

From: Greg Jacob, policy director, Service Women's Action Network

To: Judicial Proceedings Panel

Subj: Military Sexual Assault Victim Restitution and Compensation.

There exists a clear and definite need to establish a mechanism through which military sexual assault survivors can receive both restitution and compensation. Members of the military cannot effectively avail themselves to remedies provided for civilians through the civil courts due to the Feres Doctrine. SWAN has been a long-time advocate for changes to this doctrine for two reasons: so survivors of military sexual assault can be compensated for their injuries and be made whole in the same manner as civilian sexual assault victims; and to aid in creating institutional changes in the military through accountability to court orders. Feres reforms are supported by many other groups and organizations including advocates for medical malpractice and intimate partner/domestic violence.

Recent efforts to legislatively resolve issues with the Feres Doctrine have been met with resistance by Congress. In 2011 SWAN worked with then Iowa Representative Bruce Braley to author the Holley Lynn James Act, a military sexual assault reform bill that included a provision that would have military sexual assault survivor claims to be filed under the Federal Tort Claims Act. Although other provisions of the Holley Lynn James Act (including the elevation of disposition authority) were readily adopted by Congress, the Feres provision was not. Prior to this effort, Senator Schumer introduced the Carmelo Rodriguez Military Medical Accountability Act of 2009 that would have enabled service members to bring military medical malpractice claims before the court. This effort also failed.

Ordinarily, compensation for injuries incurred while serving in the military occurs once a service member leaves active duty and enters veteran status. At that point in time, the veteran can file a disability claim through the Veterans Administration and receive a disability rating that in turn provides a disability payment. In the case of survivors of military sexual assault diagnosed with Military Sexual Trauma (MST), the VA's regulations for the processing of MST claims has created a process that is inconsistent, unreliable and discriminates against survivors of military sexual assault. Data obtained by SWAN and the ACLU via FOIA requests has revealed that PTSD claims due to MST are consistently approved at a lower rate than other types of PTSD claims. In addition, the approval rates of MST claims vary widely amongst VA regional offices, ranging from a 14% claims rate to 80% approval rates.¹ These findings were echoed in a subsequent report on MST VA claims from the Government Accountability Office.²

Without access to civil courts and an unreliable and discriminatory VA compensation process, survivors of military sexual assault are often left bereft of compensation for their injuries and unable to provide for their basic needs. These veterans can then find themselves in a downward spiral of financial problems, substance abuse, homelessness and suicide.

¹ The Battle for Benefits: VA discrimination against survivors of military sexual assault; a report issued by Service Women's Action Network, the American Civil Liberties Union and prepared by the Veterans Legal Service Clinic of Yale Law School. November 2013 (<https://www.aclu.org/sites/default/files/assets/lib13-mst-report-11062013.pdf>)

² Military Sexual Trauma: Improvements Made, but VA Can Do More to Track and Improve the Consistency of Disability Claims Decisions; GAO-14-477. June 2014 (<http://www.gao.gov/products/GAO-14-477>)

SWAN recommends that a Military Sexual Assault Survivor Restitution and Compensation Fund be established. Such a fund would be designed to provide a no-fault alternative to tort litigation and take the form of a worker's compensation type of system where claims are filed and payments for restitution and compensation are awarded to survivors. The Fund would be part of the defense budget and be subject to the appropriations process by Congress. Structuring The Fund in this way would mirror the benefits obtained through litigating cases in civil court in that it would function to provide relief to survivors but also hold the military accountable in its efforts to eradicate sexual assault from its ranks through direct congressional oversight in both the appropriations and the authorization processes. The Fund would also be augmented by any funds obtained through convictions (fines, forfeiture of pay and allowances, etc.) that would be collected and directed towards survivors.

Many of the men and women of the survivor community that SWAN talks to daily describe the ordeal of their sexual assault and the subsequent physical and mental trauma as a betrayal. They feel betrayed by their fellow service members, they often feel betrayed by the way in which their cases were handled by the military judicial process and after going through the VA claims process feel betrayed a third time. Survivors need to be compensated and made whole, an opportunity that constitutionally exists through the civil courts for citizens who do not serve in the military. There must be a fair and effective mechanism for those who choose to wear the uniform to receive the same opportunity.

Any questions or comments can be directed to Greg Jacob, policy director, Service Women's Action Network.