

Sexual Assault in the Military

Activism, Representation, and the Importance of Policy Change

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Executive Summary

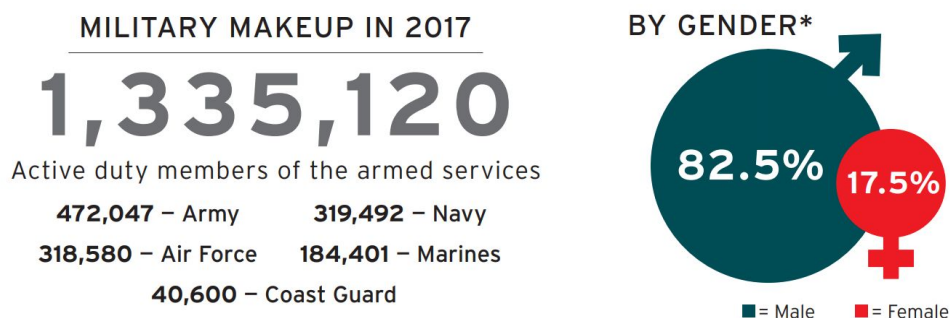
Sexual assault in the military has risen by almost 40% since 2016 in spite of efforts to implement policies against it (Kime). Clearly this problem is more complex than can be tackled by the kinds of policy changes that have already been made; sexual assault in the military involves policy centered around protecting the accused, unspoken yet ingrained power dynamics, and a lack of diversity. Because there are such systemic and cultural contributors to sexual assault in the military, policymakers must shift their focus from prevention and create policies that make people more accountable for their actions.

According to a survey from the New York Times, “women now make up only about 20 percent of the military, but are the targets of 63 percent of assaults... with the youngest and lowest-ranking women most at risk”. What is even more concerning is the prevalence of sexual assault among the future leaders of the military in ROTC and the service academies. “The number of sexual assaults at the nation’s service academies had risen by 50 percent since 2016, suggesting that the problem is just as widespread among the military’s future leaders as it is in the current ranks. It was also in line with high rates reported at civilian colleges and universities” (New York Times). So not only is sexual assault becoming more and more prevalent, this problem affects the youngest and most vulnerable soldiers disproportionately.

As part of my analysis of what potential policy changes could prevent sexual assault in the military and implement new consequences for those at fault, I performed a literature review of some of the recent findings of policies that perpetuate these issues, conducted an interview with the Director of Programs and Policy at a nonprofit that advocates for victims of sexual assault, and evaluated the feasibility of all these proposed policy changes. Such work is more imperative now than ever because so few people understand the full scale of sexual assault in the military and awareness is one of the best ways to combat stigma and power structures to bring about real change.

Introduction

Figure 1.



Sexual assault runs rampant in the military, but “before 2013, DOD did not track or report sexual harassment (or other forms of harassment/discrimination) complaint data in any systematic way” (Kamarck 47). Because of this, the severity of the problem is grossly underestimated and largely misunderstood. Even though the Department of Defense (DOD) has made efforts to increase its reporting rate and implement policies to prevent sexual assault, the problem has only worsened since 2016 with detrimental effects, especially for servicewomen. Although only 20% of the military is made up of women, they comprise the majority of sexual assault victims.

Figure 2.



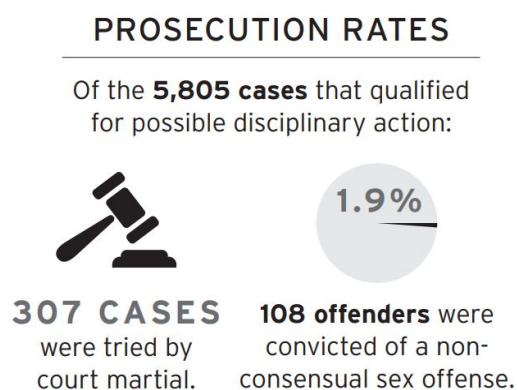
Not only are women joining a service that is already male-dominated, but the high prevalence of sexual assault continues this cycle of underrepresentation as it forces women to then leave the military. It is, unfortunately, true that “sexual assaults are a major reason that some female service members leave the military” (Castro). This underrepresentation of women, especially in places of power, also causes the “power differential between men and women in the military” that allows sexual misconduct to run rampant (Castro). According to a diversity study done by Cornell University, “women leave the military at higher rates than men at various points during their career, meaning that while a new cohort of officer accessions may have a high percentage of females, that percentage may have dropped significantly by the time the cohort is eligible for promotion to senior ranks.” Because commanding officers are the ones who make the large majority of decisions about how sexual assault is handled, this also means that the senior officers handling sexual assault cases within a unit are usually males.

In addition to the high percentage of male commanding officers, there are many other contributing factors to a low reporting rate of sexual assault and misconduct. After

all, the mere presence of male leadership is not enough to discourage reporting in and of itself and this is not a completely gendered issue. While the primary victims of sexual assault are female, many are not. According to a recent study done about military mental health, “male service members face the same challenges in reporting sexual assaults and in seeking health care as do female service members and perhaps even more so due to the stigmatizing nature of the act.” So, the problem is not that commanding officers are male and that victims are female, it is that victims are conditioned, regardless of gender, to believe that their options are limited due to the military’s “rigid chain of command”(Castro).

A fundamental value of the military is good character, and because of this many conflicts are resolved at the lowest possible level and accountability is maintained across many different levels. However, this system also means that it is discouraged for “service members [to go] directly to their supervisor or higher-ups in the military chain of command without first trying to resolve the issue themselves”, which is exactly what reporting requires victims to do (Castro). This system is especially problematic because not only do women tend to be lower-ranking while men tend to be higher-ranking, but soldiers most heavily impacted by sexual assault are those lowest in the chain of command. The military reporting system is flawed because it requires the most vulnerable and least powerful group of soldiers to communicate with higher-ups about a perpetrator who is often a higher-ranked soldier in the first place. There are too many power differentials, both unspoken and spoken, for this system to be effective-- not to mention the fact that even if the victims report sexual assault, less than 2% of cases end with a conviction (National Sexual Violence Resource Center).

Figure 3.



Background

Military courts operate differently than civilian courts, and one of the key differences that has disastrous ramifications for victims of sexual assault is the factual sufficiency clause. Unlike proving legal sufficiency, the factual sufficiency clause allows military courts to evaluate “the quality and credibility of the trial evidence”, bringing into question the credibility of the witnesses themselves (Schenck 526). Although it may have started as “one remedy to protect the rights of the accused”, in practice it perpetuates a culture of victim-blaming (Schenck 530). A sexual assault victim could do all the right things like reporting through the chain of command and testifying in court, but the factual sufficiency clause would still evaluate whether they are trustworthy enough to be truthful about their assault experience. In practice, this has even caused cases to be overturned so that those convicted of sexual assault face no consequences.

One prominent case involving the factual sufficiency clause was that of the Marine Colonel, Daniel Wilson. He was convicted of child sexual assault in 2017, but this decision was overturned in the summer of 2019 and he was never even required to register as a sex offender. According to the Marine Corps Times, “the 2019 panel reviewing the trial record found the witness — his alleged victim who was 7-years-old during her testimony — inconsistent and unreliable, and used the court’s unique factual sufficiency powers to overturn his previous child sexual abuse conviction”. Because it was decided that a child’s recollection of abuse was inconsistent, Colonel Wilson will still retire with full benefits (Schogol). While all of this was legal, it sends the message that the military distrusts victims of sexual assault and excuses this kind of behavior among its high-ranking officials.

In 2017, a West Point cadet named Jacob Whisenhunt was convicted for the rape of another West Point cadet, but the factual sufficiency clause was similarly applied for the decision to be overturned in 2019. During her testimony, the witness recalled being so afraid that she “remained frozen in the fetal position during the entire assault”, and the appeals court decided that if it were truly nonconsensual, she would have fought back harder. He was allowed to go back to West Point and continue his military career as if he were innocent, all because the victim did not react in the way the court of appeals thought she should have reacted in that situation. Maureen Curtis, who works for a prominent victim services agency, told the New York Times that “many victims do not come forward because they do not trust the system. ‘They don’t believe that they will

get the justice that they want,' she said. 'I think this sends a message that they're right.'"

Interview with Protect Our Defenders

To contextualize this problem with the current efforts to combat it, I spoke with Adelaide Kahn, the Director of Programs and Policy at Protect Our Defenders. Protect Our Defenders is a nonprofit organization that serves to "provide direct support to survivors of sexual misconduct, creates a legislative framework to start reform, and implement new policies that build upon those already put into place." We talked about how Protect Our Defenders works with legislators and the Department of Defense to actualize policy change and advocate for survivors of sexual assault, and this led to a larger discussion about the root issues that they are trying to tackle.

The overarching theme of this conversation surrounding sexual assault in the military was the necessity of holding people accountable for their actions, but this is easier said than done. One of the largest barriers to legislative changes is that legislators and the Department of Defense tend to disagree about how sexual assault policy should be handled, as the entire justice system differs between these two entities. Kahn emphasized that in the military, the chain of command makes all the decisions, which can lead to a lack of accountability and a tendency for lower-ranking soldiers to be exploited more easily. She cited that the Department of Defense's reporting rate is increasing, which means that victims have less of a fear of retaliation and have higher hopes of the accused being held accountable. Even though this is a step in the right direction, it is not necessarily met with an increasing conviction rate. The military is heavily engaged with education surrounding the prevention of sexual assault and providing resources for those affected, but when the culture as a whole doesn't mirror the liability of those accused and the support of victims, it is difficult to confront sexual assault. Combatting part of the problem without also acknowledging the role of perpetuated stereotypes, underrepresentation, and military culture in causing it cannot ever resolve it.

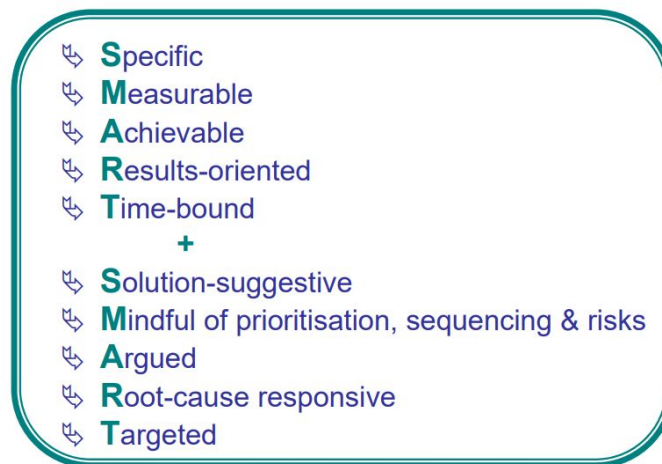
Military culture is an abstract way to look at the issue of sexual assault because it is complex and often involves unseen power dynamics. A more tangible way to view this trend is that as you go further up in military leadership, the less accountable people are for their actions because of the long-standing idea of "good military character", even as this dangerous rhetoric has been removed as a kind of defense from scrutiny. Kahn brought up several recent cases that similarly reflect the tendency to protect the accused and ostracize the victims of sexual assault. The Marine Colonel Wilson and West Point cadet who were both convicted of sexual assault and then let free because of the military's factual sufficiency clause demonstrated not only that they were minimizing the experiences of victims, but they send a message that sexual assault is not taken very seriously. In these very extreme cases, convicted sexual assaulters had their decisions overturned because child witnesses were mistrusted and the court determined that the victim had simply not fought back hard enough.

Because of these military-specific policies, victims are easily taken advantage of and the cycle of downplaying crimes is perpetuated. When victims are scrutinized and disbelieved, it maintains the low reporting rate because even those brave enough to speak out see no convictions when their cases go to trial. Kahn finished our conversation by imploring that in addition to seeking drastic policy change, there are things that individuals can be doing to combat these saddening outcomes. It is vitally important that victims know their rights and “know what actions to take if their actions are violated”, but it is just as important that throughout the ranks there are people calling other people out when unacceptable behaviors are observed.

Methodology

Figure 4.

In the evaluation of each of my proposed policy solutions, I will be utilizing a modified version of this “double smart” criteria, with a particular focus on the following metrics: measurable, results-oriented, argued, and root-cause responsive.



Measurable:

- Are there quantitative or qualitative results that would indicate the success or failure of this policy change?
- “Does the report or recommendation include or imply an indicator for [a] follow-up?” (APT)
- Would the current administration be able to effectively determine the degree to which these policies were implemented?

Results-Oriented:

- “Does the recommendation identify the desired state of affairs for the future and/or concrete actions to that end rather than merely describing the problem and calling for change?” (APT)

Argued:

- Is there specific data to back up this policy recommendation?
- Does it solve a specific problem in a way that logically follows the analyses and conclusions of this report?

Root-cause responsive:

- Does this recommendation face the root of the problem or merely the peripheral effects that the problem causes?
- If it does not directly address the root of the problem, does it address problems that could lead to the root of the problem being solved?

Policy Options and Recommendations

1. Elimination of the Factual Sufficiency Clause

Military courts should eliminate the factual sufficiency clause so that they can handle sexual assault cases giving the victims of sexual assaults the same level of validation and belief awarded by civilian courts.

- Although it may have started as a way to protect the accused in various ways, as the military has evolved so should the military's system of justice.
 - The elimination of the factual sufficiency clause could increase the reporting rate as victims would become less afraid that their trial won't lead to a conviction.
 - This policy change would also show that the military is making a conscious effort to believe the victims of sexual assault and send a message that it should be taken more seriously.
 - If the military justice system were more similar to the civilian justice system, it would be easier to offer victims services seamlessly across civilian and military agencies.
- ### 2. More transparency from the Pentagon and the Department of Defense about sexual assault statistics

Although the Department of Defense started tracking sexual assault statistics in 2013, this means that the data is too preliminary to show significant changes in the span of 7 years of data collection. Additionally, there is a gap in data surrounding service women's mental health who returned from Operation

Enduring Freedom and Operation Iraqi Freedom. Because the percentage of women in the military is relatively low, “data on other forms of interpersonal stress experienced by women in the war zone, including experiences of gender harassment and limited social support from other military personnel, is inadequate” (Street).

- Improved and more accurate sexual assault statistics from the DoD would allow for a more complete understanding of the problem and its prevalence.
- Once the DOD has more insight into the experience of the victims of sexual assault, the better they can tailor policy changes to more effectively combat sexual assault.

3. Increased diversity in the military and more advocacy for minority groups

According to Protect Our Defenders, “Congress now requires the military to track race, ethnicity, and gender of service members who are court-martialed”, which is a start in becoming aware of the diversity issues within the military. However, what they do with this information is also vitally important.

- The military should be actively seeking out the voices of the most marginalized and least represented soldiers because those are often most affected by the rigid chains of command.
- The DOD would be able to make more informed decisions about sexual assault if it focused on the lower-ranking, more vulnerable soldiers that are most impacted.
- In turn, a lower rate of sexual assault in the military would increase the number of women who remain in service to become higher-ranking officers, thus also increasing diversity.

4. Carry out these policy changes among ROTC departments and service academies, the problem cannot be solved in the military if its future leaders are ignored.

As long as sexual assault is prevalent among future servicemembers, the full problem of sexual assault in the military can never be solved. Unlike a normal university or an ROTC program that is held accountable to the rules of its host institution, service academies don't have the same oversight.

- Solve the problem of oversight by creating an initiative to hold service academies to the same kinds of standards that civilian colleges enforce for the safety of their students.

- Create more visible consequences for sexual assault because of the high incentive to covering it up-- preserving the reputation of an institution is not more important than creating a safe space for cadets/midshipmen to grow up as future leaders.

Conclusion

Sexual assault in the military is perpetuated by many cultural and institutional structures, but it is worse now than ever. Policy changes must be made because, in a post-#MeToo world, there are many barriers to this same accountability being applied to those in the military. My proposed policy changes specifically consider the importance of holding perpetrators accountable and fostering a military community that believes victims of sexual assault. Without intentional choices, both policy and otherwise, to prevent sexual assault and boldly confront it when prevention is not possible, the disheartening statistics are not going to change. The secrecy surrounding the true number of assaults that occur and the justice process itself only serves to protect the accused and penalize the victims. However, combatting this problem also means combatting the peripheral problems that contribute to assault like underrepresentation and marginalization. The Department of Defense must take this problem seriously and put more resources into understanding the various contributing factors to the high prevalence of sexual assault in the face of a call to restructure the entire system of reporting. Soldiers work selflessly to protect civilians every day, it is time the law reflects that same purpose and protects them when they are the ones victimized.

Appendices

Figures 1-3

Modified from “Sexual Violence in the Military: Infographic.” *National Sexual Violence Resource Center*, Mar. 2020.

Figure 4

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