KEEP YOUR HANDS TO YOURSELF: WHY THE MAXIMUM PENALTY FOR ASSAULT CONSUMMATED BY A BATTERY MUST BE INCREASED

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I got a little change in my pocket going ching-a-ling-a-ling
Wanna call you on the telephone, baby, give you a ring
But each time we talk, I get the same old thing
Always, "No huggee, no kissee until I get a wedding ring"
My honey, my baby, don't put my love upon no shelf
She said, "Don't hand me no lines and keep your hands to yourself."[1]

I. Introduction

The recent public focus on the military's prosecution of sexual assault cases has brought about a plethora of proposed changes to the way the military handles these types of cases. Whether the proposal is to elevate the disposition authority of many felony-level cases to a higher authority[2] or to revamp the military's sexual assault charging scheme to

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[1] THE GEORGIA SATELLITES, *Keep Your Hands to Yourself*, *on* GEORGIA SATELLITES (Elektra Records 1986).

[2] Military Justice Improvement Act, S. 967, 113th Cong. (2013).

broaden the scope of criminal conduct,[3] none fully address a significant impediment to securing convictions for those accused of sexual assault: the mandatory registration as a sex offender, and the consequent significant disincentive to plead.[4] While certainly not the antidote to all of the problems inherent in prosecuting sexual assault cases, an increase in the maximum penalty for assault consummated by a battery under Article 128, Uniform Code of Military Justice (UCMJ), from six months[5] to one year will give commanders and trial counsel more flexibility in charging and prosecuting sexual assault cases.

To understand the impact of a seemingly small change to the maximum punishment of a non-sexual assault offense, one should look through the lens of an illustrative example.[6] A woman, not wanting to offend, exchanges phone numbers with a Soldier at a party who has taken an interest in her. Despite his calls and text messages, the woman ignores the Soldier's attempts at reaching her.

A few weeks later, the Soldier and the woman happen to encounter each other at a bar. When confronted by the Soldier about why she has ignored his attempts to reach her, the woman kindly explains that she is not interested in having a boyfriend and shortly thereafter leaves the bar with friends. She then heads to a friend's apartment and goes to sleep by herself in a spare bedroom. The Soldier, meanwhile, continues drinking with his friends and, when the bar closes, goes to a rented motel room. Once at the motel, the Soldier and his friends continue drinking, but their behavior causes the manager to ask them to leave. One of the Soldier's friends, however, knows someone who lives in an apartment nearby the motel. By coincidence, this happens to be the same apartment that the woman with whom the Soldier exchanged phone numbers is sleeping.

Once the Soldier reaches the apartment, he discovers that the woman is sleeping by herself in a bedroom. Undeterred by a friend's warning, he ventures into the bedroom, removes most of his clothing, and enters

[3] MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, ¶ 45 (2012) [hereinafter MCM].
[4] 42 U.S.C. § 16913 (2006). For a list of military offenses for which a conviction requires sex offender registration, see U.S. DEP'T OF DEF., INSTR. 1325.07, ADMINISTRATION OF MILITARY CORRECTIONAL FACILITIES AND CLEMENCY AND PAROLE AUTHORITY 78–82 (11 Mar. 2013) [hereinafter DODI 1325.07].
[5] MCM, *supra* note 3, pt. IV, ¶ 54e(2).
[6] The facts in this illustration are similar to those in the case of *United States v. Specialist (SPC) David D. Miller*, No. 20130437 (1st Infantry Div. and Fort Riley, Fort Riley, Kan., May 9, 2013). The facts of this case are public record.

the bed with the sleeping woman. He proceeds to kiss her and fondle her genitals until she awakes, frightened and confused by the Soldier's presence and actions. The victim immediately reports the encounter to her friends and to civilian police the following afternoon. The case ultimately ends up with the Soldier's chain of command, who prefer charges against him under Article 120, UCMJ,[7] for sexual assault.

After the Article 32, UCMJ, investigation,[8] the accused offers to plead guilty to assault consummated by a battery in violation of Article 128, UCMJ, in exchange for the government withdrawing and dismissing the charge of violating Article 120. In discussing the offer with the victim, the trial counsel voices reservations, citing the lack of a sex offender registration requirement and the low maximum penalty authorized under Article 128. Despite the trial counsel's recommendation, the victim expresses her desire to move on with her life and asks that the accused's chain of command accept his offer. The convening authority accepts the offer, and the accused is found guilty at court-martial of violating Article 128. He is sentenced to the maximum possible confinement of six months.

While the victim and the accused may be content with the outcome of the case, society loses because not only does the accused in this scenario avoid sex offender registration; he also avoids a period of confinement commensurate with an offense of a sexual nature. Depending on the charging theory, this accused could have faced a maximum period of confinement anywhere between seven years to life.[9] Increasing the penalty for battery to one year would narrow the consequential gap between the charged offense carrying a mandatory sex offense registration and the only alternate charging theory available not carrying registration. This change would make accepting offers to plead guilty to this lesser included offense of sexual assault more palatable to trial counsel advising commanders. Thus, an increase would result in more

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[7] Article 120, Uniform Code of Military Justice (UCMJ), is the statute under which the military prosecutes cases of rape and sexual assault. There are four separate offenses under Article 120, each with multiple theories under which the offenses can be committed: rape, sexual assault, aggravated sexual contact, and abusive sexual contact. MCM, *supra* note 3, pt. IV, ¶ 45.

[8] The National Defense Authorization Act for Fiscal Year 2014 amends Article 32, UCMJ, to make what was formerly an investigation into a preliminary hearing. National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 1702, 127 Stat. 672, 954–55 (codified as amended at 10 U.S.C. § 832).

[9] Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

guilty pleas for offenses of a sexual nature.[10]

To support the recommendation that the maximum confinement for assault consummated by a battery in violation of Article 128 be increased to one year, this article will first address the history behind the offense of assault consummated by a battery. Next, it will cover recent changes to the federal assault statute, the rationale behind those changes, and a comparison of the federal and military assault-and-battery punishment schemes to state jurisdictions. Finally, the article will outline and argue why an increase of the military's maximum punishment for assault consummated by a battery is a welcome and necessary change that will better protect society from those who sexually abuse or batter in the cases when victims want the government to accept an accused's offer to plead to the lesser offense of battery.

II. History of the Offense of Assault Consummated by a Battery

Before exploring why an increase to the maximum confinement penalty for assault consummated by a battery is necessary, one must look to the history of the military offense of assault consummated by a battery to understand why a change is needed. The offense of "assault with intent to do bodily harm" first appeared in the 1916 revision to the Articles of War (AW) as AW 93.[11] However, generic "assault and battery" was still punishable under AW 96, a crime akin to the UCMJ's General Article 134, which was derived from article 62 of the 1806 Articles of War and which authorized punishment for "[a]ll crimes not capital . . . to the prejudice of good order and military discipline."[12] When enacted in 1950, the UCMJ enumerated an offense of "Assault" under Article 128: "[a]ny person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another person, whether or not the attempt or offer is consummated, is guilty of

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[10] *See* Kyle Graham, *Crimes, Widgets, and Plea Bargaining: An Analysis of Charge Content, Pleas, and Trials*, 100 CALIF. L. REV. 1573, 1598 (2012) (discussing how the closer the aims of the prosecution and defense are the more likely a criminal prosecution will end with a guilty plea).

[11] Act of Aug. 29, 1916, ch. 418, 39 Stat. 619, 664, *amended by* Act of June 4, 1920, ch. 227, 41 Stat. 759, 787–811, *repealed by* Act of June 24, 1948, ch. 625, tit. II, § 203, 62 Stat. 604, 628.

[12] GOV'T PRINTING OFFICE, COMPARISON OF PROPOSED NEW ARTICLES OF WAR WITH THE PRESENT ARTICLES OF WAR AND OTHER RELATED STATUTES 47 (1912), *available at* http://www.loc.gov/rr/frd/Military_Law/pdf/A-W_book.pdf.

assault and shall be punished as a court-martial may direct."[13] The language of the offense has not since changed.[14]

While the offense of assault consummated by a battery evolved to become an enumerated offense under the UCMJ, its maximum punishment has remained stagnant during the almost 100 years of its existence. The 1918 *Manual for Courts-Martial* (*MCM*), the first *MCM* to incorporate the 1916 amendments to the AW, provided for a six-month maximum period of confinement for "[a]ssault and battery" in violation of AW 96.[15] Even with the enactment of the UCMJ in 1950, the six-month maximum punishment remained.[16] Despite its elevation to an enumerated offense, the drafters of the 1951 *MCM* intended the punishment for the crime of assault consummated by a battery to remain the same as that in AW 96.[17]

Since 1950, the maximum penalties for certain types of batteries have increased over time based on the instrumentality used to commit the battery, the intent of the accused, and the status of the victim.[18] Not addressed by any of these maximum authorized punishment increases, however, are increases in maximum punishments for domestic and sexual batteries despite the fact that the 1951 *MCM* contemplated that certain offenses of a sexual nature would be prosecuted as batteries.[19] Over time, sexual battery has evolved in military jurisprudence to become abusive sexual contact in violation of Article 120,[20] carrying a

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[13] MANUAL FOR COURTS-MARTIAL, UNITED STATES app. 2 (1951) [hereinafter 1951 MCM].

[14] *See* MCM, *supra* note 3, pt. IV, ¶ 54a.

[15] MANUAL FOR COURTS-MARTIAL, UNITED STATES ch. XIII, § 4 (1918) [hereinafter 1918 MCM].

[16] 1951 MCM, *supra* note 13, ¶ 127c.

[17] COLONEL WILLIAM P. CONNALLY JR., U.S. DEP'T OF THE ARMY JUDGE ADVOCATE GENERAL'S CORPS, LEGAL AND LEGISLATIVE BASIS: MANUAL FOR COURTS-MARTIAL UNITED STATES 200 (1951).

[18] Maximum penalties for violations of Article 128 are increased when an assault or battery is perpetrated using loaded and unloaded firearms, when the victim is an agent of law enforcement, when grievous bodily harm is intended, and when the victim is a child. However, the maximum penalty for a violation of Article 128 for batteries of a domestic or sexual nature have remained at six-months' confinement since the enactment of the UCMJ. *See* MCM, *supra* note 3, app. 23, ¶ 54.

[19] *See* 1951 MCM, *supra* note 13, ¶ 207b (stating "[a] man who fondles against her will a woman not his wife commits a battery . . .").

[20] MCM, *supra* note 3, pt. IV, ¶ 45a(d). Until June 27, 2012, Article 120 also punished an offense of wrongful sexual contact, which is more closely akin to sexual battery and carried a maximum penalty of one year confinement. *Id.* app. 28, ¶ 45a(m), e(7). Even with the lower maximum punishment, however, a conviction of the offense of wrongful

maximum penalty of seven years' confinement[21] and registration as a sex offender.[22] While the evolution of Article 120 reflects society's abhorrence of the "despicable crime"[23] of sexual assault, the usefulness of Article 128 as a lesser included offense[24] is diminished due to the lack of a parallel evolution of its maximum punishment.

III. Assault and Battery in Other Jurisdictions

Before exploring the need for a change under the UCMJ, it is helpful to understand how other U.S. jurisdictions criminalize and punish the UCMJ-equivalent of assault consummated by a battery. First, recent changes to the federal assault statute designed to enhance the ability of prosecutors to handle cases of sexual and domestic assault suggest that parallel considerations may demonstrate a need to increase the maximum punishment for assault consummated by a battery under the UCMJ. Next, a survey of analogous state laws shows that most states either authorize punishment for assault and battery more severe than that of the UCMJ or have increased maximum punishments available in certain circumstances.

A. The Federal Approach to Assault and Battery

As part of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), Congress increased the maximum penalty for federal "assault by striking, beating, or wounding" from six months to one year in jail.[25] To be sure, common law battery, that is, battery that does not

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sexual contact still requires sex-offense registration. DODI 1325.07, *supra* note 4, at 81.

[21] Exec. Order No. 13,643, 78 Fed. Reg. 29,559 (May 15, 2013).

[22] DODI 1325.07, *supra* note 4, at 81.

[23] Sec'y of Def. Chuck Hagel, Department of Defense Press Briefing with Secretary Hagel and Maj. Gen. Patton on the Department of Defense Sexual Assault Prevention and Response Strategy from the Pentagon (May 7, 2013), *available at* http://www.defense.gov/transcripts/transcript.aspx?transcriptID=5233.

[24] *See, e.g.*, United States v. Steven H. Bonner, 70 M.J. 1 (C.A.A.F. 2011) (holding that assault consummated by a battery is a lesser included offense of wrongful sexual contact); United States v. Lewis T. Booker, No. 201300325, 2013 WL 5840229, at *5 (N-M. Ct. Crim. App. 2013) (holding that assault consummated by a battery is a lesser included offense of abusive sexual contact); United States v. David A. Aguilar, 70 M.J. 563, 567 (A.F. Ct. Crim. App. 2011) (holding that assault consummated by a battery is a lesser included offense of rape by force).

[25] Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 906, 127 Stat. 54, 124 (2013) (codified as amended at 18 U.S.C. § 113(a)(4) (2012)).

fall within the subset of "striking, beating, or wounding,"[26] still carries a six-month confinement maximum.[27] Thus, "an offensive patting, squeezing or groping of a sexual nature would also constitute a common law battery but would not constitute assault by striking, beating, or wounding."[28] Still, the rationale for Congress's increase of the maximum penalty for assaults of striking, beating, or wounding provides insight into why the penalty for assault consummated by a battery under the UCMJ should increase accordingly.

In reports leading up to the passage of VAWA 2013, both the House of Representatives and the Senate cited as the reason behind an increase in the maximum penalty to enable federal prosecutors to combat assault against women on Indian reservations.[29] Further, perhaps more telling of Congress's intent is the Senate report offering these increased penalties as an example of "the meaningful role that federal law enforcement must play in reducing domestic violence, sexual assault, and stalking in Indian country. . . ."[30] Indeed responding to sexual assaults that occur under federal jurisdiction is a permeating theme of both the House of Representatives and Senate reports.[31] In fact, "sexual assault has been one of the core crimes addressed by" the act[32] yet "prosecution and conviction rates for sexual assault are among the lowest for any violent crime."[33] It stands to reason that Congress's intent in increasing the penalty for certain types of assault under federal law, when viewed in the context of the entire VAWA 2013, was aimed at reducing sexual assault violence in addition to curtailing domestic violence.

B. The States' Approach to Assault and Battery

In addition to considering a potential change in the maximum punishment of Article 128 through the lens of federal law, it is also

[26] United States v. Delis, 558 F.3d 117, 181–82 (2d Cir. 2009) (holding that striking, beating, and wounding under 18 U.S.C. § 113(a)(4) were a subset of actions within the definition of common law battery, so 18 U.S.C. § 113(a)(5) criminalizes and punishes common law battery, not 18 U.S.C. § 113(a)(4)).
[27] 18 U.S.C. § 113(a)(5) (2012).
[28] United States v. Iron Teeth, No. 12-50076, 2013 WL 38970, at *4 n.2 (D.S.D. Jan. 3, 2013).
[29] H.R. REP. NO. 112-480, pt. 1, at 91 (2012); S. REP. NO. 112-153, at 33 (2012).
[30] S. REP. NO. 112-153, at 11.
[31] *See generally* H.R. REP. NO. 112-480; S. REP. NO. 112-153.
[32] S. REP. NO. 112-153, at 4.
[33] *Id.*

useful to compare how various states handle the prosecution and punishment of the similar crime under their laws.[34] However, one cannot simply do an apples-to-apples comparison of the several states and determine that the *MCM* must change. Some states, like the UCMJ, take a direct approach to assault and battery and its maximum punishment. Others, however, separate common law battery from domestic or sexual battery, punishing common law battery less while more severely punishing domestic or sexual battery.

As described in the appendix, at least thirty states that have an assault and battery statute similar to the generic assault consummated by a battery prohibition under Article 128 and penalize the battery with a maximum penalty greater than the *MCM*'s maximum of six months. The spread of maximum punishments in states that comprise this group is quite large, ranging from nine months[35] to ten years.[36] Most states within this subset authorize a maximum penalty for assault and battery of one year.[37]

Of those that remain, thirteen states (including the District of Columbia) prescribe a six-month maximum sentence for assault and battery, while the balance of jurisdictions permit a lower maximum period of confinement.[38] While this penalty is the same as or lower than that of assault consummated by a battery under Article 128, many of these jurisdictions have separate prohibitions and penalties for batteries that are sexual or domestic in nature. For instance, South Carolina only punishes assault and battery with a maximum of thirty days' jail.[39] However, if the battery involved the touching of private parts, defined as "the genital area or buttocks of a male or female or the breasts of a female,"[40] the maximum punishment increases to three years.[41] What is most notable about South Carolina's statutory scheme is that this crime, even when involving the touching of private parts, does not trigger sex-offender registration.[42] Wyoming follows a similar statutory scheme, punishing sexual battery more severely than simple battery with a

[34] For a survey of how the states punish assault and battery, see the appendix (Assault and Battery by Jurisdiction).
[35] WIS. STAT. § 940.19 (2013).
[36] MD CODE ANN. CRIMINAL LAW, § 3-203 (West 2013).
[37] *See infra* Appendix (Assault and Battery by Jurisdiction).
[38] *Id.*
[39] S.C. CODE ANN. § 16-3-600 (2013).
[40] *Id.*
[41] *Id.*
[42] *See id.* § 23-3-430.

maximum of one-year confinement[43] without requiring sex offense registration.[44] In that same vein, while Oklahoma's prohibition on battery carries only a ninety-day maximum sentence, domestic battery carries a maximum penalty of one year.[45]

In the context of the military, one case stands out as the best illustration of how states handle sexual battery cases differently from the military. The case of Air Force Lieutenant Colonel (Lt. Col.) Jeffrey Krusinski made headlines when he allegedly assaulted a woman in Arlington, Va., by grabbing her breasts and buttocks.[46] Originally, the Commonwealth's Attorney charged the case as a sexual battery but withdrew the charge and instead prosecuted Lt. Col. Krusinski under Virginia's assault and battery statute.[47] What is interesting about this charging decision is that both offenses carry a one-year maximum sentence of confinement,[48] but the sexual battery statute only carries a sex-offender registration requirement after a third conviction.[49] Assuming that Lt. Col. Krusinski does not have prior convictions for sexual battery, he would not have had to register as a sex offender even if he had been convicted under the original charge; yet he would still have faced up to a year in confinement. Moreover, had Lt. Col. Krusinski been convicted, his conviction would have been documented for future cases should he reoffend.

IV. Why an Increase to Article 128's Maximum Authorized Punishment Is Needed

Appreciating the genesis of Article 128 and how other jurisdictions punish similar offenses is key to understanding the need for a change to

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[43] WYO. STAT. ANN. § 6-2-313 (2013).
[44] *Id.* § 7-19-302 (2013).
[45] OKLA. STAT. ANN. tit. 21, § 644 (West 2013). Under the Oklahoma statute, domestic battery is broad enough to include a battery upon someone with whom the offender is in a dating relationship. Presumably, this could include batteries of a sexual nature. *Id.*
[46] Kristin Davis, *Officer's Trial on Groping Charge Set for Nov. 12*, AIR FORCE TIMES (Aug. 27, 2013), http://www.airforcetimes.com/article/20130827/NEWS06/308270033/Officer-s-trial-groping-charge-set-Nov-12.
[47] *Id.* Ultimately, a jury acquitted Lieutenant Colonel Krusinski. Kristin Davis & Brian Everstine, *Jury Acquits Air Force Officer Accused of Groping*, USA TODAY (November 13, 2013), http://www.usatoday.com/story/news/nation/2013/11/13/lt-col-jeffrey-krusinski-military-sexual-assault/3518113/.
[48] VA. CODE ANN. § 18.2-67.4 (West 2013); *id.* § 18.2-57.
[49] *Id.* § 9.1-902 (West 2013).

the *MCM*'s maximum punishment scheme for assault consummated by a battery. Ultimately, an increase will result in more convictions for sexual assault cases, and three separate but interrelated reasons support this outcome. First, sex-offender registration is a significant disincentive to plead, and consequently, guilty pleas to an offense that does not require registration will ultimately increase convictions for crimes of a sexual nature. Second, an increase in the maximum punishment for assault consummated by a battery provides commanders and trial counsel with flexibility in charging decisions and plea negotiations. Finally, the increase in the maximum punishment will empower military judges to use this increased sentencing discretion to appropriately punish assault-and-battery acts of a sexual or domestic nature.

A. Sex-Offender Registration Hinders the Ability of Trial Counsel to Obtain Guilty Pleas in Sexual Assault Cases

Apparent pressure to increase the military's conviction rate for crimes of sexual assault[50] stands in severe conflict with the requirement that those convicted of a qualifying offense must register as a sex offender. As an initial matter, Congress and state legislatures have made considerable reforms to the prosecution of sex crimes that are intended to encourage reporting and increase offender accountability. These reforms include the removal of several barriers to reporting and prosecution: the requirement that a victim be able to corroborate his or her account by either witnesses or medical evidence, evidence of resistance, the exploration of a victim's sexual history, the marital exemption, the prompt complaint doctrine, evidence of the victim's attire during the alleged assault, and other archaic impediments.[51] Congress even amended Article 120 in 2006 and 2011 to make sexual offenses more offender-centric to shift the focus from the victim and consent, and instead place it on the alleged offender.[52]

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[50] *See* Marisa Taylor & Chris Adams, *Military's Newly Aggressive Rape Prosecution Has Pitfalls*, MCCLATCHY NEWSPAPERS, NOV. 28, 2011, *available at* http://www.mcclatchydc.com/2011/11/28/131523/militarys-newly-aggressive-rape.html.

[51] Richard Klein, *An Analysis of Thirty-Five Years of Rape Reform: A Frustrating Search for Fundamental Fairness*, 41 AKRON L. REV. 981, 985-1030 (2008).

[52] Major Mark Sameit, *When a Convicted Rape is Not Really a Rape: The Past, Present, and Future Ability of Article 120 Convictions to Withstand Legal and Factual Sufficiency Reviews*, 216 MIL. L. REV. 77, 78 (2013) (questioning the effectiveness of Article 120 changes). For instance, the version of Article 120 enacted by Congress in 2011 goes to great lengths to define consent in an easy-to-apply and offender-centric manner ("[a]

Despite these efforts, the conviction rate for sex-offender registration qualifying offenses remains low. Using the figures most favorable to the critics of the military's handling and prosecution of sexual assault,[53] in fiscal year 2012, the military saw a 13.8% conviction rate for the 1,714 possible cases of sexual assault that could have been tried by the military.[54] Regardless of how one views these statistics, this report does not reflect whether the reported convictions were for offenses that require sex-offender registration, for lesser-included offenses that do not require sex-offender registration, or for collateral misconduct.[55] Thus, it is likely that the actual fiscal year 2012 conviction percentage for sex-offenses that require registration is even lower than 13.8%.[56]

Sex-offender registration carries with it a bevy of onerous restrictions consequential to the conviction, including public notification and residency restrictions, all of which vary depending upon the jurisdiction.[57] The public, and thus prospective panel members, are likely aware, at least to some degree, of these restrictions, especially in light of the intense public scrutiny on the military and political argument about military sexual assault.[58] It is at least possible that panel members'

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sleeping, unconscious, or incompetent person cannot consent" and "[l]ack of consent may be inferred from the circumstances *of the offense*"), MCM, *supra* note 3, pt. IV, ¶ 45(g)(8)(B), (C) (emphasis added), while older versions of Article 120 placed the burden on the victim to show lack of consent ("[i]f the victim in possession of his or her mental faculties fails to make a lack of consent reasonably manifest by taking such measures of resistance as are called for by the circumstances, the inference may be drawn that the victim did consent"), *id*. app. 27, ¶ 45c(1)(b), and even included an enumerated defense of mistake of fact as to consent based on the victim's actions. *See id*. app. 28, ¶ 45(t)(15).

[53] Most notably, these figures and those of previous fiscal years are derided in the film THE INVISIBLE WAR (Chain Cinema Pictures 2012).

[54] 1 U.S. DEP'T OF DEF., DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY: FISCAL YEAR 2012, at 68, 73 (2013), *available at* http://www.sapr.mil/index.php/annual-reports [hereinafter DOD ANN. REP. ON SEXUAL ASSAULT 2012 VOL. 1].

[55] *See id*. at 71 (citing that 79% of the 302 cases taken to trial in fiscal year 2012 resulted in a conviction "of at least one charge at trial").

[56] This statistic is not a useful barometer of the percentage of military sexual assault convictions in a given fiscal year. For instance, if a convicted servicemember was charged with a crime of a sexual nature and another crime, such as providing a false official statement, the reported statistics do not indicate whether the servicemember was convicted of the sexual assault, the other offense, or both. *See id.*

[57] *See* Klein, *supra* note 51, at 1036–40.

[58] *See*, *e.g.*, President Barack Obama, Remarks by President Obama and President Park of South Korea in a Joint Press Conference (May 7, 2003), *available at* http://www.whitehouse.gov/the-press-office/2013/05/07/

increased awareness of the collateral consequences of a sex crime conviction may have the effect of reducing the panel's willingness to convict on such offenses.[59] Indeed, assuming that panel members operate similarly to modern jurors,[60] panel members would be less likely to convict an accused in a sexual-assault case than in other types of cases[61] because, in part, of their knowledge of the infinite duration of the punishment meted out not by the actual sentence imposed but rather merely as a consequence of conviction (e.g., sex-offender registration).[62]

Likewise, those accused of crimes for which conviction would require sex-offense registration are less likely to plead guilty to those offenses and will instead risk trial to avoid registration.[63] First, panels may be

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[59] *See* Amy Farrell, Liana Pennington & Shea Cronin, *Juror Perceptions of the Legitimacy of Legal Authorities and Decision Making in Criminal Cases*, 38 LAW & SOC. INQUIRY 773, 785 (2013) (finding in a study of the complex relationships between legitimacy of legal authority, race, and legal action that "[j]urors are less likely to favor the prosecution when they believe the consequences of conviction are too harsh").

[60] Although court-martial panels are not formed in the same manner as civilian juries, this assumption is necessary due to specific prohibitions upon the polling of panel members' deliberations and voting. *See* MCM, *supra* note 3, R.C.M. 922, 1007. Because panel members typically hear more than one case, post-trial contact with them about their deliberations is not only inappropriate but could create unlawful command influence issues prohibited by Article 37, UCMJ. Major Holly Stone, *Post-Trial Contact with Court Members: A Critical Analysis*, 38 A.F. L. REV. 179, 188–89 (1994). The prohibitions make difficult efforts to obtain a true measure of panel members' attitudes towards the proving of sexual assault cases.

[61] *See* James A. Billings & Crystal L. Bulges, *Maine's Sex Offender Registration and Notification Act: Wise or Wicked?*, 52 ME. L. REV. 175, 251 n.532 (2000) (identifying that proof problems inherent in sexual assault cases make risking a trial appealing to those accused of sexual assault due to the mandatory registration and high maximum sentences).

[62] *See* Graham, *supra* note 10, at 1588 (arguing that modern juries sometimes balk in trials in which a conviction triggers a severe mandatory sentence); *see also* Martin D. Schwartz & Todd R. Clear, *Toward a New Law on Rape*, 26 CRIME & DELINQ. 129, 145 & 147 (1980), *available at* http://www.sagepub.com/hemmens/study/articles/03/Schwartz_Clear.pdf (arguing that because of the likelihood that high sentences keep juries from convicting in sexual assault cases, a new scheme of assault and battery statutes with lower penalties should replace typical statutes criminalizing sexual assault).

[63] *E.g.*, Marlena Baldacci, *General Won't Plead Guilty If It Means Sex-Offender Registry, Defense Says*, CNN (Mar. 11, 2014), http://www.cnn.com/2014/03/11/justice/jeffrey-sinclair-court-martial/; *see* Graham, *supra* note 10, at 1595; *see also* Marissa Ceglian, Note, *Predators or Prey: Mandatory Listing of Non-Predatory Offenders on Predatory Offender Registries,* 12 J.L. & POL'Y 843, 885 (2004) (arguing that sex-offense registration requirements cause many defendants to opt for a jury trial instead of engaging in plea negotiations).

simply reluctant to find proof beyond a reasonable doubt for reasons not usually found in other types of cases.[64] For instance, many cases involve allegations based solely on a victim's testimony, admissible evidence of a victim's alcohol consumption, a victim's consensual acts with an accused, and delays in victim reporting regardless of expert testimony explaining post-traumatic stress.[65] These problems make an acquittal in sexual assault cases more likely, and given the significant (often, lifelong) impact of a conviction for a sex offense, those problems further increase the likelihood that an accused will take his chances at trial instead of pleading guilty to an offense requiring sex-offender registration even for considerable concessions by a convening authority with respect to a confinement cap.[66]

B. The Need for Increased Flexibility

Of course, one possible solution would be to allow trial counsel the ability to negotiate away sex-offender registration. However, without a significant change to the underlying statutory scheme, this is not possible because sex-offender registration is a collateral consequence of a finding

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[64] While the *Manual for Courts-Martial*'s prohibition on polling panels regarding their deliberations and voting prevents a direct analysis of this reluctance, one can look to panel members' questions to the military judge during courts-martial to glean evidence of panels' hesitance to convict an accused of a sexual offense. For instance, in one case involving a charge of abusive sexual contact in violation of Article 120, UCMJ, the panel president asked the military judge mid-deliberations whether there was a lesser included offense to abusive sexual contact that was still sexual in nature but did not include the "abusive" language in its title. In light of that question, the panel may have convicted the accused of assault consummated by a battery in violation of Article 128, UCMJ, because of the lack of such an alternative. United States v. Private (E-2) Reginard Egdar, No. 20121093 (1st Infantry Div. and Fort Riley, Fort Riley, Kan., Dec. 4, 2012). This appears to be an excuse not to convict on a sex offense, however, given that the word "abusive" is not found within any of the instructed elements to the crime of abusive sexual contact. *See* MCM, *supra* note 3, pt. IV, ¶ 45a(d).

[65] *See* Klein, *supra* note 51, at 1049–51; *see also* Aya Gruber, *Rape, Feminism, and the War on Crime*, 84 WASH. L. REV. 581, 646–47 (2009) (arguing that rape prosecution reforms are generally unhelpful for obtaining justice for victims of date rape because jurors are not prevented from focusing on aspects of acquaintance rape not found in paradigmatic rapes).

[66] The National Defense Authorization Act for Fiscal Year 2014's addition of a mandatory minimum sentence of dishonorable discharge or dismissal for certain sex crimes will likely not affect plea negotiations because the typical accused is more concerned about sex-offense registration than whether he is punitively discharged from the service. Major Megan Wakefield, Lecture to 62d Graduate Course, The Judge Advocate General's Legal Ctr. and Sch. (Jan. 6, 2014).

of guilty to a sex offense.[67] The rationale behind this prohibition is clear: if trial counsel had the authority to dispense with the sex-offender registration requirement, Congress's effort to ensure consistent registration could be swallowed by this exception. Moreover, making the sex-offender registration requirement a subject of plea negotiations would turn a collateral consequence of conviction into a direct consequence, thus transforming the registration itself into a punitive measure, as opposed to the administrative one it is now.[68] Finally even if a convening authority could waive the military's sex-offender registration requirements, such a waiver would have no effect on the requirement for those convicted of sexual offenses due to the patchwork of state-registration laws, some of which exceed the requirements of the Sex Offender Registration and Notification Act,[69] following the conviction.[70]

Instead, the President should give commanders the same flexibility that Congress granted federal prosecutors when it enacted VAWA 2013. When Congress expanded the punishment for federal assault by "striking, beating, or wounding"[71] from six months to one year, it did so to provide flexibility to federal prosecutors trying cases of domestic and sexual assault, particularly those on tribal lands.[72] This is flexibility that is not currently afforded to military commanders and their trial counsel.

Unlike the law in several states and under federal law, the *MCM* does not prescribe enhanced punishments for assaults that occur within a dating or domestic relationship, nor does it penalize more harshly sexual battery in a manner that would allow an accused to plead guilty without sex-offender registration. The UCMJ thus limits the options available to

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[67] *See*, *e.g.*, People v. McClellan, 862 P.2d 739, 748 (Cal. 1993) (holding "sex offender registration is not a permissible subject of plea agreement negotiation; neither the prosecution nor the sentencing court has the authority to alter the legislative mandate that a person convicted of [a sex crime] shall register as a sex offender").

[68] *See* United States v. Airman First Class Korey J. Talkington, 73 M.J. 212, 212 (C.A.A.F. 2014); *see also* Paisly Bender, Comment, *Exposing the Hidden Penalties of Pleading Guilty: A Revision of the Collateral Consequences Rule*, 19 GEO. MASON L. REV. 291, 292 (2011) (defining collateral consequences as "the consequences of a plea that do not derive from the punishment handed down from the court").

[69] 42 U.S.C. § 16913 (2006).

[70] *See* Jane Shim, *Listed For Life*, SLATE (August 13, 2014), http://www.slate.com/articles/news_and_politics/jurisprudence/2014/08/sex_offender_registry_laws_by_state_mapped.html.

[71] 18 U.S.C. § 113(a)(4) (2012).

[72] *See* S. REP. NO. 112-153, at 11 (2012).

the parties because a proposed reduction in charges is only available if there is another crime under the UCMJ that fits the facts of an allegation.[73] This paradigm places commanders and trial counsel in a tough position in cases involving sexual batteries: try a case with a high maximum confinement and mandatory sex-offender registration but with a decreased likelihood of conviction, or accept a plea for a crime with a low maximum confinement and no sex-offender registration with a nearly guaranteed conviction.

To give commanders and trial counsel the option of a better compromise, the President should increase the maximum penalty for assault consummated by a battery to one year. This will implement, in a broad sense, the approaches taken by the federal government and by many states. Concededly, increasing the penalty for battery will not specifically enumerate sexual and domestic battery as specific enhancers to a sentence resulting in a greater penalty as under schemes in Virginia, Wyoming, South Carolina, or Oklahoma. However, because each state approaches sex-offender registration differently, enumerating a specific crime of "sexual battery" under Articles 120 or 128 may defeat the purpose of this proposal, as some states may nonetheless require registration even if the military would not.[74]

Clearly, commanders already enter into plea agreements that significantly reduce the punitive exposure of those accused of sex crimes.[75] However, under the current maximum punishment scheme, the accused is at an advantageous position in the negotiation.[76] While an

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[73] *See* Ronald F. Wright & Rodney L. Engen, *The Effects of Depth and Distance in a Criminal Code on Charging, Sentencing, and Prosecutor Power*, 84 N.C. L. REV. 1935, 1940, 1953 (2006). Trial counsel are limited in their ability to fashion lesser offenses in ways that civilian prosecutors are not. For instance, an accused must be provident to all offenses for which he pleads guilty. *See* UCMJ art. 45(a) (2012). Additionally, the *MCM* precludes trial counsel from settling plea-negotiation impasses by simply crafting a new charge under Article 134 removing the disputed element from the charge. *See* MCM *supra* note 3, pt. IV, ¶ 60c(5)(a).

[74] *See*, *e.g.*, KAN. STAT. ANN. § 22-4902b(b)(5), (7) (2013) (requiring those convicted of sexual battery in Kansas in violation of title 21, section 5505 of the Kansas Code or to a similar offense in another jurisdiction be placed on the Kansas sex-offender registry).

[75] *See*, *e.g.*, United States v. SPC David D. Miller, No. 20130437 (1st Infantry Div. and Fort Riley, Fort Riley, Kan., May 9, 2013); United States v. Private First Class (PFC) Sebastian P. Flores, No. 20130180 (1st Infantry Div. and Fort Riley, Fort Riley, Kan., Feb. 28, 2013); United States v. Staff Sergeant Brandon C. Morrow, No. 20111135, 2014 WL 843582, at *1 n.1 (A. Ct. Crim. App. Feb. 27, 2014).

[76] *See* Graham, *supra* note 10, at 1586 (noting that the more difficult a crime is to prove, the more leverage an accused has to demand a significant sentence discount).

accused who understands his culpability may well readily plead guilty to a lesser offense that does not carry sex-offender registration,[77] he would do so under the current punishment scheme at a significantly reduced risk of lengthy confinement. This makes the convening authority's decision on whether to accept a plea agreement a difficult one. Such difficulty could render accepting the plea unpalatable to commanders who feel that the limited maximum term of confinement available for assault consummated by a battery is too low given the gravity of sex offenses and the scrutiny of the military's sexual-assault prosecution. The possibility of one-year of confinement, on the other hand, gives more flexibility to a commander seeking justice while shifting some of the difficulty of the decision regarding a plea to an accused.[78]

An increase to the maximum punishment for assault consummated by a battery will not likely result in all or even most sexual-assault cases being handled by plea to a lesser offense that does not carry sex-offender registration. Rape and sexual assault are serious offenses, and changes to the punishment scheme of a lesser offense is not a magic solution to all of the problems inherent in prosecuting those cases. Despite the challenges associated with prosecuting sex crimes, a commander may want to proceed with the charged offense to showcase to the unit, and to the public, the unit's commitment to investigating and prosecuting sexual assault cases.[79] However, the President should extend to commanders the flexibility to make assessments of the cases under their commands and seek justice whether by prosecuting cases as sex crimes or accepting plea agreements for lesser offenses that carry commensurate maximum punishments, especially when the victim expresses support in so doing.

Some commentators, however, believe that prosecutors should not be able to negotiate with an accused in order to "plead down" a sex offense to one that does not carry a sex-offender registration requirement.[80] Some who take this stance seem to believe that prosecutors offer and accept these agreements merely to protect their own conviction rates[81]

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[77] Klein, *supra* note 51, at 1051.
[78] *See, e.g.*, Bradley Fox, *Understanding and Managing the Challenges of Sex Crime Cases: Look Beyond the Crime at Sex Offender Status and Registration*, in STRATEGIES FOR DEFENDING SEX CRIMES (Aspatore ed. 2012), *available at* 2012 WL 3278702, at *12.
[79] *See* Graham, *supra* note 10, at 1590.
[80] *See* Patricia A. Powers, Note, *Making A Spectacle of Panopticism: A Theoretical Evaluation of Sex Offender Registration and Notification*, 38 NEW ENG. L. REV. 1049, 1066 (2004).
[81] *See id*.

and not out of a good-faith attempt at reaching a just result. Not only does this opinion ignore the reality of the increased difficulty in prosecuting sexual-assault cases, it is also not applicable to the military justice system.

First, service regulations require trial counsel to discuss proposed plea agreements with victims. Army Regulation (AR) 27-10 requires the trial counsel or some other government representative to consult with victims of a crime concerning negotiations of pretrial agreements.[82] While the victim's input is not dispositive, it is considered by a commander when determining whether to accept a plea.[83] The inclusion of the victim in plea negotiations should not be understated. While the United States Department of Defense (DoD) is implementing "institutionalized prevention efforts and policies"[84] aimed at preventing sexual assaults, a priority of DoD is that "every victim who makes an [u]nrestricted [r]eport [of sexual assault] will want to participate in the military justice process."[85] This is clearly a prosecution-oriented goal. In fiscal year 2012, eleven percent of those who made an unrestricted report of sexual assault declined to participate in the military justice system.[86] To be sure, not all victims will equate conviction with trust in the process or closure for their trauma. But decreasing the need for victim testimony will likely result in an increase in victim willingness to participate in the process, just as it did for the victim in the introductory example.[87]

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[82] U.S. DEP'T OF ARMY, REG. 27-10, MILITARY JUSTICE para. 17-15 (3 Oct. 2011) [hereinafter AR 27-10]. Additionally, the military has extended to certain victims of sexual assault free legal counsel to assist them in the court-martial process. *See, e.g.*, Policy Memorandum 14-01, The Judge Advocate General, subject: Special Victim Counsel (1 Nov. 2013). Congress later codified this requirement in the 2014 National Defense Authorization Act. National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 1716, 127 Stat. 672, 966–71 (codified as amended at 10 U.S.C. § 1044e). Thus, many victims of sexual assault committed by military members will have government-provided counsel to assist in comparing the benefits and pitfalls of a contested court-martial for a sexual assault offense and a plea to a lesser and non-sexual assault offense. The counsel can even assist the victim in communicating with the convening authority about her feelings regarding a potential plea agreement, even when the victim and the government's interests do not align. *Id.*

[83] AR 27-10, *supra* note 81, para. 17-15.

[84] DOD ANN. REP. ON SEXUAL ASSAULT 2012, *supra* note 54, at 6.

[85] *Id.* at 36.

[86] *Id.*

[87] Increasing the disposition options available to trial counsel provides the victim a benefit beyond that of simply ensuring the victim is more involved in the process. Normalizing a tradeoff of sex-offender registration and high maximum punishment in exchange for a sentencing hearing that encourages offenders to take responsibility for their crimes promotes victim healing among those victims receptive to this type of

Second, the role of a trial counsel is much more expansive than that of a prosecutor. Trial counsel are responsible for not only the prosecution of cases in their units but also for providing advice to commanders on operational law issues, adverse administrative actions, and nonjudicial military justice actions.[88] Moreover, commanders, not trial counsel, select which cases are brought to trial.[89] Trial counsel are not evaluated on their conviction rates but rather on their work product and the effectiveness of the advice they give to commanders.[90] This construct allows trial counsel to give candid advice to their commanders because it removes the incentive to protect conviction rates.[91]

C. Empowerment of Military Judges

An increase in the maximum penalty for assault consummated by a battery under Article 128 will close the difference in available sentences between the charging options for sexual assault.[92] Because charges and

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justice. *See generally* Hadar Dancig-Rosenberg & Tali Gal, *Restorative Criminal Justice*, 34 CARDOZO L. REV. 2313 (2013). While this article does not specifically address or endorse the adoption of a restorative justice scheme, certain aspects of the theory of restorative justice can be incorporated into the military justice process as a means to achieve the DoD's goal of changing the culture regarding sexual assault.

[88] U.S. DEP'T OF ARMY, FIELD MANUAL 1-04, LEGAL SUPPORT TO THE OPERATIONAL ARMY para. 4-13 (18 Mar. 2013) [hereinafter FM 1-04].

[89] *See* MCM, *supra* note 3, R.C.M. 407; *see also* UCMJ art. 22–24 (2012).

[90] The supervision of trial counsel is regulated by doctrine and includes evaluation by senior attorneys. While commanders or unit staff officers might be included in a trial counsel's rating scheme, the garrison's senior staff judge advocate interaction with trial counsel "exceeds mere technical supervision" when it comes to military justice matters. FM 1-04, *supra* note 88, para. 4-37. By policy, the staff judge advocate senior rates brigade trial counsel. Policy Memorandum 08-1, The Judge Advocate General, subject: Location, Supervision, Evaluation, and Assignment of Judge Advocates in Modular Force Brigade Combat Teams (17 Apr. 2008).

[91] Additionally, the military's conviction rate seems to be measured by a different metric than that of civilian prosecutors. While the criticism leveled in *Making A Spectacle of Panopticism* relates to a prosecutor's win versus loss record, DoD's metric compares reported cases to convictions. *See, e.g.*, DOD ANN. REP. ON SEXUAL ASSAULT 2012, *supra* note 54, at 68, 73. Thus, an expectation that trial counsel obtain a conviction in every sexual assault case is unrealistic.

[92] Wright & Engen, *supra* note 73, at 1940. The National Defense Authorization Act for Fiscal Year 2014 does not affect plea agreements in which a part of the agreement is to dismiss a greater offense in exchange for a plea of guilty to a lesser included offense. While the amendments to Article 60 prohibit convening authorities from dismissing certain sexual offenses, that limitation only takes effect when there is a finding of guilty for those offenses. There is no limitation on agreements to dismiss charges or

the corresponding maximum penalties bind the parties in a plea negotiation, there are only a small and finite number of possibilities for the agreement. The distance is especially great between the two possibilities of charges under Article 120 and Article 128: a maximum of seven-years-to-life term of confinement and mandatory sex-offender registration versus a six-month maximum confinement.

Inherent in closing this distance is an understanding that military judges are capable of using their discretion to discern between simple battery cases and sexual batteries when determining appropriate sentences for each.[93] The *MCM*'s broad discretionary sentencing scheme shows that the President trusts courts-martial to make the appropriate determination as to sentence. Rule for Courts-Martial (RCM) 1002 allows a court-martial to adjudge "any punishment authorized in [the *MCM*]" as long as a mandatory minimum sentence is not prescribed by the UCMJ.[94] Adding six months of additional discretion to a court-martial's sentencing determination is a reasonable accretion of responsibility, especially considering that Article 128 was originally contemplated to include a prohibition on sexual battery.[95] This increase will allow military judges to more appropriately sentence those who commit sexual batteries and agree to plead guilty to a lesser offense that does not carry sex-offender registration.

Of course, the accused must be provident to the lesser offense in order for the military judge to accept the plea of guilty.[96] This further strengthens the argument that pleas to lesser offenses for sexual crimes are a just result because the military judge must be convinced of an accused's guilt before accepting the plea.[97] The guilty-plea inquiry also

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specifications prior to findings, as is usually the case with plea agreements to lesser included offenses. National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, § 1702, 127 Stat. 672, 955–56 (codified as amended at 10 U.S.C. § 860).

[93] *Contra* David P. Bryden, *Redefining Rape*, 3 BUFF. CRIM. L. REV. 317, 434 (2000) (arguing that merging sexual and non-sexual assault and calling for higher penalties for non-sexual assault might result in prison overcrowding).

[94] MCM, *supra* note 3, R.C.M. 1002. The discretion described in RCM 1002 is only limited three times in the UCMJ: death for spying in violation of Article 106, *id.* pt. IV, ¶ 30e, confinement for life for premeditated and felony murder under Article 118, *id.* pt. IV, ¶ 43e(1), and mandatory dishonorable discharge or dismissal for rape, sexual assault, forcible sodomy, and attempts of those offenses under Articles 120, 120b and 125. 10 U.S.C.S § 856(b) (Lexis 2015).

[95] *See supra* text accompanying note 19.

[96] U.S. DEP'T OF ARMY, PAM. 27-9, MILITARY JUDGES' BENCHBOOK chap. 2, sec. 2 (10 Sept. 2014).

[97] *See id.*

demonstrates that the accused is guilty of a crime and that the plea is not merely to avoid the specter of the significant penalties pursuant to a sex crime conviction—a form of penalty in and of itself.

V. Conclusion

In the scenario proposed at the beginning of this article, a Soldier who committed a sexual battery pled down from a sex offense to a simple battery. Based on that plea, the court-martial sentenced the Soldier to six months of confinement, the maximum confinement penalty possible based on the plea of guilty. This scenario is not an isolated or novel fact pattern, but it is one that could have significantly benefitted from an increase in the maximum penalty for battery. But for the scenario's victim's desire to move on with her life, this case could have ended with a contested court-martial heard by panel members, pitting a just result against society's biases against victims of sexual assault.[98] In cases where a sex assault prosecution bears great risk of acquittal, the victim supports a plea to a lesser offense, and the accused submits a plea agreement to a lesser offense, enlarging the confinement penalty portion of the maximum possible sentence for battery is the best way to ensure some modicum of justice is served.

However, not all victims will be like the one in the scenario, and not all commanders will be willing to accept pleas to lesser offenses when the sentencing distance between the gravity of the charged offense and the lesser offense is so great. This lesson appears to be one already learned by other jurisdictions, as most U.S. jurisdictions either penalize common law battery at a maximum of at least twice that of the military or separately criminalize sexual battery in a way that does not immediately require sex-offender registration while maintaining higher maximum punishments.[99]

So too should the military follow this development. By raising the maximum punishment for assault consummated by a battery to confinement for one year, cases of certain types of sexual assault will be more likely to end in plea agreements that are both reasonable to an accused while exposing an accused to enough punitive exposure to satisfy the need for a just result commensurate with the crime committed.

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[98] *See* Gruber, *supra* note 65, at 646–47.
[99] *See infra* Appendix (Assault and Battery by Jurisdiction).

By making an alternative option more palatable to all parties to a court-martial, convictions for sexual batteries will increase.

The military has a long and rich legal history, and this proposal is in no way a repudiation of the development of the military's jurisprudence. This jurisprudence, with its beginnings rooted in the need to maintain good order and discipline, has stayed true to its calling while constantly evolving to better reflect its place in and among a civilized society that seeks justice for both the victims and perpetrators of criminal acts.[100] To that end, the President should increase the maximum punishment for assault consummated by a battery from six months' confinement to one year.

[100] *See* David A. Schlueter, *The Military Justice Conundrum: Justice or Discipline?*, 215 MIL. L. REV. 1, 4 (2013).

APPENDIX: Assault and Battery by Jurisdiction

Jurisdiction	Assault/Battery Statute	Maximum Penalty Statute	Maximum Confinement (First Offense)
Military	Article 128, Uniform Code of Military Justice (2012)	MANUAL FOR COURTS-MARTIAL, UNITED STATES app. 12 (2012)	6 months
Federal	18 U.S.C. § 113(a)(5) (2013)	18 U.S.C § 113(a)(5) (2013)	6 months
Alabama	ALA. CODE § 13A-6-22 (2013) (3rd Degree – physical injury) ALA. CODE § 13A-11-8 (2013) (Harrassment - touching)	ALA. CODE § 13A-5-7 (2013)	1 year 3 months
Alaska	ALASKA STAT. § 11.41.230 (2013)	ALASKA STAT. § 12.55.135 (2013)	1 year
Arkansas	ARK. CODE ANN. § 5-13-203 (2013)	ARK. CODE ANN. § 5-4-401 (2013)	1 year
California	CAL. PENAL CODE § 242 (West 2013)	CAL. PENAL CODE § 243 (West 2013)	6 months
Colorado	COLO. REV. STAT. § 18-3-204 (2013)	COLO. REV. STAT. § 18-1.3-501 (2013)	2 years (18 months max plus 6 months for "extraordinary risk")
Connecticut	CONN. GEN. STAT. § 53a-61 (2013)	CONN. GEN. STAT. § 53a-61 (2013)	1 year
Delaware	DEL. CODE. ANN. tit. 11, § 611 (2013) DEL. CODE. ANN. tit. 11, § 601 (2013)	DEL. CODE. ANN. tit. 11, § 4206 (2013)	Physical injury: 1 year Touching: 30 days
District of Columbia	D.C. CODE § 22-404 (2013)	D.C. CODE § 22-404 (2013)	180 days (3 years for intentionally, knowingly, or recklessly causing significant bodily injury)
Florida	FLA. STAT. § 784.03 (2013)	FLA. STAT. § 775.082 (2013)	1 year
Georgia	GA. CODE ANN. § 16-5-23 (2013)	GA. CODE ANN. § 17-10-3 (2013)	1 year
Hawaii	HAW. REV. STAT. § 707-712 (2013)	HAW. REV. STAT. § 706-663 (2013)	1 year
Idaho	IDAHO CODE ANN. §	IDAHO CODE ANN §	6 months

	18-903 (2013)	18-904 (2013)	
Illinois	720 ILL. COMP. STAT. 5/12-3 (2013)	730 ILL. COMP. STAT 5/5-4.5-55 (2013)	1 year
Indiana	IND. CODE § 35-42-2-1 (2013)	IND. CODE § 35-50-3-3 (2013)	Touching: 6 Months Bodily Injury: 1 Year
Iowa	IOWA CODE § 708.1 (2013)	IOWA CODE § 708.2 (2013) (serious misdemeanor); IOWA CODE § 903.1 (2013)	1 year
Kansas	KANSAS STAT. ANN. § 21-5413 (2013)	KANSAS STAT. ANN. § 21-6602 (2013)	6 months
Kentucky	KY. REV. STAT. ANN. § 508.030 (West 2013)	KY. REV. STAT. ANN. § 532.090 (West 2013)	1 year
Louisiana	LA. REV. STAT. ANN. § 14:33 (2013)	LA. REV. STAT. ANN. § 14:35 (2013)	6 months
Maine	ME. REV. STAT. tit. 17, § 207 (2013)	ME. REV. STAT. tit. 17, § 1252 (2013)	1 year
Maryland	MD. CODE ANN., Criminal Law, § 3-203 (West 2013)	MD. CODE ANN., Criminal Law, § 3-203 (West 2013)	10 years
Massachusetts	MASS. GEN. LAWS ch. 265, § 13A (2013)	MASS. GEN. LAWS ch. 265, § 13A (2013)	2 ½ years
Michigan	MICH. COMP. LAWS § 750.81 (2013)	MICH. COMP. LAWS § 750.81 (2013)	93 days
Minnesota	MINN. STAT. § 609.224 (2013)	MINN. STAT. § 609.02 (2013)	90 days
Mississippi	MISS. CODE ANN. § 97-3-7 (2013)	MISS. CODE ANN. § 97-3-7 (2013)	6 months
Missouri	MO. REV. STAT. § 565.070 (2013)	MO. REV. STAT. § 558.011 (2013)	Physical Injury: 1 year Touching: 15 days
Montana	MONT. CODE ANN. § 45-5-201 (2013)	MONT. CODE ANN. § 45-5-201 (2013)	6 months
Nebraska	NEB. REV. STAT. § 28-310 (2013)	NEB. REV. STAT. § 28-106 (2013)	1 year
Nevada	NEV. REV. STAT. § 200.481 (2013)	NEV. REV. STAT. § 193.150 (2013)	6 months
New Hampshire	N.H. REV. STAT. ANN. § 631:2-a (2013)	N.H. REV. STAT. ANN. § 625:9 (2013)	1 year

New Jersey	N.J. STAT. ANN. § 2C:12-1 (2013)	N.J. STAT. ANN. § 2C:43-8 (2013)	6 months
New Mexico	N.M. STAT. ANN. § 30-3-4 (2013)	N.M. STAT. ANN. § 30-1-6 (2013)	6 months
New York	N.Y. PENAL LAW § 120.00 (McKinney 2013)	N.Y. PENAL LAW § 70.15 (McKinney 2013)	1 year
North Carolina	N.C. GEN. STAT. § 14-33 (2013)	N.C. GEN. STAT. § 15A-1340.23 (2013)	Class 2: 45 days If male 18+y/o assaulting female (Class A1): 60 days
North Dakota	N.D. CENT. CODE § 12.1-17-01 (2013)	N.D. CENT. CODE § 12.1-32-01 (2013)	30 days
Ohio	OHIO REV. CODE ANN. § 2903.13 (West 2013)	OHIO REV. CODE ANN. § 2929.24 (West 2013)	6 months
Oklahoma	OKLA. STAT. tit. 21, § 644 (West 2013)	OKLA. STAT. tit. 21, § 644 (West 2013)	90 days If is/was in dating relationship: 1 year
Oregon	OR. REV. STAT. § 163.160 (2013)	OR. REV. STAT. § 161.615 (2013)	1 year
Pennsylvania	18 PA. CONS. STAT. § 2701 (2013)	18 PA. CONS. STAT. § 1104 (2013)	2 years
Rhode Island	R.I. GEN. LAWS § 11-5-3 (2013)	R.I. GEN. LAWS § 11-5-3 (2013)	1 year
South Carolina	S.C. CODE ANN. § 16-3-600 (2013)	S.C. CODE ANN. § 16-3-600 (2013)	30 days Moderate bodily injury/private parts: 3 years
South Dakota	S.D. CODIFIED LAWS § 22-18-1 (2013)	S.D. CODIFIED LAWS § 22-6-2 (2013)	1 year
Tennessee	TENN. CODE ANN. § 39-13-101 (2013)	TENN. CODE ANN. § 40-35-111 (2013)	Bodily injury: 11 months, 29 days Touching: 6 months
Texas	TEX. PENAL CODE ANN. § 22.01 (2013)	TEX. PENAL CODE ANN. § 12.21 (2013)	1 year
Utah	UTAH CODE ANN. § 76-5-102 (West 2013)	UTAH CODE ANN. § 76-3-204 (West 2013)	6 months
Vermont	VT. STAT. ANN. tit.	VT. STAT. ANN. tit.	1 year

	13, § 1023 (2013)	13, § 1023 (2013)	
Virginia	VA. CODE ANN. § 18.2-57 (2013)	VA. CODE ANN. § 18.2-11 (2013)	1 year
Washington	WASH. REV. CODE § 9A.36.041 (2013)	WASH. REV. CODE § 9A.20.021 (2013)	364 days
West Virginia	W. VA. CODE § 61-2-9 (2013)	W. VA. CODE § 61-2-9 (2013)	1 year
Wisconsin	WIS. STAT. § 940.19 (2013)	WIS. STAT. § 939.51 (2013)	9 months
Wyoming	WYO. STAT. ANN. § 6-2-501 (2013) WYO. STAT. ANN. §6-2-313 (2013) (Sexual Battery)	WYO. STAT. ANN. § 6-2-501 (2013) WYO. STAT. ANN. § 6-2-313 (2013)	6 months 1 year