

Is it a Civil Rights Issue or a Criminal Act?

How do you tell the difference between Sexual Assault and Sexual Harassment?

As programs go in the military, the Sexual Assault Prevention and Response (SAPR) program is relatively young. Although there have been many research studies documenting the problem of sexual assault within the military, a DoD SAPR policy has only been in effect since January 1, 2005 as the result of findings from the Task Force Report on Care for Victims of Sexual Assault. EO/EEO policies and programs have been around many years, and are well known within the military. Annually Service members receive training about the definition of sexual harassment and how to file a complaint.

Training on sexual assault prevention and response is an annual requirement, but because the SAPR program is still fairly new, service members may not yet be receiving the required training on SAPR. Service members are often confused and think sexual assault and sexual harassment are the same. Sexual assault and sexual harassment are **not** the same. However, they are somewhat related because both use sexual behaviors to hurt, demean, and control another person.

It's important to know the definitions of the two types of sexual violence:

Sexual Harassment is a form of gender discrimination that involves one or more of the following:

- Unwelcome sexual advances
- Requests for sexual favors
- Verbal or physical conduct of a sexual nature

When:

- Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person or (**quid pro quo harassment**).
- The behavior, situation, or circumstance creates an intimidating, **hostile**, or offensive **work environment**

Sexual Assault is defined for educational and training purposes as:

- **Intentional sexual contact, characterized by use of force, physical threat or abuse of authority** or when the victim **does not or cannot consent**. Sexual assault includes rape, nonconsensual sodomy, indecent assault, or attempts to commit these acts. Sexual assault can occur without regard to gender, spousal relationship or age of victim.
- **Sexual assault is a crime** punishable by the Uniform Code of Military Justice (UCMJ). Rape, forcible sodomy, indecent assault, and other sexual offenses are defined by Article 120 in the UCMJ and/or Civilian Laws as they pertain to individual States.

The definitions are similar because in both the offender uses sex as weapon – either physically, or as a tool to control a victim in the workplace. It can be very confusing, to the victim and to those attempting to help, as to whether the behavior crossed the line from sexual harassment to sexual assault when the offense did not involve rape or nonconsensual sodomy. An incident can meet the definition of sexual harassment without being a sexual assault. And an incident can meet the definition of sexual assault without being sexual harassment. The confusion arises when the behavior that meets the definition of sexual harassment includes “physical conduct of a sexual nature” which could possibly be a sexual assault.

It is important to know that sexual harassment complaints are handled much differently than sexual assault reports and by different people.

Sexual assault reports may be **restricted or unrestricted**.

Restricted reports are confidential and will not initiate an investigation or notify command of the victim's identity. A restricted report allows the victim to receive victim advocacy, medical care, and counseling, if the assault occurred while the victim was in Title 10 or active status. The following individuals are the only people who may take a restricted report:

- Sexual Assault Response Coordinator (SARC)
- Victim Advocate (VA)
- Healthcare Professional (HCP)
- Chaplain

If the victim wants to keep the report confidential, but mistakenly goes to a State Equal Employment Manager, or Equal Opportunity Representative, who is not one of the four protected and confidential professions listed to take restricted reports, the victim loses the option to keep the sexual assault report restricted.

An **unrestricted report** to a commander or anyone outside the restricted group will trigger an investigation. The victim may want the incident investigated by law enforcement, investigative resources, and command. It is the intent and hope that all sexual assault victims will have the confidence to report to command in an effort to hold offenders accountable.

But sexual assault victims often feel a sense of betrayal, shame, and guilt because society often blames the victims instead of offenders. Many times victims don't want to risk being re-victimized during an investigation. It is for this reason, that the restricted reporting option within the military services was created. It enables victims to confidentially disclose the crime to specifically identified individuals and receive medical treatment, advocacy, and counseling without triggering the official investigative process. It is the responsibility of the SARC to keep leadership informed of non-identifying information regarding the sexual assault report within 24 hours of receiving the report, but the SARC provides information on a “need to know basis.”

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EO complaints are not kept confidential from command and each one is investigated. By coming forward with a complaint, the sexual harassment victim wants the incident investigated. There is no option to request only resources or help without an investigation.

It is extremely important the Equal Opportunity Advisor or Representative understand the different reporting options for sexual assault and be able to clearly articulate the differences to a potential victim prior to the victim's disclosure of an incident. If the victim has experienced unwanted sexual touching or attempts to commit these acts, he or she may think what happened was sexual harassment and the EOR must know the difference. Once the sexual assault victim discloses to the EOR, the opportunity for the victim to make restricted report is lost.

If the victim is unsure if his/her incident is sexual assault or sexual harassment after hearing the differences, the EOR should **always** offer the victim the option of speaking with the SARC, VA, Chaplain, or HCP prior to hearing the victim's disclosure. This allows the victim to get other opinions and options without automatically triggering an investigation if there is uncertainty regarding the exact nature of a report or complaint. The SARC can also ask a hypothetical type question of the JAG without identifying the victim, to determine whether or not the offense fits the legal definitions within Article 120 of the UCMJ. By referring the victim to the SARC to confidentially assess the case, the EOA allows the victim the best possibility for confidential reporting options if the incident does fit description of sexual assault.

Although the sexual assault prevention and response program is relatively new to the military, with training and good communication between the SARCs and the EOAs, the confusion that exists regarding the differences between sexual assault and sexual harassment will soon be eliminated and sexual assault will be recognized as a crime rather than a civil rights issue.

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