Report of the Victim Services Subcommittee
to the Response Systems to Adult Sexual Assault Crimes Panel

May 2014

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
MEMORANDUM FOR MEMBERS OF THE RESPONSE SYSTEMS PANEL

SUBJECT: Report of the Victim Services Subcommittee

On September 23, 2013, the Secretary of Defense established this Subcommittee to support the Response Systems Panel in its duties under Section 576(d)(1) of the National Defense Authorization Act for Fiscal Year 2013. The Secretary established seven objectives for the Subcommittee to assess the adequacy of military systems and proceedings for providing support and protection to victims in the investigation, prosecution, and adjudication of crimes involving adult sexual assault and related offenses, under 10 U.S.C. 920 (Article 120, Uniform Code of Military Justice). This Subcommittee has completed its review and submits to the Response Systems Panel its report with our assessment, recommendations, and findings.

Mai Fernandez
Subcommittee Chair

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
Victim Services Subcommittee Report to the Response Systems to Adult Sexual Assault Crimes Panel

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EXECUTIVE SUMMARY

This executive summary highlights key findings and recommendations of the Victim Services Subcommittee of the Response Systems to Adult Sexual Assault Crimes Panel. For a full exposition of recommendations and findings, see specific sections addressing Victim Services, Special Victim Counsel, and Victim Rights.

Responsibility of the Victim Services Subcommittee

On September 23, 2013, the Secretary of Defense established three RSP subcommittees and appointed nine members to the Victim Services Subcommittee, including four members of the RSP. The overall mission of the Subcommittee is to assess the adequacy of military systems and proceedings for providing support and protection to victims in the investigation, prosecution, and adjudication of crimes involving adult sexual assault and related offenses, under Article 120 of the Uniform Code of Military Justice (UCMJ). To assist the Subcommittee with its mission, the Secretary of Defense established objectives for the Victim Services Subcommittee, including the requirements to assess the adequacy of victim services in the military; the differences between military and civilian victim support systems and any best practices for victim support and protection from civilian jurisdictions that the military justice system may incorporate; and whether the military justice system recognizes and enforces various crime victim rights. The National Defense Authorization Act for Fiscal Year 2014 (FY 14 NDAA) added the requirement to assess whether it is feasible to grant victims and their Special Victim Counsel legal standing to enforce rights the FY 14 NDAA granted to victims.

Methodology

In compiling this report, the Subcommittee gathered and analyzed evidence from nineteen preparatory, Subcommittee and RSP public meetings. During these meetings, Subcommittee and RSP members heard testimony from victim service providers and military justice personnel involved in supporting victims immediately following a sexual assault and throughout the reporting and criminal justice processes. Members also spoke to sexual assault survivors regarding their personal experiences with victim services in the military and to victim advocates and advocacy organizations. In addition, members of the Subcommittee conducted two site visits to Fort Hood, Texas and Joint Base San Antonio-Lackland, Texas and received briefings from military justice practitioners and participated in roundtable discussions with victim service providers, current Special Victim Counsel, new recruits, and training personnel. The Subcommittee members conducted these roundtable sessions in a non-attribution environment to foster candor on the part of the participants. The Subcommittee also considered extensive responses the Military Services provided to requests for information from the RSP, material experts who testified at Subcommittee and RSP hearings wrote or provided, and

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Introduction

In order to succeed in its mission to defend our nation, the Armed Forces must eliminate any threat that erodes the critical bonds of trust that are essential between and among Service members and their leaders. Military leaders recognize sexual assault is one such threat and if not addressed, could destroy the force. Therefore, Congress and the Department of Defense undertook a substantial effort to care and provide for sexual assault victims, and it is vital that the military maintain its focus on victim services. The majority of the services the Department of Defense provides need time to mature into established programs and also require ongoing assessment to determine whether they are effective at supporting and protecting sexual assault victims. Victim services can only work if they are effective and victims access them. Congress and the Department of Defense put the pieces in place, but the Department of Defense must now comprehensively and continually assess the benefits and overlaps in its programs in order to move victim services forward.

Recommendations and Findings

The Subcommittee divided its assessment into three topics: Victim Services, the military’s Special Victim counsel Program, and Victim Rights. Within each of these sections the Subcommittee also reviewed similar services offered in civilian jurisdictions.

Victim Services

The Subcommittee completed a comprehensive assessment of the adequacy of the systems and procedures to support and protect victims in all phases of the investigation, prosecution, and adjudication of adult sexual assault crimes. Through this assessment, the Subcommittee learned there are unique military attributes that affect reporting sexual assaults and utilizing available victim services. Specific military barriers to reporting and accessing victim services include the duty to obey all lawful orders, the close proximity in which Service members live and work, the potential for an offender to supervise a victim, Service members’ focus on mission, and certain collateral misconduct of the victim. However, the dedication of military leaders, mission focus, and the military’s command structure provide a matchless organizational ability to develop and enforce programs and policies to care for victims, eliminate sexual assault, and maintain the bonds of trust necessary to achieve overall mission readiness. Recognizing this unique structural ability, the Subcommittee makes several findings and
recommendations which address victim care following a sexual assault and seek to ensure both victim recovery and mission readiness.

First, the Subcommittee found the availability of victim services in the military is expansive and victim centered. However, there are some improvements and developments that can further the goals of increased reporting, enhanced victim confidence, and unit readiness. For example, to ensure Service members recognize and overcome barriers endemic within the military that may interfere with reporting instances of sexual assault, the Subcommittee recommends implementing or expanding training on the prohibition against retaliation following a sexual assault report; developing methods for emphasizing that reporting instances of sexual assault can increase good order and discipline; studying whether a policy should be implemented that eliminates punishment for low level collateral offenses; and developing policies that protect victims from suffering damage to their military careers following a report of a sexual assault. The Subcommittee also recommends clarifying the right of the victim to meet with Special Victim Counsel prior to determining whether to file a restricted or unrestricted report or no report at all, and that Military Criminal Investigators be required to advise victims of this right. Both of these recommendations are directed at empowering the victim and increasing his or her control over both the reporting and investigative processes.

Second, the level and quality of victim support is crucial to victim care and healing after an assault and to the long-term readiness of sexual assault victims. Overall, the Subcommittee finds the military strives to provide victims with a high level of care but the services are only effective if they are utilized and trusted by victims. As such, to ensure victims receive the best possible care and create confidence in the systems, some changes are necessary to current programs and policies. For example, because the Department of Defense does not have a uniform method for evaluating the different victim service programs, it appears many of the roles and responsibilities overlap between the programs; the training and curriculum are not always up to date; and some victim service personnel have an overload of responsibilities.

Therefore, the Subcommittee recommends the Department of Defense implement a uniform method of evaluating all victim service programs to determine effectiveness, efficiency, and sustainability of the programs and personnel. Further, the Subcommittee heard that some sexual assault victims have difficulty obtaining timely and consistent mental health appointments. The Subcommittee recommends the Services immediately evaluate the availability of and access to adequate and consistent mental healthcare for sexual assault victims. The Secretaries of the Services should also develop policies aimed at ensuring victims’ careers are not negatively impacted merely for seeking mental health treatment following a sexual assault.
Lastly, since the Department of Defense established its Sexual Assault Prevention and Response Office (SAPRO) in 2005, Congress mandated and the Department of Defense implemented dozens of initiatives to address various sexual assault victim services and programs. While these initiatives seek to enhance victim reporting and confidence, many of the initiatives occurred in quick succession without providing victim service personnel the ability to fully implement one program before mandating another. This rapid succession has resulted, in the Subcommittee’s view, to the Department of Defense’s inability to adequately assess the initiatives to determine which are effective, which should be discontinued, and which should receive funding to ensure long-term sustainability.

The Subcommittee also heard from victim service personnel that the speed and number of recent initiatives left them feeling frustrated and ill equipped to successfully implement the requirements while at the same time making sure victims receive the best care available. As a result, the Subcommittee recommends the Secretary of Defense, prior to mandating any further initiatives, perform an in-depth and comprehensive evaluation of all victim service programs to determine which are effective and require additional funding, and which the Department of Defense should discontinue. This recommendation affords the Department of Defense and the Military Services time to fully implement new victim services programs and initiatives and gather necessary data to determine whether the programs are effective at supporting and protecting sexual assault victims.

Special Victim Counsel

The Department of Defense created, and Congress mandated, the Special Victim Counsel (SVC) Program to provide legal assistance to and represent the interests of sexual assault victims. The SVC provides independent advice to sexual assault victims; assists victims in understanding the investigation and adjudicative processes of the military justice system; advocates protection of victims’ rights; and empowers victims by removing barriers to their full participation in the military justice process.

Early victim surveys and victim testimony suggests the SVC program is a valuable tool for victims, and effective in providing victims support and clarity throughout the military justice process. To ensure the program’s long-term sustainability, the Subcommittee recommends Congress appropriate sufficient annual funds to the Service programs; that the DoD develop a standardized evaluation with appropriate metrics to ensure continued victim satisfaction; and that the Services work together to share “best practices” between the individual SVC programs. The Subcommittee also recommends additional selection criteria to ensure those judge advocates selected to serve as SVCs are experienced and qualified.
Additionally, while each Service successfully implemented an SVC program, the Subcommittee recommends additional policy or statutory requirements necessary for the program’s continued success and effectiveness. First, the Subcommittee found the Services end the attorney-client relationship between the victim and SVC when a court-martial is over at the installation level and the Convening Authority acts on the findings and sentence, if any. However, a right of the victim may still be at issue and the victim may still require an SVC’s advice and representation. The Subcommittee recommends the Services amend their policies to provide victims SVC representation so long as a right is at issue, including appellate review.

Second, SVCs’ current right to access information regarding their clients’ cases is limited. The Subcommittee recommends clarifying an SVC’s ability to obtain evidence necessary and relevant to assert a victim’s rights. This will ensure SVCs can obtain information to effectively represent their clients. Lastly, the Subcommittee found current policies are unclear on whether a victim may seek advice from an SVC prior to making a restricted or unrestricted report or not to report at all, although the Subcommittee heard from some SVCs that they currently provide this advice. To promote victim confidence and support, the Subcommittee recommends amending polices to expressly provide that sexual assault victims may seek confidential legal advice from an SVC prior to or in the absence of a formal sexual assault report.

Victim Rights in the Military

Under the FY14 NDAA, Congress required the RSP to assess the feasibility and appropriateness of extending to military crime victims those same rights afforded a crime victim in civilian criminal legal proceedings under the Crime Victims’ Rights Act (CVRA). The Subcommittee conducted a comprehensive evaluation and comparison of victim rights in Department of Defense policy, the FY14 NDAA, and the CVRA. The Subcommittee also gathered extensive testimony and other evidence from subject-matter experts on how civilian jurisdictions implement and execute the CVRA in law and practice and ways the Department of Defense can import similar rights and enforcement mechanisms in light of different practices in the military justice system. The Subcommittee’s review revealed that, while the FY14 NDAA provisions and current Department of Defense policy incorporate many CVRA rights and provisions almost verbatim, some differences remain that statute, policy, or regulation should address.

The Subcommittee found certain rights, set forth in Department of Defense policy and the FY14 NDAA, mirror those rights set out in the CVRA, but due to military practice are not directly analogous. In particular, the CVRA grants victims the right to heard at public hearings and the right to confer with the attorney for the government in criminal cases. Likewise, Department of Defense policies, Service policies, and the FY14 NDAA grant victims the right to confer with the trial counsel in criminal cases and the right to be heard at certain public hearings.
However, since a commander serving as the convening authority makes decisions on case disposition under the Uniform Code of Military Justice, as well as whether to enter into a plea bargain with the accused, a victim’s right to confer with a counsel representing the government or to be heard at public hearings in the military justice system is not directly analogous to the CVRA rights. Therefore, the Subcommittee recommends modifying the procedures to provide a mechanism to ensure that the victim is able to provide his or her concerns and preferences to the convening authority prior to a decision regarding case disposition or whether to accept, reject, or modify a proposed pretrial agreement.

In addition, while both the CVRA and the FY14 NDAA offer victims a right to be heard at sentencing, the current military procedural rules require a victim to testify under oath subject to cross-examination. In contrast, the CVRA and Rules for Practice in federal civilian jurisdictions provide victims a right to present matters during sentencing without being subject to cross-examination. The Subcommittee recommends amending the current Rules for Courts-Martial to provide victims the right to make an unsworn victim impact statement, with several protections to ensure fairness to the convicted Service member.

The Subcommittee also addressed several areas in which Congress directed that the DoD implement mechanisms to enforce statutory victim rights. Specifically, the Subcommittee recommends amending the Uniform Code of Military Justice and the Rules for Courts-Martial to expressly include the legal standing victims have to enforce the newly enacted statutory victim rights at trial and in appellate courts; that the Secretary of Defense recommend changes to the Manual for Courts-Martial prescribing time periods and procedures under which a victim may assert these rights; and that Congress amend the FY14 NDAA to provide for one Department of Defense entity to review and investigate claims that military officials failed to grant or comply with these rights.

Conclusion

Through its assessment, the Subcommittee finds the military provides extensive and expansive services for sexual assault victims. The Subcommittee also finds Department of Defense policy and the Uniform Code of Military Justice incorporate many rights and provisions set forth in the CVRA. However, greater measures will ensure victims receive necessary care and protection following a sexual assault. With this in mind, the Subcommittee offers its recommendations concerning military victims’ rights, the Special Victim Counsel Program, and the various victim services in the military. The Subcommittee’s recommendations highlight the important role continuous and comprehensive victim support plays in caring for sexual assault victims and ensuring mission readiness of the Armed Forces.
ABSTRACT OF SUBCOMMITTEE FINDINGS AND RECOMMENDATIONS

1. FINDINGS AND RECOMMENDATIONS ON VICTIM SERVICES

- **Finding 1-1:** Over the last five years, Congress mandated and DoD initiated dozens of additions and changes to victim service programs, many in such quick succession that SAPR personnel had to begin implementing a new initiative before fully implementing previously required programs.

- **Finding 1-2:** Due to the number and rapid succession of programs and initiatives, DoD has not performed an assessment and evaluation of all current programs, to determine which are effective, which should be continued, expanded or are duplicative of other programs, and how best to allocate funds and personnel for victim service programs in a resource constrained environment.

**Recommendation 1:** The Secretary of Defense direct the Military Services to fully implement all of the currently mandated programs, initiatives, and other requirements Congress directed in the FY14 and prior year NDAs and capture enough data to adequately assess the effectiveness, efficiency, and value of all existing programs with the goal to streamline or eliminate those that are not successful, and to continue, expand, and preserve the programs that are successful.

**Recommendation 1a:** The Secretary of Defense direct SAPRO to evaluate and assess all programs and initiatives and measure the effectiveness of each to determine which programs and initiatives are effective, which should be continued, expanded, and preserved, and how best to allocate funding for the effective programs and initiatives.

**Recommendation 2:** The Secretary of Defense develop and implement policy and regulations such that sexual assault victims have the right and ability to consult with an SVC before deciding whether to make a restricted or unrestricted report, or no report at all. Communication made during this consultation would be confidential and protected under the attorney-client privilege.

**Recommendation 2a:** The Secretary of Defense develop and implement policy that, when information comes to military police about an instance of sexual assault by whatever means, the first step in an investigation is to advise the victim that s/he has the right to speak with an SVC before determining whether to file a restricted or unrestricted report, or no report at all.

- **Finding 3:** In an effort to educate new military recruits about sexual assault and sexual assault prevention, DoD requires that all new Service members receive sexual assault
prevention training within fourteen days of their initial entry into the Service. However sexual assaults may occur within the victim’s first week in the military.

**Recommendation 3:** The Secretaries of the Military Services direct Commanders of Military Entrance Processing Stations (MEPS) to provide sexual assault prevention information to new recruits that include the definition of sexual assault, possible consequences of a conviction for sexual offenses in the military and information about the DoD Safe Helpline and other avenues for assistance. This recommendation expands upon the Defense Task Force on Sexual Assault in the Military Services’ recommendation to make available, and to visibly post, sexual assault prevention and awareness campaign materials at MEPS.

- **Finding 4-1:** FY14 NDAA, Section 1743, directs the Secretary of Defense to establish a policy to require a written incident report to the installation commander, if any, and the first general officer and first officer in the grade of 0-6 in the chains of command of the victim and the alleged offender not later than eight days after a Service member files an unrestricted sexual assault report.

- **Finding 4-2:** The statute does not require tracking of or reporting on services to victims who make restricted reports.

- **Finding 4-3:** This statutory requirement enhances DoD’s requirement for SARCs to inform commanders within 24 hours of both unrestricted and restricted sexual assault reports set forth in current policy.

**Recommendation 4:** The Secretary of Defense direct the Services to require written incident reports no later than eight days following a restricted or unrestricted report detailing the services provided to the victim, when a member of the Armed Forces is the victim.

**Recommendation 4a:** When restricted reports are made, SAPRO should work with the Services to ensure adequate measures are in place to protect the identity of the victim while providing sufficient information to track the victim’s care.

- **Finding 5-1:** There is no current mechanism for a sexual assault victim to keep a report of sexual assault restricted and request an expedited transfer.

- **Finding 5-2:** DoD policy does not permit victims who file a restricted report of a sexual assault to request a temporary or permanent expedited transfer from their assigned command or installation, or to a different location within their assigned duty or living location.

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• **Finding 5-3:** If the commander knows or learns about a sexual assault, the report becomes unrestricted, even if the victim filed or intended to file a restricted report. The commander must notify the MCIO and an investigation must be opened.

• **Finding 5-4:** By nature of their duties, a request for a transfer on behalf of another Service member from a SARC or SAPR VA provides the commander with the information that a sexual assault has taken place and the identity of the victim. Under current policy, the commander will be obligated to start an investigation, even if the victim intended the report to stay restricted.

• **Finding 5-5:** Commanders have inherent flexibility to transfer Service members or place them on limited duty status due to medical conditions. Current DoD policy allows health care personnel to convey to the victim's unit commander any possible adverse duty impact related to the victim's medical condition and prognosis, even when the sexual assault report is restricted. Under this policy, confidential communication related to the sexual assault may not be disclosed to the commander.

**Recommendation 5:** Service Secretaries should ensure that command orientation and training address the commander's authority to make duty or living assignment transfers based upon the recommendation of medical personnel, even if the specific underlying reason for the request for transfer is protected and cannot be disclosed.

**Recommendation 5a:** Training for medical personnel, SARCs, and VAs, should include the options that a commander has available to make or effect transfers based on recommendations from medical personnel.

• **Finding 6-1:** The Rape, Abuse, and Incest National Network (RAINN) contracted with DoD to develop and staff the Safe Helpline as a 24/7, anonymous sexual assault hotline for Military Service members.

• **Finding 6-2:** Military installations advertise the Safe Helpline as a hotline phone number, but also advertise their own installation numbers which are not always answered 24/7 and instead may require the caller to leave a message.

• **Finding 6-3:** The Safe Helpline database of referrals to military victim service providers is not always adequate or accurate to ensure that every caller can be connected to a local victim service provider by the Safe Helpline staff upon request.

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**Recommendation 6:** The Secretaries of the Military Services set forth clear guidance that DoD Safe Helpline is the single 24/7 sexual assault crisis hotline for Military Service members.

**Recommendation 6a:** The DoD Safe Helpline establish an easily remembered number similar to its website name of SafeHelpline.org.

**Recommendation 6b:** DoD require the Services to provide the Safe Helpline with sufficient contact information at each installation or deployed location so that local victim service providers can be reached on a 24/7 basis.

- **Finding 7-1:** The FY 2012 NDAA required the Secretary of Defense to establish a professional and uniform training and certification program for SARCs and VAs.

- **Finding 7-2:** DoD SAPRO evaluated the Services’ SARC and VA training in 2012. These evaluations, while providing useful information about the Services’ training programs, did not use consistent criteria for evaluation across the Services, and DoD SAPRO did not make assessment of the uniformity of the programs across the Services. In addition, some of the training materials used by the Services were outdated and contained incorrect information.

- **Finding 7-3:** The FY 2014 NDAA required the Secretary of Defense to submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a review of the Services’ SAPR training common core elements within 120 days of enactment of the Act. The review is not complete as of the date of this report.

**Recommendation 7:** The Secretary of Defense direct that the periodic evaluations of training provided for Services’ SARC and VA be conducted and include an assessment as to whether the training and curriculum across the Services is uniform, is effective, and reflects all existing initiatives, programs, and policies.

- **Finding 8-1:** DoD issued Instruction 6400.07 “Standards for Victim Assistance Services in the Military Community,” on November 25, 2013, based on standards established by the National Victim Assistance Standards Consortium.

- **Finding 8-2:** The purpose of the Instruction is to establish a baseline of service standards to provide uniformity across programs and across the Services in providing quality victim assistance.
• **Finding 8-3:** The Instruction identifies four victim assistance-related programs for establishing a baseline of service standards: SAPR, Family Advocacy Program (FAP) Victim and Witness Assistance Program (VWAP), and the Military Equal Opportunity Program (which handles discrimination and sexual harassment).

• **Finding 8-4:** Each of these programs was established independently and at different times and with somewhat differing constituents. However, there are no additional policies or requirements outside of this instruction that require identifying gaps or redundancies in victim services.

• **Finding 8-5:** The SVC program, while under the cognizance of the Judge Advocate General of each Service, is not included in the victim assistance standards although also involves a victim advocacy component.

**Recommendation 8:** The Secretary of Defense direct SAPRO or the DoD IG to assess the roles and responsibilities of SARC, VA, VWL, and FAP personnel, to ensure advocacy personnel are effectively utilized, they are properly delineated; overlap is minimized; and to determine whether their roles should be modified, and whether all current victim assistance related programs should be sustained in this resource constrained environment. Such review should factor the new SVC program recognizing that the Service Judge Advocate Generals are the sole supervisory chain for judge advocates.

• **Finding 9-1:** There are currently over 20,000 trained and certified SARCs and VAs across the Services. Because some part-time uniformed SAPR VAs are assigned to units in which there are few or no reports of sexual assault, some uniformed personnel trained as VAs may not ever serve a victim.

• **Finding 9-2:** Victim Advocates who are not regularly assigned to assist victims of sexual assault may not develop or maintain proficiency in providing victim support when they are assigned a case.

**Recommendation 9:** The Secretary of Defense direct SAPRO to determine an appropriate caseload and number of advocates, and to ensure that VAs become and remain proficient in their duties. Victim advocate duties should include partnering with or observing other professionals who provide victim services (including community providers) or other experiential work to gain further practical skills and confidence while awaiting assignment to a case.

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• **Finding 10:** SARCs are tasked with managerial, outreach and training, administrative as well as victim care duties. Many SARCs believe that their foremost challenge is having too many responsibilities to effectively perform all of the varied duties required of the job.

**Recommendation 10:** The Secretary of Defense direct SAPRO to evaluate the duties and responsibilities of the SARC position required by SAPR policy and to ensure that there are sufficient positions created with defined roles that allow for excellence.

• **Finding 11:** The Subcommittee heard from sexual assault victims who had difficulty obtaining timely mental health appointments as well as reports that victims may not see the same therapist consistently. The Subcommittee also heard evidence of concern that counseling may negatively impact victims’ careers. While the Subcommittee received evidence of recent programs in the Services to embed counselors within units to facilitate access to care, we were not in a position to evaluate whether the practice is a successful method to alleviate the difficulties victims experience in obtaining timely mental health, obtaining consistent therapeutic services, or reducing concern about negative impact on military careers.

**Recommendation 11:** The Secretaries of the Military Services evaluate the availability of and access to adequate and consistent mental healthcare for victims of sexual assault; and to evaluate the option of incorporating counselors into the SAPR program in a manner similar to the integration in the FAP Program. Additionally, the Secretaries of the Military Services establish policies to ensure that mental health treatment for sexual assault victims will not have negative implications on such victims’ eligibility for career advancement or promotion.

• **Finding 12-1:** DoD initiated the Family Advocacy Program (FAP) over twenty years ago to support military families and to provide services for victims of domestic violence and child abuse. Domestic violence victims who are also victims of sexual assault are treated and supported by the FAP.

• **Finding 12-2:** These incidents are recorded in the separate database used by the Family Advocacy Program, and not in the Defense Sexual Assault Incident Database (DSAID), which was developed to track sexual assaults. Thus, sexual assault reports that are part of domestic violence cases are not included in SAPRO’s annual report of adult unwanted sexual contact cases.
**Recommendation 12:** The Secretary of Defense direct that adult unwanted sexual contact reports handled by FAP and recorded in its database be included in the annual SAPRO report of adult unwanted sexual contact cases.

- **Finding 13:** It has been recognized that a percentage of the men and women in the military experienced unwanted sexual contact before entering military service. A substantial percentage of these victims may be subject to revictimization.

**Recommendation 13:** The Secretary of Defense direct SAPRO to work with the Centers for Disease Control and other appropriate agencies to develop services for military members who have previously experienced sexual abuse, and to develop strategies to encourage utilization of these services in order to prevent revictimization and develop or maintain skills necessary to fully engage in military activities and requirements.

- **Finding 14:** Harassment and retaliation against a victim in response to an allegation of sexual assault erodes unit cohesion, and the fear of harassment and retaliation deters victims from coming forward to report instances of sexual assault.

**Recommendation 14:** To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, that retaliation or harassment by Service members in response to an allegation of sexual assault violates good order and discipline.

- **Finding 15:** When an offender outranks or directly commands a victim, sexual assault is an especially egregious abuse of power. There have been instances when military officials and Service members have ignored or retaliated against those who reported incidents of sexual assault when the offender is a high-performing Service member or a superior offending against a subordinate.

**Recommendation 15:** To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, explaining that implicit or explicit invitations or demands for sex or sexualized interactions from commanders or superiors are not lawful orders, should not be obeyed, violate the code of military conduct, and will be punished.

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• **Finding 16**: Inculcating the notion that the needs of the individual must be subordinate to the needs of the unit is a staple of military training. Nevertheless, the subordination of the individual to the mission may be misinterpreted to deter reports of sexual assault and encourage retaliation against victims who come forward.

**Recommendation 16**: To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, emphasizing that reporting instances of sexual assault is essential for good order and discipline and protects rather than undermines morale.

• **Finding 17**: Male victims of sexual assault are often left out of the conversation about how sexual assault functions in the military. This omission deters some male victims from reporting sexual assault.

**Recommendation 17**: To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, with examples of male on male sexual assault, including hazing and sexual abuse by groups of men. The training should emphasize the psychological damage done by sexual assault against male victims.

• **Finding 18**: Department of Defense policy states that collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim’s fear of punishment.

**Recommendation 18**: The Secretary of Defense direct a study of what constitutes low-level collateral misconduct in sexual assault cases and assess whether to implement a policy in which commanders will not prosecute low-level collateral misconduct.

• **Finding 19**: The fear of damage to one’s military career deters victims from reporting a sexual assault.

**Recommendation 19**: The Secretary of Defense implement policy that protects victims of military sexual assault from suffering damage to their military careers (including but not limited to weakened performance evaluations or lost promotions, security clearances, or personnel reliability certifications) based on having been a victim of sexual assault, having reported sexual assault, or having sought treatment for sexual assault. Additionally, the DoD promulgate regulations that ensure the SVC advise their clients of the means by which they can challenge any inappropriate personnel action based on having been a victim or seeking treatment.
II. FINDINGS AND RECOMMENDATIONS ON SPECIAL VICTIM COUNSEL

• Finding 20-1: Early survey results and victim testimony indicate the SVC program is an invaluable tool for victims. This program instills confidence in the victim and helps him or her better understand the military justice process and his or her rights under the Code.

• Finding 20-2: Congress authorized $25M in the FY14 NDAA to assist the Services with the operation costs of implementing the SVC program. However, the Services anticipate needing significant staff and monetary to implement and sustain the SVC program in the future.

**Recommendation 20:** Congress appropriate sufficient funds annually to DoD to ensure the Services are able to sustain a robust SVC program.

• Finding 21: The Military Services currently do not have a standard evaluation of effectiveness for the SVC program.

**Recommendation 21:** The Secretaries of the Military Services develop a standard evaluation mechanism with appropriate metrics, when appropriate, to measure the effectiveness of the SVC program in each Service on an annual basis.

• Finding 22-1: On August 14, 2013, the Secretary of Defense directed the Service Secretaries establish a special victim’s advocacy program best suited for the individual Service. Furthermore, he directed the Services to determine their own best practices and periodically share those practices with the other Services. No standards or requirements have been established outlining how and when these best practices should be shared.

• Finding 22-2: The SVC program managers of the respective SVC programs regularly reach out to one another via email and telephone to communicate SVC issues and exchange lessons learned/best practices generated by their respective Services. On a more formal basis, the SVC program managers meet monthly to discuss a variety of SVC program issues.

**Recommendation 22:** The Secretary of Defense establish a mandatory inter-Service working group to assess the practices of all Military Service SVC programs. The inter-Service working group should discuss, deliberate, and decide upon the best practices being utilized by all the Military Services. The working group should then ensure each Military Service implement the best practices of the SVC programs and SVC receive adequate training on these practices.
The Response Systems Panel has not yet considered or deliberated on the contents of this report. Thereafter, the working group should meet at least annually.

- **Finding 23-1**: The Special Victim Counsel Program is a relatively new program, existing for slightly more than twelve months. Even the most experienced Special Victim Counsel has limited experience as an advocate for victim’s rights.

- **Finding 23-2**: Additionally there is limited case law on issues related to victim’s rights and victim’s counsel. While both the Air Force and the Army currently offer short courses on the SVC program, these courses do not focus on the day-to-day experiences of a SVC.

**Recommendation 23**: The Secretaries of the Military Services establish collaborative methods to disseminate information and training of SVC between the Services, including an inter-Service website where SVC can access training materials and resources from each Service.

- **Finding 24-1**: In general, the policy of the Military Services requires an officer have prior military justice experience before selection to perform duties as an SVC. The required length of time or level of experience in military justice varies throughout the Services.

- **Finding 24-2**: It is unclear if selection requires actual participation in courts-martial.

**Recommendation 24**: The Secretary of Defense direct the Military Services to implement additional selection criteria for their individual Special Victim Counsel Programs to require that counsel have appropriate trial experience prior to being selected as Special Victim Counsel. The criteria should include special emphasis on the unique selection of SVC and require actual courtroom experience rather than simply requiring service in a military justice billet for a certain period of time.

- **Finding 25-1**: Pursuant to Service policy, a victim and SVC establish an attorney-client relationship at their first meeting.

- **Finding 25-2**: This relationship continues until final disposition of the matter or the attorney is reassigned or leaves active duty.

- **Finding 25-3**: For court-martial purposes, the Services have determined case disposition occurs at the time the Convening Authority takes final action in the case.
**Recommendation 25:** The Secretary of Defense direct the Military Services to extend the opportunity for SVC representation to a victim so long as a right of the victim exists and is at issue. This includes any time following final action by the convening authority and during appellate review. While it may not be feasible, due to mission requirements, for the victim to maintain the same SVC throughout the duration of the process, the policy should permit for appointment of an alternate SVC to advise the victim and assert any right or interest still at issue following final action.

- **Finding 26:** A Special Victim Counsel's right to access records is no greater than his or her client's access rights. Currently, the government trial counsel may, but is not expressly required to, disclose information and records to the SVC. Further, when disclosing information, the trial counsel is limited by the Freedom of Information Act and the Privacy Act.

**Recommendation 26:** The Secretary of Defense implement policy clarifying the victim’s right to access records which are relevant to the assertion of a victim’s particular right through his or her SVC. The policy should include language establishing that once the SVC makes a request for information that is subsequently denied by the trial counsel, the SVC may petition the court for access to the relevant information. Furthermore, it should permit the military judge to then perform an in-camera review to determine what documents, if any, are relevant and necessary to the asserted right to release to the SVC as well as the appropriate method for disclosing those relevant documents to the victim. If the military judge declines to disclose the records, the reasons should be made on the record in order for the victim to seek further review.

- **Finding 27:** To be eligible for SVC representation, an adult victim of sexual assault must make an unrestricted or restricted report of sexual assault under the Uniform Code of Military Justice and otherwise be entitled to legal assistance under 10 U.S.C. § 1044. Pursuant to DoD policy, an SVC is not a listed restricted reporting entity. It is unclear if a victim may seek SVC advice prior to making an official report.

**Recommendation 27:** The Secretary of Defense develop and implement policy and regulations such that sexual assault victims have the right and ability to consult with an SVC before deciding whether to make a restricted or unrestricted report, or no report at all. Communication made during this consultation would be confidential and protected under the attorney-client privilege.

**Recommendation 27a:** The Secretary of Defense develop and implement policy that, when information comes to military police about an instance of sexual assault by whatever means, the first step in an investigation is to advise the victim that s/he has the right to speak with an SVC before determining whether to file a restricted or unrestricted report, or no report at all.
• **Finding 28-1**: The Army has not created a “separate and distinct” SVC division. Instead, the Army SVC program falls under the current Legal Assistance Organization.

• **Finding 28-2**: SVC are usually located within the installation legal assistance office and they are supervised by the Chief of Legal Assistance and the installation Staff Judge Advocate.

• **Finding 28-3**: If a conflict of interest arises, SVC may contact his or her technical chain, the SVC Program Manager, for advice. The Program Manager will then raise the issue to the Staff Judge Advocate.

**Recommendation 28**: The Secretary of the Army create a “separate and distinct” Special Victim Counsel Division with its own chain of command and support personnel to alleviate any actual or potential conflict of interest between the SVC and the local Office of the Staff Judge Advocate and ensure SVC independence.

• **Finding 29-1**: Legislation currently pending in Congress would add to SVC requirements. Under the Victims Protection Act of 2014, which passed the Senate on March 10, 2014, and is pending in the House of Representatives, SVC would be required to advise victims of sexual assault on the advantages and disadvantages of prosecution by courts-martial versus in a civilian jurisdiction.

• **Finding 29-2**: The pending legislation also requires the establishment of a process for victims of sexual assaults that occur in the United States to be consulted regarding his or her preference on prosecution by courts-martial or a civilian forum.

• **Finding 29-3**: While not binding, the victims’ preference must be given “great weight” in determining the prosecution forum. Prior to enacting this legislation, Congress did not receive extensive evidence on the potential impacts such legislation would have on victims and the military justice system.

**Recommendation 29**: Congress defer adopting the above provision of the Victims Protection Act of 2014 until Congress obtains further evidence and information about the potential impact of such legislation on victims and the military justice system.

• **Finding 30-1**: The Army and Air Force expressly provide for SVC representation for “entry level personnel” who are alleged to have been involved in an unprofessional relationship that involves sexual contact with an instructor or staff member, even though the sexual assault-type crime has not been committed or alleged.
- **Finding 30-2:** The Marine Corps SVC policy does not have this provision and the Navy and Coast Guard have yet to publish a policy on the Service SVC program.

**Recommendation 30:** The Navy, Marine Corps, and Coast Guard implement or amend their individual SVC policies to provide for SVC representation for entry level personnel who are alleged to have been involved in a relationship that involves sexual contact with an instructor or staff member, even though a crime has not been alleged.

### III. FINDINGS AND RECOMMENDATIONS ON CRIME VICTIMS’ RIGHTS

- **Finding 31-1:** The right to confer with the prosecutor under the CVRA is not directly analogous to the right to confer with trial counsel (military prosecutor) under the military justice system.

- **Finding 31-2:** The CVRA grants victims the right to confer with the prosecutor in criminal cases. Similarly, DoD policy, Service policies, and the FY14 NDAA grant victims the right to confer with the trial counsel in criminal cases.

- **Finding 31-3:** In the military justice system, a victim may confer with trial counsel on matters such as whether to pursue court-martial, nonjudicial punishment or administrative action in the case; and, if pursuing courts-martial, what level of court-martial may be appropriate.

- **Finding 31-4:** However, since a commander serving as the convening authority makes decisions on how to dispose of cases under the UCMJ, a victim’s right to confer with the trial counsel in the military justice system is not directly analogous to the CVRA right to confer with the prosecutor.

**Recommendation 31:** The Secretary of Defense direct the creation and implementation of mechanisms, where not currently in place, requiring trial counsel to convey the victim’s specific concerns and preferences regarding case disposition to the convening authority, so the convening authority may consider the victim’s concerns and preferences prior to making a decision on case disposition. These procedures will account for the convening authority’s role in the disposition of cases under the military justice system and create a process more analogous to a victim conferring with a prosecutor under the CVRA.
• **Finding 32-1:** The FY14 NDAA extended most of the rights afforded civilian crime victims under the CVRA to crime victims under the military justice system by adding these rights into the UCMJ as Article 6b except the right to be reasonably heard on the plea.

• **Finding 32-2:** The right to be heard on the plea as provided under the CVRA does not extend to the rights conferred under Article 6b.

• **Finding 32-3:** The right to be heard on the plea is not directly analogous to the military justice system due to the differences in the manner in which pretrial agreements are accepted under military practice as compared to the civilian system.

• **Finding 32-4:** The analogous opportunity for the victim’s input to be heard in the military justice system is before the convening authority decides to accept, reject, or propose a counter offer to a pretrial agreement submitted by an accused.

**Recommendation 32:** The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations that provide victims a right to be heard regarding a pretrial agreement.

**Recommendation 32a:** The proposed changes should provide victims the right to be heard regarding a plea, with appropriate consideration to account for military pretrial agreement practice.

**Recommendation 32b:** The recommended changes include the right to be heard before the convening authority decides to accept, reject, or propose a counteroffer to a pretrial agreement offer submitted by an accused. The convening authority should retain discretion to determine the best means to comply with this right and consider the victim’s opinion (e.g., submission in writing, in person).

• **Finding 33-1:** Victims should be able to enforce the rights guaranteed by Article 6b, UCMJ. The FY14 NDAA did not specify any enforcement mechanism; rather, the FY14 NDAA requires the Secretary of Defense to recommend changes to the Manual for Courts-Martial and to prescribe appropriate regulations to implement mechanisms to ensure enforcement of such rights, including mechanisms for application of such rights and for consideration and disposition of applications for such rights.

• **Finding 33-2:** The CVRA expressly provides for legal standing for victims to seek enforcement of those rights listed in the CVRA. Specifically, the CVRA directs a victim to assert his or her rights in the district court in which the alleged offender is being prosecuted and if the offender has not yet been charged the asserted claim should take
place in the district court of where the crime occurred. The district court will then immediately decide any motion asserting a victim’s right.

- **Finding 33-3:** The CVRA expressly provides for an expedited review of any trial court decision on a victim’s right. The CVRA allows a victim to petition the court of appeals for a writ of mandamus and the appellate court shall review the issue within seventy-two hours of the filing of the petition.

| Recommendation 33: | The Secretary of Defense clarify that victims have legal standing to enforce their rights listed in Article 6b, UCMJ, at trial and appellate courts. Specifically, the Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to expressly provide for a victim’s ability to assert a violation of his or her rights in the trial court, in which the crime occurred, at any relevant time in the proceedings, including pretrial, during trial, and post-trial. The Secretary of Defense will provide procedures for a victim to seek mandatory expedited review of any alleged violation of those rights listed in Article 6b, UCMJ from an appellate court. |

- **Finding 34-1:** The FY14 NDAA amended Article 6 of the Uniform Code of Military Justice to extend to military crime victims many of the rights conferred to crime victims under the CVRA. These rights were incorporated into the UCMJ as Article 6b.

- **Finding 34-2:** The CVRA requires prosecutors and investigators to use their “best efforts” to see that crime victims are notified of, and accorded, the rights under the CVRA. It further places responsibility on the court to ensure that crime victims are afforded the rights guaranteed in court proceedings under the CVRA.

- **Finding 34-3:** The FY14 NDAA did not place a similar requirement on military investigators, prosecutors or military courts to ensure that crime victims in military proceedings have been afforded the rights specified in Article 6b, UCMJ.

- **Finding 34-4:** Rather, the legislation requires the Secretary of Defense to “recommend changes to the Manual for Courts-Martial to the President and to prescribe appropriate regulations” to implement mechanisms for ensuring that victims are notified of and accorded the rights specified in Article 6b, UCMJ.

| Recommendation 34: | Implement mechanisms to ensure that victims are notified of and accorded the rights provided by Article 6b, UCMJ. |

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
Recommendation 34a: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to ensure that military investigators, prosecutors and other DoD military and civilian employees engaged in the detection, investigation, or prosecution of crime notify and accord victims the rights specified in Article 6b, UCMJ.

Recommendation 34b: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe mechanisms that make military courts responsible for ensuring compliance with the rights afforded to crime victims in court proceedings under Article 6b, UCMJ.

• Finding 35-1: The CVRA provides conditions and time limits under which a victim may petition to re-open a plea or sentence that are not directly applicable to the military rules for courts-martial.

• Finding 35-2: Specifically, the CVRA provides that, “A victim may make a motion to re-open a plea or sentence only if – (A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied; (B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and (C) in the case of a plea, the accused has not pled to the highest offense charged.”

• Finding 35-3: There is no similar provision setting forth the conditions and time period under which a victim may petition to assert the rights set forth in Article 6b, UCMJ.

• Finding 35-4: Rather, the FY14 NDAA requires the Secretary of Defense to recommend to the President changes to the Manual for Courts-Martial and to prescribe appropriate regulations including mechanisms to enforce such rights and consider and dispose of applications for such rights.

• Finding 35-5: Under military rules and procedures, a sexual assault victim may submit matters to the convening authority under certain conditions before the convening authority takes action on the case.

Recommendation 35: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations establishing the time period under which a victim may petition to assert the rights to reopen a courts-martial plea or sentencing hearing, to ensure clarity regarding when a court-martial hearing can be reopened based on the request of a victim or victim’s counsel and to ensure the finality of court-martial
proceedings. This time period should be sufficient so as not to limit or interfere with the victim’s right to present matters to the convening authority prior to his or her taking action on the case.

- **Finding 36-1**: To promote compliance, the CVRA directed the U.S. Attorney General to establish regulations that designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of crime victim’s rights. The Department of Justice established the Office of the Victims’ Rights Ombudsman to receive and investigate complaints filed by crime victims against its employees.

- **Finding 36-2**: Similarly, the FY14 NDAA requires the Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a Service in the Navy) to designate an authority within each Armed Force to receive and investigate complaints relating to the provision or violation of such rights.

- **Finding 36-3**: Designation of a separate authority within each of the Armed Forces and Coast Guard (when not operating as a Service in the Navy) to receive and investigate complaints could result in disparate procedures, rules, and standards for making and investigating complaints relating to a failure to comply with crime victims’ rights.

**Recommendation 36**: Congress enact legislation to require the Secretary of Defense designate one entity within the Department of Defense to receive and investigate complaints relating to violations of or failures by military and civilian employees from all of the Military Services to provide the rights guaranteed by Article 6b, UCMJ.

- **Finding 37-1**: The CVRA includes the opportunity for a victim to be reasonably heard at sentencing by allowing him or her to make a statement that is neither under oath nor subject to cross-examination.

- **Finding 37-2**: Under military rules, a sexual assault victim may present evidence of financial, social, psychological, and medical impact of an offense the accused committed.

- **Finding 37-3**: Unless there is an agreement from the defense, however, the victim must testify under oath, and is subject to cross-examination.

**Recommendation 37**: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to provide victims the right to...
make an unsworn victim impact statement, not subject to cross examination during the presentencing proceeding, with the following safeguards:

The members should be instructed similarly to the instruction they receive when the accused makes an unsworn statement;

If there is “new matter” brought up in the victim’s unsworn statement, sentencing should be delayed so the defense can respond; and

The unsworn statement should be subject to the same objections available to the government regarding the accused’s unsworn statement.

- **Finding 38-1**: The Court of Appeals for the Armed Forces has addressed the issue of whether a victim has the right to be heard through counsel with regard to certain issues.

- **Finding 38-2**: Absent formal clarification regarding whether references to a victim’s right to be heard includes through counsel, litigation on this issue is likely to continue.

**Recommendation 38**: The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to clarify that all victim rights that include a right for the victim to be heard include the right to be heard through counsel.
I. Introduction

“The core task of our Armed Forces remains to defend our nation and win its wars.”¹ In order to succeed in its mission, the Armed Forces must eliminate any threat that erodes the critical bonds of complete trust that are essential between and among Service members and their leaders “to accomplish their mission in the chaos of war.”² Military leaders recognize that sexual assault’s effects are corrosive and, if not thoroughly addressed, could destroy the fabric of the force.³ In essence, “[s]exual assaults endanger our own, violate our professional culture and core values, erode readiness and team cohesion and violate the sacred trust and faith of those who serve and whom we serve.”⁴

In the past few years, Congress and the Department of Defense have undertaken a substantial effort to put into place a constellation of initiatives to attend to the needs of sexual assault victims, and it is vital that the military maintain its focus on victim services. The majority of the services now provided need time to mature into established programs and also require ongoing assessment for future evaluations. Congress and the Department of Defense have put the pieces in place, but the Department of Defense must now comprehensively and continually assess the benefit and overlap of its programs in order to move victim services forward.

The services and response systems the military offers to sexual assault victims can only be useful when they are effective and victims access them. All sexual assault victims, military and non-military, face many issues that make it one of the most underreported crimes in the United States. The hierarchical structure of military service and its focus on obedience, order, and mission before self are, paradoxically, key ingredients to both success in battle and barriers to sexual assault reporting and accessing services.

There are unique military attributes that affect reporting sexual assaults and utilizing available victim services. Specific barriers to reporting and accessing victim services endemic to military structure include the duty to obey all lawful orders, the close proximity in which Service members live and work, the potential for an offender to supervise a victim, Service members’

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⁴ Strategic Direction to the Joint Force on Sexual Assault, 7 May 2012 at 5.
focus on mission, and collateral misconduct on the victim’s part, such as underage drinking, fraternization, or violation of military orders. Sexual assaults in the military generally involve 18 to 24 year-old Service members who know each other, are close in rank, have often consumed alcohol, and take place on military installations while off-duty. These particular characteristics of victims and offenders, as well as the circumstances surrounding many of the incidents may actually enhance the difficulties inherent in overcoming barriers due in part to the very nature and essence of military organizations.

The same features of the military’s structure and hierarchy that foster success in battle and present challenges to reporting and responding to sexual assault also present unique opportunities for development, including cultural change. The dedication of military leaders, the Department of Defense’s resources (in money and personnel), mission focus, and command structure provide a matchless organizational ability to develop and enforce innovative and comprehensive programs and policies to prevent and respond to military sexual assault. The Armed Forces have proven effective in other social transformations, contributing “…positive social change throughout our history – through racial integration, the integration of women across all Services, and the elimination of discrimination on the basis of sexual orientation.” The Department of Defense can lead the nation in the fight against sexual assault.

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5 See Section III, Section F (Victim Services, Sexual Assault Reporting) of this report for a specific discussion of these barriers.

6 Subcommittee Meeting, Role of the Commander Subcommittee 22 (October 23, 2013) (testimony of Colonel Alan Metzler, DoD SAPRO).


The Response Systems Panel has not yet considered or deliberated on the contents of this report.
II. Overview of Subcommittee Assessment

A. Responsibility of the Subcommittee

Section 576 of the National Defense Authorization Act for Fiscal Year 2013 (FY13 NDAA) directed the Secretary of Defense to establish the Response Systems to Adult Sexual Assault Crimes Panel (RSP) “to conduct an independent review and assessment of the systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses under Section 920 of Title 10, United States Code (Article 120 of the Uniform Code of Military Justice), for the purpose of developing recommendations regarding how to improve the effectiveness of such systems.” In order to assist the RSP in accomplishing the many areas Congress directed it to assess in twelve months, the Secretary of Defense established three subcommittees: Role of the Commander, Comparative Systems, and Victim Services.

On September 23, 2013, the Secretary of Defense established the RSP Subcommittees and appointed nine members to the Victim Services Subcommittee, including four members of the RSP. The overall mission of the Victim Services Subcommittee is to assess the adequacy of military systems and proceedings for providing support and protection to victims in the investigation, prosecution, and adjudication of crimes involving adult sexual assault. To assist with this mission, the Secretary of Defense (SECDEF) established five initial objectives for the Victim Services Subcommittee:

1. Assess the adequacy of military systems and proceedings to support and protect victims in all phases of the investigation, prosecution, and adjudication of adult sexual assault crimes;

2. Assess whether military systems and proceedings provide victims the rights afforded by 18 U.S.C. § 3771, Department of Defense Directive 1030.1(Victim and Witness Assistance), and Department of Defense Instruction 1030.2 (Victim and Witness Procedures);

3. Assess differences between military and civilian systems in providing support and protection to victims of adult sexual crimes;

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9 Victim Services Subcommittee, Terms of Reference (September 23, 2013) (on file with the RSP).
4. Identify best practices for victim support and protection from civilian jurisdictions that may be incorporated into any phase of the military system; and

5. Assess the effectiveness of proposed legislative initiatives modifying military justice processes in providing support and protection to victims of adult sexual assault crimes. \(^\text{10}\)

The National Defense Authorization Act for Fiscal Year 2014 added two additional requirements for the RSP related to the mission of the Victim Services Subcommittee. The Subcommittee also completed:

1. An assessment regarding whether the roles, responsibilities, and authorities of Special Victims’ Counsel to provide legal assistance under Section 1044e of Title 10, United States Code, as added by Section 1716, to victims of alleged sex-related offenses should be expanded to include legal standing to represent the victim during investigative and military justice proceedings in connection with the prosecution of the offense; and

2. An assessment of the feasibility and appropriateness of extending to victims of crimes covered by the UCMJ the right afforded a crime victim in civilian criminal legal proceedings under subsection 17(a)(4) of Section 3771 of Title 18, United States Code, and the legal standing to seek enforcement of crime victim rights provided by subsection (d) of such section. \(^\text{11}\)

To perform the required assessments, the Victim Services Subcommittee utilized a multi-method approach. This approach included gathering witness testimony at various RSP and Subcommittee meetings; conducting site visits to different military installations; requesting documentation from the Department of Defense and the Services; and conducting extensive document review and data analysis.

\(^{10}\) Victim Services Subcommittee, Terms of Reference (September 23, 2013) (on file with the RSP).

B. **Methodology of Subcommittee Review**

**Meetings**

Since June 2013, RSP and Subcommittee members held 22 public meetings, Subcommittee meetings, and preparatory sessions with more than 150 different presenters. Presenters included crime victim rights advocates and organizations; survivors of sexual assault; current and former commanders (both active duty and retired); current, former, or retired military justice practitioners; military and civilian criminal investigators; civilian prosecutors, defense counsel, and victims’ counsel; sexual assault victim advocacy groups; military and civilian victim advocates; military sexual assault response coordinators (SARCs); Judge Advocates General from each of the Services; a variety of academicians, including social science professors, law professors, statisticians, criminologists, and behavioral health professionals; medical professionals, including sexual assault nurse examiners (SANE); first responders; and current United States Senators.

At the various meetings, Subcommittee members were able to question witnesses and receive testimony, documents and other materials regarding the Department of Defense’s victim service programs and initiatives, the effectiveness of those programs, and recommendations for improvement to those services from victim support personnel and survivors of sexual assault. In addition, Subcommittee members heard testimony from civilian practitioners and support personnel on the implementation, structure, and productivity of civilian victim service programs throughout the nation and how these programs compared to similar ones in the military.

The Subcommittee supplemented the witnesses it heard and materials it reviewed about civilian services to sexual assault victims with the Joint Services Committee on Military Justice Sexual Assault Subcommittee’s (JSC-SAS) study of eighteen separate jurisdictions in fourteen states. The JSC-SAS undertook its study in part to provide factual information to the RSP.

The materials the RSP and Subcommittee received and verbatim transcripts of all RSP and Subcommittee meetings are posted on the RSP website at http://responsesystemspanel.whs.mil.

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12 A complete list of meetings, preparatory sessions, and site visits conducted by the Response Systems Panel and the Victim Services Subcommittee including presenters, topics, and materials are found at the Response Systems Panel website, http://responsesystemspanel.whs.mil/.

13 Survivors who appeared before the Subcommittee were afforded the opportunity to keep their identities and Service affiliation confidential, and are referred to throughout the report by their initials.

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
Military Site Visits

Members of the Victim Services Subcommittee also conducted two preparatory site visits to gather first-hand information about the effectiveness of victim services at various military installations. During these site visits, Subcommittee members toured Fort Hood and Joint Base San Antonio-Lackland, Texas, where they received briefings from the local Commands, the Staff Judge Advocate Offices, and Special Victims Counsel Personnel. Additionally, several roundtable meetings were held where Subcommittee members were able to meet with SAPR victim advocates, SARC s, victim witness liaisons, Family Advocacy victim advocates, behavioral health professionals, military and civilian medical personnel, a military prosecutor, special victim counsel and basic trainees and instructors to see and hear how victims are supported throughout the investigation, trial, and post-trial phases of a court-martial. These site visits were supported by a non-attribution environment to foster candor on the part of the participants. Because no information would be attributed to any one individual, the Service members and civilians were able to provide honest, candid and unguarded opinions about their experiences, their impressions of victim services, military prosecutions, sexual assault response measures, and other relevant topics.

During the roundtable discussions, Subcommittee members discussed specific cases and circumstances with victim services personnel in order to better understand their experiences with the military justice system and the support services offered to victims of sexual assault. This informal setting offered victim service personnel the opportunity to discuss any concerns with the current services offered and to provide recommendations to the Subcommittee members on how to improve victim care throughout the military. Additionally, a roundtable discussion with current Special Victim Counsel (SVC) enabled Subcommittee members to gather information on the Special Victim Counsel Programs in the Military Services and the emerging role of SVC in the reporting, investigation, and prosecution of sex-related crimes. Special Victim Counsel discussed their day-to-day functions, the scope of their representation of victims of sexual assault, and current impediments they were experiencing to providing what they considered to be appropriate representation.

Requests for Information

In addition, the RSP Chair sent letters with more than 130 requests for information (RFIs) to the Secretary of Defense and the Secretaries of the Military Services. The RFIs focused on topics relevant to the subcommittees: role of the commander, comparing military and civilian investigative and prosecution systems, and victim services. To date, DoD and the Services have submitted more than 14,983 pages of narrative responses and attached documents, including policies, procedures, statistics, correspondence, and surveys. The RSP also sent letters to eighteen victim advocacy organizations around the country soliciting input from those

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
organizations to assist the RSP and the Subcommittee in its review. Advocacy organizations providing information to the RSP included those working specifically in military sexual assault, including Protect Our Defenders (POD), Service Women’s Action Network (SWAN), Rape, Abuse, and Incest National Network (RAINN), the National Organization for Victim Assistance, and the National Alliance to End Sexual Violence.

Document Review

The Subcommittee also considered publicly available information such as government reports on victim service programs, transcripts of hearing testimony, policy memoranda regarding the implementation and execution of victim services, official correspondence, statistical data, training aids and videos, and planning documents. Additionally, the Subcommittee reviewed federal and state court opinions related to the Crime Victim’s Rights Act (CVRA) as well as law review articles on various victim service programs and the implementation of the Special Victim Counsel Program in the military. As part of this legal research, the Subcommittee examined a Court of Appeals for the Armed Forces (CAAF) opinion on SVC standing and conducted a thorough analysis of the differences between the CVRA and the newly enacted Article 6b, UCMJ.

Report Writing

The Victim Services Subcommittee held a series of meetings to make major decisions on the direction of this report and to determine additional evidence necessary to answer impending questions from the Subcommittee members. Once the Subcommittee completed gathering evidence, it held meetings to discuss the content of the report and to deliberate on the Subcommittee’s findings and recommendations. The Subcommittee members developed their findings and recommendations based on the information they received from witnesses, documentary submissions, site visits, and the Service and DoD responses to requests for information while, at the same time, carefully considering the terms of reference from the Secretary of Defense.

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
III. VICTIM SERVICES

A. Responsibility of Subcommittee

The Secretary of Defense directed the Victim Services Subcommittee to assess “the adequacy of the systems and procedures to support and protect victims in all phases of the investigation, prosecution, and adjudication of adult sexual assault crimes....”\(^{14}\) Congress also directed the RSP to compare and assess the differences between Military and civilian systems “in providing support and protection to victims and . . .[to identify] civilian best practices that may be incorporated into any phase of the military system”\(^{15}\) and to “[a]ssess the effectiveness of proposed legislative initiatives modifying military justice processes in providing support and protection to victims of adult sexual assault crimes.” The Victims Services Subcommittee examined both.

The Victim Services Subcommittee of the RSP completed a comprehensive evaluation of victims’ services in the military and a comparison of the military systems with corresponding civilian systems. The comparison of victim services in the civilian systems, while extensive, did not extend to services provided by every one of the more than 2,300 state felony prosecutor offices across the United States, or the more than 230 headquarter and staffed branch offices of the U.S. Attorney’s Office.\(^{16}\) Rather, the Subcommittee supplemented the witnesses it heard and materials it reviewed about civilian services to sexual assault victims with the Joint Services Committee on Military Justice Sexual Assault Subcommittee’s (JSC-SAS) study of eighteen separate jurisdictions in fourteen states. The JSC-SAS undertook its study in order to provide factual information to the RSP, and its work is described in more detail below.\(^{17}\)

This section provides an overview of the development of a formal sexual assault program within the Department of Defense and describes the roles and responsibilities of the programs and personnel involved in providing victim assistance in the military and civilian jurisdictions, and makes findings and recommendations to improve these programs and to provide Congress and DoD guidance for the way ahead.


\(^{15}\)Id. at § 576(d)(1)(B).


\(^{17}\)The Joint Services Committee-Sexual Assault Subcommittee Report released by DoD available at http://responsesystemspanel.whs.mil/public/docs/Background_Materials/JointServicesCommittee_SexAssaultSubcom_Report_Appendices.pdf
B. Roster of DoD Victim Services Personnel and Programs

The following are definitions or descriptions of the victims services programs and personnel commonly discussed throughout this report.

Department of Defense Sexual Assault Prevention and Response (SAPR) Program: A DoD program for the Military Services and the DoD Components that establishes SAPR policies to be implemented worldwide.\(^{18}\) The program objective is to have an environment and military community intolerant of sexual assault.\(^{19}\)

Department of Defense Sexual Assault Prevention and Response Office (DoD SAPRO): The DoD single point of authority, accountability and oversight for the SAPR program. It does not oversee legal processes and criminal investigative matters that are the responsibility of the Judge Advocates General of the Military Services and the IG, respectively.\(^{20}\)

Family Advocacy Program (FAP): A DoD program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up, and reporting of family violence. FAPs consist of coordinated efforts designed to prevent and intervene in cases of family distress, and to promote healthy family life.\(^{21}\)

Sexual Assault Response Coordinator (SARC): The single point of contact at an installation or within a geographic area tasked to oversee sexual assault awareness, prevention, and response training; coordinate medical treatment, including emergency care, for sexual assault victims; and track the services provided to a sexual assault victim from the initial report through final disposition and resolution.\(^{22}\) SARC\'s may be civilian or uniformed as designated by each Service and must be able to perform victim advocate duties when needed.\(^{23}\) SARC\'s can accept both restricted and unrestricted reports of sexual assault.

Sexual Assault Prevention and Response Victim Advocate (SAPR VA): A civilian or uniformed sexual assault victim advocate, responsible for providing non-clinical crisis intervention, referral,
and ongoing support to adult sexual assault victims in the military. Support will include providing information on available options and resources to victims and accompanying victims to court, interviews and appointments when desired by the victim. The SAPR VA also provides liaison assistance for victims with other organizations and agencies on victim care matters. The SAPR VA reports directly to the SARC when performing victim advocacy duties. SARCS can accept both restricted and unrestricted reports of sexual assault.

Domestic Abuse Victim Advocate (DAVA): Civilian advocates who provide assistance through the Family Advocacy program to military victims of spousal or intimate partner domestic abuse, including sexual abuse, as well as child victims of abuse, sexual violence, or neglect. Like the SAPR VA, a DAVA informs a domestic sexual assault and abuse victim of both restricted and unrestricted reporting options, develops a safety plan with the victim, provides relevant information and available options to support a victim’s decision making, assists the victim in gaining access to service providers and victim support resources, and consults and works with the Victim Witness Liaison when assigned.

Special Victim Counsel (SVC): Specially trained uniformed judge advocates to represent the interests of sexual assault victims. The SVC provides independent advice to sexual assault victims; assists victims in understanding the investigation and adjudicative processes of the military justice system; advocates for the protection of victims’ rights; and empowers victims by “removing barriers to their full participation in the military justice process.”

Victim Witness Liaison (VWL): Civilian or uniformed service providers operating within the installation legal offices. The role of the VWL in the military is one of facilitator and coordinator, not advocate. It is the responsibility of the VWL to see that victims and witnesses of all types of crime are provided with information about available military and civilian emergency medical and social services, advocacy services, military protective orders, restitution, and other available services; assisting with the victim receiving those services; providing the victim with information about the military justice system and notification of certain hearings

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24 DoDD 6495.01, ¶ 4.c(2).
25 Id.
26 Id.
27 Id.
29 Id. at §§ 6.4.3.1 - 6.4.3.13.
30 UNITED STATES AIR FORCE SPECIAL VICTIM’S COUNSEL RULES FOR PRACTICE AND PROCEDURE 2 (July 1, 2013).
31 U.S. DEP’T OF DEF. INSTR. [hereinafter DoDI] 1030.02, VICTIM AND WITNESS PROCEDURES, ¶ 5.2.8 (June 4, 2004).
during that process; ensuring the victim is able to consult with government representatives at certain points during the court-martial process; and notifying a victim of an offenders confinement status following the court-martial.  

C. DoD’s Sexual Assault Prevention and Response Program

The mission of the DoD Sexual Assault Prevention and Response (SAPR) Program is to prevent and respond to the crime of sexual assault “in order to enable military readiness and reduce – with a goal to eliminate – sexual assault from the military.” Since its inception in 2004, the DoD SAPR program has been the single source for sexual assault policy across DoD.

The SAPR program began with Secretary of Defense Donald Rumsfeld’s concern about reports of sexual assaults of deployed Service members in Iraq and Kuwait in 2004. Secretary Rumsfeld directed a task force to evaluate the sexual assault programs and policies throughout the Military Services, and, as a result, DoD established the Sexual Assault Prevention and Response Office (SAPRO) under the purview of the Under Secretary of Defense for Personnel and Readiness (USD P&R). DoD issued the first Department-wide SAPR policy in October 2005 as DoD Directive 6495.01 “Sexual Assault Prevention and Response (SAPR) Program,” which it reissued most recently in January, 2012, with additional changes in April, 2013.

DoD SAPR policy, set forth in DoD Directive 6495.01 and DoD Instruction 6495.02, offered, for the first time, a restricted reporting option for sexual assault victims who want to

32 See DEPARTMENT OF THE ARMY, REGULATION 27-10, MILITARY JUSTICE, Chapter 17 (October 3, 2011) [hereinafter AR 27-10]; see also AIR FORCE INSTRUCTION 51-201, ADMINISTRATION OF MILITARY JUSTICE (June 6, 2013) [hereinafter AFI 51-201]; MARINE CORPS ORDER 5800.14, VICTIM-WITNESS ASSISTANCE PROGRAM (March 15, 2013) [hereinafter MCO 5800.14]; OPNAV INSTRUCTION 5800.7A, VICTIM AND WITNESS ASSISTANCE PROGRAM (VWAP) [hereinafter OPNAVINST 5800.7A] (March 4, 2008).

33 Transcript of RSP Public Meeting 94 (June 27, 2013) (testimony of Major General Gary S. Patton, Director of DoD Sexual Assault and Prevention and Response Office); see also PowerPoint Presentation of DoD SAPRO, “Sexual Assault Prevention and Response Program,” slide 3 (June 27, 2013) (“The Department of Defense prevents and responds to the crime of sexual assault in order to enable military readiness and reduce – with goal to eliminate – sexual assault from the military.”). Note: the Subcommittee uses the term “testimony” to describe the unsworn remarks and responses made by individuals invited to appear before the RSP and Subcommittee to share their experiences and expertise on issues related to sexual assault in the military.

34 See generally DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2009 [hereinafter FY09 SAPRO REPORT] at 6 (providing a history of the DoD Sexual Assault Prevention and Response (SAPR) program).


36 FY09 SAPRO Report at 6; see also DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, CALENDAR YEAR 2004 [hereinafter CY04 SAPRO Report] at 3-4 (May 6, 2005).


38 See DoDD 6945.01.
obtain services while maintaining confidentiality; mandated baseline and pre-deployment sexual assault prevention training for Service members and first responders (e.g., healthcare providers, victim advocates, law enforcement, criminal investigators, judge advocates, chaplains);\footnote{DoD POLICY ON PREVENTION AND RESPONSE TO SEXUAL ASSAULT 13-14 (January 4, 2005) available at http://www.defense.gov/news/Jan2005/d20050104ppt.pdf; see also CY04 SAPRO Report at 4-6.} and created Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VAs) to provide services specifically for sexual assault victims.\footnote{See CY04 SAPRO Report at 4-6.} Since the inaugural DoD sexual assault policy in 2005, the DoD SAPR program has undergone and implemented an ongoing and increasing list of changes, additions, and improvements from both the Secretary of Defense and Congress.\footnote{A legislative history of the development and oversight of the DoD SAPR program may be found in Appendix B to this report.} As one witness commented to the RSP, “I see a real difference in the way the commanders understand the issues of sexual assault and sexual harassment. I see a 100 percent increase in the amount of attention paid to the education of all soldiers about the crime.”\footnote{Transcript of RSP Public Meeting, 218 (November 7, 2013) (testimony of Master Sergeant Carol Chapman, U.S. Army, SHARP Program Manager, 7th Infantry Division, Joint Base Lewis McChord, Washington).} Some of those key services to protect and support victims are described below.

D. **Overview of Victim Services Programs in the Military**

Although SAPR is the military’s flagship program devoted to sexual assault response and prevention, it is not the only source of sexual assault victim assistance or support in the military. Statutes and DoD Policy direct that four separate programs and five categories of victim assistance personnel perform sexual assault support and advocacy-related duties.

*Family Advocacy Program (FAP)*

The Family Advocacy Program (FAP), established in 1981, is the oldest and most mature sexual assault prevention and response program in DoD.\footnote{DoD 6400.1-M-1, DEPARTMENT OF DEFENSE MANUAL FOR CHILD MALTREATMENT AND DOMESTIC ABUSE INCIDENT REPORTING SYSTEM 6 (July 2005, Inc. Chg. 1, Sept. 20, 2011).} FAP is a congressionally mandated initiative tasked to prevent and respond to reports of child abuse/neglect and domestic abuse – including sexual abuse - in military families. It works in cooperation with civilian social service agencies and civilian law enforcement.\footnote{Katherine Robertson, LCSW, “Department of Defense Family Advocacy Program (FAP) Overview,” PowerPoint presentation to Victim Services Subcommittee, 2 (Feb 13, 2014).} The program provides services to adult victims of
spousal and intimate partner abuse and victims of child abuse and neglect, as well as the offenders.  

A domestic abuse victim, as defined by DoD, is an individual who is a current or former spouse of the abuser, a person with whom the abuser shares a child in common, or a current or former intimate partner/domestic partner with whom the abuser shares or has shared a common domicile. If a spouse or intimate partner commits a sexual assault against a military member, the FAP provides all support and counseling services for the victim. The SAPR program does not track cases or provide services for this category of adult sexual assault victims, per DoD policy. The FAP personnel include licensed clinicians, Domestic Abuse Victim Advocates (DAVAs), education and outreach staff, and administrative staff to assist victims.

FAP’s mission is both broader and narrower in scope than SAPR’s mission. It is broader in that it includes child sexual assault victims, all forms of domestic violence, and child abuse, not exclusively sex crimes. It is narrower with respect to sexual assault, since FAP handles only adult sexual assaults that arise from intimate partners or domestic violence which are not covered by SAPRO and are not counted in SAPRO’s sexual assault statistics.

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45 See generally DoDD 6400.01 ¶ 4.

46 DoDI 6400.06 at ¶ E2.13. The term domestic abuse is broader than behavior classified as “domestic violence.” Domestic abuse includes criminally abusive behavior as well as behavior that is abusive but may not meet all of the criminal elements of a domestic violence crime. For instance, DoD defines domestic abuse as “domestic violence or a pattern of behavior resulting in emotional/psychological abuse, economic control, and/or interference with personal liberty that is directed toward a current or former spouse; a person with whom the abuser shares a child in common; or a current or former intimate partner with whom the abuser shares or has shared a common domicile.” Id. at encl 2, ¶ E2.14.

47 See DoDI 6495.02 ¶ 2.c(2) (requiring installation SARC and installation FAP staff to direct coordination when a sexual assault occurs within a domestic relationship or involves child abuse); and see DoDD 6495.01 ¶ 2.a(3) (noting that “SAPR program applies to victims of sexual assault perpetrated by someone other than a spouse or intimate partner,” and that “FAP provides the full range of services to victims of domestic violence who are sexually assaulted”); see also Katherine Robertson, LCSW, “Department of Defense Family Advocacy Program (FAP) Overview,” PowerPoint presentation to Victim Services Subcommittee, 6 (Feb 13, 2014) (reporting that only 2% of adult military domestic violence cases involve sexual assault.).

48 See generally DoDI 6495.02 ¶ 2.c(2).

49 See Transcript of RSP Victim Services Subcommittee Meeting 260 (February 26, 2014) (testimony of Col (sel) Marie Colasanti, U.S.A.F., Family Advocacy Program Manager for the Air Force) (stating that the U.S. Air Force FAP personnel include 77 family advocacy officers, most of whom are active duty LCSWs, 111 treatment managers (LCSWs), intervention specialists (LCSWs), 69 outreach prevention program managers (master’s level social workers), 97 family advocacy nurse specialists who (RNs with two years’ experience in community health), 124 family advocacy program assistants (bachelor-level counseling degrees) and manage the databases, and 44 domestic abuse victim advocates (bachelor-level counseling degrees); and see id. at 267 (testimony of Ms. Crystal Griffen, LCSW, Family Advocacy Program, U.S. Navy) (stating that the Navy has 206 clinical counselors, 54 domestic abuse victim advocates and 76 prevention staff.).

50 See DoDI 6495.02 ¶ 2.c(2); and see DoDD 6495.01 ¶ 2.a(3).


**Victim Witness Assistance Program (VWAP)**

Following enactment of the Victim Witness Protection Act of 1982, DoD established its Victim Witness Assistance Program (VWAP) to incorporate much of the federal statute in military policy.\(^{51}\) The mission of the VWAP is to provide assistance to all military crime victims throughout the military justice process, from the investigation and prosecution through the duration of confinement of a convicted offender.\(^{52}\) The VWAP establishes military crime victims’ rights in DoD policy and provides for assistance to victims of all crimes, including sexual assault.\(^{53}\) Victim Witness Liaisons (VWLs) are the service providers to crime victims under the VWAP program.\(^{54}\)

**Sexual Assault Prevention and Response Program (SAPR)**

In 2005, DoD developed a program to provide 24/7 victim assistance capability exclusively to adult military sexual assault victims and sexual assault prevention training to first responders, commanders and all Service members at the time they initially enter the Armed Forces and thereafter on an annual basis.\(^{55}\) The personnel tasked with providing training and services under this program are Sexual Assault Response Coordinators (SARCS) and their subordinates, SAPR Victim Advocates (VAs).\(^{56}\) DoD defines sexual assault, and therefore the victims eligible for services under this program, as “intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent,” including the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these offenses.\(^{57}\)

**Special Victims’ Counsel (SVC) Program**

The newest program established to provide assistance to sexual assault victims in the military is the Special Victims’ Counsel (SVC) Program, launched with initial operating capability across all of the Services in October 2013, per Secretary of Defense direction, and

\(^{51}\) Task Force Report for Care of Victims of Sexual Assault 9 (April 2004).

\(^{52}\) Id.


\(^{54}\) U.S. Dep’t of Def. Instr. [hereinafter DoDI] 1030.02, Victim and Witness Procedures, ¶ 5.2.8 (June 4, 2004).

\(^{55}\) See DoDD 6495.01 ¶ 4; and see DoDI 6495.02, encl. 10.

\(^{56}\) DoDD 6495.01 ¶ 4.e(1) – (2).

\(^{57}\) DoDD 6495.02 at 93.
The Response Systems Panel has not yet considered or deliberated on the contents of this report.

subsequent codification in the FY14 NDAA. The SVC program goes beyond what is available in the civilian criminal justice system today by providing every military sexual assault victim the option of a military lawyer to individually represent him or her and advocate his or her interests from the moment the sexual assault is reported through final disposition of the case. An overarching goal of the SVC program is to instill confidence in victims so that more victims come forward and report incidents of sexual assault.

E. Overview of Psychological Healthcare for Sexual Assault Victims

Uniformed and civilian psychiatrists, psychologists, mental health nurses, social workers, and mental health technicians provide military mental health services to sexual assault victims and many others. In addition to clinics located within military treatment facilities, the following programs also provide counseling services to sexual assault victims:

- Each Military Service’s substance abuse prevention and treatment programs;
- Family Support Centers (FSCs), some offering non-medical counseling for various clinical disorders, such as anxiety, depression, and PTSD;
- Family Advocacy Programs;
- Military OneSource, a 24-hour, 7-day-a-week, confidential non-medical information and referral system that Service members and their dependents can access globally through the telephone, Internet, and e-mail and offers confidential in-person family and personal counseling in local communities at no cost for up to six sessions per person per problem per year;
- Anonymous counseling services offered by the DoD Safe Helpline and Safe HelpRoom; and,
- Military mental health services are often delivered in partnership with services provided by military chaplains, particularly in deployed environments. Pastoral counseling is often sought because fewer stigmas are associated with it and members may feel greater confidence that the matter will be kept confidential.

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58 See Transcript of RSP Public Meeting, 104-197 (November 8, 2013) (testimony of SVC Program Heads).
59 Id.
60 Id.
61 DEFENSE TASK FORCE ON MENTAL HEALTH 12 (June 2007).
62 DEFENSE TASK FORCE ON MENTAL HEALTH 13 (June 2007) For a clinical problem (defined as any disorder for which TRICARE provides reimbursement), Military OneSource facilitates referral to TRICARE or the nearest Military Treatment Facility (MTF). Id.
63 See DoD Safe Helpline located at https://www.safehelpline.org/.
64 DEFENSE TASK FORCE ON MENTAL HEALTH 13 (June 2007).
65 Id.
Access to quality mental health care is a critical component of a robust response system for military sexual assault victims. Congress, in the FY 2006 NDAA, directed the Secretary of Defense to establish a task force to assess and make recommendations for improving “the efficacy of mental health services provided to members of the Armed Forces, reflecting its concerns about the delivery of mental health care in the military.” The subsequently empaneled Defense Task Force on Mental Health (DTF-MH), comprised of seven members from within and outside of the military, visited 38 installations world-wide encompassing all Services, and published a report of its findings and recommendations to Congress in June 2007. The DTF-MH report summarized the task force’s observations into a “single finding underpinning all others: The Military Health System lacks the fiscal resources and the fully-trained personnel to fulfill its mission to support psychological health in peacetime or fulfill the enhanced requirements imposed during times of conflict.”

The DTF-MH made a number of recommendations to address the shortcomings it found, including embedding uniformed military health providers in military units to facilitate access and availability of mental health professionals, integrating mental health providers in primary medical care settings where mental health concerns are often first raised and stigmas seem lower, and ensuring a full continuum of easily-accessible evidence-based care to ensure effective help is available when most needed. Since then, the DoD has worked to implement the recommendations of the Task Force.

Mental health practitioners who spoke to the Subcommittee described the embedded uniformed providers now in the Services. For example, the Deputy Director of Psychological Health for the Air Force reported that the Air Force now has multiple entry points of access to behavioral health, including integrated behavioral healthcare in primary care and within units. In addition, an Army licensed clinical social worker reported to the Subcommittee that as of January 2014, thirty-seven of the Army’s brigade combat teams and fourteen other brigade-sized units are supported by embedded behavioral health (EBH) units. An EBH unit consists of a

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66 Id. at ES-1.
67 Id. at ES-2.
68 Id.
69 Id. at 16.
71 Transcript of Victim Services Subcommittee Meeting 249 (February 26, 2014) (testimony of Lieutenant Colonel Todd Yosick, U.S. Army, Behavioral Health Strategic Integrator and Liaison to the Department of Defense and Veterans Administration, Army Surgeon General).
psychiatrist, a psychiatric nurse practitioner, three clinical psychologists and three social workers as well as five additional staff. The Army clinical social worker contrasted this with his service in 2004 in the 25th Infantry, where he, a psychiatrist and a psychologist had responsibility for over 16,000 soldiers. The Navy and Marine Corps have embedded providers in Marine Corps regiments, on large seagoing platforms, and within special operations units.

DoD has quadrupled the size of its mental health system since 9/11. One issue clinicians deal with frequently is whether a patient wants to be treated with medication or with therapy. According to the Director for Mental Health Policy for DoD, “Patient preference always drives the type of approach [that is used] to help folks achieve recovery.” The Services’ behavioral health providers are trained in evidence-based psychotherapies such as cognitive behavior therapy, exposure therapy, cognitive processing therapy, eye movement desensitization and reprocessing (EMDR), and acceptance and commitment therapy, all of which are useful for treating disorders related to sexual assault and PTSD.

In addition, the Army developed a Behavioral Health Data Portal (BHDP) that all of the Services are adopting to look at outcomes and track personnel as they move from one duty location to the next. The BHDP was launched by the Army in 2012 as part of “a multi-year effort to build the structures and best practices needed to create a Behavioral Health System of Care.” The BHDP consists of a web-based patient portal where patients log on in their Behavioral Health clinic waiting room prior to each appointment and answer standard, research-validated questions about items related to their presenting symptoms, stressors, and level of functioning, which are then used by the clinicians to guide treatment planning and risk assessment in a standardized, high quality manner.

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72 Transcript of Victim Services Subcommittee Meeting 249-250 (February 26, 2014) (testimony of Lieutenant Colonel Todd Yosick).

73 Transcript of Victim Services Subcommittee Meeting 250 (February 26, 2014) (testimony of Lieutenant Colonel Todd Yosick).

74 Transcript of VSS Subcommittee Meeting 262 (February 26, 2014) (testimony of Captain John Ralph, U.S. Navy, Director of Psychological Health for Navy Medicine and Chief of Staff for Wounded, Ill, and Injured Programs).

75 Transcript of RSP Victim Services Subcommittee Meeting 239 (February 26, 2014) (testimony of CAPT Mike Colston, MC, U.S. Navy, Director of Mental Health Program, Clinical and Program Policy, Office of the Assistant Secretary of Defense (Health Affairs)).

76 Transcript of RSP Victim Service Subcommittee Meeting 237 (February 26, 2014) (testimony of CAPT Mike Colston).

77 Id.

78 Transcript of RSP Victim Service Subcommittee Meeting 243 (February 26, 2014) (testimony of Col Tracy Neal-Walden).

79 Id. at 244.


81 Id.
Despite improvements, some victims who spoke to the RSP and the Subcommittee described continued challenges in obtaining adequate mental health services including long wait times to get appointments and therapists that did not know how to deal with sexual assault victims. One recent sexual assault victim described her experience to the Subcommittee as, “when I first went to mental health, I did my initial [evaluation] with someone else and then I didn’t get an appointment after that. And then eventually my command called up there…and then I get an appointment with somebody, and then after that it was somebody else. So, I just stopped going completely.”

On the other hand, one intimate partner sexual assault victim described changes she observed to the system in the past few years. She had made a report a number of years earlier, for which the offender was not held accountable and she felt completely unsupported, and then participated in another case more recently, after another victim made a report against the same offender. She participated in the subsequent trial in which he was convicted of both sexual assaults, stated that, “I cannot express to you how much different the atmosphere, the command support, the available services were between my initial reports and my experience over the past year…the changes that have been made in policy and services have directly impacted my life and the life of my family.” She went on to specifically praise the change in the quality of counseling she has received and emphasized how important it is for the [Services] to have qualified, dedicated mental health professionals and social workers available for all…victims.

F. Sexual Assault Reporting

*Sexual assault victims are more than a witness to the crime. Their bodies are the crime scene. By providing victims with a voice in the process, we begin to empower them in a way that will help in their recovery.*

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82 Transcript of RSP Victim Service Subcommittee Meeting 105-107 (March 13, 2014) (testimony of Mr. I.C. and Ms. P.C.).


84 Transcript of RSP Victim Service Subcommittee Meeting 19 (March 13, 2014) (testimony of Ms. J.P.).

85 Id. at 21.

86 Transcript of RSP Meeting 89 (November 7, 2013) (testimony of Ms. Bette Stebbins Inch, Senior Victim Assistance Advisor, DoD SAPRO);
1. Structural Impediments to Reporting Sexual Assault

All sexual assault victims, military and civilian, face substantial barriers that make sexual assault one of the most underreported crimes in the United States. Society’s tendency to blame the victim of a sexual assault for the crime; victim’s struggles with concomitant shame and self-blame; feelings of confusion, helplessness, and lack of control; and the fear of the consequences of reporting ensure that experiences of sexual assault are often shrouded in silence and secrecy.

Victims of military sexual assault face additional structural barriers to reporting. The hierarchical structure of military service and its focus on obedience, order, and mission before self, although crucial to success in battle, may provide opportunities for sexual assault and discourage those who have been victimized from reporting. The duty to obey all lawful orders, the close proximity in which Service members live and work, the fact that offenders may outrank or supervise their victims, and the threat of collateral misconduct charges deter victims from being able to seek redress and access needed services.

Retaliation and Harassment

Service members live and work in close proximity to one another. Once a sexual assault has occurred, the nearby presence of the offender can cause psychological trauma for victims. As one victim explained, “I ended up spending a year living about 100 feet away from the man that assaulted me and that again probably did more damage than anything else.”

An allegation of sexual assault may then divide loyalties among a close-knit group of people who should be working toward a common goal. When unit cohesion is a powerful

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88 See Transcript of RSP Victim Service Subcommittee Meeting 313-314 (February 26, 2014) (testimony of Captain John A. Ralph, U.S. Navy) (stating that he has never encountered “a patient who was a sexual assault victim or a combat victim who didn’t engage in self-blame”…and that self-blame is “almost universal after a traumatic experience.”).

89 As one victim explained:

One of the problems I had was, early on my command tried to get [the offender] moved to get us separated and no other command on base would take him. They didn’t want to deal with it. So he ended up still working with me on different shifts. There was a no contact order in place, but I still saw him around. He was still around. He lived across the street.

Transcript of RSP Victim Service Subcommittee Meeting 50 (March 13, 2014) (testimony of Ms. P.C.).

90 Transcript of RSP Public Meeting 498 (December 11, 2013) (public comment of Major Melissa Brown).
mandate, Service members may seek to silence the victim’s allegation of sexual assault by one of their own or retaliate against him or her to keep the unit “whole.” As one victim explained, “[I]n my unit where I worked, I mean once the report became unrestricted, they kind of turned into a choosing sides battle. I had my food stolen. I had my wallet stolen. I had to dig it out of the trash. It was just overall really bad.”

This kind of retaliation causes psychological trauma for victims.

Another victim described how others in the same unit were deterred from reporting because of the retaliation she experienced:

I was not the only person...that this drill sergeant had victimized. There were many and there was many in that same unit with me in that same bay. Once I had came forward, they saw what I had went through, all the hazing, all the harassment and they were terrified . . . have asked them... why didn’t you say anything? And they just, they all had said that they were not strong enough. They didn’t feel like they could trust anybody there and they didn’t want to put themselves out there and have people look at ‘em funny.92 [sic]

According to DoD’s Workplace and Gender Relations Survey (WGRA),93 47 percent of women who did not report “unwanted sexual contact” indicated that they were afraid of reprisal or retaliation from the person who did it, or from their friends, or thought they would be labeled a troublemaker.94 Of those victims who did not report having been sexually assault to the chain of command, 43 percent of active duty female victims and 14 percent of active duty male victims indicated that they did not report because they heard about negative experiences other victims went through who reported their situation.95

Deference to Command

A sexual assault victim and offender may have the relationship of subordinate and commanding officer. Particularly when an offender is a superior, others may ignore the allegations or avoid acquiring knowledge about instances of sexual assault. One victim told the

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95 See id.
Subcommittee that, because of the initial response she received from her senior leadership, she felt reporting was futile.

From 2004 to 2006 … I was physically and sexually assaulted on numerous occasions by another soldier. The abuser was a Staff Sergeant, later promoted to Sergeant First Class while I was a Sergeant E5 at the time. He was very well respected in our unit by fellow soldiers and our command team, and though I sought help from my command on numerous occasions, my cries for help were deliberately ignored. At one point, I sought out my Command Sergeant Major for help one-on-one in her office, and her response to me was, if you would just listen to him, he would stop hitting you.96

Offenders may be competent, even outstanding soldiers, sailors, airmen, and marines, respected by leaders and subordinates alike, which can make people disbelieve the victim.

[M]any times people, people look at just the outside, you know, [the] competence that somebody has, and the outside character and the outside way that a person presents themselves. From the outside this drill sergeant was stellar. He was fast-tracking on his way to first sergeant. He really was…a lot of times people miss, they miss the, the singling out stuff, and they miss him pulling females to the side.97

Worse, a victim may be under an offender’s direct control. “[My assailant] taught our sexual harassment class and we were given instructions to report to him if we had any issues.”98 This victim explained that Service members are taught to obey lawful orders. “In boot camp, you are taught blind obedience to every order as your only option. Saying ‘no’ did not exist. There was no one to reach out to.”99

Subordination of the Individual to the Mission

Service members are appropriately trained to be mission-focused and willing to subordinate the self in service of the larger goals and needs of the unit. However, an exclusive focus on the unit may deter the reporting of sexual assault. As one sexual assault victim told the RSP:

96 Transcript of RSP Victim Service Subcommittee Meeting 17 (March 13, 2014) (testimony of Ms. J.P.).
98 Transcript of RSP Victim Service Subcommittee Meeting 11 (March 13, 2014) (testimony of Ms. E.M.).
99 Id.

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
I didn’t have the courage at that point to pick up a phone and call 911 and have police come and get me and take me where I should have gone. Instead, I thought, I need to go home and fix this and change my clothes and get to work and do my job, because that’s what I’m supposed to do. And I think that that’s probably a reason that many individuals don’t report when they need to for their cases to be prosecuted. It took me a year and a half, and personal, physical distress, to actually go seek help and then finally report my sexual assault. Part of that was driven by my requirement to deploy. I felt that reporting it would distract my unit and distract me from that mission that I was given.\textsuperscript{100}

\textit{Focus on Female Victims of Sexual Assault}

Male victims of sexual assault do not identify as victims and report their attacks in part because sexual assault awareness campaigns tend to focus predominantly or exclusively on female victims. As one victim advocate explained, “One of the biggest hurdles today for male survivors in the military to face is the lack of recognition of their status as survivors. One of the most offensive awareness campaigns a few years ago was the ‘Ask Her When She’s Sober’ campaign.”\textsuperscript{101}

\textit{Prosecution for Collateral Misconduct}

During an instance of sexual assault, a victim “may have engaged in some form of misconduct (e.g., underage drinking or other related alcohol offenses, adultery, fraternization, or other violations of certain regulations or orders),” behavior that is often referred to as collateral misconduct.\textsuperscript{102} Commanders have discretion to defer action on alleged collateral misconduct by sexual assault victims.\textsuperscript{103}

According to information the Services provided in response to the RSP’s request, the Air Force, Army, Navy, and Marine Corps have not, in the past, tracked the prosecutions of victims of sexual assault for collateral misconduct.\textsuperscript{104} The Coast Guard submitted information from Fiscal Year 2007 to Fiscal Year 2013 that indicated few punishments of victims of sexual

\textsuperscript{100} Transcript of RSP Public Meeting 497-498 (December 11, 2013) (public comment of Major Melissa Brown).

\textsuperscript{101} Transcript of RSP Victim Service Subcommittee Meeting 18 (November 8, 2013) (testimony of Mr. Brian Lewis).

\textsuperscript{102} DoDI 6495.02 encl. 5, ¶ 7.a.

\textsuperscript{103} Id.

\textsuperscript{104} Services’ Response to Request for Information 49 (November 21, 2013).
assault for collateral misconduct.105 The Army submitted information for Fiscal Year 2013 that indicated that prosecutions of victims of sexual assault for collateral misconduct occurred in less than 5 percent of cases.106

The WGRA indicated that 23 percent of active duty female victims who chose not to report having been sexually assaulted feared they or others would be punished for infractions or violations, such as underage drinking, if they had reported.107 Of the active duty male victims who did not report, 22 percent feared they or others would be punished for infractions or violations, such as underage drinking.108 As a result, the Department of Defense recognizes, “Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim’s fear of punishment.”109

Damage to Military Career

The WGRA indicated that 28 percent of active duty female victims who did not report believed that, if they had reported their sexual assaults, their performance evaluations or chances for promotion would suffer and 15 percent believed they might lose their security clearances or personnel reliability certifications.110 Of the active duty male victims who did not report, 16 percent believed their performance evaluation or chance for promotion would suffer and 15 percent believed they might lose their security clearance or personnel reliability certification.111

Victim’s Lack of Control Over the Report

A survey of victims of military sexual assault who did not report reveals that they most often did not want anyone to know of the sexual assault (70 percent); they felt uncomfortable making a report of sexual assault to command (66 percent); and they did not think the report would be kept confidential (51 percent).112 These survey results suggest that victims do not believe they can control the information about having been hurt if they make a report of sexual assault.

105 Id.
106 Army Response to Request for Information 138 (April 11, 2014) Responses are still pending from the Air Force, Navy, and Marines, as the RSP recently submitted this additional request for information.
107 See SAPRO PowerPoint (Oct. 23 2013).
108 Id.
109 DoDI 6495.02 encl. 5, ¶ 7(a).
111 Id.
112 Id.
2. Methods for Reporting Sexual Assault

“Once you look into the face of a fellow Service member and tell them that you’re sorry they were raped because you were too afraid to come forward, it doesn’t go away.”

A sexual assault victim who decides to report the incident may do so in a number of different ways. He or she may seek emergency medical attention and report the assault to a healthcare provider; reveal the assault to a trusted friend, spiritual advisor or family member; may seek assistance at a local rape crisis center; or, of course, report the sexual assault directly to law enforcement. In addition, military sexual assault victims may choose to report a sexual assault to a member of his or her chain of command (including the commanding officer) or any number of other military professionals, including a SARC or VA at his or her installation, command, or unit.

DoD’s preference is for victims to file unrestricted reports, which allow commanders to both hold offenders accountable and facilitates the provision of services to victims. However, like some civilian jurisdictions, DoD recognizes some victims’ preference to confidentially seek services without the publicity and emotional stress of an investigation and possible court-martial, and thus implemented the restricted reporting option in 2005. Restricted reporting is intended to “give victims additional time and increased control over the release and management of their personal information and empowers them to seek relevant information and support to make more informed decisions about participating in the criminal investigation.”

Military sexual assault victims and adult military dependents have the choice to make either a restricted or unrestricted report. An unrestricted report triggers an investigation by the Service’s Military Criminal Investigative Organization (MCIO) and notification of the victim’s and alleged offender’s commander. Victims who file an unrestricted report are assigned a SARC or VA who will facilitate the victim’s access to medical treatment, counseling and other services related to the assault, including a Sexual Assault Forensic Examination.

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113 Transcript of RSP Victim Service Subcommittee Meeting 12 (March 13, 2013) (testimony of E.M.).
114 DoDI 6495.02 encl. 4, ¶ 3.
116 DoDI 6495.02 encl. 4, ¶ 3(b).
A restricted report allows a victim to confidentially disclose the assault to SARC, VAs, or healthcare providers in order to receive treatment and services.\textsuperscript{117} However, a restricted report does not trigger a law enforcement investigation and the command is notified only that an alleged sexual assault occurred, but is not provided the victim or offender’s name or any other personally identifiable information. While a victim who files a restricted report may convert it to an unrestricted report at any time, the converse is not the case – once a victim files an unrestricted report it may not be converted into a restricted report, although the victim can at any time decline to cooperate in the law enforcement investigation.\textsuperscript{118}

Some military professionals such as chaplains, legal assistance attorneys, defense counsel and Special Victims Counsel have protected, privileged, and confidential relationships with victims. A victim’s disclosure of a sexual assault to these professionals does not need to be reported to law enforcement or the command. None are permitted to accept a formally documented restricted report under DoD policy.\textsuperscript{119} However, if in the course of an otherwise privileged communication with a chaplain or legal assistance attorney, a victim indicates that he or she wishes to file a restricted report, the chaplain or attorney must facilitate contact with the SARC or VA for reporting purposes.\textsuperscript{120}

\textit{Incomplete Reports}

If a victim approaches a SARC or VA and begins to make a report, but then changes his or her mind and leaves without completing and signing the report, the SARC or VA is not required to inform investigators or commanders about the report and will not produce the report or disclose the communications surrounding the report.\textsuperscript{121}

\textit{Reports to a “Confidante” and Third Party Disclosure}

A victim’s communication with another person (e.g., roommate, friend, family member) does not, in and of itself, prevent the victim from later electing to make a restricted report. However, “if the person to whom the victim confided the information is in the victim’s chain of command or DoD law enforcement, there can be no restricted report.”\textsuperscript{122}

\textsuperscript{117} \textit{Id.} at encl. 4, ¶ 1b(3). While a chaplain or legal assistance attorney may engage in confidential communications with a victim to provide advice and support, DoD policy prohibits either from accepting a Restricted Report; a chaplain or legal assistance attorney must refer the victim to a SARC to make the official election of a Restricted or Unrestricted Report. \textit{Id.}

\textsuperscript{118} \textit{Id.} at encl. 4, ¶ 1.a,b.

\textsuperscript{119} \textit{Id.} at encl. 4, ¶ 1b(1), (3). A SARC, Victim Advocate, or Medical Professional may receive a restricted report; only a SARC, VA and Heath Care Provider may receive a restricted report. \textit{Id.}

\textsuperscript{120} \textit{Id.}

\textsuperscript{121} \textit{Id.} at encl. 4, ¶ 1.c(3).

\textsuperscript{122} \textit{Id.} at encl. 4, ¶ 1(e)(1).
When a commander or law enforcement official receives information about a sexual assault from an independent source, even if the victim has already made a restricted report, an independent investigation of the incident must begin, regardless of the victim’s wishes.\(^{123}\) However, if there was a restricted report made prior to the investigation, a victim’s communications with a SARC, VA or healthcare personnel, including the results of the SAFE, remain confidential and may not be disclosed unless a specific exception applies. All personnel involved with the investigation and prosecution of sexual assault cases should honor a victim’s decision at any time to decline to participate in an investigation or prosecution, although the investigation may continue regardless of the victim’s participation.\(^{124}\)

*Inadvertent or Improper Disclosures*

If a SARC, SAPR VA, or healthcare personnel make an unauthorized disclosure of a confidential communication [including restricted reporting], that person is subject to disciplinary action. Unauthorized disclosure has no impact on the status of the Restricted Report. All Restricted Reporting information is still confidential and protected. However, unauthorized or inadvertent disclosures made to a commander or law enforcement shall result in notification to the MCIO.\(^{125}\)

Section 1742 of the FY14 NDAA requires that commanding officers who “receive a report of a sex-related offense involving a member of the Armed Forces in the chain of command of such officer” must refer the report to the appropriate Service MCIO.\(^{126}\) There are currently no exceptions to this requirement, which caused issues for a victim, who told the Subcommittee:

The Victim Advocate that was assigned...actually was trying to figure out how to get me time off, to take care of the things that needed to be taken care of, and then when... [my supervisor] was called, and the word “victim” was mentioned. That made it go unrestricted.\(^{127}\)

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\(^{123}\) *Id.* at encl. 5, ¶ 3.h(1); *id.* at ¶ 1.f(1)

\(^{124}\) *Id.* at encl. 4, ¶ 1.f(2)

\(^{125}\) *Id.* at encl. 4, ¶ 5.e.

\(^{126}\) FY14 NDAA § 1742 (a), (b), 127 Stat. 672 (2013).

\(^{127}\) *Transcript from Subcommittee Meeting 43* (March 13, 2013) (testimony of Mr. I.C.).
And as for me, I, my gosh, I wanted to file a restricted report, but it was taken out of my hands by an inadvertent disclosure before I was even able to really get anything on paper.\textsuperscript{128}

The Services told the Subcommittee they are addressing the issue of inadvertent disclosure with education and training efforts to ensure Service members and first responders have a clear understanding of reporting options and the exceptions to Restricted Reporting.\textsuperscript{129} Victim advocates and other support personnel must facilitate access to support and assistance services without revealing personal information when they assist victims who desire that their sexual assault report remain restricted.

*Exceptions to Restricted Report Confidentiality*

There are several exceptions to the general rule that personally identifiable information, confidential communications, and Sexual Assault Forensic Examination (SAFE) kits associated with restricted reports are confidential. These exceptions generally include:

- When the victim authorizes disclosure in writing;
- When there is an imminent threat to the health or safety of the victim or another person;
- When required for fitness for duty or disability determinations;
- When required for coordination of direct victim treatment; or
- When required by law.\textsuperscript{130}

Additionally, healthcare personnel may convey to the victim’s unit commander any possible adverse duty impact related to the victim’s medical condition and prognosis, however, such circumstances do NOT otherwise warrant a restricted reporting exception to policy.\textsuperscript{131} Therefore, any confidential communications related to the sexual assault may not be disclosed.\textsuperscript{132} The SARC will evaluate the confidential information to determine whether an exception applies, but cannot disclose it until consulting with the command legal office. The SARC or VA must also inform the victim before disclosing information pursuant to an exception.\textsuperscript{133}

\textsuperscript{128} Id. at 42.

\textsuperscript{129} DoD 6495.02 at encl. 5 ¶7.a; see also FY12 SAPRO Report at 23.

\textsuperscript{130} DoD 6495.02 at encl. 4, ¶ 5.b(1) – (5).

\textsuperscript{131} DoD 6495.02 at encl. 4, ¶ 5.c.

\textsuperscript{132} Id.

\textsuperscript{133} Id. at encl. 4, ¶ 5.d.
G. Sexual Assault Crisis Line for Service Members

The DoD Safe Helpline, established in April 2011, is a secure and anonymous phone line that provides Active Duty, Reserve, and National Guard service sexual assault victims immediate crisis support and information about reporting and accessing victim services. DoD owns the Safe Helpline and operates it through a contract with the non-profit Rape, Abuse and Incest National Network (RAINN). The Safe Helpline provides an additional channel for adult Service members to seek one-on-one sexual assault assistance and crisis support tailored to their individual needs, securely and anonymously.

Safe Helpline staff members, many of whom are part time, are required to complete a background check and to seventy hours of training on sexual assault, the military, and the neurobiology of trauma. They also participate in monthly in-service trainings and receive clinical supervision and ongoing support from professional supervisors.

Safe Helpline has a database of military, civilian, and veteran services available to make referrals to callers requesting additional services including SARC and SAPR VA contact information for each of the Military Services, the National Guard and Coast Guard. It can transfer callers directly to installation-based SARCs, on-call SAPR VAs, as well as civilian rape crisis centers, Military OneSource, and to other various victim service entities. The service is intended to personally connect the victim with a resource representative for further assistance. If the local contact is unavailable, Safe Helpline staff procedure is to offer contact information to the caller to follow up with support personnel at a later time.

In addition to the phone line, a Service member may log on to the Safe Helpline website which allows users to receive live, one-on-one confidential help with a trained professional through a secure instant-messaging format. The website also provides vital information about

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135 Id.
136 Transcript from RSP Public Meeting, 96 (November 7, 2013) (Ms. Bette Stebbins Inch).
137 Id. at 98.
138 Id.
139 FY12 SAPRO Report at 30.
140 Id.
141 Id. The practice of directly connecting a victim to a service provider is known as a “warm hand-off.”
143 Transcript from RSP Public Meeting, 98 (November 7, 2013) (testimony of Ms. Bette Stebbins Inch).
recovering from and reporting sexual assault.\textsuperscript{144} The online helpline has “helped over 4,000 people . . . and it is a secure environment because . . . [SAPRO] wanted to ensure that this would be an anonymous service and that it would be confidential.”\textsuperscript{145} Safe Helpline texting capabilities also provide immediate, up-to-date contact information for SARC\textsc{es} and medical, legal, spiritual, and Military Police personnel.\textsuperscript{146}

Victims can also seek assistance by accessing the Safe HelpRoom and the Safe Helpline Application for smart phones.\textsuperscript{147} Mr. Scott Berkowitz, the Founder of RAIIN, told the RSP that, “[I]n a couple of ways, DoD victim care…is actually ahead of the civilian world. They’ve recognized that technology can be valuable and cost-effective in treating survivors . . . . this understanding has led DoD to create two services that have no civilian parallel: the Safe HelpRoom and Safe Helpline app.”\textsuperscript{148} The Safe HelpRoom is an online peer-to-peer support system which allows survivors in the military to help each other in a safe and anonymous community.\textsuperscript{149} “Well trained moderators provide help while the Service members themselves get to discuss the topics most important to them. It’s a tool that could be of great use in the civilian world . . . .”\textsuperscript{150} The Safe Helpline app enables survivors to create a “customized self-care plan, so it’s particularly useful for those who are stationed abroad.”\textsuperscript{151} Victims are able to “manage the short and long-term [e]ffects of sexual assault . . . [and to] create a tailored self-care plan that can be stored for future reference and access without internet connection.”\textsuperscript{152}

DoD’s intent is for the Safe Helpline to be the sole DoD hotline to provide crisis intervention and to facilitate victim reporting through connection to the nearest SARC and other resources, as warranted.\textsuperscript{153} However, each of the Military Services also has local base and installation SARCs or SAPR VAs, and advertises contact information for these individuals.\textsuperscript{154}

\textsuperscript{144} \textit{Id.}

\textsuperscript{145} \textit{Id.} at 99

\textsuperscript{146} \textit{Id.} at 97

\textsuperscript{147} \textit{Transcript from RSP public Meeting} 350 (November 7, 2013) (testimony of Mr. Scott Berkowitz, Founder and President of Rape, Abuse, and Incest National Network (RAINN)).

\textsuperscript{148} \textit{Id.}

\textsuperscript{149} \textit{Id.}

\textsuperscript{150} \textit{Id.}

\textsuperscript{151} \textit{Id.}

\textsuperscript{152} \textit{Transcript of RSP Public Meeting} 100 (November 7, 2013) (testimony of Ms. Bette Stebbins Inch).

\textsuperscript{153} DoDI 6495.02 at encl. 2, ¶ 6.y(1). However, the DoD Safe Helpline does not replace local base and installation SARC or SAPR VA contact information. \textit{Id.} at encl 2, ¶ 6.y(2).

\textsuperscript{154} See Fort Bragg SHARP Website available at \url{http://www.bragg.army.mil/18abc/SHARP/Pages/default.aspx}; see also Fort Hood SHARP Website available at \url{http://www.hood.army.mil/sharp}; Joint Base Lewis-McChord Washington SHARP website available at \url{http://www.lewis-mcchord.army.mil}; Marine Corps Base Quantico SAPR Website, available at
Not all of the local phone lines are staffed with personnel who answer the phone on a seven-day/twenty-four hour basis.\textsuperscript{155} In addition, not all the Military Services websites have the DoD Safe Helpline phone number listed as a primary twenty-four hour per day phone line for contact about a sexual assault incident or question.\textsuperscript{156} This can create confusion in military members who call a local number and receive a pre-recorded message, rather than a live person.\textsuperscript{157}

Safe Helpline staff members also conduct audits of the phone numbers the Military Services provide to ensure the phone numbers for SARC\textsuperscript{s} and VAs are current and accurate.\textsuperscript{158} Nevertheless, Subcommittee members heard from some victims and victim support personnel that victims are sometimes provided a phone number when personal contact is not made, and that the Safe Helpline provided some out of date or incorrect numbers.\textsuperscript{159}

In a DoD survey, sixty-six percent of women and seventy-three percent of men indicated that they are aware of the DoD Safe Helpline.\textsuperscript{160} However, some witnesses told the Subcommittee that it would be more helpful if the Safe Helpline number was easily remembered, such as the website, which is SafeHelpline.org.\textsuperscript{161}

\section*{H. Services Available to Military Sexual Assault Victims Filing a Restricted or Unrestricted Report}

Whether a sexual assault victim chooses to make a restricted or unrestricted report, the following DoD programs and personnel are available to provide support and assistance to military victims.

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\textsuperscript{155} Transcript of RSP Victim Service Subcommittee Meeting 115-16 (testimony of Ms. P.C.)(recounting her experience of calling a hotline number and receiving a recorded message).

\textsuperscript{156} See Fort Bragg SHARP Website available at \url{http://www.bragg.army.mil/18abc/SHARP/Pages/default.aspx}; see also Fort Hood SHARP Website available at \url{http://www.hood.army.mil/sharp}.

\textsuperscript{157} See, e.g., Transcript of RSP Victim Services Subcommittee Meeting 72 (March 13, 2014) (testimony of sexual assault victim identified as MS. PC)(indicating she called a hotline and was not going to leave a message after it went to voice mail).

\textsuperscript{158} Transcript from RSP Public Meeting, 98 (Nov. 7, 2013)(Testimony of Bette Stebbins Inch).

\textsuperscript{159} See Minutes from RSP Victim Services Subcommittee site visit, Joint Base San Antonio (December 13, 2013).

\textsuperscript{160} 2012 WGRA, at 5.

SARC and SAPR VA

A SARC is required to respond, in person, to every reported victim of a sexual assault, although the SARC may delegate this duty to a SAPR VA.162 SARCs and SAPR VAs must maintain 24/7 availability at each installation or deployed area.163 A SARC is responsible for providing victims non-clinical support and crisis intervention and assisting the victim in making an official incident report, restricted or unrestricted.164

Special Victims’ Counsel

Military sexual assault victims who make either restricted or unrestricted reports are eligible for Special Victim Counsel (SVC) representation.165 Immediately upon contacting a first responder, such as a SARC, SAPR VA, law enforcement or command, a sexual assault victim must be notified of his or her right to representation by an SVC, a brief description of the role of the SVC and an explanation that SVC may be declined or requested at any time.166

Medical Services

The FY 2014 NDAA requires assignment of a Sexual Assault Nurse Examiner (SANE) to all Military Treatment Facilities (MTFs) with 24-hour emergency departments. Other MTFs must have access to a SANE.167 Additionally, per DoD policy, sexual assault victims receive priority and are treated as emergency cases at all MTFs. A Sexual Assault Forensic Exam (SAFE) must be offered and encouraged.168

Mental Health Services

Sexual assault survivors are at increased risk for depression, anxiety, and PTSD, all of which confer functional limitations and have long-lasting effects on an individual’s well-being.169  Regardless of whether survivors are male or female, whether sexual abuse occurred

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162 DoDI 6495.02 at encl. 6, ¶ 1g(1),(2).
163 Id. at ¶ 4.i; id. at encl. 6, ¶ 1g.
164 Id. at encl. 6, ¶2b(2); id. at encl. 6, ¶ 1.h.
165 See UNITED STATES AIR FORCE SPECIAL VICTIM’S COUNSEL RULES FOR PRACTICE AND PROCEDURE, Rule 6 (July 1, 2013); see also UNITED STATES ARMY, SPECIAL VICTIM COUNSEL HANDBOOK, Chapter 1 (November 1, 2013); Transcript of RSP Public Meeting 106-45 (November 8, 2013) (testimony of SVC Program Heads).
166 UNITED STATES ARMY, SPECIAL VICTIM COUNSEL HANDBOOK, Chapter 2-1 (November 1, 2013). See section IV, infra, for a complete description of the SVC program and the Subcommittee’s findings and recommendations with regard to the program.
168 DoDI 6495.02 at ¶ 4.l.
169 Transcript of RSP Victim Service Subcommittee Meeting 235 (February 26, 2014) (testimony of CAPT Mike Colston).
prior to the military or during service, whether the manifestations are physical or emotional, DoD has policies and procedures in place to ensure…a structured, competent, coordinated continuum of care for survivors.”170

Community Services

Military sexual assault victims are also able to access community services. One of the responsibilities of SARCs and Family Advocacy DAVAs is community outreach to form relationships with community organizations that provide services to sexual assault victims such as rape-crisis centers, local hospitals and law enforcement. The DoD Helpline is an additional resource to connect victims with community resources beyond services available on the installation or base.

I. Services Available with Unrestricted Sexual Assault Reports

There are additional programs available to the victim who makes an unrestricted report of sexual assault beyond those available to those who make a restricted sexual assault report in the military.

Expedited Transfer

Since 2011, victims who make an unrestricted report of sexual assault have the option to request an expedited transfer from their assigned command or base.171 The SARC, VA, or the Service member’s commanding officer (CO) must notify the Service member of the option to request a temporary or permanent expedited transfer from their assigned command or installation at the time of the report, or as soon as practicable.172

Once the victim makes the request and the commander determines that the report of sexual assault is credible173 the commander must process the transfer request within 72 hours.174 If a commander denies the request for transfer, it must go to the first general officer in the chain

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170 Id. at 235-236.
172 Id.; see also DoDI 6495.02 at encl.5 ¶5.b.
173 See DTM 11-063. A credible report determination is made after considering the advice of the supporting judge advocate, or other legal advisor concerned, and the available evidence based on an MCIO’s investigations information. Id.; see also, DoDI 6495.02 at encl.5 ¶ 5.b(5).
174 See DTM 11-063; see also, Transcript from RSP Public Meeting 160 (November 7, 2013) (testimony of Dr. Christine Altendorf, U.S. Army, Director, Sexual Harassment/Assault Response and Prevention (SHARP)).
of command, who will endorse the transfer or forward the request to a higher level to make the final determination.\footnote{Transcript from RSP Public Meeting 160 (November 7, 2013) (testimony of Dr. Christine Altendorf, U.S. Army, Director, Sexual Harassment/Assault Response and Prevention (SHARP)).}

One Air Force SARC told the RSP, “[w]ith the program changes that have been made since 2005 until now, I think expedited transfers have been huge for victims . . . .”\footnote{Transcript of RSP Public Meeting, 233 (November 7, 2013) (testimony of Master Sergeant Stacia Rountree, U.S.A.F., Victim Advocate, 11th Wing, Andrews AFB).} Victim advocate groups also attest to the necessity of this policy for victim care. In his testimony before the Response Systems Panel, Mr. Greg Jacob, the Director for the Service Women’s Action Network, acknowledged, “. . . policies that allow victims to transfer away from hostile units . . . go a long way in ensuring that victims are not in continued jeopardy.”\footnote{Transcript of RSP Public Meeting, 339-340 (November 7, 2013) (testimony of Mr. Greg Jacob, former Marine, Policy Director, Service Women’s Action Network (SWANN)).}

Representatives from each Military Service told the RSP that ninety-nine to one-hundred percent of expedited transfer requests were approved within the individual Services.\footnote{See generally Transcript of RSP Public Meeting, 160-66 (November 7, 2013) (testimony of SAPR and SHARP Program Heads).} In 2012, 216 of 218 requests for expedited transfer made by victims from all Military Services were approved.\footnote{FY12 SAPRO Report at 3.}

However, expedited transfers are not available to those who file a restricted report.\footnote{DoDI 6495.02 at encl. 5, ¶ 5.b(2).} If a Service member files a restricted report and requests an expedited transfer, the Service member must convert his or her restricted report to an unrestricted report to qualify for the transfer.\footnote{Id. at encl. 5, ¶ 5.b(2)(b).}

This results in a difficult choice for some victims, particularly when the offender lives or works nearby. For example, one victim told the Subcommittee that, despite her preference to keep her report restricted, she had to convert it to unrestricted in order to move away from her assailant, who lived next door. She stated, “[w]hile I had filed a restricted report, I was unable to have my room moved due to clauses in [the reporting requirements], where if your command is notified, it automatically becomes unrestricted. So I lived next to the person that assaulted me for two weeks after [the assault occurred].”\footnote{Transcript of RSP Victim Service Subcommittee Meeting 27 (March 13, 2014) (testimony of Ms. P.C.).}
Command Support

A unit commander who receives an unrestricted report of an incident of sexual assault is required to immediately refer the matter to the appropriate Military Criminal Investigation Organization (MCIO).\textsuperscript{183} A commander can issue a Military Protective Order (MPO) to provide for the victim’s protection from the offender if necessary\textsuperscript{184} and may consider moving the alleged offender out of the unit, rather than the victim. The commander can ensure that a victim is receiving needed services and is not ostracized or bullied by others in the unit.

“Eight-Day” Report

The FY 2014 NDAA requires an incident report be provided\textsuperscript{185} to the installation commander, the first officer in the grade of O-6, and the first general officer or flag officer in the chain of command of the victim and the offender (if the offender is a member of the Armed Forces), within eight days of a Service member filing an Unrestricted Report.\textsuperscript{186} In addition to ensuring that unrestricted reports of sexual assault have been referred to the appropriate investigatory agency, the report details actions taken, or in progress, to provide the necessary care and support to the sexual assault victim.\textsuperscript{187} These actions include connecting the victim to a SARC for referral to available services, the dates of such referrals, whether a request for expedited transfer has been made and if so, the processing status, and issuance of any military protective orders in connection with the incident.\textsuperscript{188} These reports are in addition to mandatory SARC notification of either a restricted or unrestricted report of sexual assault to the installation commander within 24 hours.\textsuperscript{189}

Victim-Witness Liaison (VWL)

In general, the law enforcement official or commander responsible for the investigation will inform the victims and witnesses of their right to receive victim/witness services as soon as the investigator is involved in the case. The law enforcement official will assist the victim in contacting the VWL or provide the contact information to the victim. This notification is

\textsuperscript{183} DoDI 6495.02, at encl. 2, ¶ 6.i(3).
\textsuperscript{184} See id. at encl. 5, ¶ 6 (Military Protective Orders).
\textsuperscript{185} FY14 NDAA, at § 1743 (a), 127 Stat. 672 (2013). The statute only specifies that the report is to be submitted by a “designated person.” Id.
\textsuperscript{186} Id.
\textsuperscript{187} Id. at § 1743(b).
\textsuperscript{188} Id. at § 1743(c)(E)(i)-(iv).
\textsuperscript{189} DoDI 6495.02, at encl. 4, ¶ 4.a.
mandatory by DoD policy and is included in DD Form 2701, detailing a victim’s rights, which must be provided to the victim and/or witness immediately upon initiation of an investigation.\textsuperscript{190}

\begin{quote}
Case Management Group Oversight
\end{quote}

To ensure sexual assault victims are provided the services and support they need, a multidisciplinary team, known as a case management group (CMG),\textsuperscript{191} is required to meet on a monthly basis to review and assess actions in response to unrestricted reports of sexual assault, facilitate monthly victim updates, and direct system coordination, accountability, entry of disposition and victim access to quality service.\textsuperscript{192} CMG members carefully consider and implement measures to help facilitate and assure the victim’s well-being and recovery from the sexual assault, closely monitor the victim’s progress and recovery, and confirm that each victim has been informed of available SAPR services, such as counseling, medical care, and legal resources without violating victim confidentiality.\textsuperscript{193} Case management groups are generally known in civilian communities as a Sexual Assault Response Team (SART).

The installation commander chairs CMG meetings. The CMG also includes the installation SARC as co-chair, the commander for each victim who’s case is being reviewed, all SARCs assigned to the installation, each victim’s VA, MCIO representatives working on a particular case, medical and mental health providers, members of the Staff Judge Advocates Office, and Victim Witness Assistance Program (VWAP) representatives.\textsuperscript{194} Each entity is responsible for discussing its individual role in facilitating victim care following a reported sexual assault. One SARC explained the CMG meetings as, “[a]n important tool that helps us to [ensure victim’s needs are met] is the [CMG] meeting. As a SARC, I serve as the co-chair of this meeting with the installation commanding officer where we discuss individual cases to ensure victim care as well as address any systemic issues needing improvement. Additionally, to ensure victim safety, we have a designated individual at the meeting whose responsibility is to provide ongoing safety assessments as the case progresses.”\textsuperscript{195}

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\textsuperscript{190} See DoDI 1030.02 at ¶ 6.1. \\
\textsuperscript{191} The Army refers to these groups as Sexual Assault Review Boards (SARBs). \\
\textsuperscript{192} See DoDI 6495.02. at encl. 9. \\
\textsuperscript{193} See id. at encl. 9 ¶ 2. \\
\textsuperscript{194} Id. at ¶ 1.c. \\
\textsuperscript{195} Transcript of RSP Public Meeting 237 (November 7, 2013) (testimony of Ms. Liz Blanc, U.S. Navy, SARC, National Capital Region).
\end{flushright}
The Response Systems Panel has not yet considered or deliberated on the contents of this report.
• Training VAs. 206
• Providing each commander with one-on-one SAPR training within 30 days of him or her taking command. This training includes a trends brief for units and areas of responsibility and the confidentiality requirements for restricted reporting. 207

Victim Care
• Performing the duties of a VA, when needed. 208
• Responding, in person, to every reported sexual assault victim, or assigning a VA to do so. 209

Program Management
• Reporting an unrestricted or restricted (without personally identifying information) sexual assault report to installation commander within 24 hours of an official report. 210
• Facilitating the development and collaboration of SAPR public awareness campaigns, including planning local events for Sexual Assault Awareness Month, and publicizing the DoD Safe Helpline on all outreach materials. 211
• Acting as a liaison with commanders, DoD law enforcement, MCIOs, and civilian authorities, as appropriate, for the purpose of facilitating victim advocacy 24 hours a day, 7 days a week, for all reported sexual assaults occurring either on or off the installation involving Service members and other persons covered by DoD policy. 212
• Assessing the potential impact of State laws governing the reporting requirements for adult sexual assault that may affect compliance with the Restricted Reporting option and develop or revise applicable Memoranda of Understanding and Memoranda of Agreement, as appropriate. 213
• Collaborating with Medical Treatment Facilities (MTFs) within their respective areas of responsibility to establish protocols and procedures for direct notification

206 Id.
207 Id. at encl. 5, ¶ 3.b.
208 Id. at encl. 6, ¶ 1.a.
209 Id. at encl. 6, ¶ 1.h(5).
210 Id. at encl. 6, ¶ 1h(5). This notification may be extended to 48 hours after the Unrestricted Report of the incident if there are extenuating circumstances in the deployed environments. Id.
211 Id. at encl. 6, ¶ 1h(13).
212 Id. at encl. 6, ¶ 1h(17).
213 Id. at encl. 6, ¶ 1h(18). SARCs must consult with command legal representatives, healthcare personnel, and MCIOs, for advice and coordination. Id.
of the SARC and SAPR VA for all reported sexual assaults, and facilitating ongoing training of healthcare personnel on the roles and responsibilities of the SARC and SAPR VAs.\textsuperscript{214}

- Collaborating with local private or public sector entities that provide medical care to Service members or TRICARE eligible beneficiaries who are sexual assault victims and a Sexual Assault Forensic Exam (SAFE) outside of a military installation through a Memorandum of Understanding or Memorandum of Agreement and providing off-installation referrals to the sexual assault victims, as needed.\textsuperscript{215}

- Securing victim consent to transfer case management documents when a victim has a temporary or permanent change of station or deployment. Upon receipt of victim consent, expeditiously transferring case management documents to ensure continuity of care and SAPR services.\textsuperscript{216}

- Documenting and tracking the services referred to and requested by the victim from the time of the initial report of a sexual assault through the final case disposition or until the victim no longer desires services.\textsuperscript{217}

- Entering information into the Defense Sexual Assault Incident Database (DSAID) or Military Service DSAID-interface within 48 hours of the report of sexual assault.\textsuperscript{218}

- Providing information to assist installation commanders manage trends and characteristics of sexual assault crimes at the Military Service-level and mitigate the risk factors that may be present within the associated environment (e.g., the necessity for better lighting in the showers or latrines and in the surrounding area).\textsuperscript{219}

- Participating in the CMG that reviews individual cases of unrestricted sexual assault.\textsuperscript{220}

\textsuperscript{214} Id. at encl. 6, ¶1.h(19).

\textsuperscript{215} Id. at encl. 6, ¶ 1.h(20).

\textsuperscript{216} Id. at encl. 6, ¶ 1.h(21). If the SARC has already closed the case and terminated victim contact, no other action is needed. Id.

\textsuperscript{217} Id. at encl. 6, ¶ 1.h(22).

\textsuperscript{218} Id. at encl. 6, ¶ 1.h(22)(a). In deployed locations that have internet connectivity issues, the time frame is extended to 96 hours. Id.

\textsuperscript{219} Id. at encl. 6, ¶ 1.h(23).

\textsuperscript{220} Id. at encl. 6, ¶ 1.h(24) (a) The installation SARC shall serve as the co-chair of the CMG. This responsibility is not delegable. If an installation has multiple SARC on the installation, a Lead SARC shall be designated by the Service concerned, and shall serve as the co-chair. Id. (b) Other SARC and SAPR VAs shall actively participate in each CMG meeting by presenting oral updates on their assigned sexual assault victim cases, providing recommendations and, if needed, seeking assistance from the chair or victim’s commander. Id.
In the 2012 QuickCompass survey of SARC across the Services, the foremost challenge mentioned was that the SARC “has too many responsibilities to effectively perform all of the duties required of the job.” In the survey, only fifty-two percent agreed that they had sufficient time to complete SARC duties. SARCs and VAs related similar concerns to Subcommittee members on site visits. Another frequently mentioned challenge was “the lack of administrative or other staff support to perform all of the functions required to manage caseloads and perform training.” The change most recommended by the SARCs was to make all SARCs full-time, preferably civilian, positions.

While the SARC primarily provides management and oversight of victim services, SAPR VAs provide 24/7 direct assistance to victims seeking help. VAs are expected to help victims “navigate the military’s response network.” “VAs are not counselors, therapists or investigators, rather they are there to furnish accurate and comprehensive information on available options and resources.” VAs “educate victims so they can make informed decisions about their care and involvement in the investigative process.”

SAPR-VAs have three primary duties. First, VAs must be trained in and understand the confidentiality requirements of restricted reporting and the privilege between military victim advocate and victim codified in Military Rule of Evidence 514, including its exceptions. Second, VAs must facilitate care and provide referrals and non-clinical support to adult sexual assault victims. Third, the VA is directly

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221 DEFENSE MANPOWER DATA CENTER, 2012 QUICKCOMPASS OF SEXUAL ASSAULT RESPONSE COORDINATORS, SURVEY NOTE [hereinafter 2012 SARC QuickCompass] (March 1, 2013). The 2012 QuickCompass of Sexual Assault Response Coordinators (2012 QSARC) is a replication of a survey of SARCs performed by the Defense Manpower Data Center (DMDC) in 2009 at the request of the Defense Task Force on Sexual Assault in the Military Services (DTFSAMS). Id. The survey is designed to assess the effectiveness of SAPR programs within the Services and Reserve components in areas including resources, procedures, programs, and outreach. Id. The 2012 QSARC was fielded July to August 2012 and completed surveys were received from 289 of 606 surveyed installation SARCs provided to DMDC by Service SAPR program managers. Id. The overall weighted response rate was 52%. Id.

222 Id. at 4.

223 Id. at 2.

224 See Minutes from RSP Victim Services Subcommittee site visit, Fort Hood, Texas (December 9, 2013).

225 2012 SARC QuickCompass at 4.

226 FY07 SAPRO Report at 6.

227 Id.

228 Id.

229 Id.


231 DoDI 6495.02, encl. 6, ¶ 2.a(3).
accountable to the SARC for providing victim advocacy for adult sexual assault victims. 232

Per DoD policy, SARC and VAs may be civilian or uniformed. They must be credentialed by the Defense Sexual Assault Advocate Certification Program (D-SAACP), undergo a National Agency Check background investigation, and must not have a qualifying conviction for a crime of sexual assault or be required to be registered as a sex offender. 233 The Services have varying additional requirements, commonly flexible schedules, outstanding duty performance evaluations, good communication skills, and emotional maturity. 234

DoD policy does not determine rank and pay grade for SARC and VAs. As a result, there are considerable variations between the Services for the minimum qualification and experience requirements for SARC and VA positions. 235 While the criteria vary slightly, most civilian SARC and VAs who are hired to work within the military’s SAPR program are required to have a victim advocacy background, a bachelor’s degree in a related field and one to three years’ experience with victims. 236 Generally, the SARC recruit, select and train the VAs. 237

In the FY 2012 NDAA, Congress emphasized the importance of SARC and VA training by codifying a mandate for the Secretary of Defense to establish a professional and uniform training and certification program for SARC and VAs. 238 To fulfill this requirement, SAPRO established the DoD Sexual Assault Advocate Certification Program (D-SAACP) in 2012 to standardize and professionalize the roles of SARC and VAs across the Services. 239

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232 Id. at encl. 6, ¶ 2.a(3)(b).
233 Department of Defense, Directive-Type Memorandum 14-001, Defense Sexual Assault Advocate Certification Program (D-SAACP), Attachment 2, ¶ 4.a (January 14, 2014); DoDI 6495.02, at encl. 6, ¶ 1.b. In the application packet, the applicant has to sign a Code of Professional Ethics that they will follow. They have to submit two letters of recommendation, and there are four levels of certification that the applicant can apply for. Id. They have to submit two letters of recommendation, one from their immediate supervisor, one from their commander. Id.
234 Services’ Responses to Request for Information 8a, 9a, 10a, 11a (November 7, 2013).
235 Id. For uniformed SARC, the Air Force allows only commissioned officers at the captain level (O-3) or above; the Army and Marine Corps require SARC to be at least a major (O-4) or chief warrant officer 3; the Army also allows sergeants first class; the Navy has no rank requirements; and the Coast Guard has only civilian SARC. Id. As for civilian SARC, the minimum pay grade ranges by Service from GS-9 level (the Navy and Marine Corps) to GS-12 (Air Force and Coast Guard). Id.
236 Id.
237 Id.
238 National Defense Authorization Act for Fiscal Year 2012, Pub. L. No. 112-81, [hereinafter, FY12 NDAA], § 584; see also DoD SAPRO, Observation of Sexual Assault Response Coordinator (SARC) and Victim Advocate (VA) Sexual Assault Prevention and Response Training: Report to the U.S. Army 2 (January 22, 2013); Under Secretary of Defense for Personnel and Readiness, Performance Work Statement for DoD Sexual Assault Advocate Certification Program (D-SAACP) 2 (January 7, 2012); Defense Task Force on Sexual Assault in the Military Services (DTF-SAMS) Report Recommendation 6a, (December 1, 2009).
239 Under Secretary of Defense for Personnel and Readiness, Performance Work Statement for DoD Sexual Assault Advocate Certification Program (D-SAACP), Section 1.1 (January 7, 2012).
certification program was developed in collaboration with civilian subject matter experts from the Department of Justice’s Office of Victims of Crime, National Organization of Victim Advocates (NOVA), the National Advocate Credentialing Program (NACP), and the National Victim Assistance Standards Consortium.  

DoD standards for victim assistance services apply to: 1) the SAPR Program, 2) the Family Advocacy Program (FAP), 3) the Victim Witness Assistance Program (VWAP), and 4) the Military Equal Opportunity Program. The DoD policy is based on standards established by the National Victim Assistance Standards Consortium in 2003, and categorizes its provisions into the areas of competency, ethics, and “foundational” standards. There are fifty-one specific standards that victim assistance personnel are expected to understand and meet.

The D-SAACP has three program objectives: 1) to provide a national credential for SARCs and VAs, 2) to establish a competency framework for training SARCs and VAs, and 3) to develop an oversight and evaluation plan to train DoD personnel to provide advocacy services.

As of October 1, 2013, all SARCs and VAs must be certified by D-SAACP prior to beginning SAPR duties. To receive certification, an applicant must first complete 40 hours of NACP-approved victim advocacy training. In addition, each SARC and VA must complete an application, submit two letters of recommendation, sign a Code of Professional Ethics, and complete a National Agency Check (NAC) to be eligible for certification. In order to maintain the certification, SARCs and VAs complete thirty-two hours of NACP-approved continuing education training every two years and certifications may be revoked at any time for failures to

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240 Id.
243 Id. at encl. 2.
244 Id.
245 Id.
246 Id.
248 DEPARTMENT OF DEFENSE, DIRECTIVE-TYPE MEMORANDUM 14-001, DEFENSE SEXUAL ASSAULT ADVOCATE CERTIFICATION PROGRAM (D-SAACP), Attachment 2, ¶ 4.a, 4.b(1) (January 14, 2014); see also DEPARTMENT OF DEFENSE, FORM 2950, DEPARTMENT OF DEFENSE SEXUAL ASSAULT ADVOCATE CERTIFICATION PROGRAM APPLICATION PACKET (October, 2012).
meet program standards or misconduct. According to the NOVA website, all of the Services have NACP-approved training programs. There are four levels in the Certification Program. Level one is intended for uniformed, collateral duty SARC and requires successful completion of the certification training and two letters of recommendation, but no experience. Level two is for full-time SARC and VA, and requires 3,900 hours of sexual assault victim advocacy experience. Level three requires 7,800 hours of victim advocacy experience; level four requires 15,600 hours of victim advocacy experience.

SAPRO conducted a training observation for each Service and the National Guard Bureau and issued a report for each Service, assessing the extent to which standards and policy requirements are effectively incorporated into the training of SARC and VA. These reviews focused on evaluating training practices and methods as well as evaluating course content against DoDI 6495.02, DoD Standards for Victim Assistance Services and the D-SAACP SARC/VA competency framework.

DoD SAPRO deployed teams of military personnel along with training and subject matter experts to observe training courses to conduct the training observations. The style and content of the report produced after observation of the training of each Service’s course were not consistent, indicating that standardized evaluation criteria were not used to evaluate programs.

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249 Under Secretary of Defense for Personnel and Readiness, Performance Work Statement for DoD Sexual Assault Advocate Certification Program (D-SAACP) (January 7, 2012).


251 Under Secretary of Defense for Personnel and Readiness, Performance Work Statement for DoD Sexual Assault Advocate Certification Program (D-SAACP), ¶ 4 (January 7, 2012).

252 See DoD SAPRO, OBSERVATION OF SEXUAL ASSAULT RESPONSE COORDINATOR (SARC) AND VICTIM ADVOCATE (VA) SEXUAL ASSAULT PREVENTION AND RESPONSE TRAINING: REPORT TO THE U.S. ARMY 2 (January 22, 2013). “This report is in response to the requirement in DoDI 6495.02 for Services and the National Guard Bureau to submit a copy of their SAPR training programs, or SAPR training elements, to the Under Secretary of Defense (Personnel & Readiness) through the SAPRO for evaluation of consistency and compliance with DoD SAPR training standards contained in DoDI 6495.02.” Id. at 2; see also DoD SAPRO, OBSERVATION OF SEXUAL ASSAULT RESPONSE COORDINATOR (SARC) AND VICTIM ADVOCATE (VA) SEXUAL ASSAULT PREVENTION AND RESPONSE TRAINING: REPORT TO THE U.S. AIR FORCE (January 31, 2013); DoD SAPRO, OBSERVATION OF SEXUAL ASSAULT RESPONSE COORDINATOR (SARC) AND VICTIM ADVOCATE (VA) SEXUAL ASSAULT PREVENTION AND RESPONSE TRAINING: REPORT TO THE U.S. NAVY (March 8, 2013); DoD SAPRO, OBSERVATION OF SEXUAL ASSAULT RESPONSE COORDINATOR (SARC) AND VICTIM ADVOCATE (VA) SEXUAL ASSAULT PREVENTION AND RESPONSE TRAINING: REPORT TO THE U.S. MARINE CORPS (February 22, 2013); DoD SAPRO, OBSERVATION OF SEXUAL ASSAULT RESPONSE COORDINATOR (SARC) AND VICTIM ADVOCATE (VA) SEXUAL ASSAULT PREVENTION AND RESPONSE TRAINING: REPORT TO THE NATIONAL GUARD BUREAU (January 25, 2013).

253 See id.

254 See id.
The Response Systems Panel has not yet considered or deliberated on the contents of this report.

Each report detailed strengths of SARC and VA training and provided recommendations for improvement. Consequently, none of the reports are directly comparable, and do not provide the necessary information for evaluating the consistency of training across the Services.

2. Family Advocacy Domestic Abuse Victim Advocates (DAVA)

Since 2004, DAVAs have been a required component of DoD FAP. The advocates are considered crucial to the FAP program because they are “sometimes the first person who sees the victim, who walks into the process, gets them to their court appointment, helps them get a civilian protection order if needed, help talk to the command about military protection orders; they are with the victim at any location and help them through the whole process.”

FAP continues to handle domestic sexual abuse because it “ha[s] the licensed clinicians…the treatment and it has just been in existence and what [they]’ve done all these years and it’s working.” SAPR handles all other sexual assault cases. There is still cross-over with FAP and SAPR programs in several areas. For instance, domestic abuse cases are frequently reported via the Safe Helpline. The FAP program, like SAPR, offers a restricted reporting option for adult domestic abuse victims who wish to obtain services without involving law enforcement or command. Adult domestic sexual assault victims are also eligible for Special Victim Counsel. The installation SARC and the installation FAP must coordinate when a sexual assault occurs within a domestic relationship or involves child abuse.

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255 See id.
256 See id.
257 Transcript of RSP Victim Service Subcommittee Meeting 244 (February 26, 2014) (testimony of Katherine Robertson, DoD Family Advocacy Program Manager); See DEFENSE TASK FORCE ON DOMESTIC VIOLENCE (DTFDV) – 2003 THIRD YEAR REPORT (2003) (One of the recommendations from the DTFDV established by Congress in 2000, was for DoD to implement a “Victim Advocate Program” system-wide and to establish collaborative partnerships and working agreements with local civilian authorities). Id. at vii.
258 Transcript of RSP Victim Service Subcommittee Meeting 245 (February 26, 2014) (testimony of Katherine Robertson).
259 Id. at 247.
260 Id. at 256.
261 See DoDI 6400.06 encl. 3; see also Transcript of RSP Victim Service Subcommittee Meeting 244 (February 26, 2014) (testimony of Katherine Robertson). A domestic violence Restricted Report may be made to a victim advocate, a FAP clinician, or healthcare providers, allowing a victim to get services, medical treatment, and counseling without command or law enforcement being notified. Id.
262 Transcript of RSP Victim Service Subcommittee Meeting 249 (February 26, 2014) (testimony of Katherine Robertson).
263 DoDD 6495.01 at ¶ 2.a(3); See also DoDI 6495.02, at ¶ 2.b(2).
DAVAs are organized differently by Military Service. For instance, in the Navy and Marine Corps, the FAP is its own line function operating closely with medical assets for consultation, evaluation, and treatment.\textsuperscript{264} In the Air Force, the FAP is integrated into the medical system. Army FAP offers clinical services under the medical system, while Army Community Service conducts prevention services.\textsuperscript{265}

DAVAs must have a bachelor’s or master’s degree in a social science, victim advocate certification, and a minimum of two years’ experience working in the field of domestic violence advocacy.\textsuperscript{266} In addition to victim advocates, FAP also employs prevention staff for training and outreach.\textsuperscript{267} These primary prevention educators are also required to have a bachelor’s or master’s degree with family service agency experience.\textsuperscript{268}

3. Case Management of SAPR and FAP Programs

The SARC must enter information into the Defense Sexual Assault Incident Database (DSAID) or Military Service DSAID-interface within 48 hours of receiving a restricted or unrestricted sexual assault report.\textsuperscript{269} The SARC must continue to document and track the services referred to, and requested by, the victim from the time of the initial report of a sexual assault through the final case disposition, or until the victim no longer desires services.\textsuperscript{270}

For case management within the FAP program, each Service captures incident data in Service-specific case management systems.\textsuperscript{271} This data is entered by the clinician or administrative staff.\textsuperscript{272} In addition to the case management systems, child maltreatment and domestic abuse data is entered into an automated DoD central registry managed by the Defense

\textsuperscript{264} DEFENSE TASK FORCE ON MENTAL HEALTH 13 (2007).
\textsuperscript{265} Id.
\textsuperscript{266} Transcript of RSP Victim Service Subcommittee Meeting 241 (February 26, 2014) (testimony of Katherine Robertson); see also Katherine Robertson, LCSW, “Department of Defense Family Advocacy Program (FAP) Overview,” PowerPoint presentation to RSP Victim Services Subcommittee (Feb 13, 2014).
\textsuperscript{267} Transcript of RSP Victim Services Subcommittee Meeting 241 (February 26, 2014) (testimony of Katherine Robertson, DoD Family Advocacy Program Manager).
\textsuperscript{268} Id.; see also Katherine Robertson, LCSW, “Department of Defense Family Advocacy Program (FAP) Overview,” PowerPoint presentation to RSP Victim Services Subcommittee (Feb 13, 2014).
\textsuperscript{269} DoDI 6495.02, encl. 6, ¶ 1.h(22)(a). In deployed locations that have internet connectivity issues, the time frame is extended to 96 hours. Id.
\textsuperscript{270} Id. at encl. 6, ¶ 1.h(22).
\textsuperscript{271} Melvina Thornton, DoD FAP, “DAVA response to RSP Victim Services Subcommittee” (April 22, 2014) on file with the RSP.
\textsuperscript{272} Id.
The central registry includes information on (1) unsubstantiated reports not linked to an identifiable individual and (2) information on substantiated reports linked to identifiable active duty and retired Service members, DoD civilian employees, contractors and their family members. The purpose of central registry is not case management, but to analyze the scope of child maltreatment and domestic abuse to inform policy decisions, to support replies to public, congressional, and other government inquiries, to conduct FAP workload analysis, to support empirically based budget projections and to conduct background checks on applicants for employment in DoD sanctioned child care organizations. As a result of these separate databases, the military sexual assault data reported annually by SAPRO does not include domestic and intimate partner sexual assaults.

4. Staffing and Workload of SAPR and Family Advocacy Victim Advocates

The structure of SARC and VA positions varies. Most bases have a full-time “installation” SARC who reports directly to the installation commander. Some Services require a civilian SARC while others have both uniformed and civilian installation SARCs. There are also “command” SARCs who are typically uniformed and work for an operational commander rather than for the installation. These SARCs are generally deployable and often perform the position as a collateral duty.

Typically, there is at least one full-time VA at the installation level. Like SARCs, at least one full-time equivalent VA is required to be assigned to each brigade-sized unit. The installation VAs may be either uniformed or civilians in most Services. Below the brigade level, most VAs are uniformed and have the position as a collateral or volunteer duty.

During Subcommittee site visits, SARCs and VAs told members of the Subcommittee that many VAs never handle an actual sexual assault case because there are far more VAs than
sexual assault reports. Subsequently, some of the VAs indicated they felt unprepared to actually handle a case.

In contrast to the SAPR Program, the FAP is staffed by 1,900 clinicians, victim advocates, installation officers, educators and support personnel across all of the Services. While many of these employees do not deploy, they do not encounter the situation experienced by some part time SAPR VAs of rarely handling a case on their own.

**K. Victim Witness Liaison (VWL)**

The objective of the Victim Witness Assistance Program (VWAP) is to lessen the effects of crime on victims and witnesses by helping them understand and participate in the military justice process and to ensure that the victims’ rights are protected. Each Service requires the appointment of a VWL to crime victims to implement the DoD policy requirements. The VWL works for the commander or local staff judge advocate and serves as the victim’s primary point of contact for information and assistance in securing available victim/witness services. The VWAP is not limited to sexual assault victims or those cases prosecuted at courts-martial. Instead, VWAP services are available to all crime victims and witnesses whose cases DoD entities are investigating.

A VWL will ensure that a victim remains informed of his or her rights throughout the military justice process. This includes the right to notification of certain court-martial proceedings, the right to consult with the trial counsel on decisions regarding case disposition, and notification of all available resources. The VWL will also assist the victim or witness in

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283 See Minutes from RSP Victim Services Subcommittee site visit, Fort Hood, Texas (December 9, 2013).
284 Id.
285 Transcript of RSP Victim Services Subcommittee Meeting 254, 241 (February 26, 2014) (testimony of Katherine Robertson).

In the Marine Corps and the Navy, this position is known as the Victim Witness Assistance Coordinator. See OPNAVINST 5800.7A; MCO 5800.14. However, for purposes of clarity, we will refer to this position as a Victim Witness Liaison throughout this report.

288 The DoD policy does not set forth an organizational or structural requirement. Therefore, the staffing and organization of the programs vary between the Services.
289 See generally AR 27-10; see also AFI 51-201; MCO 5800.14; OPNAVINST 5800.7A,
290 See id.
291 See id.
292 See DoDI 1030.02, at ¶¶ 6.1, 6.2, 6.3.
The Response Systems Panel has not yet considered or deliberated on the contents of this report.293 During the court-martial of the alleged offender, the liaison coordinates with the case paralegal and the legal office to make all necessary victim and witness travel arrangements and to separate him or her from the accused during the trial.294 Because the VWL works for the installation legal office, confidentiality does not exist between the victim or witness and the VWL.295

The role of the VWL in the military is one of facilitator and coordinator, not advocate. The VWL’s responsibilities include:

- providing victims and witnesses information about available military and civilian emergency medical and social services, advocacy services, military protective orders, restitution, and other available services;
- assisting the victim’s receipt of those services;
- providing the victim with information about the military justice system and notification of certain hearings during that process;
- ensuring the victim is able to consult with government representatives at certain points during the court-martial process; and
- notifying a victim of an offender’s confinement status following the court-martial.296

Additionally, when appropriate, the VWL consults with victims concerning decisions not prefer charges, pretrial restraint, pretrial dismissal of charges, and negotiations of pretrial agreements and their potential terms.297 This consultation may be limited when justified by the circumstances.298 The VWL may act as an intermediary between the defense, prosecution, and the victim or witness. The VWL’s role as an intermediary is to ensure victims and witnesses are treated with respect and that there is minimal interference with their lives and privacy.299 Following the trial, the VWL notifies victims of their post-trial rights and ensures the victim is put in contact with a VWL at the offender’s confinement facility.300

293 See Transcript of RSP Public Meeting 221 (November 7, 2013) (testimony of Ms. Christa Thompson, U.S. Army Victim Witness Liaison at Fort Carson, Colorado).

294 See id.


297 See id.

298 See id.

299 See id.

300 See id.
In general, the law enforcement official or commander responsible for the investigation will inform victims and witnesses of their right to receive victim/witness services. DoD policy mandates this notification using a form commanders or investigators must provide the victim and/or witness immediately upon initiation of an investigation. After notifying the victim or witness of the right to assistance, the commander or law enforcement agent provides the victim and/or witness with contact information for the local VWL and helps contact the office, if requested.\(^{301}\) The victim or witness may also contact the VWL directly.\(^{302}\) However, the VWL is not a reporting entity for purposes of reporting sexual assault and communications with the VWL are not privileged since the VWL works for the Staff Judge Advocate or installation commander.\(^{303}\)

**Eligibility and Background**

DoD policy does not require a certain rank or pay grade for an individual to serve as a VWL. DoD merely requires “victim assistance personnel [to] maintain standards of competence. Additionally, they must “exercise careful judgment, apply flexibility and innovative problem solving, and take appropriate precautions to protect victims’ welfare under the guiding principle of ‘do no harm’.”\(^{304}\) As a result, the Services vary considerably in the rank or experience level required of VWLs.

**Training Requirements**

DoD policy also does not set forth specific training requirements for those selected to serve as a VWL. Rather, the Secretaries of the Military Services must “establish a training program to ensure [victim witness assistance personnel] receive instruction to assist them in complying” with DoD policy.\(^{305}\) In most of the Services, the Staff Judge Advocate or commander is responsible for providing VWAP training to representatives of all agencies performing victim/witness assistance functions within their jurisdictions.\(^{306}\) The training generally covers victim’s rights, available compensation, provider’s responsibilities, and

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\(^{301}\) See AR 27-10.

\(^{302}\) See id.; see also AFI 51-201; MCO 5800.14; OPNAVINST 5800.7A.

\(^{303}\) See id.

\(^{304}\) See id.

\(^{305}\) DoDI 1030.02, ¶ 5.2.7.

\(^{306}\) See generally AR 27-10; see also AFI 51-201; MCO 5800.14; OPNAVINST 5800.7A.
requirements and procedures established by DoD policy. Additionally, some of the Services offer annual short courses focused on the VWAP program.

**Case Management**

DoD requires each Service to prepare an annual report which is forwarded to the Undersecretary of Defense for Personnel and Readiness. The Services report the number of victims and witnesses informed of their right to seek VWAP assistance by law enforcement or criminal investigations personnel and the number of victims or witnesses who actually sought assistance. The report serves to quantify VWAP assistance provided. Although the Army has a victim satisfaction form the local Staff Judge Advocate and Victim/Witness Coordinator may review, there is no requirement to use victim satisfaction surveys or to evaluate VWAP services.

**L. Victim Advocate -Victim Privilege**

A prior Congressionally convened Task Force recommended DoD establish a victim advocate-victim privilege after discovering victims perceived “interference with the victim-victim advocate relationship and continuing victim advocate services when the victim advocate was identified as a potential witness in a court-martial,” and Service members reported being “re-victimized” when communications between the victim and his or her victim advocate were used to cross-examine them in a court-martial. The President signed an executive order in 2012 establishing Military Rule of Evidence 514, “victim advocate-victim privilege,” which protects communications between victims and their SARC or VA, with some exceptions. The privilege applies to SARCs, SAPR VAs, and DAVAs under the FAP.

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307 See id.
308 See id.
309 DoDI 1030.02.
310 Id.
312 See generally AFI 51-20; MCO 5800.14; OPNAVINST 5800.7A.
313 Id.
314 MIL. R. EVID. 514 (Victim advocate-victim privilege).
315 See Transcript of RSP Public Meeting 90 (November 7, 2014) (testimony of Ms. Bette Stebbins Inch) (stating that SARCs and SAPR VAs can accept restricted reports, and have privileged communications under MRE 514); and see id. at 228 (testimony of Ms. Christa Thompson) (stating her recommendation as a VWL in the field for over twenty years, that VWLs should have privilege for communications with victims, noting that it is currently limited to victim advocates only which causes confusion with victims when dealing with VWLs).
A victim’s communications with a VWL are not confidential or privileged since the VWL works for the Staff Judge Advocate or installation commander. 316

M. Civilian Victim Services

Study of Civilian Jurisdictions’ Support for Sexual Assault Victims

On November 8, 2012, the Secretary of Defense wrote to House Armed Services Committee Chairman Howard “Buck” McKeon to tell him the Secretary was directing the Joint Services Committee on Military Justice (JSC) to embark upon a comprehensive fact-gathering process that involved identifying comparable data and best practices from military and civilian jurisdictions in the prosecution of sexual assaults and provision of services to sexual assault victims. 317 To carry out the Secretary’s direction, the JSC formed the Sexual Assault Subcommittee (JSC-SAS) which embarked upon a fact gathering process to study and collect information regarding the investigation, prosecution, and adjudication of sexual assault crimes by prosecutors, police and victim support programs in civilian jurisdictions across the United States and provide the information to the JSC, DoD General Counsel, the House Armed Services Committee, the Senate Armed Services Committee and the RSP. 318

The JSC-SAS was directed to exercise its independent professional judgment in deciding how many and which civilian jurisdictions to include in its review, and to inquire into any areas that it believed would be helpful to the Response Systems Panel. 319 It was further directed to identify and study jurisdictions that have programs similar to the military Special Victim Counsel program and those that do not have similar programs, as well as to study jurisdictions with victim support programs embedded in the prosecutors’ office and others with victim support programs independent of a prosecutor’s office. 320 In all, the JSC-SAS studied eighteen separate

316 See id. at 110. When asked to compare the victim counsel with the already existing VWL program, Ms. Stebbins made the distinction that there are no privileged communications between victims and their VWL and that VWLs do not have the ability to advocate on behalf of victims for issues like rape shield. Id.


320 Id.
jurisdictions in fourteen different states, and met with prosecutors, investigators and police, defense attorneys, victim advocates, victim rights organizations, and civilian counsel who represent sexual assault victims. The JSC-SAS was specifically directed to provide the relevant data and information it collected to the RSP.

In addition to information from the JSC-SAS, the RSP and Subcommittee heard directly from representatives of civilian agencies and jurisdictions that provide support to sexual assault victims.

Overview of Victim Advocate Services in Civilian Communities

For the most part, non-lawyer victim advocates, not victim’s counsel, are primarily responsible for providing support for sexual assault victims in civilian communities. In jurisdictions where victim counsel are available, victim advocates may work in conjunction with victim’s counsel to provide support to sexual assault victims.

The JSC-SAS study found that all eighteen of the jurisdictions studied offered victim advocacy services to sexual assault victims, whether the crimes are reported to police, prosecuted in the criminal justice system, or the victim chooses to seek only supportive services. Various entities provide victim advocate services, from nonprofit organizations to police departments and the prosecutor’s office. Services vary from state to state, and jurisdiction to jurisdiction within states. According to the Bureau of Justice Statistics, one in four sexual assault victims utilize services provided either by nonprofit or funded victim advocate organizations.

321 JOINT SERVICES COMMITTEE, SEXUAL ASSAULT SUBCOMMITTEE, REPORT ON CIVILIAN SEXUAL ASSAULT, APPENDICES A-U [hereinafter JSC-SAS Report Appendices (released to RSP, January 23, 2014)].

322 Id. at 6-8; see also, JSC-SAS Memorandum.

323 Id.

324 See generally Transcript of RSP Public Meeting (November 7-8, 2013); Transcript of RSP Subcommittee Meeting (November 21, 2013, January 9, 2014, and February 26, 2014).

325 See, e.g., JSC-SAS Report Appendix D (Arizona); JSC-SAS Report Appendix I (Maryland); JSC-SAS Report Appendix L (Oregon); JSC-SAS Report Appendix N (Texas).

326 See JSC-SAS Report Appendices C-P.

327 See JSC-SAS Report Appendices C-P (providing an overview of victim advocacy services provided in eighteen jurisdictions in fourteen states); see also Transcript of RSP Victim Services Subcommittee Meeting 211 (February 26, 2014) (testimony of Mr. Scott Berkowitz) (indicating there are more than 1,000 local sexual assault service programs throughout the United States that respond to an extensive array of mental health, medical, legal and other needs).

328 See JSC-SAS Report Appendices C-P.

In some cases, limited funding dictates the availability of services to sexual assault victims. Since the recession began in 2008, many programs providing advocate support to sexual assault victims have either faced severe cuts or lost all funding. For instance, more than seven percent of rape crisis centers have gone out of business in the last five years; 24 hours centers have declined from about 1, 150 to closer to 1,050.\footnote{Transcript of RSP Victim Services Subcommittee Meeting 332 (February 26, 2014) (testimony of Mr. Scott Berkowitz).}

In some jurisdictions where comprehensive services remain available, non-profit organization victim advocates provide support for sexual assault victims from report of a crime, through the investigative stage, during trial preparation and throughout the trial or case disposition.\footnote{See Transcript of RSP Victim Services Subcommittee Meeting 256 (November 21, 2013) (testimony of Commander Sherry J. King, JAGC, U.S. Navy, JSC-SAS Subcommittee Member).} In at least one jurisdiction, Maricopa County, Arizona, the prosecutor’s office started to take a more active role in the post-trial clemency procedure to ensure that victim’s rights are taken into account at that stage of the criminal justice process.\footnote{See JSC-SAS Report Appendix D.} In Athens-Clarke County District Attorney’s Office in Athens, Georgia, victim advocates continue to provide services to the victim through the appellate process.\footnote{Transcript of RSP Public Meeting 263 (November 7, 2013) (testimony of Ms. Ashley Ivey, Victim Advocate Coordinator, Athens, Georgia).}

**Community Based Victim Advocates**

The Subcommittee learned about civilian jurisdictions with community based advocates to provide support services to sexual assault victims.\footnote{See, JSC-SAS Report Appendix Q (providing non-exhaustive list of community agencies in jurisdictions studied by JSC-SAS committee members).} These agencies provide initial advocacy services to victims, whether or not the victim decides to report the incident to law enforcement, where permitted by law.

Advocates from community agencies (often known as rape crisis centers) may provide a variety of services, from hotlines and support, to counseling, shelters, community outreach and education.\footnote{See, e.g., JSC-SAS Report Appendix M at 6. (stating Women Organized Against Rape (WOAR) advocates provide services that include a 24-hour hotline, medical accompaniment, adult drop-in groups, counseling and support, accompaniment to court hearings, and support during the court process in Philadelphia); Transcript of RSP Victim Services Subcommittee Meeting 211(February 26, 2014) (testimony of Mr. Scott Berkowitz).} For example, advocates from the community based agency known as The Cottage in Athens, Georgia, will meet with a victim prior to law enforcement involvement.\footnote{See JSC-SAS Report Appendix H at 3.} The Cottage meets the victim’s immediate needs through crisis counseling, and the agency provides

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support while discussing whether to report the offense to law enforcement, or have a SANE exam without police involvement.\textsuperscript{337} The Cottage also provides short term counseling, and refers victims to other more in-depth counseling and group therapy.\textsuperscript{338}

The YWCA in Grand Rapids, Michigan provides another example of a community based advocacy service that, like DoD, offers services regardless of whether a victim files a report with law enforcement.\textsuperscript{339} The YWCA provides support services, including a 24-hour crisis line, as well as SANE exams, and “soft” rooms for victims to speak to law enforcement personnel in a comfortable environment.\textsuperscript{340} Short term counseling and group therapy services are also available\textsuperscript{341} A victim’s spouse or family member may also receive some services,\textsuperscript{342} including short term counseling services, free of charge through grants to the agency,\textsuperscript{343} unless a victims’ insurance policy covers the cost of ongoing counseling services.\textsuperscript{344}

Victim advocacy services may co-locate in hospitals or other locations where victims might make an initial report of sexual assault.\textsuperscript{345} For example, in Queens and Manhattan, New York, Mount Sinai Hospital’s “hundreds of volunteer advocates” staff the victim advocate program.\textsuperscript{346} Prosecutors, police, and doctors train the volunteer advocates who are available anytime to victims at the hospital.\textsuperscript{347} A prosecutor told the RSP that, “one of the most important ingredients for a successful investigation of these cases is that you have a victim who’s strong enough to go forward.”\textsuperscript{348} She went on to explain that, “the value of having a nonparty, non-lawyer advocate to offer a victim emotional support at that stage is enormous. The ER advocates are trained and wonderful, and they hand off the case to a specially trained social worker once

\textsuperscript{337} Id.
\textsuperscript{338} Id.
\textsuperscript{339} Transcript of RSP Victim Services Subcommittee Meeting 344-45 (February 26, 2014) (testimony of Ms. Patricia Haist, Director of clinical Services, YWCA West Central, Grand Rapids, Michigan) (stating victims may receive a SANE exam and other services without reporting a crime to police, and there is an agreement with local law enforcement to permit “anonymous” reporting which the victim may later confrt to an actual standard report).
\textsuperscript{340} Id. at 343.
\textsuperscript{341} Id.
\textsuperscript{342} Id.
\textsuperscript{343} Id. at 349.
\textsuperscript{344} Id.
\textsuperscript{345} See, e.g., Transcript of RSP Public Meeting 284 (November 8, 2013) (testimony of Mr. Chris Mallios, Attorney Advisor for AEquitas); see also JSC-SAS Report Appendix K-3 (Manhattan, NY) and K-4 (Queens, NY); JSC-SAS Report Appendix M at 5 (Philadelphia, PA); Transcript of RSP Public Meeting 283 (Nov. 8, 2013) (testimony of Ms. Marjory Fisher).
\textsuperscript{346} Transcript of RSP Public Meeting 228 (Nov. 8, 2013) (testimony of Ms. Marjory Fisher).
\textsuperscript{347} Id.
\textsuperscript{348} Id. at 227.
they get to the DA’s office. [T]hat combination of help helps victims and guides them through what, as you can imagine, is a very confusing and intimidating process. She credited Mount Sinai’s services in helping victims through the process, calling it a “wonderful program.”

With some exceptions, a victim’s communications with a victim advocate in a community based organization are typically privileged, as they are in the military. Communication between the victim and advocates from criminal justice based organizations described below, however, have no protection and are subject to release.

Victim Advocates in the Criminal Justice System

The advocate’s role at this juncture is to provide crisis stabilization, advocacy, information, referral, justice support (support services to detectives and prosecutors), case management, court accompaniment, liaison, and assistance with crime victim’s compensation funds to help ensure that victims are best able to participate in the investigative process. In addition, like community victim advocates, criminal justice based advocates from law enforcement or prosecution offices may provide referrals to mental health counselors and other services.

In addition to victim support, victim advocates can ensure that police interviews do not discourage cooperation with the investigative process through unintentional use of language or types of questions that can lead a victim to withdraw from the investigative process. Depending on the jurisdiction, criminal justice based victim advocates are part of the law enforcement agency’s staff, the prosecutor’s staff, or both.

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349 Id. at 228.
350 Id.
351 See Transcript of RSP Public Meeting (Nov. 8, 2013); see also JSC-SAS Report Appendix C (Anchorage, AL); JSC-SAS Report Appendix L (Multnomah and Yamhill Counties, OR).
352 See, e.g., JSC-SAS Report Appendix L at 5 (Multnomah and Yamhill Counties, Oregon); JSC-SAS Report Appendix T at 2 (Austin, Texas).
353 See, e.g., JSC-SAS Report Appendix E at 3 (referral services provided by the Victim Advocates from the San Diego Police Department); JSC-SAS Report Appendix J at 4 (the Case Managers from the prosecutor’s office do not provide counseling services themselves, but provide referrals for counseling and other services).
354 See, e.g., Transcript of RSP Public Meeting 253-55 (November 7, 2013) (testimony of Ms. Gail Reid) (discussing that advocacy has changed a prior police practice of threatening victims regarding making false report, or warning that they’re going to “ruin this person’s life” and that bringing about change is only really possible when advocates are empowered).
Law Enforcement

Some law enforcement agencies, including the FBI, employ non-lawyer victim advocates to provide advocacy services beginning when a victim reports a sexual assault. Others team with community advocacy agencies that provide these initial victim advocacy services through contract or other agreement with a law enforcement agency.

However, services are not necessarily consistent from one jurisdiction to the next. For instance, while the Portland Police Department employs two full time victim advocates, there are no police based victim advocates in many other Oregon jurisdictions. In Arlington, Virginia, Austin, Texas and Multnomah County, Oregon, for example, advocates from the prosecutor’s or investigator’s office initiate early contact with the victim, and may provide support while the investigation continues or may just provide initial information. When there are advocates from more than one organization providing support to the same victim, the organizations coordinate how, when or whether transitions are made based on their organization’s scope and the victim’s preferences.

Prosecution Based Victim Advocates

[From a prosecutor's perspective...the victim specialist is an invaluable ally. They routinely introduce our victim to the criminal]

355 See JSC-SAS Report Appendix D at 3 (Maricopa County, Arizona) (explaining that victim advocates are employed by some police departments in Arizona); JSC-SAS Report Appendix E at 3-5 (San Diego, California) (describing San Diego Police Department crisis intervention unit which provides short term support and referral services); JSC-SAS Report Appendix G at 1-3 (District of Columbia) (explaining that both the FBI and local law enforcement agencies such as the Metropolitan Police Department in Washington DC have victim advocates who are assigned as soon as officers respond to a crime scene); see also, Transcript of RSP Public Meeting 260 (December 11, 2013) (testimony of Deputy Chief Kirk Albanese, Los Angeles Police Department, Chief of Detectives, Detective Bureau).

356 JSC-SAS Report Appendix C at 2 (Anchorage, Alaska)(explaining that Standing Together Against Rape (STAR) advocates will accompany a victim through the investigative process in Alaska); JSC-SAS Report Appendix D at 3 (Maricopa County, Arizona) (explaining that in Arizona where there are no police advocates employed by an agency, community victim advocates working out of advocacy centers are present for victim support from the beginning of the investigation); JSC-SAS Report Appendix E at 3-5 (San Diego, California) (explaining that in addition to advocates who work for the San Diego PD, community based advocates are available to accompany victims to law enforcement interviews); JSC-SAS Report Appendix I at 3-4 (Baltimore, Maryland) (explaining that Turnaround has a collaborative relationship with the Baltimore County Police Department such that when law enforcement is called to the scene, Turnaround is also notified so a victim advocate can respond).

357 See, e.g., JSC-SAS Report Appendix L at 5 (Multnomah and Yamhill Counties, Oregon) (explaining that while the Portland Police Department employs two full time victim advocates, there are no police based victim advocates in many Oregon jurisdictions).

358 Id.

359 See Transcript of RSP Public Meeting 258 (November 7, 2013) (testimony of Ms. Autumn Jones, Director of Victim Witness Program for Arlington County and the City of Falls Church, VA): see also, JSC-SAS Report Appendix L (Multnomah and Yamhill Counties, Oregon); JSC-SAS Report Appendix N (Austin, Texas).

360 JSC-SAS Report Appendix M (Philadelphia, Pennsylvania) (explaining that advocates in Pennsylvania coordinate among each other and with the prosecutor’s office, and are familiar with the services each provides to victims).
justice system. They explain to our victims what their rights are, and they provide the guidance on the often complicated court process that they are about to embark upon. And they create a critical bond between the prosecution team and the victim. In short, they allow us, the prosecutors, to focus our energy on trial preparation and strategy while at the same time allowing prosecutors to know that our victims are well cared for.\(^{361}\)

Ms. Theo Stamos, Commonwealth’s Attorney for Arlington County and the City of Falls Church, VA.

All eighteen civilian prosecution offices the JSC-SAS visited employ victim advocates to assist sexual assault victims throughout their involvement in the criminal justice system.\(^{362}\) The titles, roles, and responsibilities vary depending on the practice of the jurisdiction, type of office, other services available, and the scope of the jurisdiction’s victim’s rights law.

Prosecution based advocates can provide a number of services, which vary by jurisdiction, but generally include advising the victim of his or her rights, advocating to prosecutors to ensure the victim’s rights are enforced, advising victims about and supporting victims during court proceedings, and ensuring the victim receives necessary services throughout the process.\(^{363}\) They also assist prosecutors during discussions with victims when a case that has been referred by police will not be charged.\(^{364}\)

Prosecutors also rely on victim advocates to ensure practical compliance with victim rights requirements, such as notifying victims of court hearings and other proceedings, providing updates to, and helping explain plea agreements.\(^{365}\) Advocates and prosecutors indicate that the advocate urges what the victim wants in a case, whether or not it is the same action or outcome

\(^{361}\) Transcript of RSP Public Meeting 215 (Nov. 8, 2013) (testimony of Ms. Theo Stamos, Commonwealth’s Attorney for Arlington County and the City of Falls Church, VA).

\(^{362}\) See Transcript of RSP Public Meeting 258 (November 7, 2013) (testimony of Ms. Autumn Jones); Transcript of RSP Public Meeting 258 (November 7, 2013) (testimony of Ms. Ashley Ivey); see also JSC-SAS Report Appendix G (District of Columbia).

\(^{363}\) See JSC-SAS Report Appendices C - P.

\(^{364}\) See, e.g., JSC-SAS Report Appendix I (a social worker on staff with the State’s Attorney for Baltimore City may work with the victim when discussing a case that the prosecutor has determined cannot be charged); JSC-SAS Report Appendix L(discussing the role a victim advocate in Yamill County, Oregon plays in discussing the prosecutor’s decision that a sexual assault charge cannot be filed).

\(^{365}\) See JSC-SAS Report Appendix F at 3 (Kent County, Delaware) (explaining that victim advocates keep victims informed of all proceedings, work closely with victims whether a case is prosecuted or not, and manage services a victim may be entitled to receive); JSC-SAS Report Appendix H (Clarke County, Georgia) (describing the role of victim advocates to explain victim rights, the court system, prepare the victim to face the accused at trial, and provide crisis intervention); JSC-SAS Report Appendix P (Snohomish County, Washington) (describing duties of victim advocates which include helping the victim understand and navigate the justice system, protecting victim rights by ensuring victims are notified of bail hearings and other hearings the victim is permitted to be present at, and ensuring that their views are accounted for when appropriate).
the prosecutor believes appropriate. Prosecutors told the RSP and Subcommittee that they find their victim advocates “crucial,” and “phenomenal.”

In some jurisdictions such as the New York District Attorney offices in Bronx, Brooklyn and Queens, prosecution offices provide services beyond those normally provided by a victim advocate. They hire social workers who are available to provide short-term or long-term counseling to victims, in some cases, regardless of whether there is a criminal charge pending.

Confidentiality of Communications

One potential limitation for prosecution based victim advocates is that communications between victim and advocate are typically not protected. In Arizona, which protects statements made to victim advocates from disclosure, there is an exception for exculpatory or impeachment material the prosecutor is required to disclose to the defense. Communications are subject to release to the prosecutor and potentially to the defense, especially if the communication contains exculpatory or impeachment material. Advocates generally find these situations are rare, given that the goal is not to “get the story” from victims again, but to provide referrals to resources and services and ensure victims are informed of the status of their case.

Education, Training, and Prevention

The JSC-SAS found that in the eighteen jurisdictions it examined, victim advocate training varies from jurisdiction to jurisdiction, and depended on the type of agency in which the advocate works. For instance, advocates who work in prosecution and police agencies understand the criminal justice system and procedures in the jurisdiction in which they work. They can explain the jurisdiction’s processes and procedures to the victim throughout the

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366 Transcript of RSP Public Meeting 259-60 (Nov. 7, 2013)(testimony of Ms. Autumn Jones); Transcript of RSP Public Meeting 265 (testimony of Ms. Ashley Ivey).

367 See JSC-SAS Report Appendix F at 3 (Kent County, Delaware) (stating that “The Social Worker victim advocates are “crucial” to the office); Transcript of RSP Public Meeting 284 (Nov. 8, 2013) (testimony of Chris Mallios ) (describing victim advocates who worked in the Philadelphia District Attorney’s Office and local community based advocates).

368 See Transcript of RSP Public Meeting 228 (Nov. 8, 2013) (testimony of Ms. Marjory Fisher); see also JSC-SAS Report Appendices K-1 (Bronx, New York), K-2 (Brooklyn, New York), K3 (Manhattan, New York), K-4 (Queens, New York).

369 JSC-SAS Report Appendix K-2 (Brooklyn, New York) (“Social workers…conduct crisis counseling and turn over their notes if any Brady material comes up”).

370 JSC-SAS Report Appendix D at 4 (Maricopa County, Arizona) (stating that victim advocates in the Maricopa County District Attorney’s Office have an advocate-victim privilege, but that privilege does not extend to exculpatory material).

371 See, Transcript of RSP Public Meeting 258-59 (Nov. 8, 2013) (testimony of Ms. Keli Luther).

372 Id.

373 See JSC-SAS Report Appendices C - P.
Some prosecutor’s offices require that victim advocates have either a bachelor or master’s degree with majors in criminal justice, social work, or a similar “helping” profession. In New York, where social workers provide clinical counseling support, they are required to have a master’s degree in social work or an equivalent profession. Advocates who work in her community agency are also well versed on the criminal justice system, according to one victim advocate who appeared before the RSP.

Some agencies, such as the YWCA in Grand Rapids, Michigan, have both paid staff and volunteer victim advocates. Volunteer advocates are not required to be college graduates and are provided 35 to 40 hours of training prior to providing any services, such as court-accompaniment. Their work is also observed by a more seasoned volunteer. The YWCA also holds monthly in-house training meetings for advocates. In San Diego, advocates from a local community advocate organization are required to complete a five week training period, which encompasses both a formal program and shadowing other advocates. One prosecutor described that victim advocates in her jurisdiction sometimes gain experience volunteering at a shelter or other community agency working specifically with sexual abuse or domestic violence victims before joining the prosecutor’s office.

Prosecution offices in several jurisdictions the JSC-SAS visited have formal training for their victim advocates, including observation of court procedures and shadowing an experienced advocate before working independently with victims. For example, victim advocates in the Bronx District Attorney’s Office undergo formal training, court observation, and other on-the-

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374 JSC-SAS Report Appendix K-1 at 3 (Bronx, New York).
375 Transcript of RSP Public Meeting 257 (Nov. 7, 2013) (testimony of Ms. Autumn Jones); see also, JSC-SAS Report Appendix M at 6 (Philadelphia, Pennsylvania).
377 Transcript of RSP Public Meeting 253-55 (November 7, 2013) (testimony of Ms. Gail Reid).
378 Transcript of RSP Victim Services Subcommittee Meeting 354, 360 (February 26, 2014) (testimony of Ms. Patricia Haist).
379 Id. at 360.
380 Id. at 360-361.
381 Id. at 361.
382 JSC-SAS Report Appendix E at 5 (San Diego, California).
383 Transcript of RSP Public Meeting 258 (Nov. 7, 2013) (testimony of Ms. Autumn Jones).
384 See, e.g., JSC-SAS Report Appendix K-2 (Brooklyn, New York) (explaining that social workers in the Brooklyn, NY District Attorney’s Office undergo a two week training program that includes training by the ADA’s, speakers, sexual assault victim testimonials, shadowing experienced social works and other on-the-job training for which the new social worker must by “signed off” or certified by an experienced supervisor before beginning duties). JSC-SAS Report Appendix K-1 (Bronx, New York), (explaining victim advocates must complete a two-week observation period in the court-room, in addition to unit training and observation by a supervisor). JSC-SAS Report Appendix E (San Diego, California).
job training before receiving their own cases.\textsuperscript{385} The informal shadowing may include observing criminal trials and meeting with system based advocates. At the Maricopa County, Arizona, District Attorney’s Office, victim advocates are required to have bachelor’s degrees, prior experience as an advocate, parole or probation officer, and complete a training program before beginning to shadow other advocates.\textsuperscript{386} They typically do not handle cases on their own until working in the office for a few months.\textsuperscript{387}

Multidisciplinary Teams

Like the military’s case management groups, jurisdictions around the country have multidisciplinary sexual assault response teams or groups that meet regularly to discuss specific cases, support for the victim and evidentiary issues relating to the case. For example, San Diego’s Sexual Assault Response Team(SART) reported that these meetings lead to cooperation and problem solving that reaches across disciplines in a community that can result in system changes benefitting all.\textsuperscript{388} The military is integrated into this team; this integration is considered a “best practice” in the region.\textsuperscript{389} In the opinion of San Diego SART personnel, these interactions help professionals understand each other’s roles and what each brings to sexual assault investigation, prosecution, prevention and education even better than formal training.\textsuperscript{390}

N. Subcommitee Assessment

Need for Proper Training, Assessment, and Break from New Initiatives

Some victims told the RSP or Subcommittee that the SAPR training they received was not effective, in part because sexual assault training is only one of many required training topics. One victim told the RSP that “[t]he training that we ask of our military, we’re right now at a training burn out. I think about every 30 to 60 days we hear about a new suicide prevention training program, or sexual assault training program and we’ve got to be very specific about what we add to the plate to ensure that it’s supported and it’s effective...We implement and implement and implement. And we really do need to test, evaluate, and then apply that across a

\textsuperscript{385} \textit{Id.}

\textsuperscript{386} JSC-SAS Report Appendix D at 4 (Maricopa County, Arizona).

\textsuperscript{387} \textit{Id.}

\textsuperscript{388} \textit{See, e.g.,} JSC-SAS Report Appendix E (San Diego, California) (discussing San Diego SART).

\textsuperscript{389} \textit{Id.} at 9.

\textsuperscript{390} \textit{Id.}; see also, JSC-SAS Report Appendix H (Clarke County, Georgia) (explaining multi-disciplinary SART team in Athens-Clarke County Georgia that includes specialized police detectives, victim advocates from District Attorney office and the Cottage, Family Protection or SANE personnel, University of Georgia Police, university police, and the health department).
bigger spectrum.” Another victim stated that “[t]he training that we had…was very interesting. In the first couple weeks we get there [to basic training], they compile every little single thing that they need to throw at you in a PowerPoint, death by PowerPoint. We had so many slide shows to go through; EO [Equal Opportunity], SHARP [Sexual Harassment/Assault Response & Prevention], how to do this, how to do that. Um, when it came down to it, I honestly can’t remember one thing particular that came from any of the videos at all because we were so tired, and we were so beat down, and none of those videos helped me at all.”

Many subject matter experts who appeared before the Subcommittee also discussed the need to make programs more effective, particularly by assessing the new initiatives to determine what truly works. A program analyst for the Navy SAPR Program stated that “…I’ve seen that we’ve thrown a lot of different things out there at the field, and, you know, we’ve implemented a lot of different programs, and we’ve flooded our sailors with a lot of information. And I think that it can be a little overwhelming…I’m talking with the SARCs, they’ve been overwhelmed with all of the different initiatives, and all the different trainings, and all the different things we keep pushing and pushing and pushing. And we’ve got to give it time.”

The Subcommittee consistently asked military victim service providers if they needed anything they did not have already. One witness responded with a sentiment shared by many the Subcommittee talked to,

So what’s missing is time…We need time to implement some of this. The rollout has been so fast and furious in the last two years that we’re exhausted. I honestly feel like I have not completed one quality project since I’ve worked for the Marine Corps. You can’t get the ink dry before you’re working on the next project. I can’t answer emails because we’re so busy rolling out, collecting data, rolling out, collecting data. That’s what we do all day long. Last week we spent a good deal of time – myself and our other three SARCs – on two very acute victims who needed some – a lot of attention. And since our [victims] are spread all over, we’re on the phone and we’re traveling constantly to them. And at the same time I had to weigh, do I get my DoD end of the year report in, or

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391 Transcript of RSP Public Meeting 504 (December 11, 2013) (public comment of Major Melissa Brown).


393 Transcript of RSP Victim Services Subcommittee Meeting 163-164 (November 21, 2013) (testimony of Ms. Tanya Rogers, Program Analyst, USN SAPR Program).

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
do I get this person hospitalized this week?...The rollout is fast and furious, and we need time to implement what has already been put in place before we roll out anything else because I really don’t think we have a good grasp of what we’ve already created.\textsuperscript{394}

DoD guidelines for the care of military sexual assault victims are comparable to civilian recommendations for care. The next step is to evaluate the extent to which the care that victims actually receive complies with DoD directives for the care they ought to receive.\textsuperscript{395} High quality epidemiological data would be useful to establish baseline incidence of military sexual assault and to (1) track future changes in incidence and disclosure, (2) better target prevention and intervention programs, and (3) document risk of sexual assault among Service members relative to civilians.\textsuperscript{396}

Moreover, study of the needs of undisclosed victims of military sexual assault who have not disclosed the incident would allow DoD to (1) better understand barriers and facilitators' of disclosure, (2) improve efforts to increase the likelihood of disclosure, (3) develop strategies to protect victims from being penalized for disclosing an incident, and (4) appropriately scale services to meet the needs of victims who may not have disclosed in the past.\textsuperscript{397}

\textit{Selecting Personnel for SAPR Positions}

The Services and DoD must retain flexibility in assigning military personnel to fulfill the Armed Forces’ world-wide mission. While the Services have improved their selection criteria for victim services personnel, continued focus on putting the right people in these sensitive jobs is warranted. In this area, victims mentioned several qualities important to them.

According to one victim, passion was the key component necessary for effectiveness.

The SHARP program definitely could have been enhanced if they had maybe a live speaker talk about it, or if they just had somebody that was passionate about it. I think that’s where a lot of

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\item \textsuperscript{394} Transcript of RSP Victim Services Subcommittee Meeting 187-188 (November 21, 2013) (testimony of Ms. Peggy Cuevas, Director, U.S.M.C. MARFORRES SARC).
\item \textsuperscript{395} COREEN FARRIS ET AL., RAND CORPORATION, \textit{Physical and Psychological Health Following Military Sexual Assault Recommendations for Care, Research, and Policy} 17 (2013), \textit{available at} http://www.rand.org/pubs/occasional_papers/OP382.html.
\item \textsuperscript{396} Id.
\item \textsuperscript{397} Id.
\end{itemize}
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times it gets kind of get thrown under the rug. We just make people the SHARP, but they’re not passionate about it. They have no desire to, to really get with victims and see how, how they operate because you can’t really fix something that’s a problem if you don’t understand where that person may be coming from. A lot of the times I’ve ran into a few that just, they’re not approachable. As a victim, you need to be approachable. If I can’t approach you with my deepest, darkest secrets, you are nothing. You, you are of no help. All the training you have is nothing if I don’t come forward.398

Another victim told the RSP that victims must be able to trust victim services personnel. “Victim advocates, you can’t place people in those jobs that don’t want to do it. They have to be recommended by, I believe, their commanders and I think they should be endorsed…You know I can look in my military formation and tell you which people I would trust. And which people I would ask to do that job if they were interested. But I think it needs to be a 360 assessment that they’re the right person for the job. And they be supported to do it. And not assigned because we need to put a name on the line.399

Victim services personnel must be professional. One victim described to the Subcommittee that, “[A]fter the charges were formally filed, I was assigned a Victim Witness Liaison. This Victim Witness Liaison was not helpful…I recommend that Victim Witness Liaisons not be a part-time or a collateral duty for people who are not passionate in the job. Any Army personnel, civilian, or military personnel who work with the victims have to want to be there to help, and must have the best training and resources possible.”400

Finally, two victims who appeared before the RSP and Subcommittee spoke about consistency. According to the first victim, “After the court-martial, I kind of went, like, on a fast, downward slope and I spent 17 days in a psychiatric hospital afterwards. And I was finally able to get the help I needed. I got lucky, there was a Major TDY [on temporary duty] in there that did a prolonged exposure therapy with me, that really helped a lot.”401 Similarly, a Marine victim told the RSP, “…I would say that the one consistency I saw in victim services was inconsistency. There was and is a lack of continuity of care, both while active duty and within the VA hospitals afterwards. I saw over a dozen different counselors from the first time I sought


399 Transcript of RSP Public Meeting 501 (December 11, 2013) (public comment of Major Melissa Brown).

400 Transcript of RSP Victim Services Subcommittee Meeting 23-24 (March 13, 2014) (testimony of Ms. J.P.).

401 Transcript of RSP Victim Services Subcommittee Meeting 27 (March 13, 2014) (testimony of Ms. P.C.).
care to the time I left the Marines. When I did finally find a doctor with whom I meshed, a couple months later, I received orders to move to a new base, where I subsequently started the process all over again.”

The Importance of Victim Support

The level and quality of victim support is crucial to victim care and healing after an assault. Victims who spoke to the RSP and Subcommittee received their support from different sources, including the command. One victim stated, “Most important, my leaders never doubted me. They never blamed me. They encouraged, supported, and mentored me to ultimately be successful in the Army.” Mental health professionals can also provide the crucial support a victim needs. “I cannot stress enough the change in the quality of counseling I received, and I cannot stress to you enough how important it is . . . have qualified, dedicated mental health professionals and social workers available for all of its victims.” SARCs or VAs are also critical, and may be the first person to come in contact with a victim. “[W]hen I went and made my initial report, it was well received. The SARC, she took great care of me. She took the report, gave me the information I needed.” Another victim commented on the entire range of support he received: “[E]veryone in my process was able to handle everything in a professional manner. So my Commander, my First Shirt, and my SARC, my Victim Witness, like all of them, I still keep in touch with them today, and they’re a really great support system and very helpful in my process.”

402 Transcript of RSP Victim Services Subcommittee Meeting 56-57 (Nov. 8, 2013) (testimony of Ms. Sarah Plummer).
403 Transcript of RSP Victim Services Subcommittee Meeting 10 (Nov. 8, 2013) (testimony of Sergeant Major Julie Guerra).
404 Transcript of RSP Victim Services Subcommittee Meeting (Mar 13, 2014) (testimony of Ms. J.P.)
405 Transcript of RSP Panel Meeting 498 (December 11, 2013) (public comment of Major Melissa Brown).
406 Transcript of RSP Victim Services Subcommittee Meeting 34 (Mar 13, 2014) (testimony of Mr. I.C.).
O. Findings and Recommendations

- **Finding 1-1:** Over the last five years, Congress mandated and DoD initiated dozens of additions and changes to victim service programs, many in such quick succession that SAPR personnel had to begin implementing a new initiative before fully implementing previously required programs.

- **Finding 1-2:** Due to the number and rapid succession of programs and initiatives, DoD has not performed an assessment and evaluation of all current programs, to determine which are effective, which should be continued, expanded or are duplicative of other programs, and how best to allocate funds and personnel for victim service programs in a resource constrained environment.

**Recommendation 1:** The Secretary of Defense direct the Military Services to fully implement all of the currently mandated programs, initiatives, and other requirements Congress directed in the FY14 and prior year NDAAs and capture enough data to adequately assess the effectiveness, efficiency, and value of all existing programs with the goal to streamline or eliminate those that are not successful, and to continue, expand, and preserve the programs that are successful.

**Recommendation 1a:** The Secretary of Defense direct SAPRO to evaluate and assess all programs and initiatives and measure the effectiveness of each to determine which programs and initiatives are effective, which should be continued, expanded, and preserved, and how best to allocate funding for the effective programs and initiatives.

**Recommendation 2:** The Secretary of Defense develop and implement policy and regulations such that sexual assault victims have the right and ability to consult with an SVC before deciding whether to make a restricted or unrestricted report, or no report at all. Communication made during this consultation would be confidential and protected under the attorney-client privilege.

**Recommendation 2a:** The Secretary of Defense develop and implement policy that, when information comes to military police about an instance of sexual assault by whatever means, the first step in an investigation is to advise the victim that s/he has the right to speak with an SVC before determining whether to file a restricted or unrestricted report, or no report at all.

- **Finding 3:** In an effort to educate new military recruits about sexual assault and sexual assault prevention, DoD requires that all new Service members receive sexual assault
prevention training within fourteen days of their initial entry into the Service. However sexual assaults may occur within the victim’s first week in the military.

**Recommendation 3:** The Secretaries of the Military Services direct Commanders of Military Entrance Processing Stations (MEPS) to provide sexual assault prevention information to new recruits that include the definition of sexual assault, possible consequences of a conviction for sexual offenses in the military and information about the DoD Safe Helpline and other avenues for assistance. This recommendation expands upon the Defense Task Force on Sexual Assault in the Military Services’ recommendation to make available, and to visibly post, sexual assault prevention and awareness campaign materials at MEPS.

- **Finding 4-1:** FY14 NDAA, Section 1743, directs the Secretary of Defense to establish a policy to require a written incident report to the installation commander, if any, and the first general officer and first officer in the grade of O-6 in the chains of command of the victim and the alleged offender not later than eight days after a Service member files an unrestricted sexual assault report.

- **Finding 4-2:** The statute does not require tracking of or reporting on services to victims who make restricted reports.

- **Finding 4-3:** This statutory requirement enhances DoD’s requirement for SARC\textsuperscript{s} to inform commanders within 24 hours of both unrestricted and restricted sexual assault reports set forth in current policy.\textsuperscript{409}

**Recommendation 4:** The Secretary of Defense direct the Services to require written incident reports no later than eight days following a restricted or unrestricted report detailing the services provided to the victim, when a member of the Armed Forces is the victim.

**Recommendation 4a:** When restricted reports are made, SAPRO should work with the Services to ensure adequate measures are in place to protect the identity of the victim while providing sufficient information to track the victim’s care.

\textsuperscript{407} U.S. DEP’T OF DEF. INSTR. [hereinafter DoDI] 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES enclosure 10, ¶ 3.b (Mar. 28, 2013, incorporating Ch 1, February 12, 2014).

\textsuperscript{408} Transcript of RSP Victim Services Subcommittee Deliberation Meeting xxx-xxx (March 13, 2014) (discussion by victim who reported being singled out by instructor shortly after arriving at boot camp).

\textsuperscript{409} DoDI 6495.02, encl. 4.
• **Finding 5-1:** There is no current mechanism for a sexual assault victim to keep a report of sexual assault restricted and request an expedited transfer.

• **Finding 5-2:** DoD policy does not permit victims who file a restricted report of a sexual assault to request a temporary or permanent expedited transfer from their assigned command or installation, or to a different location within their assigned duty or living location.

• **Finding 5-3:** If the commander knows or learns about a sexual assault, the report becomes unrestricted, even if the victim filed or intended to file a restricted report. The commander must notify the MCIO and an investigation must be opened.

• **Finding 5-4:** By nature of their duties, a request for a transfer on behalf of another Service member from a SARC or SAPR VA provides the commander with the information that a sexual assault has taken place and the identity of the victim. Under current policy, the commander will be obligated to start an investigation, even if the victim intended the report to stay restricted.

• **Finding 5-5:** Commanders have inherent flexibility to transfer Service members or place them on limited duty status due to medical conditions. Current DoD policy allows health care personnel to convey to the victim's unit commander any possible adverse duty impact related to the victim's medical condition and prognosis, even when the sexual assault report is restricted. Under this policy, confidential communication related to the sexual assault may not be disclosed to the commander.

**Recommendation 5:** Service Secretaries should ensure that command orientation and training address the commander's authority to make duty or living assignment transfers based upon the recommendation of medical personnel, even if the specific underlying reason for the request for transfer is protected and cannot be disclosed.

**Recommendation 5a:** Training for medical personnel, SARC, and VAs, should include the options that a commander has available to make or effect transfers based on recommendations from medical personnel.

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410 Id. at encl. 4, §5.c.

411 Id.
• **Finding 6-1:** The Rape, Abuse, and Incest National Network (RAINN) contracted with DoD to develop and staff the Safe Helpline as a 24/7, anonymous sexual assault hotline for Military Service members.  

• **Finding 6-2:** Military installations advertise the Safe Helpline as a hotline phone number, but also advertise their own installation numbers which are not always answered 24/7 and instead may require the caller to leave a message.

• **Finding 6-3:** The Safe Helpline database of referrals to military victim service providers is not always adequate or accurate to ensure that every caller can be connected to a local victim service provider by the Safe Helpline staff upon request.

<table>
<thead>
<tr>
<th>Recommendation 6:</th>
<th>The Secretaries of the Military Services set forth clear guidance that DoD Safe Helpline is the single 24/7 sexual assault crisis hotline for Military Service members.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation 6a:</strong></td>
<td>The DoD Safe Helpline establish an easily remembered number similar to its website name of SafeHelpline.org.</td>
</tr>
<tr>
<td><strong>Recommendation 6b:</strong></td>
<td>DoD require the Services to provide the Safe Helpline with sufficient contact information at each installation or deployed location so that local victim service providers can be reached on a 24/7 basis.</td>
</tr>
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</table>

• **Finding 7-1:** The FY 2012 NDAA required the Secretary of Defense to establish a professional and uniform training and certification program for SARC's and VAs.

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412 See DoDI 6495.02 encl. 2, ¶ 4.y; The Safe Helpline phone number is 877-995-5247 and the website is SafeHelpline.org.

413 See Transcript of RSP Victim Services Subcommittee Meeting 115-116 (Ms. P.C.); Minutes from RSP Victim Services Subcommittee site visit, Joint Base San Antonio (December 13, 2013).

414 DoD uses the term “warm-handoff” for this connection. It is a procedure whereby the Safe Helpline responder conferences a caller with a SARC or other service provider and the responder stays on the line to ensure that a live person answers and to introduce the caller before terminating the responder’s end of the call, or, if there is no answer, the responder is able keep the caller on the line while dialing alternate numbers.

415 FY 2012 NDAA § 584(c)(1)
• **Finding 7-2:** DoD SAPRO evaluated the Services’ SARC and VA training in 2012. 416 These evaluations, while providing useful information about the Services’ training programs, did not use consistent criteria for evaluation across the Services, and DoD SAPRO did not make assessment of the uniformity of the programs across the Services. 417 In addition, some of the training materials used by the Services were outdated and contained incorrect information.

• **Finding 7-3:** The FY 2014 NDAA required the Secretary of Defense to submit to the Committees on Armed Services of the Senate and the House of Representatives a report containing a review of the Services’ SAPR training common core elements within 120 days of enactment of the Act. 418 The review is not complete as of the date of this report.

**Recommendation 7:** The Secretary of Defense direct that the periodic evaluations of training provided for Services’ SARC and VA be conducted and include an assessment as to whether the training and curriculum across the Services is uniform, is effective, and reflects all existing initiatives, programs, and policies.

• **Finding 8-1:** DoD issued Instruction 6400.07 “Standards for Victim Assistance Services in the Military Community,” on November 25, 2013, based on standards established by the National Victim Assistance Standards Consortium. 419

• **Finding 8-2:** The purpose of the Instruction is to establish a baseline of service standards to provide uniformity across programs and across the Services in providing quality victim assistance. 420

• **Finding 8-3:** The Instruction identifies four victim assistance-related programs for establishing a baseline of service standards: SAPR, Family Advocacy Program (FAP) Victim and Witness Assistance Program (VWAP), and the Military Equal Opportunity Program (which handles discrimination and sexual harassment). 421

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416 See SAPRO Training Observation Reports (RFI 31) Note: SAPRO called the reports “Observations” rather than evaluations, though they did evaluate the training programs.

417 See Id.

418 FY 2014 NDAA § 1733 (c)

419 The National Victim Assistance Standards Consortium (NVASC) is an ad-hoc group funded through the United States Department of Justice's Office for Victims of Crime (OVC) that worked from 1999-2003 to draft a set of standards for programs and individual victim advocates.

420 Transcript of RSP Meeting 21 (November 7, 2013) (testimony of Ms. Bette Stebbins Inch); see also DoDI 6400.07

421 DoDI 6400.07 encl. 4 ¶1.c.

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
• **Finding 8-4:** Each of these programs was established independently and at different times and with somewhat differing constituents. However, there are no additional policies or requirements outside of this instruction that require identifying gaps or redundancies in victim services.

• **Finding 8-5:** The SVC program, while under the cognizance of the Judge Advocate General of each Service, is not included in the victim assistance standards although also involves a victim advocacy component.

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**Recommendation 8:** The Secretary of Defense direct SAPRO or the DoD IG to assess the roles and responsibilities of SARC, VA, VWL, and FAP personnel, to ensure advocacy personnel are effectively utilized, they are properly delineated; overlap is minimized; and to determine whether their roles should be modified, and whether all current victim assistance related programs should be sustained in this resource constrained environment. Such review should factor the new SVC program recognizing that the Service Judge Advocate Generals are the sole supervisory chain for judge advocates.

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• **Finding 9-1:** There are currently over 20,000 trained and certified SARCs and VAs across the Services. Because some part-time uniformed SAPR VAs are assigned to units in which there are few or no reports of sexual assault, some uniformed personnel trained as VAs may not ever serve a victim.

• **Finding 9-2:** Victim Advocates who are not regularly assigned to assist victims of sexual assault may not develop or maintain proficiency in providing victim support when they are assigned a case.

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**Recommendation 9:** The Secretary of Defense direct SAPRO to determine an appropriate caseload and number of advocates, and to ensure that VAs become and remain proficient in their duties. Victim advocate duties should include partnering with or observing other professionals who provide victim services (including community providers) or other experiential work to gain further practical skills and confidence while awaiting assignment to a case.

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• **Finding 10:** SARCs are tasked with managerial, outreach and training, administrative as well as victim care duties. Many SARCs believe that their foremost challenge is having too many responsibilities to effectively perform all of the varied duties required of the job.
**Recommendation 10:** The Secretary of Defense direct SAPRO to evaluate the duties and responsibilities of the SARC position required by SAPR policy and to ensure that there are sufficient positions created with defined roles that allow for excellence.

- **Finding 11:** The Subcommittee heard from sexual assault victims who had difficulty obtaining timely mental health appointments as well as reports that victims may not see the same therapist consistently. The Subcommittee also heard evidence of concern that counseling may negatively impact victims’ careers. While the Subcommittee received evidence of recent programs in the Services to embed counselors within units to facilitate access to care, we were not in a position to evaluate whether the practice is a successful method to alleviate the difficulties victims experience in obtaining timely mental health, obtaining consistent therapeutic services, or reducing concern about negative impact on military careers.

**Recommendation 11:** The Secretaries of the Military Services evaluate the availability of and access to adequate and consistent mental healthcare for victims of sexual assault; and to evaluate the option of incorporating counselors into the SAPR program in a manner similar to the integration in the FAP Program. Additionally, the Secretaries of the Military Services establish policies to ensure that mental health treatment for sexual assault victims will not have negative implications on such victims’ eligibility for career advancement or promotion.

- **Finding 12-1:** DoD initiated the Family Advocacy Program (FAP) over twenty years ago to support military families and to provide services for victims of domestic violence and child abuse. Domestic violence victims who are also victims of sexual assault are treated and supported by the FAP.

- **Finding 12-2:** These incidents are recorded in the separate database used by the Family Advocacy Program, and not in the Defense Sexual Assault Incident Database (DSAID), which was developed to track sexual assaults. Thus, sexual assault reports that are part of domestic violence cases are not included in SAPRO’s annual report of adult unwanted sexual contact cases.

**Recommendation 12:** The Secretary of Defense direct that adult unwanted sexual contact reports handled by FAP and recorded in its database be included in the annual SAPRO report of adult unwanted sexual contact cases.

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422 DoDD 6400.1-M-1, *supra* at 43.

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*The Response Systems Panel has not yet considered or deliberated on the contents of this report.*
• **Finding 13:** It has been recognized that a percentage of the men and women in the military experienced unwanted sexual contact before entering military service. A substantial percentage of these victims may be subject to revictimization.

**Recommendation 13:** The Secretary of Defense direct SAPRO to work with the Centers for Disease Control and other appropriate agencies to develop services for military members who have previously experienced sexual abuse, and to develop strategies to encourage utilization of these services in order to prevent revictimization and develop or maintain skills necessary to fully engage in military activities and requirements.

• **Finding 14:** Harassment and retaliation against a victim in response to an allegation of sexual assault erodes unit cohesion, and the fear of harassment and retaliation deters victims from coming forward to report instances of sexual assault.

**Recommendation 14:** To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, that retaliation or harassment by Service members in response to an allegation of sexual assault violates good order and discipline.

• **Finding 15:** When an offender outranks or directly commands a victim, sexual assault is an especially egregious abuse of power. There have been instances when military officials and Service members have ignored or retaliated against those who reported incidents of sexual assault when the offender is a high-performing Service member or a superior offending against a subordinate.

**Recommendation 15:** To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, explaining that implicit or explicit invitations or demands for sex or sexualized interactions from commanders or superiors are not lawful orders, should not be obeyed, violate the code of military conduct, and will be punished.

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423 See, e.g., 2012 WGRA (indicating that the WGRA survey of active duty members found that 30% of women and 6% of men report experiencing unwanted sexual contact prior to entering the military. The 2012 WGRA study further found that of the military members who had experienced unwanted sexual contact (USC) in the twelve months prior to the survey, 45% of the women and 19% of the men also reported having experienced USC prior to entering the military).

424 The Subcommittee recognizes that SAPRO already has training protocols in place for new recruits that may accomplish the concerns expressed in Findings and Recommendations 14-17.


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The Response Systems Panel has not yet considered or deliberated on the contents of this report.
• **Finding 16**: Inculcating the notion that the needs of the individual must be subordinate to the needs of the unit is a staple of military training. Nevertheless, the subordination of the individual to the mission may be misinterpreted to deter reports of sexual assault and encourage retaliation against victims who come forward.

**Recommendation 16**: To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, emphasizing that reporting instances of sexual assault is essential for good order and discipline and protects rather than undermines morale.

• **Finding 17**: Male victims of sexual assault are often left out of the conversation about how sexual assault functions in the military. This omission deters some male victims from reporting sexual assault.

**Recommendation 17**: To the extent it is not already occurring, the Secretary of Defense develop and implement training for all members of the military, including new recruits, with examples of male on male sexual assault, including hazing and sexual abuse by groups of men. The training should emphasize the psychological damage done by sexual assault against male victims.

• **Finding 18**: Department of Defense policy states that collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim’s fear of punishment. 425

**Recommendation 18**: The Secretary of Defense direct a study of what constitutes low-level collateral misconduct in sexual assault cases and assess whether to implement a policy in which commanders will not prosecute low-level collateral misconduct.

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425 DoDI 6495.02 encl. 5, §7.a.

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The Response Systems Panel has not yet considered or deliberated on the contents of this report.
• **Finding 19**: The fear of damage to one’s military career deters victims from reporting a sexual assault.

**Recommendation 19**: The Secretary of Defense implement policy that protects victims of military sexual assault from suffering damage to their military careers (including but not limited to weakened performance evaluations or lost promotions, security clearances, or personnel reliability certifications) based on having been a victim of sexual assault, having reported sexual assault, or having sought treatment for sexual assault. Additionally, the DoD promulgate regulations that ensure the SVC advise their clients of the means by which they can challenge any inappropriate personnel action based on having been a victim or seeking treatment.
IV. SPECIAL VICTIM COUNSEL

A. Responsibility of the Subcommittee

The National Defense Authorization Act for Fiscal Year 2014 (FY14 NDAA) requires the Response Systems Panel (RSP) to assess whether the roles, responsibilities, and authorities of Special Victims’ Counsel to provide legal assistance under Section 1044e of Title 10, United States Code, to victims of alleged sex-related offenses should be expanded to include legal standing to represent the victim during investigative and military justice proceedings in connection with the prosecution of the offense.

B. Overview of Special Victim Counsel Program

The Special Victim Counsel (SVC) Program was created by the Services and mandated by Congress to “strengthen . . . support of victims of sexual assault and enhance their rights” within the military justice system “while neither causing unreasonable delay nor infringing upon the rights of an accused.”426 An independent SVC represents the “interests of the victim – and only the victim. The objective is not for SVC to establish an adversarial relationship with the government counsel or defense counsel, but to provide victims with the peace of mind of having independent representation by a licensed attorney–one eminently capable of communicating their interests throughout the military justice process.”427 An overarching goal of the SVC program is to instill confidence in victims so that more victims come forward and report incidents of sexual assault.428

Access to SVC is designed to empower victims to recognize and assert their rights and to actively participate more in the military justice process.429 SVC provides independent advice to sexual assault victims, assist victims in understanding the investigation and adjudicative processes of the military justice system, advocates for the protection of victims’ rights, and empowers victims by “removing barriers to their full participation in the military justice process to achieve this goal.”430

426 United States Army, Special Victim Counsel Handbook, pg 1 (November 1, 2013).
428 See generally Transcript of RSP Public Meeting, 118-90 (November 8, 2013) (Testimony of SVC Program Heads).
429 See Id.; see also United States Air Force Special Victim Counsel Rules of Practice and Procedure, pg 2 (July 1, 2013).
430 United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, pg. 2 (July 1, 2013).
C. Background

Military Special Victim Counsel

Discussion of providing special counsel for victims began in May 2011 when the Undersecretary of Defense for Personnel and Readiness requested the Service Secretaries to provide input into the feasibility of offering significant legal assistance to crime victims, including sexual assault victims. Based on their input, the Undersecretary issued a memorandum on October 17, 2011, concluding “the Services can provide, and in most cases are already providing, legal assistance to victims of crimes including sexual assault.” The Undersecretary then explained the scope of representation available to all crime victims includes informing victims of the victim witness assistance program (VWAP), the differences between restricted and unrestricted reporting options for sexual assault victims, available outside agency assistance, available benefits, and information on the military justice system.

The National Defense Authorization Act for Fiscal Year 2012, Section 581, enacted on January 3, 2012, codified, through 10 U.S.C. 1565b, the requirement to provide victim services and legal assistance to a victim of sexual assault who is a member of the Armed Forces or dependent. This includes military or civilian legal assistance from an attorney, assistance provided by a Sexual Assault Response Coordinator, and support from a Victim Advocate. This assistance is available to victims that file either restricted or unrestricted reports of sexual assault.

While the statute did not specifically address the scope of representation available to sexual assault victims, such as whether legal assistance counsel could represent sexual assault victims during investigation and adjudication of the alleged offender’s case, the Department of Defense General Counsel did provide guidance on the scope of assistance available. In a November 9, 2012, memorandum, the DoD General Counsel stated, “to the extent the victim could retain the advice or representation of private counsel [for legal assistance], nothing in §§


432 Id.

433 Id.


435 Id.

436 U.S. Department of Defense, Memorandum from the General Counsel on “Legal Assistance to Victims of Sexual Assault” (November 9, 2012).
1044 and 1565b prohibits a JAG from providing the same legal advice and representation, to
the same extent.” Furthermore, “these statutes do not preclude providing legal assistance to
sexual assault victims in criminal contexts, including attending victim interviews and
“interfacing with military prosecutors, defense counsel and investigators.” The Services
subsequently cited this Memorandum as support for creation of the Service’s Special Victims’
Counsel (SVC) Programs.

Then, in August 2013, the Secretary of Defense formally directed the Services to
establish a special victim advocacy program best suited for each Service and for it to be fully
operational by January 1, 2014. On April 4, 2014, DoD and the Services provided a report to
Congress and the RSP indicating each Service had reached full operational capability by the
deadline set by the Secretary of Defense.


the right of a sexual assault victim to obtain legal services through a Special Victim’s Counsel
(SVC). The statute directed the Service Secretaries to appoint SVC to provide legal
assistance to individuals eligible to receive military legal assistance who are victims of sex
related offenses and to provide in-depth and advanced training for all SVC. Additionally, the
statute clarifies many aspects of the SVC role and that it covers victims of sex-related offenses
under not just Article 120 (Rape and Sexual Assault) but also Articles 120a (Stalking), 120b
(Rape and Sexual Assault of a Child) and 120c (Other Sexual Misconduct). The statute also

437 Under 10 U.S.C. § 1044, a person is eligible for military legal assistance if he or she is currently serving on active duty, retired
from the military and receiving retirement pay, a member of a reserve or guard component when on active duty orders, a
dependent of an active duty or retired Service member, or a civilian employee of the federal government serving in an area where
other legal services are not available.

438 U.S. Department of Defense, Memorandum from the General Counsel on “Legal Assistance to Victims of Sexual Assault”
(November 9, 2012).

439 Id.

440 See United States Air Force Special Victim Counsel Rules of Practice and Procedure, 1 (July 1, 2013); see also United States
Army, Special Victim Counsel Handbook, 1 (November 1, 2013); U.S. Marine Corps Order P5800.16A, Marine Corps Manual

441 Memorandum from Secretary of Defense to the Secretaries of the Military Services, regarding “Sexual Assault and
Prevention” (August 14, 2013).

442 Department of Defense, Report on Implementation of Section 1716 of the National Defense Authorization Act for Fiscal Year


444 FY14 NDAA, at 1716 (a)(1)(a).
defines the nature of the relationship between SVC and a victim as one of “an attorney and a client.”

The scope of representation permitted under the statute is expansive and includes legal consultation related to:

- potential collateral misconduct;
- the Victim Witness Assistance Program;
- responsibilities and support provided by SARC and VA, including to include any privileges that may exist regarding communications between those persons and the victim;
- potential for civil litigation against parties other than DoD;
- the military justice system;
- accompanying the victim to any proceedings in connection with the reporting, military investigation, and military prosecution of the offense;
- eligibility and requirements for available medical and mental health services;
- personal civil legal matters,
- any proceedings of the military justice process in which a victim can participate as a witness or other party;
- military and civilian protective or restraining orders;
- understanding the eligibility for and obtaining any available military or veteran benefits; and
- other legal assistance as authorized by the Secretary of Defense.

D. Purpose and Eligibility For Services

Eligibility for Services

In general, to be eligible for SVC assistance, a sexual assault victim must make an unrestricted or restricted report of sexual assault under the Uniform Code of Military Justice and otherwise be entitled to legal assistance under 10 U.S.C. § 1044. An eligible victim must be offered the SVC services as soon as he or she reports an alleged sex-related offense or at the time he or she seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, trial counsel, a healthcare

445 Id. at 1716(c).

446 FY 14 NDAA § 1701(b)(1)-(9).

447 The U.S. Navy and U.S. Marine Corps refer to the Special Victim Counsel as “Victim Legal Counsel.” See Transcript of RSP Public Meeting, 118-162 (November 8, 2013) (Testimony of Colonel Carol Joyce and Captain Karen Fischer-Anderson); see also DoD SVC Implementation Report, 2-4. However, for purposes of this report, all victims’ counsel will be called “SVC.”

448 See FY 14 NDAA at 1716(a); see also United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 1 (July 1, 2013); United States Army, Special Victim Counsel Handbook, Chapter 1 (November 1, 2013); MCO P5 5800.16A, para 6003.

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
The Response Systems Panel has not yet considered or deliberated on the contents of this report.

Pursuant to Service policies, any active duty military personnel who report being a victim of sexual assault are eligible for SVC assistance in cases involving civilian or unknown perpetrators. In these cases, however, the SVC cannot represent a victim in civilian court and must explain this limitation to the victims. In addition, the Air Force and the Army expressly provide for SVC representation for “entry level personnel” who are “alleged to have been involved in an unprofessional relationship that involves physical contact of a sexual nature” with an instructor or staff member, even though a sexual assault-type crime has not been committed or alleged.

Military dependents can be eligible for SVC as well. If a victim is a civilian dependent of an active duty member, a commander must have UCMJ authority over the alleged offender in order for the victim be eligible to receive SVC services. The FY14 NDAA further expanded dependent access to SVC services. Prior to its enactment, most Services limited representation to “adult” victims of sexual assault. Now, statute requires that each of the Military Services provide representation to dependent minors who are victims of sexual assault and the Services have indicated this will be achieved by the end of June 2014.

Active duty Service members who were victims of sexual assaults occurring prior to service are not eligible for SVC assistance or representation unless the military has jurisdiction over the alleged offense. However, they are entitled to assistance through the servicing legal assistance office and the local sexual assault response office.

449 United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 2 (July 1, 2013); see also United States Army, Special Victim Counsel Handbook, Chapter 2 (November 1, 2013); MCO P5 5800.16A, para. 6003.

450 FY 14 NDAA at 1716(a); see also United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 1 (July 1, 2013); see also United States Army, Special Victim Counsel Handbook, Chapter 1 (November 1, 2013); MCO P5800.16A, para. 6003.

451 U.S. Army Special Victim Counsel Handbook, Chapter 1 (November 1, 2013); United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 1 (July 1, 2013); MCO P5800.16A, para. 6003.

452 U.S. Army Special Victim Counsel Handbook, Chapter 1 (November 1, 2013); United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 1 (July 1, 2013).

453 U.S. Army Special Victim Counsel Handbook, Chapter 1 (November 1, 2013); United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 1 (July 1, 2013).

454 See United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 1 (July 1, 2013); see also United States Army, Special Victim Counsel Handbook, Chapter 1 (November 1, 2013); MCO P5800.16A, para. 6003.

455 United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 1 (July 1, 2013); see also U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 1 (November 1, 2013).

456 FY 14 NDAA § 1716(g); see also DoD SVC Implementation Report, pg 3-6 (citing FY 14 NDAA 1716).

457 United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, 1 (July 1, 2013); see also U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 1 (November 1, 2013).
Unlike the other Services, the Marine Corps does not limit SVC representation to sexual assault victims; rather, all crime victims may obtain SVC services. The Marine Corps defines a victim as any person who alleges to have suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime in violation of the UCMJ. Additionally, even prior to enactment of the FY 14 NDAA, the Marine Corps did not “distinguish its eligibility based on the age of those dependents” and made SVC representation available to minor victims.

Obtaining Special Victim Counsel

Based on DoD and Service policy, after filing a restricted or unrestricted sexual assault report, the installation Sexual Assault Response Coordinator, Victim Advocate, or other first responder should immediately inform victims of his or her right to Special Victim Counsel. “Victims will be provided with a brief description of the role of the SVC and an explanation that the SVC is available and may be requested at any time throughout the duration of the justice process.” Once the victim is informed of his or her right to representation, he or she can waive the representation. However, it is incumbent upon the first responder to ensure the victim is aware an initial waiver does not permanently waive representation; the victim is able to obtain SVC at any time. Once the government initiates prosecution against a service member by preferring charges against him or her, the trial counsel is required to again provide the victim with notification of his or her right to obtain SVC. The trial counsel will also ensure the victim has the time to obtain an SVC if desired.

At least one Service expressly allows a victim to directly contact the SVC office for representation or for questions regarding representation at any time. However, in general, the Services prohibit an SVC from soliciting representation of a client. While SVC have protected

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458 MCO P5800.16A, para 6003.
459 Id.
460 Transcript of RSP Public Meeting, 122 (November 8, 2013) (Testimony of Colonel Carol Joyce).
461 See United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 2 (July 1, 2013); see also United States Army, Special Victim Counsel Handbook, Chapter 2 (November 1, 2013); MCO P5800.16A, para 6003; see generally Transcript of RSP Public Meeting, 106-90 (November 8, 2013) (Testimony of SVC Program Heads).
462 United States Army, Special Victim Counsel Handbook, Chapter 2 (November 1, 2013).
463 Id.; see also United States Air Force Rules of Practice and Procedure, Rule 2 (July 1, 2013); MCO P5800.16A, para 6003.
464 Id.; see also United States Air Force Rules of Practice and Procedure, Rule 2 (July 1, 2013).
465 Id.
466 United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 2 (July 1, 2013).
467 United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 2 (July 1, 2013); see also United States Army, Special Victim Counsel Handbook, Chapter 2 (November 1, 2013).
privilege and confidential relationships with clients, they are not an entity designated to accept a restricted report for purposes of documenting a formal report under Department of Defense policy. But, if in the course of an otherwise privileged communication with a legal assistance attorney, a victim indicates that he or she wishes to file a restricted report, the legal assistance attorney must facilitate contact with the SARC or VA for reporting purposes.

According to the Services, once a victim exercises his or her right to SVC, the local SVC Office or, for the Army, the local legal assistance office, is notified. That office will then appoint SVC to represent the victim. Once appointed, the SVC must contact the victim within forty-eight hours.

E. Organization and Structure of SVC Programs

Organization

Each Service, except the Army, has created a new SVC division with an independent chain of command. In general, each Service’s SVC division is led by an Officer-in-Charge (OIC), usually an O-6, responsible for leading, mentoring, evaluating, and training personnel assigned to the SVC program. Usually located at the headquarters office, the OIC is assisted by a deputy, generally with the rank of O-5, and several regional division heads with the rank of O-4. The OIC ensures SVC are stationed throughout the country and overseas at major installations. If there is no SVC located at an installation, the OIC must designate another installation SVC to provide the required services. Special Victim Counsel are located throughout the country and abroad, and are able to raise any concerns or questions to their direct chain of command at any time, regardless of the physical location of their chain of command.

468 Id.; see also U.S. Dept. of Def. Instr. [hereinafter DoDI] 6495.02, Sexual Assault Prevention and Response Program Procedures, Encl 4. (April 12, 2012) (only a SARC, VA and Heath Care Provider may receive a restricted report).

469 DoDI 6495.02, Encl 4.

470 United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 2 (July 1, 2013); see also United States Army, Special Victim Counsel Handbook, Chapter 2 (November 1, 2013); Transcript of RSP Public Meeting, 104-60 (November 8, 2013) (Testimony of SVC Program Heads).

471 See Transcript of RSP Public Meeting, 115-80 (November 8, 2013) (Testimony of SVC Program Heads); see also DoD SVC Implementation Report; Service Responses to RSP Request for Information Question 4 (on file with the RSP).

472 In the Air Force this position is referred to as the “Division Chief.” However, for purposes of clarity, we will refer to the Service Head of the SVC programs as the OIC.

473 Id. at 115-162 (Testimony of SVC Program Heads).

474 Id.; see also Service Responses to RSP Requests for Information, Question 4 (on file with RSP); MCO P5800.16A, para. 6002.

475 Id; see also Service Responses to RSP Requests for Information, Question 4 (on file with RSP); MCO P5800.16A, para. 6002.


477 Id; see also United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 9 (July 1, 2013).
This independent organizational setup closely mirrors the Services’ provision of trial defense counsel.

The autonomous nature of the SVC program is designed to ensure the SVC can zealously represent clients without fear of career impact or potential or actual conflicts of interest, even when the client’s interests are at odds with the government. Furthermore, SVC can directly contact their independent regional leadership and SVC Program OIC regarding ethical concerns or questions regarding the scope of representation. Lastly, the Services established the SVC division to be “separate and distinct in order for victims to realize that this is out there and not to be confused with the traditional legal assistance that [has always been] provided.”

Unlike the other Services, the Army has not created a “separate and distinct” SVC division. Instead, the Army directed that the SVC Program fall under the current Legal Assistance Organization. A Program Manager, with a rank of O-6, heads the Army’s SVC Program. This individual provides technical supervision over SVC “so if there is a conflict or there is some kind of adverse relationship” the SVC may contact the program manager who then raises the issue with the installation Staff Judge Advocate, who is normally in the direct chain of supervision of both the SVC and the trial counsel. Special Victim Counsel works through the supervisory and technical chain of supervision to resolve ethical concerns and/or questions of first impression. This supervisory chain includes their Chiefs of Legal Assistance, Deputy Staff Judge Advocates, and Staff Judge Advocates. As necessary, or in cases in which the Chief of Legal Assistance, Deputy and/or Staff Judge Advocate face a conflict of interest, the SVC will consult with his or her technical chain of command, the SVC Program Manager.

Pursuant to Army policy, SVC are specially trained legal assistance attorneys who work under the direct supervision of their Chief of Legal Assistance. The installation Staff Judge Advocate selects the SVC and the Chief of the Legal Assistance Office and the Staff Judge Advocate

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479 Id.

480 Id. at 118-20 (Testimony of Colonel Carol Joyce).

481 Transcript of RSP Public Meeting, 107-10 (November 8, 2013) (Testimony of Colonel James McKee); see also DoD SVC Implementation Report, 1.

482 The Staff Judge Advocate advises the General Court-Martial Convening Authority.

483 Transcript of RSP Public Meeting, 107-14 (November 8, 2013) (Testimony of Colonel James McKee); see also DoD SVC Implementation Report, 1.

484 Transcript of RSP Public Meeting, 107-14 (November 8, 2013) (Testimony of Colonel James McKee); see also DoD SVC Implementation Report, 1; U.S. Army Response to RSP Request for Information, Question 4 (on file with the RSP).

485 U.S. Army Response to RSP Requests for Information, Question 4 (on file with RSP).
Advocate professionally evaluate him or her. The Army determined this rating scheme would not create a conflict of interest and would not adversely impact a SVC’s career as “Army legal assistance attorneys are used to representing clients with interests adverse to the command, and our SJAs respect their professionalism in providing quality legal representation in such cases.” Additionally, “[i]t was determined that it was unnecessary to create a separate legal structure for SVC, as the legal system’s model is already working efficiently.”

Criteria and Selection

Pursuant to the FY 14 NDAA, SVC are required to meet the same qualifications as other legal assistance attorneys (i.e., judge advocate or a civilian attorney who is a member of the bar of a Federal court or of the highest court of a State) and be certified as competent to be designated as a Special Victims’ Counsel by the Service Judge Advocate General.

In addition to the above statutory requirements, the Service Staff Judge Advocate, The Judge Advocate General, or SVC Program OIC, who select the SVC, look to additional factors in the selection process. To be selected, the individual must be a judge advocate, in the rank of O-3 or above; have completed the judge advocate basic course; and, preferably, have some prior military justice experience. For example, in the Air Force, “the experience level of SVC is slightly less, but comparable to, the experience level of JAGs “entering more senior defense counsel positions.” This means SVC should have some courtroom experience and be familiar with investigations, the court-martial process, and trial practice. Although not expressly required in every Service, it is preferred that the counsel have experience as both defense and trial counsel before serving as SVC.

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486 Id.
487 Id.
488 Id.
489 FY 14 NDAA §1716(d).
490 Transcript of RSP Public Meeting, 104-60 (November 8, 2013) (Testimony of SVC Program Heads); see also Service Responses to RSP Request for Information, Question 4 (on file with the RSP).
491 Transcript of RSP Public Meeting, 104-60 (November 8, 2013) (Testimony of SVC Program Heads); see also Service Responses to RSP Request for Information, Question 4 (on file with the RSP); DoD SVC Implementation Report.
492 Air Force Response to RSP Requests for Information, Question 4 (on file with the RSP).
493 See Services Response to RSP Requests for Information, Question 4 (on file with the RSP).
494 Transcript of RSP Public Meeting, 131 (November 8, 2013) (Testimony of Captain Karen Fisher-Anderson); see also Service Responses to RSP Request for Information Question 4; DoD SVC Implementation Report. 

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
Special Victim Counsel are also selected based on their “sound judgment and their maturity to represent victims of sexual assault.”\textsuperscript{495} The officer must have the maturity and experience necessary to be able to independently manage an office, represent clients, and zealously advocate to commanders and convening authorities, with supervision and oversight that is geographically separated.\textsuperscript{496} The selecting official will also consider the SVC candidate’s willingness and desire to serve as an SVC in selection.\textsuperscript{497}

**Required Training and Certification**

All SVC must be licensed and competent to practice law.\textsuperscript{498} In addition, SVC must be certified to practice law under Article 27(b), UCMJ\textsuperscript{499}; be sworn under Article 42, UCMJ\textsuperscript{500}; have graduated from Judge Advocate Officer Basic Course; and attended an approved SVC training course.\textsuperscript{501} Depending on the Service, the local Staff Judge Advocate or Service Judge Advocate General will approve the SVC course.\textsuperscript{502}

Pursuant to the FY 14 NDAA, the Service Secretaries and the Secretary of Homeland Security (for the Coast Guard) are now statutorily required to provide “in-depth and advanced training” for all SVC.\textsuperscript{503} Currently, the Air Force and the Army offer specialized SVC courses at their Legal Centers and Schools.\textsuperscript{504} These courses last one to two weeks and SVC are selected from each of the different Services attend.\textsuperscript{505} The Navy is currently creating its own SVC course, modeled after the Air Force.\textsuperscript{506}

\textsuperscript{495} Transcript of RSP Public Meeting, 109 (November 8, 2013) (Testimony of Colonel James McKee)

\textsuperscript{496} Transcript of RSP Public Meeting, 104-60 (November 8, 2013) (Testimony of SVC Program Heads)

\textsuperscript{497} Transcript of RSP Public Meeting, 130-31 (November 8, 2013) (Testimony of Captain Karen Fisher-Anderson)

\textsuperscript{498} U.S. Army Special Victim Counsel Handbook, Chapter 8 (November 1, 2013).

\textsuperscript{499} Article 27(b), UCMJ, provides no person acting as investigating officer, military judge, or court member in a case may act as the trial counsel or defense counsel in the same case unless specifically requested by the accused.

\textsuperscript{500} Article 42, UCMJ, provides that all members of a court-martial must take an oath to faithfully perform their duties and each witness to a court-martial will be examined under oath.

\textsuperscript{501} See United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 8 (July 1, 2013); see also Transcript of RSP Public Meeting, 107-80 (November 8, 2013); see also Service Responses to RSP Requests for Information, Question 4 (on file with the RSP).

\textsuperscript{502} See United States Air Force Special Victim’s Counsel Rules for Practice and Procedure, Rule 8 (July 1, 2013); see also United States Army Special Victim Counsel Handbook, Chapter 8 (November 1, 2013); Service Responses to RSP Requests for Information, Question 4 (on file with the RSP); DoD SVC Implementation Report.

\textsuperscript{503} FY 14 NDAA §1716(b)

\textsuperscript{504} See U.S Army and U.S. Air Force Response to RSP Requests for Information, Question 4 (on file with the RSP); see also DoD SVC Implementation Report, 1, 7

\textsuperscript{505} See Service Responses to RSP Requests for Information, Question 4 (on file with the RSP); see also DoD SVC Implementation Report.

\textsuperscript{506} See U.S. Navy Response to RSP Requests for Information, Question 4 (on file with Response Systems Panel).
The Army and Air Force annual SVC courses include training on advocating for victims, understanding the psychological conditions of sexual assault victims, behavioral aspects of victims, the victim witness assistance program, victim interviews, interfacing with victims, the military justice process, the post-trial process, the role of SVC, and SVC rules of practice and procedure.507 The Army also established a JAG University website for SVC to access a document library and collaborate with other Army attorneys.508

**Assignment Length**

Based on Service policy, the duration of an officer’s SVC assignment varies. In general, SVC will serve a minimum of one year and not more than two years.509 If a Naval Reserve officer is activated to serve as an SVC, the assignment may last three years.510 Air Force SVC remain non-deployable for the duration of their assignment.511 The Army does not have the same limitation but provides, “[s]pecial consideration should be given to ensure that continuity is not broken between a SVC and the victim represented. Thus, care must be given when making deployment determinations that involve a SVC who is actively representing victims.”512

**Cost and Necessary Resources**

Due to the distinct Service missions, size, and locations of installations, the cost of sustaining the SVC programs varies.

**Air Force**

For FY 2014, the Air Force anticipates the SVC Program will require $2.25M in operating costs to include supplies and services, travel, education and training, and IT equipment.513 Based on a caseload of 712 clients during the brief period the Program has been in place and anticipated increases in client demand, the Air Force expects a sustainable program to require twenty-nine SVC and ten paralegals, five supervisory O-4s (majors), an O-6

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507 See The U.S. Air Force Judge Advocate General’s School, Memorandum for Special Victims’ Counsel Attendees (May 16, 2013); see also United States Army, Special Victim Counsel Course Desk book (November 2013); DoD SVC Implementation Report, 2, 7 (April 4, 2014).

508 Transcript of RSP Public Meeting, 114 (November 8, 2013) (Testimony of Colonel James McKee)

509 See Service Responses to RSP Request for Information Question 4; see also The Army Judge Advocate General, Memorandum for Judge Advocate Legal Services Personnel regarding “Office of the Judge Advocate General Policy Memorandum #14-01, Special Victim Counsel (November 1, 2013).

510 Transcript of RSP Public Meeting, 166-67 (November 8, 2013) (Testimony of Captain Karen Fisher-Anderson)

511 See United States Air Force Special Victim Counsel Rules for Practice and Procedure, Rule 8 (July 13, 2013).

512 United States Army Special Victim Counsel Handbook, Chapter 8 (November 1, 2013).

513 See Air Force Response to RSP Request for Information Question 4 (on file with the RSP).
The Response Systems Panel has not yet considered or deliberated on the contents of this report.

Division Chief, a Civilian Deputy (GS-14), and an E-7 to provide policy and management.\textsuperscript{514} The Program also requires a civilian (GS-13) at the Air Force Judge Advocate General’s School to formalize continued legal education and training.\textsuperscript{515} Due to SVC program requirements, the Air Force anticipates some installation level legal offices may curtail or eliminate some legal assistance services to adequately resouce the program.\textsuperscript{516}

\textbf{Army}

The Army currently has 208 judge advocates serving as SVC: 91 Active Army counsel, 47 Army National Guard Counsel, 70 Reserve Component counsel, and the Program Manager.\textsuperscript{517} Because SVC work in the legal assistance offices, they have access to paralegal and civilian support already within those offices.\textsuperscript{518}

Between November 1, 2013, and February 14, 2014, 536 victims received SVC assistance.\textsuperscript{519} The SVC and total legal assistance caseload varies from installation to installation. Some installations anticipate reducing additional legal assistance services to meet the demands of the SVC program.\textsuperscript{520} The Army Judge Advocate General has given Staff Judge Advocates the authority to limit services to retirees and their family members to meet the demands of serving sexual assault victims.\textsuperscript{521} To offset this impact, the Army Chief of Staff has authorized the mobilization of twenty Reserve Component judge advocates to backfill some of the legal assistance offices.\textsuperscript{522}

\textbf{Navy}

The Navy anticipates the SVC\textsuperscript{523} Program will require about five million dollars per year in manpower costs and an additional $41,000.00 per year in facility costs, $45,000.00 per year in

\begin{footnotesize}
\begin{enumerate}
\item See U.S. Air Force Response to RSP Requests for Information, Question 4 (on file with the RSP); see also DoD SVC Implementation Report, 6 (April 4, 2014).
\item Id.
\item DoD SVC Implementation Report, 2.
\item See Army Response to RSP Request for Information Question 4 (on file with the RSP).
\item DoD SVC Implementation Report, 2.
\item Army Response to RSP Request for Information Question 4 (on file with Response Systems Panel).
\item Id.
\item Id.
\item Id.
\item As mentioned supra, Victim Legal Counsel is the term utilized by the Marine Corps and the Navy instead of Special Victim Counsel. However, for purposes of clarity, this report will refer to all victims’ counsel as SVC.
\end{enumerate}
\end{footnotesize}
supply costs, $66,000.00 per year in training costs, and $300,000.00 for SVC travel costs.\textsuperscript{524} Thirty judge advocates are currently assigned to the program including the OIC and ten active component E-5s.\textsuperscript{525} The Navy has proposed increasing JAG Corps billets to support Program staffing requirements.\textsuperscript{526} To date, Navy SVC have assisted over 300 sex assault victims.\textsuperscript{527}

Overall, establishing the SVC program required growing the JAG Corps by thirty judge advocate billets to meet SVC mission requirements without adversely affecting the provision of legal services in other mission areas.\textsuperscript{528} The thirty additional billets will be funded beginning in FY14 and 15, but it will take several years to grow the JAG Corps through increased retention and accession quotas, which will allow a full transition from a reserve-active component mix to all active component SVC.\textsuperscript{529} The aggressive implementation timeline for the SVC program required the JAG Corps to assign officers outside their normal assignment cycle, sometimes transferring judge advocates out of their current positions on relatively short notice and before their normally scheduled rotations.\textsuperscript{530}

**Marine Corps**

The Marine Corps SVC Program budget for FY14 included $150,000 for operations and maintenance. Approximately $100,000 is required to train and certify all SVC and supporting personnel, while $40,000 will be utilized for case-related travel and required site visits. Approximately $10,000 will be used for office management. Additionally, there will be costs associated with SVC travel for courts-martial that will fall upon convening authorities.\textsuperscript{531} Currently, the SVC program is staffed with fifteen active duty judge advocates, eight enlisted Legal Support Specialists, and three part-time SVC.\textsuperscript{532} To provide long-term continuity, the civilian paralegals will replace enlisted personnel during FY14.\textsuperscript{533} During the initial operating phase of the Marine Corp’s SVC program, 114 victims received SVC representation. Then, from

\textsuperscript{524} Navy Response to RSP Request for Information Question 4 (on file with Response Systems Panel).
\textsuperscript{525} Id.; see also DoD SVC Implementation Report, 3.
\textsuperscript{526} Navy Response to RSP Request for Information Question 4 (on file with the RSP).
\textsuperscript{527} DoD SVC Implementation Report, 4.
\textsuperscript{528} Navy Response to RSP Request for Information Question 4 (on file with the RSP).
\textsuperscript{529} Id.
\textsuperscript{530} Id.
\textsuperscript{531} U.S. Marine Corps Response to RSP Request for Information Question 4 (on file with Response Systems Panel).
\textsuperscript{532} DoD SVC Implementation Report, 5.
\textsuperscript{533} Id.
January 1, 2014 to February 21, 2014, an additional 113 victims received SVC representation.\(^{534}\)

In order to fill the Regional SVC and SVC billets by November 1, 2013, the Marine Corps had to move experienced individuals out of their existing duties without immediate replacements and curtail non-trial legal services.\(^{535}\) However, the Marine Corps has not compromised its ability to try or defend complex cases or the speed with which such cases go to trial.\(^{536}\)

**Coast Guard**

The SVC program is currently administered by a full-time reserve O-6 judge advocate, one O-3 SVC coordinator, and seventeen SVC.\(^{537}\) The seventeen SVC provide services as a collateral duty.\(^{538}\) A permanent organizational structure has been approved and will be implemented later this year. The program will be led by a GS-15 civilian attorney and will include six active duty SVC, one enlisted yeoman, and one GS-8 administrative assistant.\(^{539}\) As of March 8, 2014, the Coast Guard has provided SVC services to fifty-six victims.\(^{540}\)

**Funding**

Congress authorized $25 million to the Department of Defense specifically to assist the Services with the cost of implementation, staffing, and operations for their individual SVC programs.\(^{541}\)

**F. Scope of Representation**

**Overview of Responsibilities**

The Special Victim Counsel Program is designed to “empower victims [by] fostering victims’ understanding of the military justice process and aiding each victim with the legal assistance needed to allow full participation in applicable programs and services and the military

\(^{534}\) Id.

\(^{535}\) Marine Corps Response to RSP Request for Information Question 4 (on file with the RSP).

\(^{536}\) Id.

\(^{537}\) DoD SVC Implementation Report, 8.

\(^{538}\) Id.

\(^{539}\) Id.

\(^{540}\) Id.


The Response Systems Panel has not yet considered or deliberated on the contents of this report.
justice process.” SVC accomplish this goal by providing effective and timely advice, availability to assist victims throughout the entire investigatory and adjudicative processes, and advocacy on behalf of clients to ensure their rights are protected. According to one SVC, when representing a client, “[y]ou are not only an advocate but also a protector of your client’s best interests. This usually means you should work to ensure your client is not inadvertently forced to re-live the trauma of the sexual assault by re-telling the story unless necessary for the case.”

A SVC’s primary duty is to represent the clients’ rights and interests during the investigation and court-martial process. A SVC may not represent a client in civilian courts. 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; advising the victim on collateral civil matters which stem from the alleged sexual assault; advising the victim on the difference between a restricted and unrestricted report; advising the victim on the court-martial process; coordinating with the Sexual Assault Response and Victim Witness Assistance personnel to ensure the victim is informed of all available services; assisting victims with obtaining available resources; advising the victim regarding available medical and mental health services; ensuring the victim is aware of his or her rights within the military justice system; and ensuring the victim’s rights are enforced by all persons involved in the court-martial process-this includes those rights expressly delineated in Article 6b, UCMJ. Additionally, an SVC may represent the victim in court-martial as permitted by law and assist victims with any post-trial submissions to the convening authority.

543 Id.
545 See U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 4 (July 1, 2013); see also U.S. Army Special Victim Counsel Handbook, Chapter 4 (November 1, 2013); Service Responses to RSP Requests for Information, Question 4 (on file with Response Systems Panel); Transcript of RSP Public Meeting, 110-80 (November 8, 2013) (Testimony of SVC Program Heads)
546 See U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 6, (July 1, 2013); see also U.S. Army Special Victim Counsel Handbook, Chapter 6 (November 1, 2013); Service Responses to RSP Requests for Information, Question 4 (on file with Response Systems Panel).
547 See U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 4 (July 1, 2013); see also U.S. Army Special Victim Counsel Handbook, Chapter 4 (November 1, 2013); MCO P5800.16A, para 6004; Service Responses to RSP Requests for Information, Question 4 (on file with Response Systems Panel); Transcript of RSP Public Meeting, 110-80 (November 8, 2013) (Testimony of SVC Program Heads).
548 See U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 4 (July 1, 2013); see also U.S. Army Special Victim Counsel Handbook, Chapter 4 (November 1, 2013).
Legislation currently pending in Congress would add to the requirements of SVCs. The Victims Protection Act of 2014, passed by the Senate on March 10, 2014, and currently pending in the House of Representatives, SVC duties would also include a requirement to advise victims of sexual assault on the advantages and disadvantages of prosecution by courts-martial versus in a civilian jurisdiction.  

In addition, a process must be established by which victims of sexual assault (that occur in the United States) are consulted regarding the victims’ preference on prosecution by courts-martial or a civilian forum. While not binding, the victims’ preference must be given “great weight” in determining the prosecution forum. Finally, if a victim expresses a preference for civilian prosecution, and the civilian jurisdiction declines to prosecute or defer to court-martial prosecution, the victim must be “promptly notified.”

The Department of Defense has commented on this legislative proposal. While DoD supports consulting with victims throughout the process and taking their preferences into account when appropriate, it expressed concern about giving a victims’ preference as to prosecution forum “great weight.” DoD pointed out that it has no authority over civilian jurisdictions. Also, with concurrent jurisdiction, a military prosecution would not preclude prosecution of the same offense in a civilian court. Finally, DoD is concerned that allowing victim preference could result in trial delays, which is inconsistent with “the cause of justice and military readiness.”

Interaction with the Victim Witness Assistance Program and SARC

The Sexual Assault Response Coordinator (SARC) serves as the installation’s single point of contact for integrating and coordinating sexual assault victim care services. Services start at the initial sexual assault report. As the central point of coordination, the SARC ensures the victim’s request for an SVC is forwarded through the appropriate channels to ensure immediate appointment of counsel. Once the victim and SVC form an attorney-client relationship, counsel will inform the SARC. Special Victim Counsel should work in conjunction with the SARC to coordinate delivery of services and avoid duplication of services.


550 Id, § 3(b).

551 Letter from the Assistant Secretary of Defense for Legislative Affairs to the Honorable Carl Levin (on file with the Response Systems to Adult Sexual Assault Crimes Panel).

552 See DoDI 6495.02, Sexual Assault Prevention and Response Program Procedures (Apr. 17, 2012).

553 See U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 3 (July 1, 2013); see also U.S. Army Special Victim Counsel handbook, Chapter 3 (November 1, 2013); MCO P5800.16A, para 6003.
and may advocate to the responsible agencies when these services are not being adequately provided.\footnote{554 See U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 3 (July 1, 2013); see also U.S. Army Special Victim Counsel handbook, Chapter 3 (November 1, 2013); MCO P5800.16A, para 6003.}

Similarly, the SVC works in conjunction with the installation Victim Witness Liaison\footnote{555 The victim witness liaison works for the commander or local staff judge advocate and is usually located in the prosecutor’s office. This individual serves as the victim’s primary point of contact for information and assistance in securing available victim/witness services.}, to ensure victims are afforded certain enumerated rights, such as conferring with trial counsel and notifying the victim of court-martial proceedings. A victim liaison may be assigned to each victim. Along with the Staff Judge Advocate and the trial counsel, the victim liaison is the SVC’s point of contact in the prosecution’s office for obtaining case updates and communicating questions and concerns from the victim.\footnote{556 See U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 3 (July 1, 2013); see also U.S. Army Special Victim Counsel handbook, Chapter 3 (November 1, 2013); MCO P5800.16A, para 6003.} Any communication between the victim or the SVC and the victim liaison is not confidential or privileged.\footnote{557 See Department of Defense Instruction 1030.2, Victim and Witness Assistance Procedure (June 4, 2004); see also U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 3 (July 1, 2013); see also U.S. Army Special Victim Counsel handbook, Chapter 3 (November 1, 2013); MCO P5800.16A, para 6003.} While there is overlap in the objectives of the SVC and the Victim Witness Liaison, the programs are separate and distinct as the victim liaison works for the government and serves as a facilitator of services, not as an advocate.\footnote{558 See U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 3 (July 1, 2013); see also U.S. Army Special Victim Counsel handbook, Chapter 3 (November 1, 2013); MCO P5800.16A, para 6003.}

**Standing**

“The SVC Program does not increase a victim’s standing in a court-martial hearing and other military justice proceedings beyond the standing victims are currently afforded under existing law and rules.”\footnote{559 U.S. Army Special Victim Counsel Handbook, Chapter 4 (November 1, 2013).} Pursuant to Rule for Courts-Martial [hereinafter R.C.M.] 103, a victim is not a party to a court-martial and does not have the same entitlements as litigation parties under the Uniform Code of Military Justice.\footnote{560 Manual for Courts-Martial, United States, R.C.M. 103 (2012).} However, the Court of Appeals for the Armed Forces (CAAF), the highest military court, composed of civilians appointed by the President and confirmed by the Senate, recently addressed the issue of standing in *LRM v. Kastenberg*.\footnote{561 LRM v. Kastenberg 72 MJ 364, (C.A.A.F. 2013).}
In *Kastenburg*, the victim served notice on the court that she wanted to exercise her right to be heard, through her SVC, during hearings pursuant to Military Rules of Evidence [hereinafter M.R.E.] 412 (Rape Shield) and 513 (Psychotherapist-Patient Privilege). The defense opposed the request. Following the SVC’s argument that the victim had the right to be heard, the military judge ruled the victim did not have standing on matters of law but she could be heard on matters of fact. The military judge found standing “denotes the right to present an argument of law before the court which is fundamentally different than the opportunity to be heard.” Thus, the military judge ruled the victim had no standing to move the court for relief to produce documents or to present legal argument. After filing a request for reconsideration with the trial judge, the victim filed a request for extraordinary relief petitioning the Air Force Court of Criminal Appeals (AFCCA) for a writ of mandamus. The AFCCA denied the writ outright finding the court lacked jurisdiction to hear the raised issue.

The Air Force Judge Advocate General then certified three issues to CAAF for consideration. The certified issues included whether: (1) the AFCCA erred by finding no jurisdiction existed; (2) whether the military judge erred by denying the victim, LRM, the opportunity to be heard through counsel thereby denying her due process under the Military Rules of Evidence; and (3) whether the CAAF should issue a writ of mandamus. The CAAF, citing previous case law, determined, “LRM’s position as a non-party to the courts-martial . . . does not preclude standing. There is long-standing precedent that a holder of a privilege has a right to contest and protect the privilege.” The court further found, a “reasonable opportunity to be heard at a hearing includes the right to present facts and legal argument, and that a victim . . . who is represented by counsel be heard through counsel. This is self-evident in the case of M.R.E. 513, the invocation of which necessarily includes a legal conclusion that a privilege applies.” The court then went on to acknowledge M.R.E. 513 and M.R.E. 412 both include a provision specifically addressing the victim’s right to be heard during related proceedings. Lastly, the court found that while the M.R.E.s expressly provided for a right to be heard, “[a] military judge has the discretion. . . and may apply reasonable limitations, including restricting

562 Id. at 366.
563 Id. at 366-67.
564 Id.
565 Id.
566 Article 67(a)(2), UCMJ, provides the CAAF shall review the record in “all cases reviewed by the Court of Criminal Appeals which the Judge Advocate General orders sent to the Court of Appeals for the Armed Forces for review.”
567 Id. at 366.
568 Id. at 368.
569 Id. at 370.
570 Id.
the victim or patient and their counsel to written submissions if reasonable to do so in context."\textsuperscript{571}

In the context of M.R.E. 412 and 513, a victim clearly has the right to present facts as well as legal argument through his or her SVC. However, it is unclear if CAAF’s holding is limited to the specific rules of evidence discussed in the opinion or whether a victim will have standing to make an argument and/or present evidence whenever an alleged violation of an enumerated right under Article 6b, UCMJ, occurs. Additionally, because the Judge Advocate General of the Air Force certified the issue to the a provision of the UCMJ that mandates CAAF review the issue, CAAF did not address whether the extraordinary writ is an appropriate mechanism for reviewing an alleged violation of a victim’s right under the Military Rules of Evidence or Article 6b, UCMJ.

While it is unclear if the CAAF intended to limit is holding, the Services interpret \textit{Kastenburg} to provide SVC standing only to the “right to be heard” set forth in MREs 412, 513, and 514. The current policy for both the Army and the Air Force is “for purposes of these three MREs and future MREs or RCMs giving victims the right to be heard in military justice proceedings, SVC or civilian victims’ counsel may be allowed to speak on their client’s behalf, as permitted by the presiding judge.”\textsuperscript{572} The Services did not address the issue of standing in the DoD report on SVC Implementation submitted to Congress and the RSP on April 4, 2014.\textsuperscript{573}

\textit{SVC Access to Records}

The right of Special Victim Counsel to access records is no greater than their clients’ access rights.\textsuperscript{574} While the FY 14 NDAA does provide for various notification and consultation requirements, the statute is silent regarding a victim’s right to access documentary evidence such as records.\textsuperscript{575} Further, neither military case law nor Service regulations address the issue. The Army’s approach is:

\begin{quote}

a victim’s request for investigative reports and other military justice documents during the pretrial phase must be processed under applicable Freedom of Information Act or Privacy Act
\end{quote}

\begin{itemize}
  \item \textsuperscript{571} \textit{Id.} at 371.
  \item \textsuperscript{572} U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 4 (July 1, 2013); see also U.S. Army Special Victim Counsel Handbook, Chapter 4 (November 1, 2013).
  \item \textsuperscript{573} DoD SVC Implementation Report.
  \item \textsuperscript{574} See U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 4 (July 1, 2013); see also U.S. Army Special Victim Counsel Handbook, Chapter 4 (November 1, 2013).
  \item \textsuperscript{575} See FY 14 NDAA 1716.
\end{itemize}
The Response Systems Panel has not yet considered or deliberated on the contents of this report.

In addition to these access rights, [SVC] may request information directly from the Trial Counsel under the “need to know” exception to the Privacy Act. In this case, the Trial Counsel may, but is not required to, disclose information and records to the SVC. Information and records obtained by the SVC under the “need to know” exception are for the SVC use only and may not be shared with the victim.576

Collateral Misconduct

An investigation into the facts and circumstances surrounding a sexual assault may produce evidence that the victim engaged in misconduct. “Collateral misconduct is misconduct that is committed by a victim of a sexual assault that has a direct nexus to the sexual assault.”577 Typical examples of collateral misconduct include underage drinking, adultery, fraternization, and violations of regulations or orders.578 In each Service, SVC provide some advice to victims about potential collateral misconduct issues.579 For example, in the Marine Corps an SVC may advise the victim on legal options such as testimonial immunity.580

However, the SVC’s ability to represent victims on collateral misconduct varies slightly throughout the Services. In general, Service policies dictate that upon learning of collateral misconduct, SVC will inform the victim that trial defense services are available, and inform the victim that SVC will not serve as the victim’s primary counsel for purposes of collateral misconduct if any administrative or punitive action is sought.581 The Air Force has clarified its policy, indicating that the appointed trial defense counsel will serve as primary counsel for purposes of collateral misconduct and the SVC may serve as secondary counsel.582 Only Service members, not military dependents, are entitled to trial defense services.583

576 U.S. Army Special Victim Counsel Handbook, Chapter 4 (November 1, 2013).


578 Id.

579 See U.S. Army Special Victim Counsel Handbook, Chapter 5 (November 1, 2013); see also U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule (July 1, 2013); MCO P5800.16A, para 6004.

580 MCO P5500.16A, para 6004.


583 See U.S. Dep’t of the Army, Reg. 27-10, Military Justice, Chapter 6 (3 Oct 2011); MCO P5800.16A, chp. 2; U.S. Dep’t of the Air Force Instruction 51-201, Administration of Military Justice, Chapter 5 (21 Dec 07).
Duration of Representation

According to individual Service policies, SVC’s representation terminates upon final disposition of a case. 584 Final disposition is considered the point when the Convening Authority takes action on the findings and sentence of the court-martial. 585 For non-judicial punishment actions under Article 15, UCMJ, final disposition is considered the point when the punishment is complete. For administrative actions, case disposition occurs when the separation authority takes action. 586 Once SVC is appointed, representation continues uninterrupted until final disposition of the case or until the victim releases the SVC- whichever occurs sooner. 587 In the Navy and Marine Corps, transfers of counsel due to military service will also terminate the relationship, but additional counsel will be provided. 588 Based on Service policies, SVC generally do not represent the victim during appellate review of a court-martial. 589

G. Initial Measures of Victim Satisfaction

Air Force Survey and Intended Surveys

As the pilot program for the Department of Defense, the Air Force was the first to launch the SVC program and reach full operating capability. While the other Services began to implement SVC programs in the summer of 2013, the Air Force program began significantly earlier in January 2013. 590 As such, the Air Force is the only Service to implement and complete initial small sample victim satisfaction survey. 591 The Air Force initiated its Victim Impact Survey in March 2013 and provided it to thirty-six 592 sexual assault victims, including those represented by an SVC and those who were not. 593 The survey included questions such as: what was the level of satisfaction with the appointed SVC; would you recommend other victims seek

584 U.S. Army Special Victim Counsel Handbook, Chapter 3, (November 1, 2013); see also U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 3 (July 1, 2013); MCO P5800.16A para 6005.
585 U.S. Army Special Victim Counsel Handbook, Chapter 3, (November 1, 2013); see also U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 3 (July 1, 2013); MCO P5800.16A para 6005.
586 U.S. Army Special Victim Counsel Handbook, Chapter 3 (November 1, 2013).
587 See Service Responses to RSP Request for Information Question 4 (on file with the RSP).
588 See U.S. Navy and U.S. Marine Corps Responses to RSP Request for Information Question 4 (on file with the RSP).
589 See U.S. Army Special Victim Counsel Handbook, Chapter 3, (November 1, 2013); see also U.S. Air Force Special Victim Counsel Rules of Practice and Procedure, Rule 3 (July 1, 2013); MCO P5800.16A para 6005.
591 Id at 148-57.
592 Though Air Force SVC are currently representing 458 clients, the Victim Impact Survey is not provided to them until the military justice process concludes and the attorney-client relationship ends. At the time of the initial survey, only thirty-six victims met this qualification.
593 Id.; see also U.S. Air Force Response to RSP Request for Information Question 1d; DoD SVC Implementation Report, 8.
representation from an SVC; did your SVC effectively advocate on your behalf; and did your SVC assist you in understanding the military justice process.\textsuperscript{594}

According to the Air Force, the initial survey results were overwhelmingly positive and prove the effectiveness of the SVC program.\textsuperscript{595} For example: ninety-two percent of those surveyed indicated they were “extremely satisfied” with the advice and support the SVC provided during the court-martial process; ninety-eight percent would recommend other victims request an SVC; and ninety-six percent indicated their SVC helped them understand the investigation and court-martial process.\textsuperscript{596} The survey also indicated that ninety percent of those who used an SVC were female; eighty percent were active duty; and ninety percent filed unrestricted reports.\textsuperscript{597}

Currently, the Army, Navy, and Marine Corps are developing surveys modeled on the Air Force Victim Impact Survey.\textsuperscript{598} Additionally, the Judge Advocate General of the Army has tasked the Army SVC Program Manager with gathering information for the first twelve months of the Army’s SVC program to evaluate the cost and effectiveness of the program.\textsuperscript{599} However, the Services have neither defined what “effective” means for the program nor developed using any standardized method of evaluating program effectiveness.\textsuperscript{600}

\textit{Victim Testimony}

The Subcommittee heard testimony from military sexual assault victims, including three still on active duty.\textsuperscript{601} The three witnesses were on active duty at the time of the assault and have remained on active duty following the investigation and adjudication of their alleged offenders.\textsuperscript{602} All three witnesses testified their SVC assisted them throughout the court-martial process by helping them understand the complicated rules associated with the trial process,

\begin{itemize}
  \item \textsuperscript{594} U.S. Air Force Special Victim Counsel Victim Impact Survey (March, 2013).
  \item \textsuperscript{595} See U.S. Air Force Response to RSP Request for Information, Question 1d, Victim Impact Survey Attachment; DoD SVC Implementation Report, 8.
  \item \textsuperscript{596} See Transcript of RSP Public Meeting, 150-57 (November 8, 2013) (Testimony of Colonel Dawn Hankins); DoD SVC Implementation Report, 8.
  \item \textsuperscript{597} See Transcript of RSP Public Meeting, 150-57 (November 8, 2013) (Testimony of Colonel Dawn Hankins); DoD SVC Implementation Report, 8.
  \item \textsuperscript{598} See Transcript of RSP Public Meeting, 187 (November 8, 2013) (Testimony of Colonel James McKee, Colonel Carol Joyce, and Captain Karen Fisher-Anderson).
  \item \textsuperscript{599} See Transcript of RSP Public Meeting, 164 (November 8, 2013) (Testimony of Colonel James McKee).
  \item \textsuperscript{600} See Transcript of RSP Public Meeting, 104-92 (November 8, 2013) (Testimony of SVC Program Heads).
  \item \textsuperscript{601} An additional witness was present but the testimony is not relevant for this portion of the report.
  \item \textsuperscript{602} See Transcript VSS Subcommittee Meeting, 6-135 (March 13, 2014) (Victim Testimony).
\end{itemize}

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
advocating on their behalf to government counsel and the court, and ensuring their rights were protected. Each witness testified that the SVC was critical to his or her ability to understand the process and participate effectively as witnesses against their accuser. They believe that having an SVC was a positive experience and would recommend other victims seek SVC representation immediately upon filing a report of sexual assault—restricted or unrestricted. Two of the witnesses praised the SVC program despite the acquittal of their alleged offenders in courts-martial.

One of the victims testified about her experiences as a victim both before and after the SVC program. Ms. JP told the Subcommittee “I have, unfortunately, witnessed the handling of a situation before and after the [Service’s] current initiative to combat sexual assault . . .” Prior to the SVC program, Ms. JP testified against her then husband who was charged with physically and sexually assaulting Ms. J.P. Ultimately, he was acquitted of most offenses. Ms. J.P. stated she “felt let down by the system” and that any additional reporting was senseless. But, after learning her offender was, again, accused of sexual assault in 2012, Ms. J.P. “knew [she] had to come forward” to prevent other women from being abused. She testified that her “experience [during the second court-martial] . . . was completely different and incomparable to the first . . . [and she could] not express to [the Subcommittee] how much different the atmosphere, the command support, and the available services were between [her] initial reports and [her] experience over the last year.” She credited a large part of her experience directly to her SVC’s representation. According to Ms. J.P, “[h]e was able to work with me through the entire court-martial process. He was able to hear the past ten years of my horror, explain the trial process which I was about to go through, and assist me in understanding the complex and incomprehensible rules of the court . . . I felt incredibly supported that an attorney was assigned just to me, whose only allegiance was my best interest.”

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603 Id.
604 Id.
605 Id.
606 Id.
607 Transcript of RSP Public Meeting 15 (March 13, 2014) (Testimony of Ms. J.P.).
608 Id. at 16-18.
609 Id. at 18
610 Id. at 18-19
611 Id. at 19.
612 Id. at 22.

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
H. Special Victim Counsel in Civilian Jurisdictions

Prevalence of Representation

The concept of attorneys providing legal support to non-party victims in criminal proceedings has become more common in the federal courts and state jurisdictions than before as protecting crime victim’s rights to notice, privacy interests, and other rights have become an increasingly complex practice.613 Lawyers representing only the rights of victims in criminal cases are relatively limited, used for just over ten years in some jurisdictions.614 Nowhere in the United States is the practice as comprehensive or organized as the program now in effect in the Military Services.615

Even within jurisdictions where attorneys and victim rights organizations play an active role in representing a victim’s interest in a criminal case, attorneys represent only a small percentage of victims involved in the criminal justice system.616 Special victim attorneys represent an even smaller percentage of sexual assault victims in the criminal legal system.617 For instance, in Arizona, which has enforced victim rights for over twenty years, including

613 Transcript of RSP Public Meeting 240-41 (November 8, 2013) (Ms. Keli Luther, Maricopa County Deputy Attorney); Transcript of RSP Public Meeting 243-44 (November 8, 2013) (testimony of Mr. Mike Andrews, D.C. Crime Victims’ Resource Center); REDACTED JOINT SERVICES COMMITTEE-SEXUAL ASSAULT SUBCOMMITTEE REPORT (hereinafter JSC-SAS Report), Appendix C (Anchorage, Alaska), Appendix D (Maricopa County, Arizona), Appendix G (District of Columbia), Appendix I (Baltimore Maryland), Appendix L (Multnomah and Yamhill County, Oregon).

614 Transcript of RSP Public Meeting 235-36 (November 8, 2013) (testimony of Ms. Keli Luther, Maricopa County Deputy Attorney (discussing the “grand constitutional experiment” that began in 2002 with a program to permit a crime victim to retain an attorney for the sole purpose of effectuating her rights within the criminal justice process.”)); Transcript of RSP Public Meeting 205-06 (November 8, 2013) (testimony of Mr. Chris Mallios, Attorney Advisor for AEquitas and former Assistant District Attorney, Philadelphia District Attorney’s Office) (indicating that it was fairly rare in his experience to have victims’ rights attorneys unless there was a civil case or if the judge appointed an attorney because of potential Fifth Amendment issues); Transcript of RSP Public Meeting 240 (November 8, 2013) (testimony of Ms. Keli Luther)(Prosecutors recognize that 99 percent of our victims still will not have counsel); JSC-SAS Report Appendix K-3 (Attorney victim advocates are not typically retained by victims in the Manhattan, NY District Attorney’s Office); See also, JSC-SAS Report Appendix E (San Diego, CA), Appendix F (Delaware), Appendix H (Athens, GA), Appendix I (Grand Rapids, MI), Appendix P (Snohomish County, WA) (all indicating the appearance of victim counsel is infrequent or does not occur).

615 Transcript of RSP Public Meeting 229 (November 8, 2013) (testimony of Ms. Marjory Fisher, Bureau Chief, Special Victims Bureau, Office of the District Attorney, Queens, New York) (indicating that in New York City, the instances of victims retaining counsel is rare – “maybe twice a year in a very busy county in which I work.”); Transcript of RSP Public Meeting 205-06 (November 8, 2013) (testimony of Mr. Chris Mallios, Attorney Advisor for AEquitas and former Assistant District Attorney, Philadelphia District Attorney’s Office) (indicating that it was fairly rare in his experience to have victims’ rights attorneys unless there was a civil case or if the judge appointed an attorney because of potential Fifth Amendment issues); Transcript of RSP Public Meeting 240 (November 8, 2013) (testimony of Ms. Keli Luther)(Prosecutors recognize that 99 percent of our victims still will not have counsel); JSC-SAS Report Appendix K-3 (Attorney victim advocates are not typically retained by victims in the Manhattan, NY District Attorney’s Office); See also, JSC-SAS Report Appendix E (San Diego, CA), Appendix F (Delaware), Appendix H (Athens, GA), Appendix I (Grand Rapids, MI), Appendix P (Snohomish County, WA) (all indicating the appearance of victim counsel is infrequent or does not occur).

616 Transcript of RSP Public Meeting 240-41 (November 8, 2013) (testimony of Ms. Keli Luther).

617 Transcript of RSP Public Meeting 239 (November 8, 2013) (testimony of Ms. Keli Luther); JSC-SAS Report Appendix D-5 (Victims have counsel who represent them in less than one percent of the sexual assault cases in Arizona); JSC-SAS Report Appendix I-5 (Staff attorneys at the Maryland Crime Victims’ Resource Center represent victims of various types of crimes, and currently have received a grant to work with victims of identity theft).
victim access to attorneys for over ten years, prosecutors recognize that ninety-nine percent of the victims still do not have counsel.\textsuperscript{618}

\section*{The Role of Special Victim Counsel}

Victim’s attorneys can ensure victims are treated with dignity, respect, fairness, and are free from intimidation and harassment.\textsuperscript{619} An attorney well trained in victims' rights can successfully shepherd crime victims through the gauntlet of the criminal justice system, which is often very intimidating to victims.\textsuperscript{620}

The role victim counsel plays in the criminal process varies among jurisdictions, as do specific victim rights and their source (statute, constitution, rule, or all).\textsuperscript{621} There is generally more involvement in the criminal case by special victim counsel in jurisdictions with codified enforcement mechanisms.\textsuperscript{622}

Civilian special victim counsel represent their clients’ rights and interests and will support their desires regarding criminal prosecution, regardless of their preference to pursue criminal charges or have the criminal case dismissed.\textsuperscript{623} While special victim counsel generally have good relationships and work cooperatively with prosecutors, they represent their clients’ rights and interests regardless of that interest intersecting with the prosecutor’s.\textsuperscript{624} Prosecutors may refer victims to special victim counsel in instances when there is an issue that arises during

\begin{itemize}
\item \textsuperscript{618} Transcript of RSP Public Meeting 240 (November 8, 2013) (testimony of Ms. Keli Luther).
\item \textsuperscript{619} Transcript of RSP Public Meeting 240 (November 8, 2013) (testimony of Ms. Keli Luther).
\item \textsuperscript{620} Transcript of RSP Public Meeting 240 (November 8, 2013) (testimony of Ms. Keli Luther).
\item \textsuperscript{621} Transcript of RSP Public Meeting 240 (November 8, 2013) (testimony of Ms. Keli Luther regarding Arizona’s constitutional and statutory victim rights); see also JSC-SAS Report Appendix C-7 (Describing victim rights in Alaska granted by both statute and constitution); JSC-SAS Report Appendix P-7 (Washington constitution and statutory code contain victim rights, but there are no enforcement mechanisms); JSC-SAS Report Appendix N-6 (victims have standing both from the Texas Constitution and by statute but there are no explicit enforcement mechanisms, which limits the role victims’ attorneys play in the criminal case).
\item \textsuperscript{622} See, e.g., JSC-SAS Report Appendix D (Arizona), Appendix G (District of Columbia), Appendix I (Oregon) (all provide for enforcement of victim rights).
\item \textsuperscript{623} See, e.g., JSC-SAS Report, Appendix I (Maryland)(Maryland Crime Victims’ Resource Center (MCVRC attorneys sometimes make motions and file appeals focused on upholding victim rights, even though the victim’s interests may not be the same as the State’s broader interests).
\item \textsuperscript{624} JSC-SAS Report Appendix D-4 (Arizona)(Victim Counsel generally have a cooperative relationship with prosecutors, and the prosecutor’s office will refer victims to victim counsel to ensure rights are upheld); JSC-SAS Report Appendix I-5 (Maryland)(Staff attorneys from the Maryland Crime Victims’ Resource Center describe that the needs of victims in sexual assault cases do not always correlate with the interests of the State, and they can represent the victim’s interests, which may include working out a plea agreement so the victim does not need to testify).
\end{itemize}
the criminal case prosecutors believe could best be handled by an attorney whose sole duty is to represent the victim’s interests.625

Typically, civilian special victim counsel provide advice about the criminal justice system to ensure that the statutory and constitutional rights of the victim, where enacted, are upheld.626 Most jurisdictions provide the victim the right to be heard at bail hearings. Attorneys often assist victims at this juncture of the process.627 Lawyers who represent victims have noted that simply filing a notice of appearance seems to increase the likelihood that the government will comply with the victim’s rights.628

Although special victim counsel may not play a significant role during the criminal trial itself, victim counsel in civilian jurisdictions that have them may represent clients during discrete moments in the criminal justice process, including:

1. Victim Safety – Representation at bail hearings and other hearings to set conditions of a defendant’s release. In some jurisdictions, special victim counsel are involved in filing protection orders, as well as, landlord-tenant issues or other related matters that arise out of a sexual assault incident or investigation.629

2. Victim’s Privacy Rights - Typically, victim counsel are involved in requests for disclosure of medical and mental health records and privacy regarding prior sexual history.630 A large part of the practice of victim counsel is motion practice, especially as it relates to enforcing the privacy interests of the victim in his or her records and prior sexual history.

3. Victim’s Right to be Present - Victims typically have a right to be present in the courtroom, but with some exceptions.631 Civilian special victim counsel often participate in motion practice seeking enforcement of this right.

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625 JSC-SAS Report Appendix C (Alaska) (Prosecutors refer victims to Office of Victim Rights (OVR) when the defense makes a request for medical or mental health records, as they don’t have standing to make the argument), Appendix D (Arizona)(Prosecutors will refer victims to victims’ counsel to ensure that the victim’s rights are upheld).

626 Transcript of RSP Public Meeting 235-36 (November 8, 2013) (testimony of Ms. Keli Luther).

627 See, e.g., JSC-SAS Report Appendix C-6 (Alaska Office of Victim Rights counsel participate in bail and release hearings, and Judges will inquire whether the victim has been notified of the hearing prior to proceeding).

628 JSC-SAS Report, Appendix D-5 (Arizona) (The notice of appearance also serves to educate on Arizona crime victims’ rights); Appendix I-5 (Maryland)(Entering a notice of appearance changes the dynamic in a case).

629 Transcript of RSP Public Meeting 246 (November 8, 2013) (testimony of Mike Andrews, D.C. Crime Victims’ Resource Center); JSC-SAS Report, Appendix D-5 (Maricopa County, Arizona); Appendix C-4 (Anchorage, Alaska); Appendix L-6-8 (Multnomah and Yamhill County, Oregon) Appendix N (Texas).

630 JSC-SAS Report, Appendix D (Arizona); Appendix C (Alaska); Appendix L (Oregon) Appendix N (Texas).

631 Id.
4. Sentencing - Victim interests include providing an impact statement and obtaining restitution, where there are losses the offender is responsible for payment.\footnote{Id.} Civilian special victim counsel often assist with preparation and, sometimes, delivery of victim impact statements, as well as motion practice in the form of sentencing and restitution memoranda.

5. Victims have a right to have the proceedings handled in a timely manner in many jurisdictions, and therefore, attorneys may represent victims when issues of trial dates and continuances arise.\footnote{Id.}

Access to Documents

Access to discovery or reports from the prosecutor’s file varies among jurisdictions.\footnote{See, e.g., JSC-SAS Report Appendix L (Oregon victim rights).} For example, in Texas, even though victims have standing in court, they are not explicitly entitled to discovery, and prosecutors generally do not share evidence with victim counsel.\footnote{JSC-SAS Report, Appendix N at 6.} Attorneys can obtain a copy of the police report by sending a letter of representation to the police department.\footnote{Id.; see also Charles Doyle, Congressional Research Service, Crime Victims' Rights Act; A Summary and Legal Analysis of 18 U.S.C. 3771 [Hereinafter "CRS Report"] at 32 and n.157 (April 24, 2012), stating that the right to confer with the government attorney "does not extend to a right to access to the prosecution's investigative files nor to the Probation Services' pre-sentencing report" and citing In re Kenna, 453 F.3d 1136, 1137 (9th Cir. 2006); United States v. Moussaoui, 483 F.3d 220, 235 (4th Cir. 2007); United States v. Coxton, 598 F.Supp.2d 737, 739-41 (W.D.N.C. 2009); United States v. Rubin, 558 F.Supp.2d 411, 425 (E.D.N.Y. 2008); In re Siler, 571 F.3d 604, 609-10 (6th Cir. 2009).} Attorney who work in civilian jurisdictions as victim counsel often, but not always, have a background or experience in criminal law.\footnote{Redacted JSC-SAS Report Appendix L-9 (Oregon)(many former prosecutors from Multnomah County are in private practice and represent victims);} Many attorneys who represent victims in either federal or state criminal proceedings are funded by grants or other public funding, although many attorneys also provide services on a pro bono basis.\footnote{See, e.g., Transcript of RSP Public Meeting 243 (November 8, 2013) (testimony of Mike Andrews, D.C. Crime Victims' Resource Center); JSC-SAS Report, Appendix C-3 (Alaska Office of Victim Rights is funded through the state’s Permanent Fund Dividend Program, from funds forfeited by defendants in custody on felony level crimes)Appendix D-4 (Arizona Voice for Crime Victims receives some support from a government grant).} As previously indicated, funding for

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
programs may be limited, and is not always consistently provided. For instance, in Washington, DC, the D.C. Crime Victims’ Resource Center is currently one of the only pro bono legal clinics that represent crime victims. Mr. Mike Andrews, managing attorney for the D.C. Crime Victim’s Resource Center, testified, “[t]he D.C. Crime Victim’s Resource Center is unique because we’re the only pro bono legal clinic in the D.C. metropolitan area that represents crime victims. Years ago, there [were] several clinics . . . and with funding restraints, those clinics had kind of went by the wayside.”

Prosecutors’ Concerns with Victim Relationship

While many prosecutors have encountered attorneys representing a victim filing a civil suit to recover damages, there are few jurisdictions where prosecutors are familiar with the concept of counsel representing a victim on issues related to a criminal sexual assault case. Some prosecutors expressed concern to the RSP about victim’s counsel, worrying, among other things, that they will interfere with the relationship and close bond the prosecutor forms with sexual assault victims while preparing for trial. They worry, for instance, that professional ethics rules prohibiting a lawyer from communicating with an individual about the subject matter of the representation if that individual is represented by counsel could inject an unnecessary wedge between the victim and prosecutor.

For example, Ms. Theo Stamos, the Commonwealth’s Attorney for Arlington County, Virginia, told the RSP, “. . . I firmly believe that if we are doing our jobs correctly with the dedication, professionalism, and sensitivity that these types of cases demand, victim attorneys would really be a redundancy.” Similarly, Ms. Marjorie Fisher, the Chief of the Special Victims Bureau in Queens, New York, told the RSP, “I worry that if the victim had their own lawyer in every single case, that the relationship that I think is sacrosanct in our office that exists between the victim and her counsel could circumvent or diminish the critical relationship that my ADAs have with their victim.”

639 Transcript of RSP Public Meeting 243 (November 8, 2013) (testimony of Mr. Mike Andrews, D.C. Crime Victims’ Resource Center (indicating that years earlier, there were several clinics in the DC area, but due to funding restraints, they were no longer operational).

640 Id. at 243.

641 See, e.g., Transcript of RSP Public Meeting 229 (November 8, 2013) (testimony of Ms. Marjory Fisher).

642 Transcript of RSP Public Meeting 216 (November 8, 2013) (testimony of Ms Theo Stamos); Transcript of RSP Public Meeting 229 (November 8, 2013) (testimony of Ms. Marjory Fisher); See also, Transcript of RSP Public Meeting 249 (Comment of RSP Chairwoman Judge Barbara Jones.

643 Transcript of RSP Public Meeting 216 (November 8, 2013) (testimony of Ms. Theo Stamos).

644 Id. at 215-16.

645 Id. at 218-20.
Prosecutor Concerns over Records and Potentially Exculpatory Material

The role the prosecutor plays in protecting the interests and specific rights of victims also varies between jurisdictions, depending on applicable statutory or constitutional provisions and local practice. For instance, in some jurisdictions, such as Alaska, prosecutors do not have standing to argue the victim’s privacy interests in his or her medical or counseling records. In others, such as Arizona, prosecutors have standing to argue the victim’s privacy interests, as do counsel who represent victims in the criminal process.

Likewise, some prosecutors believe it is their duty and obligation to represent a victim’s interests during hearings related to the victim’s previous sexual history or release of medical or psychiatric records. Some prosecutors worry that they may not be told of potentially exculpatory information when a victim has an attorney with whom they have confidentiality. This is especially true in situations where a victim’s medical or mental health records are being subpoenaed by the defense.

Value of Special Victim Counsel to Sexual Assault Victims

While the specific laws, rules, availability, and attitudes regarding the role of victim counsel in the criminal justice system vary, the goal remains the same: to ensure that victims are treated with dignity, respect, as well as fairness, and to be free from intimidation and harassment. With the support and advice of a well-trained victims’ rights lawyer, victims can find their voice.

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646 JSC-SAS Report, Appendix C-4 (Anchorage, Alaska) (prosecutors have no standing to assert a privilege on behalf of a victim and may suggest victims contact OVR for assistance).

647 Transcript of RSP Public Meeting 241 (November 8, 2013) (testimony of Ms. Keli Luther).


649 Id. at 231.

650 Transcript of RSP Public Meeting 208 (November 8, 2013) (testimony of Mr. Chris Mallios); Transcript of RSP Public Meeting 250 (November 8, 2013) (comment by RSP Chairwoman Judge Barbara Jones).

651 Transcript of RSP Public Meeting 240 (November 8, 2013) (testimony of Ms. Keli Luther).

652 Id. at 238.
I. Findings and Recommendations

- **Finding 20-1**: Early survey results and victim testimony indicate the SVC program is an invaluable tool for victims. This program instills confidence in the victim and helps him or her better understand the military justice process and his or her rights under the Code.

- **Finding 20-2**: Congress authorized $25M in the FY14 NDAA to assist the Services with the operation costs of implementing the SVC program. However, the Services anticipate needing significant staff and monetary to implement and sustain the SVC program in the future.

**Recommendation 20**: Congress appropriate sufficient funds annually to DoD to ensure the Services are able to sustain a robust SVC program.

- **Finding 21**: The Military Services currently do not have a standard evaluation of effectiveness for the SVC program.

**Recommendation 21**: The Secretaries of the Military Services develop a standard evaluation mechanism with appropriate metrics, when appropriate, to measure the effectiveness of the SVC program in each Service on an annual basis.

- **Finding 22-1**: On August 14, 2013, the Secretary of Defense directed the Service Secretaries to establish a special victim’s advocacy program best suited for the individual Service. Furthermore, he directed the Services to determine their own best practices and periodically share those practices with the other Services. No standards or requirements have been established outlining how and when these best practices should be shared.

- **Finding 22-2**: The SVC program managers of the respective SVC programs regularly reach out to one another via email and telephone to communicate SVC issues and exchange lessons learned/best practices generated by their respective Services.  On a more formal basis, the SVC program managers meet monthly to discuss a variety of SVC program issues.

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653 Army’s response to RFI #44.

654 Army’s response to RFI #44. The last meeting took place at CID Headquarters in Quantico, Virginia on 4 April 2014 and involved Army CID, AF OSI, and NCSI to discuss best practices for collecting evidence when an SVC was involved in the case. *Id.*
**Recommendation 22:** The Secretary of Defense establish a mandatory inter-Service working group to assess the practices of all Military Service SVC programs. The inter-Service working group should discuss, deliberate, and decide upon the best practices being utilized by all the Military Services. The working group should then ensure each Military Service implement the best practices of the SVC programs and SVC receive adequate training on these practices. The working group should consist of, at a minimum, the SVC Program Heads from each Military Service. The first meeting should occur within twelve months from the date of this report. Thereafter, the working group should meet at least annually.

- **Finding 23-1:** The Special Victim Counsel Program is a relatively new program, existing for slightly more than twelve months. Even the most experienced Special Victim Counsel has limited experience as an advocate for victim’s rights.

- **Finding 23-2:** Additionally there is limited case law on issues related to victim’s rights and victim’s counsel. While both the Air Force and the Army currently offer short courses on the SVC program, these courses do not focus on the day-to-day experiences of a SVC.

**Recommendation 23:** The Secretaries of the Military Services establish collaborative methods to disseminate information and training of SVC between the Services, including an inter-Service website where SVC can access training materials and resources from each Service.

- **Finding 24-1:** In general, the policy of the Military Services requires an officer have prior military justice experience before selection to perform duties as an SVC. The required length of time or level of experience in military justice varies throughout the Services.

- **Finding 24-2:** It is unclear if selection requires actual participation in courts-martial.

**Recommendation 24:** The Secretary of Defense direct the Military Services to implement additional selection criteria for their individual Special Victim Counsel Programs to require that counsel have appropriate trial experience prior to being selected as Special Victim Counsel. The criteria should include special emphasis on the unique selection of SVC and require actual courtroom experience rather than simply requiring service in a military justice billet for a certain period of time.

- **Finding 25-1:** Pursuant to Service policy, a victim and SVC establish an attorney-client relationship at their first meeting.
• **Finding 25-2**: This relationship continues until final disposition of the matter or the attorney is reassigned or leaves active duty.

• **Finding 25-3**: For court-martial purposes, the Services have determined case disposition occurs at the time the Convening Authority takes final action in the case.

**Recommendation 25**: The Secretary of Defense direct the Military Services to extend the opportunity for SVC representation to a victim so long as a right of the victim exists and is at issue. This includes any time following final action by the convening authority and during appellate review. While it may not be feasible, due to mission requirements, for the victim to maintain the same SVC throughout the duration of the process, the policy should permit for appointment of an alternate SVC to advise the victim and assert any right or interest still at issue following final action.

• **Finding 26**: A Special Victim Counsel's right to access records is no greater than his or her client's access rights. Currently, the government trial counsel may, but is not expressly required to, disclose information and records to the SVC. Further, when disclosing information, the trial counsel is limited by the Freedom of Information Act and the Privacy Act.

**Recommendation 26**: The Secretary of Defense implement policy clarifying the victim’s right to access records which are relevant to the assertion of a victim’s particular right through his or her SVC. The policy should include language establishing that once the SVC makes a request for information that is subsequently denied by the trial counsel, the SVC may petition the court for access to the relevant information. Furthermore, it should permit the military judge to then perform an in-camera review to determine what documents, if any, are relevant and necessary to the asserted right to release to the SVC as well as the appropriate method for disclosing those relevant documents to the victim. If the military judge declines to disclose the records, the reasons should be made on the record in order for the victim to seek further review.

• **Finding 27**: To be eligible for SVC representation, an adult victim of sexual assault must make an unrestricted or restricted report of sexual assault under the Uniform Code of Military Justice and otherwise be entitled to legal assistance under 10 U.S.C. § 1044. Pursuant to DoD policy, an SVC is not a listed restricted reporting entity. It is unclear if a victim may seek SVC advice prior to making an official report.

**Recommendation 27**: 655 The Secretary of Defense develop and implement policy and regulations such that sexual assault victims have the right and ability to consult with an SVC

655 Recommendation 27 and 27a are identical to recommendation 2 and 2a in the Victim Services section. The Subcommittee thought it prudent to put these recommendations in both places.
before deciding whether to make a restricted or unrestricted report, or no report at all. Communication made during this consultation would be confidential and protected under the attorney-client privilege.

**Recommendation 27a:** The Secretary of Defense develop and implement policy that, when information comes to military police about an instance of sexual assault by whatever means, the first step in an investigation is to advise the victim that s/he has the right to speak with an SVC before determining whether to file a restricted or unrestricted report, or no report at all.

- **Finding 28-1:** The Army has not created a “separate and distinct” SVC division. Instead, the Army SVC program falls under the current Legal Assistance Organization.

- **Finding 28-2:** SVC are usually located within the installation legal assistance office and they are supervised by the Chief of Legal Assistance and the installation Staff Judge Advocate.

- **Finding 28-3:** If a conflict of interest arises, SVC may contact his or her technical chain, the SVC Program Manager, for advice. The Program Manager will then raise the issue to the Staff Judge Advocate.

**Recommendation 28:** The Secretary of the Army create a “separate and distinct” Special Victim Counsel Division with its own chain of command and support personnel to alleviate any actual or potential conflict of interest between the SVC and the local Office of the Staff Judge Advocate and ensure SVC independence.

- **Finding 29-1:** Legislation currently pending in Congress would add to SVC requirements. Under the Victims Protection Act of 2014, which passed the Senate on March 10, 2014, and is pending in the House of Representatives, SVC would be required to advise victims of sexual assault on the advantages and disadvantages of prosecution by courts-martial versus in a civilian jurisdiction.

- **Finding 29-2:** The pending legislation also requires the establishment of a process for victims of sexual assaults that occur in the United States to be consulted regarding his or her preference on prosecution by courts-martial or a civilian forum.

- **Finding 29-3:** While not binding, the victims’ preference must be given “great weight” in determining the prosecution forum. Prior to enacting this legislation, Congress did not receive extensive evidence on the potential impacts such legislation would have on victims and the military justice system.
Recommendation 29: Congress defer adopting the above provision of the Victims Protection Act of 2014 until Congress obtains further evidence and information about the potential impact of such legislation on victims and the military justice system.

- **Finding 30-1:** The Army and Air Force expressly provide for SVC representation for “entry level personnel” who are alleged to have been involved in an unprofessional relationship that involves sexual contact with an instructor or staff member, even though the sexual assault-type crime has not been committed or alleged.

- **Finding 30-2:** The Marine Corps SVC policy does not have this provision and the Navy and Coast Guard have yet to publish a policy on the Service SVC program.

Recommendation 30: The Navy, Marine Corps, and Coast Guard implement or amend their individual SVC policies to provide for SVC representation for entry level personnel who are alleged to have been involved in a relationship that involves sexual contact with an instructor or staff member, even though a crime has not been alleged.
V. CRIME VICTIMS’ RIGHTS

A. Responsibility of the Subcommittee

The National Defense Authorization Act for Fiscal Year 2014 (FY14 NDAA) called for the Response Systems Panel (RSP) to assess the feasibility and appropriateness of extending the rights available to crime victims in civilian criminal legal proceedings under the Crime Victims’ Rights Act and legal standing to seek enforcement of crime victim rights as provided in the CVRA to crime victims covered by the Uniform Code of Military Justice.656

In addition, the National Defense Authorization Act for Fiscal Year 2013 (FY13 NDAA) directed the RSP to assess the adequacy of military systems and proceedings “to support and protect victims in all phases of the investigation, prosecution, and adjudication of adult sexual assault crimes,” including “whether victims are provided the rights afforded by” the CVRA, Department of Defense (DoD) Directive 1030.1, and DoD Instruction 1030.2,(setting forth current DoD policy regarding victims’ rights); and assess differences between military and civilian systems “in providing support and protection to victims” of adult sexual assault crimes.

The Victim Services Subcommittee conducted a comprehensive evaluation and comparison of the rights granted to crime victims under the jurisdiction of the UCMJ – through DoD policy and Congressional action - and the rights granted to crime victims in civilian criminal jurisdictions under the CVRA. We have come to the following findings and recommendations.

B. Crime Victims’ Rights under Federal Law

Shortly after efforts to pass a victims’ rights amendment to the U.S. Constitution failed,658 Congress passed the Crime Victims’ Rights Act (CVRA) in October 2004.659 The Act evolved out of “a long effort to afford greater deference to victims in the criminal justice

656 FY14 NDAA, § 1731, 127 Stat. 672 (2013)
659 18 U.S.C. §3771. (The CVRA was enacted on October 20, 2004, amended on July 27, 2006, and amended again on May 7, 2009. The most recent version (effective December 1, 2009) was used by the Subcommittee in its victim rights analysis).
process." The CVRA was analogous to various victims’ bill of rights provisions in state laws and augmented a “variety of preexisting federal victims’ rights legislation." The CVRA grants “crime victims” eight rights:

1. The right to be reasonably protected from the accused;
2. The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime, or of any release or escape of the accused;
3. The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;
4. The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;
5. The reasonable right to confer with the attorney for the Government in the case;
6. The right to full and timely restitution as provided in law;
7. The right to proceedings free from unreasonable delay;

660 CRS Report at 1 (April 24, 2012).
662 18 U.S.C. §3771(a). A “crime victim” is “a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia.” 18 U.S.C. §3771(e).
663 The right to be reasonably heard is not meant to be a veto, but an opportunity to present relevant information. CRS Report at 24 (citing S.Rept.105-409 at 27-28 (1998); S.Rept. 106-254 at 32-33 (2000); S.Rept. 108-191 at 36-37 (2003)).
664 18 U.S.C. § 3771 “assures crime victims of the right to reasonably be heard at proceedings when a plea bargain is accepted. The right only attaches to the acceptance of plea bargains in open court (i.e., at public proceedings). The right clearly does not vest a victim with the right to participate in plea negotiations between the defendant and the prosecutor, which are neither public nor proceedings. By the same token, the right to be heard is not the right to decide; victims must be heard, but their views are not necessarily controlling.” CRS Report at 29-30 (footnotes omitted).
665 The obligation of this right “rests with the government, and the courts are bound to ensure that it is honored.” CRS Report at 32 (April 24, 2013). The intent of this section is that victims have a right to confer with the prosecutor about concerns which are pertinent to the case, case proceedings or disposition. Id. at 32 (footnote omitted).
The right to be treated with fairness and with respect for the victim’s dignity and privacy.

The Department of Justice and federal courts are responsible for enforcing the CVRA’s provisions. Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime, “shall make their best efforts to see that crime victims are notified of, and accorded,” the rights under the CVRA.666 The prosecutor must advise crime victims of their option to obtain the advice of an attorney to consult with and represent their rights.667 The district court is responsible for ensuring crime victims are afforded their rights guaranteed by the CVRA in court proceedings.668 The CVRA places special emphasis on the crime victims’ right to attend public court proceedings, requiring courts to “make every effort to permit the fullest attendance possible by the victim, and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding,” prior to excluding a crime victim from a proceeding.669 A court’s decision to exclude a victim from a public court proceeding must be supported by clear and convincing evidence.670 The reasons for any decision denying relief to a victim of a violation of any of the eight enumerated rights “shall be clearly stated on the record.”671

The CVRA provides an enforcement mechanism for crime victims to seek enforcement of their guaranteed rights. A crime victim is to assert his or her rights “in the district court in which a defendant is being prosecuted for the crime of, or if no prosecution is underway, in the district court in the district in which the crime occurred.”672 The district court “shall take up and decide any motion asserting a victim’s right forthwith.”673 If the district court denies the relief sought, the victim “may petition the court of appeals for a writ of mandamus[,]” and the court of

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666 18 U.S.C. §3771(c)(1). “At least one court has expressed the view that ‘the provision requires at least some proactive procedure designed to ensure victim’s rights,’ while noting the apparent primacy of the right to attend.” CRS Report at 38 (quoting United States v. Turner, 367 F.Supp.2d 319, 323 (E.D.N.Y. 2005), and also quoting “[w]hile some proactive steps seem to be required, the statute just as clearly does not, in most circumstances, require courts to adopt every conceivable procedure that might protect the exercise of victims’ rights. Specifically, it is only with respect to orders denying a victim’s right to attend court proceedings that judges are directed to ‘make every effort’ to find reasonable alternatives to exclusion. 18 U.S.C. 3771(b). There is a lot of ground between extending some effort to ‘ensure’ that victims are afforded their rights and making ‘every effort’ to do so.”). Id. at n.194.

667 18 U.S.C. 3771(c)(2).


671 Id. 18 U.S.C. 3771(b)(2) discusses proceedings based on a writ of habeas corpus, which has limited applicability to the subcommittee’s analysis.


appeals must rule on that petition within 72 hours after filing.\textsuperscript{674} Decisions are designed to be prompt: “[i]n no event shall proceedings be stayed or subject to a continuance of more than five days…”\textsuperscript{675} If the court of appeals denies the victim’s request, “the reasons for the denial shall be clearly stated on the record in a written opinion.”\textsuperscript{676}

Relief for violating a right afforded under the CVRA is limited. Failure to afford a right to a crime victim will not provide grounds for a new trial.\textsuperscript{677} A crime victim may make a motion to re-open a plea or sentence only under the following limited circumstances: the right to be heard was asserted before or during the proceeding at issue and such right was denied; the victim petitioned the court of appeals for a writ of mandamus within fourteen days; and, in the case of a plea, the accused has not pled to the highest offense charged.\textsuperscript{678} The CVRA creates “no cause of action for damages” and does not create, enlarge, or imply “any duty or obligation to any victim or other person for the breach of which the United States[,] or any of its officers or employees[,] could be held liable in damages.”\textsuperscript{679} Finally, nothing in the CVRA “shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.”\textsuperscript{680} The rights provided under the CVRA apply at the trial court, and do not expressly provide a victim

\textsuperscript{674} 18 U.S.C. §3771 (d)(3). “The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure.” Id. Also, “[i]n any appeal in a criminal case, the Government may assert as error the district court’s denial of any crime victim’s right in the proceeding to which the appeal relates.” 18 U.S.C. §3771 (d)(4). Neither the Federal Rules of Criminal Procedure nor the Federal Rules of Appellate Procedure specifically address the writ of mandamus provision. CRS Report at 40 n. 201. “Although the 72-hour deadline reflects Congress’s desire for prompt appellate action on mandamus petitions, at least one appellate court did not think the failure to meet the deadline deprived it of jurisdiction to grant the petition, United States v. Monzel, 641 F.3d 528, 531-32 (D.C. Cir. 2011); but see In re McNulty, 597 F.3d 344, 348 n.4 (6th Cir. 2010) (‘We would like to express our frustration that Congress permitted the courts only 72 hours in which to read, research, write, circulate, and file an order or opinion on these petitions for a writ of mandamus’).” Id.

\textsuperscript{675} 18 U.S.C. §3771 (d)(3).
\textsuperscript{676} 18 U.S.C. §3771 (d)(3).
\textsuperscript{677} The participation of victim rights in the criminal process is designed to make sure the truth-finding process is not disrupted, and the central truth-finding process in criminal procedure is the trial process itself. Transcript of RSP Victim Services Subcommittee Meeting 16 (Jan. 9, 2014) (testimony of Professor Douglass Beloof); see also CRS Report at 42 n.216 (stating that “Rules 60(b)(5) and 69(b)(6), the corresponding provisions in the Federal Rules of Criminal Procedure state respectively that ‘[a] victim may move to reopen a plea or sentence only if: (A) the victim asked to be heard before or during the proceeding at issue, and the request was denied; (B) the victim petitions the court of appeals for a writ of mandamus within 10 days after the denial, and the writ is granted; and (C) in the case of a plea, the accused has not pleaded to the highest offense charged’ and that ‘[a] failure to afford a victim any right described in these rules is not grounds for a new trial’”); see also 18 U.S.C. §3771 (d)(5).
\textsuperscript{678} 18 U.S.C. §3771 (d)(5).
\textsuperscript{679} 18 U.S.C. §3771 (d)(6).
\textsuperscript{680} 18 U.S.C. §3771 (d)(6). To promote compliance, the CVRA directed the U.S. Attorney General to promulgate regulations that designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of the rights of a crime victim; require a course of training for members of the Department of Justice and assist them in responding more effectively to the needs of crime victims; and to contain disciplinary sanctions for employees of the Department of Justice who willfully or wantonly fail to comply with the CVRA. 18 U.S.C. §3771 (f). Members from the Department of Justice familiar with the CVRA were invited to testify to the RSP Victim Services Subcommittee to inform them on the process and application of the CVRA, but the invitation was declined.

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
with the right to appeal the defendant’s conviction and sentence based on a violation of the CVRA.\textsuperscript{681}


**Overview**

Prior to enactment of the FY14 NDAA, the rights of victims in the military were primarily a product of the Victim Witness Assistance Program (VWAP), which was developed in 1994 to protect the rights of all victims and witnesses located at DoD installations worldwide.\textsuperscript{682} Military officials indicate that “[t]he overarching aim of [the] VWAP program is to…assist victims and witnesses, within available resources and without infringing on the rights of the accused.”\textsuperscript{683} The DoD uses a multidisciplinary and collaborative approach that includes VWAP coordinators and liaisons at local installations, criminal investigators, chaplains, family advocacy personnel, sexual assault response coordinators, judge advocates, unit commanding officers, corrections personnel, victim advocates, and other Service designated personnel to provide services.\textsuperscript{684} The VWAP is a key element of the DoD’s Special Victim Capability, established to provide enhanced support for victims of sexual assault, serious domestic violence, and child abuse.\textsuperscript{685}

The DoD is updating DoD policy and the UCMJ to parallel the rights afforded to crime victims the in the CVRA.\textsuperscript{686} In the policy reissuance, DoD indicates that it also will provide enforcement mechanisms in each Military Service to receive and investigate complaints and provide a range of disciplinary sanctions for failure to comply with requirements relating to victims’ rights.\textsuperscript{687}

\textsuperscript{681} CRS Report at 31 n. 152 (\textit{citing United States v. Hunter}, 548 F.3d 1308, 1311 (10th Cir. 2008), which states that “[a] crime victim does not have an express right under the CVRA to appeal the defendant’s conviction and sentence based on alleged violations of the statute. Rather, the CVRA provides that if the district court denies a crime victim his rights, the victim may immediately petition the court of appeals for a writ of mandamus”).

\textsuperscript{682} \textit{Transcript of RSP Victim Services Subcommittee Meeting} 224-225 (Jan. 9, 2014) (testimony of Major Ryan Oakley, Office of the Under Secretary of Defense for Personnel and Readiness, Office of Legal Policy).

\textsuperscript{683} \textit{Id.} at 2225.

\textsuperscript{684} \textit{Id.}

\textsuperscript{685} \textit{Transcript of RSP Victim Services Subcommittee Meeting} 225 (Jan. 9, 2014) (testimony of Major Ryan Oakley) (\textit{citing Transcript of Response Systems To Adult Sexual Assault Crimes Panel Meeting} 120 (Dec. 11, 2013) for more information on the Special Victims Capability program); see also FY13 NDAA § 573.

\textsuperscript{686} \textit{Transcript of RSP Victim Services Subcommittee Meeting} 225-226 (Jan. 9, 2014) (testimony of Major Ryan Oakley).

\textsuperscript{687} \textit{Id.} at 226.

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
DoD’s Victim Rights Policy

DoD’s victim rights policy dates back to 1994. It was modeled on the Victims’ Rights and Restitution Act of 1990, the predecessor of the CVRA. Under current DoD policy, victims are entitled to the following seven rights:

1. To be treated with fairness and respect for the victim’s dignity and privacy;
2. To be reasonably protected from the accused offender;
3. To be notified of court proceedings;
4. To be present at all public court proceedings related to the defense, unless the court determines that the testimony of the victim would be materially affected if the victim heard witness testimony at trial;
5. To confer with the attorney for the government in the case;
6. To receive available restitution; and
7. To be provided with information about the conviction, sentencing, imprisonment, and release of the offender.

The DoD’s crime victims’ rights policy is similar to those contained in the CVRA—with two exceptions. First, DoD policy provides no right to be reasonably heard at a public proceeding involving the release, plea, sentencing, or parole proceeding. Second, there is no right to proceedings free from unreasonable delay. In addition, unlike the CVRA, DoD policy

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690 Transcript of RSP Victim Services Subcommittee Meeting 245 (Jan. 9, 2014) (testimony of Major Ryan Oakley).
691 Id.
692 Id.
does not contain an enforcement mechanism or remedy for noncompliance with the enumerated rights. 693

Prior to enactment of the FY14 NDAA, military crime victims’ rights were provided by DoD policy, 694 applied across the Services (including the Coast Guard when operating under the Department of the Navy), and were supplemented by Service-specific regulations. 695 The DoD’s VWAP policy defines a “victim” as “a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the Uniform Code of Military Justice…or in violation of the law of another jurisdiction if any portion of the investigation is conducted primarily by the DoD components.” 696 New DoD policy expands the definition to include military members and their families, DoD civilians, contractors and family members as victims when stationed outside the continental United States. 697

Recognizing the need to protect the necessary role of crime victims and witnesses in the criminal justice process, policy requires law enforcement and legal personnel directly engaged in the detection, investigation, or prosecution of crimes to ensure that victims are accorded their rights. 698 Through the VWAP procedures, DoD requires notification to crime victims at key stages of the investigatory and military justice process. 699

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693 See DoD Directive 1030.01 and DoD Instruction 1030.02; see also Transcript of RSP Victim Services Subcommittee Meeting 245 (Jan. 9, 2014) (testimony of Major Ryan Oakley) (stating that “…our current guidance does not provide a specific procedure for the enforcement of these rights”).

694 DoDD 1030.01, Victim Witness Assistance, and the accompanying DoD Instruction 1030.02, Victim Witness Assistance Procedures; see also RSP Transcript of RSP Victim Services Subcommittee Meeting 227-228 (Jan. 9, 2014) (testimony of Major Ryan Oakley).

695 Transcript of RSP Victim Services Subcommittee Meeting 227-228 (Jan. 9, 2014) (testimony of Major Ryan Oakley); see Air Force Instruction 51-201(2013), Army Regulation 27-10(2011), JAG/COMNAVLEGSVCCOMINST 5800.4A (2011), MCO PS5800.16A (2011), and COMDTINST M5810.1E(2011) for Service specific regulations regarding victims and witnesses during the military investigative and justice process.


697 Transcript of RSP Victim Services Subcommittee Meeting 228 (Jan. 9, 2014) (testimony of Major Ryan Oakley). The installation commander is the local responsible official for providing victims and witnesses the VWAP multi-disciplinary services. Id at 229. This responsibility is normally designated to the staff judge advocate at the installation, who then appoints a qualified, trained VWAP coordinator. Id..

698 DoDD 1030.01 (2004) ¶¶ 4.1, 4.4.

699 Transcript of RSP Victim Services Subcommittee Meeting 229-230 (Jan. 9, 2014) (testimony of Major Ryan Oakley). During the initial notification, victims and witnesses are told about their rights and are given key points of contact and available support services. Id. The information on rights is given through a brochure known as DD Form 2701, Initial Information for Victims and Witnesses of Crime. Id. Once the decision to pursue court-martial charges is made, the victim will be given Form 2702, Court-Martial Information for Victims and Witnesses. Id. This provides an overall summary of the court-martial and military justice process, and provides an additional notification of rights. Id. In the event of conviction or confinement, victims have the choice to receive further information, through DD Form 2703, Post-Trial Information for Victims and Witnesses. Id. The victim may also be notified about the offender’s sentence, confinement status, clemency, parole hearings, and release from confinement through DD Form 2704, Victim and Witness Certification and Election Concerning Inmate Status, and DD Form 2705, Victim and Witness Notification of Changes in Inmate Status. Id. at 230-231.

Statutory Provision

The FY14 NDAA incorporated the following rights into the UCMJ as Article 6b:

1. The right to be reasonably protected from the accused;

2. The right to reasonable, accurate, and timely notice of any of the following:
   a. A public hearing concerning the continuation of confinement prior to trial of the accused,
   b. A preliminary hearing under Section 832 of this title (article 32) relating to the offense,
   c. A court-martial relating to the offense,
   d. A public proceeding of the Service clemency and parole board relating to the offense, and
   e. The release or escape of the accused, unless such notice may endanger the safety of any person;

3. The right not to be excluded from any public hearing or proceeding described in paragraph (2) unless the military judge or investigating officer, as applicable, after receiving clear and convincing evidence, determines that testimony by the victim of an offense under this chapter would be materially altered if the victim heard other testimony at that hearing or proceeding;

4. The right to be reasonably heard at any of the following:
   a. A public hearing concerning the continuation of confinement prior to trial of the accused,
   b. A sentencing hearing relating to the offense, and
   c. A public proceeding of the Service clemency and parole board relating to the offense;

5. The reasonable right to confer with the counsel representing the Government at any proceeding described above;

6. The right to receive restitution as provided in law;
(7) The right to proceedings free from unreasonable delay; and

(8) The right to be treated with fairness and with respect for the
dignity and privacy of the victim of an offense.\textsuperscript{700}

The Secretary of Defense has one year to recommend changes to the Manual for Courts-Martial to the President to implement these rights.\textsuperscript{701} The FY14 NDAA also directed the Secretary to consider mechanisms for affording rights to victims, and mandates that regulations include:

(A) Mechanisms for ensuring that victims are notified of, and
accorded, the rights specified in Article 6b of the Uniform Code of
Military Justice;

(B) Mechanisms for ensuring that members of the Armed Forces and
civilian personnel of the Department of Defense and the Coast
Guard make their best efforts to ensure that victims are notified of,
and accorded, the rights specified in Article 6b of the Uniform
Code of Military Justice;

(C) Mechanisms for the enforcement of such rights, including
mechanisms for application for such rights and for consideration
and disposition of applications for such rights;

(D) The designation of an authority within each Armed Force to
receive and investigate complaints relating to the provision or
violation of such rights; and

(E) Disciplinary sanctions for members of the Armed Forces and other
personnel of the Department of Defense and Coast Guard who
willfully or wantonly fail to comply with requirements relating to
such rights.\textsuperscript{702}

\textsuperscript{700} FY14 NDAA § 1701 at 707.

\textsuperscript{701} FY14 NDAA § 1701 at 710. “Not later than one year after the date of the enactment” of FY14 NDAA, “the Secretary of
Defense shall recommend to the President changes to the Manual for Courts-Martial to implement Section 806b of Title 10,
United States Code[;] and…the Secretary of Defense and Secretary of Homeland Security (with respect to the Coast Guard when
it is not operating as a service in the Navy) shall prescribe such regulations as each such Secretary considers appropriate to
implement such section.” \textit{Id.}

\textsuperscript{702} FY14 NDAA § 1701 at 710-711.
The Response Systems Panel has not yet considered or deliberated on the contents of this report.

Differences Between the CVRA and NDAA

Comparing crime victims’ rights under the CVRA with those under the FY14 NDAA reveals that, while Article 6b incorporates many CVRA rights into the UCMJ, some differences remain. Both the CVRA and the NDAA grant the reasonable right to confer with the attorney representing the Government; the right to receive restitution as provided in law; the right to proceedings free from unreasonable delay; and the right to be “treated with fairness and with respect for the victim’s dignity and privacy.” Whereas the CVRA and the NDAA grant crime victims the right to be reasonably protected from the accused, the right to be notified of and not to be excluded from certain proceedings, and the right to be heard at certain hearings, slight differences exist in military practice.

There are numerous differences between military sentencing procedure and procedures followed in state and federal courts which make any comparisons or general conclusions difficult. Nonetheless, one difference in the right to be heard at sentencing arises in military rules. The sentencing phase of a trial, whether contested or pursuant to an offer to plead guilty, is governed by the Rules for Courts-Martial. Military procedure requires the victim and other witnesses—except the accused—to appear and testify under oath, subject to the rules of evidence and defense cross-examination. In general, the government presents evidence in aggravation, which includes evidence directly relating to or resulting from the offenses of which the accused has been found guilty. “Evidence in aggravation includes, but is not limited to, evidence of financial, social, psychological, and medical impact on or cost to any person or entity who was the victim of an offense committed by the accused.” In order to be heard, either the trial or defense counsel must call the victim. However, as part of a pre-trial agreement or stipulation,

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703 18 U.S.C. §3771(a); see also FY14 NDAA §1701.

704 While the CVRA grants “the right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused[,]” the NDAA grants the right to reasonable, accurate, and timely notice of a public hearing concerning the continuation of confinement prior to the trial of the accused; a preliminary hearing under Article 32 relating to the offense; a court-martial relating to the offense; a public proceeding of the Service clemency and parole board relating to the offense; and the release or escape of the accused, unless such notice may endanger the safety of any person. 18 U.S.C. §3771(a)(2); FY14 NDAA §1701 at 707. The CVRA states the right as “not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.” 18 U.S.C. §3771(a)(3). The NDAA states the right as not to be excluded from any public hearing or proceeding described above “unless the military judge or investigating officer, after receiving clear and convincing evidence, determines that testimony by the victim of an offense would be materially altered if the victim heard other testimony at that hearing or proceeding.” FY14 NDAA §1701 at 707-708.

705 See Report of the Comparative Systems Subcommittee to the RSP for a more detailed discussion of military and civilian sentencing practices.

706 R.C.M. 1001(b)(4).

707 R.C.M. 1001(b)(4); see also R.C.M. 1001(c)(3) and (d) permits the military judge to relax the rules of evidence only with respect to matters in extenuation or mitigation or both, leaving the only possible time for a victim to testify with relaxed rules of evidence being during rebuttal. Additionally, although the Rules for Courts-Martial grant the ability to do an unsworn statement, that rule only pertains to the accused. R.C.M. 1001(c)(2)(C).
the victim may sometimes be allowed to submit a written impact statement rather than be required to testify under oath.\textsuperscript{708}

The requirement that a victim testify in person and under oath to present victim impact evidence is in contrast to the Federal Rules of Criminal Procedure, which generally permit a victim of a sexual abuse to make an unsworn statement or present information at sentencing.\textsuperscript{709} Military practice is also inconsistent with statutes in a number of state jurisdictions, which permit a victim to present a victim impact statement without testifying under oath or being subject to cross examination.\textsuperscript{710}

Unlike the CVRA, which grants “the right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing or any parole proceeding,”\textsuperscript{711} Article 6b grants the right to be reasonably heard at a public hearing regarding continuing confinement prior to the accused’s trial; a sentencing hearing relating to the offense; and a public proceeding of the Service clemency and parole board relating to the offense, but is silent on the right to be heard on the plea.\textsuperscript{712}

There are also several CVRA provisions without analogous provisions in the NDAA. Congress directed DoD to address some of these provisions in its implementing regulations. First, the NDAA lacks a provision that mirrors the CVRA’s instruction to the court to ensure that victims are afforded the rights enumerated in Article 6b, UCMJ.

Second, while the NDAA requires clear and convincing evidence that a victim’s testimony would be materially altered by hearing other testimony before a victim can be excluded from public proceedings, it is missing the CVRA’s requirements that, before a court excludes a crime victim from a public proceeding, the court should: (1) make every effort to permit the fullest attendance possible and to consider reasonable alternatives to excluding the

\textsuperscript{708} See R.C.M. 1001(c)(3) (Noting that with respect to extenuation and mitigation, the rules of evidence may be relaxed, to include admitting letters, affidavits, certificates of military and civil officers, and other writings of similar authenticity and reliability).

\textsuperscript{709} See Fed. R. Crim. P. 32(i)(4)(B).


\textsuperscript{711} 18 U.S.C. §3771(a)(4).

\textsuperscript{712} FY14 NDAA §1701 at 708.
crime victim; and (2) clearly state on the record the reasons for any decision denying relief under the CVRA by clear and convincing evidence.

Third, the NDAA also lacks a provision similar to CVRA’s enforcement mechanism, which allows a victim to assert rights in district court and, if the district court denies the relief sought, allows the victim to petition the court of appeals for a writ of mandamus. However, the NDAA instructed DoD to include in its regulations a mechanism to enforce the rights specified in Article 6b.

Fourth, the NDAA has no provision similar to the CVRA’s compliance mechanism. The CVRA instructed the Department of Justice to designate an internal administrative authority to receive and investigate complaints relating to the provision or violation of a crime victim’s rights; requires training for employees and offices of the Department of Justice that fail to comply with provisions of federal law pertaining to the treatment of crime victims, and otherwise assist the employees and offices in responding more effectively to the needs of crime victims; and contains disciplinary sanctions for Department of Justice employees who willfully or wantonly fail to comply with provisions of federal law pertaining to the treatment of crime victims.

However, the NDAA instructed DoD to include a mechanism for ensuring that Armed Forces members and DoD and Coast Guard civilian personnel make their best efforts to ensure that victims are notified of, and accorded, the rights specified in Article 6b, UCMJ in DoD regulations. The NDAA also instructed DoD to designate an authority within each Service to receive and investigate complaints relating to the provision or violation of such rights, and provide disciplinary sanctions for Armed Forces members and other DoD and Coast Guard personnel who willfully or wantonly fail to comply with requirements relating to such rights in its regulations.

Finally, the NDAA has no similar provision to the CVRA’s limitation of liabilities section. The CVRA section outlines that the failure to afford a CVRA right will not provide grounds for a new trial as well as when a victim may petition a court to reopen a plea or sentence. The limitations provision also makes explicit that the CVRA creates no cause of action for damages and that nothing in the CVRA is construed to impair the prosecutorial discretion of the Attorney General or any officer under his or her discretion. While the NDAA does have a limiting clause indicating that it should not be construed to authorize a cause of action for damages, it does not have a similar provision indicating that nothing should be construed to limit prosecutorial discretion.
Updating DoD Policy

On September 20, 2012, the DoD General Counsel directed the Joint Service Committee on Military Justice (“JSC”) to study and compare the rights granted by the CVRA to DoD VWAP policy. On December 20, 2012, the JSC recommended to the DoD General Counsel that two additional rights provided by the CVRA - the right to be heard during public proceedings and the right to be free from unreasonable delay - be incorporated into VWAP policy. The JSC also recommended that it be authorized to study jurisdictions with procedures in place which address the failure to comply with the victim’s assertion of rights and to determine best practices for a potential enforcement mechanism to include in the military justice system.

Subsequently, on October 8, 2013, the Acting DoD General Counsel directed the JSC to propose an amendment to the Manual for Courts-Martial to incorporate the CVRA’s protections, to the extent they are not already part of military justice practice and process. The DoD Office of Legal Policy indicated that it will continue to work closely with the Office of General Counsel, the JSC, and Service counterparts to ensure the newly enacted Article 6b, UCMJ, is effectively implemented. Further, it indicated that the revised DoD policy will direct the Military Services to prescribe enforcement mechanisms to ensure that victims are notified and properly afforded their rights and remedies in a timely manner.

Finally, DoD is incorporating the provisions of the FY14 NDAA into the new DoD Instruction 1030.02, which will constitute DoD’s single, overarching VWAP Instruction

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713 Transcript of RSP Victim Services Subcommittee Meeting 260 (Jan. 9, 2014) (testimony of Major Ryan Oakley); September 20, 2012 letter from Mr. Jeh Johnson, General Counsel of the Department of Defense, to Chairman, Joint Service Committee on Military Justice.

714 December 20, 2012 letter from COL Charles Pede, Chair, Joint Service Committee on Military Justice, to Office of General Counsel of the Department of Defense, regarding the Joint Service Committee Response to the Senate Armed Services Committee Directive to Review Department of Defense Directive 1030.01.

715 February 18, 2013 letter from Mr. Taylor, Acting General Counsel of the Department of Defense, to Chairman, Committee on Armed Services, regarding Senate Report 112-173, which accompanied S.3254, the FY13 NDAA and, at pages 115-116, referenced the Crime Victims’ Rights Act, stating that DoD Directive 1030.01 did not include the victims’ right to be heard during public proceedings and to proceedings free from unreasonable delay. Although not yet updated in the VWAP policy, the rights were granted in the FY14 NDAA §1701 which extended crime victims’ rights to victims of offenses under the Uniform Code of Military Justice into the Uniform Code of Military Justice at §806b, Article 6b, and grants the victim the right to be reasonably heard at a public hearing concerning the continuation of confinement prior to trial of the accused; a sentencing hearing relating to the offense; and a public proceeding of the Service clemency and parole board relating to the offense. FY14 NDAA §1701 at 708. It also grants the right to proceedings free from unreasonable delay. Id.

716 Transcript of RSP Victim Services Subcommittee Meeting 260-261 (Jan. 9, 2014) (testimony of Major Ryan Oakley).

717 Id. at 262.

718 Id. at 263. The enforcement mechanism will specifically include the designation of authority in each Military Service to receive and investigate complaints, and also to review, and adjudicate when appropriate, disciplinary sanctions. Id. at 263-264. The Department of Justice Office of the Victims’ Rights Ombudsman, as set up by the CVRA, serves a similar purpose. 18 U.S.C.A. §3771; see also http://www.justice.gov/usao/eousa/vr/.
detailing policy and procedures.\textsuperscript{719} While Article 6b, UCMJ, is effective immediately, the JSC will continue to study and propose necessary amendments to the Manual for Courts-Martial.\textsuperscript{720}

\textsuperscript{719} Transcript of RSP Victim Services Subcommittee Meeting 264 (Jan. 9, 2014) (testimony of Major Ryan Oakley).

\textsuperscript{720} Id.
E. Findings and Recommendations

- **Finding 31-1**: The right to confer with the prosecutor under the CVRA is not directly analogous to the right to confer with trial counsel (military prosecutor) under the military justice system.

- **Finding 31-2**: The CVRA grants victims the right to confer with the prosecutor in criminal cases. Similarly, DoD policy, Service policies, and the FY14 NDAA grant victims the right to confer with the trial counsel in criminal cases.

- **Finding 31-3**: In the military justice system, a victim may confer with trial counsel on matters such as whether to pursue court-martial, nonjudicial punishment or administrative action in the case; and, if pursuing courts-martial, what level of court-martial may be appropriate.  

- **Finding 31-4**: However, since a commander serving as the convening authority makes decisions on how to dispose of cases under the UCMJ, a victim’s right to confer with the trial counsel in the military justice system is not directly analogous to the CVRA right to confer with the prosecutor.

**Recommendation 31**: The Secretary of Defense direct the creation and implementation of mechanisms, where not currently in place, requiring trial counsel to convey the victim’s specific concerns and preferences regarding case disposition to the convening authority, so the convening authority may consider the victim’s concerns and preferences prior to making a decision on case disposition. These procedures will account for the convening authority’s role in the disposition of cases under the military justice system and create a process more analogous to a victim conferring with a prosecutor under the CVRA.  

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721 DoDI 1030.02 ¶ 6.3.
722 There are two related provisions to this recommendation in the FY14 NDAA. Section 1744(a)(2)(B) specifies that the Secretary of a Military Service shall require that for decisions not to refer charges of certain sex-related offenses for trial by court-martial, that “a determination be made whether the victim’s statement and views concerning disposition of the alleged sex-related offense were considered by the convening authority in making the referral decision.” FY14 NDAA § 1744(a)(2)(B). Also, the Sense of Congress in the FY14 NDAA, regarding the sparing use of discharge in lieu of court-martial of members of the Armed Forces who commit sex-related offenses, provides in part that whenever possible, the victims of rape, sexual assault, forcible sodomy, or attempts to commit such offenses “shall be consulted prior to the determination regarding whether to discharge the members who committed such offenses” and that “convening authorities should consider the views of [the] victims… when determining whether to discharge the members who committed such offenses in lieu of trying such members by court-martial…” FY14 NDAA §1753.

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
• **Finding 32-1:** The FY14 NDAA extended most of the rights afforded civilian crime victims under the CVRA to crime victims under the military justice system\(^{723}\) by adding these rights into the UCMJ as Article 6b except the right to be reasonably heard on the plea.

• **Finding 32-2:** The right to be heard on the plea as provided under the CVRA\(^{724}\) does not extend to the rights conferred under Article 6b.

• **Finding 32-3:** The right to be heard on the plea is not directly analogous to the military justice system due to the differences in the manner in which pretrial agreements are accepted under military practice as compared to the civilian system.

• **Finding 32-4:** The analogous opportunity for the victim’s input to be heard in the military justice system is before the convening authority decides to accept, reject, or propose a counter offer to a pretrial agreement submitted by an accused.\(^{725}\)

<table>
<thead>
<tr>
<th>Recommendation 32:</th>
<th>The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations that provide victims a right to be heard regarding a pretrial agreement.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Recommendation 32a:</strong></td>
<td>The proposed changes should provide victims the right to be heard regarding a plea, with appropriate consideration to account for military pretrial agreement practice.</td>
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<tr>
<td><strong>Recommendation 32b:</strong></td>
<td>The recommended changes include the right to be heard before the convening authority decides to accept, reject, or propose a counteroffer to a pretrial agreement offer submitted by an accused.(^{726}) The convening authority should retain discretion to determine the best means to comply with this right and consider the victim’s opinion (e.g., submission in writing, in person).</td>
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\(^{724}\) 18 U.S.C. § 3771 (a)(4) provides crime victims the right to be “reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.”

\(^{725}\) See R.C.M. 705(a) (An accused and the convening authority may enter into a pretrial agreement).

\(^{726}\) See R.C.M. 705(d) (describing procedure regarding pretrial agreement negotiation).
• **Finding 33-1:** Victims should be able to enforce the rights guaranteed by Article 6b, UCMJ. The FY14 NDAA did not specify any enforcement mechanism; rather, the FY14 NDAA requires the Secretary of Defense to recommend changes to the Manual for Courts-Martial and to prescribe appropriate regulations to implement mechanisms to ensure enforcement of such rights, including mechanisms for application of such rights and for consideration and disposition of applications for such rights.

• **Finding 33-2:** The CVRA expressly provides for legal standing for victims to seek enforcement of those rights listed in the CVRA. Specifically, the CVRA directs a victim to assert his or her rights in the district court in which the alleged offender is being prosecuted and if the offender has not yet been charged the asserted claim should take place in the district court of where the crime occurred. The district court will then immediately decide any motion asserting a victim’s right.

• **Finding 33-3:** The CVRA expressly provides for an expedited review of any trial court decision on a victim’s right. The CVRA allows a victim to petition the court of appeals for a writ of mandamus and the appellate court shall review the issue within seventy-two hours of the filing of the petition.

**Recommendation 33:** The Secretary of Defense clarify that victims have legal standing to enforce their rights listed in Article 6b, UCMJ, at trial and appellate courts. Specifically, the Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to expressly provide for a victim’s ability to assert a violation of his or her rights in the trial court, in which the crime occurred, at any relevant time in the proceedings, including pretrial, during trial, and post-trial. The Secretary of Defense will provide procedures for a victim to seek mandatory expedited review of any alleged violation of those rights listed in Article 6b, UCMJ from an appellate court.

• **Finding 34-1:** The FY14 NDAA amended Article 6 of the Uniform Code of Military Justice to extend to military crime victims many of the rights conferred to crime victims under the CVRA. These rights were incorporated into the UCMJ as Article 6b.

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727 DoD policy found at DoDD 1030.01 and DoDI 1030.02 and the FY14 NDAA does not expressly provide for a method of enforcement. However, the FY14 NDAA directs the Secretary of Defense to recommend changes to the Manual for Courts-Martial and to enact regulations which provide for “mechanisms for the enforcement of such rights, including mechanisms for application of such rights and for consideration and disposition of applications for such rights.” FYNDAA 14 § 1701 at 711. Additionally, Congress directs the Secretary of Defense to designate an “authority within each Armed Force to receive and investigate complaints relating to the provision or violation of such rights.” Id.

728 FY14 NDAA §1701(b).
• **Finding 34-2**: The CVRA requires prosecutors and investigators to use their “best efforts” to see that crime victims are notified of, and accorded, the rights under the CVRA. It further places responsibility on the court to ensure that crime victims are afforded the rights guaranteed in court proceedings under the CVRA.

• **Finding 34-3**: The FY14 NDAA did not place a similar requirement on military investigators, prosecutors or military courts to ensure that crime victims in military proceedings have been afforded the rights specified in Article 6b, UCMJ.

• **Finding 34-4**: Rather, the legislation requires the Secretary of Defense to “recommend changes to the Manual for Courts-Martial to the President and to prescribe appropriate regulations” to implement mechanisms for ensuring that victims are notified of and accorded the rights specified in Article 6b, UCMJ.

| Recommendation 34: | Implement mechanisms to ensure that victims are notified of and accorded the rights provided by Article 6b, UCMJ. |
| Recommendation 34a: | The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to ensure that military investigators, prosecutors and other DoD military and civilian employees engaged in the detection, investigation, or prosecution of crime notify and accord victims the rights specified in Article 6b, UCMJ. |
| Recommendation 34b: | The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe mechanisms that make military courts responsible for ensuring compliance with the rights afforded to crime victims in court proceedings under Article 6b, UCMJ. |

• **Finding 35-1**: The CVRA provides conditions and time limits under which a victim may petition to re-open a plea or sentence that are not directly applicable to the military rules for courts-martial.

• **Finding 35-2**: Specifically, the CVRA provides that, “A victim may make a motion to re-open a plea or sentence only if – (A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied; (B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and (C) in the case of a plea, the accused has not pled to the highest offense charged.”

729 FY14 NDAA §1701(b).
• **Finding 35-3:** There is no similar provision setting forth the conditions and time period under which a victim may petition to assert the rights set forth in Article 6b, UCMJ.

• **Finding 35-4:** Rather, the FY14 NDAA requires the Secretary of Defense to recommend to the President changes to the Manual for Courts-Martial and to prescribe appropriate regulations including mechanisms to enforce such rights and consider and dispose of applications for such rights. 730

• **Finding 35-5:** Under military rules and procedures, a sexual assault victim may submit matters to the convening authority under certain conditions before the convening authority takes action on the case. 731

| Recommendation 35: | The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations establishing the time period under which a victim may petition to assert the rights to reopen a courts-martial plea or sentencing hearing, to ensure clarity regarding when a court-martial hearing can be reopened based on the request of a victim or victim’s counsel and to ensure the finality of court-martial proceedings. This time period should be sufficient so as not to limit or interfere with the victim’s right to present matters to the convening authority prior to his or her taking action on the case. 732 |

• **Finding 36-1:** To promote compliance, the CVRA directed the U.S. Attorney General to establish regulations that designate an administrative authority within the Department of Justice to receive and investigate complaints relating to the provision or violation of crime victim’s rights. 733 The Department of Justice established the Office of the Victims’ Rights Ombudsman to receive and investigate complaints filed by crime victims against its employees.

• **Finding 36-2:** Similarly, the FY14 NDAA requires the Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a Service in the Navy) to designate an authority within each Armed Force to receive and investigate complaints relating to the provision or violation of such rights.

730 FY14 NDAA § 1701 sec 806b, Article 6b.

731 FY14 NDAA § 1706(a).

732 See Rule for Courts-Martial 1107 (governing action by convening authority); see also FY14 NDAA Sec. 1706(a) enacting a provision allowing victim submission of matters for consideration by the convening authority.

733 18 U.S.C. §3771(f)
• **Finding 36-3:** Designation of a separate authority within each of the Armed Forces and Coast Guard (when not operating as a Service in the Navy) to receive and investigate complaints could result in disparate procedures, rules, and standards for making and investigating complaints relating to a failure to comply with crime victims’ rights.

**Recommendation 36:** Congress enact legislation to require the Secretary of Defense designate one entity within the Department of Defense to receive and investigate complaints relating to violations of or failures by military and civilian employees from all of the Military Services to provide the rights guaranteed by Article 6b, UCMJ.

• **Finding 37-1:** The CVRA includes the opportunity for a victim to be reasonably heard at sentencing by allowing him or her to make a statement that is neither under oath nor subject to cross-examination.\(^{734}\)

• **Finding 37-2:** Under military rules, a sexual assault victim may present evidence of financial, social, psychological, and medical impact of an offense the accused committed.\(^{735}\)

• **Finding 37-3:** Unless there is an agreement from the defense, however, the victim must testify under oath, and is subject to cross-examination.\(^{736}\)

**Recommendation 37:** The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to provide victims the right to make an unsworn victim impact statement, not subject to cross examination during the presentencing proceeding, with the following safeguards:

The members should be instructed similarly to the instruction they receive when the accused makes an unsworn statement;


\(^{735}\) R.C.M. 1001(b)(4).

\(^{736}\) R.C.M. 1001(b)(4); see also R.C.M. 913(c)(2); RCM 1001(c)(2)(C); M.R.E. 611.
If there is “new matter” brought up in the victim’s unsworn statement, sentencing should be delayed so the defense can respond; and

The unsworn statement should be subject to the same objections available to the government regarding the accused’s unsworn statement.

- **Finding 38-1:** The Court of Appeals for the Armed Forces has addressed the issue of whether a victim has the right to be heard through counsel with regard to certain issues.\(^{737}\)

- **Finding 38-2:** Absent formal clarification regarding whether references to a victim’s right to be heard includes through counsel, litigation on this issue is likely to continue.

**Recommendation 38:** The Secretary of Defense recommend to the President changes to the Manual for Courts-Martial and prescribe appropriate regulations to clarify that all victim rights that include a right for the victim to be heard include the right to be heard through counsel.

\(^{737}\) **LRM v. Kastenberg, 72 MJ 364, 366 (C.A.A.F. 2013).**
VI. Additional Views of Subcommittee Members

Separate Statement on Victim Impact Statements

William E. Cassara
Defense Counsel

I write separately to explain why I stand apart from my colleagues on the issue of whether the victim should have the right to make an unsworn victim impact statement at the sentencing hearing. While the reality is that victims are not always cross-examined at the sentencing hearing, it is crucial that the accused retains that right. The Rules for Courts-Martial are written to “…secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay.” Allowing an unsworn victim statement subverts these goals. Retaining the adversarial nature during sentencing is inherently fundamental to the military justice process. When combined with the recent changes to the Article 32 (b) hearing, this proposed change is drawing us ever so close to a system which is devoid of due process for a military member accused of sexual assault. I cannot abide by such changes.

As an initial matter, due to the ability to cross-examine the victim, the defense may learn for the first time during sentencing that the victim had received mental health counseling that was previously not disclosed to the defense. This problem is exacerbated by the recent changes to Article 32 (b) hearings which severely limit the right of the accused to a pre-trial interview of the alleged victim. This can lead to post-trial 39a sessions where evidence relevant to the defense is disclosed. The relevant information would not come out without the ability to cross-examine the witness. At a post-trial 39a session, the military judge could reopen the case on the merits, which could lead to a different result entirely. In the very least, the ability to cross-examine the victim leads to additional information on sentencing that makes for a more informed and fair result for the accused.

More generally, the unsworn victim impact statement does not allow the accused to question the victim about inconsistencies between his or her statement at sentencing and his or her testimony on the merits. To illustrate, I recently had a case in which the victim’s testimony at sentencing was so inconsistent with her trial testimony that it led the panel members to ask the military judge whether they could reconsider their verdict on the merits regarding guilt. It was

738 R.C.M. 102(b).
739 An Article 39(a) session refers to the ability of the military judge to call the court into session without the presence of the members. 10 U.S.C. §839.
740 The military judge ruled that the members could not reopen the merits portion of the case.
precisely the tool of cross-examination during sentencing that brought the witness’s discrepancies to light.

The Subcommittee heard similar testimony on this topic, as a federal defense attorney discussed unsworn victim impact statements at sentencing.

What frightens me is when they [victims] say things that no one else has said in the process before, and it’s the first time you’re hearing it when you’re up there, and the judge ends up taking that fact, and using that fact to give my client a longer sentence . . . My example . . . it was a pimp-prostitute relationship . . . and at the sentencing, the victim submitted a statement saying that as a result of what, her activities, she was sterile. And the judge used that fact, from her statement – it wasn’t backed up by any medical reports or anything else, used that fact to imply what’s called a permanent physical injury enhancement, which significantly increased the defendant’s sentence. We objected and appealed, and what ended up strengthening our appeal greatly was between the time of the sentencing and the appeal, she had a baby . . . It got remanded back and his sentence was reduced, but if we hadn’t filed that appeal, or if she’d gotten pregnant later in life, this person would be doing a lot longer on the basis of a statement that she submitted that was really just her say-so and not backed up by any medical evidence or anything like that.741

No one knows what a judge, or panel, may take away from unsworn testimony. Due to the peculiarities of the military system, there is no presentence report, and the first time that the defense would hear the information in the unsworn statement would be at the sentencing hearing, especially given the new limited pre-trial access to the alleged victim. It is of no moment that the accused retains the right to rebut the victim’s unsworn statement. That right is meaningless when there is no time to prepare a rebuttal with witnesses or evidence. It is likewise an inadequate safeguard to say that the victim would get the same limiting instruction that the accused receives when the accused gives an unsworn statement.742 The accused should have a right to an unsworn statement because, at the point of sentencing, guilt has been determined and the accused is facing constraints on his or her liberty.743 Any mistakes made by the panel

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742 Under the Rules for Courts-Martial, “[t]he accused may make an unsworn statement and may not be cross-examined by the trial counsel upon it or examined upon it by the court-martial. The prosecution may, however, rebut any statements of facts therein. The unsworn statement may be oral, written, or both, and may be made by the accused, by counsel, or both.” R.C.M. 1001(c)(2)(C).

743 The purpose underlying the right of allocution is to “permit a convicted defendant an opportunity to plead personally to the court for leniency in his sentence by stating mitigating factors and to have that plea considered by the court in determining the appropriate sentence.” U.S. v. Tamayo, 80 F.3d 1514, 1518 (11th Cir. 1996) (citing Green v. United States, 365 U.S. 301, 304–05

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
regarding the proper weight to accord the accused’s unsworn statement only inures to the benefit
of the accused, which is an appropriate safety net in the military justice system.

Conversely, the victim’s role at sentencing is completely dissimilar. Although the victim
may be facing a cathartic moment with an unsworn statement, the purpose of sentencing is not
therapy.\textsuperscript{744} That is a counselor’s job. Any mistakes by the panel regarding the proper weight to
accord the victim’s unsworn statement would be to the detriment of the accused and would raise
major appellate issues. A colloquy between the trial counsel and victim, similar to a colloquy
between the defense counsel and accused, may be interpreted as sworn testimony. Even the
specter of sworn testimony would be unduly prejudicial to the accused. We must not lose sight
of the fact that even after conviction, the accused is a Service member who has served his or her
country, often during times of war.

The discussion given by the Manual for Courts-Martial regarding the accused’s unsworn
statement is clear. It should ordinarily not include what is properly argument, but inclusion of
such matter by the accused when personally making an oral statement normally should not be
grounds for stopping the statement.\textsuperscript{745} Similar latitude to the victim is impermissible. The
accused must have the ability to object and contest improper argument during sentencing so that
the accused gets a fair sentence that fits the crime for which he or she was convicted, and to
ensure that the government’s (and victim’s) evidence and argument fit within the narrow
provisions set forth in Rule for Courts-Martial 1001.\textsuperscript{746}

If the RSP adopts the recommendation of the majority of the Subcommittee, I would like
the Panel to consider adopting it with the following safeguards:

- If the victim refuses to provide a pretrial interview, the victim should not be allowed
to make an unsworn statement at sentencing;
- The statement must be provided to the defense five days in advance of trial, to allow
the defense the opportunity to provide meaningful rebuttal;
- The members should be instructed similarly to the instruction they receive when the
accused makes an unsworn statement;
- If there is “new matter” brought up in the victim’s unsworn statement, sentencing
should be delayed so the defense can respond; and
- The unsworn statement should be subject to objections such as relevance and hearsay.

(1961) and Fed.R.Crim.P. 32(a)(1)(C)). Furthermore, the defendant’s “[a]llocution serves an important function at initial
sentencing, where the district court exercises discretion in determining an appropriate sentence.” \textit{Id.}

\textsuperscript{744} See e.g. Paul G. Cassell and Edna Erez, \textit{Victim Impact Statements and Ancillary Harm: The American Perspective}, Canadian
court, certain therapeutic benefits may occur…”)).

\textsuperscript{745} R.C.M. 1001(c)(2)(C) Discussion.

\textsuperscript{746} This is the main rule that governs sentencing in the military.
Separate Statement on Collateral Misconduct

Michelle J. Anderson  
Dean and Professor of Law  
City University of New York School of Law

Meg Garvin  
Executive Director, National Crime Victim Law Institute  
Clinical Professor of Law, Crime Victim Litigation Clinic  
Lewis & Clark Law School

The Honorable Christel E. Marquardt  
Judge, Retired  
Kansas Court of Appeals

We write separately from our colleagues on the Victim Services Subcommittee to recommend stronger measures on the issue of “collateral misconduct.” The threat that service members who have been sexually assaulted will be punished, up to and including prosecution, for conduct that they engaged in before or during the offense keeps many victims silent. The ability to punish sexual assault victims for such conduct creates a major barrier to the reporting and prosecution of sexual assault. In practice, victims are rarely prosecuted for such conduct, yet the threat of prosecution looms large, providing perpetrators with cover and intimidating victims. Eliminating the criminal prosecution of service members who report having been sexually assaulted would remove the leverage perpetrators continue to have and encourage victims to step forward.

The military criminalizes a range of behaviors that are not criminal in the civilian world, such as alcohol offenses, adultery, and fraternization (i.e., relationships between service members of different ranks outside a professional setting).1 When service members are sexually assaulted, whether by another service member or a civilian, the victim may have engaged in one or more of these activities around the time of the assault.2 If victims elect to report having been sexually assaulted, a convening authority may prosecute them for these behaviors or other crimes, collectively referred to as “collateral misconduct.”3

The civilian world has largely abandoned charges of collateral misconduct against a person who comes forward to report having been sexually assaulted.4 Even when the

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1 See, e.g., http://www.militaryreporter.org/om041397.html (soldier’s crime of fraternization “is not even illegal in the civilian world”).


3 Id.

4 See, e.g., JSC-SAS Report Appendix E at 4 (bigger concern for District Attorney’s Office in San Diego is whether victim lies about having committed misconduct, not misconduct itself); Appendix M at 8 (it is
victim’s misconduct involves offenses such as drug possession or prostitution, civilian prosecutors rarely charge the victim with criminal behavior. They choose, instead, to focus on the offense of highest import and consequence, the sexual assault.

Civilian prosecutors realize that a policy of charging the victims with collateral offenses would deter them from coming forward to report sexual assault. From a public safety perspective, therefore, it is better to refuse to prosecute minor offenses in order to encourage and prosecute sexual assault. This practice works to ensure that sexual abusers are brought to justice.

The military’s policy allowing commanders the discretion to prosecute sexual assault victims for collateral misconduct creates a substantial structural impediment to victims reporting sexual offenses. The 2012 Department of Defense’s Workplace and Gender Relations Survey of Active Duty Members indicates that over 20 percent of victims who chose not to report having been sexually assaulted feared they or others would be punished for infractions or violations, such as underage drinking, if they reported the crimes they suffered.

These recent data are not news to the military. As far back as 2004, the Undersecretary of Defense wrote in a memo to the Secretaries of the Military Departments:

One of the most significant barriers to the reporting of sexual assault is the victim’s fear of punishment for some of the victim’s own actions leading up to or associated with the sexual assault incident. Many reported sexual assaults involve


5 See, e.g., JSC-SAS Report Appendix F at 2 (police and prosecutors in Kent County, Delaware advise victims who may have committed minor misconduct such as underage drinking or drug use that they are focused on sexual assault and not minor misconduct); Appendix O at 1 (investigators in Snohomish County, Washington typically advise victim that law enforcement is not investigating or concerned with victim’s drug possession or prostitution, because knowing what truly happened with the sexual assault is more important).

6 See Transcript of RSP Public Meeting 200-01 (Nov. 8, 2013) (Testimony of Mr. Chris Mallios, Attorney Advisor for AEquitas).

7 See http://www.rollcall.com/news/military_women_fear_collateral_damage_from_reporting_sexual_assault-226859-1.html (some military sexual assault victims “simply assume that by reporting a crime, they’ve earned immunity from prosecution, a common arrangement in the civilian world, especially where fear of punishment would otherwise prevent reporting. Under the Violence Against Women Act, for example, undocumented victims may not be penalized for their immigration status and can even receive temporary legal status in exchange for assisting in the investigation of crimes.”).


9 Transcript of RSP Role of the Commander Subcommittee Meeting, slide 9 of accompanying presentation (October 23, 2013).
circumstances in which the victim may have engaged in some form of misconduct (i.e., underage drinking or other alcohol related offenses, adultery, fraternization or other violations of certain regulations or orders).10

The 2013 Department of Defense instruction on sexual assault prevention procedures later underscored: “Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim’s fear of punishment.”11

The Victim Services Subcommittee Report finds that the threat of prosecution for collateral misconduct is a structural impediment to the reporting of sexual assault.12 Yet the Subcommittee only recommends that the Department of Defense study the problem and makes no recommendation about the wisdom of continuing to vest commanders with the authority to prosecute sexual assault victims themselves, even when the threat of prosecution deters victims from reporting.13

Some subcommittee members expressed concern that the RSP did not receive evidence on the consequences of a military policy to discourage or disallow prosecutions of sexual assault victims for collateral misconduct.14 Since such a policy does not exist in the military, any testimony about it would be speculative. The evidence we do have on the record suggests that the Services themselves do not believe that the power to prosecute victims of sexual assault for collateral misconduct is critical. According to information the Services provided in response to the RSP’s request, the Air Force, Army, Navy, and Marine Corps have not tracked the prosecutions of victims of sexual assault for collateral misconduct.15 When they have tracked it, prosecutions appear to be few and of minor import.

The Coast Guard submitted information from fiscal years 2007-13 showing that it pursued very few prosecutions of collateral misconduct.16 The Army submitted data for

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11 Department of Defense Instruction 6495.02 (2013, incorporating February 12, 2014 change), Enclosure 5, ¶7(a).


15 DoD and Service responses to Request for Information 49.

16 See DoD and Service responses to Request for Information 49 (indicating that Coast Guard took “action” for collateral misconduct against five individuals in FY07, two in FY08, seven in FY09, six in FY10-11, four in FY12, and none in FY13. None of the “action” taken involved anything more serious than NJP. These instances are only of those cases of sexual assault in which the victim chose to report.
fiscal year 2013 showing that adverse actions against sexual assault victims for collateral misconduct occurred in less than 5 percent of cases, and adverse actions, where they occurred, were mild. For example, adverse actions for collateral misconduct included counseling statements for underage drinking and non-judicial punishments for fraternization. In one jurisdiction, for three sexual assault cases, commanders considered punishing the underage drinking and fraternization engaged in by victims, but in all three cases the commander did not administer even non-judicial punishment. Given these data, one cannot seriously argue that commanders must retain the discretion to prosecute sexual assault victims for collateral misconduct because military good order and discipline are at stake.

Despite the fact that commanders rarely impose punishment upon victims for collateral misconduct, many victims are so fearful that they will be punished for the behavior that they never report to command having been sexually assaulted. Sexual predators can exploit that fear and use the potential criminal liability of victims to persuade them to remain silent. Hence, many assaults go undetected and unpunished, leaving those perpetrators free to offend again. Deterring reports of sexual assault through the prosecution of victims’ collateral misconduct causes a serious diminution in military good order and discipline. It is worthy of reconsideration.

We recommend that the Department of Defense develop and implement a policy that commanders will not prosecute instances of lower-level collateral misconduct against those reporting credible allegations of sexual assault. Lower-level collateral misconduct would include underage drinking or related alcohol offenses, adultery, and fraternization. However, the Department of Defense may go further and define lower-level collateral misconduct as any offense that is less serious than sexual assault itself, given that commanders should be willing to forgo the pursuit of these lesser offenses when faced with a very serious crime that too often has gone unreported and unpunished.

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17 DoD and Service responses to Request for Information 138.

18 Id.

19 RFI 138.

20 See, e.g., Transcript of RSP Public Meeting 69-71 (Nov. 8, 2013) (testimony of Ms. Marti Ribeiro)(describing discussion with SARC who warned that she would be charged with an offense if she decided to file sexual assault report); see also, Transcript of RSP Role of the Commander Subcommittee Meeting 62 (discussion between RSP Member Hillman and Dr. Galbreath that 22% of responses to the question regarding why victims didn’t report in 2012 Workplace and Gender Relations Survey (WGRA) were that “you fear that you or others would be punished”).

The Response Systems Panel has not yet considered or deliberated on the contents of this report.
These terms of reference establish the Secretary of Defense’s (SecDef) objectives for an independent subcommittee review of military and civilian systems for providing support and protection to victims in the investigation, prosecution, and adjudication of adult sexual assault crimes. At the SecDef’s direction, the Victim Services Subcommittee (“the Subcommittee”) has been established under the Response Systems to Adult Sexual Assault Crimes Panel (Response Systems Panel) to conduct this assessment.

**Mission Statement:** Assess the adequacy of military systems and proceedings for providing support and protection to victims in the investigation, prosecution, and adjudication of crimes involving adult sexual assault and related offenses, under 10 U.S.C. § 920 (Article 120, Uniform Code of Military Justice (UCMJ)).

**Issue Statement:** Section 576(d)(1) of the FY 2013 National Defense Authorization Act provides that in conducting a systems review and assessment, the Response Systems Panel shall provide recommendations on how to improve the effectiveness of the investigation, prosecution, and adjudication of crimes involving adult sexual assault and related offenses, under 10 U.S.C. 920 (Article 120 of the UCMJ). This includes an assessment of military systems for providing support and protection to victims in the investigation, prosecution, and adjudication of crimes involving adult sexual assault and related offenses. In addition, the Subcommittee should identify systems or methods for strengthening the effectiveness of military systems. Section 1731 of the FY 2014 National Defense Authorization Act established additional tasks for the Response Systems Panel.

**Objectives and Scope:** The Subcommittee will address the following specific objectives.

- Assess the adequacy of military systems and proceedings to support and protect victims in all phases of the investigation, prosecution, and adjudication of adult sexual assault crimes.
- Assess whether military systems and proceedings provide victims the rights afforded by 18 U.S.C. § 3771, Department of Defense Directive 1030.1, and Department of Defense Instruction 1030.2.
- Assess differences between military and civilian systems in providing support and protection to victims of adult sexual assault crimes.
- Identify best practices for victim support and protection from civilian jurisdictions that may be incorporated into any phase of the military system.
- Assess the effectiveness of proposed legislative initiatives modifying military justice processes in providing support and protection to victims of adult sexual assault crimes.
- An assessment regarding whether the roles, responsibilities, and authorities of Special Victims’ Counsel to provide legal assistance under Section 1044e of Title 10, United States Code, as added by Section 1716, to victims of alleged sex-related offenses should be expanded to include legal standing to represent the victim during investigative and military justice proceedings in connection with the prosecution of the offense.
- An assessment of the feasibility and appropriateness of extending to victims of crimes covered by the UCMJ the right afforded a crime victim in civilian criminal legal proceedings under subsection 17 (a)(4) of Section 3771 of Title 18, United States Code, and the legal standing to seek enforcement of crime victim rights provided by subsection (d) of such section.
APPENDIX B
History of SAPR Program and Victim Services Legislation

Historical discussion of the Sexual Assault Prevention and Response (SAPR) Program:

On October 6, 2005, the Acting Deputy Secretary of Defense formally established the DoD Sexual Assault Prevention and Response (SAPR) Program.\(^1\) In June 2006, DoD issued initial SAPR program procedures.\(^2\)

The 2005 DoD policy introduced significant improvements to the military response system that are still in place today, including:

- A restricted reporting option for victims who wished to obtain services while maintaining confidentiality.
- Baseline and pre-deployment sexual assault prevention training for Service members and first responders (e.g., healthcare providers, victim advocates, law enforcement, criminal investigators, judge advocates, chaplains).\(^3\)
- Recommendation to commanders to delay disciplinary action for victims’ collateral misconduct until after final disposition of a sexual assault case.\(^4\)
- Required review of all administrative separations involving sexual assault victims to ensure that a “full and fair consideration of the victim’s military service and particular situation were taken into account during the separation action and to ensure that it was not in retaliation for the report.”\(^5\)
- Directed the Military Services to establish “immediate response capability” for “each report of sexual assault in all locations, including deployed locations, to ensure victims have timely access to appropriate services and that there is system accountability.”
- Established Sexual Assault Response Coordinators (SARCs) and Victim Advocates (VAs).\(^6\)

In addition, the inaugural DoD policy directed each of the Military Services to establish sexual assault program offices at all major installations, staffed by more than 1,000 trained SARCs

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\(^1\) DoDD 6495.01 (October 6, 2005)
\(^2\) DoDI 6495.02 (June 23, 2006)
\(^4\) CY2004 SAPRO Report at 4-5
\(^5\) CY2004 SAPRO Report at 5
\(^6\) CY2004 SAPRO Report at 6
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and Victim Advocates (VAs) to implement the new SAPR programs. Since 2005, SARC's and
SAPR VAs have become the heart of DoD's sexual assault response program.

DoD SAPRO conducted a SAPR strategic planning effort in 2009 to align SAPR priorities
across DoD. In May 2012, the Joint Chiefs of Staff weighed in on the importance of the issue,
providing their strategic guidance in a report that directed a review and revision of SAPR strategy.
In May 2013, DoD issued the current SAPR strategic plan. “Sexual assault” for purposes of
receiving SAPR victim services, is defined as “intentional sexual contact characterized by the use
of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent.”

The 2013 plan incorporated four key priorities originally developed in 2009: 1) increase
reporting of sexual assaults, 2) increase the quality and access to services and support for sexual
assault victims, 3) improve accountability, and 4) improve prevention and awareness.

Congressional Oversight of DoD-SAPRO

The Defense Task Force on Sexual Assault in the Military Services

In 2004, Congress directed the Secretary of Defense to establish a task force examining
matters relating to sexual harassment and violence at the United States Military Academy and the
United States Naval Academy in the wake of a number of sexual misconduct allegations at the
academies. After completing its report in 2005, Congress directed the task force to continue and
assess the Military Services’ response to sexual assault.

The mission of the Defense Task Force on Sexual Assault in the Military Services (DTF-
SAMS) was to assess current programs and recommend ways for the military to improve victim care,
prevention efforts, program oversight, investigations, reporting, data collection and protecting

7 CY 2005 SAPRO Report at 1, DoD released its sexual assault policy framework in January 2005 in a series of
Directive-Type-Memoranda (DTMs) that were consolidated and issued as Directive 6495.1 in October 2005. (p5)
8 SAPRO Observation of Sexual Assault Response Coordinator (SARC) and Victim Advocate (VA) Sexual Assault
and Response Training Report to the U.S. Army” (Jan 22, 2013)[hereinafter Army Training Observation Report] at
2.
10 The Joint Chiefs of Staff, Strategic Direction to the Joint Force on Sexual Assault Prevention and Response (May
7, 2012).
11 Department of Defense Sexual Assault Prevention and Response Strategic Plan 5 (April 30, 2013)
12 DoDI 6495.02 at 94 (glossary). Department of Defense Sexual Assault Prevention and Response Program
PowerPoint Presentation slide 5 (June 27, 2013) Offenses are charged based on the act perpetrated, the level of force
used, and the ability of the victim to consent. Id. The UCMJ offenses included in the definition of “sexual assault”
are: 1) rape (Art 120); 2) sexual assault (Art 120); Forcible Sodomy (Art 125); attempts to commit (Art 80);
aggravated sexual contact (Art 120); and abusive sexual contact (Art 120). Id.
13 Department of Defense Sexual Assault Prevention and Response Strategic Plan 5 (April 30, 2013)
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Over the course of nine months, DTF-SAMS held two hundred sixteen structured focus group discussions during site visits to sixty installations world-wide. DTF-SAMS issued its report on December 1, 2009, containing eighty-three substantive recommendations to Congress, the Secretary of Defense, the Combatant Commanders, DoD Inspector General, the Judge Advocates General, Joint Commanders, Commanders of recruiting organizations and SAPRO.

DTF-SAMS’ recommendations covered four major areas: strategic direction, prevention and training, response to victims, and accountability. Overall, DTF-SAMS concluded that “since [the inception of the SAPR Program] in 2005, [the DoD] and Military Services … made major strides toward improving their capacity to respond to reports of sexual assaults,” but, the report continues, “the overall progress of the SAPR program [was] uneven.” Specifically, DTF-SAMS determined that a “lack of strategy and ineffective organizational structures . . . hindered adequate prevention and response to sexual assault.”

As a result, DTF-SAMS made a number of recommendations to “restruct[e] SAPRO and improve the visibility of its mission . . . to develop a credible data and reporting system and to establish consistency in SAPR programs and structures among the Military Services.” In addition, DTF-SAMS “urge[d] DOD and the Military Services to reinvigorate their victim support programs and … develop strategic prevention strategies supported by a clear plan for continuous program evaluation.”

DoD SAPRO identified ninety-one recommendations from the DTF-SAMS study and told the RSP that it has “implemented all but six of them... and [they are] waiting for some of the processes…put in place a while back to complete…then those will be closed as well.”

Legislation

Since DTF-SAMS released its report in 2009, Congress has continued to enact statutory changes to address the issue of sexual assault in the military, many of which relate to victim services.

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16 FY05 NDAA, at § 576.
17 DTF-SAMS
19 DTF SAMS p2
20 DTF SAMS p2
21 DTF SAMS p3
22 DTF SAMS p3; DTF-SAMS made eight primary recommendations with respect to victim response Recommendation 20) Ensure victims are offered adequate legal assistance and appropriate privileged communications; 21) Give victims the opportunity to decline to continue participation in sexual assault investigations and decline SAPR Services; 22) Provide access to SAPR services to family members, retirees, DoD civilians and contractors; 23) ensure Restricted Reporting option; 24) Establish protocols for medical care of both male and female victims; 25) Improve sexual assault forensic exam practices; 26) Ensure victims’ medical records are complete and accurate; 27) establish universal hotline to facilitate victim reporting. At 68-74.
23 Transcript of RSP Meeting (June 27, 2013) (testimony of Dr. Nathan Galbreath).
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The National Defense Authorization Act for Fiscal Year 2010 (FY10 NDAA) included two sections related to improved sexual assault prevention and response in the Armed Forces.\(^{24}\)

<table>
<thead>
<tr>
<th>Section</th>
<th>Requirement</th>
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<tbody>
<tr>
<td>Section 567(a).</td>
<td>Amended the FY05 NDAA to require a revised sexual assault response plan within 180 days.(^{25})</td>
</tr>
<tr>
<td>Section 567 (b) and (c).</td>
<td>Required report evaluating the availability of sexual assault medical forensic examinations (SAFEs) in combat zones and the number of military protective orders related to sexual assaults.(^{26})</td>
</tr>
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The National Defense Authorization Act for Fiscal Year 2011 (FY11 NDAA) included ten sections related to improved sexual assault prevention and response in the Armed Forces.\(^{27}\)

<table>
<thead>
<tr>
<th>Section</th>
<th>Requirement</th>
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<tr>
<td>Section 1601.</td>
<td>Defines “sexual assault prevention and response program” as Department of Defense policies and programs intended to reduce the number of sexual assaults and improve the response to reports of sexual assaults.</td>
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<td>Section 1602(e).</td>
<td>Required consistent terminology, position descriptions, program standards and organizational structures.</td>
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<td>Section 1611.</td>
<td>Established a Director of SAPRO.</td>
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<td>Section 1612.</td>
<td>Required the Secretary of Defense to issue standards to assess and evaluate the effectiveness of the sexual assault and prevention response program of each Service.</td>
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<tr>
<td>Section 1613.</td>
<td>Required report and plan for completion of acquisition of centralized Department of Defense sexual assault database.</td>
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<tr>
<td>Section 1614.</td>
<td>Required clarification on the limitations of restricted reports of sexual assault.</td>
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<tr>
<td>Section 1621.</td>
<td>Required the Secretary of Defense to establish consistent protocols for providing medical care for sexual assault victims.</td>
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\(^{25}\) FY10 NDAA, at §567(a)(5).

\(^{26}\) FY10 NDAA, at § 567(b) and (c).

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<table>
<thead>
<tr>
<th>Section</th>
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<tbody>
<tr>
<td><strong>Section 1622.</strong></td>
<td>Provides that a member of the Armed Forces or a dependent thereof who is the victim of a sexual assault is entitled to assistance from a Sexual Assault Victim Advocate.</td>
</tr>
<tr>
<td><strong>Section 1631.</strong></td>
<td>Annual report regarding sexual assaults involving members of the Armed Forces and improvement to sexual assault prevention and response program.</td>
</tr>
<tr>
<td><strong>Section 1632.</strong></td>
<td>Required the Secretary of Defense to evaluate the feasibility of: extending SAPR services to Department of Defense civilian employees, defense contractors and the Reserve component; requiring that a copy of the record of courts-martial proceedings be given to the victim when victim testified; providing legal assistance to sexual assault victims; and requiring use of forensic medical examiners when access to civilian resources is limited.</td>
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The National Defense Authorization Act for Fiscal Year 2012 (FY12 NDAA) included eight sections related to improved sexual assault prevention and response in the Armed Forces.28

<table>
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<tr>
<th>Section</th>
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<tr>
<td><strong>Section 541.</strong></td>
<td>Reform of offenses relating to rape, sexual assault, and other sexual misconduct under the Uniform Code of Military Justice.</td>
</tr>
<tr>
<td><strong>Section 542.</strong></td>
<td>Amended Article 47 (refusal to appear or testify) to add the case of a subpoena <em>duces tecum</em> for an Article 32 investigation.</td>
</tr>
<tr>
<td><strong>Section 581.</strong></td>
<td>Required legal assistance counsel to be offered as soon as victim contacts a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, or a trial counsel; and required victim to be informed that they may decline services or opt to utilize them at any time.</td>
</tr>
<tr>
<td><strong>Section 582.</strong></td>
<td>Required consideration of expedited transfer for victims making unrestricted reports.</td>
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<td><strong>Section 583.</strong></td>
<td>Required Director of the Sexual Assault Prevention and Response Office to be a general or flag officer or a DoD Senior Executive Service level civilian.</td>
</tr>
<tr>
<td><strong>Section 584.</strong></td>
<td>Required at least one full-time SARC and full-time VA for each brigade level unit; and required SARCs and VAs to be certified prior to assignment.</td>
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<td>Section 570.</td>
<td>Amended the Armed Forces Workplace and Gender Relations Surveys to add “assault” along with “harassment and discrimination” to the survey; and to clarify when surveys are required.</td>
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<tr>
<td>Section 571.</td>
<td>Provides authority, upon request by the member, to retain or recall to active duty reserve members who are sexual assault victims while on active duty.</td>
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<tr>
<td>Section 572.</td>
<td>Additional elements in comprehensive Department of Defense policy on sexual assault prevention and response. (a)(1) Requires tracking unrestricted reports, to include whether disposition by court-martial, non-judicial punishment or other administrative action. (a)(2) Requires administrative discharge if convicted of a covered offense</td>
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### History of SAPR Program and Victim Services Legislation

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<tr>
<th>Section 573</th>
<th>Required the Military Services to establish “Special Victim Capabilities” to respond to allegations of certain special victim offenses; and which consist of collaborative teams of specially trained and selected investigators, judge advocates, victim witness assistance personnel.</th>
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<tbody>
<tr>
<td>Section 574</td>
<td>Enhancement to training and education for sexual assault prevention and response.</td>
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<tr>
<td></td>
<td>- Amends Section 585 of the FY12 NDAA to require sexual assault prevention and response training in the training for new or prospective commanders at all levels of command; and requires SAPR training for troops within 14 days of initial entrance on active duty or into a duty status with a reserve component.</td>
</tr>
<tr>
<td>Section 575</td>
<td>Added additional reporting requirements to the case synopses portion of</td>
</tr>
</tbody>
</table>

---

30 FY13 NDAA, at § 572(b)(5). Members of the Armed Forces may seek remedies under chapter 79 of title 10, U.S.C. for the correction of military records when a member experiences any retaliatory personnel action for making a report of sexual assault or harassment.
### APPENDIX B

**History of SAPR Program and Victim Services Legislation**

<table>
<thead>
<tr>
<th>Section</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 576.</strong></td>
<td>Independent reviews and assessments of Uniform Code of Military Justice and judicial proceedings of sexual assault cases.</td>
</tr>
<tr>
<td><strong>Section 577.</strong></td>
<td>Required Restricted Reports to be maintained for 50 years, if requested by victim.</td>
</tr>
<tr>
<td></td>
<td>- <em>Section 1723 of the FY14 NDAA amends this section to require retention for 50 years.</em></td>
</tr>
<tr>
<td><strong>Section 578.</strong></td>
<td>Required flag officer review of circumstances and grounds for involuntary separation of any member of the Armed Forces who made an Unrestricted Report of sexual assault within twelve months of separation action, within one year after making the Unrestricted Report.</td>
</tr>
<tr>
<td><strong>Section 579.</strong></td>
<td>Required creation of sexual harassment policy that includes prevention training, reporting mechanisms, responding to incidents.</td>
</tr>
<tr>
<td><strong>Section 579.</strong></td>
<td>(a) Required the Secretary of Defense to develop a comprehensive policy to prevent and respond to sexual harassment in the Armed Forces.</td>
</tr>
<tr>
<td></td>
<td>(b) Requires a plan to collect data on substantiated incidents of sexual harassment involving members of the Armed Forces for the purpose of identifying cases in which a member is accused of multiple incidents of sexual harassment.</td>
</tr>
</tbody>
</table>


The National Defense Authorization Act for Fiscal Year 2014 (FY14 NDAA) included 36 provisions related to improved sexual assault prevention and response in the Armed Forces.3¹ Unless otherwise noted, the provisions were effective immediately.

<table>
<thead>
<tr>
<th>Section</th>
<th>Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 1701.</strong></td>
<td>Extension of crime victims' rights to victims of offenses under the Uniform Code of Military Justice.</td>
</tr>
<tr>
<td></td>
<td>- <em>No later than December 26, 2014 (one year after enactment of the Act), SECDEF and Secretary of Homeland Security prescribe regulations for implementation; and SECDEF recommend to POTUS changes to MCM to implement.</em></td>
</tr>
</tbody>
</table>

---

## APPENDIX B
**History of SAPR Program and Victim Services Legislation**

| Section 1702. | (a) Revision of Article 32, Uniform Code of Military Justice.  
- *Effective December 26, 2014 (one year after enactment of the Act).*  
(b) Revision of Article 60, Uniform Code of Military Justice.  
- *Effective June 26, 2014 (180 days after enactment of the Act).* |
| Section 1703. | Eliminates five-year statute of limitations on trial by court-martial for additional offenses involving sex-related crimes. |
| Section 1704. | Upon notice by trial counsel to defense counsel of the name of an alleged victim of a sex-related offense who trial counsel intends to call to testify at a preliminary hearing under Article 32 or a court-martial, defense counsel must make request to interview victim through trial counsel; and the interview of victim must take place in presence of trial counsel, counsel for the victim, or a Sexual Assault Victim Advocate. |
| Section 1705. | (a) Discharge or dismissal for offenses of rape or sexual assault (under Art. 120), rape or sexual assault of a child (under Article 120b), forcible sodomy (under Article 125), or attempts thereof (under Article 80); and trial of such offenses by general courts-martial.  
- *Effective June 26, 2014 (180 days after enactment of the Act).*  
(b) Jurisdiction limited to general courts-martial for offenses of rape or sexual assault (under Article 120), rape or sexual assault of a child (under Article 120b), forcible sodomy (under Article 125), or attempts thereof (under Article 80).  
- *Effective June 26, 2014 (180 days after enactment of the Act).* |
| Section 1706. | Participation by victim in clemency phase of courts-martial process.  
- *Further amends Section 1702 of the FY14 NDAA (which amends Article 60 of the UCMJ).*  
- *Effective June 26, 2014 (180 days after enactment of the Act).* |
| Section 1707. | Repeal of the offense of consensual sodomy under the Uniform Code of Military Justice. |
| Section 1708. | Modification of Manual for Courts-Martial to eliminate factor relating to character and military service of the accused in rule on initial disposition |
APPENDIX B
History of SAPR Program and Victim Services Legislation

<table>
<thead>
<tr>
<th>Section 1709.</th>
<th>SECDEF to prescribe regulations that prohibit retaliation against members of the Armed Forces for reporting a criminal offense and criminalize retaliation under the UCMJ.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Regulations prohibiting such retaliation due by April 26, 2014 (120 days after enactment of the Act).</td>
</tr>
<tr>
<td></td>
<td>- Report to Congress due June 26, 2014 (180 days after enactment of the Act) regarding whether a new punitive article is required to prohibit retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense.</td>
</tr>
<tr>
<td>Section 1711.</td>
<td>Prohibition on service in the Armed Forces by individuals who have been convicted of certain sexual offenses.</td>
</tr>
<tr>
<td>Section 1712.</td>
<td>Issuance of regulations applicable to the Coast Guard regarding consideration of request for permanent change of station or unit transfer by victim of sexual assault.</td>
</tr>
<tr>
<td>Section 1713.</td>
<td>Allows the Secretary of Defense to provide guidance to commanders regarding their authority to reassign members alleged to have committed offenses under Articles 120, 120a, 120b, 120c, and 125 of the UCMJ.</td>
</tr>
<tr>
<td>Section 1714.</td>
<td>Expansion and enhancement of authorities relating to protected communications of members of the Armed Forces and prohibited retaliatory actions.</td>
</tr>
<tr>
<td>Section 1715.</td>
<td>Inspector General investigation of allegations of retaliatory personnel actions taken in response to making protected communications regarding sexual assault.</td>
</tr>
<tr>
<td>Section 1716.</td>
<td>Requires Special Victims’ Counsel be made available to sexual assault victims.</td>
</tr>
<tr>
<td></td>
<td>- Effective June 26, 2014 (180 days after enactment of the Act).</td>
</tr>
<tr>
<td>Section 1721.</td>
<td>Amends section 572 of the FY13 NDAA to require SECDEF to direct Secretaries to verify and track compliance of commanding officers in conducting organizational climate assessments for purposes of preventing and responding to sexual assaults.</td>
</tr>
</tbody>
</table>
### APPENDIX B  
**History of SAPR Program and Victim Services Legislation**

<table>
<thead>
<tr>
<th><strong>Section 1722.</strong></th>
<th>Response Systems Panel report due in 12 months vice 18.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Section 1723.</strong></td>
<td>Amends section 577 of the FY13 NDAA to require mandatory 50-year retention for restricted and unrestricted report records on sexual assault involving members of the Armed Forces.</td>
</tr>
<tr>
<td><strong>Section 1724.</strong></td>
<td>Amends section 584(a) of the FY12 NDAA to require timely access to Sexual Assault Response Coordinators by members of the National Guard and Reserves.</td>
</tr>
</tbody>
</table>
| **Section 1725.** | (a) Amends section 1602(e)(2) of the FY11 NDAA to address qualifications and selection of Department of Defense sexual assault prevention and response personnel.  
(b) Requires the assignment of at least one full-time sexual assault nurse to any emergency department that operates 24 hours per day.  
(c) No later than April 26, 2014, SECDEF submits report to the Armed Services Committees on the adequacy of training, qualifications, and experience of sexual assault prevention and response personnel. |
| **Section 1726.** | Amends section 1611 of the FY11 NDAA to add responsibilities to the Sexual Assault Prevention and Response Office for Department of Defense sexual assault prevention and response program. |
| **Section 1731.** | Adds additional responsibilities for the Response Systems Panel and the Judicial Proceedings Panel. |
| **Section 1732.** | Requires the Secretary of Defense to review practices of MCIOs in response to allegations of Uniform Code of Military Justice violations and develop policy regarding use of case determinations to record results of MCIO investigations, similar to uniform crime report if feasible.  
- **Review to be completed no later than June 26, 2014 (180 days after enactment of the Act).** After review, SECDEF to develop uniform policy for the Armed Forces. |
| **Section 1733.** | Review of training and education provided members of the Armed Forces on sexual assault prevention and response.  
- **No later than April 26, 2014 (120 days after enactment of the Act), SECDEF to submit a report to Congress containing the results of the review.** |
| **Section 1734.** | Report on implementation of Department of Defense policy on the retention of and access to evidence and records relating to sexual assaults |
## APPENDIX B

### History of SAPR Program and Victim Services Legislation

<table>
<thead>
<tr>
<th>Section 1735.</th>
<th>Review of the Office of Diversity Management and Equal Opportunity role in sexual harassment cases.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 1741.</td>
<td>Enhanced protections for prospective members and new members of the Armed Forces during entry-level processing and training.</td>
</tr>
<tr>
<td></td>
<td>- No later than April 26, 2014 (120 days after enactment of the Act), SECDEF to submit report to Congress to assess whether a new punitive article is needed for prohibition of inappropriate senior-subordinate relationships with entry-level personnel.</td>
</tr>
<tr>
<td>Section 1742.</td>
<td>Commanding officer action on reports on sexual offenses involving members of the Armed Forces.</td>
</tr>
<tr>
<td></td>
<td>- A commanding officer, upon receipt of a report of a sex-related offense involving a member in the commanding officer’s chain of command, must immediately refer the report to the appropriate MCIO.</td>
</tr>
<tr>
<td>Section 1743.</td>
<td>Eight-day incident reporting requirement in response to unrestricted report of sexual assault in which the victim is a member of the Armed Forces.</td>
</tr>
<tr>
<td></td>
<td>- No later than June 26, 2014, SECDEF to prescribe regulations to carry out this section.</td>
</tr>
<tr>
<td>Section 1744.</td>
<td>Review of decisions not to refer charges of certain sex-related offenses for trial by court-martial.</td>
</tr>
<tr>
<td></td>
<td>- Requires the Secretary of military departments to review all cases under Articles 120(a), 120(b), 125, and attempts thereof, where the SJA recommends referral and the convening authority declines to refer charges. Requires review by the next superior commander authorized to exercise general court-martial convening authority when both the SJA recommends not referring charges and the convening authority does not refer charges. Also requires written statement explaining the reasons for convening authority’s decision not to refer any charges for trial by court-martial.</td>
</tr>
<tr>
<td>Section 1745.</td>
<td>Inclusion and command review of information on sex-related offenses in personnel service records of members of the Armed Forces.</td>
</tr>
<tr>
<td>Section 1746.</td>
<td>Prevention of sexual assault at military service academies (within 14 days)</td>
</tr>
<tr>
<td>Section</td>
<td>Description</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>1747</td>
<td>Required notification whenever members of the Armed Forces are completing Standard Form 86 to allow a member to answer “no” to question 21 if the member received counseling related to a sexual assault. This legislation codified the April 5, 2013, policy guidance issued by the Director of National Intelligence.</td>
</tr>
<tr>
<td>1751</td>
<td>Sense of Congress on commanding officer responsibility for command climate free of retaliation.</td>
</tr>
<tr>
<td>1752</td>
<td>Sense of Congress on disposition of charges involving certain sexual misconduct offenses under the Uniform Code of Military Justice through courts-martial.</td>
</tr>
<tr>
<td>1753</td>
<td>Sense of Congress on the discharge in lieu of court-martial of members of the Armed Forces who commit sex-related offenses.</td>
</tr>
</tbody>
</table>
APPENDIX C
Subcommittee Members and Staff

Mai Fernandez, Executive Director, National Center for Victims of Crime – Victim Services
Subcommittee Chair
Mai Fernandez has been executive director of the National Center for Victims of Crime since June 2010. Ms. Fernandez has had a distinguished 25-year career in the criminal justice, nonprofit, and policy arenas. She has served as the acting executive director of the Latin American Youth Center, a DC-based nonprofit organization that provides multicultural, underserved youth with education, social, and job training services. Ms. Fernandez has spent the last 13 years managing programs that serve victims of child abuse, sex trafficking, and gang violence. Before joining the Latin American Youth Center, Fernandez served as Assistant District Attorney for New York County, helping victims navigate the criminal justice system and pleading their cases before the court. She also developed policy for victims of domestic and youth violence at the U.S. Department of Justice, Office of Justice Programs, and served as a Congressional aide to U.S. Representatives Mickey Leland and Jim Florio.

Former Rep. Elizabeth Holtzman
Rep. Holtzman is counsel with the law firm, Herrick Feinstein, LLP. Rep. Holtzman served as a U.S. Congresswoman (D-NY, 1973-81) for eight years. While in office, she authored the Rape Privacy Act. She subsequently served for eight years as the Kings County, New York (Brooklyn) District Attorney, the fourth largest DA’s office in the country, from 1981-89. There, she helped change rape laws, improved standards and methods for prosecution, and developed programs to train police and medical personnel. Rep. Holtzman was also the only woman elected Comptroller of New York City. Rep. Holtzman graduated from Radcliffe College, magna cum laude, and received her law degree from Harvard Law School.

BG Colleen McGuire, U.S. Army (Retired)
Brigadier General (Retired) Colleen McGuire is the seventh Executive Director of Delta Gamma Fraternity. In August 2012, BG McGuire retired from the United States Army after more than 32 years of service, including deployments to Somalia and Iraq. She last served at the Pentagon as the Director of Manpower and Personnel on the Joint Staff. As a military police officer, BG McGuire is the first woman in the history of the U.S. Army to hold the highest law enforcement office, Provost Marshal General of the Army; first woman to command the U.S. Army’s premier felony investigative organization, Criminal Investigations Command; and the first woman to command the Department of Defense all-male maximum security prison at Fort Leavenworth, Kansas. BG McGuire also served as the director of the Army’s Suicide Prevention Task Force.

Michelle J. Anderson, J.D., LL.M., Dean and Professor of Law, CUNY School of Law
Michelle Anderson has been the Dean of CUNY School of Law since 2006 and has seen the law school through a period of great renewal and transformation in development, programs, and recognition. Dean Anderson is a leading scholar on rape law and has written numerous law review articles on the subject. Her article redefining what rape should be legally, “Negotiating Sex,” was selected as the core text on rape law in Criminal Law Conversations, published by Oxford University Press in 2009. Previously, Dean Anderson clerked on the United States Court of Appeals for the Ninth Circuit, and has taught at Georgetown University Law Center and as a visiting professor of law at the University Of Pittsburgh School Of Law.

Dean Schenck became Associate Dean for Academic Affairs at The George Washington University Law School in 2009 after serving in the Army’s Judge Advocate General’s Corps for more than 25 years. She also has served as a judge, lawyer, and educator. While in the military, she was an appellate military judge on the U.S. Army Court of Criminal Appeals in 2002 and received the 2003 Judge Advocates Association Outstanding Career Armed Services Attorney Award (Army). In 2005, Dean Schenck was the first female appointed as a Senior Judge on that court, where she served until she retired. In 2007, the Secretary of Defense also appointed her to serve concurrently as Associate Judge on the U.S. Court of Military Commission Review. After retiring from the military as a colonel in 2008, Dean Schenck served as Senior Advisor to the Defense Task Force on Sexual Assault in Military Services.

Honorable Barbara S. Jones, U.S. District Court for the Southern District of New York (Retired)
Judge Jones is a partner at the law firm, Zuckerman Spaeder, LLP. She served as a judge in the U.S. District Court for the Southern District of New York for 16 years, and heard a wide range of cases including accounting and securities fraud, antitrust, fraud and corruption involving city contracts and federal loan programs, labor racketeering, and terrorism. In addition to her judicial service, she spent more than two decades as a prosecutor. Judge Jones was a special attorney of the United States Department of Justice (DOJ) Organized Crime & Racketeering, Criminal Division and the Manhattan Strike Force Against Organized Crime and Racketeering. Previously, Judge Jones served as an assistant U.S. Attorney, as chief of the General Crimes Unit and chief of the Organized Crime Unit in the Southern District of New York.

Judge Christel E. Marquardt, Kansas Court of Appeals, Topeka, Kansas
Judge Marquardt was born in Chicago, Illinois. She received her B.S. in Education from Missouri Western State College in St. Joseph, Missouri and graduated with honors from Washburn University School of Law in 1974. While at Washburn, she served as managing editor of the Washburn Law Journal. After law school, she was an attorney in private practice at firms in Topeka and Kansas City. In 1994, Judge Marquardt and her son Andrew formed Marquardt & Associates, L.L.C. in Fairway, Kansas where she practiced until her appointment to the court in 1995. Judge Marquardt served as the first woman president of the Kansas Bar Association in 1987-88. She has been a member of the American Bar Association’s Board of Governors and has served in its House of Delegates since 1988. She is a past chair of the Washburn University of Topeka, Board of Regents and past chair of the Washburn University School of Law Board of Governors.

Meg Garvin, M.A., J.D., Executive Director of the National Crime Victim Law Institute (NCVLI) and clinical professor of law at Lewis & Clark Law School
Meg Garvin, M.A., J.D., joined the National Crime Victim Law Institute (NCVLI) in 2003. She serves as Executive Director of NCVLI and clinical professor of law at Lewis & Clark Law School. Ms. Garvin is recognized as a leading expert on victims’ rights. She has testified before Congress and the Oregon Legislature on the current state of victim law. She serves on the Legislative & Public Policy Committee of the Oregon Attorney General’s Sexual Assault Task Force, co-chairs the Oregon Attorney General’s Crime Victims’ Rights Task Force, and is a Board member of the Citizens’ Crime Commission. She previously served as co-chair of the American Bar Association’s Criminal Justice Section Victims Committee, and as a member of the board of directors for the National Organization of Victim Assistance. She is the recipient of the 2012 Crime Victims First-
Stewart Family Outstanding Community Service Award. Prior to joining NCVLI, Ms. Garvin practiced law in Minneapolis, Minnesota and clerked for the Eighth Circuit Court of Appeals.

**William E. Cassara, J.D., Attorney at Law, U.S. Army (Retired).**
For more than 20 years, Mr. Cassara has represented service members of all military branches in courts-martial, appeals of court-martial convictions, military discharge upgrades, administrative separations, security clearance matters, records correction, medical and physical evaluation boards and all other areas of military law. Mr. Cassara served six years on active duty in the Army JAG Corps and sixteen years in the Army JAG Corps Reserves. He served as a prosecutor, defense counsel and as appellate defense counsel. He has appeared before the Army Court of Criminal Appeals, the Air Force Court of Criminal Appeals, the Navy-Marine Corps Court of Criminal Appeals and the Coast Guard Court of Criminal Appeals.

**Subcommittee Staff**  
Commander Sherry King, U.S. Navy – Supervising Attorney  
Ms. Julie Carson  
Ms. Rachel Landsee  
Ms. Kristin McGrory
APPENDIX D
Glossary of Terms and Acronyms

10th Cir.     10th Circuit
ADA      assistant district attorney
AFCCA     Air Force Court of Criminal Appeals
AFI     Air Force Instruction
Alas. App.    Alaska Court of Appeals
Alaska Ct. App.    Alaska Court of Appeals
App      application
AR      Army Regulation
Art      article
CAAF     Court of Appeals for the Armed Forces
Chg      change
CMG     Case Management Group
CO     commanding officer
COMDTINST  Commandant of the United States Coast Guard
COMNAVLEGSCOMINST  Commander, Naval Legal Service Command Instruction
CRS     Congressional Research Service
CVRA     Crime Victims’ Rights Act
CY     calendar year
D.C. Cir.    District of Columbia Circuit
DA      district attorney
DAVA     Domestic Abuse Victim Advocate
DD Form    Department of Defense form
DMDC     defense management data center
DOD     Department Of Defense
DODD     Department of Defense directive
DODI     Department of Defense instruction
D-SAAPC    DoD Sexual Assault Advocate Certification Program
DSAID    defense sexual assault incident database
DTF-MH    Defense Task Force on Mental Health
DTF-SAMS    Defense Task Force on Sexual Assault in the Military Services
DTM     directive type memorandum
E      enclosure
E.D.N.Y.    Eastern District of New York
EMDR     Eye Movement Desensitization and Reprocessing
Encl     enclosure
ER      emergency room
F.R.Evid.    Federal Rules of Evidence
F.Supp.    Federal Supplement
FAP      Family Advocacy Program
FBI     Federal Bureau of Investigation (DOJ)
FSC     Family Support Center
FY      fiscal year
GS     general schedule
H.R.     House of Representatives
APPENDIX D
Glossary of Terms and Acronyms

HRC      Human Resources Command
IT      information technology
JAG      judge advocate general
JSC      Joint Services Committee on Military Justice
JSC-SAS  Joint Services Committee Sexual Assault Subcommittee
LCSW     Licensed Clinical Social Worker
M      million
M.R.E.  Military Rules of Evidence
MARFORRES  Marine Forces Reserve
MCIO    military criminal investigative organization
MCO     Marine Corps order
MCVRC   Maryland Crime Victims’ Resource Center
MG      Major General
MJ      military justice
MPO     military protective order
MSG     Master Sergeant, United States Army
MTF     medical treatment facility
NAC  National Agency Check
NACP    National Advocate Credentialing Program
NDAA    national defense authorization act
No  number
NOVA  National Organization of Victim Advocates
OCONUS  outside the continental United States
OIC  officer in charge
OPNAVINST  Chief of Naval Operations instruction
OVR  Office of Victim Rights
Para  paragraph
PCS  permanent change of station
PSARC  Philadelphia Sexual Assault Response Center
PTSD  post-traumatic stress disorder
PWS  performance work statement
R.C.M.  Rule for Courts-Martial
RAINN  Rape, Abuse and Incest National Network
RFI  request for information
RSP  Response Systems to Adult Sexual Assault Crimes Panel
S  Senate
S.Rept.  Senate Report
SAFE  sexual assault forensic examination
SANE  Sexual Assault Nurse Examiner
SAPR  sexual assault prevention and response
SAPRO  Sexual Assault Prevention and Response Office
SARB  Sexual Assault Review Board
SARC  Sexual Assault Response Coordinator
SART  Sexual Assault Response Team
SASC  Senate Armed Services Committee
SAVI  Sexual Assault Victim Intervention
Sec  section
## APPENDIX D
Glossary of Terms and Acronyms

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sess</td>
<td>session</td>
</tr>
<tr>
<td>SHARP</td>
<td>Sexual Harassment/Assault Response and Prevention</td>
</tr>
<tr>
<td>STAR</td>
<td>Standing Together Against Rape</td>
</tr>
<tr>
<td>SVC</td>
<td>Special Victims’ Counsel</td>
</tr>
<tr>
<td>TRICARE</td>
<td>Triple option benefit plan available for military families</td>
</tr>
<tr>
<td>UCMJ</td>
<td>Uniform Code of Military Justice</td>
</tr>
<tr>
<td>USMC</td>
<td>United States Marine Corps</td>
</tr>
<tr>
<td>USD P&amp;R</td>
<td>Under Secretary of Defense for Personnel and Readiness</td>
</tr>
<tr>
<td>USN</td>
<td>United States Navy</td>
</tr>
<tr>
<td>VA</td>
<td>victim advocate</td>
</tr>
<tr>
<td>Vol</td>
<td>volume</td>
</tr>
<tr>
<td>VSS</td>
<td>Victim Services Subcommittee</td>
</tr>
<tr>
<td>VWAP</td>
<td>Victim Witness Assistance Program</td>
</tr>
<tr>
<td>VWL</td>
<td>Victim Witness Liaison</td>
</tr>
<tr>
<td>W.D.N.C.</td>
<td>Western District of North Carolina</td>
</tr>
<tr>
<td>WGRA</td>
<td>Workplace and Gender Relations Survey of Active Duty Members</td>
</tr>
<tr>
<td>WOAR</td>
<td>Women Organized Against Rape</td>
</tr>
<tr>
<td>YWCA</td>
<td>Young Women's Christian Association</td>
</tr>
</tbody>
</table>
## APPENDIX E

Presentations before the Subcommittee and Response Systems Panel

<table>
<thead>
<tr>
<th>DATE</th>
<th>MEETING</th>
<th>PRESENTERS</th>
</tr>
</thead>
</table>
| June 27, 2013 | Public Meeting of the RSP U.S. District Court for the District of Columbia, Washington, D.C. | • Dr. Lynn Addington, Associate Professor, American University Department of Justice, Law, & Society  
• Ms. Delilah Rumburg, Executive Director, Pennsylvania Coalition Against Rape  
• Major General Gary S. Patton, Director, DoD Sexual Assault Prevention and Response Office (SAPRO)  
• Dr. Nathan Galbreath, Senior Executive Advisor, DoD SAPRO  
• Mr. Fred Borch, Army JAG Corps Regimental Historian  
• Captain Robert Crow, Joint Service Committee Representative |
| Aug. 1, 2013 | Preparatory Session of the RSP One Liberty Center, Arlington, VA         | • Ms. Bette Stebbins Inch, Senior Victim Assistance Advisor, DoD SAPRO  
• Major General Margaret Woodward, Director, Air Force Sexual Assault Prevention & Response (SAPR) Office  
• Ms. Carolyn Collins, Director, Army Sexual Harassment/Assault Response & Prevention (SHARP) Office  
• Rear Admiral Sean Buck, Director, Navy 21st Century Sailor Office  
• Brigadier General Russell Sanborn, Director, Marine & Family Programs  
• Ms. Shawn Wren, SAPR Program Manager, U.S. Coast Guard  
• Colonel Don Christiansen, Chief, Government Trial and Appellate Counsel Division, U.S. Air Force  
• Lieutenant Colonel Brian Thompson, Deputy Chief, Government Trial and Appellate Counsel Division, U.S. Air Force  
• Lieutenant Colonel Jay Morse, Chief, Army Trial Counsel Assistance Program  
• Major Jaclyn Grieser, Army Special Victim Prosecutor  
• Commander Aaron Rugh, Director, Navy Trial Counsel Assistance Program  
• Lieutenant Colonel Derek Brostek, Branch Head, U.S. Marine Corps Military Justice Branch  
• Mr. Guy Surian, Deputy G-3 for Investigative Operations & Intelligence, U.S. Army Criminal Investigation Command  
• Special Agent Kevin Poorman, Associate Director for Criminal Investigations, Headquarters, Air Force Office of Special Investigations  
• Special Agent Maureen Evans, Division Chief, Family & Sexual Violence, Naval Criminal Investigative Service  
• Mr. Marty Martinez, U.S. Coast Guard Investigative Service (CGIS) Assistant Director  
• Special Agent Beverly Vogel, CGIS Sex Crimes Program Manager  
• Professor Margaret Garvin, Executive Director, National Crime Victim Law Institute, Lewis & Clark Law School, Portland, Oregon |
| Aug. 5, 2013 | Preparatory Session of the RSP One Liberty Center, Arlington, VA         | • Professor Jeffrey Corn, South Texas College of Law  
• Professor Chris Behan, Southern Illinois University School of Law  
• Professor Michel Drapeau, University of Ottawa  
• Professor Eugene Fidell, Yale Law School (via telephone)  
• Professor Victor Hansen, New England School of Law  
• Professor Rachel VanLandingham, Stetson University College of Law |

Agendas, transcripts, and materials for all sessions available at [http://responsesystemspanel.whs.mil/](http://responsesystemspanel.whs.mil/)
### APPENDIX E
**Presentations before the Subcommittee and Response Systems Panel**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
<th>Presenters</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sept. 24, 2013</td>
<td>Public Meeting of the RSP&lt;br&gt;U.S. District Court for the District of Columbia, Washington, D.C.</td>
<td>Professor Jeffrey Corn, South Texas College of Law&lt;br&gt;Professor Chris Behan, Southern Illinois University School of Law&lt;br&gt;Professor Michel Drapeau, University of Ottawa&lt;br&gt;Professor Eugene Fidell, Yale Law School (telephonic)&lt;br&gt;Professor Victor Hansen, New England School of Law&lt;br&gt;Professor Rachel VanLandingham, Stetson University College of Law&lt;br&gt;Lord Martin Thomas of Gresford QC, Chair of the Association of Military Advocates in the United Kingdom&lt;br&gt;Professor Amos Guiora, University of Utah College of Law&lt;br&gt;Major General Blaise Cathcart, Judge Advocate General of the Canadian Armed Forces&lt;br&gt;Major General Steve Noonan, Deputy Commander, Canadian Joint Operations Command&lt;br&gt;Air Commodore Paul Cronan, Director General, Australian Defence Force Legal Service&lt;br&gt;Commodore Andrei Spence, Commodore Naval Legal Services, Royal Navy, United Kingdom&lt;br&gt;Brigadier (Ret.) Anthony Paphiti, former Brigadier Prosecutions, Army Prosecuting Authority, British Army&lt;br&gt;Senator Kirsten Gillibrand (New York)&lt;br&gt;Senator Claire McCaskill (Missouri)</td>
</tr>
<tr>
<td>Sept. 25, 2013</td>
<td>Public Meeting of the RSP</td>
<td>Lieutenant General Michael Linnington, U.S. Army</td>
</tr>
</tbody>
</table>

Agendas, transcripts, and materials for all sessions available at [http://responsesystemspanel.whs.mil/](http://responsesystemspanel.whs.mil/)
## APPENDIX E

### Presentations before the Subcommittee and Response Systems Panel

Colonel Polly S. Kenny, U.S. Air Force  
Colonel Rob disclosures of the Independent Panel, U.S. Air Force  
Captain David Harrison, U.S. Navy  
Commander Frank Hutchison, U.S. Navy  
General Edward Rice, U.S. Air Force  
Major General Steven Busby, U.S. Marine Corps  
Lieutenant Colonel Kevin Harris, U.S. Marine Corps  
Rear Admiral Thomas Ostebo, U.S. Coast Guard  
Commander William Dwyer, U.S. Coast Guard  
Brigadier General Richard C. Gross, Legal Counsel, Chairman of the Joint Chiefs of Staff  
Lieutenant General Flora D. Darpino, The Judge Advocate General, U.S. Army  
Vice Admiral Nanette M. DeRenzi, Judge Advocate General, U.S. Navy  
Major General Vaughn A. Ary, Staff Judge Advocate to the Commandant of the Marine Corps  
Rear Admiral Frederick J. Kenney, Judge Advocate General and Chief Counsel, U.S. Coast Guard |
TRANSCRIPT  
Major General Gary S. Patton, Director, DoD SAPRO  
Ms. Bette Stebbins Inch, Senior Victim Assistance Advisor, DoD SAPRO  
Major General Margaret Woodward, Director, Air Force SAPR Office  
Rear Admiral Maura Dollymore, Director of Health, Safety and Work-Life, U.S. Coast Guard  
Ms. Shawn Wren, SAPR Program Manager, U.S. Coast Guard  
Rear Admiral Sean Buck, Director, Navy 21st Century Sailor Office  
Brigadier General Russell Sanborn, Director, Marine & Family Programs  
Dr. Christine Altendorf, Director, U.S. Army Sexual Harassment/Assault Response & Prevention Office  
Master Sergeant Carol Chapman, SHARP Program Manager, 7th Infantry Division, U.S. Army  
Ms. Christa Thompson, Victim Witness Liaison, Fort Carson, Colorado  
Dr. Kimberly Dickman, Sexual Assault Response Coordinator, National Capitol Region, U.S. Air Force  
Master Sergeant Stacia Rountree, Victim Advocate, National Capitol Region, U.S. Air Force  
Ms. Liz Blanc, U.S. Navy Sexual Assault Response Coordinator, National Capitol Region  
Ms. Torie Camp, Deputy Director, Texas Association Against Sex Assault  
Ms. Gail Reid, Director of Victim Advocacy Services, Baltimore, Maryland  
Ms. Autumn Jones, Director, Victim/Witness Program, Arlington County & City of Falls Church, Virginia  
Ms. Ashley Ivey, Victim Advocate Coordinator, Athens, Georgia  
Ms. Nancy Parrish, President, Protect our Defenders  
Ms. Miranda Peterson, Program and Policy Director, Protect our Defenders |

Agendas, transcripts, and materials for all sessions available at http://responsesystemspanel.whs.mil/
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**Presentations before the Subcommittee and Response Systems Panel**

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<thead>
<tr>
<th>Nov. 8, 2013</th>
<th>Public Meeting of the RSP U.S. District Court for the District of Columbia, Washington, D.C.</th>
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<tbody>
<tr>
<td></td>
<td>• Mr. Greg Jacob, Policy Director, Service Women’s Action Network</td>
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<td></td>
<td>• Mr. Scott Berkowitz, President, Rape, Assault, and Incest Network</td>
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<td></td>
<td>• Dr. Will Marling, Executive Director, National Organization for Victim Assistance</td>
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<td></td>
<td>• Ms. Donna Adams (Public Comment)</td>
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<td></td>
<td>• Mr. Brian Lewis</td>
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<td></td>
<td>• Ms. BriGette McCoy</td>
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<td>• Ms. Ayana Harrell</td>
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<td>• Ms. Sarah Plummer</td>
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<td></td>
<td>• Ms. Marti Ribeiro</td>
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<td></td>
<td>• Command Sergeant Major Julie Guerra, U.S. Army</td>
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<td></td>
<td>• Colonel James McKee, Special Victims’ Advocate Program, U.S. Army</td>
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<td></td>
<td>• Colonel Carol Joyce, Officer in Charge, Victims’ Legal Counsel Organization, U.S. Marine Corps</td>
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<td></td>
<td>• Captain Karen Fischer-Anderson, Chief of Staff, Victims’ Legal Counsel, U.S. Navy</td>
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<td></td>
<td>• Captain Sloan Tyler, Director, Office of Special Victims’ Counsel, U.S. Coast Guard</td>
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<td></td>
<td>• Colonel Dawn Hankins, Chief, Special Victims’ Counsel Division, U.S. Air Force</td>
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<td></td>
<td>• Mr. Chris Mallios, Attorney Advisor for AEquitas, Washington, D.C.</td>
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<td></td>
<td>• Ms. Theo Stamos, Commonwealth Attorney, Arlington, Virginia</td>
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<td></td>
<td>• Ms. Marjory Fisher, Chief, Special Victims Unit, Queens, New York</td>
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<td></td>
<td>• Ms. Keli Luther, Deputy County Attorney, Maricopa County, Arizona</td>
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<td></td>
<td>• Mr. Mike Andrews, Managing Attorney, D.C. Crime Victims Resource Center</td>
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<td>• Colonel Peter Cullen, Chief, U.S. Army Trial Defense Service</td>
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<td></td>
<td>• Colonel Joseph Perlak, Chief Defense Counsel, U.S. Marine Corps, Defense Services Organization</td>
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<td></td>
<td>• Captain Charles Purnell, US. Navy Defense Service Office</td>
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<tr>
<td></td>
<td>• Colonel Dan Higgins, Chief, Trial Defense Division, U.S. Air Force</td>
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<td></td>
<td>• Commander Ted Fowles, Deputy, Office of Legal and Defense Services, U.S. Coast Guard</td>
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<td>• Mr. David Court of Court and Carpenter, Stuttgart, Germany</td>
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<td>• Mr. Jack Zimmermann of Lavine, Zimmermann and Sampson, P.C., Houston, Texas</td>
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<td></td>
<td>• Ms. Bridget Wilson, Attorney, San Diego, California</td>
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<thead>
<tr>
<th>Nov. 21, 2013</th>
<th>Victim Services Subcommittee Meeting One Liberty Center, Arlington, VA</th>
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<tr>
<td></td>
<td>• Ms. Shawn Wren, Director, U.S. Coast Guard Sexual Assault and Prevention Office</td>
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<td>• Ms. Tanya Rogers, Program Analyst, US Navy Sexual Assault and Prevention Office</td>
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<td></td>
<td>• Lieutenant Colonel Mike Lewis, Victim Witness Liaison (accompanied by Lisa Surrette, US Air Force Sexual Assault Response Coordinator and Captain Allison DeVito, Victim Witness Liaison)</td>
</tr>
<tr>
<td></td>
<td>• Ms. Peggy Cuevas, Director US Marine Corps, MARFORRES, Sexual Assault Response Coordinator (accompanied by Gunnery Sergeant Yesenia Rodriguez, Unit Victim Advocate, Marine Corps Base Quantico, and Chief</td>
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Agendas, transcripts, and materials for all sessions available at http://responsesystemspanel.whs.mil/
# APPENDIX E

Presentations before the Subcommittee and Response Systems Panel

<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Attendees</th>
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</table>
| Dec. 10, 2013 | Site Visit                      | Warrant Officer Three Dancy Simons, Regional Victim Witness Liaison Officer, National Capitol Region  
  - Carolyn Collins, U.S. Army (accompanied by Janet Mansfield, U.S. Army)  
  - Bette Stebbins Inch, Senior Victim Services Advisor, Department of Defense Sexual Assault Response and Prevention Office  
  - Lieutenant Colonel Michael Lewis, U.S. Air Force, Joint Services Committee on the UCMJ  
  - Commander Sherry King, U.S. Navy, Joint Service Committee Subcommittee on Sexual Assault (JSC-SAS)  
  - Captain Nicholas Carter, U.S. Air Force, Joint Service Committee Subcommittee on Sexual Assault (JSC-SAS) |
| Dec. 11, 2013 | Public Meeting of the RSP        | Military Justice Personnel  
  - Behavior Health Personnel  
  - Representatives from the Family Advocacy Program  
  - Sexual Assault Response Coordinator  
  - Victim Advocates  
  - Representatives from the Victim Witness Assistance Program  
  - Special Victim Counsel |

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### APPENDIX E
### Presentations before the Subcommittee and Response Systems Panel

<table>
<thead>
<tr>
<th>Date</th>
<th>Location</th>
<th>Presenters</th>
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</thead>
</table>
| Dec. 12, 2013 | Public Meeting of the RSP University of Texas – Austin, Austin, TX | Ms. Joanne Archambault, Executive Director of End Violence Against Women International and President and Training Director for Sexual Assault Training and Investigations  
Dr. Noël Busch-Armendariz, Professor, School of Social Work at The University of Texas at Austin, and Associate Dean of Research  
Dr. Kim Lonsway, Director of Research for End Violence Against Women International  
Major Melissa Brown, Texas National Guard (Public Comment)  
Mr. Daniel Ross, Attorney, Chairman of the Advisory Committee, Institute on Domestic Violence and Sexual Assault (Public Comment)  
Martha Bashford, Chief, Sex Crimes Unit, New York County District Attorney's Office  
Lane Borg, Executive Director, Metropolitan Public Defenders, Portland, Oregon  
Captain Jason Brown, Military Justice Branch (JAM), Judge Advocate Division, Headquarters U.S. Marine Corps  
Colonel Don Christensen, Chief, Government Trial and Appellate Counsel Division, U.S. Air Force  
Lieutenant Colonel Erik Coyne, Special Counsel to The Judge Advocate General, U.S. Air Force  
Captain Robert Crow, Director, Criminal Law Division (Code 20), U.S. Navy  
Kelly Higashi, Assistant United States Attorney, Chief, Sex Offense and Domestic Violence Section, U.S. Attorney's Office, District of Columbia  
Laurie Rose Kepros, Director of Sexual Litigation, Colorado Office of the State Public Defender  
Commander Don King, Director, Defense Counsel Assistance Program, U.S. Navy  
Lieutenant Colonel Fansu Ku, Chief, Defense Counsel Assistance Program, Army Trial Defense Service, U.S. Army  
Lieutenant Colonel Mike Lewis, Chief, Military Justice Division, U.S. Air Force  
Janet Mansfield, Attorney, Sexual Assault Policy, Office of The Judge Advocate General, U.S. Army  
Captain Stephen McCleary, Chief, Office of Legal Policy and Program Development, U.S. Coast Guard  
Bill Montgomery, Maricopa County Attorney, Maricopa County, Arizona  
Lieutenant Colonel Jay Morse, Chief, U.S. Army Trial Counsel Assistance Program  
Colonel Michael Mulligan, Chief, Criminal Law Division, Office of The Judge Advocate General, U.S. Army  
Anne Munch, Owner, Anne Munch Consulting, Inc.  
Amy Muth, Attorney-at-Law, The Law Office of Amy Muth  
Wendy Patrick, Deputy District Attorney, Sex Crimes and Stalking Division, San Diego County District Attorney's Office  
Lieutenant Colonel Julie Pitvorec, Chief Senior Defense Counsel, U.S. Air Force  
Barry G. Porter, Attorney & Statewide Trainer, New Mexico Public |
## APPENDIX E
### Presentations before the Subcommittee and Response Systems Panel

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Details</th>
<th>Participants</th>
</tr>
</thead>
</table>
| Dec. 13, 2013 | Site Visit Victim Services Subcommittee Site Visit Joint Base San Antonio - Lackland, TX | - Basic Military Training Instructors  
- Basic Military Training Trainees  
- Members of the Special Victim Counsel Office  
- Sexual Assault Response Coordinators  
- Victim Advocates  
- Victim Witness Liaisons |
| Jan. 9, 2014 | Victim Services Subcommittee Meeting One Liberty Center, Arlington, VA | - Professor Doug Beloof, Lewis and Clark Law School  
- Mr. Russell Butler, Executive Director, Maryland Crime Victims’ Resource Center  
- Mr. Jonathan Jeffress, Assistant Federal Public Defender, Washington D.C.  
- Major Ryan Oakley, Department of Defense |
- Brigadier General (Retired) Pat Foote, U.S. Army  
- Rear Admiral (Retired) Marty Evans, U.S. Navy (via telephone)  
- Rear Admiral (Retired) Harold Robinson, U.S. Navy  
- Captain Lory (Retired) Manning, U.S. Navy  
- Colonel (Retired) Paul McHale, U.S. Marine Corps (via telephone)  
- Ms. K. Denise Rucker Krepp, former U.S. Coast Guard JAG & former Chief Counsel, U.S. Maritime Administration  
- General (Retired) Ann Dunwoody, U.S. Army  
- General (Retired) Roger Brady, U.S. Air Force  
- Vice Admiral (Retired) Mike Vitale, U.S. Navy (via telephone)  
- Lieutenant General (Retired) James Campbell, U.S. Army  
- Lieutenant General (Retired) Ralph Jodice II, U.S. Air Force (via telephone)  
- Rear Admiral (Retired) William Baumgartner, U.S. Coast Guard |
| Feb. 26, 2014 | Victim Services Subcommittee Meeting | - Captain Mike Colston, Md, U.S. Navy, Director, Mental Health Program, Clinical and Program Policy, Office of the Assistant Secretary of Defense  
- Captain John A. Ralph, U.S. Navy, Assistant Deputy Chief, Wounded, Ill, and Injured, Navy Bureau of Medicine and Surgery |

Agendas, transcripts, and materials for all sessions available at [http://responsesystemspanel.whs.mil/](http://responsesystemspanel.whs.mil/)
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Presentations before the Subcommittee and Response Systems Panel

| One Liberty Center, Arlington, VA | • Colonel Marie Colasanti, U.S. Air Force, Chief, Family Advocacy Program, Lackland-Kelly AFB.  
| | • Colonel Tracy Neal-Walden, U.S. Air Force, Deputy Director, Psychological Health, Air Force Medical Support Agency  
| | • Lieutenant Colonel Todd Yosick, U.S. Army, Behavioral Health Strategic Integrator and Liaison to the Department of Defense And Veterans Administration.  
| | • Commander Kristie Robson, Department Head, Clinical Programs, Navy Bureau of Medicine and Surgery  
| | • Mr. Scott Berkowitz, Founder and President, Rape, Abuse and Incest National Network  
| | • Crystel Griffen, U.S. Navy, Family Advocacy Program  
| | • Patricia Haist, Director of Clinical Services, YWCA West Central Michigan  
| | • Paulette Hubbert, PhD, LCSW, ADC II, USMC (Ret)  
| | • Katherine Robertson, DoD, Service Family Advocacy Program  
| | • Jacqueline Richardson, U.S. Army, Family Advocacy Program  

| Mar. 13, 2014 | • Military Sexual Assault Survivors  
| Victim Services Subcommittee Meeting One Liberty Center, Arlington, VA |
APPENDIX F
Sources Consulted

1. U.S. Constitution

2. Legislative Sources
   a. Enacted Statutes
      18 U.S.C. § 3771
      18 U.S.C. § 3510
      18 U.S.C. § 3525
      18 U.S.C. § 3555
      18 U.S.C. § 3663
      10 U.S.C. § 1044
      10 U.S.C. § 1565b
      Uniform Code of Military Justice, 10 U.S.C. §§ 806, 806b, 827, 842, 920, 920a, 920b, 920c
      42 U.S.C. § 10607
      Ariz. Rev. Stat. §13-4426.01
      Iowa Code §915.21.3
   b. Proposed Statutes
      Military Justice Improvement Act of 2013, S. 967, 113th Congress (2013); S. 1197, § 552, amend. no. 2099 (2013); S. 1752, 113th Cong. (2013)
   c. Reports of Congress
      Senate Report 105-409 (1998)

3. Judicial Decisions
   a. Supreme Court
      Green v. United States, 365 U.S. 301 (1961)
Sources Consulted

b. Court of Appeals for the Armed Forces


c. Service Courts of Criminal Appeals

d. Circuit Court Opinions

In re Kenna, 453 F.3d 1136 (9th Cir. 2006)
In re McNulty, 597 F.3d 344 (6th Cir. 2010)
In re Siler, 571 F.3d 604 (6th Cir. 2009)
United States v. Coxton, 598 F.Supp.2d 737 (W.D.N.C. 2009)
United States v. Hunter, 548 F.3d 1308 (10th Cir. 2008)
United States v. Monzel, 641 F.3d 528 (D.C. Cir. 2011)
United States v. Moussaoui, 483 F.3d 220 (4th Cir. 2007)
U.S. v. Tamayo, 80 F.3d 1514 (11th Cir. 1996)

4. Rules and Regulations

MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012)
DEPARTMENT OF THE AIR FORCE, INSTRUCTION 51-201, ADMINISTRATION OF MILITARY JUSTICE (Jun 6, 2013)
U.S. MARINE CORPS, ORDER 5800.14, VICTIM-WITNESS ASSISTANCE PROGRAM (Mar. 15, 2013)
DEPARTMENT OF HOMELAND SECURITY, UNITED STATES COAST GUARD, COMDTINST M5810.1E, MILITARY JUSTICE MANUAL (May, 2011)
DEPARTMENT OF DEFENSE, FORM 2701, INITIAL INFORMATION FOR VICTIMS AND WITNESSES OF CRIME (Aug. 2013)
DEPARTMENT OF DEFENSE, FORM 2702, COURT-MARTIAL INFORMATION FOR VICTIMS AND WITNESSES OF CRIME (May 2004)
DEPARTMENT OF DEFENSE, FORM 2703, POST-TRIAL INFORMATION FOR VICTIMS AND WITNESSES OF CRIME (May 2004)
DEPARTMENT OF DEFENSE, FORM 2704, VICTIM AND WITNESS CERTIFICATION AND ELECTION CONCERNING INMATE STATUS (Mar 2013)
DEPARTMENT OF DEFENSE, FORM 2705, VICTIM AND WITNESS NOTIFICATION OF CHANGES IN INMATE STATUS (Mar 2013)
FEDERAL RULES OF CRIMINAL PROCEDURE (Dec. 2013)

5. Meetings and Hearings

1 The materials pertaining to the meetings of the Response Systems Panel and its Subcommittees are currently available at http://responsesystemspanel.whs.mil/index.php/meetings.
Sources Consulted

a. Public Meetings of the Response Systems Panel
Transcript of RSP Public Meeting (June 27, 2013)
Transcript of RSP Public Meeting (Sept. 24, 2013)
Transcript of RSP Public Meeting (Sept. 25, 2013)
Transcript of RSP Public Meeting (Nov. 7, 2013)
Transcript of RSP Public Meeting (Nov. 8, 2013)
Transcript of RSP Public Meeting (Dec. 11, 2013)
Transcript of RSP Public Meeting (Dec. 12, 2013)
Transcript of RSP Public Meeting (Jan. 30, 2014)

b. Meetings of the RSP Subcommittees
Transcript of Role of the Commander Subcommittee Meeting (Oct 23, 2013)
PowerPoint Presentation of DoD SAPRO (Oct. 23, 2013)
Transcript of Victim Services Subcommittee Meeting (Nov 21, 2013)
Transcript of Victim Services Subcommittee Meeting (Jan 9, 2014)
Transcript of Victim Services Subcommittee Meeting (Feb 26, 2014)
PowerPoint Presentation of Ms. Katherine Robertson, LCSW, “Department of Defense Family Advocacy Program (FAP) Overview” (Feb. 13, 2014)
Transcript of Victim Services Subcommittee Meeting (Mar 13, 2014)

c. Other Hearings
Transcript of Briefing on Sexual Assault in the Military, U.S. Commission on Civil Rights (Jan. 11, 2013).
Transcript of Hearing to Receive Testimony on Sexual Assaults in the Military, Hearing Before the Personnel Subcommittee of the Senate Armed Services Committee (Mar. 13, 2013), available at
Written Statement of General Raymond Odierno, U.S. Army, to Armed Services Committee, U.S. Senate (June 4, 2013)

6. Official Reports
DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY (FISCAL YEAR 2009),
DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY (CALENDAR YEAR 2004),
DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY (FISCAL YEAR 2007),
DEPARTMENT OF DEFENSE, ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY (FISCAL YEAR 2006),
THE DEFENSE TASK FORCE ON SEXUAL ASSAULT IN THE MILITARY SERVICES (Dec. 2009)
DEFENSE TASK FORCE ON DOMESTIC VIOLENCE –THIRD YEAR REPORT (2003)
Sources Consulted


DEPARTMENT OF DEFENSE, REPORT ON IMPLEMENTATION OF SECTION 1716 OF THE NATIONAL DEFENSE AUTHORIZATION ACTO FOR FISCAL YEAR 2014 (Apr. 4, 2014)


Memorandum from Major General Gary S. Patton, Director, DoD SAPRO, re “Assessment of Services’ Reviews of Prevention and Reporting of Sexual Assault and Other Misconduct in Initial Military Training” (Apr. 3, 2013) (on file with Response Systems Panel)


CHARLES DOYLE, CONGRESSIONAL RESEARCH SERVICE, CRIME VICTIMS’ RIGHTS ACT: A SUMMARY AND LEGAL ANALYSIS OF 18 U.S.C. § 3771 (April 24, 2012)


7. Official Policy Statements
   a. President
Sources Consulted


b. Department of Defense


DEPARTMENT OF DEFENSE, DIRECTIVE 1030.01, VICTIM AND WITNESS ASSISTANCE (April 13, 2004, cert. current as of April 23, 2007)

DEPARTMENT OF DEFENSE, INSTRUCTION 1030.02, VICTIM AND WITNESS PROCEDURES (June 4, 2004)


DEPARTMENT OF DEFENSE, MANUAL FOR CHILD MALTRTREATMENT AND DOMESTIC ABUSE INCIDENT REPORTING SYSTEM (Jul, 2005, Inc Chg 1, Sept 20, 2011)

DEPARTMENT OF DEFENSE, DIRECTIVE-TYPE MEMORANDUM 11-063, EXPEDITED TRANSFER OF MILITARY SERVICE MEMBERS WHO FILE UNRESTRICTED REPORTS OF SEXUAL ASSAULT (Dec. 16, 2011)

DEPARTMENT OF DEFENSE, DIRECTIVE-TYPE MEMORANDUM 14-001, DEFENSE SEXUAL ASSAULT ADVOCATE CERTIFICATION PROGRAM (Mar 28, 2013)


Secretary of Defense, Memorandum re Sexual Assault Prevention and Response Stand-down (May 17, 2013) (on file with Response Systems Panel)


Sources Consulted

U.S. Department of Defense, Memorandum from the General Counsel on “Legal Assistance to Victims of Sexual Assault” (November 9, 2012).

U.S. Department of Defense, Memorandum from Secretary of Defense to the Secretaries of the Military Departments, regarding “Sexual Assault and Prevention” (August 14, 2013).


c. Services

U.S. Air Force, Special Victim Counsel Rules for Practice and Procedure (July 1, 2013)

U.S. Army, Special Victim Counsel Handbook (November 1, 2013)

The Army Judge Advocate General, Memorandum for Judge Advocate Legal Services Personnel regarding “Office of the Judge Advocate General Policy Memorandum #14-01, Special Victim Counsel (November 1, 2013).


8. Responses to RSP Requests for Information

Services’ Responses to Request for Information 1d (Nov. 21, 2013)

Services’ Responses to Request for Information 4 (Nov. 21, 2013)

Services’ Responses to Request for Information 8 (Nov. 21, 2013)

Services’ Responses to Request for Information 9 (Nov. 21, 2013)

Services’ Responses to Request for Information 10 (Nov. 21, 2013)

Services’ Responses to Request for Information 11 (Nov. 21, 2013)

Army’s response to Request for Information 44 (Nov. 21, 2013)

Service’s Response to Request for Information 49 (Nov. 21, 2013)

Services’ response to RSP Request for Information 138 (Jan. 14, 2014)


10. Journal Articles


11. Letters and E-mails

Secretary of Defense, Leon Panetta, Letter to Chairman, Committee on Armed Services, U.S. House of Representitves, Howard “Buck” McKeon (Nov. 8, 2012)

General Counsel of the Department of Defense, Letter to Chairman, Joint Service Committee on Military Justice (Sept. 20, 2012)


Acting General Counsel of the Department of Defense, Letter to Chairman, Committee on Armed Services, regarding Senate Report 112-173 (Feb. 18, 2013).
Sources Consulted

Assistant Secretary of Defense for Legislative Affairs to Senator Carl Levin, Chair, Armed Services Committee, U.S. Senate [date].


Roger A. Canaff, Letter to Ms. Taryn Meeks, Executive Director of Protect Our Defenders (Sept. 16, 2013) (on file with Response Systems Panel)

E-mail from Melvina Thornton, to Victim Services Subcommittee, re DAVA response to Victim Services Subcommittee, (April 22, 2014) (on file with Response Systems Panel)

News Articles and Broadcasts


12. Online Resources

United States Department of Justice, Bureau of Justice statistics at http://trac.syr.edu/data/jus/eousaData.html


Military Rape Crisis Center, http://militaryrapecrisiscenter.org/for-active-duty/reporting-option/
Sources Consulted

## APPENDIX G
### Victim Witness Liaison Comparison

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<thead>
<tr>
<th>Issue</th>
<th>DOD/JCS</th>
<th>USARMY</th>
<th>USAF</th>
<th>USNAV</th>
<th>USMC</th>
<th>USCG</th>
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<tr>
<td>Governing Policy or Regulation</td>
<td>DODD 1030.1 Victim Witness Assistance, April 23 2007</td>
<td>Army Regulation 600-20 Chapter 7 and 8 Army Command Policy.</td>
<td>AFI 51-201 Administration of Military Justice Chapter 7</td>
<td>OPNAVINST 5800.7A Victim and Witness Assistance Program.</td>
<td>MCO 5800.14 Victim Witness Assistance Program</td>
<td>The Coast Guard does not have a Victim Witness Liaison Program.</td>
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<tr>
<td></td>
<td>DODI 1030.2 Victim Witness Procedures</td>
<td>Army Regulation 27-10 Legal Services: Military Justice, Chapter 17</td>
<td></td>
<td>SECNAVINST 5800.11B</td>
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<td>DODI 6400.07 Standards for Victim Assistance Services in the Military Community</td>
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<td>BUPERINST 5800.3A Victim and Witness Assistance Program.</td>
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<td>VWL - Rank</td>
<td>The designated VWL should, when practicable, be a commissioned officer, or civilian in the grade of GS-11 or above.</td>
<td>The victim liaison is selected and appointed by the Local Responsible Official (LRO) or delegate (usually the VWAP coordinator).</td>
<td>The victim liaison may be a medical or mental health care provider, judge advocate, paralegal, or other person appropriate under the circumstances of a particular case. There is no specific</td>
<td>The designated Victim Witness Liaison Officer shall be appointed from the legal office and is preferably a staff judge advocate, civilian attorney, or paralegal in the grade of GS-9 or above.</td>
<td>The Regional Victim Witness Liaison Officer (RVWLO) shall be an officer or civilian member of the regional installation commander’s staff.</td>
<td>The Victim Witness Liaison Officer (VWLO) is an officer or civilian employee on the local installation Commander’s staff.</td>
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<td>VWL – criteria and certification</td>
<td>Victim assistance personnel are expected to maintain standards of competence. They provide victim assistance in accordance with DoD and Military Service qualification requirements, such as education, training, or relevant experience. Victim assistance personnel must exercise careful judgment, apply flexibility and innovative problem solving, and take appropriate precautions to protect victims’ welfare under the guiding principle of “do no harm.”</td>
<td>Staff Judge Advocates will designate in writing one or more VWLs they have certified as qualified to administer the Victim/Witness Assistance programs for their office. Per AR 600-20, paragraph 17-7, a VWL is certified to perform VWL duties upon completion of the Judge Advocates General’s Officer Basic Course, or Graduate Course; or attendance at a DOD or HQDA-sponsored VWL regional training event; or after completing training designated by HQDA or the certifying SJA. SJAs will designate</td>
<td>The LRO or delegate will determine the individual most qualified to serve as a victim liaison. The regulation does not include specific criteria or qualifications.</td>
<td>The VWLO should have legal training/experience with VWAP.</td>
<td>The RVWLO will be of appropriate grade, experience, and maturity. The RVWLO shall not serve as trial counsel, defense counsel, staff judge advocate, or legal assistance attorney. There is no requirement the RVWLO be a Judge Advocate. The VWLO shall not serve as trial counsel, senior trial counsel, regional trial counsel, defense counsel, senior defense counsel, regional defense counsel, staff judge advocate, or legal assistance attorney. The VWAC should not serve as a</td>
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<td>VWLs in writing. In addition to the rank requirements, to the extent permitted by resources, SJAs should refrain from appointing attorneys as VWLs. When an attorney is assigned as a VWL, the attorney must ensure that victims and witnesses understand the attorney’s role as a VWL and that an attorney-client relationship does not exist. To be most effective, VWLs must be perceived as impartial actors in the court-martial process. The Office of The Judge Advocate General of the Army (OTJAG) verifies through Article 6, UMCJ, visits to all installations that Staff Judge Advocates have complied with the</td>
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<td>uniformed victim advocate and must be of appropriate experience, temperament, and rank. Generally the VWAC should not serve as a victim advocate due to potentially conflicting roles, responsibilities, and duties to the victim and command. The unit VWAC shall not serve as a trial counsel, defense counsel, or legal assistance attorney.</td>
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<td>requirements of Army Regulation (AR) 27-10, Military Justice, Chapter 17, regarding appointment and certification of VWLs.</td>
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<td>VWL – Responsibilities</td>
<td>Per DODI 1030.1, paragraph 5.2.8, “The local responsible official (also referred to as a victim/witness coordinator or victim/witness liaison) shall coordinate the effort to ensure that systems are in place at the installation level to provide information on available benefits and services, assistance in obtaining those benefits and services, and other serves required” from this instruction.</td>
<td>The role of the VWL is one of facilitator and coordinator. The VWL will act as a primary point of contact through which victims and witnesses may obtain information and assistance in securing available victim/witness services. The VWL will act in conjunction with the unit victim advocate who is responsible for providing crisis intervention, referral, and ongoing nonclinical support to a sexual assault.</td>
<td>The VWAP Coordinator selected by the SJA to implement and manage the VWAP. This individual is responsible for ensuring the accomplishment of required training by all local agencies. The VWAP Coordinator may also serve as victim liaison as appropriate under the circumstances of a particular case.</td>
<td>The VWLO is the representative for the Regional Commander or Type Commander is responsible for coordination of victim and witness assistance within their area of responsibility. They will ensure: each command appoints a VWAC; maintain a list of VWACs; maintain a list of services for victims within their area; obtain reporting data from VWACs; and chair meetings of the local VWC.</td>
<td>The RVWLO is the regional MCI Commanding General’s primary representative responsible for the VWAP program within each region. The RVWLO is ensuring that all installations under their cognizance of their respective commanders comply with the law and applicable orders and regulations.</td>
<td>The RVWLO is ensuring that all installations under their cognizance of their respective commanders comply with the law and applicable orders and regulations. The RVWLO will: ensure regional compliance with the VWAP; maintain a list of VWLOs from each installation under their commanding general; ensure basic VWAP training is</td>
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<td>responsible official, law enforcement officer, or criminal investigation officer will provide the following services: provide the DD form 2701 which conveys basic information and contact information for victims; provide information about services available to victims; information about the military justice process and status of the relevant investigation; information about the prosecution of an alleged offender, including consultation on decisions not go forward with charges; information on an order of confinement for the alleged offender.</td>
<td>investigation, the law enforcement official or commander responsible for the investigation will inform the victims and witnesses of their right to receive victim/witnesses services and the name and contact information of the VWL and how to request assistance from the VWL in obtaining the victim services listed in AR 27-10. The DD form 2701 will be used for this purpose. This notification is mandatory. At the earliest opportunity, but no later than appointment of a UCMJ, Art. 32 investigative officer or referral of charges to a court-martial, the VWL, trial counsel, or other government representative will ensure that victims are informed of the services described in between victims and service agencies and arranging for those services, when appropriate. Communications between a liaison and a victim are not confidential or privileged (See MRE 513 regarding the privilege in judicial proceedings for communications between psychotherapists and patients). Either the LRO or victim liaison will advise the victim of his/her rights under federal and state law (the regulation tasks the LRO but allows for a delegation. In practice the liaison carries out these tasks). The victim liaison is responsible for assisting the victim during the military justice process and acts as the point of contact between the obtaining and distributing VWAP materials and for providing VWAP training to members of the command. The will ensure victims are: informed of their rights; provide information on available resources; maintain contact with other VWACs and other VWAP personnel; assist victims in exercising their rights; advise on pretrial confinement status; confirm trial counsel has received victims’ views on plea negotiations; and ensure compliance with notification procedures. Victim Witness Coordinators located at each Brig will notify victims of a change in a prisoner’s status. BUPERINST 5800.3A(d). The</td>
<td>available; collect and maintain data on victims; assist inspector generals during the inspections; chair and conduct a semi-annual regional VWLO meeting to discuss VWAP related issues; and liaise with the SJA to the CMC. The VWLO is an installation commander’s primary representative responsible for the VWAP aboard an installation. The VWLO will serve as Chair for the installation Victim and Witness Assistance Counsel. The Counsel will coordinate a comprehensive assistance program and comply with VWAP notification and reporting requirements. The VWLO will maintain a list of</td>
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<td>provide support when confronted with a crisis situation. Within the military community, victim assistance personnel are required to abide by standards for appropriate and ethical conduct when performing duties by ensuring victims understand participation is voluntary; respecting privacy of information; respecting victims’ rights; accurately representing roles of victim assistance personnel; and maintaining objectivity in relationships with victims. DODI 6400.07(3)(a)(2): Victim assistance personnel will: describe to victims in clear language the capabilities and limits of the victim assistance programs;</td>
<td>AR 27-10 and provided with a victim/witness packet. The VWL should use Appendix d of AR 27-10 to ensure victims are informed of the services provided. The VWL will inform the victim of available medical services and will assist the victim in obtaining financial, legal, and social service support. The VWL will assist the victim in contacting the available agencies. During the investigation and prosecution of a crime, the VWL or other government representative will notify the victim of significant events in the case. To include: the status of the investigation; apprehension of the suspect; decision whether to prefer; initial appearance of victim and the various service agencies that assist with VWAP. A liaison will ensure that a victim remains informed regarding their rights throughout the justice process. This includes the right to notification of certain court-martial proceedings, the right to consultation with the trial counsel on decisions regarding disposition of the case, and notification of all available resources. The victim liaison will assist the victim or witness in arranging for medical care, notification of employers, counseling, and childcare. The liaison will also coordinate with the case paralegal and the legal office to make sure that all arrangements are</td>
<td>VWC will maintain secure records of each victim and/or witness information and the contact made with those individuals. VWACs, service providers, and SJAs on the installation; ensure each organization appoints a VWAC; chair and conduct installation level Victim Witness Counsel meetings; maintain a website with information about VWAP personnel; distribute relevant information; ensure victims are notified of their rights; ensure victims are aware of VWAC personnel; compile data in accordance with VWAP requirements; ensure deploying units receive appropriate training; and assist victims in exercising their rights. The VWAC is a local commander’s designated representative for victim and witness assistance matters. The VWAC will ensure that victims</td>
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<td>provide an explanation of victim’s rights; provide information on available resources; as needed provide written information on the on and off base resources; provide information on the military justice system; and provide liaison assistance with other organizations and agencies on victim care matters.</td>
<td>provide the suspected offender at a judicial hearing; scheduling dates; detention or release of the offender; acceptance of a guilty plea or rendering of a verdict; the opportunity to speak with the trial counsel about presenting evidence at sentencing; when offender is eligible for parole; general information about the corrections process; how to submit a statement to the clemency and parole board.</td>
<td>made for the victim/witness to ensure that they are able to travel and remain away from the accused at trial. The government trial counsel or designee (usually the liaison) will also notify victims of their post-trial rights. This includes being notified any changes to a confinement status or appearance. The VWAP coordinator at the confinement facility will ensure these notifications take place.</td>
<td>and witnesses understand the rights afforded them under the law and ensure close coordination with VWAP personnel so victims are aware of the available resources. The VWAC will also ensure procedures are in place to maintain certain data on victims and witnesses. After charges have been preferred the VWAC will ensure victims and witnesses are provided with the necessary notifications under the victim and witness assistance program. The VWAC shall confirm the trial counsel obtained the victim’s views on pretrial negotiations and has forwarded that to the convening authority. They will also ensure the trial</td>
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<td>charges; decisions about pretrial restraint; pretrial dismissal of charges; negotiations of pretrial agreements and their potential terms. Consultation may be limited when justified by the circumstances.</td>
<td>The VWL will ensure non contraband property of the victim used in the prosecution is returned to the victim.</td>
<td>The VWL will notify the SJA when a victim or witness is concerned for their safety. Will also advise victim/witnesses of protections from intimidation.</td>
<td>At the request of a victim or witness, a VWL may act as an intermediary between such persons and the government or defense. The VWLs</td>
<td>counsel complied with notification requirements in accordance with the VWAP. In the event a case is not referred to court-martial, a VWAC may perform the notifications and confer with the victims.</td>
<td>The VWAC located at each Brig will ensure victims are notified of any changes in a prisoner’s confinement status. This includes any granted parole and/or clemency.</td>
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<td>role in arranging the interviews is to ensure victims and witnesses are treated with respect and interference with their lives and privacy is kept to a minimum. At trial, will assist victim/witnesses in obtaining a separate waiting area. Also at the request of the victim or witness, the VWL will inform a victim’s employer of his or her involvement in the case and the possibility of missing work. They will also explain to creditors the victim’s involvement in this case if such involvement created a financial hardship.</td>
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<td>VWL – Curriculum and training</td>
<td>SJAs will ensure that annual victim/witness assistance program training is provided to representatives of all agencies performing</td>
<td>The LRO is responsible for developing and implementing a training program at each installation. The LRO is also responsible for</td>
<td>Formal training is established and maintained for the Victim Witness Assistance Program in the Basic Lawyer, Legal Officer, Legalman, SJA, and</td>
<td>HQMC, Judge Advocate Division sponsors annual training on the proper implementation of VWAP. The training will provide regional</td>
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Victim/witness assistance functions within their GCM jurisdictions. At a minimum, training will cover victim's rights; available compensation; provider's responsibilities; and requirements and procedures established by AR 27-10.

The U.S. Army tracks VWL attendance at HQDA-sponsored training events. The Office of The Judge Advocate General offers training to VWLs annually.

In Fiscal Year (FY) 2013, OTJAG conducted training for 25 Army VWLs, Army correctional facility victim assistance personnel, and 19 paralegals designated for direct support of Special Victim Prosecutors, 20-23 August 2013, in Raleigh, North Carolina.

Ensuring the accomplishment of required annual training by all local agencies.

The installation SJA, Chief of Security Forces (SF), Air Force Office of Special Investigations (AFOSI) detachment commander, medical facility commander (SG), Sexual Assault Response Coordinator (SARC), Family Advocacy Program (FAP), Airman and Family Readiness Center director (A&FRC), installation chaplain (HC) and representatives from commanders and first sergeants develop local training programs to ensure compliance with the VWAP.

Each individual agency is responsible for training the program and the LRO is responsible for ensuring the accomplishment of required annual training by all local agencies.

Senior Officer Courses offered by the Naval Justice School.

Director, NAVCRIMINVSVC is responsible for ensuring all investigative personnel under their cognizance are educated and trained on the requirements of VWAP.

The curriculum will include the following topics: VWAP basics, victim advocacy, assisting victims of violent crime, interaction with victims and victim legal counsel, the impact of crime, effectively communicating with victims, offender behavior, sex offender registration notification act, VWAP checklist, confinement, clemency and parole, transitional compensation and an overview of the court-martial process.

And installation program managers and other VWAP personnel with a basic understanding of the VWAP, the roles and responsibilities of supervisors and to properly assist victims of crime.
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<td>Carolina. From 17 to 19 September, OTJAG also trained 35 Army Special Victim Counsel, four VWLs, and five paralegals designated for direct support of Special Victim Prosecutors, in Seattle, Washington. This training included instruction on working with victims of sexual assault, counterintuitive behavior, transitional compensation, and other Army specific programs that address issues related to sexual assault. Both training programs were held in conjunction with Trial Counsel Assistance Program (TCAP) training for prosecutors to encourage collaboration and continuity of services. for the coordination between agencies.</td>
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<td>Number of VWLs</td>
<td>The SJA will appoint a VWL, at a minimum, for each GCMCA.</td>
<td>VWAP Coordinator. The individual selected by the SJA to implement and manage the VWAP.</td>
<td>The Regional Commanding Officer will appoint, in writing, a VWLO for their region.</td>
<td>Each unit command will appoint a VWAC.</td>
<td>Each Brig CO will appoint a Brig VWAC.</td>
<td>The MCI CG will appoint one RVWLO for his or her region.</td>
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<td>(RFI 8d, 9d)</td>
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<td>Victim Liaison. An individual appointed by the LRO or delegate, to assist a victim during the military justice process.</td>
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<td>Installation CGs or GCMCAs will appoint a VWLO for the installation and subordinate installations. If a brig is located on the installation, the CG will appoint a VWAC for that confinement facility.</td>
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<td>The unit commanders will appoint a VWAC for their units.</td>
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<td>Reporting Structure</td>
<td>Per DODI 1030.1(6.6): The component responsible official (see service regulations) shall submit an annual report using the DD Form 2706 to the Under Secretary of Defense for Personnel and Readiness and will include the following information: the number of victims who received the DD Form 2701 or DD Form 2706</td>
<td>The Army corrections command, Victim/witness Central Repository Manager, is the Army's Central repository for tracking notice of the status of offenders confined and for tracking the following information: the number of victims who received a DD Form 2701 or DD Form 2706</td>
<td>Responsible officials will develop a system for assessing the effectiveness of their victim and witness assistance program. Liaisons should keep a record of each case involving victims and witnesses entitled to notice to show the notice was provided.</td>
<td>The CRO will act as the central repository for maintaining data on the number of victims and witnesses to whom Navy Brig personnel provide notice of changes in confine status.</td>
<td>The VWLO will obtain reporting data from VWACs on the number of victims and witnesses who received the relevant</td>
<td>HQMC will receive reports on assistance provided to victims and witnesses by each command and will prepare a report for submission to the Assistant Secretary of the Navy.</td>
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<td>Installation commanders will ensure processes are in place to maintain data on the number of victims who received assistance</td>
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<td>Forms 2701, 2702, 2703, 2704, 2705; and the cumulative number of inmates in each service for whom victim witness notifications must be made by the confinement facilities.</td>
<td>Form 2702; the number of victims and witnesses who were informed of their right to be notified of changes to a confinee’s status. The Central repository will report to the OTJAG, Criminal Law Division, cumulative figures from the previous year.</td>
<td>The SJA of each command having GCM Jurisdiction will report, though major Army command channels, to OTJAG Crim law, cumulative information about the following: the number of victims who received DD Form 2701 from VWLs or other government representatives; the number of victims who received DD Form 2703 from trial counsel, VWL, or another designee. SJAs will obtain data using the DD Form 2706, Annual Report on Victim and Witness Assistance, to the Under Secretary of Defense for Personnel and Readiness, quantifying the assistance provided victims and witnesses of crime. Each base SJA or equivalent reports: the number of victims and witnesses who received a DD Form 2701 from law enforcement or criminal investigations personnel; the number of victims and witnesses who received a DD Form 2702 from the government trial counsel or designee; the number of victims and witnesses who received a DD Form 2703 from the government trial counsel or designee; and the number of DD Forms for each year. The number of victims and witnesses who were notified of changes in inmate status must be reported. The VWAC shall retain this data and report those numbers to the central repository. An annual report is required to be presented to the Under Secretary of Defense (P and R) on the assistance provided to victims and witnesses of crime. and notifications. This will be forwarded to HQMC.</td>
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<td>for their reports from subordinate commands. Negative reports are required. OTJAG will then prepare a consolidated report on DD Form 2706 for submission to the department of defense. SJAs will ensure that each victim and witness in an incident receives a victim/witness evaluation form DA Form 7568. Evaluations will be reviewed locally by the SJA and copies forwarded quarterly to the Victim/Witness coordinator at OTJAG, Criminal Law. A part of the Army SAPR Action Plan, OTJAG continues to collect and review every Department of the Army (DA) Form 7568, Army/Victim/Witness Liaison Program Evaluation. These forms are provided for victims and witnesses who elected via the DD Form 2704 to be notified of changes in confinee status through JA channels to their major command.</td>
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### VWL COMPARISON CHART

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<td>to each victim and witness in each trial by special or general court-martial, including sexual assault cases. It is also provided to victims and witnesses in cases where there is an investigation pursuant to Article 32, UCMJ, that does not result in a trial. The DA Form 7568 is optional for trials by summary court-martial and nonjudicial proceedings. They are returned anonymously, are reviewed by the local Staff Judge Advocate and forwarded to OTJAG, Criminal Law Division for review quarterly in accordance with AR 27-10, Military Justice, Paragraph 17-28, dated 3 October 2011. These evaluations are overwhelmingly positive.</td>
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<td>Commanders are responsible for establishing the victim witness assistance programs within their GCM jurisdiction. SJAs are designated as the local responsible official and will implement the local victim witness liaison program. The SJA will designate VWLs in writing. The SJA will then ensure law enforcement agencies inform victims and witnesses of the VWLs name and contact information.</td>
<td>Commanders are responsible for coordinating, implementing and managing the Air Force VWAP. The LRO is the individual responsible for identifying victims and witnesses of crimes and providing the services required by the VWAP. Each installation commander or SPCMCA, as appropriate, is the LRO. LROs may delegate the LRO duties and responsibilities to the SJA. The delegation must be in writing and addressed to the base SJA by duty title rather than name. The SJA may further delegate the LRO duties and responsibilities in writing to a VWAP Coordinator while</td>
<td>The Judge Advocate General (TJAG) is responsible for coordinating, implementing and managing the Air Force VWAP. The LRO is the individual responsible for identifying victims and witnesses of crimes and providing the services required by the VWAP. Each installation commander or SPCMCA, as appropriate, is the LRO. LROs may delegate the LRO duties and responsibilities to the SJA. The delegation must be in writing and addressed to the base SJA by duty title rather than name. The SJA may further delegate the LRO duties and responsibilities in writing to a VWAP Coordinator while</td>
<td>The Chief of Naval Operations is the Component responsible Official for implementation of the Navy’s VWAP program. Responsibility for oversight is delegated to Navy Personnel Command, Office of Legal Counsel. The will ensure materials are provided to the Local Responsible Officials and will receive reports concerning assistance to victims. Regional Commanders are responsible for the overall implementation of the VWAP within their geographic areas and for acting as the central point of contact for victims and witnesses. Program oversight is administered through the SJA that provides legal support to that commander. They</td>
<td>Regional MCI CGs are responsible for ensuring the VWAP is properly implemented by installation VWLOs in their region. Regional MCI CGs will appoint the RVWLO. Installation CGs or GCMCAs are responsible for implementing the VWAP program on their installations. The CG will appoint a VWLO for the installation and subordinate installations. The CG will establish the Victim Witness Assistance Counsel and comply with VWAP reporting requirements. If a brig is located on the installation, the CG will appoint a VWAC for that confinement facility. Unit commanders are responsible for aggressively</td>
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- maintaining oversight and overall responsibility for the program.
- will also ensure close coordination is maintained between VWAP personnel; establish a VWAC; ensure data collection; appoint a VWLO
- Unit and Type commanders are responsible for ensuring victims are afforded their rights and informed of the status of their case. They are responsible for ensuring compliance with the VWAP and ensuring those under their command are properly trained. They will appoint a VWAC and ensure that VWAC fulfills their responsibilities.
- supporting the VWAP program and ensuring compliance with that program.
- Each unit commander will appoint a VWAC. Unit commanders will make every effort to protect victims within their command. Commanders will provide annual VWAP training.
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<th>Issue</th>
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<tr>
<td>Governing Policy or Regulation</td>
<td>DODD 6495.01, Sexual Assault Prevention and Response (SAPR) Program, 23 January 2012, incorporating change 1</td>
<td>AR 600-20 Chapters 7 and 8 (20 Sep 2012)</td>
<td>AFI 36-6001, Sexual Assault Prevention And Response (SAPR) Program, 14 October 2010, paragraph 2.3.</td>
<td>August 8, 2013 Secretary of the Navy Instruction 1752.4B Sexual Assault Prevention and Response (SECNAV 1752.4B SAPR).</td>
<td>MCO 1752.5B, MFB, 1 March 2013, Sexual Assault Prevention and Response Program</td>
<td>COMDTINST M1754.10D (19 April 2012) -</td>
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<td>SECDEF DTM, Sexual Assault Prevention and Response, 14 August 2013</td>
<td>FRAGO 1 - 5 December 2012</td>
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<td>DODI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Amended Feb 2014</td>
<td>FRAGO 2 - Includes Updates To Base Order And Provides Annex G:</td>
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<td>SECDEF DTM, Sexual Assault Prevention and Response, 6 May 2013</td>
<td>FRAGO 3 - Provides Guidance For Sexual Harassment/Assault Response And Prevention (Sharp) Memorandum, Secretary of the Army, dtd 28 May</td>
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<td>DODI 6400.07, Standards for Victim Assistance Services in the Military Community November 25, 2013</td>
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## SARC and SAPR VA COMPARISON CHART

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<td>Restricted Reporting to Third Parties</td>
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<td>A victim’s communication with another person (e.g., roommate, friend, family member) does not, in and of itself, prevent the victim from later electing to make a Restricted Report.</td>
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<td>Restricted Reporting is confidential, not anonymous, reporting.</td>
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<td>However, if the person to whom the victim confided the information is in the victim’s officer and/or non-commissioned officer chain of command or DoD law enforcement, there can be no Restricted Report. Encl 4 (1)(e)(1)</td>
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<td>A victim’s disclosure of his/her sexual assault to persons outside the protective sphere of the persons covered by the Restricted Reporting policy may result in an investigation of the allegations. (AR 600-20 Appendix H-5(e))</td>
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<td>USAF SARC's and VAs should also notify victims that any disclosure of information about their sexual assault to individuals other than the SARC, VA or Healthcare Personnel may result in the initiation of an official investigation regarding the allegations that the victim disclosed (AFI36-6001, 3.1.9.8.2)</td>
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<td>All Marines shall report all incidents of sexual assault which come under their observation to PMO/Law enforcement and the chain-of-command immediately. MCO 1752.5B Encl 1, Ch 8-4(a)</td>
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<td>If the victim has disclosed his or her sexual assault to anyone other than an EAPC/SARC, FAS, VA, HCP, or Chaplain, the report is Unrestricted.</td>
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### Note

- **2013**
- **H-2**
- **Encl 4 (1)(e)(1)**
- **SEACNAV INST 1752.4B, Encl**
### SARC and SAPR VA COMPARISON CHART

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<tr>
<td><strong>SAPR VA - Rank</strong></td>
<td>Not Addressed</td>
<td>1LT/CW2/SSG/GS-9</td>
<td>O-2/E-4/GS-11</td>
<td>No rank requirement/GS-9</td>
<td>Sgt/GS-9</td>
<td>No rank requirement</td>
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<td>(RFI 8a, 9a)</td>
<td>(RFI 8a, 9a)</td>
<td>(RFI 8a, 9a)</td>
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<td>(RFI 8a, 9a)</td>
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<tr>
<td><strong>SARC - Rank</strong></td>
<td>Not Addressed</td>
<td>MAJ/CW3/SFC/GS-11</td>
<td>Capt/GS-12</td>
<td>No rank/rate requirements for mil / GS-9</td>
<td>Maj/CWO3-5/GS-9</td>
<td>Civilian Only GS-12</td>
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<td><strong>Victim Advocacy Program Structure</strong></td>
<td>If an installation has multiple SARCs on the installation, a Lead SARC shall be designated by the Service. (4)(h)(1)</td>
<td>In Garrison:</td>
<td>MAJCOM SARC - Administers SAPR program w/in that MAJCOM and provides functional oversight and guidance for Installation SARCs.</td>
<td>Installation SARC - Military or civilian. Provides local management of SAVI program</td>
<td>Command SARC – Civilian or Military</td>
<td>Employee Assistance Program Coordinator (EAPC)/SARC – Military or civilian. If a dedicated SARC is not co-located, serves as central POC at the Command or within a geographic area to conduct SAPR awareness, prevention and response training.</td>
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<td>- Installation SARC - Responsible for coordinating local implementation of SAPR</td>
<td>Installation SARC - Reports directly to the installation WG/CV. Is installation’s single point of contact for integrating and coord. SA victim care services. Tracks status of SA cases in AOR &amp; updates WG/CV.</td>
<td>Installation SARC Command POC - Responsible for facilitating awareness and prevention training and oversight of command compliance with SAVI program requirements. Command Data Collection Coordinator (DCC) - Responsible for obtaining data on sexual assault incidents to meet reporting requirements</td>
<td>Installation SARC – Full-time civilian employees</td>
<td>Family Advocacy Specialist (FAS) – Military or civilian. Handles cases of family violence within FAP. May also act as a SARC if needed and trained.</td>
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<td>- Installation VAs (IVA) - Work directly with Installation SARC, victims, unit VAs, and other installation response agencies</td>
<td>Deployment Environment:</td>
<td>- Deployable SARC Admin Assist. - performs clerical duties to directly support the SARC</td>
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<td>VAs - COs/OICs</td>
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<td>- Uniformed VAs (UVAs) – Provide limited victim advocacy as a collateral duty</td>
<td>Deployed Environment:</td>
<td>- Deployable SARC - Soldiers who</td>
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<td>coordinate SAPR program as a collateral duty. At each brigade/unit of action and higher. No civilians.</td>
<td>and installation’s SAPR program. VAs – provide support, liaison services and care to victims of SA. All are volunteers. Can be civilian or active duty. Deployed Environment: - Can be trained military SARC or civilian SARC who volunteer. Normally, each AEW will warrant at least 1 SARC. For smaller deployments, cdrs must provide a sexual assault response capability. AFI 36-6001(2.2, 2.3, 2.4, 2.5)</td>
<td>- Installation VAs - Uniformed VAs – Respond to victims whenever sexual assault occurs in locations where installation VAs are not available (e.g., when deployed). OPNAVINST 1752.1B (8b(6), 9c(1), (3), (6), (7), 9d(2), (9), 9f(3), (4), (6), Encl (1)8)</td>
<td>sometimes lists UVA and sometimes UVA/VA, indicating that there can be civilian VAs though the civilian VA is never defined or specifically referred to in the reg. MCO 1752.5B (b(7)(a), (d), b(10)(a), encl (1) Ch 3 (2)(a)(1), (2)(b)</td>
<td>should designate command member(s) as VAs. Commands are strongly encouraged to have at least one VA especially on afloat units. COMDTINST M1754.10D Ch 6(H), (I), (K)</td>
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<td>UVAs – Soldiers who provide victim advocacy as a collateral duty. 2 UVAs for each battalion-sized unit. AR 600-20 (8-3)</td>
<td>UVAs coordinate directly with the Installation SARC and Command SARC regarding all sexual assault cases, but work directly for the victim when providing services.</td>
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**SAPR VA - Reporting Structure**

(RFI 8g, 9g) The Army is not currently identifying reporting structures, as each command has the flexibility to establish the appropriate structure for their organization and could change under

The VA reports to the installation SARC, or as applicable, the installation SAVA. SAVA’s direct supervisor is the installation SARC.

SAPR VAs report directly to the SARC regarding all sexual assault cases.

UVAs coordinate directly with the Installation SARC and Command SARC regarding all sexual assault cases, but work directly for the victim when providing services.

VAs work directly for the cognizant SARC in their VA role.
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<td>different command teams.</td>
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<td>The Army is not currently identifying reporting structures, as each command has the flexibility to establish the appropriate structure for their organization and could change under different command teams.</td>
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<td>All SARCs report to the installation Vice Commander.</td>
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<td>The Uniformed SARCs follow the same reporting structure as the civilian SARCs. Regional SARCs (RSARCs) oversee implementation and execution of SAPR program within their AOR.</td>
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<td>Civilian full-time Command SARCs have been placed at the Division, Wing, Group and Marine Expeditionary Force levels. Commanding Generals at this level may hire Command SARCs who report directly to them. All General Court-Martial Convoking Authorities and</td>
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<td>The Command SAR also provides the Installation SARC with SAPR-related data and case information as requested.</td>
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<td>Installation SARCs and Command SARCs work</td>
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<td>The Coast Guard does not have a Uniformed SARC program.</td>
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<td>Civilian SARCs report sexual assault incidents to the SAPR Program Manager at Coast Guard Headquarters, but have a Regional Manager as their day-to-day supervisor.</td>
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<td>SAPR VA - Screening and selection process (including databases checked) (RFI 8b, 9b)</td>
<td>After October 1, 2013, all SAPR VAs must be certified under this program. Applications consist of two letters of recommendation, one of which must be from the SARC’s Commanding Officer -- which must include a completed National Agency Check; the SARC/SAPR VA Code of Ethics; and a certificate of completion of 40 hours of victim advocacy training.</td>
<td>The Army records check process 1402.5 (Criminal History Background Checks on Individuals in Child Care Services), January 19, 1993; U.S. Department of Justice National Sex Offender Registry; Army Military Human Resource Record; Department of the Army Inspector General files; and U.S. Army Criminal Investigation Command/Crime Records Center</td>
<td>The UVA program is volunteer. To apply, airmen must complete: a Commander’s or Agency Head’s Statement of Understanding, a Volunteer’s Statement of Understanding for Volunteer Victim Advocates, a completed application, conduct a SARC interview per AFI 36-6001, be subjected to a criminal background check conducted by</td>
<td>Commanders select Uniformed SAPR VAs whom they believe will be an appropriate fit for the role, attesting to their good moral character, professional abilities and willingness to perform the duties of a SAPR VA. SARCs conduct interviews and conduct ongoing assessment of the candidate’s suitability throughout the training process.</td>
<td>UVAs must have: flexible schedule, be available 24/7, have no adverse fitness reports in grade, no history of SA or SH allegations, no history of Court-Martial, no NJP w/in last 3 years, no history of drugs, no alcohol incidents in last 3 yrs, no domestic violence history. They must epitomizes core values, be comfortable working with all ranks, be</td>
<td>VAs are screened for background misconduct, recommended by their command, and screened by the SARC for level of maturity, interest in SAPR and assisting victims, and any personal issues that could make the VA role too much of a challenge for the volunteer. UVAs - emotional maturity of the candidate to maintain the necessary</td>
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<td>SARPR VAs must also obtain 32 hours of additional training and re-certify every two years.</td>
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<td>NOVA administers the D-SAACP through a contract with the DoD SAPRO.</td>
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<td>Deployable UVAs: Recommended by chain of command, First LTC or battalion level equivalent or higher must approve, Must be deployable, Able to respond 24/7 when on call, Have outstanding duty performance evaluation reports, demonstrate stability in personal affairs, have no history of domestic violence or severe personal problems including significant indebtedness, excessive use of alcohol, or any use of illegal drugs, no UCMJ violations for last 5 yrs, must be deployable with min of one year retainability in the unit (this is non-waiverable), collateral duty, available to attend SARB as needed, successfully complete training databases.</td>
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<td>AFOSI using AFOSI Manual 71-122, and also a mental health background check. (See Attachment, AFI 36-6001 Atch 3, 4, 6)</td>
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<td>Civilian VAs must pass a background check conducted for all potential AF GS employees, position is Non-Critical Sensitive Security and requires a current Access National Agency Check with Inquiries or a National Agency Check with Local Agency Check and Credit as a condition of employment.</td>
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<td>To be hired as a SAVA, the applicant must possess knowledge of a wide range of generally accepted practices and procedures associated with victim advocacy, social services delivery systems,</td>
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<td>The candidate must not be under investigation for any criminal offense, does not carry a conviction for a sexual offense, is not required to register as a sexual offender, and has completed the National Agency Check (NAC).</td>
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<td>Civilian: minimum of one year specific experience working with victims of sexual assault or working in victim advocacy and victim advocacy services is required. They must submit a Declaration for Federal Employment (which asks about prior misconduct or illegal activities) to NAF HR.</td>
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<td>approachable, have good communication skills, ability to gain rapport, good listener, empathetic, must be comfortable with sensitive topics, discreet, able to maintain confidentiality, have a calm demeanor during stressful situations.</td>
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<td>Civilian: minimum of one year specific experience working with victims of sexual assault or working in victim advocacy and victim advocacy services is required. They must submit a Declaration for Federal Employment (which asks about prior misconduct or illegal activities) to NAF HR.</td>
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<td>approachable, have good communication skills, ability to gain rapport, good listener, empathetic, must be comfortable with sensitive topics, discreet, able to maintain confidentiality, have a calm demeanor during stressful situations.</td>
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SARPR VAs must also obtain 32 hours of additional training and re-certify every two years.

NOVA administers the D-SAACP through a contract with the DoD SAPRO.

Civilian VAs must pass a background check conducted for all potential AF GS employees, position is Non-Critical Sensitive Security and requires a current Access National Agency Check with Inquiries or a National Agency Check with Local Agency Check and Credit as a condition of employment.

Civilian: minimum of one year specific experience working with victims of sexual assault or working in victim advocacy and victim advocacy services is required. They must submit a Declaration for Federal Employment (which asks about prior misconduct or illegal activities) to NAF HR.

(RFI 8a, 9a)
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<td>SARC and SAPR VA COMPARISON CHART</td>
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<td>prior to assuming duties.</td>
<td>principles, and behavioral theories relating to victim advocacy, sexual assault and other acts of interpersonal violence. (RFI 8a, 9a)</td>
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<td>SARC - Screening and Selection Process (including databases checked)</td>
<td>Per DoDD 6495.01, the SARC (civilian or uniformed) is a person who, as a victim advocate, shall provide non-clinical crisis intervention, referral, and ongoing non-clinical support to adult sexual</td>
<td>The Army records check process includes data as identified in the Department of Defense definition for &quot;Installation Records Check&quot; in Department of Defense</td>
<td>AFI 36-6001, para. 2.3.3.1.2. “SARC responsibilities are part of the 38F (Force Support) core competencies. Other officers or civilians, except those noted in paragraph 2.3.1.1., may serve as SARC provided Commanders select Uniformed SARC who they believe will be an appropriate fit for the role, attesting to their good moral character, professional abilities and willingness to perform the duties of</td>
<td>All Command SARCs must receive a local background check prior to being offered the position.</td>
<td>The Coast Guard does not have a Uniformed SARC program</td>
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<td>(RFI 10b, 11b)</td>
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<td>A process for background screenings is currently being developed.</td>
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<td>assault victims.</td>
<td>Instruction 1402.5 (Criminal History Background Checks on Individuals in Child Care Services), January 19, 1993; U.S. Department of Justice National Sex Offender Registry; Army Military Human Resource Record; Department of the Army Inspector General files; and U.S. Army Criminal Investigation Command/Crime Records Center databases.</td>
<td>they are released by their career field program manager, successfully complete requisite training identified in paragraph 2.8., and are approved by AFPC Assignments Branch.”</td>
<td>another SARC facilitates ongoing assessment of the candidate’s suitability throughout the training process.</td>
<td>The Regional SARCs also verify that the Uniformed SARC is not currently under investigation for any criminal offense; does not carry a conviction for a sexual offense; is not required to register as a sexual offender; and has completed the National Agency Check (NAC).</td>
<td>Additionally, SARCs receive a National Agency Check.</td>
<td>Full-time SARCs must receive a local background check prior to credentialing and appointment. Additionally, SARCs receive a National Agency Check prior to being offered the position.</td>
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<td>Support will include providing information on available options and resources to victims.</td>
<td>Deployable SARCs and UVAs will be selected in accordance with the following requirements: Be recommended by the chain of command. The first LTC or battalion level equivalent or higher commander will approve the recommendation and sign the appointment order, must be</td>
<td>Eligibility to be a SARC. SARCs can be either an Air Force officer or DoD civilian employee.</td>
<td>The Human Resources office advertises the SARC position and uses a credentialing plan to determine eligible candidates.</td>
<td>The Human Resources office advertises the SARC position and uses a credentialing plan to determine eligible candidates.</td>
<td>Active-duty Command SARCs (collateral duty) are selected based on the same criteria as a UVA,</td>
<td>Command SARCs: All full-time civilian Command SARCs are required to complete a four-year degree in behavioral health or social science AND possess three years of experience that demonstrates acquired knowledge of one or more of the behavioral health</td>
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<td>The SARC, on behalf of the sexual assault victim, provides liaison assistance with other organizations and agencies on victim care matters and reports directly to the SARC when performing victim advocacy duties.</td>
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<td>Personnel who are interested in serving as a SARC are encouraged to volunteer for this duty assignment.</td>
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<td>- Per DoDI 6495.02 SAPR Program Procedures (p49, Enc. 6), the SARC shall:</td>
<td>Comply with DoD Sexual Assault Advocate</td>
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<td>Certification requirements, be trained in and understand the confidentiality requirements of Restricted Reporting and MRE 514. Training must include exceptions to Restricted Reporting and MRE 514., facilitate care and provide referrals and non-clinical support to adult victims of sexual assault. Support will include providing information on available options and resources so the victim can make informed decisions about his/her case. The SAPR VA will be directly accountable to the SARC in adult sexual assault cases (not under the FAP jurisdiction) and shall provide victim advocacy for adult victims of sexual assault.</td>
<td>deployable, must be able to respond to a sexual assault incident at any time when on call, must have outstanding duty performance, as evidenced by a review of the individual’s evaluation reports, must demonstrate stability in personal affairs. Soldier will not have a history of domestic violence or severe personal problems, including significant indebtedness, excessive use of alcohol, or any use of illegal drugs. Will be required to obtain a waiver from HQDA in instances where individuals have withdrawn from the Human Reliability or Personal eligibility Program during the 2 years preceding the nomination. Must not have been</td>
<td>Force’s commitment to expeditionary missions, ensuring that SAPR capability is transferable to the battlefield (real or exercise). Military SARC positions cannot be converted to civilian positions without the approval of HQ USAF/A1. SARC responsibilities are part of the 38F (Force Support) core competencies. Other officers or civilians, except those noted in paragraph 2.3.1.1., may serve as SARCs provided they are released by their career field program manager, successfully complete requisite training identified in paragraph 2.8., and are approved by AFPC Assignments Branch. Employment (which asks about prior misconduct or illegal activities) to NAF HR. FFSC Directors and/or SARC Supervisor is provided a list of eligible candidates and schedules interviews. RSARC developed standardized questions to be used for interview process throughout the region. FFSC Director and/or SARC Supervisor selects candidate. Once hired, SARCs complete documentation for a National Agency Check (NAC). SARCs also serve as the SAPR VA when needed and based on victim’s preference.</td>
<td>or social sciences equivalent to a major in the field OR an appropriate combination of education and experience that demonstrates possession of knowledge and skill equivalent to that gained in the above. The SARC is required to obtain and maintain certification/credentialing as required by the FY12 NDAA through the Department of Defense Sexual Assault Advocate Certification/Credentialing Program (D-SAACP) or an agency approved by Headquarters Marine Corps. Installation SARCs: (NF-4) Completion of a four-year degree in behavioral health or social science AND three years of experience that demonstrates acquired knowledge</td>
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<td>assault.</td>
<td>punish under the provisions of the UCMJ during the 5 years preceding the nomination, must be deployable with a minimum of 1 year retainability in the unit (for short tour areas, UVA must have a minimum of 6 months retainability in the unit). This requirement is non-waiverable.</td>
<td>Installation civilian SARC's must be GS-12 or NSPS equivalent and are governed by the mandatory SARC Standard Civilian Position Description.</td>
<td>of one or more of the behavioral health or social sciences equivalent to a major in the field OR an appropriate combination of education and experience that demonstrates</td>
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<td>Acknowledge understanding of their advocacy roles and responsibilities using DD Form 2909, Victim Advocate and Supervisor Statements of Understanding.</td>
<td>The deployable SARC will be an NCO (SFC or higher), officer (MAJ/CW3 or higher), or civilian (GS–11 or higher).</td>
<td>Civilian SARC's may volunteer to deploy contingent upon meeting required prerequisites (i.e., security clearance, weapons qualification, etc.) and subject to commander's approval.</td>
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<td>Questions 10 (a), (b), and (d) thru (i) are specific to the Military Services and National Guard Bureau SAPR program policies.</td>
<td>The UVA will be an NCO (SSG or higher), officer (1LT/CW2 or higher), or civilian (GS–9 or higher).</td>
<td>At installations where there is a civilian and a military SARC, the civilian will hold the position of SARC and the military SARC will serve as the deputy.</td>
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SARC and SAPR VA COMPARISON CHART

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<td>the SARB, as required, must complete continuing education requirements on an annual basis.</td>
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<td>Following selection, UVAs/deployable SARCs must successfully complete required training as a UVA/deployable SARC prior to assuming responsibility within the unit.</td>
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<td>SAPR VA Curriculum (RFI 8c, 9c)</td>
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<td>Army SHARP 80-Hour Certification Course:</td>
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<td>Credentialed by (D-SAACP).</td>
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<td>Receive annual continuation training as part of the Army SHARP 24-Hour Recertification Online Course.</td>
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<td>SARCs/VAs must apply every two years to remain credentialed under</td>
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<td>40 National Organization of Victim Assistance (NOVA) certified hours of training at their installation by the local SARC/SAVA</td>
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<td>Also required to complete 32 hours of advanced continuing education every 2 years after initial NOVA certification</td>
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<td>All SARCs and</td>
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<td>Uniformed SAPR VAs receive 40 hours of in-person NACP approved SAPR VA training,</td>
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<td>SAPR VAs are certified with the D-SAACP prior to providing direct services to sexual assault victims.</td>
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<td>To recertify with D-SAACP, SAPR VAs complete a minimum of 32 hours of approved training</td>
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<td>All UVAs receive 40 hours of certified training.</td>
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<td>The training is certified by the National Organization for Victim Advocacy (NOVA).</td>
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<td>Credentialed by NOVA.</td>
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<td>Additionally, all UVAs are required to maintain their certification by</td>
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<td>VAs are trained via a 3-day Coast Guard-specific VA training- taught by the cognizant SARC.</td>
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<td>In the Spring of 2014 CG VAs will be applying for credentialing under the National Advocate Credentialing Program (NACP) from the National Organization for Victim Assistance</td>
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<td>SARC -Curriculum (RFI 10c, 11c)</td>
<td>Army Victim Advocates receive certification training as part of the Army SHARP 80-Hour Certification Course. Qualified SARCs and VAs are credentialed by the Department of Defense Sexual Assault Advocate Certification Program (D-SAACP). SARC and SAVAs receive annual training.</td>
<td>All SARC and SAVAs are NOVA certified after receiving 40 hours of training.</td>
<td>All SARC receive specific training at the Sexual Assault Response Coordinator Course at Maxwell AFB. NOVA certified our 40 hour SARC Course held at Air University which is used for SARCs and SAVAs. The total course is 8 days, 64 total hours.</td>
<td>The Navy SAPR Program requires all SARC to receive 80 hours of NACP approved training (40 hours of online SARC training and 40 hours of in-person initial SARC VA training provided by a SARC). SARC training consists of training on how to supervise staff, Defense Sexual Assault Incident Database training is required before SARCs can be credentialed by NOVA and then appointed in writing.</td>
<td>All SARC receive 40 hours of training certified by the National Organization for Victim Assistance (NOVA). Completion of this 40-hour curriculum, Command SARC training, and Defense Sexual Assault Incident Database (DSAID) training is required before SARCs can be credentialed by NOVA for the NACP (to be completed by December 31st).</td>
<td>The Coast Guard does not have a Uniformed SARC program. Coast Guard SARCs receive a three-day Coast Guard-specific SARC training, 10 hours of online training, and are currently undergoing credentialing by NOVA for the NACP (to be completed by December 31st).</td>
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<td>continuity training as part of the Army SHARP 24-Hour Recertification Online Course.</td>
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<td>SARCs/VAs must apply every two years under D-SAACP in order to remain credentialed under the National Organization for Victim Assistance.</td>
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<td>All SARCs/VAs must be credentialed as outlined in the FY12 National Defense Authorization Act (NDAA) in order to have the ability to provide assistance to victims of sexual assault.”</td>
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<td>receiving 40 hours of training at this course.</td>
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<td>They are also required to complete 32 hours of advanced continuing education every 2 years after initial NOVA certification.</td>
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<td>(DSAID), case management, trainer skill building, Sexual Assault Case Management Group (SACMG) facilitation, SAPR Command Personnel cross training (SAPR Point of Contact, SAPR Data Collection Coordinator, SAPR Command Liaison), and other advanced sexual assault topics. All SARCs are certified with the D-SAACP prior to providing direct services to sexual assault victims.</td>
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<td>To recertify SARCs complete 32 hours of approved continuing education every two years (including 2 hours of mandatory ethics training).</td>
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<td>The SARC Annual Training exceeds the minimum D-SAACP requirement. SARCs receive an annual 40 hour advanced</td>
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<td>Additionally, all SARCs are required to maintain their certification by completing 16 hours of continuing education annually.</td>
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<td>After receipt of certification, SARCs are required to provide proof of completion of continuing education to NOVA every two years to maintain their credentials.</td>
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<td>SAPR VA – Number of full-time, part-time, volunteer and deployable SAPR VAs (RFI 8d, 9d)</td>
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<td>The current number of credentialed military and civilian full-time Victim Advocates is:</td>
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<td>- Active Army Component: 10,499</td>
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<td>- 246 Full time (equivalent) VAs at Brigade level commands (either AD or Civilian)</td>
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<td>Required by FY12 NDAA – (76% (246 VAs) certified as of Nov. 2013) (Metric 6, MG Patton, RSP Public Meeting 57-58 (November 7,</td>
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<td>The Air Force currently has 2,237 volunteer VAs, all of whom are potentially deployable.</td>
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<td>All SAVAs are full-time Air Force civilian employees. They may be deployable depending on their installation’s position description and negotiations. (RFI 8d, 9d)</td>
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<td>- 84 Full time (equivalent) VAs at Brigade level commands (either</td>
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<td>The Navy currently has 4,402 Uniformed SAPR VAs who perform this job on a collateral duty basis and deploy with their units as required.</td>
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<td>The Navy currently has 77 civilian SAPR VAs. Civilian SAPR VAs do not deploy. (RFI 8d, 9d)</td>
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<td>- 64 Full time (equivalent) VAs at Brigade level commands (either AD or Civilian)</td>
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<td>All UVAs are deployable and the billet is always a collateral duty (i.e., part-time).</td>
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<tr>
<td>Rank Number</td>
<td>1st Lt - 77</td>
<td>2nd Lt - 48</td>
<td>Capt - 139</td>
<td>Maj - 9</td>
<td>WO1 - 4</td>
<td>CWO2 - 15</td>
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<td>The Coast Guard currently has approximately 1000 volunteer, part-time, active-duty VAs.</td>
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<td>- Civilians not separated from UVAs above (RFI 8d, 9d)</td>
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<td>- National Guard Bureau: 394 (RFI 8d, 9d)</td>
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<td>- 54 Full time (equivalent) SARCS &amp; VAs at Brigade level commands (either AD or Civilian) Required by FY12 NDAA – (39% (21 VAs) certified as of Nov. 2013) Metric 6, MG Patton, RSP Public Meeting 57-58 (November 7, 2013)</td>
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<td>AD or Civilian) Requirement by FY12 NDAA – (100% (64 VAs) certified as of Nov. 2013) Metric 6, MG Patton, RSP Public Meeting 57-58 (November 7, 2013)</td>
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<td>The Marine Corps currently has 21 full-time Civilian VAs. VAs are in general support of the operating forces and are located at the installation level. Civilian VAs are not deployable. (RFI 8d, 9d)</td>
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<td>- 21 Full time (equivalent) VAs at Brigade level commands (either AD or Civilian) Required by FY12 NDAA – (95% (21 VAs) certified as of Nov. 2013) Metric 6, MG Patton, RSP Public Meeting 57-58 (November 7, 2013)</td>
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<td>The current number of credentialed military and civilian full-time SARCS is: - Active Army Component: 1,214 (RFI 10d, 11d) - 322 - Full time (equivalent) SARCs at Brigade level commands (either AD or Civilian)</td>
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<td>- There are 46 full-time military SARCS. They are all deployable. - There are 75 full-time civilian SARCs. These are typically non-deployable civilian positions. - 84 - Full time</td>
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<td>The Navy has 5 Uniformed SARCS. - The Navy does not deploy SARCS. - The Navy in the process of hiring Deployed Resiliency Counselors (DRCs) which are licensed Clinical Counselors. - The DRC will</td>
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<td>- The Marine Corps has 40 part-time (or collateral duty), deployable, Uniformed SARCs. - The Marine Corps also has six part-time (or collateral duty) civilian SARCs. - The civilian</td>
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<td>- The Coast Guard does not have a Uniformed SARC program. - The Coast Guard employs one full-time SARC, and 44 part-time SARC (EAPC and FAS) at this time. - There are no</td>
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<td>Required by FY12 NDAA –(86% (277) certified as of Nov. 2013) Metric 6, MG Patton, RSP Public Meeting 57-58 (November 7, 2013) Civilians not separated from USARCs above (RFI 10d, 11d)</td>
<td></td>
<td>(equivalent) SARCs at Brigade level commands (either AD or Civilian) Required by FY12 NDAA –(100% (84) certified as of Nov. 2013) Metric 6, MG Patton, RSP Public Meeting 57-58 (November 7, 2013)</td>
<td>receive all required SARC training and be D-SAACP certified. The DRC will serve as a liaison to the homeport SARC while deployed providing immediate victim response and coordination of allegations of sexual assault while afloat to their assigned ship, under the guidance and direction of the homeport SARC. (RFI 10d, 11d)</td>
<td>SARCs are not deployable. (RFI 10d, 11d)</td>
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<td>National Guard Bureau: 2,394 (RFI 10d, 11d) - 54 Full time (equivalent) SARCs at Brigade level commands (either AD or Civilian) Required by FY12 NDAA – (39% (21 VAs) certified as of Nov. 2013) Metric 6, MG Patton, RSP Public Meeting 57-58 (November 7, 2013)</td>
<td></td>
<td>- There are currently 81 civilian SARCs and 2 vacancies. - The Navy is able to deploy SARCs as needed. (RFI 10d, 11d)</td>
<td>- 22 - Full time (equivalent) SARCs at Brigade level commands (either AD or Civilian) Required by FY12 NDAA – (100% (22) certified as of Nov. 2013) Metric 6, MG Patton, RSP Public Meeting 57-58 (November 7, 2013)</td>
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<td>- 64 - Full time (equivalent) SARCs at Brigade level commands (either AD or Civilian) Required by FY12 NDAA – (100% (64) certified as of Nov. 2013) Metric 6, MG Patton, RSP Public Meeting 57-58 (November 7, 2013)</td>
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| SAPR VA - breakdown by age, gender, rank, education, and certification status (RFI 8e, 9e) | Due to recent revisions to our screening and credentialing policies, the Army is in the process of gathering specific personally identifying information (PII) for currently serving full-time and collateral duty military SARC and VAs in order to break down by age, gender, rank, and education. At this time, the data is not available. The SHARP Program Office previously only maintained limited personally identifying information (PII) for SHARP personnel. Civilian SARC and VAs are permanent hires into the position; as such, the | We currently do not require our installation or Major Command (MAJCOM) SARC and VAs to track and/or report the gender, age and outside education of our VAs. | There are no age, gender, rank, or education requirements to serve as a Uniformed or civilian SAPR VA; therefore this data is not tracked by CNIC. All SAPR VAs are certified with D-SAACP. | The Marine Corps does not track UVAs by age, gender, or education. | Coast Guard VAs will undergo the credentialing process in Spring of 2014 (see c.), Approximately 60% female and 40% male, of varied ranks and education levels.
## SARC and SAPR VA COMPARISON CHART

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<th>Issue</th>
<th>DOD/JCS</th>
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<tr>
<td>SARC – Breakdown by age, gender, rank, education, and certification status (RFI 10e, 11e)</td>
<td>Army does not track length of assignment.</td>
<td>Due to recent revisions to our screening and credentialing policies, the Army is in the process of gathering specific personally identifying information (PII) for currently serving full-time and collateral duty military SARC's and VAs in order to break down by age, gender, rank, and education. At this time, the data is not available. The SHARP Program Office previously only maintained limited personally identifying information (PII) for SHARP personnel.</td>
<td>We currently do not require our installation or Major Command (MAJCOM) SARC's to track and/or report the gender, age and outside education of our SARC's.</td>
<td>There are no age, gender, rank, or education requirements to serve as a Uniformed SARC. All of the Uniformed SARC's are currently males, the highest rank is a LCDR, and the highest education is a Masters of Science. All SARC's are certified with D-SAACP.</td>
<td>Collateral Duty (Marine) (Navy) Col 2 CDR 1 LtCol 5 LCDR 2 Maj 8 LT 2 Capt 12 LTJG 1 CWO-3 1 MSGt 1 GS-15 1 GS-14 2 GS-13 1 GS-12 1 TOTALS 34 6</td>
<td>The Coast Guard does not have a Uniformed SARC program. 14 are male, 30 are female; all have at least a Bachelor's degree, but most have Masters degrees in behavioral science fields</td>
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<td>SAPR VA -Average Caseload (RFI 8f, 9f)</td>
<td>N/A</td>
<td>The Army is not currently tracking average caseload or desired caseload. As installation size, assigned manning and command missions vary, so do the case loads per SHARP personnel at each installation. This variance was considered when assigning full-time assets at brigade and equivalent units to ensure effective services are provided to victims.</td>
<td>Average caseload is for the VA to only have one case at a time. This allows the VA to focus on their victim and prevent any “burn out” by the VA. The SAVA’s case load could be a maximum of five. However, the AF prefers the SAVA to have fewer cases to allow for efficient supervision of the Volunteer VAs.</td>
<td>Many Uniformed SAPR VA’s will never work directly with a victim. Those that do typically have very low caseloads working with 1 or 2 victims at any one time. As the civilian SAPR VAs are recent additions to the SAPR program, their caseloads vary based on location. Typically, the average caseload is 1-2 open cases. As they become integrated into the 24/7 response watch bill, their caseload may increase.</td>
<td>The caseload for a UVA will vary. Some UVAs may never have a case and others may have two or three. Victims are allowed to choose whether or not they work with a UVA or Civilian VA. Additionally, victims can choose their UVA. The UVA does not have to be in their unit and can be from another unit.</td>
<td>The average ongoing caseload for a VA is approximately 20 cases. The level of involvement for each case varies and, therefore, the desired caseload is difficult to define. For example, a VA may only assist a victim for a short period or could assist a victim for the duration of a case (which can be</td>
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Average caseload is typically one per VA (as one is enough to manage for a part-time volunteer), but many VAs never have cases as our numbers of VAs far outweigh the number of cases.
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<td>The Army is not currently tracking average caseload or desired caseload. As installation size, assigned manning and command missions vary, so do the case loads per SHARP personnel at each installation. This variance was considered when assigning full-time assets at brigade and equivalent units to ensure effective services are provided to victims.</td>
<td>The range would be from 1-3, depending on location, availability of VA personnel/volunteers, etc. (e.g. INCONUS - remote, or OCONUS - availability of personnel). The current caseloads are manageable by our current SARC's.</td>
<td>Average caseloads vary by Region for SARC's, but are approximately 5-10 cases.</td>
<td>The average caseload for a collateral duty SARC's varies and is dependent upon the number of cases in their command. Additionally, collateral duty SARC's at the Division, Wing, Group and Marine Expeditionary Force levels partner with civilian full-time Command SARC's, which decreases their caseload.</td>
<td>The Coast Guard does not have a Uniformed SARC program. The average caseload is 0-5 cases per civilian SARC.</td>
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<td>SAPR VA - Performance Evaluation (RFI 8h, 9h)</td>
<td>N/A</td>
<td>The Army is not currently tracking performance evaluation at the HQDA level.</td>
<td>This is not a requirement for our VAs, as they are volunteer. However, the SARC and/or SAVA gives feedback back when needed, usually with every case.</td>
<td>Uniformed SAPR VAs receive annual evaluations by their supervisory chain of command. Regions conduct an evaluation for civilian SAPR VAs biannually.</td>
<td>Sergeants and above receive Fitness Reports annually. These Fitness Reports evaluate the overall performance of the Marine and includes an evaluation of any collateral duty held, The performance of VAs is continually evaluated for professionalism and appropriateness by the SARC.</td>
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<td>SAVA’s, like all civilian (GS) personnel, receive formal initial and annual feedback from their direct supervisor (installation SARC) as well as required annual civilian performance reports.</td>
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<td>such as duty as UVA. Examples of categories on the Fitness Report include performance, effectiveness under stress, taking care of subordinates, setting the example, judgment, and decision-making ability.</td>
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<td>The performance of a civilian VA is evaluated on an annual basis, which includes a mid-year review, via a formal HR process. In addition to the formal HR process, Installation SARCs provide direct supervision of case management and constantly evaluate the VA’s ability to work with victims.</td>
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<td>The Army is not currently tracking performance evaluation at the HQDA level.</td>
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<td>Uniformed SARCs, like all military personnel, receive formal initial and annual feedback from their direct supervisor (installation vice)</td>
<td>Uniformed SARCs receive annual SARC evaluations and military Fitness Reports.</td>
<td>Uniformed SARCs receive Fitness Reports annually. These Fitness Reports evaluate the overall performance of the Marine and includes an</td>
<td>The Coast Guard does not have a Uniformed SARC program. GS civilians have an annual performance evaluation.</td>
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<td>The performance of a civilian VA is evaluated on an annual basis, which includes a mid-year review, via a formal HR process. In addition to the formal HR process, Installation SARCs provide direct supervision of case management and constantly evaluate the VA’s ability to work with victims.</td>
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<td>Uniformed SARCs receive Fitness Reports annually. These Fitness Reports evaluate the overall performance of the Marine and includes an</td>
<td>The Coast Guard does not have a Uniformed SARC program. GS civilians have an annual performance evaluation.</td>
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<td>SAPR VA -Average Length of Assignment (RFI 8i, 9i)</td>
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<td>The Army does not track the average length of assignment.</td>
<td>The Air Force currently does not track the average length of time that a VA serves in that position. Once trained, and after receiving any refresher training, a VA could serve in that capacity their entire AF career; it does not depend solely on an assignment action. For additional</td>
<td>The length of assignment for a UVA varies and depends on the amount of time to a unit. UVAs must be appointed by their Commanding Officer and cannot act in that capacity if not appointed in writing.</td>
<td>VAs can be assigned to respond to only the initial report depending on the level of assistance desired by the victim, but more often can be involved for up to a year (or more sometimes) as the legal process unfolds.</td>
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### SARC and SAPR VA COMPARISON CHART

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<td><strong>SARC – Average Length of Assignment (RFI 10i, 11i)</strong></td>
<td>standard time on station. Civilian SARCs and VAs are permanent hires into the position; as such, the Army does not track length of assignment.</td>
<td>information, see Tab 7, “SAVA and VA Bullet Background Paper (30 Oct 13).” As this is a new program, it is unclear how long the civilian SAVAs will remain in their position. This will be according to the existing civilian personnel regulations.</td>
<td>FY13.</td>
<td>terminated or they leave the position. The Marine Corps has only recently started to employ full-time civilian SAPR VAs and therefore cannot provide a length in which they typically maintain employment.</td>
<td>Tours last approximately 3 years. Civilians - these are permanent positions. The length of assignment for a UVA can vary and will depend on the amount of time attached to a unit. UVAs must be appointed by their Commanding Officer and cannot act in that capacity if not appointed in writing (<strong>response refers to UVA not SARC</strong>).</td>
<td>The Coast Guard does not have a Uniformed SARC program. GS civilians remain in their positions until they leave or are relieved.</td>
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<td>DSAID – Who enters data and how is data verified? (RFI 45)</td>
<td>assignment length at commander discretion, subject to standard time on station.</td>
<td>The SARC is responsible for entering information into DSAID. Only SARC who have, at a minimum, a favorable NAC shall be permitted access to enter sexual assault reports into DSAID.</td>
<td>Each installation will have the capability and responsibility of entering information into the system. The lead SARC will track the status of sexual assault cases within their designated area of responsibility utilizing DSAIDs as the database. Only SARC who, at a minimum, have a favorable NAC and are credentialed through National Organization of Victim Assistance (NOVA) shall be permitted access to enter sexual assault reports into DSAID.</td>
<td>SARC must also maintain in DSAID, or the DSAID-interfaced Military Service data system, an account of the services referred to and requested by the victim for all reported sexual assault incidents, from medical treatment through counseling, and from the time of the initial report of a sexual assault through the final case disposition or until the victim no longer desires services. Finally, Commanders are required to provide reports of disposition of sexual assault cases to NCIS, who enters the information into</td>
<td>time command SARC in and therefore cannot provide a length in which they typically maintain employment</td>
<td>In January 2014, the SARC will begin to enter new data into DSAID (prior closed cases will not be entered), using the metrics that DoD SAPRO has populated into DSAID. The DSAID metrics match the Congressional requirements for data collection.</td>
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<td>DSAID – When must data be entered? (RFI 45b)</td>
<td>Information will be entered into DSAID within 48 hours of the report of sexual assault. In deployed locations that have internet connectivity issues, the time frame is extended to 96 hours. The minimum standard to open a case is controlled by to identify cases in which a member is accused of multiple incidents of sexual harassment. DoD/DSAID. In DSAID, there are two options to open a case: a normal option and a “with limited data” option. Closing a report requires that you provide information in all of the mandatory DSAID fields.</td>
<td>Within 48 hours of the report of sexual assault.</td>
<td>SARC's must enter information related to reported sexual assaults into DSAID within 48 hours of the initial report. In deployed locations that have internet connectivity issues, the time frame is extended to 96 hours. Only SARC's who have, at a minimum, a favorable National Agency Check (NAC) are permitted access to enter sexual assault reports into DSAID.</td>
<td>Information is entered into DSAID within 48 hours of the report of sexual assault. In deployed locations that have internet connectivity issues, the time frame is extended to 96 hours.</td>
<td>No response.</td>
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<td>Substantiation – Ramifications for Unfounded Reports</td>
<td>Generally, there is no ramification to a service member who made a report of</td>
<td>An important note is that AFOSI does not determine whether a case is “unfounded.” A report of a crime, made in good faith, is never the subject of negative</td>
<td>The Marine Corps does not have a policy for determining if an</td>
<td>The Coast Guard is developing the response to this question but will</td>
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### SARC and SAPR VA COMPARISON CHART

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<td>(RFI 65)</td>
<td>sexual assault that is later unfounded. The only exception is a situation when Soldiers and/or civilians who are found to have knowingly and willfully provided a false report to CID are indexed as subjects for False Swearing, False Official Statement or Title 18 US Code Section 1001 (False Statements). Any disciplinary action or lack thereof is decided by the commander once the investigation is closed. If the false statement was used to obtain a transfer from one installation to another, then additional offenses, such as larceny or fraud could also be reported. There are occasions where investigations are unfounded and CID does not list the victim as a subject for False Swearing.</td>
<td>In every investigation that AFOSI opens, a Report of Investigation is provided to the Commander for action. The Initial Disposition Authority Commander is the one who would make a determination that a report is unfounded. If the Initial Disposition Authority Commander determined that a case was “baseless,” there would be no ramifications for the victim who made the report because the victim did not do anything wrong (i.e. this is not a false report) in reporting conduct that after thorough investigation was found not to be a crime. If the Commander ramifications for a service member. However, under circumstances in which an allegation was apparently made with malicious intent so as to raise suspicion of a violation of the UCMJ, those allegations would be investigated in the same manner as any other similar, suspected offense. Offenses could include violations of Article 107, false official statement, Article 131, perjury, Article 127, extortion, or Article 134, obstructing justice. In cases involving an allegation of sexual assault, due consideration is always given to the neuro-biological effects of trauma which may make memory formation and recovery complex and lead to honest yet</td>
<td>allegation is “unfounded” or what the Marine Corps does to a person who made the unfounded report. The commander has discretion to prosecute someone who makes a false report if the false official statement charge is supported by the evidence.</td>
<td>need additional time to provide the answer.</td>
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<td><strong>This occurs when victims report an incident in which they believe they were sexually assaulted, but the investigation, and supported prosecutor review, finds the act did not meet the elements of proof for a sexual assault offense.</strong></td>
<td>determined that a case was “false” and the Air Force had jurisdiction over the victim who made the false report, the Commander would have the full range of administrative, nonjudicial, and judicial remedies at his/her disposal to take action in the case. Not every case that is determined to be “false” by a Commander includes misconduct on the part of the victim.</td>
<td>inconsistent statements.</td>
<td>Once an NCIS investigation is complete, the case is forwarded to the accused’s commander. In accordance with Secretary of Defense policy, the initial disposition decision for reports of rape, sexual assault, forcible sodomy, and attempts to commit these offenses must be made by Sexual Assault Initial Disposition Authorities (SA-IDAs), who are Navy Captains (pay grade O-6) or above designated as Special Court-Martial Convening Authorities. If the accused’s commander is not an SA-IDA, the commander must forward the case to the appropriate SA-IDA in the chain of</td>
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<td>Issue</td>
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<td>Who Substantiates Reports?</td>
<td>It is not a CID investigator’s responsibility to determine whether a sexual assault allegation is founded or unfounded. The decision as to whether an offense is founded or not, and whether the accused should be indexed as having committed a founded offense belongs to the supported prosecutor.</td>
<td>In the Air Force, only commanders may conclude that a sexual assault allegation is unfounded. Once AFOSI receives a sexual assault allegation, and investigators complete their investigation, AFOSI forwards the investigation to the accused Airman’s commander in a report that evaluates the evidence and makes a recommendation as to disposition.</td>
<td>The commander, with the advice of his/her SJA, then determines whether the allegation is founded, and proceeds to whatever disposition of the case is deemed appropriate.</td>
<td>NCIS investigators do not make determinations regarding substantiated or unfounded allegations, regardless of the type of case (sexual assault, robbery, domestic violence, etc.). NCIS investigators obtain facts and evidence and present those findings to the appropriate convening authority. As NCIS fills the role of a neutral fact-finding and investigative body, placing the determination decision on them could compromise their mission, impede the case investigation or raise questions of partiality.</td>
<td>NCIS investigators do not make determinations regarding substantiated or unfounded allegations, regardless of the type of case (sexual assault, robbery, domestic violence, etc.). NCIS investigators obtain facts and evidence and present those findings to the appropriate convening authority.</td>
<td>The Coast Guard is developing the response to this question but will need additional time to provide the answer.</td>
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<tr>
<td>Is it policy to have commander or MCIO determine whether SA allegations are substantiated or founded?</td>
<td>Why?</td>
<td>(RFI 66)</td>
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**SARC and SAPR VA COMPARISON CHART**

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<tr>
<th>Issue</th>
<th>DOD/JCS</th>
<th>USARMY</th>
<th>USAF</th>
<th>USNAV</th>
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<th>USCG</th>
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<td>employ with their District Attorneys or prosecutors when founding offenses and effecting arrest warrants.</td>
<td>determine whether sexual assault allegations are considered substantiated or founded. It is AFOSI's position that having AFOSI personnel render such an opinion presents an inappropriate conflict with the requirement to conduct objective and impartial investigations. AFOSI's Standards of Professional Conduct specifically require agents to remain objective and unbiased in their investigation and reporting of investigative information. AFOSI further believes having criminal investigators render an opinion regarding substantiated/founded or unsubstantiated/unfounded is contrary to the requirement</td>
<td>complete, the case is forwarded to the accused’s commander. In accordance with Secretary of Defense policy, the initial disposition decision for reports of rape, sexual assault, forcible sodomy, and attempts to commit these offenses must be made by Sexual Assault Initial Disposition Authorities (SA-IDAs), who are Navy Captains (pay grade O-6) or above designated as Special Court-Martial Convening Authorities. If the accused’s commander is not an SA-IDA, the commander must forward the case to the appropriate SA-IDA in the chain of command for the initial disposition decision. SA-IDAs must</td>
<td>Convening Authorities (SPCMCA). The SA-IDAs consult with staff judge advocates (SJA) and receive advice from them relating to military justice matters. In addition, the SA-IDA will receive advice from the applicable Region Legal Service Office (RLSO). As NCIS fills the role of a neutral fact-finding and investigative body, placing the determination decision on them could compromise their mission, impede the case investigation or raise questions of partiality.</td>
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<td>Issue</td>
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<td>guidance prescribed by the Council of the Inspectors General on Integrity and Efficiency, Quality Standards for Investigations. These Standards specifically call for investigators to “…not allow conjecture, unsubstantiated opinion, bias, or personal observations or conclusions …”</td>
<td>consult with a judge advocate prior to making disposition decisions, ensuring that appropriate legal considerations for these major offenses are fully evaluated and balanced with good order and discipline. Having received legal advice from a trained and experienced staff judge advocate and/or prosecutor, based on the nature of the offenses and an analysis of the evidence available, the SA-IDA may recommend that the suspect face charges at a general court-martial. The SA-IDA also has the option, when appropriate, to send charges to a special court-martial, summary court-martial, or non-judicial punishment and may also process the suspect for administrative</td>
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<td>Finally, in an August 6, 2013 Memorandum to senior DoD and Services’ senior leaders, the Secretary of Defense emphasized commanders must “… base their decision [in matters of military justice] on their independent judgment.” Having AFOSI investigators convey judgment as to whether an allegation is substantiated/founded or</td>
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<th>Issue</th>
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<td>unsubstantiated/unfounded could be prejudicial to a commander forming his or her independent judgment and, as such, at variance with SECDEF’s direction.</td>
<td>separation. If the SA-IDA does not recommend general court-martial, the SA-IDA can also return the case to the suspect's commanding officer for disposition deemed appropriate by that commanding officer, based on the nature of the offenses and an analysis of the evidence available, including special court-martial, summary court-martial, non-judicial punishment, or administrative separation processing.</td>
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## APPENDIX I
### Special Victim Counsel Comparison Chart

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<tr>
<th>Issue</th>
<th>DOD/FY 14 NDAA</th>
<th>USARMY</th>
<th>USAF</th>
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<tr>
<td>Military Special Victim Counsel Rules/Regs</td>
<td>Secretary of Defense (DTM), Sexual Assault Prevention and Response, 14 August 2013</td>
<td>Office of The Judge Advocate General Policy Memorandum #14-01, Special Victim Counsel, 1 November 2013</td>
<td>Air Force Special Victims’ Counsel Program Rules of Practice and Procedure, 1 July 2013 (RFI Q29 Tab 9)</td>
<td>Navy Victims' Legal Manual is still in draft form and not yet released.</td>
<td>MCO P5800.16A Ch 7, LEGADMINMAN, The Marine Corps Victims’ Legal Counsel Organization, Chapter 6, 10 Feb 14</td>
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<td>Number of SVCs</td>
<td>Not addressed in NDAA</td>
<td>67 SVCs trained - 52 Active Counsel, 13 ARNG, 2 Reserve Component USA RFI 4(a) (Nov. 5, 2013)</td>
<td>24 SVCs and 10 paralegals Summer 2014 – 29 SVCs and 10 paralegals USAF RFI 4(a) (Nov. 5, 2013); see also USAF SVC Rules of Practice and Procedure, Attachment 1, (July 1, 2013); see also Col Dawn Hankins, USAF, Testimony</td>
<td>9 currently trained and in place USN RFI 4(a) (Nov. 5, 2013) 18 active component judge advocates are assigned to the VLCP. 11 reservists are assigned as Navy VLC on ADSW orders for at least one year. There are no</td>
<td>The Marine Corps will re-code 9 judge advocate billets, and add one colonel (O-6/4402) and five majors (1 O-4/4402 and 4 O-4/4409s). USMC RFI 4(d) (Nov. 5, 2013)</td>
<td>14 active duty SVCs qualified and designated as SVC. This represents 10% of USCG active duty JAs in legal assignments. USCG RFI 4(a) (Nov. 5, 2013) Several new military and civilian positions have been authorized,</td>
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<td>Issue</td>
<td>DOD/FY 14 NDAA</td>
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<td>Caseload</td>
<td>Not addressed in NDAA</td>
<td>Information not provided in RFI 4</td>
<td>534 clients over 1st 9 months of program. 409 clients at 5 Nov 13 USAF RFI 4(d) (Nov. 5, 2013)</td>
<td>Information not provided in RFI 4</td>
<td>Information not provided in RFI 4</td>
<td>Information not provided in RFI 4</td>
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<td>8 Nov 13, p. 140, 143.</td>
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<td>Civilians attorneys performing VLC duties</td>
<td>USN RFI 4(f) (Nov. 5, 2013)</td>
<td>Proposed steady-state VLC Program Manning is 30 JAs (1 O-6 Chief of Staff, 4 O-4 Senior VLCs, and 25 LT VLCs)</td>
<td>USN RFI 4(d) (Nov. 5, 2013); see also, CAPT Karen Fischer-Anderson, USN, Testimony, 8 Nov 13, p.128-129, 166-167.</td>
<td>Including administrative support, junior and senior legal staff and management staff positions.</td>
<td>Permanent staff is expected to be in place by summer 2014.</td>
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<td>30 JAs</td>
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<td>1 O-6 Chief of Staff</td>
<td>4 O-4 Senior VLCs</td>
<td>25 LT VLCs</td>
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<td>Issue</td>
<td>DOD/FY 14 NDAA</td>
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<td>SVC – Rank/GS Level</td>
<td>Not addressed in NDAA</td>
<td>Active Army Judge Advocates USA RFI 4(f) (Nov. 5, 2013)</td>
<td>Not addressed in RFI 4 O-3 – Captains USAF SVC Rules of Practice and Procedure, Attachment 1, (July 1, 2013)</td>
<td>VLC rank levels range from Lieutenants (O-3) to Commanders (O-5), plus a Captain (O-6) as Chief of Staff. USN RFI 4(f) (Nov. 5, 2013)</td>
<td>One colonel (O-6/4402) majors (O-4) captains (O-3) USMC RFI 4(d) (Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov 13, p. 121. USCG RFI 4(f) (Nov. 5, 2013)</td>
<td>Currently, all SVCs are: LTs (O-3) or LCDRs (O-4) USCG RFI 4(f) (Nov. 5, 2013)</td>
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<tr>
<td>What are victim attorneys called?</td>
<td>FY14NDAA 1716(a)(1)(a) The Secretary concerned shall designate counsel (to be known as ‘Special Victims’ Counsel’)</td>
<td>Special Victim Counsel USA RFI 4(a) (Nov. 5, 2013)</td>
<td>Special Victims’ Counsel USAF RFI 4(a) (Nov. 5, 2013)</td>
<td>Victim Legal Counsel USN RFI 4(a) (Nov. 5, 2013)</td>
<td>Victim Legal Counsel USMC RFI 4(a) (Nov. 5, 2013)</td>
<td>Special Victim Counsel USCG RFI 4(a) (Nov. 5, 2013)</td>
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<td>Full-time or</td>
<td>Not addressed in</td>
<td>Not addressed in</td>
<td>Full-time</td>
<td>Not addressed in</td>
<td>Not addressed in</td>
<td>Collateral Duty</td>
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<td>Issue</td>
<td>DOD/FY 14 NDAA</td>
<td>USARMY</td>
<td>USAF</td>
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<td>collateral duty</td>
<td>NDAA</td>
<td>RFI 4</td>
<td>USAF RFI 4(a) (Nov. 5, 2013)</td>
<td>RFI 4</td>
<td>RFI 4</td>
<td>initially – will move to full-time in FY14</td>
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<td>Can be part-time</td>
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<td>USCG RFI 4(a) (Nov. 5, 2013)</td>
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<td>USAF SVC Rules of Practice and Procedure, Rule 9, (July 1, 2013)</td>
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<td>Locations</td>
<td>Not addressed in NDAA</td>
<td>Active Counsel located at 32 installations</td>
<td>22 installations world-wide</td>
<td>15 Installations</td>
<td>Four (4) Regional Victims’ Legal Counsel Offices have been established at MCB Camp Lejeune, MCB Camp Pendleton, MCB Camp Butler, and MCB Quantico.</td>
<td>Not addressed in RFI 4</td>
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<td>Those installations without a resident SVC have an identified installation for SVC support.</td>
<td>Summer 2014 - 19 locations world-wide.</td>
<td>U.S. Naval Academy, Oceana, Mayport, Great Lakes, Coronado, San Diego, Bremerton, Pearl Harbor and Guam, Norfolk, Pensacola, Gulfport, Everett and Rota, Spain. Followed by Groton, Jacksonville, Lemoore, Ventura and Bahrain.</td>
<td>MCB Kaneohe Bay, HI; MCAS Miramar, CA; MCAGCC 29 Palms, CA; and MCRD Parris Island, SC,</td>
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### SPECIAL VICTIMS’ COUNSEL COMPARISON CHART

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<tr>
<th>Issue</th>
<th>DOD/FY 14 NDAA</th>
<th>US ARMY</th>
<th>USAF</th>
<th>US NAV</th>
<th>USMC</th>
<th>USCG</th>
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**FY14 NDAA 1716(a)(1)(f)**

Individuals eligible for military legal assistance regardless of whether unrestricted or restricted report of SA.

Individual shall be informed that the assistance of a SVC may be declined in whole or in part. Declining assistance does not

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<th>SVC –Who is eligible for services?</th>
<th>DOD/FY 14 NDAA</th>
<th>US ARMY</th>
<th>USAF</th>
<th>US NAV</th>
<th>USMC</th>
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<tr>
<td><strong>FY14 NDAA 1716(a)(1)(f)</strong></td>
<td>Not addressed in RFI 4 (Nov. 5, 2013); see also, COL James McKee, USA, Testimony, 8 Nov 13, p112.</td>
<td>USA RFI 4(a) into 10 regions worldwide, with each region covering 4 to 12 different installations. Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp. 144-145.</td>
<td>The goal is to physically locate VLC at or near Fleet &amp; Family Service Centers. All VLC have private offices. Eight VLC are located near or with SARC/VAs. USN RFI 4(a) (Nov. 5, 2013) ; see also, CAPT Karen Fischer-Anderson, USN, Testimony, 8 Nov 13, pp.132-133.</td>
<td>Not addressed in RFI 4</td>
<td>Not addressed in RFI 4 (Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov 13, pp. 120-121,127.</td>
<td>Not addressed in RFI 4</td>
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- **All active duty, Army Reserve, ARNG victims who 1) report they are victims of SA under UCMJ and 2) Cdr has jurisdiction and 3) victim is in active status at time of offense.**
  - Army members who report they are victim of SA under state and federal laws when alleged
  - All active duty, AF Reserve, ANG victims who 1) report they are victims of SA under state and federal laws when alleged

- **Victims of sexual assault and other crimes who are:**
  - Active duty military members and reservists on active duty, and all other eligible victims as resources permit.
  - Services also provided to adult dependents of AD service members, as determined by eligibility for Legal Assistance Services.

- **Coast Guard active duty and Reserve members who are in active or drilling status at the time of the offense are eligible, as well as family members who are eligible for the legal assistance program.**

- **USMC RFI 4(a) (Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov 13, pp. 120-121,127.**

- **USA RFI 4(b)**

- **CAPT Sloan Tyler, USCG, Testimony, 8 Nov 13, p.138.**
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<th>Issue</th>
<th>DOD/FY 14/NDAA</th>
<th>USARMY</th>
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<td>perpetrator is civilian or unknown perpetrator.</td>
<td>UCMJ and 2) AF Cdr has jurisdiction and 3) victim is in active status at time of offense.</td>
<td>AF members who report they are victim of SA under state and federal laws when alleged perpetrator is civilian or unknown perpetrator.</td>
<td>AF members who report they are victim of SA under state and federal laws when alleged perpetrator is civilian or unknown perpetrator.</td>
<td>(Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov 13, pp. 122-123, 179.</td>
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<td>If SA prior to military service, victim NOT eligible for SVC.</td>
<td>If SA prior to military service, victim NOT eligible for SVC.</td>
<td>AF members who report they are victim of SA under state and federal laws when alleged perpetrator is civilian or unknown perpetrator.</td>
<td>If SA prior to military service, victim NOT eligible for SVC.</td>
<td>A victim is a person who alleges to have suffered physical, emotional, or pecuniary harm as a result of a crime in violation of the Uniform Code of Military Justice.</td>
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<td>Adult dependents of Active Duty members if 1) Cdr has jurisdiction and 2) eligible dependent at time of offense. Restricted and unrestricted.</td>
<td>Adult dependents of Active Duty members if 1) report SA, 2) AF Cdr has jurisdiction and 3) eligible dependent at time of offense. Restricted and unrestricted.</td>
<td>Adult dependents of Active Duty members if 1) report SA, 2) AF Cdr has jurisdiction and 3) eligible dependent at time of offense. Restricted and unrestricted.</td>
<td>Adult dependents of Active Duty members if 1) report SA, 2) AF Cdr has jurisdiction and 3) eligible dependent at time of offense. Restricted and unrestricted.</td>
<td>USMC RFI 4(b) (Nov. 5, 2013), see also LEGADMINMAN 5800.16A Ch 7, 6003.1, (10 Feb 14)</td>
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<td>Victims in other Services &amp; their dependents if perpetrator is Army member in title 10 status. Restricted and unrestricted.</td>
<td>Victims in other Services &amp; their dependents if perpetrator is AF member in title 10 status.</td>
<td>Victims in other Services &amp; their dependents if perpetrator is AF member in title 10 status.</td>
<td>Victims in other Services &amp; their dependents if perpetrator is AF member in title 10 status.</td>
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<td>All entry-level status Army members who are alleged to have been involved in an unprofessional relationship with BMT faculty or staff.</td>
<td>All entry-level status Army members who are alleged to have been involved in an unprofessional relationship with BMT faculty or staff.</td>
<td>All entry-level status Army members who are alleged to have been involved in an unprofessional relationship with BMT faculty or staff.</td>
<td>All entry-level status Army members who are alleged to have been involved in an unprofessional relationship with BMT faculty or staff.</td>
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A victim is a person who alleges to have suffered physical, emotional, or pecuniary harm as a result of a crime in violation of the Uniform Code of Military Justice.
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<th>Issue</th>
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<tr>
<td>All other victims (excluding minors) if Cdr has jurisdiction and eligible under AR 27-3. Restricted and unrestricted.</td>
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<td>status AF who are alleged to have been involved in an unprofessional relationship with BMT faculty or staff.</td>
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<td>Deployed victims – in-country SVCs available.</td>
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<td>SVC Program Manager, OTJAG, has final authority on determination of eligibility and may grant exceptions on case-by-case basis consistent with 10 U.S.C. 1044 and 1056(b)</td>
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<td>USA SVC Handbook, Ch 1, (Nov 1, 2013); see also, COL James McKee, USA, Testimony, 8 Nov 13, p.179.</td>
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<td>All other victims (excluding minors) if 1) Unrestricted report 2) AF Cdr has jurisdiction and eligible under AFI 51-504.</td>
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<td>Deployed victims – eligible through reach-back capability.</td>
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<td>Chief, SVC Div, AFLOA/CLSV, has final authority on determination of eligibility and may grant exceptions on case-by-case basis consistent with 10 U.S.C. 1044 and 1056(b)</td>
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<td>USAF SVC Charter Part C, Note 1, (1 Jul 13); USAF SVC Rules of Practice</td>
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<td>SVC - Reporting Structure</td>
<td>FY14NDAA 1716(a)(1)(e)</td>
<td>SVC reports directly to Chief of Legal Assistance.</td>
<td>O-6 SVC Division Chief (HQ) Civilian Deputy (GS-14) (HQ)</td>
<td>The VLC program is an independent line of operation separate from the prosecution and the convening authority.</td>
<td>VLC reports to Officer in Charge VLCO (OIC) (O-6 experienced active duty Marine judge advocate)</td>
<td>SVCs Report to The Office of Special Victim's Counsel (OSVC) at Coast Guard HQ. USCG RFI 4(f) (Nov. 5, 2013)</td>
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<td>Service TJAGS are responsible for the establishment and supervision of individuals designated as Special Victims’ Counsel.</td>
<td>SVC Program manager (PM) has technical supervision over all Army SVCs.</td>
<td>SVC Reports directly to the Division Chief.</td>
<td>Under independent chain of command in AFLOA, Special Victims' Counsel Division</td>
<td>VLC will report to Commander, Naval Legal Service Command via their OIC, Deputy Chief of Staff, and Chief of Staff.</td>
<td>The Director of the OSVC is currently a CAPT (06) who reports to the Deputy Judge Advocate General of the Coast Guard (SES). USCG RFI 4(f) (Nov. 5, 2013)</td>
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<td>USAF RFI 4(d) (Nov. 5, 2013); See also, COL James McKee, USA, Testimony, 8 Nov 13, pp. 108-109, 184.</td>
<td>All SVCs, while serving in that capacity, are supervised professionally by AFLOA/CLSV, and for purposes of covered collateral misconduct, AFLOA/JAJD. For the purposes of SVC representation, SVCs operate independently from the command and supervision chains.</td>
<td>USN RFI 4(d) (Nov. 5, 2013) ; see also, CAPT Karen Fischer-Anderson, USN, Testimony, 8 Nov 13, p.128-129.</td>
<td>Establishment of the VLCP necessitated creation of a third echelon III command under CNLSC.</td>
<td>OIC reports to SJA to the Commandant of the Marine Corps (SJA to CMC)</td>
<td>Much like the Marine Corps Defense Services Organization, the VLCO supervisory and reporting chain is autonomous from, and independent of, convening authorities, OICs, and staff judge advocates. USMC RFI 4(a) (Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov 13, pp.118-121.</td>
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<td>and supervision for professional responsibility per AR 27-26. Functional and policy oversight of SVCs will be provided by the SVCP Manager, OTJAG. SJAs will make the initial appointment to the position of SVC. In general, CLAs will make individual appointments of SVCs to victims. A tracking system will be used to track SVCs and their workload. SJAs that host SVCs will host SVC within the legal assistance office and ensure adequate administrative support for the SVC.</td>
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<td>that govern the Air Force units and locations that SVCs support. USAF SVC Charter, Part A (3) (1 Jul 13) Installation SJAs will provide professional oversight of part-time SVCs while performing non-SVC duties. AFLOA/CLSV has oversight over the detailing process. Installation SJAs that host SVCs will provide appropriate office space. A tracking system will be used to track SVCs and their workload. USAF SVC Rules of Practice and Procedure, Rule 9, (July 1, 2013)</td>
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<td>attached to Legal Services Support Sections (LSSS). Marine VLC are under the operational control and supervision of, and responsible and accountable to, the OIC, VLCO and the responsible Regional Victims’ Legal Counsel (RVLC) for the delivery of VLC services. LEGADMINMAN, 6001.2, Ch 1(10 Feb 14)</td>
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## SPECIAL VICTIMS’ COUNSEL COMPARISON CHART

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<td>SVC - Screening and Selection Process</td>
<td>FY14NDAA 1716(a)(1)(d)</td>
<td>USA SVC Handbook, Ch 9, (Nov 1, 2013)</td>
<td>The SVC Program Manager reports directly to the Assistant JAG for Military, Legal and Operations, OTJAG. SVCPM also coordinates with the HQDA G-1 COL James McKee, USA, Testimony, 8 Nov 13, p 106.</td>
<td>Selected by Staff Judge Advocates based on their military justice experience, sound judgment, and their maturity to represent the victims of sexual assault.</td>
<td>Active duty member certified as trial counsel (requires graduation from the Judge Advocate Staff Officer Course, serving proficiently as trial counsel in courts-martial, and being recommended for certification by their (SJA) and a military judge).</td>
<td>Criteria for selection was based on desire to be VLC, experience level, professional maturity, people skills and all had to be professionally recommended.</td>
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<td>support the Army National Guard and the U.S. Army Reserve. SVCs will not be civilian attorneys. USA RFI 4(f) (Nov. 5, 2013)</td>
<td>successfully complete a TJAG-approved SVC course. The experience level of SVCs is slightly less, but comparable to, the experience level of JAGs entering Area Defense Counsel (ADC) positions, both in terms of number of assignments, time in the JAG Corps, and number of courts-martial tried as JAGs. Both require the level of maturity and experience necessary to be able to independently manage an office, represent clients, and zealously advocate to commanders and convening authorities, with supervision and oversight that is geographically separated.</td>
<td>more senior folks have SJA experience. Interviews were conducted and TJAG personally approved every candidate. After completion of training, all VLC were certified as Victims’ Legal Counsel by the Judge Advocate General. USN RFI 4(f) (Nov. 5, 2013) ; see also, CAPT Karen Fischer-Anderson, USN, Testimony, 8 Nov 13, pp. 130-131.</td>
<td>of 4409 (Master of Criminal Law). VLC and AVLC must be active duty Marine judge advocates, serving in or selected to the grade of captain (O-3), with the NMOS of 4409. VLCs must have at least six months of military justice experience, unless waived by the OIC, VLCO.</td>
<td>Currently, all SVCs are LTs (03) or LCDRs (04). USCG RFI 4(f) (Nov. 5, 2013) SVCs are military attorneys who receive specialized training to provide support to sexual assault victims. CAPT Sloan Tyler, USCG, Testimony, 8 Nov 13, pp.135-136.</td>
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<td>TJAG of the armed force in which the JA is a member or by which the civilian attorney is employed. COL James McKee, USA, Testimony, 8 Nov 13, p 108, 184.</td>
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<td>SVC Training Requirements</td>
<td>FY14NDAA 1716(b)</td>
<td>Not specified in RFI 4(f)</td>
<td>Graduation from Judge Advocate Staff Officer Course TJAG approved SVC course USAF RFI 4(f) (Nov. 5, 2013)</td>
<td>Initial training of 20 Navy VLC was provided by the Air Force. One Navy VLC attended the Army course.</td>
<td>All VLC are required to attend training approved by the SJA to CMC. Must attend the Air Force Special Victims’ Counsel Course at Maxwell AFB, Montgomery, AL. (^1)</td>
<td>All SVCs receive specialized training as Coast Guard Victim Advocates and are certified as such. Coast Guard SVCs have attended a variety of specialized training programs provided by our sister services.</td>
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1 Marine Corps RFI 4a (Nov. 5, 2013)

USAFTJAG approved SVC course USAF RFI 4(f) (Nov. 5, 2013) 

\(\text{(criminal law)}\) 

Primary duty is training, mentoring, and supervising VLCs

Auxiliary Victims’ Legal Counsel (AVLC) a JA who may be detailed to meet high caseloads or when there is a conflict of interest

LEGADMINMAN 5800.16A Ch 7, 6002.4e, (10 Feb 14)

Veterinarian civilian counsel must possess the same qualifications as civilian counsel representing an accused. SVCs and civilian counsel

SVCs will be in initial training of 20 Navy VLC was provided by the Air Force. One Navy VLC attended the Army course.

The Navy is creating its own VLC training course modeled after the Air Force.

Plan to provide Navy VLC as instructors at the Air Force training

Additionally, the VLCO has sent representatives to observe the Army’s special victims’

USCG RFI 4(f) (Nov. 5, 2013)
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<td>need not be detailed to a court-martial, but will be required to state their qualifications on the record as directed by the Trial Judiciary. JAGs selected to serve as SVCs must successfully complete a TJAG approved SVC course before assuming duty. USA SVC Handbook, Ch 8, (1 Nov 13) The Army has established a JAG university presence, a legal assistance military suite web site for collaboration and a document library where attorneys can share forms, briefs, and other documents COL James McKee, USA, Testimony, 8 Nov 13, p114.</td>
<td>need not be detailed to a court-martial, but will be required to state their qualifications on the record as directed by the Trial Judiciary. JAGs selected to serve as SVCs must successfully complete a TJAG approved SVC course before assuming duty. USA SVC Handbook, Ch 8, (1 Nov 13) The Army has established a JAG university presence, a legal assistance military suite web site for collaboration and a document library where attorneys can share forms, briefs, and other documents COL James McKee, USA, Testimony, 8 Nov 13, p114.</td>
<td>non-deployable status while serving as SVC. USAF SVC Rules of Practice and Procedure, Rule 8, (July 1, 2013) and for Navy specific breakouts USN RFI 4(a) (Nov. 5, 2013)</td>
<td>non-deployable status while serving as SVC. USAF SVC Rules of Practice and Procedure, Rule 8, (July 1, 2013) and for Navy specific breakouts USN RFI 4(a) (Nov. 5, 2013)</td>
<td>counsel course in Charlottesville, VA USMC RFI 4(f) (Nov. 5, 2013) A Marine VLCs ability, training, and experience should match the complexity of the case. Supervisory attorneys will only assign counsel who are properly qualified to handle a particular case. LEGADMINMAN 5800.16A Ch 7, 6001.5f, (10 Feb 14)</td>
<td>counsel course in Charlottesville, VA USMC RFI 4(f) (Nov. 5, 2013) A Marine VLCs ability, training, and experience should match the complexity of the case. Supervisory attorneys will only assign counsel who are properly qualified to handle a particular case. LEGADMINMAN 5800.16A Ch 7, 6001.5f, (10 Feb 14)</td>
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<td>SVC-Mission &amp; Scope of representation</td>
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<td>FY14NDAA §1716 (a)(1)(a)</td>
<td>The Secretary concerned shall designate legal counsel (to be known as ‘Special Victims’ Counsel’) for the purpose of providing legal assistance to an individual eligible for military legal assistance under section 1044 of this title who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.</td>
<td>An SVC’s role is to zealously represent the victim of a sexual assault. SVC will represent victim’s best interests even if it does not align with those of the U. S. or those of the accused.</td>
<td>Not provided in AF RFI 4</td>
<td>Not specified in RFI 4</td>
<td>VLC will provide confidential legal assistance to eligible victims of crime in place of legal assistance attorneys.</td>
<td>Not specified in RFI 4</td>
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<td>Purpose of SVC Program is to: Provide advice – develop victims’ understanding of the investigatory and military justice processes; Provide advocacy – protect the rights afforded to victims in the military justice system; Empower victims by removing barriers to their full participation in the military justice process USAF SVC Rules of Practice and Procedure, p2, (1 Jul 13)</td>
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<td>The goal of the program is to provide appropriate legal support to victims of sexual assaults and to ensure the member understands their rights in the legal process and feels respected and included.</td>
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<td>Representation in civilian courts is not authorized under this program.</td>
<td>SVC may provide assistance to a victim with respect to state and federal victim compensation and restitution programs.</td>
<td>SVC may provide assistance to a victim with respect to state and federal victim</td>
<td>Exactly where the SVC program will fit within the entire USCG legal program is still being deliberated.</td>
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<td>Representation in civilian courts is not authorized under this program.</td>
<td>SVC may generally</td>
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<td>SVC will refer victims to legal assistance office for traditional legal assistance services.</td>
<td>SVCs are military attorneys who receive specialized training to provide support to sexual assault victims.</td>
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<td>USMC RFI 4(b) (Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov</td>
<td>SVCs assist the member in negotiating the legal process, thereby reducing the anxiety associated with</td>
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<td>advocate a victim’s interests off-base to civilian prosecutors, law enforcement agencies, and other civilian government agencies. SVCs may not advocate a victim’s interests to the Dept of Veterans Affairs or represent a victim in the disability evaluation system. USA SVC Handbook, Ch 6, (1 Nov 13) An SVC may make a statement to the media that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or client. Statement shall be limited to such information as is compensation and restitution programs. SVC may generally advocate a victim’s interests off-base to civilian prosecutors, law enforcement agencies, and other civilian government agencies. USAF SVC Rules of Practice and Procedure, Rule 6, (1 Jul 13) SVCs may advocate a victim’s interests to the media consistent with the AF Rules of Professional Conduct, AF Standards for Criminal Justice, the Uniform Rules of Practice before AF Courts-Martial and SVC’s governing state rules of professional conduct. USAF SVC Rules 13, p. 123., LEGADMINMAN 5800.16A Ch 7, 6004, (10 Feb 14)</td>
<td>being a witness in the military justice system. SVC ensures the victim understands their rights and feels respected and included in the process. CAPT Sloan Tyler, USCG, Testimony, 8 Nov 13, pp.135-136.</td>
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<td>SVC – Pre-trial role</td>
<td>FY14NDAA §1716 (a)(1)(b)</td>
<td>SVC authorized to provide legal consultation regarding:</td>
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<td>Collateral misconduct related to the SA and the victim’s right to seek military defense services.</td>
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<td>The VWAP Program including:</td>
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<td>The rights and benefits afforded the victim.</td>
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<td>The role of the VWL and what privileges do or do not exist between the victim and the VWL.</td>
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<td>Accompany and advise the victim during interviews, examinations, and hearings</td>
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<td>Referral of the victim to the U.S. Army Trial Defense Service (TDS) for collateral misconduct, if necessary; Advocate the victim’s interest with government counsel and commanders on disposition options; Advise the victim on collateral civil issues arising from the crime; Provide the victim with legal assistance services as needed; Answer any questions that the victim may observe or participate in proceedings the victim may observe or participate in</td>
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<td>Services to Military victims and DoD Agencies:</td>
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<td>Civil legal matters (may include traditional legal assistance), Article 32, Pretrial Confinement Hearings, Depositions, Investigations Courts of Inquiry Article 138, notaries and administrative oaths</td>
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<td>Collateral misconduct with a direct nexus to the SA</td>
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<td>Submit FOIA requests for client</td>
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<td>Provide referrals for Board of</td>
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<td>Will advise victim of rights afforded under VWAP</td>
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<td>Will advise on role of the VA and any privileges between victim and VA</td>
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<td>Advise of victims duties to court and responsibility to testify</td>
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<td>Advise on proceedings the victim may observe or participate in</td>
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<td>Advise on collateral misconduct and refer to defense services</td>
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<td>Advise on services available for medical support, including emotional</td>
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<td>Answer any questions that the victim may observe or participate in</td>
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<td>Will provide confidential legal assistance to eligible victims of crime in place of legal assistance attorneys.</td>
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<td>Will fully advise victims of their rights in the military justice process</td>
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<td>When detailed, will represent crime victims at military justice proceedings, in accordance with statute, regulation, and case law.</td>
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<td>Will refer the victim, when appropriate, to the Marine Corps Defense Services Organization for</td>
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<td>SVCs provide assistance to victims in answering questions about the military justice process,</td>
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<td>Inform victim of availability of other victim support services, Engage and interact with VAs, SARCs, trial and defense counsel and commands to help the victim protect his or her interests.</td>
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<td>SVC services are provided primarily through telephonic communications.</td>
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<td>When appropriate, attend military justice proceedings (including Article</td>
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<td>The nature of communication made to the WVL in comparison to that made to a SVC or legal assistance attorney under § 1044 of this title</td>
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<td>The responsibilities and support provided to victim by the SARC, a unit or installation VA or (FAP)VA including any privileges that exist between those persons and the victim.</td>
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<td>The potential for civil litigation against other parties (other than DoD)</td>
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<td>The military justice system, including:</td>
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<td>The roles and responsibilities of the trial counsel, the defense counsel</td>
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**SVC** will **NOT** assist with: Preparing IG complaints, Military EO complaints, Congressional complaints, Or similar matters

**SVC MAY advise** client that these avenues exist and may review contents of complaint to ensure client’s rights not and mental health counseling

**SVC will NOT assist with:** Preparing IG complaints, Military EO complaints, Congressional complaints, Or similar matters

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<td>and investigators. Any proceedings of the military justice process in which victim may observe.</td>
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<td>The Government’s authority to compel cooperation and testimony.</td>
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<td>The victim’s responsibility to testify and other duties to the court.</td>
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<td>Accompanying the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.</td>
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<td>Eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and</td>
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<td>SVC may advocate a victim’s interests to any actor in the military justice process, including, but not limited to, Commanders, convening authorities, SJA, TC, Defense Counsel, and to extent authorized by MCM, military judges regarding: Victim’s right to consult with the government and provide their views regarding, decisions not to prefer charges, dismissal of charges, pretrial restraint or confinement, pretrial agreement negotiations, plea negotiations, discharge or resignation in lieu of trial by court-martial and scheduling of judicial proceedings jeopardized with respect to the matter that led to original representation.</td>
<td>Testimony, 8 Nov 13, pp110-111</td>
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<td>Services to Civilian agencies: US civilian criminal jurisdiction advice foreign criminal jurisdiction advice, civil legal matters.</td>
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<td>USAF RFI 4(b) (Nov. 5, 2013); See also USAF Charter Part B(2)(a) SVC may advocate a victim’s interests to any actor in the military justice process, including, but not limited to, Commanders, convening authorities, SJA, TC, Defense Counsel, and to extent authorized by MCM, military judges regarding: Victim’s right to consult with the government and provide their views</td>
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<td>investigation officers, pretrial confinement initial review officers and military judges.</td>
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<td>If requested and available, will attend interviews with investigators, trial counsel and defense counsel.</td>
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<td>Will represent the victim in the military justice proceeding such as an Article 32 pretrial investigation – where victim has opportunity to be present and heard. VLC will present facts and legal argument through written pleadings and oral argument if permitted by the court.</td>
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<td>VLC will attend all military justice proceedings where victim testifies.</td>
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<td>available for emotional and mental health counseling and other medical services.</td>
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<td>The availability of MPOs and CROs. Eligibility for and potential benefits available through the transitional compensation programs.</td>
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<td>Other rights or benefits provided to victims under law or regulation, to include future legislation, DODDs, DODIs, SecNavInst, MCOs, etc.</td>
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<td>LEGADMINMAN 5800.16A Ch 7, 6001.5f, (10 Feb 14)</td>
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### SPECIAL VICTIMS’ COUNSEL COMPARISON CHART

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<td>other medical services.</td>
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<td>Legal consultation and assistance: In personal civil legal matters in accordance with § 1044 of this title. In any proceedings of the military justice process in which a victim can participate as a witness or other party. In understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders.</td>
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<td>In understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits found in section 1059 of this title and other State and Federal</td>
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<td>where victim is required or entitled to attend. Victim’s right to notification of all court-martial proceedings. In addition, victims will also be notified of the opportunity to provide input during the post-trial process and how to submit victim impact statements to the Army Clemency and Parole Board for consideration in clemency decisions. SVCs are permitted to attend all interviews of victim with investigators, TC and DC. At interviews, SVCs should ensure that the interviewer has an additional party present to reduce the likelihood that the SVC may be called later as a</td>
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<td>regarding, decisions not to prefer charges, dismissal of charges, pretrial restraint or confinement, pretrial agreement negotiations, plea negotiations, discharge or resignation in lieu of trial by court-martial and scheduling of judicial proceedings where victim is required or entitled to attend. Victim’s right to notification of all court-martial proceedings.</td>
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<td>Will assist the victim in obtaining information relevant to the case, including the status of the investigation and the status of the accused.</td>
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<td>Will assist and facilitate communication with trial counsel where the victim has a right to confer such as whether or not charges will be preferred, whether charges will be dismissed, or whether a pretrial agreement will be approved.</td>
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<td>Will provide basic legal assistance directly connected to the reported sexual assault. This includes notarizations and basic powers of attorney. If assistance is needed on more substantive legal assistance</td>
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USAF SVC Rules of Practice and Procedure, Rule 4.1., (1 Jul 13); see also Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp. 146-147.
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<td>victims’ compensation programs.</td>
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<td>Such other legal assistance as the SECDEF (or SECDHS) may authorize in the regulations prescribed under subsection (h).</td>
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<td>witness.</td>
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<td>USA SVC Handbook, Ch 4 (1 Nov 13)</td>
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<td>matters, the VLC will coordinate referral to the nearest Regional Legal Service Office.</td>
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<td>VLC will assist victims who believe they are being retaliated against by advising them of potential avenues of relief such as submitting an Article 1150 or Article 138 Complaint, requesting mast, or filing a Congressional complaint and reviewing any complaint submitted by victim.</td>
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<td>USN RFI 4(b) (Nov. 5, 2013)</td>
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<td>SVC - Role during court martial</td>
<td>Accompany and advise the victim</td>
<td>Advocacy during General and Special</td>
<td>VLC will attend a court-martial where</td>
<td>Not specified in RFI 4</td>
<td>Not specified in RFI 4</td>
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<td>SVC - Post-trial Role</td>
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<td>Assist the victim with post-trial submissions to include victim impact statements.</td>
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<td>Post-Trial - matters submitted to CA; Clemency and Parole Boards</td>
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<td>Not addressed in RFI 4</td>
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<td>USA RFI 4(b) (Nov. 5, 2013); See also, COL James McKee, USA, Testimony, 8 Nov 13, p178.</td>
<td></td>
<td>USAF RFI 4(b) (Nov. 5, 2013)</td>
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<td>Not specified in RFI 4</td>
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<td>Post-Trial assistance will be evaluated on a case-by-case basis.</td>
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<td>SVCs help victim submit victim impact statements during post-trial phase. USAF reg</td>
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<td>USMC RFI 4(b) (Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov 13, p178.</td>
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<td>SVC – Standing and Access to Information</td>
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<td>Victims, whether represented by a uniformed SVC or civilian counsel, are non-parties to a court-martial under RCM 103. MRE 412, 513, 514 afford victims a reasonable opportunity to attend and be heard at hearings concerning these rules. This includes argument and presentation of evidence by a SVC or victim’s civilian counsel (LRM v. Kastenberg 72 MJ 364 (C.A.A.F. 2013)). Presentation of evidence and argument by</td>
<td>USARMY: gives victims right to submit post-trial statement during clemency phase. Col Dawn Hankins, USAF, Testimony, 8 Nov 13, p.146.</td>
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<td>13, pp. 125-126, 188-189., LEGADMINMAN 5800.16A Ch 7, 6005, (10 Feb 14)</td>
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<td>counsel will not preclude a victim’s exercise of the opportunity to be heard through unsworn statements or testimony.</td>
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<td>TC and DC will serve SVC with copies of motions and responses (as well as accompanying documents) under MRE 412, 513, 514, filed by parties to the case.</td>
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<td>Any filings by SVCs must comply with the pretrial order from the military judge or Rules of Practice Before Army Courts-Martial if no such order.</td>
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<td>SVC’s right to access records is no greater than their client’s access rights.</td>
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<td>TC may, but is not required to, provide motions and other relevant information necessary in order for the victim’s opportunity to be heard to be meaningful.</td>
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<tr>
<td>SVCs have a right to records which is not greater than their client’s rights.</td>
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<td>USAF SVC Rules of Practice and Procedure, Rules 4.6 and 4.9, (1 Jul 13)</td>
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**Issue** | **DOD/FY 14 NDAA** | **USARMY** | **USAF** | **USNAV** | **USMC** | **USCG**
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required to disclose information and records to the SVC if requested under the “need to know’ exception to the Privacy Act. Such information is for SVC use only and may not be shared with the victim. USA SVC Handbook, Ch 4.5, 4.8, (1 Nov 13); see example, COL James McKee, USA, Testimony, 8 Nov 13, p113.

### When is a victim eligible for an SVC?

| FY14NDAA 1716(a)(1)(f) | Not addressed in RFI 4 | The first individual to make contact with the eligible victim (for example, SARC, Victim Advocate, FAP, military investigator, victim liaison, or legal office personnel) will inform the victim of the availability of SVC services, at any time. | Not addressed in RFI 4 | Upon seeking assistance from a (SARC), SAPR or FAP VA, military criminal investigator, victim/witness liaison or coordinator, or trial counsel, all eligible persons who assert direct physical, emotional, or pecuniary harm as a result of the commission of a sexual assault or
| Upon report of an alleged sex-related offense or at the time the victim seeks assistance from a SARC, SAPR VA, MCIO, VWL, a trial counsel, a healthcare provider, or any other personnel designated by the Secretary concerned | The VA or first individual to make contact with the eligible victim (for example, SARC, Victim Advocate, FAP, military investigator, victim liaison, or legal office personnel) will inform the victim of the availability of SVC services, at any time. | The first individual to make contact with the eligible victim (for example, SARC, Victim Advocate, FAP, military investigator, victim liaison, or legal office personnel) will inform the victim of the availability of SVC services, at any time. | The first individual to make contact with the eligible victim (for example, SARC, Victim Advocate, FAP, military investigator, victim liaison, or legal office personnel) will inform the victim of the availability of SVC services, at any time. | Upon seeking assistance from a (SARC), SAPR or FAP VA, military criminal investigator, victim/witness liaison or coordinator, or trial counsel, all eligible persons who assert direct physical, emotional, or pecuniary harm as a result of the commission of a sexual assault or
<p>| If a Coast Guard member reports that they are a victim of sexual assault, they are notified through the SARC that they are eligible for a SVC. | SVC contact info will be provided to the victim by the SARC and victim may initiate contact. | SVC contact info will be provided to the victim by the SARC and victim may initiate contact. | SVC contact info will be provided to the victim by the SARC and victim may initiate contact. | SVC contact info will be provided to the victim by the SARC and victim may initiate contact. | SVC contact info will be provided to the victim by the SARC and victim may initiate contact. |</p>
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<td>for purposes of this subsection</td>
<td>point in the process in accordance with 10 U.S.C. § 1565b, utilizing DD Form 2701, Initial Information for Victims and Witnesses of Crime. CLA appoints an SVC and they are to consult with victim within 24 hours of victim’s request for SVC. USA SVC Handbook, Ch 2 (Nov 1, 2013)</td>
<td>accordance with 10 U.S.C. § 1565b, utilizing DD Form 2701, Initial Information for Victims and Witnesses of Crime. Victims may also contact SVC offices directly to request SVC representation. SVC office will provide the name and contact info of the detailed SVC to the victim through the installation SJA or SARC/FAP w/in 48 hours of initial request. USAF RFI 4(c) (Nov. 5, 2013); see also AF SVC Rules of Practice and Procedure, Rule 2 (1 Jul 13); Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp. 191-192.</td>
<td>other crime, shall be informed of and given the opportunity to consult with a VLC. USN RFI 4(c) (Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov 13, p. 125, LEGADMINMAN 5800.16A Ch 7, 6003.3, (10 Feb 14)</td>
<td>CAPT Sloan Tyler, USCG, Testimony, 8 Nov 13, pp.138-139.</td>
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<td>SVC –Duration of Relationship</td>
<td>Not addressed in NDAA</td>
<td>Representation will end at initial action by the General Court-Martial Convening</td>
<td>In general, the SVC-client relationship terminates when case disposition is</td>
<td>The VLC-client relationship will continue until the victim releases the VLC; the legal</td>
<td>Complete when the convening authority has taken action in the case; unless the case is resolved</td>
<td>Not specified in RFI 4</td>
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CAPT Sloan Tyler, USCG, Testimony, 8 Nov 13, pp.138-139.
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<td>Authority (GCMCA) or similar disposition of the complaint or when the client determines services are no-longer required.</td>
<td>complete. For courts-martial, case disposition is considered complete at action or earlier termination of charges. The SVC-client relationship will be terminated after case disposition once all ongoing legal needs are met and upon agreement between the parties. Once an SVC is detailed to represent a victim of sexual assault, the SVC remains the counsel for all matters relating to the sexual assault, unless released by the victim. Transfer of counsel due to deployments, expedited transfers, and other unique circumstances will be coordinated by SJA through SVCP manager. Victim will be consulted throughout the process</td>
<td>aspects of the reported sexual assault are concluded (after a disposition decision is made by the appropriate Sexual Assault Initial Disposition Authority, or in the case of a court martial, after action is taken on the findings and sentence by the Convening Authority); or one of the parties transfers to a new duty station or terminates military service. The legal processing of the case remains at the original location, the original VLC will continue with the case unless the victim requests release of the original VLC.</td>
<td>sooner. Ends if VLC reassigned or discharged/retired (new VLC will be assigned) Post-trial assistance will be evaluated on a case-by-case basis.</td>
<td>USAF RFI 4(b) (Nov. 5, 2013); see also AF SVC Rules of Practice and Procedure, Rule 3.3 (1 Jul 13); Col.</td>
<td>USMC RFI 4(b) (Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov 13, pp. 125-126, 188-189., LEGADMINMAN 5800.16A Ch 7, 6005, (10 Feb 14)</td>
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<td><strong>How Long Will SVC serve in that position?</strong></td>
<td>Not addressed in NDAA</td>
<td>Not addressed in RFI 4</td>
<td>It is anticipated that JAGs will serve in an SVC assignment for 18-24 months. USAF RFI 4(f) (Nov. 5, 2013)</td>
<td>Not addressed in RFI 4</td>
<td>VLC expected to remain in the VLC billet for at least 18 months. USMC RFI 4(b) (Nov. 5, 2013); see also LEGADMINMAN 5800.16A Ch 7, 6007, (10 Feb 14)</td>
<td>Not addressed in RFI 4</td>
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<tr>
<td><strong>SVC – Collateral Misconduct</strong></td>
<td>Not addressed in NDAA</td>
<td>SVC will refer the victim to the U.S. Army Trial Defense Service (TDS) for collateral misconduct, if necessary. The SVC will inform the victim of the availability of TDS counsel and that it is Army policy that the SVC will not serve as counsel for purposes of collateral misconduct.</td>
<td>An SVC may represent the victim for covered collateral misconduct IAW the SVC Rules of Practice and Procedure, with the victim’s consent. Covered collateral misconduct is misconduct by victim that has a direct nexus to the sexual assault. USAF RFI 4(b) (Nov. 5, 2013); see If there is collateral misconduct connected to the sexual assault on the part of the victim, the VLC will provide limited personal representation advice regarding the alleged misconduct. VLC will explain the potential consequences of the collateral misconduct. With permission of the victim, the VLC VLC will refer victims to defense services for collateral misconduct. Victim should see VLC first and VLC will refer to TDS. USMC RFI 4(b) (Nov. 5, 2013); see also, Col Carol Joyce, USMC, Testimony, 8 Nov 13, p. 124, 181.</td>
<td></td>
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<td>Not addressed in RFI 4</td>
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<td>USA RFI 4(b) (Nov. 5, 2013); see also USA SVC Handbook, Ch 5 (1 Nov 13); see also COL James McKee, USA, Testimony, 8 Nov 13, pp.181-182.</td>
<td>also Col Dawn Hankins, USAF, Testimony, 8 Nov 13, p. 181. Only victims that are members of the AF are eligible for representation for collateral misconduct. Victims that are members of other Services may seek representation IAW their Service’s Military Defense programs. Representation is generally not authorized for collateral misconduct of civilian victims. SVC may represent victim as secondary counsel for covered collateral misconduct, unless victim chooses to have SVC for sole representation. AF SVC Rules of may advocate on the victim's behalf to military authorities regarding the collateral misconduct. If the victim faces administrative or disciplinary proceedings connected to the collateral misconduct, the VLC will work with the defense counsel to promote and protect the victim's rights and interests. USN RFI 4(b) (Nov. 5, 2013); see also CAPT Karen Fischer-Anderson, USN, Testimony, 8 Nov 13, p. 186.</td>
<td>collateral misconduct related to the crime of which he or she is a victim, VLC may advise victim on legal options, including seeking testimonial or transactional immunity, and provide referral to Defense Services if needed. LEGADMINMAN 5800.16A Ch 7, 6003.4, (10 Feb 14)</td>
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<td>Special Victims' Counsel Comparison Chart</td>
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<td>SVC – How integrated with existing legal assistance and SAPR VA services?</td>
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<td>The SVC will work in Legal Assistance Offices across the U.S. Army. Supervised by Installation Chief of Legal Services. They are required to coordinate with VWL, VA, unit VA, Special Victim Prosecutor, Trial Counsel, Trial Defense Counsel, SJA, CID and others on the services provided. Required to establish contact with local SARC/Victim Advocates and must establish procedures for expedited referral of victim-clients who request SVC services. SARC or FAP notifies CLA when victim requests</td>
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<td>The first individual to make contact with the eligible victim (for example, SARC, Victim Advocate, Family Advocacy Program, military investigator, victim liaison, or legal office personnel) will inform the victim of the availability of SVC services, as an extension of legal assistance for victims, utilizing DD Form 2701, Initial Information for Victims and Witnesses of Crime. Victims may also contact SVC offices directly to request SVC representation. SVCs work closely with VWAP personnel to ensure that all rights afforded to crime are available. VLC services are in addition to, and not in lieu of, other victim advocate services offered by the Navy. SARC will oversee the management of a sexual assault case. Victim advocates will facilitate access to service providers and be the day-to-day support person to ensure the victim knows what services are available. There may be overlap by Trial Counsel and VLC in providing necessary VWAP forms to the victim. VLC and TC will communicate early and often in a case to ensure each other.</td>
<td>Practice and Procedure, Rule 5.1, 5.3, (1 Jul 13)</td>
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<td>VLCs will provide confidential legal assistance to eligible victims of sexual assault and other crimes in place of legal assistance attorneys. The VLCO is a separate structure from that of Marine Corps Legal Assistance Offices. VLCs will provide confidential advice and counseling to eligible victims and will coordinate with the Legal Assistance Office should a victim need traditional legal assistance that is unrelated to the crime to which the client is a victim. VLC services will supplement, not replace, other victim services such as FAP, SAPR</td>
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<td>Integration is facilitated in part by the Special Victim's Counsel Working Group that supports the Office of Special Victim's Counsel (OSVC). The Working Group includes representatives of the office which directs Coast Guard legal Assistance services and representation in Physical Disability Evaluation System cases. That office and OSVC both report to the Deputy Judge Advocate General, in part to facilitate that coordination. In addition, one option under consideration for Final Operational Capability is</td>
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<td>SVC.</td>
<td>In each of these relationships, the SVC will work with those individuals to coordinate support for the victim and avoid duplication of efforts.</td>
<td>SVC.</td>
<td>SVCs also work closely with victim advocates to ensure that all mental and emotional needs of represented victims are being met. While there are overlapping responsibilities, the provision of services is a fully-integrated, holistic team approach to take care of victims of sexual assault.</td>
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<td>In each of these relationships, the SVC will work with those individuals to coordinate support for the victim and avoid duplication of efforts.</td>
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<td>Chiefs of Legal Assistance will assign each victim-client to an SVC.</td>
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<td>Conflicts checks will be run before SVCs are assigned or makes initial contact with the victim-client.</td>
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<td>counsel understands what has been provided to the victim in terms of legal forms and information.</td>
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<td>Program, Victim Advocates (VA), the (VWAP), and services provided by Chaplains and medical personnel. (SARC), SAPR or FAP VA, military criminal investigator, victim/witness liaison or coordinator, or trial counsel, must inform all eligible persons who assert direct physical, emotional, or pecuniary harm as a result of the commission of a sexual assault shall be informed of and given the opportunity to consult with a VLC.</td>
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<td>placing OSVC and the Director of Coast Guard legal Assistance within the same office.</td>
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<td>SVC services are closely coordinated with services provided by other Victim Advocates, SARC, chaplains and others. This coordination will continue in the FOC phase of operations.</td>
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| SVC –Cost and Resources required | Procedure, Rule 3.4-3.5, (1 Jul 13) | for the SVC Program Manager for the designation of an alternate SVC. 
USA RFI 4(c) (Nov. 5, 2013); See also USA SVC Handbook, Ch 3-4 and 3-5, (1 Nov 13) | SVC is the central person that victims use to be able to access all other services, whether medical care, mental health, issues with education, training problems, etc. 
Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp. 168-169. | For FY 2014, it is anticipated that the SVC Program will require $2.25M to operate. The cost of the program includes supplies and services; travel; education and training; and IT equipment. 
With the current caseload of 409 clients (534 clients over the life of the program over nine months) | Projected costs to support the VLC program: 
$5M per year in Manpower costs once the program evens out | VLCO requires: $150,000 for its operations and maintenance budget for FY14. 
$100,000 required to train and certify all VLCs and supporting personnel. | Not specified in RFI 4 |
| Because SVCs will work in the legal assistance offices, they will have access to paralegal and civilian support. 
CSA has authorized mobilization of 20 Reserve Component JAs to serve as backfill in some of the Legal assistance offices. 
At this time, required number of | | | | | | |
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<td>SVCs is unknown. TJAG has tasked SVC PM to gather data over the next 12 months to determine the required resources. USA RFI 4(d) (Nov. 5, 2013)</td>
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<td>anticipated increases in client demand, we expect a sustainable program to require 29 SVCs and 10 paralegals. The headquarters element for policy and management requires an O-6 Division Chief, a Civilian Deputy (GS-14), and an E-7. With a worldwide mission and span of control issues given the number of personnel numbers, we assess a need in the future for 3-5 supervisory O-4s (majors). The program also requires a civilian (GS-13) at our Judge Advocate General’s School to formalize continued legal education and training. USAF RFI 4(d) (Nov. 5, 2013)</td>
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<td>$300,000 initially for VLC travel There will be 30 judge advocates assigned to the VLCP including the Chief of Staff and ten active component E-5 YNs. USN RFI 4(d) (Nov. 5, 2013)</td>
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<td>Additional costs associated with VLC travel for courts-martial. USMC RFI 4(d) (Nov. 5, 2013)</td>
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<td>USMC decided to set up VLCO with active duty JAs rather than Reserves to force the JAG structure to adapt, and to push for increased JA billets. Col Carol Joyce, USMC, Testimony, 8 Nov 13, pp. 161-162. Requests for specific case-related funding submitted to the convening authority shall be considered and processed consistent with Article 46, UCMJ, MCM and JAGMAN. LEGADMINMAN 5800.16A Ch 7, 6001.5, (10 Feb 14)</td>
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<td>Impact on Overall JAG Structure</td>
<td>FY14NDAA 1716(a)(1)(e)</td>
<td>Standing up the SVC program will have an impact on legal assistance services across the Army</td>
<td>Not addressed in AF RFI Response to question 4(d)</td>
<td>It will take several years to grow the JAGC through increased retention and accession quotas, which will allow us to fully transition from a reserve-active component mix to all active component VLCs.</td>
<td>The Marine Corps will re-code nine judge advocate billets, and provide an uncompensated in-year increase of judge advocate structure by one colonel (O-6/4402) and five majors (1 O-4/4402 and 4 O-4/4409s).</td>
<td>The Coast Guard is exploring the feasibility and utility of providing SVC services through reserve component judge advocates in addition to active duty judge advocates. Final Operational Capability (FOC) for the Special Victim's will include full-time SVCs</td>
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<td>Administrative Responsibility: TJAGS are responsible for the establishment and supervision of individuals designated as Special Victims’ Counsel.</td>
<td>TJAG has given SJAs authority to limit services to retirees and their family members in order to meet the demand to serve victims of sexual assault.</td>
<td>AF initially took 24 SVCs from installation level legal offices doing work for wing commanders.</td>
<td>AF has provided some additional manpower billets, but not one-for-one backfill.</td>
<td>All VLCs are volunteers, but in some cases, their early transfer out of their position and into a VLC slot resulted in a gap in their former position.</td>
<td>Each VLCO office will require a civilian paralegal to support the assigned VLC.</td>
<td>USCG RFI 4(f) (Nov. 5, 2013)</td>
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<td>The Secretary of Defense (and Sec DHS) shall conduct a periodic evaluation of the Special Victims’ Counsel programs operated under this section.</td>
<td>CSA has authorized the mobilization of 20 Reserve Component judge advocates to serve as backfill in some of the legal assistance offices.</td>
<td>Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp 163-164.</td>
<td>The tremendous support from our reserve component has helped to mitigate this challenge.</td>
<td>The Marine Corps has announced an opening for a reservist judge advocate to assist the OIC, VLCO.</td>
<td>GS-11 Paralegal Specialist for the OIC, VLCO, and GS-9 Paralegal Specialists for each RVLC.</td>
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<td>USA RFI 4(d) (Nov. 5, 2013); see also, COL James McKee, USA, Testimony, 8 Nov</td>
<td>At this time the required number of SVCs is unknown.</td>
<td>USA RFI 4(d) (Nov. 5, 2013)</td>
<td>Establishment of the VLCP necessitated creation of a third echelon III</td>
<td>The Marine Corps has announced an opening for a reservist judge advocate to assist the OIC, VLCO.</td>
<td>USMC RFI 4(d)</td>
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### SPECIAL VICTIMS’ COUNSEL COMPARISON CHART

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<td>SVC – Legal services being eliminated or curtailed to resource SVC Program</td>
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<td>Legal assistance services to Retirees and their family members will be reduced if the SVC caseload results in an inability to maintain the normal level of legal assistance services. The SVC caseload will vary from installation to installation, as will the legal assistance workload. It is anticipated that some installations are going to have to</td>
<td>Installation-level legal offices may curtail or eliminate some legal assistance services to resource the victim attorney program. USAF RFI 4(e) (Nov. 5, 2013); see also Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp. 163-164.</td>
<td>No legal services are being eliminated or curtailed in order to resource the VLCP. USN RFI 4(e) (Nov. 5, 2013)</td>
<td>CMC has directed that there can be no reduction in the ability to try or defend complex cases, and no reduction in the speed of such complex cases as a result of the establishment of the Marine Corps VLCO. In the short term, non-trial legal services have been curtailed due to the shifting of personnel for the initial operating</td>
<td>The Coast Guard does not anticipate eliminating or significantly reducing any legal resources or services as a result of establishing its Special Victim's Counsel capability. USCG RFI 4(e) (Nov. 5, 2013)</td>
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- CMC has directed that there can be no reduction in the ability to try or defend complex cases, and no reduction in the speed of such complex cases as a result of the establishment of the Marine Corps VLCO. In the short term, non-trial legal services have been curtailed due to the shifting of personnel for the initial operating.
- The Coast Guard does not anticipate eliminating or significantly reducing any legal resources or services as a result of establishing its Special Victim's Counsel capability. USCG RFI 4(e) (Nov. 5, 2013)
- One reservist O-4 judge advocate with litigation experience has been given orders to MCB Quantico to augment the gap caused by the movement of personnel. USMC RFI 4(e) (Nov. 5, 2013)
- Navy has proposed increasing the JAG Corps end strength by 30 billets. CAPT Karen Fischer-Anderson, USN, Testimony, 8 Nov 13, pp. 166-167.
- Command under CNLSC.
- USN RFI 4(d) (Nov. 5, 2013)
- No legal services are being eliminated or curtailed in order to resource the VLCP.
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<td>reduce additional legal assistance services to meet the demands of the SVC program.</td>
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<td>Staff Judge Advocates are directed to mitigate the loss of services to retirees and their families, when feasible, by having Reserve Component judge advocates service retiree clients and their families on weekends and have special designated days for retirees and their families to come into the SJA office.</td>
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<td>USA RFI 4(e) (Nov. 5, 2013)</td>
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<td><strong>Assessment, Evaluation and Reports</strong></td>
<td>FY14 NDAA 1716(c)</td>
<td>The Judge Advocate General has tasked the SVC PM to gather data over the next 12 months to determine the required resources.</td>
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<td>In order to measure the effectiveness of the SVC Program as a whole, a Victim Impact Survey (VIS) was fielded on 20 March 2013 with feedback from several</td>
<td>The USN will be modeling victim surveys after the USAF surveys. CAPT Karen Fischer-Anderson, USN, Testimony, 8 Nov 13, p. 187.</td>
<td>The USMC will be modeling victim surveys after the USAF surveys. Col Carol Joyce, USMC, Testimony,</td>
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<td>Report Required: Not later than 90 days after the date of the enactment of this Act, the Secretary of</td>
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<td>The USN will be modeling victim surveys after the USAF surveys. CAPT Karen Fischer-Anderson, USN, Testimony, 8 Nov 13, p. 187.</td>
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<td>The USMC will be modeling victim surveys after the USAF surveys. Col Carol Joyce, USMC, Testimony,</td>
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<td>Defense, in coordination with the SecDHS for USCG shall submit to SASC &amp; HASC a report describing how the Armed Forces will implement the requirements of section 1044e of title 10 U.S.C. as added by subsection (a)</td>
<td>USA RFI 4(d) (Nov. 5, 2013) The U.S. Army will be gathering workload data from the SVC program throughout the year. USA RFI 4(e) (Nov. 5, 2013); see also COL James McKee, USA, Testimony, 8 Nov 13, p.164. The U.S. Army will be modeling victim surveys after the USAF surveys. COL James McKee, USA, Testimony, 8 Nov 13, p.187.</td>
<td>civilian subject matter experts incorporated into the questions and format. The VIS is provided to all sexual assault victims involved in the military justice process, including those represented by an SVC and those who are not. Recent results include: 1. 92% &quot;extremely satisfied&quot; with the advice and support SVC provided during the Article 32 hearing and court-martial; 2. 98% would recommend other victims request an SVC; 3. 93% indicated their SVC advocated effectively on their behalf;</td>
<td>8 Nov 13, p. 187.</td>
<td>Navy, Coast Guard judge advocates gain trial experience through assignment to Navy Defense Service offices on two year rotations. Over the last eight years, USCG JAs have trained as prosecutors with the Marine Corps Trial Counsel offices. USCG RFI 1(d) (Nov. 5, 2013) USCG doesn't have a survey at this point but they are interested in looking at the USAF survey. CAPT Sloan Tyler, USCG, Testimony, 8 Nov 13, p. 187.</td>
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# Special Victims’ Counsel Comparison Chart

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4. 96% indicated their SVC helped them understand the investigation and court-martial processes

USAF RFI 1(d) (Nov. 5, 2013); See also, Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp. 151-152.

82% of clients have requested SVC support to protect privacy in some way.
124 cases have been closed. This is when the survey is given.
Modeled some of the questions on a Rand impact evaluation study.

Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp. 147-149.

Over 90% of clients are female.
Over 80% are
# SPECIAL VICTIMS’ COUNSEL COMPARISON CHART

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<td>active duty. 90% filed unrestricted reports. Of those who filed restricted report and asked for SVC, nearly 50% converted to unrestricted report. Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp. 155-156.</td>
<td></td>
<td>SVCs can raise ethical concerns or cases of first impression to either the Chief, Special Victims’ Counsel Division, or the Deputy Chief, Special Victims’ Counsel Division. They may also contact their State Bar or the Air Force Professional Responsibility Office for guidance. USAF RFI 4(g) (Nov. 5, 2013)</td>
<td>VLC will raise &amp; discuss any ethical concerns with their supervising OICs. If necessary, they will seek further guidance up the chain of command and will consult with the Professional Responsibility POC at OJAG Code 13. USN RFI 4(g) (Nov. 5, 2013)</td>
<td>While VLC will follow the guidance provided by rules, regulations, statutes and case law (to include JAGINST 5803.1D, and State Bar rules), they will also seek advice and counseling through their supervisory chain – the VLCO. USMC RFI 4(g) (Nov. 5, 2013)</td>
<td>The Coast Guard has an established legal Professional Responsibility Program through which counsel can resolve potential ethical concerns. The SVC Working Group that supports the (OSVC) includes a representative of the Office of Legal Policy and Program Development that oversees the Professional Responsibility Program, and is a</td>
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**How will SVC resolve ethical concerns or cases of first impression?**

FY14NDAA 1716(a)(1)(c):

Nature of relationship: The relationship between a Special Victims’ Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.

Special Victim Counsel will work through their supervisory and technical chain of supervision to resolve ethical concerns and/or questions of first impression. This will include their Chiefs of Legal Assistance, DSJAs, and SJAs.

As necessary, or in cases in which the Chief of Legal Assistance, DSJA and/or SJA are conflicted, the SVCs can raise ethical concerns or cases of first impression to either the Chief, Special Victims’ Counsel Division, or the Deputy Chief, Special Victims’ Counsel Division.

They may also contact their State Bar or the Air Force Professional Responsibility Office for guidance.

USAF RFI 4(g) (Nov. 5, 2013)
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<td>SVC – Civilian programs or organizations consulted or researched to develop SVC Program</td>
<td>will consult with their technical chains, the SVC PM. USA RFI 4(g) (Nov. 5, 2013)</td>
<td>The Office of The Judge Advocate General, Criminal Law Division, assigned a judge advocate as the U.S. Army representative to the McKeon Study group of the Joint Services Committee (DOD). In that capacity, the judge advocate visited with the directors of a number of state victim service programs and consulted telephonically with a number of others. This information was used as the SVC program was being developed. None of these civilian programs</td>
<td>The Air Force has consulted with, and received training from the following individuals and organizations: 1. Ms. Meg Garvin, Executive Director of the National Crime Victim Law Institute (NCVLI). 2. Ms. Jessica Mindlin, National Director of Training and Technical Assistance from the Victim Rights Law Center (VRLC). 3. Dr. Rebecca Campbell, Professor of Psychology at Michigan State University. 4. Mr. Russell Butler, Executive Director of the Maryland Crime</td>
<td>None known. USN RFI 4(h) (Nov. 5, 2013)</td>
<td>The OIC, VLCO has been coordinating with the Marine Corps and Navy representatives from the Sexual Assault Subcommittee that falls under the Joint Services Committee on Military Justice, referred to as the JSC-SAS. The JSC-SAS travelled to various civilian jurisdictions to make comparisons between the State and Federal victims’ counsel services programs and identify best practices. Additionally, the OIC, VLCO met with the Director of the DOJ Office for The OIC, VLCO has been coordinating with the Marine Corps and Navy representatives from the Sexual Assault Subcommittee that falls under the Joint Services Committee on Military Justice, referred to as the JSC-SAS. The JSC-SAS travelled to various civilian jurisdictions to make comparisons between the State and Federal victims’ counsel services programs and identify best practices. Additionally, the OIC, VLCO met with the Director of the DOJ Office for</td>
<td>The Coast Guard consulted with the sister services, especially the Air Force, in developing its program. To develop policies and procedures that govern the delivery of SVC services, the Coast Guard reviewed and considered applicable ethical and practice standards of the ABA, its Legal Professional Responsibility Program and Legal Rules of Professional Conduct, and those established by the bars in the several states in which Coast Guard</td>
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## SPECIAL VICTIMS’ COUNSEL COMPARISON CHART

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<td>SVC – coordination with other services to standardize training and services offered</td>
<td>offered the scope of services of the magnitude directed by the Secretary of Defense. These state programs developed under a single Code of Professional Responsibility. SVC program operates under the Army Rules of Professional Responsibility. USAF RFI 4(h) (Nov. 5, 2013)</td>
<td>DoD has directed the Services to share best practices. This includes sharing curriculums from SVC training courses hosted by the various services. In addition to conducting our own training course, the Air Force hosted a</td>
<td>The Navy has consulted closely with the Air Force and the Marine Corps on the stand up of the VLCP and is interested in working with the Air Force and other military services to standardize training and VLC services.</td>
<td>Consistent with the direction of the SECDEF, the Marine Corps has established a VLCO that best meets the needs of the Marine Corps. The services offered by the VLCO are similar to those offered by the other Services,</td>
<td>The Coast Guard looks forward to cooperating with its sister services in developing appropriate training and guidance for Special Victim's Counsel as the services implement and develop this new capability.</td>
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<td>Victims’ Resource Center (MCVRC). 5. Representatives from Protect Our Defenders (POD) and Service Women’s Action Network (SWAN). 6. Office of Victims of Crime, DOJ. USAF RFI 4(h) (Nov. 5, 2013); see also Col Dawn Hankins, USAF, Testimony, 8 Nov 13, pp. 159-160.</td>
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<td>services to victims of sexual assaults. As a result there has been a great deal of exchange of training ideas.</td>
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<td>joint- service training course October 15-18, 2013 to train over 60 victims counsel from the Navy, Marine Corps, and Air National Guard to assist them with meeting the requirement to reach Initial Operating Capability by Nov 1, 2013. The Air Force expects to continue to offer and provide joint-service SVC training on an annual basis.</td>
<td>A period of at least six months post-January 2014 is needed in order to evaluate the VLC Program and determine what is working well, what needs improvement, and to determine if the current Air Force and Army training meets the needs of the practitioners.</td>
<td>but the Marine Corps has not limited victims’ legal counsel services to victims of sexual assault, but instead has extended these services to all eligible crime victims.</td>
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<td>USCG RFI 4(i) (Nov. 5, 2013)</td>
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<td>SVC Curriculum</td>
<td>A copy of the recent curriculum will be delivered to the RSP on disk.</td>
<td>See RFI Tabs 3 &amp; 4 (Narrative Schedule 4 Day training at AF JAG School in May and October 2013)</td>
<td>The Navy has no specific curriculum as of this date but we are developing a VLC course to be presented in January of 2014 for newly reported VLC. The curriculum will closely mirror the Marine Corps VLC attorneys attend training conduct by the Air Force.</td>
<td>Marine Corps VLCs have all attended the Air Force’s Special Victims’ Counsel Course and the completion of this course is necessary for certification as a Marine Corps VLC.</td>
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<td>USMC RFI 4(i) (Nov. 5, 2013)</td>
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<td>Classes are taught by some of the leading experts in their fields. The experts include: a Forensic Pathologist; a Forensic Psychologist; a Forensic Psychiatrist; a Sexual Assault Forensic Examiner/Sexual Assault Nurse Examiner; a Forensic Toxicologist; a Forensic Child Interviewer; a Forensic Computer Examiner; a Fingerprint Examiner; a Trace Evidence Examiner; and a DNA and Serology Examiner. USA RFI 1(d)(Nov. 5, 2013)</td>
<td>includes: - Fundamental Concepts of Being a Victims' Attorney, - Appellate Updates on applicable areas of law, - VWAP/SARC/NCIS/OSI and TC Interaction, - The Neurobiology of Trauma/Cognitive Interviewing, - Post-Trial Processing for VLC, - Professional Responsibility concerns, - Mental Health Issues/Referrals/PTSD/Resiliency and Suicide Awareness, - Cognitive Biases; - Behavioral Aspects of Victims - Understanding Sex Offenders. - SVC from the Air Force discussed their challenges and successes in the field and took questions from other service</td>
<td>Air Force’s curriculum. USN RFI 4(j) (Nov. 5, 2013) Navy is developing a 2-day course in Newport, RI for newly-reported VLC. VLC will perform mock exercises and presentations by Navy counsel already performing VLC duties. The course will cover Professional Responsibility concerns, fundamental concepts of being a Victims' counsel, and the roles of the SARC/VA &amp; NCIS. Students will view the presentation given by Dr. Rebecca Campbell on the Neurobiology of Trauma and Cognitive Interviewing.</td>
<td>investigation and SVC-related training offered by our sister services. USCG RFI 4(j) (Nov. 5, 2013)</td>
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### SPECIAL VICTIMS’ COUNSEL COMPARISON CHART

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<td>SVC – Retaliation and Complaints</td>
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<td>Legal assistance attorneys have always assisted Soldiers with filing Article 138 complaints. SVCs may also assume that duty.</td>
<td>An SVC will not assist a member in preparing IG complaints, Military Equal Opportunity Complaints, Congressional Complaints, or similar matters. SVC may advise the client that these and similar avenues exist for addressing a complaint SVC</td>
<td>VLC will assist victims who believe they are being retaliated against by advising them of potential avenues of relief such as: submitting an Article 1150 or Article 138 Complaint, requesting mast, or filing a Congressional complaint, Reviewing any</td>
<td>VLC can assist a victim in filing a complaint. methods for requesting redress of grievances: a complaint through the chain of command (including a victim advocate or Sexual Assault Response Coordinator); a complaint to law enforcement; correspondence</td>
<td>Victim may seek administrative relief under Article 138. Victim may seek a remedy through the Board of Correction for Military Records (BCMR). USCG RFI 6 (Nov. 5, 2013)</td>
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<td>Complaints of Wrong; The Inspector General’s office; DoD or Army</td>
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<td>hotlines and websites set up to allow victims to bypass the chain of</td>
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<td>command for redress.</td>
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<td>Victims may report retaliatory actions taken against them to CID,</td>
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<td>SARC/VA, VWL, SVC, trial counsel or established hotlines.</td>
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<td>All Service IGs receiving reprisal complaints required by</td>
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<td>Whistleblower Act to notify DoD IG.</td>
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<td>A complainant has direct and priority access to the Army Board for</td>
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<td>may review a client’s IG, Congressional, or similar complaint for</td>
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<td>the purpose of assuring that the contents of the complaint do not</td>
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<td>jeopardize the client’s rights or position wrt the matter that led</td>
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<td>An SVC may submit a Freedom of Information Act (FOIA)/Privacy Act</td>
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<td>request for his or her client in the furtherance of a representation</td>
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<td>on a matter within the category of services provided.</td>
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<td>New AF policy allows any person discharged within a year of</td>
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<td>making a report of sexual assault to have their complaint submitted</td>
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<td>with a Member of Congress; an Inspector General (IG) complaint for</td>
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<td>instances of fraud, waste, and abuse; an Equal Opportunity complaint</td>
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<td>for instances of discrimination or sexual harassment; an Article 138</td>
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<td>(UCMJ) complaint, for instances of specific abuse, discriminatory</td>
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<td>practices of a superior officer, or where the command is not</td>
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<td>following regulations; an Article 139 (UCMJ) complaint, where</td>
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<td>1 complaint for redress of wrong against any superior the victim</td>
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<td>believes retaliated against him or her; and a petition the Board for</td>
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<td>case reviewed if he or she alleges the discharge is due to retaliation.</td>
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<td>Another avenue for a victim is a military justice action for maltreatment under Article 93, UCMJ USAF RFI 5 (Nov. 5, 2013)</td>
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<td>Victims have multiple avenues with which to file a complaint for redress for retaliation:</td>
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<td>Law enforcement investigators, Victim liaisons, VAs, trial counsel, SVC, IG, and Commanding Officers.</td>
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<td>Victims are made aware of these and other programs in numerous ways, primarily through the operation of the VWAP program.</td>
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<td>Military Records to change adverse items, or make other corrections, in a member’s official record.</td>
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<td>Article 92 (dereliction of duty, specifically for not complying with The Military Whistleblower Protection Act (10 U.S.C. § 1034); Article 134 (obstructing justice); and Article 134 (wrongful interference with an adverse administrative proceeding).</td>
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<td>USMC RFI (5) and (6) (Nov. 5, 2013)</td>
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</table>
### SPECIAL VICTIMS’ COUNSEL COMPARISON CHART

<table>
<thead>
<tr>
<th>Issue</th>
<th>DOD/FY 14 NDAA</th>
<th>USARMS</th>
<th>USAF</th>
<th>USNAV</th>
<th>USMC</th>
<th>USCG</th>
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<tr>
<td></td>
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<td>USAF RFI 6 (Nov. 5, 2013)</td>
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</table>
## APPENDIX J
Comparison of Victim Rights
The NDAA, the CVRA, and DOD Policy

<table>
<thead>
<tr>
<th>FY14 NDAA §1701</th>
<th>18 U.S.C. § 3771 CVRA</th>
<th>DOD Directive 1030.1 Victim and Witness Assistance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Rights Granted</strong></td>
<td><strong>Rights Granted</strong></td>
<td><strong>Rights Granted</strong></td>
</tr>
<tr>
<td>The right to be reasonably protected from the accused</td>
<td>The right to be reasonably protected from the accused</td>
<td>The right to be reasonably protected from the accused offender</td>
</tr>
<tr>
<td>The right to reasonable, accurate, and timely notice of any of the following:</td>
<td>The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused</td>
<td>The right to be notified of court proceedings</td>
</tr>
<tr>
<td>(A) A public hearing concerning the continuation of confinement prior to trial of the accused</td>
<td>(B) A preliminary hearing under Article 32 relating to the offense</td>
<td>The right to be provided information about the conviction, sentencing, imprisonment, and release of the offender</td>
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<td>(B) A preliminary hearing under Article 32 relating to the offense</td>
<td>(C) A court-martial relating to the offense</td>
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<td>(C) A court-martial relating to the offense</td>
<td>(D) A public proceeding of the service clemency and parole board relating to the offense</td>
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<td>(D) A public proceeding of the service clemency and parole board relating to the offense</td>
<td>(E) The release or escape of the accused, unless such notice may endanger the safety of any person</td>
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<td>(E) The release or escape of the accused, unless such notice may endanger the safety of any person</td>
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<tr>
<td>The right not to be excluded from any public hearing or proceeding described above unless the military judge or investigating officer, after receiving clear and convincing evidence, determines that testimony by the victim of an offense would be materially altered if the victim heard other testimony at that hearing or proceeding</td>
<td>The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding</td>
<td>The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at trial</td>
</tr>
<tr>
<td>The right to be reasonably heard at any of the following:</td>
<td>The right to be reasonably heard at any public proceeding</td>
<td>No similar provision currently, but according to testimony, DoD</td>
</tr>
</tbody>
</table>
## APPENDIX J
### Comparison of Victim Rights
#### The NDAA, the CVRA, and DOD Policy

| (A) A public hearing concerning the continuation of confinement prior to trial of the accused | proceeding in the district court involving release, plea, sentencing, or any parole proceeding. | is working to include a provision that mirrors the CVRA. |
| (B) A sentencing hearing relating to the offense | The reasonable right to confer with the attorney for the Government in the case | The right to confer with the attorney for the Government in the case |
| (C) A public proceeding of the service clemency and parole board relating to the offense | The right to receive restitution as provided in law | The right to receive available restitution |
| The reasonable right to confer with the counsel representing the Government in any of the above listed proceedings | The right to full and timely restitution as provided in law | No similar provision currently, but according to testimony, DoD is currently working to include a provision that mirrors the CVRA. |
| The right to receive restitution as provided in law | The right to proceedings free from unreasonable delay | The right to be treated with fairness and respect for the victim’s dignity and privacy |
| The right to proceedings free from unreasonable delay | The right to be treated with fairness and with respect for the dignity and privacy of the victim | |
| The right to be treated with fairness and with respect for the dignity and privacy of the victim | In general. In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described above. Before making a determination to exclude the victim from a public proceeding, the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this | No similar provision |

The FY14 NDAA directed the Secretary to consider mechanisms for affording rights to victims, mandating that regulations include mechanisms for ensuring that victims are notified of, and accorded, the rights specified in Article 6b, UCMJ.
## APPENDIX J
### Comparison of Victim Rights
#### The NDAA, the CVRA, and DOD Policy

<table>
<thead>
<tr>
<th>Definition of Victim</th>
<th>Definition of Victim</th>
<th>Definition of Victim</th>
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<tr>
<td>The term victim means a person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of an offense under the Uniform Code of Military Justice</td>
<td>The term “crime victim” means a person directly and proximately harmed as a result of the commission of a Federal offense or an offense in the District of Columbia</td>
<td>Victim. A person who has suffered direct physical, emotional, or pecuniary harm as a result of the commission of a crime committed in violation of the Uniform Code of Military Justice</td>
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<th>Enforcement</th>
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<td>The FY14 NDAA directed the Secretary to consider mechanisms for affording rights to victims, mandating that regulations include mechanisms for the enforcement of such rights, including mechanisms for application for such rights and for consideration and disposition of applications for such rights.</td>
<td>The rights described above shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim’s right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals will decide the motion within 72 hours. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.</td>
<td>No similar provision</td>
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<tr>
<th>Procedures to Promote Compliance</th>
<th>Procedures to Promote Compliance</th>
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<tr>
<td>The FY14 NDAA directed the</td>
<td>The Department of Justice</td>
<td>No similar provision</td>
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</table>
### APPENDIX J
#### Comparison of Victim Rights
The NDAA, the CVRA, and DOD Policy

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<tr>
<th>Secretary to consider mechanisms for affording rights to victims, mandating that regulations include the designation of an authority within each Armed Force to receive and investigate complaints relating to the provision or violation of such rights and disciplinary sanctions for members of the Armed Forces and other personnel of the Department of Defense and Coast Guard who willfully or wantonly fail to comply with requirements relating to such rights.</th>
<th>Regulation will designate an administrative authority within the DOJ to receive and investigate complaints relating to the provision or violation of the rights of a crime victim; require a course of training for employees and offices of the DOJ that fail to comply with provisions of Federal law pertaining to the treatment of crime victims, and otherwise assist such employees and offices in responding more effectively to the needs of crime victims; contain disciplinary sanctions, including suspension or termination from employment, for DOJ employees who willfully or wantonly fail to comply with provisions of Federal Law pertaining to the treatment of crime victims; and provide that the Attorney General, or his designee, shall be the final arbiter of the complaint.</th>
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<td>Limitations</td>
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<td>The FY14 NDAA has a limiting clause indicating that Article 6b, UCMJ should not be construed to authorize a cause of action for damages. The FY14 NDAA does not have similar provision to the CVRA indicating that nothing should be construed to limit prosecutorial discretion.</td>
<td>The failure to afford a right under the CVRA will not provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if the victim asserted the right to be heard before or during the proceeding at issue and such right was denied; the victim petitions the court of</td>
<td>No similar provision</td>
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<td>appeals for a writ of mandamus within 14 days; and, in the case of a plea, the accused has not pled to the highest offense charged. The CVRA creates no cause of action for damages and does not create, enlarge, or imply any duty or obligation to any victim or other person for the breach of which the United States, or any of its officers or employees, could be held liable in damages. Nothing in the CVRA is construed to impair the prosecutorial discretion of the Attorney General or any officer under his or her direction.</td>
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<td>GAO DOCUMENT</td>
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<td>SUMMARY</td>
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<td>GAO Report to Congressional Addresses: Military Personnel. DoD Has Taken Steps to Meet the Health Needs of Deployed Servicewomen, but Actions are Needed to Enhance Care for Sexual Assault Victims.</td>
<td>January 2013</td>
<td>While the DoD is taking steps to address the health care needs of deployed servicewomen, military health care providers do not have a consistent understanding of their responsibilities in caring for sexual assault victims because the department has not established guidance for the treatment of injuries stemming from sexual assault—which requires that specific steps are taken while providing care to help ensure a victim’s right to confidentiality.</td>
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<tr>
<td>Military Personnel: Prior GAO Work on DoD’s Actions to Prevent and Respond to Sexual Assault in the Military.</td>
<td>March 30, 2012</td>
<td>GAO finds DoD has fully implemented thirteen recommendations and has partially implemented the remaining twelve recommendations which GAO will continue to monitor.</td>
</tr>
<tr>
<td>Military Justice: Oversight and Better Collaboration Needed for Sexual Assault Investigations and Adjudications.</td>
<td>June 22, 2011</td>
<td>GAO was asked to address the extent to which (1) the Department of Defense (DOD) conducts oversight of the military services’ investigative organizations and (2) the services provide resources for investigations and adjudications of alleged sexual assault incidents.</td>
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<tr>
<td>Report Title</td>
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<td>Summary</td>
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<td>Military Personnel: DoD’s and the Coast Guard’s Sexual Assault Prevention and Response Program Need to be Further Strengthened.</td>
<td>February 24, 2010</td>
<td>This report discusses our efforts to evaluate the Department of Defense's (DOD) and the U.S. Coast Guard's oversight and implementation of their respective sexual assault prevention and response programs. Our findings build upon our previous work related to sexual assault in the military services.</td>
</tr>
<tr>
<td>Military Personnel: Additional Actions are Needed to Strengthen DoD’s and the Coast Guard’s Sexual Assault Prevention and Response Programs.</td>
<td>February 24, 2010</td>
<td>DOD has addressed four of GAO's nine recommendations from 2008 regarding the oversight and implementation of its sexual assault prevention and response programs. But DOD's efforts to address the other recommendations reflect less progress.</td>
</tr>
<tr>
<td>Military Personnel: Actions Needed to Strengthen Implementation and Oversight of DoD’s and the Coast Guard’s Sexual Assault Prevention and Response Programs.</td>
<td>September 10, 2008</td>
<td>This statement addresses implementation and oversight of DOD's and the Coast Guard's programs to prevent and respond to sexual assault incidents. Specifically, it addresses the extent to which DOD and the Coast Guard (1) have developed and implemented policies and procedures to prevent, respond to, and resolve reported sexual assault incidents; (2) have visibility over reports of sexual assault in the military; and (3) exercise oversight over reports of sexual assault involving servicemembers.</td>
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<tr>
<td>Preliminary Observations on DoD’s and the Coast Guard’s Sexual Assault Prevention and Response Programs.</td>
<td>July 31, 2008</td>
<td>This statement addresses the extent to which DOD and the Coast Guard (1) have developed and implemented policies and programs to prevent, respond to, and resolve sexual assault incidents involving servicemembers; (2) have visibility over reports of sexual assault; and (3) exercise oversight over reports of sexual assault involving servicemembers.</td>
</tr>
<tr>
<td>Military Personnel: The DoD and Coast Guard Academies have Taken Steps to Address Incidents of Sexual Harassment and Assault, but Greater Federal Oversight is Needed.</td>
<td>January 17, 2008</td>
<td>This report evaluates (1) the academies' programs to prevent, respond to, and resolve sexual harassment and assault cases; (2) the academies' visibility over sexual harassment and assault incidents; and (3) DOD and Coast Guard oversight of their academies' efforts.</td>
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## APPENDIX L
Inspector General Report List

<table>
<thead>
<tr>
<th>INSPECTOR GENERAL REPORT</th>
<th>DATE</th>
<th>SUMMARY</th>
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<tbody>
<tr>
<td>Evaluation of the Military Criminal Investigative Organizations Sexual Assault Investigations.</td>
<td>July 9, 2013</td>
<td>The DoD IG evaluated the Military Criminal Investigative Organizations’ (MCIO) sexual assault investigations completed in 2010 to determine whether they completed investigations as required by DoD, Military Service, and MCIO guidance.</td>
</tr>
<tr>
<td>Evaluation of the Military Criminal Investigative Organizations Sexual Assault Investigation Training.</td>
<td>February 28, 2013</td>
<td>The DoD IG evaluated the MCIOs sexual assault investigation training to determine whether it adequately supports the Department.</td>
</tr>
<tr>
<td>Evaluation of DoD Sexual Assault Response in Operations Enduring and Iraqi Freedom Areas of Operation.</td>
<td>February 1, 2010</td>
<td>The DoD IG review sought to determine whether DoD policies and practices ensure sexual assault complaints involving contractors in the areas of operation were properly received, processed and referred for investigation.</td>
</tr>
<tr>
<td>Report on Service Academy Sexual Assault and Leadership Survey.</td>
<td>March 4, 2005</td>
<td>The DoD IG gathered information from cadets and midshipmen on their experiences with sexual assault and harassment while attending the service academies.</td>
</tr>
<tr>
<td>Report on the United States Air Force Academy Sexual Assault Survey.</td>
<td>September 11, 2003</td>
<td>The DoD IG administered a survey of female cadets at the US Air Force Academy. The purpose of the survey was to determine the scope of sexual assault incidents and to assess perceptions of female cadets concerning the Academy’s response efforts.</td>
</tr>
</tbody>
</table>
APPENDIX L
Inspector General Report List

| Evaluation of DoD Correctional Facility Compliance with Military Sex Offender Notification Requirements. | June 26, 2002 | The study evaluates whether the services satisfy their notification requirements for military sex offenders. |