DoD Sexual Assault Prevention and Response Update

March 14, 2014
DACOWITS

DACOWITS RFI #1

- DACOWITS requests a briefing from SAPRO and/or other knowledgeable sources on the implementation status of the sexual assault provisions of the NDAA for FY 2014 and the benchmarks that DoD intends to use in assessing the effectiveness of both the new NDAA provisions and the progress of DoD generally in making "substantial improvements with respect to sexual assault prevention and response, including to the military justice system."

DACOWITS RFI #2

- DACOWITS requests a briefing from SAPRO and the Office of Diversity Management and Equal Opportunity and/or other knowledgeable sources, on the implementation of NDAA FY14 §1745, including the ways in which commanders will be alerted to the need to review particular personnel service records.

- Include the extent to which DoD and the Services are able, or will be able through the implementation of this provision, to track offenders as they move from assignment to assignment and to assess the instances in which individuals who have committed sexual harassment and/or sexual assault offenses have thereafter committed the same or more serious sexual harassment and/or sexual assault offenses.

Agenda

- DoD SAPR Progress Report to the President
- NDAA FY14 SAPR Provisions
- NDAA FY14 §1745 Implementation Review
- NDAA FY14 Military Justice Provisions

DoD SAPR Progress Report to the President

Major General Jeffrey Snow

Director, SAPRO

Report Requirements

- Demonstrate DoD-wide efforts and leadership to POTUS
- Exhibit command climate that is intolerant of harassment and assault
- Illustrate comprehensive prevention and response system
- Show clear measures of progress - both quantitative & qualitative:
  - Demonstrate signs of culture change
  - Measure outcomes of tasks and initiatives in Lines of Effort
  - Include past-year prevalence rate of unwanted sexual contact
  - Show improved victim satisfaction and confidence in the system:
    - Show reports progress as intended through the system
    - Describe experience of victims qualitatively
    - Address concerns of retaliation
    - Illustrate how investigations proceed appropriately
  - Provide review of the military justice system to include recent reforms
  - Show that cases are being processed correctly
- Offer examples of best practices, projects, and interventions
- Identify what other reforms, if any, are necessary

OFFICE OF THE SECRETARY OF DEFENSE
SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE

Notional Points of Analysis

Sexual Assault

Prevention

- **Policy Requirements**
- **Legislation**
- **Strategy**
- **Interventions**
- **Outcomes**

Victim Advocacy

- **Policy Requirements**
- **Legislation**
- **Strategy**
- **Interventions**
- **Outcomes**

Restricted Report

Unrestricted Report

Investigation

Accountability

- Pre-Service Misconduct Screening
- Basic Training
  - 14 Day SAPR Program Brief
  - Full SAPR Training
- Advanced School Training
- Pre-Command Training
- Recruiter-Recruit/Trainee-Trainer Policy
- Command Climate: Visual Inspections
- Commander Effectiveness Assessments
- SAPR Accession Training/Selection Initiatives
  - Recruiters, MEPS, ROTC
- Command Climate Assessments
  - Updated SAPR Items
  - Required within 120 Days; 1 Year Thereafter
  - Results Elevated to Next Echelon Commander
- Sexual Assault Stand Down

- Align Military Justice with Crime Victims' Rights Act
- Special Victims Counsel
- Balanced Expedited Transfer Options
- Victim Input to Post-Trial Action Phase
- Improved Response and Victim Treatment
- Reporting of Sexual Assault
- 50 Year SAPR Record Storage
- SARC/SAPR VA Certification Process
- DoD Safe Helpline
- SAFE/SANE Access for Victims

- Employ Specialized Victim Interviewing Techniques
- Deploy Special Victims Capability
- Criminal Laboratory Capability and Turnaround Time
- Victim Investigative Experience

- Special Victims Counsel
- Special Victims Capability
- Enhance Pretrial Investigations
- Elevating Disposition Authority
- Response Systems Panel Report
- Joint Service Committee UCMJ Review

Assessment

- Methods to be used:
  - DoD metrics (Existing and Proposed)
  - Surveys (Prevalence, Victim Experience, SARC/VA)
  - Focus groups
  - Service-authored assessment reports

- Specific points of assessment and methods developed collaboratively with Services

Assessment (cont.)

- Data Sources:
  - 2014 Workplace and Gender Relations Survey – Active Duty (WGRA)
  - 2014 Workplace and Gender Relations Survey – Reserve Component (WGRR)
  - 2014 DEOMI Equal Opportunity Climate Surveys (DEOCS)
  - 2014 DoD Victim Experience Survey (To Be Developed)
  - Military Criminal Investigative Organizations Reports
  - Office of the Judge Advocates General - Reports of Trial
  - Defense Sexual Assault Incident Database (DSAID)
  - Service Manning Data

Questions

Implementation of Sexual Assault Prevention & Response Provisions in NDAA FY 14

Colonel Alan Metzler
Deputy Director, SAPRO

NDAA FY14

- FY 14: The FY14 NDAA included 33 sections of law (including multiple provisions within each section) and the most sweeping reform to the Uniform Code of Military Justice since 1968, with 16 military justice provisions that enhance victims' rights and constrain convening authorities
- We are decisively engaged in implementing these wide-ranging reforms, and have already put into effect three provisions:
  - Prohibitions on accessions for those who have sexual assault convictions (§1711)
  - Expedited transfer of a suspect (§1712)
  - Mandatory referral of sexual assault incidents to independent Military Criminal Investigative Organization (§1742)

Summary of Sections

SAPR Provisions

- 3 reports

Military Personnel Policy, Readiness, Legal Policy

- (no reports)

Investigations

- (no reports)

Climate Assessment

- (no reports)

Retaliation

- (no reports)

Legal

- 5 reports (3 legal + 2 panel reports)

Summary of Sections – SAPR Provisions

Victim Assistance

- USCG expedited transfers (§1712)
- Expedited transfer of suspect (§1713)
- Automatic retention of Restricted Reporting (RR) forms for 50 years (amended NDAA FY 13, which gave the RR victim the option of requesting retention for 50 years) (§1723)
  - Report in 180 days (§1734)
- Timely access to SARCs and SAPR VAs by Reserve Component and National Guard (DoD policy is more comprehensive than FY 14 and provides SAPR services regardless of duty status or status of offender) (§1724)
- One sexual assault nurse examiner in every 24/7 MTF, or MOU for sexual assault nurse examiner in smaller facilities (§1725)
- Required notification of DoD policy to answer “no” to Q. 21 in SF 86, if received mental health counseling because of sexual assault (§1747)

Summary of Sections – SAPR Provisions

Training and Certification

- Training and certification standards for SAPR program mangers, SARCs, and SAPR VAs (§1725)
- Training and certification standards for sexual assault nurse examiners (§1725)
- Review of "Stand-Down for SAPR Training" (§1725)
  - Report in 120 days
- Review of SAPR training and establishment of common core elements (§1733)
  - Report in 120 days
- MSA curriculum on SAPR delivered in the first 14 days (§1746)

Summary of Sections – SAPR Provisions

Additional duties for SAPR Director (§1726)

- Data collection and maintenance
- Liaison with other federal/state agencies
- Development of strategic guidance and planning objectives for resources and making recommendations of policy, law, and regulations to ensure availability of resources
- Development of metrics

SAPR Policy Additions

- Requirement for commanders to immediately report assault to MCIO (§1742)
- 8-day report of Unrestricted Reports to identified personnel in the chain, to include the 1st GO/FO (§1743)

Summary of Sections – MPP, Readiness, Legal Policy

- Prohibition on service in the Armed Forces by individuals convicted of certain sexual offenses (§1711)

- Expansion and enhancement of authorities relating to protected communications of members of the Armed Forces and prohibited retaliatory actions, to include personnel action is prohibited & provides for correction of military records (§1714)

- Inclusion and command review of information on sex-related offenses in personnel service records of members of the Armed Forces (for purpose of reducing likelihood that repeat offenses will escape notice) (§1745)
  - *More information on this section later in briefing*

Summary of Sections – MPP, Readiness, Legal Policy

- Enhanced protections for prospective members and new members of the Armed Forces during entry-level processing and training: (§1741)
  - Secretaries of the Military Departments (and Secretary of Department in which Coast Guard is operating) shall maintain a policy that defines and prescribes what constitutes inappropriate and prohibited relationships, communication, conduct, or contact (including consensual) among individuals in entry-level processing or training
  - SECDEF shall require processing for administrative separation any Service member in first substantiated violation of this policy;
  - SECDEF shall issue regulations as necessary to carry out this policy in 180 days. SecDef shall ensure that, to the extent practicable, the regulations are uniform for each armed force under the jurisdiction of that Secretary.

Summary of Sections – Investigations

- Review and policy regarding Department of Defense investigative practices in response to allegations of Uniform Code of Military Justice violations (§1732)
  - SECDEF shall conduct review in 180 days of practices of the MCIOs in response to allegation that a Service member committed a UCMJ violation, including extent to which MCIO makes a determination of founded or unfounded
  - SECDEF shall develop uniform policy, to extent practicable, regarding use of case determinations to record results of an investigation of a UCMJ violation and consider feasibility of adopting case determination methods used by nonmilitary law enforcement agencies

Summary of Sections – Climate Assessments

- Tracking of compliance of commanding officers in conducting organizational climate assessments for purposes of preventing and responding to sexual assaults (§1721)
- Review of the Office of Diversity Management and Equal Opportunity role in sexual harassment cases. Identify how ODMEO works with SAPRO to address sexual harassment. (§1735)

Summary of Sections – Retaliation

- Prohibition of retaliation against members of the Armed Forces for reporting a criminal offense (§1709)
  - SECDEF shall (or require Secretaries of Military Departments to) prescribe regulations that prohibit retaliation against a victim or other member of the Armed Forces who reports a criminal offense
  - SECDEF shall provide minimum standards for defining “retaliation”
  - SECDEF shall define “personnel actions”

- Expansion and enhancement of authorities relating to protected communications of members and prohibited retaliatory actions (§1714)
- Inspector General investigation of allegations of retaliatory personnel actions taken in response to making protected communications regarding sexual assault (rape, sexual assault, or other sexual misconduct added to requirement). Explicitly includes “sexual assault” instead of just sexual harassment (§1715)

Implementation Review of § 1745

Inclusion and Command Review of information on sex-related offenses

Context for Implementation

What is the practical application of the notation in the personnel record and the tracking of sex offenders?

- § 1705 requires dismissal or dishonorable discharge after a finding of guilty at court-martial for the following offenses:
  - Rape and sexual assault of an adult
  - Rape and sexual assault of a child
  - Forcible sodomy
  - Attempts to commit these offenses
- Not necessary to maintain permanent record of conviction in personnel file for the § 1745 stated purpose of tracking the offender, since offender will no longer be in the military
- However, a notation will appear in the permanent personnel file IAW §1745 requirement

NDAA FY14 § 1745

§1745. Inclusion and Command Review of information on sex-related offenses in personnel service records of members of the Armed Forces

- Requirements:
  - Notation for conviction or punitive administrative action for "sex offenses
  - Notation cannot be placed in restricted section
  - Receiving commanders must review notations, for the purpose of "reduc[ing] the likelihood that repeat offenses will escape the notice of commanders"

- "Sex offenses" not defined in statute, but defined by USD(P&R) in tasking:
  - Rape, Sexual Assault, Aggravated Sexual Contact, and Abusive Sexual Contact of an adult
  - Rape and Sexual Assault of a child
  - Stalking
  - Other Sexual Misconduct (Indecent Viewing, Forcible Pandering, Indecent Exposure)
  - Forcible Sodomy
  - Attempts to commit the above offenses

NDAA FY14 § 1745

Offenders impacted by notation and review requirement of §1745:

- Offenders found guilty at court-martial are those (generally) charged with "penetrating" offenses & attempts
  - Will result in dismissal IAW with *§1705* mandatory discharge or dismissal
  - Notation will appear in permanent record, but no need for review, since member will no longer be in the military.

- Offenders disciplined through Non-judicial Punishment or Punitive Administrative Action are those (generally) charged with "sexual contact" offenses
  - Notation will appear in permanent record and record will be reviewed by receiving commander
  - Defer to Military Services for service-specific procedures regarding personnel service records

Sex Offender Registration

- Per DoD policy, which is based on U.S. Department of Justice Sex Offender Registration and Notification Act (SORNA) national standards, it is the conviction of ***qualifying sex offense***, regardless of the sentence adjudged, which triggers mandatory reporting requirements
  - Charts detailing ***Qualifying Offenses*** for Sex Offender Registration in back-up slides

- A Service member who is convicted in a general or special court-martial of any of the offenses listed in DoD Instruction 1325.07 “Administration of Military Correctional Facilities and Clemency and Parole Authority," must register with the appropriate authorities in the jurisdiction (State, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the United States Virgin Islands, and Indian Tribes) in which he or she will reside, work, or attend school upon leaving confinement, or upon conviction if not confined

- Generally, this registration must take place within 3 days of release from confinement or within 3 days of conviction if not confined. Each registration jurisdiction sets its own sex offender policy and laws

Questions