

Military Families and Intimate Partner Violence: Background and Issues for Congress

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Intimate partner violence (IPV) is a national public health issue. IPV is also a crime characterized by recidivism and escalation, meaning offenders are likely to be repeat abusers, and the intensity of the abuse or violence is likely to grow over time. Like the broader phenomenon of domestic violence and abuse, a subset of which includes IPV, associated physical and mental trauma for those who are victims of abuse, as well as for those minor children who witness the abuse, can have both immediate and long-term health effects and significant costs to society. When military servicemembers are involved as either victims or perpetrators of IPV, the consequences of IPV can also harm unit readiness.

Congress has constitutional authority to fund, regulate, and oversee the Armed Forces, including the military justice system. Congress has used this authority in recent years to mandate domestic violence prevention and victim response policies, programs, and services. In addition, Congress has acted to improve accountability measures for military perpetrators through statutory changes to the *Uniform Code of Military Justice* (UCMJ).

Within the Department of Defense (DOD), IPV may include domestic violence and domestic abuse. *Domestic violence* is defined as an offense with legal consequences under the *U.S. Code*, UCMJ, and State laws, while *domestic abuse* refers to a pattern of abusive behavior. Within DOD, the Family Advocacy Program (FAP) is responsible for clinical assessment, supportive services, and treatment in response to domestic abuse, child abuse, and neglect in military families. Military responses to incidents of IPV may involve military law enforcement, unit or installation commanders, and military health personnel. In some cases, military and civilian officials may coordinate additional responses to IPV.

In FY2018, DOD reported 16,912 incidents of spouse and intimate partner abuse (the active servicemember population totals over 1.3 million). Roughly half (8,039) of these incident reports met the criteria for abuse under the DOD definition. Some of these incidents have severe consequences. In FY2018, there were 15 confirmed domestic abuse fatalities involving military personnel as perpetrators or victims; in three of the cases, the victims had reported prior incidents of abuse to FAP personnel.

Congress has taken numerous actions over the past few decades to address risk factors for IPV among the servicemember population, to raise awareness, to protect victims, and to hold perpetrators accountable. More recently, in the 116th Congress, lawmakers added a punitive article to the UCMJ specifically for domestic violence offenses (prior offenses had been prosecuted under the punitive article for assault). As Congress continues to consider policy issues related to IPV, areas for continued oversight include community coordination in prevention and response, coverage and access to military-sponsored victim services, the appropriateness of law enforcement response, data collection and federal reporting requirements, and other programs that can help mitigate risk factors for IPV.

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Contents

Introduction	1
Background	2
DOD Organization and Definitions	3
Family Advocacy Program (FAP)	4
Family Advocacy and Family Assistance Funding	4
FAP Personnel and Accreditation	5
Definitions	5
Incident Data and Reporting	6
What Proportion of the Military-Connected Population is Affected?	8
Victim Profile	9
Offender Profile	10
Younger Troops are at Higher Risk of Offending and Being Victimized	11
How does IPV in the Military Compare to the Civilian Population?	12
Prevention	13
Entry Screening	14
Education, Training, and Awareness	15
Military and Family Life Counseling	15
Interventions	16
Clinical Interventions	16
Military Protective Orders	17
Expedited Transfer and Administrative Reassignments	18
Victim Support and Services	18
Confidentiality: Restricted and Unrestricted Reporting	19
Victim Advocacy Services	20
Special Victims' Counsel/Victims' Legal Counsel	20
Transitional Compensation	20
Forfeiture and/or Coordination of Benefits	21
Access to Retired Pay and Benefits	22
Emergency Housing and Accommodations	22
Relocation Benefits	22
Federal Crime Victims Fund	23
Military Law Enforcement Response	24
DODIG Review of Law Enforcement Actions	26
Crime Reporting to National Databases	27
Military Justice System	29
Commander's Authority	30
Court-Martial	30
Domestic Violence Punitive Article	31
Sentencing	31
Military Rules of Evidence	32
Victim Advocate—Victim Privilege	32
Remote Live Testimony of a Child	32
Issues for Congress	33
Community Coordination	33

Coverage and Access to Victim Services	34
Law Enforcement Response.....	34
Data Reporting	35
Mitigating Risk Factors.....	35

Figures

Figure 1. DOD Spouse and Intimate Partner Abuse Incidents, FY2009-FY2018.....	9
Figure 2. Active Duty Spouse Abuse Offenders by Pay Grade, FY2018	12

Tables

Table 1. DOD’s Family Assistance Funding, FY2015–FY2020	5
Table 2. DOD-Reported Spouse and Intimate Partner Abuse Victims, FY2018	10
Table 3. Types of Alleged Spouse Abuse, FY2018.....	11
Table 4. Estimated Prevalence of Intimate Partner Violence: Comparisons Across Military and Civilian Female Populations.....	13
Table 5. DODIG Findings on Military Law Enforcement Incident Response	26
Table A-1. Intimate Partner Violence; Selected Legislation.....	37
Table C-1. Table of Acronyms.....	41

Appendixes

Appendix A. Selected Legislation	37
Appendix B. CDC Risk Factors for Intimate Partner Violence.....	40
Appendix C. Acronyms	41

Contacts

Author Contact Information	42
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Introduction

Domestic violence is a term often used to describe abuse of a spouse or child in the home. *Intimate partner violence (IPV)* is a subset of domestic violence that is committed against a spouse, or current or former dating partner. IPV is treated as a public health issue and is monitored by the Centers for Disease Control and Prevention (CDC) at the national level. According to the CDC, approximately one in five women and one in seven men report having experienced severe physical violence from an intimate partner in their lifetime.¹ In addition, crime statistics suggest that 16% of all U.S. homicide victims are killed by an intimate partner. Nearly half of female homicide victims are killed by a current or former male intimate partner.² IPV criminal offenses are typically defined and prosecuted at the state level; however, federal law imposes penalties on some domestic violence offenders.³ Military IPV offenders may be prosecuted in civilian courts, but are also subject to punitive measures within the military justice system under *Uniform Code of Military Justice* (UCMJ) provisions.⁴

From a military effectiveness perspective, IPV may lead to productivity losses, degraded servicemember or unit readiness, and subsequent costs to the Department of Defense (DOD).⁵ When servicemembers are victims, associated mental and physical trauma may affect their ability to deploy or serve in worldwide assignments and can lead to capability gaps in units. In addition, qualified veterans who were victims of IPV may require additional care for co-morbid conditions through the Veterans' Health Administration (VHA).

Congress has constitutional authority to fund, regulate, and oversee the Armed Forces, including the military justice system. Congress has used this authority in recent years to mandate domestic violence prevention and victim response policies, programs, and services. As such, there is enduring congressional interest on domestic violence prevention and response, victim well-being, and perpetrator accountability.

This report starts with an overview of IPV in the Armed Forces, including risk factors, prevalence, and concerns specific to military families and certain subgroups. The next section focuses on DOD prevention activities, including efforts to screen out high-risk individuals, increase awareness, and address relationship stresses before they escalate. This section is followed by a discussion of intervention activities implemented by clinical service providers, military commanders, and other stakeholders. The next section describes actions taken by DOD and the Congress to provide victim support, resources, and advocacy. Following that, the report touches on how military law enforcement organizations respond to and investigate allegations of domestic abuse and how offenders are held accountable under the military justice system. Finally, the report touches on some continuing issues for congressional oversight and action.

¹ Centers for Disease Control and Prevention (CDC), *Preventing Intimate Partner Violence*, at <https://www.cdc.gov/violenceprevention/intimatepartnerviolence/fastfact.html>.

² Ibid.

³ Federal law outside of military law is beyond the scope of this report. For more on this topic, see CRS Report R42499, *The Violence Against Women Act: Overview, Legislation, and Federal Funding*, by Lisa N. Sacco.

⁴ The Uniform Code of Military Justice (UCMJ), Chapter 47 of Title 10 of the *U.S. Code* is the code of military criminal laws applicable to all U.S. military members worldwide.

⁵ The U.S. Government Accountability Office (GAO) noted in a 2010 report that, according to DOD officials and servicemembers, "domestic abuse has a negative effect on readiness mostly due to the amount of time spent by commanders and others on this issue." See GAO, *Military Personnel: Sustained Leadership and Oversight Needed to Improve DOD's Prevention and Treatment of Domestic Abuse*, GAO-10-923, September 2010, p. 12.

Background

Intimate partner violence (IPV) is a crime characterized by recidivism and escalation, meaning offenders are likely to be repeat abusers, and the intensity of the abuse or violence is likely to grow over time. IPV can harm victims in various ways, resulting in physical injury, mental health problems, and adverse pregnancy outcomes (e.g., low birth weight, preterm birth, and neonatal death).⁶ Many victims of IPV continue to struggle with stress and anxiety long after incidents occur. For example, national surveys have found that among victims of IPV, 41% of women and 10% of men have experienced symptoms of post-traumatic stress disorder (PTSD).⁷

In addition, alleged perpetrators can face decreased productivity at work, loss of income, and incarceration. Domestic violence can also affect the behavior and well-being of subsequent generations. Research has shown that children who grow up in a home where IPV occurs are at higher risk for behavioral, cognitive, and emotional disorders.⁸ Relatedly, studies have indicated that perpetrators often have a history of experiencing abuse or witnessing abusive relationships within their families as a children or young adults.

Factors unique to military service may exacerbate risks for both perpetrators and victims of IPV.⁹ First, servicemembers and their families frequently move for various assignments.¹⁰ This separates individuals from natural support networks, which can heighten stress on intimate partnerships, including those involving caretakers, and lead to social isolation. Whereas a victim of domestic abuse might normally escape a situation by temporarily moving in with a local family member or trusted friend, this option may not be readily available, particularly for those located at overseas or remote installations.¹¹ Similarly, difficulties in coping with frequent moves and other pressures associated with military service (e.g., a spouse's long hours, shift work, or unpredictable deployments) may contribute to marital conflict and instability (e.g., reunification cycles, separation, or divorce). In addition, frequent household moves may complicate the capacity of nonmilitary spouses to achieve full employment. Lack of financial independence and the threat of lost or reduced military benefits may serve as a disincentive for military spouse victims to seek help in cases of abuse. Finally, prior interpersonal trauma is also indicated as a risk factor for both perpetrators and victims. Some data suggest that women who have

⁶ Alhusen, Jeanne L., et al., "Intimate Partner Violence During Pregnancy: Maternal and Neonatal Outcomes," *Journal of Women's Health*, vol. 24, no. 1 (J 2015), pp. 100-106.

⁷ D'Inverno, A.S., Smith, S.G., and Zhang, X., et al., *The Impact of Intimate Partner Violence: 2015 NSVS Research-in-Brief*, Centers for Disease Control and Prevention (CDC), August 2019, <https://www.cdc.gov/violenceprevention/pdf/nisvs/nisvs-impactbrief-508.pdf>.

⁸ Carlson, Bonnie E., "Children Exposed to Intimate Partner Violence; Research Findings and Implications for Intervention," *Trauma, Violence, & Abuse*, vol. 1, no. 4 (October 2000), pp. 321-342.

⁹ For a full list of CDC risk factors for intimate partner violence (IPV), see **Appendix B**.

¹⁰ GAO has estimated that the average time between permanent change of station (PCS) moves is two years. See GAO, *Military Personnel: Longer Time Between Moves Relates to Higher Satisfaction and Retention*, GAO-01-841, August 2001, p. 2, <https://www.gao.gov/new.items/d01841.pdf>.

¹¹ According to 16 U.S.C. §670(1)(A), a *military installation* "means any land, or interest in land owned by the United States and administered by the Secretary of Defense or the Secretary of a [MILDEP], except land under the jurisdiction of the Assistant Secretary of the Army having responsibility for civil works." The term is further defined in 10 U.S.C. §2801(c)(4) to mean "a base, camp, post, station, yard, center, or other activity." In general, this includes facilities, training ranges, and other supporting infrastructure that reside on a military installation. See CRS In Focus IF11263, *Defense Primer: Military Installations Management*, by G. James Herrera.

experienced abuse in childhood may be more likely to join the military to escape a violent or unstable home environment.¹²

At the same time, some factors unique to military service may mitigate IPV incidence. For example, access to health care (TRICARE), stable pay and benefits, and the availability of installation-based family support services may help with financial stability and early intervention for at-risk couples. In addition, military servicemembers who are perpetrators of abuse may face more immediate or severe sanctions for IPV than their civilian counterparts (e.g., reductions in pay, loss of employment, and/or benefits). Military commanders have broad discretion to impose administrative remedies, penalties, or referrals for judicial action for abusers under their command (see section on “Commander’s Authority”). In this way, military commanders can play an important role in IPV intervention, and in establishing a climate where victims feel safe to report and perpetrators are held accountable.

DOD Organization and Definitions

Prior to 1980, the military services (Army, Navy, Air Force, and Marine Corps) conducted their own family advocacy programs, primarily under their respective military medical service programs.¹³ In response to a 1979 U.S. General Accounting Office (now called the U.S. Government Accountability Office) report that characterized military service family violence prevention programs as inconsistent and understaffed, DOD established the Military Family Resource Center (MFRC) as a three-year demonstration project through a DOD-subsidized grant from the Department of Health and Human Services (HHS).¹⁴ In 1981, Congress first appropriated funds for DOD family violence prevention and between 1981 and 1983, responsibility for total funding of the program transitioned to DOD’s sole responsibility.¹⁵ During that time, DOD also published Directive 6400.1, establishing the Family Advocacy Program and an Advocacy Committee with representatives from the services and DOD.¹⁶ Given the success of the MFRC demonstration and DOD’s interest in consolidating programs under a single secretariat, DOD transferred MFRC activities to the Office of the Deputy Assistant Secretary of Defense for Force Management and Personnel in August of 1985.

The Military Family Act of 1985 formally established an Office of Family Policy under the Office of the Secretary of Defense to “coordinate programs and activities of the military departments to the extent that they relate to military families.”¹⁷ Congress later amended and codified the act under Chapter 88 of Title 10, *U.S. Code*, in 1995 as part of the National Defense Authorization Act (NDAA) for Fiscal Year 1996 and renamed the Office of Family Policy as the Office of Military Family Readiness Policy. Currently, this office falls under the purview of the Office of

¹² Gerner, Megan R., et al., “Women Veterans and Intimate Partner Violence: Current State of Knowledge and Future Directions,” *Journal of Women’s Health*, vol. 23, no. 4 (2014), p. 304, http://www.ncdsv.org/images/JWH_Women-veterans-and-IPV-current-state-of-knowledge-and-future-directions_2014.pdf.

¹³ U.S. Department of Defense (DOD), Office of Family Policy, Military Family Resource Center, *History of the Department of Defense Family Advocacy Program*, 1987, p. 5.

¹⁴ U.S. Government Accountability Office, *Military Child Advocacy Programs—Victims of Neglect*, HRD-79-75, May 23, 1979, <https://www.gao.gov/assets/130/126931.pdf>.

¹⁵ P.L. 97-114.

¹⁶ U.S. Department of Defense (DOD), Office of Family Policy, Military Family Resource Center, *History of the Department of Defense Family Advocacy Program*, 1987, p. 2.

¹⁷ P.L. 99-145 §802.

the Under Secretary of Defense (USD) for Personnel and Readiness (P&R).¹⁸ Within USD (P&R), the Deputy Assistant Secretary of Defense for Military Community and Family Policy has oversight responsibility for military family programs, including domestic violence prevention and response. The military services implement domestic violence prevention and response through the Family Advocacy Program (FAP). Military law enforcement activities fall under the purview of USD (P&R) and the Defense Human Resource Activity (DHRA), while central incident databases are housed in the Defense Manpower Data Center (DMDC), also under DHRA.

Family Advocacy Program (FAP)

Currently, the Family Advocacy Program (FAP) is the designated program within DOD and the services to address “domestic abuse, child abuse and neglect, and problematic sexual behavior in children and youth” through prevention, awareness, treatment, and rehabilitation services.¹⁹ The military services implement the FAP. FAP managers also work in coordination with civilian agencies involved in domestic violence response. In 2016, Congress required the FAP to provide an annual report to Congress on child abuse and neglect and domestic abuse in military families.²⁰

Family Advocacy and Family Assistance Funding

Family advocacy and family assistance programs are funded through annual appropriations as part of the Defense-wide Operation and Maintenance budget for DOD dependents education. DOD-requested FAP funds are directed to each of the military services to implement clinical intervention programs, “in the areas of domestic abuse, intimate partner violence, child abuse and neglect, and problematic sexual behavior in children and youth.”²¹ FAP funding also supports a DOD hotline for reporting allegations of child abuse, training for domestic violence responders and members of the chain of command, public awareness activities, support for obtaining civilian protection orders, and research on domestic violence prevention. According to DOD budget documents, defense-wide funding for family assistance supports

programs and outreach services to include, but not limited to: the 1-800 Military OneSource call center; the Military and Family Life Counseling Program; financial outreach and non-medical counseling; Spouse Education and Career Opportunities; child care services; youth programs; morale, welfare and recreation programs and, support to the Guard and Reserve service members, their families, and survivors. Funding supports DoD-wide service delivery contracts to support all Active Duty, Guard, and Reserve Components.²²

The total defense-wide funding request for family assistance and family advocacy for FY2020 was \$877 million, an increase of 5.5% from the previous year (see **Table 1**).

¹⁸ P.L. 104-106 §568.

¹⁹ DOD, *Family Advocacy Program*, DODI 6400.01, May 1, 2019, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640001p.pdf>.

²⁰ P.L. 114-328 §574.

²¹ DOD, “DOD Dependents Education,” *FY2020 President’s Budget Request, Operation and Maintenance, Defense-Wide*, March 2019, p. 9.

²² *Ibid.*, p. 8.

Table 1. DOD's Family Assistance Funding, FY2015–FY2020

in millions of current dollars

	FY2015 (actual)	FY2016 (actual)	FY2017 (actual)	FY2018 (actual)	FY2019 (enacted)	FY2020 (requested)
Family Advocacy Program (FAP)	705.5	194.9	194.3	198.2	208.2	230.6
Family Assistance		632.4	596.2	628.9	622.9	646.0
TOTAL	705.5	827.3	790.5	827.2	831.1	876.5

Source: Compiled by CRS from DOD budget documents for Defense-wide Operation and Maintenance, DOD Dependents Education.

Note: DOD did not report separate line items for FY2015 Family Assistance and FAP funding. Total funding for Family Assistance and FAP covers a broader range of activities than IPV.

FAP Personnel and Accreditation

DOD policy requires specific credentialing for those assigned as FAP managers, including a master's or doctoral level degree in the behavioral sciences from an accredited U.S. university or college, state licensure, and certain experience.²³ Service Secretaries are also responsible for establishing criteria for other FAP personnel, and for annual accreditation and certification of installation FAPs. According to DOD, the FAP is supported by over 2,000 government and contracted personnel.²⁴

Definitions

The CDC uses the term *intimate partner violence* (IPV) to describe “physical violence, sexual violence, stalking and psychological aggression (including coercive acts)” by a current or former spouse or dating partner. DOD often refers to IPV as domestic violence or domestic abuse. *Domestic violence* is defined as an offense with legal consequences under the *U.S. Code*, the UCMJ, and state laws, while *domestic abuse* refers to a pattern of abusive behavior. DOD defines four types of abusive behavior: (1) physical abuse, (2) emotional abuse, (3) sexual abuse, and (4) neglect of spouse (see text box below on “DOD Definitions of Domestic Abuse and Domestic Violence”).

Under the DOD definition, a victim of domestic violence may be a current or former spouse, an intimate partner sharing a common domicile, or a person with whom the abuser shares a child. Under the CDC's definition, an intimate partner does not need to share a common domicile or child. DOD's narrower definition of what constitutes IPV correlates to victim and dependents' eligibility for certain benefits or services following an incident of reported abuse (see section below on “Victim Support and Services”). Sexual violence involving military personnel in which the offender and victim do not share a domicile, child, or other legal relationship (i.e., spouse or

²³ DOD, *Family Advocacy Program*, DODI 6400.01, May 1, 2019, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640001p.pdf>.

²⁴ UDO, “DOD Dependents Education,” *FY2020 President's Budget Request, Operation and Maintenance, Defense-Wide*, March 2019, p. 9.

former spouse), is typically handled by DOD's Sexual Assault Prevention and Response (SAPR) program.²⁵

DOD Definitions of Domestic Abuse and Domestic Violence

Domestic Violence. An offense under the *U.S. Code*, the UCMJ, and state laws involving the use, attempted use, or threatened use of force or violence against a person, or a violation of a lawful order issued for the protection of a person who is:

- A current or former spouse,
- A person with whom the abuser shares a child in common, or
- A current or former intimate partner with whom the abuser shares or has shared a common domicile.

Domestic Abuse. Domestic violence or a pattern of behavior resulting in emotional/psychological abuse, economic control, and/or interference with personal liberty that is directed toward a person who is:

- A current or former spouse,
- A person with whom the abuser shares a child in common, or
- A current or former intimate partner with whom the abuser shares or has shared a common domicile.

Types of Maltreatment

- **Physical abuse.** The non-accidental use of physical force against a spouse or intimate partner that causes physical injury (e.g., bruise, cut, sprain, or broken bone) or reasonable potential for more than inconsequential physical injury.
- **Emotional abuse.** Non-accidental act or acts, excluding physical or sexual abuse, or threat adversely affecting the psychological well-being of the partner (e.g., isolating partner from friends/family; restricting access to economic resources or benefits; threatening to harm the individual's children, pets or property; or berating, disparaging, or humiliating the partner).
- **Sexual abuse.** The use of physical force to compel the spouse or intimate partner to engage in a sexual act or sexual contact against his or her will, whether or not the sexual act or sexual contact is completed.
- **Neglect of spouse.** Withholding or threatening to withhold access to appropriate, medically indicated health care, nourishment, shelter, clothing, or hygiene where the spouse is incapable of self-care and the abuser is able to provide care or access to care.

Source: DOD, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*, DODI 6400.06, May 26, 2017. For a complete list of maltreatment categories and corresponding definitions, see http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/640001m_vol3.pdf.

Incident Data and Reporting

DOD collects data on domestic abuse incidents through the FAP Central Registry, created by in 1994. In 1999, as part of the FY2000 NDAA, Congress explicitly mandated that DOD maintain a centralized database and collect annual reports from the Services on

- (1) Each domestic violence incident reported to a commander, a law enforcement authority of the armed forces, or a family advocacy program of the Department of Defense.
- (2) The number of those incidents that involve evidence determined sufficient for supporting disciplinary action and for each such incident, a description of the substantiated allegation and the action taken by command authorities in the incident.

²⁵ For more information on military sexual assault, see CRS Report R44944, *Military Sexual Assault: A Framework for Congressional Oversight*, by Kristy N. Kamarck and Barbara Salazar Torreon.

- (3) The number of those incidents that involve evidence determined insufficient for supporting disciplinary action and for each such case, a description of the allegation.²⁶

The military services collect data at the installation level. Each installation's FAP enters data into its respective service registry and then submits reports to the DMDC, which maintains the registry for all of DOD.²⁷ Data elements include demographic information, individual identifiers (i.e., name and social security number), relationship indicators, incident details (e.g., location and date), and the type and severity of abuse.²⁸ When an FAP office receives a report of domestic abuse, an incident determination committee (IDC) determines whether the incident "met criteria" to be submitted and tracked within the database.²⁹ Incidents that do not meet the criteria for domestic abuse are also included in the database, but identifiable individual information is not tracked. DOD uses the aggregate data in this registry to produce annual reports to Congress, analyze the scope of abuse and trends, and support budget requests for domestic violence prevention resources.

The FAP Central Registry is not the only database that includes domestic violence information involving military servicemembers. DOD also maintains the Defense Incident-Based Reporting System (DIBRS) as a central repository at DMDC for criminal incident-based statistical data.³⁰ DIBRS includes criminal activity related to domestic abuse, but would typically not capture cases without law enforcement involvement. (See section on "Crime Reporting to National Databases" for more detail.) While GAO has highlighted concerns about gaps and overlaps in these two databases (see text box below on "GAO Reviews of DOD Domestic Violence Data Collection Efforts"), DOD has resisted consolidating them, stating that

DIBRS and the Services' FAP Central Registries, from which the DoD Central Registry contains limited data elements, serve fundamentally different purposes: law enforcement and clinical treatment, respectively. [...] Using the FAP database for law enforcement data collection purposes will significantly degrade the perception of the FAP as a program that provides clinical assistance to troubled families.³¹

In some cases, the DOD's database for military sexual assault, the defense sexual assault incident database (DSAID) may also capture data on incidents of sexual abuse involving spouses or intimate partners.³² The prevalence of intimate partner sexual assault or stalking of

²⁶ P.L. 106-65 §594; 10 U.S.C. §1562.

²⁷ Data is entered using DD Form 2901, *Frequently Asked Questions about the Family Advocacy Program Data Collection System Central Registry*, at <http://www.ncdsv.org/images/FAQFAPDataCollectioncentralregistry.pdf>.

²⁸ DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019.

²⁹ The term "met criteria" in the context of an incident determination committee (IDC) finding does not reflect a criminal legal disposition; rather, the term reflects a clinical determination of whether the incident meets the criteria to be classified as abuse for the purpose of developing an intervention/treatment plan for both the victim and the offenders involved in the allegations. The IDC is comprised of the deputy to the installation or garrison commander who serves as the chair, the senior enlisted noncommissioned officer advisor to the chair, a representative from the servicemember's chain of command, a representative from the Staff Judge Advocate's office, a representative from military law enforcement, and the FAP manager or FAP supervisor of clinical services. DOD, *Family Advocacy Program (FAP): Child Abuse and Domestic Abuse Incident Reporting System*, DOD Manual 6400.01, vol. 2, August 11, 2016.

³⁰ DOD, *Defense Incident-Based Reporting System (DIBRS)*, DODI 7730.47, June 29, 2018, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/773047p.pdf?ver=2018-07-25-142042-013>.

³¹ Defense Task Force on Domestic Violence, *Second Annual Report*, February 25, 2002, p. x, <http://www.ncdsv.org/images/Year2Report2002.pdf>.

³² U.S. Government Accountability Office (GAO), *Sexual Violence: Actions Needed to Improve DOD's Efforts to Address the Continuum of Unwanted Sexual Behaviors*, GAO-18-33, December 2017, p. 23, <https://www.gao.gov/assets/690/689086.pdf>. See also CRS Report R44944, *Military Sexual Assault: A Framework for Congressional*

servicemember victims may also be captured in DOD's annual workforce and gender relations (WGR) surveys. These surveys would not generally capture all types of domestic abuse, and surveys do not include military spouses. Therefore, while incidents of domestic abuse that are reported to FAP or other military officials are generally captured in the data, it is possible that the actual prevalence (including unreported incidents) within the military is higher than reported.

GAO Reviews of DOD Domestic Violence Data Collection Efforts

In 2006, as part of a congressionally mandated review of the management of domestic violence programs and systems, GAO found significant deficiencies in data collection and reporting.³³ In particular, the GAO noted that until January 2006, the Central Registry only contained reported incidents of abuse involving spouses and not intimate partners. In addition, a review of DIBRS information found that a number of installations were not reporting disciplinary actions taken by the commanders, as required by statute. In 2010, Congress asked GAO to review the progress made by DOD on the recommendations from the 2006 review.³⁴ In the 2010 review, GAO raised concerns about potential for overlap, gaps, or data reliability issues between the DIBRS and FAP databases.³⁵ GAO also noted in the 2010 report that while previous attempts to get a more accurate count of domestic violence incidents by matching DIBRS and Central Registry data had been made, there was no systematic methodology in place for matching data or ensuring accuracy.³⁶

What Proportion of the Military-Connected Population is Affected?

The total active duty population is over 1.3 million, approximately 16% of whom are women.³⁷ In addition, the total number of active duty military spouses is about 600,000, about 25% of which are age 25 or younger.³⁸ Based on data collected by the services, there were 16,912 reported incidents of spouse and intimate partner abuse in FY2018.³⁹ Of these, roughly half (8,039) of the reports met the criteria for abuse under DOD definitions, affecting 6,372 victims (see **Figure 1** below).⁴⁰ Physical abuse accounted for 73.7% of all met criteria incidents, followed by emotional abuse (22.6%). Sexual abuse and neglect accounted for a smaller proportion of domestic abuse incidents—3.6% and 0.06% respectively.⁴¹

Oversight, by Kristy N. Kamarck and Barbara Salazar Torreon.

³³ GAO, *Military Personnel: Progress Made in Implementing Recommendations to Reduce Domestic Violence, but Further Management Action Needed*, GAO-06-540, May 2006, <https://www.govinfo.gov/content/pkg/GAOREPORTS-GAO-06-540/pdf/GAOREPORTS-GAO-06-540.pdf>.

³⁴ GAO, *Military Personnel: Sustained Leadership and Oversight Needed to Improve DOD's Prevention and Treatment of Domestic Abuse*, GAO-10-923, September 2010, p. 2.

³⁵ *Ibid.*, p. 7.

³⁶ "From 2000 until 2003, while the Defense Task Force on Domestic Violence was in operation, DOD attempted to manually match data from the Defense Incident-Based Reporting System and the Central Registry to compare information on specific cases." *Ibid.*, p. 16.

³⁷ Defense Manpower Data Center (DMDC), DoD Personnel, Workforce Reports & Publications, Table of Active Duty Females by Rank/Grade and Service, August 2019, https://www.dmdc.osd.mil/appj/dwp/dwp_reports.jsp.

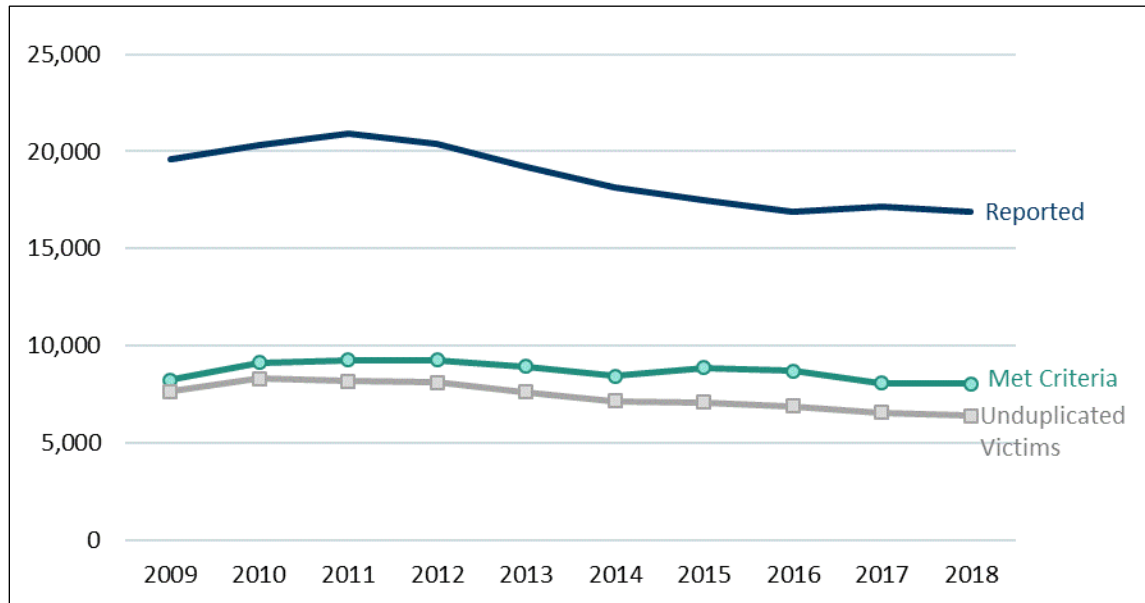
³⁸ DOD, *2017 Demographics: Profile of the Military Community*, 2017, p. 135, <https://www.militaryonesource.mil/reports-and-surveys/demographic-profiles>.

³⁹ DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019, pp. 40 and 54.

⁴⁰ *Ibid.* One or more incidents may be reported by a single victim.

⁴¹ *Ibid.*, p. 39.

Figure I. DOD Spouse and Intimate Partner Abuse Incidents, FY2009-FY2018
number of incidents



Source: DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019.

Notes: Data include both spouse and intimate partner abuse. Unduplicated victims represents the number of unique victims. Some victims may report multiple incidents of IPV.

There has been little change in the rate or number of reported incidents that met criteria for domestic abuse since FY2009. While the total number of incidents in FY2018 is 19% lower than the number of incidents at the most recent peak in FY2011, the total force size also shrank during that time. In fact, the rate of incidents that met criteria for spouse abuse has not varied significantly since FY2008.⁴² While there are no clear trends in the number of incident reports, there are some indications that the categories of abuse being reported may have changed over the past eight years. The number of reported domestic abuse incidents involving sexual abuse has generally increased incrementally since FY2009, when DOD added this as a category for reporting (there was a slight drop in reported incidents in FY2018). This change in reporting may be due to a number of factors, including an actual increase in these types of IPV; cultural shifts in the perception of sexual abuse within existing relationships; and greater general awareness of sexual violence, reporting avenues, and available resources among military servicemembers, military-connected intimate partners, and first responders.⁴³

Victim Profile

Victims of reported abuse are predominately (two-thirds) female. About half of the victims who reported spouse abuse to DOD and two-thirds who reported intimate partner abuse were members

⁴² DOD does not collect data on the number of servicemembers with intimate partners, therefore is unable to determine a rate for that subpopulation.

⁴³ Marital rape has been illegal in all 50 states since 1993. However, some definitions and penalties for the offense vary by state and penalties may differ in severity from other domestic abuse or sexual violence crimes. Sexual abuse of a spouse or intimate partner is also reported as a domestic abuse-related sexual assault in DOD's annual reports of sexual assault in the military.

of the military at the time the abuse took place (see **Table 2** below). In FY2018, DOD reported 15 domestic abuse fatalities (13 spouses and 2 intimate partners).⁴⁴ Of the fatalities, three victims had previously reported abuse to DOD’s FAP and four of the perpetrators had been reported previously for at least one prior abuse offense. Nine of the offenders were civilians with military victims.

Table 2. DOD-Reported Spouse and Intimate Partner Abuse Victims, FY2018

	Number of unique victims	Sex of victims		Victims by military status	
		male	female	military	civilian
Spouse abuse ^a	5,550	35%	65%	54%	46%
Intimate partner abuse ^b	822	29%	71%	62%	38%

Source: DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019, pp. 42, 44, 45, 55, and 56.

Notes:

- a. Victims married to an offender and who experienced at least one incident of maltreatment that meets criteria for abuse (i.e., physical, sexual, or emotional abuse, or spousal neglect).
- b. Victims who experienced at least one incident of maltreatment that meets criteria for abuse and are former spouses, share a child in common with the offender, or are current or former partners who have shared a common domicile.

Offender Profile

Servicemembers account for a majority of reported offenders. In FY2018, 57% of the reported spouse-abuse offenders were servicemembers.⁴⁵ DOD-reported female offenders were more likely to be civilians, and were the perpetrators in 40% of physical spouse abuse incidents (see **Table 3**). This percent of female physical abuse offenders reported by DOD is higher than the literature would predict for the general population. Multiple studies suggest that women are less likely to be the primary perpetrator of physical violence in a relationship and that when they use violence it is nearly always in response to physical violence by their partner.⁴⁶ However, it is unclear from the data if physical abuse perpetrated by women is retaliatory. Sexual abuse cases were almost entirely perpetrated by men (96%) which is consistent with the research.⁴⁷

⁴⁴ Fatalities for the fiscal year only include cases taken to the IDC. DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019, p. 55.

⁴⁵ DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019, p. 46.

⁴⁶ Similar offender data for intimate partners is not available in the FAP report.

⁴⁶ Miller, Susan L. and Michelle L. Meloy, “Women’s Use of Force: Voices of Women Arrested for Domestic Violence,” *Violence Against Women*, vol. 12, no. 1 (January 2006), pp. 89-115, <https://www.biscmi.org/wp-content/uploads/2015/05/MillerMeloy2006.pdf>.

⁴⁷ DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019, p. 51.

Table 3. Types of Alleged Spouse Abuse, FY2018

met-criteria incidents

Type of abuse	Sex of offenders	
	male	female
Physical	60%	40%
Emotional	75%	25%
Sexual	96%	4%
Neglect	100%	0%
Spouse abuse (total)	62%	38%

Source: DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019.

Perpetration of IPV in military partnerships may be underrepresented in DOD incident data, particularly if the victims are civilians, unmarried to the perpetrator, or not residing on a military installation. Incidents that occur outside of a military installation are less likely to be witnessed by military first responders and unmarried civilian intimate partners of a servicemembers are typically ineligible to be treated at military treatment facilities (MTFs). Coordination between civilian and military officials for domestic violence reporting is discussed in later sections (see “Confidentiality: Restricted and Unrestricted Reporting” and “Community Coordination”).

Younger Troops are at Higher Risk of Offending and Being Victimized

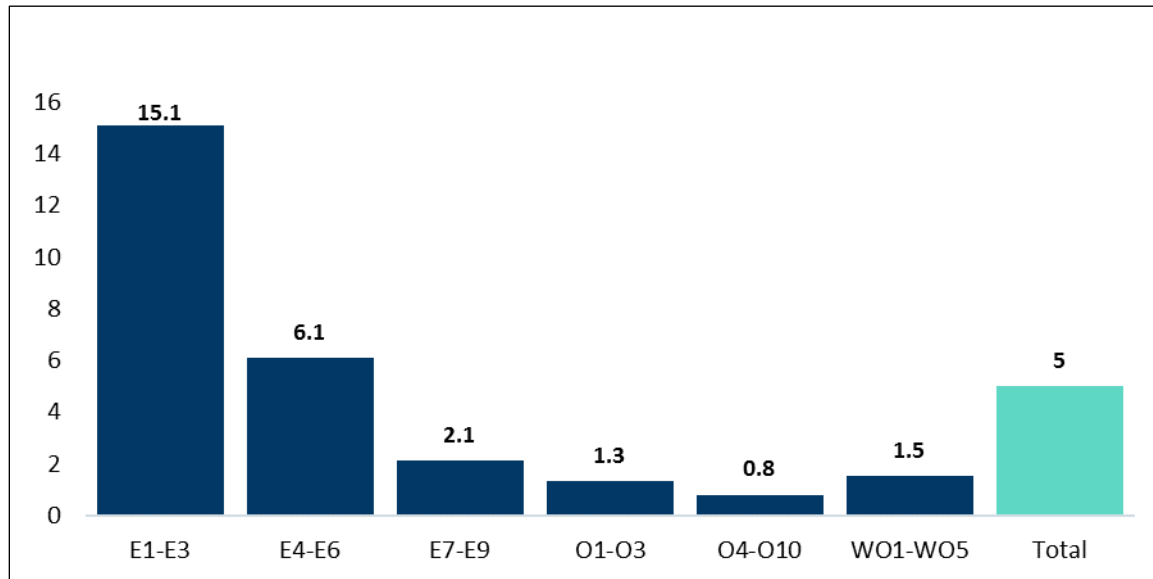
National-level data suggest that intimate partner violence primarily begins at a young age: an estimated 71% of females and 58% of males reported having first experienced sexual violence, intimate partner physical violence, or stalking before the age of 25.⁴⁸ In addition, approximately 23% of female victims reported having first experienced intimate partner violence before the age of 18.⁴⁹ Similarly, rates of reported domestic abuse in the military are highest among junior enlisted (E-3 and below) families who are typically between the ages of 18 and 24. In FY2018, the rate of offenders in the grades of E-1 to E-3 was 15.1 per 1,000 married couples; in contrast to the overall rate of 5 per 1,000 married couples (see **Figure 2**).⁵⁰

⁴⁸ Breiding, Matthew J. et al., *Prevalence and Characteristics of Sexual Violence, Stalking, and Intimate Partner Violence Victimization—National Intimate Partner and Sexual Violence Survey, United States, 2011*, CDC, September 5, 2014, https://www.cdc.gov/mmwr/preview/mmwrhtml/ss6308a1.htm?s_cid=ss6308a1_e.

⁴⁹ Ibid.

⁵⁰ DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019.

Figure 2. Active Duty Spouse Abuse Offenders by Pay Grade, FY2018
rate per 1,000 married couples



Source: DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019, p 50.

Notes: Grades E1-E9 are enlisted grades, O1-O10 are officer grades, and WO1- WO5 are warrant officer grades.

How does IPV in the Military Compare to the Civilian Population?

A number of factors complicate comparisons of military and nonmilitary IPV datasets, particularly the infrequent reporting of national civilian data and differences between how DOD and federal nonmilitary data are reported, collected, and aggregated. For example, each state may have different laws and processes for recording IPV, whereas all military branches use a common IPV definition and process. In addition, military members and their spouses and partners are, on average, younger than the general population. Therefore, direct (unweighted) comparisons of incident rates at the national or local level should be interpreted with some caution.

Some studies, nonetheless, have compared IPV prevalence data across military and civilian populations. Since 2010, the CDC has conducted the National Intimate Partner and Sexual Violence Survey (NISVS), which collects data from adult men and women on past-year and lifetime experiences of sexual violence, stalking, and intimate partner violence at the state and national levels.⁵¹ In 2010, CDC randomly sampled military women and wives of active duty members to compare IPV prevalence rates among civilians, military women and military spouses and generally found similar prevalence rates across the populations.⁵² Where there were differences, active duty women were generally found to have a decreased risk of IPV relative to the civilian population. Nevertheless, active duty women who were deployed in the previous

⁵¹ CDC, *Prevalence of Intimate Partner Violence, Stalking, and Sexual Violence Among Active Duty Women and Wives of Active Duty Men—Comparisons with Women in the U.S. General Population, 2010*, Technical Report, March 2013, http://www.sapr.mil/public/docs/research/2010_National_Intimate_Partner_and_Sexual_Violence_Survey-Technical_Report.pdf.

⁵² The CDC did not conduct similar comparisons between male civilian and military victims of IPV in this study.

three years were significantly more likely to have experienced physical and sexual IPV compared with those who had not deployed.⁵³

Table 4. Estimated Prevalence of Intimate Partner Violence: Comparisons Across Military and Civilian Female Populations
2010

Type of Intimate Partner Violence	General Population Women	Active Duty Women (deployed w/in 3 years)	Active Duty Women (not deployed w/in 3 years)	Wives of Active Duty Men (deployed w/in 3 years)	Wives of Active Duty Men (not deployed w/in 3 years)
Contact Sexual Violence					
Lifetime	20.0%	13.7%	11.4%	13.4%	13.1%
3-years	3.7%	4.5%	4.0%	3.5%	-
Psychological Aggression					
Lifetime	56.7%	47.2%	41.1%	41.2%	40.0%
3-years	28.2%	22.6%	24.7%	15.8%	12.0%
Severe Physical Violence					
Lifetime	26.9%	21.9%	16.0%	20.6%	15.9%
3-years	6.2%	5.7%	5.4%	4.8%	-

Source: CDC, *Prevalence of Intimate Partner Violence, Stalking, and Sexual Violence Among Active Duty Women and Wives of Active Duty Men—Comparisons with Women in the U.S. General Population, 2010*, Technical Report, March 2013, Tables 2, 3, 6, 13, 14, 15, 17, 20 http://www.sapr.mil/public/docs/research/2010_National_Intimate_Partner_and_Sexual_Violence_Survey-Technical_Report.pdf.

Notes: The age range for women in these data is 18-59 years. Contact sexual violence as completed forced penetration, attempted forced penetration, completed alcohol- or drug-facilitated penetration, being made to penetrate someone else, sexual coercion, and other unwanted sexual contact experiences. Severe physical violence includes acts such as being hit with something hard, being kicked or beaten, or being burned on purpose. Psychological aggression includes expressive aggression (e.g., name-calling, or insulting or humiliating an intimate partner) and coercive control, which includes behaviors that are intended to monitor, control, or threaten an intimate partner. Contact sexual violence for wives of active duty men not deployed within three years is not reported due to high standards errors or small sample size.

Prevention

DOD has focused on a number of activities to prevent IPV and mitigate the escalation and repetition of violence or abuse following an initial offense.⁵⁴ The CDC has identified several individual, relationship, community, and societal risk factors for domestic violence (see **Appendix B**). Some of these risk factors are inherent in the military environment. For example,

⁵³ CDC, *Prevalence of Intimate Partner Violence, Stalking, and Sexual Violence Among Active Duty Women and Wives of Active Duty Men—Comparisons with Women in the U.S. General Population, 2010*, Technical Report, March 2013, p. 14, http://www.sapr.mil/public/docs/research/2010_National_Intimate_Partner_and_Sexual_Violence_Survey-Technical_Report.pdf.

⁵⁴ Defense Task Force on Domestic Violence, *Third Year Report*, 2003, <http://www.ncdsv.org/images/Year3Report2003.pdf>.

youth is considered a risk factor, and the bulk of servicemembers are recruited and enlisted or appointed between the ages of 17-26. On the other hand, military protocols for entry screening, education and training, and support structures may provide protective factors and deterrence.

Entry Screening

DOD and the services use medical, cognitive, and other qualification standards to screen those seeking entry into the Armed Forces for IPV risk factors. For example, DOD medical standards generally prohibit enlistment or appointment of individuals with a history of personality or behavioral disorders.⁵⁵ In addition, a history of drug or alcohol abuse can be a disqualifying factor.⁵⁶ Past misconduct and criminal convictions can also disqualify individuals.

Those disqualified from service may request a conduct waiver, which typically requires specific information about the offense(s) and “letters of recommendation from responsible community leaders, such as school officials, clergy, and law enforcement officials, attesting to the applicant’s character or suitability.”⁵⁷ Convicted domestic violence offenders, on the other hand, are typically ineligible for conduct waivers, pursuant to the Lautenberg Amendment Gun Control Act of 1968.⁵⁸ Domestic battery or other violent offenses committed without conviction may also be disqualifying.⁵⁹

The Lautenberg Amendment and Military Service

Some studies have found that access to firearms increases the risk for intimate partner homicide.⁶⁰ Consequently, Congress has taken actions to reduce firearm access for known offenders. A 1996 amendment to the Gun Control Act of 1968 (P.L. 104-208, 18 U.S.C. §922) makes it a felony for any individual convicted of a misdemeanor crime of domestic violence to ship, transport, possess or receive firearms or ammunition. The 1996 amendment, sometimes referred to as the *Lautenberg Amendment* (named after its sponsor, Senator Frank Lautenberg), also makes it a felony for another person to sell or otherwise dispose of a firearm to any person they have reasonable cause to believe has such a conviction, regardless of when the conviction occurred. There are no exceptions for military personnel or military-issued weapons. As a result, those convicted of domestic violence would be unable to carry a firearm and are thus ineligible for entry into military service.⁶¹

According to DOD policy, if a member is found to have been convicted of a domestic violence conviction in a civilian court or a general or special court martial, an appropriate military authority will “immediately retrieve all government-issued firearms and ammunition, suspend his/her authority to possess government-issued firearms or ammunition, and advise them to dispose of their privately owned firearms and ammunitions lawfully. These actions shall also be taken if there is reasonable cause to believe a military member has a qualifying conviction.”⁶²

In recent years, as recruiting quantity targets have increased to force end-strength numbers, the Services, and particularly the Army, have increased the use of conduct, and other waivers.⁶³ Some

⁵⁵ DOD, *Medical Standards for Appointment, Enlistment, or Induction into the Military Services*, DODI 6130.03, May 6, 2018, p. 44.

⁵⁶ *Ibid.*, p. 10.

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ Campbell, Jacquelyn C., et al., “Risk Factors for Femicide in Abusive Relationships: Results from a Multisite Case Control Study,” *American Journal of Public Health*, vol. 93, no. 7 (2003), pp. 1089-1097.

⁶¹ DOD policy clarifies that the department “does not construe the amendment to apply to major military weapon systems or “crew served” military weapons and ammunition (e.g., tanks, missiles, aircraft).” DOD, *Domestic Abuse Involving DOD Military and Certain Affiliated Personnel*, DODI 6400.06, May 26, 2017, p. 10.

⁶² *Ibid.*, p. 11.

⁶³ Baldor, Lolita C., “Army Using Drug Waivers, Bonuses to Fill Ranks,” XX Insert Publication Title Here XX, August

have questioned whether those with waivers for any kind of misconduct (e.g., drug, alcohol, or traffic violations) are at higher risk for misconduct offenses while serving in the military.⁶⁴ One study of Army enlistments between 2003 and 2008 found that while those with conduct waivers for any reason did have higher rates of alcohol and drug-related offenses, the waivers were not significantly associated with substantiated incidents of domestic abuse.⁶⁵

Education, Training, and Awareness

Prevention programs for domestic violence include education and training components, some of which are required in both law and policy. The FY2000 NDAA required DOD to establish a standard training curriculum for commanding officers on handling domestic violence cases.⁶⁶ In a 2004 memorandum, the USD (P&R) also required specialized training for military chaplains on confronting a potential domestic violence situation.⁶⁷

The Family Advocacy Program (FAP) is charged with promoting awareness of domestic abuse through education, training, and information dissemination.⁶⁸ Training for commanders, troops, counselors, and health care personnel typically focuses on increasing awareness of IPV warning signs and appropriate responses. Training for troops might include workshops or briefings on healthy relationships and family resiliency. Generally, domestic violence prevention training is not mandatory and is not applied uniformly across and within the services. The military services have experimented with tailored education programs for higher-risk demographics. The Navy, for example, has initiated a series of workshops on relationship abuse awareness and prevention that targets junior enlisted members.⁶⁹ DOD's Military Onesource website also offers a range of self-serve resources and tools to learn more about domestic violence.⁷⁰

Domestic Violence Awareness Month

In 1989, the 101st Congress passed the first joint resolution designating October as National Domestic Violence Awareness Month (S.J.Res. 133). The military services typically recognize this month through purple ribbon awareness campaigns and activities (e.g., ceremonies, workshops, posters/fliers, and social media).

Military and Family Life Counseling

Relationship stressors are indicated as risk factors for IPV. Part of DOD's prevention activities include no-cost, nonmedical, confidential counseling services for members and their families through the Military and Family Life Counseling (MFLC) program.⁷¹ These services are part of

1, 2018.

⁶⁴ Alvarez, Lizette, "Army and Marine Corps Grant More Felony Waivers," *New York Times*, April 22, 2008.

⁶⁵ Galloway, M. Shayne, et al., "The Association Between U.S. Army Enlistment Waivers and Subsequent Behavioral and Social Health Outcomes and Attrition From Service," *Military Medicine*, vol. 178 (2013).

⁶⁶ P.L. 106-65 §593.

⁶⁷ Letter from David Chu, Under Secretary of Defense for Personnel and Readiness (USD (P&R)), *Domestic Abuse Training for Chaplains*, January 29, 2004, <http://www.ncdsv.org/images/DomesticAbuseTrainingChaplains.pdf>.

⁶⁸ DOD, *Family Advocacy Program (FAP)*, DODI 6400.01, March 16, 2018.

⁶⁹ The Navy has reported that they are currently studying the effectiveness of these workshops. DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019.

⁷⁰ See for example DOD, Military Onesource, *2018 Domestic Violence Prevention Month Toolkit*, at <https://www.militaryonesource.mil/leaders-service-providers/child-abuse-and-domestic-abuse/2018-domestic-violence-prevention-month-toolkit>.

⁷¹ DOD, *Counseling Services for DoD Military, Guard and Reserve, Certain Affiliated Personnel, and Their Family*

DOD's prevention activities and include relationship counseling, anger/conflict management, and deployment adjustment (i.e., separation and reintegration). DOD provides these services through a contractor to active and reserve personnel and their immediate families at over 200 military installations or in nearby civilian community centers worldwide. Family life counselors do not handle domestic abuse cases—these are typically referred to the FAP and medical providers, as required. Members and their spouses may also participate in other service-level programs, like chaplain-led marriage retreats or family resiliency workshops under their installation's family readiness program.⁷² While commanders or others may refer couples to these programs, participation in them is generally optional.

Interventions

While prevention activities generally target the entire population, interventions are targeted at high-risk couples or individuals, or provided after a first alleged offense.⁷³ Interventions include removing individuals and family members from any immediate risk of harm, initiating an investigation, ensuring ongoing safety, and preventing future escalation or offender recidivism. Response to domestic abuse often involves coordination among military commanders, law enforcement officials, health care personnel, social workers, and legal representatives. DOD policies outline specific roles and responsibilities for each of these responders.⁷⁴ The FY2019 NDAA required the establishment of multidisciplinary teams on military installations to enhance collaboration in response and management of domestic abuse cases.⁷⁵ The law requires each team to include (1) one or more judge advocates, (2) personnel from military criminal investigation organizations (MCIOs), (3) mental health professionals, (4) family advocacy caseworkers, and (5) other personnel as appropriate.

Clinical Interventions

When an incident is reported to the FAP, a team assesses the situation and coordinates clinical case management, including treatment, rehabilitation, and ongoing monitoring and risk management. FAP employees are typically professional social workers. According to DOD, there are over 2,000 funded positions across the military departments for delivery of FAP services, including “credentialed/licensed clinical providers, Domestic Abuse Victim Advocates, New Parent Support Home Visitors, and prevention staff.”⁷⁶

Members, DODI 6490.06, March 31, 2017.

⁷² Military Onesource provides resources and links to information about these programs at <https://www.militaryonesource.mil/family-relationships/relationships/keeping-your-relationship-strong/marriage-enrichment-programs>.

⁷³ DOD identifies individuals or families that are high-risk for violence as those with known incidents of severe abuse or the potential for severe abuse, or offenders engaging in high-risk behaviors such as making threats to cause grievous bodily harm, preventing victim access to communication devices, stalking, etc.

⁷⁴ DOD, *Domestic Abuse Involving DOD Military and Certain Affiliated Personnel*, DODI 6400.06, May 26, 2017.

⁷⁵ P.L. 115-232 §577.

⁷⁶ DOD, *Report on Child Abuse and Neglect and Domestic Abuse in the Military for Fiscal Year 2018*, April 2019, p. 11.

Military Protective Orders

Once a servicemember has allegedly committed an act of domestic violence, and it is reported to the member's commander, the commander is responsible for holding the perpetrator accountable and taking actions to protect the victim.⁷⁷ The commander may, for example, issue a military protective order (MPO) to help ensure the victim's safety.⁷⁸ An MPO generally prohibits contact between the alleged offender and the domestic violence victim.⁷⁹ A servicemember must obey an MPO at all times, whether inside or outside a military installation; violations may be subject to court martial or other punitive measures. The commanding officer may also restrict an accused servicemember to a ship or to his or her barracks to keep the parties separate. There may be some cases when the victim is a servicemember and the alleged abuser is a civilian. Commanders cannot issue an MPO for civilians, but may arrange for temporary housing on the installation for the servicemember victim and bar the accused civilian from installation access.

While military commanders have a high degree of control over the activities on an installation, they typically lack jurisdiction over events in civilian communities. Approximately 63% of military personnel live in private housing located outside of a military installation.⁸⁰ Because of this, coordination between military and civilian law enforcement authorities is often required to provide for victim safety. The FY2000 NDAA included a provision to create incentives for collaboration between military installations and civilian community organizations working to prevent and respond to domestic violence.⁸¹ In 2002, Congress required that civilian protection orders (CPOs) have full force and effect on military installations.⁸² This means that if a servicemember violates the terms of a CPO, he or she may be subject to disciplinary actions under the UCMJ, in the same way as if violating an MPO. Military commanders, by regulation, are also encouraged to issue an MPO to support an existing CPO, or to provide some protection to a victim while the victim pursues a CPO.⁸³ MPOs are unenforceable by civilian law enforcement. In 2008, however, Congress required the commander of a military installation to notify civilian authorities when an MPO is issued, changed, or terminated with respect to individuals who live outside of the installation.⁸⁴ Procedures for coordination and information-sharing between military and local officials are established through formal memoranda of understanding (MOUs).

⁷⁷ DOD, *Domestic Abuse Involving DOD Military and Certain Affiliated Personnel*, DODI 6400.06, May 26, 2017, p. 6.

⁷⁸ 10 U.S.C. §1567. An MPO is a written lawful order issued by a commander (see DD Form 2873 at <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2873.pdf>). Violations may be prosecuted under article 90 of the UCMJ for willfully disobeying a superior commissioned officer; under article 92 for failure to obey order or regulation; or under article 134 for conduct prejudiced to good order and discipline in the Armed Forces or of a nature to bring discredit upon the Armed Forces.

⁷⁹ Before an MPO is issued, a commander can immediately issue as a first step a no contact order, which is analogous to a temporary restraining order.

⁸⁰ DOD, Office of the Assistant Secretary of Defense for Sustainment, "Facilities Management—Military Housing Privatization Initiative; Privatized Housing Overview," FY2007, https://www.acq.osd.mil/eie/fim/Housing/Housing_overview.html.

⁸¹ P.L. 106-65 §592.

⁸² P.L. 107-311.

⁸³ DOD, *Domestic Abuse Involving DOD Military and Certain Affiliated Personnel*, DODI 6400.06, May 26, 2017, p. 8.

⁸⁴ 10 U.S.C. §1567a.

Expedited Transfer and Administrative Reassignments

In an effort to protect servicemembers reporting sex-related offenses from retaliation, Congress required in 2011 that DOD develop policies and procedures for consideration of station changes or unit transfers of active duty member victims who report sex-related offenses under the UCMJ.⁸⁵ Per statute, an individual's commanding officer must approve or disapprove an application for transfer within 72 hours of submission. If the commander disapproves the transfer, the applicant may request review from the first general officer in the chain of command. The law requires a decision from the general officer within 72 hours of the submission of the request. Congress expanded the application of such transfer policies and procedures to cover military servicemembers who are victims of physical or sexual IPV through the FY2018 NDAA.⁸⁶ The act specified that transfer policies and procedures are to be implemented once abuse has occurred, irrespective of whether the offender is a member of the Armed Forces.

In the FY2014 NDAA, Congress also added a provision that allows commanders and others with authority to reassign or remove from a position of authority individuals who are alleged to have committed or attempted sex-related offenses. The law is specific that reassignment action is "not as a punitive measure, but solely for the purpose of maintaining good order and discipline within the member's unit."⁸⁷ Advocates for this provision had argued that reassignment of the victim could be seen as penalizing the victim instead of the perpetrator.⁸⁸

Covered offenses under the expedited transfer (10 U.S.C. §673) and administrative reassignment (10 U.S.C. §674) authorities currently do not include the UCMJ offense for domestic violence, which was added in 2018 as part of the FY2019 NDAA (See section below on "Domestic Violence Punitive Article").⁸⁹

Victim Support and Services

In the past decade, DOD has developed methods for incident reporting, data collection, and analysis of IPV trends. There is some evidence to suggest, however, that the actual prevalence of domestic abuse in the military could be underreported. While DOD conducts annual surveys of servicemembers to determine the prevalence of sexual assault and harassment in the military, it does not conduct or report on similar surveys with the military spouse population or on the prevalence of non-sex-related abuse by intimate partners. Indeed, IPV prevalence can be difficult to measure, and within the academic literature there is a broad range of prevalence estimates for victimization and perpetration involving military servicemembers. One meta-analysis undertaken by the VA suggests that among active duty servicemembers, the 12-month prevalence of IPV perpetration was 22%, and victimization was 30%—rates higher than those of actual incident reports within DOD.⁹⁰ Another (nonscientific) survey conducted by a military family advocacy

⁸⁵ P.L. 112-81 §582. These offenses include rape and sexual assault, other sexual misconduct, and stalking under 10 U.S.C. §§920, 920c, and 930.

⁸⁶ P.L. 115-232 §536.

⁸⁷ P.L. 113-66, 10 U.S.C. §674.

⁸⁸ For a broader discussion on military protective orders, see CRS Report R44944, *Military Sexual Assault: A Framework for Congressional Oversight*, by Kristy N. Kamarck and Barbara Salazar Torreon.

⁸⁹ P.L. 115-232 §532.

⁹⁰ The authors note that both of these estimates had high heterogeneity. Department of Veterans Affairs (VA); Health Services Research and Development Services, *Intimate Partner Violence: Prevalence Among U.S. Military Veterans and Active Duty Servicemembers and a Review of Intervention Approaches*, p. 22, <https://www.hsrd.research.va.gov/>

group in 2017 found that 15% of the military and veteran family respondents did not feel physically safe in their relationship. Among those experiencing abuse, the survey found that “87% of military spouse respondents did not report their physical abuse, citing their top two reasons for not reporting the abuse was that they felt it was not a big deal and they did not want to hurt their spouse or partner’s career.”⁹¹

Intimate partner abuse for the perpetrator is often connected with coercive control and monitoring of the victim’s activities (e.g., controlling phone or email passwords, and restricting bank account access), and thus some victims may be fearful of seeking help. Confidentiality concerns, financial dependency, and lack of support structures can all create barriers to reporting IPV. Congress and DOD have taken some actions to try to reduce these barriers, to encourage victims to report, and to increase access to victim support services.

Confidentiality: Restricted and Unrestricted Reporting

Responding to concerns from military family members about confidentiality in reporting incidents of domestic abuse, Congress required in 1999 that DOD establish policies and procedures, which provide “maximum protection for the confidentiality of dependent communications” with service providers, such as therapists, counselors, and advocates.⁹² DOD has since developed distinct reporting streams that can accommodate varying levels of confidentiality. In an unrestricted reporting scenario, domestic abuse is reported to law enforcement, FAP, or the chain of command. Such a report would typically set off a sequence of actions to include a criminal investigation of the alleged offender. In some cases, a victim may be hesitant to trigger these events but may want to access support services in a confidential manner. In recognition that some victims may be deterred from reporting based on confidentiality concern, DOD has established a restricted reporting option. With some exceptions, this reporting option allows victims to disclose information to a victim advocate, victim advocate supervisor, or healthcare provider without that information being disclosed to other authorities.⁹³ The restricted reporting options allows the victim time to access medical care, counseling, and victim advocacy services while providing some time to consider relationship choices and next steps.

Whom to Call for Victims of Abuse

Military-connected victims of domestic abuse may contact the local Family Advocacy Program⁹⁴ or call the **24/7 National Domestic Abuse Hotline at 800-799-SAFE (7233)**. Those in immediate danger of assault or physical injury should **call 911**. Those on a military installation, may also call their military law enforcement office.

[publications/esp/partner_violence-REPORT.pdf](#).

⁹¹ Blue Star Families, *Here’s What Military Spouses Say about Domestic Violence*, October 22, 2018, <https://bluestarfam.org/2018/10/heres-what-military-spouses-say-about-domestic-violence/>.

⁹² P.L. 106-65 §585.

⁹³ In some cases, for example, a serious and imminent threat to the victim or another person (including a child), prohibitions on disclosing information are suspended.

⁹⁴ A state or country FAP resource locator can be found at <https://www.militaryonesource.mil/leaders-service-providers/child-abuse-and-domestic-abuse/victim-advocate-locator>

Victim Advocacy Services

In 2003, as part of the FY2004 NDAA, Congress called for the development of a Victim Advocate Protocol for victims of Domestic Violence.⁹⁵ Among other things, the Protocol requires victims of domestic abuse be notified of victim advocacy services and be provided access to those services 24 hours a day (either in person or by phone).⁹⁶ Victim advocates play a substantial role in supporting the victim following a domestic violence incident. They help victims and other at-risk family members by developing a safety plan,⁹⁷ referring them to ongoing care through military or civilian providers, and providing information on other resources (e.g., chaplain or legal services, transitional compensation).⁹⁸ Victim advocates can be DOD employees, military contractors, or other civilian providers.

Special Victims' Counsel/Victims' Legal Counsel

A Special Victims' Counsel (SVC) or Victims' Legal Counsel (VLC) is a judge advocate or civilian attorney who satisfies special training requirements and is authorized to provide legal assistance to victims of sexual assault throughout the military justice process.⁹⁹ Currently SVC/VLC services are not authorized for victims of domestic violence; however, recent legislative proposals have sought to expand such services to this population. A provision in the FY2019 NDAA required DOD to submit a report on feasibility and advisability of expanding SVC/VLC eligibility to victims of domestic violence and asked for an analysis of personnel authorizations with respect to the current case workload. DOD found that expanding this eligibility to domestic violence victims would “significantly increase the caseload of SVC/VLC programs across the board.”¹⁰⁰ If SVC/VLC support were made available to victims of domestic violence, each of the military services “would require additional SVC/VLC authorizations and sufficient time to train personnel to implement new mission requirements.”¹⁰¹

Transitional Compensation

Some spouses are wholly or highly financially dependent on their military intimate partner, possibly discouraging some victims from reporting IPV. Therefore, the prospect of the member being incarcerated or discharged from the military can provide a disincentive for an abused spouse to seek help. In a 1993 House Armed Services hearing on Victims' Rights, the Ranking Member noted that “with few exceptions, when a military member is incarcerated because of violence or abuse, the family is cut loose by DOD and left without medical coverage, without counseling, without housing, without the support of the military community.”¹⁰²

⁹⁵ The Army and Air Force refer to this position as a Special Victims' Counsel and Navy and Marine Corps refer to it as a Victims' Legal Counsel. P.L. 108-136 §577.

⁹⁶ Department of Defense, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*, DODI 6400.06, May 26, 2017, p. 7.

⁹⁷ This is developed using DD Form 2893 “Victim Advocate Safety Plan”.

⁹⁸ Some victims may be ineligible for military medical care if they are an unmarried intimate partner of a servicemember. These individuals may be referred to civilian providers.

⁹⁹ 10 U.S.C. §§1044, 1044e and 1565b.

¹⁰⁰ E-mail correspondence between CRS and OSD on September 6, 2019.

¹⁰¹ *Ibid.*

¹⁰² U.S. Congress, House Committee on Armed Services, Subcommittee on Military Forces and Personnel, *Victims' Rights*, 103rd Cong., 1st sess., May 11, 1993, H.Hrg 103-22 (Washington: GPO, 1994).

Congress sought to redress this disincentive to reporting through the FY1994 NDAA, which authorized the temporary provision of monetary benefits, called *transitional compensation*, to dependents of servicemembers or former servicemembers who were separated from the military due to IPV.¹⁰³ One of the motivating arguments for establishing the transitional compensation benefit was that it could provide a measure of financial security to spouses or former spouses. The provision was codified in 10 U.S.C. §1059 and applies to cases involving members who, on or after November 30, 1993 are

- separated from active duty under a court-martial sentence resulting from a dependent-abuse offense,
- separated from active duty for administrative reasons if the basis for separation includes a dependent-abuse offense, or
- sentenced to forfeiture of all pay and allowances by a court-martial that has convicted the member of a dependent-abuse offense.

Transitional compensation payments are exempt from federal taxation, provided at the dependency and indemnity compensation (DIC) rate, and authorized for at least 12 months but no more than 36 months.¹⁰⁴ For individuals to be eligible, they must be current or former dependents of servicemembers, including spouses, former spouses, or dependent children.¹⁰⁵ Intimate partners who are not or were never married to servicemembers are generally ineligible to receive compensation from DOD. While in receipt of transitional compensation, dependents are also entitled to military commissary and exchange benefits, and may receive dental and medical care, including mental health services, through military facilities as TRICARE beneficiaries.¹⁰⁶

Forfeiture and/or Coordination of Benefits

Recipients of transitional compensation benefits must certify eligibility on an annual basis to retain payments. In addition, payments will cease if the eligible spouse or former spouse

- remarries, on the date of remarriage,
- cohabitates with the servicemember after punitive or other adverse action has been executed, or
- is found to have been an active participant in the conduct constituting the criminal offense, or actively aided or abetted the member in such conduct against a dependent child.¹⁰⁷

¹⁰³ P.L. 103-160 §1058.

¹⁰⁴ DOD, *Financial Management Regulation*, Volume 7B, Chapter 60: Victims of Abuse—Nonretirement Eligible Members (Transitional Compensation), July 2018, https://comptroller.defense.gov/Portals/45/documents/fmr/current/07b/07b_60.pdf P. 60-10. DIC rates are specified in 38 U.S.C. 1311(a). For more information on DIC, see CRS Report R40757, *Veterans' Benefits: Dependency and Indemnity Compensation (DIC) for Survivors*, by Scott D. Szymendera.

¹⁰⁵ A dependent child is under the age of 18, over 18 but incapable of self-support due to a mental or physical incapacity that existed prior to age 18, or less than age 23 and enrolled in a full-time course of study. For dependents over the age of 18, they must be dependent on the former member for over one-half of dependent-support. A dependent child who was carried during pregnancy at the time of the dependent-abuse offense resulting in the separation of the former member, who was subsequently born alive to the eligible spouse or former spouse, will not receive payment until after the child is born.

¹⁰⁶ Medical and dental care furnished to a dependent of a former member of the uniformed services in facilities of the uniformed services will be limited to the health care prescribed by 10 U.S.C. §1077, and subject to the availability of space, facilities, and the capabilities of the medical and dental staff.

¹⁰⁷ 10 U.S.C. 1059(g)(3).

Payments may also cease if a court-martial sentence is remitted, set aside, or mitigated to a lesser punishment. Spouses or former spouses may not receive both transitional compensation and court-ordered payments of retired pay and must elect to receive one or the other of those benefits, if applicable.¹⁰⁸

Access to Retired Pay and Benefits

A military servicemember typically becomes eligible for a pension from the federal government after 20 years of service.¹⁰⁹ Under the Uniformed Services Former Spouses Protection Act (USFSPA), up to 50% of the member's disposable military retired pay may be awarded by court order to a former spouse in a divorce settlement.¹¹⁰ In some cases, a member may be eligible for retired pay by virtue of longevity in service; however, punitive actions in response to member misconduct may terminate eligibility for retired pay. In 1992, Congress authorized the military departments to make court-ordered payments of an amount of disposable retired pay to abused spouses or former spouses in cases where the member has eligibility to receive retired pay terminated due to misconduct related to the abuse.¹¹¹ So, for example, if a retired member, through court martial sentencing as a result of a domestic violence offense, becomes ineligible to receive retired pay, the Defense Finance and Accounting Service (DFAS) may still pay a court-ordered portion of what the member might otherwise be eligible for, to the member's spouse or former spouse. A spouse or former spouse, while receiving payments under this chapter, is also eligible to receive any other benefits a spouse or former spouse of a retired member may be entitled, including medical and dental care, commissary and exchange privileges, and the Survivor Benefit Plan.¹¹²

Emergency Housing and Accommodations

In situations where a servicemember is the perpetrator of violence, the commanding officer may restrict that individual to the barracks, ship, or other installation housing and issue MPOs (as discussed in section "Military Protective Orders"). The primary objective is typically to remove the offender from the home, to protect the victim. On the other hand, there may be scenarios where commanders have less control over housing of the perpetrator (e.g., in the case where the offender is a civilian living outside an installation). In such cases, DOD policies also require that victim advocates facilitate provision of shelter and safe housing resources for victims.¹¹³ According to the services, commanders typically draw on a number of housing options on the installation (e.g., temporary lodging) or in the local civilian community (e.g., shelters, hotels, etc.).

Relocation Benefits

Military families move frequently to different assignments worldwide, often far away from family and support networks. Moving expenses for the family under a member's orders are paid

¹⁰⁸ Under 10 U.S.C. §1408(h), a spouse or former spouse who is a victim of abuse may be eligible for court-ordered retired pay, even if the member has had his or her eligibility to receive retired pay terminated as a result of misconduct.

¹⁰⁹ CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by Kristy N. Kamarck.

¹¹⁰ CRS Report RL31663, *Military Benefits for Former Spouses: Legislation and Policy Issues*, by Kristy N. Kamarck.

¹¹¹ P.L. 102-484.

¹¹² DOD Comptroller, *Financial Management Regulation*, DOD 7000.14-R, Volume 7B, Chapter 59, May 2012, p. 20.

¹¹³ DOD, *Domestic Abuse Involving DoD Military and Certain Affiliated Personnel*, DODI 6400.06, May 26, 2017.

by the Department of Defense. Generally, civilian spouses are only eligible for these benefits when the family moves together under the military sponsor's orders. For some abused spouses, it may be prohibitively expensive to independently execute a household move following a domestic abuse incident, particularly for those accompanying servicemembers stationed overseas. In 2003, as part of the FY2004 NDAA, Congress added a provision that allows for certain travel and transportation benefits for dependents who are victims of domestic abuse in the absence of military orders for a permanent change of station move.¹¹⁴ When relocation is advisable to ensure the safety of the victim, the Secretary of the military department concerned may authorize movement of household effects and baggage at the government's expense, plus travel per diem paid to the dependent. The authorization for these benefits allows for a move to an appropriate location in the United States or its possessions, or if the abused dependent is a foreign national, to their country of national origin.

Federal Crime Victims Fund

In 1984, the Crime Victims Fund (CVF, or the Fund) was established by the Victims of Crime Act (VOCA, P.L. 98-473) to provide funding for state victim compensation and assistance programs.¹¹⁵ The CVF does not receive appropriated funding.¹¹⁶ Rather, deposits to the CVF come from a number of sources including criminal fines,¹¹⁷ forfeited bail bonds, penalties, and special assessments collected by the U.S. Attorneys' Offices, federal courts, and the Federal Bureau of Prisons from offenders convicted of federal crimes.¹¹⁸ The largest source of deposits into the CVF is criminal fines.¹¹⁹ U.S. military servicemembers and their families are eligible for these victim assistance and compensation programs.

The Office for Victims of Crime (OVC) within the Department of Justice (DOJ) administers the CVF.¹²⁰ As authorized by VOCA, the OVC awards CVF money through formula and discretionary grants to states, local units of government, individuals, and other entities.¹²¹ Grants are allocated according to VOCA statute, and most of the annual funding goes toward the two VOCA formula grants: the victim compensation formula grant and victim assistance programs. The grants are distributed to states and territories according to guidelines established by VOCA.¹²²

¹¹⁴ P.L. 108-136 §571, 37 U.S.C. §406(h).

¹¹⁵ P.L. 98-473, Title II, Chapter XIV, Victims of Crime Act of 1984, October 12, 1984, 98 Stat. 2170. VOCA is codified at 34 U.S.C. §20101 et seq.

¹¹⁶ In January 2002, Congress enacted a one-time appropriation of \$68.1 million for the Crime Victims Fund to assist in providing relief to 9/11 victims (P.L. 107-117, 115 Stat. 2294).

¹¹⁷ The largest source of deposits into the CVF is criminal fines. See U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, *2011 OVC Report to the Nation*, p. 2, <http://www.ovc.gov/pubs/reporttonation2011/ReporttoNation2011.pdf> (hereinafter, *2011 OVC Report to the Nation*).

¹¹⁸ See 34 U.S.C. §20101. In 2001, the USA PATRIOT Act (P.L. 107-56) established that gifts, bequests, or donations from private entities could also be deposited to the CVF.

¹¹⁹ U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime, *2011 OVC Report to the Nation*, p. 2, <http://www.ovc.gov/pubs/reporttonation2011/ReporttoNation2011.pdf> (hereinafter, *2011 OVC Report to the Nation*).

¹²⁰ P.L. 100-690, Title VII, Subtitle D.

¹²¹ For more information on the Crime Victims Fund and VOCA, see CRS Report R42672, *The Crime Victims Fund: Federal Support for Victims of Crime*, by Lisa N. Sacco.

¹²² For information regarding state offices that receive and administer these funds, see U.S. Department of Justice (DOJ), Office of Justice Programs, Office for Victims of Crime, *Providers/Community Leaders – U.S. Resource Map*

Victim compensation formula grants may be used to reimburse crime victims for out-of-pocket expenses such as medical and mental health counseling expenses, lost wages, funeral and burial costs, and other costs (except property loss)¹²³ authorized in a state's compensation statute. Victims are reimbursed for crime-related expenses that are not covered by other resources, such as private insurance. Since FY1999, medical and dental services have accounted for close to half of the total payout in annual compensation expenses.¹²⁴ In FY2017, "the vast majority of applications related to a victimization (52,461 or 96%) were related to domestic and family violence."¹²⁵

Victim assistance formula grants support a number of services for crime victims, including the provision of information and referral services, crisis counseling, temporary housing, and criminal justice advocacy support. States are required to prioritize the following groups: (1) underserved populations of victims of violent crime,¹²⁶ (2) victims of child abuse, (3) victims of sexual assault, and (4) victims of spouse abuse.¹²⁷ States may not use federal funds to supplant state and local funds otherwise available for crime victim assistance. According to the OVC, victims of domestic violence make up the largest number of victims receiving services under the victim assistance formula grant program. In FY2017, over five million crime victims were served by these grants, 43% of whom were victims of domestic and/or family violence.¹²⁸

Military Law Enforcement Response

DOD and the Services have a general framework under the UCMJ, and other laws, for responding to violent offenses.¹²⁹ DOD domestic abuse policies superimpose specific requirements onto this framework. Among other things, DOD policy states commanders are required to respond to reports of domestic abuse in the same manner as they would to credible reports of any other crime and must ensure that military service offenders are held accountable for acts of domestic violence through appropriate disposition under the UCMJ.¹³⁰ Similarly, law enforcement and military

of Crime Victim Services & Information, <https://www.ovc.gov/map.html>.

¹²³ The Final Guidelines for the VOCA Victim Compensation Grant Program clarify that states may not include property replacement or repair cost as compensable expenses, except for replacement or repair of locks and windows, and replacement of bedding and clothing held as evidence, in their annual certification of payments. See Section IV. B.2 (b) (ii) 4 & 5.

¹²⁴ Medical and dental services do not include mental health services. OVC records these mental health costs as a separate category. For additional compensation data, as well as the number of victims served, by victim types and service categories, see DOJ, Office of Justice Programs, Office for Victims of Crime, *VOCA Nationwide Performance Reports*, <https://www.ovc.gov/grants/vocareps.html>.

¹²⁵ Compensation recipients indicated whether a crime experienced by an applicant was related to a type of victimization, when applicable. In FY2017, there were 54,819 applications paid that indicated that a victimization type was related to a crime, out of 250,583 total applications paid. See Office for Victims of Crime, *Victims of Crime Act Victim Compensation Formula Grant Program, Fiscal Year 2017 Data Analysis Report*, March 2017, p. 5, https://www.ovc.gov/grants/vocanpr_vc17_508.pdf.

¹²⁶ States have flexibility in defining and determining the populations of victims of violent crimes that may be underserved in their respective states.

¹²⁷ 34 U.S.C. §20103(a).

¹²⁸ DOJ, Office of Justice Programs, Office for Victims of Crime, *2017 Victims of Crime Act Performance Report, State Assistance Program*, https://www.ovc.gov/grants/vocanpr_va17.pdf.

¹²⁹ United States Manual for Courts-Martial (MCM), 2019 Edition, Rule 303 requiring a preliminary investigation of potential offenses. http://www.loc.gov/rr/frd/Military_Law/pdf/MCM-2019.pdf.

¹³⁰ DOD, *Investigations by DOD Components*, DODI 5505.16, June 23, 2017.

criminal investigation personnel are required to investigate reports of domestic violence and respond to them as they would to credible reports of any other crime.¹³¹

In 1993, as part of the FY1994 NDAA, Congress specified certain responsibilities for military law enforcement officials in response to domestic violence. In particular, the law requires that in cases where there is evidence of physical injury, or where a deadly weapon or dangerous instrument has been used, officials must report the incident within 24 hours to the appropriate commander and to a local FAP representative.¹³² Military law enforcement includes both installation law enforcement (ILE), MCIOs, and the Defense Criminal Investigative Service (DCIS), which is an arm of the DOD Inspector General. The term defense criminal investigative organization (DCIO) is used to describe the military criminal investigative organizations and DCIS. Current DOD policy requires that either a MCIO or another appropriate law enforcement organization investigate domestic violence and specifies that MCIOs are to investigate all unrestricted reports of domestic violence involving sexual assault or aggravated assault with grievous bodily harm.¹³³

Military Law Enforcement Organizations

To fully understand which law enforcement organization is responsible for investigating domestic violence, it is helpful to distinguish between installation law enforcement (ILE) and MCIO. These organizations have different levels of responsibility for investigating crimes and corresponding levels of proficiency.

Military Criminal Investigative Organization (MCIO)

An MCIO is composed of servicemembers or civilians who are military department criminal investigators (special agents). MCIOs include the U.S. Army Criminal Investigation Command (USACIDC), the Naval Criminal Investigative Service (NCIS), and the Air Force Office of Special Investigations (AFOSI). A typical MCIO special agent must be 21 or older, have at least two years of military service, have a minimum of 60 college semester hours, and have a minimum General Technical (GT) score of 110 (the same minimum score required for commissioned officers in the Army); and have successfully completed a special agent course accredited by the Federal Law Enforcement Training Accreditation Board (typical course length is 15 weeks.)¹³⁴ They have general jurisdiction over offenses under the UCMJ. MCIO personnel are under the control and supervision of the military department's provost marshal.¹³⁵ An MCIO investigates serious offenses analogous to felonies and is expressly responsible for investigating all sexual assault offenses under the UCMJ.¹³⁶

Installation Law Enforcement (ILE)

ILE is made up of servicemembers or civilians who are military installation police or police investigators whose jurisdiction is limited to military installations. ILE includes U.S. Army Military Police, Naval Security Forces, Air Force Security Forces, and U.S. Marine Corps Military Police. ILE personnel are under the control and supervision of an installation provost marshal or equivalent official. ILE investigates incidents that do not fall within a MCIO's jurisdiction, namely, minor military offenses and offenses analogous to a *misdemeanor*.¹³⁷ ILE are responsible for investigating offenses under Article 128 (Assault) with a maximum punishment that is less than one year.

¹³¹ Ibid.

¹³² P.L. 103-160, 10 U.S.C. §1058.

¹³³ DODI 5505.19 defines grievous bodily harm as a "serious bodily injury that includes fractures or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs, and other severe bodily injuries. It does not include minor injuries, such as a black eye or bloody nose. See <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640005p.pdf>.

¹³⁴ U.S. Army, *Regulation 195-3, The Criminal Investigation Command Special Agent Program*, February 19, 2017.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Military Criminal Investigation Organizations (MCIO) Jurisdiction, https://armypubs.army.mil/epubs/DR_pubs/DR_a/pdf/web/ARN18263_R195_2_ADMIN_FINAL.pdf (Army); https://static.e-publishing.af.mil/production/1/saf_ig/publication/afi71-101v1/afi71-101v1.pdf (Air Force); <https://www.secnv.navy.mil/doni/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05->

DODIG Review of Law Enforcement Actions

A 2019 report by the Department of Defense Inspector General (DODIG) found that law enforcement response actions were generally consistent with DOD policies; however, the DODIG noted DCIOs did not consistently comply with DOD policies when responding to nonsexual domestic violence incidents involving adult victims (see **Table 5**).¹³⁸ In particular, the audit revealed that responders often did not have necessary equipment for collecting and preserving evidence and that incident reports did not get proper supervisory review. In 22% of the reviewed cases law enforcement failed to report the incident to the FAP and in 82% of those cases failed to submit criminal history data to the Defense Central Index of Investigations (DCII), the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division (CJIS), and the Defense Forensics Science Center. (See discussion below under “Crime Reporting to National Databases.”)¹³⁹

Table 5. DODIG Findings on Military Law Enforcement Incident Response
noncompliance rates

Category for Noncompliance	Total	Army	Navy	Marine Corps	NCIS	Air Force
Crime scene search not conducted	33%	50%	56%	24%	5%	35%
Required evidence not collected	8%	5%	0%	6%	0%	29%
Required photographs not taken	92%	100%	100%	88%	58%	100%
Interviews not conducted	27%	37%	21%	22%	17%	24%
Interviews not thorough	54%	71%	64%	27%	25%	87%
FAP not notified	24%	31%	42%	12%	0%	38%
Subjects not indexed in DCII	55%	59%	100%	62%	17%	34%
Fingerprint cards not submitted as required	71%	94%	100%	41%	18%	94%
Final disposition reports not submitted as required	76%	98%	100%	51%	24%	94%
DNA sample not submitted as required	55%	42%	100%	46%	6%	97%

Source: Table derived from DODIG, *Evaluation of Military Services’ Law Enforcement Responses to Domestic Violence Incidents*, DODIG -2019-075, April 19, 2019.

Notes: Noncompliance rates are based on a sample of 219 of the 956 incident responses that were reported between October 1, 2014, and September 30, 2016. NCIS is the Naval Criminal Investigative Service. While the Navy had the highest non-compliance rates, they also had the smallest sample of incidents (18 total).

400%20Organization%20and%20Functional%20Support%20Services/5430.107A.pdf (Navy).

¹³⁸ DOD Inspector General, *Evaluation of Military Services’ Law Enforcement Responses to Domestic Violence Incidents*, DODIG -2019-075, April 19, 2019, <https://media.defense.gov/2019/Apr/25/2002120678/-1/-1/1/DODIG-2019-075.PDF>, p. i. DOD policy (DODI 5505.19) requires DCIOs to investigate all unrestricted reports of domestic violence involving sexual assault or aggravated assault with grievous bodily harm.

¹³⁹ Ibid. p. i.

In general, actions by the Navy Criminal Investigative Service (NCIS)—the only MCIO included in the IG report—were more likely to be in compliance than those by military law enforcement.¹⁴⁰ In the report, the Army and the Air Force do not distinguish between ILEs and MCIOs, and relevant criminal investigation jurisdiction policies for these military services show that their MCIOs do not have responsibility for investigating domestic violence.¹⁴¹ Presumably, with the exception of the NCIS data, all other data in the table are based on ILE responses to domestic violence incidents. Among other things, the DOD IG found that military service law enforcement organizations, largely ILE, did not consistently comply with DOD policies when responding to nonsexual domestic violence incidents involving adult victims.¹⁴² The IG findings and the data in the table appear to suggest that ILE are less proficient at domestic violence responses and investigations, whereas an MCIO, using NCIS as the sole example, is more proficient at responding to them.

Crime Reporting to National Databases

Law and policy require military law enforcement to provide certain crime reports to DOD and national crime databases throughout a criminal investigation of a servicemember. The Services are required to maintain automated information systems that comply with the Defense Incident-Based Reporting System (DIBRS), which complies with the FBI National Law Enforcement Data Exchange (N-DEx) System.¹⁴³ The FBI's N-DEx system is a repository of criminal justice records and data from law enforcement agencies in the United States and it is managed by the FBI's Criminal Justice Information Service (CJIS).

DIBRS captures criminal incidents of domestic violence that are reported to law enforcement in compliance with the following laws¹⁴⁴:

- The Uniform Federal Crime Reporting Act of 1988,¹⁴⁵
- The Victims' Rights and Restitution Act of 1990,¹⁴⁶
- The Lautenberg Amendment to the Gun Control Act,¹⁴⁷ and
- The Jacob Wetterling, Megan Nicole Kanka, and Pam Lychner Sex Offender Registration and Notification Program.¹⁴⁸

¹⁴⁰ Navy policy for NCIS jurisdiction and responsibility does not expressly include domestic violence, so it is not clear under what circumstances NCIS will investigate an offense under Article 128(b) (Domestic Violence) (SECNAV INSTR 5430.107A).

¹⁴¹ DODIG, *Evaluation of Military Services' Law Enforcement Responses to Domestic Violence Incidents*, DODIG - 2019-075, April 19, 2019.

¹⁴² Ibid.

¹⁴³ DOD, *Fingerprint Card and Final Disposition Report Submission Requirements*, DODI 5505.11, October 31, 2019, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/550511p.pdf?ver=2019-08-20-104636-083>. FBI, National Data Exchange (N-DEx) System, at <https://www.fbi.gov/services/cjis/ndex>.

¹⁴⁴ DOD, *Defense Incident-Based Reporting System (DIBRS)*, DODI 7730.47, June 29, 2018, p. 1, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/773047p.pdf?ver=2018-07-25-142042-013>.

¹⁴⁵ 28 U.S.C. §534.

¹⁴⁶ 42 U.S.C. §§ 10601 - 10608.

¹⁴⁷ 18 U.S.C. §922.

¹⁴⁸ 42 U.S.C. §§ 16901 - 16928.

DIBRS data is subsequently reported to the Federal Bureau of Investigation's National Incident-Based Reporting System (NIBRS).¹⁴⁹ As repository for federal and state crime activity, NIBRS data is used for analyzing crime trends and developing policy approaches to reduce criminal activity.¹⁵⁰

Specific records of investigations are located in the Defense Central Index of Investigations (DCII), an automated central index that identifies investigations conducted by DOD investigative agencies. DCII is typically used by DOD security and investigative agencies and other federal agencies to determine security clearance status and the physical location of criminal and personnel security investigative files.¹⁵¹

Per DOD policy for collating investigation data, MCIOs are responsible for

- Titling and indexing subjects of criminal investigations in the DCII when there is credible information that a subject of an investigation committed a criminal offense (under the UCMJ or any other federal criminal statute).¹⁵²
- Reporting disposition information within 15 days of final disposition of military judicial or nonjudicial proceedings; approval of a request for discharge, retirement, or resignation in lieu of court-martial; or, discharge resulting from anything other than honorable characterization of service based on investigations UCMJ violations.¹⁵³
- Submitting fingerprint cards and final disposition of investigations to the FBI CJIS regarding servicemembers investigated for violating an offense under the UCMJ, based on probable cause.¹⁵⁴

Crime Data Reporting Failure: the Devin Kelley Case

While crime data reporting procedures are in place, a single instance of noncompliance can result in severe harm. In November 2017, a former member of the U.S. Air Force entered the First Baptist Church in Sutherland Springs, Texas, and shot and killed 26 people using a weapon he purchased from a licensed firearms dealer. The former member, Devin Kelley, had been convicted by general court-martial for a felony-level domestic violence offense stemming from an assault on his wife and stepson.¹⁵⁵ He was sentenced to confinement and given a bad conduct discharge from the Air Force.¹⁵⁶ Under existing law and policy at the time, Kelley should have been prohibited from purchasing a weapon from a licensed federal firearm dealer. However, on six separate occasions, Kelley was able to purchase firearms from stores that were Federal Firearms Licensees and completed the Bureau of Alcohol, Tobacco, Firearms, and Explosives Form 4473, which is required to obtain a firearm license.¹⁵⁷

¹⁴⁹ U.S. Department of Defense, *Defense Incident-Based Reporting System (DIBRS)*, DODI 7730.47, June 29, 2018.

¹⁵⁰ FBI, *National Incident-Based Reporting System (NIBRS)*, at <https://www.fbi.gov/services/cjis/ucr/nibrs>.

¹⁵¹ DOD, *Defense Central Index of Investigations (DCII) Account Management Guide*, May 23, 2016.

¹⁵² DOD, *Titling and Indexing in Criminal Investigations*, DODI 5505.07, February 28, 2018 (To title a subject is to place the name and identifying information of a person in the title block of a criminal investigative report. To index a subject is to submit identifying information concerning subjects, victims, or incidentals of investigations).

¹⁵³ *Ibid.*; DODI 5505.11.

¹⁵⁴ *Ibid.*

¹⁵⁵ DODIG, *Report of Investigation into the United States Air Force's Failure to Submit Devin Kelley's Criminal History Information to the Federal Bureau of Investigation*, DODIG-2019-030, December 6, 2018, https://media.defense.gov/2018/Dec/07/2002070069/-1/-1/1/DODIG-2019-030_REDACTED.PDF, p. 1.

¹⁵⁶ For more on discharge types, see CRS Report R43928, *Veterans' Benefits: The Impact of Military Discharges on Basic Eligibility*, by Sidath Viranga Panangala.

¹⁵⁷ DODIG, *Report of Investigation into the United States Air Force's Failure to Submit Devin Kelley's Criminal History Information to the Federal Bureau of Investigation*, DODIG-2019-030, December 6, 2018,

A subsequent report by the DOD Inspector General (DODIG) found that after Kelley's court martial conviction, the Air Force failed to submit his fingerprints and final disposition report to the FBI's Criminal Justice Information Services (CJIS) Division for inclusion in its databases as required by DOD and Air Force policy. In particular, the DODIG found that the Air Force missed four opportunities in the course of the investigation, prosecution, and incarceration of Kelley to submit his fingerprints to the FBI and two opportunities to submit final disposition information.¹⁵⁸

In 2019, the Air Force launched a modernized criminal data reporting system, called the Air Force Justice Information System, to provide a "centralized hub of criminal data reporting, automatic flagging of federally reporting of offenses, providing installation breach tracking and criminal data reporting trends and analytics that allow for predictive analytics."¹⁵⁹

Military Justice System

While some domestic violence offenders in the military may be subject to local or host nation jurisdiction, active duty servicemembers worldwide may be held accountable for domestic violence offenses under the military justice system. The military justice system is established in Title 10 of the United States Code and is separate from and independent of the federal criminal justice system established in Title 28.¹⁶⁰ Congress enacts this authority through the articles (statutes) that make up the UCMJ, under Chapter 47, of Title 10, *U.S. Code*.¹⁶¹ The President implements the UCMJ by executive order through the *Manual for Courts-Martial* (MCM).¹⁶² The MCM establishes detailed rules for administering justice.¹⁶³ Among other things, The MCM contains the major components of military justice:

- *Jurisdiction*—Court-Martial Convening Authority for the three levels of courts-martial and the jurisdiction of each one (chapter II, part II, MCM).
- *Criminal Procedure Code*—Rules for Courts-martial provide for the administration of military justice (chapters III – XIII, part II, MCM).
- *Rules of Evidence*—Military Rules of Evidence established the evidential procedure for judicial proceedings at a court-martial (part III, MCM).
- *Criminal Code*—Punitive Articles in the UCMJ criminalize specific conduct (part IV, MCM).

The MCM also includes the procedure for nonjudicial punishment (NJP) and maximum punishment information for each punitive article.¹⁶⁴

https://media.defense.gov/2018/Dec/07/2002070069/-1/-1/1/DODIG-2019-030_REDACTED.PDF, p. 30.

¹⁵⁸ DODIG, *Report of Investigation into the United States Air Force's Failure to Submit Devin Kelley's Criminal History Information to the Federal Bureau of Investigation*, DODIG-2019-030, December 6, 2018, https://media.defense.gov/2018/Dec/07/2002070069/-1/-1/1/DODIG-2019-030_REDACTED.PDF, p. 61.

¹⁵⁹ Stein, Vicki, *New Air Force Justice Information System Goes Live*, U.S. Air Force, October 3, 2019, <https://www.af.mil/News/Article-Display/Article/1979464/new-air-force-justice-information-system-goes-live/>.

¹⁶⁰ The military justice system derives its authority from the War Power clauses in Article I of the U.S. Constitution.

¹⁶¹ The UCMJ establishes status-based jurisdiction over servicemembers and UCMJ offenses without regard to their location. Article 802, UCMJ (10 U.S.C. §802); Article 17, UCMJ (10 U.S.C. §817); Rule 201, 202, 203, MCM.

¹⁶² Article II of the U.S. constitution provides the authority of the commander-in-chief to implement military justice. https://constitution.congress.gov/conan/essay/II_2_1_1_2/.

¹⁶³ United States Manual for Courts-Martial (MCM), 2019 Edition, http://www.loc.gov/rr/frd/Military_Law/pdf/MCM-2019.pdf.

¹⁶⁴ Part V Nonjudicial Punishment Procedure, Appendix 12 Maximum Punishment Chart, MCM (2019 Edition).

Commander's Authority

The authority to prosecute or refer charges to court martial falls within the jurisdiction of a command and its commander.¹⁶⁵ Commanders at every level are responsible for deciding whether to take action regarding misconduct occurring in a command over which they have authority.¹⁶⁶ When addressing misconduct, a commander acts as an adjudicator of first instance to determine whether misconduct warrants disposition in a judicial, nonjudicial, or administrative process.¹⁶⁷ A commander can also determine to take no action against an offender. These determinations are known as disposition decisions. They are made at the lowest level of command with direct authority over an offender, unless disposition authority is withheld by a higher-level commander.

DOD requires all commanders to refer allegations of domestic violence by a victim, or credible reports of domestic violence by a third party, to an appropriate law enforcement organization.¹⁶⁸ Law enforcement personnel must promptly complete a detailed written report of the investigation and forward it to the alleged offender's commander.¹⁶⁹ The commander must then review the report and obtain advice from an appropriate legal officer before determining disposition.¹⁷⁰

Court-Martial

Upon review of the investigative report, the commander may refer the case to court-martial for trial. There are three courts-martial levels with jurisdiction over UCMJ offenses.¹⁷¹ The first two levels—summary and special courts-martial—are courts of limited jurisdiction (minor and misdemeanor offenses).¹⁷² The third and highest level—general court-martial—is a court of general jurisdiction (felony offenses).¹⁷³ A general court-martial can impose the maximum punishment prescribed for a crime in the UCMJ.¹⁷⁴ A trial by general court-martial typically consists of a military judge, prosecutor, defense counsel, and members.¹⁷⁵ The members are a panel of servicemembers who can render guilty or not guilty verdicts, like a civilian jury, and make sentencing decisions, unlike a civilian jury.¹⁷⁶

¹⁶⁵ Rule 201, MCM.

¹⁶⁶ Rule 306, MCM.

¹⁶⁷ *Ibid.* Article 15, UCMJ (10 U.S.C. §815), establishes nonjudicial punishment (NJP) proceedings. NJP is a quasi-judicial adjudicatory process in which the commander makes the disposition and punishment decisions, unless a higher level commander conducts the proceedings. However, NJP is not suitable for serious offenses that are typically adjudicated in a court martial. NJP addresses matters such as intentional non-compliance with regulations or standards.

¹⁶⁸ DOD, *Instruction 6400.06, Domestic Abuse Involving DOD Military and Certain Affiliated Personnel*, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640005p.pdf>.

¹⁶⁹ *Ibid.*

¹⁷⁰ *Ibid.*

¹⁷¹ 10 U.S.C. §816.

¹⁷² 10 U.S.C. §§819, 820.

¹⁷³ 10 U.S.C. §818.

¹⁷⁴ 10 U.S.C. §818.

¹⁷⁵ 10 U.S.C. §§825-827.

¹⁷⁶ Panel members are not required if the accused requests a judge-alone trial.

Domestic Violence Punitive Article

The punitive articles in the UCMJ are the offenses that fall within the jurisdiction of a court-martial.¹⁷⁷ Prior to 2019, domestic violence offenses were typically prosecuted under the general offense of assault under Article 128 (Assault).¹⁷⁸ Congress amended the UCMJ in the National Defense Authorization Act for Fiscal Year 2019 by adding a specific punitive article for domestic violence—Article 128b—effective on January 1, 2019.¹⁷⁹ This punitive article prescribes punishment, as a court-martial may direct, for any person subject to UCMJ jurisdiction who:

- (1) commits a violent offense against a spouse, an intimate partner, or an immediate family member of that person;
- (2) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person-
 - (A) commits an offense under [the UCMJ] against any person; or
 - (B) commits an offense under [the UCMJ] against any property, including an animal;
- (3) with intent to threaten or intimidate a spouse, an intimate partner, or an immediate family member of that person, violates a protection order;
- (4) with intent to commit a violent offense against a spouse, an intimate partner, or an immediate family member of that person, violates a protection order; or
- (5) assaults a spouse, an intimate partner, or an immediate family member of that person by strangling or suffocating;¹⁸⁰

Article 128b generally requires a threat or violent offense or the specific act of strangulation or suffocation to trigger the UCMJ. Research has found that strangulation is an associated risk factor for intimate partner homicide of female victims.¹⁸¹

Sentencing

After a guilty verdict or plea, and without delay, a court-martial imposes a sentence that is within its authority and discretion.¹⁸² Specific punishments for UCMJ offenses tried by a court-martial are reprimand; forfeiture of pay and allowances; fine; reduction in pay grade; restriction to specified limits; hard labor without confinement; confinement; punitive separation; and death.¹⁸³ A single punitive article can include a range of offenses from minor to serious; the maximum punishment increases as the severity of the offense increases.

¹⁷⁷ In addition to punitive articles in the UCMJ, the Federal Assimilative Crimes Act (18 U.S.C. §13) is an adoption by Congress of state criminal laws for areas of exclusive or concurrent federal jurisdiction, provided federal criminal law, including the UCMJ, has not defined an applicable offense for the misconduct committed. This allows a court-martial to adopt the criminal law of the State wherein the military installation is located and applies it as though it were federal law (No. 91 (Article 134, clause 3, Discussion), Ch. IV, MCM).

¹⁷⁸ Article 128, UCMJ (10 U.S.C. §928); Appendix 12 Maximum Punishment Chart, MCM.

¹⁷⁹ P.L. 115-232 §532.

¹⁸⁰ 10 U.S.C. §928b.

¹⁸¹ Glass, Nancy, et al., “Non-fatal Strangulation is an Important Risk Factor for Homicide in Women,” *Journal of Emergency Medicine*, vol. 35, no. 3 (October 2008), pp. 329-335.

¹⁸² Rules 1001-1009, MCM.

¹⁸³ 10 U.S.C. §856; Rule 1003, MCM.

As noted above, domestic violence was previously included in the general assault article (Article 128) before it became a nominative offense under Article 128b.¹⁸⁴ Punishment under Article 128 includes a maximum punishment as low as three months for simple assault and a maximum punishment as high as dishonorable or bad conduct discharge, total forfeitures, and 20 years' confinement, for assault with intent to commit specified offenses, such as murder, rape, and rape of a child.¹⁸⁵ Domestic violence was distinguishable from other types of assault under Article 128 (Assault) by the greater severity of its punishment.¹⁸⁶ DOD has not yet amended the most recent MCM issued in 2019 to include a maximum punishment for Article 128b (Domestic Violence), which became law around the time DOD issued the 2019 MCM.

Military Rules of Evidence

The Military Rules of Evidence (MRE) are established by executive order as part of the Manual for Courts-Martial.¹⁸⁷ They are analogous to civilian rules of evidence, particularly the Federal Rules of Evidence.¹⁸⁸ There are two rules within the MRE that specifically apply to domestic violence (i.e., privileged conversations with victim advocates, and testimony of children who witness an event).

Victim Advocate—Victim Privilege

A victim who has suffered direct physical or emotional harm as the result of a sexual or violent offense has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made between the alleged victim and a victim advocate, or between the alleged victim and DOD Safe Helpline staff.¹⁸⁹ The communication must have been made for the purpose of facilitating advice or assistance to the victim.¹⁹⁰ A victim advocate is a person, other than a trial counsel, any victims' counsel, law enforcement officer, or military criminal investigator in the case, who is appropriately designated as such.¹⁹¹

Remote Live Testimony of a Child

If a child is a victim or witness of domestic violence, a military judge must allow remote live testimony if the judge finds on the record that

It is necessary to protect the welfare of the particular child witness;

The child witness would be traumatized, not by the courtroom generally, but by the presence of the accused; and,

The emotional distress suffered by the child witness in the presence of the accused is more than slight.¹⁹²

¹⁸⁴ Ibid. Article 128b.

¹⁸⁵ Ibid.

¹⁸⁶ UCMJ, Appendix 12, Article 128.

¹⁸⁷ Appendix 19, MCM.

¹⁸⁸ Article 36, UCMJ (10 U.S.C. §836).

¹⁸⁹ Rule 514, MCM.

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

¹⁹² Rule 611(d), MRE, MCM.

To make these findings a “military judge may question the child in chambers, or at some comfortable place other than the courtroom, on the record for a reasonable period of time, in the presence of the child, a representative of the prosecution, a representative of the defense, and the child’s attorney or guardian ad litem.”¹⁹³ Remote live testimony is not required if the accused voluntarily excludes himself or herself from the courtroom.¹⁹⁴

Issues for Congress

The consequences of intimate partner and domestic violence to servicemembers and families can be severe and even fatal. Congress has taken a number of actions over the past three decades to expand the provision of prevention and support responses, improve data collection and monitoring of IPV prevalence, deepen civilian and military collaboration on addressing and monitoring IPV, among other things. In the 116th Congress, there have been several proposals to augment services for military-connected IPV victims. Nevertheless, recent reports and testimony have identified several ongoing issues for oversight. These include

- Community coordination,
- Coverage and access to victim services,
- Law enforcement response,
- Data collection federal reporting requirements, and
- Mitigating risk factors.

Community Coordination

In many IPV cases involving the military, the abused or the abuser is a civilian, and incidents happen both on and off military installations. The UCMJ applies worldwide to active duty servicemembers; however, local, state, and foreign governments (for members serving in foreign countries) may have overlapping jurisdiction for domestic violence response, investigation, and prosecution. Local law enforcement authorities may have different protocols for domestic violence response depending on the location. Domestic violence victim advocates have often asserted that insufficient coordination between military and state/local authorities threatens the safety of victims when they move between installations and the civilian community. DOD regulations require certain information to be shared between installation commanders and local authorities, but it is unclear if processes for information sharing are consistent across bases and if gaps are sufficiently addressed. For example, at a September 2019 House hearing, a representative of a victims’ advocacy group noted that while CPOs are given full force and effect on military installations, victims may not know whom to notify on the installation that they have a CPO and that everyone involved needs clear registration procedures.¹⁹⁵

¹⁹³ Ibid.

¹⁹⁴ Ibid.

¹⁹⁵ U.S. Congress, House Committee on Armed Services, Subcommittee on Military Personnel, *Prepared Testimony of Brian Clubb, J.D., U.S. Marine Corps Reserve (Ret.), Military & Veterans Advocacy Program, Battered Women’s Justice Project, Shattered Families, Shattered Service: Taking Military Domestic Violence Out of the Shadows*, 116th Cong., 1st sess., September 18, 2019.

Coverage and Access to Victim Services

While there have been a number of efforts to improve and expand victim services, there may still be some barriers to coverage and access. A 2019 study based on interviews of FAP personnel found that there was variation in the services offered across services and installations with smaller installations sometimes lacking a full range of programs.¹⁹⁶ The study also found that, on average, FAP offices are open five days a week for approximately 41 hours per week, with a small portion (3%) offering weekend hours.¹⁹⁷ Some FAP personnel noted that these hours may make it difficult for working civilian spouses, or those in need of childcare, to be able to attend counseling appointments.¹⁹⁸

In addition, some servicemembers and spouses may not be aware of their eligibility for services. In 2019 testimony to the House Armed Services Military Personnel Subcommittee, an IPV survivor noted that during the period of her abuse, she was not aware of the FAP or other services available to her.¹⁹⁹ The 2019 FAP study also found that public awareness and outreach activities, “are not a strong emphasis of [FAP] programming.”

In terms of coverage, some military-connected IPV victims may not be eligible for services under existing law and policy. For example, unmarried civilian intimate partners of a servicemember would not typically have access to military relationship counseling services, military health care, transitional monetary benefits, or other resources on the installation. In addition, due to the part-time nature of their work, members of the Reserve Component and intimate partners of members, may not have consistent access to installation resources and mental/behavioral health coverage. For example, the National Guard has reported that it does not offer a curriculum on Domestic Abuse Response and Intervention Training; rather, it relies on FAP services of its parent services (Army and Air Force) for members called to duty on federal orders.

Finally, another aspect to consider is the period of transition during discharge or separation from the military. Military veterans, including retirees and their civilian spouses are generally not eligible for FAP services but may be eligible for some services through the VA. For example, the VA does offer some social work programs including the Veteran Health Administration’s Intimate Partner Violence Assistance Program.²⁰⁰

Law Enforcement Response

DODIG’s 2019 findings of deficiencies in military law enforcement response to domestic violence incidents (as discussed in “DODIG Review of Law Enforcement Actions”) suggest that further congressional oversight of DOD actions in this area could be warranted. DOD domestic violence policy requires the DODIG to develop relevant policy for MCIOs and to oversee their investigations of domestic violence, similar to DODIG responsibility for sexual assault

¹⁹⁶ Farris, Coreen, Margaret Tankard, Praise O. Iyiewuare, Lynn Rosenthal, Angela Clague, Laura L. Miller, Peter Glick, Katharine Sieck, and Radha Iyengar Plumb, *Availability of Family Violence Services for Military Service Members and Their Families*. Santa Monica, CA: RAND Corporation, 2019. https://www.rand.org/pubs/research_reports/RR3019.html, p. 13.

¹⁹⁷ *Ibid.* p. 23.

¹⁹⁸ *Ibid.* p. xii.

¹⁹⁹ U.S. Congress, House Committee on Armed Services, Subcommittee on Military Personnel, *Shattered Families, Shattered Service: Taking Military Domestic Violence Out of the Shadows*, 116th Cong., 1st sess., September 18, 2019.

²⁰⁰ VA, VHA Social Work, at <https://www.socialwork.va.gov/IPV/Index.asp>.

investigations.²⁰¹ Current DODIG policy assigns MCIOs responsibility for initiating a criminal investigation in response to all allegations of adult sexual assault, a *serious offense* under the UCMJ.²⁰² That is, these investigations are not within the jurisdiction of installation law enforcement. There was no similar mandate for all allegations of domestic violence under Article 128 (Assault), with the exception of unrestricted reports of domestic violence involving sexual assault or aggravated assault with grievous bodily harm.²⁰³ If the maximum punishment of Article 128b were to be established at one year or more—a *serious offense*—such a move may preclude investigations by installation law enforcement investigators whose investigative jurisdiction is limited to minor offenses with punishment for a year or less.

Data Reporting

Several DODIG and GAO reports have raised concerns with DOD data collection, management, and reporting to internal DOD and federal databases. The reliability of data can have implications for congressional oversight and funding, in terms of accurate estimates of the size and scope of IPV issues and identifying high-risk military populations for targeted programs. While DOD and the services have undertaken efforts to improve the quality and reliability of data, this is a potential area for continued oversight and audit. Questions also remain as to whether those responsible for entering data into the various systems (i.e., law enforcement, FAP personnel) are adequately trained on their statutory and regulatory obligations. Consideration may be given as to whether incident data accurately captures IPV that goes unreported to the FAP, or if further surveys or studies of the military spouse population are needed. In addition, proper entry of criminal data is necessary for adequate enforcement of other laws, for example, those prohibiting convicted IPV offenders from purchasing firearms.

Mitigating Risk Factors

Another way to address IPV prevention is to address risk factors. One method is through DOD programs and policies that help to improve family stability and resiliency and promote a positive and supportive command climate. From a broad perspective, any actions to reduce personnel tempo (PERSTEMPO), whether through fewer deployments, more time at home station between deployments, or through fewer unaccompanied assignments can help to reduce family stresses associated with departure and reintegration.²⁰⁴ Another option for reducing stress on military families is to manage permanent change of station (PCS) moves to extend time on station.²⁰⁵ Frequent moves can impair social support networks and have been found to have a negative impact on spousal employment and earnings.²⁰⁶

²⁰¹ Ibid, DODI 6400.06.

²⁰² DOD, Instruction 5505.18, *Investigation of Adult Sexual Assault in the Department of Defense*, March 22, 2017. Regarding the two offenses of child and adult sexual assault, previously, only child sexual assault was exclusively characterized as a serious offense and under the exclusive investigative jurisdiction of MCIOs.

²⁰³ Ibid.

²⁰⁴ For more on PERSTEMPO, see CRS In Focus IF11007, *Defense Primer: Personnel Tempo (PERSTEMPO)*, by Kristy N. Kamarck.

²⁰⁵ Tong, Patricia K., et al., *Enhancing Family Stability During a Permanent Change of Station: A Review of Disruptions and Policies* (Santa Monica, CA: RAND Corporation, 2018), https://www.rand.org/pubs/research_reports/RR2304.html.

²⁰⁶ Burke, Jeremy, and Amalia Miller, *The Effects of Military Change-of-Station Moves on Spousal Earnings*, (Santa Monica, CA: RAND Corporation, 2016), https://www.rand.org/pubs/research_briefs/RB9920.html.

While personnel management efforts could be made to reduce deployments and PCS moves, national security concerns may sometimes necessitate high PERSTEMPO. DOD and the services have several other programs to support families, for example, child and youth programs (e.g., subsidized child-care services),²⁰⁷ spouse employment assistance, and other family readiness services. In Congress's oversight and appropriations roles, one area of consideration is whether these programs are funded at appropriate levels given current or anticipated demands on military servicemembers.

Finally, given the military commander's unique authority, the command climate he or she establishes within a unit is an important aspect of IPV prevention. DOD policies specify that military commanders have a duty for care not only of their troops, but also of the troop's families.²⁰⁸ Commanders may address issues among the troops through positive reinforcement of healthy relationships and attitudes or through punitive administrative actions. The CDC has identified problematic gender norms as a potential risk factor for IPV. Some reporting has identified prevailing negative stereotypes, attitudes, and memes directed at the military spouse community.²⁰⁹ Commanders can have significant influence on acceptable and unacceptable behavior in the workplace.

In addition, several abused spouses have testified that they felt their partner's commander did not provide adequate support, follow established procedures, or take complaints of abuse seriously.²¹⁰ In cases where victims of IPV are servicemembers, there may also be concerns about retaliation from a commander or military peers for reporting or seeking help—particularly if the offending spouse is also a military servicemember. One response to this might be a survey of IPV victims to better understand their perceptions of command response and their experiences with other responders such as victim advocates and law enforcement or military justice personnel. Similar surveys have been done with victims of sexual assault.²¹¹ Options to remedy concerns about commander response may be to require higher-level review of IPV complaints, or to enhance protections from retaliation against those who report IPV.

²⁰⁷ CRS Report R45288, *Military Child Development Program: Background and Issues*, by Kristy N. Kamarck.

²⁰⁸ DOD, *Military Family Readiness*, DODI 1342.22, April 11, 2017, p. 12.

²⁰⁹ See for example, Jowers, Karen, "Dependa' Bashing: Mudslingers Stun Military Spouses," *MilitaryTimes*, June 22, 2015; and Marcotte, Amanda, "Meet the 'Dependa': An Ugly Meme—and Sexist Stereotype—Used to Slur Military Spouses," *Salon*, May 15, 2017.

²¹⁰ U.S. Congress, House Committee on Armed Services, Subcommittee on Military Personnel, *Shattered Families, Shattered Service: Taking Military Domestic Violence Out of the Shadows*, 116th Cong., 1st sess., September 18, 2019.

²¹¹ See, CRS Report R44944, *Military Sexual Assault: A Framework for Congressional Oversight*, by Kristy N. Kamarck and Barbara Salazar Torreon

Appendix A. Selected Legislation

Table A-I. Intimate Partner Violence; Selected Legislation

1968 - 2019

Year		Law and Statute
1968	Gun Control Act of 1968	18 U.S.C. §922
1974	Child Abuse Prevention and Treatment Act provided financial assistance for a demonstration program for the prevention, identification, and treatment of child abuse and neglect, to establish a National Center on Child Abuse and Neglect under the Secretary of Health, Education, and Welfare.	P.L. 93-247; 42 U.S.C. §5010 note.
1981	Department of Defense Appropriations Act of 1981 Section 778. Established funding for the Family Advocacy Program.	P.L. 97-114
1985	National Defense Authorization Act for Fiscal Year 1986 (Military Family Act of 1985) Section 802. Established an Office of Family Policy under the Office of the Secretary of Defense.	P.L. 99-145 §802; 10 U.S.C. 133 note.
1988	Uniform Federal Crime Reporting Act – Initiated the development of National Incident-Based Reporting System (NIBRS).	P.L. 100-690; 34 U.S.C. §41303
1992	National Defense Authorization Act for Fiscal Year 1993 Section 653. Allows victims of abuse to receive payment of court-ordered retired pay if the member has eligibility for retired pay as a result of misconduct involving abuse of a spouse or dependent.	P.L. 102-484; 10 U.S.C. §1408
1993	National Defense Authorization Act for Fiscal Year 1994 Section 551. Established response and reporting responsibilities of military law enforcement officials at scenes of domestic violence. Within 24 hours of the incident, provide a report of the domestic violence to the appropriate commander and to a local military family advocacy representative. Section 552. Required improved procedures for notification of victims and witnesses of status of prisoners in military correctional facilities. Section 553. Required study of stalking by persons subject to UCMJ. Section 554. Established transitional compensation for dependents of members separated for dependent abuse.	P.L. 103-160 10 U.S.C. §1058 10 U.S.C. 951 note 10 U.S.C. §1059
1994	Violent Crime Control and Law Enforcement Act of 1994; Title IV, Violence Against Women Act of 1994 (VAWA) National Defense Authorization Act for Fiscal Year 1995 Section 534. Established victim advocacy services for victims of family violence through the family advocacy programs of the military departments. Section 535. Allowed for earlier payment of transitional compensation – at the date of approval of a court-martial sentence, and the date that administrative separation action is taken for the perpetrator.	P.L. 103-322; 42 U.S.C. §13701 et. seq. P.L. 103-337 10 U.S.C. §1059
1995	National Defense Authorization Act for Fiscal Year 1996 Section 568. Revises and codifies the Military Family Act and Military Child Care Act.	P.L. 104-106; Ch. 88, Title 10, U.S. Code

Year		Law and Statute
1996	Omnibus Consolidated Appropriations Act of 1997 Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence (the Lautenberg Amendment).	P.L. 104-208; 18 U.S.C. §922
1999	National Defense Authorization Act for Fiscal Year 2000 Section 585. Required DOD to establish regulations for confidential communications with victim service providers. Section 591. Established the Defense Task Force on Domestic Violence. Section 592. Required the Secretary of Defense to establish an incentive program to provide funds to commanders of military installations to improve coordination with civilian authorities and to strengthen capacity of those providing domestic violence response and support services. Section 593. Required 1) standard guidelines for negotiating agreements with civilian law authorities, 2) that no contact orders be recorded, tracked, and a copy provided to the aggrieved party, 3) standard guidelines on factors for substantiating allegations, 4) and a standard training program for all commanding officers on handling of domestic violence cases. Section 594. Required a central DOD data base for domestic violence incidents.	P.L. 106-65 10 U.S.C. §1071 note. 10 U.S.C. §1562 note 10 U.S.C. §1562
2002	Department of Defense Appropriations Act for Fiscal Year 2003 requires a report to Congress on the implementation of recommendations by Defense Task Force on Domestic Violence.	P.L. 107-248
2002	Armed Forces Domestic Security Act required that civilian orders of protection shall have the same force and effect on a military installation.	P.L. 107-311; 10 U.S.C. §1561a
2003	National Defense Authorization Act for Fiscal Year 2004 Section 571. Authorized travel and transportation for dependents relocating for reasons of personal safety. Sections 572. Allowed transitional compensation to commence as of the date of sentencing of a service member who has been convicted of a dependent-abuse offense at a court-martial and extended eligibility period to 36 months. Section 573. Expanded eligibility for transitional compensation for dependents and former dependents of a former member of the armed forces. Section 574. Extended eligibility to spouses of members who are separated administratively on the basis of a dependent-abuse offense.	P.L. 108-136 37 U.S.C. §476 10 U.S.C. §1059
2008	Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 Section 561. Required that MPOs remain in effect until terminated or replaced by a military commander. Section 562. Required that commanders of military installations notify civilian law enforcement agencies when an MPO has been issued.	P.L. 110-417 10 U.S.C. §§1567 & 1567a
2010	Ike Skelton National Defense Authorization Act for Fiscal Year 2011 Section 543. Required DOD to address deficiencies in the Defense Incident-Based Reporting System (DIBRS) for domestic violence incidents and required that chaplains receive domestic violence training.	P.L. 111-383
2011	National Defense Authorization Act for Fiscal Year 2012 Section 582. Authorized expedited transfer of duty station for victims of sexual assault.	P.L. 112-81 10 U.S.C. §673
2014	Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015	P.L. 113-291

Year		Law and Statute
2017	Section 544. Required improved reporting of domestic violence incidents.	10 U.S.C. §1562
	National Defense Authorization Act for Fiscal Year 2018	P.L. 115-91
2018	Section 538. Required inclusion of information in annual SAPRO reports regarding sexual assaults committed by a member of the Armed Forces against the member's spouse or other family member.	10 U.S.C. §1561 note
	John S. McCain National Defense Authorization Act for Fiscal Year 2019	P.L. 115-232
	Section 532. Added a punitive article on domestic violence to the UCMJ.	10 U.S.C. §928b
	Section 534. Required a report on feasibility and advisability of expanding eligibility for the Special Victims' Counsel programs to victims of domestic violence.	10 U.S.C. §1044e
	Section 536. Required expedited transfer procedures for victims of physical domestic violence.	10 U.S.C. §673
	Section 577. Required service secretaries to maintain multidisciplinary teams on military installations to address child abuse and domestic violence.	10 U.S.C. §1561 note.

Source: Compiled by CRS from federal statute.

Appendix B. CDC Risk Factors for Intimate Partner Violence

Individual Risk Factors

- Low self-esteem
- Low income
- Low academic achievement
- Young age
- Aggressive or delinquent behavior as a youth
- Heavy alcohol and drug use
- Depression
- Anger and hostility
- Antisocial personality traits
- Borderline personality traits
- Prior history of being physically abusive
- Having few friends and being isolated from other people
- Unemployment
- Emotional dependence and insecurity
- Belief in strict gender roles (e.g., male dominance and aggression in relationships)
- Desire for power and control in relationships
- Perpetrating psychological aggression
- Being a victim of physical or psychological abuse (consistently one of the strongest predictors of perpetration)
- History of experiencing poor parenting as a child
- History of experiencing physical discipline as a child

Relationship Factors

- Marital conflict: fights, tension, and other struggles
- Marital instability: divorces or separations
- Dominance and control of the relationship by one partner over the other
- Economic stress
- Unhealthy family relationships and interactions

Community Factors

- Poverty and associated factors (e.g., overcrowding)
- Low social capital: lack of institutions, relationships, and norms that shape a community's social interactions
- Weak community sanctions against IPV (e.g., unwillingness of neighbors to intervene in situations where they witness violence)

Societal Factors

- Traditional gender norms (e.g., women should stay at home, not enter workforce, and be submissive; men support the family and make the decisions)

Appendix C. Acronyms

Table C-1. Table of Acronyms

Acronym	Description
CDC	Centers for Disease Control and Prevention
CJIS	Criminal Justice Information Services Division
CPO	Civilian Protective Order
CVF	Crime Victims' Fund
DCII	Defense Central Index of Investigations
DCIO	Defense Criminal Investigative Office
DCIS	Defense Criminal Investigative Service
DFAS	Defense Finance and Accounting Service
DHRA	Defense Human Resources Activity
DIBRS	Defense Incident-Based Reporting System
DIC	Dependency and Indemnity Compensation
DMDC	Defense Manpower Data Center
DOD	Department of Defense
DODIG	Department of Defense Inspector General
DOJ	Department of Justice
DSAID	Defense Sexual Assault Incident Database
GAO	Government Accountability Office
FAP	Family Advocacy Program
FBI	Federal Bureau of Investigation
IDC	Incident Determination Committee
ILE	Installation Law Enforcement
IPV	Intimate Partner Violence
MCIO	Military Criminal Investigative Office
MCM	Manual for Courts Martial
MFRC	Military Family Resource Center
MOU	Memorandum of Understanding
MPO	Military Protective Order
MRE	Military Rules of Evidence
MTF	Military Treatment Facility
NCIS	Naval Criminal Investigative Service
NDAA	National Defense Authorization Act
N-DEx	National Law Enforcement Data Exchange
NIBRS	National Incident-Based Reporting System
OVC	Office for Victims of Crime

PCS	Permanent Change of Station
PTSD	Post-Traumatic Stress Disorder
SAPR	Sexual Assault Prevention and Response
SVC	Special Victims' Counsel
UCMJ	Uniform Code of Military Justice
USD	Undersecretary of Defense
VA	Department of Veterans Affairs
VHA	Veterans Health Administration
VLC	Victims' Legal Counsel
VOCA	Victims of Crime Act

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