

APPENDIX B: DOD SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM OVERVIEW

SEXUAL ASSAULT IN THE MILITARY

Service members risk their lives for each other and are trained to keep fellow Service members out of harm's way. Sexual assault breaks this important bond and tears apart military units. Unfortunately, leading studies indicate that most sexual assaults that occur in America are not reported to law enforcement.^{81,82} In 2012, the Department could account for approximately 11 percent of the estimated number of victims of unwanted sexual contact in its Unrestricted and Restricted Reports of sexual assault.⁸³ Underreporting of this crime poses a serious challenge to military readiness, because the potential consequences and human costs of sexual assault are extremely high. Chronic psychological consequences may include depression, post-traumatic stress, and substance abuse.⁸⁴ Sexual assault is incompatible with military culture, and negatively affects the Department's ability to accomplish critical missions.

SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE HISTORY

In 2004, the Department aggressively changed its approach to SAPR after learning of reports of sexual assault from Service members deployed to Iraq and Kuwait. On February 5, 2004, then-Secretary of Defense Donald Rumsfeld directed the Department to undertake a 90-day review of all sexual assault policies and programs and recommend changes to increase prevention, promote reporting, enhance the quality of support provided to victims, and improve accountability. The DoD Care for Victims of Sexual Assault Task Force was created, and it identified 35 key findings relevant to sexual assault policies and programs within the Military Services. The Task Force proposed nine broad recommendations for immediate, near-term, and long-term corrective action.

The Department established the Joint Task Force for Sexual Assault Prevention and Response (JTF-SAPR) in October 2004 to develop a comprehensive SAPR policy for the Department based on the recommendations of the Care for Victims of Sexual Assault Task Force. The JTF-SAPR authored 13 DTMs that fundamentally changed SAPR policy, including the addition of Restricted Reporting, a confidential reporting option for Service member victims of sexual assault. The DTMs are the foundation of

⁸¹ Estimates show that between 22 to 41.6 percent of the sexual assaults that occur in the U.S. are reported to police. DOJ, *Criminal Victimization, 2007* (2008).

⁸² Rand, M., Rennison, C., & DOJ (2002). *Rape and Sexual Assault: Reporting to Police and Medical Attention, 1992–2000*. Available at: <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=1133>.

⁸³ Every two years, the DoD conducts the *Workplace and Gender Relations Survey of Active Duty Members (WGRA)* as mandated by 10 U.S. Code § 481. The WGRA survey is the primary instrument the DoD uses to assess the prevalence of sexual assault and sexual harassment, and also to measure victim satisfaction. It was last conducted in FY12. Therefore, the prevalence rate cannot be calculated for FY13.

⁸⁴ Department of Health and Human Services Centers for Disease Control and Prevention (2012). *Understanding Sexual Violence Fact Sheet, 2012*. Available at http://www.cdc.gov/violenceprevention/pub/sv_factsheet.html.

the two policy documents that govern the Department's SAPR program today: DoDD 6495.01, "Sexual Assault Prevention and Response Program;" and DoDI 6495.02, "SAPR Program Procedures."^{85,86} DoDD 6495.01 was revised and reissued in FY12 with a requirement that the Military Services align their prevention strategies with DoD SAPR strategy. DoDI 6495.02 was modified in FY08 to close gaps identified by the Department and clarify Military Service responsibilities. Further revisions to DoDI 6495.02 were published in FY10, FY11, FY12, and FY13.

The DoD-wide change in policy was also intended to address events at the Military Service Academies. In 2003, after receiving reports from cadet victims, former Representative Tillie Fowler was appointed to lead a review of the treatment of women at the U.S. Air Force Academy. Based on the findings of the Fowler Commission, the Task Force on Sexual Harassment and Violence at the MSAs was established in 2004. Congress directed this task force to assess and make recommendations concerning how the Departments of the Army and Navy could more effectively address sexual harassment and assault at the U.S. Military Academy (USMA) and the U.S. Naval Academy. Congress later passed legislation requiring the Department to assess the MSAs' SAPR programs annually.

In October 2005, the Department established DoD SAPRO to take over as the single point of responsibility for SAPR policy in the Department. However, medical care, legal processes, and criminal investigations remained the responsibility of the Office of the Assistant Secretary of Defense for Health Affairs, the Offices of the JAGs of the Military Departments, the MCIOs of the Military Departments, and the Office of the DoD IG, respectively. Since the establishment of DoD SAPRO, the Department has developed a prevention strategy, developed and implemented policies intended to increase reporting, improved care and response to victims, implemented program oversight, and expanded knowledge of the SAPR program among Service members and other key stakeholders.

MILITARY DEFINITION OF SEXUAL ASSAULT

In the Department, the term "sexual assault" does not refer to one specific crime; rather, it encompasses a range of sex crimes that represent a broad spectrum of offenses from rape to nonconsensual sodomy to wrongful sexual contact as well as attempts to commit these offenses. Consequently, the definition of sexual assault in the military is broader than the crime of rape. In its current form, DoDD 6495.01 defines sexual assault as follows:

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, nonconsensual

⁸⁵ DoDD 6495.01, "SAPR Program," Incorporating Change 1, April 30, 2013. 32 CFR Part 103 Final Rule (RIN 0790-AI37). Available at <http://www.sapr.mil/index.php/dod-policy/directives-and-instructions>.

⁸⁶ DoDI 6495.02, "SAPR Program Procedures," Incorporating Change 1, February 12, 2014. Available at <http://www.sapr.mil/index.php/dod-policy/directives-and-instructions>.

sodomy (forced oral or anal sex), or attempts to commit these acts. Consent is defined as:

*Words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. There is no consent where the person is sleeping or incapacitated, such as due to age, alcohol or drugs, or mental incapacity.*⁸⁷

Sexual assault is also defined in military law, as contained in the UCMJ. The sexual crimes within SAPR policy are included in Article 120, *Rape and Sexual Assault generally*, and Article 125, *Sodomy*.^{88,89} Article 120 includes the crimes of rape, sexual assault, aggravated sexual contact, and abusive sexual contact. The criminal offense of sodomy is covered under Article 125. Attempts to commit these crimes are under Article 80 and are also included under SAPR policy.

Other misconduct, such as indecent exposure and stalking, is not included in this report because it does not fall within the SAPR program as chartered in 2005. However, the Military Services investigate and adjudicate these and other sex crimes as appropriate. Incidents of sexual harassment are also not in this report because they fall under the purview of the Office of the Secretary of Defense Office of Diversity Management and Equal Opportunity. Lastly, sex crimes against children and spouses are not contained in this report because they fall under the purview of DoD Family Advocacy Program (FAP).

DEPARTMENT'S REPORTING OPTIONS AND PROCEDURES

The Department offers two sexual assault reporting options: Restricted and Unrestricted Reporting. The creation of the Restricted Reporting option in June 2005 was a critical addition to the SAPR program. Restricted Reporting allows Service member victims of sexual assault to confidentially access medical care and advocacy services without initiating an official investigation. DoDD 6495.01 defines Restricted Reporting as:

Reporting option that allows sexual assault victims to confidentially disclose the assault to specified individuals (i.e., SARC, SAPR VA, or healthcare personnel)... and receive medical treatment, including emergency care, counseling, and assignment of a SARC and SAPR VA, without triggering an official investigation. The victim's report provided to healthcare personnel (including the information acquired from a SAFE [Sexual Assault Forensic

⁸⁷ DoDD 6495.01, "SAPR Program," Incorporating Change 1, April 30, 2013. 32 CFR Part 103 Final Rule (RIN 0790-AI37). Available at: <http://www.sapr.mil/index.php/dod-policy/directives-and-instructions>.

⁸⁸ DoD, UCMJ, Article 120, *Rape and Sexual Assault generally*. Excerpt available at <http://www.sapr.mil/index.php/dod-policy/directives-and-instructions>.

⁸⁹ UCMJ, Article 125, *Sodomy*. Excerpt available at <http://www.sapr.mil/index.php/dod-policy/directives-and-instructions>.

Examination] Kit), SARCs, or SAPR VAs will NOT be reported to law enforcement or to the command to initiate the official investigative process unless the victim consents or an established EXCEPTION applies in accordance with [DoDI 6495.01]. The Restricted Reporting Program applies to Service members and their military dependents 18 years of age and older. For additional persons who may be entitled to Restricted Reporting, see eligibility criteria in [DoDI 6495.01]. Only a SARC, SAPR VA, or healthcare personnel may receive a Restricted Report, previously referred to as Confidential Reporting. This term and its definition are proposed for inclusion in the next edition of [the Department of Defense Dictionary of Military and Associated Terms].⁹⁰

Confidential communication is defined as:

*Oral, written, or electronic communications of personally identifiable information concerning a sexual assault victim and the sexual assault incident provided by the victim to the SARC, SAPR VA, or healthcare personnel in a Restricted Report. This confidential communication includes the victim's SAFE Kit and its information. See <http://www.archives.gov/cui>.*⁹¹

Restricted Reporting does more than allow victims to confidentially access medical care. It preserves the possibility of holding offenders appropriately accountable by allowing victims to anonymously receive SAFEs. Following the examination, military law enforcement holds the evidence under an anonymous alphanumeric identifier for 5 years.⁹² Section 1723 of the NDAA for FY14 established a requirement to maintain DD Forms 2910 and 2911 filed in connected with Restricted Reports for 50 years, regardless of whether it is requested by the victim. Victims may convert their Restricted Report to an Unrestricted Report at any time and participate in the military justice process.⁹³ One month before the end of the first year following the sexual assault, the SARC contacts the victim to determine if he or she would like to convert to an Unrestricted Report and participate in the military criminal justice process. If the victim elects to convert the report, an Unrestricted Report is made to criminal investigators. If the victim declines to convert the report, the evidence is retained for 49 more years. Restricted Reporting allows for the preservation of evidence that would be otherwise unavailable.

Although Restricted Reporting does not disclose the identity of the victim or begin the investigative process, commanders receive limited information about the incident, which allows them to address force protection concerns. In this way, the Department is able to honor a victim's privacy while taking steps to keep others safe. The Department is also able to offer victims care and treatment that victims may have not accessed without this

⁹⁰ DoDD 6495.01, "SAPR Program," Incorporating Change 1, April 30, 2013. 32 CFR Part 103 Final Rule (RIN 0790-AI37). Available at: <http://www.sapr.mil/index.php/dod-policy/directives-and-instructions>.

⁹¹ Id.

⁹² Sec. 577 of P.L. 112-239, the NDAA for FY13, increased the time period for holding time evidence from one year. It also mandated that DD Forms 2910 and 2911 be kept for 50 years at the request of the victim.

⁹³ DoDI 6495.02, "SAPR Program Procedures," Incorporating Change 1, February 12, 2014. Available at <http://www.sapr.mil/index.php/dod-policy/directives-and-instructions>.

confidential option. Sexual assault victims who seek medical care or SAFEs in the state of California cannot make a Restricted Report because of the state laws that mandate reporting by healthcare providers.⁹⁴

Although SAPR policy allows for confidential Restricted Reports, it encourages victims to make Unrestricted Reports that allow the Department to investigate and hold subjects appropriately accountable. Victims who initially make a Restricted Report may convert their report to Unrestricted and participate in an official investigation at any time. In addition, if information about a sexual assault comes to a commander's attention or to the attention of law enforcement independent of a victim's report, an investigation will be initiated.

Under Unrestricted Reporting, when a victim reports an incident of sexual assault, the matter is referred for investigation, and victim's rights apply.⁹⁵ As in Restricted Reporting, victims may receive healthcare, counseling, and advocacy services. However, in an Unrestricted Report, details of the incident are provided to command and law enforcement for an official investigation.

DoDD 6495.01 defines Unrestricted Reporting as:

A process that an individual covered by this policy uses to disclose, without requesting confidentiality or Restricted Reporting, that he or she is the victim of a sexual assault. Under these circumstances, the victim's report provided to healthcare personnel, the SARC, a SAPR VA, command authorities, or other persons is reported to law enforcement and may be used to initiate the official investigative process. Additional policy and guidance are provided in [DoDI 6495.01]. This term and its definition are proposed for inclusion in the next edition of [the Department of Defense Dictionary of Military and Associated Terms].⁹⁶

SARCs and SAPR VAs work with victims to help them understand the reporting options described above. To ensure victims make informed choices, the Department developed DD Form 2910, *Victim Reporting Preference Statement*, which explains the benefits and the limitations of each reporting option. The victim completes this form with the assistance of the SARC or SAPR VA.

VICTIM CARE IN THE DEPARTMENT OF DEFENSE

When the Department adopted the SAPR policy in 2005, it used existing best practices from the civilian community as a framework to shape the military's response system. This system comprises professionals from several disciplines who work as a team to provide expert care for victims worldwide 24 hours a day, 7 days a week.

⁹⁴ California's mandatory reporting laws also affect victims in Arizona if the nearest military treatment facility is in California. Refer to each U.S. state and territory mandatory reporting laws for specific information. More information available at <http://www.sapr.mil/index.php/dod-policy/directives-and-instructions>.

⁹⁵ DoDD 1030.1, 4.4, "Victim and Witness Assistance," April 2004.

⁹⁶ DoDD 6495.01, "SAPR Program," Incorporating Change 1, April 30, 2013. 32 CFR Part 103 Final Rule (RIN 0790-AI37). Available at: <http://www.sapr.mil/index.php/dod-policy/directives-and-instructions>.

Victim care begins immediately upon the report of a sexual assault. At the heart of the sexual assault response system are the SARCs and SAPR VAs. Every military installation in the world, both in garrison and deployed, has SARCs and SAPR VAs who provide a timely and personal response to victims of the crime. SARCs and SAPR VAs assist victims by providing them with three fundamental principles of victim care: safety and security, a place to communicate, and the ability to be prepared for the difficult decisions and challenging situations that will likely follow their report.

First, victims need to feel safe. SARCs and SAPR VAs work with victims to identify and address issues related to their physical safety as well as concerns about re-victimization by the subject or others who might retaliate against the victim for making a report. Second, victims may choose to talk about what happened. Although they are not therapists, SARCs and SAPR VAs are trained to be attentive listeners. Their job is not to gather details about the assault but rather to support victims' reactions to and feelings about the incident in a non-judgmental way. Finally, victims need to know their options, their legal rights, and what actions will likely follow their report. SARCs and SAPR VAs explain the available reporting options and how they may affect the victim's future. SARCs and SAPR VAs listen to victims' needs and then connect victims with appropriate resources, including medical care, mental healthcare, legal advice, and spiritual support. They ensure Service members are not left alone to navigate the potentially daunting process of reporting a sexual assault. They also support victims in decision making. Victims who elect to make an Unrestricted Report also remain informed of the progress of their report via information the SARC gathers at monthly multidisciplinary case management meetings. These meetings allow the SARC to coordinate care and remain aware of the case status as the case progresses through investigation and prosecution. As a result of the dedication of SARCs and SAPR VAs, victims have access to information about how their case is proceeding and what will happen next.⁹⁷

SARCs manage an installation or unit's SAPR program, serving as the single point of contact to coordinate victim care and track the services provided to each victim. While the SARC primarily provides management and oversight of victim services, SAPR VAs provide direct assistance to victims. SAPR VAs also help victims navigate the military's response network. SARCs and SAPR VAs are the core of the sexual assault response system, but they receive a great deal of help from other responders, including healthcare and mental healthcare providers, chaplains, commanders, investigators, JAs, and VWAP personnel.

Healthcare providers treat sexual assault victims both physically and psychologically. Physicians, physician assistants, and nurses all contribute to treating injuries, managing the risk of sexually transmitted infections, and sometimes gathering evidence during a SAFE. Psychologists, psychiatrists, social workers, and other mental health professionals assist the victim in recovering and restoring resiliency after a sexual assault.

⁹⁷ The fundamental principles of victim care are commonly used by practitioners in federal victim assistance agencies, such as the Department of State.

Chaplains provide spiritual support to victims of sexual assault. Generally, information communicated to chaplains during spiritual counseling is privileged and, therefore, kept confidential.⁹⁸ Chaplains may be an additional resource for victims of sexual assault in both Restricted and Unrestricted Reports.

Law enforcement, criminal investigators, VWAP personnel, special victims' counsel, and JAs also support victims. While a case is being investigated and prosecuted, as appropriate, under an Unrestricted Report, VWAP personnel and special victims' counsel help victims understand their legal rights, understand and participate in the military criminal justice process, and obtain needed resources. This support helps minimize the risk of secondary victimization and increases the likelihood that victims will stay with the investigative process through its conclusion.⁹⁹ This support also helps the victim through the recovery process.

Commanders are responsible for the readiness of their unit and the health and welfare of their assigned Service members. To this end, they establish standards of behavior, enforce these standards, and hold people accountable for meeting them. Inherent in this responsibility is the authority to address misconduct and offenses and impose discipline in accordance with the military justice system. Preventing and responding to sexual assault should be no different; offenders must be held appropriately accountable.

At the policy level, the Department continues to strengthen internal and external partnerships with organizations that help care for victims.

⁹⁸ The privilege applies to communications made to a clergy as a formal act of religion or a matter of conscience according to the MRE 503.

⁹⁹ For additional information on victim and witness assistance see DoDD 1030.1, "Victim and Witness Assistance," April 2004 and DoDI 1030.2, "Victim and Witness Assistance Procedures," June 2004.