

119. (ALL) How are military records relating to sexual assaults accessed by victims, Department of Veterans' Affairs, alleged assailants, law enforcement and others? (See FY12 NDAA § 586.)

DoD	<p>The Department of Defense Instruction (DoDI) 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, addresses the issue of military records relating to sexual assaults accessed by victims retained by SARCs. Consequently, a Service member can contact a SARC and the SARC can assist the victim in accessing the requested copies of the SAPR DD Forms 2910 (election of reporting preference) and 2911 (forensic report). If the member has separated or retired and is a veteran, the veteran can gain access to the forms through the Military Sexual Trauma (MST) Coordinator at the Department of Veteran Affairs. If the member has separated and is not a veteran, the civilian can request their personnel records from their Service in accordance with the Service policy for releasing personnel records.</p> <p>The DD forms are retained according to the DoD policy detailed below.</p> <p>In the "Policy" section:</p> <ul style="list-style-type: none"> <li>• Document Retention for Unrestricted Reports: <ul style="list-style-type: none"> <li>o "The SARC will enter the Unrestricted Report Form 2910, "Victim Reporting Preference Statement," in the Defense Sexual Assault Incident Database (DSAID) or the DSAID-interface Military Service data system as an electronic record, where it will be retained for 50 years from the date the victim signed the DD Form 2910". (p4)</li> </ul> </li> <li>• Document Retention for Restricted Reports: <ul style="list-style-type: none"> <li>o "The SAFE kit, which includes the DD Form 2911 or civilian forensic examination report, if available, be retained for 5 years in a location designated by the Military Service concerned". (p5)</li> <li>o "The SARC will retain a hard copy of the Restricted Report DD Form 2910 for 5 years, consistent with DoD guidance for the storage of personally identifiable information (PII). The 5-year time frame for the DD Form 2910 will start from the date the victim signs the DD Form 2910. However, at the request of a Service member who files a Restricted Report on an incident of sexual assault, the DD Forms 2910 and 2911 filed in connection with the Restricted Report will be retained for 50 years". (p5)</li> </ul> </li> </ul> <p><input type="checkbox"/> Service member victims are made aware of the retention schedule upon completing the DD Form 2910 with the SARC or SAPR VA. The DD Form 2910 is provided.</p> <p>The Department of Defense Instruction (DoDI) 5505.18, Investigation of Adult Sexual Assault in the Department of Defense, addresses the issue of military records relating to sexual assaults accessed by victims retained by investigators.</p> <ul style="list-style-type: none"> <li>• In Encl 2, in the Procedures (p7) requires that "MCIOs must include the DD Form 2911, DoD Sexual Assault Forensic Examination Report, or reports from civilian sexual assault forensic exams conducted at civilian healthcare facilities (when DoD</li> </ul>
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	<p>retains jurisdiction) as part of the archived file. If creating digital records, the DD Form 2911 will be uploaded as part of the archived file”.</p> <ul style="list-style-type: none"> <li>• Furthermore, Encl. 2, in the Procedures (p7) requires that “in accordance with section 586 of Reference (o), in all investigations relating to sexual assaults involving members of the Armed Forces; as defined in the Glossary, all physical and forensic evidence must be retained for a period of at least 5 years from the date of the seizure of the evidence. However, items gathered as evidence may be returned to their rightful owner prior to the 5-year period only after written evidence disposition is obtained from the convening authority when: <ul style="list-style-type: none"> <li>o It is determined that the allegation is unfounded, i.e., the crime did not occur and/or it was a false allegation;</li> <li>o The subject is acquitted and the appeal process has been exhausted; or</li> <li>o The evidence is taken from a suspect who is later deemed to be the wrong person, i.e., mistaken identity.”</li> </ul> </li> </ul>
USA	<p>The current Army policy governing the ability of victims, Department of Veterans’ Affairs, offenders, law enforcement, and others is in compliance with the comprehensive policy on retention and access to records set forth in Department of Defense Instruction 6495.03, March 28, 2013. The current Army policy is intended to balance the needs to protect the privacy of victims, the need of victims and others to obtain records to substantiate claims filed with the Veteran’s Administration and to assist with civilian criminal prosecutions, and the requirement to comply with federal laws. A summary of those policies and applicable regulations follows:</p> <p>Law Enforcement Records: Requests for records of criminal investigations using the Freedom of Information Act and/or the Privacy Act can be made to the U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134. Depending on the requestor, various names or other identifying information on persons mentioned in the reports may be redacted in accordance with federal law.</p> <p>Health Records: Requests to access military health records relating to sexual assault are regulated by the Privacy Act and the Health Insurance Portability and Accountability Act.</p> <p>Personnel Records: Requests for personnel records relating to sexual assault are regulated by the Privacy Act.</p> <p>Department of Defense and Army regulations governing access to records are:</p> <ul style="list-style-type: none"> <li>• DODD 6490.04, Mental Health Evaluations of Members of the Military Services, 4 March 2013</li> <li>• AR 27-10, Military Justice, 3 October 2011</li> <li>• AR 195-5, Criminal Investigation Evidence Procedures, 22 February 2013</li> <li>• AR 340-21, The Army Privacy Program, 05 July 1985</li> <li>• AR 600-20, Command Policy, RAR 20 Sep 201201</li> </ul>

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USAF	<p>IAW AFI 51-201, Administration of Military Justice, (6 June 2013), paragraph 8.12, Confidentiality of Sexual Assault Program Records; When communications between an alleged victim of sexual assault and a Sexual Assault Response Coordinator (SARC) and/or Victim Advocate (VA) are involved, consult the confidential reporting program for victims of sexual assault established by DoDD 6495.01, Sexual Assault Prevention and Response (SAPR) Program, and Department of the Air Force Policies and Procedures for the Prevention of and Response to Sexual Assault.</p> <p>8.12.1. A victim has a privilege to refuse to disclose, and to prevent any other person from disclosing, a confidential communication made between the victim and a victim advocate, in a case arising under the UCMJ, if such communication was made for the purpose of facilitating advice or supportive assistance to the victim. See M.R.E. 515.</p> <p>8.12.2. Restricted reporting allows a sexual assault victim to confidentially disclose the details of his or her assault to specified individuals and receive medical treatment and counseling, without triggering the official investigative process. Service members who are sexually assaulted and desire restricted reporting under this policy may only report the assault to the SARC, VA or a health care provider (HCP). In cases where a victim elects restricted reporting, the SARC, assigned VA (whether uniformed or civilian), and HCPs may not disclose covered communications to law enforcement or command authorities, either within or outside the Department of Defense, except as provided by the DoDI and/or AF Policy.</p> <p>8.12.3. In the event confidential information as defined in paragraphs 8.12.1 and 8.12.2 is required to be disclosed, the disclosure will be limited to information necessary to satisfy the purpose of the disclosure in the event an authorized disclosure is made.</p> <p>8.12.3.1. Disclosure may be made to:</p> <p>8.12.3.1.1. Command officials or law enforcement (including SF and AFOSI or other criminal investigative service) when the disclosure is authorized in writing by the victim;</p> <p>8.12.3.1.2. Command officials or law enforcement when disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of the individual or another;</p> <p>8.12.3.1.3. Disability Retirement Boards and officials when disclosure by a healthcare provider is required for fitness for duty for disability retirement determinations, limited to only that information which is necessary to process the disability retirement determination;</p> <p>8.12.3.1.4. SARC, VAs or healthcare provider when disclosure is necessary for the supervision of direct victim services; and/or</p> <p>8.12.3.1.5. Military or civilian courts of competent jurisdiction when disclosure is ordered by a military, Federal, or State judge, or other officials or entities as required by a Federal or State statute or applicable U.S. international agreement.</p> <p>8.12.4. The SARC, assigned VA, and HCP will consult with the servicing legal office,</p>
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	<p>in the same manner as other recipients of privileged information, to determine if the exception criteria apply. Until those determinations are made, only non-identifying information should be disclosed. When there is uncertainty or disagreement on whether an exception applies, the matter shall be resolved IAW AFI 36-6001, Sexual Assault Prevention and Response (SAPR) Program, Chapter 3.</p> <p>While we can't speak for the Department of Veteran's Affairs, according to their website: <a href="http://www.va.gov">www.va.gov</a>; VA health care providers coordinate with each other to provide safe and effective treatment for the whole person. Primary Care clinics use Patient Aligned Care Teams (PACTs) to provide the Veteran's healthcare. A PACT is a medical team that includes mental health experts.</p> <p>Additionally, IAW AFI 51-201, Administration of Military Justice, 6 June 2013, paragraph 9.7.1., victims of a crime punishable under Article 120, UCMJ, who testified during the proceedings of a special or general court-martial are entitled to a copy of the record of proceedings without charge as soon as the records are authenticated.</p> <p>Alleged assailants may also request copies of investigative reports and documents relevant to their defense in a court-martial through and with the assistance of the Area Defense Counsel.</p> <p>Law enforcement personnel may gain access to records of sexual assault by subpoena when authorized.</p>
USN	<p><b>Victim Access</b>  Victims are advised to keep the copy of the DD Forms 2910 and 2911 in their personal permanent records as these forms may be used by the victim in other matters before other agencies (e.g., Department of Veterans Affairs) or for any other lawful purpose. A victim needing subsequent copies of either of these forms can request them from the SARC who shall assist the victim in accessing the requested copies within seven business days. The SARC will document this request in the DD Form 2910.</p> <p>In the case of a general or special court-martial involving a sexual assault, a copy of the prepared record of the proceedings of the court-martial (not to include sealed materials, unless otherwise approved by the presiding military judge or appellate court) shall be given to the victim of the offense if the victim testified during the proceedings. The record of the proceedings (prepared in accordance with Navy regulations) shall be provided without charge and as soon as the record is authenticated.</p> <p><b>Medical Records</b>  Access to any medical record is regulated by HIPAA and the Privacy Act and is released with appropriate signed disclosures, upon request of the member, the treating provider, or under subpoena by law enforcement.</p>

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	<p><b>SAPR Records</b>  AS mentioned above, with proper identification, SARCs are able to provide victims with a copy of their Victim Reporting Preference Statement (DD Form 2910). Individuals seeking to determine whether information about them is contained in the Defense Sexual Assault Incident Database (DSAID) or seeking access to records about themselves should address written inquiries to the Department of Navy. The Department of Navy's office designated to respond to FOIA and Privacy Act requests is also responsible for responding to requests for case information in DSAID. Requests for case information within DSAID will not be informally handled by the SARCs.</p> <p><b>NCIS Records</b>  The only records relating to sexual assaults maintained by NCIS are the Reports of Investigation that document an investigation conducted by NCIS. A victim may request an NCIS Report of Investigation by submitting a FOIA request.</p>
USMC	<p>DoD is responsible for implementing standards that apply across all Services. As a result, we are not able to establish individual processes at this time. Currently, how records are “accessed” depends on the type of record sought and who is asking. For instance, for records that the Department of Veteran Affairs may need, a DoD blanket routine use could accomplish that end. Blanket routine uses are notices to the public that a record held by one Federal entity may be disclosed upon request to another entity for certain purposes.</p> <p>Section 586 would require notifying victims that if they testified in a court-martial, they are entitled, if they ask, to a copy of the authenticated record. If personal information is in that document about others that would likely be redacted (e.g., SSN, home addresses, etc.).</p> <p>Law enforcement entities have the ability to access and obtain records when needed in performance of official duties.</p> <p>Assailants get access to records about themselves in the same manner a victim does – via the Privacy Act, and as otherwise authorized by Section 586 and DoD’s implementation (e.g., either pushed to them such as with providing copy of MPO, or upon request).</p> <p>Law enforcement records at this time are subject to exemptions from disclosure to individuals and others pursuant to a process that allows this exemption to apply. Whether it will remain the same is unknown. Another option is within the Privacy Act System of Records Notice itself, which can include specific routine uses for the information (versus the blanket routine use that applies to ALL DoD records).</p> <p>The following are two examples of Blanket Routine Uses that currently exist:</p> <ul style="list-style-type: none"> <li>• “A record from a system of records maintained by a DoD Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent</li> </ul>

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	<p>information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.”</p> <ul style="list-style-type: none"> <li>• “A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency’s decision on the matter.”</li> </ul>
USCG	<p>a) In accordance with Freedom of Information Act (FOIA), copies of CGIS investigations that are available to those who have a right to receive such information may be obtained by following the necessary steps provided on the USCG FOIA homepage (<a href="http://www.uscg.mil/foia/">http://www.uscg.mil/foia/</a>). Additional guidance regarding FOIA policy within the USCG may be obtained at <a href="http://www.uscg.mil/lsc/foia.asp">http://www.uscg.mil/lsc/foia.asp</a>. Transparency is routinely balanced with FOIA and Privacy Act requirements in the release of all records.</p> <p>b) With regard to other law enforcement agencies requesting CGIS reports of investigation, those requests are processed through the CGIS Case Management section, CGIS Headquarters Office, Arlington, VA. Information sharing between law enforcement agencies is essential for success in investigations. Information needed to assist law enforcement agencies is released with instructions related to the handling of those documents to ensure for privacy. No unauthorized release of information is permitted.</p> <p>a. Law enforcement agency representatives are instructed that the information contained within the investigative report may be disclosed to other personnel if their official duties require access thereto, in accordance with the Routine Uses of the Privacy Act of 1974, 5 USC § 552 (a), as amended. Any person reviewing this information is required to fill out and sign a disclosure record attached with the provided copy of the case file. Reproduction of any kind of the contents of the investigative report is prohibited for any purpose.</p> <p>b. Once the report provided to the law enforcement agency has served the purpose for which it was provided, the entire case package, with transmittal memo, must be returned to Coast Guard Investigative Service Headquarters, 4201 Wilson Blvd, # 110-358, Arlington, VA.</p>

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# VICTIM REPORTING PREFERENCE STATEMENT

(Read Privacy Act Statement before completing this form.)

## PRIVACY ACT STATEMENT

**AUTHORITY:** 10 U.S.C. 113 note, Department of Defense Policy and Procedures on Prevention and Response to Sexual Assaults Involving Members of the Armed Forces; 10 U.S.C. 136; 32 U.S.C.; DoD Directive 6495.01; DoD Instruction 6495.02; 10 U.S.C. 3013; Army Regulation 600-20, Chapter 8; 10 U.S.C. 5013; Secretary of the Navy Instruction 1752.4A; Marine Corps Order 1752.5A; 10 U.S.C. 8013; Air Force Instruction 36-6001; and E.O. 9397 (SSN), as amended.

**PRINCIPAL PURPOSE(S):** Information will be used to document elements of the sexual assault response and/or reporting process and comply with the procedures set up to effectively manage the sexual assault prevention and response program. At the local level, Service SAPR Program Management, Major Command Sexual Assault Response Coordinator(s) (SARCs), Installation and Brigade SARCs use information to ensure that victims are aware of services available and have contact with medical treatment personnel and DoD law enforcement entities. At the DoD level, only de-identified data is used to respond to mandated congressional reporting requirements. The DoD Sexual Assault Prevention and Response Office has access to identified closed case information and de-identified, aggregate open case information for congressional reporting, study, research, and analysis purposes. Collected information is covered by DHRA 06 DoD, Defense Sexual Assault Incident Database (<http://dpcio.defense.gov/privacy/SORNs/component/osd/DHRA06DoD.html>).

**ROUTINE USE(S):** The DoD blanket routine uses found at [http://dpcio.defense.gov/privacy/SORNs/blanket\\_routine\\_uses.html](http://dpcio.defense.gov/privacy/SORNs/blanket_routine_uses.html) may apply to this record.  
Note: Any release made as a blanket routine use will be consistent with the principal purpose of its original collection.

**DISCLOSURE:** Voluntary. However, if you decide not to provide certain information, it may impede the ability of the SARC to offer the full range of care and support established by the sexual assault prevention and response program. You will not be denied benefits via the Restricted Reporting option. The Social Security Number (SSN) is one of several unique personal identifiers that may be provided. This form will be stored electronically in the Defense Sexual Assault Incident Database (DSAID) for 50 years for Unrestricted Reports.

### 1. REPORTING PROCESS AND OPTIONS DISCUSSED WITH THE SAPR VA OR SARC

DSAID CASE NUMBER:

a. I, (full name) \_\_\_\_\_

(Social Security Number) \_\_\_\_\_

had the opportunity to talk with a Sexual Assault Prevention and Response Victim Advocate (SAPR VA) or a Sexual Assault Response Coordinator (SARC) before selecting a reporting option.

### b. UNRESTRICTED REPORTING - REPORTING A CRIME WHICH IS INVESTIGATED.

INITIALS	
	(1) I understand that law enforcement and my command will be notified that I am a victim of sexual assault. An investigation into the crime will be started by an MCIO. I can receive medical treatment, support services, and counseling. I can also choose to have a sexual assault forensic examination if indicated. I will be provided a DD Form 2701 which contains important information about my rights as a victim from the law enforcement or MCIO. I should retain the DD Form 2701. If reporting a sexual assault that occurred prior to or while not performing active service or inactive training, National Guard and Reserve Component members are eligible to receive SAPR support services from a SARC and a SAPR VA and are eligible to file an Unrestricted Report.
	(2) As a service member, I understand that: (a) (Through a separate form) I may request an Expedited Transfer (temporary or permanent) from my installation or to a different location within my installation. My family will be included.
	(b) Depending on the facts of my case, I may request a Military Protective Order (MPO). If a written and/or verbal MPO is issued, my commander will provide me with a copy of the DD Form 2873.
	(c) I also have the option of requesting a Civilian Protective Order (CPO) from civilian courts.
	(3) My Commanding Officer may take appropriate punishment action if there is evidence I committed misconduct around the time of the sexual assault. However, my Commanding Officer is to take into account the sexual assault investigation and circumstances when considering how to address my misconduct.
	(4) If the crime is prosecuted under the UCMJ, any communication with my SARC or SAPR VA are confidential under the "Victim-Victim Advocate Privilege" unless an exception applies.

### c. RESTRICTED REPORTING - CONFIDENTIALLY REPORTING A CRIME WHICH IS NOT INVESTIGATED.

	(1) I understand that I can confidentially receive medical treatment, advocacy services, and counseling. I can also choose to have a sexual assault forensic examination, if indicated. Law enforcement and my command will NOT be notified. My report will NOT cause an investigation of the crime. No action will be taken against the offender(s) as the result of my report. If reporting a sexual assault that occurred prior to or while not performing active service or inactive training, National Guard and Reserve Component members are eligible to receive SAPR support services from a SARC and a SAPR VA and are eligible to file a Restricted Report.
	(2) I understand that there are exceptions to "Restricted Reporting" (see Page 2) and they have been explained to me. If an exception applies, the details of my assault may be revealed.
	(3) I understand the evidence collected from my Sexual Assault Forensic Exam (SAFE) will be stored for 5 years from the date I sign this form. I will be contacted in 1 year by my SARC to discuss my options as they relate to this evidence. If the case is handled in civilian court, civilian law enforcement would handle the SAFE kit storage.
	(4) All state laws, local laws or international agreements that may limit some or all of DoD's Restricted Reporting protections have been explained to me. In the (state, city/county of _____), medical authorities must report the sexual assault to _____.
	(5) I understand that the SARC will provide information that does not reveal my identity, nor that of my offender, to the responsible senior commander. This notification takes place within 24 hours of my "Restricted Report". If I am at a deployed location or there are extenuating circumstances, the notification will be made within 48 hours. Commanders require this information for public safety and other responsibilities.
	(6) I understand that certain protective actions, such as an MPO and/or a CPO against the offender, or an expedited transfer and my victim's rights, will NOT be available to me if I choose Restricted Reporting.
	(7) I understand that speaking to others about my sexual assault may result in the crime being reported to command and law enforcement. This could lead to an investigation. I may keep my report confidential by only talking to those persons covered under the "Restricted Reporting" option (SARC, SAPR VA, or healthcare personnel). Communications with Chaplains and Legal Assistance Attorneys are also privileged and may not be disclosed without my consent.
	(8) I understand that I may change my mind and report this offense at a later time as an "Unrestricted Report", and law enforcement and my command will be notified. However, delays in changing the report from restricted to unrestricted may affect the amount of evidence gathered by an investigation and may impact the ability to hold offender(s) appropriately accountable.

<b>1.c. RESTRICTED REPORTING (Continued)</b>			
<b>INITIALS</b>	(9) If the crime is prosecuted under the UCMJ, any communications with my SARC or SAPR VA are confidential under the "Victim-Victim Advocate Privilege". However, there are exceptions to this privilege that may allow our communications to become evidence in military court. This privilege does not extend to civilian courts proceedings.		
<b>d. I also understand that:</b>			
(1) If I do not choose a reporting option right now or if I refuse to sign this form, the SARC or SAPR VA has no obligation to inform investigators or commanders about my sexual assault. The SARC or SAPR VA may only disclose information about our conversation according to the exceptions to the Victim-Victim Advocate privilege.			
(2) I have the right to decline any or all SAPR services. I may also ask for a different SAPR VA if one is available.			
(3) I have been advised to keep a signed and dated copy of this form for my records. This form may be used in other matters before other agencies (e.g., Department of Veterans Affairs) or for other lawful purposes. <b>Restricted Reports:</b> By signing this form I am giving consent that for Restricted Reports, this form will remain with the SARC for 50 years; if not requested, it will be retained, by policy, for 5 years (See block 8 below). <b>Unrestricted Reports:</b> By signing this form I am giving consent that for Unrestricted Reports, this form will be stored electronically in DSAID for 50 years.			
<b>2. CHOOSE A REPORTING OPTION (Initial)</b>			
<b>a. I elect Unrestricted Reporting.</b> I have decided to report that I am a victim of sexual assault to my command, law enforcement, or other military authorities for investigation of this crime. I understand that a Restricted Report is no longer available to me.			
<b>b. I elect Restricted Reporting.</b> I have decided to confidentially report that I am a victim of sexual assault. Law enforcement or other military authorities will NOT be notified unless one of the exceptions applies. I understand the information I provide will NOT start an investigation or be used to hold the offender(s) accountable. I understand that I can switch to Unrestricted Reporting at any time.			
<b>RESTRICTED REPORT CASE NUMBER:</b>			
<b>3.a. SIGNATURE OF VICTIM</b>		<b>b. DATE (YYYYMMDD)</b>	<b>4.a. SIGNATURE OF SARC/SAPR VA</b>
			<b>b. DATE (YYYYMMDD)</b>
5. I have reconsidered my previous selection of "Restricted Reporting" and am now choosing to make an Unrestricted Report.			
<b>a. SIGNATURE OF VICTIM</b>		<b>b. DATE (YYYYMMDD)</b>	<b>c. SIGNATURE OF SARC/SAPR VA</b>
			<b>d. DATE (YYYYMMDD)</b>
<b>EXCEPTIONS TO "RESTRICTED REPORTING"</b>			
There are exceptions to Restricted Reporting. 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 following reasons:			
1. Command officials or law enforcement when you provide written authorization.			
2. 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. Military or civilian courts when ordered, or if disclosure is required by Federal or state statute.			
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.			
<b>6. VICTIM CONSENTED TO TRANSFER OF (RR/UR) CASE DOCUMENTS TO ANOTHER SARC: (X and complete as applicable)</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Date (YYYYMMDD) _____ Location of Transfer: _____			
<b>7. VICTIM CONTACTED AT 1-YEAR MARK OF THE RESTRICTED REPORT: (X and complete as applicable)</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Date (YYYYMMDD) _____ If not, document how the SARC attempted to locate the victim:			
<b>8.a. VICTIM REQUESTED TO KEEP RESTRICTED REPORT DD FORM 2910 FOR 50 YEARS: (X one)</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>8.b. VICTIM REQUESTED TO KEEP RESTRICTED REPORT DD FORM 2911 FOR 50 YEARS: (X one)</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>9. VICTIM REQUESTED A SECOND COPY OF THE DD FORM 2910: (X and complete as applicable)</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Date (YYYYMMDD) _____			
<b>10. VICTIM REQUESTED A COPY OF THE DD FORM 2911 FROM SAFE KIT. I FACILITATED THIS REQUEST: (X and complete as applicable)</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No If yes: Date (YYYYMMDD) _____			
<b>11. I understand that I cannot request an Expedited Transfer, a Military Protective Order, or a Civilian Protective Order through this form. (X one)</b>			
<input type="checkbox"/> Yes <input type="checkbox"/> No			



# Department of Defense INSTRUCTION

NUMBER 5505.18  
January 25, 2013

IG DoD

SUBJECT: Investigation of Adult Sexual Assault in the Department of Defense

References: See Enclosure 1

1. PURPOSE. This instruction establishes policy, assigns responsibilities, and provides procedures for the investigation of adult sexual assault within the DoD in accordance with the authority in Appendix 3 of Title 5, United States Code (U.S.C.) (Reference (a)) and DoD Directive (DoDD) 5106.01 (Reference (b)).

2. APPLICABILITY. This instruction applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this instruction as the "DoD Components").

3. POLICY. It is DoD policy that:

a. Military criminal investigative organizations (MCIOs) will initiate investigations of all offenses of adult sexual assault of which they become aware, as listed in the Glossary, that occur within their jurisdiction regardless of the severity of the allegation. All criminal investigative files will be maintained in accordance with DoD privacy policies in DoD Directive 5400.11 and DoD 5400.11-R (References (c) and (d)).

b. Nothing in this instruction is intended to impinge on the authority of the IG DoD.

c. All Unrestricted Reports of sexual assault (and attempts) against adults will be immediately reported to the MCIO, regardless of the severity of the allegation.

(1) If the alleged assault occurred on a military installation and the accused and/or victim is not a military member or dependent, the Federal Bureau of Investigation must be notified pursuant to the Memorandum of Understanding between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes (Reference (e)).

(2) If the alleged assault has occurred on a military installation and there is a reasonable basis to believe that it has been committed by a person or persons, some or all of whom are **not** subject to the Uniform Code of Military Justice (UCMJ) (Chapter 47 of Title 10, U.S.C. (Reference (f))), the DoD investigative agency will immediately notify the appropriate DOJ investigative agency unless the DOJ has relieved the DoD of the reporting requirement for that type or class of crime pursuant to Reference (e).

(3) If the location is subject to concurrent jurisdiction, the local police department must be notified and may accept investigative responsibility if the MCIO declines; or the investigation may be worked jointly between the local law enforcement agency and the MCIO. If the location is subject to exclusive State jurisdiction, the State has investigative authority with the MCIO providing assistance as requested or deemed appropriate.

(4) If the incident occurred at the Pentagon, which is exclusive federal jurisdiction, and involves any military affiliation, the appropriate MCIO must be notified and assume the investigation; although it may be conducted jointly with the Pentagon Force Protection Agency with the MCIO serving as the lead agency.

d. All adult sexual assault investigations assumed by an MCIO will be investigated thoroughly and in compliance with DoD Instructions 5505.03, 5505.07, 5505.11, and 5505.14 (References (g) through (j)).

(1) When an MCIO initiates an adult sexual assault investigation, it will also initiate and conduct subsequent investigations relating to suspected threats against the sexual assault victim, to include minor physical assaults and damage to property.

(2) If an adult sexual assault allegation is referred to another agency, the reason must be fully documented in an investigative report that identifies the agency and states whether the MCIO will be involved in either a joint investigation or monitoring capacity.

#### 4. RESPONSIBILITIES

a. IG DoD. The IG DoD will develop policy and procedures for MCIO adult sexual assault investigations and oversee their implementation pursuant to Reference (b).

b. The OSD and DoD Component Heads. The OSD and DoD Component heads will:

(1) Ensure Component compliance with this instruction and prescribe additional procedures as necessary to implement its policy.

(2) Ensure Component commanders (see Glossary) at all levels immediately report to the appropriate MCIO all adult sexual assault allegations of which they become aware involving persons affiliated with the DoD, including active duty personnel and their dependents, DoD contractors, and DoD civilian employees.

(3) Ensure Component procedures exist that allow a victim who is eligible for and requests it, to instead have the allegation handled as a Restricted Report in accordance with DoDD 6495.01 (Reference (k)).

5. PROCEDURES. See Enclosure 2.

6. RELEASABILITY. **Unlimited**. This instruction is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

7. EFFECTIVE DATE. This instruction:

a. Is effective January 25, 2013.

b. Must be reissued, cancelled, or certified current within 5 years of its publication in accordance with DoD Instruction 5025.01 (Reference (l)). If not, it will expire effective January 25, 2023 and be removed from the DoD Issuances Website.

  
Lynne M. Halbrooks  
Principal Deputy  
Performing the Duties of the  
Inspector General of the  
Department of Defense

Enclosures

1. References
2. Procedures

Glossary

ENCLOSURE 1

REFERENCES

- (a) Appendix 3 of Title 5, United States Code (also known as the “Inspector General Act of 1978,” as amended)
- (b) DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012
- (c) DoD Directive 5400.11, “DoD Privacy Program,” May 8, 2007, as amended
- (d) DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007
- (e) Memorandum of Understanding between the Departments of Justice and Defense Relating to the Investigation and Prosecution of Certain Crimes, August 1984
- (f) Title 10, United States Code (Chapter 47 is also known as “The Uniform Code of Military Justice”)
- (g) DoD Instruction 5505.03, “Initiation of Investigations by Defense Criminal Investigative Organizations,” March 24, 2011
- (h) DoD Instruction 5505.07, “Titling and Indexing Subjects of Criminal Investigations in the Department of Defense,” January 27, 2012
- (i) DoD Instruction 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” July 9, 2010, as amended
- (j) DoD Instruction 5505.14, “Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations,” May 27, 2010, as amended
- (k) DoD Directive 6495.01, “Sexual Assault Prevention and Response (SAPR) Program,” January 23, 2012
- (l) DoD Instruction 5025.01, “DoD Directives Program,” September 26, 2012
- (m) Public Law 108-375, “Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005,” October 28, 2004
- (n) Section 563 of Public Law 110-417, “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009,” October 14, 2008
- (o) Sections 581, 585, 586 of Public Law 112-81, “National Defense Authorization Act for Fiscal Year 2012,” December 31, 2011
- (p) DoD Instruction 6495.02, “Sexual Assault Prevention and Response Program Procedures,” June 23, 2006, as amended
- (q) Military Rules of Evidence (Section III of the Manual for Courts-Martial), 2012 edition
- (r) Section 1631 of Public Law 111-383, “Ike Skelton National Defense Authorization Act for Fiscal Year 2011,” January 7, 2011

ENCLOSURE 2

PROCEDURES

1. In accordance with Reference (k), the MCIO investigator assigned to an adult sexual assault investigation will ensure a Sexual Assault Response Coordinator (SARC) has been notified as soon as possible, to ensure system accountability and victim access to services as needed.
2. The MCIO investigator assigned to conduct the adult sexual assault investigation will ensure the victim has received a completed Department of Defense (DD) Form 2701, "Initial Information for Victims and Witnesses of Crime," containing the local point of contact information. If the victim has not yet received a DD Form 2701, the investigator must provide one to the victim and explain the information in the form. (All DD Forms referred to in this instruction may be found at <http://www.dtic.mil/whs/directives/infomgt/forms/index.htm>.)
3. Adult sexual assault allegations, as listed in the Glossary, of which an MCIO becomes aware, will be investigated regardless of the sexual orientation of either the victim or the subject of the investigation (hereinafter referred to as the "subject"). Unless pertinent and significant to the investigation, the sexual orientation of a subject, victim, or any individual associated with the investigation:
  - a. Will not be addressed during the course of the investigation.
  - b. Will only be documented if it is an essential part of the investigation.
  - c. Must not be disclosed to anyone except those with an official need to know.
4. Commander(s) of the Service member(s) who is a subject of investigation must provide the MCIO, in writing, all disposition data, to include any administrative, non-judicial punishment or judicial action taken as a result of the investigation.
5. MCIOs may not close an adult sexual assault investigation in which they are the lead investigative agency without the written disposition data documented in the final investigative report or database. When MCIOs are not the lead investigative agency, disposition data must be obtained from the lead investigative agency and archived in the final investigative report or database in accordance with section 577(b) 8 and 9 of Public Law 108-375 (Reference (m)) and Public Law 110-417 (Reference (n)).
6. The primary MCIO investigator assigned to conduct an investigation of adult sexual assault must be properly trained in conducting such investigations. In accordance with section 585 of Public Law 112-81 (Reference (o)), training for MCIO investigators assigned to investigate adult sexual assault will, at a minimum, include:
  - a. Legal jurisdiction for conducting criminal investigations.

- b. The elements of proof for criminal offenses connected with sexual assault.
- c. Preliminary investigative procedures, including receiving and responding to notification of a sexual assault.
- d. Crime scene management.
- e. Searching for, locating, identifying, preserving, obtaining, and transporting evidence.
- f. Sensitivities associated with sexual assault victims, including, but not limited to:
  - (1) Specific effects of trauma and stress on the sexual assault victim.
  - (2) Balancing investigative priorities with victim needs.
  - (3) The provision that sexual assault victims may have a SARC, Sexual Assault Prevention and Response Victim Advocate (SAPR VA), or a support person present during interviews.
  - (4) The various methods used in the practice of interviewing sexual assault victims in DoD.
- g. Sexual assault forensic examination collection and submission.
- h. Deoxyribonucleic acid (DNA) collection.
- i. Comprehensive instruction in sexual assault prevention and response (SAPR) policy in accordance with training standards in DoD Instruction 6495.02 (Reference (p)), to specifically include:
  - (1) Differences between Unrestricted and Restricted Reporting.
  - (2) SARC and SAPR VA roles, responsibilities, and limitations.
  - (3) SAPR Case Management Group responsibilities for MCIOs and DoD law enforcement.
- j. Victim Witness Assistance Program.
- k. Military protective orders and expedited transfers.
- l. Military Rules of Evidence (MRE) privileges, in particular the MRE 514, "Victim Advocate – Victim Privilege" in the MRE section of the Manual for Courts-Martial (Reference (q)). MRE 514 affords a victim a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication made between the alleged victim and a victim

advocate, in a case arising under the UCMJ, if such communication was made to facilitate advice or supportive assistance to the victim.

m. Legal assistance for victims of sexual assault in accordance with section 1044 of Reference (f) and section 581 of Reference (o).

n. Digital evidence.

o. Handling false reports and official statements.

7. In accordance with Public Law 111-383 (Reference (r)), Services will use the standard definition of “substantiated” in adult sexual assault investigations (see Glossary).

8. MCIOs must include the DD Form 2911, “DoD Sexual Assault Forensic Examination Report,” or reports from civilian sexual assault forensic exams conducted at civilian healthcare facilities (when DoD retains jurisdiction) as part of the archived file. If creating digital records, the DD Form 2911 will be uploaded as part of the archived file.

9. All MCIO adult sexual assault investigative reports will be retained for a period of 50 years. If the investigation was referred to another agency, the MCIO must obtain disposition and final investigative reports and retain them for 50 years.

10. In accordance with section 586 of Reference (o), in all investigations relating to sexual assaults involving members of the Armed Forces; as defined in the Glossary, all physical and forensic evidence must be retained for a period of at least 5 years from the date of the seizure of the evidence. However, items gathered as evidence may be returned to their rightful owner prior to the 5-year period only after written evidence disposition is obtained from the convening authority when:

a. It is determined that the allegation is unfounded, i.e., the crime did not occur and/or it was a false allegation;

b. The subject is acquitted and the appeal process has been exhausted; or

c. The evidence is taken from a suspect who is later deemed to be the wrong person, i.e., mistaken identity.

11. Pursuant to section 581 of Reference (o), the MCIO investigator assigned to conduct an adult sexual assault investigation must inform the victim of a sexual assault (defined as a member of the Armed Forces or a dependent) of the availability of legal assistance and the services of a SARC or a SAPR VA. The member or dependent must also be informed that the legal assistance and the services of a SARC or a SAPR VA are optional and may be declined, in whole or in part, at any time.

12. All MCIOs will make available unrestricted sexual assault data elements, including the investigative case number, for incorporation into the Defense Sexual Assault Incident Database, in support of requirements specified in References (k), (p), and (q).

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DD	Department of Defense (form)
DoDD	DoD Directive
DNA	deoxyribonucleic acid
IG DoD	Inspector General of the Department of Defense
MCIO	military criminal investigative organization
MRE	military rules of evidence
SAPR	sexual assault prevention and response
SAPR VA	sexual assault prevention and response victim advocate
SARC	sexual assault response coordinator
UCMJ	Uniform Code of Military Justice
U.S.C.	United States Code

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this instruction.

adult. A person who is an Active Duty Service member or is 18 years old.

Armed Forces. The Army, Navy, Air Force, Marine Corps, and Coast Guard.

commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a DoD organization or prescribed territorial area. All references to “commander” also include the military and civilian heads of DoD organizations that are not part of a MCIO and are authorized to request an investigation or act on the results of an investigation by a MCIO.

Defense Sexual Assault Incident Database. Defined in Reference (o).

MCIO. U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

Restricted Reporting. Defined in Reference (k).

SARC. Defined in Reference (k).

sexual assault. An intentional sexual contact characterized by the use of force, threats, intimidation, abuse of authority, or when the victim does not or cannot consent. The term “sexual assault” includes the following offenses under the UCMJ:

Rape, in violation of Article 120.

Sexual assault, in violation of Article 120.

Aggravated sexual contact, in violation of Article 120.

Abusive sexual contact, in violation of Article 120.

Forcible sodomy (oral or anal sex), in violation of Article 125.

Attempts to commit any of the above offenses, in violation of Article 80.

Between 2007 and 2012, amendments to the UCMJ changed the Article 120 offenses in name and character. Depending upon the date the alleged offense was committed, investigators must refer to the name and character of the offense applicable to the UCMJ provisions in effect at that time.

substantiated. An Unrestricted Report that was investigated by an MCIO, provided to the appropriate military command for consideration and action, and found to have sufficient evidence to support the command’s action against the subject. Actions against the subject include court-martial charge preferral, Article 15 UCMJ punishment, administrative discharge, and other adverse administrative action that result from a report of sexual assault or other associated misconduct (e.g., adultery, housebreaking, etc.).

Unrestricted Reporting. Defined in Reference (k).