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Advocates to military: Keep evidence in rape cases to enable prosecution, disability claims

By Associated Press
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WASHINGTON — The military too quickly destroys records from the hundreds of rapes and sexual assaults reported confidentially each year, say victims' advocates and some members of Congress.

They say the practice can hamper successful disability claims by victims or the prosecution of offenders. They want the military to preserve and centralize all reports of rape, assault or harassment.

One blanket, consistent rule that ensures all such records are kept, they say, would put an end to a common complaint from victims that paperwork is lost or hard to find. The branches have inconsistent policies as to how long and where sex crimes records are kept, which can lead to a bureaucratic mess for victims later seeking them.

The advocates are particularly concerned about what happens when a victim files a confidential report — a special category in the military that allows a victim to report an incident but not trigger an investigation. Any evidence of a sexual attack, including a medical rape kit, is destroyed after one year, unless the victim withdraws

the confidentiality within that time. That means a suspect probably cannot be prosecuted after a year.

The defense budget expected to come up for a vote in the House this week includes a provision written by Reps. Niki Tsongas, D-Mass., and Michael Turner, R-Ohio, that would force the military to save all such records and make them accessible to victims. Bills with similar provisions are pending in the Senate.

“To me, there’s no good reason to throw things away if you want to have an open policy and make sure that people are able to access their own records or provide these records to a future prosecution,” said Sen. Amy Klobuchar, D-Minn., a former prosecutor.

Cynthia O. Smith, a Defense Department spokeswoman, said in an email to The Associated Press that when the confidential option was created it was decided “after much deliberation” that the military would destroy such evidence in the confidential cases after one year due to “long-term storage limitations by its law enforcement agencies, as well as for evidence viability reasons.”

“It is important to remember that reports are only handled in this fashion if the victim chooses the

restricted reporting option” because the victim “does not want it to be investigated and reported to command and law enforcement,” Smith said.

Because of changes in DNA technology and “evolving victim needs,” Smith said the military is formulating new rules on storing records. She declined to elaborate or comment on the pending legislation.

After a sexual harassment case is closed, the Navy maintains the paperwork for three years. Other branches keep such records only two years, Kaye Whitley, director of the military’s sexual assault and prevention office, told Congress last year in written testimony.

The branches also have varying policies about where they keep a form that indicates whether the victim wanted to file a confidential report or not. The Army and Air Force keep it at the base where the attack was reported, the Navy enters it into an electronic database, and the Marines move it after three years from the base where it was reported to headquarters.

Victims have long complained about the difficulty in obtaining disability compensation from the VA for health problems stemming from such an

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The case of a 54-year-old female veteran who was raped and experienced other sexual assaults during her time in the Army in the late 1970s is typical in that she didn't realize she needed help until her life spiraled downward and she was living in the streets in a car, advocates say. Each time she'd flip through her hundreds of pages of paperwork, she said, she'd have panic attacks because it brought back painful memories. It took more than a decade of attempts, but she was recently awarded more than \$80,000 in retroactive payment from the VA with the help of lawyers from Inner City Law Center in Los Angeles.

"It's been a nightmare between trying to receive treatment and get help and then being able to properly file my claim," the woman said. The AP generally as a policy does not name rape victims.

Exactly how many rape victims have had their claims denied isn't known, though a VA spokesman said that last year that two-thirds of claims for post-traumatic stress disorder stemming from sexual trauma in the military were denied. It's not clear how many of those were due to records being destroyed.

To assist those who were raped in the military with a claim, the VA allows victims to submit circumstantial evidence, such as treatment for a sexually transmitted disease or testimony from someone the victim confided in about the attack. The California woman, for example, was able to show she'd received psychiatric help after the time of the rape.

Even then, it's challenging to obtain compensation, said Elly Kugler, who works at Inner City Law Center. Of the more than 40 military sexual trauma cases she and her colleagues have worked for veterans who served from the 1970s to the present, not one has been able to find copies of paperwork directly related

to the attack — even for those who say they reported it to military authorities, she said.

"It's especially frustrating for someone who knows that she took that brave step of making a report to someone and yet she cannot find it anywhere," Kugler said. "If there could be someplace where those restricted reports would be available to the person who was a survivor of that assault, it would be incredibly helpful to that person. Because it's likely not something that would pop up anywhere else in their military records."

Because many victims never report a rape or assault, the military in 2005 established the confidential or "restricted" reporting options with the hope that some victims would come forward who otherwise wouldn't. No investigation is conducted in such a report, but the victim can receive medical care and counseling. In the 2010 fiscal year, 882 "restricted" reports of sexual assault were filed. In 15 percent of those cases, the victim later decided to press charges against the attacker.

Joy Ilem, deputy national legislative director at Disabled American Veterans, said while there have been improvements in the system, there still doesn't appear there is a clear mandate about how such paperwork is supposed to be handled by the military.

"If they want to protect people and do right by people assaulted, they need to get it squared away and do it uniformly with each military service," Ilem said.