HUMAN
RIGHTS
WATCH

Embattled

Retaliation against Sexual Assault Survivors in the US Military

Copyright © 2015 Human Rights Watch
All rights reserved.
Printed in the United States of America
ISBN: 978-1-6231-31753
Cover design by Rafael Jimenez

Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.

Human Rights Watch is an international organization with staff in more than 40 countries, and offices in Amsterdam, Beirut, Berlin, Brussels, Chicago, Geneva, Goma, Johannesburg, London, Los Angeles, Moscow, Nairobi, New York, Paris, San Francisco, Sydney, Tokyo, Toronto, Tunis, Washington DC, and Zurich.

For more information, please visit our website: http://www.hrw.org

HUMAN RIGHTS WATCH

MAY 2015

978-1-6231-31753

Embattled

Retaliation against Sexual Assault Survivors in the US Military

Acknowledgements 1

Summary 3

Research Focus 4

Retaliation 5

Impact of Punishment 7

Limited Protections 8

Recent Efforts to Address Sexual Assault 11

Recommendations 15

To the United States Congress 15

To the Secretary of Defense 16

Regarding Special Victim Counsel (SVC) and Victims' Legal Counsel (VLC) 16

Regarding Mental Health 16

Other 17

To Community Service Providers 18

Methodology 20

I. Retaliation in the Military 26

Scope of Problem 27

Threats and Violence after Reporting Sexual Violence and Harassment 32

Social Retaliation 33

Professional Retaliation 36

Poor Work Assignments 37

Lost Potential for Career Advancement 39

Disciplinary Action ("Bad Paper") 43

Letters of Counseling or Reprimand 44

Non-Judicial Punishments 47

Administrative or Involuntary Discharges 47

Punitive Mental Health Measures 51

Retaliation against Those Who Support Survivors 52

II. Collateral Misconduct **57**
Official Forms of Accountability for Collateral Misconduct 58
Accounts of Survivors Punished for Collateral Misconduct 60
Chilling Effect 64
Immunity for Collateral Charges 65

III. Other Issues Exacerbating Retaliation **68**
Lack of Confidentiality 68
Failure to Accommodate Housing and Working Requirements 70
Housing 72
Workplace Accommodations 73
Obstacles Accessing Mental Health Care 75
Limited Privilege of Psychotherapy Records 77
Lack of Confidentiality of Medical Records 78
Supervisor and Peer Resistance to Medical Care 81

IV. Failures to Remedy Retaliation **84**
Whistleblower Protection 85
Ineffectiveness of the Inspector General 91
Service Members' Perceptions 91
Inspector General's Lack of Independence 93
Limits on the Inspector General's Power 95
Military Equal Opportunity 97
Article 138 100
Accountability for Perpetrators 100

Glossary **106**

Acknowledgements

We would like to thank Protect Our Defenders (POD) for their considerable contribution to this report. In addition to providing general consultation during the initial stages and throughout the investigation process, POD supplied subject matter experts, helped identify survivors to be interviewed for the report, secured survivors' consent, gave Human Rights Watch access to POD's pro bono files and survivor database for survivors who had consented, and reviewed and contributed feedback on the final report and policy recommendations. We are grateful for their collaboration on this effort. This project could not have been done without their support.

Sara Darehshori, senior counsel in the US Program, and Meghan Rhoad, researcher in the Women's Rights Division at Human Rights Watch, researched and wrote this report. Dr. Brian Root, a quantitative analyst at Human Rights Watch, analyzed the data and created the graphs in the "Scope of the Problem" section. This report was edited at Human Rights Watch by Alison Parker, director of the US Program; Liesl Gerntholtz, director of the Women's Rights Division; James Ross, legal and policy director; Danielle Haas, senior editor; and Joseph Saunders, deputy program director. Portions of the report were also reviewed by Shantha Rau Barriga, director of the Disability Rights Division. Samantha Reiser, coordinator of the US Program, and Alexandra Kotowski, senior associate in the Women's Rights Division, provided assistance with research and final preparation of the report, formatting, and footnotes. Layout and production were coordinated by Kathy Mills, publications specialist, Fitzroy Hepkins, administrative manager, and Alexandra Kotowski.

A number of interns helped to research, organize, and check information for this report: Alex Simon-Fox, Phoebe Young, Margaret Weirich, Maya Kapelnikova, Wesley Erdelack, and Akhila Kolisetty.

Photographs were kindly provided by Mary F. Calvert.

Extremely generous pro bono legal assistance was provided by a team led by Claire Slack at McDermott, Will, & Emery LLP in Menlo Park, California. McDermott analyzed and coded all the Boards of Correction of Military Records on our behalf. In addition, we received invaluable pro bono assistance from Todd Toral and Jesse Medlong at DLA Piper LLP's San

Francisco office and Maya Watson at Bodman PLC in Detroit, Michigan, with our numerous records requests.

External reviews of portions of this report were conducted by Shannon Green, Elizabeth Hillman, and Tom Devine, among others.

We would also like to thank COL James McKee, Col Carol Joyce, CAPT Karen Fischer-Anderson, and Lt Col Andrea deCamara, heads of their respective Special Victim Counsel and Victims' Legal Counsel programs for their cooperation and assistance with our research.

In addition, a number of veterans' advocates and others went out of their way to assist us with our research, including Liz Luras, Monisha Rios, Michael and Geri Lynn Matthews, Patricia Lee Stotter, Lynn and Steve Newsom, Sandra Park, Susan Burke, Ray Toney, Rachel Natelson, and the staff of the Response Systems Panel, particularly Julie Carson and Meghan Tokash.

Finally, and most importantly, we are thankful to the service member survivors of sexual assault who shared their stories with us. This report would not have been possible without their commitment to ensuring that other victims in the US military will be able to seek justice without fear of retaliation.

Summary

Spat on. Deprived of food. Assailed with obscenities and insults—"whore," "cum dumpster," "slut," "faggot," "wildebeest." Threatened with death by "friendly fire" during deployment. Demeaned. Demoted. Disciplined. Discharged for misconduct.

It is no secret that the US military has a sexual assault problem: the Department of Defense estimates that 18,900 US service members were sexually assaulted in fiscal year (FY) 2014.[1] But the slurs, sanctions, and scorn described above are not the punishments that soldiers and their superiors have meted out to those who have perpetrated sexual assault in the armed forces, but rather what happened to *victims* who reported their experiences.

Military sexual assault survivors almost never see a remedy for these actions, for which virtually no one is held accountable. Military surveys indicate that most respondents—62 percent—who experienced unwanted sexual contact and reported it to a military authority faced retaliation as a result of reporting.[2] In other words, military 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. Just 5 percent (175 out of 3,261) of sexual assault cases in the Defense Department's jurisdiction investigated with a reportable outcome in FY 2014 led to a sex offense conviction.[3]

It is estimated that only one in four victims reports sexual assault to military authorities. In surveys, service members consistently cite fear of retaliation from the perpetrator or the perpetrator's friends, or concern about their careers, as reasons for not reporting.[4]

---

[1] Department of Defense Sexual Assault Prevention and Response, "Department of Defense Annual Report on Sexual Assault in the Military," Fiscal Year 2014, April 29, 2015, http://sapr.mil/public/docs/reports/FY14_Annual/FY14_DoD_SAPRO_Annual_Report_on_Sexual_Assault.pdf (accessed May 7, 2014).

[2] Ibid. The SAPR Annual Report for FY 2014 references the RAND Military Workplace Study finding that 62 percent of respondents who reported sexual assault experienced some form of retaliation (rates of retaliation for males who reported sexual assault were unreportable so this figure applies only to females). However, an attached Annex prepared by RAND puts the figure at 55 percent. See Annex 1: http://sapr.mil/public/docs/reports/FY14_Annual/FY14_Annual_Report_Annex_1_RAND.pdf. For purposes of this report, we are citing the figures used by Defense Department in the main body of their report.

[3] Department of Defense, "Report to the President of the United States on Sexual Assault Prevention and Response, Fiscal Year 2014, " ("Report to the President") , November 25, 2014, http://www.sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_Appendix_A.pdf (accessed April 22, 2015).

[4] Defense Manpower Data Center, "2012 Workplace and Gender Relations Survey of Active Duty Members," March 15, 2013, http://www.sapr.mil/public/docs/research/2012_workplace_and_gender_relations_survey_of_active_duty_members-

Such fears are well-founded. Although the military has undertaken significant and commendable reforms in how it handles sexual assault cases in recent years, it has not yet effectively addressed retaliation and fear of retaliation.

Survivors have little recourse if they experience retaliation and few of those who retaliate are held accountable. Human Rights Watch was unable to uncover more than two examples of even minor disciplinary action being taken against persons who retaliated against a survivor.

While reporting rates have improved dramatically in recent years, the positive trend will not continue if victims see that those who report their assaults experience retaliation and that no action is taken to address the problem. In other words, ending retaliation is critical to effectively addressing sexual assault in the US military.

Research Focus

Human Rights Watch undertook this investigation to examine reports of retaliation that these survivors faced: its forms, causes, perpetrators, and, perhaps most importantly, what recourse survivors had to stop it or to remedy related damage to their career.

We conducted 255 in-person and telephone interviews and examined documents produced by US government agencies in response to numerous public record requests, publicly available information, and performed data analysis. We spoke to more than 150 survivors of sexual assault. Twenty-two of the survivors interviewed were male, though this does not reflect the demographics of sexual assault victims in the US military. Because the services are disproportionately male, there are more male victims of unwanted sexual contact than female, though men report at much lower rates.[5] Given recent reforms in the military's treatment of sexual assault, we focused our analysis on active duty survivor experiences from the last few years (FY 2012 and later) to ensure the report reflects the current context.

---

survey_note_and_briefing.pdf (accessed April 24, 2015), p. 106; 28 percent of women who experienced sexual assault but chose not to report to military authorities thought their performance evaluation or chance for promotion would suffer; 23 percent feared they or others would be punished for infractions/violations, such as underage drinking, ibid., p. 107.

[5] See Sexual Assault Prevention and Response Office, "DOD Sexual Assault Prevention and Response Fact Sheet," April 2015, http://sapr.mil/public/docs/saapm/2015/SAPR_Fact_Sheet_201504.pdf (accessed April 8, 2015). DOD estimates 8,500 women and 10,500 men experienced unwanted sexual contact in 2014.

Retaliation as understood by the Department of Defense encompasses both professional and social retaliation. In its recent "Report to the President," the department described retaliation as including "taking or threatening to take an adverse personnel action or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member made a protected communication (e.g., filed a report of sexual assault)." It also recognizes that retaliation "includes social ostracism and such acts of maltreatment committed by peers of the victim or by other persons because the member made a protected communication." In surveys on retaliation, the Defense Department has also asked survivors whether they have been punished for an infraction but these are not included in the department's formal definition of retaliation.

Human Rights Watch investigated the above types of retaliation, as well as several additional issues that arose repeatedly in interviews as negative repercussions for survivors who reported or sought assistance with recovery from the sexual assault.

In particular, we documented the military's punishment of victims for minor "collateral misconduct," such as underage drinking or adultery, which only came to the attention of authorities because the victim came forward to report sexual assault. Fear of punishment for minor infractions is a major obstacle to reporting for many service members, and understandably so; even administrative punishment such as a written reprimand can impact promotion or the ability to stay in service during military downsizing.

We also documented the many barriers—from stigma to lack of confidentiality—that obstruct survivors' access to the mental health care they may want or need to treat their trauma and maintain their readiness for military service. Because mental health records have been routinely disclosed during criminal proceedings and used against a victim, victims often have had to choose between seeking help or having their private medical records revealed. As a result, several victims' lawyers told us they cautioned clients not to seek counseling if they were going to trial. Recent reforms to the Military Rules of Evidence may have addressed this issue, but their implementation needs to be monitored.

Retaliation

Many survivors told Human Rights Watch that they considered the aftermath of the sexual assault—bullying and isolation from peers or the damage done to their career as a result of

reporting—worse than the assault itself. Survivors told Human Rights Watch that they felt they were viewed as “troublemakers” who brought negative attention to their unit. At the very moment that they needed support, survivors described peers turning on them due to loyalty to the perpetrator or fear that they would be shunned by association.

The ostracism and bullying went well beyond not being invited to parties. Service members described being threatened, harassed, and abused: one survivor sought safety in a hospital because colleagues told her she “better sleep light,” and disabled her car after she reported her assailant. Another was besieged with phone calls after members of her unit put notes on cars at the post exchange (the on-base store) saying “for a good time call” and her number. Another wrote that within six months of his report he had been “physically attacked twice and verbally belittled” by peers and non-commissioned officers.

On the professional side, many victims feel they face a choice between reporting their sexual assault and continuing their careers in the military. Those fears are borne out in the stories survivors shared with Human Rights Watch of careers that began with seemingly limitless potential—some stellar to the point of receiving national recognition—only to plummet in various ways following the service member’s report of a sexual assault. Service members across branches describe similar patterns of career problems after reporting their assault.

Some survivors told Human Rights Watch how their reporting of an assault seemed to precipitate a change in their work assignments from high-level military tasks like intelligence work to menial tasks like picking up garbage, or to tasks that took them away from their area of specialty. One Marine, with training in computers, said that after her assault she was transferred to an armory unit for four months where she had to work inside an enclosed and locked cage with five men cleaning and passing out weapons.

Survivors also told Human Rights Watch they saw their performance evaluations take a downward turn after reporting. One senior master sergeant reported being groped by a military lawyer—a Judge Advocate (JAG)—when she was a young airman and on her next evaluation she received a lower mark for “questionable handling of personnel matters.”

Relatedly, survivors said their command denied them important opportunities for training, deployments, and ultimately promotions. A high-achieving sergeant in the Air National

Guard told Human Rights Watch that she was up for promotion when she reported a sexual assault that had occurred earlier in her career. Afterwards, a colleague told her a wing commander said, "Over my dead body will she get promoted now." She lost her responsibility for training people and was demoted twice. "Despite all those awards, I got nothing," she said.

Many survivors told Human Rights Watch that disciplinary action against them became a daily part of life after they reported. The military disciplinary system provides a spectrum of administrative options for commanders to ensure good order and discipline. These options also create ample opportunity for commanders to exercise their authority to retaliate against service members for reporting sexual assault. While some survivors who spoke with Human Rights Watch praised their commanders for the support they provided, many had the opposite experience.

At the less punitive end of the spectrum, survivors reported receiving formal letters of counseling (a notation of problematic behavior in the service member's personnel records) for behavior that would normally be overlooked or, at most, dismissed with an oral warning. Survivors recalled getting even more serious letters of reprimand, for infractions like wearing the "wrong socks" or leaving dirty dishes in the sink.

Some survivors said it appeared their command looked for any excuse—such as one victim falling behind on a run while under medical treatment—to take more severe disciplinary action (non-judicial punishment). While not criminal, these actions can carry stiff penalties, such as reduction in rank, forfeiture of pay, confinement, or diminished rations for set periods of time, and remain on the service member's permanent record.

In some cases, retaliation for reporting sexual assault led to the survivor being forced out of the military. Whether by choice or not, few of the survivors with whom we spoke who reported their assaults stayed (or plan to stay) in service beyond current enlistment requirements.

Impact of Punishment

Being punished by one's peers or supervisors for reporting a violent sex crime or for seeking medical treatment would represent a grave injustice in any employment context; it would also potentially compound the trauma of a sexual assault. But the military is not any

employment context. In fact, "employer" is a word that rarely comes up when service members speak about their relationship to the military. One former naval officer told Human Rights Watch:

> Everyone is told from day one that the military is your family. We've got your back. You can trust these people. If you are sexually assaulted, it takes on an incestuous dynamic. It is that level of betrayal. Then it goes to your command—if the command handles it badly, that's another level of betrayal. Every time the system fails, another layer of betrayal.

In addition to the betrayal, military retaliation is not limited to a 9-to-5 work day, and cannot be escaped with two weeks' notice. Service members are not mere coworkers with their perpetrators and their friends, they live together. Especially for junior enlisted service members, the military controls every minute of their time and aspect of their lives. Many service members are bound by contracts to the military for fixed-year terms.

Getting out of those commitments because they are being tormented at work is not always possible. Quitting is not an option—indeed, it is a crime. In years past, survivors fearing further violence and retaliation have left duty stations seeking safety and found themselves later court-martialed and imprisoned for going AWOL (absent without leave). One Coast Guard trainee considered faking suicide because she saw no other way to get out of military service and away from the supervisor who was regularly harassing her—and who was also the person designated to receive complaints about sexual harassment.

Limited Protections

Addressing retaliation against military sexual assault survivors constitutes an international legal obligation of the US government. In joining the Convention against Torture, the United States committed to ensure that those who report torture or other cruel, inhuman or degrading treatment or punishment "are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given."[6] In 2014, the United Nations Committee against Torture, the expert body charged with monitoring

---

[6] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, ratified by the United States in October 1994, art. 13.

compliance with the convention, reminded the US government of its obligation to ensure those protections for complainants reporting military sexual assault.[7]

In addition, international law affords victims the right to an effective remedy for sexual assault.[8] Recognizing the ways that retaliation can interfere with victims' access to a remedy under human rights law, international best practices on the treatment of victims require that governments "take measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation."[9] To ensure survivors' ability to access a remedy, governments should take all appropriate measures to end retaliation.

Nevertheless, protections for service members who are sexually assaulted are limited under existing US law. Unlike civilians, longstanding Supreme Court precedent prohibits service members from suing the military for any injuries or harm "that arise out of or are in the course of activity incident to service."[10] This includes violations of their constitutional rights.[11] Federal appeals courts have also barred uniformed personnel from bringing discrimination suits under Title VII of the Civil Rights Act, the primary mechanism for holding employers accountable for inappropriate sexual conduct.

In its "Report to the President," the Department of Defense identified nine avenues of recourse open to sexual assault survivors facing retaliation. Our research has shown that only three of the nine are viable options. Those three are:

- Seeking a military protective order;
- Requesting an expedited transfer; or
- Transfer for safety to another duty station.

---

[7] UN Committee against Torture, Concluding observations on the combined third to fifth periodic reports of the United States of America*, U.N. Doc. CAT/C/USA/CO/3-5 (2014), para. 30.

[8] Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law ("Reparations Principles"), adopted December 16, 2005, G.A. res. 60/147, U.N. Doc. A/RES/60/147 (2005), principle 11.

[9] UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly Resolution 40/34, November 29, 1985, para. 6 (5). The Declaration was adopted as a part of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, August 26-September 6, 1985 and it details international consensus on best practices in relation to victims of crime.

[10] *Feres v. United States*, 340 U.S. 135 (1950).

[11] *Chappell v. Wallace*, 462 U.S. 296 (1983).

These options are supportive or protective responses that remove the victim from the situation or protect them from harm. But they do not involve holding those responsible for the retaliation accountable. Furthermore, Human Rights Watch interviews suggest that while a transfer may offer some survivors a fresh start, others saw it as punitive or found that harassment and a reputation as a "troublemaker" followed them to other duty stations.

On the other hand, our research indicates that the six purported accountability mechanisms have not proven up to the task. These are: reporting to the commander; reporting to a commander in another chain of command; reporting to a Sexual Assault Response Coordinator at another installation; filing a Military Equal Opportunity (MEO) Complaint; reporting to the Department of Defense inspector general; and punishing retaliators for failing to obey orders.

These mechanisms are not utilized, are ineffective, poorly understood, hamstrung by jurisdictional limitations, not sufficiently independent of command structures, mistrusted because they lead to new incidents of retaliation—or all of the above. Further, little effort has been made to deter retaliation by holding wrongdoers accountable for their acts, despite a plethora of disciplinary options available to command.

The Inspector General's Office is the office designated in the US military to investigate complaints of professional retaliation. If a service member believes they have suffered negative personnel action after reporting a sexual assault or sexual harassment, they can make a complaint directly to the Department of Defense Inspector General (DODIG) or to their service Inspector General (IG) under the Military Whistleblower Protection Act.

However, although Defense Department data suggest that thousands of survivors have experienced the type of professional retaliation that would fall under the Military Whistleblower Protection Act, we have been unable to find cases in which a survivor who experienced retaliation was helped by that law.

According to documents Human Rights Watch obtained via public records requests, between January 1, 2004 and December 31, 2013, DODIG received only 38 complaints from a victim of sexual assault alleging professional retaliation. It was unable to substantiate

any of those complaints,[12] perhaps due to problems discussed in this report with inadequate investigations and the high burden of proof required for substantiation. During the same period, the Defense Department reports receiving 17,900 unrestricted (non-confidential) complaints of sexual assault from service member victims. A 2014 military workplace and gender relations survey found that 32 percent of service members who reported sexual assault also said they subsequently faced professional retaliation, suggesting that well over 5,000 of the service members who filed complaints of sexual assault in the 2004-2013 period may have also experienced professional retaliation and could have sought protection under the Military Whistleblower Protection Act.

Even if an IG investigation were to substantiate a survivor's claim, actually correcting any unjust negative mark in a service member's military record involves an entirely different process and mechanism: the Boards for Correction of Military Records. In practice, record corrections almost never happen for sexual assault victims or for military whistleblowers generally. Of all military whistleblower complaints, less than 1 percent receive some form of relief from the records boards. Human Rights Watch analyzed records board decisions over an 18-year period and found just 66 cases in which sexual assault victims won full or partial correction of an injustice in their record.

At the same time, our analysis shows that alleged perpetrators of sexual assault sought and received corrections in their records from the Boards far more often than victims, even though victims are much more likely to experience administrative action that might require assistance from the Boards to correct. Other potential avenues for redress—such as the Military Equal Opportunity Program and an Article 138 complaint through a superior officer—also have shown no demonstrated ability to provide redress for victims of retaliation by peers or superiors.

Recent Efforts to Address Sexual Assault

While these findings paint a dismal picture of what awaits military sexual assault victims who choose to report, some recent reforms aimed at preventing and responding to retaliation provide important protections. In the wake of extensive media coverage and public attention to the issue of rape in the US military, Congress and the Department of Defense have made numerous reforms to the military justice system to protect victims'

[12] Department of Defense Inspector General's response to FOIA ref: 2014-00265, January 28, 2015, on file at Human Rights Watch.

rights in recent years. Over 200 provisions of law, secretarial initiatives, and independent recommendations have been undertaken within the last three years.

These include: not requiring military sexual assault survivors to report mental health counseling on security clearance applications; prohibiting retaliation under the military's criminal code, the Uniform Code of Military Justice (UCMJ); establishing the expedited transfer program to allow survivors to transition swiftly out of toxic environments; and requiring heightened review of administrative discharges of sexual assault victims.

Human Rights Watch's investigations found the recent creation of the Special Victim Counsel programs to provide attorneys to victims a singularly powerful reform. As the programs are new, many of our interviewees did not have the advantage of that service, but those who did reported that it made a significant difference to have their interests represented, not only in the criminal investigation and proceedings against their perpetrators, but in the negotiation of a range of matters with their commands, including retaliatory behavior by peers and supervisors.

Since the Report to the President in December 2014, the Defense Department has expanded its efforts to curb retaliation. Beginning in March 2015, military sexual assault case management group meetings chaired by commands at various levels have begun to regularly address retaliation. Plans are also in place to enhance skills and training for first-line supervisors to recognize retaliation. The Defense Department also plans to enhance its data collection on retaliation.

These reforms show promise, and likely have only begun to demonstrate their potential. However, real change needs further reforms to make remedial mechanisms more accessible and effective, and to ensure that those who commit or condone retaliation are held accountable. Without reforms targeted at those issues, retaliation is likely to continue unabated as surveys indicate it did between 2012 and 2014 despite efforts to address it.

***

We recognize that trauma resulting from sexual assault may negatively impact a survivor's performance or lead to misconduct that the military is justified in addressing. Some survivors may be less competitive for promotion because they missed crucial aspects of

their duties or training due to legal meetings or medical appointments. And what some survivors experience as retaliation, such as a transfer to a new duty station or work environment, may seem benign or even supportive to others if it removes them from a hostile environment. It may be hard for the military to find an appropriate position for someone who needs to move on short notice. The military also has particular battle-readiness needs and fitness for duty requirements that may make it less adaptable to meeting victims' needs than most other institutions.

There is no "one size fits all" solution for victims.

Yet this investigation concludes that even in such situations, the US military's response too often is unnecessarily punitive and lacking consideration of the victim's mitigating circumstances.

For individual survivors, retaliation can cost them their careers and more, but their colleagues and superiors may be inured to their suffering. Lauren Morris, a Navy reservist who was raped while deployed as an intelligence specialist, described how casually those around her took the retaliation compared with what it meant to her:

> [Retaliation] was not a game. It was my life. It was my military career, future job opportunities, what I wanted to study in college. It was who I was as a person. And it was a joke to them.[13]

Morris' and others' experiences of retaliation deter other victims from reporting sexual assault and renders the military an institution that is both a nightmare for victims and a haven for perpetrators.

This is not the result that the armed forces, the Department of Defense, Congress, or the US public wants. It is certainly not the result that US service members deserve. In order to address retaliation the government should fix what is not working and strengthen what is.

---

[13] Human Rights Watch telephone interview with IS2 Lauren Morris, October 31, 2014.

Human Rights Watch recommends that:

- Congress reform the Military Whistleblower Protection Act to afford service members the same level of protection as civilians.
- Congress establish a prohibition on criminal charges or disciplinary action against survivors for minor collateral misconduct that would not have come to the military's attention but for the victim's report of sexual assault.
- The Defense Department expand initiatives, like the Special Victim Counsel program, expedited transfers, and non-military options for mental health care, which give survivors the tools and control to direct their recovery and their future in the military.
- Systems and individuals in the armed forces that take retaliation seriously be rewarded, and those who commit or tolerate acts of retaliation be held to account.

Survivors of sexual assault in the US armed forces deserve nothing less.

Recommendations

To the United States Congress

- Strengthen the Military Whistleblower Protection Act.
  - Alter burden of proof standard to be consistent with the federal Whistleblower Protection Act and best practices.
  - Expand protection to prohibit retaliatory investigations, the failure by a superior to respond to retaliation committed by subordinates, and any other discriminatory action that creates a chilling effect on reporting sexual assault.
  - Expand the protections to whistleblowers to include rights: to have Department of Defense Inspector General (DODIG) conduct the investigation; to counsel; to a hearing before the Boards of Correction of Military Records; to request disciplinary action against the party found to have retaliated; to have negative personnel action suspended during the investigation; and to recover reasonable attorney fees.
  - Consistent with the proposed Legal Justice for Servicemembers Act of 2015, require the Boards of Correction and Inspector General (IG) to recommend disciplinary action for personnel responsible for retaliation.
  - Expand procedural protections for complainants and streamline the process for whistleblowers to get relief.
  - Make training in whistleblower protection rights mandatory for all service members.
  - Apply Administrative Procedure Act standards to judicial review of military whistleblower cases.
- Prohibit disciplinary action or criminal charges against victims for minor crimes (including underage drinking, fraternization, and adultery) that only came to the military's attention due to the victim's report of sexual assault.
- Monitor use of Military Rule of Evidence 513 following its recent revision and consider further narrowing exceptions to the psychotherapist patient privilege.
- Require a court order for investigators or third parties to obtain victims' mental health records.

To the Secretary of Defense

Regarding Special Victim Counsel (SVC) and Victims' Legal Counsel (VLC)

- Improve outreach about SVCs so that survivors are more aware of the services they offer and have access to them before reporting to investigators.
- Require investigators to have victims speak with an SVC/VLC before waiving any right or beginning an investigative interview.
- Require the services to provide victims with SVC/VLC consultation prior to an administrative discharge.
- Strengthen capacity of SVCs to respond to retaliation in different forms and expand access to their services.
- Co-locate counseling and Sexual Assault Response Coordinators (SARCs)/ Sexual Harassment/Assault Response and Prevention (SHARPS) with legal services offices.
- Establish uniform practice and procedures concerning SVCs' participation in military judicial proceedings, including timely disclosure requirements of pleadings. Ensure SVCs are available on all major bases and can meet with clients in person at least once.

Regarding Mental Health

- Improve access to civilian mental health care.
  - Work closely with local rape crisis centers on training and outreach on base to ensure their services are accessible and known to service members.
- Expand the number of mental health providers trained to handle sexual assault cases and improve training to therapists to reinforce information about proper recordkeeping and disclosure.
- Reinforce mental health providers' obligation to consult with patients and advise them of risks of disclosure before complying with any waivers to disclose medical records.
- Expand outreach about the availability of Military Sexual Trauma (MST) counseling to active service members at Department of Veterans Affairs Vet Centers.

- Co-locate behavioral health facilities in buildings with multiple functions to help preserve confidentiality of those who enter the facilities.
    - Expand availability of appointments after working hours so service members can seek help while they are not on duty.
    - Ensure that commanders communicate to front-line supervisors that service members should not face negative repercussions for absences due to medical appointments.
    - Expand possibilities for voluntary in-patient treatment when appropriate and as an alternative to leaving the service for those who wish to remain in the military but may temporarily be incapable of performing their duties.
    - Create Defense Department in-patient facilities to assist with trauma arising from sexual assault and ensure that they have sufficient capacity and specialized treatment for male survivors.

Other

- Provide training and intervention for junior enlisted personnel in supervisory positions about responding to sexual assault in their unit, the effects of trauma, and the appropriate response to peer retaliation.
- Monitor treatment of victims by their peers and immediate supervisors and collect data on incidents of retaliation.
- Aggressively investigate and respond to allegations of reprisal and publicly highlight measures taken against those responsible for retaliatory action.
- Allow survivors to defer a performance evaluation, promotion consideration, or skills test for a period of time if their ability to perform or duties have been impacted by issues relating to sexual assault; create an instruction for Performance or Promotion Review Boards on how to take into account a sexual assault in an evaluation when it has impacted the victim's performance relative to their peers.
- Train broader leadership on the impact of trauma, counter-intuitive victim behaviors, and protection of those alleging sexual assault.
- Require commander consultation with SARCs/SHARPS or SVCs on how to address retaliation on a case-by-case basis as there is no "one size fits all" solution.

- Provide a mechanism for the Defense Department's Sexual Assault Prevention and Response Office (SAPRO) to receive and then enquire into generalized (non-case specific) information about problematic units or commands for the purpose of targeting remedial training and other efforts.
    - More strictly enforce confidentiality of information on a restricted (confidential) sexual assault report.
    - Recognize leaders who effectively respond to reprisals.
    - Instruct commanders to consider favorably requests by victims to transfer housing when possible, particularly if they were assaulted there.
    - For victims in areas of narrow specialties, consider the option of a career field change, if requested by a victim.
    - Allow collateral duty Victim Advocates sufficient time and material support (such as access to cell phones or transportation) to perform their advocacy duties without negatively impacting their regular duties and include feedback from victims as part of their performance evaluations.
    - Vary sexual assault trainings from standard power points to better engage audiences (i.e., employ more interactive trainings, workshops, theater).
    - Allow victims who have made restricted reports to request expedited transfer through their SVC.
    - Expand the requirement to provide a victim with a record of trial to include cases where the court martial resulted in an acquittal.

To Community Service Providers

- Allow service members to seek counseling on an anonymous and voluntary basis (consistent with obligations to ensure the service member is not a danger to themselves or others).
- Engage veterans (as staff or board members) to facilitate a relationship with the local base and assist with explaining military culture to civilian staff.
- Conduct active outreach on bases to ensure awareness of community services.
- Participate in training victim advocates and sexual assault training for service members on base.

- Extend operating hours to accommodate counseling sessions after working hours or on weekends.
- Provide training to mental health providers on proper documentation of cases including training on preparation of what should be included in medical records (symptoms, diagnosis, treatment plan) and what should be excluded (i.e. a play by play of events) as well as military mental health practices.
- Reinforce mental health providers' obligation to consult patients and advise them of risks of disclosure before complying with any waiver to disclose medical records.
- Provide feedback to SAPRO on problem units or patterns of abuse apparent from information received (within the bounds of client confidentiality).

Methodology

This report is based primarily on more than 255 in-person and telephone interviews conducted between October 2013 and April 2015, as well as documents provided to Human Rights Watch in response to public record requests.

Interviews were conducted with 150 sexual assault survivors from all branches of the US Armed Forces, including the Coast Guard and National Guard. Research also benefitted from written accounts from an additional 52 survivors. The issues documented in this report arose consistently in our interviews with survivors across the military services. However, we did not attempt to conduct a representative sampling of military sexual assault survivors. This is not a scientific study and this report's findings cannot be generalized to the military population as a whole. Given the sensitive nature of the topic and confidentiality concerns expressed by many interviewees, all survivors' names and other identifying details have been withheld. All names of survivors are randomly assigned pseudonyms.

Some survivors also provided documentation in support of their interviews. Since this report covers retaliation against victims after reporting a sexual assault, and in order to minimize further trauma, Human Rights Watch did not focus our interviews or investigations on the underlying assault. Because the Department of Defense has undertaken significant changes in its handling of sexual assault cases since FY 2012,[14] for descriptions of retaliation we relied primarily on the accounts of 75 survivors who are either active service members or who left the military in mid-2011 or later. The 75 accounts came from 17 written submissions and 58 interviews. Of the 58 interviewees, 27 are currently serving or left service in 2015; 11 left in 2014; 11 left in 2013; 5 left in 2012; and 4 left in 2011. However, some of the assaults occurred prior to changes in the military's handling of sexual assault cases, but the retaliation continued to impact the survivor's career during the timeframe of this report.

Notably, many of the survivors we interviewed (including active service members) were assaulted prior to the implementation of the Special Victim Counsel (SVC) or Victims' Legal

[14] Department of Defense, "Report to the President," http://www.sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_SAPRO_Report.pdf, p. 14

Counsel (VLC) programs in the different branches. In some cases, lawyers for victims were able to play a positive role in helping address problems victims faced after reporting and those are noted. One of our recommendations is to expand the ability of SVCs and VLCs to assist victims suffering from retaliatory treatment.

Fifty-eight of the 76 survivors were interviewed in person or by telephone and 18 provided or published written accounts. Accounts from older cases were used only on a few issues about which limited accounts were available, such as victims who had complained about retaliation to the Inspector General. When older cases are referenced, they are noted in the text.

Also, 22 of the 150 survivors interviewed were male, and 6 of them were in the timeframe relevant for this report. The disproportionate number of women interviewed does not reflect the demographics of sexual assault victims in the US military. Because the services are disproportionately male, there are more male victims of unwanted sexual contact than female, though men report at much lower rates.[15]

Survivors were located using several methods: Human Rights Watch launched a Facebook page in October 2013 describing the project and providing a point of contact for those willing to be interviewed. A number of survivors we interviewed posted information about our research on private Military Sexual Trauma support pages or referred other survivors to us. In addition, nongovernmental groups who support survivors, including Protect Our Defenders (POD), Service Women's Action Network (SWAN), and the Military Rape Crisis Center, referred victims to us and/or, with the survivor's consent, provided their written accounts of their experiences. We also reviewed audio interviews done by StoryCorps as a part of its Veterans Listening Project and in-depth statements included in the "Fort Hood Report," a joint project by Iraq Veterans Against the War, Civilian-Soldier Alliance and Under the Hood Café and Outreach Center, and the International Human Rights Clinic at Harvard Law School. On October 10, 2014, Human Rights Watch placed a print ad in *Stars and Stripes* newspaper.[16] A similar online ad ran on *Military Times* websites intermittently

---

[15] See Sexual Assault Prevention and Response Office, "DOD Sexual Assault Prevention and Response Fact Sheet," April 2015, http://sapr.mil/public/docs/saapm/2015/SAPR_Fact_Sheet_201504.pdf (accessed April 8, 2015). DOD estimates 8,500 women and 10,500 men experienced unwanted sexual contact in 2014.

[16] The ad read: A major human rights organization would like to speak confidentially with active US service members or recent veterans (2008 on) who experienced reprisals after reporting a sexual assault or harassment while serving, or witnesses to such reprisals. We are also interested in speaking with service members who felt supported after reporting an

between October 6 and October 19, 2014. Special Victim Counsel and Victims' Legal Counsel also referred clients to us.

In addition to interviews with survivors, Human Rights Watch conducted over 100 interviews with: experts in military law, current and former uniformed and civilian victim advocates, experts in military response to sexual trauma, military law practitioners, members of nongovernmental organizations that work with or advocate on behalf of service members, service members who are not victims, parents of veterans, Special Victim Counsel and Victims' Legal Counsel, members of the Department of Defense Inspector General's office, Sexual Assault Prevention and Response Coordinators, Sexual Harassment and Assault Response Program personnel, Judge Advocates, rape crisis center personnel from four rape crisis centers located near military bases, trauma counselors, Vet Center staff, and five members of the Sexual Assault Prevention and Response Office at the Department of Defense (SAPRO). We also visited five Vet Centers across the country.

Most interviews were conducted individually and in private. Group interviews were conducted with Navy Victims' Legal Counsel and Air Force Special Victim Counsel (including their Sexual Assault Prevention and Response (SAPR) policy advisor), members of the Department of Defense Inspector General's office whistleblower reprisal unit, SAPRO, staff from two rape crisis centers, and one legal services organization. One survivor had her lawyer on the line for a telephone interview; another survivor, who was interviewed multiple times, had a counselor with her for one of her interviews. No incentive or remuneration was offered to interviewees.

In addition to interviews, we submitted document requests under the US Freedom of Information Act (FOIA) to the Offices of the Inspector General for the Department of Defense, Navy, Marine Corps, Coast Guard, Air Force, and Army; Boards of Correction of Military Records for the Army, Air Force, and Coast Guard and the Board of Correction of Naval Records; the Office of the Secretary of Defense and Joint Staff; the Army National

---

assault or felt any retaliation was handled well. Information provided will contribute to an independent investigation of sexual assault survivors, and shape recommendations for improvements. Contact us at [tel. no.] or www.hrw.org/keywords/sexual-assault-us-military.

Guard; the Air National Guard; and the Departments of the Air Force, Army, Navy, Marine Corps, and Coast Guard.[17]

At time of writing, Human Rights Watch received responses from all the Inspectors General and Boards of Correction of Military Records. With the exception of the Army and Air Force, which provided a limited number of documents and data, neither the services nor the Defense Department provided substantive responses to our requests by the time of publication.

As part of our research, we also reviewed extensive publicly available information about military sexual assault including, but not limited to, reports of the Response Systems Panel and the Judicial Proceedings Panel, the responses provided by the branches to the Panel's requests for information and testimony before the panels, annual reports by the Department of Defense SAPRO, Workplace and Gender Relations Surveys, Department of Defense Inspector General semiannual reports to Congress, Government Accountability Office reports, publications by experts on psychological disorders and administrative and whistleblower law, congressional testimony by military officers and victims, complaints, military sexual assault training materials, Department of Defense Instructions, and nongovernmental and Task Force reports on sexual assault in the military.

In addition, on behalf of Human Rights Watch, the law firm of McDermott, Will & Emery downloaded and analyzed all Boards of Correction cases on the Department of Defense reading room website. The following search terms were used: sex*, sexual w/2 assault, sexual w/2 violence, rape, sexual w/2 misconduct, sexual w/2 harassment, sexual w/2 explicit, inappropriate contact, sexual w/2 abuse, sexual w/2 trauma, sodom*, oral w/2 sex, breast*, buttock*, genital*, anal, whistleblower, whistle w/3 blower, retaliate*, indecent, and rape*. The search resulted in 5,507 cases, of which 539 were duplicates. The remaining 4,968 cases were coded and analyzed for this report.

On April 22 and 23, 2015, Human Rights Watch provided SAPRO and the Department of Defense Inspector General with a summary of the findings of this report and gave them two

[17] A request was sent to the Office of the Secretary of Defense and Joint Staff on July 24, 2014. Our last communication with them was on March 4, 2015 at which time they indicated a narrowed request was being processed but the response would not be provided within the statutory time period. Requests were submitted to the branches on September 25, 2014. We are in ongoing negotiations with the branches about fees.

weeks to respond. The SAPRO response is reflected in this report. We did not receive a response from the Department of Defense Inspector General.

A note on terminology:

Many survivors' groups, support service organizations, and others working on sexual violence strongly prefer the term "survivor" to "victim." "Survivor" implies greater empowerment, agency, and resilience, and many individuals do not want to be labeled solely as "victims." This is often important to their healing process and sense of identity. That said, some individuals feel "victim" better conveys their experience of having been the target of violent crime. In recognition of these differing views, this report uses both terms.

Throughout the report, we reference survivors' most senior rank while in service, though they may have left service by the time of our interview or prior to publication of this report.

"Retaliation" is used in this report to include adverse actions taken both by peers (social retaliation) and by the chain of command (professional retaliation) against persons who have reported a criminal offense (sexual assault).[18] The National Defense Authorization Act defines retaliation as "(a) taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member reported a criminal offense; (b) ostracism and such act of maltreatment, as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense."[19] Professional retaliation is also referred to as a "reprisal" and is typically handled by the Inspector General. It includes a range of actions such as transfer or reassignment, disciplinary action, poor performance evaluations, and change in a work assignment inconsistent with the military member's grade. In this report, Human Rights Watch uses the term "retaliation" for all such adverse actions, including those referred to as "reprisals."

---

[18] The Department of Defense informed Human Rights Watch that it is moving to "leave behind the ambiguous terms 'professional' and 'social' and better elucidate terms that consider the intent of the actor and clearly delineate actionable experiences." (Email communication from MG Jeffrey Snow to Human Rights Watch, May 4, 2015). However, we have referenced social and professional retaliation in this report both because they were used in the Department's most recent surveys on retaliation and because our concern with retaliation is not limited to behavior that is criminalized under the UCMJ.

[19] National Defense Authorization Act for Fiscal Year 2014, H.R. 3304, Section 1709, http://www.gpo.gov/fdsys/pkg/CPRT-113HPRT86280/pdf/CPRT-113HPRT86280.pdf (accessed April 24, 2015).

Military service regulations further define the terms "ostracism" and "maltreatment" referenced in (b) above as requiring "the intent to discourage someone from reporting a criminal offense or otherwise discourage the due administration of justice." Ostracism includes insults or bullying, exclusion from social acceptance or friendship because the victim reported a crime. Maltreatment refers to treatment by peers or by others that, when viewed objectively under all the circumstances, is abusive or otherwise unnecessary for any lawful purpose and that results (or reasonably could have resulted) in physical or mental harm or suffering.[20] Human Rights Watch used the term "ostracism" and "maltreatment" in their ordinary senses without inferring the underlying intent of the person doing the retaliation. This report examines forms of retaliation that do not necessarily align with actionable offenses that meet the elements of proof required for a charge of retaliation under military law.

This report also discusses other adverse consequences of reporting a sexual assault, such as punishment for minor misconduct that came to light as a result of reporting, though the military does not consider that retaliation.

Finally, we note that within the military system, victims may choose to report sexual assault in one of two ways: "restricted" or "unrestricted." An unrestricted report is a non-confidential disclosure of a sexual assault to military authorities that leads to an investigation. A "restricted" report allows victims to report an assault to specified officials confidentially enabling them to access support or health care without initiating a criminal investigation. All survivors cited in this report made unrestricted reports.

Other military terminology and abbreviations are set out in the glossary at the end of the report. Common abbreviations will be spelled out in the first use of each chapter.

[20] Air Force Instruction 36-2909 AFGM2014-01 (19 Jun 2014) cited in Judicial Proceedings Panel retaliation definition chart, p.5.

I. Retaliation in the Military

> Everyone has the same fear, what happens to the person who reports. We are dispensable.
> —Former Airman Torres, November 2013

> I knew when I reported my career would be over. Based on past experience, I knew what would happen.
> —Petty Officer First Class Cox, November 2013

There is a right to a remedy for all victims of sexual assault. Since retaliation often interferes with survivors' ability to access a remedy, governments should take all appropriate measures to end retaliation. Recognizing the ways that retaliation can interfere with victims' access to a remedy under human rights law, international best practices on the treatment of victims require that governments "take measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation."[21]

Survivors recounted suffering a range of negative actions after reporting sexual assault or harassment, both professional and social. Many considered the aftermath of the assault—bullying and isolation from peers or the damage done to their career as a result of reporting—worse than the assault itself.

Human Rights Watch has concluded that these experiences constitute harmful retaliation consistent with the definition provided in the National Defense Authorization Act. Even if some of the acts were not intended as retaliation, many occurred because the service member reported a sexual assault. In addition, the victim's beliefs about the incident and, more importantly, their beliefs about the military's response has a long lasting impact.[22]

---

[21] UN General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly Resolution 40/34, November 29, 1985, para. 6 (5). The Declaration was adopted as a part of the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, Italy, August 26 – September 6, 1985 and it details international consensus on best practices in relation to victims of crime.

[22] See Dr. Patricia Harned, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p. 149-150 (unofficial transcript on file with Human Rights Watch)("[T]he truth is it doesn't really matter whether or not you can prove that an incident of social retaliation actually occurred. Employees beliefs about the incident and more

Lawyers who worked with victims said they would not report an assault after what they had seen: "I would never report unless I was a virgin coming out of Bible study with no mental health history and it was videotaped, because there will be negative consequences," one said.[23] An experienced Air Force sex crimes prosecutor said: "I would never report. I was a prosecutor for eight years. No doubt. There is no way."[24]

Scope of Problem

Service members consistently cite fear of retaliation or negative impact on their careers as major reasons for their unwillingness to report sexual assaults.[25] The Department of Defense estimates one in four service members who experienced sexual assault reported their assault to military authorities in 2013.[26] This number is a significant improvement over the estimated one in ten who reported the previous year,[27] though still lower than the military would like.

In a 2012 study, nearly half (47 percent) of female service members who did not report a sexual assault indicated one reason they did not do so is because they were afraid the perpetrator or his supporters would retaliate against them.[28] The same percentage indicated

---

importantly their beliefs about what the organization will do in response and how the organization views it, has a long-lasting and far-reaching impact.").

[23] Human Rights Watch interview with Air Force SVC #1, Alexandria, VA, November 24, 2014.

[24] Human Rights Watch telephone interview with former Air Force prosecutor, March 4, 2015.

[25] Defense Manpower Data Center, "2012 Workplace and Gender Relations Survey of Active Duty Members," March 15, 2013, http://www.sapr.mil/public/docs/research/2012_workplace_and_gender_relations_survey_of_active_duty_members-survey_note_and_briefing.pdf (accessed April 24, 2015), p. 106; 28 percent of women who experienced sexual assault but chose not to report to military authorities thought their performance evaluation or chance for promotion would suffer; 23 percent feared they or others would be punished for infractions/violations, such as underage drinking, ibid., p. 107.

[26] Department of Defense, "Report to the President of the United States on Sexual Assault Prevention and Response," November 25, 2014, http://sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_Full_Report.pdf (accessed April 24, 2015), p. 15 ("Whereas only one in 10 victims was reporting just two years ago, that rate has increased to one in four"). The 2014 survey only included reports to DOD. The 2012 survey indicates one percent of female service members and five percent of male service members reported to a civilian authority; 16 percent of females and 9 percent of males reported to both. Defense Manpower Data Center, "2012 Workplace and Gender Relations Survey of Active Duty Members," March 15, 2013, http://www.sapr.mil/public/docs/research/2012_workplace_and_gender_relations_survey_of_active_duty_members-survey_note_and_briefing.pdf (accessed April 24, 2015), pp. 72-73.

[27] Department of Defense, "Annual Report on Sexual Assault in the Military, Fiscal Year 2012," May 3, 2013, http://www.sapr.mil/public/docs/reports/FY12_DoD_SAPRO_Annual_Report_on_Sexual_Assault-volume_one.pdf (accessed April 24, 2015), p. 18.

[28] Survey respondents were able to choose more than one reason for not reporting including: you did not want anyone to know (70 percent); you felt uncomfortable making a report (66 percent); you did not think the report would be kept confidential (51 percent); you did not think anything would be done (50 percent); you did not think it was important enough to report (48 percent); you thought you would be labeled a troublemaker (47 percent); you were afraid of retaliation/reprisals from the person(s) who did it or from their friends (47 percent); you heard about negative experiences other victims went

they did not report because they feared they would be labeled a "troublemaker." More than a quarter (28 percent) feared they would receive poor performance evaluations, and 23 percent feared they would be punished for other infractions (such as underage drinking) if they reported. The 2014 RAND Military Workplace Study also indicates that concern about retaliation is a significant reason for not reporting an assault, though the figure is lower (15 percent).[29] Unfortunately, these fears are well-grounded as retaliation is pervasive.

According to a 2014 Department of Defense survey conducted by RAND Corporation, 62 percent of active service members who reported sexual assault to a military authority in the past year indicated they experienced retaliation as a result of reporting.[30] The survey defined retaliation to include professional retaliation (such as adverse personnel action), social retaliation (ostracism or maltreatment by peers or others) and administrative action or punishments. Because only active service members participate in the survey, service members who left the military—either voluntarily or involuntarily—after reporting a sexual assault are not included, so the actual rate of retaliation may well be higher.

The military conducts workplace and gender relations surveys every two years. The 2014 RAND survey shows that reported rates of retaliation have not changed since the last workplace survey in 2012, despite aggressive efforts by the military to reform its handling of sexual assault cases, including efforts to address retaliation.

---

through who reported their situation (43 percent); you thought you would not be believed (43 percent); you thought reporting would take too much time and effort (35 percent); you thought your performance evaluation or chance for promotion would suffer (28 percent); you feared you or others would be punished for infractions/violations, such as underage drinking (23 percent); you were afraid of being assaulted again by the offender (23 percent); you thought you might lose your security clearance/personnel reliability certification (15 percent); you did not know how to report (14 percent); other (16 percent). Defense Manpower Data Center, "2012 Workplace and Gender Relations Survey of Active Duty Members," March 15, 2013, http://www.sapr.mil/public/docs/research/2012_workplace_and_gender_relations_survey_of_active_duty_members-survey_note_and_briefing.pdf (accessed April 24, 2015), pp. 106-107.

[29] RAND National Defense Research Institute, "Sexual Assault and Sexual Harassment in the U.S. Military: Vol 2. Estimates for Department of Defense Service Members from the 2014 RAND Military Workplace Study,"2015, http://sapr.mil/public/docs/reports/FY14_Annual/FY14_Annual_Report_Annex_1_RAND.pdf (accessed April 24, 2015) Annex 1, p. 28.

[30] Department of Defense, "Report to the President," November 25, 2014, http://sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_Full_Report.pdf (accessed April 22, 2015), pp. 18-22. Rates of retaliation for males who reported sexual assault were unreportable so this figure applies only to females. However, an attached Annex prepared by RAND puts the figure at 55 percent. See Annex 1: http://sapr.mil/public/docs/reports/FY14_Annual/FY14_Annual_Report_Annex_1_RAND.pdf. For purposes of this report, we are citing the figures used by Defense Department in the main body of their report.

DOD has made an affirmative effort to collect data on retaliation by adding questions on retaliation to the 2014 survey to better quantify the problem. Army MG Jeffrey Snow, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p.65 (unofficial transcript on file with Human Rights Watch).

In the 2014 survey, more than half the victims who made a report (53 percent) indicated experiencing social retaliation; 32 percent reported professional retaliation; 35 percent indicated experiencing administrative action (such as a reprimand);[31] and 11 percent reported being punished for an infraction (such as underage drinking). In a separate 2014 Defense Department Survivor Experience Survey, 40 percent of victims who made an unrestricted report of sexual assault reported experiencing professional retaliation, 59 percent experienced social retaliation, and one-third experienced both.[32]

A little retaliation can have enormous impact. The negative experiences of those who report greatly influence other survivors who consider how others have been treated when they make their own decisions about reporting: in the 2012 Workplace and Gender Relations Survey, 43 percent of those who chose not to report a sexual assault indicated that one reason they did not do so is because they heard about the negative experiences of other victims who did report.

Many survivors we interviewed, some of whom did not initially report their assault, said they did not want to report because they had seen what happened to others. As one said, "I know how it works in the military. If you report, you are out [of the military]."[33] One Marine who was ostracized after reporting walked in on her roommate being violently gang-raped. When she asked her roommate if she would report the assault, her roommate said that she would not report because "I don't want to end up like you."[34] When a trainee turned her drill sergeant in for sexual misconduct in 2012, she experienced such intense abuse in retaliation that she later discovered his other victims made a pact never to reveal what he had done to them.[35]

---

[31] Administrative actions include corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or the administrative withholding of privileges, or any combination of the above. Manual for Courts-Martial United States, R.C.M. 306(c)(2), 2012, http://armypubs.army.mil/epubs/pdf/mcm.pdf (accessed April 24, 2015).

[32] RAND, "Sexual Assault and Sexual Harassment in the Military: Top-Line Estimates for Active-Duty Service Members from the 2014 RAND Military Workplace Study," 2014, http://www.sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_Annex_1_RAND.pdf (accessed April 24, 2015).

[33] Human Rights Watch telephone interview with TSgt Susan Howard who served in the Air Force for 15 years and is currently a civilian employee with the Army, February 9, 2015.

[34] Human Rights Watch telephone interview with PFC Patricia Watson, October 29, 2013.

[35] Human Rights Watch interview with SPC Bonnie Thomas, Fayetteville, NC, March 2, 2015.

The significant strides the military has recently made in improving reporting rates will be erased if victims see that others who report experience retaliation, and that the military does not respond to it effectively.

While most survivors surveyed report experiencing retaliation, few will see their perpetrator tried and punished for a sex offense, as is true generally for these offenses in both the military and civilian contexts. According to the December 2014 Report to the President on Sexual Assault in the Military, in FY 2014, of the 3,261 cases within the Defense Department's jurisdiction that had outcomes to report,[36] 910 (28 percent) had sex offense charges preferred (initiating the court-martial process); 496 (15 percent) cases proceeded to trial; and 175 (5.4 percent) were convicted of a sex offense.[37]

Thus for a victim deciding whether or not to make an unrestricted report, the risk is 12 times greater that the service member will experience retaliation as a result of their report than that the service member will see the offender (if a service member) convicted for a sex offense after a court martial.[38]

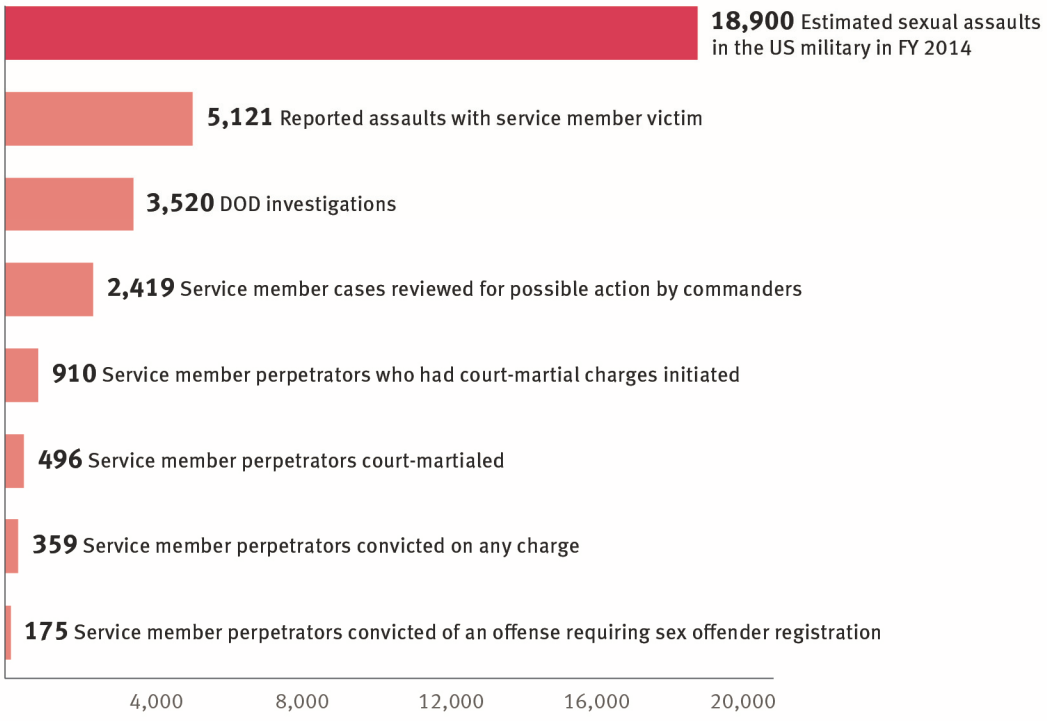
---

[36] In FY 2014, DOD had 3520 outcomes to report of investigations into sexual assault allegations made against service members. We excluded 259 cases in which DOD would not have been able to act because a civilian or foreign jurisdiction exercised authority over the perpetrator (63); the subject had died or deserted (12), or the subject was a civilian or foreign national (184). Other cases that were "unfounded" (551) or in which the investigators did not identify the offender (291) remain in the analysis. We kept in "unfounded" cases because high rates of unfounding can indicate problematic investigations. We also kept in closed cases in which the suspect was not identified because that may also be the fault of a deficient investigation and it is not clear the suspect is outside military jurisdiction.

[37] Department of Defense, "Report to the President of the United States on Sexual Assault Prevention and Response," November 25, 2014, Appendix A, p.18-22, http://www.sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_Appendix_A.pdf (accessed April 24, 2015). Of the 910 cases in which court-martial charges were brought in FY 2014, 735 were completed by the end of the fiscal year. 184 were convicted of other non-sex offense charges at court martial. Others were given non-judicial punishments (35) or were granted a resignation or discharge (90) instead of court martial. DOD figures indicate 28 percent (928 of 3261) of those investigated for sex offenses may have experienced some sort of disciplinary action (such as non-judicial punishment, administrative discharge or other adverse administrative action) following a sexual assault investigation and another 11 percent (368) may have been disciplined or experienced adverse action for a non-sex-assault offense. Thus victims are still more likely to experience retaliation than see their assailant face any negative consequences for any type of crime following a report of an assault. The SAPR 2014 Annual Report does not include figures on those convicted of offenses requiring sex offender registration so this report relies on the provisional data provided in the Report to the President.

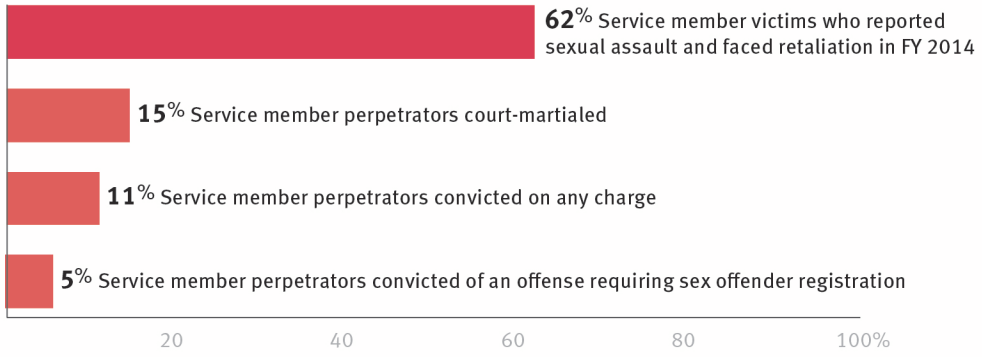
[38] Computed using relative risk. In FY 2014, there were 3,678 unrestricted reports of sexual assaults with a service member victim. The 2014 RAND Military Workplace Study found that 62 percent of service members who experienced sexual assault in the past year and reported to military authorities experienced some form of professional or social retaliation, suggesting an estimated 2,280 service members experienced retaliation in 2014. Among the 3,520 cases investigated with dispositions to report by December 2014, there were 175 convictions for serious sex offenses (including rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, indecent viewing, visual recording, broadcasting, forcible pandering). Department of Defense, "Report to the President of the United States on Sexual Assault Prevention and Response," November 25, 2014, Appendix A, p.18-22, http://www.sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_Appendix_A.pdf (accessed April 24, 2015). Civilian or foreign authorities may also prosecute a service member for crimes committed in their jurisdiction.

FIGURE 1: **SEXUAL ASSAULT AND INVESTIGATION IN THE US MILITARY**



Source: Department of Defense Annual Report on Sexual Assault in the Military, FY 2014. http://www.sapr.mil/public/docs/reports/FY14_POTUS/FY14_-DoD_Report_to_POTUS_SAPRO_Report.pdf and RAND Military Workplace Study (RMWS; 2014); Provisional Statistical Data on Sexual Assault FY 2014.

FIGURE 2: **LIMITED JUSTICE FOR SERVICE MEMBER VICTIMS**



Source: Department of Defense, "Annual Report to the President of the United States on Sexual Assault Prevention and Response," 2014. http://ww-w.sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_SAPRO_Report.pdf; Provisional Statistical Data on Sexual Assault FY 2014.

However, they usually agree to let the military exercise its UCMJ jurisdiction over its members. In FY 2014, civilian or foreign authorities exercised jurisdiction over service members in only 63 cases (or less than 2 percent) of cases DOD investigated.

Below is a description of the range of experiences reported by survivors following their reports of sexual assault.

Threats and Violence after Reporting Sexual Violence and Harassment

While social isolation can be devastating on its own, interviewees also reported peer retaliation of a more aggressive nature, up to and including physical violence.

Roy Carter, an Army survivor who provided a written account to Human Rights Watch, reported a sexual assault by a male soldier from another platoon in 2012 only to find his safety further threatened:

> Within 6 months I had been physically attacked twice and verbally belittled by no less than six senior NCOs [Non-Commissioned Officers] as well as my entire platoon of peers. It wasn't until I started drinking so heavily and failing at physical fitness that my Chief then finally found me a real counselor almost a year after being there. By then a certain Sergeant in my platoon had told me he would kill me if we ever went to Afghanistan because "friendly fire is a tragic accident that happens." I started carrying a knife for protection from people in my own unit. After I had been there for a year, someone tried to knife me in a bar and kept screaming "DIE FAGGOT, DIE" and that was when I told my Captain that I wanted a discharge before I ended up dead on the evening news which would be bad for him too.[39]

Others also reported threats:

- An Air Force survivor reported being called a “bitch” and being told “You got what you deserved.” Colleagues were angry at her for getting her assailant in trouble and “ruining his career.” She was told she “better sleep light.” Her car was tampered with so she had to walk everywhere. She stayed in a hospital overnight because she felt that nowhere else was safe. Ultimately she was given a transfer, but nothing happened to the people who threatened and harassed her.[40]

---

[39] Email communication from Roy Carter to Human Rights Watch, October 14, 2014.

[40] Human Rights Watch telephone interview with SrA Melissa Evans, October 31, 2013.

- A Marine reported that in 2014 after the case against her perpetrators was closed with them only being punished for alcohol violations, she began getting threatening anonymous text messages and her car was vandalized. On Facebook, her picture was posted on a webpage frequented by Marines with her name, calling her a "wildebeest," and saying she needed to be silenced "before she lied about another rape." She was called a "cum dumpster" and someone posted "find her, tag her, haze her, make her life a living hell." She stopped going to the chow hall (dining facilities) out of fear.[41]
- A Marine Corps VLC told us his client was harassed and viewed as a "problem child." When she went to a club with a friend, she was confronted by another Marine who told her friend, "Don't sleep with [her] or she will call 'rape.'" He cursed and threatened her, and said "If you sleep with anyone in this unit, we will gang up on you and burn you." The VLC said he was concerned if he raised the issue with her command she would face more retaliation.[42]

Social Retaliation

Isolation and bullying by peers constituted one of the most common and insidious forms of retaliation described in interviews. Why peers appear to retaliate more often against the victims than the perpetrators of assaults is a complex question. As the Response Systems to Adult Sexual Assault Crime Panel found:

> A sexual assault allegation involving members of the same military unit may divide loyalties among a close-knit group of people who should be working toward a common goal. Some unit service members may seek to silence the victim's sexual assault allegation or retaliate against him or her to protect unit cohesion and keep the unit 'whole.'[43]

---

[41] Human Rights Watch telephone interview with LCpl Amy Johnson, January 11, 2015.

[42] Human Rights Watch telephone interview with Marine Corps VLC #1, January 5, 2015.

[43] Response Systems to Adult Sexual Assault Crimes Panel, "Report of the Response Systems to Adult Sexual Assault Crimes Panel," June 27, 2014, pp. 60-61. http://responsesystemspanel.whs.mil/Public/docs/Reports/00_Final/RSP_Report_Final_20140627.pdf (accessed April 24, 2015). The Response Systems Panel was created by the Secretary of Defense at the direction of Congress in order to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses for the purposes of developing recommendations regarding how to improve the effectiveness of such systems. They issued their report on June 27, 2014.

Possibly for that reason, leadership often did not respond to survivors' complaints and sometimes even participated in the retaliation. As a senior master sergeant said, "The shunning spanned the ranks. Peers, supervisors, officers, and enlisted. If you made waves, rocked the boat, you were an issue and some[one who] threatened mission success and accomplishment."[44]

Many survivors who spoke with Human Rights Watch felt they were viewed as troublemakers who had brought negative attention to the unit. As Lisa Cox, a Navy petty officer, said, "My community is very small and many of my peers, subordinates, and seniors are aware of what happened to me. Instead of their support, I have been marked as someone to stay away from, a trouble maker, snitch and improper words I cannot type out."[45]

Some pointed to the popularity or professional standing of the perpetrator as a reason they were shunned or bullied. In addition, military sexual assault victims confront many of the same victim-blaming attitudes prevalent in society at large—finding their credibility assailed by inflated perceptions about the rate of false reporting, criticism of their behavior before and after the assault, and antiquated, damaging beliefs about what constitutes "real rape."

Survivors told Human Rights Watch about the acute trauma caused by having the people who were supposed to defend their lives in battle turn on them at the very moment they most needed support. As Senior Airman Bridges, who reported sexual harassment and assault, said, "They are supposed to be your family. When sexual assault happens, you're no longer family."[46]

The severity of peer retaliation varied across our interviews. Some survivors reported being frozen out by former friends and colleagues. Senior Airman Bridges said that being friends with her was seen as a "career-ender" after a commander made comments about her and her complaints on a conference call.[47]

---

[44] Email communication from SMgt Margaret Kelly to Human Rights Watch, November 12, 2014, on file at Human Rights Watch.
[45] Letter from PO1 Lisa Cox to Admiral [name withheld], March 10, 2010, on file at Human Rights Watch. Petty Officer Cox left service in December 2011.
[46] Human Rights Watch telephone interview with SrA Ciera Bridges, October 31, 2014.
[47] Ibid.

Supervisors often dismissed concerns that victims raised about social ostracism. Seaman Collins said when she repeatedly raised concerns about the snickering and ostracism by her peers to her chain of command in the Navy she was told to "suck it up" and to "grow up" and "ignore it."[48] A Naval petty officer told Human Rights Watch that after she was assaulted by a cook halfway through a deployment in 2011, her assailant's colleagues harassed her and as a result she could not eat in the mess hall. Despite complaining to the chain of command several times, she said that nothing was done. For seven months while on deployment, she ended up buying her own food when she was in ports and "living off cans of tuna."[49]

Fireman Martinez said she was assaulted by her supervisor during her first Coast Guard deployment in the fall of 2012. After an investigation was initiated, she was shunned by her peers. No one would sit with her while she ate. Others said they heard she was getting in trouble for sexually assaulting the perpetrator and his friends. People would look at her and turn away. Her peers knew details about her case but she was forbidden to talk about it and could not defend herself. Fireman Martinez said she felt her command let her down and described that time period as "a shit show."[50]

Survivors also described situations in which the command appeared to encourage the peer alienation of the survivor. Several service members reported that their isolation was a result of instructions by commanders to their peers not to talk to them. One Marine Corps Judge Advocate General suggested that this instruction may be a mistakenly broad interpretation by junior leaders of general guidance requiring people not to talk with a victim about an ongoing investigation.[51] Regardless of the reason why such instructions are given, the resulting isolation for the victim can be devastating. Survivors told Human Rights Watch of the following experiences:[52]

---

[48] Human Rights Watch telephone interview with SN Nicole Collins October 23, 2014.

[49] Human Rights Watch telephone interview with PO2 Gabrielle Bouvier, October 15, 2014.

[50] Human Rights Watch interview with FN Diana Martinez, November 5, 2013.

[51] Human Rights Watch telephone interview with Marine Corps Judge Advocate, March 6, 2014.

[52] In addition, similar experiences were reported by a Coast Guard survivor on *My Duty to Speak* ("I called my old Chief and those at my old unit that promised to stick by me and they told me that they were advised to no longer speak with me"), "Active Duty Coast Guardsman Face Retaliation for Seeking Treatment for Rape," *My Duty to Speak*, November 4, 2012, http://mydutytospeak.com/2012/11/04/active-duty-coast-guardsman-face-retaliation-for-seeking-treatment-for-rape/ (accessed April 28, 2015); Human Rights Watch telephone interview with Amn Lena Stewart (her command made her "feel like [she] couldn't talk to anyone or they would get in trouble"), November 17, 2014; Human Rights Watch telephone interview with PO1 Lisa Cox November 5, 2013; email communication from SrA Robinson to Human Rights Watch, November 30, 2014 (an email was sent to her unit instructing them "not to leave her alone with a male. She is under investigation.")

- Army Specialist Parker said she felt targeted, isolated, and harassed after reporting her assault. Her close friends, people she considered her "brothers and sisters," were ordered not to talk to her. One friend told her that the platoon sergeant told them not to talk to her, and if they did "they would face charges under the [Uniform Code of Military Justice]." SPC Parker said, "Sexual assault is not what messes you up. It is the reprisals, the hazing. I could recover from the assault but nothing is done for the retaliation."[53]
- A lance corporal said her friends were told they would get "NJP'd" (non-judicial punishment) if they hung out with her. "I was alone all the way until the end." She was discharged in June 2012 after being charged with "destruction of government property" for hurting herself after attempting suicide.[54]
- A Marine said that immediately after reporting in 2013, she was told not to talk about the case by Naval Criminal Investigative Service (NCIS) investigators. Meanwhile, the perpetrators were spreading rumors that she was a "lying whore." People would stand outside her room and say her name really loudly then whisper "whore."[55]
- An SVC said that when her client deployed after reporting a sexual assault in 2015, a higher-ranking person told the men in the client's unit about the report, called her a "walking SARC [Sexual Assault Response Coordinator] complaint," and advised them to stay away from her to avoid being falsely accused of sexual assault.[56]

Professional Retaliation

Many rape victims feel they face a choice between reporting their sexual assault or continuing their career in the military. Professional retaliation takes various forms including: poor performance evaluations, lost promotions or opportunities to train, loss of awards, lost privileges, demotions, a change in job duties, disciplinary actions, punitive mental health referrals, and administrative discharge.

---

[53] Human Rights Watch telephone interview with SPC Ashley Parker, December 17, 2013.
[54] Human Rights Watch telephone interview with LCpl Jane Reid, November 1, 2013.
[55] Human Rights Watch telephone interview with LCpl Amy Johnson, January 11, 2015.
[56] Email communication from Air Force SVC #1 to Human Rights Watch, May 1, 2015.

Many interviewees told us that the negative turn in their professional careers did not correspond to any change in their work performance. It should be noted, however, that some survivors' performance may well suffer following a trauma and other negative repercussions may flow from missing work to participate in judicial proceedings or seek counseling or medical treatment.

This can create significant challenges for keeping a service member on a chosen career path. However, the failure to address adequately these challenges leads to victims believing they are being punished for reporting sexual violence and fosters the perception that coming forward is a "huge career-ender."[57] It also results in loss of good soldiers.

Poor Work Assignments

Survivors reported receiving poor work assignments after reporting sexual assault or harassment. In some cases the assignments were considered undesirable because they involved demeaning tasks, such as picking up garbage. In others, the assignments took the survivors out of their area of specialty, putting them at a disadvantage for promotions.

In some cases this was done to remove victims from a hostile work environment and was a positive move for survivors. Others, however, considered the assignments to be deliberately demeaning and intended to punish them for reporting sexual violence or harassment. It may understandably be difficult for the military to find a suitable temporary position for someone in their specialty on short notice and "fill-in" duties may seem demeaning even when they are not intended to be so.[58] However, being put in a position outside of their specialty for an extended period took some survivors off their career paths and was deeply demoralizing. The following are experiences survivors shared with Human Rights Watch:[59]

---

[57] Human Rights Watch telephone interview with Amn Grace Garcia, March 12, 2015.

[58] Human Rights Watch interview with SAPRO, March 3, 2015.

[59] Similar stories were shared in a Human Rights Watch telephone interview with SN Lee, November 3, 2014 ("The way they dealt with me was by putting me in a room in a corner with nothing to do—half the time they didn't know I was there. I got no qualifications in the five months I was there... I had lots of time to think dark thoughts"); Human Rights Watch telephone interview with SN Nicole Collins, November 3, 2014 (during one of her interim assignments she sat in a shop playing video games on her phone. "No one cared."); SPC Ashley Parker (though she was a driver, she was assigned to sit at a front desk at battalion level during her investigation, forcing her to explain to people why she was not in her usual spot. She had nothing to do "and spent a lot of time crying."); Human Rights Watch telephone interview with TSgt Brenda Phillips, October 24, 2013 (after reassignment, she ended up isolated doing "menial, trivial work").

- A petty officer reported being assigned to pick up garbage after reporting her rape. She said there were three other women assigned to pick up trash on the base with her in 2013, all of whom had reported assaults, though garbage duty is usually reserved for those on restricted duty.[60] She said "It was like we got in trouble for reporting."[61]
- One lance corporal who had been trained to fix computers was transferred to the armory unit after reporting a sexual assault in 2014. There she was enclosed in a locked cage with five men for over four months, cleaning and passing out weapons. She had little to do to occupy her time and was stressed being alone in that position. By the time she was reassigned she felt she had "no idea what [she] was doing anymore because [she] had been out of it for too long." She was also assigned to fix equipment she had not been trained on, negatively impacting her performance. Out of her two-and-a-half years in the Marines, she spent less than six months working in the job she was supposed to do. She was not recommended for promotion.[62]
- After Master Sergeant Davis reported sexual assault, he was removed from his position in command and control and assigned to office duties inconsistent with his rank, including cleaning out office closets. Ultimately he was reassigned to "base beautification" and was made to pick up trash in his uniform and an orange vest. It was winter so he performed this task in the snow and ice with a broken foot and a necrotic hip that meant he needed crutches. He also had to report to an airman of significantly lower rank. Because this assignment was normally reserved for airmen who had been in trouble, it was especially shameful to be seen on base in this position.[63]
- After reporting her assault in 2012, Fireman Martinez was asked to leave her department and was reassigned to operations. Since she did not have clearance yet, she was not allowed into another department, so she spent her days in her berthing (assigned sleeping place on the ship). Later, her advanced training was delayed pending the outcome of the investigation.[64]

---

[60] "Restricted duty" refers to removing a service member from their position or assigning them limited responsibilities and may constitute a form of administrative discipline.

[61] Human Rights Watch telephone interview with PO3 Lewis, November 17, 2014.

[62] Human Rights Watch telephone interview with LCpl Amy Johnson, January 11, 2015.

[63] Human Rights Watch interview with MSgt Sam Davis, [location withheld], March 11, 2015.

[64] Human Rights Watch telephone interview with FN Diana Martinez, November 5, 2013.

- After telling her squad leader about her assault and being told "not to be talking shit about" her assailant who was a senior NCO during a deployment, a corporal said she started getting put on "BS details, mandated full battle rattle [full combat gear] PT [physical training] twice a day, and many times got put on Guard Duty that was generally reserved for someone on a profile that couldn't go on mission. Not me, as soon as I got off overnight duty, I had a full day ahead of me and did that repeatedly until I gave up trying to pursue it … they won." She medically retired from the Army in 2012.[65]

Lost Potential for Career Advancement

For too many service members reporting sexual assault ultimately derails or even ends promising military careers, including through unwarranted poor performance evaluations and the revocation of important opportunities for training, deployments, and ultimately promotions.

Annie Moore joined the Reserve Officer Training Corps (ROTC) in 2003 at the age of 18 and was commissioned in 2007. She made the rank of army captain in 2011 and deployed to Kuwait where she served as a company commander. She told Human Rights Watch that there she faced an ongoing barrage of inappropriate sexual comments from her command sergeant major. After raising the problem up the chain of command, she saw a dramatic change in the characterization of her performance by the command, a number of whom had connections to the perpetrator. "Suddenly I was the worst commander ever," she told Human Rights Watch. "I got two mediocre evals [evaluations] that didn't reflect what I had done."[66]

Despite doggedly pursuing both the original harassment complaint and subsequent communications with the base inspector general about retaliation, Captain Moore was unsuccessful in her efforts to see anyone held accountable. When she changed duty stations in 2014, she hoped to make a fresh start in a new location, but was informed within her first month by another officer that the brigade commander from Kuwait had spoken to her new brigade commander. Captain Moore told Human Rights Watch:

---

[65] Email communication from [name withheld] to Protect Our Defenders, January 13, 2013.

[66] Human Rights Watch telephone interview with CPT Annie Moore, April 29, 2014.

> When I took command, the commander asked me to do 18 months. After I was aware that the [brigade] commanders had talked, I was informed that I was being relieved of my command. No reason was given. The only time you're relieved or asked to move early is when you have done a poor job. But I have no counselling statement [admonition] on record—there's nothing to substantiate the negative or mediocre OERs [evaluations] I received.[67]

Others also told Human Rights Watch that they had lost opportunities that seriously damaged their military careers.[68]

- After reporting a sexual assault in late 2013, Senior Airman Robinson had her weapon taken from her because she was considered "emotional" because she cried during a meeting discussing her concerns about living directly across from her perpetrator. As a military police officer, she was unable to do her job without a weapon. During the investigation, Robinson received her "dream deployment" and was scheduled to leave before the case was concluded. However, she was unable to deploy without her arms. Since her commander told her she would get her arms back when the case was over, Robinson decided to withdraw her participation in the case. However, her squadron commander told her she was "unable to get off the train" so she could not get her arms back and deploy.[69]
- Technical Sergeant Phillips had a successful career in the Air National Guard, earning recognition nationally for her work designing training programs and awards for extra work she had done. She was up for a promotion in 2010 when she reported an assault by her supervisor that occurred earlier in her career. After the report, she was moved to a different area and her chances for a promotion evaporated. A colleague told her she overheard her wing commander say, "Over my dead body will she get promoted now." Phillips lost her responsibility for

---

[67] Ibid.

[68] MSgt Sam Davis also reported that he lost his assignment as superintendent following his assault, an assignment that was an important stepping stone to a promotion. Human Rights Watch interview with MSgt Sam Davis, March 11, 2015. Similarly, SN Nicole Collins reported being put in a remedial language class in early 2013 shortly after reporting her assault instead of planned advanced training because "you're going to have a lot of medical appointments." She felt that her career was put on hold for nearly a year and she was never able to become a certified linguist despite being fluent in her assigned language. Human Rights Watch telephone interview with SN Nicole Collins, October 23, 2014.

[69] Human Rights Watch interview with Air Force SVC #1, November 24, 2014; Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014; email communication from SrA Beth Robinson to Human Rights Watch, November 12, 2014.

training people and was demoted twice after her report. She said, "Despite all those awards, I got nothing." She retired in April 2013.[70]

- An Air Force SARC told of a victim who was not allowed to deploy after reporting her assault—a "flyer who could not fly." Her career stalled while her assailant was able to deploy. He was promoted during the investigation, though after his conviction he lost his stripes.[71]

Survivors also report being denied medals or recognition that would be expected in ordinary circumstances.[72] Many survivors we spoke with said it was not only demoralizing to be denied their medals, it also sent a negative signal to the promotion board, and ultimately was another marker that could lead to the end of a military career.

- An Army captain who reported a sexual assault in 2010 was scheduled to change her command after two years in her post. After the date for the change of command ceremony was set and invitations sent out, the brigade commander scheduled a brigade-wide training for the same day. She asked if she should change the ceremony date since the entire brigade usually attends the ceremony. Her request was denied and she had a barebones ceremony with just her unit. At the ceremony, despite excellent reviews, she did not receive any award. "If you don't get the award, it is an indicator to the promotion board that something is wrong. That was the start of the end of my career. Up until then, I was always exceptional, a top performer. I trained others, I was always the top female."[73]
- Senior Airman Hall reported her assault by her boyfriend, another airman, in 2014. When she next changed duty stations she was declined for a "Permanent Change of Station" medal though she said she had a good conduct medal, no paperwork and was one of few in her shop who never got in trouble. Because the medal counts as a point towards her next promotion, losing it could make her less competitive to move ahead. Through her SVC she has appealed.[74]

---

[70] Human Rights Watch telephone interview with TSgt Brenda Phillips, October 24, 2013.

[71] Human Rights Watch interview with Air Force SARC #1, October 10, 2014.

[72] Human Rights Watch telephone interview with SrA Anna Hall, November 21, 2014; Human Rights Watch interview with MSgt Sam Davis, March 11, 2015; Human Rights Watch interview with LTC Sheila Anderson, November 12, 2013; Human Rights Watch telephone interview with CPT Ruth Rivera, November 20, 2014.

[73] Human Rights Watch telephone interview with CPT Ruth Rivera, November 20, 2014.

[74] Human Rights Watch telephone interview with SrA Anna Hall, November 21, 2014.

- After a National Guard lieutenant colonel reported her sexual assault in 2012, a nomination for an award for meritorious service was withdrawn (even though it is traditionally given to all battalion commanders).[75]

Other survivors also felt reporting their assaults directly impacted their performance evaluations. A number of factors linked to the assaults could lead to poor performance evaluations. For example, performance may be negatively affected by trauma; training or assignments may be interrupted to accommodate legal appointments or healthcare needs; and deployments or other opportunities for advancement may be missed. One victim's lawyer said his client was not progressing in her career because she was "put in a position where she was doing nothing, and her performance report will show she is not progressing in her career."[76] As one Army officer said, the effect can be subtle. A lot of unrated time due to involvement in an investigation can impact performance reports.[77]

Because promotions are competitive and high scores on evaluations are common, even one bad evaluation can render someone un-promotable and mark the beginning of the end of a career. However, there is currently no procedure for consideration of how evaluations may be impacted by the aftermath of an assault, though one branch is reportedly considering allowing victims to postpone evaluations.[78] The following are examples of survivors who told Human Rights Watch of instances in which they believed they were unfairly evaluated:[79]

- Petty Officer Bouvier said she had always got the highest marks until she reported her assault. She went from being an "excellent performance" sailor to a "severe problems" sailor. She was constantly told by people to "get over it." She told Human Rights Watch that she had to sign the evaluation or she would have been punished for disobeying a direct order. She was discharged in 2013.[80]
- A Senior Master Sergeant reported being groped by a JAG when she was a young airman. On her next evaluation she received a lower mark for "questionable

---

[75] Human Rights Watch interview with LTC Sheila Anderson, November 12, 2013.

[76] Human Rights Watch group interview with Air Force SVCs, Washington, DC, December 4, 2014.

[77] Human Rights Watch telephone interview with CPT Gloria Rosen, September 25, 2014.

[78] Human Rights Watch group meeting with SAPRO, Alexandria, VA, March 3, 2015. They did not disclose which branch as it was not public at the time.

[79] In addition, similar accounts were provided in Human Rights Watch telephone interview with PO1 Lisa Cox, November 5, 2013; Human Rights Watch telephone interview with A1C Chris King, December 4, 2014.

[80] Human Rights Watch telephone interview with PO2 Gabrielle Bouvier, October 15, 2014; email communication from PO2 Gabrielle Bouvier to Human Rights Watch, April 18, 2015.

handling of personnel matters." As a result, when she was raped later in her career she said, "I was afraid to say anything, much less report what was happening.... Talking about [men who preyed on women] was seen as not being a team player or someone who wanted to rat others out... If we complained, we didn't deploy and deploying was the whole reason our flight [unit] existed. I've never reported any more harassment or assault again. To me it wasn't worth it."[81]

- After Master Sergeant Davis reported his sexual assault, he received a referral Enlisted Performance Report (EPR) —namely, a negative performance evaluation that could result in administrative discharge. He went from having a perfect record of all fives on his evaluations for 10 years and non-commissioned officer (NCO) of the year, to getting a three and a review that indicated he was possibly not fit to be an airman.[82] He was also denied a Permanent Change of Station medal when he left the duty station where he had been assaulted, losing a point toward his promotion.[83] Though he was later able to upgrade his evaluation to a four, he is no longer competitive for promotion.

A victim's lawyer can sometimes assist with an appeal of a bad evaluation. An Army SVC appealed an evaluation that overly emphasized collateral misconduct of a victim resulting in an investigation into the battalion commander who prepared the evaluation.[84] The outcome was not yet known at time of writing.

Disciplinary Action ("Bad Paper")

The US military disciplinary system provides a spectrum of administrative options for commanders to ensure good order and discipline. These options, in order of increasing severity and formality, include verbal counseling, formal letters of counseling,[85] letters of reprimand (LOR) or General Officer Memorandum of Reprimand (GOMOR), and non-judicial punishments (also known as Article 15s, or Captain's Mast, depending on the branch).

---

[81] Email communication from SMSgt Margaret Kelly to Human Rights Watch, November 12, 2014, on file at Human Rights Watch.

[82] Human Rights Watch interview with MSgt Sam Davis, March 11, 2015.

[83] Ibid.

[84] Human Rights Watch telephone interview with Army SVC #1, December 9, 2014.

[85] Letters of counseling in the Marine Corps are also known as a "6105" referring to a paragraph in the Marine Corps Separations Manual that lists counseling required prior to administrative separation; in the Coast Guard "a negative page seven" or "CG-3307" also refers to administrative remarks put into a permanent record that may later be used to justify a discharge.

LORs are a censure or "chewing out" for failure to comply with established standards.[86] They may be held locally, at the current post, in which case they will be removed from the service member's personnel record when the subject is transferred or after a certain time period (three years in the Army), or placed into the service member's permanent record, in which case they will be seen by promotion boards. Letters of counseling or reprimand may be used to justify an administrative discharge. In addition, commanders may initiate a "Command [or Commander]-Directed Investigation" if they believe a subordinate has violated a standard of conduct. This may also be stigmatizing and lead to disciplinary action.

For many service members who spoke with Human Rights Watch, these disciplinary actions became a routine part of life after they reported sexual assault or harassment. In some cases, they asserted that the allegations of misbehavior made against them had no basis in fact. In others, behavior that had previously been tolerated or failings that were routinely overlooked in others suddenly drew swift condemnation of the survivor.

Such disciplinary actions serve to reinforce perceptions of survivors as troublemakers and malingerers, further marginalize them from their peers, and begin building a record that can end a survivor's career. As one Senior Master Sergeant said, "There was never any support for females who reported. You took it or suffered. If you did report it, you were scrutinized or chastised in everything you did. You didn't deploy because you were a problem."[87]

Letters of Counseling or Reprimand

After Senior Airman Bridges reported multiple incidents of sexual harassment and assault up the chain of command, she began getting letters of counseling for minor infractions that would normally have merited an oral admonishment at most. "I started to get paperwork for little things," she told Human Rights Watch. "Letters of counseling for things like being five minutes late."[88]

---

[86] XVIII Airborne Corps and Fort Bragg Office of the Staff Judge Advocate Legal Assistance Office, "Information Paper – Letters of Reprimand (LOR) and General Officer Memorandums of Reprimand (GOMOR)," August 2012, http://www.bragg.army.mil/directorates/osja/Legal%20Assistance%20Documents/Information%20Papers/LORs%20AND%20GOMORs.pdf (accessed April 8, 2015).

[87] Email communication from SMSgt Margaret Kelly to Human Rights Watch, November 12, 2014.

[88] Human Rights Watch telephone interview with SrA Ciera Bridges, October 31, 2014.

At times it appeared that she was being set up for disciplinary action by her superiors. She told Human Rights Watch that one time two senior enlisted officers gave her conflicting times to report for duty. After following the more senior officer's order, Senior Airman Bridges said the junior officer gave her paperwork even though the senior officer confirmed he had given the order. "They were purposefully putting me in situations like that," Bridges said. "The paperwork—it never failed to come after I reported something."[89]

Bridges told Human Rights Watch that she took each piece of paperwork to her Area Defense Counsel, who was initially unaware of the sexual harassment reports and was baffled by the letters of counseling: "'Why are they giving you this small paperwork?' he would ask." Eventually on the basis of the accumulated letters of counseling, the squadron commander gave Bridges an Article 15 (non-judicial punishment). The disciplinary action she faced prevented her from receiving a promotion for which she was otherwise eligible.

Many survivors feel they are being singled out for negative attention in order to push them out of service.

An army officer reported to Human Rights Watch that following her report of sexual assault, she believed her command was "trying to create a bad record" to get her out. Her unit was repeatedly singled out for unannounced inspections that her peers were not subject to. She was given a lot of paperwork to do that was ordinarily assigned to others.

After her command climate survey (a required survey about commanders taken periodically assessing morale and strengths and weaknesses within a company), the sergeant major said he was concerned about the results and wanted to meet with her soldiers. He held a meeting with the five NCOs who reported to her. One of them reported back to her that he started the conversation by saying, "Tell me everything she does wrong." The NCO told her, "Ma'am, I don't know what you did, but he is gunning for you."

Her efforts to complain about retaliation through the chain of command and through the IG were ignored and she herself became the subject of an investigation. For other reasons,

---

[89] Human Rights Watch telephone interview with SrA Ciera Bridges, October 31, 29014.

she began the medical evaluation board process in 2012.[90] While that process was underway, she was told "we found the perfect spot for you until you are done – a reserve unit." She felt cast aside and said "I didn't believe it until it happened to me." Although she is out of the service, she still faces negative repercussions because she cannot provide references from senior officers.[91]

Others report an over attentiveness to minor issues (nitpicking over nothing) following a report of sexual harassment or assault:

- An Airman received a letter of counseling for holding a baby at work shortly after complaining to her Wing Commander about pressure from above to drop her sexual assault case. When her SVC intervened, her supervisor said her commander told him to "look at everything she does" and that he was forced to do it."[92]
- After reporting a sexual assault in 2014, Airman Garcia started accumulating paper for things such as having dirty dishes in the sink (despite having previously reported a clogged drain) and for being late (despite being on crutches and even though others who showed up late were not reprimanded). When she disputed the LOR for the dishes she was told by her supervisor that she was "playing the victim." Her First Sergeant told her "With all your paperwork, you are going to be a civilian soon." She found out that there has been a move to administratively separate her.[93]
- After reporting her assault in 2013, one Air Force survivor said she got five letters of reprimand and two letters of counseling for things like wearing the "wrong socks" or "nail polish." She felt she was always getting called out while others who did the same thing were ignored.[94]

---

[90] The Medical Review Board Process is a process by which a service member may be administratively separated or retired from the military when they have a medical condition (including a mental health condition) that renders them unfit for service. A medical evaluation board assesses fitness for continued duty. If the service member is not fit for duty because of injuries sustained or exacerbated in service, they may be eligible for benefits. The process may be initiated by a service member who voluntarily seeks medical care or by a commander who believes the member is unfit for service and refers them for an examination. Department of Defense, "Directive 1332.18, Disability Evaluation System," August 5, 2014, http://www.dtic.mil/whs/directives/corres/pdf/133218p.pdf (accessed April 24, 2015). Department of Defense, "Directive 1332.28, Discharge Review Board (DRB) Procedures and Standards," April 4, 2004, htp://www.dtic.mil/whs/directives/corres/pdf/133228p.pdf (accessed April 24, 2015). Department of Defense, "Directive 1332.29, Eligibility of Regular and Reserve Personnel for Separation Pay," September 20, 2011, http://www.dtic.mil/whs/directives/corres/pdf/133229p.pdf (accessed April 24, 2015).

[91] Human Rights Watch telephone interview with CPT Ruth Rivera, November 20, 2014.

[92] Human Rights Watch interviews with Air Force SVC #1, June 19, 2014 and November 24, 2014.

[93] Human Rights Watch interview with Amn Grace Garcia, March 12, 2015.

[94] Human Rights Watch telephone interview with Amn Carla Rodriguez, February 2, 2014.

Non-Judicial Punishments

In lieu of courts martial, a commanding officer can impose disciplinary punishment for minor offenses under Article 15 of the Uniform Code of Military Justice. A formal non-judicial punishment (NJP) stays on a service member's permanent record and can carry stiff penalties, including reduction in rank, forfeiture of pay, confinement to quarters, or diminished rations for limited periods of time.

Although the accused has rights in the administrative process, such as the right to present evidence at the NJP hearing or to reject the NJP in favor of court martial, the threat of an NJP is a potent one in a system that delegates broad power and discretion to commanders. Some service members who reported sexual assault told Human Rights Watch that they received NJPs or the threat of an NJP in apparent retaliation for reporting. In a written account provided to Human Rights Watch, Stephanie Green wrote that after she reported being raped in an Army barracks in May 2014 her supervisors targeted her for discipline:

> They started treating me differently and finding any excuse to reprimand me. For instance on the day we had a seven mile run I let them know I had just started a new medicine and I'd try my best to keep up but I was feeling dizzy, I ended up falling a little bit behind and was pending an Article 15 for it.[95]

Administrative or Involuntary Discharges

In the military, discharges are classified as:

- Honorable (the quality of the member's service generally met standards of acceptable conduct);
- General Under Honorable Conditions (significant negative aspects of the member's conduct outweigh positive aspects of conduct);
- Under Other Than Honorable Conditions (based on a pattern of misconduct that constitutes a significant departure from conduct expected from service members or one or more acts of misconduct);
- Dishonorable Discharge (a person has been adjudged by a general court martial);
- Bad Conduct Discharge (adjudged by a general or special court martial).

---

[95] Written account submitted to Protect our Defenders by Stephanie Green, on file with Human Rights Watch.

The categorization of discharge impacts ability to get benefits from the Veterans Administration and may impact the ability to get jobs or re-enlist. An administrative discharge or separation is an early termination of service based upon a service member's conduct.

Although we were unable through our public document requests to obtain statistics on how many sexual assault survivors stay in the service after they report sexual violence, our interviews suggest that victims often leave the service after reporting an assault. While some service members make it through to the end of their contract or are medically retired, others are discharged prematurely. Navy VLCs report that helping sexual assault survivors with discharges is a "regular part of their practice."[96] A Marine Corps VLC said, "Almost to a man, junior Marines get out [of the service after suffering a sexual assault]."[97]

Fireman Martinez

Following her report of sexual assault, Fireman Martinez faced charges of assault and drunk and disorderly conduct. After being acquitted at court martial, she reported to duty. Upon her return she received a letter from her commanding officer saying he intended to discharge her on the same charges for which she had just been acquitted.

Her discharge letter explained that an acquittal does not prohibit administrative separation procedures and he recommended she be discharged in "the least favorable characterization of service" allowed—"General discharge Under Honorable Conditions." He noted it meant she "may be deprived of some rights and privileges available to Honorably discharged veterans… and may encounter some prejudice in situations in which the characterization of service may have a bearing."[98]

Just prior to the incident, Fireman Martinez was awarded "non-rate of the month" (out of the 30-40 non-rates on the ship). In giving her the award, her commanding officer commended her for "selflessly volunteer[ing]" for extra duties and noted that in addition to doing her work well, she completed her qualifications "in record time."[99] She had been recommended for advancement, a review which was signed off on by the same commanding officer. When she told her SARC about the discharge she said, "That's typical."[100] Fireman Martinez successfully appealed the discharge.

---

[96] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014.

[97] Human Rights Watch telephone interview with Marine Corps VLC #1, January 5, 2015.

[98] Letter from CPT [name withheld] to FN Martinez, October 29, 2013, on file at Human Rights Watch.

[99] Award on file at Human Rights Watch, along with performance reviews.

[100] Human Rights Watch telephone interview with FN Diana Martinez, November 5, 2013.

Others also report facing an administrative discharge, or the threat of discharge, following a report of sexual assault:[101]

- After receiving an Article 15 for accumulating minor and in some cases contrived infractions (as described above), Senior Airman Bridges received notice that her command was moving to separate her Involuntarily Under Other Than Honorable Conditions on the basis of the Article 15. Only by going to media and seeking assistance from attorneys and external advocates was she able to prevent the administrative discharge. She then went through the medical evaluation board process for health issues related to the sexual harassment and assault.
- A Coast Guard survivor said that she lost her career after reporting her rape. "I was raped by a BM2[Boatswain's Mate Second Class] on August 17, 2011. I reported it like they tell you to and was told that I was lying and that it never happened. They ripped up my complaint and ordered me to not speak about it if I want to stay in the Coast Guard." Even though she did not pursue the criminal case, she was involuntarily separated.[102]
- When Specialist Bonnie Thomas reported being groped by her drill sergeant during training in 2012, her first sergeant and commander called her a liar and told her she would be "chaptered out." She fought the efforts to discharge her and, only once it became clear she was not the only victim, was able to stay in service.[103]

Some survivors may engage in misconduct connected to trauma that may legally justify a negative discharge. Without intervention or explanation to commanding authorities, the victim may be saddled with a negative discharge that can thwart their ability to find employment in the civilian sector or access the assistance they may need from the Veterans Administration.[104] The Defense Department now allows enlisted service

---

[101] See also "Coast Guardsman Raped, Ignored," *My Duty to Speak*, July 21, 2012, http://mydutytospeak.com/2012/07/21/coast-guardsmember-raped-ignored/ (accessed April 28, 2015).

[102] "Coast Guard Continues to Discharge Rape Survivors, Promote Rapists," *My Duty to Speak*, April 30, 2012, http://mydutytospeak.com/2012/04/30/coast-guard-continues-to-discharge-rape-survivors-promote-rapists/ (accessed April 28, 2015).

[103] Human Rights Watch interview with SPC Bonnie Thomas, March 2, 2015; sworn statement of her father, December 11, 2012, on file at Human Rights Watch.

[104] Human Rights Watch will present our findings with regard to this problem in a follow-up report.

members who make an unrestricted report of sexual assault and face involuntary separation afterwards to request high-level review of the grounds for their separation.[105]

Following an assault, many people no longer wish to be in service because the "uniform is a constant reminder." A psychiatrist who has appeared as an expert witness in more than 40 courts martial, told the Judicial Proceedings Panel, "I am yet to meet a victim of sexual assault who reports that she is looking forward to her future military career."[106]

One survivor suffering from trauma, said she would "take anything, just to get out."[107] A lawyer who works with service members said many of his clients accept adverse administrative discharges because going through a medical discharge process can take two years, which can be "living hell" if the perpetrator is in the chain of command.[108]

In their impatience to leave, service members may not fully appreciate the consequences of an administrative discharge when they agree to it. When Seaman Lee was refused a transfer after reporting sexual harassment, she decided she wanted to leave the military and the fastest way out was an administrative discharge for "adjustment disorder." When she accepted the discharge, she not only lost her "dream job," but a portion of important education benefits she only found out about after agreeing to administrative separation.[109]

Victims' lawyers can play an important role in assisting victims with their discharge. Victims' counsel reported being able to upgrade a general discharge to honorable after explaining to command the reasons for the victims' self-destructive behavior following their assault, which had important consequences for benefits.[110]

---

[105] Department of Defense, "Instruction 1332.14, Enlisted Administrative Separations," January 27, 2014, Enclosure 5, part 11 ("An enlisted Service member who made an unrestricted report of sexual assault and who is recommended for involuntary separation from the Military Services within one year of final disposition of his or her sexual assault case may request a general or flag officer (G/FO) review of the circumstances of and grounds for the involuntary separation"). DOD testified it has not collected information on this. Dr. Nathan Galbreath, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p. 80 (unofficial transcript on file with Human Rights Watch).

[106] Dr. Matthew F. Soulier, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p. 196 (unofficial transcript on file with Human Rights Watch).

[107] Human Rights Watch telephone interview with SN Nicole Collins, October 23, 2014.

[108] Human Rights Watch telephone interview with attorney for service members at a non-profit, May 7, 2014.

[109] Human Rights Watch telephone interview with SN Mindy Lee, November 3, 2014.

[110] Human Rights Watch telephone interview with Marine Corps VLC #1, January 5, 2015; Human Rights Watch telephone interview with Army SVC #1, December 9, 2014.

Army Captain Sommer testified before the Judicial Proceedings Panel that he was able to negotiate an honorable discharge for a survivor facing a misconduct discharge for drug usage due to a "downhill spiral" after a sexual assault.[111] Captain Sommer testified, "At a time when a different decision could have set this young man on a very different path, the Army took care of one of its own and that was something that was facilitated through the SVC Program."[112] However, by time of discharge, many victims may no longer have counsel assigned to them.

Punitive Mental Health Measures

Commanders or supervisors may refer subordinate service members to mental health services for evaluation for a variety of reasons, including fitness for duty, occupational requirements, safety issues, significant changes in performance or behavior, or in emergencies where it seems the service member is likely to cause serious injury to themselves or others. However, it is specifically prohibited to refer a service member for a mental health evaluation in retaliation for making a protected communication, including a report of a sexual assault or sexual harassment.[113]

Mental health referrals can have serious negative consequences. One person who previously managed a branch's sexual assault response program called mental health referrals "the ultimate retaliation."[114]

A command directed referral for a mental health examination may be the start of an involuntary administrative discharge. If the examination finds a mental health condition that existed before service and renders the service member unfit for duty, a service member with less than eight years of service may be discharged without benefits.[115]

---

[111] Army CPT Jesse Sommer, The Fourth Public Meeting of the Judicial Proceedings Panel, Arlington, VA, November 14, 2014, transcript p. 197, http://jpp.whs.mil/Public/docs/05-Transcripts/20141114_Transcript_Final.pdf (accessed April 29, 2015).

[112] Ibid., p. 198, http://jpp.whs.mil/Public/docs/05-Transcripts/20141114_Transcript_Final.pdf (accessed April 29, 2015).

[113] DOD Instruction 6490.04, March 4, 2013.

[114] Human Rights Watch telephone interview with Georgia Winter, December 18, 2013.

[115] Until 2010, the military improperly used this process to administratively separate thousands of service members for "personality disorder" many of whom may have been suffering from PTSD. Government Accountability Office, "Defense Health Care: Additional Efforts Needed to Ensure Compliance with Personality Disorder Separation Requirements, October 2008, GAO-09-31; See also Testimony Before the Committee on Veterans' Affairs, House of Representatives, "Status of Efforts to Address Lack of Compliance with Personality Disorder Separation Requirements, Statement of Debra Draper, GAO-10-1013T, September 15, 2010.

Survivors told Human Rights Watch of the following experiences with mental health evaluations that they felt were punitive:[116]

- When Specialist Thomas arrived for advanced individual training she was ordered by command (who told her he heard she was a "troublemaker") to undergo a mental health evaluation that she felt was done to "try to get [her] out" [through an administrative discharge]. Later, after complaining to the IG about inappropriate comments made by a later commander, that commander again ordered her to undergo a mental evaluation.[117]
- After Senior Airman Evans appeared in the documentary "The Invisible War,"[118] she was called in to undergo an evaluation to determine whether she was still eligible for temporary disability. At the time, she hoped it meant she would be called back into service because she loved her job as a jet mechanic. Instead she was told she was being discharged for a personality disorder due to "perceived injustices," and was no longer eligible for disability pay as a result of post-traumatic stress disorder (PTSD), action she felt was retaliation for appearing in the film. Her private lawyer was able to reverse the decision through the Discharge Review Board, and ultimately Evans was assigned a 70 percent disability rating for PTSD.[119]

Retaliation against Those Who Support Survivors

Survivors are not the only ones who face retaliation. In an environment where so many survivors face retaliation from their peers, the few who stand by them provide critical, sometimes life-saving support. Unfortunately, doing so may also put them at risk of retaliation. For this reason, in the civilian system, anti-discrimination law also affords protection to those who are closely associated with those engaging in a protected activity, such as reporting a hostile work environment.[120]

---

[116] A similar experience was shared in Human Rights Watch telephone interview with A1C Joseph White, November 4, 2014.

[117] Human Rights Watch interview with SPC Bonnie Thomas, March 2, 2015.

[118] "The Invisible War" is an award-winning 2012 documentary film about sexual assault in the US military featuring a number of survivors.

[119] Human Rights Watch telephone interview with SrA Melissa Evans, October 31, 2013.

[120] U.S. Equal Employment Opportunity Commission "Facts about Retaliation," http://www.eeoc.gov/laws/types/facts-retal.cfm (accessed April 24, 2015).

In Human Rights Watch's interviews, survivors reported that their spouses or partners faced retaliation by association.[121]

According to Senior Airman Bell, her husband (who is also in service) faced retaliation after they announced their engagement. She described an escalating series of events: her first sergeant went over to her husband's squadron and urged him to call off or delay the wedding. Her husband was then accused of failing a test and threatened with an Article 15 if he would not admit to failing it. Her husband was then abruptly transferred out of state, leaving her on base with her perpetrator and an overtly hostile command.[122]

Others who were instrumental in reporting a sexual assault for someone else, told Human Rights Watch they were also singled out for retaliation. Service members related the following instances in which they experienced retaliation because of their association with a reported sexual assault:[123]

- A National Guard lieutenant colonel reported sexual harassment on behalf of her subordinates in late 2010. The lieutenant colonel's direct supervisor was a close friend of the perpetrator and had deployed with him to Iraq. In the months following the investigation, which substantiated the complaints, the lieutenant colonel experienced a steep downturn in what had been a promising career. She was told she would not get the command she was expecting (though that was later rescinded). She "was treated very differently from [her] peers" and could suddenly do nothing right. Her leadership judgment was called into question repeatedly for minor issues (such as disciplinary action against a junior soldier). She was excluded from closed-door battalion command meetings, though all battalion commanders usually participate in them. When she asked a peer why they were meeting without her, she was told, "I was told not to tell you." In 2012, she received a formal counseling statement with no clear reference to how her performance needed to improve, and her contract was only extended for one year, instead of two. She later received a "referral" evaluation with unsubstantiated derogatory comments that

[121] Human Rights Watch telephone interview with CPT Annie Moore, April 29, 2014; Human Rights Watch telephone interview with SrA Kelsey Bell, September 25, 2014.

[122] Human Rights Watch telephone interview with SrA Kelsey Bell, September 25, 2014; records of SrA Kelsey Bell, on file with Human Rights Watch.

[123] A survivor also indicated her battle buddies (assigned partners) experienced retaliation due to their association with her. Human Rights Watch telephone interview with SPC Bonnie Thomas, March 2, 2015.

excluded reference to accolades she had received in external evaluations of her unit's training exercises. Moreover, after 33 years in the service, her friends were afraid to associate with her for fear it would harm their careers. An executive officer, who had agreed to write her a letter of support, sent her an email two days later saying "I can't write you a letter because I fear reprisals and I have to work here two more years." Those who had supported her during the investigation—including a captain who had proposed an award for her—also experienced retaliation. She stays away from her friends so as not to expose them to retaliation. She says, "I understand fear of reprisal but I struggle with it. People see what happened to me and it instills fear, if they can do that to a lieutenant colonel…."[124]

- In February 2014, a first sergeant got a text from the wife of an airman indicating that her husband was sexually assaulting her. He deleted the text after reading it. Later, he asked his supervisor what to do, she told him he was required to disclose the assault, even though the victim did not want to report, was a civilian, and the perpetrator was not in his unit. Since he was reluctant to turn over his phone because it contained personal messages to his wife, a warrant was issued for his phone and Blackberry. He also received a call from another squadron saying he was being investigated for intentionally deleting the email. His diamond (a symbol on the rank indicating a special leadership position) was taken away, which he found humiliating. He lost his assignment to another base, where his wife had been transferred, and had to commute hundreds of miles to see his family on weekends and support two households. His most recent performance evaluation was lower than his previous three evaluations, which sends a signal that something is wrong. He said his career was "over." Because they did not take away his stripe or take adverse administrative action, his lawyer said there was nothing he could do. He said he has felt suicidal and that, "I will never report another sexual assault. They will investigate me. This has caused me nothing but pain." He said he was counting the days until his retirement.[125]
- A new seaman complained to Coast Guard Petty Officer Clifford that she was uncomfortable with their chief who made inappropriate sexual comments in his office. Clifford was aware of other women who filed complaints forced out of service, so he decided to raise the issue with his chief. He told him some people

[124] Human Rights Watch interview with LTC Sheila Anderson, November 12, 2013.

[125] Human Rights Watch telephone interview with 1stSgt2 Robert Allen, November 21, 2014.

were uncomfortable with the tone of the office. Initially the chief did not react, but the next week he threw a magazine centerfold at Clifford and said "Do you think this will make people uncomfortable?" The seaman who complained still felt uncomfortable because the chief kept winking at her. She did not want to complain about a superior, so again asked Clifford to intervene. When he did, he experienced various forms of retaliation. He was forced to stand at attention while everyone else sat down to "improve his military bearing." Other chiefs would not talk to him. When he complained about his treatment to a superior, he was told they would pull his application for Officer Candidate School. When he asked why he was being ostracized, he said he was told, "You go against one chief, you go against all of us." Instead of getting training, he was stuffing envelopes. His transfer was moved up six months and the chief, the subject of his complaint, was allowed to write his transfer evaluation. He had always been at the top of his class and now he was "slaughtered." Although he was able to appeal the marks to some extent, the negative mark indicating he was not suitable for promotion was a career-ender. The message was sent to the other staff who saw how he was being treated: "If you blow the whistle, you are done." When he arrived at his next duty station, he said he was told, "I know about your past. Keep your head down."[126]

In a few instances, those whose job it is to support survivors told Human Rights Watch they experienced retaliation if they were too zealous in their work.

- A civilian Air Force SARC said that after sending a supposedly anonymous email raising concerns about how a victim was being treated in 2013, she was called into her superior's office and threatened with punitive personnel action. She was ordered to have no further communication with her district SARC (to whom she was supposed to have access) or "action would be taken against her." Later when she lent a victim an office phone so she could speak to her family because she did not have local support, she was written up for "letting her use government property." The admonishment stayed in her file for an entire year.[127]
- An Air Force SVC said she was told by her boss she was "too victim centered" for advocating aggressively to leadership on behalf of her clients. A staff judge advocate of a deployed legal office warned her she was "burning bridges" and

[126] Human Right Watch telephone interview with PO2 Jim Clifford, November 13, 2013.

[127] Human Rights Watch telephone interview with civilian sexual assault response coordinator, October 10, 2014.

said to remember that she had to work with them again. This worried her because the people antagonized by her support and advocacy for her clients could be her superiors in her next assignment. Though her clients raved about her and she was mostly successful on their behalves, she was rated poorly within her unit and as a result she was let go as part of force reduction.[128]

- After the successful sexual assault conviction of a fighter pilot was thrown out by a popular general, the Air Force's chief prosecutor was publicly criticized by a four-star general, subjected to frivolous IG investigations, and discouraged from talking to members of Congress about UCMJ reform. After refusing to support the general's actions, defending the survivor in the media, and advocating for reform, his officer performance report was downgraded and his role in combating sexual assault was marginalized.[129]

[128] Human Rights Watch telephone interview with Air Force SVC #1, October 8, 2014.

[129] Email communication from Protect Our Defenders to Human Rights Watch, April 16, 2015; Robert Draper, "The Military's Rough Justice," *New York Times Magazine*, November 26, 2014, http://www.nytimes.com/2014/11/30/magazine/the-militarys-rough-justice-on-sexual-assault.html?_r=0 (accessed April 22, 2015).

II. Collateral Misconduct

As the US military itself recognizes, one of the most significant barriers to reporting sexual assault is the victim's concern about facing punishment for collateral misconduct—that is, prohibited conduct that the victim engaged in around the same time, place, or circumstance as the sexual assault.[130]

Special Victim Counsel (SVCs) and Victims' Legal Counsel (VLCs) estimate that most, if not all, of their cases involve some type of collateral misconduct.[131]

A broad range of activities are punishable in the military that are not considered criminal in the civilian environment. Adultery, fraternization (an officer is prohibited from socializing with an enlisted member), underage drinking, and "conduct unbecoming an officer," are all punishable crimes under the Uniform Code of Military Justice (UCMJ). Some victims told Human Rights Watch they chose not to report their assault because they feared punishment for underage drinking.[132]

In the course of reporting an assault, a victim may face bringing their own misconduct to the attention of superiors that would otherwise have been unknown. Consequences of reporting even minor misconduct can be devastating. Victims may themselves face criminal charges or receive administrative reprimands that could damage their permanent record. As a result, some lawyers we interviewed advise their clients not to report a sexual assault if there is collateral misconduct involved.[133] As a Coast Guard SVC testified:

---

[130] Department of Defense, "Sexual Assault Prevention and Response (SAPR) Program Procedures," DODI 6495.02, March 28, 2013, updated February 12, 2014. Collateral misconduct is defined by DOD as: "Victim misconduct that might be in time, place, or circumstance associated with the victim's sexual assault incident." Some do not view actions taken against service members for collateral misconduct as retaliation because it is not punishment for reporting the assault but rather a separate disciplinary action resulting from infractions committed by the victim. Because it can lead to devastating consequences for the victim and is linked to reporting, we have included it for analysis in this report.

[131] Human Rights Watch telephone interview with Army SVC #1, December 9, 2014 ("every" case involves collateral misconduct); Human Rights Watch telephone interview with Marine Corps SVC #1, January 5, 2015 (70 percent have some collateral misconduct); Human Rights Watch interview with Army SVC #2, Alexandria, VA, February 2, 2015 ("almost every case" involves collateral misconduct); Human Rights Watch interview with Army SVC #3, Alexandria, VA, February 2, 2015 (collateral misconduct is "a major issue"). However in official military responses to the Response Systems Panel, the Air Force indicated only 15 percent of clients represented by SVCs have allegedly engaged in some form of collateral misconduct. Air Force Response to Request for Information 138, available at http://responsesystemspanel.whs.mil/index.php/rfis (accessed April 29, 2015).

[132] Human Rights Watch telephone interview with SN Nicole Collins, October 23, 2014.

[133] Group interview with Air Force SVCs, December 4, 2014; Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014.

> The biggest challenge I have dealt with is working with collateral misconduct issues. In the current personnel environment, the Coast Guard is very unforgiving when it comes to misconduct…. I have had victims who have been faced with a very difficult decision of seeking justice for what happened to them or preserving their careers.[134]

An Air Force SVC told us that "force shaping" pressures (the need to reduce the size of particular units or branches of the military) means Letters of Reprimand (LORs) have more significance—"If you have an LOR, you can't survive it."[135]

Official Forms of Accountability for Collateral Misconduct

As discussed, commanders have several options for dealing with infractions, including general courts martial or special courts martial,[136] non-judicial punishment (an Article 15 or "Captain's Mast"),[137] LORs or General Officer Memorandums of Reprimand (GOMORs), and formal letters of counseling. Formal censures may be held locally in a personnel file or may become part of the victim's permanent record. They may later be used to justify an administrative (involuntary) discharge or deny a promotion and may be included in a performance evaluation.

In addition, commanders may initiate a Commander-Directed Investigation if they believe a subordinate has violated a standard of conduct. The standard of proof is lower than for a court martial (it requires only a "preponderance of the evidence" to establish a violation), though it may be stigmatizing and lead to disciplinary action.

An SVC told us even if a victim is not punished, they could still be "titled"[138] and a red flag may be put on their file. This means there is an allegation that the person committed an offense and probable cause to believe the person was involved. The red flag will appear in a

---

[134] Testimony of Coast Guard LCDR Kismet Wunder, The Fourth Public Meeting of the Judicial Proceedings Panel, Arlington, VA, November 14, 2014, transcript p. 176, http://jpp.whs.mil/Public/docs/05-Transcripts/20141114_Transcript_Final.pdf (accessed April 29, 2015).

[135] Human Rights Watch interview with Air Force SVC #1, November 24, 2014.

[136] A special court martial is a court martial consisting of at least three officers, a military judge, a trial counsel, and a defense counsel, and that has authority to impose a limited sentence and hear only noncapital cases.

[137] In lieu of a court martial, the UCMJ allows commanders' discretion to use non-judicial punishment (NJP, also known as an "Article 15" or "Captain's Mast") to punish minor offenses though a service member has the right to demand to a court martial instead.

[138] "Titling" is placing the name, and other identifying data, of an individual or entity on the subject block of an investigative report and central index, for the potential retrieval and analysis for law enforcement and security purposes.

background check (similar to an arrest record) and could arise if the person applies for a federal job. The victim may not even know it is on his or her military record. The SVC said she has seen people "titled" for adultery, and said the person could also be subsequently charged for "filing a false official statement" if the sexual assault case is not substantiated.[139]

Survivors are well aware of the risks they face. Before June 2014, the standard Department of Defense form provided to all service members reporting sexual assault said, "My Commanding Officer may take appropriate punishment action if there is evidence I committed misconduct around the time of the sexual assault."[140] Army, Air Force, and Coast Guard investigators all read a victim their rights if they believe their statement regarding a sexual assault might incriminate them in some collateral misconduct.

This practice may end the interview or at least inhibit the victim from giving a full statement and proceeding with the charge. An Army National Guard sergeant told us when she reported her assault to investigators and the Sexual Harassment/Assault Response and Prevention (SHARP) she was "painfully honest" and admitted to drinking whiskey in Iraq when she was assaulted. She said she was told she could be charged with adultery and violation of General Order 1 (which prohibits drinking on deployment). Being "threatened" with punishment caused her to reconsider reporting, but ultimately she decided potentially losing rank would be worth it to stop a predator.[141] The Navy and Marine Corps have a policy whereby a victim is only read their rights in serious offenses (felonies punishable by a year in prison). Minor misconduct is outside of Naval Criminal Investigative Service's responsibility to investigate.[142]

Current guidelines allow a delay for punishment, but not immunity, for collateral misconduct. Commanders have "discretion to defer action on alleged collateral misconduct by the sexual assault victims until final disposition of the sexual assault case."[143] Commanders are also

---

[139] Human Rights Watch interview with Army SVC #2, Alexandria, VA, February 2, 2015.

[140] Department of Defense, "Victim Reporting Preference Statement," Form 2910, http://www.sapr.mil/public/docs/miscellaneous/toolkit/dd2910.pdf (accessed April 22, 2015). It does say "However, my Commanding Officer is to take into account the sexual assault investigation and circumstances when considering how to address my misconduct."

[141] Human Rights Watch telephone interview with SGT Ann Young, November 19, 2014.

[142] Response Systems Panel, Request for Information Question 137; http://responsesystemspanel.whs.mil/index.php/rfis (accessed April 29, 2015).

[143] Department of Defense, "Instruction 6495.02: Sexual Assault Prevention and Response (SAPR) Program Procedures," March 28, 2013, http://www.dtic.mil/whs/directives/corres/pdf/649502p.pdf (accessed April 24, 2015), Enclosure 5, no. 7.

advised to "take into account the trauma to the victim and respond appropriately so as to encourage reporting of sexual assault and the continued cooperation of the victim."[144]

Although punishment of the victim can be delayed until after the sexual assault case, prosecutors and SVCs indicate that they often prefer to have their victims punished up front to blunt efforts by defense counsel to discredit the witness in cross-examination. Moreover, the deferment of punishment does not alleviate concerns of victims that their careers will suffer if they implicate themselves in misconduct.

Accounts of Survivors Punished for Collateral Misconduct

Human Rights Watch interviewed several service members who said they were prosecuted, threatened, or punished for conduct that came to light as a result of reporting a sexual assault including the following:[145]

- Fireman (Martinez was on her first deployment on a northern fisheries patrol in Alaska when her supervisor, a Petty Officer Second Class, propositioned her and pressed his face to her crotch. In February 2013, after several months on temporary assignment, Fireman Martinez got a call and was informed she was being referred to special court martial for sexual assault, assault, and drunk and disorderly conduct. She was offered a deal to leave the Coast Guard immediately in exchange for a plea. However, she disputed the charges and was concerned about her civilian record so insisted on going through with the court martial. She was acquitted on all charges in October 2013 after a trial in which testimony was elicited demonstrating clearly that the assault charges were fabricated after her sexual assault complaint in order to support her perpetrator's claim of innocence. She nonetheless received a letter of counseling in her permanent record for an

---

[144] Army Command Policy, Army Regulation 600-20, http://www.apd.army.mil/pdffiles/r600_20.pdf (accessed April 24, 2015) para. 8-50(24); Department of Defense, "Instruction 6495.02: Sexual Assault Prevention and Response (SAPR) Program Procedures," March 28, 2013, http://www.dtic.mil/whs/directives/corres/pdf/649502p.pdf (accessed April 24, 2015) , Enclosure 5, para. 7.

[145] Another survivor told Human Rights Watch she became the subject of a criminal investigation after she decided to stop participating in judicial proceedings because it was too stressful. Human Rights Watch telephone interview with 1LT April Brown, April 7, 2015; Human Rights Watch telephone interview with PO2 Gabrielle Bouvier, October 15, 2014 (her chief said she would be "brought up on adultery charges because her perpetrator was married"); "Coast Guardswoman Raped, Beaten May 2012," *My Duty to Speak*, June 21, 2012, http://mydutytospeak.com/2012/06/21/coast-guardswoman-raped-beaten-may-2012/ (accessed April 28, 2015) ("I was threatened with a Captain Mast if I chose to go forward with reporting the rape"); email communication from [name withheld] to Protect Our Defenders January 13, 2013 ("I was told if I say another word to ANYONE about it that I was going to be charged with Adultery and get an Article 15"). SVCs also indicated that their clients sometimes faced punishment for collateral misconduct. Human Rights Watch group interview with Air Force SVCs, Washington, DC, December 4, 2014; Human Rights Watch telephone interview with Marine Corps VLC #1, January 5, 2015.

alcohol incident that came to light in the course of investigating her report of a sexual assault, despite having no history of alcohol abuse.[146]

- An Air Force SVC reported that after a sexual assault prosecution resulted in an acquittal, the victim's commander and first sergeant initially thought she had made a false report. The SVC had to explain that an acquittal did not mean her client had lied. Separately, the command misinterpreted certain facts regarding the victim's participation in the investigation and launched a CDI into allegations that the victim had obstructed justice. The CDI did not result in adverse action against the victim, but was upsetting to the victim.[147]
- Two weeks after prosecutors decided not to go forward with the prosecution of a Marine's alleged assailant in May 2014, she was called in to see her sergeant major. She told Human Rights Watch, "He said, 'Do you know why you are here?' I said 'no.' He said 'Nobody told you are being NJP'd [receiving non-judicial punishment]?'" She said her supervisor told her she had admitted to underage drinking during the investigation and had read her her rights. She was told she could not talk to her VLC and that her VLC could not represent her or help her with misconduct charges. When she searched for other representation she said they told her, "They couldn't help me either because they would be stepping on my VLC's toes."[148] Rumors spread that she was being court martialed for lying under oath. After refusing to waive her right to a court martial, she was given a letter of counseling ("6105") for underage drinking and was told she should be happy the proceedings resulted only in an order to obtain counseling and not more serious punishment.[149]
- In 2013, Air Force officer Smith reported that she had been sexually assaulted abroad by a civilian contractor with whom she had recently ended an extramarital relationship. On the advice of the Sexual Assault Response Coordinator, she went ahead and made an unrestricted report to the Air Force Office of Special Investigations (OSI) before having the opportunity to meet with Special Victim Counsel. She was completely candid with the investigators about the circumstances of the assault and her prior relationship with the perpetrator. She told Human Rights

---

[146] Human Rights Watch telephone interviews with FN Diana Martinez, November 5, 2013 and September 24, 2014; trial transcript on file at Human Rights Watch.

[147] Human Rights Watch interview with Air Force SVC #2, November 24, 2014.

[148] Email communication from LCpl Amy Johnson to Human Rights Watch, April 19, 2015.

[149] Human Rights Watch telephone interview with LCpl Amy Johnson, January 11, 2015.

Watch that her first commander did not inquire about the adultery, but her new squadron commander initiated the process to give her an Article 15, telling her lawyer "I have to worry about good order so I have to punish her."[150] Her SVC begged for leniency and the command agreed to reduce it to a letter of reprimand.[151]

- Master Sergeant Davis was given a letter of reprimand for drunk and disorderly conduct following his reported sexual assault in 2011. The LOR was then used to justify a "referral EPR"—namely, a negative performance evaluation that could result in administrative discharge. Though with the help of the IG he was able to get the referral EPR and LOR retracted, he then faced Article 15 charges. He challenged the Article 15 and was acquitted at court martial.[152]

While research for this report indicates that survivors who report sexual assault are punished (or threatened with punishment) for collateral misconduct, there is conflicting evidence on how frequently it occurs. The armed forces reported to a panel conducting an independent review of military systems used to handle sexual assault cases, the Response Systems Panel, that punishment of victims for collateral misconduct is relatively rare and often minimal.[153]

Though the Army does not track this information, a survey sent to Staff Judge Advocates and Special Victims Prosecutors indicated less than 5 percent of sexual assault victims were punished for collateral misconduct arising from a sexual assault investigation in FY 2013. Those who were punished primarily faced Article 15s or administrative separation for alcohol-related offenses, false official statements, failure to repair (not appearing at an appointed place of duty at the prescribed time), driving under the influence, drug use, adultery, and disrespect.[154]

---

[150] Human Rights Watch telephone interview with [rank withheld] Erica Smith, January 2, 2015; Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014.

[151] Human Rights watch telephone interview with [rank withheld] Erica Smith, January 2, 2015; Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014.

[152] Human Rights Watch interview with MSgt Sam Davis, March 11, 2015.

[153] DOD and Service response to Response Systems Panel 138, http://responsesystemspanel.whs.mil/Public/docs/Background_Materials/Requests_For_Information/RFI_Response_Q138.pdf (accessed April 22, 2015).

[154] DOD and Service response to Response Systems Panel Request for Information questions 49, 138, http://responsesystemspanel.whs.mil/Public/docs/Background_Materials/Requests_For_Information/RFI_Response_Q138.pdf (accessed April 22, 2015).

The survey numbers may be low for a number of reasons: not all victims have lawyers, and even when they do, victims have told us their lawyers are not always aware of administrative punishments that take place after their criminal case is over when representation ends.[155]

The Air Force reported that of the victims who engage in collateral misconduct, action is taken 25 percent of the time, and that discipline is primarily taken in the form of administrative action, such as letters of reprimand to four victims whose cases went to court martial for marijuana use, adultery, and providing alcohol to a minor. One victim was court martialed for drug abuse after the sexual assault trial was over.[156] The Air Force data only relate to cases in which the perpetrator was court martialed so it does not include many cases, such as that of Master Sergeant Davis, in which the perpetrator was not charged.

The 2014 RAND survey indicates 11 percent of service members who reported a sexual assault experienced punishment for an infraction after reporting.[157]

Although criminal defense work is handled by defense counsel and not victim's counsel, victims' lawyers report that they are sometimes able to intervene successfully to reduce the severity of the punishment for collateral misconduct. As discussed above, in Erica Smith's case, her SVC was able to get her commander to reduce her punishment from an Article 15 to a Letter of Reprimand. Nonetheless, the SVC said the "LOR is a career-ender" and had she spoken to the victim before she reported, she would have advised her not to report.[158]An Army SVC was able to intervene to have an officer's letter of reprimand for collateral misconduct put in the victim's temporary personnel file instead of her permanent record.[159]

A Marine VLC also told Human Rights Watch he has been successful in convincing command not to punish minor misconduct at all, though "it depends on if command suspects the

---

[155] Human Rights Watch telephone interview with LCpl Amy Johnson, January 11, 2015 (reporting she was told by her sergeant major she could not talk to her VLC about the misconduct charges).

[156] Air Force response to Response Systems Panel Request for Information Question 138 http://responsesystemspanel.whs.mil/index.php/rfis (accessed April 29, 2014).

[157] Department of Defense, "Report to the President of the United States on Sexual Assault Prevention and Response," November 25, 2014, http://www.sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_Appendix_A.pdf (accessed April 22, 2015), p. 117.

[158] Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014.

[159] Human Rights Watch telephone interview with Army SVC #1, December 9, 2014.

victim is lying. If so, they will go after them regardless."[160] Another Marine VLC was able to delay a negative entry into her client's record for drinking, though she was confined to her barracks.[161] SVCs also testified they have been able to negotiate testimonial (but not transactional) immunity with prosecutors for their clients in some instances.[162]

Chilling Effect

Actual or threatened prosecution for collateral charges has a significant chilling effect on survivors' willingness to come forward to report sexual assault within the military. Victims' desires to avoid punishment and career consequences for minor infractions means more serious offenses like sexual assault may go unaddressed. As one SVC told us, "If the Army is serious about handling rapists, they have to create a climate where people are comfortable coming forward…. One of the most patriotic things victims can do is out a rapist."[163]

The threat of prosecution for collateral charges, even if the charges are not pursued, can be enough to convince victims not to report or to leave the service, and gives perpetrators cover for their crimes. A victim reported that her perpetrator, a superior who got her drunk and then assaulted her while she was passed out, told her not to tell or she would be in trouble for underage drinking.[164]

Even if the collateral charges result in an acquittal, the time spent fighting the charges in court martial can take away from time training or acquiring credits needed for a promotion. Thus service members' careers may be jeopardized even if they are able to stay in the military. Master Sergeant Davis was charged at various times with assaulting a commissioned officer, driving under the influence, drunk and disorderly conduct, lying with intent to deceive, and fraternization after reporting his sexual assault. The conduct in question, including the fact that he drove his car after drinking, came to light only because he admitted driving away from his attacker in fear for his life when he reported the assault.[165] Though he was acquitted of all charges, he said his career was "over." The

---

[160] Human Rights Watch telephone interview with Marine Corps VLC #1, January 5, 2015.

[161] Human Rights Watch telephone interview with Marine Corps VLC #2, January 6, 2015.

[162] Army CPT Jesse Sommer, The Fourth Public Meeting of the Judicial Proceedings Panel, Arlington, VA, November 14, 2014, transcript pp. 194-195, http://jpp.whs.mil/Public/docs/05-Transcripts/20141114_Transcript_Final.pdf (accessed April 24, 2015).

[163] Human Rights Watch telephone interview with Army SVC #1, December 9, 2014.

[164] Human Rights Watch telephone interview with LCpl Amy Johnson, January 11, 2015.

[165] Human Rights Watch telephone interview with MSgt Sam Davis, May 30, 2014.

IG told him there was nothing they could do about it because he was acquitted so it was outside of his realm of authority.[166]

The possibility of self-incrimination for minor misconduct can also torpedo investigations even when victims do come forward. Victims may not be fully forthcoming about events for fear of self-incrimination. This in turn can hurt the investigation by causing investigators, prosecutors, judges, or defense lawyers to question the victim's credibility. As an Air Force SVC testified to the Judicial Proceedings Panel:

> [Immunity] makes a huge difference in terms of [victims'] willingness to come forward and their ability to be candid with trial counsel, which I think is really what is lacking prior to that immunity. Even if they are reporting a crime, a lot of times they are leaving gaps in their statements, the testimony. A lot of time trial counsel and investigators will look to that as some exception or signs that they are perhaps not being forthcoming. They may even prejudge the actual occurrence of the assault, at that point, based on this kind of broken testimony that may be coming out, because [the victims] are concerned about disclosing something that may incriminate them.[167]

Immunity for Collateral Charges

Due to the chilling effect of collateral charges, in civilian jurisdictions, police and prosecutors sometimes have a policy not to prosecute minor offenses that come to light when a victim reports.[168] However, a Coast Guard SVC testified about the problem with this approach in the military:

---

[166] Human Rights Watch interview with Msgt Sam Davis, March 11, 2015.

[167] Air Force SVC Capt Aaron Kirk, The Fourth Public Meeting of the Judicial Proceedings Panel, Arlington, VA, November 14, 2014, transcript pp. 199-200; http://jpp.whs.mil/Public/docs/05-Transcripts/20141114_Transcript_Final.pdf (accessed April 29, 2015). A Coast Guard SVC similarly observed, the possibility of prosecution means victims may appear to be less than forthcoming as they do not want to admit to collateral misconduct. Coast Guard LCDR Kismet Wunder, The Fourth Public Meeting of the Judicial Proceedings Panel, Arlington, VA, November 14, 2014, transcript p. 176, http://jpp.whs.mil/Public/docs/05-Transcripts/20141114_Transcript_Final.pdf (accessed April 29, 2015).

[168] Philadelphia, Kansas City, and Austin have policies not to bring charges for less serious illegal behavior by a victim that happened around the assault. Human Rights Watch group interview with Kansas City Sexual Assault Response Team, July 22, 2011; Human Rights Watch interview with Dolores Lapart-Litton, Victim Services Supervisor, Adriana Duarte, Victim Services Counselor, and Sergeant Liz Donegan, Austin Police Department, Austin, TX, December 14, 2011. See Human Rights Watch, "Improving Police Response to Sexual Assault," available at http://www.hrw.org/sites/default/files/reports/improvingSAInvest_0.pdf.

> The difference between the civilian and the military context is you certainly, absolutely can address the issue through negotiating a guilty plea or immunity issue. But the administrative consequences that come with admitting to some kind of misconduct normally results in either problems with your career or losing your job. And the victim has to decide "Is this important enough for me to come forward knowing that I am going to get fired from my job, have a mark on my record, and have difficulty getting a job in the future?"[169]

Even if immunity is granted or punishment is light, any negative mark can still have serious consequences for the victim because the person who decides on the criminal punishment is not the same as the person who is authorized to order discharge or separation from service.[170]

The Response Systems Panel, which was created by the secretary of defense at the request of Congress to assess systems used to investigate, prosecute, and adjudicate sexual assault crimes in the military, acknowledged that the lack of immunity for minor collateral misconduct may contribute to reluctance to reporting a sexual assault. However, it recommended only conducting "an expedited study" of low-level collateral misconduct to determine "whether a procedure granting limited immunity should be implemented in the future."[171]

Within the military, the primary objections to granting automatic immunity for minor offenses that come to light as a result of reporting a sexual assault are that it would damage maintenance of good order by allowing misconduct to go unpunished, encourage false reporting of sexual assault, and damage the victim's credibility on the stand if the defense makes it seem as if the victim reported the assault to avoid punishment for another infraction.[172]

---

[169] Coast Guard LCDR Kismet Wunder, The Fourth Public Meeting of the Judicial Proceedings Panel, Arlington, VA, November 14, 2014, transcript pp. 229-230, http://jpp.whs.mil/Public/docs/05-Transcripts/20141114_Transcript_Final.pdf (accessed April 24, 2015).

[170] He further testified: "And to be honest with you, the slap on the wrist that normally comes with the collateral misconduct is secondary to the administrative consequences that are going to come down the line... The Convening Authority that grants the immunity is not the same person that is the Separation Authority in our organization. And so I can't bind the Separation Authority." Ibid.

[171] Report of the Response Systems to Adult Sexual Assault Crimes Panel, Recommendation 60, http://responsesystemspanel.whs.mil/Public/docs/Reports/00_Final/RSP_Report_Final_20140627.pdf (accessed April 29, 2015).

[172] See responses from Army, Air Force and Coast Guard to Response Systems Panel Request for Information question 141 available at http://responsesystemspanel.whs.mil/index.php/rfis .

However, rates of false reporting for sexual assault are generally low (2 to 8 percent) according to studies.[173] In the military, where retaliation is so pervasive, it is even less likely a victim would falsely report a sexual assault and face retaliation, such as ostracism and poor work assignments, in order to avoid punishment for minor misconduct. If a person is found to have made a false report, they can be punished under the UCMJ for making a false official statement. Moreover, if the immunity is limited to offenses that only came to light because of the victim's report, victims are unlikely to be vulnerable to cross-examination based on a theory that the victim lied about a sexual assault to avoid collateral charges.

Victims would be unlikely to be viewed as having incentive to avoid punishment for a minor offense if the offense would have been unknown had they not brought it to their commander's attention when they reported the assault. Since the services themselves indicate victims are rarely punished for collateral misconduct, it is hard to argue that removing this ability will negatively impact good order.

Ultimately, the benefits of bringing more perpetrators to justice for sex offenses by allowing victims to come forward without fear of punishment outweigh concerns about condoning or inconsistently punishing minor misconduct.[174]

---

[173] David Lisak, Lori Gardinier, Sarah C. Nicksa and Ashley M. Cote, "False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases," *Violence Against Women*, December 16, 2010, 16:1318 (finding a false report rate of 5.9 percent over a 10 year study of reported sexual assaults at a major northeastern university).

[174] See also Separate Statement on Collateral Misconduct, Michelle Anderson, Meg Garvin, The Honorable Christel Marquardt, Victim Services Subcommittee of the Response Systems Panel, Annex, http://responsesystemspanel.whs.mil/Public/docs/Reports/00_Final/RSP_Report_Annex_Final_20140627.pdf (accessed April 29, 2015).

III. Other Issues Exacerbating Retaliation

Lack of Confidentiality

Information about a reported sexual assault is not always kept confidential (or "restricted").

Victims told Human Rights Watch that they heard their commanders talk openly about their cases to others or saw their case referenced in an email copied to people who did not need to know about it. Victims' lawyers report that the "need to know" basis for information about restricted reports is "too expansive" and that too many people are able to read email traffic about sexual assault reporting.[175]

Despite regulations allowing a sexual assault response coordinator (SARC) to withhold information "that could reasonably lead to personal identification of the victim,"[176] advocates report that in practice in smaller units, it is "too easy to figure out" who the victim is based on reference to gender, ethnicity, or pay grade in sexual assault information reported to the command.[177] Hospital staff may sometimes call a workplace and indicate they have someone there, unintentionally triggering a report.[178] Although Defense Department guidelines allow victims to keep a report restricted even if they tell a friend;[179] not all the branches have clear instructions on this.[180]

Practical considerations may also force people to reveal their sexual assaults. Transfers are only available to service members who make unrestricted reports. It may also become difficult to explain medical or legal appointments or trauma-related behavior to supervisors if they are not aware of the assault. Victims may be forced to disclose if they miss formation because they are at the hospital seeking medical care.[181] The following are

---

[175] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014.

[176] DOD Instruction 6495.02, section 4 (1)(d) updated February 12, 2014.

[177] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014; Human Rights Watch telephone interview with rape crisis center counselor, October 27, 2014.

[178] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014.

[179] DOD Instruction 6495.02, section 4 (1)(e) updated February 12, 2014.

[180] In fact, Navy instructions run counter to the DOD guidelines in certain cases: if the friend is in the same workplace, the disclosure is viewed as trumping confidentiality and can trigger an investigation. Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014.

[181] Human Rights Watch telephone interview with Amn Carla Rodriguez, February 4, 2014.

some of the incidents concerning confidentiality that were raised during interviews with Human Rights Watch:[182]

- Seaman Collins was assaulted after a Navy ball in late 2011. She was in language school in Monterey and chose not to report the assault because she was afraid she would be charged for underage drinking. Shortly before graduation in November 2012, she received a survey that she believed to be anonymous that asked about various services on base ranging from the training to the dental clinic. In response to a question about sexual harassment she wrote, "I was raped." Within hours, she received a call from a Sexual Assault Prevention and Response (SAPR) advocate saying her commander needed to see her. She was called in to explain why she wrote this on her survey and told she had to report to Naval Criminal Investigative Services (NCIS). Apparently the base commander had informed her chain of command about her survey response. She was initially told she would not be allowed to go to her next duty station until the investigation was complete, though she was desperate to move after what she described as "the worst time in her life." She begged her chief to let her move on, an experience she described as "completely humiliating," though they eventually let her go.[183]
- Another survivor told Human Rights Watch that she answered a command climate survey honestly and admitted to being sexually harassed and assaulted in her unit. After the survey "they had a witch hunt." There were only four women in a unit of three hundred men. All four women were interrogated. During questioning she admitted to her survey answer but asked to make it a restricted report. She was told she could not or she would be charged with inappropriate relations. Though this happened in 2007, before the time period of this report, the concerns about actual confidentiality of command climate surveys remain in units with small numbers of people.[184]
- One airman who was assaulted in late 2011 wanted to make a restricted report with the SARC but in order to meet with the SARC had to inform his supervisor he had an

---

[182] Others include Human Rights Watch telephone interview with recruit Carolyn Diaz, January 9, 2014 (saw an email containing private information about her assault that was shared outside her chain of command); Human Rights Watch telephone interview with Amn Lena Stewart, November 17, 2014 (inadvertent disclosure to her supervisor); Human Rights Watch telephone interview with SrA Melissa Evans, October 31, 2013 (did not wish to report); Human Rights Watch telephone interview with SPC Ashley Parker, December 17, 2013 (was forced to report due to rumors about the incident); Human Rights Watch telephone interview with Army SARC Clara Gomez.

[183] Human Rights Watch telephone interview with SN Nicole Collins, October 23, 2014.

[184] Human Rights Watch telephone interview with CPL Isabelle Long, September 29, 2014.

unspecified appointment. His supervisor pressed him for details and finally guessed it was the SARC. Just before his appointment, she wished him luck and sat in her car outside the SARC's office smoking, which he felt was a deliberate effort to confirm her suspicions. He said that he later had to make his report unrestricted because otherwise he could not explain why he was having anxiety attacks and snapping at people. Moreover, he was having problems sleeping, which led to his being late to work on occasion, and he was having difficulty scheduling mental health counseling. He began accumulating LORs and LOCs each week and was told he would get discharged if he did not improve. Meanwhile, the supervisor who suspected the assault spread a rumor that he was gay. He said, "The only reason I went unrestricted is to defend myself." Even still he felt he was "being scrutinized. They were nitpicking, looking for fault and making it clear they wanted to get rid of me."[185]

- Concerns about inadvertent disclosure required one rape crisis center located near a major military base to cancel a support group for military sexual assault survivors because of concern that if a service member made reference to their restricted case in front of another service member in certain circumstances, the other person would be required to disclose the assault.[186]

This is another area in which a victim's lawyer may be able to assist. Talking outside permissible channels is a punishable offense as a violation of privacy. One VLC was able to intervene and get two victim advocates fired after they were caught chatting about cases.[187]

Failure to Accommodate Housing and Working Requirements

With recent reforms, the military has taken important steps to assist survivors in moving on from the assault while preserving their careers. In particular, the military has instituted the expedited transfer program, allowing survivors to submit a request for transfer to another base that should be processed by their commanders within 72 hours.[188] The program has the advantage of providing a survivor with a way to avoid coming into contact with the perpetrator,

---

[185] Human Rights Watch telephone interview with A1C Chris King, December 4, 2014.

[186] Human Rights Watch telephone interview with rape crisis center administrator, October 27, 2014.

[187] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014.

[188] A commander must process a survivor's expedited transfer request within 72 hours once the commander determines the sexual assault report is credible. Response Systems to Adult Sexual Assault Crimes Panel, Report of the Response Systems to Adult Sexual Assault Crimes Panel through the Secretary of Defense and to the Committees on Armed Services of the Senate and the House of Representatives (RSP Report), June 27, 2014, p. 106, http://responsesystemspanel.whs.mil/Public/docs/Reports/00_Final/RSP_Report_Final_20140627.pdf (accessed May 4, 2015).

or his or her friends, on a regular basis and with the possibility of relocating to a place where the victim has a support network to assist them through the healing process.

While this presents a helpful option in many cases, it is not a cure-all.

Human Rights Watch heard from survivors who very much wanted to stay at their current locations for various reasons. For some, moving to another base would have sidetracked their careers or caused them to leave their friends and support systems. One survivor said she had a choice to leave but "did not want to separate from her husband since he was the only reason [she] didn't kill herself."[189] Moreover, for her narrow specialty there were not many options. Because word had spread of the assault it was difficult to have a fresh start elsewhere.[190] She also said transferring can "screw things up" because it is not normal, especially if you still have to travel back and forth for legal proceedings.[191]

For others, moving to a new base would offer little protection from retaliation because of connections between colleagues across bases who could be depended on to ensure that a "troublemaker" reputation followed the survivor. Indeed, this scenario came up in multiple interviews, often with officers and non-commissioned officers playing a role in transmitting negative information about the survivor to their destination base.

For example, Airman First Class Cook told Human Rights Watch that after she reported a coworker for fondling her, she was allowed to transfer to a unit in a different state to avoid deploying with the perpetrator. Nonetheless, a friend overheard a supervisor say to another airman, "Don't worry, we know people there. She'll get what she deserves."[192] When she arrived at the new base she learned from the master sergeant of her new unit that the maintenance chief of her old unit had spoken to him. Airman Cook told Human Rights Watch, "There was a briefing with 100 people in my [new] unit where they were advised, 'You need to stay away from her. She's already reported someone for rape.' So not a lot of people were my friends."[193]

---

[189] Human Rights Watch telephone interview with SN Nicole Collins, October 23, 2014.
[190] Ibid.
[191] Ibid.
[192] Human Rights Watch telephone interview with A1C Carol Cook, January 22, 2015.
[193] Ibid.

When Specialist Thomas arrived at her next post for advance training after reporting her drill sergeant for sexual assault, she told Human Rights Watch she was taken from the bus straight to the commander's office. He told her, "We've received an email that you're a troublemaker and we just wanted to tell you that none of that is gonna fly here, that you need to be on your best behavior, and we're all watching you." She said, "And I didn't even know their names yet….[it] just followed me like a black plague."[194]

Commanders may also resist transfers. After a SARC asked for approval for an expedited transfer of a victim to a location near her family, a wing commander reportedly responded: "So now we're allowing victims to choose what base they can go to. What else are we going to give them? They get everything they want."[195] When a Marine attempted to transfer after facing threats from her peers following the acquittal of her rapist, she said she was initially told "since you weren't actually raped, you don't get to move." She was eventually allowed to move.[196] Others told of similar problems with transfers.[197]

Given that a transfer to another base may not always be possible or present the best option for a survivor, or may not resolve every issue, it is important that the military ensure commanders work with survivors to accommodate their recovery process within the bounds of the military mission. Stories told by survivors to Human Rights Watch suggest that too often even the most minor requests for accommodation are viewed with skepticism and often delayed or denied.

Housing

A number of interviewees told Human Rights Watch that their command resisted requests for a change of housing.[198]

---

[194] Human Rights Watch interview with SPC Bonnie Thomas, March 2, 2015.

[195] Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014; email communication from Air Force SVC #1 to Human Rights Watch, May 1, 2015.

[196] Human Rights Watch telephone interview with LCpl Amy Johnson, January 11, 2015.

[197] Another survivor was told her case "was not serious enough to transfer because it only happened once." Human Rights Watch telephone interview with Naval SN Mindy Lee, November 3, 2014. Another petty officer was not allowed to transfer despite harassment because her assailant had been transferred. Human Rights Watch telephone interview with PO2 Gabrielle Bouvier, October 15, 2014.

[198] Written account submitted to Protect our Defenders by Stephanie Green, on file with Human Rights Watch; Human Rights Watch telephone interview with SrA Sharon Wright, December 5, 2014.

An Air Force SVC told us of the difficulty in getting her client moved. The client, Senior Airman Robinson, was assaulted in her dorm in late 2013. She and her assailant lived in neighboring dorms. Because Robinson's room window was right above the designated smoking area and her assailant smoked, she heard his voice whenever he was downstairs. She was afraid to open her curtains or her window when she was in her room, and at night she was having nightmares and had been unable to sleep.

Her SVC asked her command to allow her to move to another building or at least to the other side of the building so she would not have to hear his voice every day. Her first sergeant told her the only option would be to go to a unit on a different base, 15 minutes away from her friends and in a location with no Internet. The SVC said that when she objected to this plan, her client's commander reminded the SVC that she was "just a captain" and that he was a lieutenant colonel.[199]

As an alternative, the SVC asked if Senior Airman Robinson could be moved off base. The first sergeant said Robinson "only wanted to be moved off base to take advantage of the system" and "she is just an Airman and they cannot accommodate her every need." They refused to move her and they also refused to move the accused off base or to another dorm because he did not have a car.[200] Others also report difficulties related to housing.[201]

Workplace Accommodations

Some survivors reported encountering difficulty when they approached their supervisors or their command for workplace accommodations that would allow them to avoid contact with their perpetrator.[202]

Senior Airman Bell told Human Rights Watch that she was forced to work alongside an airman who had assaulted her. After making multiple complaints about her safety to

---

[199] Email communication from Air Force SVC #2 to Human Rights Watch, May 1, 2015.

[200] Human Rights Watch interview with Air Force SVC #1, November 24, 2014; memo on file with Human Rights Watch summarizing meeting with first sergeant written the day after the meeting in 2013.

[201] "Raped and Still Paying For It," *My Duty to Speak*, February 8, 2015, http://mydutytospeak.com/2015/02/08/raped-and-still-paying-for-it/ (accessed April 28, 2015) (survivor had to stay in barracks with sex offenders who had access to room keys); Human Rights Watch interview with Army SVC #2, Alexandria, VA, February 2, 2015 (commander confined survivor to barracks where she was assaulted rather than allowed to go to husband before intervention of SVC).

[202] Human Rights Watch telephone interview with SrA Kelsey Bell, September 25, 2014; written statements of SrA Kelsey Bell, on file with Human Rights Watch; Human Rights Watch telephone interview with TSgt Jennifer Sanchez, December 9, 2014.

supervisors, and then suffering a panic attack from being in the same room with the assailant, she said she finally got an audience with the chief:

> The chief started out reprimanding me for asking to speak with him and calling me ungrateful for all the things he, my supervisors, First Shirt, and the commander had done for me, all the briefings they had all about me. They had never asked me, personally, what they could do to help my recovery and had said no to my requests through the temp First Shirt…. At some point, after being shut up several times I stopped crying to speak, I yelled over him that 'I was terrified' upstairs. He ignored me and continued yelling so I yelled, 'He bit my shoulder and grabbed me and you want me to be in the same room and I can't.'[203]

Similarly, Seaman Collins had a military protective order against her perpetrator but it was not renewed because her leadership told her "he had been a good sailor." As a result, she spent a month "hiding in her cubicle" to avoid him.[204] She described the next year-and-a-half as "terrifying" and felt her chain of command's effort to keep them separated was "far from appropriate."[205] Others also report their security concerns were not taken seriously.[206]

In other cases, victims told Human Rights Watch that they, or their doctor, requested workplace accommodations or leave to allow them to recover so they could continue to perform their jobs, but they were denied:[207]

- To accommodate the PTSD of Petty Officer Lewis, her doctor recommended that during the day she only work with females. Instead, she was assigned desk duty at a male barracks, which was a trigger for her because men kept coming behind the desk. Though she complained (and had a doctor's note) she was ignored. As a

---

[203] Written statements of SrA Kelsey Bell, on file with Human Rights Watch.

[204] Human Rights Watch telephone interview with SN Nicole Collins, October 23, 2014; email communication from SN Nicole Collins to Human Rights Watch, April 28, 2015.

[205] Email communication from SN Nicole Collins to Human Rights Watch, April 28, 2015.

[206] Human Rights Watch interview with MSgt Sam Davis, March 11, 2015 (reporting that his supervisor yelled at him when he complained that the perpetrator was repeatedly coming by his office and taunting him); Human Rights Watch telephone interview with SN Kim Martin October 8, 2014.

[207] Others expressed similar concerns about workplace accommodation. Human Rights Watch interview with PFC Cynthia Turner, November 19, 2013; Human Rights Watch telephone interview with TSgt Jennifer Sanchez, December 9, 2014; Human Rights Watch telephone interview with SFC Rachel Jones, January 26, 2015; Human Rights Watch telephone interview with SPC Barbara Harris, November 5, 2015; Human Rights Watch telephone interview with A1C Joseph White, November 4, 2014.

result, she had to go to the emergency room repeatedly when she suffered from anxiety at work. She was discharged involuntarily in 2014.[208]

- The doctor for a National Guard lieutenant colonel with delayed onset PTSD recommended she be allowed to telecommute or be placed in a low stress job until retirement (about 12 months). Lieutenant Colonel Anderson requested she be allowed to telecommute for 90 days to allow her to go through cognitive behavioral therapy and then she would return to work. She was told it was not an option, and that she had to medically retire or return to work, though she noted the perpetrator was allowed to telecommute for two years while he was investigated. When the issue was raised with human resources, she said the SARC was told by the Human Resource Officer that she was "playing the rape card."[209]

In certain cases, this issue might be remedied by allowing survivors to retrain for a new job classification. After multiple assaults within her military occupational specialty, Airman First Class Cook wanted to stay in the military but switch jobs. She put together a package to apply for a position as a paralegal. Despite recommendations from two and three-star generals, she was denied. "It was fishy. I don't know why they didn't put me through. Then they offered me early separation papers," she said.[210]

Victim's counsel may be able to assist with job assignments. A Navy VLC reported that she had a client who loved the Navy but did not want to go back to sea because that is where she was assaulted. Initially her client was told she needed to go back to sea, but after the VLC wrote to her command "copying the world," the VLC got calls from people "bending over backwards" to help change her position.[211]

Obstacles Accessing Mental Health Care

Military service members told Human Rights Watch that just as they faced retaliation for reporting sexual assault and harassment, they also faced negative repercussions for seeking mental health care for the trauma they experienced.

---

[208] Human Rights Watch telephone interview with PO3 Sasha Lewis, November 17, 2014.
[209] Human Rights Watch interview with LTC Sheila Anderson, February 9, 2015.
[210] Human Rights Watch telephone interview with A1C Carol Cook, January 22, 2015.
[211] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014.

In some cases, those repercussions compounded survivors' trauma by depriving them of the safety and confidentiality of their relationships with mental health professionals at a time when their trust in others was most fragile. For others, the stigma surrounding care led their peers to shun them further. And in some cases, fear of these repercussions led survivors to forgo desperately needed care altogether.

Providing access to appropriate mental health care is a key component of the government's obligation to respond to sexual violence in any context. In the military context, the consequences of the government failing in that obligation are particularly stark.

Statistics indicate that overall, recent veterans have a significantly higher rate of suicide than civilians.[212] Although not all suicide is linked to post-traumatic stress disorder, it is notable that among potentially traumatic events, sexual assault is especially likely to lead to PTSD.[213] In addition, according to an expert on veterans and PTSD, survivors of military sexual assault who experience retaliation for reporting may have more severe and complicated PTSD than they would have without the retaliation.[214] Among the 150 service members and veterans that Human Rights Watch interviewed for this project, almost half disclosed without prompting that they had experienced periods of feeling suicidal.[215]

According to medical experts, early access to treatment can dramatically improve a survivor's long-term prognosis.[216] It is also inextricably tied to helping service members preserve their careers, as treatment can help survivors heal from the trauma and avoid coping strategies such as excessive alcohol or drug use that may have a negative impact on their health, well-being, and career.

---

[212] The suicide rate among recent veterans is 50 percent higher than among similar demographics in the civilian population. Alan Zarembo, "Detailed study confirms high suicide rate among recent veterans," *Los Angeles Times*, January 14, 2015, http://www.latimes.com/nation/la-na-veteran-suicide-20150115-story.html (accessed May 7, 2015).

[213] "Moreover, the prevalence of PTSD varies across different types of PTE, with sexual assault and exposure to violence being associated with the highest risk for PTSD." Early Intervention for Trauma: Current Status and Future Directions, Brett Litz and Matt Gray, National Center for PTSD, Richard Bryant, University of New South Wales, & Amy Adler, Walter Reed Army Institute of Research, *Clinical Psychology: Science and Practice*, http://www.ptsd.va.gov/professional/treatment/early/early-intervention-for-trauma.asp (accessed April 22, 2015).

[214] Human Rights Watch interview with Mylea Charvat, Ph.D., April 24, 2014.

[215] Seventy interviewees disclosed that they had experienced periods of suicidality.

[216] Human Rights Watch interview with Mylea Charvat, Ph.D., April 24, 2014.

Limited Privilege of Psychotherapy Records

One of the greatest barriers to survivors accessing care is the potential for those records to be disclosed during the criminal proceedings against their perpetrator.

Until recently, the broad disclosure of mental health records meant victims faced a choice between seeking justice for their assault or getting mental health help. One VLC told us that two of her clients stopped going to counseling on the eve of trial because of this issue.[217] A Marine Corps VLC told Human Rights Watch that he has a "fair amount of clients who won't seek mental health help because they know it will be turned over."[218]

Military Rule of Evidence 513 provides a privilege for the psychotherapist-patient relationship that should prevent the disclosure of communications within that relationship. However, the privilege is subject to seven exceptions, making it much weaker than, for example, the attorney-client, clergy-penitent, or spousal privileges in civilian courts.[219]

Attorneys told us that military judges commonly review private mental health records in chambers looking for relevant evidence, which some described as a "fishing expedition."[220] According to testimony before the Judicial Proceedings Panel, the admission of mental health records is regularly at issue in proceedings and records are frequently obtained from providers, at least in sealed form, prior to a hearing on the issue.[221] Other SVCs told us their clients chose to stop participating in court martial proceedings rather than have their personal medical records exposed.[222]

---

[217] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014.

[218] Human Rights Watch group interview with Marine Corps VLC #1, January 5, 2015.

[219] Until recently an additional exception stated that there was no privilege "when admission or disclosure of a communication is constitutionally required." The 2015 NDAA removed this after arguments by victim advocates that the exception served to encourage the disclosure of records for an unlimited number of reasons. Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub.L. 113-291, sec. 537(2). http://www.gpo.gov/fdsys/pkg/CPRT-113HPRT92738/pdf/CPRT-113HPRT92738.pdf (accessed April 22, 2015).

[220] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014; Human Rights Watch group interview with Air Force SVCs, December 4, 2014, Washington DC; Human Rights Watch telephone interview with Marine Corps VLC #1, January 5, 2015; Human Rights Watch interview with Air Force SVC #2, Alexandria, VA, November 24, 2014.

[221] Ryan Guilds, The Third Public Meeting of the Judicial Proceedings Panel, Washington, DC, October 10, 2014, transcript p.134, http://jpp.whs.mil/Public/docs/05-Transcripts/20141010_Transcript_Final.pdf (accessed April 29, 2015).

[222] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL, December 10, 2014; Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014.

The 2015 National Defense Authorization Act (NDAA) limited the "constitutionally required" exception to the psychotherapist-patient privilege, which was the most broad and raised the bar for the evidentiary showing the accused must make to access privileged material.[223] However, some express concerns that victims sign waivers allowing mental health records to be disclosed to investigators (and therefore the defense) before they have access to counsel. If so, that could be an end-run around strengthened privilege protections. Use of mental health records in court proceedings will need to be monitored in order to determine whether the current reform is sufficient to address the problem.

The impact of insufficient protections in this area is tremendous. Airman First Class Cook, who told Human Rights Watch that during the lead up to the court martial of her rapist in 2012, the defense counsel successfully obtained mental health records dating back to when she was 6-years-old.[224] An SVC recalled a case in which a defendant leaked the victim's mental health history to media. He described it as "staggering" as the client had thought her discussions with her doctor were confidential.[225]

Attorneys for victims repeatedly raised this issue as the main area in which reform is necessary. Several SVCs and VLCs told Human Rights Watch that they advise clients not to seek mental health care if their case is going to trial.[226] The risk of a therapist writing inaccurate notes about a victim's statements about the assault that could be damaging in a court martial is considered too great.[227] Moreover, other private issues not relevant to the case could be revealed.

Lack of Confidentiality of Medical Records

Military policy grants commanders access to subordinates' medical records, including mental health records, for the purpose of ensuring their fitness for duty. Given the unique mission of the military, and duties that may require use or control of weapons and access to sensitive information, there are legitimate reasons for the military to be interested in ensuring the health and stability of their troops.

---

[223] Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub.L. 113-291, sec. 537(2). http://www.gpo.gov/fdsys/pkg/CPRT-113HPRT92738/pdf/CPRT-113HPRT92738.pdf (accessed April 22, 2015).

[224] Human Rights Watch telephone interview with A1C Carol Cook, January 22, 2015.

[225] Human Rights Watch telephone interview with Army SVC #1 December 9, 2014.

[226] Human Rights Watch group interview with Navy VLCs, Jacksonville, FL., December 10, 2014.

[227] Human Rights Watch telephone interview with Marine Corps VLC #1, January 5, 2015.

However, these interests need to be balanced with privacy concerns of victims. Currently, the limitations on their access to the records without the patient's consent are few as during service the military "owns [your] body."[228] Consequently, survivors told Human Rights Watch, seeking care means risking the exposure of intensely private matters to their command and the possibility of their diagnoses impacting their job duties, and ultimately, their ability to continue their military careers. Officers familiar with the lax privacy protections say they "would never go to mental health."[229] Thus, while rooted in concern for service members' wellbeing and for ensuring mission readiness, the policy can in fact work counter to those purposes.

Human Rights Watch spoke with survivors who had confided in mental health professionals, only to see the contents of those private conversations later used in efforts to remove them from the military. Counseling records, like all of a service member's medical records, may be reviewed not only by commanders, but by a medical review board charged with determining the member's fitness for duty. According to Senior Airman Bell, statements from her counseling records were used in a misleading way by her commander in his statement to the medical review board recommending that Bell be separated from the military.[230]
Service members are also often reluctant to seek help because they fear being diagnosed with a disorder that will be used to justify an involuntary administrative discharge, ending their career and potentially depriving them of benefits to which they would otherwise be entitled.[231] An attorney told Human Rights Watch, "It is so hard to come forward to mental health professionals in the military and then it is used against them…. It makes people paranoid, and then the paranoia is seen as an indication of personality disorder."[232]

A former Special Victim Counsel told Human Rights Watch that she counseled clients to exercise caution in making statements to military mental health professionals due to the possibility that they could be diagnosed with Adjustment Disorder.[233] Adjustment Disorder

---

[228] Human Rights Watch interview with Air Force SVC #2, Alexandria, VA., November 24, 2014.

[229] Human Rights Watch telephone interview with Marine Corps VLC #2, January 6, 2015; Human Rights Watch telephone interview with Army SVC #1, December 9, 2014.

[230] Human Rights Watch interview with SrA Kelsey Bell, September 25, 2014; documentation on file with Human Rights Watch. Similar concerns were raised by others. Human Rights Watch telephone interview with A1C Joseph White, November 4, 2014; Human Rights Watch telephone interview with [rank withheld] Erica Smith, December 29, 2014.

[231] Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014.

[232] Human Rights Watch interview with attorney Cacilia Kim, California Women's Law Center, Los Angeles, CA, May 1, 2014.

[233] Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014.

is the development of marked distress, or significant impairment in functioning, in response to a stressor and it can often resemble PTSD.[234] With that diagnosis on file, the attorney said, a client could be subject to discharge, a process that could be started by the mental health professional speaking with the commander if the condition did not improve, or by a commander taking the initiative to look into the service member's record.

The potential career impact of seeking mental health treatment has a definite chilling effect on survivors accessing needed care. "I didn't want to go to mental health because I knew it was a career-ender," said survivor Lance Corporal Johnson, echoing the sentiments of many interviewees.[235] Sergeant Young, a non-commissioned officer in the Army National Guard, credits her career progression to the fact that she did not seek counseling through the military following her assault:

> If you say, 'I have an issue,' you get blackballed. Especially as a female. The only reason I am an NCO today is because despite my assault, I never sought help. I would have never been promoted. I have seen other NCOs and privates—NCOs all the way up the chain—seek help and get out of the military not by choice.[236]

Some survivors attempt to preserve the privacy of their treatment by seeking care through civilian providers. However, it is far from a complete solution. By policy, service members should provide all treatment records to the military, although practically-speaking, records maintained by civilians are more difficult for the military to access.

Getting the military to authorize coverage for off-base mental health care at times can be cumbersome, and in some locations abroad appropriate civilian care may not be available at all. When survivors are able to access civilian mental health care, the command may be aware of survivors' medical appointments due to scheduling and may make inquiries. A number of survivors told Human Rights Watch that their command checked up on medical

---

[234] American Psychiatric Association, "Posttraumatic stress disorder," in Diagnostic and Statistical Manual of Mental Disorders (5th ed.) (Arlington, VA: APA, 2013).

[235] Human Rights Watch telephone interview with LCpl Amy Johnson, January 11, 2015. Similarly SN Nicole Collins told Human Rights Watch she decided against seeking therapy because "I was terrified of being diagnosed with something and cutting short my dream career." Human Rights Watch telephone interview with SN Nicole Collins, October 23, 2014.

[236] Human Rights Watch telephone interview with SGT Ann Young, November 19, 2014.

appointments they had off base.[237] An SVC reported her client was tracked by her commander and received reports about everywhere she went.[238]

Supervisor and Peer Resistance to Medical Care

In addition to using mental health records for formal evaluations of a service member's fitness for duty, survivors must contend among their superiors and their peers with stigma associated with mental health treatment. One survivor said, "If you seek mental health, people avoid you, your career is not looked after, no one will give you TDYs [temporary duty assignment]. You are like a black sheep."[239] An officer said based on her experience as a commander, "It is absolutely a stigma to seek help."[240]

Many interviewees said they found it difficult to keep the fact that they were in care private, whether due to questions about their absences, supervisors' failure to protect confidentiality, or peers observing them enter a building solely dedicated to mental health services on base.[241] Seaman Lee told Human Rights Watch: "I thought [in-patient] hospitalization was confidential but a first class heard chiefs talking openly about it."[242] Lee said that later, when she was in outpatient therapy, her command required her to have an escort to the hospital who would walk her directly to the mental health clinic.

On top of fears about stigma and confidentiality, survivors reported logistical hurdles to accessing care. Although service members should be able to attend medical appointments with military medical professionals during their work hours, survivors reported that their supervisors and peers resented their absences, and at times pressured survivors to forgo appointments or give details about the appointments that compromised patient privacy.

---

[237] Human Rights Watch interview with SPC Bonnie Thomas and her therapist, Fayetteville, NC, December 8, 2014; Human Rights Watch telephone Interview with CPT Ruth Rivera, November 20, 2014.

[238] Human Rights Watch telephone interview with Air Force SVC #1, June 19, 2014.

[239] Human Rights Watch telephone interview with A1C Chris King, December 4, 2014. Temporary duty assignments (travel) may be viewed positively in evaluations.

[240] Human Rights Watch telephone interview with CPT Ruth Rivera, November 19, 2014.

[229] Human Rights Watch telephone interview with A1C Joseph White, November 4, 2014; Human Rights Watch telephone interview with A1C Chris King, December 4, 2014; also email communication from Roy Carter to Human Rights Watch, October 14, 2014 ("I went from being looked at as a good soldier to being treated like a bad one" describing his treatment after he told the chief at his first unit he needed mental health assistance following his rape); Another survivor told Human Rights Watch that when she informed her instructor of appointments, her instructor would ask, "What appointments? Mental health?" in front of her unit. Human Rights Watch telephone interview with Amn Carla Rodriguez, February 4, 2014..

[242] Human Rights Watch telephone interview with SN Mindy Lee, November 3, 2014.

The following are some of the survivors who told Human Rights Watch about their supervisors' resistance or outright refusal to allow them to leave work for medical and mental health appointments:[243]

- Navy Seaman Bailey told Human Rights Watch that her command filed a case against her for malingering due to the number of medical appointments she had for PTSD due to her sexual assault. Her review before the medical board was pulled and she was granted a "general under honorable" discharge for "serious offense misconduct." I have to live with [having that on my record] every day."[244]
- Petty Officer Lewis said the first class in charge of her barracks kept getting mad at her for having to go to the emergency room telling her, "I got over it. You need to get over it. You have a job to do." She was written up five times and would have been sent to a Captain's Mast on charges of malingering without the intervention of the SAPR personnel with her command.[245]
- Master Sergeant Thompson's unit contacted her incessantly about her absences from work and made demands that she return to her duties during her inpatient treatments for depression, including hospitalizations that followed suicide attempts. They required her to keep a phone with her and contacted her despite her doctor's instructions that she be allowed to recuperate without disturbance. The command had a process server attempt to serve her with administrative discharge papers in the emergency room following one suicide attempt.[246]

An Army SVC also told us she had to intervene on occasion when low-level commanders refused to allow clients to leave for appointments.[247] A therapist who provided services to Navy personnel and their families told Human Rights Watch that a client told her she had

---

[243] Other raised similar concerns. Human Rights Watch telephone interview with Jean Jackson, October 16, 2014; Human Rights Watch telephone interview with PO2 Gabrielle Bouvier, October 15, 2014 (saying she was told to forego counseling because "work was more important" and she "was such an asset"); "Coast Guard Captain Calls Rape Survivor 'Liar' and 'Nut Case,'" *My Duty to Speak*, September 4, 2012, http://mydutytospeak.com/2012/09/04/coast-guard-captain-calls-rape-survivor-liar-and-nut-case/ (accessed April 28, 2015) (saying her Chief forbade her to take time off to attend counseling and that he did not know why she still needed to go to counseling since there was not enough evidence to go to trial).

[244] Human Rights Watch telephone interview with SN Monica Bailey, November 13, 2013.

[245] Human Rights Watch telephone interview with PO3 Sasha Lewis, November 17, 2014.

[246] Human Rights Watch interview with MSgt Helen Thompson, San Jose, CA, April 23, 2014.

[247] Human Rights Watch interview with Army SVC, Alexandria, VA, February 2, 2015.

been coached to answer screening questions on post-traumatic stress disorder a certain way so that she would be allowed to work.[248]

Pressure can also come from peers who become upset that the survivor is not able to share the workload equally due to medical appointments. "As soon as I leave the office, the burden increases on the rest of the staff," Sergeant Jones told Human Rights Watch. "There are only three people on staff. It is hard to let me go to counseling when we're short-staffed…. I keep getting shoved into work and I feel like I'm letting people down…. There is no provision for you when you are damaged."[249] Another survivor told Human Rights Watch that her shipmates would harass and call her a traitor because she missed work due to therapy appointments every other day.[250]

Survivors who opt to file restricted reports of their assaults may find it even more difficult to schedule and keep mental health appointments, as the command will not have been informed of the assault that triggered the need for care. Emma Miller, a Marine who initially filed a restricted report while her assailant remained stationed at the same base, said that her medical appointments drew the attention of her gunnery and staff sergeants. She said, "They would say, 'If you keep having all of these appointments, you're no use to us here.'"[251]

---

[248] Human Rights Watch telephone interview with Navy contractor, October 20, 2014.
[249] Human Rights Watch telephone interview with SFC Rachel Jones, January 26, 2015.
[250] Human Rights Watch telephone interview with SN Mindy Lee, November 3, 2014.
[251] Human Rights Watch telephone interview with Cpl. Emma Miller, January 27, 2015.

IV. Failures to Remedy Retaliation

While the US military is aware that retaliation is a widespread problem, efforts to address it have so far been unsuccessful. Victims of retaliation require remedies to make them "whole" and correct injustice they might have suffered—including reinstatement, back pay, correction of performance evaluations, or removal of negative administrative action from a record.

In addition, disciplinary action is needed against those who retaliate against someone who reports sexual assault in order to deter retaliation and send a strong message to other service members and supervisors that they will be held accountable for retaliation.

Resources currently available to victims, according to the Defense Department's report to the president, primarily focus on removing or protecting a victim from an abusive situation (by allowing them to transfer or granting them a protective order), rather than emphasizing real remedies for the victim of retaliation and accountability for the retaliator.[252]

Legal protections for service members who experience retaliation are limited and ineffectual. Unlike civilians (including those employed by the military), longstanding Supreme Court precedent prohibits service members from suing the military for any injuries or harm "that arise out of or are in the course of activity incident to service."[253] This includes violations of their constitutional rights.[254]

Federal appeals courts have also barred uniformed personnel from bringing discrimination suits under Title VII of the Civil Rights Act, the primary mechanism for holding employers

---

[252] As discussed in the introduction, in its December 2014 "Report to the President," the Department of Defense lists the following resources for victims who have experienced retaliation or ostracism:

- Report to their commander, facilitated by SARC or SVC
- Request an expedited transfer
- Request a Safety Transfer, if they fear violence
- Request a Military Protective Order
- File a Military Equal Opportunity Complaint
- Report to a SARC at a different installation, facilitated by DoD Safe Helpline
- Report to a commander outside their Chain of Command
- Report to the DoD IG invoking whistle-blower protection
- Article 92 criminal prosecution for Failure to Obey Orders or Regulation

[253] *Feres v. United States*, 340 U.S. 135 (1950).

[254] *Chappell v. Wallace*, 462 U.S. 296 (1983).

accountable for sexual harassment and assault.[255] Service members are left with the Military Whistleblower Protection Act as the only means to protect their careers if they suffer retaliation as a result of reporting sexual assault.

What this means is that service members facing professional retaliation after reporting sexual assault have only one place that may provide redress: the Department of Defense Inspector General, which exclusively handles sexual assault survivor complaints under the Military Whistleblower Protection Act.[256]

Social retaliation, on the other hand, is primarily handled by the chain of command, which has multiple channels for handling retaliation.[257] These include pursuing charges against the perpetrators of the retaliation for failure to obey an order or imposing a range of possible administrative disciplinary sanctions for retaliatory behavior.

In addition to going directly to their chain of command, service members may file a Military Equal Opportunity complaint, or make a complaint against their commander under Article 138 of the Uniform Code of Military Justice. However, each of these in some way involve the chain of command, which can be problematic for those whose chain of command has condoned or participated in the retaliation.

Whistleblower Protection

The Military Whistleblower Protection Act prohibits adverse personnel action ("reprisals")[258] against a service member because they have made a "protected communication" by

---

[255] The military exception barring uniformed military personnel from pursuing Title VII causes of action has carried the day in all federal appellate courts to consider Title VII claims. Most cases have pertained to disparate treatment, not sexual harassment. *See, e.g.*, *Johnson*, 572 F.2d at 1223-24 (race discrimination); *Gonzalez*, 718 F.2d at 927-8 (race discrimination); *Stinson v. Hornsby*, 821 F.2d 1537, 1539 (11th Cir. 1987) (race discrimination); *Roper*, 832 F.2d at 248 (sex and race discrimination); *Randall v. United States*, 95 F.3d 339 (4th Cir. 1996) (race discrimination). One appellate court has addressed a disparate treatment claim for sex discrimination that also included a sexual harassment claim, and applying the military exception, held the Title VII claims to be non-justiciable because the employee's role was military in nature and thus subject to the military exception. *Fisher v. Peters*, 249 F.3d 433 (6th Cir. 2001). Service members can file complaints through the Military Equal Opportunity Program, discussed below, but they cannot sue for damages as a result of discrimination.

[256] Maj. Gen. Jeffrey Snow testified before the Judicial Proceedings Panel that for complaints of professional retaliation by military sexual assault survivors are "exclusively handled by the DoD IG." Army MG Jeffrey Snow, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p.91 (unofficial transcript on file with Human Rights Watch).

[257] Dr. Nathan Galbreath, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p.92 (unofficial transcript on file with Human Rights Watch).

[258] Reprisal is defined as "taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication." DODD 7050.06., July 23,

reporting a violation of law or regulation. In 2013, the act was amended to explicitly include a report of rape, sexual assault, or other sexual misconduct as a protected communication, though because those acts are illegal they always fell within the scope of the act.[259]

If a service member believes they have suffered retaliation after reporting a sexual assault or sexual harassment, they can make a complaint directly to the Department of Defense Inspector General (DODIG) or to their service Inspector General (IG). Members of Congress may also refer cases to the IG for investigation if a service member has requested their assistance. All whistleblower cases must be referred to DODIG, which can itself conduct an investigation into the complaint or refer it back to a military branch for investigation.

A full investigation will only be conducted if an initial review by a military branch IG or DODIG establishes the complaint meets the "acid test" and qualifies as a whistleblower reprisal (i.e., that a protected communication was made; a superior knew about the protected communication; an adverse personnel action was taken, threatened, or withheld; and the action would not have been taken in the absence of the protected communication).[260]

DODIG is responsible for ensuring all whistleblower reprisal complaints are thoroughly and objectively investigated. It must also approve all determinations not to investigate cases. If, however, a complaint is substantiated after a full investigation, the DODIG can recommend corrective action. However, the DODIG cannot itself undertake corrective action. The applicant must make a separate application to their service's Board of Correction of Military Records for relief.[261] DODIG also cannot recommend disciplinary action against retaliators.

2007, http://www.dodig.mil/Hotline/reprisalcomplaint.html (accessed April 22, 2015). Personnel action is defined as any action that affects, or has the potential to affect, the member's current position or career. Such actions include, but are not limited to, promotions; disciplinary or corrective actions; transfers or reassignments; performance evaluations; decisions on pay, benefits, rewards, or training; referrals for mental health evaluations; or any other significant changes in duties not consistent with the member's grade.

[259] Additional 2013 amendments to the Military Whistleblower Protection Act include extending the statute of limitations from 60 days to 1 year, closing some loopholes to make the law more consistent with civilian protections, and requiring investigations to be handled by a higher organizational department than the one where the alleged harassment occurred. NDAA FY 2014 sec. 1715; amending 10 USC 1034 (c)(2)(A).

[260] Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints, November 7, 2014, available at http://www.dodig.mil/Programs/Whistleblower/pdfs/IOGuide/GuideToInvestigatingMilitaryWhistleblowerReprisalAndRestrictionComplaints.pdf (accessed April 7, 2015); Inspector General United States Department of Defense Assessment Report, "Review of Office of Deputy Inspector General for Administrative Investigations," Directorate for Military Reprisal Investigations, May 16, 2011, p. 7, on file at Human Rights Watch.

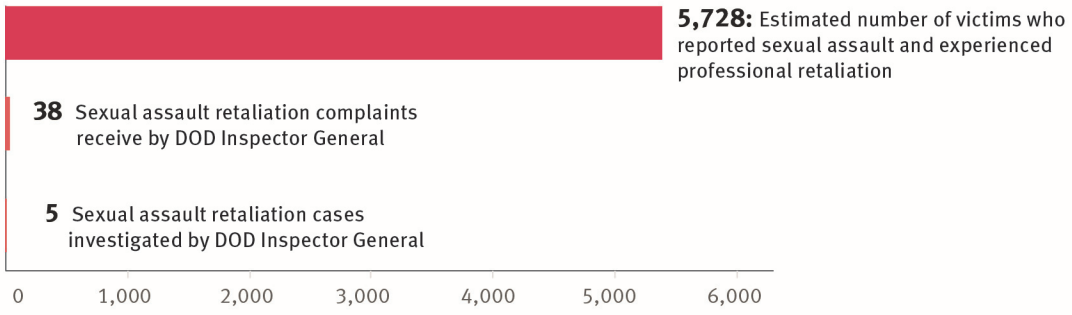
[261] The Army, Air Force, and Coast Guard each have a Board of Correction of Military Record. The Navy (including the Marines) has a Board of Correction of Naval Records (BCNR). References to Boards of Correction of Military Records as used in this report encompass all the boards, including the BCNR.

The Boards of Correction of Military Records are the ultimate administrative authority responsible for correcting errors and removing injustices in military records. In practice, this almost never happens for sexual assault victims or for whistleblowers generally.

Although thousands of sexual assault victims experience retaliation, few whistleblower cases are brought to the Inspector General. Between January 1, 2004, and December 31, 2013, DODIG received 38 sexual assault reprisal complaints. Of those, only five were fully investigated and none was substantiated.[262]The small number of retaliation cases fully investigated or substantiated may be due to the high burden of proof on military complainants.

Over the same time period Defense Department reports receiving a total of 17,900 unrestricted (non-confidential) complaints of sexual assault from service member victims. The 2014 RAND Military Workplace Study found that 32 percent of service members who reported a sexual assault also said they subsequently faced professional retaliation. This suggests that well over 5,000(5,728) service members who filed complaints of sexual assault in the 2004-2013 period may also have experienced professional retaliation and could have sought protection under the Military Whistleblower Protection Act, yet only 5 cases (0.0053 percent) were actually investigated during that time.

FIGURE 3: **WHISTLEBLOWER PROTECTION FOR SEXUAL ASSAULT VICTIMS (2004 – 2013)**



Source: Department of Defense, "Annual Report to the President of the United States on Sexual Assault Prevention and Response," 2014. http://www.sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_SAPRO_Report.pdf, RAND Military Workplace Study (RMWS; 2014), and DODIG's response to FOIA ref: 2014-00265, January 28, 2015, on file at Human Rights Watch.

Note: Estimated number of victims who experienced professional retaliation who where eligible for military whistelblower protection is the (total number of reported service member victims (24,467) - restricted reports (6,567)) * the rate of people who experience professional retaliation (.32).

[262] DODIG's response to FOIA ref: 2014-00265, January 28, 2015, on file at Human Rights Watch. On April 10, 2015, DODIG testified before the Judicial Proceedings Panel that it had received six complaints in which the protected communication involved reporting a sexual assault in FY 2012; ten in FY 2013 and 9 in FY 2014. Nilgun Tolek, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p.316 (unofficial transcript on file with Human Rights Watch).

Existing whistleblower protections not only have not served sexual assault victims, they have rarely protected any type of military whistleblower. Though some complaints may be resolved informally, between October 1, 2005, and March 31, 2011, the total number of whistleblowers in all four military branches (excluding the Coast Guard) granted relief by their corresponding Boards of Correction of Military Records was 20. Each board reported reviewing fewer than 10 whistleblower cases a year.[263]

In 2012, the US Government Accountability Office (GAO) issued a stinging report on the IG's investigation of all types of whistleblower cases.[264] The report indicated, among other things, that the Inspector General's Office investigations are subject to lengthy delays and that investigations were inadequate. A more recent GAO report found problems continue with DODIG and that they lack sufficient oversight of whistleblower investigations conducted by service IGs.[265] Documents provided to Human Rights Watch from DODIG show the average number of days it took to complete a military reprisal investigation in 2013 was 462. The one military whistleblower case involving sexual assault that DODIG investigated took 977 days to complete.[266]

Perhaps in part because of the delays in investigation or because some issues are resolved informally, most whistleblowers do not take the next step of applying for relief from the boards. Only 19 percent (25 cases) of complainants with substantiated reprisal cases between 2005 and 2011 applied for relief with the Boards of Correction of Military Records. Of all whistleblower complaints, fewer than 1 percent received some form of relief.[267]

---

[263] Government Accountability Office, Whistleblower Protections: Actions Needed to Improve DOD's Military Whistleblower Reprisal Program, GAO-12-362, February 2012, pp. 35-36, FN 35, http://www.gao.gov/assets/590/588784.pdf (accessed April 22, 2015). FOIA responses from the Marine Corps Inspector General indicated it has had no whistleblower reprisal complaints related to reporting a sexual assault between 2007 and 2013 (Letter from S.A. Hughes, Head, FOIA/PA Section, Department of the Navy, United States Marine Corps, May 30, 2014, on file at Human Rights Watch). The Navy, Army, and Air Force indicated they do not keep track of their whistleblower complaints in such a way that would enable them to determine if the complaints relate to sexual assault. According to DODIG Reports to Congress, the number of military whistleblower complaints substantiated after IG investigation were 27 (6 percent) in FY 2014; 13 (3 percent) in FY 2013; and 20 (7 percent) in FY2012. DODIG Semi-Annual Report to Congress: April 1, 2012 to September 30, 2012; DODIG Semi-Annual Report to Congress: April 1, 2013 to September 30, 2013 DODIG Semi-Annual Report to Congress: April 1, 2014 to September 30, 2014; DODIG Semi-Annual Report to Congress: October 1, 2012 to March 31, 2013; DODIG Semi-Annual Report to Congress: October 1, 2013 to March 31, 2014.

[264] Government Accountability Office, Whistleblower Protections: Actions Needed to Improve DOD's Military Whistleblower Reprisal Program, GAO-12-362, February 2012, http://www.gao.gov/assets/590/588784.pdf.

[265] Government Accountability Office, Whistleblower Protection: DOD Needs to Enhance Oversight of Military Whistleblower Reprisal Investigations, GAO-15-477, May 7, 2015, http://www.gao.gov/products/GAO-15-477 (accessed May 11, 2015).

[266] DODIG's response to FOIA ref: 2014-00265, January 28, 2015, on file at Human Rights Watch.

[267] Government Accountability Office, Whistleblower Protections: Actions Needed to Improve DOD's Military Whistleblower Reprisal Program, GAO-12-362, February 2012, http://www.gao.gov/assets/590/588784.pdf.

Those responsible for retaliation were unlikely to suffer any consequence for their actions. The secretaries of the military branches are responsible for taking action against individuals responsible for retaliation. The commander has broad discretion in determining what "command action" to take in order to maintain good order and discipline.

Action can range from judicial to administrative punishment. Administrative punishment is the least severe form of command action and can range from verbal counseling to a written reprimand and demotion. The command action taken against those found to have retaliated against a whistleblower is required to be reported back to the DODIG. At the time of the GAO report in 2012, 40 percent of all types of whistleblower cases from the five-year period examined had no information on what command action was taken, if any.

Though the data were incomplete, DODIG officials told GAO that if a commander takes action against a subject in a military whistleblower reprisal case, "it is largely, if not exclusively, an administrative action."[268]

Perhaps not surprisingly, many sexual assault victims who suffered from adverse personnel action as a form of retaliation opt not to apply to the Boards to correct the negative personnel records. Human Rights Watch downloaded and searched all Boards of Correction decisions available on the Department of Defense's Electronic Reading Room website for all potentially relevant cases.[269]

Our review of cases over an 18-year period did not reveal a single case in which a sexual assault victim successfully availed themselves of whistleblower protection by being identified as such by the DODIG and subsequently having their personnel records corrected. A broader search of a wide range of terms of sexual assault, harassment, rape, sodomy misconduct, over the same period captured just 66 cases over the 18 years in

---

[268] Government Accountability Office, Whistleblower Protections: Actions Needed to Improve DOD's Military Whistleblower Reprisal Program, GAO-12-362, February 2012, p. 48, http://www.gao.gov/assets/590/588784.pdf (accessed April 22, 2015).

[269] All Board decisions are redacted and made available on the website. The following search terms were used: sex*, sexual w/2 assault, sexual w/2 violence, rape, sexual w/2 misconduct, sexual w/2 harassment, sexual w/2 explicit, inappropriate contact, sexual w/2 abuse, sexual w/2 trauma, sodom*, oral w/2 sex, breast*, buttock*, genital*, anal, whistleblower, whistle w/3 blower, retaliate*, indecent, rape*. The search resulted in 5,507 cases which were analyzed for this report, of which 1,276 were deemed relevant after closer inspection. The quality of the analysis, however, is constrained by the quality of the decisions. We are aware of some sexual assault survivors who tried unsuccessfully to have their records corrected for reasons relating to their assault but the Board decision made no reference to the sexual assault. These would not have been captured in the data analysis.

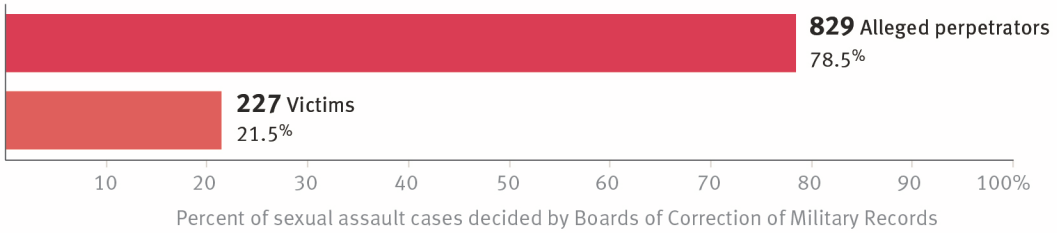
which any sexual assault victim was granted full or partial relief for an injustice in their record. Most of those granted full or partial relief had been discharged from the military.

Moreover, our analysis indicates alleged perpetrators of sexual assault are much more likely to seek relief from the Boards than victims, even though victims are far more likely to experience administrative action that might require assistance from the Boards to correct.

Data from FY 2014 shows that for each perpetrator eligible for record correction (595), there were 1.8 victims (1094) eligible.[270] However, using sexual assault data over a 14-year period, the total number of perpetrators (829) who sought relief from the Boards outnumbered victims (227) by a ratio of nearly 3.7 to 1. The Boards granted relief to nearly twice as many perpetrators (98) who wanted their records corrected than victims who reported a sexual assault (51).

In short, whistleblower protections fail to protect sexual assault victims who experience reprisals. Moreover, the lack of consequences for those who retaliate means that there is little to stop supervisors from mistreating victims who report sexual assault.

FIGURE 4: **ALLEGED PERPETRATORS OUTNUMBER VICTIMS IN BOARD CASES RELATED TO SEXUAL ASSAULT/HARASSMENT**



Source: Database search of Board of Correction of Military Records reading rooms (all branches).

[270] In FY 2014, the RAND Military Workplace Study indicates 35 percent of victims who reported a sexual assault indicate experiencing administrative action, suggesting 1,094 victims in an estimated of 3,126 unrestricted reports may have experienced adverse administrative action. For the same year, DOD reports administrative action was taken against up to 595 perpetrators in connection to a sexual assault (175 were discharged or granted a resignation; 318 had non-judicial punishment; 102 had other adverse administrative action). Department of Defense, "Report to the President of the United States on Sexual Assault Prevention and Response," FY 2014, http://www.sapr.mil/public/docs/reports/FY14_POTUS/FY14_DoD_Report_to_POTUS_Appendix_A.pdf (accessed April 22, 2015).

Ineffectiveness of the Inspector General

There are several reasons why whistleblower protections are not working: service members are not sufficiently aware that IG protections are available to them or simply may not want to tell their story again; many view the IG as ineffective or insufficiently independent from command; some fear facing additional retaliation as a result of filing a complaint; the IG does not have jurisdiction over certain common types of retaliation, such as peer retaliation; and an outdated standard of proof places a heavy burden on complainants to show that adverse personnel action would not have taken place but for the protected communication.

Service Members' Perceptions

Those who have experienced retaliation for reporting a sexual assault are far less likely to come forward to report retaliation. As an ethics expert testified before the Judicial Proceedings Panel, "If it didn't work well the first time, they are not going to come back for more."[271] Therefore, despite the prevalence of retaliation, very few service members bring complaints to an IG.

Service members Human Rights Watch interviewed cited several other reasons for not bringing complaints to an IG: many did not know that they may be eligible for whistleblower protections if they experience retaliation after reporting a sexual assault; some fear further retaliation if they complain to the IG; a number of survivors said they do not view the IG as impartial; others simply see the IG as toothless and ineffective.

Unlike for civilian government employees, training on whistleblower protection and the availability of the IG is not generally mandatory in the military.[272] While DODIG has done some outreach to the Sexual Assault Response Prevention Office of the Department of Defense, it does not appear to be extensive, nor has training reached the troops. In response to the President's report exposing the ongoing problem of retaliation, DODIG said in April 2015 that it is planning to add links to information about whistleblower protection to a military sexual assault helpline webpage.[273]

---

[271] Dr. Patricia Harned, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p. 156 (unofficial transcript on file with Human Rights Watch).

[272] The Navy/Marine Corps response to Request for Information 67 indicates that all Department of Navy military and civilian personnel are required to complete web based biennial training on whistleblower protection. Judicial Proceedings Panel, Request for Information Set #3, USMC Response, on file at Human Rights Watch.

[273] Safe Helpline, which is operated by RAINN (the Rape, Abuse, Incest National Network), offers live online or telephone crisis support to members of the Defense Department community who have been affected by sexual assault. DOD Sexual

In interviews with lawyers who work with survivors, many scoffed or even laughed at the notion of bringing retaliation cases to an IG. Lawyers who represent victims told Human Rights Watch that they advise their clients not to bother as, one said, they "had never heard a whistleblower case succeed."[274]

A lawyer for victims described the IG as "useless" and said she never takes her clients there.[275] An expert in whistleblower protection described the Military Whistleblower Protection Act as "a cardboard shield" and felt that invoking it only increased prospects for retaliation, actually creating more victims.[276] A former Naval officer who worked on sexual violence policy said her experience with DODIG was "dismal" and even if survivors knew it was an option, she could not imagine they would go.[277]

Survivors interviewed for this report were far more likely to write to their congressperson than go to the IG with a complaint. As one lawyer said of her client, she did not want to file an IG complaint because they would not help and "her career would be over."[278]

Another victim went to the IG to complain about retaliation she faced after reporting a sexual assault but decided not to file a report because she was afraid of what might happen, especially during training when supervisors had so much control over whether she could leave base or had to work weekends.[279] Concern about facing additional reprisals after going to the IG is not entirely misplaced. Survivors told Human Rights Watch of the following instances in which they experienced negative action after going to the IG:[280]

- One Army specialist complained about inappropriate treatment by her supervisor to the IG. The IG called her supervisor and told her to lay off. Within a day, the

---

Assault Prevention and Response Office, Retaliation Overview (handout), Judicial Proceedings Panel Public Meeting, April 10, 2015, http://jpp.whs.mil/Public/docs/03_Topic-Areas/06-Retaliation/20150410/12_SAPRO_Retaliation_InfoPaper.pdf (accessed April 29, 2015).

[274] Human Rights Watch telephone interview with military law practitioner, October 28, 2014.

[275] Human Rights Watch telephone interview with Marine Corps VLC #2, January 6, 2015.

[276] Human Rights Watch interview with Tom Devine, October 7, 2014.

[277] Human Rights Watch telephone interview with Georgia Winter, December 18, 2013. She also said she has been "stonewalled" when she called IGs on behalf of victims so can "only imagine" how they treat survivors.

[278] Human Rights Watch interview with Air Force SVC #1, November 24, 2014.

[279] Human Rights Watch telephone interview with Amn Carla Rodriguez, February 4, 2014.

[280] Another survivor, PO1 Lisa Cox, reported being ordered to hang up the phone by her supervisor when he found out she was on the phone with the IG. Human Rights Watch telephone interview with PO1 Lisa Cox, November 5, 2013; also written account provided by PO1 Lisa Cox on file at Human Rights Watch.

supervisor referred the service member to behavioral health for evaluation, a step which she felt was intended to lead to an administrative discharge.[281]

- In 2000, a junior Marine who experienced severe retaliation after reporting a sexual assault told the IG how she was being treated. Not long afterwards three sergeants called her into an office and yelled at her. They said, "We know you filed an IG complaint and that you have been lying to them." They called her a "troublemaker" and a "liar." She pretended not to know what they were talking about and never went back to the IG again.[282]
- An Air Force survivor who went to the IG to report retaliation in 2012 was told by the investigator that he was "opening himself up to more reprisals" and was discouraged from filing a complaint.[283]
- Master Sergeant Davis said, "If I had to do anything over, I would have never reported it to the IG. That's what set them off…. I went to the IG and that's when the administrative punishments and all that started to happen. That's when they tried to start kicking me out of the military."[284]

Inspector General's Lack of Independence

The Inspector General often works closely with command and therefore may not be seen as independent. As one victim said, "I don't trust the IG. They are supposed to be impartial but they aren't."[285]

An Army captain told of how both the chain of command and the Inspector General failed to address her claims of retaliation. She described the responsible IG as being "hand in hand" with the commander. Rather than take any action, he advised her to allow him to handle it "informally." As part of the process she was told she had to meet with the brigade commander who then spent 30 minutes trying to get her to drop the case.[286]

---

[281] Human Rights Watch interview with SPC Bonnie Thomas, January 14, 2014.
[282] Human Rights Watch telephone interview with PFC Patricia Watson, October 29, 2013.
[283] Human Rights Watch telephone interview with A1C Chris King, December 4, 2014.
[284] Human Rights Watch interview with MSgt Sam Davis, [location withheld], March 11, 2015.
[285] Human Rights Watch telephone interview with TSgt Susan Howard, November 12, 2013, February 9, 2015.
[286] Human Rights Watch telephone interview with CPT Ruth Rivera, November 20, 2014.

Three survivors expressed the view that the Inspector General functioned to protect the organization.[287] A victim's lawyer said that the IG "work[s] for the general…. Even if they say the victim is right, they don't do jack about it and at most do some ass-covering.... At best they will suggest a non-punitive letter of caution."[288]

A SARC described her branch IG as "not trustworthy with victims."[289] Another survivor said she "felt like the IG was designed to have you spill your guts so the commander can find out and protect himself."[290] An Army survivor and her roommate both complained of reprisals to the IG and said they "did nothing" and never got back to them. She said, "The IG calls the commander and says someone complained, you need to fix it and then nothing is done."[291]

For the Air Force, the perception of bias among sexual assault survivors was not helped by comments the Air Force Inspector General made praising a general who was forced to retire early after overturning a sexual assault conviction. He described the controversial retiring general as "one of the most honorable generals the Air Force has ever had. His [moral] compass is as true as they come and I hope that serving officers can follow in his footsteps when we need [moral] courage to come forward.[292]

One of the few people interviewed by Human Rights Watch who had a whistleblower investigation initiated said that nothing came of it.[293] Investigations can last for years. One Air Force complainant received his 180-day notice that his complaint was still being

---

[287] Human Rights Watch telephone interview with Elizabeth Cohen, September 13, 2014; Human Rights Watch telephone interview with Susan Howard, February 9, 2015; written comment from MSgt Sam Davis, on file at Human Rights Watch.

[288] Human Rights Watch telephone interview with Marine Corps VLC #1, January 5, 2015. Similarly, an officer in another branch described an IG complaint involving a general who refused to show SARC training materials on male sexual assault because he found it "repulsive" and "disgusting" as resulting in no negative action being taken against the general. Human Rights Watch telephone interview with SARC Shelly Park, February 9, 2015. A survivor discharged in 2008 told Human Rights Watch that the IG she went to see about being denied a promotion told her, "Air Force COs are like gods. The can do whatever they want." Human Rights Watch telephone interview with A1C Brianne Dixon, October 30, 2014; Human Rights Watch meeting with Navy VLCs, December 10, 2015. An Army officer said that her unit IG discouraged her from filing multiple complaints and treated her like "a nuisance." Human Rights Watch telephone interview with 1LT April Brown, April 8, 2015.

[289] Human Rights Watch telephone interview with SARC Shelly Park, February 9, 2015.

[290] Human Rights Watch telephone interview with MSgt Sam Davis, May 30, 2014.

[291] Human Rights Watch telephone interview with SPC Ashley Parker, December 17, 2013.

[292] Kristin Davis, "IG goes to Facebook to Lament Retirement of General who Overturned Sex Assault Conviction," *Air Force Times*, January 10, 2014, http://archive.airforcetimes.com/article/20140110/NEWS/301100009/IG-goes-Facebook-lament-retirement-general-who-overturned-sex-assault-conviction (accessed April 22, 2015).

[293] Human Rights Watch telephone interview with TSgt Brenda Phillips, October 24, 2013.

reviewed nearly 900 days after filing his initial whistleblower complaint.[294] It has now been four years since he filed a complaint and his case is still open. An Army officer described her interaction with the IG as a "dead end."[295]

Limits on the Inspector General's Power

The DODIG has significant limits on its jurisdiction that limits it effectiveness. Until the December 2013 amendment to the Military Whistleblower Protection Act, victims only had 60 days in which to report a reprisal to the IG in order for it to act.

Also, the most common form of retaliation involves peer ostracism, which is often beyond the scope of the IG since it does not involve a prohibited personnel action. Other forms of retaliation, such as threats of reprisal, letters of counseling or reprimand, or the initiation of an investigation into the survivor, which could have serious negative consequences to a victim's career, were often mistakenly not seen as negative personnel action by the IGs before 2011 if they were locally held.[296]

Collateral charges are also outside the scope of the IG's authority,[297] but may do more harm to a career than a poor performance review, as discussed above. Additional obstacles include difficulty in making a claim, and a high burden of proof. Finally, the IG has no ability to recommend disciplinary action against those who retaliate against survivors, and for some "if no one is going to be held accountable, then it's useless, pointless for me."[298]

For example, one senior enlisted person, Master Sergeant Davis, suffered numerous reprisals in 2011, including criminal charges, after reporting a sexual assault. A new supervisor, after hearing what happened, encouraged him to go to the IG. He did. Eventually he got a call from his defense lawyer saying there was good news and bad

---

[294] Letter from Department of the Air Force, Investigating Officer, August 13, 2013, on file at Human Rights Watch. On October 28, 2013, MSgt Sam Davis was informed by the IG that it had mishandled his case and suggested he withdraw his old complaint and submit a new one and provide a new statement. Davis declined while the AFIG was persuaded to investigate the original complaint, they then asked for evidence he had already submitted. He no longer trusts the IG to investigate his case appropriately.

[295] Human Rights Watch telephone interview with CPT Ruth Rivera, November 20, 2014.

[296] Inspector General, Assessment Report May 16, 2011. Review of the Office of Deputy Inspector General for Administrative Investigations, Directorate for Military Reprisal Investigations, on file at Human Rights Watch.

[297] Human Rights Watch meeting with DODIG, November 25, 2014.

[298] Human Rights Watch interview with MSgt Sam Davis, TX, March 11, 2015.

news—the good news was that his letter of reprimand was being rescinded as was a command mental health referral that would have ended his career; the bad news was that due to information he revealed in his criminal report he was being given an Article 15 for collateral misconduct, including drunk and disorderly behavior, driving under the influence, fraternization, and lying with intent to deceive. Master Sergeant Davis said, "The more I fought, the more reprisals I received."[299] He was acquitted of all charges at a court martial but the IG was unable to undo the damage to his career.

Finally, the burden of proof in the military remains on the whistleblower to demonstrate by a preponderance of the evidence that the unfavorable personnel action would not have occurred if they had not reported the sexual assault. This is a difficult test to meet. As an Army captain who learned last year that her whistleblower claim was rejected, wrote, "My JAG lawyer let me know that the burden of proof on my side is/was enormous, and rarely are any violators prosecuted.[300]

This extremely high burden of proof is out of step with standards applied in civilian cases inside the United States and in military and civilian cases in several other countries.[301] The emerging standard requires the whistleblower only to establish that the protected conduct (here, the report of the sexual assault) was "a contributing factor" in challenged discrimination. Once a prima facie case is made, the burden of proof shifts to the organization to demonstrate by clear and convincing evidence that it would have taken the same personnel action for independent, legitimate reasons in the absence of the protected activity. After adopting this standard in 1989 for civilian employees of the US government, the success rate for whistleblower claims jumped from 1 to 5 percent annually to 25 to 33 percent. This figure is consistent with records of other countries with the same standard.[302]

---

[299] Human Rights Watch telephone interview with Sam Davis, May 30, 2014; Davis' IG whistleblower complaint was filed as reprisal for reporting a safety violation and was likely not counted in the DOD IG response to Human Rights Watch's records request.

[300] Email communication from CPT Lilian Hernandez to Human Rights Watch, October 1, 2014.

[301] See Transparency International, "Whistleblower Protection and the UN Convention Against Corruption." May 2013, http://files.transparency.org/content/download/1328/10297/file/2013_WhistleblowerProtectionUNCAC_EN.pdf (accessed April 7, 2015).

[302] Tom Devine, "International Best Practices for Whistleblower Policies," Government Accountability Project, March 13, 2013, http://whistleblower.org/sites/default/files/pictures/Best_Practices_Document_for_website_March_13_2013.pdf (accessed April 22, 2015).

In other ways the standards for service members fall behind best practices and protections afforded civilian government employees. For example, service members are unable to recover attorney's fees if they prevail, unlike their civilian counterparts.[303]

Under the current military whistleblower regime, victims must choose between reporting an assault and keeping their career. As a 40-year military law practitioner said, if you make a complaint, even if you can prove it, "You may as well get out. Your career is dead. There is no protection for victims."[304]

Military Equal Opportunity

Service members do not have access to the Equal Employment Opportunity Commission and are unable to sue for discrimination under Title VII of the Civil Rights Act of 1964. However, the Military Equal Opportunity (MEO) program was created to combat discriminatory behavior (including sexual harassment) on the basis that discrimination is at odds with the obligation of men and women in uniform to treat all with dignity and respect; and is contrary to good order and discipline and can jeopardize mission readiness by undermining unit cohesion.[305]

More than half of survivors who reported sexual assault indicated in the 2014 RAND survey they experienced social retaliation. If peer retaliation results in an abusive workplace, the victim could make an MEO complaint for a hostile work environment and this could be another avenue to address retaliation. Yet very few people—sexual assault or harassment victims—choose to engage in this process.

---

[303] Ibid., see also Whistleblower Protection Act, 5 U.S.C. § 1221 (g)(ii)(B) (federal government employees); False Claims Act, 31 U.S.C. § 3730 (h)(2) (US Government contractors).

[304] Human Rights Watch telephone interview with military law practitioner, October 28, 2014.

[305] DOD defines sexual harassment as a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when 1) submission to such conduct is made either explicitly or implicitly a term of condition of a person's job, pay, or career, or 2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment. The definition emphasizes that to be actionable as an "abusive work environment," harassment need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. "Workplace" is an expansive term for military members and may include conduct on or off duty, 24 hours a day. Any supervisor or commander who condones this behavior is also engaging in sexual harassment. DODD 1350.2, August 18, 1995.

Service members have two options by which to make a complaint—formal and informal. A formal complaint is submitted in writing to a designated authority (which varies between the military branches but can be an MEO office representative or authority designated to receive complaints) and has required timelines and documentation. Informal complaints may be made in writing or orally and may be resolved directly by the complainant with the individual or through the chain of command. Either way, the commanding officer receives the allegation and determines if an investigation is required. Although there are slight procedural variations among branches, the chain of command is the primary and preferred channel for identifying and correcting discriminatory practices, including sexual harassment complaints.[306]

Data on MEO complaints are limited. A 2011 Government Accountability Office report found the services were not collecting sexual harassment complaint data systematically or consistently and that the Defense Department's annual MEO reporting requirements had not been enforced for over a decade.[307] Following the GAO report, Congress required the Defense Department to develop a plan to report on sexual harassment complaints. The first report on substantiated incidents of sexual harassment, covering FY 2013, includes data about informal and formal sexual harassment complaints in the Army, Navy, Air Force, Marine Corps, and National Guard Bureau.[308]

Across those 5 military branches during that time period, 686 informal complaints and 680 formal complaints were made. The majority of complaints (57 percent of formal complaints and 62 percent of informal complaints) were substantiated.[309] The vast majority of the substantiated complaints were for crude or unwanted behavior (52 percent of formal complaints and 54 percent of informal complaints) or unwanted sexual attention (40 percent of formal complaints and 44 percent of informal complaints). Less than 1 percent of the substantiated complaints were for a hostile work environment (0.6 percent of formal

---

[306] Department of Defense, "Fiscal Year 2013 Department of Defense Report on Substantiated Incidents of Sexual Harassment in the Armed Forces," May 7, 2014, http://www.ncdsv.org/images/DOD_FY-13-Report-Substantiated-Incidents-of-Sexual-Harassment-in-Armed-Forces_5-14-2014.pdf (accessed April 22, 2015), pp. 2, 10.

[307] United States Government Accountability Office, "Preventing Sexual Harassment: DOD Needs Greater Leadership Commitment and an Oversight Framework," September 21, 2011, pp. 17-18, 23-24, http://www.gao.gov/assets/590/585344.pdf, (accessed April 22, 2015).

[308] Department of Defense, "Fiscal Year 2013 Department of Defense Report on Substantiated Incidents of Sexual Harassment in the Armed Forces," May 7, 2014.

[309] Department of Defense, "Fiscal Year 2013 Department of Defense Report on Substantiated Incidents of Sexual Harassment in the Armed Forces," May 7, 2014, pp. 15-16. Investigations for 11 percent of formal complaints and 7.3 percent of the informal complaints were still pending at the time of the report and 4.5 percent of the informal complaints had incomplete data.

complaints and 0.8 percent of informal complaints). A total of 19 hostile work environment cases were substantiated in 2013.[310]

The 2014 RAND Military Workplace Survey estimates that 10 percent of active duty service members experienced some form of a sex-based MEO violation within the past year (including sexual harassment, a hostile work environment, sexual quid pro quo, or derogatory comments or mistreatment on the basis of gender that resulted in harm to their career) within the past year (26 percent of women and 7.4 percent of men) or an estimated possible 134,523 MEO violations. However, only 1,366 informal or formal complaints (.01 percent) were made in 2013.[311]

Very few survivors interviewed for this report utilized the MEO process and thus it was not the focus of our research. One survivor did indicate that she had the same concerns with MEO as she did with the IG—that "you tell them bad things and they say 'let me cover it up,'" especially as they are "part of the chain of command."[312] Another survivor reported that after making an MEO complaint, her evaluation was suddenly downgraded to not promotable saying she had "anger issues, can't work unsupervised, and had no interest in improving."[313]

GAO focus groups indicate the same concerns for reporting to the IG also exist for MEO complaints. Service members said that reporting sexual harassment to MEO could ruin your reputation, result in being labeled a troublemaker, or lead to retaliation or being ostracized in the unit. A junior enlisted female said she did not make an MEO complaint about a sergeant that she felt made sexual comments about women because "things would just get ugly."[314] The comments echoed those made by members of earlier GAO focus groups on MEO who said personnel who filed a complaint would be labeled

---

[310] Department of Defense, "Fiscal Year 2013 2013 Department of Defense Report on Substantiated Incidents of Sexual Harassment in the Armed Forces," May 7, 2014, p. 26, Appendix A, http://www.ncdsv.org/images/DOD_FY-13-Report-Substantiated-Incidents-of-Sexual-Harassment-in-Armed-Forces_5-14-2014.pdf .

[311] Ibid; RAND Sexual Assault and Sexual Harassment in the US Military, Volume 2, Estimates for Department of Defense Service Members from the 2014 RAND Military Workplace Study, http://sapr.mil/public/docs/reports/FY14_Annual/FY14_Annual_Report_Annex_1_RAND.pdf, pp. 5, 36 (based on DOD Active-Component Sample - 1,317,561 -and estimated percentage of active service members who experienced sexual harassment or gender discrimination in the past year – 10.21 percent).

[312] Human Rights Watch telephone interview with CPT Ruth Rivera, November 20, 2014.

[313] Human Rights Watch telephone interview with SGT Ann Young, November 19, 2014.

[314] United States Government Accountability Office, "Preventing Sexual Harassment: DOD Needs Greater Leadership Commitment and an Oversight Framework," September 21, 2011, pp. 20-21.

"troublemakers and subsequently would be watched very closely and given no leeway if they made a mistake." [315]

There are other significant reasons why people may not file MEO complaints: they may not feel the abuse will be perceived as important enough to warrant a complaint, or they may not want to appear as if they cannot solve their own problems. However, since service members and their attorneys reported to Human Rights Watch that they refrain from reporting to the IG because it is insufficiently independent from military command, complaining directly to military command through the MEO may be even less appealing.

Article 138

Another potential avenue for redress for service members who have suffered reprisals and seek to bring those responsible to account is Article 138 of the Uniform Code of Military Justice. Article 138 provides a channel for members of the armed forces who believe themselves wronged by their commanding officers and are refused redress to appeal to a higher level.

Neither our interviews, nor our public records requests, indicate that service members regularly utilize UCMJ Article 138.[316] Only three people we interviewed attempted to use it at all. Though two did have their records changed, they were told that it was not because of the Article 138 complaint.[317]

Accountability for Perpetrators

Commanders are required to protect sexual assault victims from retaliation.[318] However, little effort has been made to deter retaliation by holding wrongdoers accountable for their acts, despite a plethora of disciplinary options available to command.

---

[315] General Accounting Office, "Military Equal Opportunity: Problems with Services' Complaint Systems are Being Addressed by DOD," January 26, 1996, http://www.gao.gov/assets/230/222075.pdf (accessed April 22, 2015), pp. 20-21.

[316] In response to our requests for information from each of the 5 military branches on Article 138 complaints filed by sexual assault survivors who suffered from retaliation, the Air Force provided three letters (1 letter each from 2008, 2012, and 2013), all of which denied the requested relief and determined leadership acted appropriately, and 13 blank pages that were completely redacted either for privacy reasons or due to attorney-client privilege. The other branches did not respond to our requests at the time of publication.

[317] Human Rights Watch telephone interview with FN Diana Martinez, November 5, 2013; Human Rights Watch telephone interview with LCDR Nancy Wilson, November 17, 2014.

[318] Department of Defense Instruction 6495.02 requires commanders to "protect sexual assault victims from coercion, discrimination, or reprisals." SARCs and SAPR victim advocates are similarly supposed to be protected from coercion,

The lack of accountability could explain why retaliation persists. Apart from the administrative remedies that could potentially result from a whistleblower complaint, commanders have a wide range of judicial and non-judicial options available to hold subordinates accountable for retaliation against victims. For example:

- Under Article 92 of the UCMJ, service members can be prosecuted for Failure to Obey an Order or Regulation based on retaliating against a victim or another service member for reporting a criminal offense.[319]
- Commanders can also hold those who retaliate accountable through non-judicial (Article 15) punishments.
- Adverse administrative action options include written reprimands or letters of counseling, denial of promotion or special duty orders, or a bar to reenlistment.

Although, as discussed elsewhere in this report, sexual assault victims have experienced many of these actions in the form of retaliation, we were unable to find more than a few cases in which retaliators were held accountable for inappropriate treatment of victims.

Part of the problem may be that the military does not systematically track this information and therefore was unable to provide relevant information in response to our document requests.[320] The Army provided Human Rights Watch with a spreadsheet showing all cases in which a service member had been charged under Article 92 of the UCMJ since 2008, but the charges were generally linked to other offenses (such as drugs) and none of them referenced retaliation.

The Army told us DODIG would have information on charges linked to retaliation but they did not have specific cases they could provide.[321] DODIG said they "did not locate any

---

discrimination, or reprisals related to the execution of their duties. Department of Defense, "Instruction 6495.02: Sexual Assault Prevention and Response (SAPR) Program Procedures," March 28, 2013, Enclosure 5, part 3. http://www.dtic.mil/whs/directives/corres/pdf/649502p.pdf (accessed April 22, 2015).

[319] Each branch of the military expressly prohibited retaliation under Article 92 of the UCMJ in 2014. For a summary of recommendations and implementation guidance prepared by the Judicial Proceedings Panel, see http://jpp.whs.mil/Public/docs/03_Topic-Areas/06-Retaliation/20150410/09_Retaliation_ServiceReg_ComparisonChart.pdf (accessed April 29, 2015).

[320] The 2013 DOD Report on Substantiated Incidents of Sexual Harassment does include information about the disposition for offenders in completed sexual harassment investigations and shows that command action (primarily non-judicial punishment or other adverse or administrative action) was taken against offenders in the majority of cases.

[321] CMs Arraigned on Article 92, 1 January 2008-2 April 2015, spreadsheet provided to Human Rights Watch April 2, 2015, on file at Human Rights Watch.

records responsive to" our request for reports from the secretaries of military departments relating to command taking corrective action against individuals found to have reprised against whistleblowers.[322] In testimony before the Judicial Proceedings Panel, Major General Snow, who is in charge of SAPRO, said that information about retaliation has not been tracked but from the limited information he has gathered, he has found that plenty of tools are available to commanders, though he is not sure they are being used or leveraged to their full effect.[323]

Another issue is that junior enlisted personnel are often supervised by other junior enlisted personnel who may not be seasoned enough to handle the complications of holding personnel responsible for retaliation. Junior personnel who have reported a sexual assault are often not comfortable approaching more senior personnel in order to report on retaliation. As a result, some supervisors may be unaware of the problem.

The retaliation victims we interviewed almost never saw their tormentors held to account even when supervisors were aware of the abuse. While Special Victim Counsel may in some cases be able to intervene on behalf of a victim to stop or mitigate retaliation, none was able to provide examples of cases in which those responsible for the retaliation were disciplined or held accountable in any way for action against a victim who had reported a sexual assault.

In dozens of interviews with survivors, experts and military personnel, including SARCs, Special Victim Counsel and Victims' Legal Counsel, advocates and others, we uncovered only a few examples of command action of any kind (including just the opening of an investigation) against those who retaliated against a victim and one instance in which the Army Criminal Investigation Division opened an investigation into retaliation:

- A Marine who had reported her sexual assault in 2014 was "cyberbullied." Her picture was posted on social media with comments saying "she needed to be silenced" before she "lies about another rape." She was called a "cum dumpster." Comments told other Marines to "find her, tag her, and make her life a living hell." The survivor's car was vandalized and she stopped going to chow hall out of fear.

---

[322] DODIG's response to FOIA ref: 2014-00265, January 28, 2015, on file at Human Rights Watch.

[323] Army MG Jeffrey Snow, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p.76 (unofficial transcript on file with Human Rights Watch). The Judicial Proceedings Panel is conducting an independent review and assessment of military handling of sexual assault cases since FY 2012.

She told her command who initially said they would take care of it but did not investigate until a month later after her counsel followed up with a higher ranking officer. The victim was told she should be satisfied that the harassment was being taken seriously. By then many of the perpetrators had already deployed or left the regiment, so while the cyberbullying did stop, no disciplinary action was taken against them.[324]

- In a 2014 case in which both the victim and perpetrator of the sexual assault were assigned to the same unit, an Air Force commander sought advice from the SARC about how to deal with pervasive gossip in the workplace. He told the unit that "no one knows what happened except the two people involved" and that gossip would not be tolerated. He said "if they had time in the day to gossip, they had time to do extra work" and gave them all extra duty. This ended the gossip and made the victim feel supported by her commander.[325]
- A Navy victim told us that after five recruits reported harassment during basic training in 2000, their supervisor found nasty notes calling them "lying whores" in the common area. As a result, all the recruits (except the victims) were ordered to do physical training "until it rained inside" (from the condensation of sweat). The authors of the notes were held back two weeks in their training. The victim felt the Navy really "had her back" as a result of this gesture.[326]
- One survivor's complaints about threats and harassment by her drill sergeants following her report of sexual assault was investigated by the Army Criminal Investigative Division in 2012.[327] Service records for the people involved, which the survivor obtained through a public records request, do not indicate that the investigation resulted in any career consequences for the alleged retaliators.[328]

There is a risk that punishment, such as extra physical training or extra duty, could be resented and lead to more ostracism, but in the cases above the action by command generally led the victim to feel supported and ended the retaliatory behavior.

---

[324] Human Rights Watch telephone interview with Marine Corps VLC #2, January 6, 2015; Human Rights Watch telephone interview with LCpl Amy Johnson, January 11, 2015.

[325] Human Rights Watch telephone interview with SARC Shelly Park, February 9, 2015.

[326] Human Rights Watch telephone interview with SN Simone Todd, March 6, 2014.

[327] Law Enforcement file from December 2012 on file at Human Rights Watch.

[328] Email communication from SPC Bonnie Thomas to Human Rights Watch, April 21, 2015.

The climate set by command at all levels has a profound effect on how victims are treated. Experts on workplace ethics indicate that the response to retaliation is "a leading indicator of the health and well-being of an organizational culture going forward. When you have high levels of retaliation, it's not long before you start to have an erosion of culture and an erosion of trust within the organization."[329]

This can have far-reaching impact. A Navy seaman reported that her new unit "hated" her because she was injured during training just before she arrived at her post in 2011. She was unable to perform her job and was assigned to work 17 hours a day as a cashier. The message sent by command about support for this service member was not lost on others. When an NCO broke into her room and raped her at gunpoint, he said, "They won't believe you. They don't like you." When she called for a duty driver to take her to the hospital after the rape, he said she was "lying" and "being overdramatic" and refused to take her. She learned several months later she could not have children because the perpetrator had given her chlamydia, which was left untreated because she was not taken to the hospital after the attack.[330] No action was taken against either the perpetrator or the person who refused to take her to the hospital.

Several victims we interviewed did not report a sexual assault or chose not to participate in an investigation into the assault because their supervisors did not respond appropriately to their prior complaints about more minor forms of sexual harassment.

For example, one army captain reported inappropriate comments and touching by a peer to her commander and asked him to do something about it. She said the commander told her she had two choices: "I can remove you for cause and your career is over or you can find a way to deal with it." When she was later raped, the message was clear: "If I report, my career is gone." She did not report.[331]

A Navy petty officer also said of ongoing sexual harassment in her unit, her supervisor "never did anything about it. Never even talked to the guy," which was why she did not want to participate in an investigation into a later sexual assault. She contrasted that with

---

[329] Dr. Patricia Harned, The Ninth Public Meeting of the Judicial Proceedings Panel, Washington, DC, April 10, 2015, transcript p. 152 (unofficial transcript on file with Human Rights Watch).

[330] Human Rights Watch telephone interview with SPC Monica Bailey, November 13, 2013.

[331] Human Rights Watch telephone interview with CPT Ruth Rivera, November 20, 2014.

another ship where senior NCOs had no problem telling harassers to back off, resulting in a positive work environment and a unit she viewed as "like family."[332]

To end retaliation, those who retaliate need to be held to account and seen to be held to account. Only then will more victims feel comfortable coming forward to report their assaults without fear that their lives and their careers will be deeply, even irreparably, harmed by retaliation. In turn, the armed forces will have taken an additional and significant step towards ending the scourge of sexual assault in the United States military.

[332] Human Rights Watch telephone interview PO3 Sasha Lewis, November 17, 2014.

Glossary

TERM	DEFINITION
6105	Marine Corps term referring to formal letters of counseling, which can later be used to justify an administrative discharge.
Adjustment Disorder	The development of marked distress or significant impairment in functioning in response to a stressor. It can often resemble post-traumatic stress disorder (PTSD). This is sometimes used as grounds for an administrative discharge.
Administrative Punishment/ Administrative Action	The least severe form of command action; it can range from verbal counseling to a written reprimand and demotion.
Administrative Separation or Discharge	Early termination of military service based upon conduct on the part of the service member.
Adverse Administrative Action	Any administrative proceeding or action, initiated against a service member, that could lead to discharge, loss of special or incentive pay, administrative reduction in grade, loss of a security clearance, bar to reenlistment, or reclassification.
Article 138	Article of Uniform Code of Military Justice (UCMJ) that provides "Any member of the armed forces who believes himself wronged by his commanding officer, and who, upon due application to that commanding officer, is refused redress, may complain to any superior commissioned officer who shall forward the complaint to the office exercising court-martial jurisdiction over the officer against whom it is made. The officer exercising general court-martial jurisdiction shall examine into the complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, send to the Secretary concerned a true statement of that complaint, with the proceedings thereon."
Article 15	Non-judicial punishment administered by a commander for UCMJ offenses as an alternative to a court-martial.
Article 92	Article of UCMJ that provides: Any person subject to this chapter who– violates or fails to obey any lawful general order or regulation; having knowledge of any other lawful order issued by any member of the armed forces, which it is his duty to obey, fails to obey the order; or is derelict in the performance of his duties; shall be punished as a court-martial may direct.
Absent Without Official Leave (AWOL)	A non-pay status that covers an unapproved absence from duty.
Back Pay	Compensation for lost wages.
Boards for Correction of Military Records	Ultimate administrative authority responsible for correcting errors and removing injustices in military records. Each branch has a designated board.
Board for Correction of Naval Records	Ultimate administrative authority responsible for correcting errors and removing injustices in Navy and Marine Corps records.

TERM	DEFINITION
Captain's Mast	The term for non-judicial punishment in the Navy, similar to Article 15 punishments. Also called an Admiral's Mast depending on the level of the commander conducting the disciplinary hearing.
CG-3307	Coast Guard term referring to formal letters of counseling; also called a negative page seven.
Chaptered Out	The process of being administratively separated or discharged.
CID	Criminal Investigation Command, responsible for investigating felony crimes and serious violations of military law within the US Army.
Collateral Misconduct	Victim misconduct that might be in time, place, or circumstance associated with the victim's sexual assault incident.
Command Climate Survey	A compulsory periodic survey about commanders, assessing the leadership, cohesion, morale, and the human relations within a company.
Court Martial	Military trial proceedings.
Discharge	Order issued on the termination of a service member's military service. Forms of discharge include: General Under Honorable Discharge (denoting that significant negative aspects of the service member's conduct outweighed positive aspects of conduct); Honorable (the quality of the member's service generally met standards of acceptable conduct); Under Other Than Honorable Conditions (based on a pattern of misconduct that constitutes a significant departure from conduct expected from service members or one or more acts of misconduct); Dishonorable Discharge (a person has been adjudged by a general court martial); Bad Conduct Discharge (adjudged by a general or special court-martial). The categorization of discharge impacts ability to get benefits from the Veteran's Administration and may impact the ability to get jobs or re-enlist.
Discharge Review Board	A panel designated by each service that has the authority to review discharges.
DOD	Department of Defense.
DODIG	Department of Defense Inspector General, an independent Department of Defense office charged with overseeing audits, evaluations, and investigations relating to programs and operations of the Department of Defense. DODIG is charged with preventing fraud, waste and abuse at the Department of Defense, and issues periodic reports to the Secretary of Defense and Congress.
EPR	Enlisted Performance Report.
GAO	Government Accountability Office, an independent, nonpartisan agency that works for Congress, which investigates how the federal government spends taxpayer dollars
General Order 1	Military order that includes prohibited activities of service members on deployment, such a prohibition on drinking alcohol within area of responsibility.

TERM	DEFINITION
GOMOR	General Officer Memorandum of Reprimand.
IG	Inspector General
Involuntary Separation	Also known as an administrative discharge, being released from active duty under other than adverse conditions.
Judge Advocate General (JAG)	A military attorney who is an officer of the Judge Advocate General's Corps of the Army, Navy, Air Force, Marine Corps, and the United States Coast Guard who is designated as a judge advocate.
Judicial Proceedings Panel	The Secretary of Defense, as required by Section 576(a)(1) of the NDAA for Fiscal Year 2013 (Public Law 112-239) and in accordance with the Federal Advisory Committee Act of 1972 (FACA) (5 U.S.C., Appendix, as amended) and 41 C.F.R. Section 102-3.50(a), established the Judicial Proceedings Panel. The Judicial Proceedings Panel is conducting an independent review and assessment of judicial proceedings conducted under the Uniform Code of Military Justice involving adult sexual assault and related offenses since the amendments made to the Uniform Code of Military Justice by section 541 of the National Defense Authorization Act for Fiscal Year 2012 (Public Law 112-81; 125 Stat. 1404) for the purpose of developing recommendations for improvements to such proceedings.
LOR	Letter of reprimand; a more formal letter of admonishment included in the personnel record of a service member. They may be held locally for a limited time period or put in the service member's permanent record.
Medical Review Board Process	The Medical Review Board Process is a process by which a service member may be administratively separated or retired from the military when they have a medical condition (including a mental health condition) that render them unfit for service. A medical evaluation board assesses fitness for continued duty. If the service member is not fit for duty because of injuries sustained or exacerbated in service, they may be eligible for benefits. The process may be initiated by a service member who voluntarily seeks medical care or by a commander who believes the member is unfit for service and refers them for an examination.
Military Equal Opportunity (MEO)	Military Equal Opportunity, a program that seeks to eliminate unlawful discrimination against military personnel, family members, and retirees based on race, color, national origin, religion, or sex.
Military Sexual Trauma (MST)	Sexual assault or repeated, threatening sexual harassment that occurs while in the military.
NJP	Non-judicial punishment under the Uniform Code of Military Justice, also known as an Article 15, or Captain's Mast.
NCIS	Naval Criminal Investigative Services, responsible for investigation of serious criminal offenses in the Navy.
NCO	Non-Commissioned Officer
OSI	Office of Special Investigations, responsible for investigation of criminal offenses in the Air Force.

TERM	DEFINITION
Permanent Change of Station	To permanently relocate from an assignment at one military installation to an assignment at another installation.
Professional Retaliation	Taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member reported a criminal offense. It includes a range of actions such as transfer or reassignment, disciplinary action, poor performance evaluations, and change in a work assignment inconsistent with the military member's grade.
Promotion Review Board	Administrative process by which service members are considered for promotion.
PTSD	Post-Traumatic Stress Disorder
Reprisals	See "Professional retaliation."
Reserve Unit/Component	Reserve Components of the Armed Forces of the United States, including the National Guard (Army and Air Force) and Reserves (Army, Air Force, Navy, Marine Corps, and Coast Guard). Armed forces that are not on active duty but can be called in an emergency.
Restricted Duty	Removing a service member from their position or assigning them limited responsibilities. It may constitute a form of administrative discipline.
Restricted Reporting	A process used by a service member to report or disclose that they are the victim of a sexual assault to specified officials on a requested confidential basis. Under these circumstances, the victim's report and any identifying details provided to healthcare personnel, the SARC, or a victim advocate, will not be reported to law enforcement to initiate the official investigative process unless the victim consents or an established exception is exercised under Defense Department regulations. Restricted reporting applies to service members and their military dependents 18 years of age or older.
Response Systems to Adult Sexual Assault Crime Panel	Panel created by the Secretary of Defense at the direction of Congress in order to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses for the purposes of developing recommendations regarding how to improve the effectiveness of such systems.
ROTC	Reserve Officer Training Corps
Sexual Assault	Intentional sexual contact, characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (oral or anal sex), or attempts to commit these offenses.
SAPR	Sexual Assault Prevention and Response.
SAPRO	The Sexual Assault Prevention and Response Office; serves as the DOD's single point of authority, accountability, and oversight for the Sexual Assault and Prevention and Response Program, except for legal processes and criminal investigative matters that are the responsibility of the Judge Advocates General of the Military Departments and the Inspectors General, respectively.

TERM	DEFINITION
SARC	Sexual Assault Response Coordinator. The single point of contact at an installation or within a geographic area who oversees sexual assault awareness, prevention, and response training; coordinates medical treatment, including emergency care, for victims of sexual assault, tracks the services provided to a victim of sexual assault from the initial report through the final disposition and resolution.
SHARP	Sexual Harassment/Assault Response and Prevention, an Army program aimed at reducing and eliminating sexual assaults.
Social Retaliation	This includes ostracism and such act of maltreatment as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense. Examples include insults or bullying, exclusion from social acceptance or friendship because the victim reported a crime.
SVC	Special Victims' Counsel in the Army and Air Force. The Special Victim Counsel Program was created by the Services and mandated by Congress to support victims of sexual assault and enhance their rights within the military justice system while neither causing unreasonable delay nor infringing upon the rights of the accused. An SVC's primary duty is to represent client's rights and interests during the investigation and court-martial process. In general, SVC services include, but are not limited to, accompanying and advising the victim during interviews, examinations, and hearings, advocating to government counsel and commanders on behalf of the victim, and advising the victim on collateral civil matters which stem from the alleged sexual assault.
TDY	Temporary duty; a travel assignment at a location other than the employee's permanent duty station.
Uniform Code of Military Justice (UCMJ)	Uniform Code of Military Justice; federal law enacted by Congress serving as foundation for military law.
Unrestricted Reporting	A process a service member uses to disclose, without requesting confidentiality or restricted reporting, that they are the victim of a sexual assault. Under these circumstances, the victim's report and any details provided to healthcare personnel, the SARC, a victim advocate, command authorities, or persons are reportable to law enforcement and may be used to initiate the official investigative process.
Victims' Legal Counsel (VLC)	Victims' Legal Counsel in the Marine Corps and Navy that is equivalent to the Special Victim Counsel in the Army, Air Force, and Coast Guard. See SVC above.

Ranks

AIR FORCE

ENLISTED	(IN ASCENDING ORDER)
Amn	Airman (E-2)
A1C	Airman First Class (E-3)
SrA	Senior Airman (E-4)
SSgt	Staff Sergeant (E-5)
TSgt	Technical Sergeant (E-6)
MSgt	Master Sergeant (E-7)
SMSgt	Senior Master Sergeant (E-8)
1stSgt2	E-8 First Sergeant (E-8)
CMSgt	Chief Master Sergeant (E-9)
1stSgt3	E-9 First Sergeant (E-9)
CCM	Command Chief Master Sergeant (E-9)
CMSAF	Chief Master Sergeant of the Air Force (E-9)

OFFICERS	(IN ASCENDING ORDER)
2d Lt	Second Lieutenant (O-1)
1st Lt	First Lieutenant (O-2)
Capt	Captain (O-3)
Maj	Major (O-4)
Lt Col	Lieutenant Colonel (O-5)
Col	Colonel (O-6)

ARMY

ENLISTED	(IN ASCENDING ORDER)
PV2	Private (E-2)
PFC	Private First Class (E-3)
SPC	Specialist (E-4)
CPL	Corporal (E-4)
SGT	Sergeant (E-5)
SSG	Staff Sergeant (E-6)
SFC	Sergeant First Class (E-7)
MSG	Master Sergeant (E-8)
1SG	First Sergeant (E-8)
SGM	Sergeant Major (E-9)
CSM	Command Sergeant Major (E-9)
SMA	Sergeant Major of the Army (E-9)

OFFICERS	(IN ASCENDING ORDER)
2LT	Second Lieutenant (O-1)
1LT	First Lieutenant (O-2)
CPT	Captain (O-3)
MAJ	Major (O-4)
LTC	Lieutenant Colonel (O-5)
COL	Colonel (O-6)

COAST GUARD

ENLISTED	(IN ASCENDING ORDER)
SR	Seaman Recruit (E-1)
SA	Seaman Apprentice (E-2)
SN	Seaman (E-3)
FN	Fireman (E-3)
PO3	Petty Officer 3rd Class (E-4)
PO2	Petty Officer 2nd Class (E-5)
PO1	Petty Officer 1st Class (E-6)
CPO	Chief Petty Officer (E-7)
SCPO	Senior Chief Petty Officer (E-8)
MCPO	Master Chief Petty Officer (E-9)
CMDCM	Command Master Chief PO (E-9)
AMCPO	Area Command Master Chief PO (E-9)
MCPOCG	Master Chief Petty Officer of the Coast Guard (E-10)

OFFICERS	(IN ASCENDING ORDER)
ENS	Ensign (O-1)
LTJG	Lieutenant Junior Grade (O-2)
LT	Lieutenant (O-3)
LCDR	Lieutenant Commander (O-4)
CDR	Commander (O-5)
CAPT	Captain (O-6)

MARINE CORPS

ENLISTED	PRIVATE (E-1)
PFC	Private First Class (E-2)
LCpl	Lance Corporal (E-3)
Cpl	Corporal (E-4)
Sgt	Sergeant (E-5)
SSgt	Staff Sergeant (E-6)
GySgt	Gunnery Sergeant (E-7)
MSgt	Master Sergeant (E-8)
1stSgt	First Sergeant (E-8)
MGySgt	Master Gunnery Sergeant (E-9)
SgtMaj	Sergeant Major (E-9)
SgtMajMarCor	Sergeant Major of the Marine Corps (E-9)

OFFICERS	
2ndLt	Second Lieutenant (O-1)
1stLt	First Lieutenant (O-2)
Capt	Captain (O-3)
Maj	Major (O-4)
LtCol	Lieutenant Colonel (O-5)
Col	Colonel (O-6)

NAVY

ENLISTED	
SA	Seaman Apprentice (E-2)
SN	Seaman (E-3)
PO3	Petty Officer 3rd Class (E-4)
PO2	Petty Officer 2nd Class (E-5)
PO1	Petty Officer 1st Class (E-6)
CPO	Chief Petty Officer (E-7)
SCPO	Senior Chief Petty Officer (E-8)
MCPO	Master Chief Petty Officer (E-9)
CMDCM	Command Master Chief Petty Officer (E-9)
FLTCM/FORCM	Fleet/Force Master Chief Petty Officer (E-9)
MCPON	Master Chief Petty Officer of the Navy (E-9)

OFFICERS	
ENS	Ensign (O-1)
LTJG	Lieutenant Junior Grade (O-2)
LT	Lieutenant (O-3)
LCDR	Lieutenant Commander (O-4)
CDR	Commander (O-5)
CAPT	Captain (O-6)