

sexual assaults involving Service members organized by military installation, and matrices including the synopsis and disciplinary actions taken in substantiated cases.

§ 105.17 Sexual assault offense—investigation disposition descriptions.

Pursuant to the legislated requirements specified in Public Law 111-383, the following definitions are used by the Services for annual and quarterly reporting of the dispositions of subjects in sexual assault investigations conducted by the MCIOs. Services must adapt their investigative policies and procedures to comply with these definitions.

(a) *Substantiated reports.* Dispositions in this category come from Unrestricted Reports that have been investigated and found to have sufficient evidence to provide to command for consideration of action to take some form of punitive, corrective, or discharge action against an offender.

(1) *Substantiated reports against Service member subjects.* A substantiated report of sexual assault is an Unrestricted Report that was investigated by an MCIO, provided to the appropriate military command for consideration of action, and found to have sufficient evidence to support the command's action against the subject. Actions against the subject may include court-martial charge referral, Article 15 UCMJ punishment, nonjudicial punishment, administrative discharge, and other adverse administrative action that result from a report of sexual assault or associated misconduct (e.g., adultery, housebreaking, false official statement, etc.).

(2) *Substantiated reports by Service member victims.* A substantiated report of a sexual assault victim's Unrestricted Report that was investigated by a MCIO, and provided to the appropriate military command for consideration of action, and found to have sufficient evidence to support the command's action against the subject. However, there are instances where an Unrestricted Report of sexual assault by a Service member victim may be substantiated but the command is not able to take action against the person who is the subject of the investigation.

These categories include the following: the subject of the investigation could not be identified; the subject died or deserted from the Service before action could be taken; the subject was a civilian or foreign national not subject to the UCMJ; or the subject was a Service member being prosecuted by a civilian or foreign authority.

(b) *Substantiated report disposition descriptions.* In the event of several types of action a commander takes against the same offender, only the most serious action taken is reported, as provided for in the following list, in descending order of seriousness. For each offender, any court-martial sentence and non-judicial punishment administered by commanders pursuant to Article 15 of the UCMJ is reported annually to the DoD in the case synopses or via DSAID. Further additional actions of a less serious nature in the descending list should also be included in the case synopses reported to the Department. Public Law 111-383 requires the reporting of the number of victims associated with each of the following disposition categories.

(1) *Commander action for sexual assault offense.* (i) *Court-martial charges preferred (initiated) for sexual assault offense.* A court-martial charge was preferred (initiated) for at least one of the offenses punishable by Articles 120 and 125 of the UCMJ, or an attempt to commit an Article 120 or 125, UCMJ offense that would be charged as a violation of Article 80 of the UCMJ. (See Rules for Courts-Martial (RCM) 307 and 401 of the Manual for Courts-Martial, United States.¹³)

(ii) *Nonjudicial punishments (Article 15, UCMJ).* Disciplinary action for at least one of the UCMJ offenses comprised within the SAPR definition of sexual assault that was initiated pursuant to Article 15 of the UCMJ.

(iii) *Administrative discharges.* Commander action taken to involuntarily separate the offender from military service that is based in whole or in part on an offense within the SAPR definition of sexual assault.

¹³ Available: <http://www.dod.gov/dodgc/images/mcm2012.pdf>.

(iv) *Other adverse administrative actions.* In the absence of an administrative discharge action, any other administrative action that was initiated (including corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or other administrative withholding of privileges, or any combination thereof), and that is based in whole or in part on an offense within the SAPR definition of sexual assault. Cases should be placed in this category only when an administrative action other than an administrative discharge is the only action taken. If an “other administrative action” is taken in combination with another more serious action (e.g., courts-martial, non-judicial punishment, administrative discharge, or civilian or foreign court action), only report the case according to the more serious action taken.

(2) *Commander action for other criminal offense.* Report actions against subjects in this category when there is probable cause for an offense, but only for a non-sexual assault offense (i.e., the commander took action on a non-sexual assault offense because an investigation showed that the allegations did not meet the required elements of, or there was insufficient evidence for, any of the UCMJ offenses that constitute the SAPR definition of sexual assault). Instead, an investigation disclosed other offenses arising from the sexual assault allegation or incident that met the required elements of, and there was sufficient evidence for, another offense under the UCMJ. Report court-martial charges preferred, non-judicial punishments, and sentences imposed in the case synopses provided to the DoD. To comply with Public Law 111-383, the number of victims associated with each of the following categories must also be reported.

(i) Court-martial charges preferred (initiated) for a non-sexual assault offense.

(ii) Nonjudicial punishments (Article 15, UCMJ) for non-sexual assault offense.

(iii) Administrative discharges for non-sexual assault offense.

(iv) Other adverse administrative actions for non-sexual assault offense.

(c) *Command action precluded.* Dispositions reported in this category come from an Unrestricted Report that was investigated by a MCIO and provided to the appropriate military command for consideration of action, but the evidence did not support taking action against the subject of the investigation because the victim declined to participate in the military justice action, there was insufficient evidence of any offense to take command action, the report was unfounded by command, the victim died prior to completion of the military justice action, or the statute of limitations for the alleged offense(s) expired. Public Law 111-383 requires the reporting of the number of victims associated with each of the following disposition categories.

(1) *Victim declined to participate in the military justice action.* Commander action is precluded or declined because the victim has declined to further cooperate with military authorities or prosecutors in a military justice action.

(2) *Insufficient evidence for prosecution.* Although the allegations made against the alleged offender meet the required elements of at least one criminal offense listed in the SAPR definition of sexual assault (see 32 CFR part 103), there was insufficient evidence to legally prove those elements beyond a reasonable doubt and proceed with the case. (If the reason for concluding that there is insufficient evidence is that the victim declined to cooperate, then the reason for being unable to take action should be entered as “victim declined to participate in the military justice action,” and not entered as “insufficient evidence.”)

(3) *Victim’s death.* Victim died before completion of the military justice action.

(4) *Statute of limitations expired.* Determination that, pursuant to Article 43 of the UCMJ, the applicable statute of limitations has expired and the case may not be prosecuted.

(d) *Command action declined.* Dispositions in this category come from an Unrestricted Report that was investigated by a MCIO and provided to the

appropriate military command for consideration of action, but the commander determined the report was unfounded as to the allegations against the subject of the investigation. Unfounded allegations reflect a determination by command, with the supporting advice of a qualified legal officer, that the allegations made against the alleged offender did not occur nor were attempted. These cases are either false or baseless. Public Law 111-383 requires the reporting of the number of victims associated with this category.

(1) *False cases.* Evidence obtained through an investigation shows that an offense was not committed nor attempted by the subject of the investigation.

(2) *Baseless cases.* Evidence obtained through an investigation shows that alleged offense did not meet at least one of the required elements of a UCMJ offense constituting the SAPR definition of sexual assault or was improperly reported as a sexual assault.

(e) *Subject outside DoD's legal authority.* When the subject of the investigation or the action being taken are beyond DoD's jurisdictional authority or ability to act, use the following descriptions to report case disposition. To comply with Public Law 111-383, Services must also identify the number of victims associated with these dispositions and specify when there was insufficient evidence that an offense occurred in the following categories.

(1) *Offender is unknown.* The investigation is closed because no person could be identified as the alleged offender.

(2) *Subject is a civilian or foreign national not subject to UCMJ.* The subject of the investigation is not amenable to military UCMJ jurisdiction for action or disposition.

(3) *Civilian or foreign authority is prosecuting Service member.* A civilian or foreign authority has the sexual assault allegation for action or disposition, even though the alleged offender is also subject to the UCMJ.

(4) *Offender died or deserted.* Commander action is precluded because of the death or desertion of the alleged offender or subject of the investigation.

(f) *Report unfounded by MCIO.* Determination by the MCIO that the allega-

tions made against the alleged offender did not occur nor were attempted. These cases are either false or baseless. Public Law 111-383 requires the reporting of the number of victims associated with this category.

(1) *False cases.* Evidence obtained through a MCIO investigation shows that an offense was not committed nor attempted by the subject of the investigation.

(2) *Baseless cases.* Evidence obtained through an investigation shows that alleged offense did not meet at least one of the required elements of a UCMJ offense constituting the SAPR definition of sexual assault or was improperly reported as a sexual assault.

§ 105.18 Information collection requirements.

(a) The DSAID and the DD Form 2910, referred to in this Instruction, have been assigned OMB control number 0704-0482.

(b) The annual report regarding sexual assaults involving Service members and improvement to sexual assault prevention and response programs referred to in §§ 105.5(f)(22); 105.7(a)(9), 105.7(a)(10), and 105.7(a)(12); 105.9(c)(8)(ii); and 105.16(a) and (d) of this part is submitted to Congress in accordance with section 1631(d) of Public Law 111-383 and is coordinated with the Assistant Secretary of Defense for Legislative Affairs in accordance with the procedures in DoDI 5545.02.

(c) The quarterly reports of sexual assaults involving Service members referred to in §§ 105.5, 105.7, 105.14, 105.15, and 105.16 of this part are prescribed by DoDD 5124.02 and have been assigned a DoD report control symbol in accordance with the procedures in DTM 12-004 and DoD 8910.1-M.

(d) The Service Academy sexual assault survey referred to in § 105.16(c) of this part has been assigned DoD report control symbol in accordance with the procedures in DTM 12-004 and DoD 8910.1-M.

PART 107—PERSONAL SERVICES AUTHORITY FOR DIRECT HEALTH CARE PROVIDERS

Sec.
107.1 Purpose.