

# **Snapshot Review *of* Sexual Assault Report Files**

**AT THE FOUR LARGEST  
U.S. MILITARY BASES**

**2014 Department of Defense Documents  
Continue to Show: Despite Congressional  
Reforms Passed, Dysfunction  
in Military Justice System Remains**



**OFFICE OF SENATOR KIRSTEN GILLIBRAND  
MAY 2016**



# EXECUTIVE SUMMARY

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Despite many Department of Defense (DoD) and congressional reforms taking effect within the last several years, the problem of military sexual assault and retaliation against those who report such crimes has remained a pervasive and destructive force that is harming our military readiness and reputation. **Stories of military sexual assault cases continue to dominate headlines; they demonstrate how the dysfunction in the military justice system undermines good order and discipline and negatively affects those who are victims of these unimaginable crimes.** Moreover, as the Rand Corporation found in 2012, military sexual assault – the crime and its aftermath – costs U.S. taxpayers over \$3.5 billion a year.<sup>1</sup>

In an effort to shed more light on this issue, last May, Senator Kirsten Gillibrand, in her oversight role as Ranking Member of the Senate Armed Services Committee Personnel Subcommittee, released a report detailing 107 sexual assault cases that occurred in 2013 at the largest U.S. installation for each military service (the Army's Fort Hood in Texas, Naval Station Norfolk in Virginia, Marine Corps Base Camp Pendleton in California, and Wright-Patterson Air Force Base in Ohio).<sup>2</sup> **The**

**report was the first in-depth examination of this issue beyond the DoD's Sexual Assault Prevention and Response Office (SAPRO) statistics, and it provided much-needed context to the problem of military sexual assault.** It also unearthed troubling data trends not previously exposed or debated in Congress. Outside of last year's report, individual case files currently escape any kind of independent oversight. As a follow up, Senator Gillibrand requested the 2014 case files for the same four bases. Additionally, the request included case files regarding sexual assaults against minors.

Much like the 2013 case file request, the 2014 cases expose a troubling command culture that seems to favor the higher-ranking accused, and also seems to value closing cases over pursuing justice. In this group of case files, **there were multiple instances of commanders** choosing not to proceed to court-martial despite a recommendation from the military investigating officer that probable cause existed. Shockingly, the review found a case where the accused confessed to a sexual assault, but was allowed to be discharged in lieu of trial and faced no legal consequences or appropriate punishment. That an admitted sex offender was allowed to go

and live freely in an unsuspecting community suggests a disturbing disregard for public safety.

The review of case files also provides further information on the true scope of military sexual violence affecting civilians in military communities, and of sexual assaults against children. **The case files suggest a continued large-scale systemic failure and an ingrained culture that protects the accused and ostracizes the survivor at the expense of the public and our service members' safety.**

Lastly, the case files illuminate a culture where survivors justifiably fear retaliation for reporting their crimes. **The files revealed that a majority of assaults against service members came from those higher up in the chain of command and included reported acts of retaliation that seemingly went unpunished.** Furthermore, several service members found guilty of abusing their rank received little punishment and were not discharged. **For instance, one captain was accused of sexually**

**assaulting a male subordinate. The military investigating officer found probable cause to pursue a trial. The commanding officer issued him a "written reprimand" instead.**

It should be noted in preparing this important report that a special thanks is due to Senate Armed Services Committee Chairman John McCain. After this very narrow and appropriate request from Senator Gillibrand in her role on the Personnel Subcommittee was flatly rejected by the Department of Defense, it took the direct intervention of Chairman McCain to Secretary of Defense Carter for the files to be produced for congressional oversight. Unfortunately, the 2014 files are heavily and inconsistently redacted, are incomplete, and often lack relevant and essential data pertaining to the cases. The Department of Defense's continued resistance to independent congressional oversight and transparency is troubling, and serves as a roadblock to an active partnership in combatting military sexual assault.

# SUMMARY FINDINGS

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## ■ Civilians Trapped in Commander-Led Military Justice System – For 2<sup>nd</sup> Year in a Row, Gillibrand Review Has Found a Higher Prevalence of Civilian Victims of Military Sexual Assault than SAPRO Reported

Three significant – but often overlooked – categories of survivors in military communities are the civilian women living near military communities, non-military spouses of service members, and minors, **which total 102, or 31%, of the cases analyzed.** This is **significantly higher than the rate of civilian survivors** that are listed in the DoD SAPRO Report (Sexual Assault Prevention and Response Annual Report for FY 2014) (12.2%).<sup>3</sup> Additionally, it is important to note that the SAPRO also excludes cases involving intimate partners, which fall under the purview of the DoD’s Family Advocacy Program.

The DoD routinely seeks jurisdiction of cases when there is dual jurisdiction with civilian authorities,<sup>4</sup> which means that **civilian victims, including children, are often subjected to a foreign system of justice which, unlike the civilian system they are accustomed to, centers around the conflicted interest of the chain of command.** Compounding this conflict of interest situation, the commander of the accused has to decide between supporting a member of the military – someone who may be a valuable member of the unit – and supporting an outsider civilian with no value to the military whatsoever. Unlike in the civilian system, where a decision to prosecute a case would be based on evidence, and would be made by a trained independent prosecutor without interference from a mayor or County Executive, **the military system allows a commander, who could be in the direct chain of command of the accused and have minimal legal or criminal behavior expertise, to decide whether or not to prosecute.** Our review of case files found several instances where commanders refused to prosecute sexual assault charges, even though it seems possible that a prosecutor could have made a different decision and allowed civilians their day in court.

**In 57% of case files involving non-minor civilians, no legal or punitive action was listed as being taken, compared to service member cases, in which no action was taken 34% of the time.**

Of note, the DoD's sexual assault surveys, which are the main source of data to quantify the prevalence of sexual assault in the military, only query service members, and therefore only include projected statistics of how many service members are survivors of military sexual assault.

### **■ Case Files Demonstrate that Almost 20% of Those Who Report Eventually Opt Out of Military Justice Process – This is in Addition to DoD Estimates that Nearly 8 out of 10 Survivors Overall Don't Report**

**Fifty-six of the survivors who took the first step toward justice by filing unrestricted reports within the military justice system later declined to move forward.** The data show that at least 18% (56 out of 329) of those who went forward and initially chose to file an unrestricted report – indicating they were comfortable going public with their accusations and pursuing court action – declined to move forward and pursue justice. **The DoD often cites all unrestricted reports as a sign of faith in the system** yet current DoD estimates find that roughly 8 out of 10 military sexual assault survivors do not even report their crimes. That statistic, combined with an 18% attrition rate and a 62% DoD-reported rate of retaliation toward those who report sexual assault, directly rebuts the claim of growing “faith” in the system.

Of these 56 reports, many victims voluntarily submitted to an intrusive sexual assault evidence collection kit, indicating a strong commitment to pursuing justice. That they ultimately declined to move forward may be related to the fear of retaliation, which remains a major problem according to the DoD. It should be noted that the best research in the field of sexual assault shows that the rate of false accusation is similar to other crimes, falling between 2% and 8% of cases.<sup>5</sup> In other words, 92% to 98% of the accusations are likely to be accurate.

**The attrition rate of unrestricted reports may in fact be significantly higher than reported here, as many incomplete and heavily redacted files do not indicate whether or not the victim declined to move forward.**

### **■ ZERO Cases of Retaliation Prosecuted Despite Congressional Action**

As part of the initial case request, Senator Gillibrand specifically asked the branches to provide

information on any case of retaliation related to sexual assault where action was taken. **The DoD provided ZERO case files on retaliation.** But, as shown in last year's RAND Military Workplace Study,<sup>6</sup> retaliation remains a major concern in the reform of sexual assault in the military: **62% of women who reported being sexually assaulted experienced retaliation.** The prevalence of retaliation remains unchanged from 2012, while the estimated number of unwanted sexual contacts remains at 2010 levels – an average of 52 new cases every day. In the 2014 National Defense Authorization Act (NDAA), Congress made retaliation a crime under the Uniform Code of Military Justice (UCMJ).

Multiple cases included in the files provided to Senator Gillibrand's office did include scenarios of reported retaliation and hostile work environments in the ranks, and demonstrated how failure to deal with this problem creates a less-focused and less-effective military. **Remarkably, in one of the case files, a military investigator found several messages on the accused's phone from another service member recommending that the accused "threaten and scare" the accuser "to not participate in the furtherance of the investigation."** The victim withdrew her complaint and no action was taken against either service member, despite the unrefuted evidence that they considered making threats to retaliate against the alleged victim of the sexual assault if she were to move forward with her case.

### ■ Too Often the Command IS the Problem

A number of cases demonstrate how the chain of command structure has failed victims, with most cases reflecting abuse of power by a superior over a subordinate. **Nearly 2/3, or 64%, of the cases at these bases had a perpetrator of a higher rank assaulting a victim of a lower rank.**

Furthermore, **several cases exist where the military investigating officer recommended going forward with the case to court-martial, but the commander disagreed, and the case failed to go forward. There were also cases of commanders authorizing discharges in lieu of court-martial, sending potentially violent sex offenders free in the civilian world.** Other cases show commanders unwilling to back up their subordinates and instead ignoring these accusations of improper behavior.

### ■ Uneven Justice: Cases Dropped, Non-Judicial Punishment for Rape, Discharges in Lieu of Courts-Martial

Just 22% of the 329 cases went to trial. Of those, only about 10% of these 329 sexual assault suspects were convicted of a sexual assault crime, and 5% were convicted of a non-sexual assault crime. **Of those actually convicted of a sexual assault crime, 52% included a confession or guilty plea from the accused. Two case files included a confession of a sexual assault by the accused, yet one was set free and discharged without any other punishment, and the other was merely moved to another duty station and received no punishment.**

**Contrary to DoD claims** that commanders need convening authority powers because they will more aggressively pursue courts-martial, this review finds that trials for individuals accused of sexual assault are rare. Instead of pursuing justice, it appears that in many cases, commanders do the exact opposite and use their powers to dispose of these troubling cases outside of a courtroom. **For example, one victim reported that he was sexually assaulted by his former company commander. The military investigation established probable cause that the accused committed sodomy and cruelty of subordinates when he sexually assaulted the victim.** The case went to Non-Judicial Punishment and the accused only received a written reprimand.

### ■ **Survivors Discounted – Evidence Ignored by Commanders**

An alarming number of cases are not pursued when the accused and alleged victim provide conflicting statements as to whether the sex was consensual. **Of the 63 cases in which the accused told the authorities that the sex was consensual, or denied that the sex happened, the command took action just 15 times.** In these cases, there were 7 convictions of sexual assault. Significantly, 48 of 63, or about 76%, of these cases did not go to trial. Many case files said that there was “insufficient evidence” or “no evidence,” even in instances with multiple victims, ignoring the well-established fact that survivor testimony is “evidence” routinely used to secure both trial and conviction. **There are no data that bear out the military’s claim that commanders have been tougher on sexual assault cases than independent military prosecutors would be.**

### ■ **Low Case Numbers and Incomplete Data Provide Cause for Concern**

Naval Station Norfolk provided a strikingly low number of reported cases in proportion to the number of service members stationed there. The true number of sexual assault reports at Wright Patterson Air Force Base is also unclear, and strikingly low, suggesting that there is underreporting. The case files provide an incomplete picture; for example, many of the Fort Hood case files do not provide even the most basic case narratives, and many cases are so fully redacted that no information can be properly analyzed. **The services have all pledged that combatting sexual assault is a top priority, but they lack basic protocols for collecting, archiving, and analyzing their own data.**

# FINDINGS

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## **Civilians Are Trapped in Commander-Led Military Justice System – For 2nd Year in a Row, Gillibrand Review Has Found a Higher Prevalence of Civilian Victims of Military Sexual Assault than SAPRO Reported**

In its April 2015 SAPRO report, the DoD estimated that an annual 20,000 of the U.S. military's 1.3 million active-duty members had experienced one or more instances of sexual assault in the past year.<sup>7</sup> The survey results were based solely upon answers provided by active-duty service members. Service members' non-military spouses and children, and civilians in military communities, were not included.

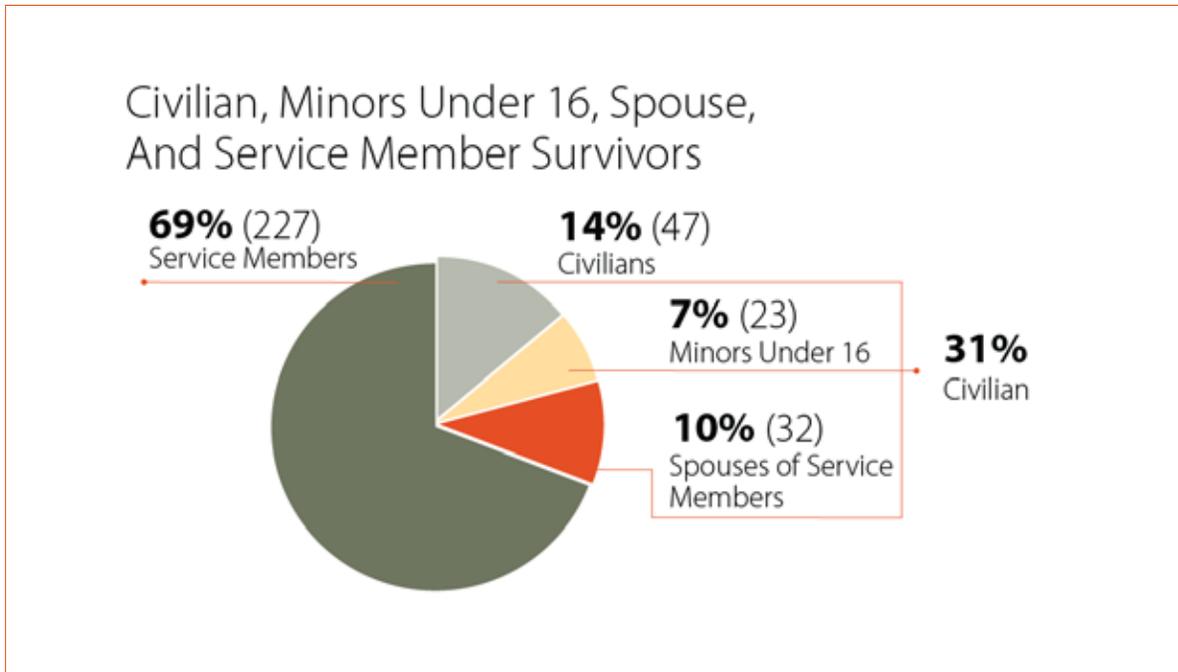
In the 329 cases analyzed for the four bases provided in 2014, three significant demographics emerged that are **not counted by the DoD's prevalence surveys**: female civilians,<sup>8</sup> spouses of service members, and minors.

Because spouses, civilians, and minors who survived sexual assaults and unwanted sexual contact are not counted in the biennial sexual assault prevalence survey, the DoD's current estimate of 20,000 sexual assault survivors most likely vastly underrepresents the scope of sexual assault violence in military communities.

### **Of the case files reviewed:**

- **14% of Reports Are by Civilian Women, Uncounted in the DoD's Sexual Assault Prevalence Surveys.** An analysis of the case files revealed that there were 47 alleged assaults by service members on civilian women out of 329 cases during 2014.

- **7% of Reports Are of Minors under the Age of 16, Uncounted in the DoD's Sexual Assault Prevalence Surveys.** An analysis of the case files revealed that there were 23 alleged assaults by service members on minors under the age of 16 out of 329 cases during 2014.
- **10% of Reports Are by Civilian Military Spouses, Uncounted in the DoD's Sexual Assault Prevalence Surveys.** An analysis of the case files revealed that there were 32 alleged assaults by service members on their civilian spouses out of 329 cases during 2014.



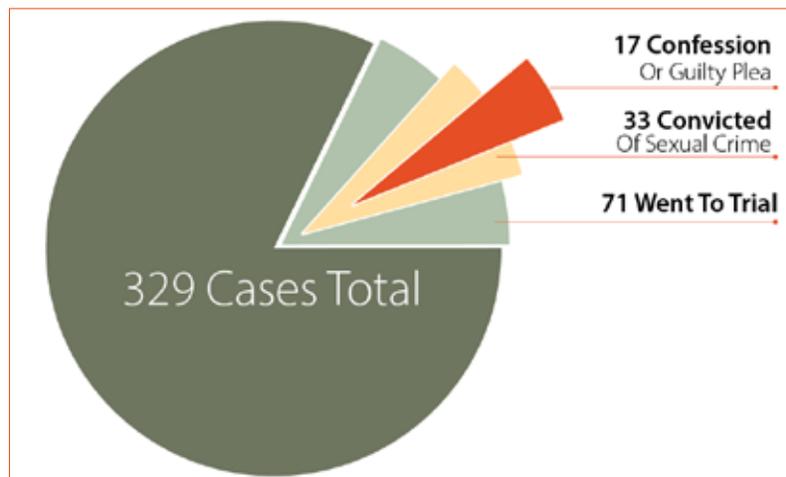
**Any discussion in Congress of the military sexual assault crisis that does not involve civilians is incomplete.**

Any discussion in Congress of the military sexual assault crisis that does not involve civilians is incomplete. **Civilian victims do not get to choose the system in which their case will be handled. (In 2014, Congress included language in the NDAA that allowed victims to voice a preference, but that preference is not legally binding.)** Current DoD policy routinely seeks jurisdiction in all cases, and the FY 2015 Annual Report on Sexual Assault in the Military states, “The Department takes appropriate action in every case it has jurisdiction.”<sup>9</sup> Local District Attorneys with limited resources often oblige these requests, as the AP recently reported.<sup>10</sup> Beyond the basic question of the fairness of

the commander-led military system for service members, there is valid concern that civilians who are sexually assaulted by service members are often subjected to a foreign system of justice that is different from the civilian system, and is unfamiliar to most civilians.

**In 57% of case files involving non-minor civilians, no legal or punitive action was listed as being taken, compared to service member cases, in which no action was taken only 34% of the time.**

As noted above, of the 329 cases reviewed, only 22% went to trial. Of the 329 cases, only about 10% of these suspects were convicted of a sexual crime. **Of those actually convicted of a sexual assault, 52% had a confession or guilty plea from the accused.**



## **DoD Estimates that Nearly 8 out of 10 Survivors Do Not Report – Case Files Demonstrate that Almost 20% of Those Who Do Report Eventually Opt Out of the Military Justice Process**

According to the case files provided, 56 out of 329 survivors, or 18%, did not move forward in the military justice system after making their initial unrestricted reports – the kind of public reporting that makes legal recourse possible. While there are many potential reasons for this, one may be that survivors experienced or feared retaliation or a hostile climate. Concerns of retaliation suggest a real lack of faith in a commander-led military justice system.

*This number may be significantly higher, but due to incomplete files, it is unknown in many cases whether or not the victim declined to move forward*



**“Service members who reported sexual assault were 12 times more likely to suffer retaliation for doing so than to see their offender, if also a service member, convicted for a sex offense.”**

– Human Rights Watch, May 2015

According to the FY 2012 and 2014 DoD prevalence surveys, 62% of female service members who reported being sexually assaulted said they were retaliated against.<sup>11</sup> Based on the limited and redacted nature of the case files examined, it is not possible to evaluate whether national trends hold true for the sexual assault cases occurring at Fort Hood, Naval Station Norfolk, Marine Corps Base Camp Pendleton, or Wright-Patterson Air Force Base in 2014. However, **the DoD’s own 2014 report to the President concluded that there has been “no progress” for preventing retaliation.**<sup>12</sup>

**The current debate around military sexual assault often centers on how many unrestricted reports have been filed as a measurement of survivor “confidence” in the military justice system. Previously, each unrestricted report has been viewed as an unequivocal show of faith in the system. The use of unrestricted reports as a proxy for faith in the military justice system is insufficient.** Methods should be developed, implemented, and tracked to more accurately capture the true perceptions of service members. Note, however, that the percentage and raw number of unrestricted reports filed in 2015 was lower than 2014, rebuffing any claim that “faith” in the system has been achieved.<sup>13</sup>

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## **Command Continues to Fail Their Victimized Subordinates**

Despite widespread attention to the issue of military sexual assault and the DoD’s stated commitment to addressing the issue, **several cases were found in which the military investigator found probable cause to go forward with the case, yet the commander failed to do so.** Other cases show commanders unwilling to support their subordinates, and instead ignored accusations of improper behavior. This provides further evidence that disposition authority must be taken out of the chain of command and placed in the hands of trained, unbiased military lawyers.

Below are summaries of case files that demonstrate a failing command culture:

- Victim was staying with the accused and his wife. At night, the accused snuck into her room and attempted to take her sweatpants off and sexually assault her. **The case eventually went to non-judicial punishment even though the Article 32 hearing officer found that “taken together, the evidence presented is more than sufficient evidence of all the charged offenses,” and recommended that the case proceed to a special court-martial.**
- Military investigation “established probable cause existed to believe” the accused “committed the offense of Rape when he performed sexual acts on Mrs. [REDACTED] against her will while using physical force to subdue her.” **Trial Counsel, Office of the Staff Judge Advocate, “concurred that probable cause existed to believe PFC [REDACTED] committed the listed offense.” The case only went to NJP where the accused was found guilty of battery, reduced in grade, and given 45 days extra duty.**
- Victim accused perpetrator of touching her on her thigh and crotch area several times (over a two week period) inappropriately. He also made advances on her and said he’d be willing to “fool around” if she wanted. **When victim went to chain of command, she was “advised nothing was going to happen” to the accused if she reported the incident.**

**When victim went to chain of command, she was “advised nothing was going to happen” to the accused if she reported the incident.**

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## Accused Perpetrators Were Discharged in Lieu of Court-Martial, Including Several Who Admitted to the Crime

Below are summaries of the multiple cases where the accused were allowed to be discharged in lieu of trial by court-martial and face no legal consequences or appropriate punishment:

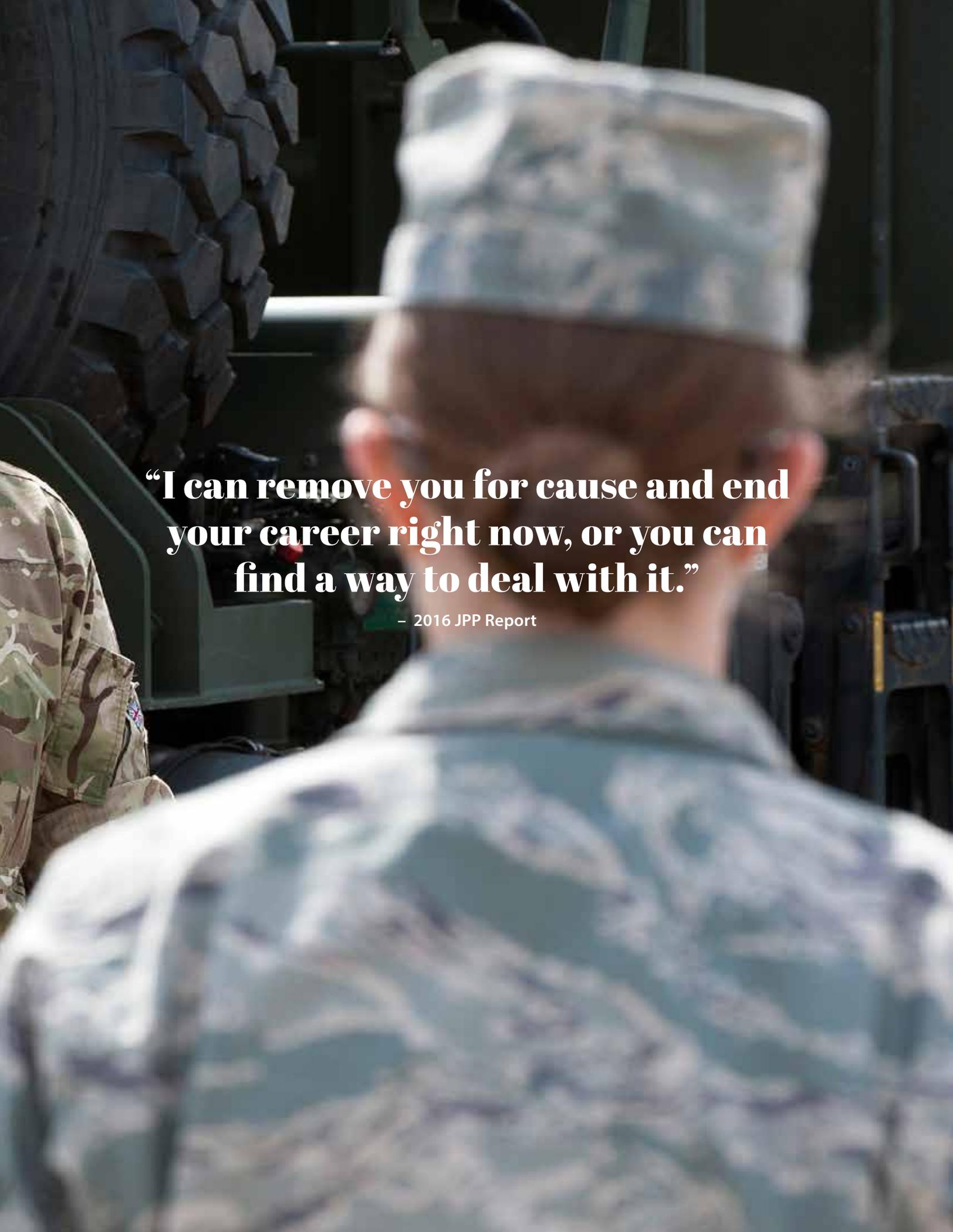
- Victim reported and **the investigation “established probable cause to believe that SGT [REDACTED] committed the offense of Rape of An Adult by Force and Cruelty of Subordinates”** when he held his subordinate victim down and raped her. **“CPT [REDACTED] Trial Counsel ... concurred there was probable cause” to believe the charges.** The accused requested and **received a discharge in lieu of trial.**
- Victim was reportedly raped by accused when he entered her room. She didn't know who he was at first, but later was able to identify him. **Despite prior agreement to move forward with court-martial,** the command agreed to the accused's request to separate from service in lieu of court-martial.
- Victim reported that after a night out, while passed out, the accused took underwear off and groped him. During the investigation, the accused “admitted to groping [REDACTED]” and was given an administrative separation.

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## ZERO Cases of Retaliation Prosecuted Despite Congressional Action

As part of the initial case request, Senator Gillibrand specifically made a request for retaliation cases related to sexual assault cases. The DoD provided ZERO case files on retaliation. As we know from last year's Rand Military Workplace Study,<sup>14</sup> retaliation remains a major concern in the military: **62% of women who reported being sexually assaulted experienced retaliation.** The amount of retaliation remains unchanged from 2012, while the estimated number of unwanted sexual contacts remains at 2010 levels – an average of 52 new cases every day.

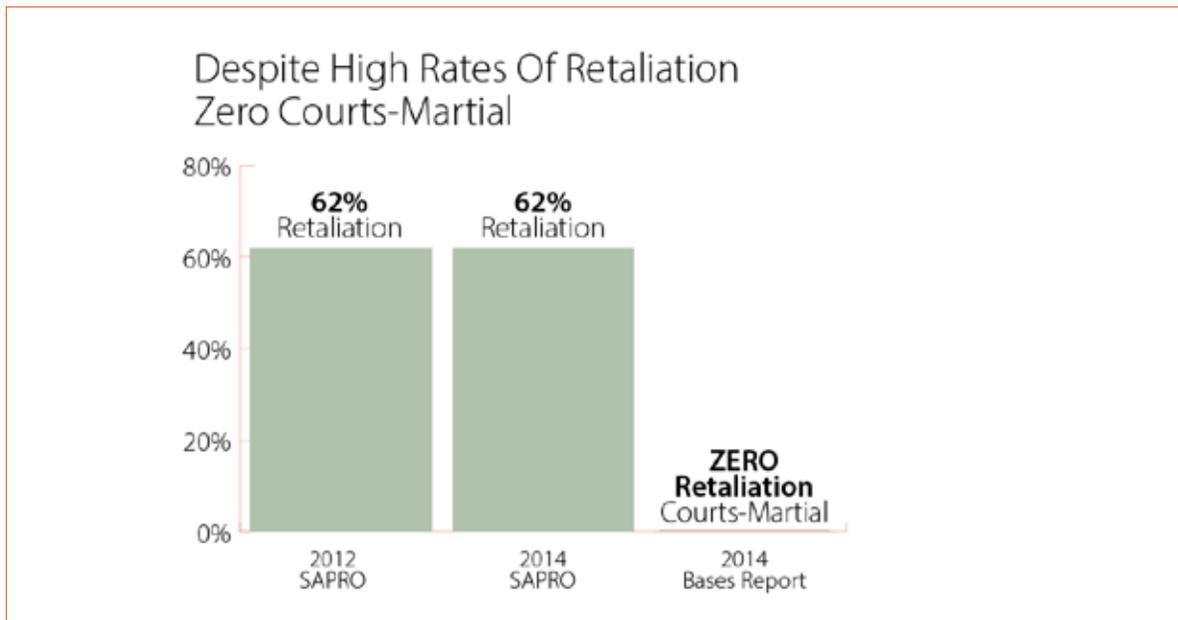
In 2014, Congress specifically made retaliation a crime. Nevertheless, we have seen scant to no evidence that retaliation cases are being pursued anywhere in the services. The lack of prosecution



**“I can remove you for cause and end your career right now, or you can find a way to deal with it.”**

– 2016 JPP Report

of retaliation may be related to the finding that, **according to the DoD SAPRO report, retaliation was perpetrated by a member higher up the chain of command in 58% of the time.** Of the 62% of women who reported some form of retaliation, over one-third said they experienced administrative action, and 40% said they faced other forms of professional retaliation.<sup>15</sup> These findings undermine the current argument that commanders who have the sole convening authority to prosecute these cases will objectively pursue cases against themselves or their close peers. Human Rights Watch did a study that showed these cases were not taken seriously, and in many cases, commanders are not using the multiple tools available to them to truly crack down on these retaliation cases.<sup>16</sup>



This year, the Judicial Proceedings Panel released a report entitled “Report on Retaliation Related to Sexual Assault Offenses” that determined that retaliation harms victims, damages unit cohesion, and disrupts mission readiness. It also deters other victims from reporting sexual assault in the future. Below are a few of the stories the report detailed:

- A former Army officer told the JPP that after she reported to her commander inappropriate touching by a senior ranking officer, the commander told her, “I can remove you for cause and end your career right now, or you can find a way to deal with it.” Fearing the loss of her career, the victim chose not to report two out of the three incidents she experienced over the next year.<sup>17</sup>

**“I can remove you for cause and end your career right now, or you can find a way to deal with it.”**

- Another victim, a former Coast Guard member, spoke of being sexually harassed by her senior enlisted supervisor, who made sexual comments and touched her inappropriately. She described what was happening to her chief petty officer, but he took no action. When the situation worsened, she told her supervisor and the chief that the harassment needed to stop. In response, her supervisor verbally attacked and threatened her, stating that he would “go toe-to-toe with [her]” and “come at [her] with both barrels” if she made a report to the command.<sup>18</sup>
- A dependent spouse who testified before the JPP described how her husband experienced retaliation after she reported that her husband’s co-worker, a senior airman, had raped her. This retaliation from his chain of command persisted throughout the judicial process, even after the accused pled guilty. She noted that the retaliation “was so stressful that during the trial I almost gave up and walked away. I didn’t want to testify. I didn’t want to be a part of any of it.”<sup>19</sup>

**Several case files reported situations of retaliation and hostile work environments against the reporting service member.** Below are several cases found in this request that demonstrate a culture of harassment and retaliation on military bases:

- Victim reported she was sexually assaulted after hanging out with other Marines. She was not drinking but others were, and she went to bed and then woke up next to the accused, who was naked, masturbating, and touching her. **The military investigator found several messages on the accused’s cell phone that another Marine suggested that the accused threaten and scare the victim to not participate in the investigation.** He later admitted to this. Victim was later interviewed and declined to participate in the investigation.
- Victim reported that while on watch with the accused, he continually sexually harassed her and other sailors. While in the Starboard Ace compartment, he attempted to kiss her, but she was able to turn away so he only kissed her cheek. She told him to stop and walked away, but he cornered her and said he needed to show her something for work, and then he held her against a pipe railing. He undid her coveralls and vaginally raped her. She did not scream for help because she believed nobody would be able to hear her. She left and did not return to duty. **She did not report, but during the next few months, the accused**

was reportedly “rude and disrespectful” to her, leading her to report the rape so she could get away from him. Case did not move forward due to “insufficient evidence.”

- Victim alleged a sexual assault. The accused said it was consensual. **While this investigation was going forward, she alleged acts of retaliation.** Command investigated and failed to “uncover any significant or direct reprisals as a result of the victim reporting.” **Command determined there was insufficient evidence to prosecute, but did recommend that the ship implement additional training concerning victim sensitivity.**
- Victim alleged that after drinking, she went to her ship and met up with the accused. They went into an unoccupied room and she woke up to being sexually assaulted. Blood stains were on the floor, indicating a violent exchange. **She left and told her friends about it but was afraid that if she reported, she would get into trouble.** She initially decided to file a restricted report, but then decided she didn’t want others to go through the same trauma so she filed the report unrestricted.



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## In 2/3 of Cases, the Sexual Assault is Perpetrated by a Higher-Ranking Service Member

As noted above, the fact that nearly 8 out of 10 military sexual assault survivors lack the confidence to report their attack is a severe hindrance to ridding the military of dangerous sexual predators.<sup>20</sup> A review of the case files we requested found that nearly 2/3, or 64%, of the cases at the four largest bases had a perpetrator of a higher rank assaulting a victim of a lower rank.

When the sole discretion of whether or not to prosecute a sexual assault lies higher up in the ranks – and within the same chain of command – of the accused, it may offer a key insight into why survivors are so fearful to report the crimes committed against them. This builds on the findings of the DoD’s own survey, which shows that a victim of military sexual assault is already more likely to be retaliated against for reporting than to see his or her assailant face a judge.<sup>21</sup>



Below are summaries of several cases that reflect this unfortunate reality:

- Victim reported and **the military investigation concluded that there was probable cause to believe that the accused committed the offense of rape** of an adult by use of force when he held his subordinate victim down and raped her. **Additionally, the investigation found probable cause that he committed the offense of cruelty of subordinates.** The accused requested and **received a discharge in lieu of trial.**
- **Perpetrator accused of maltreating victim, a person subject to his orders,** by telling her, **“not as good as my dick in your mouth”** and **“my dick would feel so good inside you.”** The case went to NJP, where he was reduced to one rank lower and required to perform 45 days extra duty.
- **Victim reported that he was sexually assaulted by his former company commander. Military investigation established probable cause that the accused committed sodomy and cruelty of subordinates when he sexually assaulted the victim.** The case went to NJP and the accused only received a written reprimand.

- **A Captain was accused by four victims under his command of the crimes of sexual assault, abusive sexual conduct, and cruelty, oppression, or maltreatment of subordinates.** The initial investigation found probable cause to pursue all of these charges. He was only charged with the lesser infractions, despite the initial investigator finding probable cause for all of the infractions.
- In one case, he told his victim, “you belong to me” and “I can make your life a living hell,” and he commented on the physical appearance of her stomach. He told another victim who was subject to his orders, “good morning beautiful, so I have an idea and it makes a long day end happy, it will make you sleep better, I want you to have an illegitimate love child, is it appropriate to share a dirty thought about a pretty girl, are you a fan of multiple orgasms, and what size boobs do you have because they are perfect and I want my wife to get that size.” In a separate charge, reasonable grounds were found to exist to satisfy the charge of abusive sexual contact where the accused was accused of touching the inner thigh, breast, and stomach of his victim to arouse and gratify his sexual desire. Reasonable grounds were also found to exist for the charge of assault consummated by battery when, after ordering the victim into a room, the accused picked up the victim and threw her on a bed in her barracks room. He had been drinking alcohol with enlisted soldiers from his company. He was also accused of saying the **“Delta Company females are bitches, sluts, whores, and skanks.”**

Installation	Accused of Higher Rank	Total # of Cases Where Service Member Crime Against Service Member and Ranks Available	% of Cases Where Accused Higher Rank
Wright Patterson	0	0	0%
Norfolk	14	18	78%
Fort Hood	39	64	61%
Camp Pendleton	21	34	62%
<b>TOTAL</b>	<b>74</b>	<b>116</b>	<b>64%</b>

- The case was recommended to go to a general court-martial, but the Captain agreed to a plea deal, in which the convening authority disapproved of any sentence of confinement greater than 18 months, but approved dismissal from service.
- **Victim reported a sexual assault by her superior.** The military police investigation determined that probable cause existed that the accused committed a sexual assault by engaging in sexual acts with a subordinate while she was under the influence of alcohol and unable to provide consent. His case went to court-martial and he pled not guilty on all sexual assault and abusive sexual contact charges, which were in turn dismissed. He pled and was found guilty of having sexual intercourse with a woman not his wife (adultery) and of disobeying orders and fraternizing. Punishment was a reduction in rank from E-5 to E-3. **He was not discharged.**
- **Victim reported that her superior, while at basic machine gun course training, thrust his pelvis against her and asked her, “are you motivated?”** All charges were dismissed, but accused had to get formal counseling. **No reduction of rank.**
- **Victim reported that she was sexually assaulted twice by her superior. During the course of the investigation, another victim who was under his command came forward.** The accused said both cases were consensual. The case went to NJP, where the accused received decrease in rank to CPL and forfeiture of \$2,426 in pay for failure to follow order or regulation, and adultery.
- **Victim went over to residence of her mentor – a Senior Non-Commissioned Officer** – who had already been drinking. She stayed, but felt uncomfortable because of his higher rank. When she tried to leave, he forcibly tried to make her stay. She was able to leave. Later they texted. She didn’t want to talk about it and he did. Because she didn’t want to talk about it, **he started behaving with hostility toward her, which affected her working environment.** She felt compelled to come forward because she noticed he had picked up another female to mentor, and she didn’t want that female to be in danger like she had been. **No disciplinary action taken, even though military investigator recommended a special court-martial.**
- **Victim advocate notified investigators of sexual assault by accused against a subordinate. Military investigation found probable cause that the accused committed the offense of abusive sexual contact** when he rubbed his subordinate victim’s stomach, touched her thigh and arm, and brushed his hand against her breast. Went to NJP but it is unknown what punishment he received.

- **Victim reported that her Staff Sergeant inappropriately touched her** while he put his face in her groin area while she was asleep. Military investigation determined that probable cause existed for crimes of abusive sexual contact and cruelty of subordinates. Unknown if any action was taken.
- Two victims claimed sexual assault by the accused when **he forced two lower-ranking soldiers to touch his penis through his clothes, and when he also unlawfully touched one of the victims on her waist.** Unknown if any action was taken.

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## Letting Predators Go Free: Lesser Charges & Low Conviction Rates

**Some cases illustrate a complete failure to hold offenders accountable. Even when the accused admitted to raping the victim, no legal or disciplinary action was taken.**

- **Victim reported she was raped by accused in 2011. When questioned, the accused admitted to having non-consensual sex with victim.** She was not under the influence of drugs or alcohol, but no legal action was taken due to the law at the time: in 2011, “sleep” was not considered incapacitated. **Despite the accused admitting to having “non-consensual sex,” the command took NO action, and he walked away with no punishment whatsoever.**

According to a recent Stars and Stripes report,<sup>22</sup> *“Disparate sentences aren’t solely due to military jury sentencing: Commanders’ decisions also play a role. In a 2011 case in which a soldier was sexually assaulted, three defendants — two soldiers and a Navy petty officer — were tried on a variety of charges stemming from the assault, and each received significantly different sentences.”*<sup>23</sup>

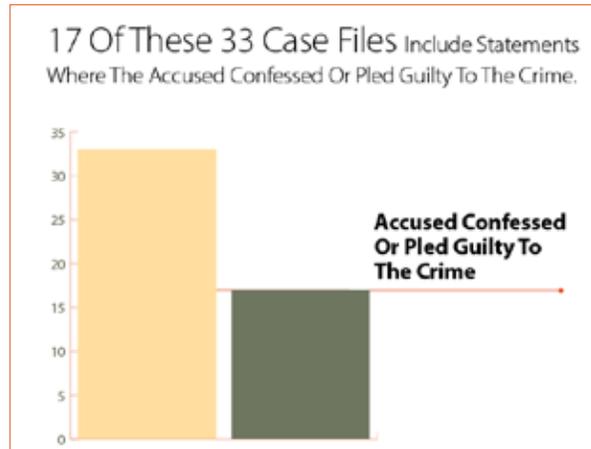
**Many of the accused who were initially charged with sexual assault ended up receiving punishment for far lesser crimes. Typically, they were charged with crimes such as violation of an order, or adultery, and given an administrative discharge from the Service; or they received non-judicial punishment, such as reduction in rank, docked pay, or confinement to the barracks.**

**This finding is similar to reporting by the Associated Press in 2013:** *“At U.S. military bases in Japan, most service members found culpable in sex crimes in recent years did not go to prison, according to internal Department of Defense documents. Instead, in a review of hundreds of cases filed in America’s largest overseas military installation, offenders were fined, demoted, restricted to their bases or removed from the military.”*<sup>24</sup>

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## In Almost Half of All Sexual Assault Convictions, The Accused Confessed or Pled Guilty to the Crime

Out of the 329 case files received, only 33 of the accused were convicted of sexual assault. **17 of these 33 case files include statements where the accused confessed or pled guilty to the crime.** It is possible that confessions were given in more cases, but the files received do not reflect that. Approximately half of the sexual assault convictions resulted from confessions or guilty pleas, suggesting that the military needs to do a much better job of prosecuting cases that lack a confession or plea deal.

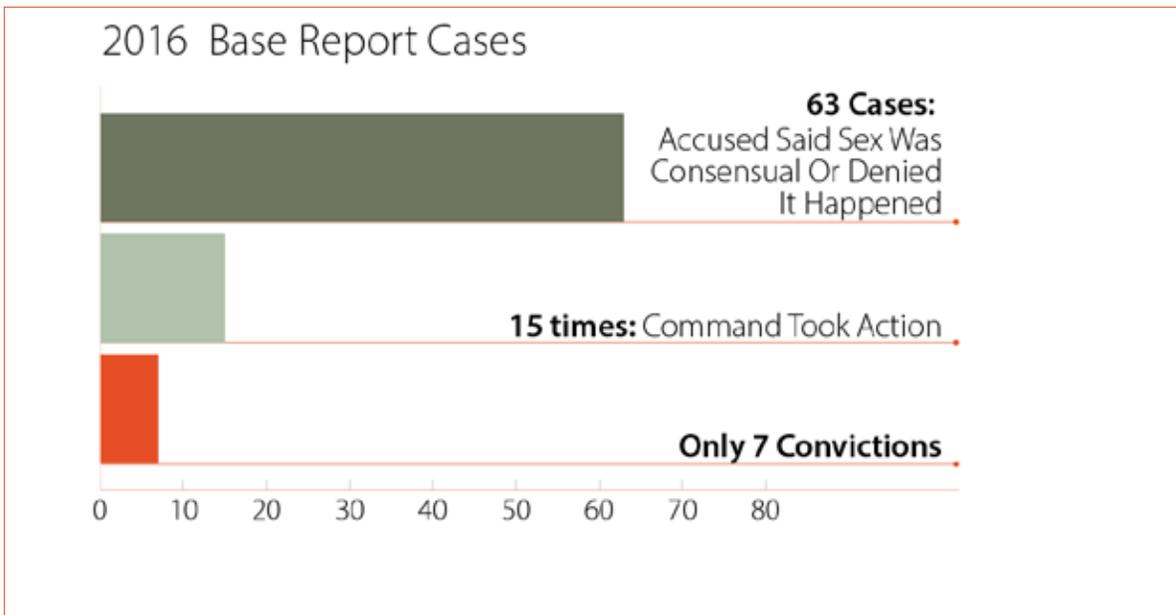


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## Evidence Ignored by Commanders – Survivors Discounted

One of the causes of such a low conviction rate (absent a confession) is that commanders, acting as the sole convening authority, almost universally discount the testimony of the victim. An alarming number of cases go cold when the accused and the alleged survivor provide conflicting statements about whether the sex was consensual. **Of the 63 cases in which the accused told the authorities that the sex was consensual or denied it happened, command took action just 15 times.** In these cases, there were 7 convictions of sexual assault. To have convictions in 7 out of 15 “he said-she said” cases shows that if commanders believed the testimony of the victims, more convictions of rapists might be obtained. **Unfortunately, about 76% of these cases never go to trial.**

**No data bear out the military’s claim that commanders have been tougher on sexual assault cases than independent military prosecutors would be.** In fact, using the limited files provided by the DoD for this report, it appears that commanders are leaving convictions on the table by refusing to effectively prosecute sexual assault cases. It is here that it is vital to note that commanders, acting as the sole convening authorities in these cases, lack the significant legal and investigative training and experience that highly trained prosecutors have. Where many variables may appear odd to an untrained observer, fact patterns in sexual assault cases, both inside and outside the military, can offer key insight to a trained prosecutor.



## Low Case Numbers Provide Cause for Concern

Naval Station Norfolk and Wright Patterson Air Force Base provided a strikingly low number of reported cases in proportion to the number of service members stationed there. Additionally, many of the Fort Hood case files are incomplete and do not provide even the most basic case narratives. Senator Gillibrand has proposed more transparency for these case files, so that the true nature of this problem will be out in the open, and those trying to combat it will be equipped with the best information and research possible.

Category	Army	Navy	Air Force	USMC
Alleged Assailants	127	86	<b>5</b>	111
Estimated Number of Service Members	48,141	50,300	<b>22,104</b>	43,170
Ratio	.26%	.17%	<b>.02%</b>	.26%



# Policy Recommendations:

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Below are several policy recommendations for the Congress to consider implementing via this year's NDAA that would positively benefit the efficiency and effectiveness of the UCMJ in combating sexual assault:

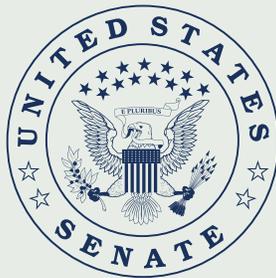
1. **Remove the decision to prosecute from the chain of command:** Align the military with the federal criminal justice system by removing the convening authority as the disposition authority and instead vest that decision with experienced military prosecutors with extensive litigation experience.
2. **Improve transparency of the military justice system:** Provide public access to court-martial records, modeled off of a system such as the civilian PACER system, as well as provide an opportunity for any member of the public who wishes to observe a trial in progress to do so.
3. **Ensure accurate accounting of crime statistics:** Track military justice statistics in one common database, including information on case disposition, administrative action, and non-judicial punishments. The database should capture statistics from all sexual assault cases, including those involving military spouses, domestic partners, and children.
4. **Improve the proficiency of the military's litigation field:** Cultivate and retain the most talented and motivated litigators through added career protections for those judge advocates who have volunteered to spend consecutive tours in litigation billets.
5. **Provide adequate supervision in complex cases:** Ensure that the most experienced litigators are supervising more junior counsels in every complex case, to ensure that the counsel is adequately representing the interests of the government or accused.
6. **Adequately address retaliation against crime victims:** Currently, the services do not adequately track or address retaliation against victims of crime, especially sexual assault victims, despite evidence that retaliation is prevalent in the services. Establish a system to track incidents of retaliation, including the initial report, subsequent investigation, punitive or administrative action taken against the offender, supportive actions taken for the victim, and information on the victim's ultimate career trajectory. Hold those who retaliate accountable, rather than ignore the problem.
7. **Enhance punishment for offenders who abuse their authority:** Amend Article 120 of the UCMJ to increase the maximum punishment available for sexual offenders who abuse their authority and assault military victims who are lower-ranking.

## (Endnotes)

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SNAPSHOT REVIEW OF SEXUAL ASSAULT REPORT FILES  
AT THE FOUR LARGEST U.S. MILITARY BASES

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