

SNAPSHOT REVIEW OF SEXUAL ASSAULT REPORT FILES

AT THE FOUR LARGEST MILITARY BASES IN THE UNITED STATES

2015 Department of Defense Documents Reveal
Continued Lack of Improvement in
Military Justice System

SEPTEMBER 2017



EXECUTIVE SUMMARY

KEY TAKEAWAYS

- **Higher Rate of Civilian Sexual Assaults than SAPRO Reports**
- **Survivor Lack of Confidence in the System Remains**
- **Widespread Prevalence and Lack of Prosecution of Retaliation**
- **Inconsistent and Insufficient Punishments for Military Sexual Assault**

Despite years of incremental reforms passed by Congress (beginning nearly five years ago in December 2012),¹ continued high-profile media reporting on the issue,² and repeated claims by military leadership of zero tolerance for sexual assault,³ sexual assault in the military is still pervasive.

According to the most recent Department of Defense (DoD) Sexual Assault Prevention and Response Office (SAPRO) report that was released this May, the overall sexual assault reporting rate remained flat, and the retaliation rate against survivors remained at an unacceptable six out of ten for a third time in a row.⁴ It is clear that **despite years of Congressional reforms, our men and women in uniform still do not have confidence in the military justice system.** These latest statistics do not reflect the good order and discipline that is essential for our military to perform at its highest level.

Due to this unacceptable lack of progress in fighting sexual assault in the military, for the third consecutive year, U.S. Senator Kirsten Gillibrand requested military sexual assault case files from the largest domestic base of each branch of the military (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) and produced this report based on the files to provide a unique and in-depth snapshot review of the state of sexual assault in our nation's military. No other report provides the independent oversight that is achieved by analyzing these files, and Senator Gillibrand, in her role as Ranking Member of the Senate Armed Services Personnel Subcommittee, takes this responsibility very seriously.

This report on the 2015 case files reaffirmed many of the troubling trends found in the 2013 and 2014 case file reports. **Levels of civilian survivors remain higher than reported** in the current SAPRO report for the third time in a row, providing further evidence that this problem extends beyond the military population and into civilian communities as well. In addition, the **overall prosecution rates of military sexual assault cases remained flat over the three years that Senator Gillibrand's office has been analyzing these case files.** This is in line with the most current SAPRO report, which shows that fewer cases are going to trial, and among the relatively few that do, fewer cases are resulting in convictions.

Perhaps most shockingly, Senator Gillibrand's office requested all cases of retaliation, and received ZERO. Nearly six out of 10 survivors say they have experienced some form of retaliation for reporting military sexual assault in the most recent SAPRO report, despite repeated efforts to stamp out the scourge of retaliation against military sexual assault survivors. **The amount of retaliation remains essentially unchanged from 2012 to 2016.**

Additionally, the emergence of the Marines United scandal this March, in which online harassment and nude photo sharing of service members came to a boiling point, highlights a pervasive cultural problem and **a new reality in the age of social media reflected in several case files** prevents our military from maintaining good order and discipline and focusing on our many and pressing national security demands.

The men and women of our Armed Forces are America's greatest asset in keeping our nation safe at home and promoting our interests abroad. Service members put their lives on the line for our country, and Congress owes them a debt of gratitude that can never be fully repaid. These sexual assault case files show that Congress has failed at its solemn responsibility to protect our service members.

The data compiled in this report make a profound argument for the professionalization and modernization of the military justice system, to allow independent military prosecutors to aggressively adjudicate and hold sexual predators who harm our military readiness accountable. Congress should take this report as an additional wake-up call. We must solve this problem.



“THEY DIDN’T BELIEVE ME FROM THE START, I DIDN’T WANT TO REPORT, BUT I JUST COULDN’T LIVE WITH MYSELF IF I DIDN’T.” – SAPRO REPORT, FY 2016

SUMMARY FINDINGS

HIGHER RATE OF CIVILIAN SEXUAL ASSAULTS THAN SAPRO REPORTS

For the Third Year in a Row, Case Files Show a Higher Prevalence of Civilian Victims of Military Sexual Assault Than is Stated in the SAPRO Report

As shown in the review of 2013 and 2014 case files, rates of civilian survivors remain high. This includes civilian women living near military communities, non-military spouses of service members, and minors. They total 83, or **35%, of the cases analyzed** (up from 31% in 2014).

This is significantly higher than the rate of civilian survivors that is stated in the DoD SAPRO Report for FY 2014 (12%)⁵ and the report for FY 2016 (13%).⁶ Additionally, it is important to note that the SAPRO report also excludes cases involving intimate partners, which fall under the purview of the DoD's Family Advocacy Program and therefore remain uncounted in the DoD's civilian victim count.

As outlined in the 2015 case file report:⁷ “The DoD routinely seeks jurisdiction of cases when there is dual jurisdiction with civilian authorities, 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.”

SURVIVOR LACK OF CONFIDENCE IN THE SYSTEM REMAINS

An Alarming Attrition Rate: Nearly Seven out of Ten Survivors Do Not Report Their Sexual Assaults, According to the Latest SAPRO Report. In Case Files Analyzed, Almost 14% of Those Who Did Report Later Opted Out of the Military Justice Process

According to the case files provided, 33 out of 238 survivors, or **14%**, **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. **This includes 28%, or 19 out of 69 cases, at Marine Corps Base Camp Pendleton.** 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.

Survivors Aren't Believed – Evidence of Survivors' Testimony Routinely Discounted

One of the potential 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 and in one case mishandled and did not even report the case to law enforcement. An alarming number of cases do not go forward when the victim and accused provide conflicting statements on whether or not the sex was consensual. **Of 42 cases where the accused and the alleged survivor provide conflicting statements, only 12 (29%) went to trial and only three (7%) were convicted of a sexual assault crime.**

Apparent Double Standards for Higher Ranking Service Members

In cases where ranks were available, 62% of cases involved assaults by higher-ranking service members on lower-ranking service members. Several cases were analyzed where it appears the higher-ranking perpetrator is believed over the lower-ranking survivor, which leads to either: 1) survivors not participating in the military justice process or 2) when the military justice process does go forward, convictions are rare and sentences are low. There appears to be an inherent bias when commanders make military justice decisions in these cases, and because of this, the disposition authority must be taken out of the chain of command and placed in the hands of trained, unbiased military lawyers.

Cases with Multiple Victims & Discharges in Lieu of Trial Demonstrate Need for Military to Crack Down on Predators So They Don't Commit More Crimes

In ten cases, the accused was found to have had multiple victims. Additionally, many of the case files reviewed resulted in a discharge in lieu of trial. Out of the 238 cases, 12 were discharged in lieu of trial, and received no other punishment, because no military justice or non-judicial

punishment went forward. This lack of justice, where the accused is simply discharged from the military and put back into the civilian community with no consequences could lead to even more sexual assaults in our civilian communities.

Perpetrators Not Only Sexually Assault, but Take Videos and Photos of Victims

The recent Marines United nude photo crisis shed light on a new reality in our military in the age of social media. There were five cases analyzed where the perpetrators not only sexually assaulted service members and civilians, but created their own video and photographic evidence of their assaults. Congress must address this disturbing aspect of the military sexual assault crisis head-on, and those responsible must be held accountable.

WIDESPREAD PREVALENCE AND LACK OF PROSECUTION OF RETALIATION

ZERO Cases of Retaliation in 2015 Case File Request

Despite specifically requesting retaliation case files, Senator Gillibrand received ZERO retaliation case files from the DoD. Even though there have been some efforts to stamp out the scourge of retaliation against military sexual assault survivors, this year's SAPRO report found that **nearly six out of 10 survivors say they have experienced some form of retaliation for reporting the crime.** The amount of retaliation remains essentially unchanged from 2012 to 2016, while fewer cases are moving forward to prosecution and conviction.⁸ Human Rights Watch found that service members who reported a sexual assault were 12 times more likely to suffer retaliation than see their offender, if also a service member, get convicted for a sex offense.⁹

INCONSISTENT AND INSUFFICIENT PUNISHMENTS FOR MILITARY SEXUAL ASSAULT

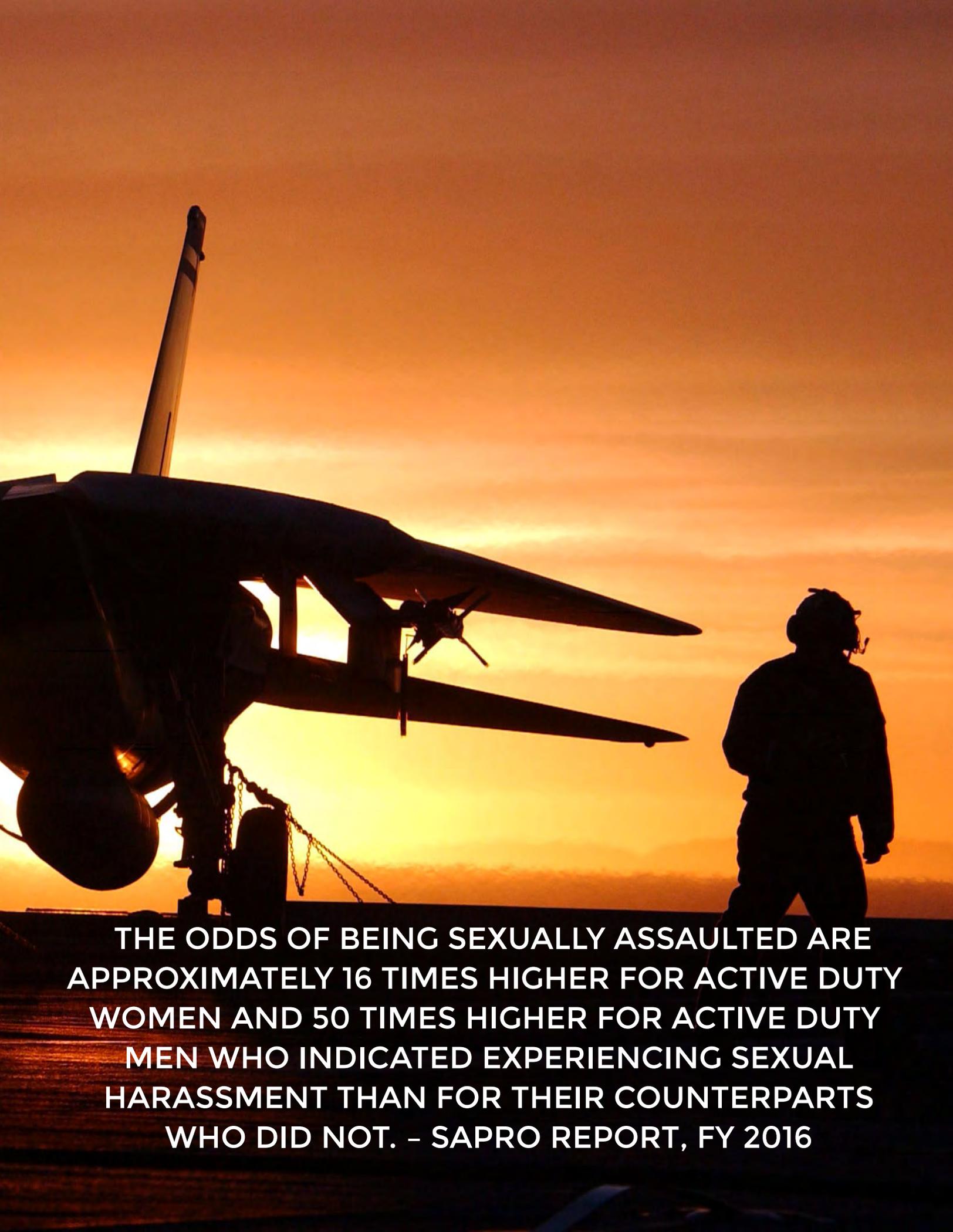
Military Justice Results Remain Flat, Show No Improvement from Previous Reports

Despite some reform efforts, **the overall prosecution rate of military sexual assault cases on these four bases remained stable** over the three years Senator Gillibrand's office has been analyzing these case files. **Yet prosecution rates in the military overall have actually decreased, according to the latest SAPRO report.**¹⁰ There were a total of 238 cases for 2015, down from 329 cases in 2014, but up from 107 cases in 2013. **Only 23% of 2015 cases went to trial, and only 13% were convicted of a sexual assault crime.**

Just as in 2014 Case File Report, in Almost Half of All Sexual Assault Convictions, the Accused Confessed or Pled Guilty to the Crime

Out of the 238 case files received, only 31 (13%) of the accused were convicted of sexual assault. 15 (48%) of these 31 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 given that the case files sent by the DoD are heavily redacted and incomplete, it is impossible to know for certain.

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.



THE ODDS OF BEING SEXUALLY ASSAULTED ARE APPROXIMATELY 16 TIMES HIGHER FOR ACTIVE DUTY WOMEN AND 50 TIMES HIGHER FOR ACTIVE DUTY MEN WHO INDICATED EXPERIENCING SEXUAL HARASSMENT THAN FOR THEIR COUNTERPARTS WHO DID NOT. - SAPRO REPORT, FY 2016

FINDINGS

FAILING MILITARY JUSTICE SYSTEM CONTINUES TO HARM CIVILIANS, INCLUDING MILITARY FAMILY MEMBERS

For the Third Year in a Row, Case Files Show a Higher Prevalence of Civilian Victims of Military Sexual Assault than SAPRO Report

The DoD estimates that approximately 14,900 of the U.S. military's 1.3 million active-duty members experienced one or more instances of sexual assault in the past year.¹¹ The survey results were based solely upon answers provided by active-duty service members.

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 14,900 sexual assault survivors most likely vastly underrepresents the scope of sexual violence in military communities.

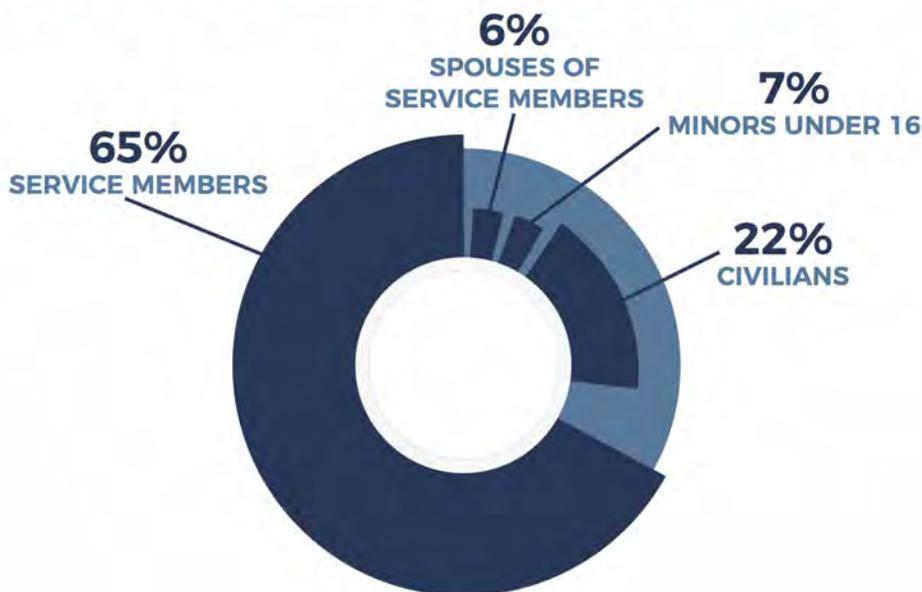
In reported cases (actual cases that moved forward in the justice system, and not the prevalence survey) the SAPRO Report for FY 2014 had a rate of 12% civilian victims, and the SAPRO Report for FY 2016 had a rate of 13% civilian victims. The Gillibrand report contains a much higher rate, which continues to show a disturbing trend.

In the 238 cases analyzed for the four bases in 2015, the number of female civilians, spouses of service members, and minor survivors remained significant, accounting for 35% of the total cases analyzed.

Of the case files reviewed:

- **22% of Reports Are by Civilian Women, Uncounted in the DoD's Sexual Assault Prevalence Surveys.** Analysis of the case files reveals that there were 52 alleged assaults by service members on civilian women out of 238 cases during 2015.
- **7% of Reports Involve Minors under the Age of 16, Uncounted in the DoD's Sexual Assault Prevalence Surveys.** Analysis of the case files reveals that there were 17 alleged assaults by service members on minors under the age of 16 out of 238 cases during 2015.
- **6% of Reports Are by Civilian Military Spouses, Uncounted in the DoD's Sexual Assault Prevalence Surveys.** Analysis of the case files reveals that there were 14 alleged assaults by service members on their civilian spouses out of 238 cases during 2015.

CIVILIAN, MINORS UNDER 16, SPOUSE, AND SERVICE MEMBER SURVIVORS



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 National Defense Authorization Act (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.”¹² Local District Attorneys with limited resources often oblige these requests, as the Associated Press has reported.¹³

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

There also exists a disparity in cases that move forward. **In 63% of case files involving non-minor civilians, no legal or punitive action was listed as being taken, compared to case files involving service members, in which no action was taken only 37% of the time.**

LACK OF CONFIDENCE IN THE SYSTEM

An Alarming Attrition Rate: Nearly Seven out of 10 Survivors Do Not Report Their Sexual Assaults According to the Latest SAPRO Report. In Case Files Analyzed, Almost 14% of Those Who Did Report Later Opted Out of the Military Justice Process

According to the case files provided by the DoD, 33 out of 238 survivors, or 14%, 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. **This includes 28%, or 19 out of 69 cases, at Marine Corps Base Camp Pendleton.** 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 command-led military justice system.



**NEARLY 7 OUT OF 10 MILITARY
SEXUAL ASSAULT SURVIVORS
LACK THE CONFIDENCE TO REPORT THEIR ATTACK**

**“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, FY 2014, and FY 2016 DoD SAPRO reports, **approximately six out of 10 female service members who reported being sexually assaulted said they were retaliated against.** 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, and this is further evidenced by the above statistic.

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 who have survived sexual assault.

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.

Survivors Aren't Believed – Evidence of Survivors' Testimony Routinely Discounted

An alarming number of cases do not go forward when the victim and accused provide conflicting statements on whether or not the sex was consensual. **Of 42 cases where the accused and the alleged survivor provide conflicting statements about whether the sex was consensual, only 12 went to trial and only three were convicted of a sexual assault crime.**

2015 BASE REPORT CASES



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. In other words, 92% to 98% of sexual assault accusations are likely to be accurate.¹⁴

There are no data in this report that confirm the military's claim that commanders have been tougher on sexual assault cases than independent military prosecutors would be. In fact, the data above show how victims aren't believed when they do have the bravery to move forward with reporting sexual assaults. Commanders, acting as the sole convening authority in these cases, lack the significant legal and investigative training and experience that highly trained prosecutors have and need to understand the complexity of these cases.

Below are just two case file descriptions where the victim was not believed, illustrating this disturbing trend:

- Victim reported that she had been sexually assaulted multiple times by the accused, who had forced her to engage in oral, vaginal, and anal sex against her will. She also stated that non-consensual acts were done to her while she was asleep, and they were recorded. The video displayed the accused touching the victim's breasts and vaginal area while she was asleep, and concluded with him laughing. Victim also reported he threatened her, often strangled her. **Command declined to move forward.**

- Victim reported that after drinking with the accused, she couldn't find her barracks room. The accused took her into a room, picked her up, put her on the bed, removed her sweatpants and proceeded to put his penis in her vagina. She says she said "no" and attempted to remove herself from the situation, but he held her down until he finally stopped. The accused at first denied having sex with the victim, then changed his story and stated it was consensual. **Even though the accused changed his story, the victim was not believed, and the case was dropped.**

Apparent Double Standards for Higher-Ranking Service Members

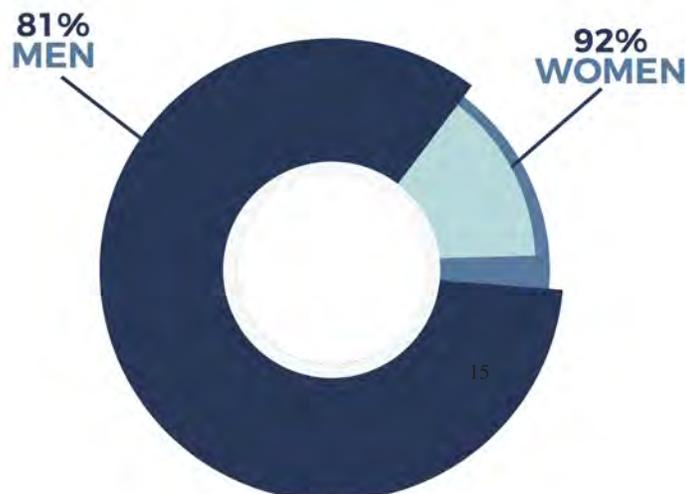
In cases where ranks were available, 62% of cases involved assaults by higher-ranking service members on lower-ranking service members. Several cases were analyzed where it appears the higher-ranking perpetrator is believed over the lower-ranking survivor, which leads to either: 1) survivors not participating in the military justice process or 2) when the military justice process does go forward, convictions are rare and sentences are low. There appears to be an inherent bias when commanders make military justice decisions in these cases, and because of this, the disposition authority must be taken out of the chain of command and placed in the hands of trained, unbiased military lawyers.

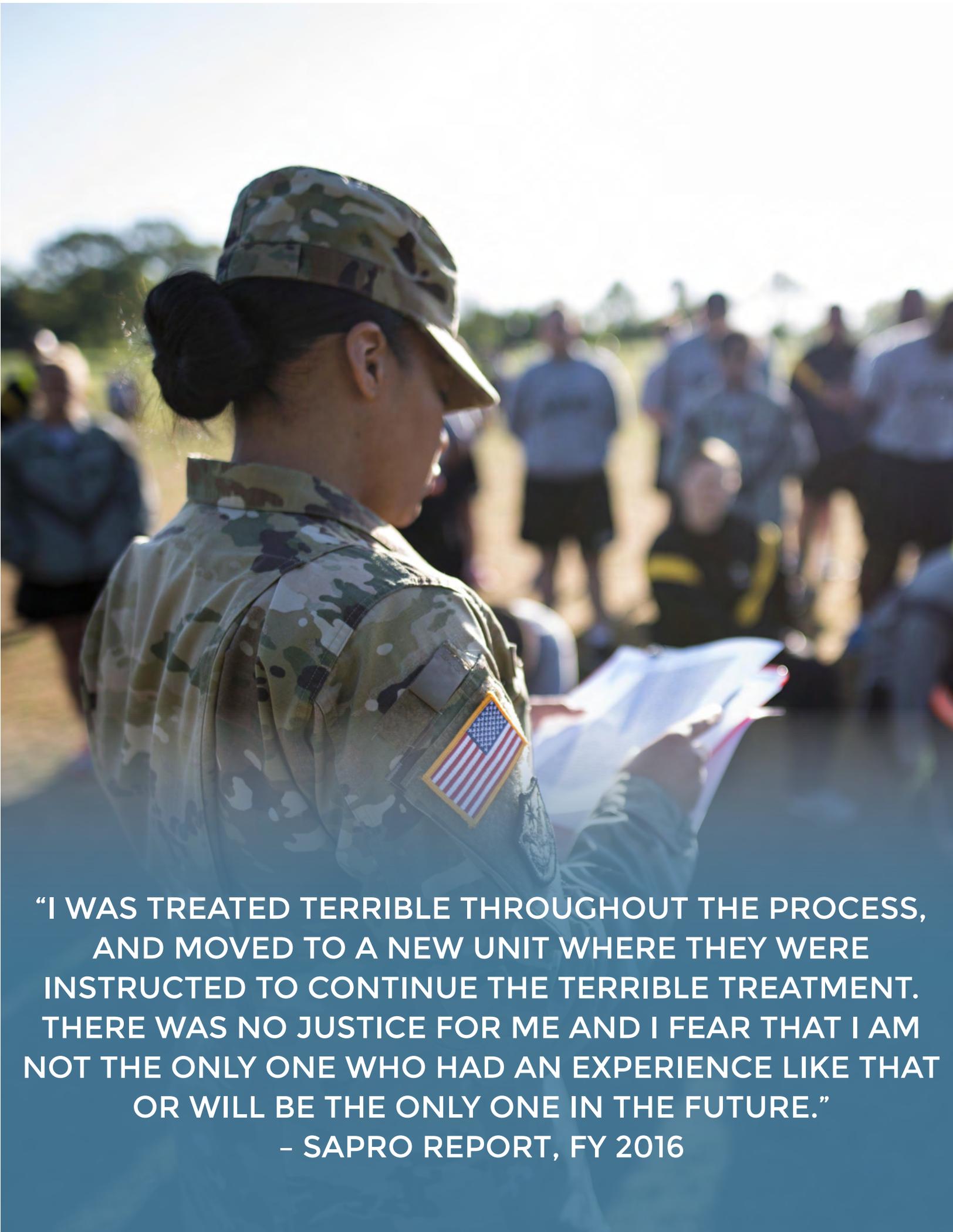
Nearly 62% of the cases at these bases had a perpetrator of a higher rank assaulting a victim of a lower rank.

INSTALLATION	TOTAL # OF CASES WHERE RANK INFORMATION AVAILABLE	# OF CASES WHERE ACCUSED WAS HIGHER RANK	% OF CASES WHERE ACCUSED WAS HIGHER RANK
WRIGHT PATTERSON	0	0	0%
NORFOLK	19	15	79%
FORT HOOD	43	23	53%
CAMP PENDLETON	12	8	67%
TOTAL	74	46	62%

The most recent SAPRO Report includes the following compelling statistics that illustrate why the role of the commander needs to be changed. These statistics also illustrate why Senator Gillibrand wrote the Military Justice Improvement Act to take convening authority from the commander and put military justice in the hands of trained, unbiased military prosecutors:

- **Victims are even less satisfied with the official actions taken against alleged perpetrators.** Down from 28% in 2015, only 20% of respondents indicated they were satisfied with official action(s) taken against the alleged perpetrator; 61% indicated that they were dissatisfied.
- Junior military members are not happy with current command climate. **Perceptions of command climate are less favorable among junior enlisted members and junior non-commissioned officers, compared to senior enlisted Service members and officers.**
- The odds of being sexually assaulted are approximately 16 times higher for active duty women and **50 times higher for active duty men** who indicated experiencing sexual harassment than for their counterparts who did not.
- The 2016 Military Investigation and Justice Experience Survey asked respondents to indicate whether response personnel and leadership informed them about the status or progress of their case. Of those who interacted with SVCs/VLCs during the military justice process, 83 percent agreed that their SVC/VLC kept them informed of their case progress. However, **of those who interacted with a Senior Enlisted Advisor, Immediate Supervisor, or Unit Commander during the military justice process, only 41 to 48 percent agreed that these leaders kept them informed about the progress of their case.**
- Another report, the IAVA's 2016 Member Survey,¹⁵ found that among its members:
 - 92% of women and 81% of men **would not** have a different view of the commander's authority if the decision to send someone to court martial was taken away from the commander.





**“I WAS TREATED TERRIBLE THROUGHOUT THE PROCESS,
AND MOVED TO A NEW UNIT WHERE THEY WERE
INSTRUCTED TO CONTINUE THE TERRIBLE TREATMENT.
THERE WAS NO JUSTICE FOR ME AND I FEAR THAT I AM
NOT THE ONLY ONE WHO HAD AN EXPERIENCE LIKE THAT
OR WILL BE THE ONLY ONE IN THE FUTURE.”**

- SAPRO REPORT, FY 2016

- **47% of female survivors and 40% of male survivors said they would be more likely to report if a trained military prosecutor made the decision to move forward** with their case instead of their commander.

Six cases below show commanders unwilling to support their subordinates (often resulting in victim declining to participate) and instead ignore accusations of improper behavior.

- Victim reported that she believed the accused sexually assaulted her, and an **investigation established probable cause that the accused committed rape of an adult by force when he engaged in sexual acts with victim against her will**, including showing her pictures of his genitalia against her will. Letter of reprimand states victims were two junior enlisted soldiers in accused's unit; accused was married at the time. Commander decided to use Non Judicial Punishment, which resulted in forfeiture of \$2,286 for one month and a written reprimand.
- Two victims **reported that they were sexually assaulted by the accused**. Accused was charged with Assault Consummated by Battery, not sexual assault, and two charges of fraternization with individuals in rank junior to himself. He received only forfeiture of half month's pay for two months, and reduction in grade from E-6 to E-5.
- Victim originally reported rape under a restricted report. Two weeks later she changed her mind and fully participated in the investigation. When she returned from military leave she went to the accused's barracks room to retrieve a hard drive she had lent him. As she was exiting, he grabbed her, pinned her against the wall, and started choking her, while she fought back. Accused then put his hands up her shirt, began to fondle her, then placed his hands down her pants, pushed her onto the bed, and vaginally raped her for a few seconds before pulling out, letting her leave, with no words exchanged. Command decided there was insufficient evidence to prosecute.
- Victim (E-3) reported that after going to a bar with other service members, she ended up leaving with two higher-enlisted sailors, E-7s. She woke up in strange room with one of the accused's penis in her mouth, and the other penetrating her vagina. One sailor went to special court martial with charges for lesser offenses of fraternization. The offender pled not guilty, and was found guilty. The sentence was very low for this higher-ranking sailor; he only received a reduction in pay grade to E-6 and restriction for 10 days.
- Commissioned Officer was accused by two enlisted soldiers. Victim reported that she was inappropriately touched by her superior. The investigation did not establish probable cause for abusive sexual contact, but did establish probable cause for Assault and Cruelty of Subordinates. Another victim accused individual of touching her without consent on her legs and shoulders, and the investigation found probable cause that the accused committed Abusive Sexual Contact and Cruelty of Subordinates.

- Victim reported that she was sexually assaulted by her superior in her platoon. He began by calling her nicknames, which she did not acknowledge, but this led up to him grabbing her around the waist, moving up her thigh without her consent. He then started texting comments to her such as “when are you going to give me a baby?” and telling her he “wanted a kiss by the end of the day.” She told him in person that his comments were inappropriate because he was a married man, but he rebuffed her and said this “was not his first rodeo.” Later, the platoon had a party, and this led to the alleged sexual assault where the accused kissed her neck and grabbed and bit her buttocks over her clothes. Accused, who had been drinking, also tried to enter victim’s barracks room while she was asleep. The case went to Special Court Martial and the accused pled guilty under a pre-trial agreement for violation of Article 92, sexual harassment. He received a sentence of only 45 days confinement, reduction to E-2, and 30 days hard labor.

Cases with Multiple Victims & Discharges in Lieu of Trial Demonstrate Need for Military to Crack Down on Predators So They Don’t Commit More Crimes

In ten cases, the accused was found to have had multiple victims, four of which are summarized below. Additionally, many of the case files reviewed resulted in a discharge in lieu of trial. **Out of the 238 cases, 12 were discharged in lieu of trial, and received no other punishment, because no military justice or non-judicial punishment went forward.** When those accused of sexual assault receive no or low punishment for their actions, they continue to be a menace to our communities. This lack of justice, where the accused is simply discharged from the military and put back into the civilian community with no consequences could lead to even more sexual assaults in our civilian communities.

- Victim was interviewed to be a witness at a separate trial of the accused when she reported that the accused had previously assaulted her. The incident, although reported to the command who investigated it as a sexual harassment case, was never reported to law enforcement as a sexual assault case. Accused was convicted at the General Court Martial for a different sexual assault on the wife of a service member and received 2 years confinement, forfeiture of all pay and allowances, and a bad conduct discharge, meaning an accusation of sexual assault was never followed up on.

- Victim 1 reported that after leaving a bar, the accused offered the victim a ride to his off-base apartment for more drinks. At that point, the accused lost memory and briefly woke up feeling something penetrating his anus. He awoke hours later completely naked and believing he had been sexually assaulted. Records reviewed revealed that the accused was the subject of another sexual assault case in 2014. DNA analysis confirmed a semen match for the accused. Victim 2 reported that he met the accused at the same bar as Victim 1 and the accused offered him a ride home. He fell asleep and woke to the accused fondling his penis, but was unable to stop him due to intoxication. The car pulled over and the victim fell out of the car, and attempted to contact his roommate and then his Squad leader. General Court Martial was convened and the accused was sentenced to 10 years confinement, forfeiture of pay and allowances, reduction to E-1, Dishonorable Discharge.
- Victim reported a sexual assault that had occurred the prior year after a birthday party in a hotel room that had been shared by partygoers. The accused was in her chain of command, and they had shared a bed to sleep in until she was awoken to him having sex with her against her will. The accused was also under another Article 120 investigation. The victim declined to participate in the civilian law enforcement investigation, but agreed to the NCIS investigation at first until she later declined to participate in that investigation too. Case was closed with no further action.

Perpetrators Not Only Sexually Assault, but Take Videos and Photos of Victims

The recent Marines United nude photo crisis shed light on a new reality in our military in the age of social media. Below are five cases where the perpetrators not only sexually assaulted service members and civilians, but created their own video and photographic evidence of their assaults. This disturbing aspect of the military sexual assault crisis needs to be addressed head-on, and those responsible must be held accountable.

- In 2014, victim reported that she had been sexually assaulted on and off for four years. Victim used medication in the evenings, which is when the assaults occurred. Accused had naked photos of victim taken during the sexual assaults. These photos were found on accused's phone. A pre-trial agreement was reached and the accused received NJP in lieu of court martial. Punishment was a reduction in rank from Sergeant to Corporal, forfeiture of \$2,450, restriction for 45 days, and 45 days of extra duty, however the restriction and extra duty were suspended for six months.
- Civilian victim reported that after hosting a party where she became extremely intoxicated, she returned home from a neighbor's house and recalled performing oral sex on two individuals. She also remembered a camera in her face. She then remembered being raped later on the bed. The next morning there was a confrontation between the victim and the accused perpetrators and they viewed the videos where they described the victim looking like a "rag doll". One of the individuals made the others delete the videos.

Multiple subjects were involved, and all but one agreed to sexual activity, and the subject who allegedly taped the exchanges admitted to doing the taping. Investigation also discovered that cocaine was brought to the party. One of the accused had no action taken against him, and two others went to NJP.

- Victim reported that she had been sexually assaulted multiple times by the accused who had forced her to engage in oral, vaginal, and anal sex against her will. She also stated non-consensual acts were done to her while she was asleep, and they were recorded. The video displayed the accused touching the victim's breasts and vaginal area while she was asleep, and concluded with the accused laughing. Victim also reported that the accused threatened her, and often strangled her.
- The accused was arrested by Virginia Beach Police Department for allegedly sexually abusing civilian victim and having sexually explicit videos of two female service members on his cell phone. Accused was sentenced by State of Virginia to 15 years confinement (with 9 years, 10 months suspended), and received an other than honorable discharge.

WIDESPREAD PREVALANCE AND LACK OF PROSECUTION OF RETALIATION REMAIN AN IMPEDIMENT TO MILITARY JUSTICE

ZERO Cases of Retaliation in 2015 Case File Request

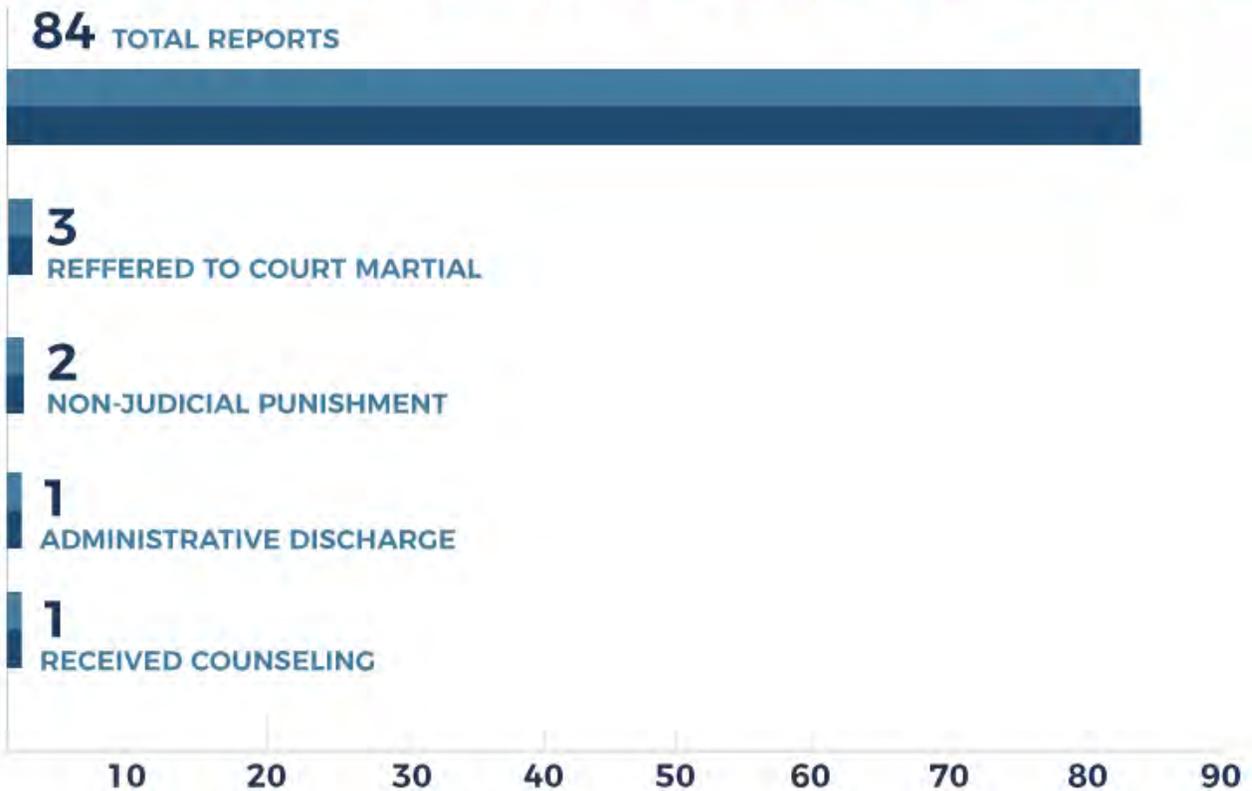
Despite specifically requesting retaliation files, Senator Gillibrand's office received ZERO cases of retaliation from the DoD. Repeated efforts to stamp out the scourge of retaliation against military sexual assault survivors, have not been effective. This year's SAPRO Report found that **nearly six out of 10 survivors say they have experienced some form of retaliation for reporting the crime.** The amount of retaliation remains essentially unchanged from 2012 to 2016, while fewer cases are moving forward to prosecution and conviction. Human Rights Watch found that **service members who reported a sexual assault were 12 times more likely to suffer retaliation than see their offender, if also a service member, get convicted for a sex offense.**

Additionally, the latest SAPRO Report numbers also show a stunningly low amount of punitive action taken for a crime that is pervasive:

Of the 84 Retaliation reports:

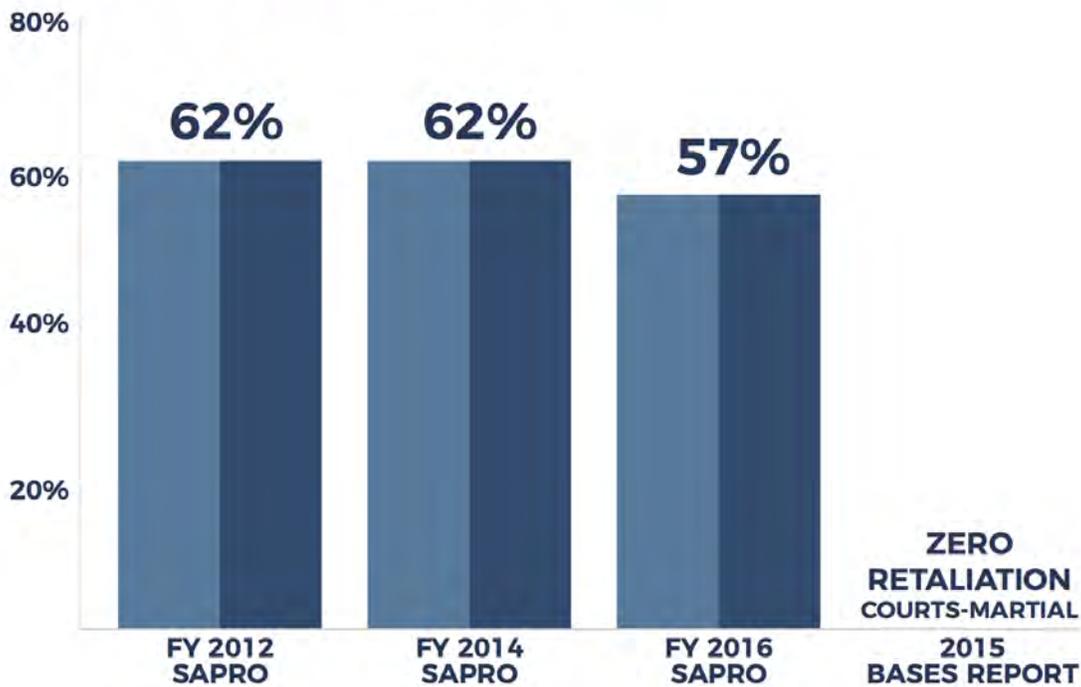
- 3 referred to court martial (**Of the 3 cases referred to court martial, only one case resulted in a conviction. As of June 2016, we are still waiting to hear from the DoD on what the punishment was for the conviction**)
- 2 non-judicial punishment
- 1 administrative discharge
- 1 received counseling

SAPRO RETALIATION REPORTS



Social media played a role in one out of three cases of perceived ostracism and/or maltreatment. Service members who indicated experiencing behavior in line with perceived ostracism and/or maltreatment were also asked if any of the actions they marked involved social media. The survey question in the FY 2016 SAPRO Report provided examples of social media, such as Facebook, Twitter, Yik Yak, and Snapchat. 29% of respondents indicated the ostracism and/or maltreatment behaviors they perceived involved some form of social media.

DESPITE HIGH RATES OF RETALIATION ZERO COURTS-MARTIAL



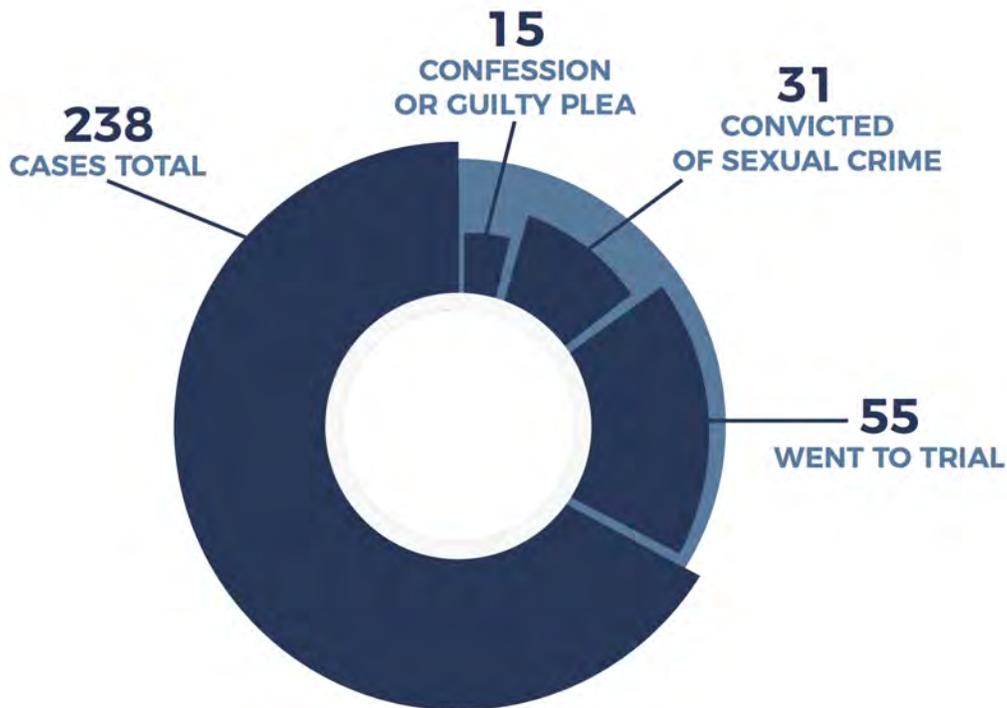
INSUFFICIENT PUNISHMENT: PUNISHMENTS DO NOT FIT THE CRIME, INCONSISTENT SENTENCING

Military Justice Results Remain Flat, Show No Improvement from Previous Reports

Despite some reform efforts, **the overall prosecution rate of military sexual assault cases remained stable** over the three years Senator Gillibrand’s office has been analyzing these case files. **Yet prosecution rates in the military overall have actually decreased, according to the latest SAPRO report.**¹⁶ In the Gillibrand case file request, there were a total of 238 cases for 2015, down from 329 cases in 2014, but up from 107 cases in 2013.

Below is the breakdown of what happened to these cases once they were reported to the military justice system:

- 2015: Just 23% of the 238 cases went to trial.
 - Of those, only about 13% of these 238 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, 48% included a confession or guilty plea from the accused.**



- 2014: 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.**
- 2013: 22% of cases went to trial.
 - Of those, only 10% of these 107 sexual assault suspects were convicted of a sexual assault crime, and 6% were convicted of a non-sexual assault crime.
 - **Of those actually convicted of a sexual assault crime, 45% included a confession or guilty plea from the accused.**

Just as in 2014 Case File Report, in Almost Half of All Sexual Assault Convictions, the Accused Confessed or Pled Guilty to the Crime

Out of the 238 case files received, only 31 of the accused were convicted of sexual assault. 15 of these 31 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 heavily redacted and incomplete files sent by the DoD 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.

- Victim reported the accused forced his way into her room and sexually assaulted her. Investigation determined that there was **probable cause that the accused had made a false statement** when he reported that victim gave him permission to enter into the room. Investigation also found probable cause for abusive sexual contact and burglary. Accused agreed to a **plea deal of reduction in rank and three months confinement.**

Letting Predators Go Free: Lesser Charges & Low Conviction Rates

According to a 2016 Stars and Stripes report, “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.”

This finding is not new, and 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.”

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 adultery or violation of an order, and given an administrative discharge from the military; or they received non-judicial punishment, such as reduction in rank, docked pay, or confinement to the barracks.

Below are two cases where the accused was discharged, but no other action was taken to address sexual assault accusations:

- Investigating officer and trial counsel determined that the accused committed rape of an adult by force and unlawful use of the prescription medication, ambien. Discharged in lieu of trial.

- Victim reported that accused sexually assaulted her. Civilian police initially ran the investigation. Military discharged the accused and did not pursue any charges against him.

Below are multiple cases where penalties seem low, which is consistent with Stars and Stripes reporting on this issue:

- Two victims reported that the accused broke into their barracks room and touched one of their breasts and buttocks without her consent and hugged and kissed the other victim from behind. Investigation established probable cause to believe that the accused had committed the offenses of abusive sexual contact and burglary. Went to NJP, but only found guilty of assault, a lesser offense. Reduced one grade to E-4.
- Victim reported that she woke up to the accused having sexual intercourse with her. She told him to stop, but he didn't stop, and she had to push him off of her. She also claimed he had many affairs, which she had digital proof of (text messages), and he admitted to the affairs. No administrative or judicial action was taken.
- Victim reported that she was raped by two service members over the course of an evening during which they were drinking at a friend's home. At one point in the night, they began to discuss Sexual Assault Prevention and Response training they had received, and wrote on a piece of paper that any sexual activity that night between Accused 1 and the victim would be considered consensual. Accused 1 was not charged with sexual assault - only of "Indecent viewing" because he reportedly watched Accused 2 sexually assault the victim, who did not appear to be conscious. Military character evidence was submitted, despite this law having been changed in 2015, but counsel argued it met an exception carved out by the executive order that changed this law. Accused 1 was found guilty of indecent viewing and received a reprimand, reduction to E-3 (from E-5), and 60 days restriction.
- Victim reported that she was asleep when the accused groped her breast. When she told him to stop, he got into her bed/rack, kissed her on the neck, and started digitally penetrating her vagina. She shoved him out, and he left. Accused told acquaintance that he entered the female berthing area and "fooled around" with a female. When questioned by command, accused denied entering the female berthing area. Accused also told the acquaintance to say he had never entered the area. Polygraph determined there was no deception in the accused's interview. Accused went to General Court Martial and was found guilty of non-sexual assault charges. Received 180 days of confinement, fine of \$500.

END NOTES

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**SNAPSHOT REVIEW OF SEXUAL ASSAULT REPORT FILES
AT THE FOUR LARGEST MILITARY BASES IN THE UNITED STATES**

OFFICE OF U.S. SENATOR KIRSTEN GILLIBRAND
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