67. (ALL) Please provide any general policies or rules that contain guidance regarding a commander's charging decision for preferral and referral, or declining to proceed to court-martial in a sexual assault case. (Please note: the RSP is familiar with the rules and requirements to avoid undue command influence. This question is directed at whether there are any other set of factors or considerations to guide commanders in their decision making process to take further adverse action against an accused in a sexual assault case.)

CJCS	The decision to appoint a commander includes consideration of which leaders possess the appropriate temperament, i.e. who can approach leadership with the judiciousness required to make these decisions. Under the UCMJ, commanders are charged with maintaining good order and discipline. The responsibility includes the use of courts-martial to punish bad behavior, as in the civilian world, but also, when appropriate, to ensure that the disciplinary system provides appropriate deterrence and education to the rest of the command about the high standards to which we hold the military. Commanders cannot go forward to general court-martial unless there is a reasonable basis for which and every charged specification. However, if there is a reasonable basis to believe that crime(s) were committed, the commander is given broad latitude to make the disciplinary decision – both in terms of charges and forum – that best fits that case.
USA	• Manual for Courts-Martial United States, (2012 Edition), Rule for Court-Martial (R.C.M.) 307. Preferral of charges. Any person subject to the Uniform Code of Military Justice may prefer charges. The person must sign the charges under oath before a commissioned officer of the armed forces authorized to administer oaths; and state that the signer has personal knowledge of or has investigated the charges and that they are true to the best of his or her knowledge and belief. A charge states the article of the code, law of war, or local penal law which the accused is alleged to have violated; and a specification is a plain, concise, and definite statement of the essential facts constituting the offense charged. See attachment. • Manual for Courts-Martial United States, (2012 Edition), Rule for Court-Martial (R.C.M.) 601. Referral. Referral is the order of a convening authority that charges against an accused will be tried by a specified court-martial. Any convening authority may refer charges to a court-martial convened by that convening authority, unless the power to do so has been withheld by a superior competent authority. An accuser may not refer charges to a general or special court-martial. If the convening authority finds or is advised by a judge advocate that there are reasonable grounds to believe that an offense triable by a court-martial has been committed and that the accused committed it, and that the specification alleges an offense, the convening authority may refer it. The convening authority may not refer a specification under a charge to a general court-martial unless there has been substantial compliance with the pretrial investigation requirements of R.C.M. 405; and he or she has received advice from the staff judge advocate. See attachment. • Army Regulation 600-200, Army Command Policy, 18 March 2008 (currently under revision), paragraph 8-5m(5) withholds the authority to dispose of cases that resulted from allegations of sexual assault to the Battalion commander level and above; however

	the Secretary of Defense has withheld the authority to the special court-marital convening authority with a rank of at least O6. • Secretary of Defense Memorandum for Secretaries of the Military Departments, Chairman of the Joint Chiefs of Staff, Commanders of the Combatant Commands, Inspector General of the Depart of Defense, Subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases, dated 20 April 2012 withholds initial disposition authority from all commanders with the DoD who do not possess at lease a special court-martial convening authority and who are not in the grade of O6 with respect to rape, sexual assault, forcible sodomy, and all attempts to commit such crimes. A copy of the memorandum is attached hereto. • Commander's Legal Handbook 2013, The Judge Advocate General's Legal Center and School, United States Army, Chapter 12, paragraph C1 provides guidance on the disposition authority in sexual assault cases. A copy of the Handbook can be located at the following web address: https://www.jagcnet.army.mil/8525799500461E5B/0/A1473A5772D802E385257A5E004587B3/%24FILE/Commanders%20Legal%20HB%202013.pdf • United States Forces Korea, Regulation 600-20, Sexual Assault Prevention and Response Program, 24 October 2012, requires Service Component Commanders to implement the Secretary of Defense withholding policy. See regulation attached hereto. • Commander, United States Army Europe Memorandum, Subject: USAREUR Withholding of Initial Disposition Authority under the UCMJ in Certain Sexual Assault Cases, dated 26 July 2013 withholds initial disposition authority to the general court-martial convening authority in cases alleging Rape, Sexual Assault, Forcible Sodomy and attempts of such offenses. The memorandum is attached hereto. • ALARACT 299/2013, 7 Nov 13, Subject: Army Responsibilities, Roles, Procedures, and Authorities for Responding to Sexual Assault Allegations provides guidance for SECDEF Memorandum "Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases. The ALARACT is attached hereto. • 15th Regimental Signal Brigade, Fort Gordon, Memorandum, Subject: Policy Letter #12: Military Justice, dated 4 September 12, withholds initial disposition for rape, sexual assault, forcible sodomy, and attempts to commit these offenses to the Commander, 15th RSB. The memorandum is attached hereto. • United States Army Alaska Regulation 27-10, Military Justice, dated 15 December 2012, withholds initial disposition for rape, sexual assault, forcible sodomy, and attempts to SPCMCAs who are at least the grade of O6. The regulation is attached hereto.
USAF	a. RCM 401(a) instructs that "only persons authorized to convene courts-martial or to administer nonjudicial punishment under Article 15 may dispose of charges." In June

	2012, SecDef further restricted who may dispose of charges for sexual assault. In his 28 June 2012 memo, SecDef said that an officer must be a special court-martial convening authority (SPCMCA) and in the grade of at least O-6 in order to be an initial disposition authority for rape, sexual assault, forcible sodomy, and attempts thereof. (Tab 32) In June 2013, Acting SecAF imposed further restrictions on initial disposition authorities for sexual assault by requiring them to 1) provide written notification to the first General Court Martial Convening Authority (GCMCA) in the chain of command as to what initial disposition action was taken, and 2) AFOSI cannot close out a case until the GCMCA provides a written notification that he/she is aware of the final disposition in the covered sexual assault cases. (See SecAF Memo, Tab 8) More generally: i. Articles 22 and 23, UCMJ designate who may act as a convening authority ii. Article 34, UCMJ prohibits a convening authority from referring a case to general court-martial unless his SJA opines in writing that 1) the specification alleges an offense under the UCMJ; 2) the specification is warranted by the evidence indicated in the Article 32 investigating officer's report; and 3) a court-martial would have jurisdiction over the accused. iii. RCM 105(a) requires a convening authority to communicate directly with their SJAs in all military justice administration matters.
USN	Rule for Courts-Martial 306 provides a non-exclusive list of factors that commanders should consider in determining the appropriate disposition for any offense, including sexual assault type offenses. The rule advises that allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition. These levels include: no action or dismissal of charges; administrative action (counseling, admonition, reprimand, administrative withholding of privileges, etc.); nonjudicial punishment; forwarding to a superior or subordinate authority for disposition; or preferral and/or referral of charges. The factors provided to guide the commander's disposition decision include: the nature and circumstances surrounding the offense and the extent of the harm caused by the offense, including the offense's effect on morale, health, safety, welfare, and discipline; the appropriateness of the authorized punishment to the particular accused or offense; any extenuating or mitigating circumstances; when applicable, the views of the alleged victim as to disposition; the availability of witnesses and the alleged victim and their willingness to testify; the evidence presented and its availability; recommendations of subordinate commanders; the interest of justice; military exigencies; the effect of the decision on the accused and the command; possible improper motives or biases of the accuser; the availability and likelihood of prosecution by a civilian jurisdiction; the character and military service of the accused; and the accused's willingness to enter into a plea agreement.
USMC	The Marine Corps has withheld the initial disposition of all sexual assault cases to the O-6 convening authority level. This withholding is detailed in MARADMIN 372/12 and applies to all cases of rape, sexual assault, aggravated sexual contact, abusive sexual contact, rape of a child, sexual assault of a child, sexual abuse of a child, forcible sodomy, and attempts to commit such offenses. The O-6 convening authority must consult with a judge advocate when determining the disposition of these cases and document his decision in an initial disposition authority memorandum. In making his

	determination, the commander must consider the Rule for Courts-Martial 306 factors and the views of the victim pursuant to Marine Corps Orders 1752.5B and 5800.14. The O-6 convening authority may order an investigation pursuant to Article 32, UCMJ, convene a special court-martial, take administrative action against the accused, or take no action at all. If the O-6 convening authority decides to forward the charges to a general court-martial convening authority, after the Article 32 investigation, he must document this decision in a letter pursuant to Article 33, UCMJ. The staff judge advocate for the general court-martial convening authority then provides advice to the general court-martial convening authority as to the legal sufficiency of the charges and recommendations as to actions that the convening authority should take with regard to the charges. All of this information would be considered by the general court-martial convening authority when making a decision whether to refer charges to a court-martial.
USCG	In accordance with the Commandant's service-wide order issued in June 2012, only those officers who have special court-martial convening authority, have achieved the grade of O-6 (Captain), and have a dedicated staff judge advocate assigned may dispose of allegations of sexual misconduct, which includes any allegation of rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, and attempts to commit such offenses. Only these commanders, who are typically a flag officer, may make the decision to take no further action in the case, to impose non-judicial punishment, or to take adverse administrative action. The commander must consult with the assigned staff judge advocate before making any decision in the case, including the decision to take no action. For those commander empowered with the ability to make disposition decisions on sexual assault cases, there are no general Coast Guard policies or rules that provide guidance for a commander faced with a charging decision in an Article 120 case. In practice, the commander makes the disposition decision after consultation with the SJA. The commander asks questions and discusses the case thoroughly, and the SJA has the opportunity to discuss the R.C.M. 306 disposition factors and the strengths and weaknesses. The consultation takes place in almost every case, regardless of whether Article 34 advice is provided.

USA-67

SECRETARY OF THE ARMY
WASHINGTON

27 SEP 2013

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2013-20 (Assessing Officers and Noncommissioned Officers on Fostering Climates of Dignity and Respect and on Adhering to the Sexual Harassment/Assault Response and Prevention Program)

1. References:

a. Memorandum, Secretary of Defense, May 6 2013, subject: Sexual Assault Prevention and Response.

b. Army Regulation (AR) 600-20 (Army Command Policy), 18 March 2008, Rapid Action Revision Issued 20 September 2012.

c. AR 623-3 (Evaluation Reporting System), 5 June 2012.

d. Department of the Army (DA) Pamphlet 623-3 (Evaluation Reporting System), 5 June 2012.

2. Both officers and noncommissioned officers (NCOs) must commit themselves to eliminating sexual harassment and assault and to fostering climates of dignity and respect in their units. The Army is taking important steps to provide new training for our leaders, strengthen our training enterprise for all Soldiers, improve our investigative and military justice capabilities and further professionalize our first responders. Even with strong leader emphasis and innovative new programs, we continue to strive for greater progress in preventing sexual assault in our ranks. In response to the guidance in reference 1a, this directive enhances the Evaluation Reporting System to assess how officers and NCOs are meeting their commitments and to hold them appropriately accountable.

3. Effective immediately for any officer or NCO whose rating period begins after the date of this document, I direct the following changes to the Evaluation Reporting System:

a. All officers and NCOs will include goals and objectives in furtherance of the commitments outlined in paragraph 2 when completing DA Form 67-9-1 (Officer Evaluation Report Support Form) or DA Form 2166-8-1 (NCOER Counseling and Support Form).

b. When completing Part V, block b of DA Form 67-9 (Officer Evaluation Report), or Part IV, block d of DA Form 2166-8 (NCO Evaluation Report), raters will assess how

well the rated officer or NCO fostered a climate of dignity and respect and adhered to the Sexual Harassment/Assault Response and Prevention (SHARP) Program. This assessment should identify, as appropriate, any significant actions or contributions the rated officer or NCO made toward:

- promoting the personal and professional development of his or her subordinates;
- ensuring the fair, respectful treatment of assigned personnel; and
- establishing a workplace and overall command climate that fosters dignity and respect for all members of the group.

This assessment should also identify, as appropriate, any failures by the officer or NCO to foster a climate of dignity, respect and adherence to the SHARP Program. Additionally, if the rated officer or NCO had a substantiated incident of sexual harassment or sexual assault in his or her unit, the assessment must note the incident and explain how the officer or NCO addressed it.

4. Raters and senior raters will document any substantiated finding, in an Army or Department of Defense investigation or inquiry, that an officer or NCO:

- committed an act of sexual harassment or sexual assault;
- failed to report a sexual harassment or assault;
- failed to respond to a complaint or report of sexual harassment or sexual assault; or
- retaliated against a person making a complaint or report of sexual harassment or sexual assault.

In such cases, the rater and senior rater will take the following actions:

a. The rater will mark "No" in Part IV, block a5 (Respect) of DA Form 67-9 or Part IV, block a3 (Respect/EO/EEO) of DA Form 2166-8. The rater will also include a statement describing why he/she marked "No" in either Part V, block b of DA Form 67-9 or Part IV, block a of DA Form 2166-8 (for example, "Does not support the SHARP Program because of failure to report an incident.").

b. The senior rater will further comment on the matter in Part VII, block c of DA Form 67-9 or Part V, block e of DA Form 2166-8, as appropriate.

SUBJECT: Army Directive 2013-20 (Assessing Officers and Noncommissioned Officers on Fostering Climates of Dignity and Respect and on Adhering to the Sexual Harassment/Assault Response and Prevention Program)

5. The Deputy Chief of Staff, G-1 is the proponent for this policy and, in coordination with the Assistant Secretary of the Army (Manpower and Reserve Affairs), will issue appropriate guidance to implement this directive. This directive cancels and takes precedence over any contrary guidance in references 1b through 1d, or in any other relevant Army policy document.

6. The Deputy Chief of Staff, G-1 will incorporate this directive into the next revision of references 1b through 1d and will ensure that the policies set forth herein are incorporated into future versions of regulations, forms, policies, procedures and guidance for officer and NCO evaluations. This directive will remain in effect until each regulation and form is revised.

7. The point of contact for this action is U.S. Army Human Resources Command (AHRC-PDV-E), commercial 502-613-9019, DSN 983-9019, or usarmy.knox.hrc.mbx.tagd-eval-policy@mail.mil.

John M. McHugh

DISTRIBUTION:
Principal Officials of Headquarters, Department of the Army
Commander
U.S. Army Forces Command
U.S. Army Training and Doctrine Command
U.S. Army Materiel Command
U.S. Army Pacific
U.S. Army Europe
U.S. Army Central
U.S. Army North
U.S. Army South
U.S. Army Africa/Southern European Task Force
U.S. Army Special Operations Command
Military Surface Deployment and Distribution Command
U.S. Army Space and Missile Defense Command/Army Strategic Command
U.S. Army Cyber Command
U.S. Army Network Enterprise Technology Command/9th Signal Command (Army)
U.S. Army Medical Command
U.S. Army Intelligence and Security Command
(CONT)

SUBJECT: Army Directive 2013-20 (Assessing Officers and Noncommissioned Officers on Fostering Climates of Dignity and Respect and on Adhering to the Sexual Harassment/Assault Response and Prevention Program)

DISTRIBUTION: (CONT)
U.S. Army Criminal Investigation Command
U.S. Army Corps of Engineers
U.S. Army Military District of Washington
U.S. Army Test and Evaluation Command
U.S. Army Installation Management Command
Superintendent, United States Military Academy
Director, U.S. Army Acquisition Support Center
Executive Director, Arlington National Cemetery
Commander, U.S. Army Accessions Support Brigade

CF:
Director, Army National Guard
Director of Business Transformation
Commander, U.S. Army Human Resources Command

USA 67

ALARACT 299/2013

DTG: 080700Z NOV 13

UNCLASSIFIED//FOR OFFICIAL USE ONLY
THIS MESSAGE HAS BEEN SENT BY THE UNITED STATES ARMY INFORMATION TECHNOLOGY AGENCY (USAITA) ON BEHALF OF DA WASHINGTON DC//OTJAG//

SUBJECT: ARMY RESPONSIBILITIES, ROLES, PROCEDURES, AND AUTHORITIES FOR RESPONDING TO SEXUAL ASSAULT ALLEGATIONS

(U) REFERENCES.
REF//A/ SECDEF MEMORANDUM "WITHHOLDING INITIAL DISPOSITION AUTHORITY UNDER THE UNIFORM CODE OF MILITARY JUSTICE IN CERTAIN SEXUAL ASSAULT CASES," DATED: 20 APR 12//
REF//B/ AR 600-20, ARMY COMMAND POLICY, DATED: RAR, 20 SEP 12//
REF//C/ AR 195-2, CRIMINAL INVESTIGATION ACTIVITIES, DATED: RAR 6 SEP 11//
REF//D/ 10 USC-673, DATED: 31 DEC 11//
REF//E/ SECDEF MEMORANDUM "SEXUAL ASSAULT PREVENTION AND RESPONSE," DATED: 14 AUG 13//
REF//F/ DODI 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAMS AND PROCEDURES, DATED 28 MAR 13//
REF//G/SECARMY MEMORANDUM "ARMY DIRECTIVE 2011-19 (EXPEDITED TRANSFER OR REASSIGNMENT PROCEDURES FOR VICTIMS OF SEXUAL ASSAULT)" DATED 3 OCT 11//
REF//H/ALARACT 007/2012, 121650Z JAN 12, SUBJECT: SEXUAL HARASSMENT/ASSAULT RESPONSE AND PREVENTION PROGRAM (SHARP) IMPLEMENTATION GUIDANCE//
REF//I/MILPER MESSAGE 12-092, DATED 21 MAR 12//

NARR// (U) THIS MESSAGE IS TO REMIND THE FIELD OF CERTAIN CRITICAL ROLES, RESPONSIBILITIES, PROCEDURES, AND AUTHORITIES RELATING TO SEXUAL ASSAULT REQUIREMENTS THAT HAVE CHANGED OR HAVE BEEN MODIFIED OVER THE PAST FEW YEARS//

1. (U) IAW REF A, ANY ALLEGATION OF RAPE, SEXUAL ASSAULT, FORCIBLE SODOMY, OR ANY ATTEMPT TO COMMIT SUCH AN OFFENSE IS WITHHELD TO THE FIRST O-6 -- THE SPECIAL COURT-MARTIAL CONVENING AUTHORITY (SPCMCA) -- IN THE CHAIN OF COMMAND FOR INITIAL DISPOSITION. IF THE SPCMCA IS BELOW THE GRADE OF O-6, THEN THE CASE IS WITHHELD TO THE GENERAL COURT-MARTIAL CONVENING AUTHORITY (GCMCA). SUBORDINATE COMMANDERS MAY MAKE RECOMMENDATIONS AS TO DISPOSITION TO THE O6 SPCMCA AND MAY ONLY TAKE ACTION ON SUCH OFFENSE WHEN THE SPCMCA RELEGATES THE CASE BACK TO THEIR LEVEL. ALL OTHER OFFENSES ARISING FROM OR RELATED

TO THE SAME INCIDENT/S ARE ALSO WITHHELD TO THE SPCMCA, INCLUDING OFFENSES COMMITTED BY THE ALLEGED VICTIM.

2. (U) IAW REF B, C, AND F, ANY ALLEGATION OF SEXUAL ASSAULT THAT IS REPORTED AS AN UN(RES)TRICTED REPORT WILL BE FORWARDED IMMEDIATELY TO THE CRIMINAL INVESTIGATION COMMAND (CID) FOR INVESTIGATION. COMMANDERS WILL NOT INITIATE AN AR 15-6 INVESTIGATION INTO THE ALLEGATION. THE COMMANDER WILL ALSO NOT MAKE A CREDIBILITY ASSESSMENT AS A PRE-CURSOR TO FORWARDING TO CID. ALL ALLEGATIONS WILL BE FORWARDED TO CID. THIS REQUIREMENT DOES NOT PRECLUDE A COMMANDER FROM APPOINTING AN AR 15-6 INVESTIGATION INTO COMMAND CLIMATE, RESPONSE, REPORTING PROCEDURES UPON DISCOVERY, ETC., BUT ANY SUCH INVESTIGATION WILL NOT INTERFERE WITH THE CRIMINAL INVESTIGATION BY CID.

3. (U) IAW REF G, H, AND I, COMMANDERS MUST BE FAMILIAR WITH THE EXPEDITED TRANSFER POLICY SET FORTH IN ARMY DIRECTIVE 2011-18, ALARACT 007 2012 SHARP, AND MILPER MESSAGE 12-092, TO INCLUDE FAMILIARITY WITH RELEVANT TIMELINES AND APPROVAL/DISAPPROVAL AUTHORITIES. CHANGES TO POLICY ON THIS IMPORTANT VICTIM RESPONSE CAN BE EXPECTED NLT 1 JAN 2014.

4. (U) IAW REF E, A JUDGE ADVOCATE IN THE GRADE OF O3 OR ABOVE WILL BE APPOINTED TO SERVE AS THE ARTICLE 32 INVESTIGATING OFFICER IN ALL CASES WHERE RAPE, SEXUAL ASSAULT, OR FORCIBLE SODOMY IS ALLEGED UNDER ARTICLES 120 OR 125 OF THE UCMJ OR AN ATTEMPT TO COMMIT SUCH AN OFFENSE IS ALLEGED UNDER ARTICLE 80 OF THE UCMJ. STAFF JUDGE ADVOCATES WILL NOMINATE JUDGE ADVOCATES WHO POSSESS THE REQUISITE JUDGMENT, MATURITY, AND EXPERIENCE TO PROPERLY INVESTIGATE SUCH OFFENSES.

5. (U) IAW REF E, VICTIMS OF SEXUAL ASSAULT WHO ARE ELIGIBLE LEGAL ASSISTANCE CLIENTS WILL BE ASSIGNED A SPECIAL VICTIM COUNSEL, IF REQUESTED. THE SPECIAL VICTIMS COUNSEL WILL BE AN ATTORNEY FROM THE SERVICING STAFF JUDGE ADVOCATE OFFICE. BECAUSE OF THE INCREASED DEMANDS ON JUDGE ADVOCATES TO BE SPECIAL VICTIM COUNSEL AND ARTICLE 32 INVESTIGATING OFFICERS, STAFF JUDGE ADVOCATES HAVE BEEN AUTHORIZED TO LIMIT LEGAL ASSISTANCE SERVICES PROVIDED TO RETIREES AND THEIR FAMILY MEMBERS; STAFF JUDGE ADVOCATES WILL IMPLEMENT MITIGATION MEASURES, SUCH AS, WEEKEND APPOINTMENTS FOR RETIREES USING LOCAL RESERVE COMPONENT JUDGE ADVOCATES WHERE AVAILABLE AND/OR EXPANDING LEGAL ASSISTANCE SERVICES DURING RETIREE APPRECIATION DAYS.

6. (U) COMMANDERS AND THEIR STAFF JUDGE ADVOCATES MUST CONTINUE TO WORK TOGETHER TO COMBAT SEXUAL HARASSMENT AND SEXUAL ASSAULT IN OUR RANKS. SPECIAL AND GENERAL COURTS-MARTIAL CONVENING

AUTHORITIES SHOULD SEEK THE ADVICE OF THEIR STAFF JUDGE ADVOCATES WHEN SEEKING TO IMPLEMENT THE POLICIES DISCUSSED IN THIS ALARACT MESSAGE TO ENSURE THAT FEDERAL STATUTES, THE MANUAL FOR COURTS-MARTIAL, AND (SEC)RETARIAL LEVEL DIRECTIVES ARE APPROPRIATELY COMPLIED WITH AND DONE SO WITHIN THE TIME FRAMES PRESCRIBED BY THOSE POLICIES.

7. (U/FOUO) POINTS OF CONTACT: HQDA, OTJAG POCS: LTC JOHN KIEL, JR., COMM: (571) 256-8136, E-MAIL: JOHN.L.KIEL2.MIL@MAIL.MIL; OR MRS. JANET MANSFIELD, COMM: (571) 256-8138, E-MAIL: JANET.K.MANSFIELD.CIV@MAIL.MIL.

8. (U) EXPIRATION OF THIS MESSAGE IS WHEN SUPERSEDED BY OTHER DA GUIDANCE OR REGULATION.

USA-67

DEPARTMENT OF THE ARMY
HEADQUARTERS, 15TH REGIMENTAL SIGNAL BRIGADE
606 BARNES AVENUE
FORT GORDON GEORGIA 30905-5729

REPLY TO
ATTENTION OF

ATZH-TB

4 September 2012

MEMORANDUM FOR ALL ASSIGNED AND ATTACHED MILITARY AND CIVILIAN PERSONNEL

SUBJECT: Policy Letter #12: Military Justice

1. References:

a. Manual for Courts-Martial, United States (2012 Edition).

b. AR 27-10, Military Justice, 3 March 2011.

c. AR 600-20, Army Command Policy, 18 March 2008/RAR 4 August 2011.

d. AR 600-85, The Army Substance Abuse Program, 2 Februarry 2009/RAR 2 December 2009.

e. TRADOC Regulation 350-6, Enlisted Initial Entry Training (IET) Policies and Administration, 19 July 2012.

f. USASC&FG Regulation 27-1, Military Justice, 26 July 2011.

2. This policy applies to all Soldiers within the Special Court-Martial Convening Authority jurisdiction of the 15th Regimental Signal Brigade (RSB) and is subject to the reservation of authority established by superior convening authorities.

3. Commanders in the 15th RSB shall consider the entire range of disciplinary tools available to them, including administrative measures, before resorting to punishment under the Uniform Code of Military Justice.

4. Authority to refer charges to a Summary Court-Martial is withheld by and limited to the Commander, 15th RSB. This reservation in no way limits Battalion Commanders' designation as Summary Court-Martial Convening Authorities for purposes of any Army regulation or policy.

203866

5. Authority to dispose of alleged misconduct by individuals in the grade of E-7 is withheld by

6. Disposition of the following types of alleged misconduct is withheld by and limited to the Commander, 15th RSB:

a. Initial disposition for rape, sexual assault, forcible sodomy, and attempts to commit any of these offenses. Initial disposition includes the following actions: summary court-martial, nonjudicial punishment, adverse administrative action, and no action. Preferral of charges is not an initial disposition. Any action other that preferral of charges or forwarding the case to me is prohibited; however, subordinate commanders may take other immediate actions, including, but not limited to: responding to victim requests for expedited transfer; providing for victim support; issuing military protective orders; approving search authorizations; providing investigative coordination; and ordering restraints on liberty."

b. Domestic violence

7. Subordinate commanders may forward other types of alleged misconduct to the Commander, 15th RSB, when additional command emphasis is desired. Commanders seeking exceptions to this policy will submit a written request. Failure to adhere to the provision of this policy will not confer any benefit on any individual accused of an offense.

STEPHEN A. ELLE
COL, SC
Commanding

that an offense warrants trial by court-martial, but believes that trial would be detrimental to the prosecution of a war or harmful to national security, the matter shall be forwarded to the general court-martial convening authority for action under R.C.M. 407(b).

Rule 307. Preferral of charges

(a) *Who may prefer charges.* Any person subject to the code may prefer charges.

Discussion

No person may be ordered to prefer charges to which that person is unable to make truthfully the required oath. *See* Article 30(a) and subsection (b) of this rule. A person who has been the accuser or nominal accuser (*see* Article 1(9)) may not also serve as the convening authority of a general or special court-martial to which the charges are later referred. *See* Articles 22(b) and 23(b); R.C.M. 601; however, *see* R.C.M. 1302(b) (summary court-martial convening authority is not disqualified by being the accuser). A person authorized to dispose of offenses (*see* R.C.M. 306(a); 401–404 and 407) should not be ordered to prefer charges when this would disqualify that person from exercising that person's authority or would improperly restrict that person's discretion to act on the case. *See* R.C.M. 104 and 504(c).

Charges may be preferred against a person subject to trial by court-martial at any time but should be preferred without unnecessary delay. *See* the statute of limitations prescribed by Article 43. Preferral of charges should not be unnecessarily delayed. When a good reason exists—as when a person is permitted to continue a course of conduct so that a ringleader or other conspirators may also be discovered or when a suspected counterfeiter goes uncharged until guilty knowledge becomes apparent—a reasonable delay is permissible. However, *see* R.C.M. 707 concerning speedy trial requirements.

(b) *How charges are preferred; oath.* A person who prefers charges must:

(1) Sign the charges and specifications under oath before a commissioned officer of the armed forces authorized to administer oaths; and

(2) State that the signer has personal knowledge of or has investigated the matters set forth in the charges and specifications and that they are true in fact to the best of that person's knowledge and belief.

Discussion

See Article 136 for authority to administer oaths. The following form may be used to administer the oath:

"You (swear) (affirm) that you are a person subject to the Uniform Code of Military Justice, that you have personal knowledge of or have investigated the matters set forth in the foregoing charge(s) and specification(s), and that the same are true in fact to the best of your knowledge and belief. (So help you God.)"

The accuser's belief may be based upon reports of others in whole or in part.

(c) *How to allege offenses.*

(1) *In general.* The format of charge and specification is used to allege violations of the code.

Discussion

See Appendix 4 for a sample of a Charge Sheet (DD Form 458).

---

(2) *Charge.* A charge states the article of the code, law of war, or local penal law of an occupied territory which the accused is alleged to have violated.

Discussion

The particular subdivision of an article of the code (for example, Article 118(1)) should not be included in the charge. When there are numerous infractions of the same article, there will be only one charge, but several specifications thereunder. There may also be several charges, but each must allege a violation of a different article of the code. For violations of the law of war, *see* (D) below.

(A) *Numbering charges.* If there is only one charge, it is not numbered. When there is more than one charge, each charge is numbered by a Roman numeral.

(B) *Additional charges.* Charges preferred after others have been preferred are labeled "additional charges" and are also numbered with Roman numerals, beginning with "I" if there is more than one additional charge. These ordinarily relate to offenses not known at the time or committed after the original charges were preferred. Additional charges do not require a separate trial if incorporated in the trial of the original charges before arraignment. *See* R.C.M. 601(e)(2).

(C) *Preemption.* An offense specifically defined by Articles 81 through 132 may not be alleged as a violation of Article 134. *See* paragraph 60c(5)(a) of Part IV. *But see* subsection (d) of this rule.

(D) *Charges under the law of war.* In the case of a person subject to trial by general court-martial for violations of the law of war (*see* Article 18), the charge should be: "Violation of the Law of War"; or "Violation of ....., ..." referring to the local penal law of the occupied territory. *See* R.C.M. 201(f)(1)(B). *But see* subsection (d) of this rule. Ordinarily persons subject to the code should be charged with a specific violation of the code rather than a violation of the law of war.

---

(3) *Specification.* A specification is a plain, concise, and definite statement of the essential facts constituting the offense charged. A specification is sufficient if it alleges every element of the charged

offense expressly or by necessary implication. Except for aggravating factors under R.C.M 1003(d) and R.C.M. 1004, facts that increase the maximum authorized punishment must be alleged in order to permit the possible increased punishment. No particular format is required.

Discussion

[Note: Although the elements of an offense may possibly be implied, practitioners should expressly allege every element of the charged offense. *See United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011); *United States v. Ballan*, 71 M.J. 28 (C.A.A.F. 2012). To state an offense under Article 134, practitioners should expressly allege at least one of the three terminal elements, i.e., that the alleged conduct was: prejudicial to good order and discipline: service discrediting; or a crime or offense not capital. *See Fosler*, 70 M.J. at 226. An accused must be given notice as to which clause or clauses he must defend against, and including the word and figures "Article 134" in a charge does not by itself allege the terminal element expressly or by necessary implication. *Fosler*, 70 M.J. at 229. *See also* discussion following paragraph 60c(6)(a) in Part IV of this Manual and the related analysis in Appendix 23.]

[Note: In *United States v. Jones*, the Court of Appeals for the Armed Forces examined Article 79 and clarified the legal test for lesser included offenses. 68 M.J. at 466. A lesser offense is "necessarily included" in the offense charged only if the elements of the lesser offense are a subset of the elements of the greater offense alleged. *Jones*, 68 M.J. at 470. *See* discussion following paragraph 3b(1)(c) in Part IV of this Manual and the related analysis in Appendix 23.]

How to draft specifications.

(A) *Sample specifications.* Before drafting a specification, the drafter should read the pertinent provisions of Part IV, where the elements of proof of various offenses and forms for specifications appear.

[Note: Be advised that the sample specifications in this Manual have not been amended to comport with *United States v. Jones*, 68 M.J. 465 (C.A.A.F. 2010) and *United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011). Practitioners should read the notes above and draft specifications in conformity with the cases cited therein.]

(B) *Numbering specifications.* If there is only one specification under a charge it is not numbered. When there is more than one specification under any charge, the specifications are numbered in Arabic numerals. The term "additional" is not used in connection with the specifications under an additional charge.

(C) *Name and description of the accused.*

(i) *Name.* The specification should state the accused's full name: first name, middle name or initial, last name. If the accused is known by more than one name, the name acknowledged by the accused should be used. If there is no such acknowledgment, the name believed to be the true name should be listed first, followed by all known aliases. For example: Seaman John P. Smith, U.S. Navy, alias Lt. Robert R. Brown, U.S. Navy.

(ii) *Military association.* The specification should state the accused's rank or grade. If the rank or grade of the accused has changed since the date of an alleged offense, and the change is pertinent to the offense charged, the accused should be identified by the present rank or grade followed by rank or grade on the date of the alleged offense. For example: In that Seaman _____, then Seaman Apprentice _____, etc.

(iii) *Social security number or service number.* The social security number or service number of an accused should not be stated in the specification.

(iv) *Basis of personal jurisdiction.*

(a) *Military members on active duty.* Ordinarily, no allegation of the accused's armed force or unit or organization is necessary for military members on active duty.

(b) *Persons subject to the code under Article 2(a), subsections (3) through (12), or subject to trial by court-martial under Articles 3 or 4.* The specification should describe the accused's armed force, unit or organization, position, or status which will indicate the basis of jurisdiction. For example: John Jones, (a person employed by and serving with the U.S. Army in the field in time of war) (a person convicted of having obtained a fraudulent discharge), etc.

(D) *Date and time of offense*

(i) *In general.* The date of the commission of the offense charged should be stated in the specification with sufficient precision to identify the offense and enable the accused to understand what particular act or omission to defend against.

(ii) *Use of "on or about."* In alleging the date of the offense it is proper to allege it as "on or about" a specified day.

(iii) *Hour.* The exact hour of the offense is ordinarily not alleged except in certain absence offenses. When the exact time is alleged, the 24-hour clock should be used. The use of "at or about" is proper.

(iv) *Extended periods.* When the acts specified extend(s) over a considerable period of time it is proper to allege it (or them) as having occurred, for example, "from about 15 June 1983 to about 4 November 1983," or "did on divers occasions between 15 June 1983 and 4 November 1983."

(E) *Place of offense.* The place of the commission of the offense charged should be stated in the specification with sufficient precision to identify the offense and enable the accused to understand the particular act or omission to defend against. In alleging the place of the offense, it is proper to allege it as "at or near" a certain place if the exact place is uncertain.

(F) *Subject-matter jurisdiction allegations.* Pleading the accused's rank or grade along with the proper elements of the offense normally will be sufficient to establish subject-matter jurisdiction.

(G) *Description of offense.*

[Note: To state an offense under Article 134, practitioners should expressly allege the terminal element, i.e., that the alleged conduct was: prejudicial to good order and discipline; service discrediting; or a crime or offense not capital. *See United States v. Fosler*, 70 M.J. 225 (C.A.A.F. 2011). *See also* note at the beginning of this Discussion.]

(i) *Elements.* The elements of the offense must be expressly alleged. *See* note at the beginning of this Discussion. If a specific intent, knowledge, or state of mind is an element of the offense, it must be alleged.

(ii) *Words indicating criminality.* If the alleged act is not itself an offense but is made an offense either by applicable statute (including Articles 133 and 134), or regulation or custom

having the effect of law, then words indicating criminality such as "wrongfully," "unlawfully," or "without authority" (depending upon the nature of the offense) should be used to describe the accused's acts.

(iii) *Specificity.* The specification should be sufficiently specific to inform the accused of the conduct charged, to enable the accused to prepare a defense, and to protect the accused against double jeopardy. Only those facts that make the accused's conduct criminal ordinarily should be alleged. Specific evidence supporting the allegations ordinarily should not be included in the specifications.

(iv) *Duplicitousness.* One specification should not allege more than one offense, either conjunctively (the accused "lost and destroyed") or alternatively (the accused "lost or destroyed"). However, if two acts or a series of acts constitute one offense, they may be alleged conjunctively. *See* R.C.M. 906(b)(5).

(H) *Other considerations in drafting specifications.*

(i) *Principals.* All principals are charged as if each was the perpetrator. *See* paragraph 1 of Part IV for a discussion of principals.

(ii) *Victim.* In the case of an offense against the person or property of a person, the first name, middle initial and last name of such person should be alleged, if known. If the name of the victim is unknown, a general physical description may be used. If this cannot be done, the victim may be described as "a person whose name is unknown." Military rank or grade should be alleged, and must be alleged if an element of the offense, as in an allegation of disobedience of the command of a superior officer. If the person has no military position, it may otherwise be necessary to allege the status as in an allegation of using provoking words toward a person subject to the code. *See* paragraph 42 of Part IV.

(iii) *Property.* In describing property generic terms should be used, such as "a watch" or "a knife," and descriptive details such as make, model, color, and serial number should ordinarily be omitted. In some instances, however, details may be essential to the offense, so they must be alleged. For example: the length of a knife blade may be important when alleging a violation of general regulation prohibiting carrying a knife with a blade that exceeds a certain length.

(iv) *Value.* When the value of property or other amount determines the maximum punishment which may be adjudged for an offense, the value or amount should be alleged, for in such a case increased punishments that are contingent upon value may not be adjudged unless there is an allegation, as well as proof, of a value which will support the punishment. If several articles of different kinds are the subject of the offense, the value of each article should be stated followed by a statement of the aggregate value. Exact value should be stated, if known. For ease of proof an allegation may be "of a value not less than _____." If only an approximate value is known, it may be alleged as "of a value of about _____." If the value of an item is unknown but obviously minimal, the term "of some value" may be used. These principles apply to allegations of amounts.

(v) *Documents.* When documents other than regulations or orders must be alleged (for example, bad checks in violation of Article 123a), the document may be set forth verbatim (including photocopies and similar reproductions) or may be described, in which case the description must be sufficient to inform the accused of the offense charged.

(vi) *Orders.*

(a) *General orders.* A specification alleging a violation of a general order or regulation (Article 92(1)) must clearly identify the specific order or regulation allegedly violated. The general order or regulation should be cited by its identifying title or number, section or paragraph, and date. It is not necessary to recite the text of the general order or regulation verbatim.

(b) *Other orders.* If the order allegedly violated is an "other lawful order" (Article 92(2)), it should be set forth verbatim or described in the specification. When the order is oral, *see* (vii) below.

(c) *Negating exceptions.* If the order contains exceptions, it is not necessary that the specification contain a specific allegation negating the exceptions. However, words of criminality may be required if the alleged act is not necessarily criminal. *See* subsection (G)(ii) of this discussion.

(vii) *Oral statements.* When alleging oral statements the phrase "or words to that effect" should be added.

(viii) *Joint offense.* In the case of a joint offense each accused may be charged separately as if each accused acted alone or all may be charged together in a single specification. For example:

(a) If Doe and Roe are joint perpetrators of an offense and it is intended to charge and try both at the same trial, they should be charged in a single specification as follows:

"In that Doe and Roe, acting jointly and pursuant to a common intent, did. . . ."

(b) If it is intended that Roe will be tried alone or that Roe will be tried with Doe at a common trial, Roe may be charged in the same manner as if Roe alone had committed the offense. However, to show in the specification that Doe was a joint actor with Roe, even though Doe is not to be tried with Roe, Roe may be charged as follows:

"In that Roe did, in conjunction with Doe, ..."

(ix) *Matters in aggravation.* Matters in aggravation that do not increase the maximum authorized punishment ordinarily should not be alleged in the specification. Prior convictions need not be alleged in the specification to permit increased punishment. Aggravating factors in capital cases should not be alleged in the specification. Notice of such factors is normally provided in accordance with R.C.M. 1004(b)(1).

(x) *Abbreviations.* Commonly used and understood abbreviations may be used, particularly abbreviations for ranks, grades, units and organizations, components, and geographic or political entities, such as the names of states or countries.

---

(4) *Multiple offenses.* Charges and specifications alleging all known offenses by an accused may be preferred at the same time. Each specification shall state only one offense. What is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person.

Discussion

[Note: Practitioners are advised that the use of the phrase "multiplicity in sentencing" has been deemed confusing. *United States v. Campbell*, 71 M.J. 19 (C.A.A.F. 2012). Unreasonable multipli-

cation of charges should not be confused with multiplicity. *See* R.C.M. 1003(c)(1)(C).]

See R.C.M. 906(b)(12) and 1003(c)(1)(C). For example, a person should not be charged with both failure to report for a routine scheduled duty, such as reveille, and with absence without leave if the failure to report occurred during the period for which the accused is charged with absence without leave. There are times, however, when sufficient doubt as to the facts or the law exists to warrant making one transaction the basis for charging two or more offenses. In no case should both an offense and a lesser included offense thereof be separately charged.

See also R.C.M. 601(e)(2) concerning referral of several offenses.

---

(5) *Multiple offenders.* A specification may name more than one person as an accused if each person so named is believed by the accuser to be a principal in the offense which is the subject of the specification.

Discussion

See also R.C.M. 601(e)(3) concerning joinder of accused.

A joint offense is one committed by two or more persons acting together with a common intent. Principals may be charged jointly with the commission of the same offense, but an accessory after the fact cannot be charged jointly with the principal whom the accused is alleged to have received, comforted, or assisted. Offenders are properly joined only if there is a common unlawful design or purpose; the mere fact that several persons happen to have committed the same kinds of offenses at the time, although material as tending to show concert of purpose, does not necessarily establish this. The fact that several persons happen to have absented themselves without leave at about the same time will not, in the absence of evidence indicating a joint design, purpose, or plan justify joining them in one specification, for they may merely have been availing themselves of the same opportunity. In joint offenses the participants may be separately or jointly charged. However, if the participants are members of different armed forces, they must be charged separately because their trials must be separately reviewed. The preparation of joint charges is discussed in subsection (c)(3) Discussion (H) (viii)*(a)* of this rule. The advantage of a joint charge is that all accused will be tried at one trial, thereby saving time, labor, and expense. This must be weighed against the possible unfairness to the accused which may result if their defenses are inconsistent or antagonistic. An accused cannot be called as a witness except upon that accused's own request. If the testimony of an accomplice is necessary, the accomplice should not be tried jointly with those against whom the accomplice is expected to testify. *See also* Mil. R. Evid. 306.

See R.C.M. 603 concerning amending specifications.

See R.C.M. 906(b)(5) and (6) concerning motions to amend specifications and bills of particulars.

(d) *Harmless error in citation.* Error in or omission of the designation of the article of the code or other statute, law of war, or regulation violated shall not be ground for dismissal of a charge or reversal of a conviction if the error or omission did not prejudicially mislead the accused.

Rule 308. Notification to accused of charges

(a) *Immediate commander.* The immediate commander of the accused shall cause the accused to be informed of the charges preferred against the accused, and the name of the person who preferred the charges and of any person who ordered the charges to be preferred, if known, as soon as practicable.

Discussion

When notice is given, a certificate to that effect on the Charge Sheet should be completed. *See* Appendix 4.

(b) *Commanders at higher echelons.* When the accused has not been informed of the charges, commanders at higher echelons to whom the preferred charges are forwarded shall cause the accused to be informed of the matters required under subsection (a) of this rule as soon as practicable.

(c) *Remedy.* The sole remedy for violation of this rule is a continuance or recess of sufficient length to permit the accused to adequately prepare a defense, and no relief shall be granted upon a failure to comply with this rule unless the accused demonstrates that the accused has been hindered in the preparation of a defense.

CHAPTER VI. REFERRAL, SERVICE, AMENDMENT, AND WITHDRAWAL OF CHARGES

Rule 601. Referral

(a) *In general.* Referral is the order of a convening authority that charges against an accused will be tried by a specified court-martial.

Discussion

Referral of charges requires three elements: a convening authority who is authorized to convene the court-martial and is not disqualified (*see* R.C.M. 601(b) and (c)); preferred charges which have been received by the convening authority for disposition (*see* R.C.M. 307 as to preferral of charges and Chapter IV as to disposition); and a court-martial convened by that convening authority or a predecessor (*see* R.C.M. 504).

If trial would be warranted but would be detrimental to the prosecution of a war or inimical to national security, *see* R.C.M. 401(d) and 407(b).

(b) *Who may refer.* Any convening authority may refer charges to a court-martial convened by that convening authority or a predecessor, unless the power to do so has been withheld by superior competent authority.

Discussion

See R.C.M. 306(a), 403, 404, 407, and 504.

The convening authority may be of any command, including a command different from that of the accused, but as a practical matter the accused must be subject to the orders of the convening authority or otherwise under the convening authority's control to assure the appearance of the accused at trial. The convening authority's power over the accused may be based upon agreements between the commanders concerned.

(c) *Disqualification.* An accuser may not refer charges to a general or special court-martial.

Discussion

Convening authorities are not disqualified from referring charges by prior participation in the same case except when they have acted as accuser. For a definition of "accuser," *see* Article 1(9). A convening authority who is disqualified may forward the charges and allied papers for disposition by competent authority superior in rank or command. *See* R.C.M. 401(c) concerning actions which the superior may take.

See R.C.M. 1302 for rules relating to convening summary courts-martial.

(d) *When charges may be referred.*

(1) *Basis for referral.* If the convening authority finds or is advised by a judge advocate that there are reasonable grounds to believe that an offense triable by a court-martial has been committed and that the accused committed it, and that the specification alleges an offense, the convening authority may refer it. The finding may be based on hearsay in whole or in part. The convening authority or judge advocate may consider information from any source and shall not be limited to the information reviewed by any previous authority, but a case may not be referred to a general court-martial except in compliance with subsection (d)(2) of this rule. The convening authority or judge advocate shall not be required before charges are referred to resolve legal issues, including objections to evidence, which may arise at trial.

Discussion

For a discussion of selection among alternative dispositions, *see* R.C.M. 306. The convening authority is not obliged to refer all charges which the evidence might support. The convening authority should consider the options and considerations under R.C.M. 306 in exercising the discretion to refer.

---

(2) *General courts-martial.* The convening authority may not refer a specification under a charge to a general court-martial unless—

(A) There has been substantial compliance with the pretrial investigation requirements of R.C.M. 405; and

(B) The convening authority has received the advice of the staff judge advocate required under R.C.M. 406. These requirements may be waived by the accused.

Discussion

See R.C.M. 201(f)(2)(C) concerning limitations on referral of capital offenses to special courts-martial. *See* R.C.M. 103(3) for the definition of a capital offense.

See R.C.M. 1301(c) concerning limitations on the referral of certain cases to summary courts-martial.

(e) *How charges shall be referred.*

(1) *Order, instructions.* Referral shall be by the personal order of the convening authority. The con-

vening authority may include proper instructions in the order.

Discussion

Referral is ordinarily evidenced by an indorsement on the charge sheet. Although the indorsement should be completed on all copies of the charge sheet, only the original must be signed. The signature may be that of a person acting by the order or direction of the convening authority. In such a case the signature element must reflect the signer's authority.

If, for any reason, charges are referred to a court-martial different from that to which they were originally referred, the new referral is ordinarily made by a new indorsement attached to the original charge sheet. The previous indorsement should be lined out and initialed by the person signing the new referral. The original indorsement should not be obliterated. *See also* R.C.M. 604.

If the only officer present in a command refers the charges to a summary court-martial and serves as the summary court-martial under R.C.M. 1302, the indorsement should be completed with the additional comments, "only officer present in the command."

The convening authority may instruct that the charges against the accused be tried with certain other charges against the accused. *See* subsection (2) below.

The convening authority may instruct that charges against one accused be referred for joint or common trial with another accused. *See* subsection (3) below.

The convening authority shall indicate that the case is to be tried as a capital case by including a special instruction in the referral block of the charge sheet. Failure to include this special instruction at the time of the referral shall not bar the convening authority from later adding the required special instruction, provided that the convening authority has otherwise complied with the applicable notice requirements. If the accused demonstrates specific prejudice from such failure to include the special instruction, a continuance or a recess is an adequate remedy.

The convening authority should acknowledge by an instruction that a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may not be adjudged when the prerequisites under Article 19 will not be met. *See* R.C.M. 201(f)(2)(B)(ii). For example, this instruction may be given when a court reporter is not detailed.

Any special instructions must be stated in the referral indorsement.

When the charges have been referred to a court-martial, the indorsed charge sheet and allied papers should be promptly transmitted to the trial counsel.

---

(2) *Joinder of offenses.* In the discretion of the convening authority, two or more offenses charged against an accused may be referred to the same court-martial for trial, whether serious or minor offenses or both, regardless whether related. Additional charges may be joined with other charges for a single trial at any time before arraignment if all necessary procedural requirements concerning the additional charges have been complied with. After arraignment of the accused upon charges, no additional charges may be referred to the same trial without consent of the accused.

Discussion

Ordinarily all known charges should be referred to a single court-martial.

---

(3) *Joinder of accused.* Allegations against two or more accused may be referred for joint trial if the accused are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such accused may be charged in one or more specifications together or separately, and every accused need not be charged in each specification. Related allegations against two or more accused which may be proved by substantially the same evidence may be referred to a common trial.

Discussion

A joint offense is one committed by two or more persons acting together with a common intent. Joint offenses may be referred for joint trial, along with all related offenses against each of the accused. A common trial may be used when the evidence of several offenses committed by several accused separately is essentially the same, even though the offenses were not jointly committed. *See* R.C.M. 307(c)(5) Discussion. Convening authorities should consider that joint and common trials may be complicated by procedural and evidentiary rules.

(f) *Superior convening authorities.* Except as otherwise provided in these rules, a superior competent authority may cause charges, whether or not referred, to be transmitted to the authority for further consideration, including, if appropriate, referral.

Rule 602. Service of charges

The trial counsel detailed to the court-martial to which charges have been referred for trial shall cause to be served upon each accused a copy of the charge sheet. In time of peace, no person may, over objection, be brought to trial—including an Article 39(a) session—before a general court-martial within a period of five days after service of charges, or before a special court-martial within a period of three days after service of charges. In computing these periods, the date of service of charges and the

USA-67

DEPARTMENT OF THE ARMY
UNITED STATES ARMY EUROPE
UNIT 29351
APO AE 09014-9351

AEPE-M

20 April 2012

MEMORANDUM FOR Commanders of USAREUR Major Subordinate and Specialized Commands and United States Army Garrisons

SUBJECT: Sexual Assault Prevention and Response Responsibilities

This memorandum expires in 1 year.

1. Sexual assault is incompatible with the core Army Values. Sexual assault breaks the bond of trust among Soldiers essential to our mission and team. Additionally, sexual assault is a criminal offense that degrades mission readiness by harming the victim and the unit's ability to work effectively as a team. Allowing any kind of Sexual Assault in our ranks is incompatible with who we are as a profession.

2. Commanders must create a climate that eliminates sexual assault. Additionally, Commanders and leaders must support and encourage victims to report incidents of sexual assault. Finally, Commanders must ensure perpetrators of sexual assault crimes are held accountable for their actions.

3. Commanders at all levels must be aware of their roles and responsibilities for responding to victims of sexual assault as prescribed by AR 600-20, chapter 8 and appendix G. Among the responsibilities prescribed by AR 600-20 is the requirement for commanders to update victims on the status of their case within 14 calendar days after the date of the initial report and each month thereafter until final disposition of the case. This is a Commander's responsibility and a victim's right, and may not be waived or delegated.

4. Ensure this guidance is distributed to all subordinate Commanders.

MARK P. HERTLING
Lieutenant General, USA
Commanding

This memorandum is available at https://aepubs.army.mil/.

203874

USA-67

DEPARTMENT OF THE ARMY
UNITED STATES ARMY EUROPE
UNIT 29351
APO AE 09014-9351

AEJA

26 July 2013

MEMORANDUM FOR

Commanders, USAREUR Major Subordinate Commands
Staff Judge Advocates, USAREUR Major Subordinate Commands

SUBJECT: USAREUR Withholding of Initial Disposition Authority under the Uniform Code of Military Justice (UCMJ) in Certain Sexual Assault Cases

1. References:

a. Uniform Code of Military Justice, Article 22.

b. Rules for Courts-Martial 306, 401, and 601.

c. Memorandum, Secretary of Defense, 20 April 2012, subject: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases.

d. Memorandum, USAREUR, AEPE-M, 16 January 2013, subject: Army in Europe Command Policy Letter 7, Sexual Harassment and Assault Response and Prevention (SHARP) Responsibilities.

2. In accordance with references 1a and b, I withhold initial disposition authority from all commanders in USAREUR who do not possess general court-martial convening authority (GCMCA) with respect to the following alleged offenses:

a. Rape, in violation of Article 120, UCMJ.

b. Sexual assault, in violation of Article 120, UCMJ.

c. Forcible sodomy, in violation of Article 125, UCMJ.

d. All attempts to commit such offenses in subparagraphs a through c, in violation of Article 80, UCMJ. Additionally, this withholding applies to all other alleged offenses arising from or relating to the same incident, whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof.

3. If the GCMCA deems it appropriate, he or she may release a withheld case to a subordinate special court-martial convening authority (SPCMCA) in accordance with reference 1c. GCMCAs must consult with their servicing Staff Judge Advocates in these instances and remain conscious of the risk of unlawful command influence. They may make no recommendation as to disposition. SPCMCAs are free to take whatever action they deem appropriate, including no action.

4. Commanders subordinate to the GCMCA should make disposition recommendations to the GCMCA for withheld cases. However, any subordinate commander's initial disposition action for withheld cases is prohibited. Preferral of charges, appointing an Article 32, UCMJ, investigation (if so qualified), and/or forwarding the case to the GCMCA with a disposition recommendation are not considered initial disposition actions. Subordinate commanders may take other immediate administrative actions as required, including but not limited to the following: responding to victim requests for expedited transfer; providing for victim support; issuing military protective orders; approving search authorizations; providing investigative coordination; and/or ordering restraints on liberty of an alleged accused.

5. The POC is the USAREUR Judge Advocate at DSN 337-4701.

DONALD M. CAMPBELL, JR.
Lieutenant General, USA
Commanding

CF:
HQ USAREUR Staff Principals

USA-67

Headquarters
United States Forces Korea
Unit #15237
APO AP 96205-5237

United States Forces Korea
Regulation 600-20

24 October 2012

Personnel - General

SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM

***This regulation supersedes USFK Regulation 600-20, dated 20 May 2011.**

FOR THE COMMANDING GENERAL:

BRIAN T. BISHOP
Major General, USAF
Deputy Chief of Staff

OFFICIAL:

GARRIE BARNES
Chief, Publications and
Records Management

Summary. This regulation establishes policies and procedures for the United States Forces Korea (USFK) Sexual Assault Prevention and Response (SAPR) Program. It is an implementing draft until it can be fully reviewed by each service component.

Summary of Change. Summary of major changes are as follows:

- Supports the DoD Dual Objectives of command awareness and prevention programs.

- Includes military dependents, DoD Civilians, DoD Contractors and their family members 18 years of age or older who are victim of a sexual assault by someone other than a spouse or intimate partner.

- Includes service members who are on active duty but were victims of sexual assault prior to enlistment or commissioning.

203877

o Focuses on the victim and on doing what is necessary and appropriate to support victim recovery.

o Provides care that is victim-centered, gender-responsive, culturally-competent, and recovery-oriented.

o Standardizes all service SAPR requirements, terminology, guidelines, protocols, and guidelines for instructional material that focus on awareness, prevention, and response at all levels.

o Prioritizes sexual assault patients giving them priority and treatment as emergency cases (regardless of whether physical injuries are evident) in the military medical facility.

o Expands the two reporting options (Restricted and Unrestricted) to all service members and their military dependents 18 years of age or older. The only option for DoD civilians, contractors and their family members is Unrestricted.

o Operationalizes and synchronizes DoD's SAPR Program across the services, at all levels of command, by defining five Lines of Effort (LOE) of Prevention, Investigation, Accountability, Advocacy, and Assessment. The implementing Lines of Effort are supported by five Overarching Tenets of Leadership, Communication, Culture / Environment, Integration and Resourcing. LOEs represent SAPR Program specific activities. Implementation of the LOEs is intended to enhance the execution of specific areas of sexual assault prevention and response, from establishment of a healthy command climate/ environment, through receipt of a sexual assault report, to final case disposition and victim recovery. Program LOEs also identify key actions and objectives and establish metrics to assess and modify ongoing efforts as part of an enduring improvement cycle.

o Expanded references for Sexual Assault programs for each service and DoD.

o Expanded related terms for Sexual Assault as defined by the Strategic Direction to the Joint Force on Sexual Assault Prevention and Response. This provides common terminology for all services in USFK.

o Updated all links to SAPR program web sites and resources.

o Added Appendix B reiterating Overarching Tenets of the DoD Sexual Assault Strategic Directive.

o Included the Sexual Assault Victim Hotline number accessible by dialing 158 (on post) or 0505-764-5700 (off post) for Unrestricted reporting option.

o Provides the new requirement to conduct a USFK Sexual Assault Task Force that will meet monthly and chaired by the USFK Deputy Chief of Staff.

o The new initiative for the SARC Certification Program is not addressed in this revision because it is still under development. Future revisions will address this topic.

Applicability.

a. This regulation applies to all active duty personnel and Reserve Component (Reserve and National Guard) personnel on active duty and assigned to U.S. military organizations in the Republic of Korea (ROK). This Regulation does not apply to Korean Augmentees to the United States Army (KATUSAs).

b. Victims who are family members (18 years of age or older) of active duty, retired military, Department of Defense (DoD) civilians, contractors, and technical representative employees will receive services through the military Medical Treatment Facility (MTF) and the Family Advocacy Program (FAP) in accordance with their eligibility status and at a cost based on this status.

Supplementation. Issue of further supplements to this regulation by subordinate commands is prohibited unless prior approval is obtained from USFK J1 (FKJ1-11), Unit #15237, APO AP 96205-5237 at pacom.yongsan.usfk.mbx.j11-workflow@mail.mil.

Forms. USFK forms are available at Click Here. DoD Forms for sexual assault can be found at Click Here.

Records Management. Records created as a result of processes prescribed by this regulation must be identified, maintained, and disposed of according to AR 25-400-2. Record titles and descriptions are available on the Army Records Information System website at: https://www.arims.army.mil.

Suggested Improvements. The proponent of this regulation is USFK J1 (FKJ1-11). Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) to the USFK J1 (FKJ1-11), Unit #15237, and APO AP 96205-5237, email: pacom.yongsan.usfk.mbx.j11-workflow@mail.mil.

Exception Authority. Requests for exceptions to policy or waivers will be submitted through the USFK J1 and coordinated with the USFK Office of the Judge Advocate. Only the Commander, Chief of Staff, or the Deputy Chief of Staff of USFK, has the authority to approve exceptions or waivers to this regulation.

Distribution. Electronic Media Only (EMO).

CONTENTS

Appendices

Glossary

1. Purpose

This regulation establishes policies and procedures for the United States Forces Korea (USFK) Sexual Assault Prevention and Response Program (SAPR). The USFK objective for the SAPR Program is to provide overarching command guidance as outlined from the Department of Defense (DoD) Strategic Direction to the Joint Force and allow each service to determine how they manage their own service specific programs. This revised regulation will provide the minimum requirements for all Commanders to follow, implement and monitor within their areas of responsibilities.

2. References

Required publications, forms, checklists and websites are listed in Appendix A.

3. Explanation of Abbreviations and Terms

Abbreviations and terms used in this regulation are explained in the glossary.

4. Concept

a. The goal of the USFK Sexual Assault and Prevention Program is to develop a culture free of sexual assault, through an environment of prevention, education and training, response capability, victim support, clear reporting procedures, and appropriate accountability that enhances the safety and well being of all persons. USFK is dedicated to this goal. Sexual assault is a crime. It demeans the value of others and erodes the basic foundation of trust that is so vital to the success of every military mission and to the readiness of this command. There is zero tolerance for sexual assaults in USFK and Commanders will take appropriate action based on the facts and evidence in consultation with legal counsel.

b. Commanders at all levels are responsible for providing a safe, healthy, and non-threatening environment for those in their charge. Commanders must take action to mitigate sexual assaults, protect and support victims, and hold offenders accountable by taking all appropriate administrative and judicial actions based on facts and circumstances. All accused subjects will have the right of due process.

c. Dormitories and barracks require special consideration. Commanders will ensure sufficient leadership is present to diminish opportunities for this crime to occur. All unrestricted reports of sexual assault will be documented and coordinated immediately in accordance with procedures contained in DoDI 6495.02 (Sexual Assault Prevention and Response Program Procedures).

d. USFK's SAPR Program aligns with the DoD's Strategic Directive using five Lines of Effort (LOE): Prevention, Investigation, Accountability, Advocacy and Assessment. These are reinforced by the Overarching Tenets of Leadership, Communication, Culture/Environment, Integration and Resourcing.

e. Each LOE represents SAPR Program specific activities. Each LOE includes specific actions to assist Commanders in reducing gaps and enhance efforts to operationalize the USFK SAPR Program at all echelons and across all services.

f. Overarching Tenets are used to represent guidelines essential to refining a professional culture and command climate / environment. They set conditions to optimize program implementation. All five Tenets must be fully realized in order to achieve optimal integration of the SAPR Program into the command environment – a weakness in one diminishes the whole. Overarching Tenets work hand-in-hand with LOEs to operationalize the program as a natural extension of a unit culture based on professionalism, core values and trust. Ultimately, this serves

203881

to reaffirm USFK's enduring commitment to the health and readiness of its Service members, Civilians and their Families.

5. Implementing Instructions

a. The first SAPR LOE is Prevention.

(1) Prevention is the most critical LOE; it ultimately defines program success. Unlike the other LOEs, prevention has neither a beginning nor an end. It informs and is informed by the other LOEs. There are tangible aspects of prevention that promote a positive command *climate/ environment* including program education and training. However, there are also intangible aspects that translate education and training to promote a professional *culture* that instills knowledge, awareness, communication, personal responsibility and the empowerment to act. Effective prevention efforts reduce environmental risks, predatory and high risk behaviors and personal vulnerabilities associated with the crime of sexual assault. These factors are most prolific in the barracks, during social activities involving alcohol consumption, among our youngest Service members and often during transitions. The majority of sexual assaults happen within the first 90 days upon the victim's arrival to the new command. Commanders must take a special interest in safe guarding our newly arrived personnel providing them a safe environment to live and learn about their new assignment in Korea. Prevention is every individual's responsibility and it ranges from controlling one's own actions, to stepping in if the situation requires.

(2) USFK SAPR Program includes sexual assault training for all USFK personnel assigned to USFK organizations as well as specific baseline training for first responders such as Sexual Assault Victim Advocates (SAVA), Sexual Assault Response Coordinator (SARC), Law Enforcement, Military Criminal Investigative Organizations (MCIO), Judge Advocates, Religious Support Teams (i.e., Chaplains) and Health Care Providers (HCP).

(a) SAPR training will be provided upon in-processing and annual refresher training conducted in accordance with (IAW) Service-specific policy (i.e., The Army uses the SHARP concept to train Soldiers and Department of the Army (DA) civilians). Initial USFK SAPR training will be conducted based on USFK 350-2 (Theater Specific Required Training for Arriving DoD Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to Korea) prior to personnel arriving in Korea or immediately upon arrival. An outline of first responder training requirements can be found in DODI 6495.02, Enclosure 6. A DoD SAPR training overview can also be found at DoD SAPR home page - click here.

(b) SAPR refresher training will be conducted annually for all service members (to include all flag and general officers) and DoD Civilians/Contractors assigned to USFK (i.e., on Safety Stand Down days). All training will require a sign-in sheet to document this requirement and will be made available for all Inspector General (IG) inspections.

(c) The focus of SAPR training is to ensure that all Service members and civilian supervisors of Service members have a working knowledge of what constitutes sexual assault, why sexual assaults are crimes, definitions of sexual assault terms (as outlined in the Terms section of this regulation) and the meaning of consent. Additionally, the training should provide personnel with information on the reporting options available to them, the exceptions and/or limitations of each option, victim advocacy program and resources related to victim care.

(d) To help Service members and civilian supervisors understand the nature of sexual assaults in the military environment, this training should be scenario-based, using real-life

situations (with changed information so as to protect the victim of an actual case) to demonstrate the entire cycle of victim support, reporting procedures, response, and accountability procedures.

b. The second SAPR LOE is Investigation.

(1) An investigation begins with an unrestricted report of sexual assault and continues until all available facts and evidence are gathered, analyzed and the case is submitted to the commander for action. Investigations play a pivotal role across each LOE, informing both concurrent and subsequent LOE execution. All unrestricted reports will be immediately referred to a Military Criminal Investigative Organization (MCIO) for investigation in a manner that respects the dignity of the victim while safeguarding the due process rights of the alleged offender. Investigations are independent of the chain of command to guarantee they are free from the perception of undue command influence.

(2) Without an effective investigative process, commanders lack the information necessary to make an informed decision regarding the merits of the investigative findings. Investigators play a critical role in the SAPR process because they are often the first to make contact with both victims and alleged offenders and ensure timely collection and preservation of facts and evidence. Investigators work jointly with all Services and with external law enforcement agencies to ensure a thorough and timely investigation.

c. The third SAPR LOE is Accountability.

(1) Accountability is an enduring aspect of command. The Accountability LOE encompasses those actions specific to adjudicating an alleged sexual assault crime from the initial unrestricted report through its appropriate disposition. Commanders must take action to protect the health and safety of the victim during the investigation while safeguarding the due process rights of the alleged offender. Commanders will take appropriate action based on the facts and evidence in consultation with legal counsel.

(2) Commanders will submit for initial disposition, allegations of (a) rape, in violation of Article 120 Uniform Code of Military Justice (UCMJ); (b) sexual assault, in violation of article 120 UCMJ; (c) forcible sodomy, in violation of Article 125 UCMJ; (d) all attempts to commit such offenses, in violation of Article 80 UCMJ; (e) and all other alleged offenses arising or from or relating to the same incidents), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof, to their Special Court Martial Convening Authority in the grade of O-6 or higher. See reference at Appendix A(h). Every case will have a consultation with a judge advocate. Subordinate Commanding Officers are encouraged to provide their own recommendations regarding disposition to their Special Court Martial initial disposition authority. Within the limits of commanders' authorities, they may dispose of an alleged offense by preferring court-martial charges, imposing non-judicial punishment, applying administrative action, or taking no action when appropriate. The objective of military justice is to fairly dispose of all allegations in a timely manner at the most appropriate level.

(3) Preserving and promoting good order and discipline are inherent responsibilities of every commander. Their authority extends to all aspects of the unit's mission, morale and discipline. When presented with the results of a sexual assault investigation, commanders are charged with forwarding the investigation to the initial disposition authority in the grade of O-6 or higher who holds Special Court Martial authority. Initial disposition decision is one of the most important decisions the Special Court Martial Convening authority will make, with broad ranging consequences to the victim, alleged offender, and the unit. The latter cannot be overstated; these disposition decisions have a direct impact on command climate/environment and unit/team

203883

cohesion and readiness. Only commanders can fully balance the many factors that affect their decisions. Commanders are responsible for making dispositions that are warranted, appropriate and fair.

(4) Commanders will ensure that SAPR training requirements are documented and provided to all commanders, judge advocates and investigators under their organizations.

(5) Commanders and Investigators will document and assess the number and type of sexual assault allegations, investigative findings and dispositions with the "Assessment" LOE. Per DoD guidance (reference Appendix A(e)) for Unrestricted Reports, each Service will:

(a) Implement and monitor compliance with the requirement to input the DD Form 2910 - "Victim Reporting Preference Statement" in the Defense Sexual Assault Incident Database (DSAID) as an electronic record. This electronic record will be maintained for 50 years from the date the victim signed the DD Form 2910.

(b) Ensure that their Military Criminal Investigation Organization (MCIO) will include the DD Form 2911 in their archived investigative reports. This electronic record will be maintained for 50 years from the date the sexual assault investigation was closed.

(6) For Restricted Reports, DD Forms 2910/2911 and SAFE kits will be retained for 5 years (which is consistent with DoD guidance of storing Personal Identifiable Information). Services must contact the service member after 1 year to determine if the victim still desires to keep the report Restricted and discuss options for an Unrestricted Report. Services must inform the victim that evidence held under Restricted Reporting can only be held for 5 years. Changing the option to Unrestricted Report will allow case files to be stored for future review for 50 years. The SARC will emphasize to the victim that his or her privacy will be respected. If the victim can still be found, **one last contact by the SARC will be made 30 days prior to the 5th year mark allowing the victim one last opportunity to consider the disposition of the evidence (SAFE kits and DD Form 2910 victim Reporting Preference Statements are destroyed after the 5th year if no disposition is directed).** The SARC will stress it is the victim's responsibility from that point forward. If the victim chooses to change from a Restricted Report to an Unrestricted Report, the victim will need to resign their DD Form 2910 before the 5th year. The victim will be advised to keep a copy of the DD Forms 2910 and 2911 for possible use at a later date.

(7) DoD has established policy and procedures to expedite the transfer of a Service member who files an Unrestricted Report of sexual assault in accordance with Appendix A(f).

(a) Any threat to life or safety of a Service member shall be immediately reported to command and law enforcement authorities and a request to transfer the victim under these circumstances will be handled in accordance with established Service regulations. USFK recognizes that circumstances may also exist that warrants the transfer of a Service member who makes an Unrestricted Report of sexual assault but may not otherwise meet established criteria for affecting the immediate transfer of Service members.

(b) Transfers are limited to only Service members. DoD civilians and family members are covered by the Family Advocacy Program outlined in DoD Directive 6400.01 to protect and assist actual or alleged victims of child or spouse abuse.

(c) To expedite Service member transfers, the sexual assault must be in the form of Unrestricted Report documented on a DD Form 2910 – Victim Reporting Preference Statement.

(d) When an expeditious transfer is requested, the Commanding Officer has 72 hours from receipt of the action to render a decision. If approval is recommended, the Commanding Officer will send the action to the appropriate personnel office for the approved reassignment transfer. If the Commanding Officer recommends disapproval, the service member has an option to have the first general/flag officer/SES equivalent in the chain of command of the member to review the action. This review must be made within 72 hours of submission.

(e) Services shall make every reasonable effort to minimize disruption to the normal career progression of a Service member who reports as a victim of a sexual assault.

(8) Service members who file Unrestricted and Restricted Reports of sexual assaults shall be protected from reprisal, or threat of reprisal, for filing a report.

d. The fourth SAPR LOE is Advocacy.

(1) The Advocacy LOE encompasses those actions involving response, protection and care for Service members from initiation of a restricted/unrestricted report through offense disposition and victim recovery. For purposes of this regulation, the Advocacy LOE includes both victim and alleged offender protections and services. It includes appropriate care and legal support of the alleged offender and reporting, advocacy coordination, medical services, legal support and (behavioral health) counseling for the victim. To achieve this balance, commanders must establish a positive command climate/environment free of stigma, where all Service members have faith in fair and impartial due process and victims have enough confidence and trust in their chain of command to report sexual assault.

(2) Successful advocacy is achieved through effective relationships between commanders, service providers and Service members. Commanders can strengthen this relationship by assigning the most qualified and trained professionals to serve in critical advocacy positions. This emphasis on advocacy will deepen individual trust, health and team/Service member readiness and productivity.

(a) Commanders will appoint, in writing, a qualified, trained and certified professionals to serve as their Sexual Assault Response Coordinator (SARC) and Victim Advocates (VA). This will help ensure the Commanders are aware, appropriately advised and implement effective sexual assault prevention and response programs.

(b) Alleged offenders will be given due process rights and protections afforded by the Constitution and the UCMJ. They will also be provided legal and medical services/counseling to address stress associated with the investigation.

(c) Successful advocacy strengthens service provider participation in an integrated victim services network of care including legal, medical and counseling.

(d) Successful advocacy encourage the portability of care services to provide extraordinary program capability and accessibility/continuity of care in USFK environment. For example, an Army Soldier may get help from an Air Force SARC at Osan Air Base (AB) or a Navy Sailor may be initially served by an Army SARC in Daegu and then have the Commander Naval Forces Korea (CNFK) SARC provide continued support while back at home station.

e. The fifth SAPR LOE is Assessment.

203885

(1) The Assessment LOE closes the loop to create a continuous cycle of execution from Prevention through each subsequent LOE. It represents an enduring process of data collection, analysis and assessment that assists commanders, program managers, service providers, investigators and judge advocates in evaluating and improving program and service efficacy.

(2) The Assessment LOE cuts across each LOE to incorporate sexual assault prevention and response measures (including an assessment of the impact of stigma), sexual assault reporting (restricted/unrestricted), victim services, investigative referrals, investigations, investigative findings, command/judicial referrals and case dispositions.

(3) Assessments are essential to improving sexual assault prevention and response programs/services to enhance the seamless coverage across each LOE as part of an enduring improvement cycle. This will ensure that programs and services are adaptive, flexible and oriented toward achieving jointness, while preserving unique Service requirements.

6. Responsibilities

a. COMMANDER, USFK will -

(1) Implement DoD sexual assault policies, directives and ensure Service component commanders are incorporating this regulation into applicable Services' SAPR Program guidance.

(2) Designate USFK, Assistant Chief of Staff (ACofS), J1, with the responsibility for managing and overseeing the USFK SAPR Program regulatory and policy guidance.

b. USFK J1, ASSISTANT DEPUTY CHIEF OF STAFF will -

(1) Publish, update and maintain all USFK regulatory and policy guidance pertaining to the USFK SAPR Program.

(2) Designate USFK J1 SAPR primary and alternate Program Managers.

(3) Conduct quarterly USFK Sexual Assault Task Force meetings with service components and subject matter experts from legal, medical, law enforcement, victim advocacy, public affairs and chaplain professionals. This meeting will be chaired by the USFK Deputy Chief of Staff. Garrison and Installation level SARCs should be encouraged to attend, but are not mandatory participants. Target months to meet will be August, November, February, and May. Leaders from installations outside Yongsan will be given the option to use VTC to attend this meeting. Each functional subject matter expert and service component sexual assault representative will provide updates on their respective topics and provide policy or regulatory updates to the group. The service components will provide a review of any lessons learned, new initiatives working, and resourcing issues they may have to conduct their sexual assault programs.

(4) Maintain overview of the USFK Sexual Assault Victim Hotline. Sexual Assault victims using an unrestricted report option can dial 158 from any DSN line in Korea or 0505-764-5700 from off the installation. Callers will be directed to the installation SARC desired.

c. USFK J3, ASSISTANT DEPUTY CHIEF OF STAFF will develop online training for all inbound personnel on the USFK SAPR policies and programs (USFK Reg 350-2 - Theater Specific Required Training for Arriving DoD Personnel and Units Assigned to, Rotating to, or in Temporary Duty Status to Korea).

203886

d. SERVICE COMPONENT COMMANDERS (CC) will -

(1) Incorporate the DoD Strategic Directives on SAPR into their respective Service component's SAPR programs in Korea (see references at Appendix A).

(2) Ensure SHARP (Army)/SAPR (Air Force, Navy & Marines) Programs are executed and monitored IAW established DoD and Service component policies and programs.

(3) Appoint qualified, trained and certified professionals to serve as the Sexual Assault Response Coordinators (SARC) and Victim Advocates (VA) according to their service component requirement.

(4) Establish policy to reduce the impact of high-risk behaviors and personal vulnerabilities to sexual assaults and other crimes against persons (e.g., alcohol consumption, barracks visitation, transition policy, use of CCTV in the barracks, etc).

(5) Commanders will conduct a command climate survey as directed by their service component to provide unit leadership with the current status of their personnel. For example, the Army guidance is to conduct a command climate survey within the first 120 days of assuming command and annually as appropriate. Air Force Instruction 36-2706, Paragraph 12.2.2 states that the Equal Opportunity (EO) office must conduct a Unit Climate Assessment on units with more than 50 personnel assigned every two years or upon the commander's request.

(6) Ensure that all Service members are assigned a sponsor before or upon arrival to Korea to mitigate sexual assaults which are more likely to occur to our junior Service members within 90 days of arrival. Service members will be quickly integrated and assigned a chain of command no later than 72 hours of arrival to the unit.

(7) Ensure services identify initial and annual refresher training opportunities for Sexual Assault Response Coordinators (SARC), Sexual Assault Victim Advocates (SAVA) and Sexual Assault First Response Group (SAFRG) members IAW Service component guidance.

(8) Ensure SAPR training is being conducted IAW DoD and Service component guidance for both new arrivals and annual refresher training. All SAPR training must be documented with sign-in rosters and available to the IG during inspections. Commanding Officers are responsible for 100% accountability of personnel receiving this mandatory training.

(9) Ensure SARCs meet with and train all newly assigned commanders on their roles and responsibilities as the commander with regards to the SHARP/SAPR program within 60 days of a commanders' assumption of command. Newly assigned Senior Enlisted Advisors will also be trained from their local SARC.

(10) Ensure Sexual Assault training is conducted in a way that promotes active audience participation, dialogue, discussion, and is scenario based. For example, the Army uses the stage interactive demonstrations called "Sex Signals" to create awareness of sexual assault culture we live in today.

(11) Ensure all unrestricted sexual assaults are reported to the USFK Provost Marshall's Office for continuity and statistical review.

(12) Provide a 80-hour SAVA training course (DoD controlled), IAW Service component SAPR regulatory and policy guidance, to train victim advocates within each Service component.

203887

Ensure all SAVA personnel have cleared background check and appointment orders signed by O-5 or above in the chain of command.

(13) Foster a climate of confidence where Service members are not forced to disclose their incident of sexual assault and encourage the Service member to receive sensitive, confidential and immediate victim advocacy, medical care, legal and chaplain counseling services.

(14) Develop and ensure procedures for assuming custody, storing, and preserving of Sexual Assault Forensic Evidence (SAFE) are being enforced within USFK IAW DoD and Service component policies and guidance.

(15) Ensure personnel serving as evidence custodians are trained in assuming custody, storing, and preserving SAFE IAW Service component and policy guidance.

(16) Ensure Law Enforcement and MCIO (Criminal Investigation Division (CID), Air Force Office of Special Investigations (AFOSI) and Naval Criminal Investigative Service (NCIS) report no later than 48 hours upon notification of any sexual assault that occurs at, on, or around their respective component installations. The information will be provided to the USFK Provost Marshal IAW the reporting instructions contained in Serious Incident Reports (SIR's) as outlined in USFK Regulation 190-50 (Law Enforcement Procedures in Korea).

(17) Promote and market SAPR and Sexual Assault Awareness Month (each April) in order to bring awareness of sexual assault prevention and bystander intervention within the community.

(18) Provide transportation means for victim advocates in their lines of victim advocacy work. Victim Advocates should possess government driver's license prior to operating GOV. VA should not respond to the victim off post.

(19) Plan for and secure funding to fill the sexual assault victim advocate (SAVA) bags which contain toiletry items and changes clothes for the victims to use after SAFE.

(20) Designate a sexual assault point of contact to the USFK SAPR Task Force on their service specific SAPR/SHARP policy and regulatory issues.

(21) Implement new OSD policy to withhold initial disposition authority under Uniform Code of Military Justice in certain sexual assault cases from all commanders who do not possess at least Special Court Martial Convening Authority (SPCMCA) and who are not in the grade of O-6 or higher, with respect to the following alleged offenses: rape, sexual assault, forcible sodomy and attempts to commit such offenses. See reference at Appendix A(h). Effective date is 28 Jun 12. Every case will have a consultation with a judge advocate. Subordinate Commanding Officers are encouraged to provide their own recommendations regarding initial disposition.

(22) Ensure commanders submit reports of disciplinary or administrative action on action taken in all sexual assault cases involving Service members in their units to their local law enforcement agency (i.e., Security Forces, Provost Marshal Office, etc). (Note: Submitting this report is essential to document disposition of sexual assault cases. Case dispositions are a metric of accountability and part of the case synopses reported in the Annual Report to Congress).

(23) Ensure that Cultural Awareness training specific to the Republic of Korea is conducted as part of in-processing and regularly.

203888

(24) Through service medical commands and/or Command Surgeons, ensure Medical Treatment Facilities (MTFs) meet the following requirements:

(a) Ensure policies are in place to ensure when a victim reports directly to the MTF that the assigned staff notifies the SARC on-call. Ensure the sexual assault victim is given priority as an urgent case and provide the victim with as much privacy and confidentiality as possible, and ensure they are supported by all means possible. The SARC or assigned victim advocate, upon arrival to the MTF, will explain to the victim the differences between the reporting options, ascertain the victim's reporting election, and notify law enforcement of unrestricted reports. Victim Advocate assignment is optional and the victim can accept or decline services at any time.

(b) Ensure HCPs receive SAPR training IAW DoD Memo, dated 26 Apr 05, Essential Training Task for a Sexual Assault Response Capability (JTF-SAPR-013), and DODI 6495.02, including any updates that are developed for these training requirements. Ensure HCPs use the response protocol for Sexual Assault Examinations IAW DoD and Service component policies. Ensure HCPs are trained to provide a full explanation of the SAFE process to the victim, obtain written consent from the victim and process according to the victim's elected reporting option. Ensure HCPs work with the SARC to coordinate for continued medical care with the new location (military base/installation or local community) or Veterans Administration, as applicable.

(c) Develop memoranda of agreement/understanding between installation MTF and host nation facilities, as required, on administering medical care and treatment to victims of sexual assault and performing SAFE. All sexual assault victims will be given priority and treated as emergency care patients.

(d) Budget and develop procedures for ensuring funding for "no-cost to the sexual assault victim" transportation. Transportation will be for the sole purpose of returning the victim back to his/her unit or area of assignment. This requirement takes on added significance when the victim has elected restricted reporting.

(e) Establish a policy that the sexual assault forensic examiner, when not already at the MTF, will arrive at the MTF within 45 minutes of being notified of a victim being brought to the facility. Ensure adequate unexpired supplies of SAFE Kits are available at the MTF (if authorized to perform and collect SAFE from sexual assault victims).

(f) Establish procedures to ensure sexual assault victims receive medical, psychological and counseling services.

(g) Ensure that both fluent English and Korean speaking representatives are available to screen (or interpret) for victims of sexual assault at all points of intake during hours of operation, and that appropriately trained translators are available on-call at those MTFs that do not operate 24-hours, and to assist with patients presenting or transported to Host Nation support facilities.

e. USFK PROVOST MARSHAL will -

(1) Support the joint exchange of information between Service components' Law Enforcement, MCIO and Staff Judge Advocate (SJA). All information exchanged will be in terms of unrestricted sexual assault reports.

(2) Develop quarterly sexual assault statistical report and analysis for the USFK Commander on all unrestricted sexual assaults and for input for the periodic congressional

203889

testimony from the USFK Commander to Congress. Provide statistical analysis to the USFK J1 SAPR Program managers at pacom.yongsan.usfk.mbx.j11-workflow@mail.mil.

(3) Send all Serious Incident Reports (SIRs) on unrestricted Sexual Assaults incidents to key agencies deemed appropriate by the USFK Provost Marshal. These agencies will include, but not be limited to, the USFK Chief of Staff, USFK Deputy Chief of Staff, USFK PMO, USFK SJA, USFK J1 SAPR Program Managers, and Eighth Army G1 SHARP Program Manager. All SIRs will be digitally signed until a means of encrypting the SIR to all service components is possible. All efforts will be used to protect the privacy of victims.

(4) Make recommendations for Installation Commanders for "Off Limits" of commercial businesses off their installation that have had reports of sexual assaults within their establishments.

(5) Designate a sexual assault subject matter expert to the USFK SAPR Task Force on law enforcement policy and regulatory issues.

f. USFK JUDGE ADVOCATE will -

(1) Support the joint exchange of information between Service component SJA offices, Law Enforcement, and MCIOs. Ensure rapid coordination between investigators and judge advocates when initiating a sexual assault investigation.

(2) Ensure all judge advocates within USFK receive SAPR training IAW DoD Memo, dated 26 Apr 05, Essential Training Task for a Sexual Assault Response Capability (JTF-SAPR-013) including any updates that are developed for this training requirement (i.e., specialized training for responding to allegations of a sexual assault).

(3) Ensure victims who testify will be provided support consultation in matters such as courtroom procedures and other legal procedures IAW applicable Service component policies and guidance.

(4) Ensure the privileged communication between the victims and the advocates are protected (IAW MRE 514).

(5) Designate a sexual assault subject matter expert to the USFK SAPR Task Force on legal policy and regulatory issues.

g. USFK PUBLIC AFFAIRS OFFICE will -

(1) Develop a USFK SAPR Media Campaign which continually publicizes the USFK SAPR program policies through public service announcements, local print media, television infomercials, radio programming and the USFK SAPR web site.

(2) Publicize sexual assault case dispositions for public awareness.

(3) Assist with posting USFK SAPR Program training materials and training/reference information on the USFK SAPR homepage. Coordinate with the J1 SAPR Program managers on web page development and maintenance.

(4) Designate a sexual assault subject matter expert to the USFK SAPR Task Force on public affairs policy and media issues.

h. USFK SURGEON will –

(1) Provide medical policy recommendations to the USFK Commander and serve as the Command Subject Matter Expert (SME) for medical-specific issues in the USFK SAPR program.

(2) Support the joint exchange of medical information between installation medical treatment facilities (MTFs) and across services.

(3) Designate a sexual assault SME to the USFK SAPR Task Force on medical policy and regulatory issues.

(4) Provide executive oversight and assist service component command surgeons as required in accomplishing the medical-specific tasks of the SAPR program.

i. USFK CHAPLAIN will -

(1) Establish procedures to ensure sexual assault victims and suspects receive chaplain counseling services upon notification of a sexual assault when a victim requests chaplain support.

(2) Designate a sexual assault subject matter expert to the USFK SAPR Task Force on religious policy and victim/suspect counseling.

j. SOFA SECRETARIAT will designate a sexual assault subject matter expert to the USFK SAPR Task Force on international policy and any Republic of Korea Government issues/actions.

Appendix A
References

Section I. Required Publications and Web Sites

A-1. DOD References:

(a) United States Department of Defense Sexual Assault Prevention and Response Office (SAPRO) official website: Click Here

(b) DoD Directive 6400.1 Family Advocacy Program (FAP) (23 Aug 04) - Click Here

(c) DoD Directive 6495.01 – Sexual Assault Prevention and Response (SAPR) Program (23 Jan 12) – Click Here

(d) DoD Instruction 6495.02 – Sexual Assault Prevention and Response Procedures (Incorporating Change 1, 13 Nov 08) – Click Here

(e) Directive-Type Memorandum (DTM) 11-062 – "Document Retention in Cases of Restricted and Unrestricted Reports of Sexual Assault" (16 Dec 11) – Click Here Expires 16 Dec 12 (DoD will incorporate in the DoDI 6495.02 effective 16 Dec 12)

(f) Directive-Type Memorandum (DTM) 11-063 – Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault (16 Dec 11) – Click Here Expires 16 Dec 12 (DoD will incorporate in the DoDI 6495.02 effective 16 Dec 12)

(g) Strategic Direction to the Joint Force on Sexual Assault Prevention and Response (7 May 2012) – Click Here

(h) SECDEF Memorandum, Subject: Withholding Initial Disposition Authority under Uniform Code of Military Justice in Certain Sexual Assault Cases (20 Apr 12) – Click Here

DoD/All Services SAPR Training Video Facilitator's Guide – Click Here

DoD Safe Helpline: www.SafeHelpLine.org or call the telephone Helpline at 877-995-5247

A-2. USPACOM Policies:

United States Pacific Command official website on Quality of Life: Click Here

United States Pacific Command official policy statement on Sexual Assault: Click Here

A-3. AIR FORCE Policies:

AF official website on Sexual Assault Prevention and Response Program: Click Here

AF Policy Directive 36.60 Sexual Assault Prevention and Response (SAPR) Program – Click Here

AFI 36-2706 Equal Opportunity Program Military and Civilian – Click Here

AFI 36-6001 Sexual Assault Prevention and Response (SAPR) Program – Click Here

203892

A-4. ARMY Policies:

Army official website on Sexual Harassment / Assault Response & Prevention (SHARP) – Click Here

AR 600-20 Army Command Policy (specifically chapter 8 and Appendix F-K) – Click Here

A-5. NAVY Policies:

Navy official website on Sexual Assault Prevention and Response: Click Here

A-6. MARINE CORPS Policies:

Marine Corps official website on Sexual Assault Prevention and Response Program: Click Here

MCO 1752.5A – Sexual Assault Prevention and Response (SAPR) Program – Click Here

A-7. USFK Regulation and Web Page:

USFK Regulation 190-50 (Law Enforcement Procedures in Korea)

USFK Sexual Assault Prevention and Response home page – Click Here

Section II. Required Forms and Checklists

DD Form 2909 - "Victim Advocate and Supervisor Statements of Understanding"

DD Form 2910 - "Victim Reporting Preference Statement"

DD Form 2911 - "DoD Sexual Assault Forensic Examination Report"

DD Form 2911 - Victim Instruction to the DD Form 2911, "DoD Sexual Assault Forensic Examination Report"

DD Form 2911 - Suspect Instruction to the DD Form 2911, "DoD Sexual Assault Forensic Examination Report"

Commander's Checklist for Unrestricted Reports of Sexual Assault
The Commander's Sexual Assault Response Checklist is provided to assist Commanding Officer s in successfully navigating the myriad of competing demands placed upon them once a sexual assault is reported. The use of the checklist has the primary objective of ensuring that there is an appropriate balance between a victim's right to feel secure and the alleged offender's rights to due process under the law. Its use also provides guidelines and standards for addressing unit interests in sexual assault cases.

Commander's Checklist

SAPR VA Sexual Assault Response Protocols Checklist
The VA Sexual Assault Response Protocols are provided to assist VAs in successfully navigating the myriad of competing demands placed upon them once a sexual assault is reported. The use of these protocols has the primary objective of ensuring that the victim of a sexual assault is provided

203893

with the appropriate medical treatment and advocacy support, as well as other referral information which may be of some benefit to him or her.

VA Sexual Assault Response Protocols Checklist

203894

Appendix B
Overarching Tenets of the DoD Sexual Assault Strategic Directive

Leadership	Communication	Culture and Climate / Environment	Integration	Resourcing
Preventing sexual assaults is commander business; SAPR is a commander's program and the responsibility of leaders at every level.	Effective communication by commanders is imperative to achieving comprehensive sexual assault prevention, intervention and response.	A culture of mutual respect, trust and professional values is foundational to establishing command climates / environments free of sexual assaults.	Establishment of a well-defined joint Climate / environment is imperative to promoting Service integration and assuring individual/ unit security, health and readiness.	Effective and efficient resourcing of SAPR Programs supports prevention, investigations, accountability, advocacy and assessments.
Sexual assault prevention, intervention and response starts with every commander who-through personal example-mentors subordinate commanders, leaders and Service members at all levels.	Commanders communicate prevention by establishing a climate/environment based on mutual respect, trust and professional values.	Command climates / environments enriched by appropriate leader oversight, team cohesion, social responsibility, regulated living conditions and responsible alcohol consumption will reduce the risks and vulnerabilities associated with sexual assaults.	Commanders must actively sponsor and integrate newly arriving Service members into their commands with special emphasis on those transitioning from initial training to their first operational assignment.	Services and Combatant Commanders resource SAPR Programs to provide continuity for supported units from deployment through redeployment.
Leaders at every level must remain vigilant to identify environmental risks, predatory and high-risk behaviors and personal vulnerabilities associated with the crime of sexual assault and take steps to mitigate them.	Commanders must promote dialogue that encourages awareness, intervention and removes barriers to reporting sexual assault within the unit.	An effectively applied military justice system holds offenders accountable, promotes good order and discipline and discourages criminal behavior.	Integration of individual Service member augmentees is equally important as they transition forward to theaters of operation.	Commanders provide sufficient oversight, engagement and personnel to achieve the actions/objectives outlined in this document.

203895

Glossary

Section I. Abbreviations

AFOSI	Air Force Office of Special Investigations
ASAP	Alcohol and Substance Abuse Program
CC-Seoul	Command Center Seoul
CFC	Combined Forces Command
CID	Criminal Investigation Division
DoD	Department of Defense
DSAID	Defense Sexual Assault Incident Database
DTM	Directive-Type Memorandum
FAP	Family Advocacy Program
HCP	Health Care Provider
IAW	In Accordance With
IG	Inspector General
IMCOM-P	Installation Management Command – Pacific
JPIC	Joint Police Information Center
LOE	Line of Effort
MCIO	Military Criminal Investigation Organization
MTF	Medical Treatment Facility
NCIS	Naval Criminal Investigative Service
PMO	Provost Marshal's Office
SACP	Sexual Assault Clinical Provider
SAFE	Sexual Assault Forensic Examination
SAFRG	Sexual Assault First Response Group
SAMFE	Sexual Assault Medical Forensic Examiner
SAMM	Sexual Assault Medical Management

SAPR	Sexual Assault Prevention and Response
SAPRO	Sexual Assault Prevention and Response Office
SARB	Sexual Assault Review Board
SARC	Sexual Assault Response Coordinator
SAVA	Sexual Assault Victim Advocate
SHARP	Sexual Harassment/Assault Response and Prevention
SIR	Serious Incident Report
SJA	Staff Judge Advocate
UCMJ	Uniform Code of Military Justice
UNC	United Nations Command
USFK	United States Forces Korea
USPACOM	United States Pacific Command
VA	Victim Advocate

Section II. Terms

Climate/Environment. Represents those actions by commanders to integrate unit members, build team cohesion, and provide seamless oversight to reduce high-risk behavior (e.g., responsible drinking and social activities that contribute to Service member risk and vulnerability).

Confidential Reporting. Is restricted reporting that allows a Service member to report or disclose to specified officials that he or she has been the victim of a sexual assault. This reporting option gives the member access to medical care, legal, counseling, and victim advocacy, without requiring those specific officials to automatically report the matter to law enforcement or initiate an official investigation. The restricted reporting option is only available to those sexual assault victims who are Service members; however, it may not be an option if the sexual assault occurs outside of the military installation or the victim first reports to a civilian facility and/or a civilian authority.

Consent. Words or overt acts indicating a freely given agreement to the sexual 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 accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. There is no consent where the person is sleeping or incapacitated, such as due to age, alcohol or drugs, or mental incapacity.

203897

Crisis Intervention. Emergency non-clinical care aimed at assisting victims in alleviating potential negative consequences by providing safety assessments and connecting victims to needed resources. Either the SARC or SAPR VA will intervene as quickly as possible to assess the victim's safety and determine the needs of victims and connect them to appropriate referrals, as needed.

Culture. Represents inherent aspects of professionalism and core values that promote social responsibility, team cohesion and trust.

Defense Sexual Assault Incident Database (DSAID). A DoD database that captures uniform data provided by the Military Services and maintains all sexual assault data collected by the Military Services. This database is a centralized, case-level database for the uniform collection of data regarding incidence of sexual assaults involving persons covered by DODI 6495.02. DSAID will include information (when available, or when not limited by Restricted Reporting, or otherwise prohibited by law) about the nature of the assault, the victim, the offender, and the disposition of reports associated with the assault.

Final Disposition. The conclusion of any judicial, non-judicial, or administrative actions, to include separation actions taken in response to the offense, whichever is later in time. If the final command determination is that there is insufficient evidence or other legal issues exist that prevent judicial or administrative action against the alleged perpetrator, this determination shall be conveyed to the victim in a timely manner.

Healthcare Provider (HCP). For purposes of this policy, HCP includes those individuals who are employed or assigned as healthcare professionals, or are credentialed to provide healthcare services, at medical or dental treatment facilities or to clinical counseling facilities such as the Army Social Work Services or Air Force Life Skills Support Centers.

High-Risk Behavior. Includes a range of behaviors that endangers fellow Service members (e.g., hazing, inappropriate social activities, and alcohol/drug abuse).

Identifying Personal Information. This term applies to the victim or alleged offender of a sexual assault, and is that information which would disclose or have a tendency to disclose the person's identity. Identifying personal information includes the person's name or a particularly identifying description (e.g., physical characteristics or identity by position, rank, or organization), or other information about the person or the facts and circumstances involved that could reasonably be understood to identify the person (e.g., a female in a particular squadron or barracks when there is only one female assigned).

Military Criminal Investigation Organization (MCIO). Refers to the Army's Criminal Investigating Division (CID), Air Force Office of Special Investigations (AFOSI) and Naval Criminal Investigation Service (NCIS).

Non-identifying Personal Information. Includes those facts and circumstances surrounding the sexual assault incident or information about the individual that enables the identity of the victim or alleged offender to remain anonymous.

Personal Vulnerability. Refers to command climate/environment factors that expose an individual to increased risk (untimely unit integration, lack of proper supervision, communication barriers).

Reprisal. Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, or any other act of retaliation, against a DoD member for making, preparing, or receiving a covered communication.

203898

Restricted Reporting. A reporting option that allows a Service member who is sexually assaulted, to confidentially disclose details of the assault to specifically identified individuals (SARC, victim advocates, healthcare provider or chaplain) and receive medical treatment and counseling without an investigation being initiated. Only available to service members and their family members.

***NOTE*:** The following definition of sexual assault has been directed by DoD and is for training and educational purposes only. This definition does not affect in any way the definition of any offenses under the Uniform Code of Military Justice (UCMJ). Commanders are encouraged to consult with their Staff Judge Advocate (SJA) for complete understanding of this definition in relation to the UCMJ.

a. Sexual Assault is a crime. Sexual assault is defined as intentional sexual contact, characterized by use of force, physical threat or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, unconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender or spousal relationship or age of victim.

b. **S**exual **A**ssault **F**orensic **E**xamination **(SAFE)** kit includes the items and instructions used by healthcare providers (HCP) to collect and to preserve the physical evidence of the assault.

Sexual Assault First Responders Group (SAFRG). Represents those individuals from functional communities who are normally the first to respond to a sexual assault incident. SAFRG normally includes as a minimum: law enforcement personnel, criminal investigators, SARC, assigned VA, HCP, clinical counselor, Staff Judge Advocate (SJA) personnel to include the Victim Witness Assistance/Liaison Program (VWAP/WVLP) and chaplain. Under restricted reporting, the SAFRG membership is limited to the SARC, assigned VA, HCP, Counselor and Chaplain, if applicable.

Sexual Assault Prevention and Response (SAPR) Program. A DoD program based on a victim-centered model and coordinates medical, law enforcement, legal, counseling, and chaplain services for the victim using a case management system.

Sexual Assault Response Coordinator (SARC). A DoD or contracted civilian employee or active duty Service member (E-7 or higher) who reports directly to and has unhindered access to the Garrison/Vice Wing Commander. The SARC implements and manages the area level SAPR program. The SARC shall serve as the single point of contact for coordinating appropriate and responsive care for sexual assault victims. SARCs shall coordinate sexual assault victim care and sexual assault response when a sexual assault is reported. The SARC shall supervise SAPR VAs, but may be called on to perform victim advocacy duties.

Sexual Assault Medical Management. This is the 40 hours of instructive course plus a competency hands-on training by MEDCOM and Department of Justice standards.

Sexual Assault Medical Forensic Examiner. This refers to those HCP's that have been certified with SAMM class.

Sexual Assault Clinical Provider. This refers to the Health Care Professional's that are not certified with SAMM, but are the privileged providers (MD/DO/NP/PA) that can see the victim in follow-up medical visits.

UCMJ. Uniform Code of Military Justice is an act of Congress setting forth laws that govern the conduct of the Armed Forces of the United States.

203899

Unrestricted Reporting. A reporting option that allows a Service member who is sexually assaulted and desires medical treatment, counseling and an official investigation of his/her allegations. This is the only option for DoD civilians, contractors and their family members

Victim. A victim is any person who reports a sexual assault upon him or herself, or is identified upon the report of another person or other information, as a person who has been subjected to a sexual assault.

Victim Advocate (VA). DoD or contracted civilian employees, active duty Service member or volunteer who receives guidance and mentoring from the SARC while assigned as a VA to a victim. Military Services member who are VA are assigned in a collateral duty in a non-deployed or deployed theater and may only be assigned to victims of sexual assault who are Service members. VA provides crises intervention, referral and on-going non-clinical support including information on available options and resources to assist the victim in making informed decisions about the case. VA services are optional and will continue until the victim states support is no longer needed. The SAPR VA shall provide non-clinical crisis intervention and on-going support, in addition to referrals for adult sexual assault victims. Support will include providing information on available options and resources to victims.

USA-67

SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

APR 20 2012

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
COMMANDERS OF THE COMBATANT COMMANDS
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases

Pursuant to my general court-martial convening authority under Article 22 of the Uniform Code of Military Justice (UCMJ) and Rules for Courts-Martial 306, 401, and 601, I hereby withhold initial disposition authority from all commanders within the Department of Defense who do not possess at least special court-martial convening authority and who are not in the grade of 0-6 (i.e., colonel or Navy captain) or higher, with respect to the following alleged offenses: (i) rape, in violation of Article 120; (ii) sexual assault, in violation of Article 120 of the UCMJ; (iii) forcible sodomy, in violation of Article 125 of the UCMJ; and (iv) all attempts to commit such offenses, in violation of Article 80. Additionally, this withholding applies to all other alleged offenses arising from or relating to the same incident(s), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof.

The effective date of this action will be June 28, 2012. The Services have discretion to further elevate initial disposition authority for these offenses.

The special court-martial convening authority shall be responsible for determining what initial disposition action is appropriate, to include whether further action is warranted and, if so, whether the matter should be resolved by court-martial, nonjudicial punishment, or adverse administrative action. The special court-martial convening authority's initial disposition decision shall be based upon his or her review of the matters transmitted, any independent review and recommendation received (including court-martial charges, if any), and consultation with a judge advocate. Subordinate unit commanders are encouraged to provide their own recommendations regarding initial disposition.

Nothing in this directive removes the responsibility of commanders, at every level, to maintain an environment free of sexual assault, to provide support and assistance to victims, and to maintain good order and discipline within their units.

cc:
Acting USD(P&R)
Director, Sexual Assault Prevention and Response Office

203901