policy, and each has regulations to implement the Directive. In theory, local command EO officers assist in implementing the policy and conducting educational programs about harassment. Information about making complaints and local, service-wide or DoD hotline numbers should be posted at every command. Unfortunately, the policies are not always followed; sexual harassment complaints are sometimes shunted aside, hidden under bureaucratic paperwork, or just ignored; and service members who make complaints may risk official and unofficial reprisals.

DoD 1350.2 says that “the chain of command is the primary and preferred channel for identifying and correcting discriminatory practices,” including sexual harassment. If you have been harassed, EO policy suggests that you begin by speaking with the harasser to resolve the problem; fortunately, this is not required. When that approach is inappropriate or unsuccessful, the policy encourages requests for help through the chain of command, starting at the lowest level. (The Navy and Marine Corps call this the informal resolution system, or IRS.) This may work if the command is sympathetic, but may not be worth the effort when the harasser is in the chain of command. In most cases, EO and other complaint procedures are more likely to work, and many survivors of sexual harassment prefer to start with them.

Sexual Harassment Complaint Procedures

DoD recently told Congress that sexual harassment complaints can now be made anonymously. Unfortunately, this is not reflected in the regulations, so that there is not information about the process. It is likely, though not certain, that anonymous complaints could be made through the IG.

Your command should have an EO officer whose job includes training on sexual harassment issues and (in most services) assisting service members who have harassment or discrimination complaints. This person is likely to be enlisted, rather than an officer, and EO is sometimes collateral duty, rather than the EO officer’s primary MOS or rate. Skill levels, support and interest can vary a great deal from one EO officer to another. While you may need to contact the EO officer in making or following up on a

complaint, he or she should be approached with some caution. There is no confidentiality with an EO officer, and his or her official responsibility is to the command rather than you. While EO officers may be vigorous and supportive advocates, you shouldn't assume the person is there for you.

Even within the EO system, informal, verbal complaints are favored. EO officers frequently encourage complainants to use them rather than formal complaints. Informal complaints are handled without much paperwork, and often without any formal resolution or action. While they can be helpful if you wish to keep the matter low-key, these complaints don't always receive careful attention or investigation, and require little or no official action by the command.

Formal sexual harassment complaints are taken more seriously. These are made in writing and require a written response, thus creating a better record if an appeal or other action is necessary. The Army uses DA Form 7279-R for complaints; the Navy uses NAVPERS 5354/2; the Marine Corps has no form; the Air Force uses a Formal Complaint Summary, AF IMT 1587.

The complaint should describe the sexual harassment in detail, with names of the harasser(s) and any witnesses. Documentary evidence and statements from witnesses can also be included. The complaint should explain the relief you want — this could be anything from a public apology to a transfer for you or (a less likely result) the harasser, or removal of an improper adverse entry in your record. It is useful

Useful Regulations on Sexual Harassment

Department of Defense: [DoD Directive 1350.2 \(PDF\)](#), *Department of Defense Military Equal Opportunity (MEO) Program*

<www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/135002p.pdf>

Army: [AR 600-20, Army Command Policy](#), Chapter 7, “Prevention of Sexual Harassment,” and Appendix C, “Equal Opportunity/Sexual Harassment Complaint Processing System”

<armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/r600_20.pdf>

Navy: [SECNAVINST 5300.26D \(PDF\)](#), *Department of the Navy Policy on Sexual Harassment and OPNAVINST 5354.1F, Navy Equal Opportunity Policy*

<doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5300.26D.pdf>

<www.jag.navy.mil/distrib/instructions/OPNAV5354.1FCH-1.EO.pdf>

Marine Corps: [MCO 1000.9A \(PDF\)](#), *Sexual Harassment and MCO P5354.1D (PDF) Marine Corps Equal Opportunity (EO) Manual*

<www.imef.marines.mil/Portals/68/Docs/IMEF/EOA/MCO%201000.9A.pdf>

<www.3rdmaw.marines.mil/Portals/118/Docs/3DMAW/EOA/MCOP5354.1D.pdf>

Air Force: [AFI 36-2706, Equal Opportunity Program Military and Civilian](#)

<www.af.mil/Portals/1/documents/eeo/afi-36-2706.pdf>

NOTE: Regs in this area are subject to update; check MLTF's web site for the latest links.

to write out a detailed complaint in advance, attaching witness statements and/or other evidence, instead of sitting down with an EO officer to write out a complaint on the spot. This reduces the chance that the person receiving the complaint will put his or her own spin on the case, or tell you what you can and cannot say. There's no need to limit your comments to the spaces on the complaint form. A civilian advocate or attorney can help you prepare the complaint, or review it and suggest additions if you have already submitted it.

Complaint procedures vary from branch to branch. It is important to read over the regs for your branch of service for details on procedures and time limits. Complaints should be made within a specific time after the incident (usually 60 days) unless circumstances prevent that. In the Air Force, complaints are made through the local EO officer. In the Army, informal complaints may be made to the Commanding Officer (CO), the IG, chaplain, provost martial, Staff Judge Advocate or others; formal complaints should be presented to the CO in most cases. The Marine Corps recognizes a number of forms of complaint, like IG complaints or Article 138 complaints (see the Other Complaint Procedures section below) in addition to EO complaints. You can also report harassment and make the initial complaint directly to the DoD Inspector General (IG) hotline, at www.dodig.mil/hotline (or hotline@dodig.mil), or to your service's IG or sexual harassment hotline.

No matter where a complaint is made, it is usually referred to your command for investigation and resolution — this means your immediate CO, unless he or she is involved in the harassment. The CO should assign an independent officer to investigate the complaint, unless the IG or other agency which received the complaint has assigned its own investigator. In the Air Force, the local EO officer conducts the investigation. Each service sets time limits for investigation and response, and you should receive periodic updates if the investigation is lengthy.

In theory, the investigator should talk to every witness you mention and consider each issue you raise in the complaint. Investigators may also question other witnesses, look into your own truthfulness or conduct, and add their own take to their reports. Gathering witness statements and other evidence in advance is one way to avoid misunderstanding or tampering by the investigator or command.

The investigator makes a written report, with findings of fact about the incident and recommendations for corrective action. This normally goes to the CO, who decides whether the complaint is "substantiated" (except in the Air Force, where the EO officer makes this decision). The CO also decides what action to take, if any; he or she is not required to follow the investigator's recommendations. You are entitled to a redacted (sanitized) copy of the investigator's findings and recommendations, but not necessarily the underlying investigative report or witness interviews. The branches vary on how much you will be told about the CO's decision and corrective action.

If you are not satisfied, you have the right to appeal. In most branches, that means taking the complaint to the CO exercising general court-martial convening authority (GCMCA) over the CO handling the complaint. The Air Force keeps the appeal in the EO system, and the Army says the highest appeal is to the GCMCA. But the DoD Directive, which the branches must follow, states that you may make a final appeal to the office of the Secretary of your branch.

Sexual harassment complaint procedures have limited value, particularly if the command is biased. For this reason, you may want to use other traditional military grievance procedures, described in the Other

Complaint Procedures section below, instead of or in addition to the EO complaint, to give you more control over the case and its outcome.

Retaliation

Service members often decide not to report harassment out of fear of retaliation. This is a real concern — members who file harassment complaints, or even mention the idea, may face “adverse personnel action” such as denial of promotion, poor performance evaluations, or reassignment (allegedly unrelated to the complaint), or face disciplinary action for alleged misconduct. Unofficial harassment — bullying, threats, or even hazing — can also be a problem. Occasionally commands respond with unwanted mental health evaluations. A hostile CO may use psychological problems resulting from the harassment (or invent emotional problems by giving doctors misinformation) to discredit your complaint, affect your career, or create grounds for an involuntary discharge. Outside legal assistance can help to prevent or limit this sort of retaliation.

While reprisals aren’t a given, it is best to be prepared for the possibility. Advocates often suggest that complainants keep a journal; make notes of the time, place and witnesses of any harassment; keep copies of documents and e-mail traffic showing the harassment or improper command actions and attitude; and talk with an advocate or attorney in advance about ways to respond to reprisals.

Reprisals for making, or simply threatening to make, a complaint about sexual harassment are violations of the EO regs, Article 92 of the UCMJ (failure to obey a lawful regulation), and special *Military Whistleblower Protection Act* policies. You can complain to the EO officer or through the command about the reprisals. The types of complaints mentioned in the Other Complaint Procedures section, such as Article 138 complaints and congressional inquiries, can also be used to protest reprisals and to request withdrawal of any “adverse personnel actions.”

In addition, you can complain to the IG about reprisals under the [Military Whistleblower Protection Act](http://www.dodig.mil/programs/whistleblower/index.html) <www.dodig.mil/programs/whistleblower/index.html> ([10 US Code Section 1034](#)) <www.gpo.gov/fdsys/granule/USCODE-2010-title10/USCODE-2010-title10-subtitleA-partII-chap53-sec1034/content-detail.html>; its provisions are discussed in [DoD Directive 7050.06](#) <www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/705006p.pdf>. The Act and Directive, and regulations in each branch of service, make it illegal for anyone to retaliate because you complained to a member of Congress, the IG, or other officials who should receive reports about violation of regulations (like complaining to an EO officer or your command about sexual harassment). The IG must investigate not only the retaliation, but also the original harassment, if that was not already investigated or the investigation was inadequate or biased. Here, too, documentation and outside assistance are extremely helpful. If the retaliation has affected your career or record, the whistleblower policy allows an expedited petition to the Board for Correction of Military/Naval Records. (Information on the Correction Boards can be found in [Chapter 16 of the American Veterans and Servicemembers Survival Guide](#), available at www.nvlsp.org).

Sexual harassment complaints, and complaints about retaliation, are not simple. Commands sometimes ignore complaints or “solve” them with Band-Aid measures, and the risk of retaliation is real. Complaints require good documentation and determination. But with an independent civilian attorney or advocate

and/or help from the organizations listed under the Resources section, complaints can have real impact.

Other Complaint Procedures

The military allows for other complaint procedures, which can be used to make sexual harassment complaints (usually along with traditional EO complaints) and can be used to challenge retaliation or reprisals for complaints about sexual assault or harassment.

One such option, if the commanding officer is not part of the problem, is a personal meeting with the CO to discuss the harassment or reprisal; the Navy and Marine Corps call this “request mast.” If the command has no direct “open door” policy, you may need to walk a written request for a meeting up the chain of command. You are not required to tell anyone other than the CO what you want to discuss, and you can simply ignore NCOs’ or lower officers’ attempts to “deny” your request - *the right to meet with one’s commanding officer is firmly embedded in military law and tradition*. You may also request this meeting “with counsel present,” and bring your attorney or legal advocate to assist you in presenting a complaint. If you wish, you can give the CO a written complaint, witness statements and/or other evidence. If the CO does not help, you can make the same request to his or her CO, and so on up the chain of command.

Your attorney or advocate, not bound by the chain of command, can write or speak directly to your CO, your CO’s CO, or military headquarters, demanding that the problem be resolved or that the command be investigated for inaction. If higher military authorities find the problem potentially embarrassing, they may take formal action or simply lean on your command to resolve the problem and get your advocate out of their hair.

One very useful option is a request for redress of grievance under Article 138 of the UCMJ. In a 138 complaint, you begin with a letter to your CO, asking him or her to correct the problem of harassment or retaliation within his or her command. It is useful to mention or reference Article 138 in the letter. The letter should state how you have been wronged and ask for specific relief, giving details and attaching any evidence you may have. The CO must respond within a reasonable time, set by the regs. If you are not completely satisfied, or if you receive no response, you then file a formal 138 complaint to the officer with special court-martial jurisdiction over your CO. This complaint should describe your CO’s failure to solve the problem and the problem itself. (The Navy has a parallel procedure when the problem is outside your chain of command, set out in Navy Regulation 1150.)

Article 138s get serious attention because they must be reported to service headquarters and can leave a permanent mark in an officer’s record. This tends to concern COs and, as with a formal EO complaint, makes a good paper trail of your effort to solve the problem through proper channels. 138 complaints sometimes end in a compromise: the complaint may be officially denied and the officer’s record may remain clean -- or the 138 may be partially denied - but you are given part or all of what you requested.

Detailed information about Article 138 complaints can be found at girightshotline.org and nlgmtf.org. This is another area where it is helpful to read the regulations — AR 27-10, Chapter 19, for the Army; JAG INSTRUCTION 5800.7F, the Manual of the Judge Advocate General, for the Navy and Marine Corps; and AFI 51-904 for the Air Force. As with EO complaints, use of an independent advocate or attorney is very helpful.

You have an absolute right to ask a Member of Congress to investigate and stop the harassment or retaliation — this right is protected by the *Military Whistleblower Protection Act*. This can be very effective *if* the Congressional office involved is willing to skip or expand the normal inquiry methods and ask your command or military headquarters directly to take the specific action you request. Routine Congressional inquiries are made by Congressional aides, not the Member of Congress; they go only to the military's Congressional liaison officer and usually ask only for an explanation, not specific action on the problem. The liaison officer checks with the command, gets your CO's or legal officer's version of the story, and sends a boilerplate reply to the Congressional office saying that your rights have been respected and all is well. While this is sometimes helpful, and the command will know that an inquiry has been made, a direct request for specific action from a Member of Congress has much more impact.

In some cases, you may choose to speak to the media, directly or through your advocate, using your name or speaking anonymously. "Going public" places greater pressure on the command to resolve the problem, but it may also result in retaliation, and should be approached with care. Legal assistance is extremely important here. Your right to speak publicly about your case or about problems with your command is set out in DoD Instruction 1325.06, but this Instruction places limits on where, when and how you do so. There are also some limits on what you can say — for example, you cannot reveal classified material, make derogatory remarks about the Commander in Chief, or make threats. An attorney or advocate can help you avoid these problems and, if you want, be present when you speak with the media.

Sexual harassment, sexual assault and retaliation cases can be taken to federal court, where you may ask for corrective action such as a transfer or a removal of retaliatory actions, but not for money damages for pain and suffering. Courts seldom step in unless a service member has tried all available administrative remedies, such as an EO complaint, and judges generally defer to military discretion about personnel matters. But a court can order the military to enforce its own regulations or order it to do more than the regulations require.

Resources on Military Sexual Assault/Harassment

These groups encourage survivors of sexual assault or harassment to obtain assistance from a civilian attorney or military counselor; referrals are available through each group. It is extremely helpful to have independent legal help from the very beginning of the case in documenting the assault or harassment, deciding which complaint procedure(s) to use, preparing a complaint, monitoring the investigation and taking further action if necessary.

National Lawyers Guild Military Law Task Force - nlgmltf.org, militarylawhelp.com

The Task Force is a standing committee of the National Lawyers Guild that works to counter military policies that are interventionist, discriminatory and unjust. MLTF provides information and resources on military sexual assault, sexual harassment and related issues. MLTF can put you in touch with independent attorneys or advocates familiar with military law.

Updates and further resources on this topic can be found by visiting our web site at MilitaryLawHelp.com.

Email: email@nlgmltf.org

Mail: 730 N. First Street, San Jose, CA 95112

Phone: 619-463-2369

GI Rights Network - girightshotline.org

With local volunteer groups around the country, the GI Rights Network operates a toll-free hotline to provide information about complaints, discharges, and service members' rights.

Hotline: 877-447-4487

Email: girights@girightshotline.org

Protect our Defenders - protectourdefenders.com

Works to end the epidemic of rape and sexual assault in the military and to combat a culture of pervasive sexual harassment and retribution against victims.

Email: info@protectourdefenders.com

Credits

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Donations to the Foundation can also be designated for the Military Law Task Force.

The Military Law Task Force of the National Lawyers Guild

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The National Lawyers Guild's Military Law Task Force includes attorneys, legal workers, law students and "barracks lawyers" interested in draft, military and veterans' issues. The Task Force publishes a quarterly newsletter, On Watch, as well as a range of legal memoranda and other educational material; maintains a listserv for discussion among its members and a website for members, others in the legal community and the public; sponsors seminars and workshops on military law; and provides support for members on individual cases and projects.

The MLTF defends the rights of servicemembers in the United States and overseas. It supports dissent, anti-war efforts and resistance within the military, offering legal and political assistance to those who challenge oppressive military policies and U.S. military adventures. Like its parent organization, the NLG, it is committed to the precept that human rights are more sacred than property interests.

To join, or for more information, contact us by email or phone (619) 463-2369, or visit our website or social media pages.

www.nlgmltf.org
www.militarylawhelp.com
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twitter.com/military_law

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Kathleen Gilberd is a legal worker living in San Diego, California. She serves as the Executive Director of the Military Law Task Force and on the board of the GI Rights Network. She has conducted dozens of workshops on GI Rights issues, including Sexual Assault and Sexual Harassment. In 2013, she was honored as the "Service Provider of the Year" by the Service Women's Action Network. Her website can be found at kathleengilberd.com.

Challenging Military Sexual Violence

A Guide to Sexual Assault and Sexual Harassment
Policies in the U. S. Armed Forces for Servicemembers,
MSV Survivors and Their Advocates

By Kathleen Gilberd | July 2017

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