

§ 105.10

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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 alleged offenses of rape, sexual assault, forcible sodomy, and all attempts to commit such offenses, in violation of Articles 120, 125, and 80 of the Manual for Courts-Martial, United States. Commanders may defer taking action on a victim's alleged collateral misconduct arising from or that relates to the sexual assault incident until the initial disposition action for the sexual assault investigation is completed.

(3) Commanders and supervisors should take appropriate action for the victim's alleged collateral misconduct (if warranted), responding appropriately in order to encourage sexual assault reporting and continued cooperation, while avoiding those actions that may further traumatize the victim. Ultimately, victim cooperation should significantly enhance timely and effective investigations, as well as the appropriate disposition of sexual assaults.

(4) Subordinate commanders shall be advised that taking action on a victim's alleged collateral misconduct may be deferred until final disposition of the sexual assault case. The Military Departments shall establish procedures so that commanders and supervisors are not penalized for deferring collateral misconduct actions for the sexual assault victim until final disposition of the sexual assault case.

(5) Commanders shall have the authority to determine, in a timely manner, how to best manage the disposition of alleged misconduct, to include making the decision to defer disciplinary actions regarding a victim's alleged collateral misconduct until after the final disposition of the sexual assault case, where appropriate. For those sexual assault cases for which the victim's alleged collateral misconduct is deferred, Military Service reporting and processing requirements should take such deferrals into consideration and allow for the time deferred to be subtracted, when evaluating whether a commander took too long to resolve the collateral misconduct.

(h) *Commander SAPR prevention procedures.* Each commander shall implement a SAPR prevention program that:

(1) Establishes a command climate of sexual assault prevention predicated on mutual respect and trust, recognizes and embraces diversity, and values the contributions of all its Service members.

(2) Emphasizes that sexual assault is a crime and violates the core values of being a professional in the Military Services and ultimately destroys unit cohesion and the trust that is essential for mission readiness and success.

(3) Emphasizes DoD and Military Service policies on sexual assault and the potential legal consequences for those who commit such crimes.

(4) Monitors the organization's SAPR climate and responds with appropriate action toward any negative trends that may emerge.

(5) Identifies and remedies environmental factors specific to the location that may facilitate the commission of sexual assaults (e.g., insufficient lighting).

(6) Emphasizes sexual assault prevention training for all assigned personnel.

(7) Establishes prevention training that focus on identifying the behavior of potential offenders.

§ 105.10 SARC and SAPR VA procedures.

(a) *SARC procedures.* The SARC shall:

(1) Serve as the single point of contact to coordinate sexual assault response when a sexual assault is reported. All SARCs shall be authorized to perform VA duties in accordance with Military Service regulations, and will be acting in the performance of those duties.

(2) Upon implementation of the D-SAACP, comply with DoD Sexual Assault Advocate Certification requirements.

(3) Be trained in and understand the confidentiality requirements of Restricted Reporting and MRE 514. Training must include exceptions to Restricted Reporting and MRE 514.

(4) Assist the installation commander in ensuring that victims of sexual assault receive appropriate responsive

care and understand their available reporting options (Restricted and Unrestricted) and available SAPR services.

(5) Be authorized by this part to accept reports of sexual assault along with the SAPR VA and healthcare personnel.

(6) Report directly to the installation commander in accordance with 32 CFR part 103, to include providing regular updates to the installation commander and assist the commander to meet annual SAPR training requirements, including providing orientation briefings for newly assigned personnel and, as appropriate, providing community education publicizing available SAPR services.

(7) Provide a 24 hour, 7 day per week response capability to victims of sexual assault, to include deployed areas.

(i) SARC shall respond (see §105.3) to every Restricted and Unrestricted Report of sexual assault on a military installation and the response shall be in person, unless otherwise requested by the victim.

(ii) Based on the locality, the SARC may ask the SAPR VA to respond and speak to the victim.

(A) There will be situations where a sexual assault victim receives medical care and a SAFE outside of a military installation under a MOU or MOA with local private or public sector entities. In these cases, pursuant to the MOU or MOA, victims shall be asked whether they would like the SARC to be notified, and, if so, the SARC or SAPR VA shall be notified, and a SARC or SAPR VA shall respond.

(B) When contacted by the SARC or SAPR VA, a sexual assault victim can elect not to speak to the SARC or SAPR VA, or the sexual assault victim may ask to schedule an appointment at a later time to speak to the SARC or SAPR VA.

(iii) SARC shall provide a response that recognizes the high prevalence of pre-existing trauma (prior to the present sexual assault incident).

(iv) SARC shall provide a response that is gender-responsive, culturally-competent, and recovery-oriented.

(v) SARC shall offer appropriate referrals to sexual assault victims and facilitate access to referrals. Provide referrals at the request of the victim.

(A) Encourage sexual assault victims to follow-up with the referrals and facilitate these referrals, as appropriate.

(B) In order to competently facilitate referrals, inquire whether the victim is a Reservist or an NG member to ensure that victims are referred to the appropriate geographic location.

(8) Explain to the victim that the services of the SARC and SAPR VA are optional and these services may be declined, in whole or in part, at any time. The victim may decline advocacy services, even if the SARC or SAPR VA holds a position of higher rank or authority than the victim. Explain to victims the option of requesting a different SAPR VA (subject to availability, depending on locality staffing) or continuing without SAPR VA services.

(i) Explain the available reporting options to the victim.

(A) Have the victim fill out the DD Form 2910 where the victim elects to make a Restricted or Unrestricted Report.

(B) Inform the victim that the DD Form 2910 will be uploaded to DSAID and maintained for 50 years in Unrestricted Reports and retained in hard copy for 5 years in Restricted Reports, for the purpose of providing the victim access to document their sexual assault victimization with the Department of Veterans Affairs for care and benefits. However, at the request of a member of the Armed Forces who files a Restricted Report on an incident of sexual assault, the DD Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years.

(C) The SARC or SAPR VA shall tell the victim of any local or State sexual assault reporting requirements that may limit the possibility of Restricted Reporting. At the same time, the victims shall be briefed of the protections and exceptions to MRE 514.

(ii) Give the victim a hard copy of the DD Form 2910 with the victim's signature.

(A) Advise the victim to keep the copy of the DD Form 2910 in their personal permanent records as this form may be used by the victim in other

matters before other agencies (e.g., Department of Veterans Affairs) or for any other lawful purpose.

(B) Store the original DD Form 2910 pursuant to secure storage Military Service regulations and privacy laws. A SARC being reassigned shall be required to assure their supervisor of the secure transfer of stored DD Forms 2910 to the next SARC. In the event of transitioning SARCs, the departing SARC shall inform their supervisor of the secure storage location of the DD Forms 2910, and the SARC supervisor will ensure the safe transfer of the DD Forms 2910.

(iii) Explain SAFE confidentiality to victims and the confidentiality of the contents of the SAFE Kit.

(iv) Explain the implications of a victim confiding in another person resulting in a third-party report to command or DoD law enforcement (§105.8 of this part).

(v) Provide the installation commander with information regarding an Unrestricted Report within 24 hours of an Unrestricted Report of sexual assault. This notification may be extended to 48 hours after the Unrestricted Report of the incident if there are extenuating circumstances in the deployed environments.

(vi) Provide the installation commander with non-PII within 24 hours of a Restricted Report of sexual assault. This notification may be extended to 48 hours after the Restricted Report of the incident if there are extenuating circumstances in a deployed environment. Command and installation demographics shall be taken into account when determining the information to be provided.

(vii) Exercise oversight responsibility for SAPR VAs authorized to respond to sexual assaults when they are providing victim advocacy services.

(viii) Perform victim advocacy duties, as needed. DoD recognizes the SARC's authority to perform duties as SAPR VAs, even though the SARC may not be designated in writing as a SAPR VA pursuant to Military Service regulation.

(ix) Inform the victim that pursuant to their Military Service regulations, each Service member who reports having been sexually assaulted shall be

given the opportunity to consult with legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct, to consult with defense counsel.

(A) Inform the victim that information concerning the prosecution shall be provided to them in accordance with DoDI 1030.2.

(B) The Service member victim shall be informed of the opportunity to consult with legal assistance counsel as soon as the victim seeks assistance from a SARC or SAPR VA.

(x) Facilitate education of command personnel on sexual assault and victim advocacy services.

(xi) Facilitate briefings on victim advocacy services to Service members, military dependents, DoD civilian employees (OCONUS), DoD contractors (accompanying the Military Services in contingency operations OCONUS), and other command or installation personnel, as appropriate.

(xii) Facilitate Annual SAPR training.

(xiii) Facilitate the development and collaboration of SAPR public awareness campaigns for victims of sexual assault, including planning local events for Sexual Assault Awareness Month. Publicize the DoD Safe Helpline on all outreach materials.

(xiv) Coordinate medical and counseling services between military installations and deployed units related to care for victims of sexual assault.

(xv) Conduct an ongoing assessment of the consistency and effectiveness of the SAPR program within the assigned area of responsibility.

(xvi) Collaborate with other agencies and activities to improve SAPR responses to and support of victims of sexual assault.

(xvii) Maintain liaison with commanders, DoD law enforcement, and MCIOs, and civilian authorities, as appropriate, for the purpose of facilitating the following protocols and procedures to:

(A) Activate victim advocacy 24 hours a day, 7 days a week for all incidents of reported sexual assault occurring either on or off the installation involving Service members and other persons covered by this part.

(B) Collaborate on public safety, awareness, and prevention measures.

(C) Facilitate ongoing training of DoD and civilian law enforcement and criminal investigative personnel on the SAPR policy and program and the roles and responsibilities of the SARC and SAPR VAs.

(xviii) Consult with command legal representatives, healthcare personnel, and MCIOS, (or when feasible, civilian law enforcement), to assess the potential impact of State laws governing the reporting requirements for adult sexual assault that may affect compliance with the Restricted Reporting option and develop or revise applicable MOUs and MOAs, as appropriate.

(xix) Collaborate with MTFs within their respective areas of responsibility to establish protocols and procedures to direct notification of the SARC and SAPR VA for all incidents of reported sexual assault, and facilitate ongoing training of healthcare personnel on the roles and responsibilities of the SARC and SAPR VAs.

(xx) Collaborate with local private or public sector entities that provide medical care Service members or TRICARE eligible beneficiaries who are for sexual assault victims and a SAFE outside of a military installation through an MOU or MOA.

(A) Establish protocols and procedures with these local private or public sector entities to facilitate direct notification of the SARC for all incidents of reported sexual assault and facilitate training of healthcare personnel of local private or public sector entities on the roles and responsibilities of SARCs and SAPR VAs, for Service members and persons covered by this policy.

(B) Provide off installation referrals to the sexual assault victims, as needed.

(xxi) When a victim has a temporary or PCS or is deployed, request victim consent to transfer case management documents and upon receipt of victim consent, expeditiously transfer case management documents to ensure continuity of care and SAPR services. If the SARC has already closed the case and terminated victim contact, no other action is needed.

(xxii) Document and track the services referred to and requested by the victim from the time of the initial report of a sexual assault through the final case disposition or until the victim no longer desires services.

(A) Enter information into DSAID or Military Service DSAID-interface within 48 hours of the report of sexual assault. In deployed locations that have internet connectivity issues, the time frame is extended to 96 hours.

(B) Maintain in DSAID, or the DSAID-interfaced Military Service data system, an account of the services referred to and requested by the victim for all reported sexual assault incidents, from medical treatment through counseling, and from the time of the initial report of a sexual assault through the final case disposition or until the victim no longer desires services.

(xxiii) Provide information to assist installation commanders to manage trends and characteristics of sexual assault crimes at the Military Service-level and mitigate the risk factors that may be present within the associated environment (e.g., the necessity for better lighting in the showers or latrines and in the surrounding area).

(xxiv) Participate in the CMG to review individual cases of Unrestricted Reports of sexual assault.

(A) The installation SARC, shall serve as the co-chair of the CMG. This responsibility is not delegable. If an installation has multiple SARCs on the installation, a Lead SARC shall be designated by the Service concerned, and shall serve as the co-chair.

(B) Other SARCs and SAPR VAs shall actively participate in each CMG meeting by presenting oral updates on their assigned sexual assault victim cases, providing recommendations and, if needed, seeking assistance from the chair or victim's commander.

(xxv) Familiarize the unit commanders and supervisors of SAPR VAs with the SAPR VA roles and responsibilities, using the DD Form 2909, "Victim Advocate Supervisor Statement of Understanding." DD Form 2909 is available via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2909.pdf>.

(b) *SAPR VA procedures.* (1) The SAPR VA shall:

(i) Upon implementation of the D–SAACP, comply with DoD Sexual Assault Advocate Certification requirements.

(ii) Be trained in and understand the confidentiality requirements of Restricted Reporting and MRE 514. Training must include exceptions to Restricted Reporting and MRE 514.

(iii) Facilitate care and provide referrals and non-clinical support to the adult victim of a sexual assault.

(A) Support will include providing information on available options and resources so the victim can make informed decisions about his or her case.

(B) The SAPR VA will be directly accountable to the SARC in adult sexual assault cases (not under the FAP jurisdiction) and shall provide victim advocacy for adult victims of sexual assault.

(iv) Acknowledge their understanding of their advocacy roles and responsibilities using DD Form 2909.

(2) At the Military Service's discretion, victim advocacy may be provided by a Service member or DoD civilian employee. Personnel responsible for providing victim advocacy shall:

(i) Be notified and immediately respond upon receipt of a report of sexual assault.

(ii) Provide coordination and encourage victim service referrals and ongoing, non-clinical support to the victim of a reported sexual assault and facilitate care in accordance with the Sexual Assault Response Protocols prescribed SAPR Policy Toolkit located on *www.sapr.mil*. Assist the victim in navigating those processes required to obtain care and services needed. It is neither the SAPR VA's role nor responsibility to be the victim's mental health provider or to act as an investigator.

(iii) Report directly to the SARC while carrying out sexual assault advocacy responsibilities.

§ 105.11 Healthcare provider procedures.

This section provides guidance on medical management of victims of sexual assault to ensure standardized, timely, accessible, and comprehensive

healthcare for victims of sexual assault, to include the ability to elect a SAFE Kit. This policy is applicable to all MHS personnel who provide or coordinate medical care for victims of sexual assault covered by this part.

(a) *Standardized medical care.* To ensure standardized healthcare, the Surgeons General of the Military Departments shall:

(1) Require the recommendations for conducting forensic exams of adult sexual assault victims in the U.S. Department of Justice Protocol be used to establish minimum standards for healthcare intervention for victims of sexual assault. Training for military sexual assault medical examiners and healthcare providers shall be provided to maintain optimal readiness.

(2) Require that MTFs that provide SAFEs for Service members or TRICARE eligible beneficiaries through an MOU or MOA with private or public sector entities verify initially and periodically that those entities meet or exceed standards of the recommendations for conducting forensic exams of adult sexual victims in the U.S. Department of Justice Protocol. In addition, verify that as part of the MOU or MOA, victims are be asked whether they would like the SARC to be notified, and if notified, that a SARC or SAPR VA actually responds.

(3) Require that medical providers providing healthcare to victims of sexual assault in remote areas or while deployed have access to the current version of the U.S. Department of Justice Protocol for conducting forensic exams.

(4) Implement procedures to provide the victim information regarding the availability of a SAFE Kit, which the victim has the option of refusing. If performed in the MTF, the healthcare provider shall use a SAFE Kit and the most current edition of the DD Form 2911.

(5) Require that the SARC be notified of all incidents of sexual assault in accordance with sexual assault reporting procedures in § 105.8 of this part.

(i) Require processes be established to support coordination between healthcare personnel and the SARC.