

HEADQUARTERS, UNITED STATES AIR FORCE ACADEMY  
OFFICE OF THE STAFF JUDGE ADVOCATE



**Sexual Assault Response Guide**

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## FOREWORD

The Air Force has a long legacy of facing challenges head-on. The fight to eliminate sexual assault from our ranks is one such challenge that we will be engaged in until the Air Force is free from sexual assault. This challenge will take bold and persistent leadership, persistent focus, and persistent action to realize our vision of an Air Force free from sexual assault. We have no doubt that our Airmen will achieve this vision because there isn't a challenge that Airmen have accepted and failed to achieve. One of the keys to successfully addressing sexual assault is to ensure every Airman has the opportunity to live and work in a healthy environment where he or she is treated with dignity and respect. There is no place in that environment for the degradation of individuals through acts of sexual harassment or sexual assault. First and foremost, it is inconsistent with our Core Values: *"Integrity First"*, *"Service Before Self"*, and *"Excellence in All We Do."* And secondly, it goes against everything our mission espouses when protecting and defending democracy at home or abroad.

Executive Summary,  
FY14 USAF Report on SAPR to the President of the United States

**“The Air Force’s mission depends on Airmen having complete trust and confidence in one another. Our core values of Integrity, Service, and Excellence, define the standard. Sexual assault is absolutely inconsistent and incompatible with our core values, our mission, and our heritage.”**

**Deborah Lee James**  
Secretary of the Air Force

To fully understand the requirements and recommended courses of actions in responding to reports of sexual assault, we have to compare multiple National Defense Authorization Acts, the Uniform Code of Military Justice, Department of Defense Instructions, Air Force Instructions, and a variety of command-specific policies. The purpose of this Guide is to consolidate these authorities into one place that is instructive and useful to those of us faced with responding to sexual assault allegations.

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## CHAPTER 1. INTRODUCTION

**1.1. Purpose.** The intent of this Guide is to provide Air Force Academy personnel at all levels the tools they need to effectively respond to allegations of sexual assault. The Guide has been designed to allow all members of the USAFA team to understand their specific roles in responding to reports of sexual assault and to assist them in understanding how the various command, legal, investigative, and helping agencies work together to respond to reports of sexual assault.

**1.2. Currency of Guidance.** At the time of publication, this Guide contains the most current information on policies and regulations in this area; however, policies are under constant revision. While frequent updates to this Guide are planned, you should always consult primary sources and seek legal advice before taking action. This Guide is a tool and is not authoritative. Commanders, AOCs, First Sergeants, and AMTs are advised to consult the legal office and chain of command on significant matters to ensure consistency with the most current guidance and established procedures. HQ USAFA/JA welcomes feedback, comments, and suggestions to improve this Guide.

**1.3. Overview.** The laws, regulations, and policies in this area of the law continue to be dynamic, evolving as we learn from experience. This Guide combines the requirements contained in DoD policies, AF instructions, and Congressional mandates contained in recent National Defense Authorization Acts. This Guide should help the members of USAFA better address the **4 Cs of sexual assault** response: care for reporters of sexual assault, consultation throughout the process, collaboration between responding entities, and the Command's role in the process. Each area of focus is described in greater detail below:

**1.3.1. Care for Reporters of Sexual Assault.** Those who report being sexually assaulted have the right to be treated with fairness and with respect for their dignity and privacy.<sup>1</sup> In addition to preventing sexual assault and creating a culture of dignity and respect, a major policy goal of the Air Force's Sexual Assault Prevention and Response (SAPR) program is that there is a "trained and immediate response capability."<sup>2</sup> In 2012, while speaking about preventing sexual assault prevention and response, former Secretary of the Air Force Michael Donley stated, "This is family business. Nobody will do this for us. We must do it for ourselves, for our Airmen, and for our Air Force."<sup>3</sup> Piggybacking on this statement, Air Force Chief of Staff General Mark A. Welsh, III, said, "as an Air Force family, we must do a better job of caring for one another."<sup>4</sup> This Guide provides step-by-step and area-specific guidance to help everyone involved in the process provide high quality, timely, and seamless care for those who report being sexually assaulted.

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<sup>1</sup> AFI 51-201, ¶ 7.11.8.

<sup>2</sup> AFI 90-6001, ¶ 1.4.3.

<sup>3</sup> Statement of Air Force Secretary Donley, 2012 Air Force Association Annual Meeting, 17 September 2012. Available at <http://www.defense.gov/news/newsarticle.aspx?id=117897>.

<sup>4</sup> Statement of General Mark A. Welsh III, USAF, Senate Armed Services Committee, June 4, 2013.

**1.3.2. Consultation Throughout the Process.** Under recently enacted federal law, DoD Instruction, and Air Force Instruction, a victim of sexual assault has widely expanded rights to both notice and consultation throughout the investigative and disciplinary process.<sup>5</sup> A goal of this Guide is to provide a road map of those processes to help those involved comply with all the requirements and execute their assistance properly.

**1.3.2.1. Notice Required to Victims.** Under these new rules, a victim has the right to “reasonable, accurate, and timely notice” of “continuation of confinement prior to trial of the accused,” a “hearing under Article 32 relating to the offense,” a “court-martial relating to the offense,” a “proceeding of . . . clemency and parole . . . relating to the offense,” “[t]he release or escape of the accused,” and to be informed that they have rights to a Special Victims’ Counsel (if entitled).<sup>6</sup>

**1.3.2.2. The Right to Be Heard.** In addition to the right to simply be timely informed about what is happening, victims now also have the right to attend hearings and be heard at important points in the process. Victims have the right to attend and be reasonably heard (by themselves or through counsel) at pretrial confinement hearings, sentencing hearings, as well as clemency and parole hearings.<sup>7</sup> Similarly, victims have a right to meet with government counsel at these hearings. Victims also have the right to attend Article 32 hearings, courts-martial, and any other public hearing.<sup>8</sup>

**1.3.3. Collaboration Between Responding Entities.** Providing the level of care and consultation required takes a high degree of collaboration. Everyone involved in the process at USAFA must understand their role in process and the process as a whole to prevent breakdowns in services which can occur when individuals or entities fail to do that which is required by regulation, exceed the scope of their duties or take action that impedes another. If unsure of your exact role, contact HQ USAFA/JA for guidance.

**1.3.4. Commander’s Role.**<sup>9</sup> A victim has the right to protection (from the accused, retaliation, and reprisal) and the right to be treated with fairness and respect for their dignity and privacy.<sup>10</sup> While these two requirements may seem straightforward, there are a number of actions that may need to be taken by a commander based on the request of a victim that are not necessarily obvious. General guidance for commanders and a list of their responsibilities is included in Chapter 3.

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<sup>5</sup> 10 U.S.C. §806(b); DoDI 1030.02; AFI 51-201, ¶ 7.11.

<sup>6</sup> AFI 51-201, ¶¶ 7.11.2.1–7.11.2.5.

<sup>7</sup> AFI 51-201, ¶¶ 7.11.3–7.11.5.

<sup>8</sup> AFI 51-201, ¶¶ 7.11.3. A victim can only be excluded from one of these hearings if the preliminary hearing officer or military judge determines by clear and convincing evidence that testimony by the victim would be materially altered if the victim heard other testimony at that hearing or proceeding. *Id.*

<sup>9</sup> “Commanders” are referenced a number of times throughout this Guide. Pursuant to AFI 51-604, ¶ 1.8.1, “Except as required by law (e.g., the Uniform Code of Military Justice), a civilian leader of a unit is authorized to perform all functions normally requiring action by the respective unit commander. When a civilian is designated to lead a unit, that individual will be the director of that unit.” Therefore, when this Guide refers to commanders, it impliedly includes directors. Any specific questions as to applicability to directors should be made to the legal office.

<sup>10</sup> AFI 51-201, ¶¶ 7.11.1, 7.11.8.

## CHAPTER 2. THE RULES

**2.1. Rules Overview.** The rules in their current form are found in a variety of source documents including: the National Defense Authorization Acts for FY14 and FY15; Department of Defense Instruction (DoDI) 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures*, 28 March 2013, *Incorporating Change 2*, 7 July 2015; DoDI 5505.18, *Investigation of Adult Sexual Assault in the Department of Defense*, 25 January 2013, *Incorporating Change 2*, 18 June 2015; AFI 90-6001 *Sexual Assault Prevention and Response (SAPR) Program*, 21 May 2015; AFI 51-201 *Administration of Military Justice*, 6 June 2013; Guidance Memo to AFI 51-201, 30 July 2015; AFI 51-504 *Legal Assistance, Notary, and Preventive Law Programs*, 27 October 2003, *Incorporating Through Change 3*, 24 May 2012; AFI 40-301\_USAFASUP, *Family Advocacy*, 19 June 2014; and a variety of memos. Pursuant to these rules, the installation commander is responsible for overseeing responsibilities concerning sexual assault response. At USAFA, the Vice Superintendent fills this role.<sup>11</sup>

**2.2. Definitions.** The following definitions related to sexual assault have been directed by DoD and are for training and educational purposes only. These definitions do not in any way affect the definition of any offense under the Uniform Code of Military Justice. Commanders are encouraged to consult with their legal office for complete understanding of these definitions in relation to specific offenses under the UCMJ.<sup>12</sup>

**2.2.1. Sexual Assault.** Sexual assault is defined as intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority, or when the victim does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit any of these acts.<sup>13</sup>

**2.2.2. Consent.** A freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating or social or sexual relationship by itself or the manner of dress of the

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<sup>11</sup> DoDI 6495.02 dictates that the SARC has direct contact with the installation commander, which cannot be delegated. However, AF/CVS has provided approval for USAFA's SAPR "installation commander" responsibilities to be handled by the Vice Superintendent, with the supervision of the SARC handled by the Director for Culture, Climate and Diversity.

<sup>12</sup> The importance of recognizing the difference between the general regulatory definitions and the definitions in the UCMJ cannot be understated. For example, throughout this Guide, "sexual assault" concerns the general definition as stated in paragraph 2.2.1. However, under the UCMJ, sexual assault is a specific offense prohibited by Article 120(b), and is a separate offense than rape (Art. 120(a)), aggravated sexual contact (Art. 120(c)), abusive sexual contact (Art. 120(d)), rape of a child (Art. 120b(a)), sexual assault of a child (Art. 120b(b)), sexual abuse of a child (Art. 120b(c)), other sexual misconduct (Art. 120c), forcible sodomy (Art. 125), and attempts of these offenses (Art. 80), which are covered by the general regulatory definition of "sexual assault."

<sup>13</sup> DoDI 6405.02, Glossary; AFI 90-6001, Attachment 1.

person involved with the accused in the conduct at issue shall not constitute consent. A sleeping, unconscious, or incompetent person cannot consent.<sup>14</sup>

**2.3. Reporting Sexual Assault.** The duties to report sexual assault vary by a person’s role. Many Air Force members and civilian employees are required by law to report revelations of sexual assault to the Air Force Office of Special Investigations (AFOSI), the Sexual Assault Response Coordinator (SARC), and Commander (if applicable). Other personnel are strongly encouraged to report sexual assaults or encourage the victim to do so, but should be careful not to negate the restricted reporting option from a victim that may desire to use it. Finally, some people are permitted to receive and keep confidential communications. Attachment 1 gives a breakdown of the mandatory reporters, those strongly encouraged to report, and those permitted to keep confidential information. The specific duties of each group will be further discussed below.

**2.3.1. Mandatory Reporters.** When a military member or civilian employee receives information about a sexual assault involving “a subordinate in the individual’s supervisory chain,” that individual is required to report the matter to AFOSI, the SARC, and the Commander (or equivalent) as soon as possible.<sup>15</sup> It does not matter from where the information came or whether the subordinate is a victim or an alleged offender. Failure to report such sexual assault can subject the superior to punishment for violation of UCMJ Art. 92 or other discipline. Being a mandatory reporter should not be confused with distinctions between restricted and unrestricted reporting, which is discussed further below at sections 2.3.4–2.3.5. At USAFA, the following are considered superiors in the individual’s supervisory chain, and are therefore mandatory reporters:

**2.3.1.1.** Commanders involving members in their chain;

**2.3.1.2.** First sergeants (only involving subordinates in their supervisory chain);<sup>16</sup>

**2.3.1.3.** Primary supervisors involving their subordinates;

**2.3.1.4.** “Air Force Instructors”<sup>17</sup> involving members they teach:

**2.3.1.4.1.** At USAFA, AOCs and AMTs involving cadets in their squadron;

**2.3.1.4.2.** At USAFA, Group AOCs involving cadets in their group;

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<sup>14</sup> DoDI 6495.01, 17.

<sup>15</sup> AFI 90-6001, ¶ 3.7.3.

<sup>16</sup> Generally, first sergeants in their role as such are not supervising members. However, in such circumstances, they would be mandatory reporters. Even when first sergeants are not mandatory reporters, as soon as they inform the commander of a report of sexual assault, the commander has a mandatory reporting obligation.

<sup>17</sup> While AFI 90-6001 only exempts civilian professors from mandatory reporting, HQ USAF/CVS granted a waiver so that no USAFA faculty are mandatory reporters for cadets. Additionally, “Air Force Instructor” is a term of art for AFI 90-6001; it has a different definition than “trainer” in a trainer–trainee relationship, which has other rules proscribed by AFI 36-2909.



**2.3.1.4.3.** At USAFA, Cadet Wing leadership involving cadets;

**2.3.1.4.4.** At USAFA, BCT AOCs, Deputy AOCs, AAOCs, and AMTs involving basic cadets in their squadron;

**2.3.1.5.** Superiors in the traditional chain of command;

**2.3.1.6.** Equal opportunity personnel;<sup>18</sup> and

**2.3.1.7.** Military OneSource.<sup>19</sup>

**2.3.2. Those Strongly Encouraged to Report.** All other military members and civilian employees who are neither superiors of the individual in the allegation or authorized to accept confidential communication are strongly encouraged to report information they hear concerning sexual assault, or to encourage the victim to report it directly.<sup>20</sup> If a victim requests privacy from someone who is not a mandatory reporter, that person may choose not to report the information to allow the victim to make a restricted report. Those communications, however, are not protected as “confidential” by regulation or statute, meaning the person may potentially be ordered by command or a court to disclose the information at a later time. Those strongly encouraged to report include:

**2.3.2.1.** Commanders involving others not in their chain;

**2.3.2.2.** First sergeants (not involving subordinates in their supervisory chain); however, once the first sergeant informs the supervisory commander, the commander is a mandatory reporter;

**2.3.2.3.** Co-workers, friends, and roommates; and

**2.3.2.4.** “Air Force Instructors” involving others they do not teach or otherwise supervise:

**2.3.1.4.1.** At USAFA, AOCs and AMTs involving other cadets not in their squadron;

**2.3.1.4.2.** At USAFA, Group AOCs involving other cadets not in their group;

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<sup>18</sup> AFI 36-2706, ¶ 3.33.

<sup>19</sup> DoDI 6490.06, at 6, provides general confidentiality for Military Family and Life Consultants and Military OneSource; however, DoDI 6495.02, at 120, creates the legal obligation that Military OneSource report allegations of sexual assault.

<sup>20</sup> AFI 90-6001, ¶ 3.7.4.

**2.3.1.4.3.** At USAFA, OICs of clubs involving cadets not otherwise in their supervisory chain;<sup>21</sup>

**2.3.1.4.4.** At USAFA, BCT AOCs, Deputy AOCs, AAOCs, and AMTs involving other basic cadets not in their squadron;

**2.3.1.4.5.** At USAFA, BCT AOCs, Deputy AOCs, AAOCs, and AMTs involving permanent party or cadet cadre working BCT;

**2.3.1.4.6.** At USAFA, Cadet leadership and cadet chain of command involving other cadets;

**2.3.1.4.7.** At USAFA, Cadet cadre working BCT involving basic cadets or other cadets;

**2.3.1.4.8.** At USAFA, Personal Ethics and Education Representatives (PEERs) and Military Guidance Officers (MGOs) involving other cadets;

**2.3.1.4.9.** At USAFA, faculty involving cadets;<sup>22</sup>

**2.3.1.4.11.** At USAFA, coaches involving cadets.

**2.3.3. Those Permitted to Keep Confidential Information.** Certain individuals are required to keep information confidential, even if it relates to sexual assault. However, the confidentiality depends on who is providing the information and what the information includes. Some of those authorized to keep confidential communications have specific exceptions when certain confidential communications may be disclosed.<sup>23</sup> Those authorized to keep confidential communications include:

**2.3.3.1.** SARCs, SAPR Victim Advocates (VAs), and Volunteer VAs (VVAs);

**2.3.3.2.** DoD Safe Helpline staff;<sup>24</sup>

**2.3.3.3.** Chaplain Corps Staff;

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<sup>21</sup> For example, if a club OIC, who is also an AOC/AMT, receives information about a cadet who is in the club and the AOC/AMT's cadet squadron, the club OIC is then a mandatory reporter from the role as AOC/AMT, not as the club OIC.

<sup>22</sup> See *infra*, note 17.

<sup>23</sup> For example, a SARC may reveal confidential information when "necessary to prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person." DoDI 6495.02, Encl. 4, ¶ 5(b)(2). Attorneys similarly may disclose otherwise confidential communications "to prevent reasonably certain death or substantial bodily harm, or substantial impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapons system." AFI 51-110, Attachment 3, Rule 1.6. Chaplains, however, retain absolute confidentiality.

<sup>24</sup> Exec. Order No. 13,696, 80 Fed. Reg. 35820-35821 (June 22, 2015). The DoD Safe Helpline provides confidential online and toll-free telephone support for sexual assault victims.

**2.3.3.4.** Family Advocacy Program (FAP) personnel involving adults not in presence of the alleged offender;<sup>25</sup>

**2.3.3.5.** Military medical providers involving patients;

**2.3.3.6.** Special Victims' Counsel (SVC) involving clients;

**2.3.3.7.** Legal Assistance attorneys involving clients;

**2.3.3.8.** Defense counsel involving clients; and

**2.3.3.9.** Military Family and Life Consultants.<sup>26</sup>

**2.3.4. Restricted Reporting.** Eligible victims may report allegations of sexual assault to specified personnel without prompting an investigation, as long as an independent investigation on the incident has not already been initiated.<sup>27</sup> This reporting option is intended to remove barriers to medical care and support, while giving the victim additional time and increased control over the release and management of personal information. Only SARCs, SAPR VAs, VVAs, and Healthcare Personnel may receive restricted reports of sexual assaults.<sup>28</sup> Sexual assault restricted reporting is available only to the following victims:<sup>29</sup>

**2.3.4.1. Active Duty.** Active duty members who were sexual assault victims perpetrated by someone other than the victim's spouse, same-sex domestic partner, or intimate partner,<sup>30</sup> regardless of when or where sexual assault took place.

**2.3.4.2. Adult Dependents of Active Duty Members.** Dependents of active duty members who are at least 18 years old and are eligible for treatment in the military health system.<sup>30</sup>

**2.3.4.3. Reserve and Guard Members.** Members of the Reserves or National Guard who were performing active duty or inactive duty training under Title 10 orders when sexually assaulted.<sup>31</sup> Additionally, if sexually assaulted prior to

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<sup>25</sup> AFI 40-301, ¶ 4.7.2.

<sup>26</sup> DoDI 6490.06, at 6, provides general confidentiality for MFLC and MOS; however, DoDI 6495.02, at 120, creates the legal obligation that MOS report allegations of sexual assault.

<sup>27</sup> DoDI 6495, Encl. 4, ¶ 1(f).

<sup>28</sup> AFI 90-6001, ¶¶ 3.3.1.

<sup>29</sup> *Id.*, ¶ 3.2.1.

<sup>30</sup> The Family Advocacy Program (FAP) manages sexual assault allegations when the alleged offender is the partner in context of a spousal relationship, same sex domestic partnership, unmarried intimate partner relationship, or military dependents who are 17 years of age and younger. See AFI 40-301. For more information about FAP and their restricted reporting options, see paragraph 9.5.

<sup>31</sup> *Id.*, ¶ 3.2.1.3.1. Reserve and Guard Members not on Title 10 orders are eligible for limited SARC services.

service or while otherwise not on orders, members of the Reserves or National Guard are entitled to certain SAPR services, including restricted reporting.<sup>32</sup>

**2.3.4.4. Air Force Civilian Employees.** Air Force civilian employees, both appropriated and non-appropriated.<sup>33</sup>

**2.3.4.5. Those Not Eligible.** Those who do not fit one of the classifications in paragraphs 2.3.4.1 through 2.3.4.4 are not eligible for restricted reporting. Ineligible persons include: retired members of any component, minor military family members, non-Air Force DoD civilian employees, and other civilians.

**2.3.5. Unrestricted Reporting.** The victims who are eligible for restricted reporting are also eligible for unrestricted reporting and use of other SAPR services. Additionally, DoD civilian employees stationed or performing duties OCONUS, their adult dependents, and DoD contractor personnel (who are U.S. citizens) authorized to accompany the military in OCONUS contingency operations may file an unrestricted report and receive emergency medical services at a Military Treatment Facility (MTF), if offered at the MTF.<sup>34</sup> All others not eligible for restricted or unrestricted reporting may report sexual assault to AFOSI.<sup>35</sup>

**2.4. Roles of the Sexual Assault Response Coordinator (SARC), Family Advocacy Program (FAP), and Special Victims' Counsel (SVC).** The SARC, FAP, and the SVC, play a role in providing support services to victims, but each has unique responsibilities and scope of support.

**2.4.1. The Role of the SARC.** The SARC executes the Air Force's Sexual Assault Prevention and Response Program. The SARC serves as the single point of contact for integrating and coordinating sexual assault victim care services. Services may begin at the initial report of sexual assault and continue through disposition and resolution of issues related to the victim's health and well-being. The SARC is responsible for ensuring a victim-support system exists capable of responding to all reported sexual assaults, 24 hours a day, 7 days a week, occurring on or off the installation within his or her area of responsibility. The SARC must provide clear, accurate information on the available avenues for reporting sexual assault throughout his or her area of responsibility. The SARC may receive a restricted report and assigns a Victim Advocate (VA) to each victim.<sup>36</sup> More information about some of the duties of the SARC is contained throughout this Guide.<sup>37</sup>

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<sup>32</sup> DoDI 6495.02, 2(a)(2).

<sup>33</sup> *Memorandum re: Expanding Sexual Assault Response Service to Civilian Employees*, HQ USAF/CVS, 24 August 2015.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> AFI 90-6001, ¶¶ 2.5.3.5, 3.3.1.

<sup>37</sup> A separate chapter on the SARC is not included in this Guide, as the roles of the SARC are provided in detail in DoDI 6495.02 (a 123-page instruction) and AFI 90-6001 (another 123-page instruction). Specific questions regarding SARC responsibilities can be raised to the legal office.

**2.4.2. The Role of the Family Advocacy Program.** SARCs who receive reports that involve domestic violence may arrange for emergency medical care and a Sexual Assault Forensic Exam (SAFE) and must contact the Family Advocacy Officer (FAO) who will ensure an immediate assessment of the victim's safety, determine eligibility for Domestic Violence Restricted Reporting, and coordinate victim advocacy services through the FAP.<sup>38</sup> Normally, the FAO will assume the lead role in domestic violence cases involving sexual assault. More information about the Family Advocacy's duties and role are contained in Chapter 9 of this Guide.

**2.4.2.1. Intimate-Partner Violence.** A sexual assault case will be strictly handled by the FAP if the victim meets one of the following criteria: (1) the victim is or has been married to the alleged offender; (2) the victim and alleged offender have any children together; (3) the victim lives or has lived with the alleged offender and is or was engaged in a sexually intimate relationship (i.e., couple engaged in sexual intercourse or other sexual acts in the course of a romantic relationship); or (4) the victim is a military dependent 17 years old or younger.<sup>39</sup>

**2.4.2.2. Potential for Ongoing Violence.** A sexual assault case where a potential for ongoing violence exists is initially referred to the FAP by the SARC if: (1) the victim is in an ongoing relationship<sup>40</sup> with the alleged offender and prior to the incident they engaged in sexual intercourse or other sexual acts in the course of a romantic relationship or there is a demonstrated potential for an ongoing relationship; or (2) if the alleged offender has engaged or is engaging in stalking behaviors (e.g., including but not limited to, showing up in places that are otherwise not expected that the victim is at, following the victim, texting, calling, contacting friends, co-workers or family, driving by a residence or work, Global Positioning System tracking, social networking tracking, tracking whereabouts through friends or co-workers, bullying and manipulation). In these cases, the case is initially referred to the FAP, but the victim has the option to choose SARC services over FAP services if the Case Management Group (CMG) is informed and the SARC ensures a safety plan is coordinated.<sup>41</sup>

**2.4.3. The Role of the Special Victim's Counsel.** A Special Victims' Counsel (SVC) is a judge advocate assigned specifically to represent the victim's interests and legal needs. The trial counsel, on the other hand, represents the government. While the interests of the government in prosecuting an offender may sometimes align with the interests of the victim, the victim is not the trial counsel's client. Therefore, victims may want to have an attorney of their own that represent only their interests. Victims who are eligible for military legal assistance and are victims of offenses under Articles 120, 120a, 120b, 120c, or 125 of the UCMJ, or attempts to commit any of these offenses under Article 80,

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<sup>38</sup> *Id.*, ¶ 1.4.5.

<sup>39</sup> *Id.*, ¶ 3.2.4.

<sup>40</sup> The 30-day requirement previously required by the triage guidelines no longer applies.

<sup>41</sup> *Id.*, ¶ 3.2.7.

UCMJ, are eligible to be represented by an SVC.<sup>42</sup> All victims may also elect to seek the advice of a private attorney, at their own expense.<sup>43</sup> More information about the SVCs' duties and roles are contained in Chapter 7 of this Guide.

**2.5. Equal Opportunity (EO) Office.** Distinct from the SAPR program is the Equal Opportunity Office, which is charged with implementing the government policy against unlawful discrimination, harassment and intimidation in employment on the basis of race, color, religion, sex (to include sexual orientation), national origin, age, disability, reprisal, or genetic information. Harassment may include unwelcome sexual advances, requests for sexual favors, or other verbal conduct of a sexual nature, but these are dealt with in the context of a hostile work environment. The EO program is not the same as the SAPR Program and is not intended to handle reports of sexual assault. EO personnel do not have a privilege of confidentiality and must immediately report sexual assault allegations to AFOSI or Security Forces Investigators (SFOI) upon discovery. After reporting the case to AFOSI or SFOI, EO is also required to inform the SARC that the sexual assault report was made.<sup>44</sup>

**2.6. Colorado Law on Reporting Sexual Assault.** A very important consideration when determining how to handle a report of sexual assault is determining if any action has been taken or medical treatment provided by entities outside of DoD channels, to include local medical providers, hospitals, state or local agencies, and law enforcement. This is important because under the SAPR AFI, any report that has made its way to state or local law enforcement is considered an unrestricted report.<sup>45</sup>

**2.6.1. Local Medical Providers Requirement to Report Crimes.** Under Colorado law, any licensed medical provider who attends or treats any injury that they have “reason to believe involves a criminal act, including injuries resulting from domestic violence” are required to “report the injury at once to the police of the city, town, or city and county or the sheriff of the county in which the licensee is located.”<sup>46</sup>

**2.6.2. Colorado Options for Reporting Sexual Assaults.** As of 30 March 2015, Colorado has three types of reports that may be made to law enforcement regarding sexual assault forensic exams.<sup>47</sup>

**2.6.2.1. Law Enforcement Reports.** Made if, at the time of a Forensic Exam, the victim elects for a medical forensic examination with evidence collection and chooses to participate in the criminal justice system. This type of report would lead to the report being unrestricted for Air Force purposes.<sup>48</sup>

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<sup>42</sup> 10 U.S.C. § 1044e. While the Guidance Memo to AFI 51-504 dated 22 October 2014, spells out other eligibility provisions, the statutory language should control. Any questions about eligibility should be directed to the SVC.

<sup>43</sup> AFI 51-201, ¶ 7.11.5.2, IAW AFI 51-504, *Legal Assistance, Notary, and Preventive Law Programs*.

<sup>44</sup> AFI 36-2706, ¶ 3.33.

<sup>45</sup> AFI 90-6001, ¶ 3.5.

<sup>46</sup> Colorado Revised Statute (C.R.S.) § 12-36-135 incorporating Senate Bill 128, effective 30 March 2015.

<sup>47</sup> C.R.S. § 12-36-135 incorporating Senate Bill 128, effective 30 March 2015.

<sup>48</sup> AFI 90-6001, ¶ 3.5.

**2.6.2.2. Medical Reports.** Made if, at the time of a Forensic Exam, the victim elects for a medical forensic examination with evidence collection and chooses not to participate in the criminal justice system. With a medical report, the identity of the victim is identified to law enforcement, and the forensic evidence is tested. This type of report would lead to the report being unrestricted for Air Force purposes.<sup>49</sup>

**2.6.2.3. Anonymous Reports.** Made if, at the time of a Forensic Exam, the victim elects for a medical forensic examination with evidence collection and chooses not to participate in the criminal justice system or have personally identifying information given to law enforcement. An anonymous number is assigned to the evidence which is given to law enforcement for storage for at least two years. The anonymous number is given to the victim and stored in the medical record. This option is very similar to a military restricted report and would likely preserve a restricted report.

**2.7. Implications of Sexual Assault Reports Made Outside of DoD Channels.** The effect of Colorado law will likely mean, in practice, that many reports of sexual assault that arise outside of DoD channels may not be restricted, depending on the Colorado reporting option used. Because of the Colorado reporting requirements, extreme care and coordination with the SARC should be performed when referring someone who has made a restricted report to local treatment providers to prevent the report from inadvertently becoming unrestricted through the medical or law enforcement reports. For further questions concerning the intersection of Colorado reporting requirements and reporting requirements under the SAPR Program, the legal office should be contacted (without revealing confidential information).

## CHAPTER 3. COMMAND RESPONSIBILITIES

**3.1. General Duties of Commanders.** Commanders notified of a sexual assault must take immediate steps to ensure the victim's physical safety, emotional security, and medical treatment needs are met, and that the AFOSI (or other appropriate criminal investigative organization) and SARC are notified.<sup>50</sup> A first-thirty-day checklist for commanders is available online in the DoD SAPR Toolkit and is included in this Guide as Attachment 2.

**3.2. Physical Safety.** Any threat to life or safety of a Service member shall be immediately reported to command and law enforcement authorities.<sup>51</sup> One of the first requirements that commanders must address is physical safety—ensuring separation of a victim from the alleged assailant. This protection and separation can be accomplished through military protective orders (MPOs), expedited transfer requests, and reassignments.

**3.2.1. Military Protective Orders.** Military protective orders should generally be issued after an unrestricted report of sexual assault but must be coordinated with the legal office and the investigative law enforcement agency to ensure that issuance of an MPO will not

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<sup>49</sup> *Id.*

<sup>50</sup> AFI 90-6001, ¶ 6.2.

<sup>51</sup> DoDI 6495.02, Encl. 5, ¶ 6(a).

interfere with any ongoing investigation. MPOs can be initiated by a request from a victim or at the discretion of the Commander and must be issued by the commander via DD Form 2873.<sup>52</sup> Initial verbal MPOs may be issued, but the MPO must be documented in DD Form 2873 as soon as possible. As such, even verbal MPOs should not be given without coordinating with the legal office.<sup>53</sup> Commanders must provide both the alleged offender and the victim a copy of the completed DD Form 2873.<sup>54</sup>

**3.2.1.1. Protective Order Denials.** If the immediate commander denies an MPO request, the commander must document reasons for denial. Denials then go to installation commander in consultation with JA for final decision on the MPO request.<sup>55</sup>

**3.2.1.2. Commander Duties When Issuing a MPO.** Commanders have a variety of notice and service requirements, outlined in the subparagraphs below, when issuing a MPO. Additionally, they should coordinate with the legal office as soon as possible on issues related to wording, proximity, duration, and terms of the order to ensure its legality and enforceability.

**3.2.1.2.1. Basis of the Order.** A legal and military basis for the order must be given as part of the order.<sup>56</sup>

**3.2.1.2.2. Specific Physical Limitations.** DD Form 2873 has blocks for assigning limitations on the type of contact, distance of separation, locations that will be vacated or avoided, and other specific actions that must be taken.<sup>57</sup> Care must be taken to ensure that the limitations are both sufficiently protective of the victim and enforceable.

**3.2.1.2.3. Duration.** The order must include a reasonable and logical duration of effect.<sup>58</sup> Orders should be given in terms of months or days and may be routinely extended by issuing another order for a new timeframe.<sup>59</sup> As with the other specifics, duration is highly dependent on the facts, and commanders should consult with the legal office.

**3.2.1.2.4. Service on the Accused.** MPOs require notice of the order to the Accused, and the DD Form 2873 requires a signed acknowledgment.<sup>60</sup>

**3.2.1.2.5. Notice to the Victim.** Commanders issuing a MPO must provide notice of a verbal order to the victim and a copy of the written

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<sup>52</sup> *Id.*, ¶ 7(f).

<sup>53</sup> *Id.*

<sup>54</sup> DD Form 2873, block 7.

<sup>55</sup> DoDI 6495.02, Encl. 5, ¶ 7(h).

<sup>56</sup> DD Form 2873, block 3.

<sup>57</sup> *Id.*, block 5.

<sup>58</sup> *Id.*, block 6.

<sup>59</sup> DoDI 6495.02, Encl. 5, ¶ 7(b) (2).

<sup>60</sup> DD Form 2873, block 7.



order.<sup>61</sup> Commanders must also advise a person seeking a MPO that is not enforceable by civilian authorities off base and that victims desiring protection off base should seek a civilian protective order.<sup>62</sup>

**3.2.1.2.6. Notice to Civilian Authorities.** If either the victim or accused does not live on base, Commanders must notify the appropriate civilian authorities (law enforcement with jurisdiction to respond to an emergency call to those involved) of the existence of MPO, as well as any changes or its termination.<sup>63</sup>

**3.2.1.2.7. Inclusion in National Crime Information Center.** When the commander issues an MPO, the commander must have law enforcement place the active MPO into the NCIC database. Specific instructions are located in DoDI 6495.02, Enc. 5, ¶ 7(c).

**3.2.2. Expedited Transfer of Victims.** Service members who wish to be transferred away from the alleged perpetrator to another area of their unit, base, or command must make the transfer request through their commander.<sup>64</sup> There is a presumption under current guidance that expedited transfer requests will be granted, but the request must be made and processed according to a specific procedure.<sup>65</sup>

**3.2.2.1. Notice to Victims.** Service members who file an unrestricted report of sexual assault shall be informed of the option to request a temporary or permanent expedited transfer by the SARC, SAPR VA, or the commanding officer at the time of making the report, or as soon as practicable.<sup>66</sup> The SARC or assigned SAPR VA must inform the victim of the right to request an expedited transfer.<sup>67</sup>

**3.2.2.2. Filing and Eligibility Requirements.** Requests should be made formally to commanders and must be based on an unrestricted report of sexual assault.<sup>68</sup> Victims filing restricted reports are not eligible for transfers; a victim seeking a transfer based upon a restricted report must unrestrict the report in order to have the transfer granted.<sup>69</sup>

**3.2.2.3. Command Processing Requirements.** Expedited transfer requests must be handled in a timely manner. As such, commanders are required to record the date and time that the request is received.<sup>70</sup> When a victim requests an expedited

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<sup>61</sup> DoDI 6495.02, Encl. 5, ¶ 7(b)(3)

<sup>62</sup> *Id.*, ¶ 7(d); AFI 90-6001, ¶ 6.2.1.3.2.

<sup>63</sup> AFI 90-6001, ¶ 6.2.1.3.1

<sup>64</sup> DoDI 6495.02, Encl. 5, ¶ 6(b).

<sup>65</sup> *Id.*, ¶ 6(b)(1).

<sup>66</sup> *Id.*, ¶ 6(b).

<sup>67</sup> *Id.*, Encl. 4, ¶ 7(a).

<sup>68</sup> *Id.*, Encl. 5, ¶ 6(b)(2).

<sup>69</sup> *Id.*, ¶ 6(b)(2)(b).

<sup>70</sup> *Id.*, ¶ 6(b).

transfer, the squadron commander will prepare the Commander's Memorandum to provide the Superintendent a recommendation to approve or deny the request.<sup>71</sup> A template is provided in Attachment 5 to AFI 90-6001 and included in this Guide as Attachment 5. The Superintendent must approve or disapprove a transfer request and return the signed decision to the victim within 72 hours from the squadron commander's receipt of the request.<sup>72</sup> If approved, the victim submits the approval through vMPF.

**3.2.2.4. Denials and Reviews of Denials.** If a transfer request is denied, the victim has a right to appeal the decision to the next general officer in the chain of command.<sup>73</sup> The appellate decision must be made by that general officer within 72 hours of submission of the request for review.<sup>74</sup>

**3.2.3. Reassignment of Alleged Offenders.** Commanders of an active duty member who is alleged to have committed a sex-related offense have within their authority to determine whether the alleged offender "should be temporarily reassigned or removed from a position of authority or from an assignment."<sup>75</sup> Temporary reassignment under this authority cannot be used as a punitive measure; instead, it must be "solely for the purpose of maintaining good order and discipline within the member's unit."<sup>76</sup> The reassignment may be considered any time after notification of an unrestricted report of an offense of: rape (Art. 120(a)), sexual assault (Art. 120(b)), aggravated sexual contact (Art. 120(c)), abusive sexual contact (Art. 120(d)), stalking (Art. 120a), rape of a child (Art. 120b(a)), sexual assault of a child (Art. 120b(b)), sexual abuse of a child (Art. 120b(c)), other sexual misconduct (Art. 120c), forcible sodomy (Art. 125), or attempts of these offenses (Art. 80). Commanders should consult with the legal office prior to making a reassignment of an alleged offender.<sup>77</sup>

**3.2.4. Cadet Wing Protective Orders and Cadet Transfers.** At USAFA, commanders within the Cadet Wing chain of command have options that meet the spirit of victim protection that take into account the unique nature of Cadet Wing operations as follows:

**3.2.4.1. Cadet Protective Orders.** Cadets may be given military protective orders (MPOs) by AOCs, Group AOCs, and the CW/CC pursuant to the guidance in paragraph 3.2.1. However, care should be taken to draft cadet protective orders to both preserve separation and allow for attendance of class and other required activities. When evaluating a case and considering these orders, the legal office should be consulted and a determination made as to whether squadron and dorm

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<sup>71</sup> AFI 90-6001, ¶ 11.3.2.1.

<sup>72</sup> *Id.*, ¶ 11.3.2.2.1.

<sup>73</sup> *Id.*, ¶ 11.3.2.4. At USAFA, a denial by the Superintendent would be appealed to the Chief of Staff of the Air Force. The AFI contemplates a final, third potential appeal if denied again; HQ USAFA/JA is currently working with HQ USAF/CVS to clarify the appellate authority.

<sup>74</sup> *Id.*

<sup>75</sup> 10 U.S.C. § 674 (implemented in NDAA 2014, § 1713).

<sup>76</sup> *Id.*

<sup>77</sup> No DoD or Air Force guidance has been provided by the Secretaries of Defense or the Air Force to assist commanders in making these determinations.

reassignment, or schedule changes need to be effected to make the protective order workable and enforceable.

**3.2.4.2. Administrative Turnbacks.** A cadet who encounters a temporary hardship may request an administrative turnback that allows the cadet to leave the Academy for one or two semesters without permanently disenrolling.<sup>78</sup> Requests for a turnback are voluntarily initiated by the cadet, and subject to approval on a case-by-case basis, by the Academy Superintendent.<sup>79</sup> While voluntary, these requests can serve the purposes of separation and protection of parties to sexual assault allegations.

**3.2.4.3. Reassignment to Administrative Flight (A-Flight).** In cases where additional separation or supervision is deemed necessary to protect health, safety, or welfare of USAFA cadets, a cadet may be assigned to the Administrative-Flight or A-Flight.<sup>80</sup> An assignment to A-Flight is not punishment and should not be used as such. The Commandant of Cadets approves assignment to A-Flight in coordination with HQ USAFA/JA.<sup>81</sup>

**3.2.4.4. Suspensions.** The USAFA Superintendent retains authority to suspend USAFA cadets if necessary in certain circumstances as provided by 10 U.S.C. § 702(b) and USAFAI 36-3504\_GM2015-01. For more specific guidance concerning this authority, contact HQ USAFA/JA.

**3.3. Required Reports.** Commanders have two important reporting requirements concerning sexual assault: the 8-day Sexual Assault Incident Response Oversight (SAIRO) report and the Critical Command Information Report (CCIR). Commanders should contact the legal office for assistance to comply with these requirements.

**3.3.1. The 8-day SAIRO.** When a sexual assault allegation is made through Unrestricted Reporting, or an Independent Investigation begins concerning sexual assault, a report must be created by the immediate commander (Squadron or Detachment Commander or civilian equivalent) of either the victim or alleged offender and sent through a specific chain.

**3.3.1.1. Responsible Commander.** Whether the report is completed by the victim's or alleged offender's immediate commander depends on the circumstances. Figure 3.1 of AFI 90-6001, included as Attachment 7, dictates which commander is responsible, and only one SAIRO will be completed per incident. Generally, if the victim is a service member or civilian employee eligible for SARC services, the victim's immediate commander is responsible. However, if the victim is a civilian or other employee not eligible for SARC

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<sup>78</sup> USAFAI 36-2007, ¶ 1.

<sup>79</sup> *Id.*, ¶¶ 1.1–1.3 .

<sup>80</sup> AFCWI 36-501, ¶ 2.2.1.

<sup>81</sup> *Id.*, ¶ 1.

services, the alleged offender's immediate commander is responsible for submitting the SAIRO.

**3.3.1.2. Reporting Chain.** The immediate commander responsible for the SAIRO must submit it via encrypted, unclassified email to the first O-6 in the victim's chain of command, the first O-6 in the subject's chain, and the SARC.<sup>82</sup> Because USAFA's mission elements are so diverse, the reporting chain differs depending on the circumstances. The various reporting pathways are depicted in Attachment 6.

**3.3.1.3. Content.** The SAIRO is limited specifically to the information included in the template (AFI 90-6001 Attachment 3, included in the Guide as Attachment 3) and does not contain any PII, victim photographs, or additional incident information that could lead to personal identification of the victim or the subject. If the case stems from an Unrestricted Report, the commander will receive the necessary information from the SARC. Otherwise, if the case was initiated by an Independent Investigation, any necessary investigative information will come from AFOSI.

**3.3.1.4. Timeline.** The SAIRO must be emailed within 8 days of the triggering event, which is either the signing of the DD Form 2910 for Unrestricted Reports or the date when AFOSI informs the immediate commander of the Independent Investigation. The SARC must notify the victim's immediate commander (or alleged offender's immediate commander if victim is civilian) within 24 hours when an Unrestricted Report is filed.<sup>83</sup>

**3.3.2. The CCIR.** The CCIR provides timely information to the Secretary of the Air Force, Under Secretary of the Air Force, Chief of Staff of the Air Force, Vice Chief of Staff of the Air Force, AF/CVS, and if necessary the Chairman of the Joint Chiefs of Staff when a sexually based, alleged, or confirmed crime meets specific criteria. The CCIR is separate from the SAIRO (though can be completed at the same time, if the criteria are met at that time).

**3.3.1.1. Responsible Commander.** The Vice Superintendent is responsible for creating and submitting the CCIR when sufficient facts are known to trigger the reporting requirement. If an immediate commander becomes aware of facts that would trigger the CCIR, that commander should immediately confer with the legal office and Vice Superintendent.

**3.3.1.2. Reporting Chain.** The Vice Superintendent will send the CCIR through unclassified email to the Colorado Springs Regional Command Post for submission as an OPREP-3 IAW AFI 10-206.

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<sup>82</sup> AFI 90-6001, ¶ 3.8.3.

<sup>83</sup> DoDI 6405.02, Encl. 4, ¶ 4(a).

**3.3.1.3. Content.** The CCIR is limited specifically to the information included in the template (AFI 90-6001 Attachment 4, included in the Guide as Attachment 4) and is only for Unrestricted Reports and Independent Investigations.

**3.3.1.4. Timeline.** The CCIR must be completed as soon as practicable when it becomes apparent the incident involves one or more of the following:

**3.3.1.4.1.** An O-6 Commander (or equivalent) and above, SARC, SAPR VA, VVA, or any SAPR Staff member;

**3.3.1.4.2.** Warrants higher level command awareness;

**3.3.1.4.3.** An overturned conviction of a sexually based crime;

**3.3.1.4.4.** Media attention; or

**3.3.1.4.5.** Congressional involvement.

**3.4. Process Updates.** Commanders have an ongoing duty to keep themselves apprised of developments in cases affecting those in their command and of providing required information to victims of sexual assault in their commands.<sup>84</sup>

**3.4.1. Case Management Group Participation.** Commanders must attend a monthly Case Management Group (CMG) meeting for all unrestricted cases with the USAFA Vice Superintendent, SARC, SAPR VA or VVA, OSI, SF, healthcare provider, chaplain, and the legal office.<sup>85</sup> Specifically, the victim's squadron commander (or equivalent)<sup>86</sup> must attend, unless the Vice Superintendent approves a lower level commander, such as a squadron section commander to attend, if and only if, the squadron commander is off installation and on approved leave, temporary duty, or deployment.<sup>87</sup> Commanders must also update the victim within 72 hours of the CMG and provide the Vice Superintendent confirmation of the update being provided to the victim.<sup>88</sup>

**3.4.1. Chair the High-Risk Response Team.** Immediate commanders must chair the High-Risk Response Team (HRRT), which is a multi-disciplinary group setup to continually monitor the victim's safety if a victim was assessed through a safety assessment and the SARC to be in a high risk of harm.<sup>89</sup> The Vice Superintendent stands up the HRRT, and the victim's commander chairs, while the following are members: alleged offender's commander, SARC, SAPR VA or VVA, mental health flight director

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<sup>84</sup> AFI 90-6001, ¶ 6.3.1.

<sup>85</sup> *Id.*, ¶ 8.2.2.1.

<sup>86</sup> At USAFA, "or equivalent" would apply to the squadron directors and faculty department heads.

<sup>87</sup> *Id.*, ¶ 8.2.3.1.

<sup>88</sup> *Id.*, ¶ 8.3.8.2. While ¶ 6.3.1 states this responsibility falls to the victim's commander (or equivalent) "on g-series orders," nowhere else in the regulation does it limit the victim's commander concerning g-series orders. In fact, the only other places in AFI 90-6001 that g-series is mentioned is a reference letters to become a victim advocate and in the list of people who cannot serve as victim advocates. Paragraph 6.3.1 is probably a typo left from the draft.

<sup>89</sup> *Id.*, ¶ 8.4.

or designee, victim's SVC, SJA or legal representative, OSI, Victim Witness Assistance Program Coordinator (VWAP), and Chaplain.<sup>90</sup> The purpose of the HRRT is to evaluate the victim's safety, create a plan, and immediately report to the Vice Superintendent and SARC within 24 hours of being activated.<sup>91</sup> Additionally, the HRRT must report to the Vice Superintendent and SARC at least once a week while the victim is in high-risk status.<sup>92</sup> More detailed information about the HRRT can be found in Chapter 8 of AFI 90-6001.

**3.4.2. Required Notices to Victims.** Under the applicable guidance, the Commander retains a requirement to keep a victim informed. The victim's unit commander is responsible for ensuring the victim receives, *at a minimum, a monthly update* on the current status of all investigative, medical, legal, and command proceedings pertaining to the unrestricted case, until final disposition of the sexual assault case.<sup>93</sup> Information provided will be consistent with any applicable directives governing release of information and should be coordinated with the SARC to ensure the victim's case file is updated.<sup>94</sup> The update can be provided (based on victim's preference) in person, by encrypted email, by video teleconference, or by telephone.<sup>95</sup> The alleged offender's commander must provide the Report of Command Action to the legal office; the victim's commander provides notice of disposition to victim within two business days.<sup>96</sup>

**3.4.3. Maintaining Victim Privacy.** A Commander has a duty in cases of unrestricted reports to keep details of the allegation only to those personnel who have an official need to know.<sup>97</sup> Commanders must ensure that all dissemination and handling of information meets the goals and spirit of the SAPR program and complies with AFI 33-332, *Privacy Act Program*.<sup>98</sup>

**3.4.4. Including Punishment or Administrative Action in Evaluations.** Whenever a sexual assault complaint results in conviction by court-martial, non-judicial punishment, or a Letter of Reprimand (LOR), Commanders must ensure such are annotated in the Airman's evaluation (EPR, OPR, Training Report, or mandatory Letter of Evaluation).<sup>99</sup>

**3.5. Addressing Reprisal, Retaliation, Coercion, and Discrimination.** At every CMG meeting, the Vice Superintendent will ask the CMG members if the victim, victim's family members, witnesses, bystanders (who intervened), SARCs and SAPR VAs, responders, or other parties to the incident have experienced any incidents of retaliation, reprisal, ostracism, or

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<sup>90</sup> *Id.*, ¶¶ 8.4.1–8.4.2.

<sup>91</sup> *Id.*, ¶ 8.4.3.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*, ¶ 6.3.1.

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*, ¶¶ 8.3.6.1.1, 8.3.6.2.

<sup>97</sup> *Id.*, ¶ 6.3.2.

<sup>98</sup> *Id.*, ¶¶ 6.3.2.2–6.3.2.3.

<sup>99</sup> *Id.*, ¶ 6.2.1.6. Because cadets do not have such reports, it is not clear that this requirement applies to them.

maltreatment.<sup>100</sup> If any allegations are reported, the CMG Chair will forward the information to the proper authority or authorities.<sup>101</sup> Retaliation, reprisal, ostracism, or maltreatment allegations involving the victim, SARCs, and SAPR VAs will remain on the CMG agenda for status updates, until the victim's case is closed or until the allegation has been appropriately addressed.<sup>102</sup> Finally, the Vice Superintendent must establish a monthly meeting with the IG for a briefing on complaints concerning alleged incidents of restriction and reprisal and/or from a victim, witness, bystander, SARC and SAPR VA, responder or other parties to an alleged sexual assault.<sup>103</sup>

**3.5.1. Reprisal.** Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making, preparing to make, or being perceived as making or preparing to make a protected communication.<sup>104</sup>

**3.5.2. Retaliation.** The taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a military member because the member reported a criminal offense.<sup>105</sup>

**3.5.3. Ostracism.** Ostracizing a military member, to include excluding from social acceptance, privilege or friendship with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice.<sup>106</sup>

**3.5.4. Maltreatment.** Maltreating a military member, to include treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unnecessary for any lawful purpose, that is done with the intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering, or reasonably could have caused physical or mental harm or suffering.<sup>107</sup>

**3.6. Case Disposition Authority.** Commanders maintain authority to make final disposition decisions on discipline of sexual misconduct and collateral misconduct of both the accused and victim, subject to the legal limitations outlined below.

**3.6.1. Referral of Charges.** Only the General Court Martial Convening Authority (GCMCA) has jurisdiction to refer charges of rape (Art. 120(a)), sexual assault (Art. 120(b)), forcible sodomy (Art. 125), or attempts of those offenses (Art. 80).<sup>108</sup> These offenses are commonly referred to as “**the Big Four**.” Additionally, effective 17 June

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<sup>100</sup> DoDI 6495.02, Encl. 9, ¶ 2(i). Discretion may be exercised in disclosing allegations of retaliation, reprisal, ostracism, or maltreatment when such allegations involve parties to the CMG. *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.*

<sup>103</sup> AFI 90-6001, ¶ 1.7.1.26.

<sup>104</sup> 10 U.S.C. § 1034.

<sup>105</sup> AFI 90-6001, at 109.

<sup>106</sup> *Id.*

<sup>107</sup> *Id.*

<sup>108</sup> AFI 51-201, ¶ 4.7.4.

2015, only the GCMCA has jurisdiction to refer charges of rape of a child (Art. 120b(a)), sexual assault of a child (Art. 120b(b)), or attempts of those offenses (Art. 80).<sup>109</sup>

**3.6.2. Disposal of a Case Without Charges.** Only commanders with Special Court Martial Convening Authority (SPCMCA) *and* are O-6 or higher have the authority to dispose of a case involving allegations of the Big Four.<sup>110</sup> Additionally, initial disposal authority is withheld for all offenses arising from or relating to sexual misconduct, whether done by the alleged offender or victim.<sup>111</sup> At USAFA, only commanders with SPCMCA have the authority to dispose of aggravated sexual assault (Art. 120(c)), abusive sexual contact (Art. 120(d)), rape of a child (Art. 120b(a)), sexual assault of a child (Art. 120b(b)), attempts of those offenses (Art. 80), and all other misconduct arising from or relating to those additional offenses.<sup>112</sup> For more information on victim collateral misconduct, see section 3.7.

**3.6.3. Notice of Disposal and Report.** When charges are not preferred by a SPCMCA for an alleged Big Four offense, the SPCMCA must provide the GCMCA written notice of the initial disposition decision.<sup>113</sup> In response to notice from the SPCMCA, the GCMCA must sign a written report on the command action taken.<sup>114</sup>

**3.6.4. Review of Decisions Not to Refer.** For all allegations of Big Four offenses, review is required by superiors, depending on the following circumstances.

**3.6.4.1. Referral Recommended.** If the Staff Judge Advocate (SJA) recommends referral of charges, but the GCMCA does not refer, the case file must be reviewed by the Secretary of the Air Force.<sup>115</sup>

**3.6.4.2. Referral Not Recommended.** If the Staff Judge Advocate (SJA) recommends to not refer charges, and the GCMCA does not refer, the case file must be reviewed by the next superior GCMCA.<sup>116</sup> Because USAFA is a direct reporting unit, that review would be done by the Chief of Staff of the Air Force.<sup>117</sup>

**3.6.4.3. Review Requested.** If the GCMCA does not refer charges, but detailed counsel for the government and the chief prosecutor (AFLOA/JAJG) request review, the Secretary of the Air Force will review the case file.<sup>118</sup>

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<sup>109</sup> EO 13696; RCM 201(f)(1)(D).

<sup>110</sup> AFI 51-201, ¶ 4.13.

<sup>111</sup> DoDI 6495.02, Encl. 5, ¶ 8(b).

<sup>112</sup> See withhold memos.

<sup>113</sup> AFI 51-201, ¶ 4.17.

<sup>114</sup> AFI 51-201, ¶ 4.18. The legal office will assist the SPCMCA and GCMCA with these requirements.

<sup>115</sup> *Id.*, ¶ 4.20. The case file is transmitted through AFLOA/JAJM. *Id.*

<sup>116</sup> *Id.*, ¶ 4.20. The case file is transmitted through AFLOA/JAJM. *Id.*

<sup>117</sup> *Id.*, ¶ 4.21. It is not clear whether AF/CC's review responsibility can be delegated. Per AFLOA/JAJM, no delegation of the review authority has been made.

<sup>118</sup> NDAA 2015, § 541.



**3.7. Victim Collateral Misconduct.** Investigation into the facts and circumstances surrounding an alleged sexual assault may produce evidence that the victim engaged in collateral misconduct. Common examples include, but are not limited to: underage drinking, violations of the Cadet Sight Picture (at USAFA), or engaging in an unprofessional relationship. In a case where such misconduct is discovered, several factors should be considered.

**3.7.1. Deferral.** Commanders have the authority to defer disciplinary action until after disposition of the sexual assault case.<sup>119</sup>

**3.7.2. Disciplinary Factors.** Commanders must balance the goals of accountability and good order and discipline with the need to avoid unnecessary additional trauma to sexual assault victims and the goal of encouraging reporting of sexual assaults.<sup>120</sup>

**3.7.3. Consultation with Legal.** Commanders should consult with their legal office prior to taking any action regarding collateral misconduct.<sup>121</sup>

**3.7.4. Initial Disposition Authority.** As previously discussed in paragraph 3.6.2, for any offenses committed by the alleged victim or offender that arise from or related to a sexual misconduct offense (as discussed in paragraph 3.6.2), the SPCMCA or higher is the initial disposition authority. Thus, for any actions involving collateral consequences for a victim, the SPCMCA must take the initial disposition.

## CHAPTER 4. NON-SUPERVISORS

**4.1. Air Force Policy and Cultural Goals for Airmen.** The United States Air Force does not tolerate sexual assault. Sexual assault is criminal conduct that falls well short of the standards America expects of its men and women in uniform. It violates Air Force core values.<sup>122</sup>

**4.1.1. Eliminating Sexual Assault Through Cultural Change.** The Air Force has established a goal of eliminating sexual assault within the Air Force by fostering a culture of prevention, providing education and training, response capability, victim support, reporting procedures, and accountability that enhances the safety and well-being of all its members. Air Force members create its culture. Each Airman must be part of the solution by supporting cultural change.<sup>123</sup>

**4.1.2. Treating Victims with Dignity and Respect.** At the core of an appropriate response to allegations of sexual assault is the treatment of victims of sexual assault with dignity and respect.

**4.2. Reporting Sexual Assault.** The Air Force's goal is to encourage prompt, complete, unrestricted reporting of sexual assault allegations to activate victim services and accountability

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<sup>119</sup> AFI 90-6001, ¶ 6.4.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*, ¶ 1.4.

<sup>123</sup> *Id.*, ¶ 1.4.1.

responses. Those people who are not mandatory reporters, but are strongly encouraged to report sexual assault allegations to law enforcement include military members and civilian employees who do not supervise the victim or alleged offender. Victims should be appropriately encouraged to make unrestricted reports and get help and support without taking away their options for making a restricted report. The full list of those strongly encouraged to report is located at paragraph 2.3.2.

**4.3. Duty to Cooperate with Law Enforcement.** While non-mandatory reporters do not have a duty to proactively provide a report to law enforcement, they are also not covered by a privilege to hold confidential communications.<sup>124</sup> Without a privilege, non-mandatory reporters have a duty to cooperate with law enforcement and can be ordered to testify.<sup>125</sup> A refusal to testify can be prosecuted under Art. 134, ¶ 108.

## CHAPTER 5. MEMBERS OF LAW ENFORCEMENT

**5.1. Investigations.** A required core competency of Air Force law enforcement agencies is the prompt, thorough, and impartial investigation of allegations of criminal conduct including sexual assault. The AFOSI and SFOI share the duties according to a preset list of investigative authorities.<sup>126</sup>

**5.1.1. OSI Primary Responsibility.** AFOSI has primary investigatory responsibility over the most severe sex crimes including:

**5.1.1.1. Article 120.** Rape, sexual assault, aggravated sexual contact, and abusive sexual contact, in violation of Article 120.

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

**5.1.1.3. Article 80.** Attempts to commit rape, sexual assault, aggravated sexual contact, abusive sexual contact, or forcible sodomy, in violation of Article 80.

**5.1.1.4. Article 120c.** Forcible pandering, major indecent viewing (e.g., AD Airman watching a dependent minor undress) and major indecent exposure (e.g., AD Airman exposing his penis to a dependent minor), in violation of Article 120c.

**5.1.1.5. Article 92.** An unprofessional relationship involving an authority figure and either vaginal intercourse, oral or anal sodomy, digital penetration of the vagina or anus, or the fondling of the genitalia or female breasts, in violation of Article 92.

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<sup>124</sup> Individuals covered by privilege include Special Victim's Counsel, Area Defense Counsel, Chaplains, SARCs, Victim Advocates, and Medical and Family Advocacy Personnel.

<sup>125</sup> Discussion, Rule for Courts-Martial 704(d).

<sup>126</sup> AFI 71-101, Volume 1, Attachment 2, Rule 29.

**5.1.1.6. Article 120b.** While not listed in AFI 71-101, Volume 1, Attachment 2, with the above offenses, OSI also handles cases involving rape, sexual assault, and sexual abuse of a child, in violation of Article 120b.

**5.1.2. SFOI Primary Responsibility.** SFOI has primary investigatory responsibility over the less severe sex crimes including:

**5.1.2.1. Article 120a.** Stalking, in violation of Article 120a.

**5.1.2.1. Article 120c.** Minor indecent viewing (e.g., AD Airman watching a coworker in the shower) and minor indecent exposure (e.g., AD Airman mooning peers at a unit function), in violation of Article 120c.

**5.1.2.2. Article 92.** An unprofessional relationship involving an authority figure that does not involve vaginal intercourse, oral or anal sodomy, digital penetration of the vagina or anus, or the fondling of the genitalia or female breasts, in violation of Article 92.

**5.2. Notification Requirements.** AFOSI must notify the following individuals as it relates to cases involving sexual assault:

**5.2.1. Notification to Victim.** AFOSI must notify the victim of the rights as explained in DD Form 2701, as well as the potential for SAPR services and legal assistance (including the possibility of an SVC).<sup>127</sup>

**5.2.1. Notification to Legal Office.** AFOSI must notify the legal office within 24 hours of all unrestricted reports of adult sexual assault, all unrestricted reports of domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm, and child abuse involving sexual assault and/or aggravated assault with grievous bodily harm.<sup>128</sup>

**5.2.2. Notification to SARC Office.** AFOSI must notify ensure the SARC has been notified as soon as possible after becoming aware of an allegation of sexual assault.<sup>129</sup>

**5.2.3. Notification to Chain of Command.** AFOSI must forward a Report of Investigation as soon as practicable to the commander of alleged assailant.<sup>130</sup>

**5.3. Coordination Requirements.** AFOSI must coordinate with the various helping agencies to help facilitate the response to allegations of sexual assault:

**5.3.1. Legal Coordination.** The AFOSI case agent must meet or consult with a designated judge advocate within 48 hours to determination if an allegation meets the

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<sup>127</sup> DoDI 5505.18, Encl. 2, ¶ 1; DoDI 6495.02, Encl. 5, ¶ 3(1).

<sup>128</sup> AFI 51-201, ¶¶ 13.34; 13.37.2.

<sup>129</sup> DoDI 5505.18, Encl. 2, ¶ 1.

<sup>130</sup> AFI 71-101, Volume 1, ¶ 1.4.3.

criteria for activating the Special Victim Investigation and Prosecution Capability (SVIPC).<sup>131</sup> Thereafter, AFOSI must consult with the designated judge advocate at least monthly.<sup>132</sup>

**5.3.2. Coordination with Command and Other Agencies.** AFOSI must attend the monthly CMG meeting for all unrestricted cases with the USAFA Vice Superintendent, SARC, VA, SF, healthcare provider, chaplain, the legal office, and the victim's commander.<sup>133</sup>

**5.3.3. Duty to Contact Represented Parties Through Counsel.** Both suspects and victims of sexual assault have the right to counsel and must be contacted through their prospective counsel if such counsel has been retained.<sup>134</sup>

**5.4. Retention Requirements.** AFOSI must retain all sexual assault investigative reports for 50 years.<sup>135</sup> Additionally, all physical and forensic evidence must be retained for at least 5 years.<sup>136</sup> Personal property may be returned to the owner within 5 years only when the convening authority grants written evidence disposition after: (1) the allegation is determined to be unfounded, (2) the evidence was seized from someone based on mistaken identity, or (3) upon conclusion of all legal, adverse action, and administrative proceedings related to the incident.<sup>137</sup> Additionally, when the evidence seized is digital (e.g., contents of a phone or computer), the physical item may be returned if a forensically sound duplicate or copy of the digital information has been made.<sup>138</sup>

## CHAPTER 6. THE LEGAL OFFICE

**6.1. Intro.** The legal office has three distinct roles in responding to sexual assault allegations: prosecuting, informing victims, and advising and managing various processes.

**6.2. The Prosecuting Team.** For unrestricted reports of adult sexual assault, domestic violence involving sexual assault or aggravated assault with grievous bodily harm, and cases of child abuse involving sexual assault or aggravated assault with grievous bodily harm, the prosecuting team is required by regulation to create a Special Victim Investigation and Prosecution Capability (SVIPC).<sup>139</sup> In the current legal world, "sexual assault" is a particular offense in violation of UCMJ Art. 120(b), and separate from other sex-related crimes, including rape (Art. 120(a)), aggravated sexual contact (Art. 120(c)), abusive sexual contact (Art. 120(d)), stalking (Art. 120a), rape of a child (Art. 120b(a)), sexual assault of a child (Art. 120b(b)), sexual abuse of a child (Art. 120b(c)), other sexual misconduct (Art. 120c), forcible sodomy (Art. 125), and

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<sup>131</sup> See ¶ 6.2 for more about the SVIPC.

<sup>132</sup> AFI 51-201, ¶¶ 13.37.2, 13.38.

<sup>133</sup> AFI 90-6001, ¶ 8.2.

<sup>134</sup> UCMJ Article 31.

<sup>135</sup> DoDI 5505.18, Encl. 2, ¶ 9.

<sup>136</sup> *Id.*, ¶ 10.

<sup>137</sup> *Id.*, ¶¶ 10, 12.

<sup>138</sup> *Id.*, ¶ 11.

<sup>139</sup> AFI 51-201, ¶ 13.35; DoDI 6495.02, at 126–127 (renaming "Special Victim Capability" to "Special Victim Investigation and Prosecution Capability" because of the multiple and contradictory use of "SVC").

attempts of these offenses (Art. 80). While not required by regulation, USAFA applies the SVIPC to all of these sex-related crimes. Attachment 8 provides a checklist to assist the legal office concerning its case processing responsibilities.

**6.2.1. Personnel.** The SPIVC is composed of a specially trained AFOSI case agent, judge advocate, paralegal, and VWAP representative. When possible, the judge advocate designated by the SJA to the case should be certified under Art. 27(b). If the judge advocate is not certified as trial counsel, the judge advocate is required to consult with the Senior Trial Counsel (STC) or Special Victim's Unit-Senior Trial Counsel (SVU-STC) whenever practicable. The paralegal assigned also should have completed the 7-level Paralegal Craftsman Course. All SVIPC personnel are required to be specially trained for this purpose. The training is in addition to the initial and annual refresher SAPR training, and the requirements are set DoD-wide.<sup>140</sup>

**6.2.2. Communication.** Communicating early and often leads to the success of the SVIPC.

**6.2.2.1. Initial.** The AFOSI case agent is required to contact the legal office within 24 hours of receiving the report.<sup>141</sup> The assigned judge advocate is required to meet or consult with the case agent within 48 hours of determining the case qualifies for the SVIPC.<sup>142</sup> In practice at USAFA, the case agent contacts the Chief of Military Justice immediately, and constant communication amongst the SVIPC begins.

**6.2.2.2. With Senior Trial Counsel.** If an SVU-STC is detailed to the case, the judge advocate should consult with the SVU-STC prior to both the victim interview and preferral of charges.<sup>143</sup>

**6.2.2.3. With Child Specialists.** For child abuse and sexual abuse cases, the legal office will request specially trained pediatric forensic interviewers.<sup>144</sup>

**6.2.2.4. Ongoing.** The assigned judge advocate must also consult with the case agent at least monthly throughout the investigation;<sup>145</sup> however, communication at least weekly is the best practice. Moreover, the SVIPC is required to collaborate with the SARC and VA (or family advocacy program manager (FAPM) and domestic abuse victim advocate (DAVA), if applicable) during all stages of investigative and military justice process.

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<sup>140</sup> DoDI 6495.02, Encl. 10, ¶ 7.

<sup>141</sup> AFI 51-201, ¶ 13.37.1.

<sup>142</sup> *Id.*, ¶ 13.37.2.

<sup>143</sup> *Id.*, ¶ 13.39.5.

<sup>144</sup> *Id.*, ¶ 13.42.

<sup>145</sup> *Id.*, ¶ 13.38.

**6.3. Informing the Victim.** Some sexual assault victims have stated that their emotional experiences with the justice system following the crimes were as bad or worse than the sexual assaults themselves. To combat such negative experiences, communication with victims is key.

**6.3.1. About the Military Justice System.** Trial counsel, SVU-STC, and the VWAP representative must ensure victims are provided a comprehensive explanation of the military justice process.<sup>146</sup> At USAFA, this requirement is handled by the VWAP Coordinator during initial victim contact. In addition, for victims who have SVC representation, SVCs also provide this information.

**6.3.2. About Victims' Rights.** Trial counsel, SVU-STC, and the VWAP representative must ensure victims are consulted concerning the following rights.<sup>147</sup> At USAFA, this requirement is handled by the VWAP coordinator during initial victim contact.

**6.3.2.1.** Legal assistance and Special Victims' Counsel, if eligible;<sup>148</sup>

**6.3.2.2.** The right to be reasonably protected from the accused;

**6.3.2.3.** The right to reasonable, accurate, and timely notice of<sup>149</sup> and the right to confer with counsel for the government<sup>150</sup> concerning any of the following:

**6.3.2.3.1.** A seven-day review concerning the continuation of confinement prior to trial of the accused;

**6.3.2.3.2.** A hearing under Article 32 relating to the offense;

**6.3.2.3.3.** A court-martial relating to the offense;

**6.3.2.3.4.** Sentencing hearing;<sup>151</sup> and

**6.3.2.3.5.** A proceeding of the Service clemency and parole board relating to the offense.

**6.3.2.4.** The right to notice of the release or escape of the accused, unless such notice may endanger the safety of any person.

**6.3.2.5.** The right not to be excluded from any public hearing or proceeding described in paragraph 6.3.2.3 unless the military judge or investigating officer, as applicable, determines by clear and convincing evidence that testimony by the

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<sup>146</sup> *Id.*, ¶ 13.41.2.

<sup>147</sup> *Id.*, ¶ 13.41.3; NDAA14 § 1701.

<sup>148</sup> AFI 51-201, ¶ 13.40.

<sup>149</sup> *Id.*, ¶ 7.11.2.

<sup>150</sup> *Id.*, ¶ 7.11.5.

<sup>151</sup> While neither AFI 51-201 nor NDAA14 provide the victim the right to notice of and consultation with trial counsel for the sentencing hearing, NDAA14 does create a right for the victim to be heard at a sentencing hearing. As such, USAFA provides victims notice of sentencing hearings and the chance to confer with trial counsel.

victim would be materially altered if the victim heard other testimony at that hearing or proceeding.

**6.3.2.6.** The right to be reasonably heard at: (1) a seven day review concerning the continuation of confinement prior to trial of the accused; (2) a sentencing hearing relating to the offense(s); and (3) a Military Department Clemency and Parole Board hearing relating to the offense(s). At these proceedings where the victim has the right to be heard, counsel for the victim (SVC or private attorney) may exercise that right on behalf of the victim.<sup>152</sup>

**6.3.2.7.** The right to seek the advice of an attorney (legal assistance, SVC, or private attorney) with respect to these rights under federal law and DoD policy.

**6.3.2.8.** The right to receive restitution as provided in law.

**6.3.2.9.** The right to proceedings free from unreasonable delay.

**6.3.2.10.** The right to be treated with fairness and with respect for the dignity and privacy of the victim.

**6.3.2.11.** The right to petition the Court of Criminal Appeals for a writ of mandamus if the victim believes a court-martial ruling violates the victim's rights afforded by Military Rule of Evidence 412 (admission of evidence concerning a victim's sexual background, commonly referred to as the "rape shield") or Military Rule of Evidence 513 (the psychotherapist-patient privilege).

**6.3.3. Concerning Updates.** Trial counsel, VWAP representative, and SVU-STC shall ensure victims are provided with regular case updates described below. At USAFA, this requirement is handled by the VWAP Coordinator in writing, with follow-ups available in person or via phone.

**6.3.3.1.** The status of the investigation of the crime, to the extent it will not interfere with the investigation and is appropriate;

**6.3.3.2.** The accused's pretrial status and any subsequent change in that status, including but not limited to, the accused being placed in pretrial confinement, being released from pretrial confinement, or escaping from pretrial confinement;

**6.3.3.3.** Preferral and referral of charges or a decision not to pursue prosecution;

**6.3.3.4.** A pretrial confinement hearing and/or Article 32 investigation, including introduction of any MRE 412, 513 or 514 evidence;

**6.3.3.5.** Notification of the scheduling, including changes and delays, of each court-martial proceeding the victim is entitled to or required to attend;

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<sup>152</sup> NDAA15, § 534(c).

**6.3.3.6.** The acceptance of a guilty plea or announcement of findings; and

**6.3.3.7.** The sentence imposed, including the date on which the accused becomes eligible for release from confinement, or parole, if applicable.

**6.3.4. For Scheduling.** While NDAA14 and AFI 51-201 provide requirements that victims be notified of certain proceedings (discussed above), Congress in NDAA15 provided an additional requirement of prompt and adequate notice to counsel for a victim (SVC or private attorney) of the scheduling of “*any hearing, trial, or other proceeding.*”<sup>153</sup>

**6.3.5. About Interlocutory Appellate Rights.** While informing victims of their right to an interlocutory appeal of rulings concerning the rape shield (MRE 412) and the psychotherapist-patient privilege (MRE 513) is not mandated by statute or regulation, USAFA informs victims of this right along with notification of their other rights.

**6.4. Advising and Managing Processes.** In addition to informing the victim and comprising the prosecutorial team, the legal office has many responsibilities to advise and manage, including to:

**6.4.1.** Establish early and often coordination with investigators concerning open cases;<sup>154</sup>

**6.4.2.** Establish active liaisons with key organizations to ensure victim care;<sup>155</sup>

**6.4.3.** Advise commanders concerning MPOs, expedited transfers, suspensions, and charging decisions and assist in writing required reports and memorandums;

**6.4.4.** Attend monthly CMG meetings and provide case updates and dispositions;<sup>156</sup>

**6.4.5.** Ensure attorneys, paralegals, and VWAP personnel are specially trained concerning sexual assault; training specifics are handled by AFLOA in accordance with the requirements of DoDI 6495.02, Encl. 10;

**6.4.6.** Designate SVIPC personnel to open cases;<sup>157</sup>

**6.4.7.** Ensure any non-certified judge advocate coordinates with STC or SVU-STC whenever practicable;<sup>158</sup>

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<sup>153</sup> NDAA15, § 534(d). The language of this provision grants more rights to victims who utilize SVCs or private attorneys, as victims are only granted the right to notice of specified proceedings. However, USAFA does not distinguish between victims with and without counsel.

<sup>154</sup> AFI 51-201, ¶¶ 13.37.2, 13.38.

<sup>155</sup> *Id.*, ¶ 13.43.

<sup>156</sup> AFI 90-6001, ¶ 8.2.2.7. The legal office must have the SJA or designee present; additionally a VWAP representative must be present. *Id.*, ¶ 8.2.3.3.

<sup>157</sup> AFI 51-201, ¶ 13.37.2.

<sup>158</sup> *Id.*, ¶ 13.37.2.1.



**6.4.8.** Ensure paralegals assigned have completed Paralegal Craftsman Course;<sup>159</sup>

**6.4.9.** Designate a VWAP coordinator (and VWAP liaisons, if applicable);<sup>160</sup>

**6.4.10.** Request specially trained pediatric forensic interviewers to support the investigation and prosecution of complex child abuse and child sexual abuse cases, when appropriate;

**6.4.11.** Honor victim's decision to decline participation in prosecution of case;<sup>161</sup> and

**6.4.12.** Before requesting jurisdiction for an offense for another governmental entity, obtain the victim's input concerning which entity the victim would prefer to prosecute the case;<sup>162</sup> and

**6.4.13.** In addition to other procedural notices, immediately provide defense counsel notice of the name of any victim intended to be called for Article 32 hearing or court-martial.<sup>163</sup>

## CHAPTER 7. THE SPECIAL VICTIMS' COUNSEL (SVC) PROGRAM

**7.1. Purpose.** Special Victims' Counsel (SVC) are active duty judge advocates that serve the legal needs of sexual assault victims through representation of victims in a confidential, attorney-client relationship, throughout the investigation and prosecution processes. Within the scope of their services, SVCs serve as a victim's personal attorney at Air Force expense.<sup>164</sup>

**7.2. Independence.** Each SVC's chain of command runs through the Air Force Legal Operations Agency (AFLOA) in Washington, DC. This independence means that no one in a victim's chain of command or the chain of command of the perpetrator will influence an SVC's representation of their clients.<sup>165</sup>

**7.3. Eligibility for SVC Services.** Pursuant to 10 U.S.C. § 1044e, those eligible for military legal assistance are eligible to be represented by an SVC if they are victims of rape (Art. 120(a)), sexual assault (Art. 120(b)), aggravated sexual contact (Art. 120(c)), abusive sexual contact (Art. 120(d)), stalking (Art. 120a), rape of a child (Art. 120b(a)), sexual assault of a child (Art. 120b(b)), sexual abuse of a child (Art. 120b(c)), other sexual misconduct (Art. 120c), forcible

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<sup>159</sup> *Id.*, ¶ 13.37.2.2.

<sup>160</sup> *Id.*, Chapter 7.

<sup>161</sup> DoDI 6495.02, Encl. 4, ¶ 1(c)(1).

<sup>162</sup> AFI 51-201, ¶ 2.6.2.1 (for UCMJ Articles 120, 120a, 120b, 120c, 125, or Article 80 attempts thereof).

<sup>163</sup> AFI 51-201, ¶ 7.26. Following such notice, defense counsel must make a request to interview the victim through the SVC or other victim counsel. *Id.* If the victim has no counsel, then defense counsel must make the request through the VWAP. *Id.*

<sup>164</sup> AFD 130711-021

<sup>165</sup> AFD 130711-021

sodomy (Art. 125), or attempts of these offenses (Art. 80).<sup>166</sup> Specifically, the Air Force, by regulation, provides SVCs to the following other victims:<sup>167</sup>

**7.3.1. Air Force Sexual Assault Victims.** All Air Force Active Duty, Air Force Reserve, and Air National Guard victims, who are in Title 10 status at the time of the offense, and report being a victim of sexual assault under the UCMJ or state and federal laws criminalizing sexual assault.<sup>168</sup>

**7.3.2. Entry-Level Air Force Members in an Unprofessional Relationship.** All entry-level status Air Force Active Duty, Air Force Reserve, and Air National Guard members who are in Title 10 status at the time of the offense, and are alleged to have been involved in an unprofessional relationship, as defined by Air Education and Training Command policy, that involves physical contact of a sexual nature with basic military training or technical training faculty or staff.<sup>169</sup>

**7.3.3. Air Force Jurisdiction over the Accused.** When an Air Force commander may exercise jurisdiction over the alleged offenders, the following victims who file an unrestricted report of sexual assault under the UCMJ are entitled to an SVC:

**7.3.3.1. Adult Dependents of Air Force Members.** All adult dependents of Active Duty Air Force members. A non-spouse adult dependent is required to be unmarried between the ages of 18 and 20, a full-time student, between the ages of 18 and 22, or an incapacitated child over the age of 21.<sup>170</sup>

**7.3.3.2. Active Duty Sister Service Members.** All Army, Navy, Marine Corps, and Coast Guard Active Duty, Reserve, and National Guard victims, who are in a Title 10 status at the time of the offense.<sup>171</sup>

**7.3.3.3. Adult Dependents of Active Duty Sister Service Members.** All adult dependents of Active Duty members of other Services.<sup>172</sup>

**7.3.3.4. Legal-Assistance Eligible Adults.** All remaining categories of adults eligible for legal assistance.<sup>173</sup>

**7.3.4. Retained Eligibility.** For those victims who lose eligibility for other kinds of legal assistance (e.g., separating active duty member), the services of an SVC are retained but limited to matters directly related to the alleged sexual assault.<sup>174</sup>

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<sup>166</sup> 10 U.S.C. § 1044e. If a victim does not appear to meet the eligibility requirements, contact the SVC for assistance receiving an exception.

<sup>167</sup> AFI 51-504, ¶ 1.3.13.

<sup>168</sup> *Id.*, ¶ 1.3.13.1.

<sup>169</sup> *Id.*, ¶ 1.3.13.6.

<sup>170</sup> *Id.*, ¶ 1.3.13.2.

<sup>171</sup> *Id.*, ¶ 1.3.13.3.

<sup>172</sup> *Id.*, ¶ 1.3.13.4.

<sup>173</sup> *Id.*, ¶ 1.3.13.5.

<sup>174</sup> AFI 51-504, ¶ 1.3.13.7.

**7.4. Services Provided by an SVC.** SVCs can help victims with a variety of criminal-law issues under the UCMJ or any local state or federal criminal law and represent a victim in a court-martial or administrative proceeding.<sup>175</sup> These representation services may include, but are not necessarily limited to, advocating the victim's interests to investigators, trial counsel, defense counsel, and commanders; attending victim interviews with investigators, trial counsel, and defense counsel; accompanying victims to military justice proceedings; answering questions their clients have about the investigatory and military justice processes; and help protecting victims' privacy interests.<sup>176</sup>

## **CHAPTER 8. SARC VICTIM ADVOCATES AND THEIR ROLE**

**8.1. Role.** Victim Advocates (VAs) affiliated with the SARC provide essential support, liaison services and care to victims of sexual assault. The VAs assist the SARC in ensures victims continue to receive the necessary care and support until the victim states or SARC determines that support is no longer needed.<sup>177</sup>

**8.2. Victim Advocate Selection.** The Air Force relies on specifically hired civilian employees and other employee-volunteers to fill this critical function.<sup>178</sup> VAs volunteer by submitting an application, going through an interview, and undergoing an AFOSI background check. VAs are recruited, screened, interviewed, selected, and supervised by the SARC. The SARC has sole discretion to decide whether an individual will serve or continue to serve as a VA.<sup>179</sup>

**8.3. Limitations on Who May Serve as a Victim Advocate.** Only active duty, Reserve or National Guard personnel in active status, and DoD civilian employees may serve as VAs. Conflict-of-interest limitations prevent the following from serving in a VA role: commanders, AOCs, AMTs, first sergeants, chief master sergeants, individuals associated with law enforcement to include Security Forces and OSI, Legal Office personnel, Medical personnel working in clinical roles, individuals assigned to Equal Opportunity (EO) offices, members of the Chaplain Corps Staff, or individuals assigned to the 10 ABW or USAFA Inspector General staff.<sup>180</sup> Finally, VAs (and SARCs) are required to obtain and maintain certification through the Defense Sexual Assault Advocate Certification Program (D-SAACP).<sup>181</sup>

**8.4. Role in Assisting the SARC.** VAs can provide most of the services assigned to the installation SARC including providing the victim information on the sexual assault response process, crisis intervention, meeting with victims of assault when reports are made, providing information on healthcare to include the option of a forensic medical examination and the collection of evidence, ongoing non-clinical support, including providing information on

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<sup>175</sup> AFI51-504\_AFGM1, paras, 1.2.2 and 1.2.9.

<sup>176</sup> AFD 130711-021

<sup>177</sup> AFI 90-6001, ¶¶ 2.7, 2.9.

<sup>178</sup> *Id.*, ¶¶ 2.6, 2.8.

<sup>179</sup> *Id.*, ¶¶ 2.6.3, 2.8.3.

<sup>180</sup> *Id.*, ¶¶ 2.6, 2.8.

<sup>181</sup> *Id.*, ¶ 10.1.

available options and resources to assist the victim in making informed decisions about the case.<sup>182</sup>

**8.5. Attendance of Interviews and Examinations.** VAs may accompany the victim, at the victim's request, during investigative interviews and medical examinations, including, but not limited to interviews with medical personnel, law enforcement, investigators, trial counsel and defense counsel.<sup>183</sup> While Military Rule of Evidence 514 provides VAs with a privilege to keep communications between the victim and the VA confidential, special care should be taken when deciding whether a VA should be present during interviews with others, as this could lead to a VA being called as a fact witness during later litigation.

## CHAPTER 9. THE FAMILY ADVOCACY PROGRAM

**9.1. Role of the Family Advocacy Program.** The Family Advocacy Program (FAP) works to address issues of family maltreatment; provides expert training and consultation to Airmen and their families, AF leaders, and other AF helping agencies; collects, maintains, analyzes, and reports data on family maltreatment; and promotes family, community, and mission readiness.<sup>184</sup> The FAP program addresses issues of adult sexual assault primarily through the lens of family and intimate-partner violence.

**9.2. Training.** FAP personnel provide annual training to include the dynamics of family maltreatment, identification of suspected abuse, reporting protocols, restricted reporting, and prevention strategies to CCs and SNCOs, healthcare providers, Integrated Delivery System (IDS) member agencies,<sup>185</sup> Air Reserve Component Representatives, Sexual Assault Response Coordinators (SARCs), and Victim Advocates (VAs), among others.<sup>186</sup>

**9.3. Safety Plans.** In coordination with commanders' policies, procedures, intervention and safety plans will be developed to ensure the safety of victims and potential victims, alleged offenders, and other family members.<sup>187</sup>

**9.4. Services and Referrals for Services.** Based on the needs of the situation, FAP personnel may refer individuals to other/outside helping agencies a case evaluation.<sup>188</sup>

**9.4.1. Victim Witness Assistance.** FAP provides information and referral to the Victim/Witness Assistance Program (VWAP) when appropriate to ensure the individual is provided sufficient information concerning the military justice system.<sup>189</sup>

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<sup>182</sup> *Id.*, ¶¶ 2.7, 2.9.

<sup>183</sup> *Id.*, ¶ 2.9.7.

<sup>184</sup> AFI 40-301, ¶ 2.1.

<sup>185</sup> The IDS “develops a comprehensive, coordinated plan for integrating and implementing community outreach and prevention programs (e.g., financial, relationship, family maltreatment, sexual assault, equal opportunity, suicide prevention, substance abuse, health promotion, tobacco cessation, etc.), with the goal of enhancing resilience in military communities.” AFI 90-501.

<sup>186</sup> *Id.* ¶ 1.6.2.12.

<sup>187</sup> *Id.*, ¶¶ 4.5.6–4.5.7.

<sup>188</sup> *Id.*, ¶ 4.5.2.

<sup>189</sup> *Id.*, ¶ 4.5.3.

**9.4.2. Off-base and Counseling Referrals.** FAP staff may refer adult victims to on- and off-base victim's services and state and local agencies, and these services may be in partnership with civilian providers.<sup>190</sup>

**9.4.3. Domestic Abuse Services.** The FAP maintains domestic abuse victim advocate (DAVA) services availability 24 hours a day, 7 days a week.<sup>191</sup>

**9.5. Reporting of Domestic Violence.** The FAP maintains a system for making both restricted and unrestricted reports of domestic violence that may include sexual assault. FAP reporting is similar to—but distinct from—SAPR reporting discussed in paragraph 2.3.<sup>192</sup>

**9.5.1. Domestic Violence of Intimate Partners.** A sexual assault case will be handled by the FAP if the victim meets one of the following criteria: (1) the victim is or has been married to the alleged offender; (2) the victim and alleged offender have any children together; (3) the victim lives or has lived with the alleged offender and is or was engaged in a sexually intimate relationship (i.e., couple engaged in sexual intercourse or other sexual acts in the course of a romantic relationship); or (4) the victim is a military dependent 17 years old or younger.<sup>193</sup>

**9.5.2. Potential for Ongoing Violence.** A sexual assault case where a potential for ongoing violence exists is initially referred to the FAP by the SARC if: (1) the victim is in an ongoing relationship<sup>194</sup> with the alleged offender and prior to the incident they engaged in sexual intercourse or other sexual acts in the course of a romantic relationship or there is a demonstrated potential for an ongoing relationship; or (2) if the alleged offender has engaged or is engaging in stalking behaviors (e.g., including but not limited to, showing up in places that are otherwise not expected that the victim is at, following the victim, texting, calling, contacting friends, co-workers or family, driving by a residence or work, Global Positioning System tracking, social networking tracking, tracking whereabouts through friends or co-workers, bullying and manipulation). In these cases, the case is initially referred to the FAP, but victim has the option to choose SARC services over FAP services if the CMG is informed and the SARC ensures a safety plan is coordinated.<sup>195</sup>

**9.5.3. Unrestricted Reporting.** A victim of domestic abuse may elect to make an unrestricted report of abuse. This reporting option results in FAP personnel informing law enforcement, the chain of command, victims service providers, and medical personnel for forensic medical examinations and other treatment.<sup>196</sup>

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<sup>190</sup> *Id.*, ¶ 4.5.2.

<sup>191</sup> *Id.*, ¶ 4.6.

<sup>192</sup> *Id.*, ¶ 4.7.

<sup>193</sup> AFI 90-6001, ¶ 3.2.4.

<sup>194</sup> The 30-day requirement previously required by the triage guidelines no longer applies.

<sup>195</sup> *Id.*, ¶ 3.2.7.

<sup>196</sup> AFI 40-301, ¶ 4.7.1.

**9.5.4. Restricted Reporting.** A victim of domestic abuse may also elect to make a restricted report of abuse. This reporting option allows FAP personnel arrange for medical care, support services, and advocacy without initiating a law enforcement investigation or notification to the chain of command.<sup>197</sup> Information is not shared with the SARC without the victim’s consent.<sup>198</sup>

**9.5.5. Exceptions to Confidentiality.** As with the SARC, FAP personnel have limited confidentiality. FAP can disclose a restricted report without a victim’s consent if: mandated by state law,<sup>199</sup> the allegation is made in the presence of the alleged offender, when FAP deems it necessary prevent or lessen a serious and imminent threat to the health or safety of the victim or another person, or the information is subpoenaed by a military or civilian court.<sup>200</sup>

## CHAPTER 10. MEDICAL PROVIDERS

**10.1. Role.** The medical providers work to support the work of investigators, the SARC and to provide services to victims of sexual assault.

**10.2. Coordination and Reporting.** Medical providers are required to coordinate many of their actions with other helping agencies and to report sexual assaults to either law enforcement or the SARC.

**10.2.1. Coordination on Case Management.** Some healthcare providers participate in the monthly CMG meetings for unrestricted cases with the USAFA Vice Superintendent, SARC, VA, OSI, Security Forces, chaplain, legal office, and victim’s commander. Specifically, the Mental Health Flight Director of Psychological Health (DPH) or the DPH’s designee will attend the CMG to consult on mental health issues (including issues regarding victim safety).<sup>201</sup> Additionally, the Vice Superintendent may also designate another healthcare provider to serve on the CMG, though it is not required.<sup>202</sup> Additionally, the DPH will attend the CMG for restricted cases, as long as the DPH is not practicing in a state that mandates reporting of sexual assault.<sup>203</sup> Because Colorado’s reporting requirement discussed in paragraph 2.6 only applies if the licensed medical “attends or treats” the victim or if a forensic exam is being performed, attendance at the CMG as a consultant for restricted cases is mandatory. Importantly, the DPH will only provide consultation to the CMG and *not provide information about a victim’s medical/mental health treatment or appointments.*<sup>204</sup>

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<sup>197</sup> *Id.*, ¶ 4.7.1.

<sup>198</sup> *Id.*, ¶ 4.7.2.1.2.

<sup>199</sup> The Colorado reporting requirements discussed in paragraph 2.6 apply only to licensed medical providers.

<sup>200</sup> AFI 40-301, ¶ 4.7.3.

<sup>201</sup> *Id.*, ¶ 8.2.2.5.

<sup>202</sup> *Id.*, ¶ 8.2.2.8.

<sup>203</sup> *Id.*, ¶ 8.2.4.3.

<sup>204</sup> *Id.*, ¶ 8.3.6.3.1.

**10.2.2. Reports of Sexual Assault to the SARC.** Health care personnel are required to report all sexual assault reports they receive, both restricted and unrestricted, to the SARC.<sup>205</sup>

**10.2.3. Receiving Restricted Reports of Sexual Assault.** Medical treatment personnel along with SARCs and VAs are the only personnel who can receive restricted reports of sexual assault.<sup>206</sup>

**10.2.3.1. Forensic Exam Performance.** At the discretion of the victim, a Sexual Assault Forensic Exam (SAFE) will be performed in compliance with the U.S. Department of Justice National Protocol for Sexual Assault Medical Forensic Examinations. Installations that do not have a SAFE capability are responsible for transporting the victim to a military facility or an off-installation, non-military facility that has a SAFE capability.<sup>207</sup> Because USAFA's MTF does not currently provide SAFE capabilities, the SARC and VA assist with transporting victims off-base.

**10.2.3.2. Restricted Report Control Numbers.** Once medical personnel have performed a forensic exam and collected clothing (if applicable), coordination must be done with the SARC or VA to have a restricted report control number assigned in lieu of identifying information. Upon completion of the exam, the health care provider will package, seal, and label the evidence containers with the control number.<sup>208</sup>

**10.2.3.3. Evidence Preservation.** After an exam is complete, AFOSI takes custody of the evidence collected and stores it for five years without processing the evidence.<sup>209</sup> AFOSI will process the evidence if the SARC informs AFOSI that the victim has changed the reporting preference from restricted to unrestricted within five years.<sup>210</sup>

**10.3. Provision of Medical Services and Referrals.** Medical facilities must provide required services or give victims timely referrals for those services. Regardless of SAPR eligibility, all victims of sexual assault are entitled to receive emergency medical care and an opportunity to receive a Sexual Assault Forensic Examination (SAFE).<sup>211</sup> Additionally, even if a SAFE is declined, victims shall be advised that they are encouraged (but not mandated) to receive medical care, psychological care, and victim advocacy.<sup>212</sup>

**10.4. Privacy Protections.** With limited exceptions, health information of victims of sexual assault is protected from release. The legal office and SARC should be consulted before any

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<sup>205</sup> *Id.*, ¶ 3.1.7.4.

<sup>206</sup> *Id.*, ¶ 3.1.7.

<sup>207</sup> *Id.*, ¶¶ 5.1.4, 1.7.1.24; AFI 90-6001, ¶¶ 1.7.1.24, 2.5.27, 2.7.13, 2.9.14.

<sup>208</sup> AFI 40-301, ¶ 5.1.5.1.

<sup>209</sup> *Id.*, ¶ 5.2.3; DoDI 5505.18, Encl. 2, ¶ 9.

<sup>210</sup> AFI 90-6001, ¶ 5.3.6.

<sup>211</sup> *Id.*, ¶ 1.4.7.

<sup>212</sup> *Id.*

release of records related to sexual assault is made.<sup>213</sup> Additionally, healthcare providers should be mindful of local laws about reporting. Specific guidance about Colorado law is provided above in section 2.6.

**10.5. Point of Contact.** One healthcare provider is to be assigned by the Vice Superintendent as the primary point of contact concerning SAPR policy and updates.<sup>214</sup>

## CHAPTER 11. THE CHAPLAIN CORPS

**11.1. Mission and Core Competencies.** The mission of the Air Force Chaplain Corps is to provide spiritual care and ensure all Airmen and their families have opportunities to exercise their constitutional right to the free exercise of religion.<sup>215</sup> Within that mission, the Chaplain Corps has the core capability to meet the diverse spiritual needs of Airmen and their families.<sup>216</sup> Members of the Chaplain Corps also have the duty to advise Air Force leaders on matters related to religious, spiritual, ethical, moral, and morale concerns and advocate for the religious and spiritual needs of Airmen and their families.<sup>217</sup>

**11.2. Assistance to Individuals Involved in Sexual Assault Allegations.** Many individuals reporting a sexual assault or accused of sexual assault will want to speak to someone about their thoughts, feelings, and experiences related to experiences they have had in connection with a sexual assault, ranging from the assault itself, to the investigation, the legal process, and all points of life in between. It is important to protect the confidentiality of both an alleged victim and an accused. The Chaplain Corps can play a vital role in meeting the need for confidential communication for an alleged victim and an accused.

**11.3. Confidential Communications.** Chaplains and those that are employed to assist them in their work have an absolute right and duty to refuse to “disclose and to prevent another from disclosing a confidential communication by the person to a clergyman or to a clergyman’s assistant, if such communication is made either as a formal act of religion or as a matter of conscience.”<sup>218</sup> The confidentiality is protected both by regulation and the Military Rules of Evidence:

**11.3.1. Regulatory Protections.** Privileged communication to a member of the Chaplain Corps may not be revealed without the individual’s informed, written consent. The individual’s written consent must be signed, dated, and witnessed by a disinterested third party.<sup>219</sup>

**11.3.2. Evidentiary Protections.** Military Rule of Evidence 503 gives an absolute privilege to a member of the Chaplain Corps or other clergy to refuse to disclose

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<sup>213</sup> DODI 6025.18-R, ¶ C7.6.3.

<sup>214</sup> AFI 90-6001, ¶ 1.7.1.13.

<sup>215</sup> AFI 52-101, ¶ 1.

<sup>216</sup> AFI 52-101, ¶ 1.1.1.

<sup>217</sup> AFI 52-101, ¶ 1.1.2.

<sup>218</sup> AFI 52-101, ¶ 5.1; AFI 90-6001, ¶ 3.4.7.3.

<sup>219</sup> AFI 52-101, ¶ 5.1.1.



confidential communication.<sup>220</sup> The privilege against disclosure survives the death of the person making the communication and the duty to prevent disclosure of the confidential communication is presumed under the law.<sup>221</sup>

**11.4. Involvement of Chaplains in Sexual Assault Cases.** Members of the Chaplain Corps have a duty to receive and protect confidential communication and should not be involved with law enforcement or members of the chain of command in an allegation of sexual assault in any other capacity than their core competencies of advising leaders on religious, spiritual, ethical, moral, and morale concerns and advocate for the religious and spiritual needs of Airmen and their families and the meeting of the spiritual needs of individuals seeking their assistance.

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<sup>220</sup> M.R.E. 503 (a).

<sup>221</sup> M.R.E. 503 (c).

# Reporting Obligations of Sexual Assault Allegations<sup>1</sup>

Mandatory <sup>2</sup>	Strongly Encouraged <sup>3</sup>	Confidential <sup>4</sup>
<b>Military members or civilian employees involving a subordinate in the individual's supervisory chain</b>	<b>Military members or civilian employees involving others not in the supervisory chain</b>	SARCs, SAPR Victim Advocates, Volunteer Victim Advocates
-- Commanders involving members in their chain	-- Commanders involving others	DoD Safe Helpline staff <sup>5</sup>
-- First Sergeants (only involving subordinates in their supervisory chain)	-- First Sergeants (not involving subordinates in their supervisory chain)	Chaplains and Chaplain Staff
-- Primary supervisors involving their subordinates	-- Co-workers, friends, roommates	Family Advocacy Program personnel involving adults not in presence of the alleged offender <sup>6</sup>
-- Air Force Instructors involving members they teach <sup>7</sup>	-- (USAFA) AOCs/AMTs involving other cadets	Military medical providers involving patients
--- (USAFA) AOCs/AMTs involving cadets in their squadron	-- (USAFA) Group AOCs involving other cadets	Special Victims' Counsel involving clients
--- (USAFA) Group AOCs involving cadets in their group	-- (USAFA) OICs of clubs involving cadets not otherwise in the supervisory chain	Legal Assistance attorneys involving clients
--- (USAFA) BCT AOCs, Deputy AOCs, AAOCs, and AMTs involving basic cadets in their squadron	-- (USAFA) BCT AOCs/Deputy AOCs/AAOCs/AMTs involving other basic cadets	Defense counsel involving clients
Traditional chain of command	-- (USAFA) BCT AOCs/Deputy AOCs/AAOCs/AMTs involving permanent party or cadet cadre working BCT	Military and Family Life Consultants <sup>8</sup>
EO personnel <sup>9</sup>	-- (USAFA) Cadet leadership and cadet chain of command	
Military OneSource <sup>8</sup>	-- (USAFA) Cadet cadre working BCT	
	-- (USAFA) Cadet PEERs and MGOs	
	-- (USAFA) Faculty involving cadets <sup>7</sup>	
	-- (USAFA) Coaches involving cadets	

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<sup>1</sup> Unless otherwise noted, AFI 90-6001, ¶¶ 3.7.3– 3.7.4, serves as the primary source for the reporting obligations.

<sup>2</sup> Mandatory means that an individual is required to report allegations of sexual assault to OSI, the SARC, and the Commander immediately after hearing such information about a subordinate in the supervisory chain. A mandatory reporter who fails to make such a report is subject to prosecution under UCMJ Art. 92 (for military members) or administrative action (for military members and civilians).

<sup>3</sup> Those who are not mandatory reporters or authorized to keep confidential communications are strongly encouraged to report the allegations to the SARC, OSI, or encourage the victim to do so. If a victim requests privacy of someone who is not a mandatory reporter, that person may choose not to report the information to allow the victim to make a restricted report. Those communications, however, are not protected as “confidential” by regulation or statute, meaning the person may potentially be ordered by command or a court to disclose the information at a later time.

<sup>4</sup> Some of those authorized to keep confidential communications have specific exceptions when certain confidential communications may be disclosed.

<sup>5</sup> Exec. Order No. 13,696, 80 Fed. Reg. 35820–35821 (June 22, 2015).

<sup>6</sup> AFI 40-301, ¶ 4.7.2.

<sup>7</sup> While AFI 90-6001 only exempts civilian professors from mandatory reporting, HQ USAF/CVS granted a waiver so that no USAFA faculty are mandatory reporters for cadets.

<sup>8</sup> DoDI 6490.06, at 6, provides general confidentiality for MFLC and MOS; however, DoDI 6495.02, at 120, creates the legal obligation that MOS report allegations of sexual assault.

<sup>9</sup> AFI 36-2706, ¶ 3.33.

# COMMANDER'S 30-DAY CHECKLIST FOR UNRESTRICTED REPORTS OF SEXUAL ASSAULT

## **I. INTRODUCTION**

The sexual assault response checklist is intended to serve as a baseline for the first 30 days for the commander's response to adult sexual assault victim(s), alleged offender(s), and unit in the event of an Unrestricted Report of sexual assault. The checklist may be expanded to meet Military Service-specific requirements and procedures. These checklist items do not represent all of the responsibilities assigned to commanders for the entire Sexual Assault Prevention and Response (SAPR) program.

It is important for commanders to take time prior to an incident to become familiar with your Service SAPR policies and installation SAPR personnel. There are other important SAPR requirements to consider past the 30-day timeframe covered in this list. For full details regarding all SAPR program responsibilities for commanders, see Enclosure 5 of Department of Defense (DoD) Instruction 6495.02 and applicable Military Service-specific policies.

Active duty Service members, National Guard (NG) members, and Reserve Component (RC) members will be eligible to receive SAPR advocacy services from a Sexual Assault Response Coordinator (SARC) or SAPR Victim Advocate (SAPR VA) regardless of whether the assault took place while on active duty, prior to enlistment or commissioning, or while performing inactive duty training. Service members of the active duty component, NG, and RC are eligible to file either a Restricted or Unrestricted Report. Commanders can assist the NG or RC member in requesting contractual active duty status (or be brought onto active duty status) to complete a Line of Duty (LOD) in order to assure continuity of healthcare<sup>1</sup>.

Military dependents 18 years of age and older who are eligible for treatment in the military healthcare system (MHS), at installations in the continental United States (CONUS) and outside of the continental United States (OCONUS), and who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner. Adult military dependents may file unrestricted or restricted reports of sexual assault. Additionally, non-military individuals who are victims of sexual assault are only eligible for limited emergency care medical services at a military treatment facility, unless that individual is otherwise eligible as a Service member or TRICARE (<http://www.tricare.mil>) beneficiary of the military health system to receive treatment in a military treatment facility (MTF) at no cost to them. At this time, they are only eligible to file an Unrestricted Report. Additionally, non-military individuals will also be offered the LIMITED SAPR services to be defined as the assistance of a Sexual Assault Response Coordinator (SARC) and a SAPR Victim Advocate (VA) while

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<sup>1</sup> In the case of a member of a reserve component who is the victim of sexual assault committed while on active duty and who is expected to be released from active duty before the determination is made regarding whether the member was assaulted while in the line of duty, the Secretary concerned, upon the request of the member, may order the member to be retained on active duty until completion of the line of duty determination. A member eligible for continuation on active duty under this subsection shall be informed as soon as practicable after the alleged assault of the option to request continuation on active duty under this subsection. In the case of a member of a reserve component not on active duty who is the victim of a sexual assault that occurred while the member was on active duty and when the line of duty determination is not completed, the Secretary concerned, upon the request of the member, may order the member to active duty for such time as necessary for completion of the line of duty determination.

undergoing emergency care OCONUS. These limited medical and SAPR services shall be provided to:

(1) DoD civilian employees and their family dependents 18 years of age and older when they are stationed or performing duties OCONUS and eligible for treatment in the MHS at military installations or facilities OCONUS. These DoD civilian employees and their family dependents 18 years of age and older only have the Unrestricted Reporting option.

(2) U.S. citizen DoD contractor personnel when they are authorized to accompany the Armed Forces in a contingency operation OCONUS and their U.S. citizen employees. DoD contractor personnel only have the Unrestricted Reporting option. Additional medical services may be provided to contractors covered under this instruction in accordance with DoDI 3020.41 (Reference (q)) as applicable.

## **II. VICTIM'S COMMANDER**

( ) **SAPR Advocacy:** Require that the SARC is notified immediately and that the SARC or a SAPR VA makes contact with the victim as soon as possible.

( ) **Timely access to healthcare:** Require that the victim receives timely access to comprehensive medical and psychological treatment, including emergency care treatment and services (regardless of visible injuries), unless the victim declines healthcare. Ensure that sexual assault victims are given priority, and treated as emergency cases. If needed, assist with obtaining immediate transportation for the victim to the hospital or other appropriate medical treatment facility using a government owned/operated vehicle (do not use a personally operated vehicle).

( ) **Forensic Exam:** Ask the victim whether s/he would be willing to have a Sexual Assault Forensic Examination (SAFE). If the victim elects to have a SAFE, advise the victim of the need to preserve evidence (by not bathing, showering, having anything by mouth, emptying bladder, washing garments, or sheets, etc.).

( ) **Military Criminal Investigation Organization Contact:** Immediately refer the matter to the Military Criminal Investigation Organization (MCIO) concerned (e.g. Naval Criminal Investigative Service (NCIS), Air Force Office of Special Investigations (OSI), or Army Criminal Investigation Command (CID)), as soon as the victim's immediate safety is assured and medical treatment procedures elected by the victim are initiated. Do **NOT** conduct any internal command directed investigation of the sexual assault or delay immediate contact with the MCIO. MCIOs have total responsibility for report investigation. Finally, the commander is not required to assess the credibility of the report.

[ ] **Victim's Alleged Collateral Misconduct:** If there is alleged victim collateral misconduct, commanders shall have discretion to defer action on alleged collateral misconduct by the sexual assault victims (and shall not be penalized for such a deferral decision), until final disposition of the sexual assault case, taking into account the trauma to the victim and responding appropriately so as to encourage reporting of sexual assault and continued victim

cooperation, while also bearing in mind any potential speedy trial and statute of limitations concerns.

Consult with the servicing legal office, as needed, to determine when and how best to adjudicate the victim's alleged collateral misconduct, if needed. Take into account the trauma to the victim and respond appropriately to foster a unit climate that encourages reporting of sexual assault and continued victim cooperation.

When practicable, consult with the servicing legal office and MCIO, and notify the assigned SARC or SAPR VA prior to taking any administrative or disciplinary action affecting the victim.

**( ) Victim Safety:** Ensure the physical safety of the victim— the Case Management Group (CMG) Chair<sup>2</sup> has designated installation personnel trained and able to perform a formal “Safety Assessment” of adult sexual assault victims. As a tool, a Safety Assessment is used to identify potential threats while addressing immediate safety needs and outlining strategies to help reduce future incidents of harm. Require the designated personnel to conduct a safety assessment of the victim. The Safety Assessment will determine:

If the alleged offender is still nearby and if the victim desires or needs protection or if the victim is at risk of doing harm to himself/herself.

If the victim is concerned about retaliation from peers or supervisors.

If the victim poses a suicide risk.

If the victim's safety is in jeopardy, immediately notify the victim's commander of the need to establish, without delay, through the installation commander a multi-disciplinary **High-Risk Response Team (HRRT)**. The HRRT will continually monitor the victim's safety, by assessing danger and developing a plan to manage the situation (in accordance with DoDI 6495.02, Enclosure 9). The HRRT shall be chaired by the victim's commander and, at a minimum, include the suspect's commander; the victim's SARC and SAPR VA; the MCIO, the judge advocate, if applicable and the Victim/Witness Assistance Provider (VWAP) assigned to the case, the victim's healthcare provider or mental health and counseling services provider; and the personnel who conducted the safety assessment.

**( ) Access to Support Person:** Ask if the victim would like to speak to a chaplain, family member, emergency contact, or other support person and, if so, facilitate the meeting.

**( ) Legal Services:**

Inform the victim of the opportunity to consult with Special Victim's Counsel (SVC), Victim's Legal Counsel (VLC), or Legal Assistance Attorney.

In cases where the victim may have been involved in collateral misconduct, inform the victim of the opportunity to consult with defense counsel.

**( ) Military Protective Orders\Civilian Protective Orders:**

Determine if the victim desires or needs a Military Protection Order (MPO) to be issued (via completion of DD Form 2873), particularly if the victim and the alleged offender are assigned to the same command, unit, duty location, or living quarters. Coordination with other commanders may be necessary if the alleged offender is assigned to a different commander.

Are only available for Unrestricted Reports.

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<sup>2</sup> The Installation commander or Deputy Installation Commander.

If an MPO is issued, notify the appropriate civilian and military authorities of the MPO issuance and of the individuals involved in the order, in the event the MPO has been issued against a Service member and any individual involved in the MPO does not reside on a military installation at any time during the duration of the MPO. The MPO should also be entered by the installation law enforcement agency in National Crime Information Center (NCIC), for the duration of the order. Also, notify the appropriate civilian and military authorities of any change in or termination of the MPO and have the installation law enforcement agency update the NCIC entry.

Require the alleged offender to sign the DD Form 2873.

Provide the victim(s) and alleged offender(s) involved with copies of the completed DD Form 2873 and require the MCIO to document the MPO in their investigative case file.

Advise the person seeking the MPO that it is not enforceable by civilian authorities off base and that victims desiring protection off base should with the assistance of the SARC or SAPR VA seek a Civilian Protective Order (CPO).

Take all necessary measures to ensure that a CPO is given full force and effect on all DoD installations within the jurisdiction of the court that issued the order and inform the SARC of an existing CPO or MPO. The SARC will then ensure the CMG is aware of the existence of the order(s).

**( ) Expedited Transfer:** Safety issues are NOT handled through an Expedited Transfer. They are handled through a fast safety move. (An Expedited Transfer may take longer than a safety move.) The intent behind the Expedited Transfer policy is to address situations where a victim feels safe, but uncomfortable.

Are only available for Unrestricted Reports.

Require the SARC or the SAPR VA to explain to adult military sexual assault victims that they may request an Expedited Transfer (temporary or permanent) to a different installation or to a different unit within his/her current installation. If the victim requests an Expedited Transfer, consider the desires of the victim when making any reassignment determinations.

Commanders are authorized to move the alleged offender instead of the victim should be considered when individual circumstances warrants.

**( ) DD Form 2910:** Require the SARC or the SAPR VA to explain to adult sexual assault victims their reporting options and rights while assisting them in completing DD Form 2910, "Victim Reporting Preference Statement".

**( ) DoD Sexual Assault Incident Database:** Confirm that the SARC entered all reported sexual assaults into DoD Sexual Assault Incident Database (DSAID) within 48 hours of the report (in deployed locations that have internet connectivity issues, the time frame is extended to 96 hours). The SARC responsibilities include uploading DD Form 2910 for Unrestricted cases into DSAID.

**( ) Sexual Assault Incident Response Oversight:** A Sexual Assault Incident Response Oversight (SAIRO) report must be submitted within eight calendar days of an Unrestricted Report by the immediate commander.

The eight-day timeframe begins when an Unrestricted Report is made to a SARC or SAPR VA, and the SARC or SAPR VA fills out a DD Form 2910. However, if the victim is a

civilian who is not eligible for SAPR Services in accordance with DoDD 6495.01, and the subject is a Service member, then the trigger for the eight-day timeframe begins when the MCIO notifies the immediate commander of the subject.

[ ] Further guidance on the SAIRO requirements can be found in Directive Type Memorandum (DTM) 14-007, “Sexual Assault Incident Response Oversight (SAIRO) Report”.

[ ] If the victim accepts advocacy services, the SARC must provide a description of any circumstances in the response that adversely affected the command’s ability to address the victim’s needs (e.g., timeliness; sensitivity; obstacles to care; coercion, retaliation, or reprisal). The SARC will include any victim input provided with documented victim consent for disclosure of privileged communications. The SARC will confirm that the victim was informed of the ability to speak to a SVC\VLC before providing consent for release of privileged information.

( ) **Victim Privacy:** Strictly limit knowledge and release of the facts or details regarding the incident to only those personnel who have an *official need-to-know or as authorized by law* as designated in the SAIRO DTM 14-007.

( ) **Case Management Group (CMG) meeting:** Participate in the monthly CMG meeting. Contact the SARC or installation commander to identify when the next CMG is scheduled. The victim’s commander is a mandatory member of the CMG and he/she may not delegate the responsibility to attend the CMG. Note: The intent is to have command involvement in the CMG. Thus, the victim’s immediate commander is the intended participant in the CMG.

[ ] Provide the victim with monthly status updates to include:

- MCIO investigation,
- medical,
- legal,
- status of an Expedited Transfer request,
- any other request made by the victim,
- command proceedings regarding the sexual assault from the date the investigation was initiated until there is a final disposition of the case.

This update must occur within 72 hours of the last CMG meeting. If the victim is transferring from the installation, make future communication arrangements with the victim, so you can contact her/him after future CMGs to provide updates.

( ) **Protection from Retaliation:** Protect the victim from coercion, ostracism, discrimination, or reprisals in person, through electronic communications, or through social media. Also protect SARCs and SAPR VAs from coercion, ostracism, discrimination, or reprisals related to the execution of their SAPR duties and responsibilities. In the event of coercion, ostracism, discrimination, or reprisal, notify the Inspector General or Military Equal Opportunity as appropriate.

[ ] At every CMG meeting, the CMG Chair will ask the CMG members if the victim, witnesses, bystanders (who intervened), SARCs and SAPR VAs, responders, or other parties to the incident have experienced any incidents of coercion, retaliation, ostracism, maltreatment, or reprisals. If any incidents are reported, the installation commander will develop a plan to immediately address the issue. The coercion, retaliation, ostracism, maltreatment, or reprisal incident will remain on the CMG agenda for status updates, until the victim’s case is closed.

**( ) Victim Rights:**

Direct MCIO and VWAP personnel to provide the victim with Victim Rights information outlined on the DD Form 2701 through the investigative and legal process.

Ensure the victim has access to an SVC/VLC.

**( ) Victim Support from Commander:**

Throughout the investigation, with assistance from the SARC or SAPR VA consult with the victim, listen to his/her feedback, and engage, as needed, to provide the victim appropriate support resources and referrals. Help the victim regularly access care and attend referral appointments, as needed. To the extent practicable, accommodate the victim's desires regarding safety, health, and security, as long as neither a critical mission nor a full and complete investigation is compromised.

With assistance from the SARC or SAPR VA, continue to monitor the victim's well-being, particularly if there are any indications of suicidal ideation, homicidal, or other unhealthy attempts to cope with stress, and ensure appropriate assistance is rendered. Consult with medical and mental health providers for appropriate courses of action, as needed.

**( ) Personnel Reliability Program:** Avoid automatic suspension or revocation of a security clearance and/or Personnel Reliability Program (PRP) access, understanding that the victim may be satisfactorily treated for his/her related trauma without compromising his/her security clearance or PRP status. Make the final determination based upon established national security standards, taking into consideration the negative impact that suspension of a victim's security clearance or PRP may have on building a climate of trust and confidence in the Military Service's sexual assault reporting system. (See DoD 5210.42-R for specific requirements.)

### **III. ALLEGED OFFENDER'S COMMANDER**

**( ) MCIO:** Notify the appropriate MCIO immediately after receiving a report of a sexual assault incident.

**( ) No Command-Directed Investigations:** Do **NOT** conduct any internal command-directed investigation of the sexual assault, delay immediate contact with the MCIO, or attempt to assess the credibility of the report. Avoid questioning the alleged offender about the sexual assault allegation, to the extent possible, since doing so may jeopardize the criminal investigation.

**( ) Privacy:** Strictly limit information pertinent to an investigation to those who have an official need-to-know.

**( ) Defense Legal Services:** Ensure procedures are in place to inform the alleged offender, as appropriate, about the investigative, legal, and command processes that may be involved.

**( ) Alleged Offender Healthcare:** As appropriate, refer the alleged offender to available counseling groups and other services or make sure that procedures are in place to inform the alleged offender about available counseling support. However, precautions need to be taken to verify that the victim and the alleged offender are not in the same counseling sessions, groups or classes or any other gatherings or installation events.



**( ) Safety of Alleged Offender and Victim:**

[ ] Monitor the well-being of the alleged offender, particularly for any indications of suicide ideation or other unhealthy attempts to cope with stress, and ensure appropriate assistance is rendered. Consult with medical and mental health providers for appropriate courses of action, as needed.

[ ] Monitor the alleged offender for erratic or violent behavior that may endanger the safety of the victim or others.

[ ] If the victim's safety is in jeopardy and a multi-disciplinary HRRT is convened, participate in the HRRT to continually monitor the victim's safety, and provide insight on alleged offender's current behavior by assessing danger and developing a plan to manage the situation.

[ ] With assistance from the SARC, SAPR VA, legal, and/or investigative agent, determine the need for an MPO via completion of DD Form 2873. (See above for further details regarding MPOs.)

**( ) Victim Retaliation or Ostracism:** Monitor for incidents of coercion, ostracism, discrimination, or reprisals against the victim in person, in the unit or workplace through electronic communications, or through social media.

**( ) Alleged Offender Retaliation or Ostracism:** Monitor for incidents of coercion, ostracism, discrimination, or reprisals against the alleged offender in person, in the unit or workplace through electronic communications, or through social media.

**( ) SAIRO:** The immediate commanding officer of the alleged offender will be responsible for preparing and submitting the abbreviated SAIRO report containing available information within eight calendar days involving a civilian victim who is **Not** eligible for SAPR Services in accordance with Reference (c) of the SAIRO DTM and the alleged offender/Service member, with the understanding that some victim or subject information may not be accessible.

**IV. IMPORTANT POINTS TO REMEMBER FOR EACH UNIT COMMANDER OF THE VICTIM AND ALLEGED OFFENDER**

***IN THE EVENT OF A SEXUAL ASSAULT***

( ) It is important to make sure that everyone in a unit and on base know that the alleged offender is presumed innocent until proven guilty and each report is considered credible until proven otherwise.

( ) Advise those who may have knowledge of the events leading up to or surrounding the incident to fully cooperate with any investigation involved in accordance with the standards of your Service and the Uniform Code of Military Justice.

( ) Remind members that discussion of a possible sexual assault incident might compromise an ensuing investigation. Discourage members from participating in "barracks gossip" or grapevine speculation about the case or investigation.

( ) Emphasize that acts of coercion, ostracism, discrimination, or reprisals against the victim, offender, and/or witnesses, bystanders will not be tolerated and the person(s) who commits any of these acts will be subject to disciplinary action according to the UCMJ.

[ ] Consult with your Service-specific retaliation policy.

( ) Emphasize that acts of coercion, ostracism, discrimination, or reprisals against SARCs and SAPR VAs related to the execution of their SAPR duties and responsibilities will not be tolerated and the person(s) who commit any of these acts will be subject to disciplinary action according to the UCMJ will be subject to disciplinary action according to the UCMJ.

( ) Review past Unit Climate Assessments, unit policies, and personnel practices for conditions that may have contributed or influenced circumstances leading to the reported sexual assault. Consider requesting assistance from outside experts (e.g. SARC, SAPR Program Manager, Rape Crisis Center) to help identify additional preventive measures.

( ) Make available or publicize the resources available to address some of the emotional or psychological consequences of crime that may manifest themselves, affect the unit, and require the unit's response during the course of the investigation.

( ) Continuously monitor the unit's overall climate to ensure neither the victim or the alleged offender are being ostracized and prevent organizational divisiveness.

( ) After the resolution of the case (courts-martial verdict, NJP, administrative separation, etc.) Actively monitor the unit for acts of coercion, ostracism, discrimination, or reprisals against the victim, witnesses, and/or offender and deal with those acts swiftly.

**Attachment 3****SEXUAL ASSAULT INCIDENT RESPONSE OVERSIGHT (SAIRO) REPORT  
TEMPLATE**

SAIRO Reports are not completed for restricted reports. Only one SAIRO Report will be completed per incident. The SAIRO will be provided to the following individuals. This responsibility will not be delegated or deviated from. The responsible Commander will transmit the SAIRO as a standalone report via an encrypted, unclassified e-mail.

- 1) From the unit/CC (e.g. Sq/CC, Det/CC, civilian equivalent) to the first O-6 (typically Gp/CC) in the victims (if service member or Air Force civilian employee) and subjects (if service member) chain of command and the installation SARC (see Note<sup>1</sup>).
- 2) First O-6 forwards to the installation commander (if TDY or deployed notify the installation commander at the incident location) and if different, the victims (if service member or Air Force civilian employee) and subjects (if service member) wing commanders.
- 3) Victims (if service member or Air Force civilian employee) and subjects (if service member) wing commanders will forward to the first G/FO and MAJCOM SARC in the respective chain of command (see Note<sup>1</sup>).
- 4) MAJCOM SARC(s) will provide to MAJCOM/CV and AF/CVS no later than the next business day (see Note<sup>2</sup>).

Note<sup>1</sup>: If the subject is the first O-6 or G/FO in the victim's chain of command designated to receive the SAIRO, the report will be provided to the next higher ranking commander in the chain of command.

Note<sup>2</sup>: If the victim and/or subject is an Air Force Reservist, the MAJCOM SARC(s) will forward a copy to the AFRC SARC.

The notification memorandum will have the subject line: **SEXUAL ASSAULT INCIDENT RESPONSE OVERSIGHT REPORT**, will not deviate from the below information and will not contain any Personally Identifiable Information (PII), victim photographs or additional incident information that could reasonably lead to personal identification of the victim or the subject. The 8-day timeframe ends when the first G/FO in the victims and/or subjects chain of command receives the SAIRO Report.

(Appropriate Letterhead)

Date

MEMORANDUM FOR VICTIMS FIRST O-6 ORGANIZATIONAL SYMBOL  
 SUBJECTS FIRST O-6 ORGANIZATIONAL SYMBOL  
 INSTALLATION SARC ORGANIZATIONAL SYMBOL

FROM: IMMEDIATE COMMANDER ORGANIZATIONAL SYMBOL

SUBJECT: SEXUAL ASSAULT INCIDENT RESPONSE OVERSIGHT REPORT

- (1) Victim(s). The SARC has the sole responsibility to provide this information, if known, to the victim's commander.
- a. Gender: Male/Female or Protected *if information could identify a specific individual (see note)*.
  - b. Duty status: Active Duty, Reserve, Guard, DoD Civilian, Military Dependent, DoD Contractor, Foreign National or Non-government Civilian.
  - c. Service affiliation: Air Force, Navy, Army, Marines, Coast Guard, Air/Army National Guard or Air Force/Army/Navy/Marine Reserves.
  - d. Assigned Unit.
  - e. Grade: List Protected *if information could identify a specific individual (see note)*.
  - f. Current geographic area where the victim is stationed and lives, i.e. Maxwell AFB, AL – off base.

Note: Do not include PII and depending on the size of the location or the gender make-up of the unit, the SARC may not be able to include victim gender, rank, or grade and those items will be answered with "Protected."

- (2) Subject(s). The Military Criminal Investigative Organization ((MCIO) – Office of Special Investigations (OSI), Criminal Investigation Division (CID), Naval Criminal Investigative Service (NCIS)) has the sole responsibility to provide this information, if known.
- a. Gender: Male/Female or Protected *if information could identify a specific individual (see note)*.
  - b. Duty status: Active Duty, Reserve, Guard, DoD Civilian, Military Dependent, DoD Contractor, Foreign National or Non-government Civilian.
  - c. Service affiliation: Air Force, Navy, Army, Marines, Coast Guard, Air/Army National Guard or Air Force/Army/Navy/Marine Reserves.
  - d. Assigned Unit.
  - e. Grade: List Protected *if information could identify a specific individual (see note)*.
  - f. Current geographic area where the subject is stationed and lives, i.e. Maxwell AFB, AL – off base.

Note: Do not include PII and depending on the size of the location or the gender make-up of the unit, the MCIO may not be able to include subject gender, rank, or grade and those items will be answered with "Protected."

## (3) Incident Detail.

- a. Nature/Type of Sexual Assault will be provided by MCIO. Provide the most serious type(s) of offense(s) being investigated.
- b. General Location where the sexual assault occurred: Choose one below
  - a. On installation (Includes USAF owned/operated property/transportation)
  - b. Off installation
  - c. Multiple (Both on/off due to multiple instances)
  - d. Undetermined
- c. Date Assault Occurred.
- d. Time. Choose one below:
  - a. Daytime; 0600L – 1759L
  - b. Nighttime; 1800L – 0559L
  - c. Multiple (Both day/night due to multiple instances)
  - d. Undetermined
- e. Date referred to SARC.
- f. Date DD Form 2910 was completed. There will be no date for non-eligible victims.
- g. Date the alleged sexual assault was reported to the MCIO to include the organization notified.
- h. Was the alleged assailant temporarily transferred, removed from assigned billet, ordered to pretrial confinement or otherwise restricted? If yes, list which action(s) was accomplished.
- i. Any additional information pertaining to the subject (see note).

Note: Do not include PII.

(4) Advocacy Services Offered to the Victim. Please complete if the victim is a Service member, adult military dependent, or otherwise eligible for SAPR services IAW DoDI 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures*, 28 March 2013. Information will be provided by the SARC to the immediate commander assigned to prepare the SAIRO report.

- a. Date the SARC entered information into the Defense Sexual Assault Incident Database (DSAID).
- b. Confirm information was entered into DSAID within 48 hours, or 96 hours if in a deployed environment with connectivity issues.
- c. Description of any circumstances in the response that adversely affected the command's ability to address the victim's needs (e.g., timeliness; sensitivity; obstacles to care; coercion, retaliation, reprisal, if any).
- d. The SARC will include any victim input provided with documented victim consent for disclosure of privileged communications. The SARC will confirm that the victim was informed of the ability to speak to a Special Victims' Counsel before providing consent for release of privileged information.
- e. Provide the date of the next Case Management Group (CMG) meeting.

(5) Health Care. Do not include PII or individually identifiable health information protected under DoD 6025.18-R, *DoD Health Information Privacy Regulation*, 24 January 2003.

- a. Victim offered medical care and date referred.

- b. Victim offered mental health services and date referred.
  - c. Victim offered Sexual Assault Forensic Examination (SAFE) and date referred? If a SAFE was not offered, explain why?
- (6) Investigation. The MCIO will provide the immediate commander assigned to prepare the SAIRO report:
- a. MCIO Case File Number: If there is no MCIO case number, indicate why and include the investigating jurisdiction notified and the date of the notification. Information from civilian law enforcement may not be available.
  - b. Confirm the victim was provided the DD Form 2701, *Initial Information for Victims and Witnesses of Crime*? If the victim did not receive this, explain why.
- (7) Safety. If the victim is a Service member or an adult military dependent, the SARC will provide the immediate commander assigned to prepare the SAIRO report:
- a. Date the victim's safety assessment was conducted.
  - b. High-Risk Response Team assembled? Yes/No
  - c. Military Protective Order issued? Yes/No, Date issued
  - d. Civilian Protective Order issued? Yes/No, Date issued
- (8) Expedited Transfer (ET). If the victim is a Service member, the SARC will provide the immediate commander assigned to prepare the SAIRO report:
- a. Date victim is informed of ET option.
  - b. Date requested ET (If requested within 8-days).
  - c. Type of ET requested: Temporary or permanent change of assignment (PCA) or permanent change of station (PCS) (If requested within 8-days).
- (9) Legal Services. If the victim is eligible for Special Victims' Counsel, the SARC will provide the immediate commander assigned to prepare the SAIRO report:
- a. Date the victim was informed of Special Victim's Counsel.
  - b. Confirm the victim was notified that a Special Victim's Counsel is the victim's attorney, not the prosecution, and will provide them legal advice and representation.
- (10) Commander's Critical Information Requirement (CCIR). Does the sexually based, alleged or confirmed, crime meet one of the following criteria (see note):
- a. Involves an O-6 Commander, or equivalent, and above, SARC/Victim Advocate, or a SAPR Staff Member, as either a victim or subject? Yes/No
  - b. Incident warrants higher level command awareness? Yes/No
  - c. An overturned conviction of a sexually based crime? Yes/No
  - d. Media Attention? Yes/No
  - e. Congressional Involvement? Yes/No

Note: If the above answers to the CCIR questions are/or become “Yes” the Installation Commanders will provide CCIR information, utilizing Attachment 4, *Unrestricted Report of Sexual Assault Commander’s Critical Information Requirement (CCIR) Template*, to the Command Post for submission as an OPREP-3 IAW AFI 10-206, *Operational Reporting*, and the current Chief of Staff of the Air Force (CSAF) OPREP-3 Reporting Matrix.

FIRST M. LAST  
Rank, USAF  
Commander

Info Copies:

First O-6 forwards to installation commander (if TDY or deployed notify the installation commander at the incident location) and victims and subjects wing commanders.

Victim and subjects wing commanders forward to the first G/FO and the MAJCOM SARC in the respective chain of command.

MAJCOM SARC will provide to the MAJCOM/CV and AF/CVS.

**Attachment 4****COMMANDERS CRITICAL INFORMATION REQUIREMENT (CCIR) TEMPLATE  
FOR SEXUAL ASSAULTS**

The Installation Commanders will complete the CCIR and submit to the Installation Command Post via an unclassified email. CCIRs are NOT completed for restricted reports.

- (1) Incident type to include which of the four criteria identified is met.
- (2) Who is involved:
  - a. Alleged offender (s). Provide grade, gender, unit of assignment, position, and any other relevant information.
  - b. Victim(s). Provide generic identifiers ONLY (e.g., grade or rank; gender). Do NOT include names, addresses, and any other personally identifiable information, even if public knowledge or in the news.
- (3) What: description of incident (short narrative case synopsis);
- (4) When: date and time of incident and/or report;
- (5) Where: location of incident (no personal addresses);
- (6) Actions Taken: response to date, if applicable; and,
- (7) Any Other Factors: e.g., international interest.



## Attachment 5

## COMMANDER'S MEMORANDUM FOR EXPEDITED TRANSFERS

MEMORANDUM FOR XX WG/CC

DATE/Time

FROM: XX SQ/CC

SUBJECT: Expedited Transfer of Military Service Member

1. Name:
2. Grade:
3. SSAN:
4. AFSC:
5. Time and Date of Request:
6. Does the member have assignment action/limitation codes in his/her personnel file?
7. Does the member have an assignment action pending?
8. Does the member request join spouse? (If so, please have spouse and spouse's commander complete the join spouse letter. Sample can be found on the SAPR Sharepoint site. This additional letter will be required to complete the member's vMPF application.)
9. Military Spouse Name and SSAN:
10. Is the member currently protected under Family Advocacy Program that would deem member ineligible for expedited transfer assignment action IAW DoDD 6400-1, DoDI 6400.06, AFGM 5, and AFI 40-301? If yes, expedited transfer assignment action cannot be processed.
11. Are there any potential factors that could disqualify or restrict Airman from performance of duties? If yes, please explain.
12. I have considered the needs of the Air Force, the Airman's career, and the Airman's healing process and I endorse the following assignment preferences:  
(Note: If the victim is requesting an OCONUS location, please refer to AFI 36-2110, *Assignments*)
  - 1)
  - 2)
  - 3)
13. Airmen must meet retainability requirements IAW AFI 36-2110 para 2.29. in conjunction with Table 2.5.. I have counseled the Airmen on this requirement. (Any retainability inquiries may be addressed via the Airman's servicing MPS)
14. I have considered the circumstances regarding the incident, current circumstances driving the request and how the reassignment provides the support that the victim is seeking. I recommend **approval/disapproval** of this request.

(1) If denied, the CC must provide a reason for the denial. This may be accomplished on this memo or under a separate attachment. Denial justification must be provided to the SARC for forward to MAJCOM SARC.

15. If you have questions please contact me at (insert Commander’s contact information).

Please Note: Once signed, the letter will be delivered back to the SARC. Please note that the process, including the Wing Commanders signature, must be accomplished within 72 hours (consecutive hours; including weekends and holidays) IAW NDAA FY12 (Public Law 112-81 – Dec 31, 2011, section 673). Any additional review level must be accomplished within 72 hours, as well.

Squadron Commander Signature Block

DATE/TIME

1st Ind, XX WG/CC

MEMORANDUM FOR HQ AFPC/DPAPH

I **approve/disapprove** the reassignment for (insert VICTIM NAME).

If denied, then a brief reason for the denial must be included. The SARC must provide this to the MAJCOM SARC.

Installation or Host Wing Commander Signature Block

DATE/TIME

2d Ind, XX XX/CC

MEMORANDUM FOR HQ AFPC/DPAPH

(Include date and time that request was sent to higher level review and document the date and time the review was received back to SARC)

I **approve/disapprove** the reassignment for (insert VICTIM NAME).

If denied, then a brief reason for the denial must be included. The SARC must provide this to the MAJCOM SARC.

GO/FO Signature Block

DATE/TIME

3rd Ind, XX XX/CV

MEMORANDUM FOR HQ AFPC/DPAPH

(Include date and time that request was sent to higher level review and document the date and time the review was received back to SARC)

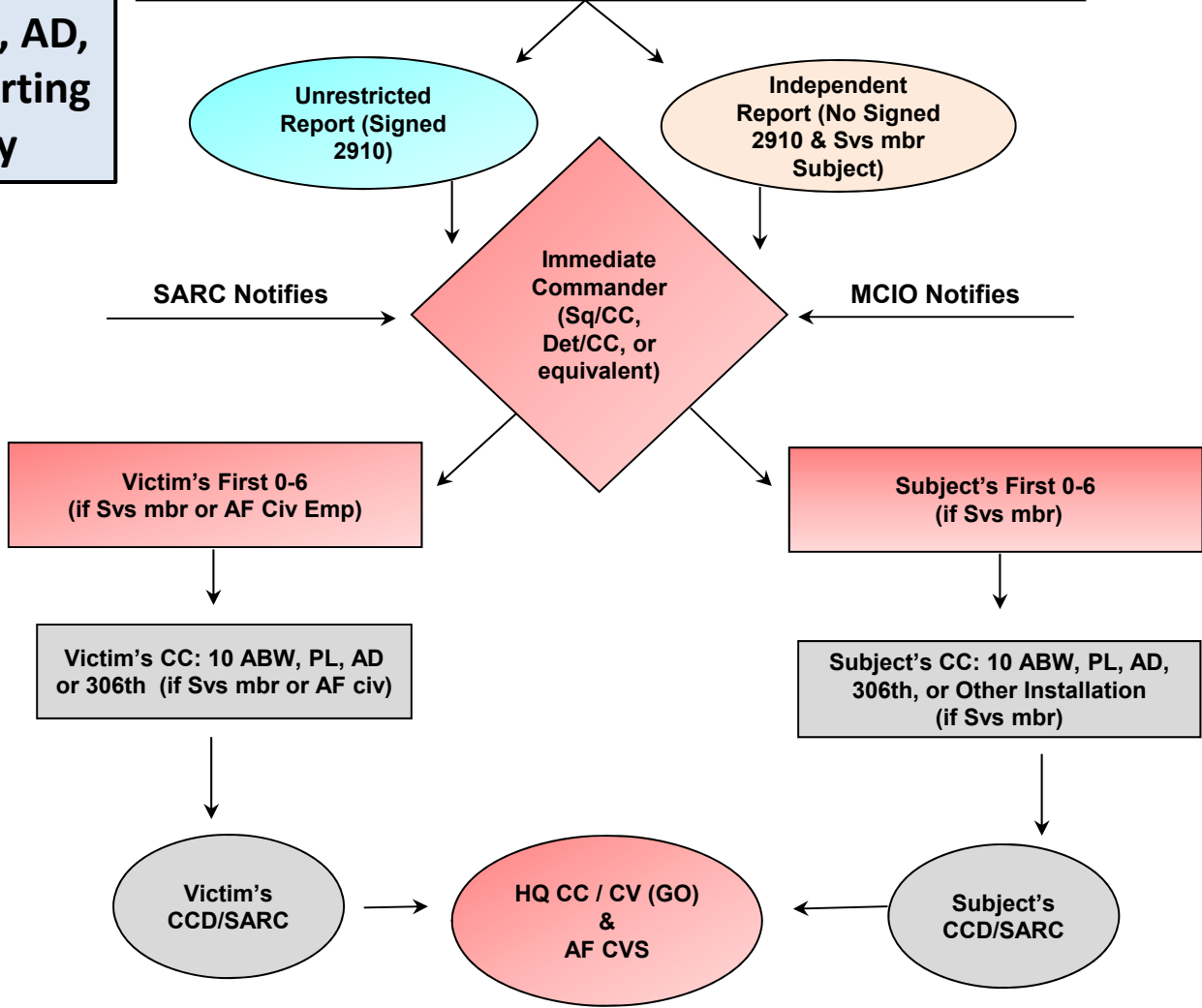
I **approve/disapprove** the reassignment for (insert VICTIM NAME).

If denied, then a brief reason for the denial must be included. The SARC must provide this to the MAJCOM SARC.

MAJCOM/CV Signature Block

**Sexual Assault Incident Oversight Report**  
**Unrestricted Report or Independent Investigation**

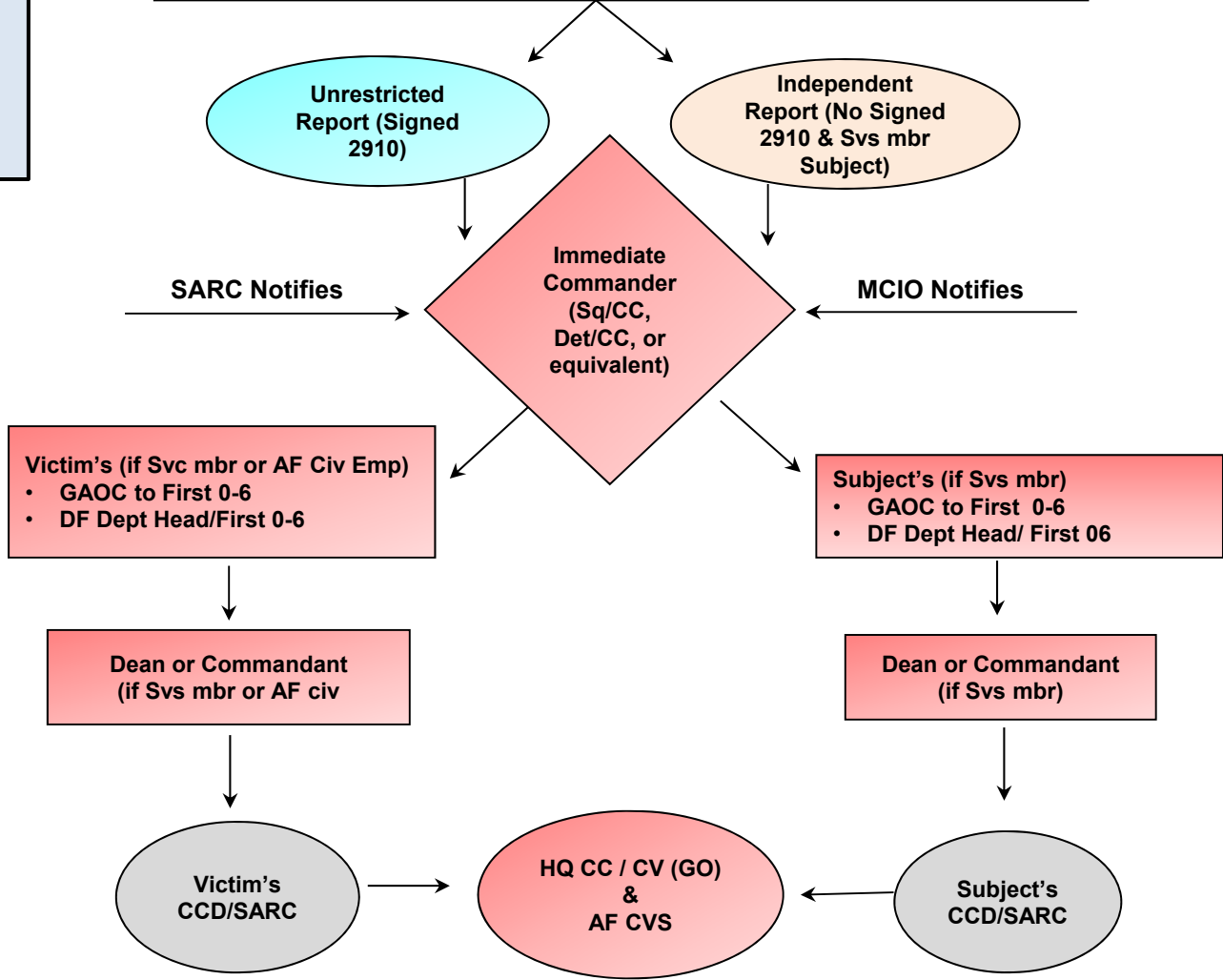
**10 ABW, PL, AD,  
 306th Reporting  
 Pathway**



**(Red = 8 day requirement required by law) (Gray = AF requirement)**

**Sexual Assault Incident Oversight Report**  
**Unrestricted Report or Independent Investigation**

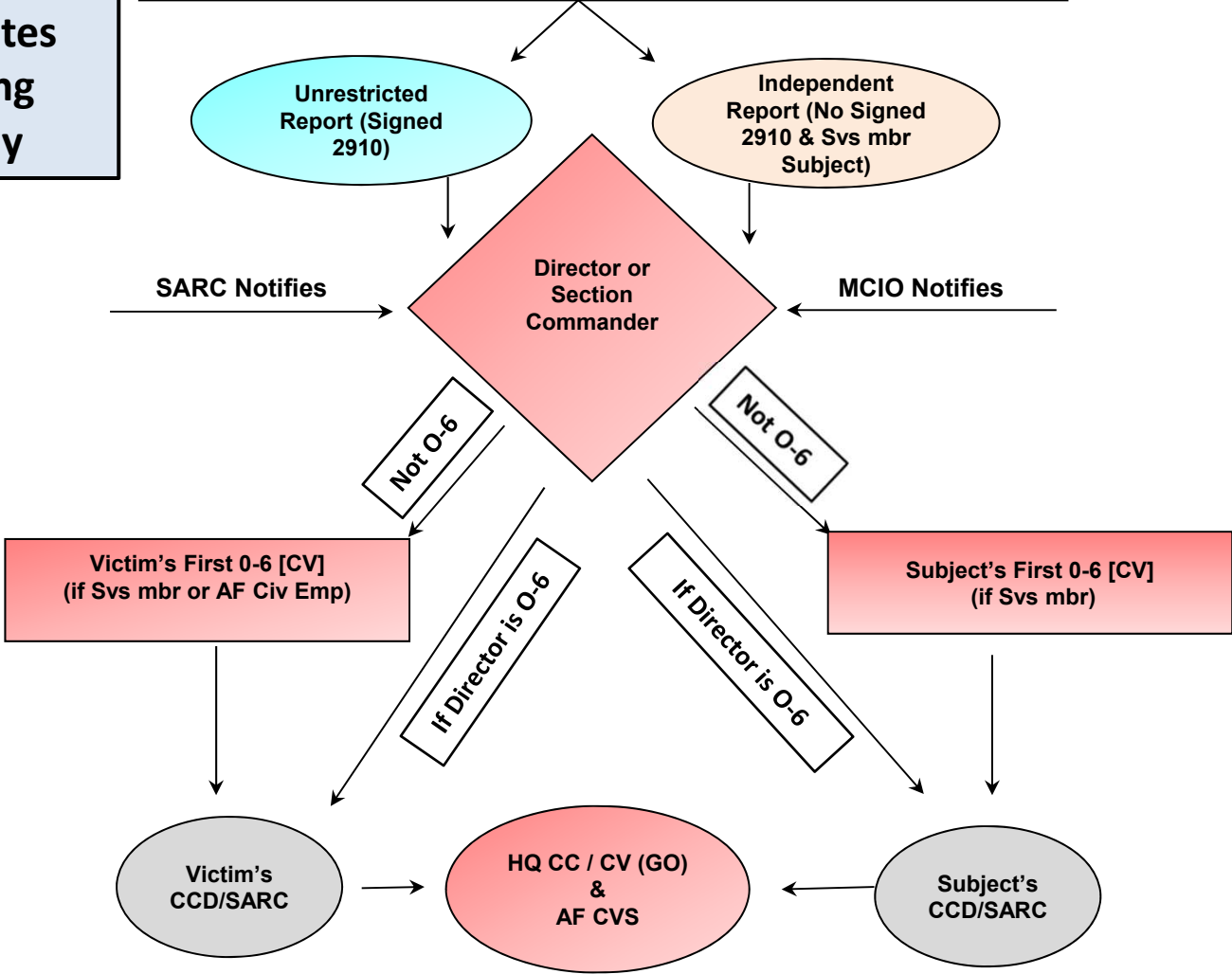
**DF & CW  
 Reporting  
 Pathway**



**(Red = 8 day requirement required by law) (Gray = AF requirement)**

**Sexual Assault Incident Oversight Report  
Unrestricted Report or Independent Investigation**

**Directorates  
Reporting  
Pathway**



**(Red = 8 day requirement required by law) (Gray = AF requirement)**

**VICTIM'S IMMEDIATE COMMANDER****Figure 3.1. Commander's Required to Complete the SAIRO Report.**

Victim	Alleged Offender	Unit	Responsibility for SAIRO	Immediate CC Submits To (Recipients Reference Transmission Guidance for Follow-on Requirements)	Report Length	Trigger for 8-day Time Frame
Service Member	Service Member	Both in Same Unit	Victim's Immediate Commander	Victim's First O-6 & G/FO Subject's First O-6 & G/FO Installation SARC	Full Report	DD Form 2910, <i>Victim Reporting Preference Statement</i> , signed
Service Member	Service Member	In Different Units (Note: Only one SAIRO is prepared)	Victim's Immediate Commander	Victim's First O-6 & G/FO Subject's First O-6 & G/FO Installation SARC	Full Report	DD Form 2910, <i>Victim Reporting Preference Statement</i> , signed
Service Member	Civilian	N/A	Victim's Immediate Commander	Victim's First O-6 & G/FO Installation SARC	Full Report	DD Form 2910, <i>Victim Reporting Preference Statement</i> , signed
Service Member	Civilian	N/A	Victim's Immediate Commander	Victim's First O-6 & G/FO Installation SARC	Abbreviated Report with: Victim, Subject, Incident Data, and Investigation Information	MCIO notifies Immediate Commander
Air Force Civilian Employee who is eligible for SAPR services	Civilian	N/A	Victim's Immediate Commander	Victim's First O-6 & G/FO Installation SARC	Full Report	DD Form 2910, <i>Victim Reporting Preference Statement</i> , signed

**SUBJECT'S IMMEDIATE COMMANDER**

Victim	Alleged Offender	Unit	Responsibility for SAIRO	Immediate CC Submits To (Recipients Reference Transmission Guidance for Follow-on Requirements)	Report Length	Trigger for 8-day Time Frame
DoD Civilian Employee, US Citizen DoD Contractor, and Dependents who are eligible for SAPR services	Service Member	N/A	Subject's Immediate Commander	Subject's First O-6 & G/FO Installation SARC	Abbreviated Report with: Victim, Subject, Incident Data, and Investigation Information	DD Form 2910, <i>Victim Reporting Preference Statement</i> , signed
Civilian who is not eligible for SAPR services OR Service Member, DoD Civilian Employee, US Citizen DoD Contractor, or Dependents eligible for SAPR Services who has not signed a DD Form 2910 and Independent Investigation has been initiated	Service Member	N/A	Subject's Immediate Commander	Subject's First O-6 & G/FO Installation SARC	Abbreviated Report with: Victim, Subject, Incident Data, and Investigation Information	MCIO notifies Immediate Commander

**3.9. Commander's (or Equivalent) Critical Information Requirement (CCIR).** The CCIR provides timely information to the Secretary of the Air Force, Under Secretary of the Air Force, Chief of Staff of the Air Force, Vice Chief of Staff of the Air Force, AF/CVS, and if necessary the Chairman of the Joint Chiefs of Staff when a sexually based, alleged, or confirmed crime meets specific criteria. This is a separate report from the SAIRO Report listed above and may be accomplished at the same time of the SAIRO Report if the criteria required for a CCIR is known, or later, as the criteria becomes apparent. A CCIR is provided to the installation Command Post for submission as an OPREP-3 IAW AFI 10-206, Operational Reporting, and the current CSAF OPREP-3 Reporting Matrix, Rule 3D. The installation or host wing commander will not complete CCIRs for restricted reports (**T-0**).

3.9.1. The installation commander or host wing commander is responsible for preparing and submitting the CCIR.

3.9.1.1. The CCIR is accomplished when criteria is met. This may occur at the same time as the SAIRO Report if the criteria required for a CCIR is known, or later, as the criteria becomes apparent.





## SEXUAL ASSAULT CASE PROCESSING CHECKLIST

Subject: \_\_\_\_\_

AMJAMS Case ID #: \_\_\_\_\_

Unit: \_\_\_\_\_

ETS/Admin Hold: \_\_\_\_\_

### ALLEGED OFFENSES

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### CONTACT INFORMATION

Squadron: \_\_\_\_\_  
Commander: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_

Investigating Agency/POC: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_

First Sergeant: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_

VWAP Liaison: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_

SARC: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_

Victim Advocate: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_

SVC: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
e-mail: \_\_\_\_\_

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## CONTACT INFORMATION – COUNSEL/PARALEGALS

Trial Counsel: \_\_\_\_\_  
 Assistant Trial Counsel: \_\_\_\_\_

Area Defense Counsel: \_\_\_\_\_  
 Phone: \_\_\_\_\_

### TAB A. INVESTIGATION

Responsible Individual			Date	Initial
NCOIC/CMJ	1	Receive evidence. Keep a case chronology to preserve facts. Determine whether the Victim is entitled to Special Victim’s Counsel (SVC).		
CMJ/SJA	2	Work with SARC to coordinate SVC request, if applicable. Consult AF Guidance Memorandum to AFI 51-504, dated 24 Jan 13, paragraph 1. 3.13, <i>SVC Charter</i> (consult JAJM Website for most recent version) to determine eligibility for SVC.		
NCOIC/CMJ	3	Open investigation in AMJAMS and immediately submit a SIR (required for sexual assault). See guidance on SIRs in AFI 51-201, para. 13.8. Route draft SIR to SJA/DSJA before submission to JAJM.		
CMJ	4	Request jurisdiction from civilian law enforcement, if appropriate. Prior to requesting jurisdiction, must obtain preference from victim. (Template in 51-201.)		
CMJ	5	View/review entire case file, including all evidence collected by investigating agency and witness statements with investigator(s) as soon as feasible to partner with investigative agency in next steps. (Note: completing this step requires requesting and reviewing files of all participating law enforcement agencies on and off base). Work with the investigative agency to identify witnesses, investigative steps, and to obtain daily updates. Update AMJAMS accordingly.		
NCOIC/CMJ	6	Coordinate administrative hold for subject and witnesses (ongoing).		
CMJ	7	Assign TC, if appropriate. TC begins reviewing evidence.		
CMJ/TC	8	Review all medical/mental health records pertaining to victim and subject, if applicable.		
CMJ	9	<b>Child Victim:</b> Is a forensic interview of child appropriate? Obtain and review report. Is a follow-up interview appropriate? If OSI is the investigating agency, request forensic psychologist opinion prior to concluding this step.		
CMJ	10	<b>Child Victim:</b> If allegation involves a childcare provider on base, contact the Base Housing Office.		
CMJ	11	<b>Child Victim:</b> Coordinate with investigating agency to request all non- law enforcement records, including Family Advocacy Records, and Child Protective Services Records, if any.		
CMJ/TC	12	Coordinate with investigating agency to request all non law-enforcement records, including Family Advocacy Records, if any. Review the records.		
CMJ	13	Contact JAJG for coordination with investigation/preparation. Maj Joseph Kubler (“embedded in DCFL” expert on child pornography/computer related crimes): <a href="mailto:Joseph.Kubler@us.af.mil">Joseph.Kubler@us.af.mil</a> STC Special Victims Unit (SVU), (JAJG):		
CMJ	14	Is a polygraph test advisable? Work with investigative agency to generate pre and post polygraph test questions.		
TC	15	Review all evidence collected, review entire case file with case investigators, work with CMJ to determine all known charges. Prepare proof analysis.		
CMJ/TC	16	Contact subject’s friends/acquaintances to inquire about the allegation/past allegations, if applicable. Consider retrieving subject’s EPRs and contact supervisors listed on the EPRs.		

## **TAB B. CASE DISPOSITION**

Responsible Individual	Date	Initial
TC 17		
TC 18		
CMJ 19		
CMJ 20		
CMJ 21		
CMJ/SJA 22		
CMJ/CP 23		

## **TAB C. CASE CONFIDENTIALITY**

Responsible Individual	Date	Initial
TC/SAPR 24		
TC/SAPR 25		

TC/SAPR	26	Determine the source of the sexual assault allegation has been reported or addressed through a civilian entity as described in <i>Sexual Assault Response Guide - HQ USAFA/JA paragraphs 2.3.6.</i> and its sub paragraphs. Referral must be made to the USAFA SARC so that a determination can be made by confidential Communication with the SARC. Referral date:  SARC _____		
TC/SAPR	27	<b>Minor Victim:</b> If allegation involves an individual under the age of 18 who is not entitled to restricted reporting because of military status it must be immediately reported to the SARC and Law Enforcement. Notification dates:  SARC _____ AFOSI _____		

### **TAB D. VICTIM PROTECTIVE SERVICES**

Responsible Individual		Date	Initial	
CC/CMJ	28	Determine if immediate threats to medical, emotional and mental safety, or physical safety exist. If any of these needs exist referrals must be made immediately with the assistance of the SARC. Referrals made for medical, emotional, and physical safety concerns: SARC (all) _____ Commander (safety) _____ AFOSI (safety) _____ Medical Providers (health) _____ Mental Health/Chaplain (emotional) _____		
CC/CMJ	29	Determine if a military protective order (MPO) is wanted or needed. Military protective orders should be issued on DD Form 2873. DD Form 2873 Issue Date _____ Expiration Date _____		
CC/CMJ	30	If MPO has been denied has reason been documented? Once denied case must be forwarded to Wing Commander for final decision in consultation with JA. Denial reason _____ Date of denial _____ Date forwarded to Wing/CC _____ Final decision by Wing/CC _____ Date _____		
CC/CMJ	31	<b>Granted MPOs:</b> All MPOs should comply with seven criteria when issued. All MPOs should include: Legal Basis _____ Physical limitations _____ Duration _____ Service on accused _____ Notice to victim _____ Notice to civilian authorities _____ Notice to law enforcement to place in the NCIC database _____		
SARC/TC	32	Notice of option to request an expedited transfer in writing to a victim's commander must be made when unrestricted report is filed. Date notice given _____ Date request made _____		

CC/CMJ	33	Notice of receipt of expedited transfer must be recorded upon receipt of the request by the commander. Date and time of receipt and notice		
CC/CMJ	34	Commanders in receipt of a written expedited transfer request must prepare a Commander's Memorandum and provide it to the Superintendent recommending approval or denial of the request. A decision must be made on the request within 72 hours of commander receipt by the Superintendent. Date and time of Commander's Memorandum		
USAFA CC/CMJ	35	USAFA CC must make a decision to grant or deny the request for expedited transfer within 72 hours. Date and time of CC's Decision		
USAFA CC/CMJ	36	Victims that have had an expedited transfer request denied by the USAFA/CC may appeal in writing to the next general officer, who must make a decision on the request within 72 hours of receipt of the appeal. *Verify appellate authority based on updating instruction/policy.* Date and time appeal made _____ Date and time decision made _____		

**TAB E. ACCUSED TRANSFERS/REASSIGNMENTS**

Responsible Individual		Date	Initial	
CC/CMJ	37	Temporary reassignment under this authority cannot be used as a punitive measure; instead, it must be "solely for the purpose of maintaining good order and discipline within the member's unit but may be made only for a number of crimes. Has the Cadet been accused in an unrestricted report with: Art. 120(a), sexual assault ____ Art. 120(b), aggravated sexual contact ____ Art. 120(c), abusive sexual contact ____ Art. 120(d), stalking ____ Art. 120a, rape of a child ____ Art. 120b(a), sexual assault of a child ____ Art. 120b(b), sexual abuse of a child ____ Art. 120b(c), other sexual misconduct ____ Art. 120c, forcible sodomy ____ Art. 125, Sodomy ____ or Art. 80, attempts of these offenses ____.		
CC/CMJ	38	Determine if a MPO can meet the needs of good order and discipline in lieu of reassignment.		
CC/CMJ	39	Does the MPO as drafted preserve separation and allow for attendance of class and other required activities?		
CC/CMJ	40	Determine if a squadron, dorm reassignment, or schedule changes are needed to be effected to make the protective order workable and enforceable.		
CC/CMJ	41	Does either the alleged offender or victim wish to apply for an administrative turnback? Turnbacks can be an effective ways to avoid more restrictive MPOs and reassignments.		
CC/CMJ	42	If the needs of health, safety, or welfare require reassignment beyond what is possible by a Cadet MPO a cadet reassignment to the Administrative Flight (A Flight) may be necessary. Assignment requires a non-punitive purpose. Unique and non-punitive purpose for assignment to A Flight _____		
CC/CMJ	43	Has suspension under 10 U.S.C. § 702(b) and USAFAI 36-3504_GM2015-01 been considered? *Suspension may make case prosecution more difficult.		

## TAB F. VICTIM NOTIFICATIONS AND UPDATES

Responsible Individual		Date	Initial
CC/CMJ	44	Is the victim's unit commander providing, at minimum a monthly update to the victim, on the current status of all investigative, medical, legal, and command proceedings pertaining to the unrestricted case, until final disposition of the sexual assault case? Best practice may be to have monthly update done after each Case Management Group (CMG) meeting as described below. Commander _____ Contact Information _____	
CV/CC/CMJ	45	Has a High Risk Response Team been stood up by the Vice Superintendent with the victim's commander chairing the group?	
CC/CMJ	46	Is the Commander attending a monthly CMG meeting? See AFI 90-6001, ¶ 8.2.2.1. Initial meeting _____ POC for scheduling _____	
CV/CMJ	47	Are issues of reprisal, retaliation, coercion, and discrimination being addressed by the Vice Superintendent at CMG Meetings?	
CV/IG/CMJ	48	Is the Vice Superintendent meeting with the IG monthly to discuss cases of reprisal? _____	
CMJ/OSI	49	Has the CMJ been contacted by OSI within 24 hours of an unrestricted report being made?	
CMJ/OSI	50	Has the CMJ met with OSI within 48 hours of an unrestricted report being made?	
CMJ/TC	51	Has the case been evaluated for the need for Special Victim Investigation and Prosecution Capability (SVIPC)? _____ See. AFI 51-201, ¶ 13.35	
CMJ/TC	51	Is there a plan in place for the legal office to comply with the Victim notification requirements in AFI 51-201, ¶ 13? _____	