2015

Sexual Assault in the United States Military: A War That Refuses to End

Francesca M. Yuppa

Follow this and additional works at: http://scholarship.shu.edu/student_scholarship

Part of the Law Commons

Recommended Citation

http://scholarship.shu.edu/student_scholarship/811
Table of Contents

I. Introduction........................................................................................................... 2

II. Women Are Viewed As Legally Equal to Men in U.S. Military.......... 4
   A. Historical Background.................................................................................... 5
   B. Decision to Lift the Direct Ground Combat Ban........................................... 7

III. Recent Findings and Policies................................................................. 9
   B. Recent Changes in Policy............................................................................ 13

IV. Psychological Effects of Sexual Assault............................................ 16
   A. Post-Traumatic Stress Disorder................................................................. 17
   B. Depression.................................................................................................. 18
   C. Body Dysmorphic Disorder........................................................................ 19
   D. Female Sexual Dysfunction...................................................................... 20

V. Recommendations to Increase Prosecution and Prevention........... 22
   A. Change Prosecution Strategy................................................................. 22
      i. Require JAG Officers to Prosecute Offenders..................................... 23
   B. Add Prevention Policies............................................................................ 25
      i. Allow JAG Officers to Prosecute Commanders.................................. 26
      ii. Tighten Applicant Screening Process............................................. 27

VI. Conclusion...................................................................................................... 29
I. Introduction

Every hour, three rapes, sexual assaults, or unwanted sexual contacts occur in the United States military.\(^1\) Beginning in the 1990s, every branch of the United States military experienced negative media attention due to allegations of sexual assault by military personnel.\(^2\) Such reports implicated not only drill sergeants, but also high-level officials.\(^3\) In the 2000s, sexual assault in the military remained prevalent.\(^4\) In response to these highly publicized incidents of sexual assault in the military, in 2004, Congress ordered that the Department of Defense revise its sexual assault policies by 2005.\(^5\) One of the main changes that the Department of Defense adopted was the Sexual Assault Prevention and Response Office, which is responsible for issuing annual public reports of sexual assault in the military and providing guidance regarding new sexual assault policies.\(^6\) Unfortunately, despite the Department of Defense’s efforts to reevaluate and alter its policies, sexual assault in the military continues to be a genuine problem, particularly for women.\(^7\) As recently as December 2013, President Obama required the

---


3 *Id.*

4 *Id.* at 589-92.


6 *Id.*

Department of Defense to provide him with an extensive report that explained improvements to the military’s sexual assault prevention and response policies.  

This paper argues that the government must increase prevention and prosecution of sexual assault in the military because its current gender neutral policies have a disparate impact on women despite the government’s express policy establishing that men and women in the military are equals. As a result of this disparate impact, women are more likely than men to experience the severe psychological effects of sexual assault and consequently, may be less likely to advance both professionally and personally. This paper will proceed as follows. Part II argues that the military’s express policy of gender equality imposes a legal obligation on the government to ensure that men and women are treated the same. First, it explains the historical bans on women in combat to provide insight on the initial questionable reasoning for various combat bans. Second, it explains the decision to lift the direct ground combat ban and Secretary of Defense Leon Panetta’s commentary as to why it was lifted, which ultimately illustrates that the government acknowledges that men and women in the military are equals. Part III examines recent findings surrounding sexual assault in the military, specifically those from the 2013-2014 Sexual Assault Prevention and Response Office Report and the 2014 Service Academies Gender Relations Survey Report, to reflect how the military’s sexual assault policies disparately impact women. Part III also describes recent policy changes, such as the Department of Defense’s 2014 November Report to President Obama and a bill passed in March 2014 by the Senate, to illustrate that the government acknowledges its

---

legal obligation to treat men and women in the military as equals. Part IV sets forth the likely effects of the government’s failure to adopt the reforms necessary to implement its policy of gender equality in the military. It presents several psychological disorders associated with sexual assault, such as post-traumatic stress disorder, depression, body dysmorphic disorder, and female sexual dysfunction, to outline how the psychological side effects of sexual assault can hinder both professional and personal advancement. Part V proposes plausible remedies to reduce the disproportionately high rate of sexual assault against women in the military. First, it argues that Congress should adopt the portion of Senator Gillibrand’s proposed bill that requires incidents of sexual assault to be reported to Judge Advocate General (JAG) officers to increase prosecution of those accused of sexual assault in the military. Second, it argues for a shift in focus from prosecution to prevention. More specifically, it proposes that commanders should be subject to prosecution by JAG officers for failure to punish sexual assault harassment within their units that they knew was occurring. Additionally, it argues that the Congress should enforce a law, applicable to all military branches, that prohibits applicants who have been previously charged with sexual assault from entering the military.

II. Women Are Viewed As Legally Equal to Men in the United States Military

The United States government has historically prohibited women from engaging in combat. Consequently, despite efforts to integrate women into the military, combat restrictions served as a clear gender-based classification that limited women’s ability to reach the highest ranks of military service, as many military honors require combat

---

However, in January 2013, the Secretary of Defense and Joint Chiefs of Staff Chairman lifted the direct ground combat ban, which eliminated the last legally sanctioned distinction between men and women service members with the exception of draft registration procedures. However, as noted by the Court in *Rostker v. Goldberg*, the purpose of a future draft would be to add combat troops to an area. Therefore, it is legitimate that the draft’s gender distinction has not been lifted due to the fact that the military has until January 2016 to fully integrate women into combat. This Part argues that the military’s current combat policy imposes a legal obligation on the government to ensure that men and women in the military are treated the same in all respects. First, it examines the historical reasons for the combat bans to illustrate the gender-based stereotypes that initially supported the bans. Second, it examines the Department of Defense’s reasons for lifting the direct ground ban, which illustrates that there is no legal basis for treating men and women service members differently.

**A. Historical Background**

Women enrolled in the United States military were historically prevented from serving in combat based on both statutory provisions and well-settled policy. Pursuant to 10 U.S.C. § 6015, women in the United States Navy were not allowed to “be assigned

---

12 See Military Selective Service Act, 50 U.S.C. § 453(a) (1948) (allowing only men to register for the draft).
14 2014 Elimination of Direct Ground Combat Ban Memo, supra note 11, para. 4.
to duty on vessels or in aircraft that are engaged in combat missions.”¹⁶ Additionally, pursuant to 10 U.S.C. § 8549, a similar restriction applied to women with regards to aircrafts in the United States Air Force.¹⁷ Although not statutorily prescribed, the United States Army and Marine Corps did not permit women to serve in combat due to understood policy.¹⁸ As an example of such policy, Senate Report 96-826 reads in pertinent part:

The principle that women should not intentionally and routinely engage in combat is fundamental and enjoys wide support among our people. It is universally supported by military leaders who have testified before the Committee…Current law and policy exclude women from being assigned to combat in our military forces, and the Committee reaffirms this policy.¹⁹

In 1981, the United States Supreme Court examined whether it was constitutional for Congress to ban women from registering for the draft pursuant to the Military Selective Service Act and ultimately found that it was.²⁰ The Court in Rostker reasoned that Congress did not violate the Due Process Clause by not allowing women to register for the draft because women were not similarly situated to men.²¹ The Court explained that, “The Constitution requires that Congress treat similarly situated persons similarly, not that it engage in gestures of superficial equality.” ²² However, what is most troublesome about the Court in Rostker’s conclusion is that it relied on the long-standing policy that women should not be permitted to serve in combat as reasoning for why

---

¹⁶ Id. (quoting 10 U.S.C. § 6015 (repealed 1993)).
¹⁷ Id. at 76 (citing 10 U.S.C. § 8549 (repealed 1991)).
¹⁸ Id.
¹⁹ S. REP. NO. 96-826, at 57 (1980).
²⁰ Rostker, 483 U.S. at 57 (citing 50 U.S.C. § 453(a)).
²¹ Id.
²² Id. at 79.
women and men are not similarly situated and failed to engage in any form of reasonable legal analysis that justified excluding women from combat.\textsuperscript{23} Instead, it relied on the notion that opposition to women in combat was accepted and therefore, did not require justification.\textsuperscript{24} Unfortunately, the understanding of women’s roles in the military, or lack thereof, was reaffirmed by the Court in \textit{Rostker} and remained in effect post-1981.\textsuperscript{25}

\section*{B. Decision to Lift the Direct Ground Combat Ban}

As one may expect, the decision to lift the combat ban was not one that was reached quickly. To the contrary, measures were gradually implemented to reflect society’s ongoing change in views on equality, specifically with regards to gender. In 1991 and 1993, the formal laws restricting women from serving in combat on aircraft and vessels were repealed\textsuperscript{26}, perhaps in part due to women’s extensive involvement in Operation Desert Storm and the sexual assault and harassment against women at the Navy’s Tailhook Convention.\textsuperscript{27} Additionally, in 1994, the “risk rule” was lifted, which had prohibited women from serving in noncombat missions if the risk of doing so was higher than remaining in the combat units that they were assigned to support.\textsuperscript{28} However, subsequent to 1994, women were still prohibited from serving in direct ground combat

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{23} See id.; see also Jill Elaine Hasday, \textit{Fighting Women: The Military, Sex, and Extrajudicial Constitutional Change}, 93 MINN. L. REV. 96, 101 (2008).
\item \textsuperscript{24} Hasday, \textit{supra} note 23, at 101.
\item \textsuperscript{25} \textit{Rostker}, 483 U.S. at 78.
\item \textsuperscript{28} Id.
\end{itemize}
\end{footnotesize}
pursuant to Secretary of Defense Les Aspin’s 1994 Direct Ground Combat Definition and Assignment Rule.29

Beginning in 2003, there was an increase in attention toward lifting the direct ground combat ban in part due to Operation Iraqi Freedom, which confused the lines of forward and rear operating areas due to Iraq’s “nonlinear battlefields.”30 Additionally, the Army changed to a modular redesign, which required its brigade combat teams to be its main combat unit.31 However, its brigade combat teams included noncombat service members and therefore, inevitably included women.32 Lastly, involvement in Iraq and Afghanistan required noncombat units to carry out direct combat to complete their missions.33 In 2011, the Military Leadership Commission recommended to the Department of Defense that it lift the direct ground combat ban for qualified women and allow for all qualified candidates to be considered for promotion to 3- and 4-star positions.34 Finally, on January 24, 2013, Secretary of Defense, Leon E. Panetta, and the Joint Chiefs of Staff Chairman, General Martin E. Dempsey, signed a memorandum that repealed the 1994 Direct Ground Combat Definition and Assignment.35 At the news conference, Secretary of Defense Panetta explained that the lift is intended to allow the

29 Id. at 4 (citing Memorandum from the Secretary of Defense to the Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, Assistant Secretary of Defense (Personnel and Readiness), and Assistant Secretary of Defense (Reserve Affairs) (Jan. 13, 1994), available at http://big.assets.huffingtonpost.com/directGroundCombatDefinitionAndAssignmentRule.pdf).
30 Burrelli, supra note 27, at 5.
31 Id.
32 See id.
33 Id.
35 2014 Elimination of Direct Ground Combat Ban Memo, supra note 11, para. 3.
most qualified individuals to carry out military services.\textsuperscript{36} Further, he noted that those who are able to meet the qualifications for a job should have the right to serve the country regardless of gender, amongst other things.\textsuperscript{37} President Obama supported the decision and explained that it reflected over two centuries of women’s courageous acts and irreplaceable roles in the military.\textsuperscript{38} There was no indication from Secretary of Defense Panetta’s commentary that the decision to lift the direct ground combat ban was motivated by any considerations other than achieving gender equality in the military.\textsuperscript{39}

As this Part has shown, the decision to lift the direct ground combat ban was motivated, at least in part, by a recognition that any differences between men and women that may have justified the initial bans, are no longer valid, if they ever were. Because the only remaining legal distinction between men and women in the military has been eliminated\textsuperscript{40} with the exception of draft registration\textsuperscript{41}, the government must ensure that men and women are treated the same in all respects. To the contrary, as Part III demonstrates, men and women have significantly different experiences in the military as a result of the disproportional rates at which they experience sexual assault.

III. Recent Findings and Policies

The military has undoubtedly ‘caught fire’ for the amount of sexual assault that occurs on an annual basis.\textsuperscript{42} Before examining recent statistics and policies regarding


\textsuperscript{37} Id.

\textsuperscript{38} Id.

\textsuperscript{39} See id.

\textsuperscript{40} See 2014 Elimination of Direct Ground Combat Ban, supra note 11, para. 3.

\textsuperscript{41} See 50 U.S.C. § 453(a) (allowing only men to register for the draft).

\textsuperscript{42} See Schenck, supra note 2, at 587; see also supra Introduction.
sexual assault in the military, it is important to first understand how the Department of Defense defines not only sexual assault, but also sexual harassment. Consistent with the Department of Defense Directive 6495.01, the 2013-2014 Sexual Assault Prevention and Response Office Report defines “sexual assault” as “intentional sexual contact characterized by use of force, threats, intimidation or abuse of authority or when the victim does not or cannot consent.” Further, consistent with the Department of Defense Directive 1305.2, the 2013-2014 Sexual Assault Prevention and Response Office Report defines “sexual harassment” as:

a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: 1) submission to such conduct is made either explicitly or implicitly a term or condition of a person’s job, pay, or career; 2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or 3) such conduct as the purpose or effect of unreasonably interfering with an individual’s work performance or creates and intimidating, hostile, or offensive working environment.

This Part examines recent findings surrounding sexual assault in the military to reflect how the military’s sexual assault policies disparately impact women. It also describes the Department of Defense’s November 2014 Report to President Obama and a bill passed by the Senate in March 2014 to illustrate that the government acknowledges its legal obligation to treat men and women in the military as equals.

44 Id. (quoting DEP’T OF DEF., DIR. 1305.2, DEPT. OF DEF. MILITARY EQUAL OPPORTUNITY (MEO) PROGRAM encl. 2 1.15 (Aug. 18, 1995)).

In January 2014, then Secretary of Defense Chuck Hagel set forth initiatives and recommendations for all academies, which included enhancing strategic planning, enhancing program effectiveness, advancing and sustaining appropriate culture, enhancing comprehension, and expanding alcohol policies.\(^{45}\) The 2013-2014 Sexual Assault Prevention and Response Office Report revealed that last year’s sexual assault initiatives have not yet been fully implemented\(^{46}\) and women are being disproportionately affected by sexual assault\(^{47}\) despite the government removing legal distinctions between men and women in the military.\(^{48}\)

The 2013-2014 Sexual Assault Prevention and Response Office Report revealed that the United States Military Academy accomplished all of the initiatives other than advancing and sustaining appropriate culture and expanding alcohol policies, both of which still remain in progress.\(^{49}\) The 2014 Service Academy Gender Relations Report, which collected data through surveys at all academies, revealed that unwanted sexual contact\(^{50}\) against women decreased to 6.5% in 2014 from 10.7% in 2012.\(^{51}\) However, only 0.8% of men at the United States Military Academy experienced unwanted sexual contact in 2014.\(^{52}\) Additionally, perceived sexual harassment against women at the

\(^{45}\) Id. at 18.


\(^{47}\) Id. (citing 2014 SAGR REPORT, supra note 7, at xi, xiii-xv, xvii).

\(^{48}\) See 2014 Elimination of Direct Ground Combat Ban, supra note 11, para. 3.


\(^{50}\) For purposes of this Article, “unwanted sexual contact” is synonymous with “sexual assault”.

\(^{51}\) 2014 SAGR REPORT, supra note 7, at xi.

\(^{52}\) Id.
United States Military Academy rose to 55% in 2014 from 49% in 2012, while only 12% of men experienced sexual harassment in 2014.53

The 2013-2014 Sexual Assault Prevention and Response Office Report also revealed that United States Naval Academy accomplished all of the initiatives other than expanding alcohol policies, which remains in progress.54 The 2014 Service Academy Gender Relations Report indicated that unwanted sexual contact against women at the United States Naval Academy decreased to 8.1% in 2014 from 15.1% in 2012 and that sexual harassment decreased to 44% in 2014 from 61% in 2012.55 While both unwanted sexual contact and sexual harassment against women at the United States Naval Academy decreased from 2012 to 2014, it is important to note that the rates remain substantially higher than those against men at the United States Naval Academy, with only 1.3% of men experiencing unwanted sexual contact and 9% experiencing sexual harassment in 2014.56

The 2013-2014 Sexual Assault Prevention and Response Office Report revealed that the United States Air Force Academy only completed three of the initiatives, with enhancing strategic planning, advancing and sustaining appropriate culture, and expanding alcohol policies still in progress.57 The 2014 Service Academies Gender Relations Report indicated that unwanted sexual contact against women at the United States Air Force Academy decreased to 9.7% in 2014 from 11.2% in 2012.58 However, only 1.4% of men at the United States Air Force Academy experienced unwanted sexual

53 Id. at xiii.
55 2014 SAGR REPORT, supra note 7, at xxi-xv.
56 Id.
58 2014 SAGR REPORT, supra note 7, at xv.
contact in 2014. Additionally, sexual harassment against women at the United States Air Force Academy increased to 48% in 2014 from 44% in 2012, while only 9% of men experienced sexual harassment in 2014.

B. Recent Changes in Policy

The 2014 Service Academy Gender Relation Report clearly indicates that much room for improvement remains with regards to sexual assault policies in the military, as evidenced by the disproportionate occurrences of sexual assault against women. Both the President and Congress have acknowledged the need for additional changes to sexual assault policies in the military in order to provide consistency between the government’s policy on equality between men and women in the military and actual outcomes.

In November 2014, the Department of Defense issued a report to President Obama in response to the President’s request for a comprehensive report of improvements in the military’s prevention and response to sexual assault. The November 2014 Report set forth indicators that the Department of Defense recognizes as evidence of progress in its sexual assault policies, specifically from 2012-2014. The first five indicators of progress regarding sexual assault in the military include the following. First, there has been a significant increase in the role of leaders to eliminate sexual assault in the military

---

59 Id.
60 Id. at xvii.
61 See 2014 SAGR REPORT, supra note 7, at xi, xiii-xv, xvii; see also supra Part III.A.
62 See 2014 REPORT TO PRESIDENT, supra note 8, at 3 (explaining that the enclosed report describing the Department of Defense’s changes to sexual assault policies is in response to the President’s request).
63 See S. 1917 § 3, 113th Con. (as passed by Senate, Mar. 10, 2014) (setting forth statutory changes to sexual assault policies in the military).
64 2014 REPORT TO PRESIDENT, supra note 8, at 3.
65 Id. at 13.
in part due to Secretary of Defense Chuck Hagel’s expansion of Secretary of Defense Leon Panetta’s initiatives, which together total forty-one.\textsuperscript{66} Second, the Department of Defense implemented a strategic plan at the organizational level, which includes Lines of Efforts consisting of prevention, investigation, accountability, advocacy/victim assistance, and assessment, was implemented.\textsuperscript{67} Third, there is a decrease in the prevalence of sexual assault and an increase in reporting.\textsuperscript{68} Fourth, the Department of Defense implemented a social-ecological model for prevention, which focuses on commanders promoting prevention and safety.\textsuperscript{69} Fifth, the Department of Defense developed the Special Victims’ Counsel/Victims’ Legal Counsel Program to provide independent legal advice to victims from advocates who are specifically trained to represent legal interests.\textsuperscript{70}

In addition to the previous five indicators, the Department of Defense set forth an additional five, which it also noted as indicators of positive change to its sexual assault policies.\textsuperscript{71} First, it implemented the Survivor Experience Survey, which allows victims to provide feedback regarding the reporting process surrounding sexual assault in the military.\textsuperscript{72} Second, it expanded on training, certification requirements for first responders, and training expectations for service members.\textsuperscript{73} Third, the Department of Defense continues to reach out to governmental organizations, advocacy organizations, universities, experts, foreign militaries, and Congress for guidance on advancing sexual

\textsuperscript{66} Id.
\textsuperscript{67} Id. at 14.
\textsuperscript{68} Id. at 15.
\textsuperscript{69} Id. at 16.
\textsuperscript{70} Id. at 17.
\textsuperscript{71} Id. at 17-22.
\textsuperscript{72} Id.
\textsuperscript{73} Id.
assault policies in the military.\textsuperscript{74} Fourth, it created the Defense Sexual Assault Incident Database to provide victims with a place for reporting and case management.\textsuperscript{75} Fifth, it increased commander responsibility through three-climate assessment activities.\textsuperscript{76} Specifically, the Defense Equal Opportunity Management Institute Climate Survey enables commanders to have information from their unit members regarding behaviors in their units, while still providing unit members with confidentiality.\textsuperscript{77} The survey results are provided to the commander’s immediate supervisor, who rates that commander’s actions in addressing the survey results.\textsuperscript{78} Beginning in June 2012, the Secretary of Defense required decisions regarding sexual assault cases to be made by senior officers, which provides a level of removal from both the victim and the suspect.\textsuperscript{79}

In March 2014, the Senate passed Senator Claire McCaskill’s bill by a 97-0 vote.\textsuperscript{80} The bill is also expected to be passed by the House but such action has not yet occurred.\textsuperscript{81} The bill allows for a case of sexual assault to be referred to the head of the particular military branch if the commander and/or prosecutor do not want to proceed.\textsuperscript{82} Additionally, it eliminates the good soldier defense, which examines factors that should not be considered, such as the service record and ratings of the accused, and allows for

\textsuperscript{74} Id. at 20-21.  
\textsuperscript{75} Id. at 21.  
\textsuperscript{76} Id. at 22.  
\textsuperscript{77} Id.  
\textsuperscript{78} Id.  
\textsuperscript{79} Id.  
\textsuperscript{81} Id.  
\textsuperscript{82} Id. (citing S. 1917 § 3).
testimony from friends and superiors of the accused. The bill also allows the victim to have a voice in whether the case is heard by a civilian or military court in situations where there is dual jurisdiction. Lastly, the bill requires that a commander’s record with regards to how he/she handled reports of sexual assault in his/her unit be taken into account when considering whether to promote the commander.

As this Part has described, the government has taken various steps to remedy the problem of sexual assault in the military. However, this Part has also unveiled the disproportionate rates of sexual assault against women in the military. As one may expect, disproportionate rates of sexual assault lead to disproportionate rates of sexual assault’s severe psychological effects, all of which are likely to limit the ability to advance not only professionally, but also personally.

IV. Psychological Effects of Sexual Assault

The government’s current sexual assault policies in the military undoubtedly have a disparate impact on women. Sexual assault causes severe and long lasting psychological effects even when victims obtain professional treatment. Physicians and psychologists have dedicated a substantial amount of time and resources to understanding the effects that sexual assault has on its victims in the attempt to best assist them in properly healing. This Part describes in detail post-traumatic stress disorder, depression,

83 Id. (citing S. 1917 § 3); see also Nancy Montgomery, Military lawyers lose the ‘good soldier’ defense, STARS AND STRIPES (Feb. 9, 2015), http://www.stripes.com/news/military-lawyers-lose-the-good-soldier-defense-1.328128.
84 Newton-Small, supra note 80 (citing S. 1917 § 3).
85 Id. (citing S. 1917 § 3).
86 See e.g., S. 1917 § 3; 2014 REPORT TO PRESIDENT, supra note 8, at 3.
87 See 2014 SAGR REPORT, supra note 7, at xi, xiii-xv, xvii.
88 Id.
89 See infra Part IV.A-D.
body dysmorphic disorder, and female sexual dysfunction, to demonstrate how debilitating symptoms can be. This Part also argues that the disproportionate psychological effects of sexual assault are likely to prevent women from advancing both professionally and personally.

A. Post-Traumatic Stress Disorder

Post-traumatic stress disorder is defined as a psychological condition that begins as a result of experiencing or witnessing a troubling event.\(^90\) Post-traumatic stress disorder symptoms are extensive and include, but are not limited to, negative feelings about oneself or others, emotional numbness, irritability, overwhelming guilt or shame, overall self-destructive behavior, and flashbacks.\(^91\) As one anonymous victim stated, “I remember the faces, the words, the smells, the negative, unwarranted touches. I remember all of that.”\(^92\) Treatment includes psychotherapy, such as cognitive therapy with exposure therapy, and at times, eye movement desensitization and reprocessing.\(^93\) Cognitive therapy focuses on how an individual currently behaves instead of on their experiences throughout childhood.\(^94\) It also attempts to identify specific distortions in


thoughts and provide guidance on how to alter them.\textsuperscript{95} Exposure therapy assists patients in developing techniques for handling thoughts regarding the trauma that they have avoided because of the stress and/or anxiety that the thoughts cause.\textsuperscript{96} Eye movement desensitization and reprocessing includes exposure therapy, in addition to a series of eye movements, that assist victims in coping with traumatic memories by altering how they react to such memories.\textsuperscript{97} In addition to psychotherapy, treatment can also include medications such as anti-depressants, anti-anxiety medications, and/or prazosin if symptoms include nightmares and/or problems sleeping.\textsuperscript{98}

\subsection*{B. Depression}

Depression is defined as a mood disorder that results in continuous feelings of sadness and loss of interest.\textsuperscript{99} Symptoms of depression are even more extensive than those associated with post-traumatic stress disorder and include, but are not limited to, feelings of sadness and/or emptiness, angry outbursts, changes in appetite, frequent thoughts of death, and anxiety and/or restlessness.\textsuperscript{100} Similar to post-traumatic stress

\begin{thebibliography}{99}
\bibitem{95} Id.
\bibitem{98} Id.
\end{thebibliography}
disorder, depression is often treated with psychotherapy and medication.\textsuperscript{101} While there are a variety of types of medications used to treat depression, physicians typically begin with selective serotonin reuptake inhibitors because of their less severe side effects.\textsuperscript{102} However, amongst several other possible side effects, serotonin reuptake inhibitors can cause nausea, agitation, dizziness, headache, weight gain or loss, and insomnia.\textsuperscript{103}

\textbf{C. Body Dysmorphic Disorder}

Body dysmorphic disorder is defined as a chronic mental illness in which an individual cannot stop thinking about a minor or imagined flaw in his/her appearance.\textsuperscript{104} Those who suffer from body dysmorphic disorder are enthralled with their appearances and are never satisfied with their attempts to fix their appearances.\textsuperscript{105} Symptoms of body dysmorphic disorder include, but are not limited to, preoccupation with one’s physical appearance accompanied by extreme self-consciousness, a strong belief of abnormality in one’s appearance, avoidance of social situations, the need to seek reassurance from others, excessive grooming, the use of clothing or make up to cover perceived flaws, and comparison of oneself to others.\textsuperscript{106} Individuals diagnosed with body dysmorphic disorder may obsess over any facet of their faces and/or bodies but more often than not, obsess

\textsuperscript{102} \textit{Id.}
\textsuperscript{103} Mayo Clinic Staff, \textit{Side effects and cautions: Selective serotonin reuptake inhibitors (SSRIs)}, MAYO CLINIC, http://www.mayoclinic.org/diseases-conditions/depression/in-depth/ssris/art-20044825 (last updated July 9, 2013).
\textsuperscript{104} Mayo Clinic Staff, \textit{Diseases and Conditions: Body Dysmorphic Disorder Definition}, MAYO CLINIC, http://www.mayoclinic.org/diseases-conditions/body-dysmorphic-disorder/basics/definition/con-20029953 (last updated May 9, 2013).
\textsuperscript{105} \textit{Id.}
over their face, hair, skin, breast size, muscle size and tone, and genitalia. Similar to treatment for post-traumatic stress disorder and depression, body dysmorphic disorder is often treated with cognitive behavioral therapy and medication. However, the Food and Drug Administration has not yet approved any medications specifically for treating body dysmorphic disorder but physicians have prescribed serotonin reuptake inhibitors to patients with body dysmorphic disorder due to the belief that the disorder is caused, at least in part, by issues with serotonin production. Additionally, some physicians prescribe other types of medication, such as antipsychotics, to treat body dysmorphic disorder when it is severe enough to cause delusions regarding a patient’s face and/or body.

D. Female Sexual Dysfunction

Female sexual dysfunction is a consistent problem regarding sexual response and/or desire. Symptoms of female sexual dysfunction include low or absent sex drive, inability to become aroused or maintain arousal during sex, inability to experience an orgasm, and pain during sex. Treatment for female sexual dysfunction is separated

---

107 Id.
109 Id.
110 Id.
into nonmedical and medical. Amongst other suggestions, nonmedical treatment includes open and honest communication with one’s partner, the practice of a healthy lifestyle without drinking or smoking, and engagement in counseling with a therapist that specializes in this particular field. Medical treatment includes the adjustment of the dosage or change in medication(s) that have sexual side effects, thyroid and/or other hormonal condition treatment, an increase in treatment for depression and/or anxiety, and engagement in strategies for relieving pelvic or other pain related problems. With regards to alleviating hormone conditions, estrogen and androgen therapy been explored but are not fully accepted as solutions.

Based on the foregoing information provided in this Part, it is apparent that sexual assault leads to serious psychological side effects that are likely to hinder an individual’s ability to advance both professionally and personally. These psychological side effects impede a person’s drive, ability to trust, and/or ability to appropriately communicate with others. As a result, it is likely that advancing professionally, as well as personally, becomes increasingly difficult for those who suffer from any of the foregoing side effects. The large discrepancy must be cured, particularly because the government acknowledges that men and women in the military are equals. Additional changes to sexual assault policies in the military are critical to lessen the disparate impact on women in a timely manner.

---

114 Id.
115 Id.
116 Id.
117 See 2014 Elimination of the Direct Ground Ban, supra note 11, para. 1-3; see also Ruolo, supra note 36 (explaining Secretary of Defense Leon Panetta’s gender equality reasoning for lifting the direct ground combat ban).
V. Recommendations for Increasing Prosecution and Prevention

Without question, both the Department of Defense and Congress have addressed the problem of sexual assault in the military, particularly from 2012 onward. The Department of Defense implemented several changes to its policies, as it explained in the November 2014 Report to President Obama. Further, Senator McCaskill’s bill, which embodies beneficial changes to sexual assault policies in the military, is likely to be passed by the House. Nonetheless, even with the changes implemented by the Department of Defense, there remains work to be done. This Part argues that Congress should adopt the portion of Senator Gillibrand’s proposed bill that requires incidents of sexual assault to be reported to Judge Advocate General (JAG) officers. This Part also argues that the government should shift its focus from prosecution to prevention. More specifically, this Part proposes that commanders should be subject to prosecution by JAG officers for failure to prosecute sexual harassment within their units. Additionally, this Part proposes that the law should prohibit applicants who have previously been charged with sexual assault from entering the military at all.

A. Change Prosecution Strategy

Senator McCaskill’s bill implements additional measures to fight sexual assault in the military. The bill allows for a case of sexual assault to be referred to the head of

\[\text{\[118\] See e.g., S. 1917 § 3; 2014 REPORT TO PRESIDENT, supra note 8, at 3; see also supra Part III.B.}\
\[\text{\[119\] See 2014 REPORT TO PRESIDENT, supra note 8, at 13-22; see also supra Part III.B.}\
\[\text{\[120\] Newton-Small, supra note 80 (citing S. 1917 § 3).}\
\[\text{\[121\] See e.g., 2013-2014 SAPRO REPORT, supra note 43, at 20, 41, 61 (indicating that no military academy accomplished all of the initiatives given by then Secretary of Defense Chuck Hagel); 2014 SAGR REPORT, supra note 7, at xi, xiii-xv, xvii (revealing the disproportionate rates of sexual assault and sexual harassment against women at the military academies in 2014); see also supra Part III.A.}\
\[\text{\[122\] See S. 1917 § 3; see also supra Part III.B.}\

22
the particular military branch if the commander and/or prosecutor do not want to move forward, eliminates the good soldier defense, which examines factors that should not be considered, such as the service record of the accused, allows the victim to have a voice in whether the case is heard by a civilian or military court in situations of dual jurisdiction, and requires that a commander’s record with regards to how he/she handled sexual assault in his/her unit be taken into account when considering a promotion.123 Nonetheless, Congress should give effect to the portion of Senator Gillibrand’s more ambitious bill that did not pass in the Senate, which requires JAG officers to be responsible for prosecuting sexual assault.124 Currently, prosecution of sexual assault in the military is handled by an officer in the chain of command, which inevitably causes a conflict of interest based on the fact that one-fourth of sexual assaults in the military are committed by an individual in the chain of command.125 The effects of such a composition are evident; in 2012, 3,000 incidents of sexual assault were reported in the military and yet only 300 were prosecuted.126 To cure this defect, JAG officers should be given exclusive authority to prosecute sexual assault offenders in the military.

i. Require JAG Officers to Prosecute Offenders

Requiring JAG officers to have exclusive authority to prosecute sexual assault in the military is likely to increase prosecution for two reasons. First, JAG officers are often more qualified than commanders to prosecute individuals because unlike commanders, active duty JAG officers are required to graduate from ABA-accredited law schools and

123 Newton-Small, supra note 80 (citing S. 1917 § 3); see also supra Part III.B.
124 S. 1752, 113th Con. § 2.
125 Newton-Small, supra note 80.
126 Id.
must be admitted to the bar in the highest court in a state or the District of Columbia.\textsuperscript{127} Ultimately, it is unwise to expect individuals who are well trained in certain expertise to effectively carry out responsibilities in other professional areas.\textsuperscript{128} Second, JAG officers are independent of the chain of command, which allows for unbiased decision-making.\textsuperscript{129} While Senator McCaskill’s bill allows reports of sexual assault to proceed to the head of the particular branch of military if the prosecutor and chain of command choose not to proceed, there is fear that it does not remove the bias from handling cases.\textsuperscript{130} Military officers have noted that stories surrounding sexual assault in the military usually include favoritism toward the individual accused and lack of sympathy toward those who choose to report such incidences.\textsuperscript{131} According to Senator Gillibrand, this common feature affects reporting rates.\textsuperscript{132} As she explained, survivors will “tell you they won’t report it because they don’t believe the chain of command will do anything or they fear witness retaliation.”\textsuperscript{133} Unfortunately, their fears are justified, as evidenced by the 62% of individuals who reported sexual assault being retaliated against.\textsuperscript{134}

While transitioning prosecution of sexual assault in the military to JAG officers seems obvious, especially when considering the best interests of victims, it has received


\textsuperscript{128} Carpenter, \textit{supra} note 127.

\textsuperscript{129} Newton-Small, \textit{supra} note 80.

\textsuperscript{130} \textit{Id.} (citing S. 1917 § 3).


\textsuperscript{132} See Newton-Small, \textit{supra} note 80.

\textsuperscript{133} \textit{Id.}

\textsuperscript{134} \textit{Id.}
negative feedback from members of the military.\textsuperscript{135} However, it is important for Congress to recognize that many of the responses are not genuine or founded. With regard to genuineness of military disproval, an anonymous Air Force JAG explained that his superiors insisted that he publicly argue in favor of maintaining this facet of commander authority.\textsuperscript{136} He also noted that Air Force JAG officers were regularly told to fight the possible change based on the belief that it would “destroy the system.”\textsuperscript{137} With regard to how founded the disproval is, it is evident that it is not. Certain military officials, such as those who corresponded with the anonymous Air Force JAG officer, argue that commanders maintaining such authority is critical to maintain order and discipline within their units.\textsuperscript{138} However, the two are not mutually exclusive, as many commanders do not have the authority to prosecute certain criminal cases.\textsuperscript{139} Therefore, commanders, such as those who lack the authority to prosecute certain criminal cases, still maintain order and discipline and will continue to even if JAG officers undertake prosecution of sexual assault crimes.\textsuperscript{140} As the anonymous Air Force JAG argued, “This idea that ‘oh, gosh, I can’t do my job unless I’m convening authority’ is laughable.”\textsuperscript{141}

\textbf{B. Add Prevention Policies}

An increase in prosecution of sexual assault in the military is beneficial to victims but it remains a reactive measure with the exception that increasing the prosecution of

\textsuperscript{135} Carpenter, \textit{supra} note 127.
\textsuperscript{136} \textit{Id.}
\textsuperscript{137} \textit{Id.}
\textsuperscript{138} \textit{Id.}
\textsuperscript{139} \textit{Id.}
\textsuperscript{140} See \textit{id.}
\textsuperscript{141} \textit{Id.}
sexual assault is likely to deter individuals from committing the offense. Currently, the military focuses on prevention as one of its Lines of Effort to decrease the occurrences of sexual assault. Pursuant to the 2014-2016 Department of Defense Sexual Assault Prevention Strategy, the Department of Defense emphasized how different societal levels have their own risk and protective factors that are critical to consider when attempting to prevent sexual violence. However, to further lessen occurrences of sexual assault in the military, the government should be more proactive and focus its efforts on implementing additional prevention strategies. More specifically, the government should allow JAG officers to prosecute commanders for failure to punish sexual harassment in their units and prohibit applicants who have previously been charged with sexual assault from entering the military.

i. Allow JAG Officers to Prosecute Commanders

The Department of Defense has recognized the critical role that leaders in the military have in preventing sexual assault, as evidenced by the polices that it has implemented thus far. Leaders at all levels of the military were added to the socio-economic model proscribed in the 2014-2016 Department of Defense Sexual Assault Prevention Strategy to reflect that they are the center of gravity for the prevention of sexual assault. While this is effective for promoting a positive and safe environment in one’s unit and educating one’s unit on sexual assault, it is essential for a commander’s

143 Id. at 7.
144 See 2014 REPORT TO PRESIDENT, supra note 8, at 13-14.
145 Id. at 10.
role in prosecuting sexual harassment. Out of the women at the United States Military Academy who experienced sexual assault in 2014, 53% reported that the individual who had sexually assaulted them had “harassed, stalked, or assaulted them before the assault.”\textsuperscript{146} Additionally, 36\% of women who were sexually assaulted at the United States Naval Academy in 2014 and 48\% of women who were sexually assaulted at the United States Air Force Academy in 2014 experienced similar behavior from their offender before the assault.\textsuperscript{147} This data clearly reflects that perpetrators showed signs that sexual assault was a possible occurrence in the future. Commanders, who take great pride in maintaining order and discipline in their units, should be responsible for reprimanding such incidents to show that such behavior will not be tolerated. Victims who are sexually harassed should be entitled to seek the assistance of JAG officers to prosecute commanders for failing to punish less offensive, but nonetheless inappropriate, behavior if the commander was aware of such behavior. Providing victims with JAG officers in such circumstances will incentivize commanders to reprimand sexual harassment because failure to do so will result in ‘answering’ not only to their superiors,\textsuperscript{148} but also JAG officers.

\textit{ii. Tighten Applicant Screening Process}

In addition to holding commanders more responsible for preventing sexual assault, the government should implement policies that prevent applicants who have previously been charged with sexual assault from entering the military. Currently, each

\textsuperscript{146} 2013-2014 SAPRO REPORT, \textit{supra} note 43, at 41.
\textsuperscript{147} \textit{Id.} at 52, 74.
\textsuperscript{148} See 2014 REPORT TO PRESIDENT, \textit{supra} note 8, at 22.
branch of the military has different criminal history standards that must be satisfied to be enlisted.\footnote{Rod Powers, \textit{Military Criminal History (Moral) Waivers}, ABOUT, http://usmilitary.about.com/od/joiningthemilitary/a/moralwaivers.htm \ (last visited Apr. 16, 2015).} If an applicant’s criminal history fails to meet such standards, the applicant may ask his/her recruiter to submit a moral waiver, which would allow the applicant to be admitted to the military as an exception if it is approved.\footnote{\textit{Id.}} To alleviate the problem of sexual assault in the military, every branch of the military should refrain from issuing such waivers. Although applicants may have the ability to reform their previous conduct, the data that the Department of Defense has provided clearly speaks to the severity of sexual assault in the military.\footnote{See 2014 SAGR REPORT, \textit{supra} note 7, at xi, xiii-xv, xvii; \textit{see also supra} Part III.A.} As a result, at least for the foreseeable future, such applicants should be prohibited from entering the military altogether. If, however, a situation presents itself that includes a shortage of individuals available to serve in the military, perhaps the standard can be loosened to only prohibit those convicted of sexual assault.

Unfortunately, no one remedy is available to cure the problem that the government faces with regards to the disproportionate rates of sexual assault against women in the military. Nonetheless, the government has shown its dedication to lessening, and eventually eliminating, such disproportion.\footnote{See, e.g., S. 1917 § 3; 2014 REPORT TO PRESIDENT, \textit{supra} note 8, at 13-22; \textit{see also supra} Part III.B.} With that being said, time has shown that further strategies, such as those set forth in this Part, must be implemented to eliminate the problem in a timely manner. The proposals do not necessarily eliminate sexual assault against only women but will inevitably have the effect of doing so because they serve as overall deterrence measures.
VI. Conclusion

An increase in the prosecution and prevention of sexual assault in the military is critical because the government recognizes men and women in the military as equals and yet a disproportionate amount of women in the military experience sexual assault. Further, the psychological effects that result from sexual assault are likely to prevent women from advancing in both their professional and personal lives. For centuries, women participated in the military as nurses and gradually increased their responsibilities. For example, in the mid- to late 1990s, Congress allowed women to participate in combat missions on aircrafts and vessels. Although the formal lift on the direct ground combat ban occurred in early January 2013, women in the military experienced similar situations as men engaged in direct ground combat prior to 2013. For instance, almost 200 women in the military lost their lives as a result of the war in Iraq and controversies concerning Afghanistan. Women have continuously demonstrated their equality to men in the military and are legally entitled to equal treatment in the military, specifically with regards to sexual assault.

---

153 See 2014 Elimination of the Direct Ground Combat Ban Memo, supra note 11, para. 1-3; see also Ruolo, supra note 36.
154 See 2014 SAGR REPORT, supra note 7, at xi, xiii-xv, xvii.
155 See supra Part IV.
157 Id.; see also supra Part III.B.
158 2014 Elimination of the Direct Ground Combat Ban Memo, supra note 11, para. 3.
159 Timeline: Women in the U.S. Military, supra note 154.
161 See 2014 Elimination of the Direct Ground Combat Ban Memo, supra note 11, para. 1-3; see also Ruolo, supra note 36.
This Article has set forth data that illustrates the significant gap between how many men and women experience sexual assault in the military.\textsuperscript{162} The government has succeeded in part in lowering sexual assault amongst women, specifically between 2012-2014.\textsuperscript{163} Nonetheless, the disproportionate occurrence of sexual assault between men and women must be remedied to remain consistent with the government’s recently accepted policy that acknowledges men and women in the military as equals.\textsuperscript{164} To remedy this problem, additional policies should be implemented that are aimed at increasing the prosecution and prevention of sexual assault in the military.

While the additional policies are not unique to lowering rates of sexual assault amongst women in the military, they will inevitably have that effect. First, JAG officers should have sole authority to prosecute sexual assault because they are often more qualified and independent than commanders. Second, JAG officers should be permitted to prosecute commanders who fail to adequately address reports of sexual harassment within their units. Guidelines of what constitutes adequately addressing sexual harassment should be set forth by the Department of Defense. Third, applicants who have previously been charged with sexual assault should be prohibited from entering the military. Although there is no ‘quick fix’ to this serious problem, the government is legally required to cure it\textsuperscript{165} and should do so as soon as possible to minimize the severe resulting effects associated with sexual assault.

\textsuperscript{162} See 2014 SAGR REPORT, supra note 7, at xi, xiii-xv, xvii; see also supra Part III.A.
\textsuperscript{163} Id.
\textsuperscript{164} See 2014 Elimination of the Direct Ground Combat Ban Memo, supra note 11, para. 1-3.
\textsuperscript{165} Id.