



What is the Feres Doctrine?

- The Feres Doctrine stems from a 1950 Supreme Court decision that precludes service members from being able to sue the military for any wrongful injury or death that may occur “incident to service.”¹ This includes sexual assault and sexual harassment.
 - Unlike every other workplace in America, service members are deprived of their ability to sue their employer for damages, and are exempt from Title VII protections.
- In FY21, close to 36,000 service members experienced sexual violence including 19,200 women and 16,600 men. The rate of wrongful sexual contact jumped by almost 35% from FY18 to FY21.
- A third of women who reported a sexual assault were discharged within a year of reporting, typically within 9 months.²
- An estimated 1 in 3 female veterans and 1 in 100 male veterans in the VA healthcare system report experiencing MST. It is important to note that by percentage women are at greater risk, but nearly 40% of veterans who disclose MST to VA are men.³
- Sexual assault survivors in both the military and civilian populations show a higher lifetime rate of PTSD for both men (65 percent) and women (49.5 percent).⁴
- 40% of women homeless veterans have faced MST. Veterans with an MST history are over twice as likely to experience homelessness.⁵

What has been done to address the Feres Doctrine?

Stayskal Act

- After years of fighting for compensation following a critical misdiagnosis, SFC Richard Stayskal’s namesake bill, the [SFC Richard Stayskal Medical Accountability Act](#)⁶ was included in FY 2020 NDAA. It created an administrative process for medical malpractice claims to be evaluated as an exemption to the Feres Doctrine. However, there are [several restrictions](#) inherent to this legislation:
 - The claims must be based on instances of medical malpractice that occurred in 2017 and onward.⁷

¹ *Feres v. United States*, 340 U.S. 135 (1950). Justia Law. (n.d.). <https://supreme.justia.com/cases/federal/us/340/135/>

² Department of Defense (DoD) Inspector General, *Evaluation of the Separation of Service Members Who Made a Report of Sexual Assault* (2016), <https://media.defense.gov/2016/May/09/2001714241/-1/-1/1/DODIG-2016-088.pdf>.

³ “What Is MST? Military Sexual Trauma.” DAV, September 25, 2023.

<https://www.dav.org/get-help-now/veteran-topics-resources/military-sexual-trauma-mst/#:~:text=An%20estimated%201%20in%203,MST%20to%20VA%20are%20men.>

⁴ Ibid.

⁵ Ibid.

⁶ H.R.2422 - 116th congress (2019-2020): *SFC Richard Stayska Military Medical Accountability Act of 2019*. | <https://www.congress.gov/bills/116th-congress/house-bill/2422/all-info>.

⁷ Federal Register, *Medical Malpractice Claims by Members of the Uniformed Services*.

<https://www.federalregister.gov/documents/2021/06/17/2021-12815/medical-malpractice-claims-by-members-of-the-uniformed-services>.

- They must be based on medical malpractice performed by a military physician in a military hospital or clinic.⁸
- There is a two year statute of limitations.⁹
 - For approved claims, the DoD pays claims under \$100,000 directly to service members or their estates. Claims valued at more than \$100,000 are reviewed and then paid out by the Treasury Department.¹⁰
- The implementation of the Stayskal Act, to include the DoD's process of evaluating these claims, has proven to be inefficient, ineffective, and lacking in transparency, giving service members and veterans little hope of ever achieving accountability or restitution for the injuries resulting from military medical malpractice.
 - As of October 2022, [data provided by individual service branches to Military.com](#) shows that troops have filed 448 claims with the Departments of the Army, Navy and Air Force seeking more than \$4 billion in damages.¹¹
 - 11 have been settled, an approval rate of 2%.¹²
 - More than one-quarter have been denied, including SFC Stayskal's own claim.¹³

Kathryn Spletstoser v. John Hyten

- While now-retired Army Col Kathryn Spletstoser was active duty, she was sexually assaulted on multiple occasions by Air Force General John Hyten between 2017 and 2018, including in her hotel room in late 2017 while they were on a work trip. In 2020, Col Spletstoser filed suit against her abuser, and in 2022, the 9th circuit court decided in [Kathryn Spletstoser v. John Hyten](#) that the incident of sexual assault she experienced in her hotel room was not "incident to service," as she was not performing any military function and was not under orders at the time that the sexual assault occurred.¹⁴
 - Therefore, court ruled that the Feres Doctrine did not barr the plaintiff from filing a claim, as it is inconceivable that sexual assault could possibly serve any military purpose.
 - While this decision is a tremendous win for survivors of military sexual assault, the immediate impact is limited to the 9th circuit, meaning it does not set precedent for cases that are brought against the military in any other court outside of the 9th circuit.

POD's priorities

- Unlike civilians, service member survivors of sexual harassment and assault are not allowed to sue the military for compensation for damages that occur in the workplace.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Kime, Patricia. "Military Approving 2% of Medical Malpractice Claims Filed by Service Members." Military.com.

<https://www.military.com/daily-news/2022/10/26/military-approving-2-of-medical-malpractice-claims-filed-service-members.html>.

¹² Ibid.

¹³ Ibid.

¹⁴ *Kathryn Spletstoser v. John Hyten*, (2022).

<https://www.fedemploylaw.com/documents/in%20the%20news/2022.08.11-Published-9th-Circuit-Decision-Spletstoser-v.-Hyten-US.pdf>

Congress must overturn the toxic Feres Doctrine and allow servicemembers to sue their employer the same way civilians can, because rape should never be treated as a routine risk in the line of duty.