

Challenges Faced by Women Veterans

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Introduction to SWAN



SWAN supports, defends, and empowers today's servicewomen and women veterans of all eras, through groundbreaking advocacy initiatives and innovative, healing community programs.

SWAN's vision is to transform military culture by securing equal opportunity and the freedom to serve in uniform without threat of harassment, discrimination, intimidation or assault. SWAN also seeks to reform veterans' services on a national scale to guarantee equal access to quality health care, benefits and resources for women veterans and their families.

What SWAN does

- National Policy Reform
- Public Education
- Community Outreach and Healing Workshops
- National Peer Support Helplines

Key Issues Facing Military Women

- Military Sexual Trauma (MST)
- Don't Ask Don't Tell repeal implementation
- Reproductive Rights
- Women in Combat
- Veterans Health Care
 - Veterans Health Administration
 - Veterans Benefits Administration

Military Sexual Trauma (MST)

What is MST?

- 38 U.S.C. 1720D defines MST as “psychological trauma, which in the judgment of a VA mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while the Veteran was serving on active duty or active duty for training.”

Military Sexual Trauma (MST)

Military-wide Data (does not include Coast Guard)

- 3,230 military sexual assaults were reported in 2009, which represents an increase of 11% from fiscal year 2008. 163 sexual assaults were reported in Iraq and Afghanistan in 2008.
- Less than 20% of assaults are reported.
- Only 8% of perpetrators face prosecution.

Military Sexual Trauma (MST)

Data from Military Academies

- 64% Increase in reported sexual assaults from 2008-2009
- Less than 10% of sexual assaults are reported
- 79-85% of women and 76-79% of men say sexual harassment was not “important enough to report”
- 1 in 5 military officers come from service academies
- 64% percent of all 4-star generals are academy graduates
- 90% of all Navy 4-star admirals were commissioned from the Navy Academy

Military Sexual Trauma (MST)

Barriers to Justice

- Military Culture
- Underreporting
- Reporting Procedures and Prosecutions

Military Sexual Trauma (MST)

Consequences of MST

- Health Issues
- Economic Consequences
- Career Jeopardy
- Military Readiness
 - Retention
 - Operational Readiness

DADT Implementation

- DADT repealed in 2010
- DADT disproportionately affected women and people of color
 - In 2009, women made up 14% of the armed forces, but 39% of servicemembers discharged under DADT
 - Lesbian-Baiting
 - In 2008, 45% of DADT discharges were people of color
- Present Challenge: Ensure gay, lesbian and bisexual servicemembers are a protected group under military EO policy.

Reproductive Rights

- Emergency Contraception
 - New policy: Plan B access
- Abortion Services
 - Military is required to perform and pay for abortions only in cases where life of the mother is in jeopardy. In cases involving rape or incest, the cost of the abortion must be covered by the patient.

Women In Combat

- More than 230,000 women have deployed to Iraq and Afghanistan, represents 11% of the total force
- Combat Exclusion Policy:
 - Lioness and FET teams
 - Non-Linear Battlefield
 - Submarine service
 - Gen Casey announces review

Veterans Health Care - Veterans Health Administration

- Underutilization
- Undertrained staff
- Lack of women's clinics and women-centric treatments
- Second victimization of MST survivors

Veterans Health Care - Veterans Benefits Administration

- General Issues with VBA claims
- New combat assumptive VA regs on PTSD do not help MST survivors who file PTSD claims
 - Higher burden of proof for MST survivors
- Combat Exclusion Policy prevents qualified women from getting benefits
 - Claims officers not trained to understand women veterans' experiences in service

Policy Goals: Access to Justice

- Third party oversight of MST investigations and prosecutions
- Allow servicemembers to bring sexual assault and harassment complaints under Title VII of the Civil Rights Act and the Federal Tort Claims Act

MST and Judicial Precedent

- In *Chappell v. Wallace* (1983), the Supreme Court held that enlisted military personnel may not maintain suits to recover damages from superior officers for alleged constitutional violations.
 - “The special status of the military has required... two systems of justice: one for civilians and one for military personnel.”
- The Court based its decision on the *Feres* doctrine - *Feres v. United States* (1950) - which shields the military from liability for injuries to servicemembers under the Federal Tort Claims Act
 - “The United States is not liable under the Federal Tort Claims Act for injuries to members of the armed forces sustained while on active duty...and resulting from the negligence of others in the armed forces.”
- A number of federal circuit courts extended this interpretation to Title VII discrimination claims, citing *Feres* as well as the legislative history of Title VII

Questions?



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Introduction to NLCHP

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As the legal arm of the nationwide movement to end homelessness, NLCHP employs impact litigation, policy advocacy, and public education to prevent and end homelessness.

NLCHP strives to place homelessness in the larger context of poverty by addressing such underlying causes as the shortage of affordable housing, insufficient income, and inadequate social services.

Special Needs of Military Women

- Access to housing and homelessness assistance
- Family law: divorce, custody, visitation, child welfare

Housing and Homelessness

- There are currently an estimated 13,100 homeless female veterans in the U.S.
- Women veterans are up to 4 times more likely to be homeless than non-veteran women and male veterans
- Approximately 45% of homeless veterans suffer from mental health issues, 70% are affected by substance abuse issues, and 40% of female homeless veterans report experiences of sexual assault in the military
- Homeless women veterans are more likely to experience severe forms of mental illness than men
- About a quarter of female veterans in the VA's Homelessness Programs have minor children
- Finding shelters that permit children and offer a safe environment is a primary obstacle for homeless women veterans

Housing Protections for Servicewomen

- Under the Servicemembers Civil Relief Act, debts incurred by a servicemember, or servicemember and spouse jointly, prior to entering military service cannot bear interest at a rate above 6 percent during the period of military service.
- The SCRA states that in a legal action to enforce a debt against real estate that is filed during, or within 90 days after the servicemember's military service, a court may stop the proceedings for a period of time, or adjust the debt.
- In addition, the sale, foreclosure, or seizure of real estate will not be valid if it occurs during, or within 90 days after, the servicemember's military service, unless the creditor has obtained a court order.

SCRA Rental Provisions

- A lease for property may be terminated by a servicemember if one of the following conditions are met: a) the lease was entered into by the member before he or she started active duty; b) the lease was entered into by the reserve or guard member before he or she was recalled to active duty for 180 days or more; c) the servicemember occupying the premises under lease receives military orders for permanent change of station; or d) the servicemember occupying the premises under lease receives military orders for deployment for 90 days or more.
- To terminate the lease, the member must deliver written notice to the landlord at any time after call to active duty or receipt of orders. Oral notice is not sufficient.

The Military and Family Law

- Military family care plans consist of: (a) Power of Attorney or equivalent delegation of legal control; (b) Certificate of Acceptance as Guardian; (c) dependent health insurance application; (d) proof of financial support arrangements; (e) letter of instruction to assigned guardian; (f) consent forms from all parties with a legal interest in the custody of the minor child.
- A family care plan, however, is NOT a legal document that can change a court-mandated custodial arrangement. Its sole purpose is to document *for military purposes* the plan by which servicemembers provide for the care of their family members when military duties prevent them from doing so.
- Military family care plans are NOT substitutes for state court designations of parental authority.

Military Status and Custody

- Military women experience divorce at almost three times the rate of male servicemembers
- Female servicemembers are also much more likely to be single parents than male troops: as of March 2009, more than 30,000 single mothers had deployed to Iraq and Afghanistan
- A typical situation involves a divorced servicemember with joint legal custody and primary physical custody, who receives orders to deploy. As part of a Family Care Plan, the servicemember arranges for a grandparent to take care of the children, and while the servicemember is deployed, the other parent sues for permanent physical custody.
- Since laws in most states favor natural parents over any other guardian, the non-servicemember parent will likely prevail.

Military Status and Custody

- The Servicemembers Civil Relief Act (SCRA), which allows servicemembers to defer legal proceedings until after military service, does not include specific provisions on child custody disputes.
- Although Congress recently amended the Act to emphasize that its stay provisions apply to child custody matters in addition to other civil proceedings, the amendment does not require courts to grant stays for entire deployment periods.
- Nor does the amendment prohibit courts from making permanent changes to pre-deployment custody arrangements.
- Also, some courts may be inclined to deny or ignore stay requests outright, asserting that the best interests of the child outweigh the authority and interests of the SCRA

Legislative Developments: Healthcare

- Caregivers and Veterans Omnibus Health Services Act of 2010: Title II, Women Veterans Health Care Matters
- Authorizes study of barriers for women veterans to health care from the Department of Veterans Affairs, and training and certification for VA mental health care providers on care for veterans suffering from sexual trauma and post-traumatic stress disorder.
- Authorizes pilot program on counseling in retreat settings for women veterans newly separated from service in the Armed Forces, and establishes certain advisory committees of women recently separated from service in the Armed Forces.
- Authorizes pilot program on assistance for childcare for certain veterans receiving health care, and care for newborn children of women veterans receiving maternity care.

Legislative Developments: Housing and Income Support

- Veterans' Benefits Act of 2010: reauthorizes the Homeless Veterans Reintegration Program (HVRP) through fiscal year (FY) 2011 and authorizes \$1 million from FY 2011-2015 to provide dedicated services for homeless women veterans and homeless veterans with children
- 38 CFR §3.304(f)(3): eliminates the VA requirement that applicants for PTSD benefits provide corroborating evidence of an alleged in-service stressor if: 1) the stressor is related to the veteran's "fear of hostile military or terrorist activity," and 2) a VA psychiatrist or psychologist confirms that the alleged stressor supports a diagnosis of PTSD

Legislative Developments: Custody

- H. R. 4469: “a bill to amend the Servicemembers Civil Relief Act to provide for protection of child custody arrangements for parents who are members of the Armed Forces deployed in support of a contingency operation.”
- Precludes courts from permanently changing custody while a military parent is deployed
- Requires resumption of custody upon the servicemember’s return from deployment, unless the reinstatement of custody is not in the best interest of the child
- Bars courts from considering a military parent’s deployment or possibility of deployment as a basis for determining the best interest of the child in custody modification cases.
- While the bill has gained support within the veterans services community, it has been opposed by the American Bar Association.

Policy Goals: Healthcare

- Require the VA to collect gender-specific data on MST claim decisions, develop additional MST-related reference materials for raters, and incorporate training and testing on MST claims into its rater certification program.
- Create comprehensive and uniform standards for women's care in all VA hospitals and clinics.

Policy Goals: Housing and Income Support

- Facilitate access to benefits for MST claimants: as with deployment-related trauma, the agency should accept the veteran's personal testimony alone as proof of the claimed stressor, provided that a VA psychiatrist or psychologist confirms that the claim is adequate to support a diagnosis of PTSD.
- Conduct aggressive and targeted outreach in order to identify women in need of services
- S. 1237, Homeless Veterans and Other Health Care Authorities Act of 2010: would expand the Department of Housing and Urban Development's Veterans Affairs

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