



MILITARY LAW
TASK FORCE

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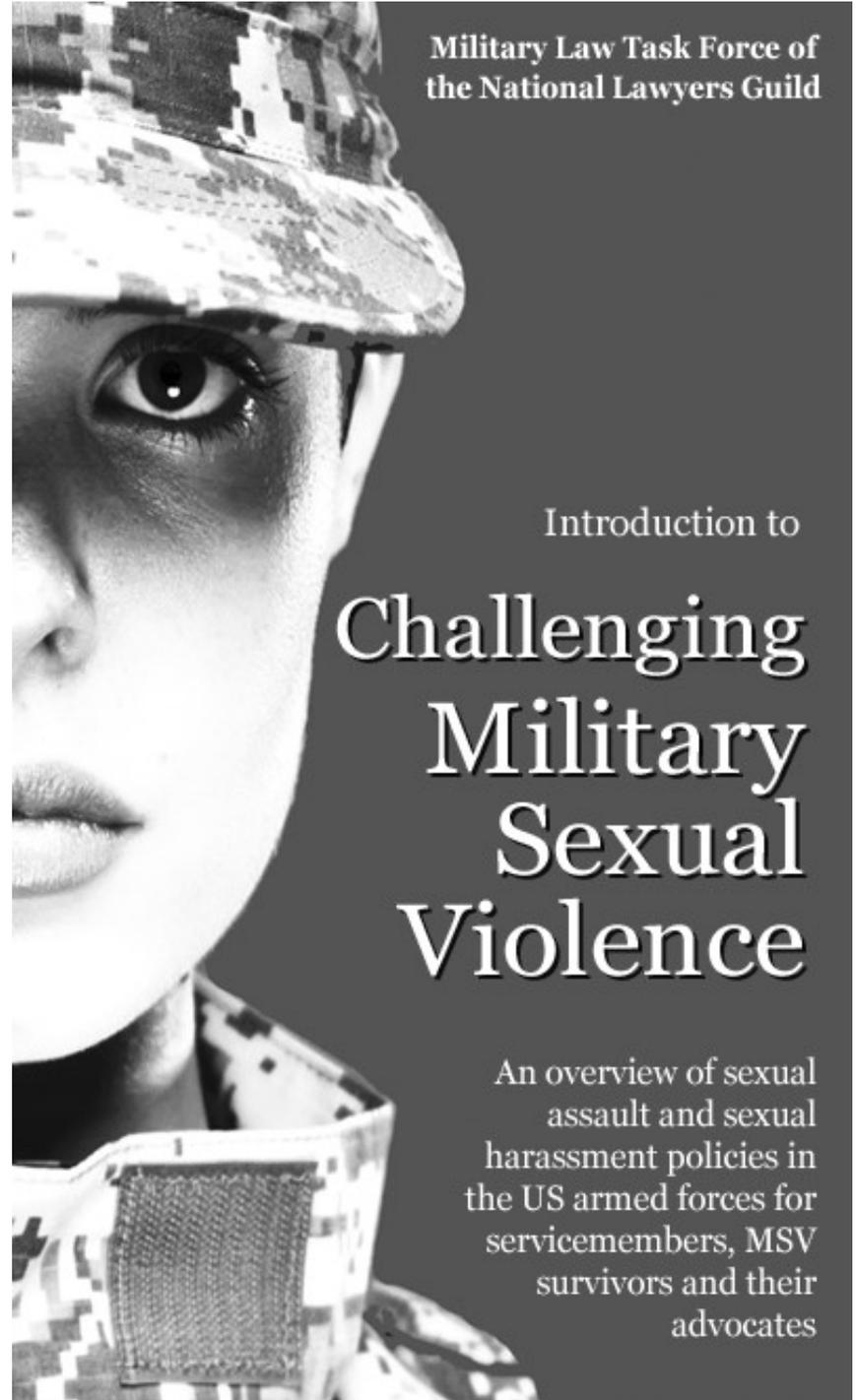
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Military Law Task Force of
the National Lawyers Guild

Introduction to

Challenging Military Sexual Violence

An overview of sexual assault and sexual harassment policies in the US armed forces for servicemembers, MSV survivors and their advocates



Overview of Reporting Military Sexual Violence

What is Sexual Assault?

Sexual assault is defined as intentional sexual conduct when the victim does not or cannot consent. Sexual assault can be characterized by use of force, threats, intimidation or abuse of authority. Sexual assault includes rape, forcible sodomy and other unwanted sexual conduct that is aggravated, abusive, or wrongful, or attempts to commit these acts.

What is Sexual Harassment?

Sexual harassment involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

harassment occurs and who witnesses it; keep copies of any documents, e-mails or messages showing the harassment; and talk with an advocate or attorney in advance about ways to respond to reprisals.

You have the right to ask a Member of Congress to investigate and stop any harassment or retaliation — this right

is protected by the Military Whistleblower Protection Act and has the potential to be very effective.

You may choose to speak to the media, directly or through your advocate. This can place greater pressure on the command to resolve the problem, but may also result in retaliation.

Legal Help

After reading MLTF’s full-length self-help **Guide to Challenging Military Sexual Violence**, we encourage service members making complaints to seek legal help. Free and confidential counseling for most basic questions is available through these organizations:

Military Law Task Force

nlgmltf.org or MilitaryLawHelp.com
619-463-2369 | email@nlgmltf.org

MLTF is a committee of the National Lawyers Guild and is not affiliated with the military.

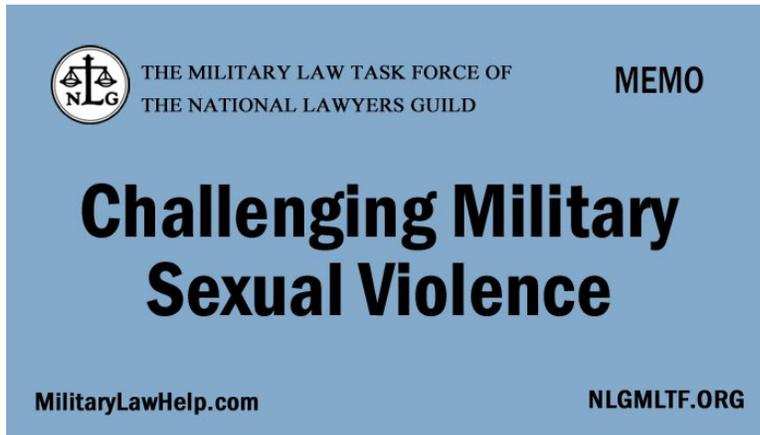
The GI Rights Network

girightshotline.org
877-447-4487 | girights@girightshotline.org

Protect our Defenders | protectourdefenders.com

These groups encourage victims of sexual assault or harassment to obtain help from a civilian attorney or legal advocate. It is extremely helpful to have independent legal help from the very beginning of the case in documenting the assault or harassment, deciding which complaint procedure(s) to use, preparing a complaint, monitoring the investigation and taking further action if necessary.

Go to our website to read the full in-depth guide **Challenging Military Sexual Violence**.



- Written by Military Law practitioners and GI Rights counselors
- Updated regularly to reflect current policy and practice.
- Free. Donations appreciated.

Sexual Harassment

Sexual Harassment Complaint Procedures

Your command should have an Equal Opportunity (EO) officer whose job is to provide training on sexual harassment issues and to assist service members who have harassment or discrimination complaints. This person is likely to be enlisted, rather than an officer and, while they may be supportive advocates, do not assume they are there for you. There is no confidentiality with an EO, and his or her official responsibility is to the command rather than you.

Complaint procedures vary from service to service. It's important to read over the regs for your branch of service for specific procedures and time limits. Complaints should be made within a specific time after the incident (usually 60 days) unless circumstances prevent that.

Formal EO sexual harassment complaints are taken more seriously than informal ones. These are made in writing, and they require a written response, so that they create a better record if an appeal or other complaint is necessary.

Preparing for Possible Retaliation

Service members may decide not to report assaults or harassment out of fear of retaliation. This is a real concern — members who file complaints may face harassment or “adverse personnel action” such as denial of promotion, disciplinary action, reassignment or involuntary discharge. Under the regs, service members and/or their dependents who file either kind of report for sexual assault shall be protected from retaliation, ostracism,

maltreatment or threats for filing a report. At the time of reporting, victims must be informed of the right to consult with counsel. Retaliation for sexual harassment complaints is likewise illegal under the regs.

Retaliation does not always happen, but it is best to be prepared for the possibility. Advocates suggest that complainants keep a journal; make notes of when and where

Sexual Assault

U.S. Military Sexual Assault Policy

The U.S. military's sexual assault policy has been improved somewhat in the last few years, but it still has limits, and commands are not consistent in enforcing it. The DoD policy requires all commands to take action to prevent sexual assaults, to punish offenders and to treat victims with dignity and respect for their privacy. (See DoD Directive 6495.01 “Sexual Assault Prevention and Response (SAPR) Program”)

Reporting Sexual Assaults

The current policy is designed to encourage victims to report assaults, allowing them to make restricted (confidential) reports or unrestricted (non-confidential) reports.

The two types of reports have some important differences, which are summarized in Table 1. For more detailed comparison, see our **Guide to Challenging Military Sexual Violence**.

Confidentiality

A restricted report provides the greatest privacy, and ensures you have medical care. However, confidentiality also means the assaulter will not be investigated or prosecuted unless evidence

independent of your report exists.

You can make a restricted report by reporting the assault to a Sexual Assault Response Coordinator (SARC), Victims Advocate, health care person or chaplain. If you tell an officer or non-commissioned officer in your chain of command about the assault, and the information comes to the command's attention, your restricted report will be considered unrestricted. *Reporting it to military law enforcement or civilian law enforcement will likely mean a report to command and loss of confidentiality. However, telling your lawyer is not reporting and will be confidential.*

Although an unrestricted report is less confidential, the policy still requires that your privacy be respected and the information only shared with those who need to know. Unnecessary and repetitious questioning is not allowed under the regs, and they say that gossip and rumors should be dealt with firmly.

What happens after making a report?

If you make an unrestricted report to law enforcement personnel or someone in a position of authority in your unit, they should notify the SARC as well as the command. The SARC or

Victims Advocate should respond immediately with the same assistance as in a restricted report. Information about the report will be provided to your CO and to military law enforcement. Sexual assault cases are now supposed to be investigated by your service’s investigative agency (NCIS, CID, or OSI). Information regarding unrestricted reports should only be released to persons with an authorized need to know or as authorized by law. See also the Preparing for Possible Retaliation section below.

With unrestricted reports, you are entitled to monthly updates from the SARC about the status of the case. If you feel the case is being ignored or handled improperly, you can complain to your command, the general court-martial convening authority, or higher authority.

Investigations and Prosecution

Military investigative services are now obligated to investigate sexual assaults. Local commanders and command-level law enforcement personnel may feel – wrongly – that they should also investigate assault reports. You are not required to cooperate in an investigation, although you should expect to get some pressure to cooperate.

Legal proceedings may be difficult and stressful, particularly in response to traumatic incidents. Having an advocate through the process is likely to help a great deal.

For more information, read our detailed guide to **Challenging Military Sexual Violence** at nlgmtf.org or militarylawhelp.com.

*Sexual assault and sexual harassment continue to be major concerns for a significant number of members of the military, particularly female service members. This brochure and a companion guide, **Challenging Military Sexual Violence: A Guide to Sexual Assault and Sexual Harassment Policies in the US Armed Forces for Servicemembers, MSV Survivors and Their Advocates**, have been created by the Military Law Task Force to provide basic information about members’ rights when making complaints or encountering retaliation. **Find the guide and other resources/updates at militarylawhelp.com or nlgmtf.org/.***

Table 1: Types of reporting for Military Sexual Assault – How it’s supposed to work		Unrestricted
	Restricted	
Privacy for victim	Privacy for victim guaranteed	Privacy for victim limited
Medical attention	Medical attention ensured	Medical attention ensured
Legal followup	Assaulter investigated/potentially prosecuted only with independent evidence	Legal investigation and possible prosecution.
How to report	Report to SARC, victim’s advocate, health care provider or chaplain	Anyone (including law enforcement)
Notifications to command	Command NOT notified (may be notified but not given victim’s name.)	Command notified
Law enforcement involved	Law enforcement NOT notified	Law enforcement notified