

Fact Sheet on Department of Defense Sexual Assault Statistics¹

1. Introduction. On April 15, 2013, the Department of Defense (DoD) released a two-volume, 1,494 page report on sexual assaults involving the Armed Forces in 2012 (2012 DoD Report). The 2012 DoD Report cost \$514,000 to prepare. The 2012 DoD Report was undergirded by the 309-page 2012 *Workplace and Gender Relations Survey of Active Duty Members (2012 WGRA)*. It was clear from questions from the Senate Armed Services Committee Hearing on June 5, 2013 that key metrics were not included in the 2012 DoD Report, and the reliability of the 26,000 extrapolation of active duty military victims was debatable.

2. The 2012 DoD Report.

a. In FY 2012, there were 2,949 Service member victims initiating 2,166 unrestricted reports² and 783 restricted reports (which cannot be investigated).³ The 2012 DoD Report does not divide the offenses by gender of victim. The numbers for specific offenses tried by courts-martial are not indicated. Instead, the 2012 DoD Report consolidates the dispositions for the crimes of rape, sexual assault, aggravated sexual contact, abusive sexual contact, nonconsensual sodomy, and attempts to commit these acts into the category “sexual assault.”⁴

¹ This document reflects the personal opinion of the author and does not represent the views of George Washington University or the Law School.

² “In FY12, there were 2,558 unrestricted reports of sexual assault involving Service members as either the subject or victim of a sexual assault; 1,985 (76 percent) of the 2,558 unrestricted reports involved Service members as victims. Because some incidents involved multiple victims, 2,166 Service member victims were involved in these 1,985 Unrestricted Reports. . . Each year, the majority of sexual assault reports received by the [Military Criminal Investigative Organizations] involve the victimization of Service members by other Service members. In FY12, 1,590 of the 2,558 Unrestricted Reports (62 percent) involved allegations of Service member-on-Service member sexual assault.” 2012 DoD Report, Vol. I at 60. The DoD Report includes the number of unrestricted reports of service member-on-service member by offense type in the individual Service sections and the overall numbers for the Services by gender for victim and offender. 2012 DoD Report, Vol. I at 191 (Army), 479 (Navy), 534 (Marine Corps), 635 (Air Force). The information for restricted reports is much less specific. 2012 DoD Report, Vol. I at 195 (Army), 483 (Navy), 537 (Marine Corps), 639 (Air Force).

³ 2012 DoD Report, Vol. I at 3, 25, 58-60. Victims making unrestricted reports trigger a criminal investigation and notification to the command about the allegation. *Id.* at 101. Victims making restricted reports may receive medical or counseling services without triggering an investigation, and the command receives limited information about the allegation. *Id.* at 87. No disciplinary action may be taken against a perpetrator based on a restricted report because of the DoD promise to protect the victim’s confidentiality.

⁴ The 2012 DoD Report provides percentages of original allegations in unrestricted reports as follows: Abusive and Wrongful Sexual Contact 35%; Aggravated Sexual Assault and Sexual Assault 28%; Rape 27%; Consensual Sodomy 6%; Aggravated Sexual Contact 4%; Indecent Assault <1%; and Attempts <1%. 2012 DoD Report, Vol. I at 62.

b. The 2012 WGRA extrapolated that 6.1% of active duty women and 1.2% active duty men experienced some kind of unwanted sexual contact (USC) in the 12 months prior to being surveyed based on the 1.6% of the active duty force that chose to respond.⁵ The 2012 WGRA extrapolated from those percentages that there were approximately 26,000 active duty USC victims.⁶ The DoD extrapolation concluded 12,463 women (6.1% of active duty women) and 14,205 men (1.2% of active duty men), were the victims of sexual assault in FY 2012.⁷

c. The 2012 DoD Report includes the unrestricted reports of sexual assault by type of offense originally alleged and the military status of the victim as follows:

Most Serious Offense Alleged in Report	Total Unrestricted Reports	= Number of Reports Involving Service Members as Victims	+ Number of Reports Involving Non-Service Members as Victims
Rape	676	467	209
Aggravated Sexual Assault and Sexual Assault	724	573	151
Aggravated Sexual Contact	92	70	22
Abusive Sexual Contact	308	252	56
Wrongful Sexual Contact	580	478	102
Indecent Assault	6	6	0
Nonconsensual Sodomy	162	129	33
Attempts to Commit Offenses	10	10	0
Total Unrestricted Reports in FY12	2,558	1,985	573

d. The 2012 WGRA survey method entailed emailing written surveys to 108,478 active duty service members.⁸ The WGRA survey did not involve follow-up interviews; instead questionnaires were emailed to respondents; and respondents were asked

⁵ 2012 DoD Report, Vol. I at 2. On September 30, 2012, the total DoD active duty population was 1,388,028. The DoD received 22,792 responses to the survey, which is 1.6% of the active duty population.

⁶ *Id.*, at 11-12.

⁷ On September 30, 2012, the total female population on active duty was 204,309, and the male population was 1,183,179. DoD Personnel and Procurement Statistics, <http://siadapp.dmdc.osd.mil/personnel/MILITARY/miltop.htm>. 6.1% of 204,309 is 12,463; and 1.2% of 1,183,719 is 14,205. 12,463 plus 14,205 is 26,667. See 2012 DoD Report, Vol. I at 25-26. The 26,000 number in the 2012 DoD Report is an approximation. *Id.*

⁸ 2012 *Workplace and Gender Relations Survey of Active Duty Members* at 6, http://www.sapr.mil/public/docs/research/2012_Workplace_and_Gender_Relations_Survey_of_Active_Duty_Members-Survey_Note_and_Briefing.pdf [hereinafter 2012 WGRA].

whether they were subjected to USC.⁹ The “overall weighted response rate for eligibles, corrected for nonproportional sampling, was 24% (male 23%, female 29%)”; DoD received 22,792 completed surveys.¹⁰ The surveys that were less than 50% completed were not counted,¹¹ and there was no assessment to determine whether someone who failed to complete a survey was less likely to have had an unwanted sexual contact in their extrapolation calculation.

e. In FY 2012, unrestricted reports of sexual assault indicated 88% of the victims were female and 12% were male. (2012 DoD Report, Vol. I at 81) In FY 2012 restricted reports, 79% of the victims were female, 13% were male, and 8% were unavailable.¹²

f. In FY 2012, 90% of the subjects in unrestricted reports were male, 2% were female, and the gender of the remainder was unknown.¹³

3. The 2010 Center for Disease Control and Prevention (CDC) Reports.

a. The 2012 DoD Report explicitly relies on the CDC’s 2010 MILITARY NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY (NISV) REPORT and its comparison with

⁹ Survey recipients were asked the following:

In the past 12 months, have you experienced any of the following sexual contacts that were against your will or occurred when you did not or could not consent where someone:

- Sexually touched you (e.g., intentional touching of genitalia, breasts, or buttocks) or made you sexually touch them?
- Attempted to make you have sexual intercourse, but was not successful?
- Made you have sexual intercourse?
- Attempted to make you perform or receive oral sex, anal sex, or penetration by a finger or object, but was not successful?
- Made you perform or receive oral sex, anal sex, or penetration by a finger or object?

2012 WGRA, supra note 8, at 9. The wording of the question implies that holding a mental reservation about sexual activity is sufficient without any manifestation of lack of consent. USC under such circumstances may not constitute a provable criminal offense. Because of the complexity of the crimes and defenses, careful follow-up interviews by well-trained specialists are crucial for accurate assessments of sexual crimes victimization.

¹⁰ *2012 WGRA, supra* note 8, at 1, 6.

¹¹ *Id.*, at 6.

¹² *Id.*, at 88.

¹³ *Id.*, at 83.

national data in *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report (2010 CDC NISVS)*, to corroborate the extrapolation made by the 2012 WGRA, stating, “[This 2010 MILITARY NISV REPORT, a] CDC-conducted survey provided the Department with a reliable prevalence estimate for contact sexual violence among Active Duty women and female spouses of military men, which aligned closely to similar findings in the 2010 WGRA.”¹⁴ In 2010, the CDC conducted a telephonic survey using question responses to collect detailed information on sexual and stalking victimization of adult civilian men and women, and separately, of active duty military men and women on past-year and lifetime experiences of sexual violence.¹⁵ The CDC survey included a non-military sample¹⁶ and a military sample involving approximately 2,800 DoD women (1,408 Active Duty women and 1,428 wives of Active Duty men).¹⁷ The CDC determined that “The risk of contact sexual violence for military and civilian women is the same, after controlling for age and marital status differences between these groups.”¹⁸

b. The 2010 MILITARY NISV REPORT includes in its overall numbers statistical information about non-criminal, socially inappropriate conduct, reducing its value to assess the scope of criminal sexual violence in the military. The 2010 MILITARY NISV REPORT includes the broad definition of “contact sexual violence” as “completed forced penetration . . . sexual coercion, and other unwanted sexual contact experiences.”¹⁹

¹⁴ 2012 DoD Report, Vol. I, at 44. The 2012 DoD Report cites to the similar definitions of “unwanted sexual contact” in the 2012 WGRA Report, *supra* n. 8, and “contact sexual violence.” See Centers for Disease Control and Prevention (CDC), *Prevalence of Intimate Partner Violence, Stalking, and Sexual Violence Among Active Duty Women and Wives of Active Duty Men—Comparisons with Women in the U.S. General Population, 2010* (Mar. 2013) [hereinafter 2010 MILITARY NISV REPORT]. The 2010 MILITARY NISV REPORT was prepared by Michele C. Black and Melissa T. Merrick and “the Centers for Disease Control and Prevention (CDC) for the Department of Defense (DoD) as part of an interagency agreement between the National Institute of Justice (NIJ) and the CDC. The interagency agreement set forth multi-agency (NIJ, CDC, DoD) efforts in support of the 2010 National Intimate Partner and Sexual Violence Survey.” 2012 DoD Report, Vol. II, Annex D at 714. The 2010 MILITARY NISV REPORT is presented at pages 711-765, Annex D to Volume II of the 2012 DoD Report.

¹⁵ 2012 DoD Report, Vol. II, Annex D, 2010 MILITARY NISV REPORT, *supra* note 14, at 714-65.

¹⁶ 2010 MILITARY NISV REPORT, *supra* note 14, at 714-65. Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention [hereinafter 2010 CDC NISVS], http://www.cdc.gov/violenceprevention/pdf/nisvs_report2010-a.pdf, at 9 (stating that the CDC collected data from 16,507 completed and 1,542 partially completed telephone interviews of over a 12-month period.).

¹⁷ 2012 DoD Report, Vol. I, at 16.

¹⁸ *Id.*

¹⁹ 2012 DoD Report, Vol. I, at 44 (“The term “contact sexual violence” (CSV) is the CDC’s survey term for contact sexual crimes between adults. Careful effort was made to align the definition of “contact sexual

One survey question for “contact sexual violence” asks, “How many people have ever . . . kissed you in a sexual way? Remember, we are only asking about things that you didn’t want to happen.”²⁰ Another series of questions ask, “How many people have you had vaginal, oral, or anal sex with after they pressured you by . . . doing things like telling you lies, making promises about the future they knew were untrue, threatening to end your relationship, or threatening to spread rumors about you? [or by] wearing you down by repeatedly asking for sex, or showing they were unhappy?” Some of the conduct included in this survey such as an unwanted kiss and “making promises about the future” to pressure or trick someone into engaging in sexual conduct describe inappropriate and socially offensive conduct; however, they are unlikely to constitute criminal conduct, which should be the focus of protecting victims from the criminal act of sexual assault.

c. The 2010 CDC NISVS concluded that tens of millions of U.S. women were lifetime victims of sexual assaults and rape, and more than one million are victimized each year.²¹ The number of cases law enforcement reported to the DOJ was a fraction of these extrapolations. The CDC determination of the prevalence of contact sexual violence for the 12 months prior to the survey among active duty women involving

violence” with the definition of “unwanted sexual contact,” the Department’s survey term for the same behaviors. CSV and USC both involve intentional sexual contact that was against a person’s will or occurred when the person did not or could not consent. The terms describe completed and attempted oral, anal, and vaginal penetration with any body part or object, and the unwanted touching of genitalia and other sexually-related areas of the body).

²⁰ 2012 DoD Report, Vol. II, Annex D, App. A, 2010 MILITARY NISV REPORT, *supra* note 14, Victimization Questions, at 742.

²¹ 2010 CDC NISVS, *supra* note 16, Executive Summary at 1-2. (“Nearly 1 in 5 women (18.3%) and 1 in 71 men (1.4%) in the United States have been raped at some time in their lives, including completed forced penetration, attempted forced penetration, or alcohol/drug facilitated completed penetration. . . . An estimated 13% of women and 6% of men have experienced sexual coercion in their lifetime (i.e., unwanted sexual penetration after being pressured in a nonphysical way); and 27.2% of women and 11.7% of men have experienced unwanted sexual contact.”). The DoD chose to utilize the CDC to conduct telephone surveys, and arrived at “a reliable prevalence estimate for contact sexual violence among Active Duty women and female spouses of military men, which aligned closely to similar findings in the 2010 WGRA Report. Another primary finding of the survey was that the risk of lifetime and past-year contact sexual violence is the same for military women and civilian women.” 2012 DoD Report at 44. The 2010 CDC NISVS calculated the number of women who are victims of contact sexual violence to be a weighted lifetime percentage of 40.3 and the number of U.S. victims to be 35,396,000. 2012 DoD Report, Vol. II, App. B, 2010 MILITARY NISV REPORT, *supra* note 14, Table 1, at 746. The 2010 MILITARY NISV REPORT determined that the prevalence of contact sexual violence for the 12 months prior to the survey among women aged 18 and 59 years in the general U.S. population with non-intimate partner. *Id.* at 729. The 2010 MILITARY NISV REPORT defines “intimate partner” to include “current or former cohabitating or non-cohabitating romantic or sexual partners.” The rate of sexual contacts was 5.2 percent, amounting to 4,598,000 victims. *Id.* at 746.

military and civilian perpetrators was 5.6 percent, amounting to 10,000 victims.²² According to the 2012 DoD Report, the number of reported and unreported military victims of sexual assault was 2,949, and the CDC number is 3.4 times higher than the actual reported number.²³

d. The 2010 CDC NISVS measurements reflect a vast variation between the different states, which may indicate that the survey was conducted inconsistently or some other explanation exists for these substantial variations.²⁴

e. The 2010 MILITARY NISV REPORT and 2010 CDC NISVS' methods of telephone interviews make these surveys more reliable than the 2012 WGRA for extrapolation purposes, as interviews make it possible to more thoroughly and carefully assess the sexual offense incident. These survey results, however, seem inflated because the survey includes noncriminal sexual activity that is not beneficial in assessing criminal sexual assault offenses in the military Services.

4. Department of Justice Victimization and Prosecution Reports.

a. The Department of Justice's (DOJ) National Crime Victimization Survey (NCVS). The DOJ has been conducting the NCVS since 1973. The DOJ states:

NCVS is the Nation's primary source of information on criminal victimization. Each year, data are obtained from a nationally representative sample of about 40,000 households comprising nearly 75,000 persons on the frequency, characteristics and consequences of criminal victimization in the United States. Each household is interviewed

²² The 2012 DoD Report, Vol. II, App. B, 2010 MILITARY NISV REPORT, Table 1, at 746 indicated the 95 percent confidence interval was 4.2 percent to 6.9 percent for the Active Duty women victims. On September 2012, the total DoD active duty population was 1,399,622 and the female population on active duty was 204,309. DoD Personnel and Procurement Statistics, <http://siadapp.dmdc.osd.mil/personnel/MILITARY/miltop.htm>. The product of 5.6% and 204,309 is 11,441.

²³ 2012 DoD Report, at 3.

²⁴ 2010 CDC NISVS, *supra* note 16, at 3, 67 (“[S]tate-level estimates varied with lifetime estimates for women ranging from 11.4% to 29.2% for rape; 28.9% to 58% for sexual violence other than rape; and 25.3% to 49.1% for rape, physical violence, and/or stalking by an intimate partner. For men, lifetime estimates ranged from 10.8% to 33.7% for sexual violence other than rape; and 17.4% to 41.2% for rape, physical violence, and/or stalking by an intimate partner.”). Based on the 2010 CDC NISVS' extrapolations indicating 18.3% or 15 million U.S. females between the ages of 18 and 59 were the victims of “severe physical violence, rape, or stalking” during their lifetimes and 1.8% or 1,476,360 were victims during the previous year. 2012 DoD Report, Vol. II, App. B, 2010 MILITARY NISV REPORT, Table 2 at 747 shows a 20% lifetime prevalence of contact sexual violence among women in the general U.S. Population age 18 to 59 or 16,404,000 women. The total population of U.S. women is 82,020,000; 18.3% of 82,020,000 is 15,009,660; 1.8% of 82,020,000 is 1,476,360.

twice during the year. The survey enables BJS [Bureau of Justice Statistics] to estimate the likelihood of victimization by rape, sexual assault, robbery, assault, theft, household burglary, and motor vehicle theft for the population as a whole as well as for segments of the population such as women, the elderly, members of various racial groups, city dwellers, or other groups. The NCVS provides the largest national forum for victims to describe the impact of crime and characteristics of violent offenders.²⁵

The NCVS sends interviewers who question victims about incidents and then classify the events as various types of offenses. The NCVS notes:

The measurement of rape and sexual assault presents many challenges. Victims may not be willing to reveal or share their experiences with an interviewer. The level and type of sexual violence reported by victims is sensitive to how items are worded, definitions used, data collection mode, and a variety of other factors related to the interview process. In addition, the legal definitions of rape and sexual assault vary across jurisdictions. The NCVS presents one approach to measuring and enumerating these incidents as well as other forms of violence and property crime.²⁶

The NCVS surveyed 143,120 men and women through personal interviews during 2011.²⁷ The same individuals were interviewed every six months for seven interviews.²⁸ The NCVS received a 90% response rate and acknowledged that various survey methods inflate or cause underreporting of survey results.²⁹ Further, the NCVS attempts to increase the accuracy of reports by improving the training of interviewers.³⁰ The extrapolated rape and sexual assault total for 2002 was 349,810; for 2010 it was

²⁵ The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, website, <http://www.bjs.gov/index.cfm?ty=dcdetail&iid=245> (last visited June 5, 2013).

²⁶ Department of Justice, Bureau of Justice Statistics, *Female Victims of Sexual Violence, 1994-2010*, NCJ 240655 (Mar. 2013) at 2, <http://www.bjs.gov/content/pub/pdf/fvsv9410.pdf> [hereinafter 2013 DOJ FEMALE SEXUAL ASSAULT VICTIMS REPORT].

²⁷ Department of Justice, Bureau of Justice Statistics, *Criminal Victimization, 2011*, NCJ 239437 (Oct. 2012) at 12, available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4494> [hereinafter 2011 CRIMINAL VICTIMIZATION REPORT].

²⁸ *Id.*, at 12.

²⁹ *Id.*, at 12-14.

³⁰ *Id.*, at 12-14.

268,570; and for 2011 it was 243,800.³¹ The NCVS determined the rape and sexual assault rate per thousand was 1.5 in 2002; 1.0 in 2010; and .9 in 2011.³²

b. The Federal Bureau of Investigation (FBI) Uniform Crime Report (UCR) Program is the primary source for all crime data throughout the United States (federal and state combined), and it includes offense information for one sexual offense, forcible rape.³³ The National Judicial Reporting Program (NJRP) compiles detailed information on the sentences that felons receive in state courts nationwide and on characteristics of the felons. NJRP surveys have been conducted every 2 years since 1986. The Department of Justice publishes federal prosecution rates and conviction rates.³⁴

c. The Administrative Office of U.S. Courts lists the sexual offenses tried in each U.S. District Court, and overall throughout the United States on the world wide web.³⁵ In

³¹ *Id.*, at 2-3. The 2013 DOJ FEMALE SEXUAL ASSAULT VICTIMS REPORT, *supra* note 26, shows total male and female rape and sexual assaults in 2010 by using a 2-year rolling average centered on the most recent year with female victimization of 269,700, which is 2.1 per thousand, and male victimization of 17,400, which is .1 per thousand. *Id.* at 11-12.

³² 2011 CRIMINAL VICTIMIZATION REPORT, *supra* n. 27, at 3. The NCVS used a total U.S. population of age 12 or older of 231,589,260 in 2002; 255,961,940 in 2010; and 257,542,240 in 2011. *Id.*

³³ According to the Federal Bureau of Investigation (FBI) UNIFORM CRIME REPORTS (UCR), in 2005, "There were an estimated 93,934 forcible rapes reported to law enforcement," and "The rate of forcible rapes in 2005 was estimated at 62.5 offenses per 100,000 female inhabitants." http://www2.fbi.gov/ucr/05cius/offenses/violent_crime/forcible_rape.html. In 2011, the most recent year available, "There were an estimated 83,425 forcible rapes reported to law enforcement in 2011" and "The rate of forcible rapes in 2011 was estimated at 52.7 per 100,000 female inhabitants." <http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/violent-crime/forcible-rape> .

³⁴ See U.S. Department of Justice, *Federal Justice Statistics, 2008*, Nov. 2010, NCJ 231822, at 5 (2008 FEDERAL JUSTICE STATISTICS), <http://www.bjs.gov/content/pub/html/fjsst/2008/fjs08st.pdf>. Sexual abuse is defined as "rape, assault with intent to commit rape, and carnal knowledge of a female under age 16 who is not one's wife. . . . [It] include[es] sexual abuse of a minor and cases of sexual abuse in federal prisons." *Id.* at 69. In FY 2007, U.S. Attorney Offices received 960 cases of sexual abuse of the 178,570 total or .5% of the total suspects. *Id.* at 10 (Table 2.1). 53.4% of cases of sexual abuse referred were prosecuted in U.S. District Court. *Id.* at 12 (Table 2.2). In FY 2007, 554 trials were completed, 446 pleaded guilty, 2 pleaded nolo contendere, convicted, and of those convicted, 446 pleaded guilty, 2 pleaded nolo contendere, 30 were convicted after jury trials, and 3 were convicted after bench trials. *Id.* Of the 73 defendants not convicted, 64 cases were dismissed, 6 were acquitted by juries, and 3 by bench trials. *Id.* The rate of guilty pleas was 93% (446 divided by 481) as compared to 97% of all "convictions in U.S. district court in 2009 were the result of guilty pleas." *Compare Id. with* U.S. Department of Justice, FEDERAL JUSTICE STATISTICS, 2009, Dec. 2011, NCJ 234184, at page 12. <http://bjs.gov/content/pub/pdf/fjs09.pdf>. The Department of Justice eliminated the category of sexual abuse from their annual statistical report in 2009. *Id.*

³⁵ Administrative Office of U.S. Courts. <http://www.uscourts.gov/Statistics/StatisticalTablesForTheFederalJudiciary/december-2012.aspx>.

the Department of Defense, general courts-martial jurisdictions do not publish court-martial statistics on the world wide web.

5. Department of Education Surveys and Reports.

a. Surveys of female college students have indicated significantly higher victimization extrapolations than the 2012 WGRA and 2012 DoD Report.³⁶

b. Department of Education reports indicate much smaller rates of victimization than the college student surveys, and lower rates than the 2012 DoD Report.³⁷

6. Analysis.

a. The gender percentages of victims in restricted and unrestricted reports are 88% female and 12% male, whereas the 2012 WGRA victimization percentage is 47% female and 53% male. 12% of 2,949 military victim reports is 354 male victims. 354 male victims compared to the 2012 WGRA's extrapolated 14,205 male victims means only one in 40 male victims reported their victimization.

b. 90% of the subjects in unrestricted reports are male. 90% of 14,205 male victims (the WGRA's extrapolated number of male victims) is 12,784. The extrapolation of 12,784 military male-on-male assaults appears to be extremely inflated. The number of male-on-male investigations is 160 or 10% of the total number of investigations (1,590).³⁸ The number of male-on-male courts-martial prosecutions is not indicated in

³⁶ Kilpatrick, D., Resnick, H., Ruggiero, K., Conoscenti, L., and McCauley, J., U.S. Department of Justice, *Drug-Facilitated, Incapacitated, and Forcible Rape: A National Study*. Washington, DC (2007) at 3, 28, <https://www.ncjrs.gov/pdffiles1/nij/grants/219181.pdf> [hereinafter 2007 KILPATRICK STUDY]. The 2007 KILPATRICK STUDY was financed through a federally funded grant; however, it was not "published by the U.S. Department of Justice." *Id.* at 1. The Report includes the following disclaimer, "Opinions or points of view expressed are those of the author(s) and do not necessarily reflect the official position or policies of the U.S. Department of Justice." *Id.* The 2007 KILPATRICK STUDY was the cited basis concerning the prevalence of national rape incidents. 2012 DoD Report, Vol. I, at 18 n. 31, 53 n. 69.

³⁷ The 2007, 2008, and 2009 Cleary Act reportable forcible sex offenses were 3,478 in 2007; 3,270 in 2008; and 3,284 in 2009. U.S. Department of Education, DATA ON CAMPUS CRIME, at 5-6, <http://www2.ed.gov/admins/lead/safety/criminal2007-09.pdf>. The female student population for those three years was: 2007 (10,432,000); 2008 (10,914,000); and 2009 (11,658,000). http://nces.ed.gov/programs/digest/d11/tables/dt11_200.asp. The female college student victimization rate per thousand for forcible sex offenses for those three years was: 2007 (.33); 2008 (.30); and 2009 (.28).

³⁸ The FY 2012 DoD number of unrestricted reports of male-on-male sexual assaults was 160. 2012 DoD Report, Vol. I, at 191 (Army-85), 479 (Navy-37), 534 (Marine Corps-23), 635 (Air Force-15). 1,590 unrestricted reports involved allegations of Service member-on-Service member sexual assault. See note 2, *supra*. Unrestricted reports result in criminal investigations. See note 3, *supra*.

the 2012 DoD Report; however, it would be surprising if the number was more than about ten percent.

c. The extrapolated number of military victims of sexual assault (26,000) in the 2012 DoD Report is 20 times as high as the survey numbers found in the 2011 Criminal Victimization Report.³⁹ However, the DoD extrapolation and survey did not involve trust and reliability building interviews. The 2012 WGRA did not involve repeated interviews of the same respondents. The 2007 Kilpatrick Study extrapolated a college female rape victimization percentage more than three times higher than the 2012 WGRA rape extrapolation of female active duty women.⁴⁰

d. The 2012 WGRA utilized the results from the 2010 MILITARY NISV REPORT to support the 26,000 extrapolation. 2010 MILITARY NISV REPORT mixed non-criminal sexual misbehavior into their interview questions which may have confused respondents and caused inflated results. The 2010 MILITARY NISV REPORT found vast variations in sexual victimizations between different states.⁴¹ Absent a credible explanation for the different state results, the CDC survey results should be viewed with skepticism and assessed as too unreliable to support the 2012 WGRA's extrapolation of 26,000 victims.

³⁹ Using the total DoD active duty population of 1,388,028 and the extrapolated number of 26,000 military victims found in the 2012 DoD Report, the extrapolated rate per thousand is 18.7, which is 20 times the rate per thousand for the most recent year available in the 2011 CRIMINAL VICTIMIZATION REPORT, *supra* n. 27. Reporting rates per thousand allow comparison of reports from groups of different sizes and it facilitates year-after-year comparisons, even when the total number of people in a group has changed. 2012 DoD Report, Vol. I, at 60. Actual victim reporting rates for the last six years are as follows: FY 2007 (1.6); FY 2008 (1.7); FY 2009 (1.9); FY 2010 (1.8); FY 2011 (1.9), and FY 2012 (2.1). *Id.* at 60. Rates are calculated using the number of Service member victims in unrestricted and restricted reports and Active Duty Military Service end strength for each year on record with Defense Manpower Data Center (DMDC). *Id.*

⁴⁰ 2007 KILPATRICK STUDY, *supra* n. 36, at 3, states:

Estimates are that 673,000 of nearly 6 million women (11.5%) currently attending American colleges have ever been raped. This includes an estimated half-million college women who have been forcibly raped, 160,000 who have experienced drug-facilitated rape, and over 200,000 who have experienced incapacitated rape. During the past year alone, 300,000 college women (5.2%) were raped: nearly 200,000 who have been forcibly raped, nearly 100,000 who have experienced drug-facilitated rape, and over 100,000 who have experienced incapacitated rape." []].

Id. The 2012 DoD Report provides 27% of the unrestricted reports of USC were rapes. 2012 DoD Report, Vol. I at 62. 27 times 6.1% is 1.65%. The annual college rape percentage is 3.15 times as high as the military rape percentage.

⁴¹ See, e.g., Virginia (11.4%) and California (14.6%) were less than half the rates for lifetime rape of Michigan (25.6%) and Alaska (29.2%). 2010 CDC NISVS, *supra* note 16, Table 7.1 at 68-69.