

# DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES



## MEETING AND REFERENCE MATERIALS

PUBLIC MEETING  
OCTOBER 19 - 20, 2017  
ARLINGTON, VIRGINIA



**Defense Advisory Committee on Investigation, Prosecution, and Defense of  
Sexual Assault in the Armed Forces (DAC-IPAD)  
Public Meeting**

**October 19–20, 2017**

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**Tab 2** Minutes of July 21, 2017 Public Meeting

Follow-Up Materials Provided from July 21, 2017 DAC-IPAD Public Meeting

**Tab 3** Excerpt from Model Response to Sexual Violence for Prosecutors (RSVP): An Invitation to Lead

- *Document provided by Ms. Long. The Model Response to Sexual Violence for Prosecutors (RSVP): An Invitation to Lead, is a model developed by Aequitas, the Justice Management Institute, and the Urban Institute for improving the prosecution response to sexual violence. Chapter 5, which provides performance management metrics, is excerpted. The full report is available at <http://www.aequitasresource.org/Model-Response-to-Sexual-Violence-for-Prosecutors-RSVP-An-Invitation-to-Lead.pdf>.*

Materials for Briefing on the Department of Defense (DoD) and Military Services' Expedited Transfer Policies

**Tab 4** DoD Policy Regarding Expedited Transfers of Service Members who File an Unrestricted Report of Sexual Assault and Related Statutory Provisions

- *Document prepared by DAC-IPAD staff with excerpts from Department of Defense Instruction (DoDI) 6495.02, "Sexual Assault Prevention and Response (SAPR) Program Procedures," related to expedited transfers of sexual assault victims and statutory provisions related to expedited transfers.*

**Tab 5** Expedited Transfer Data from the Department of Defense FY 2016 Sexual Assault Prevention and Response Office (SAPRO) Annual Report

- *Spreadsheet prepared by DAC-IPAD staff incorporating the FY 2016 expedited transfer data, by Service, obtained from the Service enclosures to the FY 2016 DoD SAPRO annual report.*

**Tab 6** DAC-IPAD Request for Information (RFI) and Request for Meeting Presenters: RFI Set 4, Questions 1–6

- *DAC-IPAD request for (1) detailed information for each FY 2016 expedited*

*transfer request and transfer of an accused for a sex-related offense allegation submitted in FY 2016; (2) information and materials related to the sexual assault legal and response training provided to commanders by the Services; and (3) a request for presenters for the October 19–20 DAC-IPAD public meeting. The request was sent on September 11, 2017, and responses are due from the Services and DoD by October 5, 2017.*

- *The DAC-IPAD was notified by DoD on September 26, 2017, that responses to the expedited transfer data request would not be provided by DoD until December 8, 2017 due to the difficulty in obtaining this information.*

Materials for Service Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC)  
Perspectives on the Expedited Transfer Policy and the SVC/VLC Program

**Tab 7      Statutory Provision for the Special Victims' Counsel Program**

- *10 U.S.C. § 1044e (2015) (Special Victims' Counsel for victims of sex-related offenses). Enacted in December 2013 in the FY 2014 National Defense Authorization Act (NDAA), § 1716, and amended in the FY 2015 and FY 2016 NDAA's.*

Materials for Company/Squadron or Service Equivalent-level Commander and Senior Enlisted Advisor Perspectives on Sexual Assault Military Justice Training and Sexual Assault Response Training and Special Court Martial Convening Authority Perspectives on Sexual Assault Military Justice Training

**Tab 8      Commander Training Materials: Excerpts on Sexual Assault**

- *Document prepared by DAC-IPAD staff with excerpts from the Services' commander legal handbooks related to sexual assault prevention and response. These handbooks are produced by the Services' Judge Advocate General's/Naval Justice schools.*
- *Note that the document provides the websites for access to the complete commander legal handbooks published by the Departments of the Army, Air Force, and Navy.*

**Defense Advisory Committee on  
Investigation, Prosecution, and Defense of  
Sexual Assault in the Armed Forces (DAC-IPAD)  
Public Meeting Agenda**

**October 19-20, 2017**

**One Liberty Center, Suite 1432  
875 N. Randolph Street, Arlington, Virginia**

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**Thursday, October 19, 2017**

<b>8:00 a.m. – 10:00 a.m.</b>	<b>Statistical Data Working Group Preparatory Session (41 C.F.R. §102-3.160, not subject to notice &amp; open meeting requirements)</b>
<b>10:00 a.m. – 12:00 p.m.</b>	<b>Case Review Working Group Preparatory Session (41 C.F.R. §102-3.160, not subject to notice &amp; open meeting requirements)</b>
<b>12:00 p.m. – 1:00 p.m.</b>	<b>Lunch</b>
<b>1:00 p.m. – 1:15 p.m.</b>	<b>Administrative Session (41 C.F.R. §102-3.160, not subject to notice &amp; open meeting requirements)</b>
<b>1:15 p.m. – 1:30 p.m.</b>	<b>Public Meeting Begins – Welcome and Introduction</b>  <i>- Designated Federal Official Opens Meeting</i> <i>- Remarks of the Chair</i>
<b>1:30 p.m. – 2:30 p.m.</b>	<b>Perspective of a Sexual Assault Victim</b>  <i>- Ms. Hannah Stolberg, U.S. Air Force, Retired, Former Senior Airman</i>
<b>2:30 p.m. – 3:20 p.m.</b>	<b>Briefing on the Department of Defense (DoD) and Military Services' Expedited Transfer Policies.</b>  <i>- DoD SAPRO Representative</i> <i>- Service Policy/Assignments Representatives</i>
<b>3:20 p.m. – 3:30 p.m.</b>	<b>Break</b>
<b>3:30 p.m. – 5:00 p.m.</b>	<b>Service Special Victims' Counsel/Victims' Legal Counsel (SVC/VLC) Perspectives on the Expedited Transfer Policy and SVC/VLC Program</b>  <i>- Service SVCs/VLCs</i>
<b>5:00 p.m.</b>	<b>Public Meeting Adjourned</b>

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**October 19-20, 2017**

**One Liberty Center, Suite 1432  
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**Friday, October 20, 2017**

<b>8:30 a.m. – 8:45 a.m.</b>	<b>Administrative Session (41 C.F.R. §102-3.160, not subject to notice &amp; open meeting requirements)</b>
<b>8:45 a.m. – 9:00 a.m.</b>	<b>Public Meeting Begins – Welcome and Introduction</b>  <i>- Designated Federal Official Opens Meeting</i> <i>- Remarks of the Chair</i>
<b>9:00 a.m. – 11:30 a.m.</b>	<b>Company/Squadron or Service Equivalent-level Commander and Senior Enlisted Advisor Perspectives Sexual Assault Military Justice Training and Sexual Assault Response Training</b>  <i>- Service O-3/O-4 Company/Squadron or Service Equivalent-level Commanders (who have handled sexual assault cases)</i> <i>- Service First Sergeants/Senior Enlisted Advisors (who have handled sexual assault cases)</i>
<b>11:30 a.m. – 12:30 p.m.</b>	<b>Lunch</b>
<b>12:30 p.m. – 2:20 p.m.</b>	<b>Special Court Martial Convening Authority Perspectives on Sexual Assault Military Justice Training</b>  <i>- Service O-6 Special Court-Martial Convening Authorities (who have handled sexual assault cases)</i>
<b>2:30 p.m. – 3:00 p.m.</b>	<b>Committee Update from DAC-IPAD Case Review Working Group</b>
<b>3:00 p.m. – 3:15 p.m.</b>	<b>Public Comment</b>
<b>3:15 p.m.</b>	<b>Public Meeting Adjourned</b>
<b>3:15 p.m. – 3:30 p.m.</b>	<b>Break</b>
<b>3:30 p.m. – 5:00 p.m.</b>	<b>Policy and Case Review Working Group Preparatory Sessions (41 C.F.R. §102-3.160, not subject to notice &amp; open meeting requirements)</b>



THE DEFENSE ADVISORY COMMITTEE ON  
INVESTIGATION, PROSECUTION, AND DEFENSE OF  
SEXUAL ASSAULT IN THE ARMED FORCES

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**MINUTES OF JULY 21, 2017 PUBLIC MEETING**

**AUTHORIZATION**

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (“the Committee”) is a federal advisory committee established by the Secretary of Defense in February 2016 in accordance with section 546 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 and section 537 of the NDAA for FY 2016. The Committee is tasked to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its review of such cases on an ongoing basis.

**EVENT**

The Committee held a public meeting on July 21, 2017 from 8:30 a.m. to 3:10 p.m. The Committee received an informational presentation on the mechanics of a sexual assault investigation from the Services’ criminal investigation organizations. Following the presentations, the Committee held a strategic planning session.

**LOCATION**

The meeting was held at One Liberty Center, Suite 1432, 875 North Randolph Street, Arlington, Virginia 22203.

**MATERIALS**

A verbatim transcript of the meeting, as well as preparatory materials provided to the Committee members prior to and during the meeting, are incorporated herein by reference and listed individually below. The meeting transcript and materials received by the Committee are available on the website at: <http://dacipad.whs.mil>.

## **PARTICIPANTS**

### Participating Committee Members

Ms. Martha S. Bashford, Chair  
Major General Marcia Anderson, U.S.  
Army, Retired  
The Honorable Leo I. Brisbois  
Ms. Kathleen B. Cannon  
The Honorable Paul W. Grimm  
Dean Keith M. Harrison  
Mr. A.J. Kramer  
Ms. Jennifer Gentile Long  
Mr. James P. Markey

Dr. Jenifer Markowitz  
Chief Master Sergeant of the Air Force  
Rodney J. McKinley, U.S. Air Force,  
Retired  
Brigadier General James A. Schwenk, U.S.  
Marine Corps, Retired  
Dr. Cassia C. Spohn  
Ms. Meghan A. Tokash (by phone)  
The Honorable Reggie B. Walton

### Absent Committee Member

Ms. Margaret A. Garvin

### Committee Staff

Captain Tammy Tideswell, JAGC, U.S. Navy, Staff Director  
Mr. Dale Trexler, Chief of Staff  
Ms. Julie Carson, Attorney-Advisor  
Dr. Janice Chayt, Investigator  
Dr. Alice Falk, Editor  
Ms. Theresa Gallagher, Attorney-Advisor  
Ms. Nalini Gupta, Attorney-Advisor  
Ms. Amanda Hagy, Senior Paralegal  
Mr. Chuck Mason, Attorney-Advisor  
Ms. Meghan Peters, Attorney-Advisor  
Ms. Stayce Rozell, Senior Paralegal  
Ms. Terri Saunders, Attorney-Advisor

### Other Participants

Mr. Dwight Sullivan, Designated Federal Officer (DFO)  
Captain Joseph Ahlers, U.S. Air Force, Service Representative  
Lieutenant Alexandra Nica, U.S. Navy, Service Representative  
Dr. Paul Garst, Senior Advisor, Department of the Navy Sexual Assault Prevention and  
Response Office  
Mr. Stephen McLeary, U.S. Coast Guard, Service Representative  
Mr. Christopher Redmond, Supervisory Special Agent, Violent Crimes Division, Office of the  
Inspector General, U.S. Department of Defense  
Major Wayne Shew, U.S. Marine Corps, Service Representative  
Lieutenant Colonel Mary Catherine Vergona, U.S. Army, Service Representative

### Presenters

Mr. Michael Defamio - Division Chief, Family and Sexual Violence Division, Naval Criminal  
Investigative Service Headquarters



Mr. Kevin Poorman, Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations  
Ms. Beverly Vogel, Senior Special Agent and Sex Crimes Program Manager, U.S. Coast Guard Criminal Investigative Service  
Ms. T. L. Williams, Deputy Chief, Policy Branch, U.S. Army Criminal Investigation Command

## **MEETING MINUTES**

The DFO opened the public meeting at 8:35 a.m. Chair Martha Bashford provided opening remarks and summarized the agenda for the meeting.

### Mechanics of a Sexual Assault Investigation

Mr. Kevin Poorman, Associate Director, Criminal Investigations, U.S. Air Force Office of Special Investigations, explained that the presenters would be providing an overview of the organization, training, and policies of the military criminal investigation organizations and data and trend information for each Service. He noted that while there are a lot of similarities, there are also structural differences among the Services in the organization and delivery of investigation services.

Ms. T. L. Williams, Deputy Chief, Policy Branch, U.S. Army Criminal Investigation Command, provided an overview of the structure of the Army Criminal Investigation Command known as CID. It is commanded by a major general who reports directly to the Secretary and the Chief of Staff of the Army to avoid issues of unlawful command influence. She continued that eight battalions have command and control over 10 CID offices. There are 834 authorized agent positions, 706 of which are currently filled, including 30 civilian sexual assault positions. She also noted that CID is the executive agency for the U.S. Army Laboratory, which is a branch within the Defense Forensic Science Center and is responsible for all forensic examinations including sexual assault, drugs, DNA, chemistry, trace, and digital evidence.

Next, Mr. Michael Defamio, Division Chief, Family and Sexual Violence Division, Naval Criminal Investigative Service Headquarters, described the Naval Criminal Investigative Service's (NCIS) organization. He explained that NCIS is led by a civilian director who reports to the Secretary of the Navy through the Under Secretary of the Navy. NCIS is an all-civilian special agent force, with no active duty military in the NCIS chain of command. NCIS has 14 field offices, 10 of which are in the U.S. and four are overseas. There are 461 criminal investigating agents, 164 of whom are special agents dedicated to family and sexual violence investigations. NCIS also has an active duty program where members of the Navy and Marine Corps are assigned to NCIS offices and participate in investigations as well.

Ms. Beverly Vogel described the organization of the Coast Guard Investigative Service (CGIS), which is an independent and centralized investigative authority led by a civilian senior executive service (SES) director who reports directly to the Vice Commandant of the Coast Guard. There are 35 resident agent offices in the U.S. and abroad that report to eight regional offices. CGIS has 102 civilian, 89 active duty, and 149 Reserve CGIS special agents – for a total of 340 special

agents filling 381 authorized billets. Thirty-five special agents are designated as family and sexual violence investigators and are stationed in the U.S. and abroad.

Mr. Poorman told the Committee that in the Air Force, the Office of Special Investigations (AFOSI) commander reports directly to the Inspector General of the Air Force, and in turn, the Secretary of the Air Force. Though there are 1,800 agents, only about half are funded to work on criminal investigations. The others work on counterintelligence, cyber, and special security operations. The Air Force has investigators stationed at over 200 locations with 75 main offices in eight regions. 24 of the agents are specifically designated full-time sexual assault investigators and there are 23 lower level security force investigators detailed to OSI to help with sexual assault contact investigations and overseen by OSI agents.

Following the description of their organizations, each of the military criminal investigation organizations (MCIOs) officials discussed the training received by agents. The Army has an 80-hour advanced sexual assault training provided by the U.S. Army Military Police School and is working on a pilot program to train civilian investigators along with sexual assault prosecutors to better learn about and understand each other's roles. NCIS, AFOSI, and CGIS agents are trained at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia which is where most federal investigative agencies, other than the Federal Bureau of Investigation (FBI) and Drug Enforcement Agency (DEA), train. The Navy and Air Force also have supplemental military-specific and advanced sexual-assault related trainings and Ms. Vogel indicated that CGIS agents also participate in some of these courses.

Next, the MCIOs discussed their caseloads. Ms. Williams reported that Army CID opened investigations on over 11,000 felony crimes in fiscal year 2016, 2,500 of which were sexual assaults. The average length for a sexual assault investigation is 154 days and is often attributable to the transient nature of Soldiers, deploying, moving, and leaving the military. She reported that the average length of time for lab results in fiscal year 2017 is 74 days, though it is dropping.

Mr. Defamio reported just over 6,000 felony investigations for NCIS, 1,940 of which were for sexual assaults. He noted that this covers both the Navy and Marine Corps. The Navy had 893 total cases with an average case open for 129 days. The Marine Corps had 453 cases with a 132 day average investigation length. Most of the cases NCIS sees occurred off-base. Most are military subjects and about 10 percent are civilian subjects.

For the Coast Guard, Ms. Vogel stated that in fiscal year 2016 there were 1,962 total investigations initiated, 122 of which were adult sexual assault investigations. The average investigation duration is 133 days and other demographic data is similar to that described by NCIS.

For the Air Force, Mr. Poorman stated that sexual assault investigations make up about 40 percent of AFOSI's approximately 2,500 investigations per year – or about 1000 cases. The average length of investigation is 105 days. Twenty percent of the Air Force cases involve civilian suspects and 48 percent occur off-base.

The MCIOs discussed some of the complications presented by jurisdictional issues such as concurrent and exclusive federal jurisdiction and status of forces agreements with foreign countries. They also noted that their policies and procedures are similar across Services as to when evidence is taken, how it is handled, which laboratories are used and what the reports of investigation look like.

Mr. Poorman explained that since 2012 the Department of Defense Office of the Inspector General (DoD IG) has conducted three major assessments: (1) an assessment of the MCIOs for compliance with DoD policy and for investigation sufficiency; (2) an assessment of the training agents receive related to sexual assault; and (3) an assessment focused on MCIO policies related to adult-victim sexual assault investigations.

Chair Bashford thanked the presenters and began the question and answer session. She noted the statistic presented that nearly 50 percent of the cases are reported more than a month after the incident and found this to be extremely high. The presenters suggested several possible reasons, such as conversion of restricted reports to unrestricted and victims waiting until they finish basic training or move to another duty station to report an incident. Mr. Poorman added that the relationship between the victim and the subject may affect the reporting time period. He noted that the Air Force just had the Rand Corporation look at its sexual assault cases and they found that in 85 percent of the cases, the victim and subject knew or worked with each other – which may influence the decision to come forward.

Mr. Kramer asked the investigators where a restricted case file would be physically located. Mr. Defamio explained they would be processed by a Sexual Assault Response Coordinator (SARC). Mr. Poorman further explained if there was evidence in the case, like a sexual assault forensic examination kit, OSI would physically store it without the victim's identifying information. Mr. Kramer followed up by asking whether only the Army had a forensics laboratory. Ms. Williams affirmed that all of the Services use the Army's forensics laboratory including the Coast Guard. Mr. Kramer asked why the Army did not train its investigators at Glynco like the other Services. Ms. Williams explained that the Army, being the biggest Service, had its own Army-specific training.

Judge Brisbois asked how many restricted report forensic exam kits were housed at the Services' evidence facilities. None of the MCIO representatives had the exact numbers but indicated they could get them for the Committee if desired.

Dr. Spohn asked how many days after an incident a forensic medical exam would be performed in the military, noting that in Los Angeles it is within 72 hours. Mr. Poorman stated ten days in the Air Force. Dr. Markowitz noted, based on her experience working with DoD and the Services, that the time frame is 7 days from the date of incident at DoD medical facilities.

Dean Harrison inquired whether or not installation-specific crime statistics were required to be kept as is required of civilian police departments and college campuses. The Service investigator representatives all responded in the affirmative but noted that those statistics were generally compiled into the larger annual reports. Mr. Poorman explained that the Defense Incident-Based

Reporting System (DIBRS), which feeds into the National Incident-Based Reporting System, is used by the Services to record felony-level cases by type and by location.

Chief McKinley asked, based on the reality of joint base operations, whether there was any push to consolidate the investigator training programs for all of the Services. Mr. Poorman stated that DoD IG had looked into the issue of consolidated training and that he would defer to that report. Mr. Poorman added that he felt the training was very similar across the Services and when they did collaborate it was a positive experience.

Ms. Cannon asked whether or not there was a comparative analysis of cases that come out of different installations across the Services. Mr. Defamio explained that there was no consolidated report comparing bases or locales but that the agencies did have those numbers. He further explained that the number of cases on an installation is used to determine manpower requirements. Ms. Vogel stated that the Coast Guard has a SAPRO crime analyst who has compared the numbers across different locales and those numbers had been reported up the chain of command.

Judge Walton asked how diverse the investigator staffs were based upon gender and race. Mr. Defamio stated NCIS has 214 female investigators, consisting of one Native American, 14 Asian-Pacific Islander, 29 African American, 20 Hispanic, and 150 Caucasian investigators. He added that of the 815 male NCIS investigators, 3 are Native American, 32 are Asian-Pacific Islander, 64 are African American, 71 are Hispanic and 640 are Caucasian. Judge Walton then asked whether a Service member charged with a crime has access to a defense investigator. Mr. Defamio reported that at the present moment there are not defense investigators but it is “in the process” of being established. Ms. Vogel reported that the defense can request use of an investigator in the Coast Guard and Ms. Williams reported that in the Army, the defense could request agents to perform investigative tasks.

Ms. Bashford referred to the JPP’s findings that investigators reported having delayed access to complainants as a result of the appointment of special victim counsel and asked whether the data is kept on the time between the filing of an unrestricted report and the first interview of the victim. Ms. Williams stated that she did not have exact data on that issue and that it could not be easily pulled from the CID database. Mr. Defamio reported that NCIS does not keep data on the length of time from case opening to when investigators gain access to a victim. Ms. Bashford asked whether anecdotally, the MCIOs felt that the introduction of the counsel for the victim has delayed the initial interview. Mr. Defamio noted that at the inception of the special victim counsel program there were some significant issues with delays but now it was viewed as a positive program. He said that significant delays are now annotated in investigative reports and he hasn’t seen any in well over a year. Mr. Poorman and Ms. Vogel concurred with Mr. Defamio’s assessment. All three praised the victims’ counsel program overall.

Judge Brisbois followed up on his earlier question regarding defense counsel’s access to investigators and whether or not any investigative work conducted on behalf of the defense was kept confidential from the government. Ms. Williams stated that it was shared information in the Army. Mr. Poorman stated that investigators can work for the defense but information is only confidential if approved by the convening authority in the Air Force.

General Anderson asked whether or not investigators specialized in sexual assault cases. Ms. Williams explained that in the Army there is no specific track for sexual assault investigations except for civilian agents. Mr. Poorman stated that sexual assault was a violent crime and that all Air Force investigators were trained to investigate violent crimes.

Judge Walton asked the investigator panel at what point coordination occurs between a prosecutor and an investigator in a sexual assault case. Ms. Vogel stated “early and often.” Mr. Poorman referenced the DoD Instruction which requires 24-hour notification of the “team” which included prosecutors, victim advocates, and SARCs.

Judge Walton asked what percentage of Service members were represented by civilian attorneys as opposed to military defense attorneys. Mr. Poorman stated he did not have that data but in his experience, most were represented by military defense attorneys. In response to a question by Judge Walton about whether MCIOs have statistics regarding conviction rates, Mr. Poorman indicated that AFOSI does not have these numbers, but Mr. Defamio and Ms. Williams reported that NCIS and CID both track conviction rates.

Mr. Kramer asked why 20 percent of the Army and Air Force investigations involved a civilian suspect while only 10 percent of the Navy, Marine Corps and Coast Guard investigations involved civilian subjects. Mr. Defamio speculated it may be because there are not that many civilians on ships. Mr. Kramer then asked how many of the victims are civilian versus uniformed. Mr. Defamio reported that those numbers were available but not presently on hand. Responding to another question, Mr. Poorman stated that a recent Air Force study conducted by the Rand Corporation found that 85 percent of victims and suspects knew one another before an alleged incident. Mr. Defamio also noted that NCIS tracks the relationships between victims and suspects.

In response to further questions by the Committee regarding defense investigators, Captain Tideswell explained that the JPP had identified this as an issue in one of its recent reports and she noted that the Navy now has a pilot program where defense investigators are now imbedded in Navy legal offices, but the Navy was the only Service presently with such a program.

Ms. Bashford inquired about subpoena power in the investigation process. Mr. Defamio stated that investigators may apply for a DoD IG subpoena for certain violent crimes. Mr. Poorman stated that the Air Force uses the DoD subpoena process often. Mr. Redmond, from the Department of Defense Office of Inspector General, stated that the turnaround time to respond to subpoena requests was 48 to 72 hours. Mr. Sullivan added that Congress recently authorized the military judiciary to begin issuing investigative subpoenas by January 1, 2019. Judge Grimm followed up by asking what type of enforcement mechanisms would be available to the military judiciary. Mr. Sullivan stated that the Military Justice Act authorized military judges to take certain pre-referral actions, but that the implementing regulation had not yet been created to address the exact mechanics of that option. On the other hand, Mr. Sullivan noted, Congress has authorized the United States to go into U.S. District Court to enforce the subpoena against a civilian if the recipient doesn’t comply.

General Schwenk asked the investigators whether they had concerns about restricted reporting. Ms. Vogel responded that her investigators now understood that it was an important option so that victims could tap into resources even if they were undecided about reporting the incident criminally. Mr. Poorman echoed Ms. Vogel's sentiments and added that whether or not a report is restricted or unrestricted, if a victim later does not want to cooperate there is no substantial difference in result. General Schwenk then asked what effect the expedited transfer process has had on sexual assault investigations. Mr. Defamio reported, at least anecdotally, that it extended timelines on witness interviews, but that it hasn't had a major impact on completing investigations. Ms. Williams explained that when a victim is transferred a new agent will need to build up rapport again which can take time.

General Schwenk then asked about the relationship between investigators and trial counsel towards the end of an investigation. Mr. Poorman stated that they do the best they can prior to closing an investigation to see that the case is sufficient, but it is inevitable that after closure of an investigation things arise. He said that AFOSI attends to them the best they can depending on "how probative they are, how serious they are, how much they would change an outcome to the case." Mr. Defamio stated that NCIS was required to keep the case open until final adjudication so that they can continue to handle specific requests from trial counsel through the trial. Ms. Williams stated that CID does close cases before final adjudication but that they will do more investigative activity if it's reasonable, noting that they have to make some judgement calls. Ms. Vogel stated that the process is very similar for CGIS.

Judge Walton asked the investigative panel what percentage of sexual assault cases were male on male. Ms. Williams and Mr. Defamio reported they could get that information to the panel. Mr. Poorman reported that out of 1,000 cases in the Air Force in 2016, 128 were male victims—so approximately 10 percent. Ms. Williams and Mr. Poorman also indicated that male on male sexual assaults had some hazing element to them.

General Schwenk asked the panel how they would change the system for the better. Ms. Williams stated she would ask for more people and more money. Mr. Defamio said he would like to see more surveillance cameras on the installations—in the barracks hallways in particular.

Dean Harrison asked Ms. Vogel about the CGIS Reserve agents she mentioned earlier and inquired whether they worked in law enforcement in their civilian lives. Ms. Vogel reported that they all did.

Chief McKinley asked whether records are kept regarding the Service members who separate in lieu of court-martial or those who receive non-judicial punishment. Mr. Defamio responded they would have data on the alternative dispositions but that they would only alert a local community if sex offender registration was required due to a conviction.

Next, Ms. Long asked the panel of investigators how they track their performance and how they know when they need to improve. Mr. Poorman explained that he welcomed the DoD IG sufficiency reviews which started in 2012 because they provided external peer review of the MCIO products. He noted that in the last two assessments there were no major investigational deficiencies in any of the cases. Mr. Poorman also explained that senior investigators review a

random selection of closed cases for sufficiency, providing additional quality control. Judge Grimm followed up on Ms. Long's question and asked the panel what they were doing to improve in light of the statistic of a roughly 25 percent acquittal rate in sexual assault cases. Ms. Vogel responded that her investigators do "hotwashes" with legal to specifically look at those issues. Mr. Poorman stated AFOSI did not do an assessment of their investigations but explained that a senior Air Force trial counsel does assess case files and shares conclusions on improvements. Ms. Williams explained that CID did not have any hard data on types of cases which resulted in acquittals but they did have an IG team which pulls random files at installations and reviews them for sufficiency.

Ms. Long noted that it is important to look at the varying complexities involved in cases when comparing outcomes and stated that her organization has worked with the Urban Institute and Rand Corporation to develop methods for evaluating conviction rates that capture these complexities. She also noted that the military has data that isn't available across the country making it easier to look at these issues.

Mr. Markey explained his involvement in assessing sexual assault investigations in civilian jurisdictions noting that one of the overarching goals is that no matter where a victim might present—to whatever organization within the system—that they get the same response. In his assessments he indicated he looks to see how effective, efficient, and consistent an organization is in their response. Some of the key variables he suggests looking at are investigator caseload, assignment length and turnover of personnel, selection of investigators and the first line supervisors who are overseeing the investigations and investigators. He noted that part of the effectiveness of the response is having a multi-disciplinary team that works together and understands each other.

Mr. Markey noted that in the civilian world, while all sexual assault kits are being submitted to the lab, not all are being tested and asked the MCIOs if this is the case in the military. Ms. Williams responded that all kits are being tested and probably more extensively than tested in a local lab. She also explained that all profiles detected at the lab are uploaded into the Combined DNA Index System (CODIS).

Ms. Bashford thanked the investigative panel for their time.

#### DAC-IPAD Strategic Planning Session

Captain Tideswell began by directing the members' attention to the legislative language which created the DAC-IPAD. Captain Tideswell explained that in the original bill Congress had listed several specific tasks for the DAC-IPAD to address. Captain Tideswell went on to explain that the original tasks did not end up in the final bill because Congress did not want to limit the DAC-IPAD's scope of exploration.

Next, Captain Tideswell explained that in the Military Justice Act of 2016, DoD was directed to implement a case management system by December 2020. Captain Tideswell recommended that based on the Committee members' expertise they may want to recommend to DoD the standards and criteria for the database.

Next, Ms. Bashford discussed case analysis and noted that the JPP studied only cases where charges had been preferred. She noted that the sexual assault investigation data for fiscal year 2016 provided to the Panel by the MCIOs indicates that only 15 to 20 percent of cases investigated were ever preferred and she is very interested in knowing the reason as to why so many cases are not preferred. Ms. Bashford suggested that the Committee should focus its efforts on penetrative offenses. Dr. Spohn noted that her data analysis showed that the outcomes are very different for contact versus penetrative offenses and that comparing them would be like comparing apples to oranges. She also supported reviewing only penetrative cases. Ms. Long raised a concern that perhaps in some instances non-penetrative cases may be mischaracterized and noted that the Committee may want to look at whether allegations were being charged appropriately.

Ms. Bashford and the Committee agreed they would like to look specifically at sexual assault cases beginning at the investigation stage, where charges were not preferred.

Judge Walton asked whether or not plea bargaining existed in the military system. Captain Tideswell explained pretrial agreements exist between the accused and the convening authority. She further explained that at a guilty plea a military judge will still sentence an accused but the accused will get the lesser of the judicial sentence or terms of the pretrial agreement. Mr. Sullivan then added that the Military Justice Act of 2016 will change the present plea-bargaining system to require the accused and the convening authority to reach a “sentencing range.” A military judge will then sentence within that pre-determined range. Alternatively, the accused could choose to plead without any sentencing range in place.

Ms. Bashford expressed an interest in looking to see if demographic factors such as rank correspond to disparities in preferral of charges, noting that the JPP found there to be little difference in outcomes based on rank once charges are preferred. She also indicated that one of the Committee’s primary goals should be looking at why the conviction rate for penetrative offenses is so low, and that it should also look at why so many sexual assaults in the military are reported a year or more after the incident, which she did not find to be the case in the civilian world. Dr. Markowitz suggested the Committee look at the number of cases that are converted from restricted to unrestricted as a factor.

Discussing the categories of cases the Committee should review, Ms. Bashford stated she believed the committee should look at a statistically significant sample of cases that resulted in acquittals and dismissals. Captain Tideswell explained that in cases of acquittals there was no full record of trial, just an abbreviated transcript and that in order to review those types of cases the Committee would need to have the audio files transcribed. She discussed the Committee issuing a request for information (RFI) requesting that audio recordings of these cases be preserved by the Services.

Judge Grimm expressed his interest in reviewing the JPP’s final report recommendations so that the Committee could avoid duplicating any work already performed by the JPP and use them to help direct the Committee’s focus. Captain Tideswell informed him that some recommendations have already been made by the JPP to DAC-IPAD such as continuing to conduct the data



analysis undertaken by the JPP. She noted that the Chair has already signed an RFI for fiscal year 2016 case files and reported that the data collection process is already underway.

Dr. Spohn raised the issue of what exactly a “case review” meant in terms of the DAC-IPAD’s mandate and asked whether the Committee has the ability to hire graduate students at criminology programs to collect the data. Captain Tideswell responded that there is a budget that provides the ability to contract out work on a limited basis.

Dr. Markowitz raised a concern about the Committee members reviewing confidential medical information in the investigation files which patients did not agree to release for this type of purpose. She advocated building in a process by which the members can protect the confidential medical information from being viewed.

Ms. Bashford recommended that a working group or subcommittee should handle case reviews and report back to the full Committee. Captain Tideswell identified the proposed members for the working group as Chair Bashford, Mr. Markey, Ms. Long, General Schwenk, Mr. Kramer, and Ms. Cannon. Ms. Bashford suggested that the working group look at some case files in August or September to identify challenges and recommend how the reviews should go forward as the subcommittee is being established.

In response to a question posed by Mr. Markey about the time it takes to review a case in the DoD IG investigative case oversight review process, Mr. Redmond, the DoD IG representative, reported that for the last DoD IG oversight report it took approximately eight to ten weeks working full-time for four to six people to review 400 case files. He explained that the DoD IG does not review case outcomes, but rather efficiency and compliance with DoD, Service, and Agency policies for its oversight function.

Dr. Spohn expressed interest in reviewing unfounded cases to determine if there are ways these cases could be improved so that they could move forward. Ms. Bashford suggested looking at alcohol as the basis for lack of consent, whether physical force or capacity is the issue, and the issue of delayed reporting to see if there are any common threads or differences in outcomes. She also suggested looking at patterns related to corroboration and external evidence.

Mr. Kramer felt that reviewing the quality of the investigation was an important factor because one of the reasons a case might not be preferred could be because evidence was mishandled by the investigators, making the quality of the investigation relevant to the outcome.

Dr. Markowitz emphasized the importance of looking at what successful convictions have in common as well as acquittals. Dr. Spohn similarly suggested that if the Committee was going to look at acquittals they should look at convictions in order to have something to compare to.

Ms. Bashford reiterated that it would be beneficial to have a working group look at a handful of cases before the next meeting and report back to the Committee on what is available to look at, what the challenges are, what data is collected and what isn’t in the files. Mr. Markey suggested that there are additional data points that could be collected on investigations such as noting when

witnesses were not interviewed, evidence wasn't collected, there was a lack of follow up, and when victims were treated poorly by first responders.

In response to questions by Committee members about the term “unfounding” cases, Mr. Redmond explained that while MCIOs used to have the authority to unfound a case [meaning to find the case false or baseless], that decision is now required to be made by a commander at the O-6 level. Judge Brisbois and Dr. Markowitz both noted that today there is no category of cases labeled “unfounded.”

Lieutenant Colonel Vergona, the Army's Service Representative, reiterated that cases can no longer be “killed” at the trial counsel level as used to be the case and that today the decision to go forward or not must be made by a commander at the O-6 level. Noting that 80 to 85 percent of cases don't have charges preferred, Ms. Bashford asked whether the O-6 issues a finding as to why a case does not go forward. Ms. Carson responded that the Committee heard testimony previously [at the April 28, 2017 public meeting] that while the convening authority's action on the case may provide some information about why the decision was made, it does not consistently contain this information.

Judge Grimm made the point that in light of impending changes to Article 33 of the UCMJ which deals with convening authority determinations whether or not to go forward, it may be irrelevant for the Committee to be looking at how charging decisions were made in the past. Mr. Sullivan explained the new statute, informing the Committee that the Military Justice Act of 2016 amended Article 33 to require that non-binding disposition guidance for convening authorities be issued by January 1, 2019. Mr. Sullivan said the non-binding guidance will establish factors that commanders, convening authorities, and judge advocates should take into account when exercising judgment on the disposition of charges and is to take into consideration the principles set forth for federal criminal prosecutions in the U.S. Attorney's manual.

Ms. Bashford then brought the Committee's attention to the [Article] 140a [UCMJ] requirement that DoD develop a uniform military justice system for data collection and management. She felt the Committee could make a lasting impact by studying and making recommendations on the criteria that should be used to track sexual assault cases. In response to Ms. Cannon's suggestion that the Committee look at the DoD IG report on its investigative case reviews, Captain Tideswell explained that the DoD IG has provided the Committee with its protocols and information on the database it uses to conduct case reviews. Captain Tideswell noted that these documents may be useful for a subcommittee or working group to study for developing the DAC-IPAD process.

Chief McKinley expressed strong interest in looking at the training of leaders at the squadron level on the UCMJ and making decisions on the disposition of sexual assault allegations. He would like to look at the training received by those in leadership positions across the Services on how to deal with a sexual assault.

Dean Harrison suggested the Committee speak with some convening authorities and staff judge advocates who have experience with the process.

Ms. Bashford suggested the Committee look at the written advice that staff judge advocates provide to convening authorities and whether recommendations are less candid because of discovery obligations, referencing the JPP Subcommittee recommendation on this issue.

Ms. Bashford asked the Committee to turn its attention to the statistical data collection options presented in the planning outline and for Dr. Spohn to explain the methodology utilized by the JPP in collecting and analyzing case data. Dr. Spohn noted that the JPP collected data only for cases that were preferred. She explained that the JPP collected data on the charges that were preferred, the disposition of those charges, information about the sentence, as well as limited demographic information about the victim and the suspect. Ms. Rozell explained that she has entered over 2,000 cases in the JPP database and the documents collected included charge sheets, Article 32 reports, pre-trial agreements, reports of results of trial, and actions taken after the fact by the convening authority. She added that the JPP also collected documents related to appellate review and outcomes. Ms. Rozell said that the JPP data collection was conducted by two members of the JPP staff.

Captain Tideswell explained that the data team created a system where the data in the system is tied to the actual case documents which could be pulled upon an inquiry. Ms. Carson stated that more data points could be added to the existing system and added that the document based system allows for quality control because the data is taken directly from the actual documents which can be reviewed. This document-based method is a best practice modeled after the U.S. Sentencing Commission. Mr. Redmond informed the Committee that DoD IG uses Microsoft Access for its database and that they had thousands of data points. He offered to provide a demo of the DoD IG system to Committee members if they wished.

Ms. Bashford stated that at the previous meeting they agreed that Dr. Spohn and Chief McKinley would be on the data working group. Mr. Markey also volunteered to be on the data Subcommittee. Captain Tideswell stated they could now start as a working group and once approved by DoD act as a Subcommittee.

Ms. Carson recommended that the working group should come up with a list of data points that would be beneficial for case reviews, explaining their significance.

Ms. Bashford noted that at the previous meeting there was a discussion regarding retention and the career path of victims after reporting a sexual assault. Chief McKinley added that the committee might want to review what impact a sexual assault report has on career progression. Dr. Markowitz suggested looking at the career paths of officer versus enlisted.

Ms. Bashford then suggested the Committee review data points on expedited transfer to determine the impact on the process of those transfers. Ms. Bashford then requested to hear from the defense bar and the special victim counsel. Ms. Bashford suggested that they begin working on the criteria for the DoD mandated database.

Dean Harrison asked about what type of training defense receive. Ms. Carson explained that training standards were addressed by the JPP and the services have been mandated to begin a litigation track for their judge advocates. The services are currently working on pilot programs.

Lieutenant Colonel Vergona, the service representative for the Army, stated trial counsel and defense counsel serve two years but sometimes it can be a 12-month tour. Captain Ahlers, the Air Force representative, stated that all counsel started as prosecutors typically for two years. They can then go on to be defense counsel or special victim's counsel and those tours can last two years. Ms. Bashford was also interested in seeing how often trial counsel and defense counsel transitioned off cases due to deployments or tour cycle.

Lieutenant Colonel Vergona stated that depending on where counsel was stationed they may have heavier caseloads and that on average counsel may carry 15 to 20 cases. Lieutenant Colonel Vergona also reported that judge advocates may spend time in the criminal law field and then go on to do other things like environmental law. LT Nica, the service representative from the Navy, went on to report the Navy had established the military justice litigation career track. The Navy has a board that selects personnel to the military justice track based on their experience. Lieutenant Colonel Vergona stated that the Army has skill identifiers that identify trial counsel and defense counsel with expertise. Lieutenant Colonel Vergona stated that the Congressional litigation track is being reviewed prior to implementation.

Judge Brisbois stated that there was an imbalance between government and defense resources. Ms. Cannon then raised the point that just calling a person a victim tilts things unfairly, as that is the issue the fact-finder must decide.

Ms. Bashford directed the Committee's attention back to the data points for possible collection. At an earlier session Ms. Bashford stated she had talked about analyzing how often turnover of counsel happens on sexual assault cases. Dr. Spohn stated she had written down several suggestions. The first was whether or not the victim participated in the expedited transfer program, whether the case was originally a restricted or unrestricted report, and a measure of what type of relationship the victim and offender were in. In other words, was it an intimate partner or not. Ms. Long stated that she would send the Committee an article which had some of the data points. Those included alcohol involvement, victim participation, prior relationship, delay in reporting, and evidence of bias or motive to lie on the part of the victim.

Next, Dr. Paul Garst, from the Department of the Navy SAPRO Office spoke from the gallery and stated that his office had looked at some of these data points. For one, some of the victims could be civilians he stated that he thought that number was ten percent. He also stated the Committee may want to differentiate between penetration versus contact offenses. Dean Harrison then asked whether there was a sub-category to indicate whether a civilian victim was affiliated with the military in some way.

Megan Tokash asked whether the database tracked the rank and experience of the trial counsel or defense counsel or whether there was a special victim's prosecutor on the case. General Anderson suggested looking at the type of training the O-6 receives in making decisions on case disposition. The Committee spoke about narrowing the training to what commanders receive on military justice.

Ms. Bashford then stated that she would like to know who makes the decision on the expedited transfer decision. Mr. Garst stated that the Service member's immediate commanding officer

decides whether or the allegation is credible and must make a decision within 72 hours. If it is rejected then it will receive a higher review. General Schwenk suggested that at the next meeting the Committee might want to hear from Service representatives who are actually involved in the program so that the Committee could benefit from their knowledge. Chief McKinley added he would like to hear about the training the Commanders receive on this issue. Ms. Bashford stated it might also be interesting to pull out the data on expedited transfers and whether or not a victim agrees to go forward.

Ms. Bashford then stated that at the previous session the Committee discussed establishing a working group for data which included Ms. Spohn, Mr. McKinley, and Mr. Markey. Ms. Bashford said she would like to start looking at a handful of cases to see how many of the data points discussed may be available from the case file. She announced that the members interested in the case review were Ms. Cannon, Mr. Kramer, Mr. Markey, Ms. Long, General Schwenk, herself, and Dr. Spohn.

General Schwenk suggested the Committee may want to set up a working group to look at expedited transfers, Article 140a, UCMJ regarding military justice data management, training for convening authorities, and training for defense counsel. Dr. Markowitz then again stated that during the case reviews there may be medical information that should not be shared in this setting. General Schwenk added that at the next meeting there could be an informational panel that would outline the expedited transfer as well as a panel on defense training.

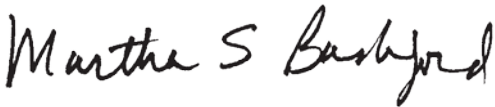
#### Public Comment

There were no public comments.

The DFO closed the public meeting at 3:10 p.m.

### **CERTIFICATION**

I hereby certify, to the best of my knowledge, the foregoing minutes are accurate.



Martha Bashford  
Chair

### **MATERIALS**

#### Meeting Records

1. Transcript of the July 21, 2017, DAC-IPAD Public Meeting, prepared by Neal R. Gross and Co., Inc.

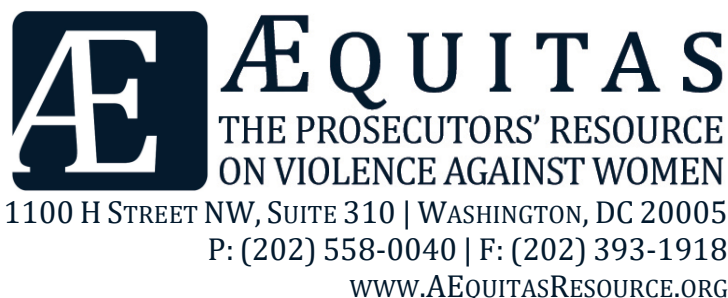
#### Read Ahead Materials Provided Prior to and at the Public Meeting

2. Table of Contents for Read Ahead Materials
3. Public Meeting Agenda, July 21, 2017

4. Minutes of the April 28, 2017 DAC-IPAD Public Meeting
5. Public Meeting Speakers' Biographies
6. Summary of Regulations and Reports Related to Sexual Assault Investigations in the Armed Forces (DAC-IPAD staff prepared document)
7. DoD Instruction 5505.18, "Investigation of Adult Sexual Assault in the Department of Defense," (March 22, 2017)
8. DAC-IPAD Request for Information from DoD IG, RFI Set 2, Question 1 (Request Date: June 22, 2017)
9. DAC-IPAD Request for Information from Military Criminal Investigation Organizations (MCIOs), RFI Set 3, Questions 1–18 (Request Date: June 29, 2017)
10. DAC-IPAD Committee Planning Session Outline
11. DAC-IPAD Request for Information from DoD SAPRO and Service JAG Corps, RFI Set 1, Questions 1–3 (Request Date: June 20, 2017)
12. Legislative History: The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) (Staff prepared document)
13. Article 140a (New Provision) – Case Management; Data Collection and Accessibility
14. Power Point Presentation – MCIOs: Presentation to the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (July 21, 2017)
15. MCIO Organization Charts for CID, NCIS, AFOSI, and CGIS
16. DAC-IPAD Request for Information from Military Criminal Investigation Organizations (MCIOs), RFI Set 3, Questions 1–18 (Response Date: June 29, 2017) [Responses Included]

# Model Response to Sexual Violence for Prosecutors (RSVP)

*An Invitation to Lead*



## **Model Response to Sexual Violence for Prosecutors (RSVP)**

### **An Invitation to Lead**

Excerpt from Executive Summary

The Sexual Assault Justice Initiative (SAJI) is a project developed in partnership among AEquitas, the Justice Management Institute, and the Urban Institute. The Initiative challenges prosecutors to look beyond conviction rates as the primary measure of success or effectiveness in sexual violence prosecutions and to implement, continually evaluate, and refine sustainable prosecution practices that will advance the goals of justice, victim safety, and offender accountability. The present document sets forth the Model Response to Sexual Violence for Prosecutors (RSVP), the cornerstone of SAJI's proposal for improving the prosecution response to sexual violence. The RSVP Model is a collection of office- and case-level promising practices that have been identified through research and experience—of both AEquitas staff and the prosecutors with whom we partner—to result in positive case outcomes, using measures of success that extend beyond conviction rates. **The RSVP Model also provides a performance management system with a tool for offices and individual prosecutors to measure their effectiveness in achieving the intended outcomes, and proposes a method of routine evaluation of prosecution practices that can be refined as necessary in response to evolving research, emerging issues, or changing conditions in a jurisdiction.** The RSVP Model is intended to serve as a comprehensive tool for making decisions on office policy and individual cases of sexual violence. If implemented, the Model's policies and practices will allow for all adult sexual assault victims who interact with prosecutors across the United States to experience prosecution practices that are trauma-informed, victim-centered, offender-focused, informed by research, and sustainable over the course of changes in administration and personnel. (pp. 6–7)



# Performance Management

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## 5.1. PERFORMANCE MANAGEMENT TO CONTINUOUSLY IMPROVE THE RESPONSE TO SEXUAL ASSAULT CASES

**One of the objectives of the RSVP Model is to identify the primary performance metrics and measurement procedures for continuous improvement of the effectiveness and efficiency of how sexual assault cases are handled. This chapter outlines how to obtain and use these metrics to monitor performance and improve practices. These metrics might be reported on a regular basis (such as quarterly) or at any time when review of the data is called for. Tracking these metrics alerts agencies to existing problems and indicates, over time, the extent to which progress is being made or backsliding is occurring.**

Performance measurement encourages stakeholders responding to sexual assault (the prosecutor's office, law enforcement, health care providers, and victim advocates) to see themselves as partners—each an important component contributing to the success of the effort. Outcome measurement and analytic processes can lead to useful multidisciplinary discussions and improvement strategies; the involvement of key partners influences the values of individual outcome measures. For example, medical forensic examiners collect kit evidence and law enforcement will usually be involved in submission of SAKs to the lab; coordination of those steps is essential.

Our focus here is on the measurement and use of “outcome” measures. Outcome measures represent what prosecutors, with their partners, seek to accomplish, as well as goals important to victims and the public. “Output” measures, by way of contrast, represent the quantity or volume of work done, such as “number of rape kit tests tested.” The focus in the RSVP model is not on outputs but on the *results* of those outputs—the outcomes that occur.

The suggestions here, including both the identification of performance measures and data collection procedures, are by no means definitive. They need to be tested in the field to permit identification and correction of performance measurement problems that inevitably will arise.

**TIP:** Focus on using the data as a learning tool for improving the effective and efficient handling of sexual assault cases. The primary use of the data should NOT be to assign blame but to learn how to improve practice. A focus on fault-finding is likely to lead to mishandling of the data.

This chapter of the RSVP Model discusses the following major components:

1. **Identifying the basic outcome measures for monitoring sexual assault case processing ([Section 5.2](#), [5.2A](#), and [5.2B](#)).** These metrics include the estimated number of sexual assault incidents in the community, the disposition of cases at each level of processing, the level of success in prosecutorial outcomes, and victim assessment of their experience with the criminal justice process. This section additionally identifies likely data sources for each measure. Initially, a prosecutor's office may find it feasible to implement only a subset of these measures.

The outcome measures are separated into two categories, primary and secondary outcome measures. Primary outcomes are those that will be of most interest to victims and to the community served; secondary outcomes are those most relevant to review of internal office practices.

2. **Reviewing outcome data by victim characteristics and circumstances ([Section 5.2C](#)).** This enables partners to better target practice-related improvements. Examining outcome data by such characteristics as demographic data, disability, previous victimization, etc., can add considerably to the utility of the data.
3. **Reviewing cases based on their complexity ([Section 5.3](#)).** This will provide a more accurate and fairer picture of the performance measurement information, particularly conviction rates. When conviction rates are used without accounting for case complexity, there is a disincentive to prosecute complex cases. The section below on accounting for case complexity identifies a list of factors and procedures to consider when assessing complexity.
4. **Obtaining feedback from victims on their experiences with the criminal justice process ([Section 5.4](#)).** The quality of victims' experience should be a major concern. Systematically soliciting feedback from victims through surveys may be the most feasible way to obtain reliable data, even with the difficulties involved. A well-crafted survey, properly administered, can provide data of significance for several of the outcome measures.
5. **Establishing a process for analyzing, reporting, and using the performance data ([Section 5.5](#)).** Several basic analyses, such as those suggested in this section, are likely to be very helpful to prosecutor's offices and their partners (such as law enforcement, health care, and advocacy

organizations). The raw data, by itself, has limited utility. However, when combined, using basic analytic approaches, the resulting information can be quite useful. Technology can be used to facilitate data analysis with little additional effort by prosecutors or their partners.

6. **Holding regular “How Are We Doing?” meetings with partners (on a monthly or quarterly basis) to discuss the latest sexual assault performance report ([Section 5.5.C](#)).** The meetings preferably would include representatives from all partner agencies, allowing them to identify successes and disappointments, discuss what is and is not working, and propose appropriate corrective actions to be undertaken. Progress on these actions could be considered at future meetings.

The primary use of the data generated should NOT be to assign blame but to learn how to improve. A focus on fault-finding is likely to lead to mishandling of the data and missed opportunities with partners. Maintain a focus on learning the best ways to improve for an effective and efficient response to cases of sexual assault.

**TIP:** Hold a kick-off meeting with representatives from all partner agencies to: (a) discuss the sexual assault performance management process, (b) jointly develop the site’s own logic model, (c) select the desired performance measures, and (d) develop a timeline for implementation.

## 5.2. IDENTIFYING OUTCOME MEASURES

First, this section will discuss the suggested primary outcome measures. These measures seek to capture overall progress toward the major desired outcomes. Next, it will discuss the suggested secondary outcome measures, which represent important intermediary steps toward progress in improving the primary outcomes. Likely data sources are presented for each measure. A list of all these measures is provided in [Figure 8](#).

### 5.2-A. Primary Outcome Measures

**TIP:** Ask key local government officials (such as local government leadership—e.g., mayors and county executives, district attorneys, chiefs of police) to make personal commitments of support to the effort at a preliminary joint meeting.

The following primary outcome measures apply to all jurisdictions, as they are not specific to particular

practices that may be used by partner agencies. These primary outcome measures are grouped under

statements of their objectives. Note that the *data* found for most of these measures can be significantly affected by the activities of more than one partner.

***Objective: To reduce the number of sexual assaults and to increase rate of reporting (Measures 1, 2, 3, and 4).***

1. Total number and percentage of sexual assaults, both reported and unreported. This is likely to be the most powerful outcome data *but measurement with any degree of accuracy will most likely require use of either a communitywide survey or national survey providing reliable data at the community level, conducted on a regular basis and including questions specific to sexual assault.* Unfortunately, few communities are likely to have such data. If such data becomes available, the percentage of cases reported would be derived from the survey. (Statisticians would likely want to adjust this figure based on community demographic data available from national surveys.) The number of sexual assaults would be estimated by multiplying the percent derived from the survey by the estimated population of the community. (For example, if the percentage is 24 percent and there are 10,000 people in the adult population, the number is 2,400:  $.24 \times 10,000 = 2,400$ ). These would be rough estimates.

**Figure 8**

List of Outcome Measures	
Primary Outcome Measures	
1.	Total number and percentage of sexual assaults, both reported and unreported.
	1a. Number and percentage of assaults unreported to any agency, public or private.
2.	Number and percentage of sexual assault cases reported to law enforcement, including police departments, sheriff's agencies, and campus/school police.
3.	Number and percentage of sexual assault cases reported by victims to a health or victim service agency, public or private, but not to law enforcement.
4.	Total number of known victims. This is the sum of the number of victims who reported to law enforcement (Measure 2) and the number who had reported the assault to another agency but NOT to law enforcement (Measure 3).
5.	Number and percentage of reported sexual assault cases not referred by law enforcement to the prosecutor's office.
6.	Number and percentage of cases declined by the prosecutor.
7.	Total number and percentage of cases declined, whether by law enforcement or the prosecutor.
8.	Number of persons charged with sexual assault and percentage convicted of that charge (the "conviction rate").
9.	Number and percentage of cases accepted for prosecution with: (a) fully successful outcomes; (b) partially successful outcomes; and (c) fully unsuccessful outcomes.
	9a. Number and percentage of cases rated as resolved satisfactorily by plea.
10.	Percentage of victims who rated their overall experience with the sexual assault case handling as either good or excellent.
11.	Percentage of cases in which the victim was threatened, <i>while the case was pending</i> , by the offender or the offender's allies.
	11a. Threat reported before the conclusion of the case.
	11b. Threat not reported until after the conclusion of the case.
12.	Percentage of cases in which the victim reported being threatened by the offender or the offender's allies, <i>after case disposition</i> .
13.	Ratings of the overall performance of the prosecution of sexual assault cases as either good or excellent.
	13a. Number and percentage of judges who rated the overall performance of the prosecution of sexual assault cases as either good or excellent.

13b. Number and percentage of law enforcement who rated the overall performance of the prosecution of sexual assault cases as either good or excellent.

13c. Number and percentage of advocates who rated the overall performance of the prosecution of sexual assault cases as either good or excellent.

### **Secondary Outcome Measures**

**14.** Number of cases with victims or witnesses who failed to appear for trial.

**15.** Average case processing time from initial report to arrest to case resolution/disposition; and/or number and percentage of cases with delays.

**16.** Number and percentage of cases in which: findings from rape kits were not available in time to be useful for investigatory or prosecutorial purposes; kits were mishandled; or kits were lost.

**17.** Number and percentage of cases in which the forensic lab required over “Y” days to provide its findings; and/or average lab processing time.

**18.** Percentage of cases rated satisfactory or fully satisfactory by case reviews of each best practice.

**19.** Victim ratings of each quality-of-service element with respect to the victim’s experience with medical forensic examiners, responding law enforcement officers, detectives/investigators, prosecutors, and victim advocates.

This outcome measure is included in the RSVP Model because it likely represents the ultimate outcome information sought. While this measure may be impossible to obtain initially, additional sources of data may become available in the future, eventually making this measure feasible. Findings from national surveys and special one-time locality surveys may provide rough indicators, but will be less than useful for assessing changes in incidence that might occur following the introduction of new practices or policies addressing response to sexual assault.

Likely data source(s): The estimate would likely require surveying a (large) sample of adults, with carefully crafted questions and a very specific definition of sexual assault. The most feasible approach might be to add a small number of questions to a community survey already in use, which would greatly reduce the cost of data collection. Another cost-effective option would be to collect such information every other year, or even every third year, though the data would be less timely. With successive surveys, respondents would be asked about sexual assaults occurring during the period since the previous survey.

1a: Number and percentage of assaults unreported to any agency, public or private.

Likely data source: These estimates would be obtained from the survey identified under outcome measurement 1.

2. Number and percentage of sexual assault cases reported to law enforcement, including police departments, sheriff's agencies, and campus/school police. These numbers represent the measure that has commonly been used, in the absence of the above-mentioned population survey data, to indicate the prevalence of sexual assault in a community. The percentage refers to the total number of reports, divided by the most current estimate of the community's adult population (yielding a per capita reported sexual assault rate).

Likely data source: The number of assaults reported to police is available from police records. For the percentage measure, the most current community adult population estimate is likely to be available from census surveys or from the planning department.

3. Number and percentage of sexual assault cases reported by victims to a health or victim service agency, public or private, but not to law enforcement. Such cases would include those in which the



victim requested a sexual assault medical forensic exam at the hospital but declined to report to law enforcement. This measure preferably should be broken out by reasons for declining to report (if recorded by the medical forensic examiner), which would assist in targeting improvement actions. The percentage is calculated by dividing the number of cases in which victims indicated they would not report the assault to the police, by the sum of this number plus the number of cases that were reported to law enforcement (Measure 2). “No reason given” would be one of the possible response options.

Likely data source: The number of sexual assault incidents and number of assaults in which the victim declines to report to the police are not commonly tracked by health or victim service organizations. To use this measure, the site will need to set up a process for routinely obtaining this information from partner agencies in a way that does not compromise victims’ identities. The only data needed for each reporting period here are the number of assaults reported only to medical or victim service agencies and subtotals of the reasons for declining to report to law enforcement. Personal identifying information is not needed.

4. Total number of known victims. This is the sum of the number of victims who reported to law enforcement (Measure 2) and the number who had reported the assault to another agency but NOT to law enforcement (Measure 3). This number may include some double-counting attributable to victims who initially decline to report to law enforcement but later decide to report. When such cases are known to law enforcement, their number should be deducted. When outcome measure 1 is not available, *this may be the best available estimate of the prevalence of sexual assault in the community.* (Note that this measure does not include those incidents for which victims did not report to any of the partner organizations.)

Likely data source: See sources under Measures 2 and 3.

***Objective: To increase the number and percentage of cases accepted by: (a) law enforcement; and (b) the prosecutor’s office (Measures 5, 6, and 7).***

5. Number and percentage of reported sexual assault cases not referred by law enforcement to the prosecutor’s office. This measure can indicate the need to provide training and/or technical assistance to law enforcement, the need for better communication and coordination among partners,

etc. The percentage is calculated by dividing the number of cases not referred to the prosecutor's office by the number of sexual assault cases reported to law enforcement. This measure may be more helpful if it is broken out by reasons given for not investigating or referring a case, such as insufficient evidence, inability to disprove a claim of consent, victim declined to speak with police, etc.

Likely data source: Law enforcement records.

6. Number and percentage of cases declined by the prosecutor. The percentage is calculated by dividing the number of sexual assault cases declined by the prosecutor by the number of cases referred to the prosecutor from law enforcement. This measure can be considerably more helpful if it is broken out by reasons given for declining to prosecute, such as insufficient evidence, outside the statute of limitations, inability to locate the victim or witnesses, etc.

Likely data source: Prosecutor's office records.

7. Total number and percentage of cases declined, whether by law enforcement or the prosecutor. The percentage is calculated by dividing the total number of reported cases declined by either law enforcement or the prosecutor, by the total number of cases reported to law enforcement.

Likely data source: Law enforcement and prosecutor's office records.

***Objective: To improve the number and percentage of sexual assault offenders held accountable (Measures 8 and 9).***

8. Number of persons charged with sexual assault and percentage convicted of that charge (the "conviction rate"). This is the outcome measure most often used as the primary measure for assessing sexual assault case outcomes. A considerably more accurate and fairer assessment can be obtained by factoring in the complexity of cases (see [Section 5.3](#)). The overall conviction rate would be supplemented by tabulations of the number and percentage of convictions for each level of complexity.

Likely data source: Prosecutor's office records.

9. Number and percentage of cases accepted for prosecution with: (a) fully successful outcomes; (b) partially successful outcomes; and (c) fully unsuccessful outcomes. Conviction rates, of course, are of major importance in determining success. However, many other case resolutions also occur that indicate varying degrees of success. The conviction rate outcome does not account for cases resulting in dispositions to other charges or for lesser sentences. The conviction might be for a less serious charge (*e.g.*, attempted rape rather than forcible rape). Pleas may be accepted that involve concessions of various kinds. The success level also will likely be affected by case complexity and prosecutors' expectations of what is possible to achieve. This measure seeks to account for these factors.

Standardized operational definitions of each of the success categories will need to be developed. For example, the definition of "fully successful" would likely include guilty pleas or verdicts on the most serious sexual assault count or, in some particularly complex cases, guilty pleas or verdicts on other charges carrying lengthy prison sentences. The definition of "partially successful" might include guilty pleas or verdicts on lesser (but significant) charges. "Fully unsuccessful" might include outright acquittals in non-complex cases, guilty pleas or verdicts on petty charges (such as non-sexual misdemeanors), or no-contest pleas without meaningful penalties.

Careful definitions of each success level are needed, including consideration of the many forms of case resolution that can occur, such as the type of charge for which the defendant was ultimately convicted, length/type of sentence (including conditions), whether the conviction requires sex offender registration, and the degree of complexity of the case. The proposed measure here has three levels of case success. A site might want to vary the levels of success, based on their own needs.

Likely data source: Determination of successful outcomes will inevitably involve a degree of subjective judgment. However, such judgments should be made using objective factors, with specific definitions for each level of success.

This measure is perhaps more suitable for internal evaluations of progress within the prosecutor's office, and perhaps for multidisciplinary discussion, than for public information, at least until the prosecutor's office is satisfied with the utility and validity of its operational definitions of success and the fairness of the procedure.

(A measure of the number of cases subsequently overturned on appeal might be added. However, because convictions can be reversed for a variety of reasons, including unforeseeable changes in law, reversals might better be handled on an ad hoc basis, such as by a note on the performance report when reversals occur.)

9a. Number and percent of cases rated as resolved satisfactorily by pleas. This measure is a subset of Measure 9 and includes pleas that are considered as successful resolutions of a case. For example, a plea to the initial charge may be considered a success, whereas a plea to a reduced charge (to a non-sexual offense) might generally be considered less satisfactory, depending upon other factors. See the previous measure for considerations in determining whether the disposition by a specific plea represents a satisfactory outcome.

Likely data source: See Measure 9.

***Objective: To ensure that victim's experience is beneficial, and her/his safety and rights have been preserved (Measures 10, 11, and 12).***

10. Percentage of victims who rated their overall experience with the sexual assault case handling as either good or excellent. This measure includes the input from victims themselves, allowing us to understand their perspectives about case handling processes and the resolution of the case.

Likely data source: Surveys of victims conducted soon after disposition. See [Section 5.4](#) for more details on suggested survey content and process.

11. Percentage of cases in which the victim was threatened, *while the case was pending*, by the offender or the offender's allies, broken down as follows:

- a. Threat reported before the conclusion of the case.
- b. Threat not reported until after conclusion of the case (i.e., first reported during follow-up survey).

Likely data sources: [a] Victim statements reported to law enforcement or to any of the other partners. [b] Surveys of victims.

12. Percentage of cases in which the victim reported being threatened by the offender or the offender's allies, after case disposition. The assumption for this measurement is that the prosecutor's office continues to be concerned with the victim's safety.

Likely data source: Surveys of victims perhaps three months after case resolution.

***Objective: To maximize the quality of prosecutor performance in the litigation process (Measure 13).***

13. Ratings of the overall performance of the prosecution of sexual assault cases as either good or excellent.

Judicial, law enforcement, and advocate evaluations, while enlightening, should be reviewed with an awareness that the judiciary, law enforcement, prosecutors, and allied professionals, as well as the public, may have gaps in their understanding of sexual violence and the principles underlying the RSVP Model. Negative evaluations should be discussed to determine whether they reflect problems in the prosecution response or whether they suggest a need for partner education and training.

13a. Number and percentage of judges who rated the overall performance of the prosecution of sexual assault cases as either good or excellent.

13b. Number and percentage of law enforcement who rated the overall performance of the prosecution of sexual assault cases as either good or excellent.

13c. Number and percentage of advocates who rated the overall performance of the prosecution of sexual assault cases as either good or excellent.

Likely data source: Surveys of judges, law enforcement, and advocates responsible for criminal sexual assault cases during the reporting period. The feedback information should be confidential. This survey would likely be done on an annual basis. The respondents would be asked about the prosecution's handling of sexual assault cases *collectively*. The survey would *not* ask about individual cases or prosecutors. The respondents would be asked to evaluate specific aspects of case processing (possibly specialized to their expertise), such as victim treatment and notification, prosecutor

preparation, direct examination, cross-examination, knowledge of the law, and knowledge of the rules of evidence, as well as asked to provide suggestions for improving the handling of sexual assault cases.

## **5.2-B. Secondary Outcome Measures**

14. Number of cases with victims or witnesses who failed to appear for trial. The number will be considerably more informative if the reasons for declining to participate are sought, tallied, and documented.

Likely data source: Law enforcement and/or prosecutor's office records.

15. Average case processing time from initial report to arrest to case resolution/disposition; and/or number and percentage of cases with delays. Delays should be quantified (*e.g.*, "overdue by X days") and preferably broken down by step where the delay occurred (*e.g.*, submission of rape kit evidence, forensic testing of kit evidence and DNA analysis, receipt of lab reports, referral to prosecutor, trial delay).

Likely data source: Law enforcement and/or prosecutor's office records.

16. Number and percentage of cases in which: findings from rape kits were not available in time to be useful for investigatory or prosecutorial purposes; kits were mishandled; or kits were lost. This measure focuses on the processing time for rape kits, on the assumption that this has been a major source of case delays. This could include delays in submitting kits to labs, as well as delays at the labs or the mishandling of evidence.

Likely data source: Law enforcement and/or prosecutor's office records.

17. Number and percentage of cases in which the forensic lab required over "Y" days to provide its findings; and/or average lab processing time. Some states may have set a legal limit on the amount of time a lab has to test a kit and upload its findings into CODIS. The value of "Y" could then be that amount of time.

Likely data source: Law enforcement and/or prosecutor's office records.

18. Percentage of cases rated satisfactory or fully satisfactory by case reviews of each best practice, as outlined in the RSVP Model. It would be necessary to develop a procedure for rating the extent to which each best practice was followed and to create an algorithm for an overall rating from this set of measures. Such rating procedures are outside the scope of this document.
19. Victim ratings of each quality-of-service element with respect to the victim's experience with medical forensic examiners, responding law enforcement officers, detectives/investigators, prosecutors, and victim advocates. (These ratings are in addition to the assessment of victims' overall satisfaction, described above in the section on [Primary Outcome Measures](#).) A proposed set of quality-of-service elements is provided below. Some of these elements may be sufficiently important to consider their inclusion as part of the Primary Outcome Measures.

Likely data source: Survey of victims.

Many jurisdictions will likely find it very difficult to track all the above outcome measures, at least initially. Measures can be implemented in phases. Initially, stakeholders could determine a prioritized set of measures they would like to track first. They could then focus on implementing systems to track these data and training staff to record them. Other measures could then be added over time.

### **5.2-C. Reviewing Outcome Data by Victim Characteristics or Circumstances**

For many outcomes, the findings will be most useful if the outcomes are reported not only in aggregate but also for subgroups based on specific victim characteristics or circumstances. This additional information provides useful information as to what has worked well with particular groups and what has not worked well, perhaps suggesting the need for different approaches for different victim populations. Information pertaining to different groups also can help indicate the extent to which *equal justice issues* are present. One notable limitation is that the prosecutor's office will not have access to information pertaining to cases not reported to law enforcement.

Individual sites may decide to routinely report on only a small subset of these victim characteristics or circumstances or may wish to add others not included in this list. As long as the information on victim characteristics and circumstances are recorded, the prosecutor's office can request such tabulations on an ad hoc basis.

1. Age
2. Gender (male, female, transgender/gender non-conforming)
3. Sexual orientation
4. Race/ethnicity
5. Income group
6. Geographical location of the sexual assault (*e.g.*, rural/urban/suburban or specific locations within the jurisdiction of focus)
7. Educational level (*e.g.*, is a student; has or has not completed high school/college)
8. Disability status
9. Employment status
10. Family characteristics, such as number and age of children
11. Presence of cognitive disabilities
12. Past history of alcohol or drug use/abuse or mental health issues
13. Past criminal justice involvement (as a defendant, victim, witness)
14. Previous victim of sexual assault
15. Relationship to the offender
16. Other victim characteristics and circumstances? (This provides sites with flexibility to add characteristics and circumstances important to individual cases.)

The prosecutor's office most likely can readily access information on each performance measure for each such victim group (to the extent the data has been recorded). The data on outcome measures also can be broken down by such case factors as case complexity (see [Section 5.3](#)).

To avoid overwhelming the prosecutor's office and its partners with data, the group should select perhaps three key victim characteristics or circumstances for which outcomes on the performance measures would be regularly reported.

It is not essential that data pertaining to any specific characteristic or circumstance be available for every case. However, the number cases where the characteristic is "unknown" should be noted, to provide an indication of the accuracy and reliability of the data. Any substantial data gaps should be identified when reporting the outcome information. It is, of course, always necessary to protect personal identifying data from disclosure.



## 5.3. ACCOUNTING FOR CASE COMPLEXITY

### 5.3-A. The Issue

One foundational SAJI premise is that conviction rates are not a fair measure of a prosecutor's performance because conviction rates do not account for case complexity. Prosecutors, and their offices, do not want to be penalized for working with more complex cases that might lower their conviction rate. The use of conviction rates as a measure of success, without accounting for case complexity, creates a perverse disincentive to advance challenging, complex cases.

Another premise is that additional performance measurements, other than conviction rates, are needed to provide fair, comprehensive, and useful information, such as measurements of victim safety and satisfaction with the prosecution process (as pointed out in "Beyond Conviction Rates"<sup>288</sup>). These additional measurements will be considerably more useful to prosecutors, their partners, policymakers, researchers, and the public if they also can be adjusted to account for case complexity.

### 5.3-B. How Can Complexity be Measured?

One reasonably straightforward approach to measuring case complexity is to categorize each case by its level of complexity (such as using two, three, or four levels of complexity) and then to report success rates for each level of case complexity, in addition to reporting the success rate for all cases combined. This may be one way to help alleviate prosecutors' natural hesitancy to take on complex cases. It also provides data users with explanations for disappointing overall success rates. ("My overall prosecution success rate decreased because my cases were more complex.")

The outcome for each case should be linked to the complexity rating for that case. This yields a performance measure for each level of complexity, such as "percentage of very complex cases with successful outcomes." This percentage would be reported for each complexity level, as well as overall.

How might cases be rated for complexity?

- The simplest approach is to ask senior attorneys in the prosecutor's office to rate each case as to complexity: very complex, somewhat complex, somewhat uncomplicated, or uncomplicated. Such ratings would be subjective, thereby reducing their reliability. Not all experienced prosecutors would judge the same cases the same way. The problem of subjectivity can be somewhat alleviated by having two or even three prosecutors separately rate each case. This

approach would be strengthened by providing detailed definitions for each complexity category. The definitions could be based on the presence or absence of preselected complexity factors, such as those listed below.

- A second, more involved approach would reduce the subjectivity of the ratings (and thus reducing any perception that the ratings are biased). This approach involves developing a process for obtaining a computerized calculation of complexity for each case. A case would be evaluated for the presence or absence of specific complexity factors, such as those suggested in the list below. The total complexity rating for a case would then be grouped into two, three, or four categories, for example: very complex cases, somewhat complex cases, somewhat uncomplicated cases, or uncomplicated cases. (The second approach increases the feasibility of rating case complexity for small prosecutor's offices—which may or may not have specialized sex crimes or victims' units with multiple attorneys. The second approach allows an individual attorney to plug information about each factor into the complexity algorithm. The first approach relies on an office being sizable, and may be executed more easily in offices with specialized units.)

The computer-calculated rating system is preferable for its reduced subjectivity. Some sites, however, might want to start out with the simpler procedure and then switch to the computer-calculated procedure at a later date.

### **5.3-C. List of Proposed Complexity Factors**

Below is a list of proposed complexity factors.

The list provides a starting point for a prosecutor's office to consider. The factors are listed in random order and though it is long, more factors undoubtedly could be identified. The final set of rating factors selected by a site should be those that the prosecutor's office believes to be most significant for their site.

1. Lack of statement from the defendant.
2. Lack of DNA, especially if the offender was not known to the victim.
3. Lack of physical evidence that the victim was assaulted (e.g., clothing).
4. Lack of third-party witnesses to events or statements before, during, or after the assault.
5. Lack of rape kit evidence.
6. Lack of documented physical injury.

7. Lack of supportive testimony from medical forensic examiner.
8. Lack of other corroborating evidence.
9. Lack of use of a weapon by the offender.
10. Prior sexual relationship between the victim and offender.
11. Offender claim of consent to act.
12. Lack of participation by the victim.
13. Lack of cooperation of witnesses.
14. Victim has a history of mental health issues, alcohol/drug use/abuse, and/or commercial sexual exploitation.
15. Lack of offender history of abuse or other crimes, including felonies and misdemeanors.
16. Victim use of alcohol or drugs at time of assault.
17. Offender use of alcohol or drugs at time of assault.
18. Lack of physical resistance by the victim.
19. Delayed report.
20. Significant forensic and/or digital content in case (requiring major effort and cost).
21. Prominent status of offender or offender's connections/family.
22. Significant political/media attention pressuring prosecution.
23. Unusual elements with which prosecutors have little or no experience.
24. Involvement of multiple offenders.
25. Consensual interactions between offender and victim at, or near, the time of the assault.
26. Victim or offender has a disability.
27. Significant difficulties understanding the victim's or offender's speech.
28. Other important factors? (This option allows additional factors important to individual cases.)

#### **5.3-D. Procedure for Calculation of the Summary Complexity Ratings**

A basic procedure for computing case complexity ratings is described as follows.

- a. The prosecutor's office selects a set of case complexity factors, which would be listed on a form. The list of factors suggested above can provide a starting point. For each case, the applicability/inapplicability of each factor would be noted on the form.

For a more precise evaluation, should the office choose to conduct a more sensitive measurement, each factor could be valued according to its significance in a particular case or

as a part of the overall rating system. One such variation would ask raters to estimate the extent to which a factor was applicable to a case on a scale of 1 to 5, rather than only a yes (applicable) or no (inapplicable). Alternatively, each factor could itself be given a range of values based on the degree to which the factor had occurred for a case. For example, witnesses who are unable to participate could be rated as to whether this factor posed a major problem, minor problem, or no problem. A second variation would apply a weight to each factor, with more complicating factors weighted more heavily than others, and the same weight applied across all cases. In this variation, the weighing thus would be built into the process, rather than in each individual case. Weights would be developed by sites and in collaboration with technical assistance and local community partners.

Some sites might feel more comfortable developing a complexity rating procedure with this level of added nuance because of the potential value it affords by accounting for more detail. [Figure 9](#) provides an example of these options for a subset of complicating factors. The first column names a subset of five factors. The second column illustrates a system that would simply rate the applicability/inapplicability of each factor; that is, each factor, if applicable, would get a score of 1 with a total possible case complexity score of 5. The third column illustrates a system where an attorney would rate the extent to which each factor matters for particular cases on a scale from 1-5. The total possible case complexity score would be 25. The last column illustrates a system where factors would be consistently weighted across all cases, with the size of the weight predetermined by sites (and represented in each row). The total possible complexity score for this example using this system would be 7.5. The Figure shows a number for each factor using all three systems for illustrative purposes; however, attorneys may rate a particular factor as zero, meaning not applicable to the case, for the first and third system.

- b. The prosecutor's office determines the cut-off points—the number of complexity factors that need to be present for a case to be categorized into specific levels of complexity. For example, the prosecutor's office might use three categories of complexity levels: Highly Complex, Moderately Complex, and Not Complex. The ranges for each category might be: Not Complex = 0-3 factors; Moderately Complex = 4-6 factors; and Very Complex = 7 or more factors. The ranges for these categories would be different if offices choose to use ratings or weights when scoring a case for complexity.

- c. The prosecutor's office also establishes a procedure for obtaining the information, determining who will make the complexity ratings and the time at which ratings should be determined.

For example, the unit chief might be assigned the responsibility for determining ratings for all cases disposed during the previous month.

Next, calculate the "successful" percentage (and/or "unsuccessful" percentage) of cases resolved during the reporting period that fell into each level of complexity. (The determination of level of case success is discussed above in the [Primary Outcome Measures, Section 5.2-A](#)). This would provide, for the reporting period, outcome measures in the form: "Percentage of moderately complex cases resolved with satisfactory outcomes."

The computer also could provide outcome values for each victim characteristic or circumstance group, such as "Percentage of moderately complex cases, involving a teenaged victim, with satisfactory outcomes."

**Figure 9****Methodology Comparison: Case Complexity Factors for a Prosecutor's Office**

<b>Complicating Factor</b>	<b>Factors weighted the same</b>	<b>Rating Factors on a scale of 1-5</b>	<b>Weighting factors based extent of complexity</b>
Lack of rape kit evidence	1	A rating from 1-5	1
Prior sexual relationship between victim and offender	1	A rating from 1-5	1.5
Victim use of alcohol or drugs	1	A rating from 1-5	1.5
Lack of participation by the victim	1	A rating from 1-5	2
Delayed report	1	A rating from 1-5	1.5
<b>Total Possible Case Complexity Score</b>	<b>5</b>	<b>25</b>	<b>7.5</b>

- d. When should these case complexity factors be rated? Case complexity could be evaluated: (a) early in the case (e.g., at the time of charging); and (b) after the case is resolved. Certain offices may have varying opinions about the utility of case complexity ratings at each stage of the case, and these opinions should be weighed when determining such timing. For example, early ratings may help the prosecutor estimate the amount of effort and resources the case may require, and encourage the prosecutor and other team members to identify ways to meet the challenges posed by the identified complexity factors. The risk is that such a determination early on may bias the process in favor of a less than optimal disposition because of the perceived difficulty of securing a conviction at trial. Offices might wish to consider not disclosing early complexity ratings until after the case is resolved.

Rating complexity after the case has been resolved will provide a more accurate picture of the complexity factors. The post-resolution case review could encourage prosecutors to identify challenges in future cases as a way to improve their practices.

Ratings at both points—early in the case and after disposition, may be optimal, when feasible. Conducting both early and post-disposition assessments may yield important information, such as how much use of an expert witness aided in securing a favorable outcome, and may challenge the prosecutor’s own pre-conceived ideas about the case. However, each rating of the complexity factors will take extra prosecutor time.

A site might wish to seek some outside assistance to help set up the procedures. Faculty or students from nearby universities and community colleges might be available to help. Once the process has been established, implementing it can become a routine task.

Uniform definitions of complexity factors and complexity levels across prosecution offices would be ideal, facilitating comparisons among prosecutor offices to identify successful (“best”) practices. However, this is unlikely to be immediately feasible. It may be better, at least initially, for each community to select its own definitions and parameters for rating case complexity.

## **5.4. OBTAINING FEEDBACK AND OUTCOME INFORMATION FROM VICTIMS**

This Model proposes another major form of data collection activity—one seldom used at present in most prosecution offices: systematically obtaining feedback from victims on their perceptions of the quality of their experience with various components of the criminal justice process. The victim survey findings can be combined with the outcome data from agency records to provide all partners: (a) a comprehensive picture of progress; (b) problem areas to be addressed; and (c) the extent to which problems are lessening or worsening.

Whatever the final outcome of individual cases, victim satisfaction with the level of respect, dedication, and competence on the part of the professionals handling their cases represents an important outcome for the prosecutor’s office and its partners. In addition, the feedback process itself may be helpful to sexual assault victims by affording them the opportunity to express their feelings and concerns about the

process. Past research has shown that victims who participated in surveys about their assault found the survey experience to be a neutral or positive one, with a small minority reporting it was not a positive experience. Further, a majority of victims reported that had they known in advance what the experience of completing the survey would be like, they still would have agreed to do it.<sup>289</sup>

This victim survey procedure is proposed regardless of whether a jurisdiction is participating in an in-depth evaluation of its practices. In-depth evaluations would likely require a longer survey or interview, different sampling strategies, and a longer follow-up process than that proposed here.

The survey proposed here would be used to provide regular, ongoing, performance information. It should be short, both to reduce the burden on victims (and on the prosecutor's office) and to maximize the likelihood that victims will complete it.

The first part of this section suggests the content of the questions to ask victims. The data from these questions become outcome measures. The second part of the section provides basic guidance on survey design and procedures.

#### **5.4-A. Proposed Topics for Victim Questions on the Perceived Quality of their Experience**

1. Feelings of safety, throughout the process and since case resolution.
2. Threats or intimidation by the offender or the offender's allies, throughout the process and since case resolution.
3. Interactions the victim had with the various agencies or organizations (law enforcement, prosecution, healthcare, and victim service).
4. Timeliness—estimate of the time it took, after the assault was reported, until the victim was provided with: access to medical care and sexual assault medical forensic exams; access to information on the process; continued notifications of case status. In addition, ask about victim perception of the timeliness of various stages of the prosecution, from reporting through final disposition.
5. Whether the victim received continued notification and information about the process, and knew whom to call with any questions.
6. Whether the victim was able to easily obtain answers to any questions or concerns.



7. Supportiveness/respectfulness of key professionals with whom the victim came into contact: responding law enforcement officers, medical forensic examiners, detectives/investigators, prosecutors, community-based advocates, victim/witness advocates, etc.
8. Quality/helpfulness of the various types of assistance the victim received, such as: crisis intervention, emergency housing, physical health care, mental health care, transportation, emotional support, legal advocacy, medical advocacy, trial preparation, etc.
9. Clarity and helpfulness of information provided to the victim, including information and assistance provided in the victim's primary language.

At the end of the survey:

10. Explanations of any negative responses. These narrative responses can provide useful clues as to what corrective actions are needed, particularly where multiple victims identify similar problems.
11. Suggestions for improving the system/services. The suggestions can provide useful clues as to what corrective actions are needed.

For surveys conducted a few months *after* case resolution:

12. (a) satisfaction with the outcome; (b) feeling of safety since case resolution; (c) adequacy of the protective order (if applicable); (d) adequacy of the system's help in obtaining victim compensation; and [e] threats or intimidation by the offender or the offender's allies, throughout the process and since case resolution. (Note that some victims may feel unable/unwilling to revisit the experience months after the criminal case is resolved.)

## **5.4-B. Victim Survey Procedures**

Suggestions about the survey procedure are below. An example of a basic, very brief, questionnaire is provided in [Appendix L](#). Jurisdictions looking to develop victim surveys should contact the SAJI technical assistance partners.

### *5.4-B-1. Survey Design*

- Keep the survey short to reduce respondent burden and encourage responses.
- Elicit ratings from the victims on questions that address issues of interest.
- Elicit the basis for any negative ratings.

- Include a final question that asks victims for their suggestions for improving the process. These responses can be quite informative and can stimulate additional efforts to improve.
- Keep the wording of the questions clear; focus on only one topic per question.
- Make available surveys in languages other than English, if appropriate to the jurisdiction. Victims with limited literacy may need to be interviewed in person or via telephone (possibly by a victim advocate; preferably not by a law enforcement official or staff from the prosecutor's office).
- Consider what the performance measures for the survey responses might look like: "Percentage of victims that responded favorably (or unfavorably) to 'X'". The response categories might include three or four response options, such as scales ranging from fully/very satisfactory to fully/very unsatisfactory; determine where the cutoff will be for "favorable" versus "unfavorable" responses.

#### 5.4-B-2. Survey Process

- Ask each victim to complete a survey shortly after the time the case is resolved. Resolved cases includes any dispositional outcome (*e.g.*, sentencing after guilty plea or trial; trial verdict of not guilty). Ideally, victims would also be re-surveyed about 6-12 months thereafter, to assess the quality of post-resolution services and to reassess the overall experience after some time has passed.
- Guarantee and protect respondent anonymity and/or confidentiality.
- Increase victim participation by working with victim advocates to encourage survey completion. Advocates also could be asked to help administer the survey to victims, with the prosecutor's office bearing the cost of their assistance. Advocacy assistance also should be sought in designing survey procedures and content, to ensure that the procedure and content is victim-centered and trauma-informed; the findings should prove helpful to advocates, as well.
- Encourage victim participation in the survey by explaining that this is an opportunity for them to confidentially express any complaints or lingering concerns about the process or their experience and that the results will be used to improve the experience for future victims.

**TIP:** Emphasize to victims the importance of completing the short survey for improving the handling of future sexual assault cases. It would be good if 40% or more of victims provide responses. It is better than most expensive national polls.

- Increase response rates by:
  - Taking advantage of access to reasonably recent contact information probably in the possession of the prosecutor's office;
  - Notifying each victim, before the case is closed, that they will receive the survey and asking for their participation, along with their latest contact information, including contact information of friends or family likely to know how to get in touch with them;
  - Making the survey brief, easy to understand, and attractively presented;
  - Presenting the prospect of a later, follow-up survey as an after-care service to learn how the victim is doing and whether additional help is needed. (This latter approach is likely to be useful to advocates, perhaps increasing their interest in assisting with the administration of the survey.)
  - Sending out reminders via mail, email, or phone (calls or text); whichever the victim prefers.
- Access help if needed. Setting up the survey process may require a some outside assistance (*e.g.*, to review wording of questions and setting up the tabulation procedures). Faculty or students from nearby universities and community colleges might be available to help. Once the survey process has been established, conducting the surveys can become a routine task. However, for data quality control, ask an outside expert to review the survey process at regular intervals.
- Offer multiple ways to complete the survey. The survey administration method will likely need to be a mixed-mode approach, such as use of a combination of email, regular mail, online, and telephone interviews. Ask victims their preferred mode of survey administration when explaining that they will be contacted. Remember that victims have the right to decline to participate in the survey, and those wishes should be respected. Lack of participation should not affect the ability of victims to access and receive help and services.
- Ask *all* victims for their participation in the survey, rather than only a sample. Certain categories of victim populations may be unavailable for survey, such as those who cannot be located (*e.g.*, migrants, homeless).
- Offer an option for victims to participate in a more in-depth conversation about their experiences. If victims agree, advocates could administer a semi-structured interview guide designed to obtain more detailed feedback about victims' experiences and suggestions for improvement. If victims choose this option, it would be good to consider some type of

compensation for their time (*e.g.*, a gift card, transportation and child care if the interview is conducted in person, refreshments, etc.).

The surveys can be made even more useful to prosecutors' offices and their partners by adding a few questions, each reporting period, on a special and/or timely topic of interest for which victim feedback would be helpful.

## **5.5. ESTABLISHING A BASIC ANALYSIS AND REPORTING PROCESS TO MAXIMIZE USEFULNESS**

Raw performance measurement data are necessary ingredients, but without processing, they are unlikely to provide much useful information for those managing or handling sexual assault cases. Analysis of the data, and reporting the findings, are what transforms performance measurement into performance management.

This section suggests basic analyses that can likely be undertaken, reported, and profitably used by most sites. Investigation into the underlying causes of problematic responses would, however, require more in-depth studies and evaluations.

### **5.5-A. Basic Analysis Options**

The focus in this Model is on reporting basic, straightforward analysis—something that prosecutor's offices (or their partners) can do without advanced statistical skills. *The primary purpose is to help prosecutor's offices and their partners to continually improve the effectiveness and efficiency of their response to sexual assault.*

Computer technology can aid prosecutor's offices and their partners considerably in interpreting performance information, at minimal cost in time and resources. The prosecutor's office and its partners should be able to identify the extent to which progress has or has not been made—which practices are working well and which are not, and for whom. The prosecutor's office and its partners should be better able to understand and compare progress for various victim groups and for various types of cases.

The data will not tell *why* outcome values have changed, or what needs to be done to improve outcomes. To obtain such information would require in-depth program evaluations, involving more advanced data collection and mathematical techniques. However, basic performance information can provide useful clues—especially if basic analysis steps, drawing from program evaluation, are used. Each basic analysis procedure helps identify patterns, suggesting issues that the partners need to address. The outcome measurement and analysis process also will help to identify potential training and technical assistance needs.

Performance reports should be prepared and reported at regular intervals, such as monthly, quarterly, or annually. (The frequency of reporting may depend on the size of the office. Those with low caseloads may decide to do the analysis less frequently.) The process should be able to provide the latest performance data *at any time, as specific issues arise*.

Below are basic analysis steps likely to be especially useful for identifying problems and guiding program improvements.

1. Examine the latest performance report providing data on each performance measure and identify outcome values that are unexpected, whether the values are disappointing or surprisingly good. These signal the need for attention by the prosecutor’s office or its partners.
2. Compare outcomes for victim groups. This will identify victim groups for whom current practices are working well and those for whom they are not working well, suggesting that practices might need revision. [Figure 10](#) illustrates what such a report might look like. The top three sections of the Figure display one outcome measure for three different victim demographic groups—age, gender, and race/ethnicity.
3. Compare outcome values over time. This will indicate progress, setbacks, and trends. [Figure 11](#) illustrates a simple, basic reporting format that would display the latest data on outcome measures over time. The measures can be organized by particular goals that the prosecutor and partner agencies set and aim to achieve.

4. Compare outcomes for different levels of case complexity. This information will enable prosecutors and others to more realistically and fairly interpret case outcomes. [Figure 9](#) includes an example of a tabulation based on case complexity.
5. Compare the outcomes of cases having different characteristics or using different practices. This comparison can help to assess the relative effectiveness of different practices, such as the implementation of new practices suggested in the RSVP Model. For example, a site might wish to test a different way of processing rape kits (such as submitting kits to private versus public labs) to improve the timeliness of test results. Or the site might want to test the benefit of requiring multiple reviews before a case is cleared by law enforcement as “unfounded.”

[Figure 10](#) illustrates how such comparisons can be observed. The exhibit includes an example of outcomes for one case characteristic (whether the victim knew the offender) and one example capturing a part of the case process (which prosecutor was responsible for the case).

If a site chooses to calculate outcomes by prosecutor, such information should be restricted for internal use only, as it may relate to personnel issues. Remember, any individual prosecutor’s overall case success rate would more appropriately and fairly be considered in context of the complexity of that prosecutor’s caseload, as discussed in [Section 5.3](#).

6. Examine reasons for declining cases documented as part of some of the outcome measurements. The reasons cases did not move forward can be reviewed for patterns (and accuracy) for both the total number of declinations by the prosecutor and the percentage of cases reported to law enforcement but not forwarded to the prosecutor. Examine victims’ suggestions for improving sexual assault response obtained from victim surveys. Victim surveys (and semi-structured interviews, if conducted) can be reviewed for patterns showing where in the process corrective action might be considered. This information could be summarized and discussed with the multidisciplinary team partners for next steps.
7. Assign someone who likes numbers to help develop and implement the analysis process. This would include examination of each performance report, summarizing the findings for the prosecutor’s office and its partners, and highlighting performance results that appear to warrant further attention.

The data calculations for the performance measurement comparisons described above can be obtained using spreadsheet software in which the relevant data on each case are entered and desired tabulations are made. The software can be programmed to format and fill out the tables.

### **5.5-B. Reporting Results**

Performance information should be reported to staff, partners, and the public with reports that convey the essential information clearly, with descriptive labeling, and in an attractive format that is uncrowded, easy to read, and makes use of helpful visuals (charts or graphs). Basic desktop publishing software can be used to create attractive, readable reports.

In the interest of transparency, most of the performance information described in the RSVP model should be reportable to the public. Information about individual cases, of course, continues to be subject to confidentiality. Be sure that the performance information reported does not prematurely and inappropriately release information that might jeopardize individual cases. This might be of greater concern to smaller offices with smaller caseloads, where someone might easily identify a particular case based on specific pieces of data. Such identification might jeopardize the confidentiality of victims who participate in the survey or, if a case is still in process, particular information may lead to a disincentive to proceed with the case.

### **5.5-C. Using Performance Information**

All this work will not be worth the effort if it is not used to help improve the response to sexual assault. As explained throughout this chapter, the findings from the data collection, analysis, and reporting can be used to:

- Help identify progress and trends;
- Identify problem areas that need attention and/or corrective action;
- Assess outcomes that follow from changes in sexual assault case processing policies and practices;
- Encourage coordination with partners;
- Help develop, and subsequently justify, budget and staffing recommendations; and
- Provide data for use in future in-depth studies of policies and practices, such as program evaluations.

An approach that originated in New York City's police department (under the name "CompStat") appears highly appropriate for sexual assault case handling:

Hold regular (such as monthly or quarterly) "How Are We Doing?" meetings with partners to discuss the latest sexual assault performance report. (The performance reports would include the values for all the available outcome measurements.) The meetings preferably would include representatives from all partner agencies and would: (a) identify successes and disappointments; (b) discuss why they had occurred; (c) identify corrective actions needed; (d) by whom; and (e) by when. Progress on these actions should be monitored at future meetings.





# **Department of Defense (DoD) Policy Regarding Expedited Transfers of Service Members who File an Unrestricted Report of Sexual Assault and Related Statutory Provisions**

U.S. Department of Defense Instruction (DoDI) 6495.02, “Sexual Assault Prevention and Response (SAPR) Program Procedures,” para. 4 (o), (March 28, 2013) (Ch. 3, May 24, 2017).

o. Service members who file an Unrestricted Report of sexual assault shall be informed by the SARC or SAPR VA at the time of making the report, or as soon as practicable, of the option to request an Expedited Transfer, in accordance with the procedures for commanders in Enclosure 5 of this Instruction. A Service member may request:

(1) A temporary or permanent Expedited Transfer from their assigned command or installation to a different command or installation; or

(2) A temporary or permanent Expedited Transfer to a different location within their assigned command or installation.

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DoDI 6495.02 enclosure 5 (March 28, 2013) (Ch. 3, May 24, 2017).

## **ENCLOSURE 5**

### **COMMANDER AND MANAGEMENT SAPR PROCEDURES**

#### **6. EXPEDITED VICTIM TRANSFER REQUESTS**

a. Any threat to life or safety of a Service member shall be immediately reported to command and DoD law enforcement authorities (see Glossary) and a request to transfer the victim under these circumstances will be handled in accordance with established Service regulations.

(1) Safety issues are NOT handled through an Expedited Transfer. They are handled through a fast safety move following applicable DoD and Service-specific procedures. (An Expedited Transfer may take longer than a safety move.)

(2) The intent behind the Expedited Transfer policy in this enclosure is to address situations where a victim feels safe, but uncomfortable. An example of where a victim feels uncomfortable is where a victim may be experiencing ostracism and retaliation. The intent behind the Expedited Transfer policy is to assist in the victim’s recovery by moving the victim to a new location, where no one knows of the sexual assault.

b. Service members who file an Unrestricted Report of sexual assault shall be informed by

the SARC, SAPR VA, or the Service member's commanding officer (CO), or civilian supervisor equivalent (if applicable), at the time of making the report, or as soon as practicable, of the option to request a temporary or permanent Expedited Transfer from their assigned command or installation, or to a different location within their assigned command or installation in accordance with section 673 of 10 U.S.C. The Service members shall initiate the transfer request and submit the request to their COs. The CO shall document the date and time the request is received.

(1) A presumption shall be established in favor of transferring a Service member (who initiated the transfer request) following a credible report (see Glossary) of sexual assault. The CO, or the appropriate approving authority, shall make a credible report determination at the time the expedited request is made after considering the advice of the supporting judge advocate, or other legal advisor concerned, and the available evidence based on an MCIO's investigation's information (if available). If the Expedited Transfer is disapproved because there was no credible report, the grounds on which it was disapproved must be documented. A commander can always transfer a victim on other grounds, e.g., on humanitarian grounds, through a process outside of the Expedited Transfer process.

(2) Expedited Transfers of Service members who report that they are victims of sexual assault shall be limited to sexual assault offenses reported in the form of an Unrestricted Report.

(a) Sexual assault against adults is defined in the Glossary of DoD Directive 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," January 23, 2012, as amended, and includes rape and sexual assault in violation of Article 120 of the UCMJ (section 920 of 10 U.S.C.), and forcible sodomy in violation of Article 125 of the UCMJ (section 925 of 10 U.S.C.). This Instruction does not address victims covered under FAP.

(b) If the Service member files a Restricted Report in accordance with DoD Directive 6495.01, and requests an Expedited Transfer, the Service member must affirmatively change his or her reporting option to Unrestricted Reporting on the DD Form 2910, in order to be eligible for an Expedited Transfer.

(3) When the alleged perpetrator is the commander or otherwise in the victim's chain of command, the SARC shall inform such victims of the opportunity to go outside the chain of command to report the offense to MCIOs, other commanding officers or an Inspector General. Victims shall be informed that they can also seek assistance from a legal assistance attorney, the DoD Safe Helpline, or an SVC/VLC. The relationship between an SVC/VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client, in accordance with section 1044e of 10 U.S.C.

(4) The CO shall expeditiously process a transfer request from a command or installation, or to a different location within the command or installation. The CO shall request and take into consideration the Service member's input before making a decision involving a temporary or permanent transfer and the location of the transfer. If approved, the transfer orders shall also include the Service member's dependents (if accompanied) or military spouse (if the military spouse consents). In most circumstances, transfers to a different installation should be completed within 30 calendar days from the date the transfer is approved. Transfers to a new

duty location that do not require a change of station move should be completed within 1 week from the date the transfer is approved.

(5) The CO must approve or disapprove a Service member's request for a permanent change of station (PCS), permanent change of assignment (PCA), or unit transfer within 72 hours from receipt of the Service member's request. The decision to approve the request shall be immediately forwarded to the designated activity that processes PCS, PCA, or unit transfers (see Glossary

(6) If the Service member's transfer request is disapproved by the CO, the Service member shall be given the opportunity to request review by the first G/FO in the chain of command of the member, or an SES equivalent (if applicable). The decision to approve or disapprove the request for transfer must be made within 72 hours of submission of the request for review. If a civilian SES equivalent reviewer approves the transfer, the Secretary of the Military Department concerned shall process and issue orders for the transfer. All transfer requests must be reported in the Services' and NGB Annual Program Review submission; to include all disapproved transfer requests, and the reason for disapproval.

(7) Military Departments shall make every reasonable effort to minimize disruption to the normal career progression of a Service member who reports that he or she is a victim of a sexual assault.

(8) Expedited Transfer procedures require that a CO or the appropriate approving authority make a determination and provide his or her reasons and justification on the transfer of a Service member based on a credible report of sexual assault. A CO shall consider:

(a) The Service member's reasons for the request.

(b) Potential transfer of the alleged offender instead of the Service member requesting the transfer.

1. . Commanders have the authority to make a timely determination and to take action regarding whether a Service member who is alleged to have committed or attempted to commit a sexual assault offense should be temporarily reassigned or removed from a position of authority or from an assignment. This reassignment or removal must be taken not as a punitive measure, but solely for the purpose of maintaining good order and discipline within the member's unit in accordance with section 674 of 10 U.S.C.

2. This determination may be made at any time after receipt of notification of an Unrestricted Report of a sexual assault that identifies the Service member as an alleged perpetrator.

(c) Nature and circumstances of the offense.

(d) Whether a temporary transfer would meet the Service member's needs and the operational needs of the unit.

- (e) Training status of the Service member requesting the transfer.
- (f) Availability of positions within other units on the installation.
- (g) Status of the investigation and potential impact on the investigation and future disposition of the offense, after consultation with the investigating MCIOs.
- (h) Location of the alleged offender.
- (i) Alleged offender's status (Service member or civilian).
- (j) Other pertinent circumstances or facts.

(9) Service members requesting the transfer shall be informed that they may have to return for the prosecution of the case, if the determination is made that prosecution is the appropriate action.

(10) Commanders shall directly counsel the Service member to ensure that he or she is fully informed regarding:

- (a) Reasonably foreseeable career impacts.
- (b) The potential impact of the transfer or reassignment on the investigation and case disposition or the initiation of other adverse action against the alleged offender.
- (c) The effect on bonus recoupment, if any.
- (d) Other possible consequences of granting the request.

(11) When an Expedited Transfer is approved, notification from the losing commander to the gaining commander will depend on whether there is an open case and continuation of services. If there is neither an open case nor continuation of services, no other action is needed. If there is an open case and services are requested, then notification to the gaining commander will occur to facilitate the investigation and access to services. This procedure applies to any sexual assault victim move (e.g., permanent change of station either on or before the member's normal rotation date, temporary duty inside or out of local area).

(a) When an Expedited Transfer is approved, the losing commander will NOT inform the gaining commander of the sexual assault incident unless one of the following applies:

- 1. Active criminal investigation.
- 2. Active legal proceeding.
- 3. Ongoing victim healthcare (medical or mental health) needs that are directly related to the sexual assault.

4. Ongoing monthly CMG oversight involving the victim or

5. Active SAPR victim support services.

(b) When an Expedited Transfer is approved, the losing commander will inform the gaining commander of the inbound Expedited Transfer if any of the circumstances in paragraphs 5.b.(11)(a) 1.-4. are occurring. The losing commander will limit the information given to objective facts about victim care provided, status of open investigations, and the status of ongoing legal proceedings in order to provide the gaining commander with some context for victim behavior and to facilitate the victim's access to advocacy, healthcare, MCIOs, and legal counsel.

1. . SARC or SAPR VA case documents will not be transferred to the gaining SARC without consent from the victim.

2. The receiving commander will adopt processes to assure strict confidentiality. Only the immediate commander of the victim will be notified. The immediate commander may share the notification with the senior enlisted advisor, if deemed necessary to support the victim. All information shall be kept confidential to the extent authorized by law. Additional personnel will be notified by the commander only if they have direct input to the monthly ~~Case Management Group~~ *CMG* meeting. Every attempt must be made to limit access to the information that a victim has been transferred into the unit as a result of a sexual assault report.

(12) If a victim transfers from the installation, then the processes in Table 2 apply as appropriate.

Table 2. Victim Transfer Processes

IF	THEN
<ul style="list-style-type: none"> <li>• The victim does NOT seek continued services of a SARC or SAPR VA at the new location, and</li> <li>• The investigation or legal proceeding is ongoing at the original installation:</li> </ul>	<ul style="list-style-type: none"> <li>• The CMG responsibility remains with the original installation's CMG chair.</li> <li>• The victim will be asked if she or he would like to receive the monthly update from the CMG meetings.</li> <li>• If the victim wants the CMG updates, then the victim's new commander will participate in person or call in to the CMG meetings and this call in will be documented in the minutes of the CMG.</li> <li>• The new commander will provide the victim a monthly update of her or his case within 72 hours of the last CMG.</li> </ul>
<ul style="list-style-type: none"> <li>• The victim DOES seek SAPR services at the new location:</li> </ul>	<ul style="list-style-type: none"> <li>• The advocacy responsibility transfers to the receiving SARC at the victim's new installation (if the victim consents to seek SAPR services at new location), and then the CMG responsibility may transfer to the new location.</li> <li>• If the CMG does transfer to the location of the victim, then the MCIOs at the original installation (if there is an ongoing investigation) and the legal officer at the original installation (if there are ongoing legal proceedings) are required to call in to the CMG. This MCIO and legal officer call-in will be documented in the CMG notes</li> </ul>
<ul style="list-style-type: none"> <li>• The victim seeks SAPR services at the new location, and</li> <li>• The Military Service determines that the CMG should stay at the original installation:</li> </ul>	<ul style="list-style-type: none"> <li>• The SARC at the new location must call in to the CMG meeting at the original location to report on victim services and any safety or retaliation-related issues. This SARC call-in will be documented in the CMG notes.</li> <li>• The victim's new commander must also call in to the CMG meeting and must provide the victim a monthly update of her or his case within 72 hours of the last CMG.</li> </ul>

(13) Require that Expedited Transfer procedures for Reserve Component members, Army NG, and Air NG members who make Unrestricted Reports of sexual assault be established by commanders within available resources and authorities. If requested by the Service member, the command should allow for separate training on different weekends or times from the alleged offender or with a different unit in the home drilling location to ensure undue burden is not placed on the Service member and his or her family by the transfer. Potential transfer of the alleged offender instead of the Service member should also be considered. At a minimum, the alleged offender's access to the Service member who made the Unrestricted Report shall be controlled, as appropriate.

(14) Even in those court-martial cases in which the accused has been acquitted, the standard for approving an Expedited Transfer still remains whether a credible report has been filed. The commander shall consider all the facts and circumstances surrounding the case and the basis for the transfer request.

**\*Glossary:**

credible information. Information that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to presume that the fact or facts in question are true.

credible report. Either a written or verbal report made in support of an Expedited Transfer that is determined to have credible information.

CMG. A multi-disciplinary group that meets monthly to review individual cases of Unrestricted Reports of sexual assault. The group facilitates monthly victim updates and directs system coordination, accountability, and victim access to quality services. At a minimum, each group shall consist of the following additional military or civilian professionals who are involved and working on a specific case: SARC, SAPR VA, military criminal investigator, DoD law enforcement, healthcare provider and mental health and counseling services, chaplain, command legal representative or SJA, and victim's commander.

FAP. A DoD program designated to address child abuse and domestic abuse in military families and child maltreatment in DoD-sanctioned activities in cooperation with civilian social service agencies and military and civilian law enforcement agencies. Prevention, advocacy, and intervention services are provided to individuals who are eligible for treatment in military medical treatment facilities.

law enforcement. Includes all DoD law enforcement units, security forces, and MCIOs.

PCA. Permanent change of assignment

PCS. Permanent change of station

sexual assault. Intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. As used in this Instruction, the term includes a broad category of sexual offenses consisting of the



following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these offenses.

## National Defense Authorization Act (NDAA) Provisions Related to Expedited Transfers of Sexual Assault Victims and Accused Service members

EXPEDITED TRANSFER			
<a href="#"><u>FY 2012 NDAA §582</u></a>	<b><u>EXPEDITED TRANSFER ESTABLISHED</u></b>  Consideration of Expedited Transfer Option for Victims of Sexual Assault or Related Offense	Requires Service Secretaries to issue regulations to carry out timely consideration for a request for a change of station by an active duty service member who is a victim of a sexual assault. Must be approved or disapproved by member's commanding officer within 72 hours of request and member may request review by the first general or flag officer in chain of command and that decision must be made within 72 hours of requested review.  IMPLEMENTATION: DoDI 6495.02 ¶4(o), encl 5 ¶6	Effective Immediately Upon Passage  (Dec 31, 2011)
<a href="#"><u>FY 2014 NDAA §1712</u></a>	<b><u>EXPEDITED TRANSFER FOR COAST GUARD</u></b>  Extending Expedited Transfer to Members of the U.S. Coast Guard	Extends requirement to allow requests for expedited transfers for victims of sexual assault in the U.S. Coast Guard.	Effective Immediately Upon Passage  (Dec 26, 2013)
<a href="#"><u>FY 2014 NDAA §1713</u></a>	<b><u>EXPEDITED TRANSFER FOR ACCUSED</u></b>  Temporary Administrative Reassignment or Removal of a Service Member Accused of committing a Sex-Related Offense	SecDef may provide guidance for commanders regarding their authority to reassign members alleged to have committed offenses under Arts 120, 120a, 120b, 120c, 125 and attempts to commit such offenses.  IMPLEMENTATION: <a href="#"><u>Aug 14, 2013 SecDef Memorandum</u></a> , SecDef directed Services to implement a policy allowing administrative reassignment or transfer of alleged offenders of sexual assault by Jan 1, 2014;	Effective Immediately Upon Passage  (Dec 26, 2013)

## Expedited Transfer Data from FY 2016 DoD SAPRO Report

### Expedited Transfer Requests by Service Member Victims of Sexual Assault in Fiscal Year 2016

(Data from Service Enclosures to the FY 16 SAPRO Report)

Number of Unit/Duty Expedited Transfer Requests
Number Denied (Unit/Duty transfer)
Number of Installation Expedited Transfer Requests
Number Denied (Installation transfer)

Army	Navy	Marine Corps	Air Force	DoD Total
29	19	13	1	62
1	0	1	1	3
225	287	86	86	684
1	7	8	0	16

<b>Total Expedited Transfer Requests</b>
Total Denied
% of Requests Approved

<b>254</b>	<b>306</b>	<b>99</b>	<b>87</b>	<b>746</b>
2	7	9	1	19
99%	98%	91%	99%	97%

<b>Total Number of Unrestricted Sexual Assault Reports</b>
% of Unrestricted Reports Requesting Expedited Transfer

<b>1,975</b>	<b>1,066</b>	<b>553</b>	<b>905</b>	<b>4,499</b>
13%	29%	18%	10%	17%

### Expedited Transfer Requests in Combat Areas of Interest (CAI) in Fiscal Year 2016

Number of Unit/Duty Expedited Transfer Requests
Number Denied
Number of Installation Expedited Transfer Requests
Number Denied

Army	Navy	Marine Corps	Air Force	DoD Total
1	0	0	0	1
0	0	0	0	0
4	2	0	3	9
0	0	0	0	0

Number of Unrestricted Sexual Assault Reports in CAI
% of Unrestr. Reports in CAI Requesting Expedited Transfer

38	12	2	21	73
13%	17%	0%	14%	14%

Army (38): Afghanistan (6), Egypt (1), Iraq (3), Jordan (1), Kuwait (16), Qatar (9), UAE(2)

Navy (12): Bahrain (8), Kuwait (1), UAE (3)

Marine Corps (2): Afghanistan (1), Oman (1)

Air Force (21): Afghanistan (3), Djibouti (2), Iraq (2), Jordan (2), Kuwait (2) Qatar (8), Saudi Arabia (1), UAE (1)

Reasons for Denial of Expedited Transfer Requests	
Army (2)	<ul style="list-style-type: none"> <li>1 - Victim pending separation</li> <li>1 - Alleged sexual assault unfounded</li> </ul>
Navy (7)	<ul style="list-style-type: none"> <li>3 - Not a credible report</li> <li>2 - Pending separation from Navy</li> <li>1 - Latency of report and concern for timing with recent misconduct</li> <li>1 - Insufficient info for the command to make determination</li> </ul>
Marine Corps (9)	<ul style="list-style-type: none"> <li>2 - Command took other action to improve victim's safety</li> <li>2 - PCA in lieu of PCS</li> <li>2 - Pending administrative separation</li> <li>1 - CO determined adequate safety and support measures in place</li> <li>1 - Active Reservist transfer to Inactive Ready Reserve</li> <li>1 - Modified existing orders</li> </ul>
Air Force (1)	<ul style="list-style-type: none"> <li>1 - victim placed in different organization and squadron with victim approval</li> </ul>



**Defense Advisory Committee on Investigation, Prosecution, and  
Defense of Sexual Assault in the Armed Forces (DAC-IPAD)**

**Request for Information (RFI) and Request for Meeting Presenters**

**RFI Set 4, Questions 1 – 6**

**Request Date: September 11, 2017**

**SUBJECT: Legal and Sexual Assault Response Training for Commanders and  
Expedited Transfer Data for Fiscal Year 2016**

**I. Purpose**

- A. The DAC-IPAD is a federal advisory committee established by the Secretary of Defense pursuant to section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended.
- B. The mission of the Committee is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
- C. The DAC-IPAD requests the below information and presenters to facilitate its required review of cases involving allegations of sexual misconduct on an ongoing basis for purposes of providing advice to the Secretary of Defense.

**II. Requested Response Dates**

Suspense	Question(s)	Proponent
<b>5 Oct 17</b>	Presenters	Services and DoD provide names and contact information for nominated presenters for each panel.
<b>5 Oct 17</b>	1 - 3	Services and DoD SAPRO provide narrative responses and requested training materials.
<b>5 Oct 17</b>	4 - 6	Services provide requested expedited transfer policies and requested FY 16 data using the attached Excel spreadsheets (Attachments A and B).

**III. Request for Meeting Presenters at the October 19-20, 2017 DAC-IPAD Public Meeting in Arlington, Virginia.**

**October 19, 2017 – Panel 1** (*Services and DoD*): The DAC-IPAD requests a briefing on the Department of Defense (DoD) and military Services' expedited transfer policies.

- The Committee would like to hear from an authority from DoD on the expedited transfer policy promulgated by Department of Defense Instruction

(DoDI 6495.02), including the history of the policy, the request approval and transfer process, and the process for transfer of an accused.

- The Committee would like to hear from an authority from DoD on how the Family Advocacy Program handles expedited transfer requests related to adult sexual assault allegations and the policies that govern these transfers.
- The Committee would like to hear from a representative from each Service about the Service-specific policies regarding expedited transfers and the process for re-assigning Service members under such policies.
- This panel will tentatively be held from 2:30 p.m. to 3:20 p.m. (EDT) on October 19 and will consist of 6-7 presenters. Each presenter is requested to give a five minute presentation followed by questions from the Committee.

**October 19, 2017 – Panel 2** (*Services*): The DAC-IPAD requests presentations from five experienced special victims' counsel/victims' legal counsel (SVC/VLC).

- The Committee would like to hear from an experienced SVC/VLC from each Service who has two years of current or very recent experience serving in this capacity, if possible, on their experience with the expedited transfer policy and serving as victims' counsel.
- This panel will tentatively be held from 3:30 p.m. to 5:30 p.m. (EDT) on October 19. Each presenter is requested to give a five to seven minute presentation followed by questions from the Committee.

**October 20, 2017 – Panel 1** (*Services*): The DAC-IPAD requests presentations from five company/squadron or Service equivalent-level commanders and five first sergeants/senior enlisted advisors.

- The Committee would like to hear from a company/squadron or Service equivalent-level commander and his or her first sergeant/senior enlisted advisor from each Service with recent experience dealing with sexual assault allegations within the command. The Committee would like to hear about the legal and sexual assault response training received by the presenters and their personal experiences and perspectives dealing with sexual assault allegations and the expedited transfer policy.
- This panel will tentatively be held from 9:00 a.m. to 11:00 a.m. (EDT) on October 20. Each presenter team is requested to give a five minute presentation followed by questions from the Committee.

**October 20, 2017 – Panel 2** (*Services*): The DAC-IPAD requests presentations from five special court-martial convening authorities with recent experience dealing with sexual assault allegations.

- The Committee would like to hear from a special court-martial convening authority from each Service who has experience dealing with sexual assault allegations. The Committee would like to hear about the legal and sexual assault response training received by the presenters and their personal experiences and perspectives dealing with sexual assault allegations and the expedited transfer policy. *[Note: The Committee will not ask the presenters to discuss specific sexual assault cases with which they've been involved, but will ask them to focus more generally on their experiences and training in handling sexual assault allegations.]*
- This panel will tentatively be held from 12:30 p.m. to 2:20 p.m. (EDT) on October 20. Each presenter is requested to give a five to seven minute presentation followed by questions from the Committee.

**IV. Request for Information Regarding Commander Legal and Sexual Assault Response Training**

**Question 1** (*Services*): The DAC-IPAD requests information regarding the type, duration, and frequency of formal, Service-wide UCMJ legal training provided to special and general court-martial convening authorities. What portion of this training is devoted to sexual assault and making appropriate disposition decisions in sexual assault cases? Provide training materials used in this legal training.

**Question 2** (*Services*): The DAC-IPAD requests information regarding the type, duration, and frequency of UCMJ legal training provided to commanders below the level of special court-martial convening authority (i.e., company commanders, squadron commanders). What portion of this training is devoted to sexual assault? Provide training materials used in commander legal training. *[Please provide information on formal, Service-wide training. However, if you have examples of informal, installation-level training (i.e., legal training seminars or classes), please include some of these, as well.]*

**Question 3** (*DoD SAPRO and Services*): The DAC-IPAD requests information on the type and amount of formal, Service-wide training provided to commanders at all levels on sexual assault and supervising victims of sexual assault and accused Service members, to include the following types of training:

- a. The different ways victims may respond to a sexual assault
- b. How to respond to/treat a victim in the commander's unit
- c. How to respond when both the victim and alleged perpetrator are in the commander's unit
- d. Official and peer retaliation and ostracism
- e. How to respond to expedited transfer requests

**\* Responses to questions 1 – 3 should address the following:**

1. How many hours is the training and how often is it conducted?
2. At what point in the commander's tenure is the training conducted? (e.g., prior to taking command, after assumption of command)
3. Where is the training conducted? (e.g., JAG school, installation)
4. How is the training conducted? (e.g., group setting, one-on-one, computer-based, scenario-based)

**V. Request for Information Regarding Expedited Transfer Requests for Fiscal Year 2016**

**Question 4** (*Services*): Please provide copies of (or links to) all current Service-specific policies and procedures related to expedited transfers of adult sexual assault victims and accused.

**Question 5** (*Services*): Please provide a list of all sexual assault-related expedited transfer requests made **by victims** in FY 16, including those made pursuant to DoDI 6495.02 or other policies such as transfers made within the purview of the Family Advocacy Program. Please include an identification number (DSOID number, if available) for each request that can be used by DoD and the Services to provide additional information about a specific request or the underlying sexual assault case if requested by the DAC-IPAD at a later date.

For each sexual assault-related expedited transfer request, please provide the information listed below. So that the responses are uniform across the Services, please use Attachment A to provide the data to the DAC-IPAD. The label of each column in the spreadsheet corresponds to the numbered data points below.

1. Identification number (DSOID number for the underlying sexual assault allegation or other case-identifying number if not in DSOID)
2. Requester rank at time of request
3. Requester gender
4. Requester location/installation at the time of the request
5. Requester job title at the time of the request
6. Was the requester represented by an SVC/VLC?
7. Was the request approved or denied?
8. Rank of the decision-maker/approval authority for the request
9. Job title of the decision-maker/approval authority for the request
10. Requested transfer location(s)/installation(s)
11. If transfer was approved, location/installation that requester transferred to
12. If transfer was approved, requester's MOS/job title at new location
13. Was the transfer temporary or permanent?
14. Date of the underlying unrestricted sexual assault report
15. Date of the expedited transfer request
16. Date of the approval/denial of expedited transfer request



17. Date of the transfer of requester, if transfer occurred
18. Disposition of the sexual assault allegation if final

**Question 6** (*Services*): Please provide a list of all sexual assault-related transfers of Service members **accused of sexual assault** in FY 16, including an identification number (DSAID number, if available) for each transfer that can be used by DoD and the Services to provide additional information about a specific transfer or the underlying sexual assault case if requested by the DAC-IPAD at a later date.

For each sexual assault-related transfer of an accused, please provide the information listed below. So that the responses are uniform across the Services, please use Attachment B to provide the data. The label of each column in the spreadsheet corresponds to the numbered data points below.

1. Identification number (DSAID number for the underlying sexual assault allegation or other case-identifying number if not in DSAID)
2. Accused rank at time of request
3. Accused gender
4. Accused location/installation at the time of the request
5. Accused job title at the time of the request
6. What was the rank of the decision-maker/approval authority?
7. What was the job title of the decision-maker/approval authority?
8. Location/installation that the accused was transferred to
9. Accused job title at receiving location/installation
10. Date of the underlying unrestricted sexual assault report
11. Date of transfer of accused
12. Was the transfer permanent or temporary?
13. Disposition of the sexual assault allegation if final

	ATTACHMENT A: Expedited Transfer Request Data for Fiscal Year 2016												
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	DSAID (or other) Identification Number	Requester Rank	Requester Gender (M/F)	Origin Installation	Requester Job Title	SVC/VLC (Y/N)	Request Approved/ Den. (A/D)	Decision- Maker Rank	Decision-Maker Job Title	Requested Transfer Locations	Transfer Installation (or N/A)	Requester Job Title at New Location	Permanent or Temp. Transfer (P/T)
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ATTACHMENT B: Accused Transfer Data for Fiscal Year 2016

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	DSOID (or other) Identification Number	Accused Rank	Accused Gender (M/F)	Origin Installation	Accused Job Title	Decision- Maker Rank	Decision-Maker Job Title	Transfer Installation (or N/A)	Accused Job Title at New Location	Date of Sexual Assault Report (mm/dd/yyyy)	Date of Transfer (mm/dd/yyyy) or (N/A)	Permanent or Temp. Transfer (P/T)	Disposition of Sexual Assault Case if Final
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	DSAID (or other) Identification Number	Accused Rank	Accused Gender (M/F)	Origin Installation	Accused Job Title	Decision- Maker Rank	Decision-Maker Job Title	Transfer Installation (or N/A)	Accused Job Title at New Location	Date of Sexual Assault Report (mm/dd/yyyy)	Date of Transfer (mm/dd/yyyy) or (N/A)	Permanent or Temp. Transfer (P/T)	Disposition of Sexual Assault Case if Final
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## **Statutory Provision for the Special Victims' Counsel Program**

### **10 U.S.C. §1044e. Special Victims' Counsel for victims of sex-related offenses**

**(a) Designation; Purposes.—**

- (1) The Secretary concerned shall designate legal counsel (to be known as "Special Victims' Counsel") for the purpose of providing legal assistance to an individual described in paragraph (2) who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted.
- (2) An individual described in this paragraph is any of the following:

  - (A) An individual eligible for military legal assistance under section 1044 of this title.
  - (B) An individual who is—

    - (i) not covered under subparagraph (A);
    - (ii) a member of a reserve component of the armed forces; and
    - (iii) a victim of an alleged sex-related offense as described in paragraph (1)—

      - (I) during a period in which the individual served on active duty, full-time National Guard duty, or inactive-duty training; or
      - (II) during any period, regardless of the duty status of the individual, if the circumstances of the alleged sex-related offense have a nexus to the military service of the victim, as determined under regulations prescribed by the Secretary of Defense.
  - (C) A civilian employee of the Department of Defense who is not eligible for military legal assistance under section 1044(a)(7) of this title, but who is the victim of an alleged sex-related offense, and the Secretary of Defense or the Secretary of the military department concerned waives the condition in such section for the purposes of offering Special Victims' Counsel services to the employee.

**(b) Types of Legal Assistance Authorized.—**The types of legal assistance authorized by subsection (a) include the following:

- (1) Legal consultation regarding potential criminal liability of the victim stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services.

- (2) Legal consultation regarding the Victim Witness Assistance Program, including—
  - (A) the rights and benefits afforded the victim;
  - (B) the role of the Victim Witness Assistance Program liaison and what privileges do or do not exist between the victim and the liaison; and
  - (C) the nature of communication made to the liaison in comparison to communication made to a Special Victims' Counsel or a legal assistance attorney under section 1044 of this title.
- (3) Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator, a unit or installation Sexual Assault Victim Advocate, or domestic abuse advocate, to include any privileges that may exist regarding communications between those persons and the victim.
- (4) Legal consultation regarding the potential for civil litigation against other parties (other than the United States).
- (5) Legal consultation regarding the military justice system, including (but not limited to)—
  - (A) the roles and responsibilities of the trial counsel, the defense counsel, and investigators;
  - (B) any proceedings of the military justice process in which the victim may observe;
  - (C) the Government's authority to compel cooperation and testimony; and
  - (D) the victim's responsibility to testify, and other duties to the court.
- (6) Representing the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.
- (7) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services;
- (8) Legal consultation and assistance—
  - (A) in personal civil legal matters in accordance with section 1044 of this title;
  - (B) in any proceedings of the military justice process in which a victim can participate as a witness or other party;
  - (C) In understanding the availability of, and obtaining any protections offered by, civilian and military protecting or restraining orders; and

- (D) in understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in section 1059 of this title and other State and Federal victims' compensation programs.
- (9) Legal consultation and assistance in connection with—
  - (A) any complaint against the Government, including an allegation under review by an inspector general and a complaint regarding equal employment opportunities;
  - (B) any request to the Government for information, including a request under section 552a of title 5 (commonly referred to as a "Freedom of Information Act request"); and
  - (C) any correspondence or other communications with Congress.
- (10) Such other legal assistance as the Secretary of Defense (or, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) may authorize in the regulations prescribed under subsection (h).
- (c) Nature of Relationship.—The relationship between a Special Victims' Counsel and a victim in the provision of legal advice and assistance shall be the relationship between an attorney and client.
- (d) Qualifications.—
  - (1) An individual may not be designated as a Special Victims' Counsel under this section unless the individual—
    - (A) meets the qualifications specified in section 1044(d)(2) of this title; and
    - (B) is certified as competent to be designated as a Special Victims' Counsel by the Judge Advocate General of the armed force in which the judge advocate is a member or by which the civilian attorney is employed, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.
  - (2) The Secretary of Defense shall—
    - (A) develop a policy to standardize the time period within which a Special Victims' Counsel receives training; and
    - (B) establish the baseline training requirements for a Special Victims' Counsel.
- (e) Administrative Responsibility.—

- (1) Consistent with the regulations prescribed under subsection (h), the Judge Advocate General (as defined in section 801(1) of this title) under the jurisdiction of the Secretary concerned, and within the Marine Corps the Staff Judge Advocate to the Commandant of the Marine Corps, is responsible for the establishment and supervision of individuals designated as Special Victims' Counsel.
  - (2) The Secretary of Defense (and, in the case of the Coast Guard, the Secretary of the Department in which the Coast Guard is operating) shall conduct a periodic evaluation of the Special Victims' Counsel programs operated under this section.
  - (3) The Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating, shall establish—
    - (A) guiding principles for the Special Victims' Counsel program, to include ensuring that—
      - (i) Special Victims' Counsel are assigned to locations that maximize the opportunity for face-to-face communication between counsel and clients; and
      - (ii) effective means of communication are available to permit counsel and client interactions when face-to-face communication is not feasible;
    - (B) performance measures and standards to measure the effectiveness of the Special Victims' Counsel program and client satisfaction with the program; and
    - (C) processes by which the Secretaries of the military departments and the Secretary of the Department in which the Coast Guard is operating will evaluate and monitor the Special Victims' Counsel program using such guiding principles and performance measures and standards.
- (f) Availability of Special Victims' Counsel.—
- (1) An individual described in subsection (a)(2) who is the victim of an alleged sex-related offense shall be offered the option of receiving assistance from a Special Victims' Counsel upon report of an alleged sex-related offense or at the time the victim seeks assistance from a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, a military criminal investigator, a victim/witness liaison, a trial counsel, a healthcare provider, or any other personnel designated by the Secretary concerned for purposes of this subsection.
  - (2) Subject to such exceptions for exigent circumstances as the Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating may prescribe, notice of the availability of a Special Victims' Counsel shall be

provided to an individual described in subsection (a)(2) before any military criminal investigator or trial counsel interviews, or requests any statement from, the individual regarding the alleged sex-related offense.

- (3) the assistance of a Special Victims' Counsel under this subsection shall be available to an individual described in subsection (a)(2) regardless of whether the individual elects unrestricted or restricted reporting of the alleged sex-related offense. The individual shall also be informed that the assistance of a Special Victims' Counsel may be declined, in whole or in part, but that declining such assistance does not preclude the individual from subsequently requesting the assistance of a Special Victims' Counsel.
- (g) **Alleged Sex-related Offense Defined.**—In this section, the term "alleged sex-related offense" means any allegation of—
  - (1) a violation of section 920, 920a, 920b, 920c, or 925 of this title (article 120, 120a, 120b, 120c, or 125 of the Uniform Code of Military Justice); or
  - (2) an attempt to commit an offense specified in a paragraph (1) as punishable under section 880 of this title (article 80 of the Uniform Code of Military Justice).
- (h) **Regulations.**—The Secretary of Defense and the Secretary of the Department in which the Coast Guard is operating shall prescribe regulations to carry out this section.

(Added Pub. L. 113–66, div. A, title XVII, §1716(a)(1), Dec. 26, 2013, 127 Stat. 966; amended Pub. L. 113–291, div. A, title V, §§531(c), 533, 534(a), Dec. 19, 2014, 128 Stat. 3364, 3366, 3367; Pub. L. 114–92, div. A, title V, §§532–534(a), 535(a), (b), Nov. 25, 2015, 129 Stat. 815, 816.)

#### AMENDMENTS

- 2015**—Subsec. (a)(2)(C). Pub. L. 114–92, §532, added subpar. (C).  
Subsec. (b)(9), (10). Pub. L. 114–92, §533, added par. (9) and redesignated former par. (9) as (10).  
Subsec. (d). Pub. L. 114–92, §535(a), designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).  
Subsec. (e)(3). Pub. L. 114–92, §535(b), added par. (3).  
Subsec. (f)(2), (3). Pub. L. 114–92, §534(a), added par. (2) and redesignated former par. (2) as (3).  
**2014**—Subsec. (a). Pub. L. 113–291, §533(a), amended subsec. (a) generally. Prior to amendment, text read as follows: "The Secretary concerned shall designate legal counsel (to be known as 'Special Victims' Counsel') for the purpose of providing legal assistance to an individual eligible for military legal assistance under section 1044 of this title who is the victim of an alleged sex-related offense, regardless of whether the report of that offense is restricted or unrestricted."  
Subsec. (b)(4). Pub. L. 113–291, §531(c)(1), substituted "the United States" for "the Department of Defense".  
Subsec. (b)(6). Pub. L. 113–291, §534(a), substituted "Representing the victim" for "Accompanying the victim".  
Subsec. (d)(2). Pub. L. 113–291, §531(c)(2), inserted ", and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps" before period at end.  
Subsec. (e)(1). Pub. L. 113–291, §531(c)(3), inserted "concerned" after "jurisdiction of the Secretary".

Subsec. (f). Pub. L. 113–291, §533(b), substituted "described in subsection (a)(2)" for "eligible for military legal assistance under section 1044 of this title" in pars. (1) and (2).

#### **ENHANCEMENT OF VICTIMS' RIGHTS IN CONNECTION WITH PROSECUTION OF CERTAIN SEX-RELATED OFFENSES**

Pub. L. 113–291, div. A, title V, §534(b)–(e), Dec. 19, 2014, 128 Stat. 3367, 3368, provided that:

"(b) Consultation Regarding Victim's Preference in Prosecution Venue.—

"(1) Consultation process required.—The Secretary of Defense shall establish a process to ensure consultation with the victim of an alleged sex-related offense that occurs in the United States to solicit the victim's preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.

"(2) Convening authority consideration of preference.—The preference expressed by the victim of an alleged sex-related offense under paragraph (1) regarding the prosecution of the offense, while not binding, should be considered by the convening authority in making the determination regarding whether to refer the charge or specification for the offense to a court-martial for trial.

"(3) Notice to appropriate jurisdiction of victim's preference for civilian prosecution.—If the victim of an alleged sex-related offense expresses a preference under paragraph (1) for prosecution of the offense in a civilian court, the convening authority described in paragraph (2) shall ensure that the civilian authority with jurisdiction over the offense is notified of the victim's preference for civilian prosecution.

"(4) Notice to victim of status of civilian prosecution when victim expresses preference for civilian prosecution.—Following notification of the civilian authority with jurisdiction over an alleged sex-related offense of the preference of the victim of the offense for prosecution of the offense in a civilian court, the convening authority shall be responsible for notifying the victim if the convening authority learns of any decision by the civilian authority to prosecute or not prosecute the offense in a civilian court.

"(c) Modification of Manual for Courts-Martial.—Not later than 180 days after the date of the enactment of this Act [Dec. 19, 2014], Part III of the Manual for Courts-Martial shall be modified to provide that when a victim of an alleged sex-related offense has a right to be heard in connection with the prosecution of the alleged sex-related such offense, the victim may exercise that right through counsel, including through a Special Victims' Counsel under section 1044e of title 10, United States Code (as amended by subsection (a)).

"(d) Notice to Counsel on Scheduling of Proceedings.—The Secretary concerned shall establish policies and procedures designed to ensure that any counsel of the victim of an alleged sex-related offense, including a Special Victims' Counsel under section 1044e of title 10, United States Code (as amended by subsection (a)), is provided prompt and adequate notice of the scheduling of any hearing, trial, or other proceeding in connection with the prosecution of such offense in order to permit such counsel the opportunity to prepare for such proceeding.

"(e) Definitions.—In this section:

"(1) The term 'alleged sex-related offense' has the meaning given that term in section 1044e(g) of title 10, United States Code.

"(2) The term 'Secretary concerned' has the meaning given that term in section 101(a)(9) of such title."

#### **IMPLEMENTATION**

Pub. L. 113–66, div. A, title XVII, §1716(a)(4), Dec. 26, 2013, 127 Stat. 969, provided that: "Section 1044e of title 10, United States Code, as added by paragraph (1), shall be implemented within 180 days after the date of the enactment of this Act [Dec. 26, 2013]."

### **ENHANCED TRAINING REQUIREMENT**

Pub. L. 113–66, div. A, title XVII, §1716(b), Dec. 26, 2013, 127 Stat. 969, provided that: "The Secretary of each military department, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy, shall implement, consistent with the guidelines provided under section 1044e of title 10, United States Code, as added by subsection (a), in-depth and advanced training for all military and civilian attorneys providing legal assistance under section 1044 or 1044e of such title to support victims of alleged sex-related offenses."

### **10 U.S.C.**

United States Code, 2015 Edition

Title 10 - ARMED FORCES

Subtitle A - General Military Law

PART II - PERSONNEL

CHAPTER 53 - MISCELLANEOUS RIGHTS AND BENEFITS

Sec. 1044e - Special Victims' Counsel for victims of sex-related offenses

From the U.S. Government Publishing Office, [www.gpo.gov](http://www.gpo.gov)





## **Commander Training Materials: Excerpts on Sexual Assault**

*[The judge advocate schools for the Army, Air Force, and Navy/Marine Corps each publish legal handbooks for their Service's commanders to help guide them on commonly encountered legal issues. Below are excerpts pertaining to sexual assault from each of the handbooks. Links to the full publications are included in the footnotes.]*

### **Army: Excerpts from Commander's Legal Handbook (2015)<sup>1</sup>**

This Handbook is designed to assist Commanders with legal situations by helping them to recognize and avoid issues, or take immediate actions necessary to preserve the situation when legal issues arise.

This publication is not meant to replace or supersede the independent legal advice of your servicing Judge Advocate.

#### **Proper Responses to Reports of Sexual Assault**

One of the most sensitive issues that you will have to deal with as a commander is an allegation of sexual assault where the victim, the alleged offender, or both are in your unit. Army policy on sexual assault is found in Army Regulation 600-20, Chapter 8. Here is the policy statement from your senior leaders, found in paragraph 8-2:

“Sexual assault is a criminal offense that has no place in the Army. It degrades mission readiness by devastating the Army's ability to work effectively as a team . . . Sexual assault is incompatible with Army values and is punishable under the UCMJ and other Federal and local civilian laws . . . The Army will treat all victims of sexual assault with dignity, fairness, and respect . . . The Army will treat every reported sexual assault incident seriously by following proper guidelines.”

#### **A. Identify And Understand The Special Victim Capability**

Early in your command, you should identify and meet the key professionals that will assist you in this area. In addition to your servicing judge advocate, the following personnel will be a part of the special victim team:

- **Special Victim Prosecutor (SVP)** - SVPs are specially-trained judge advocates who assist with domestic violence and sexual crimes cases. They are located at twenty-three Army installations worldwide and provide regional coverage.

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<sup>1</sup> COMMANDER'S LEGAL HANDBOOK at 83-90, Misc. Pub 27-8 (2015), The Judge Advocate General's Legal Center and School, United States Army, *available at* [https://www.jagcnet.army.mil/Sites/jagc.nsf/0/EE26CE7A9678A67A85257E1300563559/\\$File/Commanders%20Legal%20HB%202015%20C1.pdf](https://www.jagcnet.army.mil/Sites/jagc.nsf/0/EE26CE7A9678A67A85257E1300563559/$File/Commanders%20Legal%20HB%202015%20C1.pdf)

- **Special Victim Counsel (SVC)** – SVCs are specially-trained judge advocates who represent eligible victims of sexually-based offenses. SVCs are located at installations worldwide.
- **Special Victim Investigator** - CID investigator responsible for the investigation of certain offenses, to include sexually-based offenses, involving “special” victims.
- **Special Victim Paralegal** - Specially trained paralegal who works alongside the SVP.
- **Special Victim Witness Liaison** – Specially trained facilitator and coordinator who provides information and assistance in obtaining available victim/witness services. The VWL also works with the UVA who is responsible for providing crisis intervention, referral, and ongoing nonclinical support to a sexual assault victim.
- The SHARP/SARC (**Sexual Assault Response Coordinator**) is the principal POC for sexual assault and sexual harassment. Every Brigade has at least one SARC. DoDD 6495.01 (Jan. 23, 2012) states: “The SARC shall serve as the SINGLE POINT OF CONTACT for coordinating appropriate and responsive care for sexual assault victims.”
- You will also have **Unit Victim Advocates** (UVA) assigned to your organization. Know who these people are and how to contact them. They can also help you to establish a meaningful training program that will meet the annual requirements, and more importantly, help you to get ahead of this problem.
- The unit **Trial Counsel** remains a critical part of a commander’s response to sexual assault and a critical part of the team in providing services to the victim.

## B. Preventing Sexual Assault

Get involved early so that you can set the conditions that will prevent sexual assaults from happening in the first place. We know that **most** reported sexual assaults in the military:

- Happen to women;
- Happen to Soldiers who are within the first four months of their assignment to the unit;
- Happen within 18 months of entry onto active-duty;
- Involve alcohol;
- Occur late on Friday and Saturday nights; and
- Occur in high-density housing.

Understand these conditions and work to control them.

## C. Retaliation

Commanders at all levels must guard against professional and personal retaliation against crime victims and those who report crimes. Army Directive 2014-20 prohibits taking, or threatening to take, adverse personnel action against crime victims or persons who report crimes. Army

Directive 2014-20 also prohibits ostracism and acts of cruelty or maltreatment against crime victims or persons who report crimes. Special Victim Counsel will assist victims in identifying and reporting retaliation.

Professional retaliation against crime victims and other persons who report crimes can be punished under provisions of the Uniform Code of Military Justice. Staff Judge Advocates, Brigade Judge Advocates, Trial Counsel, or Special Victim Prosecutors will assist commanders in identifying and investigating retaliation, and holding offenders appropriately accountable.

Social retaliation presents a more complex issue. Peer-to-peer social retaliation is not criminal conduct and should be addressed as a larger command culture issue. Commanders realize the divisive nature of social retaliation and the danger it poses to degrading readiness. Through engaged leadership at all levels of command and corrective training that promotes a culture of dignity and respect, commanders can address peer-to-peer retaliation.

#### **D. Reports of Sexual Assault**

There are two kinds of reports: restricted and unrestricted. Victims can only make restricted reports to a select group of people (Sexual Assault Response Coordinators (SARC), Victim Advocates, and health care professionals). If a sexual assault is reported to the chain of command (to include the NCO chain of command), then it is an unrestricted report. However, commanders should be aware that Soldiers sometimes do not know that when they tell a friend, the information is not protected. Commanders must refer any victim to CID and a victim advocate.

The point of this chapter is to highlight two immediate action drills that you need to know. The guidelines you are required to follow are found in paragraph 8-4 and in Appendix G of AR 600-20. You should also be familiar with DoDI 6495.02. You need to go to these references to ensure that you completely comply with them, and you need to seek help from those who have special training in this issue.

##### **1. Immediate Action Drill 1: Relay The Report To Law Enforcement**

At your level, you have very little discretion in what action must be taken upon learning of an allegation of a sexual assault. If you learn about an allegation of sexual assault, you must report that allegation to CID immediately.

Sexual assault is a crime defined 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 (oral or anal sex), abusive sexual contact, aggravated sexual contact, and attempts to commit these acts. Keep in mind that rape and sexual assault are commonly interchanged, but there are legal distinctions.

Report EVERY allegation of a sexually-based offense to CID immediately. You must also inform your chain of command, servicing judge advocate, and the SARC.

You should not make a credibility judgment about the victim. In fact, the Department of Defense defines a victim of sexual assault as anyone who makes an allegation of sexual assault. You do not get to choose whether the person who made the complaint is, in your opinion, a victim. You must treat the victim with dignity and respect at all times. You must also remember that the alleged perpetrator is presumed innocent until proven guilty in a court of law.

Law enforcement agents, prosecutors, and defense counsel will develop the evidence in the case and will eventually present what they have learned to commanders for disposition. At the conclusion of the investigation, you will be asked to recommend what action you believe should be taken in the case.

Current Department of Defense policy is that the authority to dispose of allegations of rape, sexual assault, forcible sodomy, and attempts to commit these acts is WITHHELD TO BRIGADE COMMANDERS. You cannot dispose of a sexual assault case, meaning that you cannot make a case go away, if you are in command below that level. You can make a recommendation to superiors that no action be taken (or whatever you think is the appropriate action in the case), but you must transmit the case to your superiors for disposition. Disposition authority for collateral misconduct related to a sexual assault is also withheld to Brigade Commanders.

## **2. Immediate Action Drill 2: Safeguard The Victim**

Dealing with a victim is complex business. You have to be careful not to re-traumatize them with the actions that you take. One of the most important first steps is to make sure the victim has a victim advocate and then work with that victim advocate. Victim advocates are specially trained and will help you to interact with and safeguard the victim.

You need to take immediate actions to ensure that the victim is safe. In the military, many of our victims and alleged offenders work in the same unit. They may have daily interaction. You should consider issuing a military protective order (DD Form 2873) to the alleged offender to minimize contact and safeguard the victim. You may also consider other forms of pretrial restraint against the alleged offender, to included pretrial confinement.

Recognize also that victims can be subject to harassment from others, to include the alleged offender's spouse or significant other, and friends of the alleged offender.

Under current law, the victim may request a transfer from the unit and you (or the first commander authorized to transfer the victim) must make a decision within 72-hours (weekends and holidays are not excluded from the 72-hour rule). The presumption is that you will transfer the victim. A victim's request may ONLY be disapproved by the first general officer in the chain of command. That general officer has a further 72 hours to act upon the request. When a victim requests transfer to another installation, the authority to disapprove the request is reserved to the Commander, Human Resources Command.

In some cases, the victim may not want to transfer from the unit. In those cases, consider transferring the alleged offender.

## **E. Registered Sex Offenders**

If one of your Soldiers is convicted of an offense for which he or she needs to register as a sex offender and the Soldier is still in your formation, then the chain of command needs to take certain actions. Generally, this scenario occurs if the Soldier is tried at a general or special court-martial and convicted but receives a sentence of less than four months confinement with no punitive discharge or the Soldier is convicted by a civilian court after he or she enlists. For a list of qualifying convictions, see AR 27-10, ch. 24. In those situations, consider the following administrative courses of action. It is very important, however, that you consult your servicing Judge Advocate before proceeding.

### **1. Separation UP AR 600-20 and 635-200**

You **MUST** initiate a separation action IAW AR 600-20, para. 8-5o(34) or AR 635-200, ch. 14. This does not mean that you must separate; however, you must initiate the action and consider the Soldier for separation. The commander who initiates separation is likely not the separation authority and the Soldier will have an opportunity to challenge the separation (either through a separation board or rebuttal). The Department of Defense policy is that registered sex offenders are generally to be separated.

If, after initiating separation, the Soldier is retained, separation under the Secretary of the Army's plenary authority will be initiated IAW AR 635-200, para. 5-3 or AR 135-178, para. 14-3. For commissioned and warrant officers, commanders will initiate an elimination action under AR 135-75 or AR 600-8-24 as appropriate. No further action is required if a commissioned or warrant officer has already been subject to an elimination action for conviction of a sex offense and has been retained.

Note that if the Soldier is tried by a court-martial empowered to adjudge a punitive discharge that did not, in fact, adjudge a punitive discharge, the Soldier's service via administrative separation may only be characterized as other than honorable by the Secretary of the Army IAW AR 635-200, para. 3-8(e).

### **2. Bar to Reenlistment**

If the Soldier is retained under that separation procedure, you may issue a bar to reenlistment under AR 601-280, para. 8-3a.

### **3. Security Clearance**

You may choose to revoke the Soldier's security clearance under AR 380-67, para. I-13b(1) (c).

### **4. Administrative Reduction**

If the Soldier was convicted at a civilian trial, you may initiate administrative reduction procedures under AR 600-8-19, para. 10-3.

## **5. Administrative Reprimand**

You may issue an administrative reprimand under AR 600-37, para. 3-4.

## **6. Prohibited Assignments**

Soldiers convicted of an offense noted in AR 27-10 or Title 42, USC §16911, will not be assigned or deployed on a temporary duty, temporary change of station, or permanent change of station status to duty stations OCONUS.

*Please see the Commander's Checklist which begins on the next page.*

**Appendix A**  
Department of the Army  
Sexual Harassment and Assault Prevention and Response Program

**Commander's Sexual Assault  
Victim Assistance Checklist**

The actions in the following list are to be taken in the event of receiving a report of sexual assault. Although the commander has significant leadership responsibility for actions after a report of sexual assault, not necessarily all of the actions listed below will be taken by the commander personally. This list is non-inclusive. Commanders must review AR 600-20, AR 27-10, DoDI 6495.02, the Commander's Legal Handbook, and the SHARP Guidebook along with other pertinent guidance regarding sexual assault to ensure they are aware of all requirements.

1. \_\_\_\_ Ensure the physical safety of the victim-determine if the alleged offender is still nearby and if the victim needs protection.
2. \_\_\_\_ Advise the victim of the need to preserve evidence (for example, by not bathing, showering, washing garments).
3. \_\_\_\_ Encourage the victim to report the incident and get a medical examination immediately (even if the incident occurred prior to the past 72 hours).
4. \_\_\_\_ Make appropriate administrative and logistical coordination for movement of victim to receive care. (Involve the minimum number of personnel possible and only on a need-to-know basis).
5. \_\_\_\_ Ask if the victim needs a support person (for example, a personal friend, victim advocate, chaplain) to immediately join the victim.
6. \_\_\_\_ Notify the Sexual Assault Response Coordinator (SARC) immediately.
7. \_\_\_\_ Notify the Chaplain if the victim requests pastoral counseling or assistance.
8. \_\_\_\_ Notify the Criminal Investigation Command, military police, installation provost marshal (per AR 195-1, paragraph 6), and commanders in the chain of command (as appropriate) immediately (as soon as the victim's safety is established and victim's medical treatment procedures are in motion) and:
  - \_\_\_\_ Limit the details regarding the incident to only those personnel who have a legitimate need to know.
  - \_\_\_\_ Take action to safeguard the victim from any formal or informal investigative interviews or inquiries, except by those personnel who may have a "need to know," including but not limited to, the Criminal Investigation Command investigator(s) and the trial counsel.

- \_\_\_\_Collect only the necessary information (for example, victim's identity, location and time of the incident, name and/or description of alleged offender(s)). Do not ask detailed questions and/or pressure the victim for responses.

9. \_\_\_\_Ensure the victim is made aware of his/her options during each phase of the medical, investigative, and legal processes to include notification of the right to Special Victim Counsel. (Reference AR 600-20, AR 27-10, DoDI 6495.02, DoDI 1030.2)

10. \_\_\_\_Ensure the CID notifies victims and witnesses of their rights through a completed Victims and Witnesses of Crime form, DD Form 2701. (Reference AR 27-10).

11. \_\_\_\_Inform the victim of the resources available through the Victim and Witness Assistance Program (VWAP) (AR 27-10). Also, inform the victim of resources accessible from anywhere in the world (that is, Military One Source (from U.S.: 1-800-464-8107; International: 800-464-81077; International collect: 484-530-5889, 24-hours-a-day, 7-days-a-week)).

12. \_\_\_\_Provide emotional support to the victim, including—

- \_\_\_\_Throughout the investigation, consult with the victim and, to the extent practicable, accommodate the victim's wishes, as long as a full and complete investigation is not compromised.
- \_\_\_\_Listen/engage in quiet support of the victim, as needed. Be available in the weeks and months following the sexual assault, and ensure the victim that she/he can rely on the commander's support.
- \_\_\_\_Emphasize to the victim the availability of additional avenues of support; refer to available counseling groups and other victim services.
- \_\_\_\_Confer with the commander's legal representative and/or servicing SJA office to consider legal options, responsibilities (for example, pretrial restraint, military protective order), and appropriate disposition of the alleged offense.
- \_\_\_\_If the alleged offender is a foreign national or from a coalition force, confer with SJA on responsibilities, options, and victim's rights (in theater).
- \_\_\_\_Determine the best courses of action for separating the victim and the alleged offender during the investigation:
  - Determine whether the victim desires to be transferred to another unit.
  - Determine if the alleged offender needs/desires to be transferred to another unit.
  - Consider whether a Military Protection Order (MPO) (DD Form 2873), referred to as "no contact order," is appropriate.



- Coordinate with sexual assault response agencies and the chain of command (involve as few people as possible and only on a need to know basis, protecting the victim's privacy) to determine if the victim's condition warrants redeployment or reassignment until there is a final legal disposition of the sexual assault case and/or the victim is no longer in danger.

- To the extent practicable, preferential consideration related to the reassignment should be based on the victim's desires.

13. \_\_\_\_\_Flag (suspend favorable personnel actions) any Soldier under charges, restraint, or investigation for sexual assault in accordance with AR 600–8–2 (Suspension of Favorable Actions), and suspend the Soldier's security clearance in accordance with AR 380–67, The Department of the Army Personnel Security Program.

14. \_\_\_\_\_Determine how to best dispose of the victim's collateral misconduct. Absent overriding considerations, commanders should consider exercising their authority in appropriate cases to defer disciplinary actions for the victim's misconduct until after the final disposition of the sexual assault case.

15. \_\_\_\_\_Update the battalion or higher-level commander on the status of the victim and alleged offender(s) within 14 calendar days, and on a monthly basis thereafter, until the case is officially closed. If the victim or alleged offender is transferred or redeployed prior to the case closing, coordinate with investigative and SJA personnel before ceasing monthly updates on parties involved.

16. \_\_\_\_\_The battalion commander will update the victim 14 calendar days after the initial report. Thereafter, battalion commanders will ensure that, at a minimum, a victim receives a monthly report on the sexual assault investigation and any medical, legal, or command proceedings regarding the assault until final disposition.

17. \_\_\_\_\_Consult with the servicing legal office, criminal investigative organization, and notify the assigned victim advocate prior to taking any administrative action affecting the victim.

18. \_\_\_\_\_Ensure unit personnel are abreast of risk factors associated with sexual assault, especially those risk factors unique to the deployed environment.

19. \_\_\_\_\_The battalion commander will initiate follow-up with the victim within 45 days after disposition of the case to ensure the victim's needs have been addressed.

## **Air Force: Excerpts from The Military Commander and the Law (2016)<sup>2</sup>**

*The Military Commander and the Law* is a publication of The Judge Advocate General's School. This publication is used as a deskbook for instruction at various commander courses at Air University. It also serves as a helpful reference guide for commanders in the field, providing general guidance and helping commanders to clarify issues and identify potential problem areas. As with any publication of secondary authority, this deskbook should not be used as the basis for action on specific cases. Primary authority, much of which is cited in this edition, should first be carefully reviewed. Finally, this deskbook does not serve as a substitute for advice from the staff judge advocate.

### **SEXUAL ASSAULT PREVENTION AND RESPONSE**

Sexual assault is criminal conduct. It falls well short of the standards America expects of its men and women in uniform and civilian members. It violates Air Force Core Values. Inherent in our Core Values of Integrity First, Service Before Self, and Excellence in All We Do is respect: self-respect, mutual respect, and respect for our Air Force as an institution. Our core values and respect are the foundation of our Wingman culture; a culture in which we look out for each other and take care of each other. Incidents of sexual assault corrode the very fabric of our Wingman culture; therefore we must strive for an environment where this behavior is not tolerated and where all Airmen are respected.

- Air Force Sexual Assault Prevention and Response policy and responsibilities apply to all levels of command and all Air Force organizations and personnel, including active duty, Air Force government civilian employees, Air Force Academy, Air National Guard, and Air Force Reserve components while in federal service

- Installation commanders will implement local sexual assault prevention and response programs. The installation vice commander or equivalent may be designated as the responsible official to act for the installation commander and supervises the Installation Sexual Assault Response Coordinator.

#### **Definition of Sexual Assault**

- Sexual assault is the intentional sexual contact, characterized by use of force, threats, intimidation, abuse of authority or when the victim does not or cannot consent. It includes rape, forcible sodomy (oral or anal sex), and other unwanted sexual contact that is aggravated, abusive or wrongful (to include unwanted and inappropriate sexual contacts), or attempts to commit these acts.

- This definition is for training and educational purposes only and does not affect in any way the definition of any offenses under the UCMJ. Commanders are encouraged to consult with their staff judge advocate for complete understanding of this definition in relation to the UCMJ.

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<sup>2</sup> THE MILITARY COMMANDER AND THE LAW at 157-75, Edition 13 (2016), The Judge Advocate General's School, United States Air Force, *available at* <http://www.afjag.af.mil/Portals/77/documents/MCL%202016%20web4.pdf?ver=2017-01-17-122502-863>

## **Installation Sexual Assault Prevention and Response Office**

### **- Sexual Assault Response Coordinator (SARC)**

- The SARC serves as the single point of contact for integrating and coordinating sexual assault victim care from an initial report of sexual assault, through disposition and resolution of issues related to the victim's health and well-being
- Reporting directly to the installation vice wing commander, the SARC implements and manages the installation level sexual assault prevention and response programs
- The SARC is responsible for assisting commanders in meeting annual sexual assault prevention and response training requirements
- The SARC is responsible for ensuring a victim support system that provides a 24 hours a day/7 days a week sexual assault response capability for all victims that fall under the SAPR program within his/her designated area of responsibility
- The SARC will provide updates to the victim and commanders as appropriate and in accordance with Air Force policy
- The SARC will supervise the Sexual Assault Prevention and Response Victim Advocate (VA) and Volunteer Victim Advocates (VVA)

### **- Sexual Assault Prevention and Response VA and VVAs**

- Responsibilities of SAPR VAs and VVAs include providing crisis intervention, referral, and ongoing non-clinical support, including information on available options and resources to assist the victim in making informed decisions about the case. VA services will continue until the victim states support is no longer needed.
- SAPR VAs and VVAs must possess the maturity and experience to assist in a very sensitive situation
  - SAPR VAs are GS-11 civilian employees who work full-time in the SAPR office
  - VVAs are volunteers
    - Only active duty military personnel and DoD civilian employees selected by the SARC may serve as VVAs. They cannot be assigned to the legal office, Area Defense Counsel, Investigator General (IG), Air Force Office of Special Investigations (AFOSI), Security Forces Squadron (SFS), Equal Opportunity (EO) office, or wing chaplain's office.

---- Individuals on G-series orders, first sergeants, and chief master sergeants cannot serve in this capacity

---- Medics can serve as VVAs if they do not participate in “direct patient care”

-- SAPR VAs and VVAs do not provide counseling or other professional services to a victim. Appropriate agencies will provide clinical, legal, and other professional services.

-- SAPR VAs and VVAs may accompany the victim, at the victim’s request, during investigative interviews and medical examinations

- SARC’s, SAPR VAs’, and VVAs’ communications with victims (of a sexual or violent offense) are privileged under Military Rule of Evidence 514 when the communication is intended to be confidential and the perpetrator is a military member. Consult the local legal office for additional exceptions to this general rule.

### **Commander’s Response to Allegations of Sexual Assault**

- Commanders notified of a sexual assault must take immediate steps to ensure the victim’s physical safety, emotional security, and medical treatment needs are met, and that the AFOSI or other appropriate criminal investigative agency is notified

-- Commanders and anyone in the victim’s chain of command are mandatory reporters that must report a sexual assault to AFOSI

-- Commanders and others in the victim’s chain of command cannot keep a report of sexual assault restricted

-- Commanders should also refer to the section of this chapter titled “Command Response to Sexual Assault” for further details regarding their responsibility

- The appropriate commanders should determine whether temporary reassignment or relocation of the victim or subject is appropriate

- Commanders should consider whether no contact orders or Military Protective Orders (DD Form 2873) are required

- Personnel Reliability Program (PRP): A sexual assault victim certified under the PRP is eligible for both the restricted and unrestricted reporting options

-- If electing restricted reporting, the victim is required to advise a medical clinic provider of any factors that could have an adverse impact on the victim’s performance, reliability, or safety while performing PRP duties. If necessary, the medical clinic will inform the commander that the person in question should be temporarily suspended from PRP status, without revealing that the person is a sexual assault victim, thus preserving the restricted report.

- Required Reports:

-- 24-Hour Notification: The SARC will complete and submit the 24-hour Notification for all restricted or unrestricted reports to the Installation Commander as a standalone report via an encrypted, unclassified e-mail. The Installation Commander will forward a copy to the MAJCOM SARC who will forward to the MAJCOM/CV and AF/CVS.

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**SARP Response to Allegations of Sexual Assault**

- Upon notification if the Victim desires SAPR services

-- The SAPR office will determine program eligibility using the definition listed above for education and training purposes

--- SAPR services are available to active duty service members, dependents 18 years of age and older, reservists and guardsmen and Air Force civilian employees. DoD Civilian employees (Army, Navy and Marine), their dependents 18 years of age and older, outside the continental United States (OCOUS) and contractor employees are eligible in contingency areas if they are eligible for treatment in the military treatment facility

--- SAPR services are not available for victims who are assaulted by their spouse and child victims. Due to the heightened risk of violence, those cases are handled by the Family Advocacy Program (FAP) and must be referred to FAP.

--- Victims can be referred to FAP through command or by the SARC once it is determined FAP services are the most appropriate care

---- In cases where the subject and victim are unmarried intimate partners, the case will be referred to FAP

---- However, if the victim chooses not to engage in FAP services, victim may choose SAPR services

-- The SARC, SAPR VA, or on-call VVA will meet with the victim and discuss the restricted and unrestricted reporting options

--- Unrestricted Reports: An unrestricted report of sexual assault will result in a formal investigation and must be reported to AFOSI

---- Any report of a sexual assault made through the victim's chain of command, law enforcement, and the AFOSI, or other criminal investigative service is an unrestricted report

- The victim can also elect to make an unrestricted report
- Restricted Reports: Restricted reports will not be referred to AFOSI for investigation. A restricted report can only be made to a SARC, SAPR VA, VVA, or healthcare provider.
  - Restricted reporting is intended to give a victim additional time and increased control over the release and management of the victim's personal information, and to empower the victim to seek relevant information and support to make an informed decision about participating in the criminal process
  - Only military personnel and Air Force civilian employees may make restricted reports. Dependents and Reservists not on Title 10 orders cannot make restricted reports.
  - Restricted reports may be disclosed only under very limited circumstances, e.g., a serious or imminent threat to life.
- Independent Investigations (also referred to as third party reports): Should information about a sexual assault be disclosed to command or law enforcement from sources independent of the victim (such as a friend or witness), and an investigation into an allegation of sexual assault is initiated, that report is considered an independent investigation. An official investigation may be initiated based on that independently acquired information.
  - When the SARC or SAPR VA learns that a law enforcement official has initiated an official investigation that is based upon independently-acquired information and after consulting with the law enforcement official responsible for the investigation, the SARC or SAPR VA will notify the victim, as appropriate
  - If the victim has already made a restricted report, covered communications from the restricted report will not be released for the investigation unless the victim authorizes the disclosure in writing or another exception applies
- Assignment of a Victim Advocate (full-time or volunteer)
  - A VA may be assigned to the victim. To the extent practicable, the assigned VA will not be from the same unit as the victim.
  - The VA will provide support throughout the process. The VA will provide referral and ongoing non-clinical support to the victim.
  - Services will continue until the victim indicates services are no longer required, or the SARC makes this determination based on the victim's response to offers of assistance

## Other SAPR Related Issues

### - Expedited Transfers (ET)

-- An ET provides victims who file an unrestricted report of sexual assault the option of a permanent change of station (PCS) or a temporary or permanent change of assignment (PCA) to a location that will assist with the immediate and future welfare of the victim, while also allowing them to move to locations that can offer additional support to assist with healing, recovery, and rehabilitation

-- An ET is only available for active duty victims

-- Victims will only be eligible to receive one facilitated ET for an unrestricted report of sexual assault. Multiple reassignment requests for the same reported incident are only considered in exceptional circumstances.

-- Process:

--- The victim, with the assistance of the SARC, makes the request for an expedited transfer

--- The victim's commander (or equivalent) makes a recommendation to the host wing/installation commander for approval or disapproval. The victim's commander should base his or her recommendation upon all available information, especially that provided by AFOSI, and after consultation with the staff judge advocate (SJA). The victim's commander should recommend approval if he or she finds a credible report of sexual assault exists.

--- The host wing/installation commander makes a decision which, if approved, is forwarded by the victim through the virtual MPF to AFPC for transfer orders

--- The process from request through host wing/installation commander's decision must take no more than 72 hours

--- If disapproved by the wing/installation commander, the victim may appeal to the first/next general officer in the chain of command. If disapproved at this level the victim may make a final appeal to the MAJCOM/CV.

- Victims in FAP cases may also request an expedited transfer. The process is the same. The SARC will facilitate the process which can be found in AFI 40-301, Family Advocacy Program.

- Subjects may be transferred in the best interest of the Air Force. This is a separate process that is initiated by a commander through the local Military Personnel Flight (MPF). Additional guidance may be found in AFI 36-2110, *Assignments*, Attachment 26.

#### - Case Management Group (CMG) Meetings

-- SARCs and commanders, along with AFOSI, medical, SJA, and others, meet monthly to discuss reports of sexual assault on the installation. The CMG is convened to address cohesive emotional, physical, and spiritual care of a victim in a collaborative environment. The CMG will not discuss FAP, spouse or intimate partner cases. This CMG is chaired by the host wing or vice wing commander.

-- The CMG will also discuss instances of retaliation

-- The victim's commander is a mandatory member of the CMG and he/she may not delegate the responsibility to attend the CMG. Within 72 hours after the CMG the commander will provide the victim with an update regarding the investigation, medical, legal, status of an expedited transfer request, any other request made by the victim, command proceedings regarding the sexual assault from the date the investigation was initiated until there is a final disposition of the case.

#### - Retaliation

-- Air Force personnel who file an unrestricted or restricted report of sexual assault will be protected from reprisal, coercion, ostracism, maltreatment, retaliation, or threat of reprisal, coercion, ostracism, maltreatment or retaliation, for filing a report

-- If a commander becomes aware of retaliation they may refer the victim to the SARC, IG, or EO to assist with resolution. If referred to the SARC he or she will inform, with victim consent, the IG and the SJA.

-- In addition to protections for those who make a report to the SARC, no military member can retaliate against any alleged victim or other military member who reports a criminal offense (of any kind)

--- This provision in AFI 36-2909, *Professional and Unprofessional Relationships*, also prohibits members from maltreating or ostracizing any person who reports a criminal offense

--- A violation of this provision is considered a violation of a lawful general order or regulation, which means a violation of the AFI can be punished under UCMJ, Art. 92

-- At every CMG meeting, the CMG Chair will ask the CMG members if the victim, witnesses, bystanders (who intervened), SARCs and SAPR VAs, responders, or other parties to the incident have experienced any incidents of coercion, retaliation, ostracism, maltreatment, or reprisals. If any incidents are reported, the installation commander will develop a plan to immediately address the issue. The coercion, retaliation, ostracism, maltreatment, or reprisal incident will remain on the CMG agenda for status updates, until the victim's case is closed.



- Addressing Victim Misconduct:

- An investigation into the facts and circumstances surrounding an alleged sexual assault may develop evidence that the victim engaged in misconduct like underage drinking or other related alcohol offenses, adultery, drug abuse, fraternization or other violations of instructions, regulations, or orders
- In accordance with the UCMJ, the Manual for Courts-Martial (MCM), and AFIs, commanders are responsible for ensuring victim misconduct is addressed in a manner that is consistent and appropriate to the circumstances
- The disposition authority, the commander that makes the determination as to whether action should be taken and the appropriate level of action, for victim misconduct is the first O-6 Special Court-Martial Convening Authority in the chain of command
- Commanders have the authority to determine the appropriate disposition of alleged victim misconduct, to include deferring disciplinary action until after disposition of the sexual assault case. When considering what corrective actions may be appropriate, commanders must balance the objectives of holding members accountable for their own misconduct with the intent to avoid unnecessary additional trauma to sexual assault victims and to encourage reporting of sexual assaults, the gravity of any collateral misconduct by the victim and its impact on good order and discipline should be carefully considered in deciding what, if any, corrective action is appropriate.
- Special Victims' Counsel and/or Area Defense Counsel may be representing victims on matters of victim misconduct
- Commanders are expected to consult with their servicing staff judge advocate and use appropriate personnel actions to resolve any allegations
- Administrative separation actions involving victims of sexual assaults will be processed as required by the applicable AFI
  - When a commander proposing administrative or medical separation action was previously aware, or is made aware by the respondent or others, that the member has filed a past complaint, allegation, or charge that they were a victim of sexual assault, the proposing commander shall ensure the separation authority is aware that the discharge proceeding involves a victim of sexual assault
  - The separation authority must be provided sufficient information concerning the alleged assault and the victim's status to ensure a full and fair consideration of the victim's military service and particular situation
  - An Airman who is being recommended for an involuntary separation has the right to request the General Court-Martial Convening Authority review his or her discharge if

they believe their separation was initiated in retaliation for making an unrestricted report of sexual assault with the 12 months prior to the notification of the discharge

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## **COMMAND RESPONSE TO SEXUAL ASSAULT**

The Air Force's response to sexual assault is both proactive and reactive. On both fronts the Air Force utilizes a multidisciplinary approach. On the proactive front, the Sexual Assault Prevention and Response (SAPR) office is the lead agency for prevention. Prevention addresses a number of areas such as education and establishing an appropriate Air Force climate. The SAPR office has the lead in the area of sexual assault prevention, but every Airman and every agency must play a role for prevention to work. The Air Force responds to sexual assault as an institution, but a number of specific agencies respond to individual cases depending on the facts of the case. A broad range of agencies respond to individual cases. The SAPR office or Family Advocacy is typically one of those agencies. Others agencies include the Air Force Office of Special Investigations (AFOSI), the legal office, numerous medical and mental health providers, the chaplain's office, a member's chain of command and many others. Ultimately the member's commander will also be involved. Commanders are responsible for the good order and discipline within their unit and therefore have unique responsibilities regarding their response to an allegation of sexual assault.

### **Command Action Unique to Sex Assault Cases**

- The legal landscape in the area of sexual assault is changing very rapidly. There have been a host of legal changes in consecutive National Defense Authorizations Acts (NDAA) beginning in 2012. These NDAA changes resulted in sweeping legal changes to Federal Law (primarily in Chapter 10 of the United States Code), the UCMJ, Rules for Courts-Martial (RCM), Military Rules of Evidence (MRE) and numerous Air Force Instructions.
- With so many legal changes and more likely to come, it is imperative commanders consult with their respective Staff Judge Advocate early on in any sexually related offense. Below are several important areas all commanders must be aware of and consider when dealing with any sexual offense.

-- Authority to Investigate: AFOSI is the lead agency to investigate sexual assault allegations regardless of the severity of the offense. A commander should not make a determination about investigating a sexual offense without first consulting both AFOSI and their respective staff judge advocate (SJA).

-- Disposition Authority: RCM 306 states: "Each commander has discretion to dispose of offenses by members of that command." It also states: "A superior commander may withhold the authority to dispose of offenses in individual cases, types of cases, or generally." The Secretary of Defense did just that with regard to certain sexual offenses. This mandate known as "Initial Disposition Authority" is reiterated in AFI 51-201, *Administration of Military Justice*. The Secretary of Defense's (SecDef) order and AFI 51-201 both state the O-6 Special

Court-Martial Convening Authority is the initial disposition authority for certain sexual assault cases and all offenses arising from or relating to the same incident(s). Initial reports of a criminal offenses are often unclear. Early collaboration between the command, AFOSI, and the judge advocate (JAG) is critical to ensure this Initial Disposition Authority Policy is complied with.

-- Mandatory Discharge for Perpetrator of Sexual Assault: Sexual assault and sexual assault of a child are incompatible with military service. In accordance with AFI 36-3208, *Administrative Separation of Airmen*, a member found to have committed a sexual assault or sexual assault of a child will be discharged unless the member meets all of the specified retention criteria listed in the AFI. Sexual assault for the purposes of the instruction is defined very broadly. Again, JAG consultation is essential to ensure compliance with the AFI.

-- Discharging a Victim of a Sexual Assault: There are special discharge processing requirements for airmen who have made unrestricted reports of sexual assault. AFI 36-3208 provides victims the opportunity to request the General Court-Martial Convening Authority to review a discharge case if the victim made an unrestricted report of sexual assault within the 12 months prior to being notified of an involuntary discharge if that victim believed the discharge was initiated in retaliation for making the unrestricted report.

-- Mandatory General Court-Martial (GCM) and Statute of Limitations: Specified sexual assault offenses referred to a court-martial are now required to be referred to a GCM. This change in the UCMJ impacts a number of sexual assault offenses. In addition, UCMJ, Art. 56 makes a punitive discharge mandatory for a conviction of the same specified offenses under Article 18. Finally, UCMJ, Art. 43 was amended and the statute of limitation was removed for certain sexual assault cases.

-- Victim Consultation: Victims have a number of rights under UCMJ, Art. 6b (addressed in the section on the Victim Witness Assistance Program). In an effort to ensure victims are accorded their rights; commanders and legal offices are required to consult with victims (of all crimes) prior to taking a number of military justice related actions. The list of actions is provided in AFI 51-201, para. 7.12.12.

### **Addressing Victim Misconduct**

- An investigation into the facts and circumstances surrounding an alleged sexual assault may develop evidence that the victim engaged in misconduct like underage drinking or other related alcohol offenses, adultery, drug abuse, fraternization, or other violations of instructions, regulations, or orders

-- In accordance with the UCMJ, the MCM, and Air Force Instructions, commanders are responsible for ensuring victim misconduct is addressed in a manner that is consistent and appropriate to the circumstances.

--- A commander's authority might be limited, based on the type of offense involved

--- Commanders are expected to consult with their servicing SJA and use appropriate personnel actions to resolve any allegations of victim misconduct

-- If not withheld by a superior authority, commanders have the authority to determine the appropriate disposition of alleged victim misconduct, to include deferring disciplinary action until after disposition of the sexual assault case

-- When considering what corrective actions may be appropriate, commanders must balance the objectives of holding members accountable for their own misconduct with the intent to avoid unnecessary additional trauma to sexual assault victims and to encourage reporting of sexual assaults

-- The gravity of any collateral misconduct by the victim and its impact on good order and discipline should be carefully considered in deciding what, if any, corrective action is appropriate

### **Commander Response to Allegations of Sexual Assault**

- Commanders notified of a sexual assault through unrestricted reporting must take immediate steps to ensure the victim's physical safety, emotional security, and medical treatment needs are met, and that the AFOSI or appropriate criminal investigative agency is notified

- Attachment 4 to the Air Force Sexual Assault Policy is a checklist for assisting commanders in responding to allegations of sexual assault. Its primary objective is to assist commanders in safeguarding the rights of the victim and the subject, as well as addressing appropriate unit standards and interests. In all cases, commanders should seek the advice of the SJA in using the checklist before taking action.

- The appropriate commander should determine whether temporary reassignment or relocation of the victim or subject is appropriate, or possibly a permanent change of station, including humanitarian reassignment

- Commanders should consider whether no contact orders or Military Protective Orders (DD Form 2873) are required

- Sex Offender Registration: It is the policy of the DoD that any service member convicted in a general or special court-martial of any specified sexual offense must register with the appropriate authorities in the jurisdiction the service member will reside, work, or attend school upon leaving confinement (or upon conviction if not confined)

-- The specific offenses requiring a convicted member to register are listed in AFI 51-201, sec. 13L.

**Navy/Marine Corps: Excerpts from USN/USMC Commander's Quick Reference Legal Handbook (2016)<sup>3</sup>**

**SECTION 1:  
MILITARY JUSTICE  
AND  
SEXUAL ASSAULT PREVENTION AND RESPONSE**

**NCIS REPORTING AND MILITARY JUSTICE INVESTIGATIONS**

**COMMAND INQUIRY:**

Suspected offenses may come to command attention in a variety of ways (e.g., shore patrol, civil law enforcement, or phone call, etc.) The commanding officer (CO) must conduct some form of inquiry into reported offenses that may be tried by court-martial per reference (a). The degree of inquiry will depend on the nature, validity, and seriousness of the complaint. See reference (b).

**MANDATORY REFERRAL TO NCIS:**

Reference (c) mandates that certain incidents be referred to NCIS whether occurring on or off base and regardless of civilian investigation involvement. These incidents include:

- Actual, suspected, or alleged major criminal offenses (punishable under the Uniform Code of Military Justice (UCMJ) by more than 1 year of confinement);
- Non-combat deaths when the cause of death is not medically attributable to disease or natural causes;
- Fires or explosions of unknown origin affecting Department of the Navy (DON) property or property under DON control;
- Theft or loss of ordnance or controlled substances;
- Disappearance of a command member;
- All instances of suspected fraud against the government within DON (e.g., theft of government property, bribery, false claims for pay, etc.); actual or suspected acts of espionage, terrorism, sabotage, assassination, and actual, suspected, or attempted defection of DON personnel;
- Internal security incidents, such as loss, compromise, or suspected compromise of classified information and national security cases; and
- **Suspected sex-related offenses as defined under Articles 120 and 125 of the UCMJ.**  
*[bold typeface added]*

**WHEN NCIS DECLINES TO INVESTIGATE:**

NCIS may, at its discretion, decline to conduct or continue any investigation, but shall expeditiously inform the effected command. A command may then request assistance from the local base security department or appropriate authority or pursue a command investigation pursuant to reference (a).

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<sup>3</sup> USN/USMC COMMANDER'S QUICK REFERENCE LEGAL HANDBOOK at 1-8, 13-14 (Jul. 2016), Naval Justice School, United States Navy, *available at* <http://www.jag.navy.mil/documents/NJS/Quickman2016.pdf>

## **PROCESSING SEXUAL ASSAULT ALLEGATIONS**

### **REFERENCES:**

- (a) SECNAVINST 1752.4 (series)
- (b) MCO 1752.5 (series)
- (c) MCO 3504.2 (series)
- (d) OPNAVINST 1752.1 (series)
- (e) SAPR CO Checklist ([www.sapr.mil](http://www.sapr.mil))
- (f) DoDD 6495.01
- (g) DoDI 6495.02
- (h) NAVADMIN 272/12 and MARADMIN 624/12
- (I) MCO 5800.16A
- (J) SECDEF Memo of 14 Aug 2013
- (k) 10 U.S.C. § 1565(b)
- (l) MARADMIN 583/13
- (m) NAVADMIN 014/15
- (n) ALNAV 061/14
- (o) MARADMIN 607/15

### **GENERAL INFORMATION:**

- The Department of Defense defines “sexual assault” as the intentional sexual contact, characterized by use of force, physical threat, abuse of authority, or when such sexual contact is made when the victim does not or cannot consent. It includes rape, nonconsensual sodomy, and indecent assault regardless of gender or spousal relationship [see reference (g)]. References (b) and (c) provide specific detail specific policies, provide guidance, and identify command responsibilities for handling sexual assault allegations.
- Sex-related crimes are prescribed under the Uniform Code of Military Justice in Articles 120-120c and 125. Understand that the definition of “sexual assault” from the Sexual Assault and Prevention (SAPR) program is not the same as the legal definition of sexual offenses as punishable crimes under the UCMJ.

**COMMANDER’S RESPONSIBILITIES:** Commanders must have a thorough knowledge of reference (a) and reference (d) to fully understand the scope of their responsibilities, and those of the personnel under their command, when handling sexual assault allegations.

- Leadership is the key to sexual assault prevention and response;
- The commander’s role in prevention is to establish a climate that confronts the beliefs and values that contribute to behaviors which facilitate sexual assault, to establish clear standards for personal behavior, and to hold offenders accountable;
- As leaders commanders must be keenly aware of and sensitive to the climate of their units;
- Commanders must continuously educate their personnel on how to prevent incidents of sexual assault, while also encouraging victims and witnesses to report these incidents when they occur; and

- Be aware that sexual assault victims are physically, mentally, and emotionally traumatized and wounded.
- See Sexual Assault Initial Disposition Authority section below for additional command responsibilities.

**REPORTING REQUIREMENTS FOR SEXUAL ASSAULT INCIDENTS:** Commanders shall immediately report all actual, suspected, or alleged sexual assaults to the Naval Criminal Investigative Service. Therefore, commanders **must not** conduct independent command investigations into alleged sexual assaults in order not to potentially compromise an NCIS investigation into any sexual assault allegations.

In addition to normal OPREP/SITREP requirements, commands must report to Echelon II commanders within 24 hours of receiving a report of an incident of sexual assault and submit follow-up reports at least monthly until resolution [see reference (f)Not included in reference f- should this cite the OPREP instruction?; monthly SITREP no long required per OPNAVINST 1752.1C]. The following types of incidents must be reported as noted:

- Sexual assaults, including rape, forcible sodomy, assault with intent to commit rape or sodomy, and indecent assault.
- Sexual assaults occurring in areas of Navy control regardless of the victim's or perpetrator's military status, military affiliation, or nationality.
- Incidents involving sexual assault victims who are family members and victims and alleged perpetrators who are active-duty naval Service members or of another service assigned to a naval command regardless of the location of the incident.
- Incidents involving sexual assault victims who are under age 18 or married to the perpetrator should be reported through the family advocacy program [see DOMESTIC VIOLENCE/FAMILY ADVOCACY].

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**CARE FOR SEXUAL ASSAULT VICTIMS:** In cases of sexual assault, the specialized concerns and issues (physical, mental, and emotional) surrounding such assaults require all personnel involved in the case to give additional consideration to the sensitive treatment of such victims. Avoiding actions or treatment that makes the victim feel re-victimized is crucial to the well-being of the individual concerned. Additionally, references (a) and (b) expressly prohibit releasing the name of any sexual assault victim to the media without the victim's consent.

**VICTIM ADVOCATES:** The Navy and Marine Corps have victim advocates available through the Family Services, Sexual Assault Prevention Program. Victim advocates possess specialized training in assisting victims of sexual assault. Commanders should be receptive to recommendations made by victim advocates on behalf of victims. Victim advocates may recommend that the commanding officer issue a military protective order, that the victim reside in a 'safe house' for a short period of time, or that the victim requires a level of assistance beyond what the victim advocate can provide, requiring a commander's authorization.

**VICTIM'S LEGAL COUNSEL (VLC):** Per reference (j), on 14 Aug 2013, the Secretary of Defense directed that each service immediately implement a victim legal advocacy program to provide legal and representation to victims of sexual assault. On 1 Jan 2014, the Navy and Marine Corps established a VLC Organization (VCLO). The mission of the VCLO is to provide legal advice and representation to the victims of certain crimes. A VLC (judge advocate) will be detailed to advocate on the victim's behalf by providing legal counsel throughout the investigation and court-martial process. References (j) through (l) provide additional guidance on a victim's eligibility for VLC services. Contact a staff judge advocate in order to determine whether a particular victim is required to meet a VLC.

**ADDITIONAL CONSIDERATIONS:**

- The Secretary of the Navy will provide guidance to commanders regarding their ability to take appropriate action to remove or temporarily reassign a Service member accused of committing a sex-related offense from a position of authority or from an assignment. This may not be used as a form of punishment but is intended to promote good order and discipline within the unit and to protect the victim if he/she is in the same unit as the accused. OPNAVINST 1752.1C directs: Consider a temporary or permanent reassignment of the alleged offender instead of the victim pursuant to a determination that reasonable grounds exist to believe that an offense constituting sexual assault has occurred based on the advice of the supporting judge advocate and the available evidence.
- A defense counsel must now request, via the trial counsel, to interview the victim of a sex-related offense. The victim has the right to have the trial counsel or a VLC present for the interview with the defense counsel.
- **For the most recent USMC Sexual Assault Prevention and Response Program changes, see reference (o).**

**SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY (SA-IDA)**

**REFERENCES:**

- (a) Policy
  - i. NAVADMIN 195/12
  - ii. MARADMIN 372/12
  - iii. JMJ Practice Advisory (1-14)
- (b) Reporting requirements
  - i. NAVADMIN 272/12
  - ii. MARADMIN 624/12
- (c) Expedited transfer
  - i. NAVADMIN 132/12
  - ii. MILPERSMAN 1300-1200I
  - iii. CMC/MFC-3 LOI dtd 28 Jun 2012
  - iv. MARADMIN 227/12
- (d) Commander's Checklist (www.sapr.mil)
- (e) MCO 5800. 16A
- (f) OPNAVINST 1752.1 (series)



**POLICY:** Per Secretary of Defense (SECDEF) policy, any report of offenses under the Uniform Code of Military Justice, Article 120 (rape, sexual assault of an adult), Article 125 (forcible sodomy), or Article 80 (attempts of rape, sexual assaults, or sodomy) shall now be referred to the O-6 Special Court-Martial Convening Authority (SPCMCA) or higher court-martial authority in the chain of command for initial disposition of the allegation(s). This person will be the SA- IDA [see reference (a)i].

**USMC POLICY:** While the USN follows the SECDEF policy, the USMC is broader and requires all crimes under Article 120, including sexual-contact crimes, as well as all crimes under Article 120b (all sexual crimes against children), also be elevated to the higher convening authority [see reference (a)ii].

**SA-IDA RESPONSIBILITIES:** If you are a SA-IDA, you have all options to direct or dispose of a case that are available pursuant to Rules for Court-Martial 306 [for USMC policy, see below and reference (a)iii]. Prior to making any disposition decision, the SA-IDA must consult with a staff judge advocate, trial counsel, or both. The following options are available to the SA-IDA:

- Take no action: the case will be dismissed, and the SA-IDA will work with the local Sexual Assault Response Coordinator to complete reporting requirements.
- Court-martial warranted: If the SA-IDA believes the case may warrant a court- martial, then the SA-IDA may convene an Article 32 investigation and then potentially forward the matter to a General Court-Martial Convening Authority (GCMCA), who will determine whether to refer charges to a court-martial. A SA-IDA may convene a special court-martial for charges other than rape or sexual assault of an adult, rape or sexual assault of a child, forcible sodomy, or attempts thereof.
- Administrative action: in the USMC, the SA-IDA must make the decision to initiate administrative separation proceedings when appropriate. The SA-IDA in the USMC can also direct the accused's immediate superior to notify the accused of administrative separation processing initiation. If the accused's immediate superior is also a SPCMA, the SA-IDA can direct the SPCMCA to convene the administrative separation board [see reference (a)iii]. In the Navy, the SA-IDA will return the matter to the immediate commanding officer of the accused to initiate administrative separation proceedings.
- Non-judicial punishment. Forward for disposition. In the USN, the SA-IDA may determine that the matter should be forwarded to a subordinate or senior authority for disposition, to include any disposition action available to that authority under Rule for Court-Martial 306. In the USMC, the SA-IDA cannot forward a case to a subordinate command for disposition [see reference (a)iii].

#### **SUPPORT TO THE SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR)**

**PROGRAM (Formerly SAVI):** Commands must be prepared to prevent and respond to allegations of sexual assault. Establish an atmosphere of zero tolerance of sexual assault and rape [see enclosure (4) of reference (f)].

**RESPONSIBILITIES OF THE COMMANDING OFFICER (CO):** Whether the CO is the SA-IDA or not, if a CO is the immediate commander of the accused or victim, the CO must be familiar with and follow the requirements of the Commander's Checklist [see reference (d)].

- Military Protective Orders (MPOs): This is still the responsibility of the accused's and/or victim's CO, respectively, to implement if necessary. COs are encouraged to consult with a staff judge advocate and NCIS prior to issuing a MPO if feasible.
- Victim/Witness Assistance Program (VWAP): Ensure that the victim has been advised of his/her VWAP rights under Department of Defense policy and as enumerated in DD Form 2701.
- Investigations: Ensure that NCIS is immediately notified upon the receipt of an unrestricted report of sexual assault. The command is not to initiate a command investigation
- Responsibility to the victim: Ensure the victim's safety, as well as the victim's access to all needed SAPR and medical resources.
- Responsibility to the accused: Ensure that the accused's due process rights are not violated, he/she has access to appropriate legal resources, and has access to any necessary medical assistance.
- Participate in monthly sexual assault Case Management Group (CMG) meeting chaired by the installation CO. This responsibility may not be delegated. (*DoDI 6495.02*) Within 72 hours of the last CMG, provide victims of a sexual assault who filed an Unrestricted Report monthly updates regarding the current status of any ongoing investigative, medical, legal, status of an Expedited Transfer request or any other request made by the victim until the final disposition. This is a non-delegable commander duty. (*DoDI 6495.02*)
- Within 30 days of assuming command, along with the deputy, XO or assistant OIC, and senior enlisted advisor, obtain a customized brief and CO's toolkit from the local SARC.
- Within 30 days of assuming command, along with the deputy, XO or assistant OIC, and senior enlisted advisor, obtain training from a judge advocate on the Military Rules of Evidence 514 privilege, retaliation, sexual-assault initial disposition authority, and case disposition reporting requirements.
- Review the official military personnel files with the designated field code (i.e., 91) or NAVPERS 1070/887 Sex Offense Accountability Record within 30 days of permanent assignment of a Service Member

**EXPEDITED TRANSFER:** If a victim, who has made an unrestricted report of sexual assault, requests an expedited transfer, then the CO has 72 hours in which to make a decision as to whether the mission can support the request. For the USN, the factors to consider when making this decision can be found in reference (c)ii.

- **USN:** Per reference (c)ii, if the CO denies the request for expedited transfer, there will be an automatic appeal of the denial to the GCMCA in the chain of command.
- **USMC:** Per reference (c)iv, if the CO denies the request for expedited transfer, then the victim may appeal the decision if he/she wishes to do so. There is no automatic appeal.

**MOST IMPORTANT:** Always consult with a staff judge advocate, one of the USN's Region Legal Service Offices, or a USMC Legal Services Support Section as soon as possible.

#### **OTHER CONSIDERATIONS:**

- All convictions for a sex-related offense will now result in a mandatory dismissal for officers and a dishonorable discharge for enlisted personnel. Further, if an eligible sex-

related offense goes to court-martial it must be tried in a general court-martial and may not be disposed of at any lesser court-martial forum. An eligible sex- related offense is defined as rape, sexual assault, rape and sexual assault of a child, forcible sodomy, or an attempt to commit one of these offenses.

- Involuntary Separation of a Service member within 1 year of final disposition of a reported sexual assault requires flag/general officer review of the circumstances of and grounds for the proposed separation, and concurrence to separate law now prohibits a commander and the SA-IDA from considering the character and military service record of the accused when making an initial disposition decision for a sex- related offense. NAVPERS 1070/887 will be used to annotate the official military personnel file of any Service member who is convicted at court-martial or awarded NJP for sex-related offense(s), regardless of recommendation for retention or separation from the naval service. NAVPERS 1070/887 will remain in the official military personnel file of Service members for the duration of the applicable member's career. (OPNAVINST 1752.1C)

#### **CONVENING AUTHORITY LIMITATIONS AS A RESULT OF THE FY-14 NATIONAL DEFENSE AUTHORIZATION ACT:**

- Action on court-martial findings (guilty/not guilty):
  - The convening authority (CA) CANNOT modify court-martial findings if:
    - The offence involves rape, sexual assault, a sexual offense against a child, or forcible sodomy; or
    - The offense's maximum allowable punishment exceeds two years
    - OR the sentence actually adjudged includes a punitive discharge or confinement exceeding six months.
  - If a CA modifies a court-martial finding in any other case he/she needs to provide a written explanation for doing so.
- Action on a court-martial sentence:
  - The CA can modify a sentence for an offense unless the actual adjudged sentence includes a punitive discharge or confinement exceeding six months.
  - For such a sentence, the CA can only modify it pursuant to a written recommendation from the trial counsel indicating that the accused provided substantial assistance in another trial or if the sentence modification is pursuant to a pre-trial agreement.
  - If there is a pre-trial agreement, a mandatory minimum sentence of dishonorable discharge may only be commuted to a bad conduct discharge.

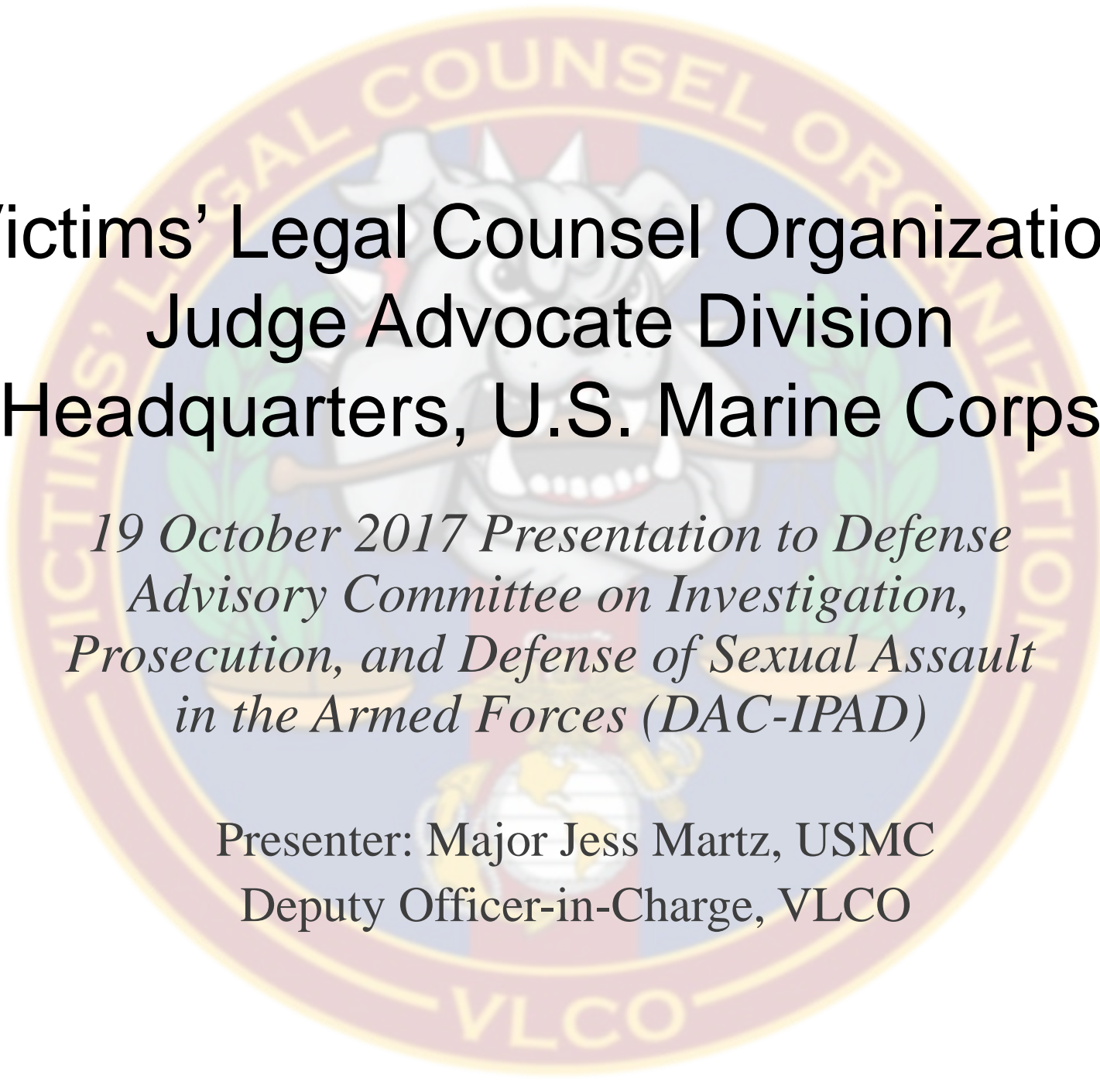
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#### **GENERAL COURT-MARTIAL (GCM):**

- A Uniform Code of Military Justice (UCMJ) Article 32 pre-trial investigation is required before any charges are referred to a GCM. A CA may order an Article 32 investigation.
- **\*\*UPDATE\*\* FY-14 NDAA:** Section 1702 (effective 26 Dec 2014) will change how an Article 32 hearing is conducted. A victim, whether civilian or military, may not be required to testify at the hearing. The Article 32 investigation/hearing officer must be

senior in rank to the TC and DC and must be a judge advocate except in extraordinary circumstances.

- Only flag or general officers (and a very few specifically designated non-flag/general officers who are COs) may convene a GCM [see reference (c), section 0120].
- GCMs involve a MJ, at least 5 members, TC, and DC (military and/or civilian).
- GCMs have the authority to issue the maximum punishment listed for any UCMJ offense.
- GCMCAs may approve pre-trial agreements.
- GCMCAs take action on findings and sentences after the clemency period has expired.
- **OTHER CONSIDERATIONS:**
  - Law now requires that all convictions for a sex-related offense result in a mandatory dismissal for officers or a dishonorable discharge for enlisted personnel. Further, all sex-related offenses must be tried at a GCM, when a court-martial is warranted, and may not be disposed of at any lesser forum when charges are appropriate for referral. A sex-related offense is defined as rape, sexual assault, rape and sexual assault of a child, forcible sodomy, or an attempt to commit one of these offenses.
  - Law also requires additional review if a GCMCA elects not to refer a sex-related charge to a GCM. If the GCMCA's staff judge advocate recommends referring a case to a GCM after the Article 32 investigation and the GCMCA chooses not to, this decision must be reviewed by SECNAV. However, if the SJA recommends not referring the case to a GCM and the GCMCA concurs, this decision must be reviewed by the next GCMCA in the chain of command.



# Victims' Legal Counsel Organization Judge Advocate Division Headquarters, U.S. Marine Corps

*19 October 2017 Presentation to Defense  
Advisory Committee on Investigation,  
Prosecution, and Defense of Sexual Assault  
in the Armed Forces (DAC-IPAD)*

Presenter: Major Jess Martz, USMC  
Deputy Officer-in-Charge, VLCO

# Agenda

- Mission Statement
- Opening Remarks
- Questions





# Mission of USMC VLCO

- Provide legal advice, legal counseling, and representation to victims of sexual assault and other crimes while ensuring that victims' rights are protected at all stages of the investigation and throughout the military justice process.
- *10 USC § 1044e, 10 USC § 1365b; MCO P5800.16A; MCBUL 5800 (May 2017); VLCO SOP Manual (April 2016)*

# Personal Experience

- 4 years of military justice experience prior to VLC
- RVLC from May 2016-August 2017
  - Assisted over 70 victims (47 detailed clients)
  - Average caseload = 25 cases
  - Supervised other VLCs
- Deputy OIC from August 2017 to the present
  - Assist the OIC in supervision of all VLCs
  - Still represent 12 clients

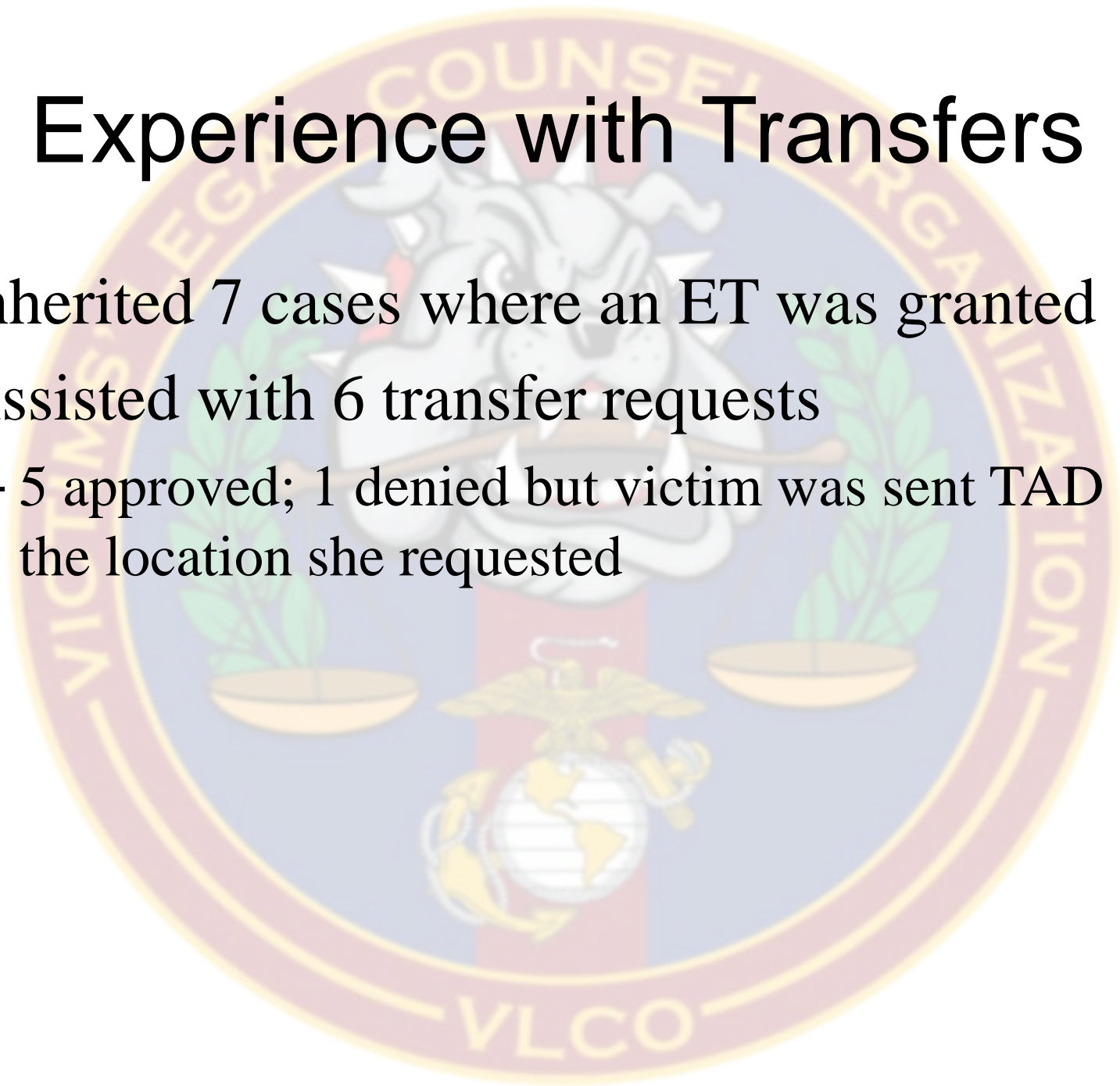


# VLC Role

- Timing of representation depends on when the victim seeks our services
- Explain the policies, process, and options
- Impact on victim's career
- Impact on case/investigation
- Transfer VLC services?
- Possible assistance with submission and appeals

# Experience with Transfers

- Inherited 7 cases where an ET was granted
- Assisted with 6 transfer requests
  - 5 approved; 1 denied but victim was sent TAD to the location she requested

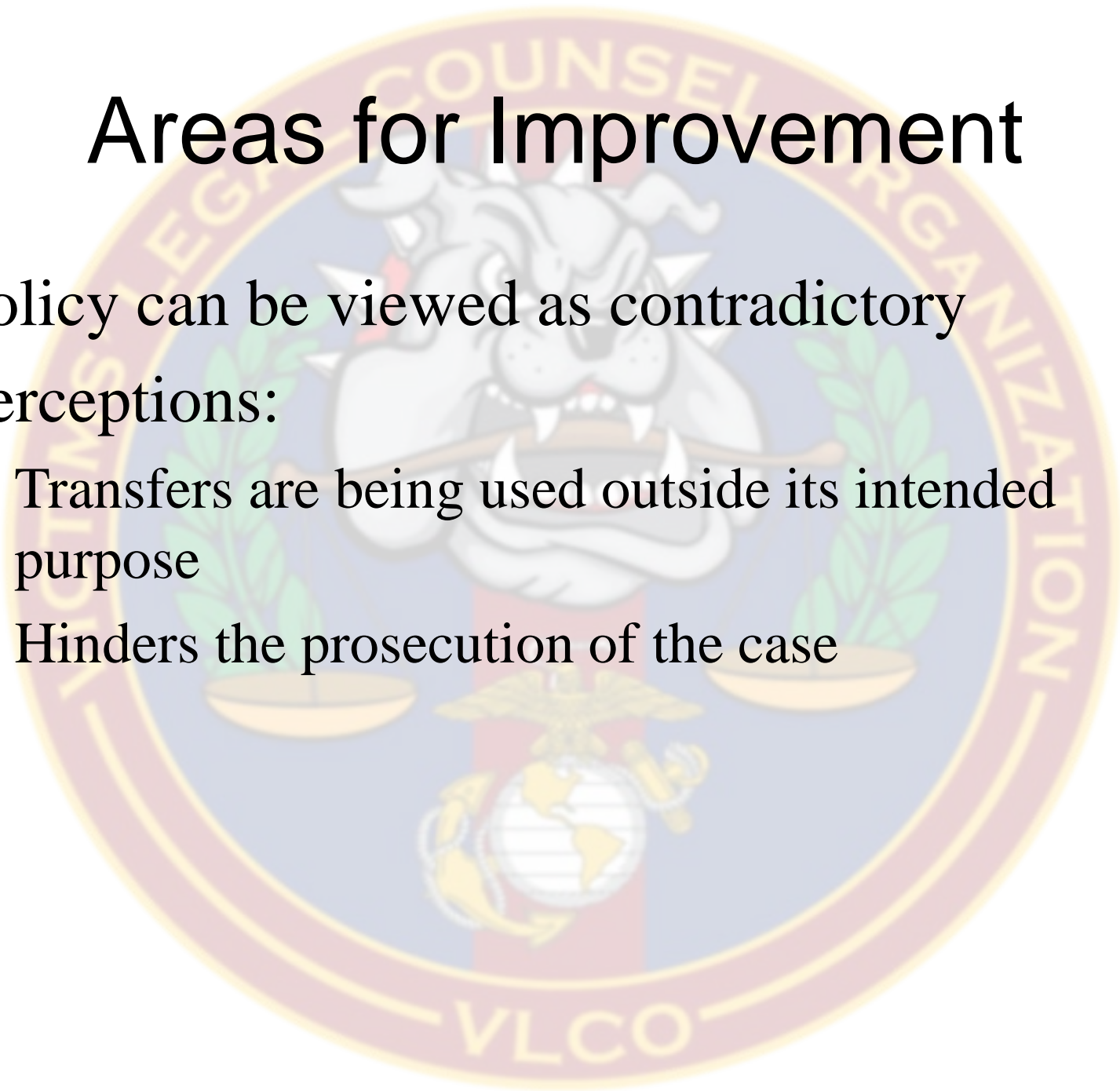


# Victim Experience with ETs

- Victim removed from the physical proximity of the sexual assault in many cases
- Victim allowed a new start at a new duty station
  - Limits retaliation and rumors in the unit
  - Gives the victim a sense of empowerment
- Victim moved closer to family and other support structures in many cases

# Areas for Improvement

- Policy can be viewed as contradictory
- Perceptions:
  - Transfers are being used outside its intended purpose
  - Hinders the prosecution of the case







**Questions?**

# In the military, trusted officers have become alleged assailants in sex crimes



The Army is grappling with a resurgence of cases in which troops responsible for preventing sexual assault have been accused of rape and related crimes, undercutting the Pentagon's claims that it is making progress against sexual violence in the ranks.

In the most recent case, an Army prosecutor in charge of sexual assault investigations in the Southwest was charged by the military last month with putting a knife to the throat of a lawyer he had been dating and raping her on two occasions, according to documents obtained by The Washington Post.

Additionally, a soldier at Fort Sill, Okla., who was certified as a sexual-assault-prevention officer was convicted at a court-martial in May of five counts of [raping a preteen girl](#).

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Army officials confirmed to The Post that eight other soldiers and civilians trained to deter sex offenses or help victims have been investigated over the past year in connection with sexual assault. The Army would not provide details, saying that many of the investigations are pending.

Other branches of the armed forces have faced their own embarrassments. The deputy director of the Air Force's office of sexual assault prevention at the Pentagon resigned last year after the Air Force inspector general rebuked him for making sexually inappropriate comments and creating "an intimidating and offensive working environment," according to a confidential report obtained by The Post under the Freedom of Information Act.

[https://www.washingtonpost.com/investigations/in-the-military-trusted-officers-became-alleged-assailants-in-sex-crimes/2017/10/19/ec2cf780-ae9a-11e7-be94-fabb0f1e9ffb\\_story.html?utm\\_term=.56857d2b1517&wpisrc=nl\\_evening&wpmm=1](https://www.washingtonpost.com/investigations/in-the-military-trusted-officers-became-alleged-assailants-in-sex-crimes/2017/10/19/ec2cf780-ae9a-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.56857d2b1517&wpisrc=nl_evening&wpmm=1)

## The Washington Post

By Craig Whitlock – October 19, 2017

Air Force staff members complained that the senior executive, Jay Aanrud, made sexist remarks about tight pants and Hooters models, and said it is women's work to shop and eat bonbons, according to the report. Aanrud, a former pilot whose call sign was "Hoser," told investigators that he was joking and that his remarks were misconstrued.

Despite the investigation, the Air Force rehired Aanrud last month to work at the Pentagon as a technical specialist on aviation issues. An Air Force spokeswoman said he doesn't supervise anyone in his new job. Aanrud declined to comment.

*[\[How the military handles sexual assault cases behind closed doors\]](#)*

For the armed forces, the cases are a painful reminder of similar scandals that erupted in 2013.

That year, the Air Force's [chief sexual-assault-prevention officer](#) at the Pentagon was [accused of groping a woman outside a bar](#); he was later acquitted by a civilian jury but reprimanded by the military. An Army sergeant in charge of helping sexual assault victims at Fort Hood, Tex., was convicted of pandering for pimping female soldiers.

In addition, each of the military services was tainted by reports of young women being assaulted by uniformed recruiters.

With angry lawmakers in Congress demanding a crackdown, then-Defense Secretary Chuck Hagel ordered the armed forces in May 2013 to retrain and rescreen tens of thousands of military recruiters and sexual-assault-prevention officers.

Despite the new measures, incidents kept happening. Five months after Hagel's order, a soldier attending a sexual-assault-prevention conference in Orlando was accused of [getting drunk and raping a woman](#) he met at his hotel. The Army investigated but did not file charges because the woman declined to cooperate.

Since then, the military has invested millions of additional dollars in sexual-assault-awareness programs. Training is mandatory for everyone in uniform. Top brass have promised to redouble their efforts to punish offenders and protect victims.

"We've been putting extraordinary resources into this area," said Rep. Mike Coffman (R-Colo.), chairman of the House Armed Services subcommittee for military personnel. "Of all the issues we have on my committee, we have spent more time on sexual assault than any other issue."

Coffman said military leaders have come a long way in addressing the problem but added that more needs to be done. He said Army leaders have briefed him about the sexual-assault-prevention officers who have gotten in trouble and said they are reviewing how people are selected for those posts.

"We always need to look at the screening and look where the screening failed," he said in an interview. But in comparison to past scandals, he said, "the Army has gotten the message an awful lot quicker."

[https://www.washingtonpost.com/investigations/in-the-military-trusted-officers-became-alleged-assailants-in-sex-crimes/2017/10/19/ec2cf780-ae9a-11e7-be94-fabb0f1e9ffb\\_story.html?utm\\_term=.56857d2b1517&wpisrc=nl\\_evening&wpmm=1](https://www.washingtonpost.com/investigations/in-the-military-trusted-officers-became-alleged-assailants-in-sex-crimes/2017/10/19/ec2cf780-ae9a-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.56857d2b1517&wpisrc=nl_evening&wpmm=1)



## The Washington Post

By Craig Whitlock – October 19, 2017

Last year, the Defense Department received 6,172 reports of sexual assault in the ranks — a new high and almost twice as many as were reported in 2010. Pentagon officials have called the increase an encouraging sign that more victims are willing to come forward and trust the military to help them.

To tackle the problem, the Army employs 650 full-time sexual assault response coordinators and victim advocates, plus 2,200 others who work part-time.

*[\[In the war against sexual assault, the Army keeps shooting itself in the foot\]](#)*

In the past year, eight of them have been accused of sexual assault, triggering criminal investigations by a combination of military and civilian authorities, said William J. Sharp, an Army spokesman at the Pentagon.

Officials from the Navy, the Marine Corps and the Air Force told The Post that none of their personnel involved in sexual assault prevention have been investigated for sex crimes over the past year.

Lt. Col. Jennifer R. Johnson, an Army spokeswoman, said the service adopted new standards in 2013 for screening sexual-assault-prevention personnel, drill instructors, recruiters and others who hold positions of “significant trust.”

She said that the standards are more stringent than what the Defense Department requires, but that the Army has decided to review them again “to determine if any changes are required.”

“As Army professionals, we expect everyone on our team to live and demonstrate the Army values every day,” she said in an email. “Every allegation of sexual assault, from an unwanted touch over the clothing to a forcible rape, is investigated. . . . The Army strives to hold all offenders accountable for their actions no matter their position or rank.”

Few personnel get more screening than the Army’s special-victim prosecutors, a team of 23 lawyers who oversee sex crime and domestic violence cases across the country. The job is considered an elite position within the Judge Advocate General’s Corps, and those who hold it are handpicked by the Army’s top uniformed lawyer.

The program was thrown into turmoil in 2014 when its supervisor was placed under investigation for [allegedly groping a female lawyer](#) — at a sexual-assault-prevention conference.

The supervisor, Lt. Col. Jay Morse, acknowledged having an intimate encounter with the woman but denied touching her without consent. Army officials ultimately decided that they lacked evidence to press criminal charges, but [reprimanded Morse for misconduct](#). He retired soon after.

The Army has since been rattled by another case involving a special-victim prosecutor.

[https://www.washingtonpost.com/investigations/in-the-military-trusted-officers-became-alleged-assailants-in-sex-crimes/2017/10/19/ec2cf780-ae9a-11e7-be94-fabb0f1e9ffb\\_story.html?utm\\_term=.56857d2b1517&wpisrc=nl\\_evening&wpmm=1](https://www.washingtonpost.com/investigations/in-the-military-trusted-officers-became-alleged-assailants-in-sex-crimes/2017/10/19/ec2cf780-ae9a-11e7-be94-fabb0f1e9ffb_story.html?utm_term=.56857d2b1517&wpisrc=nl_evening&wpmm=1)



## **The Washington Post**

By Craig Whitlock – October 19, 2017

In August 2016, a lawyer who worked for the Army walked into the Comanche County Courthouse in Lawton, Okla., to seek a protective order against a man she had been dating: Capt. Scott Hockenberry, who handled cases at Fort Sill and other posts in the region.

The woman alleged in court papers that their relationship had turned violent and that Hockenberry had raped her three times over the previous month. She also alleged that he had placed a knife against her throat during one of the assaults and injured her jaw on another occasion, according to her protective-order application.

“They started dating but it got out of control,” said Robert Don Gifford, an attorney for the woman.

Hockenberry disputed the allegations and has filed a defamation claim against the woman in state court in Oklahoma, documents show.

The Army reassigned him to the Military District of Washington and conducted a lengthy criminal investigation.

Last month, it charged Hockenberry with sexually assaulting the woman on two occasions, placing a knife against her throat and striking her in the face, according to military charging documents obtained by The Post. A preliminary hearing is scheduled for later this month.

“We categorically deny all of the allegations made by this accuser. Period. Full stop,” said Will Helixon, an attorney representing Hockenberry.

The Post’s policy is not to identify victims of sexual assault or abuse in most cases.

It is unclear why the Army waited a year to file charges. Lawyers for both sides say the case has attracted notice at the Pentagon, given the nature of Hockenberry’s job. “This has received extra scrutiny,” Gifford said.

Another recent case that has received high-level attention surfaced in August at Fort Benning, Ga., a boot-camp hub for the Army.

The [Army suspended](#) several drill instructors after female recruits reported being sexually assaulted. A criminal investigation is pending. The Army has released few details, although it has since relieved a Fort Benning battalion commander for “a loss of confidence in his ability” to lead.



# **Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD)**

Case Review Working Group  
Initial Case Review Plan

October 20, 2017



# PURPOSE

- Brief initial case review plan
- Gain approval of proposed initial review plan



# BACKGROUND

- Members of the CRWG reviewed MCIO case files and Records of Trial
  - Nine CID case files
  - Seven AFOSI case files
  - Ten NCIS case files
  - Five Records of Trial
- Two hours of deliberations



# INITIAL CASE REVIEW PLAN

- Investigations of penetrative offenses not resulting in preferral of charges
- Military subjects
- Adult victim (16 and over)
- Investigations closed in FY17



# BENEFIT OF PROPOSED PLAN

- Not covered by prior panels
- Congressional interest
- Dueling data – too few cases preferred vs. too many cases preferred
- Case categorization is not uniform between the Services and is confusing
- Capture preferred case, penetrative offense data for follow-on comparison



# METHOD OF REVIEW

- Staff will review a statistically valid sample of investigations
- Follow guidance provided by CRWG
- Collect data and identify trends and issues
- CRWG review and assess data and review staff identified cases