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32 CFR Part 105

Sexual Assault Prevention and Response (SAPR) Program Procedures;
Final Rule

DEPARTMENT OF DEFENSE**Office of the Secretary**

[DOD–2008–OS–0100; 0790–AI36]

32 CFR Part 105**Sexual Assault Prevention and Response (SAPR) Program Procedures****AGENCY:** Department of Defense (DoD).**ACTION:** Interim final rule; amendment.

SUMMARY: This rule contains amendments to an interim final rule published in the **Federal Register** on April 11, 2013, which provided guidance and procedures for the SAPR Program. This included establishing the processes and procedures for the Sexual Assault Forensic Examination (SAFE) Kit; establishing the multidisciplinary Case Management Group (CMG), providing guidance on how to handle sexual assault; and establishing minimum program standards, training requirements, and requirements for the DoD Annual Report on Sexual Assault in the Military. This rule adds amendments from the National Defense Authorization Act (NDAA) for Fiscal Year 2016, which contains a provision that preempts state laws that require disclosure of personally identifiable information (PII) of the adult sexual assault victim or alleged perpetrator to local or state law enforcement. This interim final rule implements this provision with respect to care sought at DoD Installations.

DATES: *Effective Date:* This rule is effective September 27, 2016. Comments must be received by November 28, 2016.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Deputy Chief Management Officer, Directorate of Oversight and Compliance, 4800 Mark Center Drive, Mailbox #24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Summary of the Major Amendments to the Final Rule**

This rule amends the interim final rule published in the **Federal Register** on April 11, 2013 (78 FR 21716–21747) by:

(a) Incorporating Secretary of Defense policy initiatives in furtherance of the Department’s continuous goal to eliminate sexual assault through the focus efforts of leadership to include:

- CMG Chair inquiry into incidents of retaliation involving the victim, witnesses, bystanders (who intervened), SARC, SAPR VA, or responders;
- Specialized training for all supervisors (officer, enlisted, civilian) that explain requirement to protect victim from retaliation, reprisal, ostracism, and maltreatment; what constitutes retaliation, reprisal, ostracism, and maltreatment; list of resources available for victims to report instances of retaliation, reprisal, ostracism, or maltreatment.

(b) Incorporating NDAA FY14 requirements for updated SAPR training standards for Service members, which include specific standards for: Accessions, annual, professional military education and leadership development training, pre- and post-deployment, pre-command, General and Field Officers and SES, military recruiters, civilians who supervise military, and responders (to include legal assistance attorneys) training;

(c) Incorporating NDAA FY15 requirement for training on the new military rule of evidence (MRE) 513 that established the victim advocate privilege in UCMJ cases;

(d) Establishing requirements for a sexual assault victim safety assessment and the execution of a high-risk team to monitor cases where the sexual assault victim’s life and safety may be in jeopardy;

(e) Elevating SAPR oversight to senior leadership through an eight-day incident report in response to Unrestricted Report of sexual assault;

(f) Establishing a special victim capability to provide legal representation to victims of sexual assault;

(g) Incorporating NDAA FY13 requirements to retain or recall to active duty reserve component members who are victims of sexual assault while on active duty;

(h) Requiring the Department of Defense to establish a record on the disposition of any Unrestricted Report of sexual assault;

(i) Incorporating NDAA requirement to post and widely disseminate SAPR information available to report and respond, including hotline and Internet Web sites;

(j) Requiring that commanders conduct a command assessment within 120 days of assumption of command;

(k) Establishing requirement for a general or flag officer review of and concurrence in the separation of a victim of sexual assault making an Unrestricted Report from the Armed Forces;

(l) Providing notification to Armed Forces members completing Standard Form 86 of the Questionnaire for National Security Positions the ability to answer “no” to question 21 if the individual is a victim of sexual assault and consultation occurred strictly in relation to the sexual assault.

(m) Preempting state and local laws requiring disclosure of PII of the service member (or adult military dependent) victim or alleged perpetrator to state or local law enforcement agencies, unless such reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of an individual, as determined by an authorized Department of Defense official.

Interim Final Rule Justification

The Department of Defense is publishing this rule as interim to maintain and enhance the current SAPR program which elucidates the prevention, response, and oversight of sexual assaults involving members of the U.S. Armed Forces and Reserve Component, to include the National Guard.

Until this interim final rule is published, DoD is limited in its ability to properly address issues associated with sexual assault such as minimal leadership involvement, hostile command environment, retaliation, ostracism, and maltreatment.

For example, until this rule is published:

- Sexual assault victims do not have the ability to receive legal assistance from Special Victims Counsel (SVC) and Victims’ Legal Counsel (VLC).

- Victims of sexual assault regardless of their geographic location will not have the option of a restricted report. This reporting option allows victims to confidentially disclose the assault to specified individuals (*i.e.*, Sexual Assault Response Coordinator (SARC), Sexual Assault Prevention and Response Victim Advocate (SAPR VA),

or healthcare personnel), receive medical treatment, including emergency care, counseling, and be assigned a SARC and SAPR VA, without triggering an official investigation.

- State and local laws are not preempted and would require disclosure of PII of the service member (or adult military dependent), a victim or the alleged perpetrator.
- Military members who are sexually assaulted cannot receive the ability to request an Expedited Transfer as a means to getting a ‘fresh start’ to support the victim’s recovery.
- Reserve Component and National Guard members who are victims of sexual assault will not receive the same SAPR advocacy regardless of when the sexual assault incident occurred, similar to the advocate support afforded their active duty counterparts.

Background

The authorities for this rule are based on the following:

(1) Incorporates all applicable congressional mandates from Public Laws 112–239, 113–66, 113–291, 114–92 and all applicable policy guidance from the IG, DoD; GAO; DoD Task Force on Care for Victims of Sexual Assault; and Defense Task Force on Sexual Assault in the Military Service (DTFSAMS);

(2) Establishes the creation, implementation, maintenance, and function of DSAID, an integrated database that will meet congressional reporting requirements, support Service SAPR program management, and inform DoD SAPRO oversight activities;

(3) Increases the scope of applicability of this part by expanding the categories of persons covered by this part to include:

(i) National Guard (NG) and Reserve Component members who are sexually assaulted when performing active service, as defined in 10 U.S.C. 101(d)(3), and inactive duty training. If reporting a sexual assault that occurred prior to or while not performing active service or inactive training, NG and Reserve Component members will be eligible to receive timely access to SAPR advocacy services from a Sexual Assault Response Coordinator (SARC) and a SAPR Victim Advocate (SAPR VA). They also have access to a Special Victim Counsel and are eligible to file a Restricted or Unrestricted Report. Additionally, the Reserve Component members can report at any time and do not have to wait to be performing active service or be in inactive training to file their report.

(ii) 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 the continental United States (OCONUS), and who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner.

(iii) Adult military dependents who may file unrestricted or restricted reports of sexual assault.

(iv) The Family Advocacy Program (FAP), consistent with DoDD 6400.1¹ and DoD Instruction (DoDI) 6400.06,² which covers adult military dependent sexual assault victims who are assaulted by a spouse or intimate partner and military dependent sexual assault victims who are 17 years of age and younger.)

(4) Non-military individuals who are victims of sexual assault who 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 medical treatment facility (MTF) at no cost to them. They are only eligible to file an Unrestricted Report. They will also be offered the limited SAPR services to be defined as the assistance of a SARC and SAPR VA while undergoing emergency care OCONUS. These limited medical and SAPR services shall be provided to:

(i) 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.

(ii) 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 part in accordance with DoDI 3020.41³ as applicable.

(5) Service members who are on active duty but were victims of sexual assault prior to enlistment or commissioning are eligible to receive SAPR services under either reporting

option. The DoD shall provide support to an active duty Service member regardless of when or where the sexual assault took place.

Authority:

The authorities for these changes are provided by the following.

- Public Law 114–92, National Defense Authorization Act for Fiscal Year 2016 which preempts state and local laws requiring disclosure of PII of the service member (or adult military dependent) victim or alleged perpetrator to state or local law enforcement agencies, unless such reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of an individual, as determined by an authorized Department of Defense official.

- Public Law 113–291, Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 which provides

- Access of Special Victims’ Counsel to member of Reserve and National Guard.
- Modification of DoD policy on retention of evidence in a sexual assault case whereby victim’s property returned upon completion of related proceedings.
- Modification of Military Rules of Evidence 513 whereby victim-psychotherapist privilege extended to other mental health providers.
- Analysis and assessment of disposition of most serious offenses identified in Unrestricted Reports on the Annual Report on Sexual Assaults in the Armed Forces.
- Limited use of certain information on sexual assaults in Restricted Reports by military criminal investigative organizations.

- Public Law 112–239, National Defense Authorization Act for Fiscal Year 2013 which
 - Establishes special victim capabilities within DoD to respond to allegations of certain special victim offenses.
 - Enhances training and education for sexual assault prevention and response: commander training and 14-day notice of SAPR program to new Service members.
 - Creates or Authorities Armed Forces Workplace and Gender Relations Surveys.
 - Requires General or Flag officer review of a member of the Armed Forces separation after making an Unrestricted Report of sexual assault.
- Public Law 113–66, National Defense Authorization Act for Fiscal Year 2014 which

¹ Available: <http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf>.

² Available: <http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf>.

³ Available: <http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf>.

- Prohibits retaliation against members of the Armed Forces for reporting a criminal offense.
- Requires temporary administrative reassignment or removal of alleged offender.
- Requires retention of forms in connection with Restricted Reports for 50 years.
- Elevates oversight to senior leadership through an eight-day incident report in response to an Unrestricted Report in which the victim is a member of the Armed Forces.
- Requires discharge or dismissal for certain sex-related offenses and trial of such offenses by general courts-martial.
- Requires notification to members of the Armed Forces the ability to answer “no” to question #21 when completing Standard Form 86 of the Questionnaire for National Security Positions when consultation occurred strictly in relation to the sexual assault.

III. Costs and Benefits

For Fiscal Year 2015, the preliminary estimate of the anticipated costs associated with this rule is approximately \$15 million. Additionally, each Military Services must establish its own SAPR budget for the programmatic costs arising from the implementation of the training, prevention, reporting, response, and oversight requirements established by this rule.

The anticipated benefits associated with this rule include the following.

- (1) Requires medical care and SAPR services be gender responsive, trauma informed, culturally competent and recovery oriented. This includes requirements to assign at least one full-time sexual assault medical forensic examiner to each military treatment facility with an 24-hour emergency department.
- (2) Requires both Unrestricted and Restricted Reports to be retained for 50 years to preserve the historical record of a sexual assault victims case for future claims for support or medical services.
- (3) Allows a commander authority to temporarily reassign or remove subject from current assignment for the purposes of maintaining good order and discipline.
- (4) Protects Military Service members who file Unrestricted or Restricted Reports of sexual assault from reprisal, or threat of reprisal, for filing a report.
- (5) Expands the applicability of SAPR services to military dependents 18 years and older who have been sexually assaulted and giving the option of both reporting options

(6) Supports to an active duty Military Service member regardless of when or where the sexual assault took place.

(7) Mandates training standards for legal assistance attorneys in performance of their role as SVCs/VLCs.

(8) Establishes “victim advocate privilege” through implementation of Executive Order 13593 establishing a new military rule of evidence (MRE) 514 which ensures the communications between a sexual assault victim and victim advocate is protected from disclosure.

(9) Addresses sexual assault victims safety concerns through the administering of a “safety assessment” by trained first responders.

(10) Increases efforts to effect change in the military culture by improving SAPR training standards specifically targeting accessions, annual, professional military education and leadership development, pre and post deployment, pre command, senior leadership (military and civilian), military recruiters, and responders.

Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

It has been determined that this rule does not:

- (a) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; or
- (c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof.

However, it has been determined that this rule does raise novel legal or policy issues arising out of legal mandates, and the principles set forth in these Executive Orders.

Sec. 202, Public Law 104–4, “Unfunded Mandates Reform Act”

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96–354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility

Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule provides guidance and procedures for the DoD SAPR Program only.

Public Law 96–511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

Section 105.15 of this interim final rule contains information collection requirements. These collection requirements have been assigned OMB Control Number 0704–0482, “Defense Sexual Assault Incident Database.” The System of Records Notice for the rule is available at <http://dpcl.d.defense.gov/Privacy/SORNsIndex/DOD-wide-SORN-Article-View/Article/570559/dhra-06-dod> The Privacy Impact Assessment associated with this rule is available at <http://www.dhra.mil/webfiles/docs/Privacy/PIA/DHRA.06.SAPRO.DSAID.7.15.2015.pdf> or <http://www.dhra.mil/Website/headquarters/info/pia.shtml>.

Executive Order 13132, “Federalism”

It has been certified that this rule does have federalism implications, as set forth in Executive Order 13132, because it incorporates the pre-emption language in section 536 of Public Law 114–92, which preempts state and local laws requiring disclosure of personally identifiable information of the service member (or adult military dependent) victim or alleged perpetrator to state or local law enforcement agencies, unless such reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of an individual, as determined by an authorized Department of Defense official. This rule does have substantial direct effects on:

- (a) The States;
- (b) The relationship between the National Government and the States; or
- (c) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 105

Crime, Health, Military personnel, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 105 is amended as follows:

PART 105—SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM PROCEDURES

- 1. The authority citation for part 105 is revised to read as follows:

Authority: Secs. 570, 573, 574, and 578, Pub. L. 112–239, 126 Stat. 1632; secs. 1705, 1709, 1713, 1723, 1743, and 1747, Pub. L. 113–66, 127 Stat. 672; secs. 531, 537, 538,

542, and 543, Pub. L. 113–291, 128 Stat. 3292; and sec. 536, Pub. L. 114–92, 129 Stat. 817.

■ 2. Amend § 105.1 by:

■ a. In paragraph (d):

■ i. Removing “10 U.S.C. 113, 10 U.S.C. chapter 47 (also known and hereafter referred to as the “UCMJ”)” and adding in its place “10 U.S.C.”

■ ii. Removing “Public Laws 106–65, 108–375, 109–163, 109–364, 110–417, 111–84, 111–383, 112–81” and adding in its place “Public Laws 112–239, 113–66, 113–291, and 114–92.”

■ b. Revising paragraphs (e) and (f).

The revisions read as follows:

§ 105.1 Purpose.

* * * * *

(e) Incorporates and cancels DTM 11–063, DTM 11–062, and DTM 14–007.

(f) Implements DoD policy and assigns responsibilities for the SAPR Program on prevention, response, and oversight to sexual assault according to the policies and guidance in:

(1) DoDI 6495.02, “Sexual Assault Prevention and Response Program Procedures,” June 23, 2006 (hereby cancelled);

(2) DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008;

(3) 32 CFR part 103;

(4) Title 10, U.S.C.;

(5) Under Secretary of Defense for Personnel and Readiness, “Task Force Report on Care for Victims of Sexual Assault,” April 2004;

(6) Sections 561, 562, and 563 of Public Law 110–417, “Duncan National Defense Authorization Act for Fiscal Year 2009,” October 14, 2008;

(7) Sections 584, 585, and 586 of Public Law 112–81, “National Defense Authorization Act for Fiscal Year 2012,” December 31, 2011;

(8) Public Law 112–239, “National Defense Authorization Act for Fiscal Year 2013,” January 2, 2013;

(9) Public Law 113–66, “National Defense Authorization Act for Fiscal Year 2014,” December 26, 2013;

(10) Public Law 113–291, “Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015,” December 29, 2014;

(11) Public Law 114–92, “National Defense Authorization Act for Fiscal Year 2016,”

(12) Directive Type Memorandum 11–063, “Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault,” December 16, 2011;

(13) Directive Type Memorandum 11–062, “Document Retention in Cases of Restricted and Unrestricted Reports of Sexual Assault,” December 16, 2011;

(14) Directive Type Memorandum 14–007, “Sexual Assault Incident Response Oversight (SAIRO) Report,” September 30, 2014, hereby cancelled;

(15) DoDI 3020.41, “Operational Contract Support (OCS),” December 20, 2011;

(16) DoD 6400.1–M–1, “DoD Manual for Child Maltreatment and Domestic Abuse Incident Reporting System,” July 2005, as amended;

(17) U.S. Department of Defense, “Manual for Courts-Martial, United States,” current edition amended;

(18) DoDI 1332.14, “Enlisted Administrative Separations,” January 27, 2014, as amended, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/133214p.pdf>;

(19) DoDI 1332.30, “Separation of Regular and Reserve Commissioned Officers,” November 25, 2013, which can be found at http://sapr.mil/public/docs/instructions/DoDI_133230_20131125.pdf;

(20) Title 5, U.S.C.;

(21) DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014;

(22) Public Law 104–191, “Health Insurance Portability and Accountability Act of 1996,” August 21, 1996;

(23) DoDI 5505.18, “Investigation of Adult Sexual Assault in the Department of Defense,” January 25, 2013, as amended, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/550518p.pdf>;

(24) Presidential Memorandum, “Implementing the Prison Rape Elimination Act,” May 17, 2012;

(25) Part 115 of title 28, Code of Federal Regulations, May 17, 2012;

(26) DoD Manual 8910.01, Volume 2, “DoD Information Collections Manual: Procedures for DoD Public Information Collections,” June 30, 2014, which can be found at http://www.dtic.mil/whs/directives/corres/pdf/891001m_vol2.pdf;

(27) DoDI 5545.02, “DoD Policy for Congressional Authorization and Appropriations Reporting Requirements,” December 19, 2008, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/554502p.pdf>;

(28) DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014, which can be found at http://www.dtic.mil/whs/directives/corres/pdf/891001m_vol1.pdf;

(29) DoDI 6495.03, “Defense Sexual Assault Advocate Certification Program (D–SAACP),” September 10, 2015, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/649503p.pdf>;

www.dtic.mil/whs/directives/corres/pdf/649503p.pdf;

(30) U.S. Department of Justice, Office on Violence Against Women, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” current version, which can be found at <https://www.ncjrs.gov/pdffiles1/ovw/206554.pdf>;

(31) DoDI 5505.19, “Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs),” February 3, 2015, can be found at <http://www.dtic.mil/whs/directives/corres/pdf/550519p.pdf>;

(32) DoDI 1030.2, “Victim and Witness Assistance Procedures,” June 4, 2004, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/103002p.pdf>;

(33) DoD Directive 7050.06, “Military Whistleblower Protection,” April 17, 2015, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf>;

(34) Under Secretary of Defense (Personnel and Readiness) Memorandum, “Guidelines for the DoD Safe Helpline,” January 22, 2015;

(35) DoD Directive 1350.2, “Department of Defense Military Equal Opportunity (MEO) Program,” August 18, 1995, as amended, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/135002p.pdf>;

(36) Directive Type Memorandum 14–003, “DoD Implementation of Special Victim Capability (SVC) Prosecution and Legal Support,” February 12, 2014, (as amended), which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/DTM-14-003.pdf>;

(37) Under Secretary of Defense (Personnel and Readiness) Memorandum, “Certification Standards for Department of Defense Sexual Assault Prevention and Response Program Managers,” March 10, 2015;

(38) DoDI 6400.07, “Standards for Victim Assistance Services in the Military Community,” November 25, 2013, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/640007p.pdf>;

(39) DoD 6025.18–R, “DoD Health Information Privacy Regulation,” January 24, 2003, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf>;

(40) Executive Order 13593, “2011 Amendments to the Manual for Courts-Martial, United States,” December 13, 2011, can be found at <http://www.gpo.gov/fdsys/pkg/FR-2011-12-16/pdf/X11-11216.pdf>;

(41) AD 2014–20/AFI 36–2909/SECNAVINST 5370.7D, dated 4 Dec 14,

“Prohibition of Retaliation Against Members of the Armed Forces Reporting a Criminal Offense,” dates vary by Military Service;

(42) DoD Directive 1030.01, “Victim and Witness Assistance,” April 13, 2004, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/103001p.pdf>;

(43) Executive Order 13696 Amendments to the Manual for Courts-Martial, dated June 17, 2015;

(44) Department of Defense 2014–2016 Sexual Assault Prevention Strategy, April 30, 2014, which can be found at http://sapr.mil/public/docs/reports/SecDef_Memo_and_DoD_SAPR_Prevention_Strategy_2014-2016.pdf;

(45) DoD Directive 5136.13, “Defense Health Agency (DHA),” September 30, 2013, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/513613p.pdf>;

(46) U.S. Department of Justice, Office on Violence Against Women, “National Training Standards for Sexual Assault Medical Forensic Examiners,” current version, which can be found at <https://www.ncjrs.gov/pdffiles1/ovw/213827.pdf>;

(47) DoDI 6025.13, “Medical Quality Assurance (MQA) and Clinical Quality Management in the Military Health Care System (MHS),” February 17, 2011, as amended, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/602513p.pdf>;

(48) Under Secretary of Defense for Personnel and Readiness Memorandum, “Legal Assistance for Victims of Crime,” October 17, 2011, which can be found at <http://www.sapr.mil/index.php/law-and-dod-policies/directives-and-instructions>; and

(49) DoD 4165.66–M, “Base Redevelopment and Realignment Manual,” March 1, 2006, which can be found at <http://www.dtic.mil/whs/directives/corres/pdf/416566m.pdf>.

■ 3. Revise § 105.2 to read as follows:

§ 105.2 Applicability.

(a) This part applies to:

(1) Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the IG, DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereafter referred to collectively as the “DoD Components”).

(2) National Guard and Reserve members, who are sexually assaulted when performing active service, as defined in section 101(d)(3) of title 10, U.S.C., and inactive duty training. If reporting a sexual assault that occurred

prior to or while not performing active service or inactive training, NG and Reserve members will be eligible to receive timely access to SAPR advocacy services from a SARC and a SAPR VA, and the appropriate non-medical referrals, if requested, in accordance with section 584(a) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2012, as amended by section 1724 of NDAA for FY 2014 (Public Law 113–66). They also have access to a Special Victims Counsel in accordance with section 1044e of title 10, U.S.C. and are eligible to file a Restricted or Unrestricted Report. Reports of prior-to-military service sexual assault shall be handled in accordance with the procedures for Restricted and Unrestricted Reports outlined in this part, as appropriate based on the type of report made (Restricted or Unrestricted). Reserve Component members can report at any time and do not have to wait to be performing active service or be in inactive training to file their report.

(3) Military dependents 18 years of age and older who are eligible for treatment in the MHS, at installations 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 (See § 105.3). Adult military dependents may file unrestricted or restricted reports of sexual assault.

(4) The following 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 MTF at no cost to them. At this time, they are only eligible to file an Unrestricted Report. They will also be offered the limited SAPR services to be defined as the assistance of a SARC and SAPR VA while undergoing emergency care OCONUS. These limited medical and SAPR services shall be provided to:

(i) 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.

(ii) 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 part in accordance with DoDI 3020.41 as applicable.

(5) Service members who were victims of sexual assault PRIOR to enlistment or commissioning are eligible to receive SAPR services (see § 105.3) under either reporting option. The DoD shall provide support to Service members regardless of when or where the sexual assault took place. The SARC or SAPR VA will assist a victim to complete a DD Form 2910, “Victim Reporting Preference Statement,” and provide advocacy services and the appropriate referrals, if requested, for victimization occurring prior to military service.

(i) Prior-to-military service victimization includes adult sexual assault (including stranger sexual assault and intimate partner sexual assault, if the victim is no longer in the same intimate relationship) and sexual assault that was perpetrated on the Service member while he or she was still a child.

(ii) Reports of prior to military service sexual assault will be handled in accordance with the procedures for Restricted and Unrestricted Reports outlined in this part, as appropriate based on the type of report made (Restricted or Unrestricted).

(b) This part does not apply to victims of sexual assault perpetrated by a spouse or intimate partner (see § 105.3), or military dependents under the age of 18 who are sexually assaulted. The FAP, as described in DoD 6400.1–M–1, provides the full range of services to those individuals. When a sexual assault occurs as a result of domestic abuse or involves child abuse, the installation SARC and the installation FAP staff will direct the victim to FAP.

■ 4. Amend § 105.3 by:

■ a. Removing all alphabetical paragraph designators and arranging the terms in alphabetical order.

■ b. Removing the definition of “DoD Safe Helpline.”

■ c. Adding the definition of “Family Advocacy Program (FAP)” in alphabetical order.

■ d. Revising the definitions of “Healthcare provider” and “Installation.”

■ e. Adding the definitions of “Intimate partner,” “Military OneSource,” and “Open with limited information” in alphabetical order.

■ f. Removing the definition of “Reprisal.”

- g. Revising the definition of “Restricted reporting.”
- h. Adding the definitions of “Safe Helpline,” “Safety assessment,” “Special Victim Investigation and Prosecution Capability,” and “Special Victims’ Counsel (SVC)” in alphabetical order.
- i. Revising the definition of “Victim Witness Assistance Program (VWAP).”
- j. Adding the definition of “Victims’ Legal Counsel (VLC)” in alphabetical order.
- k. Removing the definition of “Working Integrated Product Team (WIPT).”

The revisions and additions read as follows:

§ 105.3 Definitions.

* * * * *

Family Advocacy Program (FAP). A DoD program designated to address child abuse and domestic abuse in military families and child maltreatment in DoD-sanctioned activities in cooperation with civilian social service agencies and military and civilian law enforcement agencies. Prevention, advocacy, and intervention services are provided to individuals who are eligible for treatment in military medical treatment facilities.

* * * * *

Healthcare provider. Those individuals who are employed or assigned as healthcare professionals, or are credentialed to provide healthcare services at a medical treatment facility (MTF), or who provide such care at a deployed location or otherwise in an official capacity. This also includes military personnel, DoD civilian employees, and DoD contractors who provide healthcare at an occupational health clinic for DoD civilian employees or DoD contractor personnel. Healthcare providers may include, but are not limited to:

- (1) Licensed physicians practicing in the military healthcare system (MHS) with clinical privileges in obstetrics and gynecology, emergency medicine, family practice, internal medicine, pediatrics, urology, general medical officer, undersea medical officer, flight surgeon, psychiatrists, or those having clinical privileges to perform pelvic examinations or treat mental health conditions.
- (2) Licensed advanced practice registered nurses practicing in the MHS with clinical privileges in adult health, family health, midwifery, women’s health, mental health, or those having clinical privileges to perform pelvic examinations.
- (3) Licensed physician assistants practicing in the MHS with clinical

privileges in adult, family, women’s health, or those having clinical privileges to perform pelvic examinations.

(4) Licensed registered nurses practicing in the MHS who meet the requirements for performing a SAFE as determined by the local privileging authority. This additional capability shall be noted as a competency, not as a credential or privilege.

(5) A psychologist, social worker or psychotherapist licensed and privileged to provide mental health are or other counseling services in a DoD or DoD-sponsored facility.

* * * * *

Installation. A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the DoD, including any leased facility. It does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the DoD in accordance with 4165.66–M, “Base Redevelopment and Realignment Manual, March 1, 2006.”

* * * * *

Intimate partner. Defined in 32 CFR part 61.

* * * * *

Military OneSource. A DoD-funded program providing comprehensive information on every aspect of military life at no cost to active duty, National Guard, and Reserve members, and their families. Military OneSource has a mandatory reporting requirement.

* * * * *

Open with limited information. Entry in DSAID to be used in the following situations: Victim refused or declined services, victim opt-out of participating in investigative process, third-party reports, local jurisdiction refused to provide victim information, or civilian victim with military subject.

* * * * *

Restricted reporting. Reporting option that allows a service member 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 investigation or reporting the PII of the victim or alleged perpetrator unless an exception applies, as determined by the Department of Defense. For DoD installations located in state jurisdictions with mandatory reporting laws requiring disclosure of PII of a sexual military assault victim (or their adult dependent) or alleged offender, to federal, local or state law

enforcement agencies, such disclosure is not required unless disclosure of PII is necessary to prevent or mitigate a serious and imminent threat as provided for in this part. Additional persons who may be entitled to Restricted Reporting are NG and Reserve members. DoD civilians and contractors, at this time, are only eligible to file an Unrestricted Report. Only a SARC, SAPR VA, or healthcare personnel may receive a Restricted Report, previously referred to as Confidential Reporting.

* * * * *

Safe Helpline. A crisis support service for members of the DoD community affected by sexual assault. The DoD Safe Helpline:

- (1) Is available 24/7 worldwide with “click, call, or text” user options for anonymous and confidential support.
- (2) Can be accessed by logging on to www.safehelpline.org or by calling 1–877–995–5247, and through the Safe Helpline mobile application.
- (3) Is to be utilized as the sole DoD hotline.
- (4) Does not replace local base and installation SARC or SAPR VA contact information.

* * * * *

Safety assessment. A set of guidelines and considerations post-sexual assault that the responsible personnel designated by the Installation Commander can follow to determine if a sexual assault survivor is likely to be in imminent danger of physical or psychological harm as a result of being victimized by or reporting sexual assault(s). The guidelines and considerations consist of a sequence of questions, decisions, referrals, and actions that responders can enact to contribute to the safety of survivors during the first 72 hours of report, and during other events that can increase the lethality risk for survivors (e.g., arrests or command actions against the alleged perpetrators). Types of imminent danger may include non-lethal, lethal, or potentially lethal behaviors; the potential harm caused by the alleged perpetrator, family/friend(s)/acquaintance(s) of the alleged perpetrator, or the survivors themselves). The safety assessment includes questions about multiple environments, to include home and the workplace. Survivors are also assessed for their perception or experience of potential danger from their leadership or peers via reprisal or ostracism. The safety assessment contains a safety plan component that survivors can complete and take with them to help improve

coping, social support, and resource access during their recovery period.

* * * * *

Special Victim Investigation and Prosecution Capability. In accordance with Public Law 112-81, a distinct, recognizable group of appropriately skilled professionals, including MCIO investigators, judge advocates, victim witness assistance personnel, and administrative paralegal support personnel, who work collaboratively to:

(1) Investigate and prosecute allegations of child abuse (involving sexual assault or aggravated assault with grievous bodily harm), domestic violence (involving sexual assault or aggravated assault with grievous bodily harm), and adult sexual assault (not involving domestic offenses).

(2) Provide support for the victims of such offenses.

Special Victims' Counsel (SVC). Attorneys who are assigned to provide legal assistance in accordance with section 1044e of title 10, U.S.C. and Service regulations. The Air Force, Army, NG, and Coast Guard refer to these attorneys as SVC. The Navy and Marine Corps refer to these attorneys as VLC.

* * * * *

Victim Witness Assistance Program (VWAP). Provides guidance in accordance with DoDI 1030.2 for assisting victims and witnesses of crime from initial contact through investigation, prosecution, and confinement. Particular attention is paid to victims of serious and violent crime, including child abuse, domestic violence and sexual misconduct.

Victims' Legal Counsel (VLC). Attorneys who are assigned to provide legal assistance in accordance with section 1044e of title 10, U.S.C. and Service regulations. The Navy and Marine Corps refer to these attorneys as VLC. The Air Force, Army, NG, and Coast Guard refer to these attorneys as SVC.

* * * * *

■ 5. Revise § 105.4 to read as follows:

§ 105.4 Policy.

It is DoD policy, in accordance with 32 CFR part 103, that:

(a) This part and 32 CFR part 103 establish and implement the DoD SAPR program. Unrestricted and Restricted Reporting Options are available to Service members and their adult military dependents in accordance with this part.

(b) The DoD goal is a culture free of sexual assault, through an environment of prevention, education and training, response capability (see § 105.3), victim

support, reporting procedures, and appropriate accountability that enhances the safety and well-being of all persons covered by this part and 32 CFR part 103.

(1) While a sexual assault victim may disclose information to whomever he or she chooses, an official report is made only when a DD Form 2910 is signed and filed with a SARC or SAPR VA, or when a Military Criminal Investigative Organization (MCIO) investigator initiates an investigation.

(2) For Restricted and Unrestricted Reporting purposes, a report can be made to healthcare personnel, but healthcare personnel then immediately contact the SARC or SAPR VA to fill out the DD Form 2910. Chaplains and military attorneys cannot take official reports.

(3) Unless a DD Form 2910 is filed with a SARC, a report to a Chaplain or military attorney may not result in the rendering of SAPR services or investigative action because of the privileges associated with speaking to these individuals. A Chaplain or military attorney should advise the victim to consult with a SARC to understand the full scope of services available or facilitate, with the victim's consent, contact with a SARC.

(c) The SAPR Program shall:

(1) Focus on the victim and on doing what is necessary and appropriate to support victim recovery, and also, if a Service member, to support that Service member to be fully mission capable and engaged.

(2) Require that medical care and SAPR services are gender-responsive, culturally-competent, and recovery-oriented as defined in 32 CFR 103.3.

(3) Not provide policy for legal processes within the responsibility of the Judge Advocates General (JAG) of the Military Departments provided in sections 801-946 of Title 10, United States Code, also known and referred to in this part as the Uniform Code of Military Justice (UCMJ), the Manual for Courts-Martial, or for criminal investigative matters assigned to the IG, DoD.

(d) Command sexual assault awareness and prevention programs and DoD law enforcement (see § 105.3) and criminal justice procedures that enable persons to be held appropriately accountable for their actions shall be supported by all commanders.

(e) Standardized SAPR requirements, terminology, guidelines, protocols, and guidelines for training materials shall focus on awareness, prevention, and response at all levels, as appropriate.

(f) SARC and SAPR VA shall be used as standard terms as defined in and in

accordance with 32 CFR part 103 throughout the Military Departments to facilitate communications and transparency regarding SAPR response capability.

(g) The SARC shall serve as the single point of contact for coordinating care to ensure that sexual assault victims receive appropriate and responsive care. All SARCs shall be authorized to perform VA duties in accordance with service regulations, and will be acting in the performance of those duties.

(h) All SARCs shall have direct and unimpeded contact and access to the installation commander (see § 105.3) and the immediate commander of the Service member victim and alleged Service member offender for the purpose of this part and 32 CFR part 103. The installation commander will have direct contact with the SARC(s) and this responsibility is not further delegable.

(1) If an installation has multiple SARCs on the installation, a Lead SARC shall be designated by the Service.

(2) For SARCs that operate within deployable commands that are not attached to an installation, they shall have access to the senior commander for the deployable command.

(i) A 24 hour, 7 day per week sexual assault response capability for all locations, including deployed areas, shall be established for persons covered in this part. An immediate, trained sexual assault response capability shall be available for each report of sexual assault in all locations, including in deployed locations.

(j) SARCs, SAPR VAs, and other responders (see § 105.3) will assist sexual assault victims regardless of Service affiliation.

(k) Service member and adult military dependent victims of sexual assault shall receive timely access to comprehensive medical and psychological treatment, including emergency care treatment and services, as described in this part and 32 CFR part 103.

(l) Sexual assault victims shall be given priority, and treated as emergency cases. Emergency care (see § 105.3) shall consist of emergency medical care and the offer of a SAFE. The victim shall be advised that even if a SAFE is declined the victim shall be encouraged (but not mandated) to receive medical care, psychological care, and victim advocacy.

(m) DoD prohibits granting a waiver for commissioning or enlistment in the Military Services when the person has a qualifying conviction (see § 105.3) for a crime of sexual assault or is required to be registered as a sex offender.

(n) There will be a safety assessment capability for the purposes of ensuring the victim, and possibly other persons, are not in physical jeopardy. A safety assessment will be available to all Service members, adult military dependents, and civilians who are eligible for SAPR services, even if the victim is not physically located on the installation. The installation commander or the deputy installation commander will identify installation personnel who have been trained and are able to perform a safety assessment of each sexual assault victim, regardless of whether he or she filed a Restricted or Unrestricted Report. Individuals tasked to conduct safety assessments must occupy positions that do not compromise the victim's reporting options. The safety assessment will be conducted as soon as possible, understanding that any delay may impact the safety of the victim.

(1) For Unrestricted Reports, if a victim is assessed to be in a high-risk situation, the assessor will immediately contact the installation commander or his or her deputy, who will immediately stand up a multi-disciplinary High-Risk Response Team in accordance with the guidance in § 105.13. This will be done even if the victim is not physically located on the installation.

(2) For Restricted Reports, if the victim is assessed to be in a high-risk situation, it may qualify as an exception to Restricted Reporting, which is necessary to prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person. The SARC will be immediately notified. The SARC will disclose the otherwise-protected confidential information only after consultation with the staff judge advocate (SJA) of the installation commander, supporting judge advocate, or other legal advisor concerned, who will advise the SARC as to whether an exception to Restricted Reporting applies, and whether disclosure of personally identifiable information (PII) to a military, other Federal, State or local law enforcement agency is necessary to prevent or mitigate an imminent and serious threat to the health and safety of the victim or another person, in accordance with the guidance in § 105.8. If the SJA determines that the victim is not in a high-risk situation or no serious and imminent threat to the health and safety of the victim or another person exists, then the report will remain Restricted. The SARC will ensure a safety assessment is conducted.

(o) Service members who file an Unrestricted Report of sexual assault shall be informed by the SARC or SAPR

VA at the time of making the report, or as soon as practicable, of the option to request an Expedited Transfer, in accordance with the procedures for commanders in § 105.9. A Service member may request:

(1) A temporary or permanent Expedited Transfer from their assigned command or installation; or

(2) A temporary or permanent Expedited Transfer to a different location within their assigned command or installation.

(p) An enlisted Service member or a commissioned officer who made an Unrestricted Report of sexual assault and is recommended for involuntary separation from the Military Services within 1 year of final disposition of his or her sexual assault case may request a general or flag officer (G/FO) review of the circumstances of and grounds for the involuntary separation in accordance with DoDI 1332.14 and DoDI 1332.30.

(1) A Service member requesting this review must submit his or her written request to the first G/FO in the separation authority's chain of command before the separation authority approves the member's final separation action.

(2) Requests submitted after final separation action is complete will not be reviewed by a G/FO, but the separated Service member may apply to the appropriate Service Discharge Review Board or Board of Correction of Military/Naval Records of their respective Service for consideration.

(3) A Service member who submits a timely request will not be separated until the G/FO conducting the review concurs with the circumstances of and the grounds for the involuntary separation.

(q) DoD prohibits granting a waiver for commissioning or enlistment in the Military Services when the person has a qualifying conviction (see § 105.3) for a crime of sexual assault, or a conviction for an attempt of a sexual assault crime, or has ever been required to be registered as a sex offender, in accordance with section 657 of Title 10, United States Code.

(r) A Service member whose conviction of rape, sexual assault, forcible sodomy, or an attempt to commit one of the offenses is final, and who is not punitively discharged in connection with such convictions, will be processed for administrative separation for misconduct in accordance with DoDI 1332.14 and DoDI 1332.30.

(s) Information regarding Restricted Reports should only be released to persons authorized to accept Restricted

Reports or as authorized by law or DoD regulation. Improper disclosure of confidential communications under Restricted Reporting or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ or other adverse personnel or administrative actions.

(t) Information regarding Unrestricted Reports should only be released to personnel with an official need to know, or as authorized by law. Improper disclosure of confidential communications under Unrestricted Reporting or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ or other adverse personnel or administrative actions.

(u) The DoD will retain the DD Forms 2910, "Victim Reporting Preference Statement," and 2911, "DoD Sexual Assault Forensic Examination (SAFE) Report," for 50 years, regardless of whether the Service member filed a Restricted or Unrestricted Report as defined in 32 CFR part 103. PII will be protected in accordance with sections 552a of Title 5, United States Code, also known as the Privacy Act of 1974 and 32 CFR part 310 and Public Law 104-191.

(1) *Document retention and SAFE Kit retention for unrestricted reports.* (i) The SARC will enter the Unrestricted Report DD Form 2910, in DSAID (see 32 CFR 103.3) as an electronic record within 48 hours of the report, where it will be retained for 50 years from the date the victim signed the DD Form 2910. The DD Form 2910 is located at the DoD Forms Management Program Web site at <http://www.dtic.mil/whs/directives/infomgt/forms/index.htm>.

(ii) The DD Form 2911 shall be retained in accordance with DoDI 5505.18. The DD Form 2911 is located at the DoD Forms Management Program Web site at <http://www.dtic.mil/whs/directives/forms/index.htm>.

(iii) If the victim had a SAFE, the SAFE Kit will be retained for 5 years in accordance with DoDI 5505.18 and in accordance with section 586 of the NDAA for FY 2012 (Public Law 112-81) as amended by section 538 of the NDAA for FY 2015 (Public Law 113-291). When the forensic examination is conducted at a civilian facility through a memorandum of understanding (MOU) or a memorandum of agreement (MOA) with the DoD, the requirement for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD

agency responsible for accepting custody of the SAFE.

(iv) Personal property retained as evidence collected in association with a sexual assault investigation will be retained for a period of 5 years. Personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents in accordance with section 586 of the NDAA for FY 2012 (Public Law 112–81), as amended by section 538 of the NDAA for FY 2015 (Public Law 113–291) and DoD regulations.

(2) *Document retention and SAFE Kit retention for restricted reports.* (i) The SARC will retain a copy of the Restricted Report DD Form 2910 for 50 years, consistent with DoD guidance for the storage of PII. The 50-year time frame for the DD Form 2910 will start from the date the victim signs the DD Form 2910. For Restricted Reports, forms will be retained in a manner that protects confidentiality.

(ii) If the victim had a SAFE, the Restricted Report DD Form 2911 will be retained for 50 years, consistent with DoD guidance for the storage of PII. The 50-year time frame for the DD Form 2911 will start from the date the victim signs the DD Form 2910, but if there is no DD Form 2910, the timeframe will start from the date the SAFE Kit is completed. Restricted Report forms will be retained in a manner that protects confidentiality.

(iii) If the victim had a SAFE, the SAFE Kit will be retained for 5 years in a location designated by the Military Service concerned. When the forensic examination is conducted at a civilian facility through an MOU or an MOA with the DoD, the requirement for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD agency responsible for accepting custody of the forensic kit. The 5-year time frame will start from the date the victim signs the DD Form 2910, but if there is no DD Form 2910, the timeframe will start from the date the SAFE Kit is completed.

(iv) Personal property retained as evidence collected in association with a sexual assault investigation will be retained for a period of 5 years. In the event the report is converted to Unrestricted or an independent investigation is conducted, personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action

and administrative proceedings related to such incidents in accordance with section 586 of the NDAA for FY 2012 (Public Law 112–81), as amended by section 538 of the NDAA for FY 2015 (Public Law 113–291), and DoD regulations.

(v) Current or former Service members who made a report of sexual assault may contact their respective Service SAPR headquarters office or Service or NG SARCs for help accessing their DD Forms 2910 and 2911. Requests for release of information relating to sexual assaults will be processed by the organization concerned, in accordance with the procedures specified in the sections 552 and 552a of Title 5, United States Code also known as “The Freedom of Information Act” and “The Privacy Act of 1974” respectively.

(w) Service members who file Unrestricted and Restricted Reports of sexual assault and/or their dependents shall be protected from retaliation, reprisal, ostracism, maltreatment, or threats thereof, for filing a report.

(x) An incident report must be submitted in writing within 8 days after an Unrestricted Report of sexual assault has been made in accordance with section 1743 of the NDAA for FY 2014 (Public Law 113–66). This 8-day incident report will only be provided to personnel with an official need to know.

(y) At the time of reporting, victims must be informed of the availability of legal assistance and the right to consult with a Special Victims’ Counsel or Victims’ Legal Counsel (SVC/VLC) in accordance with section 1044e of Title 10, United States Code.

(z) Consistent with the Presidential Memorandum, “Implementing the Prison Rape Elimination Act,” sexual assaults in DoD confinement facilities involving Service members will be governed by 28 CFR part 115.

■ 6. Revise § 105.5 to read as follows:

§ 105.5 Responsibilities.

(a) *USD(P&R).* The USD(P&R), in accordance with the authority in DoD Directive 5124.02 and 32 CFR part 103, shall:

(1) Oversee the DoD SAPRO (see 32 CFR 103.3) in accordance with 32 CFR part 103.

(2) Direct DoD Component implementation of this part in compliance with 32 CFR part 103.

(3) Direct that Director, SAPRO, be informed of and consulted on any changes in DoD policy or the UCMJ relating to sexual assault.

(4) With the Director, SAPRO, update the Deputy Secretary of Defense on SAPR policies and programs on a semi-annual schedule.

(5) Direct the implementation, use, and maintenance of DSAID.

(6) Oversee DoD SAPRO in developing DoD requirements for SAPR education, training, and awareness for DoD personnel consistent with this part.

(7) Appoint a G/FO or Senior Executive Service (SES) equivalent in the DoD as the Director, SAPRO, in accordance with section 1611(a) of the Ike Skelton NDAA for FY 2011, as amended by section 583 of the NDAA for FY 2012.

(8) In addition to the Director, SAPRO, assign at least one military officer from each of the Military Services and a National Guard member in title 10 status in the grade of O–4 or above to SAPRO for a minimum tour length of at least 18 months. Of the military officers assigned to the SAPRO, at least one officer shall be in the grade of O–6 or above in accordance with Public Law 112–81.

(9) Maintain the Defense Sexual Assault Advocate Certification Program (D–SAACP), the DoD-wide certification program (see § 105.3), with a national accreditor to ensure all sexual assault victims are offered the assistance of a SARC or SAPR VA who has obtained this certification in accordance with DoDI 6495.03.

(10) Maintain the DoD Safe Helpline (see § 105.3) to ensure members of the DoD community are provided with the specialized hotline help they need, anytime, anywhere.

(b) *Director, Department of Defense Human Resource Activity (DoDHRA).* The Director, DoDHRA, under the authority, direction, and control of the USD(P&R), shall provide operational support, budget, and allocate funds and other resources for the DoD SAPRO as outlined in 32 CFR part 103.

(c) *Assistant Secretary of Defense for Health Affairs (ASD(HA)).* The ASD(HA), under the authority, direction, and control of the USD(P&R), shall:

(1) Establish DoD sexual assault healthcare policies, clinical practice guidelines, related procedures, and standards governing the DoD healthcare programs for victims of sexual assault.

(2) Oversee the requirements and procedures in § 105.11.

(3) Establish guidance to:

(i) Give priority to sexual assault patients at MTFs as emergency cases.

(ii) Require standardized, timely, accessible, and comprehensive medical care at MTFs for eligible persons who are sexually assaulted.

(iii) Require that medical care is consistent with established community standards for the healthcare of sexual assault victims and the collection of

forensic evidence from victims, in accordance with the current version of the U.S. Department of Justice, Office on Violence Against Women, Protocol *National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents* (the U.S. Department of Justice SAFE Protocol), instructions for victim and alleged offender exams found in the SAFE Kit, and DD Form 2911.

(A) Minimum standards of healthcare intervention that correspond to clinical standards set in the community shall include those established in the U.S. Department of Justice SAFE Protocol. However, clinical guidance shall not be solely limited to this resource.

(B) Prescribe training and certification requirements for sexual assault medical forensic examiners.

(C) Healthcare providers providing care to sexual assault victims in theaters of operation are required to have access to the current version of the U.S. Department of Justice SAFE Protocol.

(iv) Include deliberate planning to strategically position healthcare providers skilled in SAFE at predetermined echelons of care, for personnel with the responsibility of assigning medical assets.

(4) Establish guidance for medical personnel that requires a SARC or SAPR VA to be called in for every incident of sexual assault for which treatment is sought at the MTFs, regardless of the reporting option.

(5) Establish guidance in drafting MOUs or MOAs with local civilian medical facilities to provide DoD-reimbursable healthcare (to include psychological care) and forensic examinations for Service members and TRICARE eligible sexual assault victims in accordance with § 105.11. As part of the MOU or MOA, a SARC or SAPR VA will be notified for every incident of sexual assault.

(6) Establish guidelines and procedures for the Surgeon Generals of the Military Departments to require that an adequate supply of resources, to include personnel, supplies, and SAFE Kits, is maintained in all locations where SAFEs may be conducted by DoD, including deployed locations. Maintaining an adequate supply of SAFE Kits is a shared responsibility of the ASD(HA) and Secretaries of the Military Departments.

(7) In accordance with § 105.14, establish minimum standards for initial and refresher SAPR training required for all personnel assigned to MTFs and for specialized training for responders and healthcare providers.

(d) *General Counsel of the DoD (GC, DoD)*. The GC, DoD, shall:

(1) Provide legal advice and assistance on proposed policies, DoD issuances, proposed exceptions to policy, and review of all legislative proposals affecting mission and responsibilities of the SAPRO.

(2) Inform the USD(P&R) of any sexual assault related changes to the UCMJ.

(e) *IG DoD*. The IG DoD shall:

(1) Establish guidance and provide oversight for the investigations of sexual assault in the DoD to meet the SAPR policy and training requirements of this part.

(2) Inform the USD(P&R) of any changes relating to sexual assault investigation policy or guidance.

(3) DoD IG shall collaborate with SAPRO in the development of investigative policy in support of sexual assault prevention and response.

(f) *Secretaries of the Military Departments*. The Secretaries of the Military Departments shall:

(1) Establish SAPR policy and procedures to implement this part.

(2) Coordinate all Military Service SAPR policy changes with the USD(P&R).

(3) Establish and publicize policies and procedures regarding the availability of a SARC.

(i) Require that sexual assault victims receive appropriate and responsive care and that the SARC serves as the single point of contact for coordinating care for victims.

(ii) Direct that the SARC or a SAPR VA be immediately called in every incident of sexual assault on a military installation. There will be situations where a sexual assault victim receives medical care and a SAFE outside of a military installation through a MOU or MOA with a local private or public sector entity. In these cases, the MOU or MOA will require that a SARC be notified as part of the MOU or MOA

(iii) When a victim has a temporary change of station or PCS or is deployed, direct that SARCs immediately request victim consent to transfer case management documents. Require the SARC to document the consent to transfer in the DD Form 2910. Upon receipt of victim consent, SARCs shall expeditiously transfer case management documents to ensure continuity of care and SAPR services. All Federal, DoD, and Service privacy regulations must be strictly adhered to. However, when the SARC has a temporary change of station or PCS or is deployed, no victim consent is required to transfer the case to the next SARC. Every effort must be made to inform the victim of the case transfer. If the SARC has already closed the case and terminated victim contact, no other action is needed. See § 105.9

for Expedited Transfer protocols and commander notification procedures.

(iv) Require the assignment of at least one full-time SARC and one full-time SAPR VA to each brigade or equivalent unit in accordance with section 584 of the NDAA for FY 2012. Additional full-time or part-time SARCs and SAPR VAs may be assigned as necessary based on the demographics or needs of the unit in accordance with the NDAA for FY 2012. Only Service members or DoD civilians will serve as SARCs and SAPR VAs in accordance with section 584 of the NDAA for FY 2012.

(v) Sexual assault victims shall be offered the assistance of a SARC and/or SAPR VA who has been credentialed by the D-SAACP. D-SAACP certification requirements are contained in the DD Form 2950, "Department of Defense Sexual Assault Advocate Certification Program Application Packet," and DTM 14-001.

(vi) Issue guidance to ensure that equivalent standards are met for SAPR where SARCs are not installation-based but instead work within operational and/or deployable organizations.

(4) Establish guidance to meet the SAPR training requirements for legal, MCIO, DoD law enforcement, responders and other Service members in § 105.14.

(5) Establish standards and periodic training for healthcare personnel and healthcare providers regarding the Unrestricted and Restricted Reporting options of sexual assault in accordance with § 105.14. Enforce eligibility standards for healthcare providers to perform SAFEs.

(6) Require first responders (see § 105.3) to be identified upon their assignment and trained, and require that their response times be continually monitored by their commanders to ensure timely response to reports of sexual assault. The response for MCIOs is governed by DoDI 5505.19. See § 105.14 for training requirements. Ensure established response time is based on local conditions but reflects that sexual assault victims will be treated as emergency cases.

(7) Upon request, submit a copy of SAPR training programs or SAPR training elements to USD(P&R) through SAPRO for evaluation of consistency and compliance with DoD SAPR training standards in this part and current SAPR core competencies and learning objectives. The Military Departments will correct USD(P&R) identified DoD SAPR policy and training standards discrepancies.

(8) Establish policy that ensures commanders are accountable for implementing and executing the SAPR

program at their installations consistent with this part, 32 CFR part 103, and their Service regulations.

(9) Require the assignment of at least one full-time sexual assault medical forensic examiner to each MTF that has an emergency department that operates 24 hours per day. Additional sexual assault medical forensic examiners may be assigned based on the demographics of the patients who utilize the MTF.

(10) In cases of MTFs that do not have an emergency department that operates 24 hours per day, require that a sexual assault medical forensic examiner be made available to a patient of the facility through an MOU or MOA with local private or public sector entities and consistent with U.S. Department of Justice, Office on Violence Against Women, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents", when a determination is made regarding the patient's need for the services of a sexual assault medical forensic examiner. The MOU or MOA will require that SARCs or SAPR VAs are contacted and that SAFE Kits are collected and preserved in accordance with § 105.12.

(11) Establish guidance to direct that all Unrestricted Reports of violations (to include attempts) of sexual assault and non-consensual sodomy, as defined in title 10, U.S.C., against adults are immediately reported to the MCIO.

(i) A unit commander who receives an Unrestricted Report of an incident of sexual assault shall immediately refer the matter to the appropriate MCIO. A unit commander shall not conduct internal, command-directed investigations on sexual assault allegations (*i.e.*, no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIOs while attempting to assess the credibility of the report.

(ii) Commander(s) of the Service member(s) who is a subject of a sexual assault allegation shall, as soon as possible, provide in writing all disposition data, to include any administrative or judicial action taken, if any, stemming from the sexual assault investigation to the MCIO.

(iii) Once the investigation is completed, MCIOs shall submit case disposition data that satisfies the reporting requirements for DSAID identified in § 105.15 and the annual reporting requirements in § 105.16.

(12) Establish SAPR policy that requires commanders to be responsive to a victim's desire to discuss his or her case with the installation commander tasked by the Military Service with oversight responsibility for the SAPR

program in accordance with 32 CFR part 103.

(13) Establish standards for command assessment of organizational SAPR climate, including periodic follow-up assessments. In accordance with section 572 of the NDAA for FY 2013, these standards will require that commanders conduct such climate assessments within 120 days of assuming command and annually thereafter.

(14) As a shared responsibility with ASD(HA), direct installation commanders to maintain an adequate supply of SAFE Kits in all locations where SAFEs are conducted, including deployed locations. Direct that Military Service SAPR personnel, to include medical personnel, are appropriately trained on protocols for the use of the SAFE Kit and comply with prescribed chain of custody procedures described in their Military Service-specific MCIO procedures.

(15) Establish procedures that require, upon seeking assistance from a SARC, SAPR VA, MCIO, the VWAP, or trial counsel, that each Service member who reports that she or he has been a victim of a sexual assault be informed of and given the opportunity to:

(i) Consult with SVC/VLC, legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct (see § 105.3), to consult with defense counsel.

(A) When the alleged perpetrator is the commander or in the victim's chain of command, such victims shall be informed of the opportunity to go outside the chain of command to report the offense to other commanding officers (CO) or an Inspector General. Victims shall be informed that they can also seek assistance from the DoD Safe Helpline (see § 105.3).

(B) The victim shall be informed that legal services are optional and may be declined, in whole or in part, at any time.

(C) Commanders shall require that information and services concerning the investigation and prosecution be provided to victims in accordance with VWAP procedures in DoDI 1030.2.³

(ii) Have a SARC or SAPR VA present when law enforcement or trial counsel interviews the victim.

(iii) Have a SARC or SAPR VA, counsel for the government, or SVC or VLC present, when defense counsel interviews the victim, in accordance with Article 46 of the UCMJ (section 846 of Title 10 U.S.C.)

(16) Establish procedures to ensure that in the case of a general or special

court-martial the trial counsel causes each qualifying victim to be notified of the opportunity to receive a copy of the record of trial (not to include sealed materials, unless otherwise approved by the presiding military judge or appellate court, classified information, or other portions of the record the release of which would unlawfully violate the privacy interests of any party, and without a requirement to include matters attached to the record under Rule for Courts-Martial (R.C.M.) 1103(b)(3) in the Manual for Courts-Martial, United States. A qualifying victim is an individual named in a specification alleging an offense under Articles 120, 120b, 120c, or 125 of the UCMJ (sections 920, 920b, 920c, or 925 of title 10, U.S.C.), or any attempt to commit such offense in violation of Article 80 of the UCMJ (section 880 of title 10, U.S.C.), if the court-martial resulted in any finding to that specification. If the victim elects to receive a copy of the record of proceedings, it shall be provided without charge and within a timeframe designated by regulations of the Military Department concerned. The victim shall be notified of the opportunity to receive the record of the proceedings in accordance R.C.M. 1103(g)(3)(C) in Manual for Courts-Martial, United States.

(17) Require that a completed DD Form 2701, "Initial Information for Victims and Witnesses of Crime," be distributed to the victim as required by paragraph 6.1 of DoDI 1030.2. (DD Form 2701 may be obtained via the Internet at <http://www.dtic.mil/whs/directives/infomgt/forms/index.htm> and in DoDI 5505.18.)

(18) Establish procedures to protect Service member victims of sexual assault and/or their dependents from retaliation, ostracism, maltreatment and reprisal in accordance with section 1709 of the NDAA for FY 2014, DoDD 7050.06⁴ and Service regulations. Require the SARC or SAPR VA to inform victims of the resources, listed in § 105.8, to report instances of retaliation, reprisal, ostracism, or maltreatment to request a transfer or military protective order (MPO).

(19) Require SARCs and SAPR VAs to advise victims who reported a sexual assault or sought mental health treatment for sexual assault of the opportunity to communicate with a G/FO regarding issues related to their military career that the victim believes are associated with the sexual assault.

³ Available: <http://www.dtic.mil/whs/directives/corres/pdf/103002p.pdf>.

⁴ Available: <http://www.dodig.mil/HOTLINE/Documents/DODInstructions/DCD%20Directive%207050.06.pdf>.

(20) Establish procedures to require commanders to protect the SARC and SAPR VA from retaliation, reprisal, ostracism, or maltreatment related to the execution of their duties and responsibilities.

(21) Establish procedures to require commanders to protect witnesses and bystanders who intervene to prevent sexual assaults or who report sexual assaults, from retaliation, reprisal, ostracism, or maltreatment in accordance with section 1709 of the NDAA for FY 2014.

(22) Require specialized training for all supervisors (officer, enlisted, civilian) down to the most junior supervisor that explains:

(i) That all supervisors in the victim's chain of command, officer and enlisted, are required when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment, to take appropriate measures to protect the victim from retaliation, reprisal, coercion, ostracism, and maltreatment in Unrestricted Reports.

(ii) What constitutes retaliation, reprisal, ostracism, and maltreatment in accordance with Service regulations and Military Whistleblower Protections and procedures for reporting allegations of reprisal in accordance with DoDD 7050.06.

(iii) The resources available for victims (listed in § 105.8) to report instances of retaliation, reprisal, ostracism, maltreatment, or sexual harassment or to request a transfer or MPO.

(iv) That victims who reported a sexual assault or sought mental health treatment for sexual assault, have the opportunity to communicate with the G/FO regarding issues related to their military career that the victim believes are associated with the sexual assault.

(23) Establish Military Service-specific guidance to ensure collateral misconduct is addressed in a manner that is consistent and appropriate to the circumstances, and at a time that encourages continued victim cooperation.

(24) Establish expedited transfer procedures of victims of sexual assault in accordance with §§ 105.4(n) and 105.9.

(25) Appoint a representative to the SAPR IPT in accordance with § 105.7, and provide chairs or co-chairs for working groups, when requested. Appoint a representative to SAPRO oversight teams upon request.

(26) Provide quarterly and annual reports of sexual assault involving Service members to Director, SAPRO, to be consolidated into the annual Secretary of Defense report to Congress

in accordance with 32 CFR part 103 and section 1631(d) of Public Law 111–84. (See § 105.16 for additional information about reporting requirements.)

(27) Support victim participation in semi-annual Survivor Meetings with the Director of SAPRO.

(28) Support victim participation in the Survivor Experience Survey referred to in § 105.16, conducted by the Defense Manpower Data Center (DMDC).

(29) Provide budget program and obligation data, as requested by the DoD SAPRO.

(30) Require that reports of sexual assault be entered into DSAID through MCIO case management systems or by direct data entry by SARCs and legal officers. Establish procedures to regularly review and assure the quality of data entered into DSAID.

(i) Data systems that interface with DSAID shall be modified and maintained to accurately provide information to DSAID.

(ii) Only SARCs who are credentialed (and maintain that credential) through D–SAACP and legal officer appointed by their Military Service shall be permitted access to enter sexual assault reports and case outcome data into DSAID.

(31) Provide Director, SAPRO, a written description of any sexual assault related research projects contemporaneous with commencing the actual research. When requested, provide periodic updates on results and insights. Upon conclusion of such research, a summary of the findings will be provided to DoD SAPRO as soon as practicable.

(32) Establish procedures for supporting the DoD Safe Helpline in accordance with the USD(P&R) Memorandum, “Guidelines for the DoD Safe Helpline”, which provides guidance for the referral database, providing a timely response to victim feedback, and publicizing the DoD Safe Helpline to SARCs, SAPR VAs, Service members, and to persons at military correctional facilities.

(i) Utilize the DoD Safe Helpline as the sole DoD hotline to provide crisis intervention, facilitate victim reporting through connection to the nearest SARC, and other resources as warranted.

(ii) The DoD Safe Helpline does not replace local base and installation SARC or SAPR VA contact information.

(33) Establish procedures to implement SAPR training in accordance with § 105.14, to include explaining the eligibility for SVC or VLC for individuals making Restricted and Unrestricted Reports of sexual assault, and the types of legal assistance

authorized to be provided to the sexual assault victim in accordance with section 1565b and 1004e of Title 10 U.S.C. Explain that the nature of the relationship between a SVC or VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client, in accordance with section 1044e of Title 10 U.S.C. Training should be provided by subject matter experts on the topics outlined in § 105.14.

(34) Require that reports of sexual assaults are provided to the Commanders of the Combatant Commands for their respective area of responsibility on a quarterly basis, or as requested.

(35) For CMGs:

(i) Require the installation commander or the deputy installation commander chair the multi-disciplinary CMG (see § 105.13) on a monthly basis to review individual cases of Unrestricted Reporting of sexual assault, facilitate monthly victim updates, direct system coordination, accountability, and victim access to quality services. This responsibility will not be delegated.

(ii) Require that the installation SARC (in the case of multiple SARCs on an installation, then the Lead SARC) serve as the co-chair of the CMG. This responsibility will not be delegated.

(iii) If the installation is a joint base or if the installation has tenant commands, the commander of the tenant organization and their designated Lead SARC shall be invited to the CMG meetings when a Service member in his or her unit or area of responsibility is the victim of a sexual assault. The commander of the tenant organization shall provide appropriate information to the host commander, to enable the host commander to provide the necessary supporting services.

(iv) The Secretaries of the Military Departments shall issue guidance to ensure that equivalent standards are met for case oversight by CMGs in situations where SARCs are not installation-based but instead work within operational and/or deployable organizations.

(36) Establish document retention procedures for Unrestricted and Restricted Reports of sexual assault in accordance with § 105.4(t).

(37) When drafting MOUs or MOAs with local civilian medical facilities to provide DoD-reimbursable healthcare (to include psychological care) and forensic examinations for Service members and TRICARE eligible sexual assault victims, require commanders to include the following provisions:

(i) Notify the SARC or SAPR VA.

(ii) Local private or public sector providers shall have processes and procedures in place to assess that local community standards meet or exceed those set forth in the U.S. Department of Justice SAFE Protocol as a condition of the MOUs or MOAs.

(38) Comply with collective bargaining obligations, if applicable.

(39) Provide SAPR training and education for civilian employees of the military departments in accordance with Section 585 of Public Law 112–81.

(40) In accordance with Section 572 of Public Law 112–239, establish a record on the disposition of any Unrestricted Report of rape, sexual assault, forcible sodomy, or an attempt to commit these offenses involving a member of the Military Services, whether such disposition is court-martial, nonjudicial punishment, or other administrative action.

(i) The record of the disposition of an Unrestricted Report of sexual assault will, as appropriate, include information regarding:

(A) Documentary information (*i.e.*, MCIO adult sexual assault investigative reports) collected about the incident, other than investigator case notes.

(B) Punishment imposed, if any, including the sentencing by judicial or nonjudicial means, including incarceration, fines, restriction, and extra duty as a result of a military court-martial, federal or local court, and other sentencing, or any other punishment imposed.

(C) Adverse administrative actions, if any, taken against the subject of the investigation.

(D) Any pertinent referrals made for the subject of the investigation, offered as a result of the incident, such as drug and alcohol counseling and other types of counseling or intervention.

(ii) The disposition records will be retained for a period of not less than 20 years.

(A) Documentary information (*i.e.*, MCIO adult sexual assault investigative reports) will be retained in accordance with DoDI 5505.18.

(B) Punishment imposed by nonjudicial or judicial means, adverse administrative actions, any pertinent referrals made for the subject of the investigation, and information from the records that satisfies the reporting requirements established in section 1631 of Public Law 111–383 will be incorporated into DSAID.

(41) In accordance with DoD Directive 1350.2, require that the commander of each military command and other units specified by the Secretary of Defense for purposes of the policy will conduct, within 120 days after the commander

assumes command and at least annually thereafter while retaining command, a climate assessment of the command or unit for purposes of preventing and responding to sexual assaults.

(i) The climate assessment will include an opportunity for members of the Military Services to express their opinions regarding the manner and extent to which their leaders, including commanders, respond to allegations of sexual assault and complaints of sexual harassment and the effectiveness of such response.

(ii) The compliance of commanding officers in conducting organizational climate assessments in accordance with section 572 of Public Law 112–239 as most recently amended by section 1721 of Public Law 113–291 must be verified and tracked.

(42) Establish and publicize policies and procedures for reporting a sexual assault that will clearly explain both reporting options and who can receive Restricted Reports. Mandate the posting and wide dissemination of information about resources available to report and respond to sexual assaults, including the establishment of hotline phone numbers and Internet Web sites available to all members of the Military Services.

(43) Mandate a general education campaign to notify members of the Military Services of the authorities available in accordance with chapter 79 of title 10, U.S.C., for the correction of military records when a member experiences any retaliatory personnel action for making a report of sexual assault or sexual harassment.

(44) Require the SARCs and SAPR VAs to collaborate with designated Special Victims Investigation and Prosecution (SVIP) Capability personnel during all stages of the investigative and military justice process in accordance with DoDI 5505.19, to ensure an integrated capability, to the greatest extent possible, in accordance with DTM 14–003.

(45) Require that, if a complaint of a sex-related offense is made against a Service member and he or she is convicted by court-martial or receives non-judicial punishment or punitive administrative action for that offense, a notation to that effect will be placed in the Service member's personnel service record, regardless of his or her grade.

(i) A notation may NOT be placed in the restricted section of the Service member's personnel service record.

(ii) "Sex-related offenses" include a violation of Articles 120, 120a, 120b, 120c, or 125 of the UCMJ ((sections 920, 920a, 920b, 920c, or 925 of title 10 U.S.C.) or an attempt to commit these

offenses punishable under Article 80 of the UCMJ (section 880 of title 10 U.S.C.).

(iii) The commanding officer of a facility, installation, or unit to which a Service member is permanently assigned or transferred will review the history of sex-related offenses as documented in the Service member's personnel service record. The purpose of this review is for commanders to familiarize themselves with such history of the Service member.

(iv) The notation and review requirement should not limit or prohibit a Service member's capacity to challenge or appeal the placement of a notation, or location of placement of a notation, in his or her personnel service record in accordance with otherwise applicable service procedures.

(46) In accordance with the requirements of section 1743 of Public Law 113–66 require the designated commander to submit a written incident report no later than 8 days after whichever happens first:

(i) An Unrestricted Report of sexual assault has been made to a SARC or SAPR VA through a DD Form 2910; or

(ii) An independent investigation has been initiated by an MCIO.

(47) Require timely access to a SARC or SAPR VA by any member of the Reserve Component in accordance with § 105.2.

(48) Require that the Military Service Academies include in their curricula substantive course work that addresses honor, respect, character development, leadership, and accountability, as they pertain to the issue of preventing sexual assault in the Military Services and providing the appropriate response to sexual assault when it occurs.

(i) In addition to the substantive coursework in academy curricula, training will be provided within 14 days after the initial arrival of a new cadet or midshipman at the Military Service Academies and repeated annually thereafter. Training will be conducted in the manner described in § 105.15, using adult learning methods.

(ii) Such training will include, at a minimum, a brief history of the problem of sexual assault in the Military Services, a definition of sexual assault, information relating to reporting a sexual assault, victims' rights, and dismissal and dishonorable discharge for offenders.

(49) Ensure that the provisions of title 17 of Public Law 113–66 apply to the Military Service Academies as required by section 552 of Public Law 113–291.

(50) Provide notice to a Service member, whenever he or she is required to complete Standard Form (SF) 86,

“Questionnaire for National Security Positions,” in connection with an application, investigation, or reinvestigation for a security clearance, that it is DoD policy to answer “no” to question 21 of SF 86 with respect to consultation with a health care professional if:

(i) The individual is a victim of a sexual assault; and

(ii) The consultation occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault.

(51) Require the installation SARC and the installation FAP staff to coordinate when a sexual assault occurs as a result of domestic abuse, domestic violence, or involves child abuse, to ensure the victim is directed to FAP.

(52) Require commanders to direct SARCs to provide information on incidents of sexual assault for inclusion in the Commander’s Critical Information Requirements (CCIR) report. CCIR reportable incidents are those meeting criteria as determined by the Secretary of Defense.

(53) Establish procedures to implement minimum standards for the qualifications necessary to be selected, trained, and certified for assignment as a SAPR Program Manager in accordance with USD(P&R) Memorandum, “Certification Standards for Department of Defense Sexual Assault Prevention and Response Program Managers.”

(54) Establish a confidential process, utilizing boards for the correction of military records of the Military Departments by which a sexual assault victim during service in the Military may challenge the terms or the characterization of the discharge or separation on the grounds that the terms or characterization were adversely affected by being a sexual assault victim in accordance with section 547 of Public Law 113–291.

(g) *Chief, NGB.* On behalf of and with the approval of the Secretaries of the Army and Air Force, and in coordination with DoD SAPRO and the State Adjutants General, the Chief, NGB, establishes and implements SAPR policy and procedures for eligible NG members, including the requirement for timely access to a SARC or SAPR VA by any NG member as required by section 584(a) of Public Law 112–81, as amended by section 1724 of Public Law 113–66.

(h) *Chairman of the Joint Chiefs of Staff.* The Chairman of the Joint Chiefs of Staff shall monitor implementation of this part and 32 CFR part 103.

(i) *Commanders of the Combatant Commands.* The Commanders of the Combatant Commands, through the

Chairman of the Joint Chiefs of Staff and in coordination with the other Heads of the DoD Components, shall:

(1) Require that a SAPR capability provided by the Executive Agent (see § 105.3) is incorporated into operational planning guidance in accordance with 32 CFR part 103 and this part.

(2) Require the establishment of an MOU, MOA, or equivalent support agreement with the Executive Agent in accordance with 32 CFR part 103 and this part and requires at a minimum:

(i) Coordinated efforts and resources, regardless of the location of the sexual assault, to direct optimal and safe administration of Unrestricted and Restricted Reporting options with appropriate protection, medical care, counseling, and advocacy.

(A) Ensure a 24 hour per day, 7 day per week response capability. Require first responders to respond in a timely manner.

(B) Response times shall be based on local conditions; however, sexual assault victims shall be treated as emergency cases.

(ii) Notice to SARC of every incident of sexual assault on the military installation, so that a SARC or SAPR VA can respond and offer the victim SAPR services. In situations where a sexual assault victim receives medical care and a SAFE outside of a military installation through a MOU or MOA with a local private or public sector entities, as part of the MOU or MOA, the SARC or SAPR VA shall be notified and shall respond.

■ 7. Amend § 105.7 by:

■ a. Revising paragraph (a)(7).

■ b. In paragraph (a)(8), removing “, sections 113 and 4331 of title 10, U.S.C.,” and “of this part.”

■ c. In paragraph (a)(10), removing “fiscal year (FY)” and adding in its place “FY.”

■ d. In paragraph (a)(12), removing “the development” and adding in its place “use.”

■ e. In paragraph (a)(13), removing “Establish, oversee, publicize and maintain” and adding in its place “Maintain, oversee, and publicize.”

■ f. In paragraph (a)(14), removing “Establish” and adding in its place “Maintain.”

■ g. In paragraph (a)(15) introductory text, removing “Army Criminal Investigation Laboratory (USACIL)” and adding in its place “Defense Forensic Science Center (DFSC).”

■ h. In paragraph (a)(15)(i), removing “USACIL” and adding in its place “DFSC.”

■ i. In paragraph (a)(15)(ii), removing “USACIL” and adding in its place “DFSC” everywhere it appears.

■ j. Redesignating paragraph (a)(16) as paragraph (a)(20), and adding paragraphs (a)(16) through (19).

■ k. Adding paragraphs (a)(21) and (22).

■ l. In paragraph (b)(1)(ii):

■ i. Removing “Secretaries” and adding in its place “Secretary.”

■ ii. Removing “Departments of the Army and the Air Force” and adding in its place “Department of the Army.”

■ m. Redesignating paragraph (b)(1)(iii) through (v) as paragraphs (b)(1)(iv) through (vi), and adding a new paragraph (b)(1)(iii).

■ n. In newly redesignated paragraph (b)(1)(vi), removing “Public Law 100–504” and adding in its place “title 5 U.S.C., also known as “The Inspector General Act of 1978.””

■ o. Revising paragraph (b)(2)(ii).

■ p. In paragraph (b)(2)(iv), in the first sentence, removing “WIPTs” and adding in its place “working groups” and, in the second sentence, removing “WIPTs” and adding in its place “Working groups”.

■ q. In paragraph (b)(3)(iii), removing “WIPTs” and adding in its place “working groups” everywhere it appears.

The revisions and additions read as follows:

§ 105.7 Oversight of the SAPR Program.

(a) * * *

(7) Develop oversight metrics to measure compliance and effectiveness of SAPR training, sexual assault awareness, prevention, and response policies and programs. Collect and maintain data in accordance with these metrics, analyze data, and make recommendations regarding SAPR policies and programs to the USD(P&R) and the Secretaries of the Military Departments.

* * * * *

(16) Act as the DoD liaison between the DoD and other federal and State agencies on programs and efforts relating to sexual assault prevention and response.

(17) Oversee development of strategic program guidance and joint planning objectives for resources in support of the sexual assault prevention and response program, and make recommendations on modifications to policy, law, and regulations needed to ensure the continuing availability of such resources.

(18) Quarterly include Military Service Academies as a SAPR IPT standard agenda item, and semi-annually meet with the academy superintendents to facilitate oversight of the implementation of SAPR programs.

(19) Develop and administer standardized and voluntary surveys for

victims of sexual assault on their experiences with SAPR victim assistance, the military health system, the military justice process, and other areas of support. The surveys will be regularly offered to victims and administered in a way that protects victim privacy and does not adversely impact the victim’s legal, career, and health status.

* * * * *

(21) Participate in the DoD Victim Assistance Leadership Council in accordance with DoDI 6400.07.

(22) Maintain the SAPRO awards program recognizing SARCS and/or SAPR VAs or SAPR programs within the Military Departments, and with consent of the Secretary of the Department of Homeland Security, the SARCS and/or SAPR VAs of the Department of Homeland Security.

(b) * * *

(1) * * *

(iii) Director, Air Force Sexual Assault Prevention and Response Program.

* * * * *

(2) * * *

(ii) Serve as the implementation and oversight arm of the DoD SAPR Program. Coordinate policy and review the DoD’s SAPR policies and programs consistent with this part and 32 CFR part 103, as necessary. Monitor the progress of program elements, to include DoD SAPR Strategic Plan tasks, DoD Sexual Assault Prevention Strategy tasks, and NDAA implementation for adult sexual assault related issues.

* * * * *

■ 8. Amend § 105.8 by:

■ a. In paragraph (a) introductory text: ■ i. Redesignating footnote 6 as footnote 5.

■ ii. Adding the words “in accordance with 32 CFR part 103” at the end of the last sentence.

■ b. Revising paragraphs (a)(1), (a)(2) introductory text, (a)(2)(i), (a)(2)(iii) through (v), (a)(3)(ii) and (iii), and (a)(4).

■ c. In paragraph (a)(5)(i), removing “and non-commissioned officer chain of command” and adding in its place “or non-commissioned officer chain of command.”

■ d. In paragraph (a)(5)(ii), removing “or” and adding “, assigned SVC/VLC, legal assistance officer, or chaplain” after “healthcare personnel.”

■ e. Revising paragraphs (a)(6) introductory text, (a)(6)(ii), and (a)(7).

■ f. Adding paragraph (a)(8).

■ g. Revising paragraph (b).

■ h. In paragraph (c) introductory text, removing “complete Unrestricted Reporting” and adding in its place “Unrestricted Reporting”; and removing “pursue accountability” and adding in

its place “pursue offender accountability.”

■ i. In paragraph (c)(1), removing “alleged offender accountable” and adding in its place “alleged offender appropriately accountable.”

■ j. Revising paragraphs (d), (e)(2) introductory text, and (e)(2)(ii) and (iii).

■ l. In paragraph (e)(2)(iv), removing “victim treatment” and adding in its place “victim healthcare.”

■ m. In paragraph (e)(2)(v), removing “a duly authorized trial counsel subpoena” and adding in its place “a duly authorized subpoena.”

■ n. In paragraph (e)(3):

■ i. Removing “DoD Directive 5400.11–R” and adding in its place “DoD Directive 5400.11 and DoD 6025.18–R” and removing footnote 7.

■ ii. Removing “or State statute” and adding in its place “or another Federal or State statute.”

■ o. Revising paragraphs (e)(4) and (5).

■ p. In paragraph (f), removing “offender or the victim” and adding in its place “alleged offender or the victim.”

■ q. Adding paragraph (g).

The revisions and additions read as follows:

§ 105.8 Reporting options and sexual assault reporting procedures.

(a) * * *

(1) *Unrestricted reporting.* This reporting option triggers an investigation, command notification, and allows a person who has been sexually assaulted to access healthcare treatment and the assignment of a SARC and a SAPR VA. When a sexual assault is reported through Unrestricted Reporting, a SARC shall be notified, respond or direct a SAPR VA to respond, and offer the victim healthcare treatment and a SAFE, and inform the victim of available resources. The SARC or SAPR VA will explain the contents of the DD Form 2910 and request that the victim elect a reporting option on the form. If the victim elects the Unrestricted Reporting option, a victim may not change from an Unrestricted to a Restricted Report. If the Unrestricted option is elected, the completed DD Form 2701, which sets out victims’ rights and points of contact, shall be distributed to the victim in Unrestricted Reporting cases by DoD law enforcement agents. If a victim elects this reporting option, a victim may not change from an Unrestricted to a Restricted Report.

(2) *Restricted reporting.* This reporting option does not trigger an investigation. The command is notified that “an alleged sexual assault” occurred, but is not given the victim’s name or other

personally identifying information. Restricted Reporting allows Service members and military dependents who are adult sexual assault victims to confidentially disclose the assault to specified individuals (SARC, SAPR VA, or healthcare personnel) and receive healthcare treatment and the assignment of a SARC and SAPR VA at DoD installations. A sexual assault victim can report directly to a SARC, who will respond or direct a SAPR VA to respond, and offer the victim healthcare treatment and a SAFE, and explain to the victim the resources available through the DD Form 2910, where the reporting option is elected. The Restricted Reporting option is only available to Service members and adult military dependents. Restricted Reporting may not be available in all cases, (See §§ 105.3 and 105.8(a)(6).) If a victim elects this reporting option, a victim may convert a Restricted Report to an Unrestricted Report at any time. The conversion to an Unrestricted Report will be documented with a signature by the victim and the signature of the SARC or SAPR VA in the appropriate block on the DD Form 2910.

(i) Only the SARC, SAPR VA, and healthcare personnel are designated as authorized to accept a Restricted Report. Healthcare personnel, to include psychotherapist and other personnel listed in Military Rules of Evidence (MRE) 513 pursuant to the Manual for Courts-Martial, United States, who received a Restricted Report (meaning that a victim wishes to file a DD Form 2910 or have a SAFE) shall contact a SARC or SAPR VA in accordance with requirements in § 105.11, to assure that a victim is offered SAPR services and so that a DD Form 2910 can be completed and retained.

* * * * *

(iii) In the course of otherwise privileged communications with a chaplain, SVC/VLC, or legal assistance attorney, a victim may indicate that he or she wishes to file a Restricted Report. If this occurs, a chaplain, SVC/VLC, and legal assistance attorney shall, with the victim’s consent, facilitate contact with a SARC or SAPR VA to ensure that a victim is offered SAPR services and so that a DD Form 2910 can be completed. A chaplain, SVC/VLC, or legal assistance attorney cannot accept a Restricted Report.

(iv) A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication between a victim and a SARC and SAPR VA, in a case arising under the UCMJ, if such communication

is made for the purpose of facilitating advice or supportive assistance to the victim in accordance with MRE 514 of the Manual for Courts-Martial, United States.

(v) A sexual assault victim certified under the personnel reliability program (PRP) is eligible for both the Restricted and Unrestricted Reporting options. If electing Restricted Reporting, the victim is required to advise the competent medical authority of any factors that could have an adverse impact on the victim's performance, reliability, or safety while performing PRP duties. If necessary, the competent medical authority will inform the certifying official that the person in question should be suspended or temporarily decertified from PRP status, as appropriate, without revealing that the person is a victim of sexual assault, thus preserving the Restricted Report.

(3) * * *

(ii) The victim's decision not to participate in an investigation or prosecution will not affect access to SARC and SAPR VA services, medical and psychological care, or services from an SVC or VLC. These services shall be made available to all eligible sexual assault victims.

(iii) If a victim approaches a SARC, or SAPR VA, or healthcare provider and begins to make a report, but then changes his or her mind and leaves without signing the DD Form 2910 (the form where the reporting option is selected), the SARC, SAPR VA, or healthcare provider is not under any obligation or duty to inform investigators or commanders about this report and will not produce the report or disclose the communications surrounding the report. If commanders or law enforcement ask about the report, disclosures can only be made in accordance with exceptions to the MRE 514 or MRE 513 privilege, as applicable.

(4) *Disclosure of confidential communications.* In cases where a victim elects Restricted Reporting, the SARC, SAPR VA, and healthcare personnel may not disclose confidential communications or the SAFE and the accompanying Kit to DoD law enforcement or command authorities, either within or outside the DoD, except as provided in this part. In certain situations, information about a sexual assault may come to the commander's or DoD law enforcement official's (to include MCIO's) attention from a source independent of the Restricted Reporting avenues and an independent investigation is initiated. In these cases, a SARC, SAPR VA, and healthcare personnel are prevented from disclosing confidential communications under

Restricted Reporting, unless an exception applies. An independent investigation does not, in itself, convert the Restricted Report to an Unrestricted Report. Thus, a SARC, SAPR VA, or healthcare personnel in receipt of confidential communications are prohibited from disclosure in an independent investigation. Improper disclosure of confidential communications or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ or other adverse personnel or administrative actions.

* * * * *

(6) *Independent investigations.* Independent investigations are not initiated by the victim. If information about a sexual assault comes to a commander's attention from a source other than a victim (victim may have elected Restricted Reporting or where no report has been made by the victim), that commander shall immediately report the matter to an MCIO and an official (independent) investigation may be initiated based on that independently acquired information.

* * * * *

(ii) The timing of filing a Restricted Report is crucial. In order to take advantage of the Restricted Reporting option, the victim must file a Restricted Report by signing a DD Form 2910 before the SARC is informed of an ongoing independent investigation of the sexual assault.

(A) If a SARC is notified of an ongoing independent investigation and the victim has not signed a DD Form 2910 electing Restricted Report, the SARC must inform the victim that the option to file a Restricted Report is no longer available. However, all communications between the victim and the victim advocate will remain privileged except for the application of an exception to Restricted Reporting

(B) If an independent investigation begins after the victim has formally elected Restricted Reporting (by signing the DD Form 2910), the independent investigation has no impact on the victim's Restricted Report and the victim's communications and SAFE Kit remain confidential, to the extent authorized by law and DoD regulations.

(7) *Mandatory reporting laws and cases investigated by civilian law enforcement.* To the extent possible, DoD will honor the Restricted Report; however, sexual assault victims need to be aware that the confidentiality afforded their Restricted Report is not guaranteed due to circumstances surrounding the independent investigation or the SARC, in

consultation with their respective staff judge advocates, determine that disclosure of personally identifiable information of the victim or alleged perpetrator is necessary to prevent or mitigate an imminent threat to health and safety of the victim or another person.

(8) *Preemption of State law to ensure confidentiality of restricted report.* Pursuant to section 1565b(b)(3) of title 10, United States Code, as amended by Section 536 of Public Law 114-92, a member of the armed forces, or a dependent of a member, who is the victim of a sexual assault may elect to confidentially disclose the details of the assault to a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, or healthcare personnel as defined in DoD regulations, receive medical treatment, legal assistance or counseling, without initiating an official investigation of the allegations. Any state or local law or regulation that would require an individual who is a Sexual Assault Response Coordinator, a Sexual Assault Victim Advocate, or individual within the definition of healthcare personnel to disclose the personally identifiable information of the adult victim or alleged perpetrator of the sexual assault to a state or local law enforcement agency shall not apply, except when reporting is necessary to prevent or mitigate a serious and imminent threat to the health and safety of the victim or another person, as determined by an authorized Department of Defense official.

(b) *Initiating medical care and treatment upon receipt of report.* Healthcare personnel will initiate the emergency care and treatment of sexual assault victims, notify the SARC or the SAPR VA in accordance with § 105.11, and make appropriate medical referrals for specialty care, if indicated. Upon receipt of a Restricted Report, only the SARC or the SAPR VA will be notified. There will be no report to DoD law enforcement, a supervisory official, or the victim's chain of command by the healthcare personnel, unless an exception to Restricted Reporting applies or applicable law requires other officials to be notified. Regardless of whether the victim elects Restricted or Unrestricted Reporting, confidentiality of medical information will be maintained in accordance with applicable laws and regulations.

* * * * *

(d) *Reports and commanders—(1) Unrestricted reports to commanders.* The SARC shall provide the installation commander and the immediate commander of the sexual assault victim

(if a civilian victim, then the immediate commander of alleged military offender) with information regarding all Unrestricted Reports within 24 hours of an Unrestricted Report of sexual assault. This notification may be extended by the commander to 48 hours after the Unrestricted Report of the incident when there are extenuating circumstances in deployed environments. SARC and SAPR VA communications with victims are protected under the MRE 514 privilege. For Unrestricted Reports, the 8-day incident report will be filed in accordance with section 1743 of Public Law 113-66.

(2) *Restricted reports to commanders.* For the purposes of public safety and command responsibility, in the event of a Restricted Report, the SARC shall report non-PII concerning sexual assault incidents (without information that could reasonably lead to personal identification of the victim or the alleged assailant (see exception in § 105.8(e)(2)(ii)) only to the installation commander within 24 hours of the report. This notification may be extended by the commander to 48 hours after the Restricted Report of the incident when there are extenuating circumstances in deployed environments. To ensure oversight of victim services for Restricted Report cases, the SARC will also confirm in her or his report that the victim has been offered SAPR advocacy services, an explanation of the notifications in the DD Form 2910; medical and mental healthcare and informed of his or her eligibility for an SVC/VLC. The 8-day incident report is not required for Restricted Reports in accordance with section 1743 of Public Law 113-66. SARC and SAPR VA communications with victims are protected by the Restricted Reporting option and the MRE 514 privilege, U.S. Department of Defense, Manual for Courts-Martial, United States.

(i) Even if the victim chooses not to convert to an Unrestricted Report, or provide PII, the non-PII information provided by the SARC makes the installation commander aware that a sexual assault incident was reported to have occurred. Restricted Reporting gives the installation commander a clearer picture of the reported sexual assaults within the command. The installation commander can then use the information to enhance preventive measures, to enhance the education and training of the command's personnel, and to scrutinize more closely the organization's climate and culture for contributing factors.

(ii) Neither the installation commander nor DoD law enforcement may use the information from a Restricted Report for investigative purposes or in a manner that is likely to discover, disclose, or reveal the identities of the victims unless an exception to Restricted Reporting applies. Improper disclosure of Restricted Reporting information may result in disciplinary action or other adverse personnel or administrative actions.

(e) * * *

(2) The following exceptions to the prohibition against disclosures of Restricted Reporting authorize a disclosure of a Restricted Report only when the SJA consultation described as provided in paragraphs (f) and (g) of this section has occurred and only if one or more of the following conditions apply:

* * * * *

(ii) Disclosure of the personally identifiable information of the military victim or their adult dependent is necessary to prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person. For example, multiple reports involving the same alleged offender (repeat offender) could meet this criterion. See similar safety and security exceptions in MRE 514, U.S. Department of Defense, Manual for Courts-Martial, United States.

(iii) Required for fitness for duty or disability determinations. This disclosure is limited to only the information necessary to process duty or disability determinations for Service members. Disclosure of a Restricted Report under these circumstances does not change the nature of the victim's Restricted Report, nor does it create an obligation for reporting to law enforcement or command for investigation.

* * * * *

(4) The SARC or SAPR VA shall inform the victim when a disclosure in accordance with the exceptions in this section is made. Whenever possible, the victim should be notified in advance of the disclosure.

(5) If a SARC, SAPR VA, or healthcare personnel make an unauthorized disclosure of a confidential communication, that person is subject to disciplinary action. Unauthorized disclosure has no impact on the status of the Restricted Report. All Restricted Reporting information is still confidential and protected, to the extent authorized by law and this part. However, unauthorized or inadvertent disclosures made to a commander or

law enforcement shall result in notification to the MCIO.

* * * * *

(g) Resources for victims to report retaliation, reprisal, ostracism, maltreatment, sexual harassment, or to request an expedited/safety transfer or military protective order (MPO)/civilian protective order (CPO). SARCs and SAPR VAs must inform victims of the resources available to report instances of retaliation, reprisal, ostracism, maltreatment, sexual harassment, or to request a transfer or MPO. If the allegation is criminal in nature and the victim filed an Unrestricted Report, the crime should be immediately reported to an MCIO, even if the crime is not something normally reported to an MCIO (e.g., victim's personal vehicle was defaced). Victims can seek assistance on how to report allegations by requesting assistance from:

- (1) A SARC or SAPR VA or SVC/VLC.
- (2) A SARC on a different installation, which can be facilitated by the Safe Helpline.
- (3) Their immediate commander.
- (4) A commander outside their chain of command.
- (5) Service personnel to invoke their Service-specific reporting procedures regarding such allegations in accordance with AD 2014/AFI 36-2909/SECNAVINST 5370.7D.
- (6) Service Military Equal Opportunity (MEO) representative to file a complaint of sexual harassment.
- (7) A G/FO if the retaliation, reprisal, ostracism, or maltreatment involves the administrative separation of victims within 1 year of the final disposition of their sexual assault case. A victim may request that the G/FO review the separation in accordance with DoDI 1332.14 (enlisted personnel) or DoDI 1332.30 (commissioned officers).
- (8) A G/FO if the victim believes that there has been an impact on their military career because they reported a sexual assault or sought mental health treatment for sexual assault that the victim believes is associated with the sexual assault. The victim may discuss the impact with the G/FO.
- (9) An SVC or VLC, trial counsel and VWAP, or a legal assistance attorney to facilitate reporting with a SARC or SAPR VA.
- (10) Service personnel to file a complaint of wrongs in accordance with Article 138 of the UCMJ (section 938 of title 10 U.S.C.)
- (11) IG DoD, invoking whistle-blower protections in accordance with DoDD 7050.06.
- (12) Commander or SARC to request an Expedited Transfer.

(13) Commander or SARC to request a safety transfer or an MPO and/or CPO, if the victim is in fear for her or his safety.

(14) The MCIO, if the allegation is of an act that is criminal in nature and the victim filed an Unrestricted Report. The allegation should immediately be reported to an MCIO.

■ 9. Revise § 105.9 to read as follows:

§ 105.9 Commander and management SAPR procedures.

(a) *SAPR management.* Commanders, supervisors, and managers at all levels are responsible for the effective implementation of the SAPR program and policy. Military and DoD civilian officials at each management level shall advocate a strong SAPR program, and provide education and training that shall enable them to prevent and appropriately respond to incidents of sexual assault.

(b) *Installation commander SAPR response procedures.* Each installation commander shall:

(1) Develop guidelines to establish a 24 hour, 7 day per week sexual assault response capability for their locations, including deployed areas. For SARCs that operate within deployable commands that are not attached to an installation, senior commanders of the deployable commands shall ensure that equivalent SAPR standards are met. All SARCs will have direct and unimpeded contact and access to the installation commander (see § 105.3), and the immediate commander of both the Service member victim and alleged Service member offender. The installation commander will have direct contact with the SARC; this responsibility will not be delegated.

(2) Require all supervisors, officer and enlisted, down to the most junior supervisor, to receive specialized training that explains:

(i) That all personnel in the victim's chain of command, officer and enlisted, are required when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment to take appropriate measures to protect the victim.

(ii) What constitutes retaliation, reprisal, ostracism, and maltreatment in accordance with AD 2014–20/AFI–36–2909/SECNAVINST 53.7D, and Military Whistleblower Protections and procedures for reporting allegations of reprisal in accordance with DoDD 7050.06.

(iii) The resources available for victims (listed in § 105.8) to report instances of retaliation, reprisal, ostracism, maltreatment, or sexual

harassment or to request a transfer or MPO.

(iv) That victims who reported a sexual assault or sought mental health treatment for sexual assault have the opportunity to discuss issues related to their military career with the G/FO that the victim believes are associated with the sexual assault.

(3) Ensure that a safety assessment will be available to all Service members, adult military dependents, and civilians who are eligible for SAPR services, even if the victim is not physically located on the installation.

(i) Identify installation personnel who have been trained and are able to perform a safety assessment of each sexual assault victim, regardless of whether he or she filed a Restricted or Unrestricted Report. Individuals tasked to conduct safety assessments must occupy positions that do not compromise the victim's reporting options.

(ii) The safety assessment will be conducted as soon as possible.

(c) *Commander SAPR response procedures.* Each commander shall:

(1) Respond appropriately to incidents of sexual assault. Use the "Commander's 30-Day Checklist for Unrestricted Reports" to facilitate the response to the victim and an alleged offender, and an appropriate response for a sexual assault within a unit. The "Commander's 30-Day Checklist for Unrestricted Reports" is located in the SAPR Policy Toolkit, on www.sapr.mil. This 30-Day checklist maybe expanded by the Military Services to meet Service-specific requirements and procedures.

(2) Meet with the SARC within 30 days of taking command for one-on-one SAPR training. The training shall include a trends brief for unit and area of responsibility, the confidentiality and "official need to know" requirements for both Unrestricted and Restricted Reporting, the requirements of 8-day incident report in accordance with section 1743 of Public Law 113–66. The Sexual Assault Incident Response Oversight Report template is located in the SAPR Policy Toolkit, on www.sapr.mil. The commander must contact the judge advocate for training on the MRE 514 privilege.

(3) Require the SARC to:

(i) Be notified of every incident of sexual assault involving Service members or persons covered in this part, in or outside of the military installation when reported to DoD personnel. When notified, the SARC or SAPR VA shall respond to offer the victim SAPR services. All SARCs shall be authorized to perform VA duties in accordance with service regulations,

and will be acting in the performance of those duties.

(A) In Restricted Reports, the SARC shall be notified by the healthcare personnel in accordance with § 105.11 or the SAPR VA.

(B) In Unrestricted Reports, the SARC shall be notified by the DoD responders or healthcare personnel.

(ii) Provide the victim's installation commander and immediate commander the information regarding an Unrestricted Report within 24 hours of an Unrestricted Report of sexual assault.

(iii) If the victim is a civilian and the alleged offender is a Service member, the immediate commander of that Service member shall be provided relevant information, to include any SAPR services made available to the civilian. The MCIO provides the commander of the alleged offender with information, to the extent available, regarding the victim, and SAPR services offered, if any, to file the 8-day incident report in accordance with section 1743 of Public Law 113–66.

(iv) Provide the installation commander with non-PII, as defined in § 105.3, within 24 hours of a Restricted Report of sexual assault. This notification may be extended to 48 hours after the report of the incident if there are extenuating circumstances in the deployed environment. Command and installation demographics shall be taken into account when determining the information to be provided. To ensure oversight of victim services for Restricted Report cases, the SARC will confirm in his or her report that the victim has been offered SAPR advocacy services; received explanation of the notifications in the DD Form 2910; offered medical and mental health care; and informed of eligibility for a Special Victim's Counsel or Victim's Legal Counsel. An 8-day incident report is not required for Restricted Reports in accordance with section 1743 of Public Law 113–66.

(v) Be supervised and evaluated by the installation commander or deputy installation commander in the performance of SAPR procedures in accordance with § 105.10.

(vi) Receive SARC training to follow procedures in accordance with § 105.10. Upon implementation of the D–SAACP, standardized criteria for the selection and training of SARCs and SAPR VAs shall include the application criteria in DD Form 2950 and comply with specific Military Service guidelines and certification requirements.

(vii) Follow established procedures to store the DD Form 2910 pursuant to Military Service regulations regarding the storage of documents with PII.

Follow established procedures to store the original DD Form 2910 and ensure that all Federal and Service privacy regulations are adhered to.

(4) Evaluate healthcare personnel pursuant to Military Service regulation in the performance of SAPR procedures as described in § 105.11.

(5) Require adequate supplies of SAFE Kits be maintained by the active component. The supplies shall be routinely evaluated to guarantee adequate numbers to meet the need of sexual assault victims.

(6) Require DoD law enforcement and healthcare personnel to comply with prescribed chain of custody procedures described in their Military Service-specific MCIO procedures. Modified procedures applicable in cases of Restricted Reports of sexual assault are explained in § 105.12.

(7) Require that a CMG is conducted on a monthly basis in accordance with § 105.13.

(i) Chair or attend the CMG, in accordance with the requirements of § 105.13. Direct the required CMG members to attend.

(ii) Commanders shall provide victims of a sexual assault who filed an Unrestricted Reports monthly updates regarding the current status of any ongoing investigative, medical, legal, status of an Expedited Transfer request or any other request made by the victim, or command proceedings regarding the sexual assault until the final disposition (see § 105.3) of the reported assault, and to the extent permitted pursuant to DoDI 1030.2, Public Law 104–191,⁶ and section 552a of title 5, U.S.C. This is a non-delegable commander duty. This update must occur within 72 hours of the last CMG. Commanders of NG victims who were sexually assaulted when the victim was on title 10 orders and filed Unrestricted Reports are required to update, to the extent allowed by law and regulations, the victim's home State title 32 commander as to all or any ongoing investigative, medical, and legal proceedings and of any actions being taken by the active component against subjects who remain on title 10 orders.

(8) Ensure that resolution of Unrestricted Report sexual assault cases shall be expedited.

(i) A unit commander who receives an Unrestricted Report of a sexual assault shall immediately refer the matter to the appropriate MCIO, to include any offense identified by the UCMJ. A unit commander shall not conduct internal command directed investigations on

sexual assault (*i.e.*, no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIOs while attempting to assess the credibility of the report.

(ii) The final disposition of a sexual assault shall immediately be reported by the accused's commander to the assigned MCIO. Dispositions on cases referred by MCIOs to other DoD law enforcement agencies shall be immediately reported to the MCIOs upon their final disposition. When requested by MCIOs, commanders shall provide final disposition of sexual assault cases. Service legal officers are responsible for entering and approving the final case disposition input into DSAID and notifying the SARC of the disposition results.

(9) Appoint a point of contact to serve as a formal liaison between the installation SARC and the installation FAP staff (or civilian domestic resource if FAP is not available for a Reserve Component victim) to direct coordination when a sexual assault occurs within a domestic relationship or involves child abuse.

(10) Ensure appropriate training of all military responders be directed and documented in accordance with training standards in § 105.14. Direct and document appropriate training of all military responders who attend the CMG.

(11) Identify and maintain a liaison with civilian sexual assault victim resources. Where necessary, it is strongly recommended that an MOU or MOAs with the appropriate local authorities and civilian service organizations be established to maximize cooperation, reciprocal reporting of sexual assault information, and consultation regarding jurisdiction for the prosecution of Service members involved in sexual assault, as appropriate.

(12) In accordance with section 1565b(a)(2) of title 10 U.S.C., a Service member or a dependent who is the victim of sexual assault shall be informed of the availability of legal assistance and the services of a SARC and SAPR VA as soon as the member or dependent seeks assistance from a SARC, a SAPR VA, an MCIO, a victim or witness liaison, or a trial counsel. The member or dependent shall also be informed that the legal assistance and the services of a SARC or a SAPR VA are optional and may be declined, in whole or in part, at any time.

(13) Direct that DoD law enforcement not affiliated with an MCIO, when applicable, and VWAP personnel provide victims of sexual assault who elect an Unrestricted Report the

information outlined in DoDD 1030.01⁷ and Public Law 100–504⁸ throughout the investigative and legal process. The completed DD Form 2701 shall be distributed to the victim in Unrestricted Reporting cases by DoD MCIO in accordance with DoDI 5505.18.

(14) Require that investigation descriptions found in § 105.17 be used to report case dispositions.

(15) Establish procedures to protect Service member victims and/or their dependents, SARCs, SAPR VAs, witnesses, healthcare providers, bystanders, and others associated with a report of sexual assault allegation from retaliation, reprisal, ostracism, and maltreatment.

(i) Protect victims of sexual assault from retaliation, ostracism, maltreatment, and reprisal in accordance with DoDD 7050.06 and AD 2014–20/AFI 36–2909/SECNAVINST 5370.7D. Require the SARC or SAPR VA to inform victims of the resources, listed in § 105.8, to report instances of retaliation, reprisal, ostracism, maltreatment, or sexual harassment or to request a transfer or MPO and/or CPO or to consult with an SVC/VLC.

(ii) Require SARCs and SAPR VAs to advise victims who reported a sexual assault or sought mental health treatment for sexual assault that they have the opportunity to discuss issues related to their military career with a G/FO that the victim believes are associated with the sexual assault.

(16) Require that sexual assault reports be entered into DSAID through interface with a MCIO case management systems, or by direct data entry by authorized personnel.

(17) Designate an official, usually the SARC, to generate an alpha-numeric Restricted Reporting case number (RRCN).

(18) Appoint a healthcare provider, as an official duty, in each MTF to be the resident point of contact concerning SAPR policy and sexual assault care.

(19) Submit an 8-day incident report in writing after an Unrestricted Report of sexual assault has been made in accordance with section 1743 of Public Law 113–66. The 8-day incident report will only be provided to personnel with an official need to know.

(d) *MOUs or MOAs with local civilian authorities.* The purpose of MOUs and MOAs is to:

(1) Enhance communications and the sharing of information regarding sexual assault prosecutions, as well as of the sexual assault care and forensic

⁶ Available: <http://www.gpo.gov/fdsys/pkg/PLAW-104publ191/pdf/PLAW-104publ191.pdf>.

⁷ Available: <http://www.dtic.mil/whs/directives/corres/pdf/103001p.pdf>.

⁸ Available: <http://ntl.bts.gov/DOCS/iga.html>.

examinations that involve Service members and eligible TRICARE beneficiaries covered by this part.

(2) Collaborate with local community crisis counseling centers, as necessary, to augment or enhance their sexual assault programs.

(3) Provide liaison with private or public sector sexual assault councils, as appropriate.

(4) Provide information about medical and counseling services related to care for victims of sexual assault in the civilian community, when not otherwise available at the MTFs, in order that military victims may be offered the appropriate healthcare and civilian resources, where available and where covered by military healthcare benefits.

(5) Where appropriate or required by MOU or MOA, facilitate training for civilian service providers about SAPR policy and the roles and responsibilities of the SARC and SAPR VA.

(e) *Line of duty (LOD) procedures.* (1) Members of the Reserve Components, whether they file a Restricted or Unrestricted Report, shall have access to medical treatment and counseling for injuries and illness incurred from a sexual assault inflicted upon a Service member when performing active service, as defined in section 101(d)(3) of title 10, U.S.C., and inactive duty training.

(2) Medical entitlements remain dependent on a LOD determination as to whether or not the sexual assault incident occurred in an active service or inactive duty training status. However, regardless of their duty status at the time that the sexual assault incident occurred, or at the time that they are seeking SAPR services (see § 105.3), Reserve Component members can elect either the Restricted or Unrestricted Reporting option (see 32 CFR 103.3) and

have access to the SAPR services of a SARC and a SAPR VA.

(3) Any alleged collateral misconduct by a Service member victim associated with the sexual assault incident will be excluded from consideration as intentional misconduct or gross negligence under the analysis required by section 1074a(c) of title 10 U.S.C. in LOD findings for healthcare to ensure sexual assault victims are able to access medical treatment and mental health services.

(4) The following LOD procedures shall be followed by Reserve Component commanders.

(i) To safeguard the confidentiality of Restricted Reports, LOD determinations may be made without the victim being identified to DoD law enforcement or command, solely for the purpose of enabling the victim to access medical care and psychological counseling, and without identifying injuries from sexual assault as the cause.

(ii) For LOD determinations for sexual assault victims, the commander of the Reserve command in each component and the directors of the Army and Air NG shall designate individuals within their respective organizations to process LODs for victims of sexual assault when performing active service, as defined in section 101(d)(3) of title 10, U.S.C., and inactive duty training.

(A) Designated individuals shall possess the maturity and experience to assist in a sensitive situation, will have SAPR training, so they can appropriately interact with sexual assault victims, and if dealing with a Restricted Report, to safeguard confidential communications and preserve a Restricted Report (e.g. SARCs and healthcare personnel). These individuals are specifically authorized to receive confidential communications

as defined by § 105.3 for the purpose of determining LOD status.

(B) The appropriate SARC will brief the designated individuals on Restricted Reporting policies, exceptions to Restricted Reporting, and the limitations of disclosure of confidential communications as specified in § 105.8(e). The SARC and these individuals, or the healthcare provider may consult with their servicing legal office, in the same manner as other recipients of privileged information for assistance, exercising due care to protect confidential communications in Restricted Reports by disclosing only non-identifying information. Unauthorized disclosure may result in disciplinary action.

(iii) For LOD purposes, the victim's SARC may provide documentation that substantiates the victim's duty status as well as the filing of the Restricted Report to the designated official.

(iv) If medical or mental healthcare is required beyond initial treatment and follow-up, a licensed medical or mental health provider must recommend a continued treatment plan.

(v) Reserve Component members who are victims of sexual assault may be retained or returned to active duty in accordance with Table 1 of this section and section 12323 of title 10 U.S.C.

(A) A request described in Table 1 of this section submitted by a Reserve Component member must be answered with a decision within 30 days from the date of the request, in accordance with Public Law 112-239.

(B) If the request is denied, the Reserve Component member may appeal to the first G/FO in his or her chain of command. A decision must be made on that appeal within 15 days from the date of the appeal, in accordance with Public Law 112-239.

TABLE 1—RETENTION OR RETURN TO ACTIVE DUTY OF RESERVE COMPONENT MEMBERS FOR LOD DETERMINATIONS TO ENSURE CONTINUITY OF CARE

If a member of the Reserve Component . . .		Then . . .
Is expected to be released from active duty before the determination is made regarding whether he or she was assaulted while in the LOD in accordance with section 12323 of title 10, U.S.C.	And the sexual assault was committed while he or she was on active duty.	The Secretary concerned, upon the member's request, may order him or her to be retained on active duty until the LOD determination.
Is not on active duty and the LOD determination is not completed.	The Secretary concerned, upon the member's request, may order him or her to be recalled to active duty for such time as necessary for completion of the LOD determination. A member eligible for this retention or recall shall be informed as soon as practicable after the alleged assault of the option to request continuation on active duty for the LOD.

(f) *Expedited victim transfer requests.*

(1) Any threat to life or safety of a Service member shall be immediately reported to command and DoD law enforcement authorities (see § 105.3) and a request to transfer the victim under these circumstances will be handled in accordance with established Service regulations.

(i) Safety issues are not handled through an Expedited Transfer. They are handled through a fast safety move following applicable DoD and Service-specific procedures. (An Expedited Transfer may take longer than a safety move.)

(ii) The intent behind the Expedited Transfer policy in this section is to address situations where a victim feels safe, but uncomfortable. An example of where a victim feels uncomfortable is where a victim may be experiencing ostracism and retaliation. The intent behind the Expedited Transfer policy is to assist in the victim's recovery by moving the victim to a new location, where no one knows of the sexual assault.

(2) Service members who file an Unrestricted Report of sexual assault shall be informed by the SARC, SAPR VA, or the Service member's CO, or civilian supervisor equivalent (if applicable) at the time of making the report, or as soon as practicable, of the option to request a temporary or permanent expedited transfer from their assigned command or installation, or to a different location within their assigned command or installation in accordance with section 673 of title 10, U.S.C. The Service members shall initiate the transfer request and submit the request to their COs. The CO shall document the date and time the request is received.

(i) A presumption shall be established in favor of transferring a Service member (who initiated the transfer request) following a credible report (see § 105.3) of sexual assault. The CO, or the appropriate approving authority, shall make a credible report determination at the time the expedited request is made after considering the advice of the supporting judge advocate, or other legal advisor concerned, and the available evidence based on an MCIO's investigation's information (if available). If the Expedited Transfer is disapproved because there was no credible report, the grounds on which it was disapproved must be documented. A commander can always transfer a victim on other grounds, *e.g.*, on humanitarian grounds, through a process outside of the Expedited Transfer process.

(ii) Expedited transfers of Service members who report that they are

victims of sexual assault shall be limited to sexual assault offenses reported in the form of an Unrestricted Report.

(A) Sexual assault against adults is defined in 32 CFR 103.3 and includes rape and sexual assault in violation of Article 120, of the UCMJ (section 920 of title 10 U.S.C.) and forcible sodomy in violation of Article 125, of the UCMJ (section 925 of title 10 U.S.C.). This part does not address victims covered under the FAP.

(B) If the Service member files a Restricted Report in accordance with 32 CFR part 103 and requests an expedited transfer, the Service member must affirmatively change his or her reporting option to Unrestricted Reporting on the DD Form 2910, in order to be eligible for an expedited transfer.

(iii) When the alleged perpetrator is the commander or otherwise in the victim's chain of command, the SARC shall inform such victims of the opportunity to go outside the chain of command to report the offense to MCIOs, other COs or an Inspector General. Victims shall be informed that they can also seek assistance from a legal assistance attorney, the DoD Safe Helpline, or an SVC/VLC. The relationship between an SVC/VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client, in accordance with section 1044e of title 10 U.S.C.

(iv) The CO shall expeditiously process a transfer request from a command or installation, or to a different location within the command or installation. The CO shall request and take into consideration the Service member's input before making a decision involving a temporary or permanent transfer and the location of the transfer. If approved, the transfer orders shall also include the Service member's dependents (if accompanied) or military spouse (if the military spouse consents). In most circumstances, transfers to a different installation should be completed within 30 calendar days from the date the transfer is approved. Transfers to a new duty location that do not require a change of station move should be completed within 1 week from the date the transfer is approved.

(v) The CO must approve or disapprove a Service member's request for a PCS, PCA, or unit transfer within 72 hours from receipt of the Service member's request. The decision to approve the request shall be immediately forwarded to the designated activity that processes PCS, PCA, or unit transfers (see § 105.3).

(vi) If the Service member's transfer request is disapproved by the CO, the Service member shall be given the opportunity to request review by the first G/FO in the chain of command of the member, or a SES equivalent (if applicable). The decision to approve or disapprove the request for transfer must be made within 72 hours of submission of the request for review. If a civilian SES equivalent reviewer approves the transfer, the Secretary of the Military Department concerned shall process and issue orders for the transfer. All transfer requests must be reported in the Services' and NGB Annual Program Review submission; to include all disapproved transfer requests, and the reason for disapproval.

(vii) Military Departments shall make every reasonable effort to minimize disruption to the normal career progression of a Service member who reports that he or she is a victim of a sexual assault.

(viii) Expedited transfer procedures require that a CO or the appropriate approving authority make a determination and provide his or her reasons and justification on the transfer of a Service member based on a credible report of sexual assault. A CO shall consider:

(A) The Service member's reasons for the request.

(B) Potential transfer of the alleged offender instead of the Service member requesting the transfer.

(1) Commanders have the authority to make a timely determination and to take action regarding whether a Service member who is alleged to have committed or attempted to commit a sexual assault offense should be temporarily reassigned or removed from a position of authority or from an assignment. This reassignment or removal must be taken not as a punitive measure, but solely for the purpose of maintaining good order and discipline within the member's unit in accordance with section 674 of title 10 U.S.C.

(2) This determination may be made at any time after receipt of notification of an Unrestricted Report of a sexual assault that identifies the Service member as an alleged perpetrator.

(C) Nature and circumstances of the offense.

(D) Whether a temporary transfer would meet the Service member's needs and the operational needs of the unit.

(E) Training status of the Service member requesting the transfer.

(F) Availability of positions within other units on the installation.

(G) Status of the investigation and potential impact on the investigation and future disposition of the offense,

after consultation with the investigating MCIOs.

(H) Location of the alleged offender.

(I) Alleged offender's status (Service member or civilian).

(J) Other pertinent circumstances or facts.

(ix) Service members requesting the transfer shall be informed that they may have to return for the prosecution of the case, if the determination is made that prosecution is the appropriate action.

(x) Commanders shall directly counsel the Service member to ensure that he or she is fully informed regarding:

(A) Reasonably foreseeable career impacts.

(B) The potential impact of the transfer or reassignment on the investigation and case disposition or the initiation of other adverse action against the alleged offender.

(C) The effect on bonus recoupment, if any.

(D) Other possible consequences of granting the request.

(xi) When an Expedited Transfer is approved, notification from the losing commander to the gaining commander will depend on whether there is an open case and continuation of services. If there is neither an open case nor continuation of services, no other action

is needed. If there is an open case and services are requested, then notification to the gaining commander will occur to facilitate the investigation and access to services. This procedure applies to any sexual assault victim move (e.g., permanent change of station either on or before the member's normal rotation date, temporary duty inside or out of local area).

(A) When an Expedited Transfer is approved, the losing commander will not inform the gaining commander of the sexual assault incident unless one of the following applies:

(1) Active criminal investigation.

(2) Active legal proceeding.

(3) Ongoing victim healthcare (medical or mental health) needs that are directly related to the sexual assault.

(4) Ongoing monthly CMG oversight involving the victim or

(5) Active SAPR victim support services.

(B) When an Expedited Transfer is approved, the losing commander will inform the gaining commander of the inbound Expedited Transfer if any of the circumstances outlined in paragraph (f)(2)(xi)(A) of this section are occurring. The losing commander will limit the information given to objective facts about victim care provided, status of

open investigations, and the status of ongoing legal proceedings in order to provide the gaining commander with some context for victim behavior and to facilitate the victim's access to advocacy, healthcare, MCIOs, and legal counsel.

(1) SARC or SAPR VA case documents will not be transferred to the gaining SARC without consent from the victim.

(2) The receiving commander will adopt processes to assure strict confidentiality. Only the immediate commander of the victim will be notified. The immediate commander may share the notification with the senior enlisted advisor, if deemed necessary to support the victim. All information shall be kept confidential to the extent authorized by law. Additional personnel will be notified by the commander only if they have direct input to the monthly Case Management Group meeting. Every attempt must be made to limit access to the information that a victim has been transferred into the unit as a result of a sexual assault report.

(xii) If a victim transfers from the installation, then the processes in Table 2 of this section apply as appropriate.

TABLE 2—VICTIM TRANSFER PROCESSES

If	Then
<ul style="list-style-type: none"> The victim does NOT seek continued services of a SARC or SAPR VA at the new location, and The investigation or legal proceeding is ongoing at the original installation: 	<ul style="list-style-type: none"> The CMG responsibility remains with the original installation's CMG chair. The victim will be asked if she or he would like to receive the monthly update from the CMG meetings. If the victim wants the CMG updates, then the victim's new commander will participate in person or call in to the CMG meetings and this call in will be documented in the minutes of the CMG. The new commander will provide the victim a monthly update of her or his case within 72 hours of the last CMG.
<p>The victim DOES seek SAPR services at the new location:</p>	<ul style="list-style-type: none"> The advocacy responsibility transfers to the receiving SARC at the victim's new installation (if the victim consents to seek SAPR services at new location), and then the CMG responsibility may transfer to the new location. If the CMG does transfer to the location of the victim, then the MCIOs at the original installation (if there is an ongoing investigation) and the legal officer at the original installation (if there are ongoing legal proceedings) are required to call in to the CMG. This MCIO and legal officer call-in will be documented in the CMG notes
<ul style="list-style-type: none"> The victim seeks SAPR services at the new location, and The Military Service determines that the CMG should stay at the original installation: 	<ul style="list-style-type: none"> The SARC at the new location must call in to the CMG meeting at the original location to report on victim services and any safety or retaliation-related issues. This SARC call-in will be documented in the CMG notes. The victim's new commander must also call in to the CMG meeting and must provide the victim a monthly update of her or his case within 72 hours of the last CMG.

(xiii) Require that expedited transfer procedures for Reserve Component members, Army NG, and Air NG members who make Unrestricted Reports of sexual assault be established

by commanders within available resources and authorities. If requested by the Service member, the command should allow for separate training on different weekends or times from the

alleged offender or with a different unit in the home drilling location to ensure undue burden is not placed on the Service member and his or her family by the transfer. Potential transfer of the

alleged offender instead of the Service member should also be considered. At a minimum, the alleged offender's access to the Service member who made the Unrestricted Report shall be controlled, as appropriate.

(xiv) Even in those court-martial cases in which the accused has been acquitted, the standard for approving an expedited transfer still remains whether a credible report has been filed. The commander shall consider all the facts and circumstances surrounding the case and the basis for the transfer request.

(g) *Military protective orders (MPO)*. In Unrestricted Reporting cases, commanders shall execute the following procedures regarding MPOs:

(1) Require the SARC or the SAPR VA to inform sexual assault victims protected by an MPO, in a timely manner, of the option to request transfer from the assigned command in accordance with section 567(c) of Public Law 111-84.

(2) Notify the appropriate civilian authorities of the issuance of an MPO and of the individuals involved in the order, in the event an 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 pursuant to Public Law 110-417.

(i) An MPO issued by a military commander shall remain in effect until such time as the commander terminates the order or issues a replacement order.

(ii) The issuing commander shall notify the appropriate civilian authorities of any change made in a protective order, or its termination, in accordance with Section 561, 562, and 563 of Public Law 110-417, "Duncan Hunter National Defense Authorization Act Fiscal Year 2009.

(iii) When an 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, notify the appropriate civilian authorities of the issuance of an MPO and of the individuals involved in the order. The appropriate civilian authorities shall include, at a minimum, the local civilian law enforcement agency or agencies with jurisdiction to respond to an emergency call from the residence of any individual involved in the order.

(3) Military commanders will, through their installation law enforcement agency, place an active MPO in the National Crime Information Center (NCIC) for the duration of the order. Installation law enforcement will initiate a police report for the MPO, creating the required Originating

Agency Case Number, and place the MPO in the NCIC Protective Order File, using Protection Order Conditions (PCO) Field Code 08 with the following mandatory caveat in the miscellaneous field: "This is a military protective order and may not be enforceable by non-military authorities. If subject is in possible violation of the order, advise the entering agency (military law enforcement)."

(4) Advise the person seeking the MPO that the MPO is not enforceable by civilian authorities off base and that victims desiring protection off base should seek a civilian protective order (CPO). Off base violations of the MPO should be reported to the issuing commander, DoD law enforcement, and the relevant MCIO for investigation.

(i) Pursuant to section 1561a of Public Law 107-311⁹, a CPO shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order. Commanders, MCIOs, and installation DoD law enforcement personnel shall take all reasonable measures necessary to ensure that a CPO is given full force and effect on all DoD installations within the jurisdiction of the court that issued such order.

(ii) If the victim has informed the SARC of an existing CPO, a commander shall require the SARC to inform the CMG of the existence of the CPO and its requirements. After the CPO information is received at the CMG, DoD law enforcement agents shall be required to document CPOs for all Service members in their investigative case file, to include documentation for Reserve Component personnel in title 10 status.

(5) MPOs in cases other than sexual assault matters may have separate requirements.

(6) The issuing commanders will fill out the DD Form 2873, "Military Protective Order (MPO)," and is required to provide victim(s) and alleged offender(s) with copies of the completed form. Verbal MPOs can be issued, but need to be subsequently documented with a DD Form 2873, as soon as possible.

(7) Require DoD law enforcement agents document MPOs for all Service members in their investigative case file, to include documentation for Reserve Component personnel in title 10 status. The appropriate DoD law enforcement agent representative to the CMG shall brief the CMG chair and co-chair on the existence of an MPO.

(8) If the commander's decision is to deny the MPO request, document the reasons for the denial. Denials of MPO requests go to the installation commander or equivalent command level (in consultation with a judge advocate) for the final decision.

(i) The number of MPO(s) issued, to include violations, must be included in the Services' and NGB Annual Program Review submission, as required by Public Law 111-84.

(ii) [Reserved]

(h) *Collateral misconduct in sexual assault cases*. (1) Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim's fear of punishment. Some reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct (*e.g.*, underage drinking or other related alcohol offenses, adultery, fraternization, or other violations of certain regulations or orders). 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.

(2) In accordance with Executive Order 13696 initial disposition authority is withheld from all commanders within the DoD who do not possess at least special court-martial convening authority and who are not in the grade of O-6 (*i.e.*, colonel or Navy captain) or higher, with respect to the alleged offenses of rape, sexual assault, and forcible sodomy; all attempts to commit such offenses, in violation of Articles 120, 125, and 80 of the UCMJ (sections 920, 925, and 880 of title 10, U.S.C.); and all other alleged offenses arising from or relating to the same incident, whether committed by the alleged offender or alleged to have been committed by the sexual assault victim (collateral misconduct). Commanders may defer taking action on a victim's alleged collateral misconduct arising from or relating to the sexual assault incident until the initial disposition action for the sexual assault investigation is completed.

(3) Commanders and supervisors should take appropriate action for the victim's alleged collateral misconduct (if warranted), responding appropriately in order to encourage sexual assault

⁹ Available: <http://www.gpo.gov/fdsys/pkg/PLAW-107publ311/pdf/PLAW-107publ311.pdf>.

reporting and continued cooperation, while avoiding those actions that may further traumatize the victim. Ultimately, victim cooperation should significantly enhance timely and effective investigations, as well as the appropriate disposition of sexual assaults.

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

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

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

(1) Establishes prevention practice consistent with his or her Service's implementation of the "Department of Defense 2014–2016 Sexual Assault Prevention Strategy". Prevention programs will address concerns about unlawful command influence so that victims' rights are protected at the same time that the due process rights of the alleged offenders are safeguarded.

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

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

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

(5) Monitors the organization's SAPR climate and responds with appropriate

action toward any negative trends that may emerge.

(6) Reflects feedback and modifications based on command climate surveys, which are regularly administered in accordance with section 572 of Public Law 112–239.

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

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

(9) Establishes prevention training that focuses on identifying the behavior of potential offenders.

(10) Identifies and utilizes community-based resources and partnerships to add depth to prevention efforts.

■ 10. Amend § 105.10 by:

■ a. Revising paragraphs (a)(2), (a)(7)(ii)(A), (a)(7)(iii), and (a)(8)(i)(A) through (C).

■ b. In paragraph (a)(8)(ii)(A), removing "the DD Form 2910 in their personal permanent records as this form" and adding in its place "the DD Form 2910 and the DD Form 2911 in their personal permanent records as these forms."

■ c. Revising paragraph (a)(8)(v) and (vi).

■ d. Removing paragraph (a)(8)(ix)(B), redesignating paragraph (a)(8)(ix)(A) as paragraph (a)(8)(ix)(B), and adding a new paragraph (a)(8)(ix)(A).

■ e. In paragraph (a)(8)(xiii), adding the words "and Service Web sites" at the end of the second sentence.

■ f. In paragraph (a)(8)(xv), adding the words "and report these observations to the installation commander" at the end of the sentence.

■ g. In paragraph (a)(8)(xx), adding "to" before "Service members" and removing "for" before "sexual assault victims".

■ h. Revising paragraph (a)(8)(xxii)(B) and adding paragraph (a)(8)(xxii)(C).

■ i. Revising paragraph (a)(8)(xxv) and adding paragraph (a)(8)(xxvi).

■ j. Revising paragraph (b)(1)(i).

■ k. In paragraph (b)(1)(iii), adding the sentence "Provide a response consistent with requirements for the SARC response in this part." at the end of the paragraph.

■ l. In paragraph (b)(1)(iv), removing "using DD Form 2909" and adding in its place "by reviewing the DD Form 2950".

The revisions read as follows:

§ 105.10 SARC and SAPR VA procedures.

(a) * * *

(2) Comply with DoD Sexual Assault Advocate Certification requirements.

* * * * *

(7) * * *

(ii) * * *

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

* * * * *

(iii) SARCs shall provide a response that recognizes the high prevalence of pre-existing trauma (prior to the present sexual assault incident) and empowers an individual to make informed decisions about all aspects in the reporting process and to access available resources.

* * * * *

(8) * * *

(i) * * *

(A) Assist the victim in filling out the DD Form 2910 where the victim elects to make a Restricted or Unrestricted Report. However, the victims, not the SARCs or SAPR VAs, must fill out the DD Form 2910. Explain that sexual assault victims have the right and ability to consult with a SVC/VLC before deciding whether to make a Restricted Report, Unrestricted Report, or no report at all. Additionally, the SARC or SAPR VA shall explain the eligibility requirements for an SVC/VLC, as well as the option to request SVC or VLC services even if the victim does not fall within the eligibility requirements.

(B) Inform the victim that the DD Form 2910 will be uploaded to DSAID and retained for 50 years in Unrestricted Reports. The DD Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years, in a manner that protects confidentiality.

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

* * * * *

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

(vi) Provide the installation commander with non-PII within 24

hours of a Restricted Report of sexual assault. This notification may be extended to 48 hours after the Restricted Report of the incident if there are extenuating circumstances in a deployed environment. Command and installation demographics shall be taken into account when determining the information to be provided. To ensure oversight of victim services for Restricted Report cases, the SARC will also confirm in her or his report that the victim has been offered SAPR advocacy services; received a safety assessment; received explanation of the notifications in the DD Form 2910; been offered medical and mental health care; and informed of his or her eligibility for an SVC/VLC.

* * * * *

(ix) * * *

(A) Explain the eligibility for SVC or VLC for victims filing Restricted or Unrestricted Reports, and the types of legal assistance authorized to be provided to the sexual assault victim, in accordance with section 1044e of title 10 U.S.C. Inform the victim of the opportunity to consult with legal assistance counsel and SVC or VLC as soon as the victim seeks assistance from a SARC or SAPR VA. Explain that the nature of the relationship between an SVC or VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client.

* * * * *

(xxii) * * *

(B) Maintain in DSAID an account of the services referred to and requested by the victim for all reported sexual assault incidents, from medical treatment through counseling, and from the time of the initial report of a sexual assault through the final case disposition or until the victim no longer desires services. Should the victim return to the SARC or SAPR VA and request SAPR services after indicating that he or she no longer desired services, the case will be reopened and addressed at the CMG meeting.

(C) A SARC will open a case in DSAID as an "Open with Limited Information" case when there is no signed DD 2910 (e.g., an independent investigation or third-party report, or when a civilian victim alleged sexual assault with a Service member subject) to comply with section 563(d) of Public Law 110-417 and to ensure system accountability.

* * * * *

(xxv) Familiarize the unit commanders and supervisors of SAPR VAs with the SAPR VA roles and responsibilities, to include the

"Supervisor and Commander Statement of Understanding" section in the DD Form 2950, "Department of Defense Sexual Assault Advocate Certification Program (D-SAACP) Application Packet for New Applications." The DD Form 2950 is available via the Internet at <http://www.dtic.mil/whs/directives/forms/eforms/dd2950.pdf>.

(xxvi) Offer victims the opportunity to participate in surveys asking for victim feedback on the reporting experience. Inform victims regarding what the survey will ask them and uses of the data collected.

(b) * * *

(1) * * *

(i) Comply with DoD Sexual Assault Advocate Certification requirements in D-SAACP.

* * * * *

■ 11. Amend § 105.11 by:

■ a. In paragraph (a)(1), adding the words "in accordance with § 105.14 and section 539 of Public Law 113-291" at the end of the second sentence.

■ b. Redesignating paragraphs (a)(6) through (11) as paragraphs (a)(10) through (15) and paragraphs (a)(2) through (5) as paragraphs (a)(5) through (8), and adding new paragraphs (a)(2) through (4) and (9).

■ c. Revising the last sentence of newly redesignated paragraph (a)(5).

■ d. Revising newly redesignated paragraph (a)(8).

■ e. In newly redesignated paragraph (a)(11) introductory text, removing the words "SAFE Kit" and adding in its place "SAFE."

■ f. In newly redesignated paragraph (a)(11)(i), adding the words "at no cost to them in accordance with Violence Against Women Act as explained in with U.S. Department of Justice, Office on Violence Against Women, National Protocol for Sexual Assault Medical Forensic Examinations, *Adults/Adolescents*" at the end of the second sentence.

■ g. In newly redesignated paragraph (a)(11)(ii), removing the words "SAFE Kit" and adding in its place "SAFE."

■ h. In newly redesignated paragraph (a)(12) introductory text:

■ i. Removing the words "SAFE Kit" and adding in its place "SAFE."

■ ii. Adding the words "with the exception of the special requirements to safeguard PII in Restricted SAFE Kits in § 105.12" at the end of the sentence.

■ i. In newly redesignated paragraphs (a)(12)(i) and (ii), removing the words "SAFE Kit" and adding in its place "SAFE."

■ j. In newly redesignated paragraph (a)(12)(ii), removing the word "their" and adding in its place "his or her."

■ k. Revising newly redesignated paragraph (a)(13).

■ l. In newly redesignated paragraph (a)(14)(ii) introductory text, removing the words "SAFE Kit" and adding in its place "SAFE".

■ m. In newly redesignated paragraph (a)(15), removing the words "Restricted reporting applies" and adding in its place "Restricted Reporting applies, in accordance with § 105.8".

■ n. Adding a new paragraph (a)(16).

■ o. Redesignating paragraphs (b) through (e) as paragraphs (c) through (f), and adding a new paragraph (b).

■ q. Revising newly redesignated paragraphs (e)(2) and (f)(2)(i) and (ii).

■ r. Adding paragraph (f)(3) to newly redesignated paragraph (f).

The revisions and additions read as follows:

§ 105.11 Healthcare provider procedures.

* * * * *

(a) * * *

(2) Require that a SARC is immediately notified when a victim discloses a sexual assault so that the SARC can inform the victim of both reporting options (Restricted and Unrestricted) and all available services (e.g., SVC/VLC, Expedited Transfers, Military Protective Orders, document retention mandates). The victim can then make an informed decision as to which reporting option to elect and which services to request (or none at all). The victim is able to decline services in whole or in part at any time.

(3) Require the assignment of at least one full-time sexual assault medical forensic examiner to each MTF that has an emergency department that operates 24 hours per day. Additional sexual assault medical forensic examiners may be assigned based on the demographics of the patients who utilize the MTF.

(4) In cases of MTFs that do not have an emergency department that operates 24 hours per day, require that a sexual assault forensic medical examiner be made available to a patient of the facility consistent with the U.S. Department of Justice, Office on Violence Against Women, National Protocol for Sexual Assault Medical Forensic Examinations, *Adults/Adolescents* (U.S. Department of Justice SAFE Protocol), through an MOU or MOA with local private or public sector entities and consistent with U.S. Department of Justice SAFENational Protocol for Sexual Assault Medical Forensic Examinations, *Adult/Adolescent*, when a determination is made regarding the patient's need for the services of a sexual assault medical forensic examiner.

(j) The MOU or MOA will require that a SARC be notified and that SAFE Kits be collected in accordance with § 105.12.

(ii) When the forensic examination is conducted at a civilian facility through an MOU or an MOA with the DoD, the requirements for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD agency responsible for accepting custody of the forensic kit.

(5) * * * In addition, verify that as part of the MOU or MOA, a SARC or SAPR VA is notified, and responds and meets with the victim in a timely manner.

* * * * *

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

(9) Require processes be established to support coordination between healthcare personnel and the SARC and SAPR VA. If a victim initially seeks assistance at a medical facility, SARC notification must not delay emergency care treatment of a victim.

* * * * *

(13) Publicize availability of healthcare (to include mental health), and referral services for alleged offenders who are also active duty Service members. Such care will be administered in a way to respect and preserve the rights of the victim and the accused, and the physical safety of both.

* * * * *

(16) Require that psychotherapy and counseling records and clinical notes pertaining to sexual assault victims contain only information that is required for diagnosis and treatment. Any record of an account of a sexual assault incident created as part of a psychotherapy exercise will remain the property of the patient making the disclosure and should not be retained within the psychotherapist's record.

(b) *Selection, training, and certification.* For the selection, training, and certification of healthcare providers performing SAFEs in MTFs, refer to standards in § 105.14.

* * * * *

(e) * * *

(2) Assessment of the risk of pregnancy, options for emergency contraception, and any follow-up care and referral services to the extent authorized by law.

* * * * *

(f) * * *

(2) The Combatant Commanders shall:

(i) Require that victims of sexual assault are given priority treatment as emergency cases in deployed locations within their area of responsibility and are transported to an appropriate evaluation site, evaluated, treated for injuries (if any), and offered SAPR VA assistance and a SAFE as quickly as possible.

(ii) Require that U.S. theater hospital facilities (Level #, NATO role #) (See § 105.3) have appropriate capability to provide experienced and trained SARC and SAPR VA services and SAFE providers, and that victims of sexual assault, regardless of reporting status, are medically evacuated to such facilities as soon as possible (within operational needs) of making a report, consistent with operational needs.

(3) In accordance with DoDD 5136.13, the Director, Defense Health Agency (DHA), will:

(i) Ensure that this policy is implemented in the National Capital Region.

(ii) Identify a primary office to represent the National Capital Region in Military Service coordination of issues pertaining to medical management of victims of sexual assault.

(iii) Assign a healthcare provider at each MTF in the National Capital Region as the primary point of contact concerning DoD and Military Service SAPR policy and for updates in sexual assault care.

■ 12. Amend § 105.12 by:

■ a. Revising paragraphs (a) and (c).

■ b. In paragraph (d), removing “tell” and adding in its place “inform.”

■ c. Revising paragraphs (e) introductory text, (f) introductory text, and (f)(2) introductory text.

■ d. In paragraph (f)(2)(i) introductory text, removing “their” and adding in its place “his or her.”

■ e. In paragraph (f)(2)(i)(A):

■ i. Removing “SAFE Kit, DD Form 2911, and the DD Form 2910” and adding in its place “SAFE Kit.”

■ ii. Removing “(However, at the request of a member of the Armed Forces who files a Restricted Report on an incident of sexual assault, the Department of Defense Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years.)” and adding in its place “The DD Forms 2910 and 2911 will be retained for 50 years in a manner that protects confidentiality.”

■ iii. Removing “5-year retention” and adding in its place “5-year SAFE Kit retention.”

■ f. In paragraph (f)(2)(ii) introductory text, removing “5-year storage period” and adding in its place “5-year SAFE Kit storage period.”

■ g. Revising paragraphs (f)(2)(ii)(B)(1) and (2) and (f)(2)(iii).

The revisions read as follows:

§ 105.12 SAFE Kit collection and preservation.

* * * * *

(a) Medical services offered to eligible victims of sexual assault include the ability to elect a SAFE in addition to the general medical management related to sexual assault response, to include medical services and mental healthcare. The SAFE of a sexual assault victim should be conducted by a healthcare provider who has been trained and certified in the collection of forensic evidence and treatment of these victims as specified in § 105.14(g)(4). The forensic component includes gathering information in DD Form 2911 from the victim for the medical forensic history, an examination, documentation of biological and physical findings, collection of evidence from the victim, and follow-up as needed to document additional evidence.

* * * * *

(c) In situations where installations do not have a SAFE capability, the installation commander will require that the eligible victim, who wishes to have a SAFE, be transported to a MTF or local off-base, non-military facility that has a SAFE capability. Local sexual assault medical forensic examiners or other healthcare providers who are trained and certified as specified in § 105.14(g)(4) to perform a SAFE may also be contracted to report to the MTF to conduct the examination.

* * * * *

(e) Upon completion of the SAFE in an Unrestricted Reporting case, the healthcare provider shall package, seal, and label the evidence container(s) with the victim's name and notify the MCIO. The SAFE Kit will be retained for 5 years in accordance with section 586 of Public Law 112–81. When the forensic examination is conducted at a civilian facility through an MOU or an MOA with the DoD, the requirement for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD agency responsible for accepting custody of the forensic kit. Personal property retained as evidence collected in association with a sexual assault investigation may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related

to such incidents in accordance with section 538 of Public Law 113–291.

* * * * *

(f) Upon completion of the SAFE in a Restricted Reporting case, the healthcare provider shall package, seal, and label the evidence container(s) with the RRCN and store it in accordance with Service regulations. The SAFE Kit will be retained for 5 years in a location designated by the Military Service concerned. When the forensic examination is conducted at a civilian facility through an MOU or an MOA with the DoD, the requirement for the handling of the forensic kit will be explicitly addressed in the MOU or MOA. The MOU or MOA with the civilian facility will address the processes for contacting the SARC and for contacting the appropriate DoD agency responsible for accepting custody of the forensic kit. The 5-year time frame will start from the date the victim signs the DD Form 2910, but if there is no DD Form 2910, the timeframe will start from the date the SAFE Kit is completed.

* * * * *

(2) Any evidence and the SAFE Kit in Restricted Reporting cases shall be stored for 5 years from the date of the victim’s Restricted Report of the sexual assault, thus allowing victims additional time to accommodate, for example, multiple deployments exceeding 12 months.

* * * * *

(B) * * *

(1) The DoD law enforcement agency, which will receive forensic evidence from the healthcare provider if not already in custody, and label and store such evidence shall be designated.

(2) The designated DoD law enforcement agency must be trained and capable of collecting and preserving evidence in Restricted Reports prior to assuming custody of the evidence using established chain of custody procedures.

(iii) Evidence will be stored by the DoD law enforcement agency until the 5-year storage period for Restricted Reporting is reached or a victim changes to Unrestricted Reporting.

■ 13. Amend § 105.13 by:

■ a. Redesignating paragraph (a)(1) through (6) as paragraphs (a)(2) through (7), and adding a new paragraph (a)(1).

■ b. In newly redesignated paragraph (a)(2), removing “may” and adding in its place “will.”

■ c. In newly redesignated paragraph (a)(3), removing “This responsibility may” and adding in its place “This responsibility shall.”

■ d. Revising newly redesignated paragraph (a)(4).

■ e. Redesignating paragraphs (b)(2)(ii) through (vii) as paragraphs (b)(2)(iii) through (viii), and adding a new paragraph (b)(2)(ii).

■ f. Revising newly redesignated paragraph (b)(2)(iii).

■ g. In paragraph (b)(3)(i), removing “or a DSAID Service interface system” and adding “, such as areas of combat” after “In deployed locations.”

■ h. In paragraph (b)(3)(ii), removing “or a DSAID Service interface system” at the end of sentence.

■ i. In paragraph (b)(6), adding the sentence “The victim’s commander cannot delegate this responsibility.” at the end of the paragraph.

■ j. Redesignating paragraph (b)(8) as paragraph (b)(10) and paragraph (b)(7) as paragraph (b)(8), and adding new paragraphs (b)(7) and (9).

■ k. Revising newly redesignated paragraph (b)(10) introductory text.

■ l. Removing newly redesignated paragraph (b)(10)(ii).

■ m. Further redesignating newly redesignated paragraphs (b)(10)(iii) and (iv) as paragraphs (b)(10)(ii)(A) and (B) and paragraph (b)(10)(v) as paragraph (b)(10)(iii).

■ n. Revising newly redesignated paragraph (b)(10)(iii).

The revisions and additions read as follows:

§ 105.13 Case management for unrestricted reports of sexual assault.

(a) * * *

(1) Case Management Group oversight for Unrestricted Reports of adult sexual assaults is triggered by open cases in DSAID initiated by a DD Form 2910 or an investigation initiated by an MCIO. In a case where there is an investigation initiated by an MCIO, but no corresponding Unrestricted DD Form 2910:

(i) The SARC would have no information for the CMG members. During the CMG, the MCIO would provide case management information to the CMG including the SARC.

(ii) The SARC would open a case in DSAID indicating the case status as “Open with Limited Information.” The SARC will only use information from the MCIO to initiate an “Open with Limited Information” case in DSAID. In the event that there was a Restricted Report filed prior to the independent investigation, the SARC will not use any information provided by the victim, since that information is confidential.

* * * * *

(4) Required CMG members shall include: victim’s immediate commander; all SARCs assigned to the

installation (mandatory attendance regardless of whether they have an assigned victim being discussed); victims’ SAPR VA, MCIO and DoD law enforcement representatives who have detailed knowledge of the case; victims’ healthcare provider or mental health and counseling services provider; chaplain, legal representative, or SJA; installation personnel trained to do a safety assessment of current sexual assault victims; victim’s VWAP representative (or civilian victim witness liaison, if available), or SVC/VLC. MCIO, DoD law enforcement and the legal representative or SJA shall provide case dispositions. The CMG chair will ensure that the appropriate principal is available. The responsibility for CMG members to attend CMG meetings will not be delegated. Additional persons may be invited to CMG meetings at the discretion of the chair if those persons have an official need to know, with the understanding that maintaining victim privacy is essential.

* * * * *

(b) * * *

(2) * * *

(ii) Require effective and timely coordination and collaboration among CMG members. At each CMG meeting:

(A) Confirm that the MCIO assigned to an adult sexual assault investigation has notified the SARC as soon as possible, after the investigation is initiated in accordance with DoDI 1332.14.

(B) Confirm that all Unrestricted Reports, initiated by a DD Form 2910 or an investigation initiated by an MCIO, are entered into DSAID within 48 hours of the DD Form 2910 being signed by the victim.

(C) Confirm that commanders are providing the final disposition of sexual assault cases to MCIOs. Confirm that the installation commander’s or his/her designated legal officer is providing the SARC the required information for the SARC to enter the final case disposition in DSAID.

(D) Confirm that members of the SVIP are collaborating with local SARCs and SAPR VAs during all stages of the investigative and military justice process to ensure an integrated capability, to the greatest extent possible, in accordance with DTM 14–003 and DoDI 5505.19.

(E) Confirm that the SARCs and SAPR VAs have what they need to provide an effective SAPR response to victims.

(iii) Require that case dispositions to include cases disposed of by nonjudicial proceedings are communicated to the sexual assault victim, to the extent authorized by law, within 2 business

days of the final disposition decision. The CMG chair will require that the appropriate paperwork (pursuant to Service regulation) is submitted for each case disposition within 24 hours, which shall be inputted into DSAID by the designated officials.

* * * * *

(7) If a victim transfers from the installation, then the processes in Table 2 in § 105.9 will apply as appropriate.

* * * * *

(9) At every CMG meeting, the CMG Chair 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 maltreatment. If any allegations are reported, the CMG Chair will forward the information to the proper authority or authorities (e.g., MCIO, Inspector General, Military Equal Opportunity). Discretion may be exercised in disclosing allegations of retaliation, reprisal, ostracism, or maltreatment when such allegations involve parties to the CMG. 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.

(10) The CMG chair will confirm that each victim receives a safety assessment as soon as possible. There will be a safety assessment capability. The CMG chair will identify installation personnel who have been trained and are able to perform a safety assessment of each sexual assault victim.

* * * * *

(iii) The CMG chair will immediately stand up a multi-disciplinary High-Risk Response Team if a victim is assessed to be in a high-risk situation. The purpose and the responsibility of the High-Risk Response Team is to continually monitor the victim's safety, by assessing danger and developing a plan to manage the situation.

(A) The High-Risk Response Team (HRRT) shall be chaired by the victim's immediate commander and, at a minimum, include the alleged offender's immediate commander; the victim's SARC and SAPR VA; the MCIO, the judge advocate, and the VWAP assigned to the case, victim's healthcare provider or mental health and counseling services provider; and the personnel who conducted the safety assessment. The responsibility of the HRRT members to attend the HRRT

meetings and actively participate in them will not be delegated.

(B) The High-Risk Response Team shall make their first report to the installation commander, CMG chair, and CMG co-chair within 24 hours of being activated. A briefing schedule for the CMG chair and co-chair will be determined, but briefings shall occur at least once a week while the victim is on high-risk status.

(C) The High-Risk Response Team assessment of the victim shall include, but is not limited to evaluating:

- (1) Victim's safety concerns.
- (2) Alleged offender's access to the victim or whether the alleged offender is stalking or has stalked the victim.
- (3) Previous or existing relationship or friendship between the victim and the alleged offender, or the alleged offender and the victim's spouse, or victim's dependents. The existence of children in common. The sharing (or prior sharing) of a common domicile.

(4) Whether the alleged offender (or the suspect's friends or family members) has destroyed victim's property; threatened or attacked the victim; or threatened, attempted, or has a plan to harm or kill the victim or the victim's family members; or intimidated the victim to withdraw participation in the investigation or prosecution.

(5) Whether the alleged offender has threatened, attempted, or has a plan to commit suicide.

(6) Whether the alleged offender has used a weapon, threatened to use a weapon, or has access to a weapon that may be used against the victim.

(7) Whether the victim has sustained serious injury during the sexual assault incident.

(8) Whether the alleged offender has a history of law enforcement involvement regarding domestic abuse, assault, or other criminal behavior.

(9) Whether the victim has a civilian protective order or command has an MPO against the alleged offender, or there has been a violation of a civilian protective order or MPO by the alleged offender.

(10) History of drug or alcohol abuse by either the victim or the alleged offender.

(11) Whether the alleged offender exhibits erratic or obsessive behavior, rage, agitation, or instability.

(12) Whether the alleged offender is a flight risk.

■ 14. Revise § 105.14 to read as follows:

§ 105.14 Training requirements for DoD personnel.

(a) *Management of training requirements.* (1) Commanders, supervisors, and managers at all levels

shall be responsible for the effective implementation of the SAPR program.

(2) Military and DoD civilian officials at each management level shall advocate a robust SAPR program and provide education and training that shall enable them to prevent and appropriately respond to incidents of sexual assault.

(3) Data shall be collected according to the annual reporting requirements in accordance with Public Law 111-383 and explained in § 105.16.

(b) *General training requirements.* (1) The Secretaries of the Military Departments and the Chief, NGB, shall direct the execution of the training requirements in this section to individually address SAPR prevention and response in accordance with § 105.5. These SAPR training requirements shall apply to all Service members and DoD civilian personnel who supervise Service members and should be provided by subject matter experts in those practice areas. These training requirements must align with current SAPR core competencies and learning objectives.

(i) The Secretaries and the Chief, NGB, shall develop dedicated SAPR training to ensure comprehensive knowledge of the training requirements.

(ii) The SAPR training, at a minimum, shall incorporate adult learning theory, which includes interaction and group participation.

(iii) Upon request, the Secretaries and the Chief, NGB, shall submit a copy of SAPR training programs or SAPR training elements to USD(P&R) through SAPRO for evaluation of consistency and compliance with DoD SAPR training standards in this part. The Military Departments will correct USD(P&R) identified DoD SAPR policy and training standards discrepancies.

(2) Commanders and managers responsible for training shall require that all personnel (i.e., all Service members, DoD civilian personnel who supervise Service members, and other personnel as directed by the USD(P&R)) are trained and that completion of training data is annotated. Commanders for accession training will ensure all new accessions are trained and that completion of training data is annotated.

(3) If responsible for facilitating the training of civilians supervising Service members, the unit commander or civilian director shall require all SAPR training requirements in this section are met. The unit commander or civilian equivalent shall be accountable for requiring data collection regarding the training.

(4) The required subject matter for the training shall be appropriate to the Service member's grade and

commensurate with their level of responsibility, and will include:

- (i) Defining what constitutes sexual assault. Utilizing the term “sexual assault” as defined in 32 CFR part 103.
- (ii) Explaining why sexual assaults are crimes.
- (iii) Defining the meaning of “consent” as defined in 32 CFR part 103.
- (iv) Explaining offender accountability and UCMJ violations.
- (v) Explaining updates to military justice that impact victims, to include:
 - (A) The codification and enhancement of victims’ rights in the military.
 - (B) Changes in Articles 32 and 60 of the UCMJ (sections 832 and 860 of title 10 U.S.C.) and their impact on victims.
 - (C) Elimination of the 5-year statute of limitations on sexual assault.
 - (D) Minimum mandatory sentence of dismissal or dishonorable discharge for persons found guilty in a general court-martial of: rape under Article 120(a); sexual assault under Article 120(b); forcible sodomy under Article 125; or an attempt to commit these offenses under Article 80 of the UCMJ (sections 920(a), 920(b), 925 or 880 of title 10 U.S.C.).
 - (E) That defense counsel has to make the request to interview the victim through the SVC/VLC or other counsel for the victim, if the victim is represented by counsel. In addition, the victim has the right to be accompanied to the interview by the SARC, SAPR VA, SVC/VLC, or counsel for the government.
 - (F) That the victim has the right to submit matters for consideration by the convening authority during the clemency phase of the court-martial process, and the convening authority will not consider the victim’s character as a factor in making his or her determination unless such matters were presented at trial and not excluded at trial.
 - (G) Service regulations requiring inclusion of sex-related offenses in personnel records and mandating commanders to review personnel records of incoming Service members for these notations.
 - (H) Establishing a process to ensure consultation with a victim of an alleged sex-related offense that occurs in the United States to solicit the victim’s preference regarding whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.
 - (vi) Explaining the distinction between sexual harassment and sexual assault and that both are unacceptable forms of behavior even though they may have different penalties. Emphasizing

the distinction between civil and criminal actions.

- (vii) Explaining available reporting options (Restricted and Unrestricted), the advantages and limitations of each option, the effect of independent investigations on Restricted Reports (See § 105.8(a)(6)) and explaining MRE 514.
- (viii) Providing an awareness of the SAPR program (DoD and Service) and command personnel roles and responsibilities, including all available resources for victims on and off base. Explaining that Military OneSource (see § 105.3) has a mandatory reporting requirement.
- (ix) Identifying prevention strategies and behaviors that may reduce sexual assault, including bystander intervention, risk reduction, and obtaining affirmative consent. Identifying strategies to safely intervene and to guard against retaliation, reprisal, ostracism, or maltreatment because of that intervention.
- (x) Discussing process change to ensure that all sexual assault response services are gender-responsive, culturally-competent, and recovery-oriented.
- (xi) Discussing expedited transfers and MPO procedures.
- (xii) Providing information to victims when the alleged perpetrator is the commander or in the victim’s chain of command, to go outside the chain of command to report the offense to other COs or an Inspector General. Victims shall be informed that they can also seek assistance from SVC/VLC, a legal assistance attorney or the DoD Safe Helpline.
- (xiii) Discussing 50-year document retention for sexual assault documents (DD Forms 2910 and 2911), to include retention of investigative records. Explaining why it is recommended that sexual assault victims retain sexual assault records for potential use in the Department of Veterans Affairs benefits applications. Explain that the SAFE Kit is retained for 5 years in a Restricted Report cases to allow victims the opportunity to change their minds and convert to Unrestricted. Explain that the SAFE Kit is retained for 5 years in Unrestricted Report cases.
- (xiv) Explaining the eligibility for SVC/VLC for individuals who make Restricted or Unrestricted Reports of sexual assault, and the types of legal assistance authorized to be provided to the sexual assault victim.
- (xv) Explaining that the nature of the relationship between an SVC/VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client.

(xvi) Explaining what constitutes retaliation, reprisal, coercion, ostracism, and maltreatment in accordance with Service regulations and Military Whistleblower Protections and procedures for reporting allegations of reprisal.

(A) Explaining what is the appropriate, professional response by peers to a victim and an alleged offender when a sexual assault is reported in a unit. Using scenarios to facilitate discussion of appropriate behavior, to include discussing potential resentment of peers for victims, bystanders, or witnesses who report a sexual assault. Explaining that incidents of retaliation, reprisal, ostracism, and maltreatment violate good order and discipline erode unit cohesion and deter reporting of sexual assault incidents.

(B) Explaining that all personnel in the victim’s chain of command, officer and enlisted, when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment, are required to take appropriate measures to protect the victim, including information regarding how to prevent retaliation, reprisal, ostracism, and maltreatment in a unit after a report of sexual assault.

(xvii) Explaining Service regulations that protect Service member victims of sexual assault and/or their dependents from retaliation, reprisal, ostracism, and maltreatment. If the allegation is an act that is criminal in nature and the victim filed an Unrestricted Report, the allegation should immediately be reported to an MCIO. Explaining that victims can seek assistance on how to report allegations by requesting assistance from:

- (A) A SARC, SAPR VA, or SVC/VLC.
- (B) A SARC in different installation, which can be facilitated by Safe Helpline.
- (C) Their immediate commander.
- (D) A commander outside their chain of command.

(E) Service personnel to invoke their Service-specific reporting procedures regarding such allegations (AD 2014–20/AFI 36–2909/SECNAVINST 5370.7D).

(F) Service Military Equal Opportunity representative to file a complaint of sexual harassment.

(G) A G/FO if the retaliation, reprisal, ostracism, or maltreatment involves the administrative separation of a victim within 1 year of the final disposition of the sexual assault case. A victim may request that the G/FO review the separation.

(H) A G/FO if the victim believes there has been an impact on their military career because victims reported a sexual assault or sought mental health

treatment for sexual assault. The victim may discuss the impact with the G/FO.

(I) An SVC/VLC, trial counsel and VWAP, or legal assistance attorney to facilitate a report with a SARC or SAPR VA.

(J) Service personnel to file a complaint of wrongs in accordance with Article 138 of the UCMJ (section 938 of title 10 U.S.C.).

(K) DoD IG, invoking Whistle-blower Protections.

(L) Commander or SARC to request an Expedited Transfer.

(M) Commander or SARC to request a safety transfer or MPO, if the victim fears violence.

(xviii) Explaining Service regulations that protect SARC and SAPR VA from retaliation, reprisal, ostracism, and maltreatment, related to the execution of their duties and responsibilities.

(xix) Explaining Service regulations that protect witnesses and bystanders who intervene to prevent sexual assaults or who report sexual assaults from retaliation, reprisal, ostracism, and maltreatment.

(xx) Explaining that, when completing an SF 86 in connection with an application, investigation, or reinvestigation for a security clearance, it is DoD policy to answer "no" to question 21 of SF 86 with respect to consultation with a health care professional if:

(A) The individual is a victim of a sexual assault; or

(B) The consultation occurred with respect to an emotional or mental health condition strictly in relation to the sexual assault.

(c) *DoD personnel training requirements*. Refer to Military Service-specific training officers that maintain personnel training schedules.

(1) Initial SAPR training will occur within 14 days of initial entrance.

(i) The matters specified in paragraph (c)(1)(ii) of this section will be carefully explained to each member of the Military Services at the time of or within 14 duty days of the member's initial entrance to active duty or the member's initial entrance into a duty status with a Reserve Component.

(ii) The matters to be explained in the initial SAPR training include:

(A) DoD policy with respect to sexual assault.

(B) Special emphasis to interactive scenarios that fully explain the reporting options and the channels through which victims can make an Unrestricted or a Restricted Report of a sexual assault.

(C) The resources available with respect to sexual assault reporting and prevention and the procedures a

member seeking to access those resources should follow. Emphasize that sexual assault victims have the right and ability to consult with a SVC or VLC before deciding whether to make a Restricted or Unrestricted Report, or no report at all.

(2) Accessions training shall occur upon initial entry.

(i) Mirror the general training requirements in paragraph (b) of this section.

(ii) Provide scenario-based, real-life situations to demonstrate the entire cycle of prevention, reporting, response, and accountability procedures to new accessions to clarify the nature of sexual assault in the military environment.

(3) Annual training shall occur once a year and is mandatory for all Service members regardless of rank or occupation or specialty.

(i) Mirror the general training requirements in paragraph (b) of this section.

(ii) Explain the nature of sexual assault in the military environment using scenario-based, real-life situations to demonstrate the entire cycle of prevention, reporting, response, and accountability procedures.

(iii) Deliver to Service members in a joint environment from their respective Military Services and incorporate adult learning theory.

(4) Professional military education (PME) and leadership development training (LDT).

(i) For all trainees, PME and LDT shall mirror the general training requirements in this section.

(ii) For senior noncommissioned officers and commissioned officers, PME and LDT shall occur during developmental courses throughout the military career and include:

(A) Explanation and analysis of the SAPR program.

(B) Explanation and analysis of the necessity of immediate responses after a sexual assault has occurred to counteract and mitigate the long-term effects of violence. Long-term responses after sexual assault has occurred will address the lasting consequences of violence.

(C) Explanation of rape myths (See SAPR Toolkit on www.sapr.mil), facts, and trends pertaining to the military population.

(D) Explanation of the commander's and senior enlisted Service member's role in the SAPR program.

(E) Review of all items found in the "Commander's 30-Day Checklist for Unrestricted Reports of Sexual Assault". (See SAPR Toolkit on www.sapr.mil.)

(F) Explanation of what constitutes retaliation, reprisal, ostracism, and

maltreatment in accordance with Service regulations and Military Whistleblower Protections. This includes understanding:

(1) Of resources available for victims (listed in § 105.8) to report instances of retaliation, reprisal, ostracism, maltreatment, sexual harassment, or to request a transfer or MPO.

(2) That victims who reported a sexual assault or sought mental health treatment for sexual assault may discuss issues related to their military career with a G/FO that the victim believes are associated with the sexual assault.

(3) That all personnel in the victim's chain of command, officer and enlisted, when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment, are required to take appropriate measures to protect the victim.

(4) Of a supervisor's role in unit SAPR programs and how to address sexual assault and other illegal and other negative behaviors that can affect command climate.

(5) Pre-deployment training shall be provided.

(i) Mirror the general training requirements in paragraph (b) of this section.

(ii) Explain risk reduction factors tailored to the deployment location.

(iii) Provide a brief history of the specific foreign countries or areas anticipated for deployment, and the area's customs, mores, religious practices, and status of forces agreement. Explain cultural customs, mores, and religious practices of coalition partners.

(iv) Identify the type of trained sexual assault responders who are available during the deployment (e.g., law enforcement personnel, legal personnel, SARC, SAPR VAs, healthcare personnel, chaplains).

(v) Include completion of D-SAACP certification for SARCs and SAPR VAs.

(6) Post-deployment reintegration training shall occur within 30 days of returning from deployment and:

(i) Commanders of re-deploying personnel will ensure training completion.

(ii) Explain available counseling and medical services, reporting options, and eligibility benefits for Service members (active duty and Reserve Component).

(iii) Explain MRE 514. Explain that National Guard and Reserve members can make a Restricted or Unrestricted report with the SARC or SAPR VA and then be eligible to receive SAPR services.

(7) Pre-command training shall occur prior to filling a command position.

(i) Mirror the general training requirements in paragraph (b) of this section.

(A) The personnel trained shall include all officers who are selected for command and the unit's senior enlisted Service member.

(B) The required subject matter for the training shall be appropriate to the level of responsibility and commensurate with level of command.

(ii) Explain rape myths, facts, and trends.

(iii) Provide awareness of the SAPR program and explain the commander's and senior enlisted Service member's role in executing their SAPR service program.

(iv) Review all items found in the commander's protocols for Unrestricted Reports of sexual assault. (See SAPR Toolkit on www.sapr.mil.)

(v) Explain what constitutes retaliation, reprisal, ostracism, and maltreatment in accordance with Service regulations and Military Whistleblower Protections and procedures for addressing reprisal allegations. This includes understanding:

(A) Resources available for victims (listed in § 105.8) to report instances of retaliation, reprisal, ostracism, maltreatment, sexual harassment or to request a transfer or MPO.

(B) That victims who reported a sexual assault or sought mental health treatment for sexual assault may discuss issues related to their military career with the G/FO that the victim believes are associated with the sexual assault.

(C) That all personnel in the victim's chain of command, officer and enlisted, when they become aware of allegations of retaliation, reprisal, ostracism, or maltreatment, are required to take appropriate measures to protect the victim.

(D) The role of the chain of command in unit SAPR programs.

(E) The skills needed to address sexual harassment and sexual assault. Interactive exercises should be conducted to provide supervisors the opportunity to practice these skills.

(vi) A sexual assault prevention and response training module will be included in the training for new or prospective commanders at all levels of command. The training will be tailored to the responsibilities and leadership requirements of members of the Military Services as they are assigned to command positions. Such training will include:

(A) Fostering a command climate that does not tolerate sexual assault.

(B) Fostering a command climate in which persons assigned to the command

are encouraged to intervene to prevent potential incidents of sexual assault.

(C) Fostering a command climate that encourages victims of sexual assault to report any incident of sexual assault.

(D) Understanding the needs of and the resources available to, the victim after an incident of sexual assault.

(E) Using MCIOs for the investigation of alleged incidents of sexual assault.

(F) Understanding available disciplinary options, including court-martial, nonjudicial punishment, administrative action, and deferral of discipline for collateral misconduct, as appropriate.

(G) Understanding the Expedited Transfer policy. Commanders have the authority to make a timely determination, and to take action, regarding whether a Service member who is alleged to have committed or attempted to commit a sexual assault offense should be temporarily reassigned or removed from a position of authority or from an assignment. This determination should be made, not as a punitive measure, but solely for the purpose of maintaining good order and discipline within the Service member's unit in accordance with Public Law 113-66.

(8) Curricula of the Military Service Academies will include:

(i) Substantive course work that addresses honor, respect, character development, leadership, and accountability as such pertain to the issue of preventing and the appropriate response to sexual assault in the Military Services.

(ii) Initial SAPR training will occur within 14 days of the initial arrival of a new cadet or midshipman at that Military Service Academy and repeated annually thereafter. Training will be conducted using adult learning method in accordance with paragraph (c)(1) of this section.

(iii) At a minimum, a brief history of the problem of sexual assault in the Military Services, a definition of sexual assault, information relating to reporting a sexual assault, victims' rights, and dismissal and dishonorable discharge for offenders of Service members convicted by general court-martial for certain sex-related offenses in accordance with section 856 of title 10 U.S.C.

(d) *G/FO and SES personnel training requirements.* G/FO and SES personnel training shall occur at the initial executive level program training and annually thereafter. Mirror the general training requirements in paragraph (b) of this section.

(1) The Military Services' executive level management offices are

responsible for tracking data collection regarding the training.

(2) The required subject matter for the training shall be appropriate to the level of responsibility and commensurate with level of command.

(3) Training guidance for other DoD components other than the Military Departments, will be provided in a separate issuance.

(e) *Military recruiters.* Military recruiter training shall occur annually and mirror the general training requirements in paragraph (b) of this section.

(f) *Training for civilians who supervise Service members.* Training is required for civilians who supervise Service members, for all civilians in accordance with section 585 of Public Law 112-81 and, if feasible, highly recommended for DoD contractors. Training shall occur annually and mirror the general training requirements in paragraph (b) of this section.

(g) *Responder training requirements.* To standardize services throughout the DoD, as required in 32 CFR part 103, all DoD sexual assault responders shall receive the same baseline training. These minimum training standards form the baseline on which the Military Services and specialized communities can build. First responders are composed of personnel in the following disciplines or positions: SARC; SAPR VAs; healthcare personnel; DoD law enforcement; MCIOs; judge advocates; chaplains; firefighters and emergency medical technicians. Commanders and VWP personnel can be first responders. Commanders receive their SAPR training separately.

(1) All responder training shall:

(i) Be given in the form of initial and annual refresher training from their Military Service in accordance with § 105.5. Responder training is in addition to annual training.

(ii) Be developed for each responder functional area from each military service and shall:

(A) Explain the different sexual assault response policies and critical issues.

(1) DoD SAPR policy, including the role of the SARC, SAPR VA, victim witness liaison, and CMG.

(2) Military Service-specific policies.

(3) Unrestricted and Restricted Reporting as well as MRE 514.

(4) Exceptions to Restricted Reporting and limitations to use.

(5) Change in victim reporting preference election.

(6) Victim advocacy resources.

(B) Explain the requirement that SARCs must respond in accordance with this part.

(C) Describe local policies and procedures with regards to local resources, referrals, procedures for military and civilians as well as collaboration and knowledge of resources and referrals that can be utilized at that specific geographic location.

(D) Explain the range of victim responses to sexual assault to include:

(1) Victimization process, including re-victimization and secondary victimization.

(2) Counterintuitive behavior.

(3) Impact of trauma on memory and recall.

(4) Potential psychological consequences, including acute stress disorder and post traumatic stress disorder.

(E) Explain deployment issues, including remote location assistance.

(F) Explain the possible outcomes of investigations of sexual assault.

(G) Explain the possible flow of a sexual assault investigation. (See flowchart in the SAPR Policy Toolkit, located at www.sapr.mil.)

(H) Be completed prior to deployment.

(I) Recommend, but not require, that SAPR training for responders include safety and self care.

(J) Explain how to provide a response that recognizes the high prevalence of pre-existing trauma.

(K) Explain the eligibility for SVC or VLC for both Restricted and Unrestricted Reports of sexual assault, and the types of legal assistance authorized to be provided to the sexual assault victim. Explain that the nature of the relationship between an SVC/VLC and a victim in the provision of legal advice and assistance will be the relationship between an attorney and client.

(2) SARC training shall:

(i) Provide the responder training requirements in paragraph (g)(1) of this section.

(ii) Be scenario-based and interactive. Provide for role play where a trainee SARC counsels a sexual assault victim and is critiqued by a credentialed SARC and/or an instructor.

(iii) Explain roles and responsibilities and command relationships.

(iv) Explain the different reporting options, to include the effects of independent investigations (see § 105.8). Explain the exceptions to Restricted Reporting, with special emphasis on the requirement to disclose personally identifiable information of the victim or alleged perpetrator if such disclosure is necessary to prevent or mitigate a serious and imminent threat to the health and safety of the victim or another individual.

(v) Provide training on how MCIOs will be entering reports of sexual assault into DSAID through MCIO cases management systems or by direct data entry. Provide training on potential discovery obligations regarding any notes entered in DSAID.

(vi) Provide training on document retention and SAFE Kit retention in of Restricted and Unrestricted cases. Explain evidence collected in a sexual assault investigation is disposed of in accordance with section 586 of Public Law 112–81, as amended by section 538 of Public Law 113–291, and DoD regulations.

(vii) Provide training on expedited transfer and MPO procedures.

(viii) Provide instruction on all details of SAPR VA screening, including:

(A) What to do if SAPR VA is a recent victim, or knows sexual assault victims.

(B) What to do if SAPR VA was accused of being an alleged offender or knows someone who was accused.

(C) Identifying the SAPR VA's personal biases.

(D) The necessary case management skills.

(1) Required reports and proper documentation as well as records management.

(2) Instruction to complete DD Form 2910 and proper storage according to Federal and Service privacy regulations.

(3) Ability to conduct SAPR training, when requested by the SARC or commander.

(4) Transferring cases to another installation SARC.

(ix) Explain the roles and responsibilities of the VWAP and DD Form 2701.

(x) Inform SARCs of the existence of the SAPRO Web site at <http://www.sapr.mil>, and encourage its use for reference materials and general DoD-level SAPR information.

(xi) Include annual suicide prevention training to facilitate their ability to assist a sexual assault victim who has suicidal ideation.

(3) SAPR VA training shall:

(i) Provide the responder training requirements in paragraph (g)(1) of this section.

(ii) Be scenario-based and interactive. Provide for role play where a trainee SAPR VA counsels a sexual assault victim, and then that counseling session is critiqued by an instructor.

(iii) Explain the different reporting options, to include the effects of independent investigations (see § 105.8). Explain the exceptions to Restricted Reporting, with special emphasis on the requirement to disclose personally identifiable information of the victim or alleged perpetrator if such disclosure is

necessary to prevent or mitigate a serious and imminent threat to the health and safety of the victim or another individual.

(iv) Include:

(A) Necessary critical advocacy skills.

(B) Basic interpersonal and assessment skills.

(1) Appropriate relationship and rapport building.

(2) Sensitivity training to prevent re-victimization.

(C) Crisis intervention.

(D) Restricted and Unrestricted Reporting options as well as MRE 514.

(E) Roles and limitations, to include: command relationship, SAPR VA's rights and responsibilities, reporting to the SARC, and recognizing personal biases and issues.

(F) Preparing proper documentation for a report of sexual assault.

(G) Document retention and SAFE Kit retention in Restricted and Unrestricted cases. Explain evidence collected with a sexual assault investigation is disposed of in accordance with section 586 of Public Law 112–81, amended by section 538 of Public Law 113–291, and DoD regulations.

(H) Expedited transfer and MPO procedures.

(I) Record keeping rules for protected disclosures relating to a sexual assault.

(J) A discussion of ethical issues when working with sexual assault victims as a VA.

(K) A discussion of individual versus system advocacy.

(L) A review of the military justice process and adverse administrative actions.

(M) Overview of criminal investigative process and military judicial requirements.

(N) A review of the issues in victimology.

(1) Types of assault.

(2) Health consequences such as mental and physical health.

(3) Cultural and religious differences.

(4) Victims' rights and the victim's role in holding offenders appropriately accountable and limitations on offender accountability when the victim elects Restricted Reporting.

(5) Healthcare management of sexual assault and medical resources and treatment options to include the medical examination, the forensic examination, mental health and counseling, pregnancy, and STD/I and HIV.

(6) Identification of safety issues and their immediate report to the SARC or law enforcement, as appropriate.

(7) Identification of retaliation, reprisal, ostracism, and maltreatment actions against the victim; procedures

for responding to these allegations and their immediate reporting to the SARC and the VWAP; safety planning to include how to prevent retaliation, reprisal, ostracism, and maltreatment actions against the victim.

(8) Separation of the victim and offender as well as the MPO and CPO process.

(9) Expedited transfer process for the victim.

(O) An explanation of the roles and responsibilities of the VWAP and DD Form 2701.

(P) Safety and self-care, to include vicarious trauma.

(v) Include annual suicide prevention training to facilitate their ability to assist a sexual assault victim who has suicidal ideation.

(4) Healthcare personnel training shall be in two distinct training categories:

(i) Training for healthcare personnel assigned to an MTF. In addition to the responder training requirements in paragraph (e)(1) of this section, healthcare personnel who received a Restricted Report shall immediately call a SARC or SAPR VA, so a DD Form 2910 can be completed. Training must include the information that healthcare personnel who receive a Restricted Report will maintain confidentiality to the extent authorized by law and this part. Training must include Expedited Transfers.

(ii) Training for sexual assault medical forensic examiners. Healthcare personnel who received a Restricted Report shall immediately call a SARC or SAPR VA, so a DD Form 2910 can be completed.

(A) In addition to the responder training requirements and healthcare personnel requirements in paragraphs (g)(1) and (g)(4)(i) of this section, healthcare providers performing SAFEs will be trained and must remain proficient in conducting SAFEs.

(B) All providers conducting SAFEs must have documented education, training, and clinical practice in sexual assault examinations in accordance with DoDI 1030.2 and the U.S. Department of Justice, Office on Violence Against Women, National Training Standards for Sexual Assault Medical Forensic Examiners and in accordance with DoDI 6025.13.

(C) There must be selection, training, and certification standards for healthcare providers performing SAFEs in MTFs.

(1) *Selection.* (i) Have specified screening and selection criteria consistent with DTM 14-001, the U.S. Department of Justice, Office on Violence Against Women, National Training Standards for Sexual Assault

Medical Forensic Examiners, and DoDI 6025.13.

(ii) In addition to the requirements in DoDI 6025.13, licensed DoD providers eligible to take SAFE training must pass a National Agency Check that will determine if they have been convicted of sexual assault, child abuse, domestic violence, violent crime (as defined by the Federal Bureau of Investigation's Uniform Crime Reporting Program) and other felonies.

(iii) If the candidate is a non-licensed provider, he or she must meet the same screening standards as those for SARCs in the D-SAACP certification program.

(2) *Training for healthcare providers performing SAFEs in MTFs.* Healthcare providers who may be called on to provide comprehensive medical treatment to a sexual assault victim, including performing SAFEs, are: obstetricians, gynecologists, and other licensed practitioners (preferably family physicians, emergency medicine physicians, and pediatricians); advanced practice nurses with specialties in midwifery, women's health, family health, and pediatrics; physician assistants trained in family practice or women's health; and registered nurses. These individuals must:

(i) In addition to the responder training requirements and the healthcare personnel training requirements in paragraphs (g)(1) and (g)(4)(i) of this section, healthcare providers performing SAFEs shall be trained and remain proficient in conducting SAFEs.

(ii) All providers conducting SAFEs must have documented education, training, and clinical practice in sexual assault examinations in accordance with U.S. Department of Justice, Office on Violence Against Women, National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents, and the U.S. Department of Justice, Office on Violence Against Women, National Training Standards for Sexual Assault Medical Examiners.

(3) *Certification.* (i) Provider must pass all selection and screening criteria.

(ii) Provider must submit documentation by trainer that healthcare provider has successfully completed SAFE training and is competent to conduct SAFEs independently. Documentation can be in the form of a certificate or be recorded in an electronic medical training tracking system.

(iii) Provider must obtain a letter of recommendation from her or his commander.

(iv) Upon successful completion of the selection, training, and certification

requirements, the designated medical certifying authority will issue the certification for competency.

Certification is good for 3 years from date of issue and must be reassessed and renewed at the end of the 3-year period.

(iii) Additional training topics for healthcare providers performing SAFEs:

(A) The SAFE Kit and DD Form 2911.

(B) Toxicology kit for suspected drug-facilitated cases.

(C) Chain of custody.

(D) Translation of findings.

(E) Proper documentation.

(F) Storage of evidence in Restricted Reports (e.g., RRCN).

(G) Management of the alleged offender.

(H) Relevant local and State laws and restrictions.

(I) Medical treatment issues during deployments including remote location assistance to include: location resources including appropriate personnel, supplies (drying device, toluidine blue dye, colposcope, camera), standard operating procedures, location of SAFE Kit and DD Form 2911; and availability and timeliness of evacuation to echelon of care where SAFEs are available.

(J) How to provide testing, prophylactic treatment options, and follow-up care to possible exposure to human immunodeficiency virus (HIV), and other sexually transmitted diseases or infections (STD/Is).

(K) How to assess the risk of pregnancy; provide options for emergency contraception, and any follow-up care and referral services to the extent authorized by law.

(L) How to assess the need for mental health services and provisions for a referral, if necessary or requested by the victim.

(M) How to conduct physical and mental health assessment.

(N) How to deal with sexual assault-related trauma, to include:

(1) Types of injury.

(2) Photography of injuries.

(3) Behavioral health and counseling needs.

(4) Consulting and referral process.

(5) Appropriate follow-up.

(6) Drug or alcohol facilitated sexual assault, to include review of best practices, victim interview techniques, and targeted evidence collections.

(O) Medical record management.

(P) Legal process and expert witness testimony.

(5) DoD law enforcement (those elements of DoD components, to include MCIOs, authorized to investigate violations of the UCMJ) training shall:

(i) Include the responder training requirements in paragraph (g)(1) of this section for DoD law enforcement

personnel who may respond to a sexual assault complaint.

(ii) Remain consistent with the guidelines published under the authority and oversight of the IG, DoD. In addition, DoD law enforcement training shall:

(A) Explain how to respond in accordance with the SAPR program.

(1) When to notify the command, SARC, and SAPR VA.

(2) How to work with SAPR VAs and SARCs, and medical personnel.

(3) In the event that law enforcement personnel respond to a 911 or emergency call involving sexual assault, how to refer the incident to the appropriate MCIO for investigation (after taking appropriate emergency response actions).

(B) Explain how to work with sexual assault victims, to include the effects of trauma on sexual assault victims. Ensure victims are informed of and accorded their rights, in accordance with DoDI 1030.2 and DoDD 1030.01 by contacting the VWAP.

(C) Take into consideration the victim's safety concerns and medical needs.

(D) Review IG policy and Military Service regulations regarding the legal transfer of the SAFE Kit and the retention of the DD Form 2911 or reports from civilian SAFEs in archived files. Explain that if the victim had a SAFE, the SAFE Kit will be retained for 5 years in accordance with DoDI 5505.18 and with section 586 of Public Law 112–81, as amended by section 538 of Public Law 113–291. Personal property retained as evidence collected in association with a sexual assault investigation will be retained for a period of 5 years. Personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents in accordance with section 586 of the Public Law 112–81, as amended by section 538 of Public Law 113–291 and DoD regulations.

(E) Discuss sex offender issues.

(6) Training how MCIO agents assigned to investigate sexual assaults shall:

(i) Be detailed in IG policy.

(ii) Adhere to the responder training requirements in paragraph (g)(1) of this section for military and civilian criminal investigators assigned to MCIOs who may respond to a sexual assault complaint.

(iii) Remain consistent with the guidelines published under the authority and oversight of the IG, DoD. In addition, MCIO training shall:

(A) Include initial and annual refresher training on essential tasks

specific to investigating sexual assault investigations that explain that these reports shall be included in sexual assault quarterly and annual reporting requirements found in § 105.16.

(B) Include IG policy and Military Service regulations regarding the legal transfer of the SAFE Kit and the retention of the DD Form 2911 or reports from civilian SAFEs in archived files. Explain that if the victim had a SAFE, the SAFE Kit will be retained for 5 years in accordance with DoDI 5505.18 and in accordance with section 586 of the Public Law 112–81, as amended by section 538 of Public Law 113–291. Personal property retained as evidence collected in association with a sexual assault investigation will be retained for a period of 5 years. Personal property may be returned to the rightful owner of such property after the conclusion of all legal, adverse action and administrative proceedings related to such incidents in accordance with section 586 of the Public Law 112–81, as amended by section 538 of Public Law 113–291 and DoD regulations.

(C) Explain how to work with victims of sexual assault.

(1) Effects of trauma on the victim to include impact of trauma and stress on memory as well as balancing investigative priorities with victim needs.

(2) Ensure victims are informed of and accorded their rights, in accordance with DoDI 1030.2 and DoDD 1030.01 by contacting the VWAP.

(3) Take into consideration the victim's safety concerns and medical needs.

(D) Explain how to respond to a sexual assault in accordance with 32 CFR part 103, this part, and the assigned Military Service regulations on:

(1) Notification to command, SARC, and VWAP.

(2) Investigating difficult cases to include drug and alcohol facilitated sexual assaults, having multiple alleged offenders and sexual assaults in the domestic violence context as well as same-sex sexual assaults (male/male or female/female).

(E) Review of available research regarding false information and the factors influencing false reports and false information, to include possible victim harassment and intimidation.

(F) Explain unique issues with sex offenders to include identifying, investigating, and documenting predatory behaviors.

(G) Explain how to work with the SARC and SAPR VA to include SAPR VA and SARC roles, responsibilities, and limitations; victim services and support program; and MRE 514.

(7) Judge advocate training shall:

(i) Prior to performing judge advocate duties, adhere to the responder training requirements in paragraph (g)(1) of this section for judge advocates who are responsible for advising commanders on the investigation or disposition of, or who prosecute or defend, sexual assault cases.

(ii) Explain legal support services available to victims.

(A) Pursuant to the respective Military Service regulations, explain that each Service member who reports a sexual assault shall be given the opportunity to consult with legal assistance counsel and SVC/VLC, and in cases where the victim may have been involved in collateral misconduct, to consult with defense counsel.

(1) Provide information concerning the prosecution, if applicable, in accordance with DoD 8910.1–M. Provide information regarding the opportunity to consult with legal assistance counsel and SVC/VLC as soon as the victim seeks assistance from a SARC, SAPR VA, or any DoD law enforcement agent or judge advocate.

(2) Ensure victims are informed of their rights and the VWAP program, in accordance with DoDI 1030.2 and DoDD 1030.01.

(B) Explain the sex offender registration program.

(iii) Explain issues encountered in the prosecution of sexual assaults.

(A) Typologies (characteristics) of victims and sex offenders in non-stranger sexual assaults.

(B) Addressing the consent defense.

(C) How to effectively prosecute alcohol and drug facilitated sexual assault.

(D) How to introduce forensic and scientific evidence (e.g., SAFE Kits, DNA, serology, toxicology).

(E) Evidentiary issues regarding MRE 412, 413, and 615 of the Manual for Courts-Martial, United States.

(F) How to advise victims, SAPR VAs, and VWAP about the military justice process, and MRE 514. Explain:

(1) Victims' rights during trial and defense counsel interviews (e.g., guidance regarding answering questions on prior sexual behavior, interviewing parameters, coordinating interviews, case outcomes).

(2) In the case of a general or special court-martial, the trial counsel will cause each qualifying victim to be notified of the opportunity to receive a copy of the record of trial (not to include sealed materials unless approved by the presiding military judge or appellate court, classified information, or other portions of the record the release of which would

unlawfully violate the privacy interests of any party, and without a requirement to include matters attached to the record under R.C.M. 1101(b)(3) in Manual for Courts-Martial, United States. A qualifying victim is an individual named in a specification alleging an offense under Articles 120, 120b, 120c, or 125 of the UCMJ (sections 920, 920b, 920c, or 925 of title 10 U.S.C.) or any attempt to commit such offense in violation of Article 80 of the UCMJ (section 880 of title 10 U.S.C.) if the court-martial resulted in any finding of that specification.

(3) Guidance on victim accompaniment (*e.g.*, who may accompany victims to attorney interviews, what is their role, and what they should do if victim is being mistreated).

(i) Defense counsel must request interviews through the victim's counsel if the victim is represented by counsel.

(ii) The victim has the right to be accompanied to the Defense interview, in accordance with section 846 of title 10, U.S.C.

(4) MRE 412 of the Manual for Courts-Martial, United States, and its application to an Article 32 preliminary hearings.

(5) Protecting victim privacy (*e.g.*, access to medical records and conversations with SARC or SAPR VA, discovery consequences of making victim's mental health an issue, MRE 514).

(8) Legal Assistance Attorney training shall adhere to the requirements of annual training in paragraph (c)(2) of this section. Attorneys shall receive training in order to have the capability to provide legal assistance to sexual assault victims in accordance with the USD(P&R) Memorandum. Legal assistance attorney training shall include:

(i) The VWAP, including the rights and benefits afforded the victim.

(A) The role of the VWAP and what privileges do or do not exist between the victim and the advocate or liaison.

(B) The nature of the communication made to the VWAP as opposed to those made to the legal assistance attorney.

(ii) The differences between the two types of reporting in sexual assault cases.

(iii) The military justice system, including the roles and responsibilities of the trial counsel, the defense counsel, and investigators. This may include the ability of the Government to compel cooperation and testimony.

(iv) The services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.

(v) The availability of protections offered by military and civilian restraining orders.

(vi) Eligibility for and benefits potentially available as part of transitional compensation benefits found in section 1059 of title 10, U.S.C., and other State and Federal victims' compensation programs.

(vii) Traditional forms of legal assistance.

(9) SVC/VLC will adhere to the requirements of annual training in paragraph (c)(2) of this section, to include explaining the nature of the relationship between a SVC/VLC and a victim will be the relationship between an attorney and client. In accordance with section 1044e of title 10 U.S.C., SVC/VLC training will include providing legal consultation regarding:

(i) Potential criminal liability of the victim, if any, stemming from or in relation to the circumstances surrounding the alleged sex-related offense and the victim's right to seek military defense services.

(ii) The Victim Witness Assistance Program, including:

(A) The rights and benefits afforded the victim.

(B) The role of the Victim Witness Assistance Program liaison and what privileges do or do not exist between the victim and the liaison.

(C) The nature of communication made to the liaison in comparison to communication made to an SVC/VLC or a legal assistance attorney in accordance with section 1044 of title 10 U.S.C.

(iii) The responsibilities and support provided to the victim by the SARC or a SAPR VA, to include any privileges that may exist regarding communications between those persons and the victim.

(iv) The potential for civil litigation against other parties (other than the United States).

(v) The military justice system, including (but not limited to):

(A) The roles and responsibilities of the trial counsel, the defense counsel, and investigators.

(B) Any proceedings of the military justice process which the victim may observe.

(C) The U.S. Government's authority to compel cooperation and testimony.

(D) The victim's responsibility to testify and other duties to the court.

(vi) Accompanying the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sex-related offense.

(vii) Eligibility and requirements for services available from appropriate agencies or offices for emotional and

mental health counseling and other medical services.

(viii) Legal consultation and assistance:

(A) In personal civil legal matters in accordance with section 1044 of title 10 U.S.C.

(B) In any proceedings of the military justice process in which a victim can participate as a witness or other party.

(C) In understanding the availability of, and obtaining any protections offered by, civilian and military protective or restraining orders.

(D) In understanding the eligibility and requirements for, and obtaining, any available military and veteran benefits, such as transitional compensation benefits found in section 1059 of title 10 U.S.C. and other State and Federal victims' compensation programs.

(10) Chaplains, chaplain assistants and religious personnel training shall:

(i) Adhere to the responder training requirements in paragraph (g)(1) of this section.

(ii) Pre-deployment SAPR training shall focus on counseling services needed by sexual assault victims and offenders in contingency and remote areas.

(iii) Address:

(A) Privileged communications and the Restricted Reporting policy rules and limitations, including legal protections for chaplains and their confidential communications, assessing victim or alleged offender safety issues (while maintaining chaplain's confidentiality), and MRE 514.

(B) How to support victims with discussion on sensitivity of chaplains in addressing and supporting sexual assault victims, identifying chaplain's own bias and ethical issues, trauma training with pastoral applications, and how to understand victims' rights as prescribed in DoDI 1030.2 and DoDD 1030.01.

(C) Other counseling and support topics.

(1) Alleged Offender counseling should include: assessing and addressing victim and alleged offender safety issues while maintaining confidentiality; and counseling an alleged offender when the victim is known to the chaplain (counseling both the alleged offender and the victim when there is only one chaplain at a military installation).

(2) Potential distress experienced by witnesses and bystanders over the assault they witnessed or about which they heard.

(3) Counseling for SARCs, SAPR VAs, healthcare personnel, chaplains, JAGs, law enforcement or any other

professionals who routinely work with sexual assault victims and may experience secondary effects of trauma.

(4) Providing guidance to unit members and leadership on how to mitigate the impact that sexual assault has on a unit and its individuals, while keeping in mind the needs and concerns of the victim.

■ 15. Amend § 105.15 by revising paragraphs (a)(1) and (b) to read as follows:

§ 105.15 Defense Sexual Assault Incident Database (DSAID).

(a) *Purpose.* (1) In accordance with section 563 of Public Law 110–417, DSAID shall support Military Service SAPR program management and DoD SAPRO oversight activities. It shall serve as a centralized, case-level database for the collection and maintenance of information regarding sexual assaults involving persons covered by this part. DSAID will include information, if available, about the nature of the assault, the victim, the alleged offender, investigative information, case outcomes in connection with the allegation, and other information necessary to fulfill reporting requirements. DSAID will serve as the DoD’s SAPR source for internal and external requests for statistical data on sexual assault in accordance with section 563 of Public Law 110–417. The DSAID has been assigned OMB Control Number 0704–0482. DSAID contains information provided by the Military Services, which are the original source of the information.

* * * * *

(b) *Procedures.* (1) DSAID shall:

(i) Contain information about sexual assaults reported to the DoD involving persons covered by this part, both via Unrestricted and Restricted Reporting options.

(ii) Include adequate safeguards to shield PII from unauthorized disclosure. The system will not contain PII about victims who make a Restricted Report. Information about sexual assault victims and subjects will receive the maximum protection allowed under the law. DSAID is accessible only by authorized users and includes stringent user access controls.

(iii) Assist with annual and quarterly reporting requirements, identifying and managing trends, analyzing risk factors or problematic circumstances, and taking action or making plans to eliminate or to mitigate risks. DSAID shall store case information. Sexual assault case information shall be available to DoD SAPRO for SAPR program oversight (data validation and

quality control), study, research, and analysis purposes. DSAID will provide a set of core functions to satisfy the data collection and analysis requirements for the system in five basic areas: data warehousing, data query and reporting, SARC victim case management functions, subject investigative and legal case information, and SAPR program administration and management.

(iv) Receive information from the MCIO case management systems or direct data entry by authorized Military Service personnel.

(v) Contain information pertaining to all victims of sexual assault reported to the DoD through filing a DD Form 2910 or reporting to an MCIO. When a Service member is alleged to have sexually assaulted a civilian or foreign national, the SARC will request and the MCIO will provide the victim’s name, supporting PII, and the MCIO case file number, to include the unique identifier for foreign nationals, for entry into DSAID.

(vi) A SARC will open a case in DSAID as an “Open with Limited Information” case when there is no signed DD 2910 (e.g., an independent investigation or third-party report, or when a civilian victim alleged sexual assault with a Service member) to comply with Section 563(d) of Public Law 109–364 and to ensure system accountability.

(2) The DD Form 2965 may be used as a tool for capturing information to be entered into DSAID when direct data entry is not possible, but the DD Form 2965 is not meant to be retained as a permanent form.

(i) SARCs and SAPR VAs will be the primary users of the DD Form 2965, which may be completed in sections as appropriate. Applicable sections of the form may also be used by MCIO and designated legal officer, if applicable, to provide required investigative and disposition information to SARCs for input into DSAID. Victims will not complete the DD Form 2965.

(ii) In accordance with General Records Schedule 20, Item 2(a)4, users will destroy the DD Form 2965 immediately after its information has been inputted into DSAID or utilized for the purpose of developing the 8-day incident report (Public Law 113–66). In all cases, the DD Form 2965 will not be retained for longer than 8 days and will not be mailed, faxed, stored, or uploaded to DSAID. In a Restricted Report case, a copy of the DD Form 2965 will not be provided to commanders.

* * * * *

■ 16. Amend § 105.16 by:

■ a. In paragraph (a) introductory text, removing “in accordance with section

1631(d) of Public Law 111–383” and adding in its place “in accordance with guidance from the USD(P&R) and section 1631(d) of Public Law 111–383.”

■ b. Revising paragraph (a)(4).

■ c. Adding paragraphs (a)(6) and (7).

■ d. In paragraph (b) introductory text, removing “comprehensive reporting” and adding in its place “comprehensive reporting and metrics tracking.”

■ e. In paragraph (b)(1), removing “January 31” and adding in its place “February 15.”

■ f. In paragraph (b)(2), removing “April 30” and adding in its place “May 15.”

■ g. In paragraph (b)(3), removing “July 31” and adding in its place “August 15.”

■ h. In paragraph (d), removing “April 30” and adding in its place “April 30 of each year.”

The revision and addition read as follows:

§ 105.16 Sexual assault annual and quarterly reporting requirements.

(a) * * *

(4) Matrices for Restricted and Unrestricted Reports of the number of sexual assaults involving Service members that include case synopses, and disciplinary actions taken in substantiated cases and relevant information. See § 105.17.

* * * * *

(6) May include analyses of surveys administered to victims of sexual assault on their experiences with SAPR victim assistance and the military health and justice systems.

(7) Analysis and assessment of the disposition of the most serious offenses identified in Unrestricted Reports in accordance with section 542 of Public Law 113–291.

* * * * *

§ 105.17 [Amended]

■ 17. Amend § 105.17 by:

■ a. In the introductory text, removing “definitions” and adding in its place “terms.”

■ b. In paragraph (a) introductory text, removing “to provide” and adding in its place “and provided” and removing “to take” and adding in its place “which may include.”

■ c. In paragraph (a)(1), removing “Actions against the subject may include court-martial charge referral, Article 15 UCMJ punishment, nonjudicial punishment” and adding in its place “Actions against the subject may include initiation of a court-martial, nonjudicial punishment.”

■ d. In paragraph (b) introductory text, adding “(section 815 of title 10 U.S.C.)” after “UCMJ.”

■ e. In paragraph (b)(1)(i):

- i. Adding “(sections 920 and 925 of title 10, U.S.C.)” after “Articles 120 and 125 of the UCMJ.”
- ii. Adding “(section 880 of title 10, U.S.C.)” after “Article 80 of the UCMJ.”
- iii. Redesignating footnote 13 as footnote 10.
- f. In paragraph (b)(1)(ii), adding “(section 815 of title 10, U.S.C.)” after “Article 15 of the UCMJ.”
- h. In paragraph (b)(2) introductory text, removing “non-judicial” and adding in its place “nonjudicial.”
- i. In paragraph (b)(2)(ii), adding “(section 815 in title 10, U.S.C.)” after “(Article 15, UCMJ).”
- j. In paragraph (c)(4), adding “(section 943 of title 10, U.S.C.)” after “Article 43 of the UCMJ.”
- k. In paragraph (e) introductory text, removing “are” and adding in its place “is.”
- 18. Revise § 105.18 to read as follows:

§ 105.18 Information collection requirements.

(a) The DSAID, the DD Form 2910, and the DD Form 2965, “Defense Sexual Assault Incident Database (DSAID) Data Form,” referred to in this part, have been assigned OMB control number 0704–0482 in accordance with the procedures in Volume 2 of DoD Manual 8910.01.

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

(c) The quarterly reports of sexual assaults involving Service members referred to in §§ 105.5, 105.7, 105.14,

105.15, and 105.16 are prescribed by DoDD 5124.02 and have been assigned a DoD report control symbol in accordance with the procedures in Volume 1 and Volume 2 of DoD Manual 8910.01.

(d) The Service Academy sexual assault survey referred to in § 105.16(c) has been assigned DoD report control symbol in accordance with the procedures in Volume 1 and Volume 2 of DoD Manual 8910.01.

(e) The Survivor Experience Survey, referred to in § 105.16(a) and conducted by the Defense Manpower Data Center (DMDC), has been assigned the Report Control Symbol DD–P&R(AR)2554 in accordance with the procedures in DoD Manual 8910.01, Volume 2.

Dated: September 7, 2016.

Patricia L. Toppings,
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