



National Alliance to
End Sexual Violence

Policy Statement Military Sexual Assault

July, 2013

Sexual assault within the military continues to occur at alarming levels with 26,000 anonymously reported incidents in 2012 alone according to Department of Defense (DoD) estimates. During this same period, only 3,300 service members reported their assaults. Meanwhile, the nation is confronted with headlines of high level military sexual assault leaders acting in sexually abusive ways. Combined with the heart-wrenching stories of survivors, these facts reveal the depth of the problem of military sexual assault (MSA) and demand incisive action.

Sexual violence is an endemic and epidemic social problem in our nation. The victim blaming attitudes of the civilian world carry into military service, and those attitudes carry over into tours of duty. The military has embraced the role of being a standard bearer of discipline, honorable action, and integrity. An opportunity exists to cultivate attitudes, behaviors, and responses in the military that blaze a trail for a burgeoning national and international response to sexual violence.

While the military has correctly been in the spotlight for failing to support victims and respond to and prevent sexual assault, civilian criminal justice systems regularly and systematically fail victims too, and leaders in all realms fall short of adequately understanding and addressing the problem of sexual violence. Like other closed institutions, the military has access to a range of punishments for offenders including but not limited to a court-martial. In the civilian criminal justice system, prosecutors are often unable or unwilling to file formal charges against an offender and proceed to trial. And in the civilian system, there is no other criminal recourse for the victim to pursue. While a court-martial will most often be the correct course of action to respond to a MSA offense, policy makers should not be too quick to remove options available in the military system. Non-judicial punishments may provide very important avenues for offender accountability and victim support.

At the same time, because the military is based on such a strongly hierarchical system, it is especially important to build in policies and structures that allow cultural change to occur related to sexual violence; fully expose the extent and systemic nature of the problem; provide victims with mechanisms to safely report and receive support; and hold offenders accountable. Sexual offenders are serial offenders and many members of the military will one day become civilians again. For the safety of both members of the military and the safety of all of our communities, it is absolutely imperative that offenders are stopped.

NAESV believes that, in order for the military to succeed in addressing MSA, it must build strong local, state and national collaborations with community-based experts in the arenas of sexual assault prevention and intervention. Victims should always receive referral information for their local rape crisis center, and requiring this specific referral should be included in code. Military installations should be encouraged to build robust working relationships and Memoranda of Understanding (MOUs) with state sexual assault coalitions and rape crisis centers who are community experts and trainers on creating victim-centered policies, advocating and intervening with victims, and preventing sexual assault.

NAESV commends the White House, Congress and the Department of Defense for prioritizing legislative and policy responses to MSA including the establishment of *the Response Systems to Adult Sexual Assault Crimes Panel* in the National Defense Authorization Act of 2013. Over the next year, the panel will conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault, for the purpose of developing recommendations concerning how to improve the effectiveness of those systems. NAESV believes all proposed solutions to MSA should be considered. The Panel's recommendations could be an important guide to determine the most appropriate changes to current military policy and the Uniform Code of Military Justice (UCMJ) related to sexual assault

A number of victim-centered best practices and policy changes have been suggested to address MSA. NAESV wholeheartedly supports many of these including:

- Removing prosecution for MSA from the chain of command structure.
- Providing a special counsel to victims of MSA to ensure that they have access to independent legal advice and advocacy.
- Prohibiting commanders from overturning a court-martial conviction of MSA and requiring a written justification of any changes to a court-martial sentence for MSA.
- Removing the authority to initiate and conduct an MSA investigation from the chain of command structure.
- Retaining records of sexual assault reports for at least 50 years.
- Explicitly protecting victims who choose to report from retaliation and requiring an inspector general investigate such claims.
- Confirming the commander's authority to transfer the accused or victim to a different post based on the victim's needs and safety.
- Removing the statute of limitations on crimes of MSA against children.
- Addressing the undue influence and potential for coercion of military trainers and prohibiting sexual relationships between trainers and trainees.
- Ensuring that victims have access to a range of veterans' benefits as a result of sexual trauma without having to prove a diagnosis of Post-Traumatic Stress Disorder (PTSD).
- Strengthening standards for military service members assigned to sexual assault prevention and response roles.

- Addressing any behavior that creates degrading and offensive work environments or sustains a culture that tolerates sexual violence.
- Requiring that a substantiated complaint of sexual assault or harassment is included in a serviceman's personnel record and that convicted offenders receive a punitive separation/dishonorable discharge.
- Sharing information on sex offenders in the military with civilian sex offender databases.
- Removing members of the military who were convicted as sex offenders in civilian court.
- Providing the same rights to victims of MSA as victims of federal crimes as laid out in the Crime Victims Rights Act.

NAESV recommends caution in several policy arenas related to MSA:

- Long mandatory minimum sentences can have a chilling effect on reporting and prosecuting sexual assault in the civilian system and NAESV does not recommend them.
- Combining the prosecution, reporting, investigation, and victim services response to MSA in one office could result in conflicts of interest. Victim-centered practices should exist in all areas of the military and a division of powers and responsibilities to address MSA is warranted.
- Careful thought must be given before removing any potential options for addressing MSA including plea bargains and other administrative punishments in cases where there is truly insufficient evidence for a court-martial yet sexually offending behavior has clearly occurred. Victims can often benefit from a wider array of options for offender accountability.

The Department of Defense has recently promulgated an interim final rule governing Sexual Assault Prevention and Response (SAPR) Program Procedures. NAESV finds many aspects of the proposed rule laudable including:

- Ensuring that members of the National Guard & Reserves have access to Sexual Assault Response Coordinators (SARCs). NAESV believes, whether or not they are on active duty, members of the National Guard should have access to the full range of prevention and services related to MSA.
- Allowing military dependents over age 18 and employees of DoD contractors to have access to sexual assault services. NAESV believes that all dependents over 12 should have access to these services.
- Proposing an appropriate document retention policy and requiring strong recordkeeping procedures and tracking mechanisms. This includes requiring that information about MSA be entered into the tracking system within 48 hours of a report (ninety-six hours if the unit is deployed in an area with internet connectivity issues).
- Expediting the transfer policy to allow victims freedom from contact with the offender.
- Focusing on services that are trauma-informed, gender-responsive, culturally competent, and recovery-oriented.

- Prohibiting enlistment if an individual has been convicted of a sexual crime.
- Requiring collaboration with local services. NAESV recommends legislative language to specifically name rape crisis centers.
- Requiring five years of storage for sexual assault forensic examination results from victims who have not yet reported.
- Including strong training requirements across the board for all employees responding to MSA.
- Establishing standards to assess the organizational climate related to MSA including interviews and follow-up assessments with a broad range of employees.
- Requiring a commander to meet with the SARC within 30 days of taking command.

NAESV is pleased to join with the military and policy makers as we strive to create both a military and civilian culture that fundamentally rejects sexual violence, supports victims and holds offenders accountable.

HAVE ADDITIONAL QUESTIONS?

Contact Terri Poore, Policy Consultant 

The National Alliance to End Sexual Violence is the voice in Washington for state coalitions and local programs working to end sexual violence and support survivors.