

#### DEPARTMENT OF THE AIR FORCE HEADQUARTERS UNITED STATES AIR FORCE WASHINGTON, DC

DEC 20 2018

#### MEMORANDUM FOR ALMAJCOM-FOA-DRU/CD

FROM: HQ USAF/A1 1040 Air Force Pentagon Washington, DC 20330-1040

SUBJECT: 2019 Sexual Assault Prevention and Response and Suicide Prevention Annual Training

# References: (a) DoDI 6495.02, Sexual Assault Prevention and Response (SAPR) Procedures, 28 March 2013, Incorporating Change 3, 24 May 2017 (b) DoDI 6490.16, Defense Suicide Prevention Program, 6 November 2017

One suicide or sexual assault is one too many. As Air Force leaders, we must do all we can to prevent suicide and sexual assault as well as provide the best response and care to our Airmen who face crisis or trauma. We owe this to our Airmen who fly, fight, and win every day, make sacrifices to defend our nation, and accomplish the mission. We have made great progress in our response, but more must be done in preventing these forms of violence before they occur.

All Regular Air Force, Reserve, Guard, and Air Force civilians (appropriated and nonappropriated fund) will complete the 2019 Sexual Assault Prevention and Response (SAPR) and Suicide Prevention Annual Training via the *Commander's Toolkit: SAPR Talking Points* and the *Tools to Create an Environment of Dignity, Respect, and Connectedness* toolkit. Contractors are encouraged, but not required, to complete the training. By integrating training in related areas, annual training for SAPR, suicide prevention, and resilience has decreased from 8 hours in 2015 to 1.5 hours in 2018.

The Commander's Toolkit: SAPR Talking Points are attached for implementation in calendar year 2019 with completion by 31 December 2019. Commanders have discretion on how they conduct all the talking points and are encouraged to reach out to their Sexual Assault Response Coordinator (SARC) for assistance. The tracking mechanism will be made available quarterly through formal tasking channels.

The Tools to Create an Environment of Dignity, Respect, and Connectedness toolkit materials and guidance have been provided to Violence Prevention Integrators (VPI) and Air National Guard (ANG) designees for implementation at their locations. All Total Force members will complete training selected from this toolkit based on approved MAJCOM or installation Community Action Plans (CAP) to meet local needs and emerging community issues. Installations must select training to meet the sexual assault and suicide prevention requirements. New incoming Air Force enlisted and civilian members will complete foundational bystander intervention skills training at their accessions source and/or first duty assignment in place of the toolkit trainings. All training must be conducted face-to-face and taught by an implementer/coordinator trained by a VPI or ANG designee. This toolkit cannot be replaced without written permission from AF/A1Z. The associated training video is not authorized for use in place of the face-to-face requirement with limited exceptions. Training will be tracked in Advanced Distributed Learning Service (ADLS).

My point of contact is Ms. Maritza Sayle-Walker, AF/A1Z Policy, Operations and Training Division Chief, DSN 225-5578, or maritza.m.saylewalker.civ@mail.mil.

Your leadership is crucial to our success in preventing and responding to suicide and sexual assault. Thank you for your energy and attention on these matters, and for all you do for your Airmen.

B.J. Thele

BRIAN T. KELL? Lieutenant General, USAF DCS, Manpower, Personnel and Services

Attachments: Commander's Toolkit: SAPR Talking Points

cc: SAF/MR SAF/GC SAF/PA SAF/SG AF/JA MAJCOM/VPI (or designee) MAJCOM/SARC MAJCOM/CSPM

(For Commander's or Director's Calls and other Staff Gatherings)

## January - December 2019

#### **Overview/Purpose**

SAPR Talking Points are designed to supplement 2019 Integrated SAPR/Suicide Prevention training in order to meet all SAPR training requirements outlined in DoDI 6495.02. This toolkit will assist commanders with creating a regular and repeated dialogue with their Airmen regarding sexual assault prevention and response. Quarterly, commanders will conduct this dialog during scheduled briefing or meeting to discuss the designated topics.

#### Guidance

Commanders and Directors (not delegated further than SQ/CC) are required to discuss the SAPR Talking Points with their personnel. For 2019, the required topics are combined into quarterly Talking Points and must be completed by 31 Dec 2019. This requirement includes all Reg AF, ANG, ARC, and DoD Civilians. Contractors are highly encouraged, but not required to receive the Talking Points. The quarterly SAPR Talking Points, in conjunction with 2019 Integrated SAPR/Suicide Prevention training, satisfies mandated SAPR and Suicide Prevention Training.

Commanders may use interactive tools, games (such as Jeopardy or Family Feud), slide shows, and videos to convey the message. (**Note:** The exception to video usage is using the integrated training video for mass sessions, which is prohibited.) Suggested tools for each quarter are provided in this package. Commanders are encouraged to reach out to the Installation SARC for assistance.

**Note:** In extenuating circumstances ONLY, where you cannot reach every Airman (remote GSUs, shiftwork, etc.), commanders may use other means (newsletter, VTC, t-con, etc.) to reach all personnel.

#### Tracking

Commanders and Directors (SQ/CC and above) must document completion of each quarterly Talking Point. Quarterly, commanders or their designee, must report the number of personnel in their organization and the number trained to their MAJCOM. MAJCOMs will report their percent trained to A1Z. Since this training is an NDAA requirement and mandated for all military and civilians, the quarterly training goal is 100% trained.

**Suspense:** Metrics will be sent to A1Z no later than 9 Apr 19, 9 Jul 19, 8 Oct 19 and 8 Jan 20.

#### **SENSITIVITY NOTICE**

Commanders should address the sensitive nature of the content at the start of each brief to prevent unintentional disclosure of a sexual assault as well as acknowledge that victim sensitivity and care are top priorities for the Air Force.

## **SUPPORT**

Commanders can seek support from SJA or other legal office personnel on legal or investigative topics. SARC involvement should be specific to the SAPR program.

### **RESOURCES**

For additional resources or to access the Talking Points online, visit the SAPR Program on the CACenabled AF web portal, under LIFE & FITNESS. For additional information about the SAPR program, visit the SAPR.mil website

### APPENDIX

An appendix is provided with supplemental information to use if further guidance on the Talking Points is needed.

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(For Commander's or Director's Calls and other staff gatherings)

## First Quarter: January - March

## The SAPR Program

Sexual Assault is inconsistent with our AF Core Values. The AF SAPR mission is to educate, advocate, and collaborate to stop sexual assault and to provide direct response services to victims of sexual assault. The AF will ensure response services are gender-inclusive, culturally competent and recovery-oriented.

- Definition: SAPR policy defines sexual assault as intentional sexual contact characterized by force, threats, intimidation, abuse of authority, or when the victim does not or cannot consent.
- SAPR policy defines consent as a freely given agreement to the conduct at issue by a competent person.
  - > An expression of lack of consent through words or conduct means there is no consent.
  - Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent.
  - A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent.
  - > A sleeping, unconscious, or incompetent person cannot consent.

(**Note:** These definitions are NOT the definitions used to determine whether adverse administrative or punitive action under the UCMJ is appropriate for an offense.)

- Program Oversight: Installation or host Wing Commander provides functional oversight of local SAPR program - ensuring immediate, trained response capability exists to support victims.
  - > SAPR services are available 24/7, for all locations including deployed locations.
  - SAPR personnel will ensure victims are protected, treated with dignity and respect, and receive timely access to appropriate medical treatment and services.
- Confidentiality:
  - > SARCs/SAPR VAs have an obligation to protect confidential communication with the victim.
  - > Protections apply whether the report is Restricted or Unrestricted.
  - > Applies from initial report onwards.
- > Disclosures may be required by law or regulation.

#### Suggested tools to enhance Talking Point topics:

Tea Video: <u>https://www.youtube.com/watch?v=fGoWLWS4-kU</u> Uses stick figures and offering someone tea to make the simple but essential point that consent is not complicated. (2:51 min) Sexual Assault: Whose Fault Is It? Video: <u>https://www.youtube.com/watch?v=8l1wc2bzZNY</u> Where do we really put the blame when someone assaults somebody else? This video talks about assault, victim blaming, and desensitization to sexual violence and rape culture. (5:22 min) Sexual Consent: Easy as Pie: <u>https://www.youtube.com/watch?v=wbwa-LBwXu8</u> Urges people to be sure they have consent before engaging in any intimate relation with someone and instills the notion that not knowing whether you have consent should be an ethical barrier to sexual activity. (1:22 min)



(For Commander's or Director's Calls and other staff gatherings)

## Second Quarter: April - June

## **SAPR Reporting Options**

Unrestricted: investigated and command authorities are aware

\*Restricted: confidential, not investigated, reported to SARC, SAPR VA, or health care

#### Exceptions to confidentiality of Restricted Reports include:

- Victim provides written authorization
- > To prevent/lessen a serious and imminent threat to anyone's health or safety
- Officials participating on Disability Evaluation Boards and Medical Evaluation Boards
- SARC, SAPR VA or healthcare personnel supervising victim services
- When required by law

Reporting outside the chain of command: When the alleged perpetrator is the commander (or equivalent) 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 others, including:

- Their next senior commanding officer
- Commanders outside the chain of command
- > OSI
- ≻ IG
- > SVC
- DoD Safe Helpline

Independent Investigation: When information regarding a sexual assault is provided to law enforcement by someone other than the victim (i.e. third party). Victim can elect not to participate.

- Mandatory reporters include: Commanders, First Sergeants, chain of command (includes supervisors, supervisory chain, AF Instructors), and law enforcement.
- If a SARC is notified of an ongoing independent investigation and the victim has not signed a DD Form 2910 electing Restricted Report, the SARC must inform the victim that the option to file a Restricted Report is no longer available.



## (For Commander's or Director's Calls and other staff gatherings) Third Quarter: July - September

## **Available SAPR Resources**

#### The following are available resources for victims of sexual assault:

- SARC (military and civilian eligible)
- > Advocacy from a SAPR VA or Volunteer VA (military and civilian eligible)
- Sexual Assault Forensic Examination (SAFE) (military and civilian eligible)
- Special Victims' Counsel (SVC) (UCMJ nexus see SARC for request/exceptions)
- Mental Health (military/dependents), Employee Assistance Program (civilians), local counseling resources (both military and civilians)
- Medical Care Primary Care (military)/Local hospital or physician (civilians)
- Chaplain (both military and civilians)
- DoD Safe Helpline (both military and civilians)
- Expedited Transfer (ET) PCS or PCA to support immediate and future welfare of military sexual assault victim (Note: Applies to military members who are the victim of a sexual assault and file an Unrestricted Report on DD Form 2910. ETs are not available to DoD civilians).
- Military Protective Orders (MPOs) and Civilian Protective Orders (CPOs) (Unrestricted Report only) - Prohibit contact or communication with the victim. MPOs are issued by the alleged offender's commander and are enforceable by military authorities. Civilian law enforcement is not required to honor or enforce an MPO.

## SF 86 - Questionnaire for National Security Positions, Question 21E

"If your judgment, reliability, or trustworthiness is not substantially adversely affected by a mental health or other condition, then you should **answer "no"** even if you have a mental health or other condition requiring treatment. For example, if you are in need of emotional or mental health counseling as a result of service as a first responder, service in a military combat environment, **having been sexually assaulted** or a victim of domestic violence, or marital issues, but your judgment, reliability or trustworthiness is not substantially adversely affected, then **answer "no"**."

**Suggested tools to enhance Talking Point topics**: Ask what SAPR resources are available and make the brainstorming visible via a projected image with <u>Polleverywhere.com</u> and <u>Wallwisher.com</u>. Wallwisher requires an internet connection, Airmen may use a cellphone for Polleverywhere.com.



(For Commander's or Director's Calls and other staff gatherings)

## Fourth Quarter: October - December

## **SAPR Victim Rights**

Sexual assault victims have the right to, but not limited to:

- Be treated with fairness and respect for your dignity and privacy
- Be reasonably protected from the accused offender
- Additionally, if the case proceeds to military justice action, the victim has the right to:
  - Receive notice and be present unless military judge orders otherwise
  - ✓ Reasonably confer with the Prosecutor/Trial Counsel in the case
  - ✓ Receive available restitution
  - ✓ Proceedings free from unreasonable delay

Military Justice Updates:

Eliminates the 5-year statute of limitations on sexual assault as defined by the UCMJ

Protection against Retaliation and Reprisal:

**Retaliation:** Taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a military member because the member reported a criminal offense.

Command will protect the following individuals from retaliation, ostracism, maltreatment, and reprisal related to a report of sexual assault:

- Victims
- Witnesses/Bystanders, and
- First Responders (i.e., SAPR Personnel and SVCs)

Report retaliation/reprisal related to a report of sexual assault via:

- SARC/SAPR VA
- Special Victims' Counsel (SVC)
- Office of Special Investigations (OSI)
- Immediate Commander
- Commander Outside the Chain of Command, or
- Inspector General (IG)

Suggested tools to enhance Talking Point topics: Recommend Installation SJA present.

## **References**

AFI 90-6001, Sexual Assault Prevention and Response (SAPR) Program

DoDI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures

DoDD 6495.01, Sexual Assault Prevention and Response (SAPR) Program

DoD SAPRO, Annual/Refresher SAPR Training Core Competencies and Learning Objectives

## Resources

AF SAPR: <u>http://www.af.mil/SAPR.aspx</u>

DoD SAPRO: <u>http://www.sapr.mil/</u>

Commander's Toolkit: CAC-enabled AF web portal, under LIFE & FITNESS

If you have any legal questions, it is recommended that you reach out to your SJA for guidance.



www.safehelpline.org or 877-995-5247



#### Commander Roles and Responsibilities

AF SAPR Mission: Educate, advocate and collaborate to respond to and stop sexual assault and its harmful effects on the Air Force. The Air Force SAPR Program will:

- Focus on the victim, doing what is necessary and appropriate to support his or her recovery, and transition to survivor.
- Ensure SAPR response services are gender-inclusive, culturally competent, and recovery-oriented.
- > Offer Unrestricted and Restricted (confidential) reporting options.
- Execute a proactive and comprehensive sexual assault prevention program to enable mission readiness and reduce - with a goal to eliminate - sexual assault from AF.

SAPR services are available 24/7 for all locations; including deployed locations.

SAPR personnel will ensure victims are protected, treated with dignity and respect, and receive timely access to appropriate medical treatment and services.

The Installation or host Wing Commander has oversight over the local SAPR program; ensuring immediate, trained response capability exists to support sexual assault victims. This includes, but is not limited to:

- > Establishing a command climate that is predicated on mutual respect and trust.
- Ensuring that SAPR personnel meet the certification and recertification requirements.
- Ensuring standardized, timely, accessible, and comprehensive healthcare for victims, to include the ability to elect a SAFE.
- Requiring that victim care is gender-responsive, culturally competent, and recovery-oriented.
- Taking immediate steps to ensure the physical safety and emotional security of a victim.
- Protecting victims, witnesses, bystanders (who intervene), responders, or others parties to the incident from reprisal and retaliation.
- Chairing the multi-disciplinary Case Management Group (CMG) on a monthly basis to review individual cases of Unrestricted sexual assault reports.
- Ensure all assigned military and civilian personnel receive sexual assault prevention and response training.

#### **Defining Sexual Assault**

Sexual Assault is sexual contact characterized/accomplished by use of force, threats, intimidation, or abuse of authority, or when the victim does not or cannot consent.

- 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 any of these acts.
- Punitive UCMJ offenses are listed in the Manual for Courts Martial under Articles 120, 120a, 120b, 120c, or 125 of the UCMJ; or attempts to commit such acts punishable under Article 80.

#### **Consent**

Consent, as defined by the SAPR program, is a freely given agreement to the conduct at issue by a competent person. Additionally, DoD includes the following in the SAPR consent definition:

- An expression of lack of consent through words or conduct means there is no consent (verbal or nonverbal).
- Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent.
- A current or previous dating or social or sexual relationship by itself or the manner of dress of the person involved with the accused in the conduct at issue shall not constitute consent.
- > A sleeping, unconscious, or incompetent person cannot consent.

A person does not give consent merely because they did not say "no" or did not fight back.

Consent is not automatic. Even if there was a prior sexual relationship, there is no automatic permission to have sex with that person again. If you are unsure about consent, always ask, ensure you have permission to proceed or stop.

Sexual harassment is not the same as sexual assault. Sexual harassment involves:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that unreasonably interferes with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

**Note:** This discussion is not intended to educate you on the legal definition of consent under the UCMJ. We are teaching this lesson for education purposes with the focus on mutual respect and adherence to the Air Force's Core Values. Please be aware that these training definitions and concepts regarding consent are not a substitute for a military judge's legal instructions during a court-martial.

#### Military Rule of Evidence (MRE) 514: Communications and Confidentiality

♦ Whether a victim filed an Unrestricted Report or an Independent Investigation was launched, a victim can maintain confidentiality with their SARC or SAPR VA under MRE 514.

This privilege applies to all stages of a UCMJ proceeding; from initial investigation to a courtmartial.

SARCs and SAPR VAs can refuse to disclose these conversations on behalf of the victim.

♦For example, a victim seeks advice from the SAPR VA about their sexual assault and underage drinking. Law enforcement later asks the SAPR VA questions about the victim's underage drinking.

> Because the conversation is protected under MRE 514, the SAPR VA is prohibited from disclosing any information about the victim.

Communications between victim and SARC/SAPR VA are given similar protection as that between the patient and a mental health professional.

**Note:** There may be exceptions to MRE 514, however, before disclosing any information, SARCs, SAPR VAs and healthcare personnel will first consult with the servicing legal office. The legal office will determine if any of the above exceptions apply, if there is a duty to disclose the information, and who will make the disclosure when required.

## **SAPR Reporting Options**

## ✤ Victims can file a Restricted or Unrestricted report by signing a DD Form 2910 with their SARC or SAPR VA.

- Unrestricted Report When a person chooses to disclose, without requesting confidentiality or restricted reporting, that he or she is the victim of a sexual assault. An Unrestricted Report initiates victim support, law enforcement investigation, and command support. Conversations with the SARC or SAPR VA are still protected by the respective privileges, absent written permission or applicable exception(s).
- Restricted Report A process by which a Service member, a dependent 18 years of age and older, as well as an AF civilian reports or discloses that he or she is the victim of a sexual assault to specified officials on a requested confidential basis. Under these circumstances, the victim's report and any details provided to the SARC, Healthcare Personnel, or a SAPR VA will not be reported to law enforcement to initiate an official investigation or trigger Command involvement, unless the victim consents or an established exception is exercised under DoDD 6495.01.

Exceptions to Restricted Reports. This means that sometimes circumstances require that your Restricted Report of sexual assault must be disclosed. The following persons or organizations may be told about your sexual assault report for the reasons stated in each exception:

- 1. Command officials or law enforcement when you provide written authorization.
- Command officials or law enforcement to prevent or lessen a serious and imminent threat. This may be a threat to the health or safety of you or another person. Multiple reports involving the same alleged suspect may also meet this criteria.
- 3. Disability Evaluation Boards, Medical Evaluation Boards, and the officials participating in the boards. The report may be disclosed to these parties when it is required for fitness for duty or disability retirement determinations. Disclosure is limited to only that information necessary to make a determination for disability processing.
- 4. SARC, SAPR VA or healthcare personnel when required for the direct supervision of victim services.
- 5. When required by law.

✤Before disclosing any information, SARCs, SAPR VAs and healthcare personnel will first consult with the servicing legal office. The legal office will determine if any of the above exceptions apply, if there is a duty to disclose the information, and who will make the disclosure when required.

✤DD Forms 2910 and 2911 are retained for 50 years, to include retention of any investigative records.

- > DD Form 2910 Victim Reporting Preference Statement.
- > DD Form 2911 DoD Sexual Assault Forensic Examination (SAFE) Report.

It is recommended that victims retain sexual assault records for potential use in VA benefits applications.

SAFE Kits are retained for 5 years for both Unrestricted and Restricted Reports.

- > SAFE Kits are used to store and safeguard any evidence collected during a SAFE.
- For Restricted Reports, victims have the opportunity to change their minds and convert to an Unrestricted Report.

## **Reporting Outside the Change of Command**

When the alleged perpetrator is the commander (or equivalent) 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 others, including:

- Report to the next senior commanding officer.
- Report to commanders outside the chain-of-command.
- Contact Office of Special Investigations (OSI).
- Contact an Inspector General (IG).
- > Talk to a SVC or Legal Assistance Attorney.
- > Call the DoD Safe Helpline.

If a victim decides to report to the next senior commanding officer, report outside of the chain-of-command, or report to OSI or IG, the report is considered Unrestricted and, in most instances, a law enforcement investigation will be initiated.

> The victim can still file an Unrestricted Report to receive SAPR victim advocacy services as well as support from the chain of command.

## Independent Investigation

An independent investigation occurs when law enforcement initiates an official investigation of a sexual assault after a third party report.

- A third party can be witnesses, friends, family, roommates, supervisors, chain of command, etc.
- Commanders, First Sergeants, chain of command (includes supervisors, supervisory chain, AF Instructors), and law enforcement are mandatory reporters and are required to contact law enforcement.
- Military One Source also has mandatory reporting requirements.

♦ If a victim filed a Restricted Report (by signing DD Form 2910) BEFORE the SARC is informed of an independent investigation by law enforcement, they can maintain their Restricted Report.

> SARC, SAPR VA, and healthcare personnel will maintain confidentiality and will not disclose covered communications, including the existence of a Restricted Report or prior contact with the victim, unless the victim authorizes the disclosure in writing or another exception applies.

♦ A victim CAN decline to participate in an investigation whether an Unrestricted Report or Restricted Report is made.

## Independent Investigation (cont.)

If there is an ongoing independent investigation, the sexual assault victim will no longer have the option of filing a Restricted Report when:

- > DoD law enforcement has already informed the SARC of the investigation.
- > The victim has not already elected a Restricted Report on DD Form 2910.

An independent investigation does not automatically convert a Restricted Report to an Unrestricted Report.

It is permissible for a roommate, friend, or family member (excludes law enforcement personnel) to not report the incident when the victim has expressed to that individual that he or she wishes the report to remain Restricted.

- If a victim discloses information about their sexual assault to individuals other than the SARC, SAPR VA, Volunteer VA or healthcare personnel this may limit the ability to request a Restricted Report.
- The more individuals are aware of the incident/details surrounding the sexual assault, the greater possibility of disclosures and opening an official investigation.

All information on a Restricted Report remains confidential and protected.

However, unauthorized or inadvertent disclosures made to a commander, supervisor or law enforcement will be reported to law enforcement, which may start an investigation by MCIO.

## **Available Resources**

Individuals have the option of filing an Unrestricted or Restricted Report and receiving services that are gender-responsive, culturally-competent, and recovery-oriented.

The following resources are available for sexual assault victims when filing a Restricted Report:

- SARC, SAPR VA or Volunteer VA
- Sexual Assault Forensic Exam (SAFE)
- Special Victims' Counsel (SVC)
- Mental Health (e.g. Counseling)
- Medical (Primary Care)
- Chaplain
- DoD Safe Helpline

Remember Restricted Reports initiate confidential victim support without triggering command knowledge or law enforcement investigation.

SVCs and Chaplains have, and maintain, privileged communications with victims, but cannot accept an official sexual assault report. They can refer the victim to the SARC or SAPR VA who can accept an official report.

\*As a reminder, Military OneSource has mandatory reporting requirements.

Individuals filing an Unrestricted Report have the same resources available as individuals filing a Restricted Report. In addition to those resources, the following are also available:

- Command Support
- > ET Only applies to military victims of sexual assault who file an Unrestricted Report.

## Available Resource (cont.)

Remember that Unrestricted Reports initiate a law enforcement investigation and command support.

Victims can opt to change their Restricted Report to Unrestricted at any time, but cannot change their Unrestricted Report to Restricted.

## Military Protective Orders (MPO) and Expedited Transfers (ET)

Sexual assault victims who have filed an Unrestricted Report can request and MPO or ET via support from the SARC or SVC. This includes instances of retaliation and reprisal.

◆MPO - Ensures the safety of a victim by notifying the alleged offender that they are being ordered from contacting or communicating with the victim and/or their dependents (DD Form 2873) and may be subject to action under the UCMJ if they do so.

- Issued by alleged offender's commander and copies supplied to victim and alleged offender.
- Remains in effect until the commander terminates the order or issues a replacement order.
- > The alleged offender must adhere to the order both on and off a military installation.
- An MPO is enforceable by military authorities. Civilian law enforcement is not required to honor or enforce a MPO. Victims can also seek a CPO which is enforceable by civilian law enforcement.

Commanders, Security Forces and MCIOs shall reasonably ensure that a CPO is given full force on all DoD installations within the jurisdiction of the court that issued such order.

**T** - Provides military sexual assault victims an option to request a PCS or a PCA to support the immediate and future welfare of the military victim. (**Note:** ET is not available to DoD civilians)

- Initiated by the victim via support from the SARC, SAPR VA, or SVC and the victim's unit commander.
- Installation or host Wing Commander has 72 hours to make a determination on the request.
- ▶ If disapproved, victims can appeal to the G/FO in their chain of command.
- > Once approved, AFPC will process the PCS or PCA for the ET.

♦ET requests involving threats of bodily harm or death should be handled in accordance with AFI 36-2110, Assignments Attachment 12, Threatened Person Assignment, since an ET may take longer to process.

When approved, the losing commander will inform the gaining commander and will limit the information related to facts and care to provide context for victim behavior.

The SARC will not transfer the case documents to the gaining SARC without written consent from the victim.

## **Reminders**

The Air Force recommends that victims retain their sexual assault records for potential use in VA benefits applications. These documents include DD Form 2910 and DD Form 2911, which are retained by the Air Force for 50 years.

- > DD Form 2910 is the Victim Reporting Preference Statement.
- > DD Form 2911 is the DoD Sexual Assault Forensic Examination (SAFE) Report.

### **SAFE Kits**

♦A SAFE is a voluntary medical and forensic examination of a sexual assault victim using controlled procedures to ensure the physical examination process and the collection, handling, analysis, testing, and safekeeping of any bodily specimens and evidence that meet the requirements for use as evidence in criminal proceedings.

SAFE Kits are used to store and safeguard any evidence collected during a SAFE.

✤For Restricted Reports, the victim's SAFE Kit is marked with a Restricted Report Control Number, generated by the SARC, to prevent disclosure of the victim's identity to law enforcement. The 5-year SAFE Kit storage by AFOSI or the Military Service designated law enforcement agency, gives victims who filed a Restricted Report time to decide whether they want to convert to an Unrestricted Report, launching an official investigation.

### Victim's Rights and Legal Assistance

Sexual assault victims have the following rights (DD Form 2701):

- > The right to be treated with fairness and respect for your dignity and privacy.
- The right to be reasonably protected from the accused offender (e.g. MPO or CPO). Additionally, if the case proceeds to military justice action, the victim has:
  - The right to reasonable, accurate, and timely notice of public preliminary hearings, pretrial confinement hearings, court proceedings, and clemency and parole hearings related to the offense.
  - The right to be present at all public proceedings related to the offense unless the hearing officer or military judge determines that your testimony would be materially altered if you heard other testimony.
  - ✓ The right to reasonably confer with the prosecutor/Trial Counsel in the case.
  - ✓ The right to receive available restitution.
  - ✓ The right to be reasonably heard at: 1) a public hearing concerning the continuation of any pretrial confinement of the accused; 2) a sentencing hearing related to the offense; 3) a public Military Department Clemency and Parole Board hearing related to the offense.
  - ✓ The right to submit a written statement for the consideration of the convening authority prior to taking action on findings and sentence.
  - ✓ The right to proceedings free from unreasonable delay.
  - ✓ The right to be provided information, if applicable, about the conviction, sentencing, imprisonment, convening authority's action, appellate review, and release of the offender.

## <u>SVC</u>

The SVC provides confidential, no cost legal assistance through independent representation to victims.

- The relationship between a victim who obtains an SVC is an attorney/client one; meaning privileged communication and confidentiality are maintained.
- SVCs cannot accept an official sexual assault report, but can refer victims to a SARC or SAPR VA, who can accept an official report (DD Form 2910).
- Unrestricted Reports SVCs can provide assistance in OSI interviews, obtaining MPOs, ETs, Trial and Defense Counsel interviews, Court-Martial, complaints about retaliation and reprisal, etc.

### Sexual Assault Military Justice Updates

- Recent updates to the military have enhanced victims' rights.
- Alleged offenders will also be impacted by the recent updates.
- These military justice updates include:
  - If the victim is represented by an SVC, the defense counsel, Trial Counsel and OSI must request victim interviews through the SVC. If the victim is not represented by counsel, defense counsel must request an interview through Trial Counsel.
  - Allowing the victim the right to be accompanied to an interview by the SARC, SAPR VA, SVC, or other counsel for the government.
  - Consulting with the victim on their preference whether the sexual assault offense should be prosecuted by court-martial or in a civilian court with jurisdiction, for offenses that occur in the U.S.
  - The victim has the right to submit matters for consideration by the Convening Authority during the clemency phase of the court-martial process. The Convening Authority will not consider the victim's character as a factor in making his or her determination unless such matters were presented at trial and not excluded at trial.

Eliminating the 5-year statute of limitations on sexual assault as defined by the UCMJ.

Requiring that sex-related findings/determinations (non-judicial punishment) be included in personnel records and mandating commanders to review personnel records of incoming service members for these notations.

Revisions to Article 32, UCMJ, preliminary hearings and Article 60, UCMJ, limiting a convening authority's ability to alter finding and sentence at clemency.

## **Retaliation and Reprisal**

It is Air Force policy to protect individuals from retaliation, ostracism, maltreatment, and reprisal related to a sexual assault incident.

Protected individuals include: victims and/or their dependents, witnesses or bystanders who intervene or report a sexual assault, SARCs and SAPR VAs executing their duties and responsibilities, and SVCs.

Retaliation - Taking, or threatening to take, an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a military member because the member reported a criminal offense.

**Ostracism** - A form of retaliation, is wrongfully excluding a military member from social acceptance or membership in or association with a group of which such military member was a part or a reasonable person would conclude wanted to be a part with the *intent* to do any of the following:

- 1. Inflict emotional distress on the military member.
- Discourage reporting of a criminal offense or sexual harassment or otherwise discourage the due administration of justice concerning a criminal offense or sexual harassment; *and*, because the perpetrator knew or believed that the member:
  - reported or was planning to report a criminal offense or sexual harassment;
  - > was a victim or alleged victim of a criminal offense or sexual harassment;
  - was reported by another as being a victim of a criminal offense or sexual harassment;
  - intervened to prevent or attempt to prevent a criminal offense or sexual harassment from occurring;
  - cooperated in an investigation or the member has served or will serve as a witness or otherwise cooperate in the future in a criminal, disciplinary, or administrative proceeding or investigation involving a criminal offense or sexual harassment.

Maltreatment - A form of retaliation is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unnecessary for any lawful purpose, that is done with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering.

Reprisal - Involves taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making, preparing to make, or being perceived as making or preparing to make a protected communication.

## **Retaliation and Reprisal (cont.)**

Victims can seek assistance from a SARC, SAPR VA, SVC, a SARC at a different installation facilitated by SAFE Helpline, OSI, their immediate commander, and/or a commander outside their chain of command to report retaliation and the IG for reprisal via options including:

- > Service personnel to invoke their Service-specific reporting procedures.
- Service Military Equal Opportunity representative to file a complaint of sexual harassment.
- Service personnel to file a complaint of wrongs in accordance with Article 138 of the UCMJ.
- > DoD IG, invoking Whistle-Blower Protections.
- Commander or SARC to request an ET.
- Commander or SARC to request a safety transfer or MPO if the victim fears violence.
- G/FO if the retaliation, reprisal, restriction, ostracism or maltreatment involves administrative separation of a victim within one year of the final disposition of the sexual assault case.
- Installation IG if the victim believes there has been an impact on their military career due to reporting a sexual assault or seeking mental health treatment for sexual assault.

If a victim discusses retaliation with SAPR personnel, but chooses not to make a retaliation report, communication between SAPR personnel and the victim remains privileged (confidential).

If the victim's chain of command (mandatory reporters) becomes aware of allegations of retaliation, reprisal, ostracism, or maltreatment, they are required to take appropriate measures to protect the victim and report the allegation(s).

♦ When individuals engage in retaliation or reprisal, it not only violates good order and discipline, it can erode unit cohesion and undermine mission readiness. Moreover, it can deter other victims from reporting their sexual assault and receiving support services.

If you have any questions about the SAPR program, please contact the SARC.

> Tel:	
> Name:	Address:

♦ If you have general questions about any legal terms, consult with your base legal office. If you have reported a sexual assault and obtain SVC representation, then what you say to the SVC is privileged (confidential). Your SARC can connect you with an SVC.

### DD Form 2701 INITIAL INFORMATION FOR VICTIMS AND WITNESSES OF CRIME

#### Your Rights as a Victim.

As a crime victim, you have the following rights: - The right to be treated with fairness and respect for your dignity and privacy;

- The right to be reasonably protected from the accused offender;

 The right to reasonable, accurate, and timely notice of public preliminary hearings, pretrial confinement hearings, court proceedings, and clemency and parole hearings related to the offense;

 The right to be present at all public proceedings related to the offense unless the hearing officer or military judge determines that your testimony would be materially altered if you as the victim heard other testimony;

 The right to reasonably confer with the prosecutor/Trial Counsel in the case;

- The right to receive available restitution;

- The right to be reasonably heard at: 1) a public hearing concerning the continuation of any pretrial confinement of the accused; 2) a sentencing hearing related to the offense; 3) a public Military Department Clemency and Parole Board hearing related to the offense;

 The right to submit a written statement for the consideration of the Convening Authority prior to taking action on findings and sentence;

 The right to proceedings free from unreasonable delay;

 The right to be provided information, if applicable, about the conviction, sentencing, imprisonment, Convening Authority's action, appellate review, and release of the offender.
 For further information on crime issues, see the DoD Victim and Witness Assistance Council web page at: http://vwac.defense.gov/

#### If You Need Additional Assistance:

In regard to the status of the investigation, contact the investigator below:

(Name)

(Telephone Number)

In regard to other <u>assistance available</u>, contact the command Victim/Witness Liaison (VWL), or the person identified below:

(Name)

(Telephone Number)

In regard to the prosecution, contact the legal office below:

(Name)

(Telephone Number)

In regard to <u>compensation</u> for medical or other expenses, contact the state office for Crime Victim Compensation:

(Office/Name)

(Telephone Number)

In regard to any reprisal, retaliation, or ostracism you experienced as a result of reporting a crime, contact:

(Office/Name)

(Telephone Number)

You may be eligible for <u>legal assistance</u> and/or a Special Victims' Counsel (SVC) or Victims' Legal Counsel (VLC), depending on the specific offense. To determine eligibility or obtain assistance, contact these offices at:

(Legal Assistance Office)

(Telephone Number)

(SVC/VLC Office Number)

(Telephone Number)

If you believe one of your rights as a <u>victim or witness of a</u> <u>crime</u> has been violated, contact the following authority responsible for receiving and investigating such complaints:

(Office/Name)

(Telephone Number)

