

STATEMENT  
OF  
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BEFORE THE  
UNITED STATES COMMISSION ON CIVIL RIGHTS

2013 STATUTORY REPORT: SEXUAL ASSAULT IN THE MILITARY  
BRIEFING

JANUARY 11, 2013

**Written Statement to the USCCR  
Department of Defense's Approach to Combating Sexual Assault**

Chairman Castro, members of the United States Commission on Civil Rights, thank you for the opportunity to provide a statement on the Department of Defense's (DoD) approach to combating sexual assault and our progress in eliminating this crime in the armed forces. This statement will provide an update on our strategy, critical policy changes, Service-wide implementation of recent directives and military-wide efforts to improve the response and care for the victims and survivors of sexual assault.

Sexual assault is a crime and has no place in the United States military. It is a violation of everything that we stand for and it is an affront to the values we defend. It is unacceptable that in 2010, based on the results of the DoD Workplace and Gender Relations Survey of Active Duty Personnel (WGRA), it was estimated that more than 19,000 Service members—nearly 11,000 men and 9,000 women—experienced some form of unwanted sexual contact. The same year, the Department received over 2,600 reports from victim service members, underscoring the reality of this crime and the significant underreporting that prevents victims from receiving care and prevents us from holding offenders appropriately accountable.

Secretary of Defense Leon Panetta is absolutely committed to eradicating this crime from our armed forces. Our DoD-wide mission is to prevent and respond to this crime in order to enable military readiness and to reduce—with a goal to eliminate—sexual assault from the military.

The solution to the problem of sexual assault requires a multi-pronged approach, one that applies a wide range of authorities, activities, and the full efforts of leaders and service members

throughout the armed forces and at every level of command and leadership. Our strategy is to apply simultaneous effort in five areas that we call lines of effort: Prevention, Investigation, Accountability, Advocacy, and Assessment. A key part of the strategy is to reinforce cultural imperatives of mutual dignity and respect and other core values to foster an environment where sexual assault is not tolerated, condoned, or ignored.

My office, SAPRO, partners with a broad spectrum of Department entities exercising authorities given to me by Congress and the Secretary of Defense. As Director of SAPRO, I oversee implementation of the comprehensive approach for the DoD Sexual Assault Prevention and Response program. My office serves as the single point of authority, accountability, and oversight for the sexual assault prevention and response (SAPR) program; and provides oversight to ensure that the military departments comply with SAPR program policy. To facilitate execution of these lines of efforts, we collaborate with a variety of stakeholders across the Department, to include: Department of Defense and senior Service leadership, the military legal community, the DoD Inspector General, victim advocacy organizations, and other executive branch agencies such as the Department of Justice and the Department of Veterans Affairs. The latter is particularly important as we strive to ensure there is a continuous chain of support for service members transitioning to civilian life. Given the complexity and nature of this problem, both in the military and civilian society, we know there is no single solution to eliminate this crime.

One critical limitation and challenge we face is the underreporting of the crime of sexual assault, which we recognize as a problem in the military as well as in civilian communities. Our research shows that as few as 14 percent of victims will make a restricted or unrestricted report, with stigma, fear and shame serving as the most frequently reported reasons. This underreporting limits the military's ability to hold offenders appropriately accountable, and more importantly, prevents victims from receiving the care they need. Victim confidence is paramount; we cannot eliminate this crime without their committed involvement. The vast underreporting underscores our need to combat this crime across a range of efforts, most importantly by providing high quality support and services to victims.

We must have reports of crime for victims to be cared for and cases to be appropriately investigated. Gaining victims' trust is paramount. We do that by creating a climate of dignity and respect, where a victim's report is taken seriously, their privacy is protected, and they are provided the resources and attention to manage their care and treatment. Most important, we need the committed involvement of leaders and commanders in every unit across the Department of Defense to fix this problem—by each Commander creating a command climate where victims are supported and do not fear retaliation, where offenders know they will be found and appropriately punished for their crimes, and where bystanders are motivated to intervene to stop unsafe behavior. Our troops take care of each other on the battlefield better than any other military in the world – and this same ethos of care must extend to combating sexual assault within our ranks.

Suggestions to remove Commanders from the administration of military justice undercut good order and discipline. Commanders are accountable for the good order and discipline of the forces assigned under them and are responsible for what their units do or fail to do. Removing a commander from the administration of justice among his or her troops would undercut a

commander's authority, especially in combat, where the Uniform Code of Military Justice (UCMJ) is most tested by the stresses of war. In January 2012, Secretary Panetta ordered an assessment of commander training on sexual assault prevention and response. As a result of this assessment, the Secretary directed development of a standardized set of Core Competencies for pre-command training courses, which all officers and senior non-commissioned officers must complete before assuming command and senior non-commissioned officer leadership positions. These Core Competencies will be integrated into all four Services' pre-command courses by March 30, 2013.

The Department has initiated and implemented a variety of initiatives to fundamentally change the way the Department confronts sexual assault. These reforms, which I will now highlight, are specifically intended to strengthen our efforts in victim advocacy and accountability.

In December 2011, the Department issued guidance that mandated an increased document retention time for sexual assault reports, including investigative documentation, the sexual assault forensic exam (SAFE kit) and the victim's Reporting Preference Statement. Under this guidance, combined with the requirements of the recently enacted FY2013 NDAA, reports of sexual assault will be kept for 50 years. This is particularly useful for veterans as this documentation could be used to support a Military Sexual Trauma diagnosis from the Department of Veterans Affairs. The Department also issued new policy that provides victims of sexual assault the option to request a permanent or temporary transfer from their command or base, or to a different location within their assigned command or base. This expedited transfer policy requires that victims receive a response within 72 hours of their request for an expedited transfer. If denied, the victim may appeal to the first general/flag officer in their chain, who also has 72 hours to provide a response.

Also in December 2011, the President signed an Executive Order adding Military Rule of Evidence 514 into military law, an action that enhances victim trust by ensuring that communications between a victim and victim advocate are privileged.

In January 2012, the Secretary announced the implementation of the Department of Defense Sexual Assault Advocate Certification Program (D-SAACP). The Department contracted with a leading civilian victim advocacy organization to establish the DoD certification program in alignment with national standards. This program is now underway; the Department is now certifying all military and civilian sexual assault response coordinators and victim advocates, with a goal of certifying all DoD sexual assault response coordinators and victim advocates by October 2013. In January 2012, the Department also expanded sexual assault victim support to cover military spouses and adult military dependents, and ensured DOD civilians stationed abroad and DOD U.S. citizen contractors in combat areas receive emergency care after sexual assault.

In April 2012, the Secretary transmitted the Leadership, Education, Accountability and Discipline (LEAD) Act to Congress to further codify into law specific reforms to advance sexual assault prevention and response. These six provisions were included in the recently signed National Defense Authorization Act for 2013. The new law includes provisions to:

- Establish a Special Victims Capability within each of the Services, to ensure specially trained investigators, prosecutors, and victim-witness assistance personnel are available to

assist with sexual assault cases and that each service has specially trained experts in evidence collection, interviewing, and interacting with sexual assault victims.

- Require all Service members to receive an explanation of all SAPR policies within fourteen days of entrance into active service as a way to educate our newest members on the resources available if victimized and to immediately underscore that the military culture does not tolerate sexual assault.
- Require record of outcome of disciplinary and administrative proceedings related to sexual assault be centrally located and retained for a period of not less than 20 years, in order to allow us to better track our progress in combating sexual assault, and will help us identify potential patterns of misconduct and systemic issues.
- Require Commanders to conduct an Organizational Climate assessment within 120 days of assuming command and an annual assessment thereafter, enabling leaders to measure whether they are meeting the Department's goal regarding bystander intervention, command climate, and reducing barriers to reporting.
- Allow Reserve and National Guard personnel who have alleged to have been sexually assaulted while on active duty to request to remain on active duty or return to active duty until a determination is made as to whether the alleged assault occurred in the line of duty; and
- Mandate wider dissemination of SAPR resources, including victim resources such as the SafeHelpline.

In June 2012, the Secretary of Defense elevated the initial disposition decision for the most serious sexual assault offenses—including rape, sexual assault, forcible sodomy, and attempts to commit these offenses—so that, at a minimum, these cases are addressed by a Special Court Martial Convening Authority” who is an O-6 grade (an officer at the Colonel or Navy Captain level) or above. This ensures that, in consultation with Judge Advocate Generals, disposition decision for cases of sexual assault are made by experienced commanders. Elevating the initial disposition authority also ensures these cases remain within the chain of command, so our leaders retain responsibility and accountability for the problem of sexual assault.

Also in June 2012, our Safe Helpline was expanded to help transitioning service members who have experienced sexual assault. The DoD Safe Helpline is an anonymous and confidential crisis support service for adult members of the DoD community. It is available 24/7, worldwide by “click, call, or text.” The expanded service offered for transitioning Service members helps smooth the transition from DoD to the Department of Veterans Affairs. As of December 30, 2012, [www.SafeHelpline.org](http://www.SafeHelpline.org) has received 95,569 unique visits (each computer is counted once and the unique visits number does not represent sexual assault victims), and the 7,198 visitors have been helped (completed a live session).

In September 2012, the Secretary received the findings from the pre-command training assessment he ordered in January 2012. My office, along with training, curriculum, advocacy, and military education subject matter experts, assessed pre-command and senior enlisted leader training conducted by the Marine Corps, Navy, and Air Force and reviewed Army's newly developed Sexual Harassment / Assault Response and Prevention (SHARP) Program training support package for senior enlisted leaders. Upon reviewing our report, the Secretary directed the military Services to take the following steps to improve training quality and consistency across the services:

- Develop and implement standardized core competencies, learning objectives, and methods for objectively assessing the effectiveness of SAPR programs.
- Provide a dedicated block of SAPR instruction that incorporates best practices including interactive instruction with vignettes, exercises, and classroom discussion.
- Provide a quick-reference SAPR "Commander's Guide" that personnel can then use in subsequent leadership roles.
- Assess commanders' and senior enlisted leaders' understanding of the key SAPR concepts and skills and develop and implement refresher training to sustain skills and knowledge.

In September 2012, in response to criminal acts and misconduct at Joint Base San Antonio-Lackland, Secretary Panetta ordered a sweeping review and assessment of all initial military training of enlisted personnel and commissioned officers. As a result, the Services are in the process of reviewing a variety of important elements of their training enterprises:

- Selection, training, and oversight of instructors and leaders who directly supervise initial military training. This review is particularly considering the potential benefits of increasing the number of female training instructors;
- Manning, including the ratio of instructors to students and the ratio of leaders in the chain of command to instructors;
- Internal controls in place to identify and prevent behavior inconsistent with established standards by instructors and leaders throughout all phases of initial military training;
- Student accessibility to SAPR services;
- Timing, content, and delivery of SAPR-related training; and
- Timing, content, and effectiveness of student feedback mechanisms.

The Services are due to report their findings and recommendations by February 13, 2013.

In October 2012, the Defense Sexual Assault Incident Database (DSAID) became fully operational, which greatly enhances our ability to analyze data on sexual assault reports. DSAID has three primary functions: standardization of reporting, managing victim care, and providing business management for sexual assault response coordinators. It is a common database that all Services will use. Sexual assault response coordinators and Service SAPR program managers will use the database for data entry, allowing the Department and each Service to track every case from beginning to end. Additionally, the system will interface with the Services' investigative systems, integrating criminal and case management data. Reporting preferences will be maintained in DSAID for 50 years, which will assist victims seeking disability compensation for military sexual trauma through the Department of Veterans Affairs.

In May 2012, as an integral part of the Department's efforts to combat sexual assault, the Joint Chiefs of Staff published the "Strategic Direction to the Joint Force on Sexual Assault Prevention and Response." This strategic direction emphasizes senior leaders' involvement and ownership in addressing sexual assault among the ranks. It is an unprecedented "32-Star" guidance written to synchronize Departmental efforts as we combat sexual assault along the previously described five lines of effort. With this joint guidance as our foundation, the Department is in the process of revising our DoD-wide SAPR strategy along these five lines of effort:

- **Prevention.** Our prevention goal is to standardize and deliver effective prevention methods and programs. It is critical that our entire military community work together to preclude criminal behavior from occurring. We are evaluating and optimizing every sexual assault prevention and response training course our Services offer to our commanders, senior enlisted noncommissioned officers, our newest enlisted troops and to the Sexual Assault Response Coordinators and Victim Advocates. We are standardizing this training with best practices—the best practices within our current training and from the civilian sexual assault training—and making those common practices. We are also establishing policy to reduce the impact of high-risk behaviors. And each Service has launched enhanced training programs; this new training prominently features senior leaders, thus underlying the importance on creating the right culture. Our end state is an environment where the cultural imperatives of mutual respect and trust, professional values, and team commitment are reinforced to create an environment where sexual assault is not tolerated.
- **Investigation.** We continue to expand our efforts to achieve high competence in every investigation of sexual assault, which begins with an unrestricted report. Our investigative resources need to yield timely and accurate results. By DoD Policy, investigations are conducted entirely independent from the military chain of command. When an unrestricted report is filed, the case is referred for investigation to a professionally-trained Military Criminal Investigative Organization that is independent of the chain of command. Each military Department has its own MCIO—the Army's Criminal Investigative Division, the Navy Criminal Investigative Service, and the Air Force Office of Special Investigations. The

MCIOs are overseen by their Services' Secretaries and policy oversight is provided by the DoD Inspector General (IG). In FY 2012, the DoD IG conducted oversight reviews of closed adult sexual assault cases and adequacy of training. The Department funded over four hundred seats at the US Army Special Victim Investigators Course through FY 2017 and funded US Army Criminal Investigative Laboratory through FY 2017 for five additional DNA examiners to keep sexual assault case evidence processing time under 60 days. In FY 2013, we are budgeting over \$3 million for additional training.

- **Accountability.** Holding offenders appropriately accountable is the primary focus under the accountability line of effort. The Department's data shows that court martial actions for sexual assault offenses are up significantly over the past five years as are punishments resulting from court-martial convictions. In addition, unlike the civilian system, the military justice system provides tools to commanders to appropriately punish offenders when the facts and circumstances of the case do not warrant a court martial action, providing increased tools to maintain discipline. The military justice system is critical to establishing and maintaining good order and discipline in the ranks and our commanders are a critical part of this justice system; we cannot separate their responsibility to maintain good order and discipline from their ability to administer military justice to achieve that end. The Secretary's direction to elevate initial disposition authority to special courts-martial convening authorities provides senior-level commander review while still keeping the case within the chain of command. In addition, the newly-mandated Special Victims Capability will enable the Services' ability to deliver enhanced investigation and prosecution of sexual offenses, child abuse and serious domestic violence.
- **Advocacy.** Victim care is central to our approach. Our goal is to standardize and deliver effective victim support, response, and reporting options, with the ultimate goal of providing high quality services and support to instill confidence, restore resilience, and inspire victims to report -- from the initiation of a report through case disposition in the justice system to victim recovery. When our victims report a sexual assault, we provide them a safe environment and ensure they get the medical, counseling, legal assistance, and victim witness assistance they need. When our victims choose not to report, we cannot provide them the assistance, care, and support they need to recover from this terrible crime. And we cannot investigate or hold offenders appropriately accountable. The Services have begun expanding the number of sexual assault response coordinators and sexual assault victim advocates across the Department, in tandem with the establishment of the DoD Sexual Assault Advocate Certification Program. This will deliver specially trained and certified professional advocates for victims of sexual assault where ever our members serve.
- **Assessment.** We aim to effectively standardize, measure, analyze, and assess sexual assault prevention and response program progress in our final line of effort. Assessment is an enduring process of data collection and analytics designed to improve program effectiveness and is embedded within each of the other four lines of effort. This effort

includes valuable feedback from Service members in the form of surveys and also includes feedback from commanders, victims, and victim advocates. Our goal is to incorporate responsive, meaningful, and accurate systems of measurement and evaluation into every aspect of our programs in order to determine the impact we are having on reducing and eliminating sexual assault. We have initiated more frequent Department-wide surveys—now every two years, instead of four—and we have placed sexual assault prevention and response questions on the climate surveys that are available to Commanders.

Administered in the tens of thousands each month, these climate assessments provide invaluable feedback to Commanders on the climate in the unit, service member propensity to report, and the barriers to reporting that exist within individual units.

I do not come here today to minimize the problem of sexual assault in the military. In the Department of Defense, we have a problem and we will continue to confront the brutal realities until we eliminate sexual assault from our ranks. I am here to report that the Department is firmly committed to that goal and that we remain persistent in confronting this crime through prevention, investigation, accountability, advocacy, and assessment so that we can reduce, with a goal of eliminating, sexual assault from the military.