

# **SEXUAL ASSAULT AND DOMESTIC VIOLENCE: THEN & NOW**

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IN THE MILITARY AND CIVILIAN WORLD

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# DISCUSSION

- Then vs. Now
- Implications & Client Care
- Persistent Legal Conflicts
- Trends: US, Texas, Military

# THEN

- Domestic violence was legal until 1920
- Until 1974, the testimony of a female rape victim required corroboration to convict the offender

# NOW

- Strengthened federal punishments
- VAWA funds and trains law enforcement, prosecutors, and judges to better handle cases involving intimate partner violence
- Extended victim rights

# HISTORICAL LOWLIGHTS

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## BIAS IN THE COURTROOM

Before the 1994 amendment to Rule 412, a victim's sexual history was admissible as evidence in court.

Between 1995 and 2002, the likelihood of a federal judge deciding in favor of the plaintiff decreased by ~10% when the judge was male.

Cornell Law Institute's Legal Information Institute  
Study: Untangling the Causal Effects of Sex on Judging

# TODAY'S TRENDS

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## COVID PANDEMIC & VICTIMS OF VIOLENCE

In 2018, partner violence accounted for 20% of all violent crime. Due to pandemic-related lockdowns in 2020, the rate of incidents increased by 8.1%.

Through the 2022 VAWA reauthorization, \$1 billion was directed to domestic violence and sexual assault services, including \$49.5 million for community-based organizations serving marginalized communities.

National Coalition Against Domestic Violence  
Council on Criminal Justice, Jenifer Warren  
White House Briefing Room's Fact Sheet Reauthorization of VAWA

# LEGAL PROTECTION

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## FOR VICTIMS

As of 2022, forced arbitration for sexual assault and harassment is illegal: survivors can now settle all related claims in court.

The SMART Prevention Program aims to reduce dating violence in youth. The 2022 VAWA update increases help available to children exposed to domestic violence and increases preventative training available to community members.

White House Briefing Room's Fact Sheet  
Reauthorization of the Violence Against Women Act  
34 U.S. Code § 12463

# LESS STIGMA

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## **NORMALIZING THE CONVERSATION**

Before 1980, major newspapers had published ~150 articles on domestic violence. Since 2000, there are more than 7,000.

Conversations around and victims of domestic abuse are less stigmatized: violence against women is considered less of an individual, gendered issue and more so a social problem requiring public support.

VAWA  
Futures Without Violence

# EXPANDING CARE

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## RECOGNIZING DIVERSITY

In its 2012 reauthorization, VAWA expanded authority to Native American tribes to prosecute cases involving Native American women. As of 2022, tribal courts can convict non-Native offenders of sexual assault, stalking, and sex trafficking on tribal lands.

Also as of this year is increased funding for culturally specific services for victims in rural communities and those who are LGBTQ+.

The National Law Review  
White House Briefing Room's Fact Sheet  
Reauthorization of the Violence Against Women Act



# MILITARY UPDATES

- Sexual harassment is a crime as of Jan 2022
- New methods for tracking allegations of assault and retaliation
- Protected command-victim communications
- Civilian positions to support Special Victims Counsel
- Deadlines to analyze efficacy of new laws
- Expanded training on anti-harassment and anti-discrimination information and policies, including sexual assault prevention and response

Task & Purpose, Jeff Schogol  
SEC. 546. 5404. 1562a. of 2022 NDAA

# METHODS

The Secretary of Defense will designate a component of the Office of the Secretary of Defense to document and track all allegations of retaliation and ensure that the Secretaries and Inspector General of the DoD relays the information required to be documented and tracked. The head of the component designated by the Secretary will receive all documentation and tracking information of each allegation of retaliation, including

- that the allegation has been reported and by whom
- date of the report
- nature of the allegation
- name of the offender(s) alleged to have engaged in retaliation
- DoD component responsible for the investigation of or inquiry into the allegation
- Investigation findings
- referrals, if any
- the outcome
- Command climate surveys

U.S. Code Title 10 Subtitle A Part II  
Chapter 47 Subchapter X § 932

# **Vanessa Guillén Bill**

Effective as of Jan 2022, this bill criminalizes sexual harassment and transfers prosecutorial authority for sexual assault, murder, and domestic violence from unit commanders to independent prosecutors. The bill requires sentencing by judges (unaffiliated with the unit), rigid sentencing parameters, and annual reporting on retaliation to Congress.

Before this bill, criminal sentences was largely influenced by officers with little to no legal education or guidance on minimum sentences.

# **ANITA HILL**

In October 1991, Anita Hill, a law professor, testified before a Senate panel stating that SCOTUS nominee Clarence Thomas sexually harassed her while he was her supervisor at DoEd and EEOC. When hired by Thomas, Hill thought she was hired based upon merit, but within three months, Thomas began pressuring her to go out with him and sought out opportunities to discuss his sexual prowess, films involving group sex, rape, and bestiality, and his “penchant for oral sex.”

Hill faced an all-white, all-male panel and was mocked by the panel and the public during the televised testimony. Hill was dismissed as delusional, as having an affinity for Thomas, and fabricating the entire account. The Senate confirmed Thomas to the Supreme Court in July 1991.

# IMPLICATIONS

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Victims have historically unprecedented opportunity to seek guidance and legal recourse. However, their choice to sacrifice familiarity remains difficult: understanding the patterns of abusive relationships and the psychological effect on assault survivors lends to understanding inner conflict with reporting, leaving abusers, seeking legal action, and moving forward.

# RESOURCES

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Research and training for investigating and prosecuting gender-based violence: **Aequitas**

Caring for clients: **Attorney General Guidelines for Victims and Witness Assistance**

State and national level legal information and guidance on domestic violence: **womenslaw.org** and state legislature offices through **congress.gov**

**American Bar Association** Standing Committee on Legal Assistance for Military Personnel

**SAPRO** (571) 372-2657

U.S. Code Title 10 Subtitle A Part II Chapter 47 Subchapter X

# SERVICES

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## FOR VICTIMS

Houston Area Women's Center

Sexual Assault Prevention and Crisis Services (SAPCS)

The Samaritan Inn: Brighter Tomorrows

Sojourner House

Office for Victims of Crime

Office on Violence Against Women

DOJ Office of Justice Programs (Office for Victims of Crime)

Crime Victim Compensation Fund

National Sexual Violence Resource Center

- **loveisrespect.org**
- **youth.gov**
- **RAINN.org hotline:** 800-656-4673
- Live chat at **thehotline.org**
- **National Domestic Violence Hotline** 1800-799-SAFE



# MISSION CONTINUES

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Some states still have "spousal exemptions" for offenders who assault their spouse. These excused offenses include first- and second-degree rape and third and fourth-degree sexual offenses.

CT, MI, MS, OH, NV, OK do not protect victims who are unconscious or under the influence of controlled substances at the time of assault. Law only covers cases where overpowering force is used or threatened.

CT classifies spousal rape as a Class B felony instead of Class A. Offenders receive a lesser sentence than an offender not married to a victim.

SC classifies spousal rape if the assault includes aggravated force or the use of a weapon

In January 2021, MD still "generally prohibits the prosecution of sexual offenses committed within the confines of marriage."

Maryland Reporter, Bryan Renbaum  
World Population Review



## TEXAS

**40.1%**

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of women experienced intimate partner physical violence

**75%**

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of Texan 16-24-year-olds have either experienced dating violence or know another who has.

## NATIONWIDE

**23.2%**

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of women experienced severe physical violence by an intimate partner

**45%+**

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of rape victims are attacked by an intimate partner.

National Coalition of Domestic Violence

# RESOURCES

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## MILITARY

Battalion level SARC

Battery/Company level SHARP representative

Chaplain

Sexual Assault Prevention and Response organization

Protect Our Defenders

National Sexual Violence Resource Center's MST Resource List

**DoD Safe Helpline** 202-540-5962, 877-995-5247

- operates 24/7 and is anonymous, confidential, and secure.
- Staff will listen to your concerns, discuss safety planning, share info about resources
- can connect you with local resources such as a SARC or VA

# **REPORTING**

## **RESTRICTED**

confidentially report the assault without triggering the official investigative process

- Victim can report the assault to the SARC, VA, or a healthcare provider, or chaplain
- Healthcare provider will conduct a sexual assault forensic examination and report the sexual assault to the SARC instead of law enforcement or the command. The SARC will assign a VA to the victim and the VA will educate the victim on the process of filing a restricted report.

## **UNRESTRICTED**

Permit an investigation by disclosure to unit command

- All medical aid and victim assistance remain available
- Opportunity to apply for unit transfer or base relocation
- Place a military protective order
- Offender receives legal recourse
- Paper trail is established if victim pursues filing for Military Sexual Trauma (MST) or if the offender becomes a repeat offender

# Important Takeaways

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## ■ VIOLENCE AGAINST WOMEN INCREASING

Be prepared with training and resources for the case and services for the victim.

## ■ ELIMINATE BIAS

Bias still exists in the courtroom and should be actively addressed.

## ■ RESOURCES

Range from state to national levels, military and civilian, for victims, their family members, and representatives of the law

## ■ LEGAL NEGLECT CONTINUES

State laws drastically differ in protections against violence for women. Use your position as a representative of law and the public to advocate for justice

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