

# MITIGATING THE HARM FROM MILITARY SEXUAL TRAUMA ON OUR NATION'S HEROES

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**O**n April 22, 2020, Specialist Vanessa Guillen, a victim of sexual harassment, disappeared. More than two months later, Guillen's bludgeoned and burned body was located near her base.

Her disappearance and murder reignited a resounding call for reform in how the military addresses sexual assault and harassment. Military Sexual Trauma (MST) is a pervasive problem that jeopardizes military readiness and severely impacts survivors' quality of life.

Located in the heart of Orange County, Veterans Legal Institute®, a nonprofit military-specific legal aid, zealously advocates for MST survivors.

## What Is Military Sexual Trauma?

The Veterans Administration (VA) defines MST as any unwanted sexual contact or harassment experienced while serving in the military. MST does not require a physical assault, but can encompass various forms of sexual harassment and discrimination. Some studies have estimated that one in every four women in the military suffer MST, while others estimate the total to be much closer to 50%.<sup>1</sup>

The Department of Defense (DOD) has been lax in collecting important demographic data regarding MST. Accordingly, it becomes harder to make the necessary tar-

geted reforms to alleviate the exploitation of more vulnerable populations.

## The Impacts of MST

The military often fails to provide adequate support for victims. Even in cases where the military states that the victim has been "taken care of," danger still exists.

For example, Elder Fernandes, a soldier in Fort Hood, was recently found hanging from a tree after reporting a sexual assault. He was actively being assisted by the Sexual Assault Prevention and Response Office (SAPR). The SAPR Program's mandate is to "focus on the victim and on doing what is necessary and

appropriate to support victim recovery, and also, if a Service member, to support that Service member to be fully mission capable and engaged.”<sup>2</sup> Fernandes’s cause of death was determined to be suicide.

The 2019 National Veteran Suicide Prevention Annual Report found that male veterans are 1.3 times more likely than non-veterans to commit suicide, while female veterans are 2.2 times more likely than non-veterans to commit suicide.<sup>3</sup> Survivors of sexual trauma have a two-to-threefold higher risk for depression and suicidal ideations.<sup>4</sup> Those who manage to survive their attacks may continue to face barriers to their service.

For decades, Post Traumatic Stress Disorder (PTSD) has been misunderstood in the military. Soldiers were often written off as “shell shocked” or “crazy” when they displayed the symptoms of PTSD after returning home from combat. Even well into the twenty-first century, service members who were experiencing PTSD were diagnosed with personality disorders and discharged from the military. In 2007, the DOD tightened the screening requirements to protect those who had been in combat and were exhibiting symptoms of PTSD from being discharged due to personality disorders. Remarkably, the number of discharges for personality disorders dropped from 4,264 in 2007 to 1,078 in 2010. While the changes in PTSD screening procedures have been useful for those returning from combat, they do not specifically address PTSD caused by MST.

Female victims of sexual trauma are seven times more likely to develop PTSD than those who do not experience sexual trauma.<sup>5</sup> Service members are often attempting to simply survive after MST and thus cannot meet all of the expectations the military places on them, leading to a pattern of misconduct, which is grounds for a less than honorable discharge. While in the civilian world, medical marijuana may be prescribed to a survivor of sexual trauma who is experiencing PTSD, testing positive for THC in the military is still grounds for separation, or even court martial.

Then there is the issue of retaliation. Some service members who do report their MST subsequently report being treated as a “problem” in the unit. They are stigmatized for being their own advocate. This retaliation can take many forms. The culmination of the retaliation for many is the involuntary end of their military career.

## Bad Paper

Having a less than honorable discharge is often considered having “bad paper.” Anything less than honorable limits what services and benefits a veteran can access when they separate.

The VA has made strides in making mental health care available to certain categories of service members with Other Than Honorable (OTH) discharges, but it still remains elusive for thousands of veterans. In 2017, the VA Secretary expanded emergency mental health care to former service members with OTH discharges, constituting approximately 500,000 veterans.<sup>6</sup> In 2018, the Veterans Health Administration (VHA) served only 2,580 former service members with an

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OTH discharge.<sup>7</sup> Of those, 41% had a mental health diagnosis.<sup>8</sup> Despite these efforts, nearly half a million American veterans still are not accessing the VHA for services. According to a small sample study of female veterans in the California community college system, 68% of female veterans were unaware of the services survivors could receive at the VA.<sup>9</sup>

The GI Bill education benefits and VA Home Loan benefits have even more restrictive requirements. Even those with “under honorable conditions” or “general” are excluded from education benefits. Those applying for a VA home loan must have an Honorable, Under Honorable Conditions, or General at a minimum to be eligible. These are tangible benefits that can make meaningful impact on the life of a veteran.

## Long Lasting Impacts of MST

MST-related PTSD continues to plague the lives of survivors, long after they have separated from the military. Survivors have an increased risk of sleep disorders, and are at higher risk for chronic pain and back pain.<sup>10</sup> Studies have also found a strong correlation between PTSD and heart conditions.

Many MST survivors do not disclose their status on initial screenings, so the data is far from complete. America has hundreds of thousands of veterans who may be carrying the weight of MST and PTSD without ever telling anyone.

MST is not new. In 1992 it came to light that more than eighty women and seven men had been sexually assaulted at a Navy convention held in Las Vegas, Nevada. The Secretary of the Navy was forced to resign because of the scandal, and numerous reforms were put into place. More than thirty years later, however, the Guillen and Fernandes families, along with thousands of others, still seek justice.

## How You Can Help

Because so many service members who experience MST will end up with less than honorable discharges, the need for volunteer attorneys to assist MST survivors is critical. Assisting a veteran attain a discharge upgrade (DU) or character of discharge (COD) review by the VA can be profoundly impactful. Fortunately, there is an avenue through which veterans can be assisted by in-house and volunteer attorneys at the Veterans Legal Institute®, which provides pro bono legal assistance to homeless, at risk, disabled, and low-income current and former service members to eradicate barriers to housing, healthcare, education, and employment, and to foster self-sufficiency.

Channels already exist by which service members can petition to have their discharges reviewed. DOD guidance in the last five years has specifically addressed service members with PTSD as a result of MST, urging Discharge Review Boards (DRB) and Boards for the Correction of Military Records (BCMR) to grant liberal consideration to petitions alleging PTSD and MST.<sup>11</sup> The success rate at these boards remains low but is greatly improved with the assistance of an attorney. Oftentimes, the experience of having an attorney fight with a veteran to restore the honor of their discharge can be life-changing even where the petition is unsuccessful. Veterans suffering from PTSD frequently, and rightfully, feel wronged by the system they swore their life to protect. Hav-



ing a DU granted opens doors for our veterans; with an Honorable discharge they become eligible for education benefits, health care, financial assistance, and better paying jobs.

If a veteran's primary goal is access to VA benefits, lawyers can assist them in applying for a VA COD Review. This process is more efficient than a DU petition, which can take two or more years. However, this process will not change a veterans' DD-214 and only changes the character of service for the purpose of access to VA benefits. While generally useful, in a world in which the VA can serve those with OTHs who have mental health disabilities related to MST, such a route is not likely to secure all of the benefits a veteran may ultimately deserve. A successful COD review can result in the veteran being able to make their disability claims to the VA, which can provide compensation for disabilities such as PTSD.

Take the case of Derek (name altered to protect his confidentiality) who came to VLI after finding he had no other recourse. Derek's military performance was solid until he became a victim of MST. He developed PTSD as a direct result of the repeated MST that involved stalking and harassment prior to physical sexual assault. Understandably terrified, Derek reported the incidents, but was abandoned to his attacker by his chain of command. After many months of sexual harassment, he was physically sexually assaulted by an older, more senior enlisted service member. He had no means of escape. He sought the assistance of his command and was denied help. After the assault, he suffered from nightmares and sought the counsel of the chaplain; again, he was denied help. He felt desperately alone and afraid. Out of desperate self-preservation, he took an unauthorized absence until he was apprehended several months later.

Instead of providing protection and mental health treatment, the military court-martialed Derek, sentenced him to military prison, reduced his rank, fined him, and separated him with a Bad Conduct Discharge (BCD). The BCD denied him VA disability benefits and stained his employment record.

With the help of an attorney advocate at VLI, Derek succeeded in obtaining an upgrade of his discharge to a full Honorable. The attorney proved to the board that Derek's MST was

legitimate, pointing out that his performance declined after the assault and his extended periods of unauthorized absence occurred after the MST. As a direct result, the discharge upgrade allowed the veteran access to essential VA health care and service-connected disability compensation for his PTSD resulting from the MST, and eliminated the life-impacting stigma of a bad conduct discharge. Not stopping there, VLI made a second successful application for Derek, obtaining for him the following additional relief to correct injustice: (1) rank restoration, (2) lost pay from the unauthorized absence, and (3) reimbursement of fines levied at the court martial.

Every day America loses twenty-two veterans to suicide. Thousands of America's bravest warriors are denied access to benefits that could save their lives. VHA patients with military service-connected disability status may have lower risk of suicide than other VHA patients.<sup>12</sup> Receiving a DU or a positive COD review can be what ultimately saves a veteran's life and fosters self-sufficiency.

MST cannot be ignored, nor can the thousands of survivors who are paying the price for being a victim for decades after their separation. Trauma informed care and advocacy is needed to assist these veterans access what they rightfully earned. Let us use this inflection point to better serve our veteran population. If you are interested in joining the movement to provide pro bono legal assistance to survivors of MST, please contact Antoinette Balta at Veterans Legal Institute or visit [www.VetsLegal.org](http://www.VetsLegal.org).

#### ENDNOTES

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4. Nicole Edison, *Study Reveals Lasting Effects of Sexual Assault Among Female Veterans*, NBCNews.com (Sept. 25, 2019) <https://www.nbcnews.com/health/womens-health/study-reveals-lasting-effects-sexual-assault-among-female-veterans-n1058371>.

5. *Id.*

6. Hans Petersen, *Other-Than-Honorable Discharge? You're Still Eligible for VA Mental Health Care*, Vantage Point (May 15, 2019, 11:52 AM), <https://www.blogs.va.gov/VAnantage/60349/other-than-honorable-discharge/>.


7. *Id.*

8. *Id.*

9. Nancy L. Montgomery et al., *Female Veterans Experiences Survey: 2019–2020 Survey Results for California Community Colleges*, Irvine Valley College (April 2020).

10. Nicole Edison, *supra* note 4 at 27.

11. U.S. Dep't of Def., Memorandum, Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming Post Traumatic Stress Disorder (Sept. 3, 2014) [Hagel Memorandum]; U.S. Dep't of Def., Memorandum, Clarifying Guidance to the Military Discharge Review Boards and Boards for Correction of Military/Naval Records Considering Requests by Veterans for Modification of Their Discharge Due to Mental Health Conditions, Sexual Assault or Sexual Harassment (Aug. 25, 2017) [Kurta Memorandum]; U.S. Dep't of Def., Memorandum, Guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records Regarding Equity, Injustice or Clemency Determinations (July 25, 2018) [Wilkie Memorandum].

12. U.S. Dep't of Veterans Affairs, 2019 National Veteran Suicide Prevention Annual Report (2019). 

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