

**Office of the Secretary**

**DoD-2008-OS-0124; 0790-AI37**

**32 Code of Federal Regulations (CFR) Part 103**

**Sexual Assault Prevention and Response (SAPR) Program**

**AGENCY:** Department of Defense.

**ACTION:** Interim Final Rule.

**SUMMARY:** This part implements Department of Defense (DoD) policy and assigns responsibilities for the SAPR Program on prevention, response, and oversight to sexual assault. It is DoD policy to establish a culture free of sexual assault by providing an environment of prevention, education and training, response capability, victim support, reporting procedures, and accountability that enhances the safety and well being of all persons covered by this part.

This rule is being published as an interim final rule to:

- (a) Implement DoD policy and assign responsibilities for the SAPR Program on prevention, response, and oversight to sexual assault.
- (b) Incorporate all applicable congressional mandates and all applicable recommendations from the Inspector General of the Department of Defense (IG, DoD), Government Accountability Office, and Defense Task Force on Sexual Assault in the Military Services, to include the new Defense Sexual Assault Incident Database (DSAID) that will give the Department a clear view of the number of incidents at the installation level;
- (c) Address vigorous congressional and public interest by publishing a revised and comprehensive DoD policy on the prevention of and response to sexual assaults involving

members of the U.S. Armed Forces, which affords victims critical and unprecedented additional protections under this part; and

(d) Provide field guidance and training requirements to the Military Components to ensure individual resilience and unit readiness in the U.S. Armed Forces, which may be degraded by sexual assault, and thus enable Service member victims to become fully mission capable and engaged once again.

Additionally, if this rule is not published as an interim final rule, the public will be harmed because adult spouses and other military dependents cannot get Restricted Reporting or the services of a Sexual Assault Response Coordinator (SARC) or a Sexual Assault Prevention and Response Victim Advocate (SAPR VA) until the rule and corresponding DoD policy are published. In addition, DoD civilians outside of the continental United States (OCONUS) and DoD contractors (who are U.S. citizens and authorized to accompany U.S. military) will not be able to receive emergency care and the services of a SARC and a SAPR VA during the emergency care until the Rule and corresponding DoD policy are published. Moreover, the rule and corresponding DoD policy mandate that all sexual assault victims are treated as emergency cases, regardless of visible physical injuries.

**DATES: Effective: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].** Comments must be received by **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS RULE IN THE FEDERAL REGISTER].**

**ADDRESSES:** You may submit comments, identified by docket number and/or RIN number and title, by any of the following methods:

- Federal Rulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number or Regulatory Information Number (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:** Diana Rangoussis, Senior Policy Advisor, Sexual Assault Prevention and Response Office (SAPRO), (703) 696-9422.

**SUPPLEMENTARY INFORMATION:**

This rule:

- (a) Incorporates all applicable congressional mandates from Section 113 of Title 10, United States Code (U.S.C.), and Public Laws 109-364, 109-163, 108-375, 106-65, 110-417, and 111-84; and all applicable recommendations from the IG, DoD; Government Accountability Office; and Defense Task Force on Sexual Assault in the Military Services;
- (b) Establishes the creation, implementation, maintenance, and function of DSAID, an integrated database that will meet congressional reporting requirements, support Military Service SAPR Program management, and inform DoD SAPRO oversight activities;
- (c) Increases the scope of applicability of this part by expanding the categories of persons covered by this part to include:
  - (1) National Guard and Reserve Component 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. Refer to DoD Instruction (DoDI) 6495.02 for additional SAPR and medical services provided to such personnel and eligibility criteria for Restricted Reporting;

(2) Military dependents 18 years of age and older who are eligible for treatment in the military healthcare system, at installations in the continental United States (CONUS) and outside of the continental United States (OCONUS), and who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner. (The Family Advocacy Program (FAP), pursuant to DoD Directive (DoDD) 6400.1, covers 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);

(3) The following non-military personnel who are only eligible for limited medical services in the form of emergency care (see §103.3 (g) of this rule), unless otherwise eligible to receive treatment in a military medical treatment facility. They will also be offered the limited SAPR services of a Sexual Assault Response Coordinator (SARC) and a SAPR Victim Advocate (VA) while undergoing emergency care OCONUS. Refer to DoDI 6495.02 for any additional SAPR and medical services provided. 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 military healthcare system at military installations or facilities OCONUS. Refer to DoDI 6495.02 for reporting options available to DoD civilians and their family dependents 18 years of age and older;

(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 per DoDI 3020.41. Refer to DoDI 6495.02 for reporting options available to DoD contractors; and

(4) Service members who are on active duty but were victims of sexual assault prior to enlistment or commissioning. They are eligible to receive full SAPR services and either reporting option. The focus of this part and DoDI 6495.02 is on the victim of sexual assault. The DoD shall provide support to an active duty Service member regardless of when or where the sexual assault took place.

## **REGULATORY PROCEDURES:**

### **Executive Order 12866, “Regulatory Planning and Review”**

It has been determined that this rule is not a significant regulatory action. The rule does not:

- (1) 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;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

### **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 SAPR Program guidance only.

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

Section 103.5(a)(9) of this interim final rule contains information collection requirements. DoD has submitted the following proposal to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on:

- (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility;
- (b) The accuracy of the estimate of the burden of the proposed information collection;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (d) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

Title: DSAID.

Type of Request: New.

Number of Respondents: 3,200.

Responses Per Respondent: 1.

Annual Responses: 3,200.

Average Burden Per Response: 60 minutes.

Annual Burden Hours: 1 hour.

Needs and Uses: A DoD database that captures uniform data provided by the Military Services and maintains all sexual assault data collected by the Military Services. This database shall be a

centralized, case-level database for the uniform collection of data regarding incidence of sexual assaults involving persons covered by this part and DoDI 6495.02. DSAID will include information when available, or when not limited by Restricted Reporting, or otherwise prohibited by law, about the nature of the assault, the victim, the offender, and the disposition of reports associated with the assault. Information in the DSAID will be used to respond to congressional reporting requirements, support Military Service SAPR Program management, and inform DoD SAPRO oversight activities.

Affected Public: Federal Government; Individuals or Households; Business or Other For-Profit; Not-For-Profit Institutions; Farms; State, Local or Tribal Government.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer:

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the OMB, DoD Desk Officer, Room 10102, New Executive Office Building, Washington, DC 20503, with a copy to Ms. Darlene Sullivan at the DoD SAPRO, Oversight Program Manager, 1401 Wilson Boulevard, Suite 402, Arlington, VA 22209.

Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number and title, by the following method:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, docket number and title 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.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to DoD SAPRO, 1401 Wilson Boulevard, Suite 402, Arlington, VA 22209, ATTN: Ms. Darlene Sullivan, (703) 696-9422.

### **Executive Order 13132, “Federalism”**

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

### **List of Subjects in 32 CFR Part 103**

Military personnel, crime, health

Accordingly, 32 CFR Part 103 is added to read as follows:

## **PART 103 - SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM**

### **Sec.**

#### **103.1 Purpose.**

#### **103.2 Applicability.**

#### **103.3 Definitions.**

#### **103.4 Policy.**

#### **103.5 Responsibilities.**



**AUTHORITY:** 10 U.S.C. 113; and Public Laws 109-364, 109-163, 108-375, 106-65, 110-417, and 111-84.

**§103.1 Purpose.**

(a) This part reissues DoDD 6495.01, pursuant to section 113 of Title 10, U.S.C., to implement DoD policy and assign responsibilities for the SAPR Program on prevention, response, and oversight to sexual assault according to the guidance in:

- (1) This part;
- (2) DoDD 6495.01, “Sexual Assault Prevention and Response (SAPR) Program,” October 6, 2005 (hereby cancelled);
- (3) Sections 101(d)(3) and 113, chapter 47,<sup>1</sup> and chapter 80 of title 10, U.S.C.;
- (4) DoDI 6495.02, “Sexual Assault Prevention and Response Program Procedures,” November 13, 2008;
- (5) DoDD 6400.1, “Family Advocacy Program (FAP),” August 23, 2004;
- (6) U.S. Department of Defense, “Manual for Courts-Martial,” 2008;
- (7) DoDD 7050.06, “Military Whistleblower Protection,” July 2007;
- (8) U.S. Department of Justice, Office on Violence Against Women, “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,” September 2004, or the most recent edition;
- (9) DoDD 5400.11, “DoD Privacy Program,” May 8, 2007;
- (10) DoD 6025.18-R, “DoD Health Information Privacy Regulation,” January 24, 2003;
- (11) DoD 8910.1-M, “DoD Procedures for Management of Information Requirements,” June 30, 1998;

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<sup>1</sup> Also known as “The Uniform Code of Military Justice.”

- (12) DoDD 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008;
  - (13) U.S. Department of Defense paper, “The Department of Defense Sexual Assault Prevention Strategy,” September 30, 2008;
  - (14) Section 577 of Public Law 108-375, “Ronald Reagan National Defense Authorization Act for Fiscal Year 2005,” October 28, 2004;
  - (15) Sections 561, 562, and 563 of Public Law 110-417, “The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009,” October 14, 2008;
  - (16) Section 567(c) of Public Law 111-84, “The National Defense Authorization Act for Fiscal Year 2010,” October 28, 2009;
  - (17) Joint Publication 1-02, “Department of Defense Dictionary of Military and Associated Terms,” current edition; and
  - (18) DoD Instruction 3020.41, “Contractor Personnel Authorized to Accompany the U.S. Armed Forces.” October 3, 2005.
- (b) Reserved.

**§103.2 Applicability.**

This part applies to:

- (a) 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”).
- (b) National Guard, and Reserve Component 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. Refer to DoDI 6495.02 for additional SAPR and medical services provided to such personnel and eligibility criteria for Restricted Reporting.

(c) Military dependents 18 years of age and older, who are eligible for treatment in the military healthcare system, at installations in the continental United States (CONUS) and outside of the continental United States (OCONUS), and who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner. (The FAP, pursuant to DoDD 6400.1, 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.) Victims whose assault qualifies under the UCMJ punitive action of Article 120/125, but have an intimate partner relationship with the suspect, are provided services by the FAP program for critical reasons.

(d) The following non-military personnel, who are only eligible for limited medical services in the form of emergency care (see §103.3), unless otherwise eligible to receive treatment in a military medical treatment facility. They will also be offered the limited SAPR services of a SARC and a SAPR VA while undergoing emergency care OCONUS. Refer to DoDI 6495.02 for any additional SAPR and medical services provided. These limited medical and SAPR services shall be provided to:

(1) DoD civilian employees and their family dependents 18 years of age and older when they are stationed or performing duties OCONUS and eligible for treatment in the military healthcare system at military installations or facilities OCONUS. Refer to DoDI 6495.02 for reporting options available to DoD civilians and their family dependents 18 years of age and older; and

(2) U.S. citizen DoD contractor personnel when they are authorized to accompany the Armed Forces in a contingency operation OCONUS and their U.S. citizen employees per DoDI 3020.41. Refer to DoDI 6495.02 for reporting options available to DoD contractors.

(e) Service members who are on active duty but were victims of sexual assault prior to enlistment or commissioning. They are eligible to receive SAPR services and either reporting option. The focus of this part and DoDI 6495.02 is on the victim of sexual assault. The DoD shall provide support to an active duty Service member regardless of when or where the sexual assault took place.

(f) Supersedes all policy and regulatory guidance within the DoD not expressly mandated by law that is inconsistent with its provisions, or that would preclude execution.

### **§103.3 Definitions.**

Unless otherwise noted, these terms and their definitions are for the purpose of this part.

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

(b) Consent. Words or overt acts indicating a freely given agreement to the sexual conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the accused's use of force, threat of force, or placing another person in fear does not constitute consent. A current or previous dating relationship or the manner of dress of the person involved with the accused in the sexual conduct at issue shall not constitute consent. There is no consent

where the person is sleeping or incapacitated, such as due to age, alcohol or drugs, or mental incapacity.

(c) Crisis intervention. Emergency non-clinical care aimed at assisting victims in alleviating potential negative consequences by providing safety assessments and connecting victims to needed resources. Either the SARC or SAPR VA will intervene as quickly as possible to assess the victim's safety and determine the needs of victims and connect them to appropriate referrals, as needed.

(d) Culturally-competent care. Care that provides culturally and linguistically appropriate services.

(e) DSAID. A DoD database that captures uniform data provided by the Military Services and maintains all sexual assault data collected by the Military Services. This database shall be a centralized, case-level database for the uniform collection of data regarding incidence of sexual assaults involving persons covered by this part and DoDI 6495.02. DSAID will include information when available, or when not limited by Restricted Reporting, or otherwise prohibited by law, about the nature of the assault, the victim, the offender, and the disposition of reports associated with the assault. DSAID shall be available to the Sexual Assault and Response Office and the DoD to develop and implement congressional reporting requirements. Unless authorized by law, or needed for internal DoD review or analysis, disclosure of data stored in DSAID will only be granted when disclosure is ordered by a military, Federal, or State judge or other officials or entities as required by a law or applicable U.S. international agreement. This term and its definition are proposed for inclusion in the next edition of Joint Publication 1-02.

(f) Emergency. A situation that requires immediate intervention to prevent the loss of life, limb, sight, or body tissue to prevent undue suffering. Regardless of appearance, a sexual assault

victim needs immediate medical intervention to prevent loss of life or undue suffering resulting from physical injuries internal or external, sexually transmitted infections, pregnancy, or psychological distress. Sexual assault victims shall be given priority as emergency cases regardless of evidence of physical injury.

(g) Emergency care. Emergency medical care includes physical and emergency psychological medical services and a SAFE consistent with the U.S. Department of Justice, Office on Violence Against Women Protocol.

(h) Gender-responsive care. Care that acknowledges and is sensitive to gender differences and gender-specific issues.

(i) Healthcare personnel. Persons assisting or otherwise supporting healthcare providers in providing healthcare services (e.g., administrative personnel assigned to a military medical treatment facility, or mental healthcare personnel). Healthcare personnel also includes all healthcare providers.

(j) Military Services. The term, as used in the SAPR Program, includes Army, Air Force, Navy, Marines, Reserve Components, and their respective Military Academies.

(k) Non-identifiable personal information. Non-identifiable personal information includes those facts and circumstances surrounding the sexual assault incident or that information about the individual that enables the identity of the individual to remain anonymous. In contrast, personal identifiable information is information belonging to the victim and alleged assailant of a sexual assault that would disclose or have a tendency to disclose the person's identity.

(l) Official investigative process. The formal process a commander or law enforcement organization uses to gather evidence and examine the circumstances surrounding a report of sexual assault.

(m) Personal identifiable information. Includes the person's name, other particularly identifying descriptions (e.g., physical characteristics or identity by position, rank, or organization), or other information about the person or the facts and circumstances involved that could reasonably be understood to identify the person (e.g., a female in a particular squadron or barracks when there is only one female assigned).

(n) Qualifying conviction. A State or Federal conviction, or a finding of guilty in a juvenile adjudication, for a felony crime of sexual assault and any general or special court-martial conviction for a Uniform Code of Military Justice (UCMJ) offense, which otherwise meets the elements of a crime of sexual assault, even though not classified as a felony or misdemeanor within the UCMJ. In addition, any offense that requires registration as a sex offender is a qualifying conviction.

(o) Recovery-oriented care. 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.

(p) Restricted Reporting. Reporting option that allows sexual assault victims to confidentially disclose the assault to specified individuals (i.e., SARC, SAPR VA, or healthcare personnel), in accordance with "Victim Centered Care" of U.S. Department of Justice, Office on Violence Against Women, "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents" and receive medical treatment, including emergency care, counseling, and assignment of a SARC and SAPR VA, without triggering an official investigation. The victim's report provided to healthcare personnel (including the information acquired from a SAFE Kit), SARCs, or SAPR VAs will not be reported to law enforcement or to the command to initiate the official investigative process unless the victim consents or an established exception applies in

accordance with DoDI 6495.02. The Restricted Reporting Program applies to Service Members and their military dependents 18 years of age and older. For additional persons who may be entitled to Restricted Reporting, see eligibility criteria in DoDI 6495.02. Only a SARC, SAPR VA, or healthcare personnel may receive a Restricted Report, previously referred to as Confidential Reporting. This term and its definition are proposed for inclusion in the next edition of Joint Publication 1-02.

(q) SAFE Kit. The medical and forensic examination of a sexual assault victim under circumstances and controlled procedures to ensure the physical examination process and the collection, handling, analysis, testing, and safekeeping of any bodily specimens and evidence meet the requirements necessary for use as evidence in criminal proceedings. The victim's SAFE Kit is treated as a confidential communication when conducted as part of a Restricted Report. This term and its definition are proposed for inclusion in the next edition of Joint Publication 1-02.

(r) SAPRO. Serves as DoD's single point of authority, accountability, and oversight for the SAPR program, except for legal processes and criminal investigative matters that are the responsibility of the Judge Advocates General of the Military Departments and the IG respectively. This term and its definition are proposed for inclusion in the next edition of Joint Publication 1-02.

(s) SAPR Program. A DoD program for the Military Departments and the DoD Components that establishes SAPR policies to be implemented worldwide. The program objective is an environment and military community intolerant of sexual assault. This term and its definition are proposed for inclusion in the next edition of Joint Publication 1-02.



(t) SAPR VA. A person who, as a victim advocate, shall provide non-clinical crisis intervention, referral, and ongoing non-clinical support to adult sexual assault victims. Support will include providing information on available options and resources to victims. The SAPR VA, on behalf of the sexual assault victim, provides liaison assistance with other organizations and agencies on victim care matters and reports directly to the SARC when performing victim advocacy duties. Personnel who are interested in serving as a SAPR VA are encouraged to volunteer for this duty assignment. This term and its definition are proposed for inclusion in the next edition of Joint Publication 1-02.

(u) SARC. The single point of contact at an installation or within a geographic area who oversees sexual assault awareness, prevention, and response training; coordinates medical treatment, including emergency care, for victims of sexual assault; and tracks the services provided to a victim of sexual assault from the initial report through final disposition and resolution. This term and its definition are proposed for inclusion in the next edition of Joint Publication 1-02.

(v) Senior commander. An officer, usually in the grade of O-6 or higher, who is the commander of a military installation or comparable unit and has been designated by the Military Service concerned to oversee the SAPR Program.

(w) Service member. An active duty member of a Military Service. In addition, National Guard and Reserve Component 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.

(x) Sexual assault. Intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. Sexual assault includes rape, forcible sodomy (oral or anal sex), and other unwanted sexual contact that is aggravated,

abusive, or wrongful (including unwanted and inappropriate sexual contact), or attempts to commit these acts.

(y) Unrestricted Reporting. A process that an individual covered by this policy uses to disclose, without requesting confidentiality or Restricted Reporting, that he or she is the victim of a sexual assault. Under these circumstances, the victim's report provided to healthcare personnel, the SARC, a SAPR VA, command authorities, or other persons is reported to law enforcement and may be used to initiate the official investigative process. Additional policy and guidance are provided in DoDI 6495.02. This term and its definition are proposed for inclusion in the next edition of Joint Publication 1-02.

(z) Victim. A person who asserts direct physical, emotional, or pecuniary harm as a result of the commission of a sexual assault. The term encompasses all persons 18 and over eligible to receive treatment in military medical treatment facilities; however, the Restricted Reporting Program applies to Service Members and their military dependents 18 years of age and older. For additional persons who may be entitled to Restricted Reporting, see eligibility criteria in DoDI 6495.02.

#### **§103.4 Policy.**

It is DoD policy that:

- (a) This part and DoDI 6495.02 implement the DoD SAPR policy.
- (b) The DoD goal is a culture free of sexual assault by providing an environment of prevention, education and training, response capability (defined in DoDI 6495.02), victim support, reporting procedures, and accountability that enhances the safety and well being of all persons covered by this part and DoDI 6495.02.
- (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. The SAPR Program shall provide care that is gender-responsive, culturally-competent, and recovery-oriented. (See §103.3)

(2) Not provide policy for legal processes within the responsibility of the Judge Advocates General of the Military Departments provided in Chapter 47 of Title 10, U.S.C. (also known as and hereafter referred to as “UCMJ”) and the Manual for Court’s-Martial or for criminal investigative matters assigned to the Judge Advocates General of the Military Departments and IG, DoD.

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

(e) The terms “Sexual Assault Response Coordinator (SARC)” and “SAPR Victim Advocate (VA),” as defined in this part and the DoDI 6495.02, shall be used as standard terms throughout the DoD to facilitate communications and transparency regarding SAPR capacity. For further information regarding SARC and SAPR VA roles and responsibilities, see DoDI 6495.02.

(1) SARC. The SARC shall serve as the single point of contact for coordinating appropriate and responsive care for sexual assault victims. SARCs shall coordinate sexual assault victim care and sexual assault response when a sexual assault is reported. The SARC shall supervise SAPR VAs, but may be called on to perform victim advocacy duties.

(2) SAPR VA. The SAPR VA shall provide non-clinical crisis intervention and on-going support, in addition to referrals for adult sexual assault victims. Support will include providing information on available options and resources to victims.

(f) Command sexual assault awareness and prevention programs, as well as law enforcement and criminal justice procedures that enable persons to be held accountable for their actions, as appropriate, shall be established and supported by all commanders.

(g) An immediate, trained sexual assault response capability (defined in DoDI 6495.02) shall be available for each report of sexual assault in all locations, including in deployed locations. The response time may be affected by operational necessities, but will reflect that sexual assault victims shall be treated as emergency cases.

(h) Victims of sexual assault shall be protected from coercion, retaliation, and reprisal in accordance with DoDD 7050.06.

(i) Victims of sexual assault shall be protected, treated with dignity and respect, and shall receive timely access to comprehensive medical treatment, including emergency care treatment and services, as described in this part and DoDI 6495.02.

(j) Emergency care shall consist of emergency medical care and the offer of a SAFE consistent with the “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents” and refer to DD Form 2911, “DoD Sexual Assault Medical Forensic Examination Report” and accompanying instructions. The victim shall be advised that even if a SAFE is declined, the victim is encouraged (but not mandated) to receive medical care, psychological care, and victim advocacy.

(1) Sexual assault patients shall be given priority, so that they shall be treated as emergency cases. A sexual assault victim needs immediate medical intervention to prevent loss of life or suffering resulting from physical injuries (internal or external), sexually transmitted infections, pregnancy, and psychological distress. Individuals disclosing a recent sexual assault shall, with their consent, be quickly transported to the exam site, promptly evaluated, treated for serious

injuries, and then, with the patient's consent, undergo a SAFE, pursuant to "Victim Centered Care" of "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents" and refer to DD Form 2911 and accompanying instructions.

(2) Sexual assault patients shall be treated as emergency cases, regardless of whether physical injuries are evident. Patients' needs shall be assessed for immediate medical or mental health intervention pursuant to "Victim Centered Care," and "Triage and Intake" of "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents." Sexual assault victims shall be treated uniformly, consistent with "Victim Centered Care" of "A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents" and DD Form 2911 and accompanying instructions, regardless of their behavior because when severely traumatized, sexual assault patients may appear to be calm, indifferent, submissive, jocular, angry, emotionally distraught, or even uncooperative or hostile towards those who are trying to help.

(k) Service members and their dependents who are 18 years of age or older covered by this part (see §103.2(d)) and DoDI 6495.02 who are sexually assaulted have two reporting options: Unrestricted or Restricted Reporting. Complete, Unrestricted Reporting of sexual assault is favored by the DoD. See DoDI 6495.02 for additional information on the DoD sexual assault reporting options and exceptions as they apply to Restricted Reporting. Consult DoDD 5400.11 and DoD 6025.18-R for protections of personally identifiable information solicited, collected, maintained, accessed, used, disclosed, and disposed during the treatment and reporting processes. The two reporting options are as follows:

(1) Unrestricted Reporting allows an eligible person who is sexually assaulted to access medical treatment and counseling and request an official investigation of the allegation using existing

reporting channels (e.g., chain of command, law enforcement, healthcare personnel, the SARC).

When a sexual assault is reported through Unrestricted Reporting, a SARC shall be notified as soon as possible, respond, assign a SAPR VA, and offer the victim medical care and a SAFE.

(2) Restricted Reporting allows sexual assault victims (see eligibility criteria in §103.2(c) of this part) to confidentially disclose the assault to specified individuals (i.e., SARC, SAPR VA, or healthcare personnel), in accordance with DoDD 5400.11, and receive medical treatment, including emergency care, counseling, and assignment of a SARC and SAPR VA, without triggering an official investigation. The victim's report to healthcare personnel (including the information acquired from a SAFE Kit), SARCs, or SAPR VAs will not be reported to law enforcement or to the victim's command, to initiate the official investigative process, unless the victim consents or an established exception applies in accordance with DoDI 6495.02. When a sexual assault is reported through Restricted Reporting, a SARC shall be notified as soon as possible, respond, assign a SAPR VA, and offer the victim medical care and a SAFE.

(i) Eligibility for Restricted Reporting. The Restricted Reporting Program applies to Service Members and their military dependents 18 years of age and older. For additional persons who may be entitled to Restricted Reporting, see eligibility criteria in DoDI 6495.02.

(ii) DoD Dual Objectives. The DoD is committed to ensuring victims of sexual assault are protected; treated with dignity and respect; and provided support, advocacy, and care. The DoD supports effective command awareness and preventive programs. The DoD also strongly supports applicable law enforcement and criminal justice procedures that enable persons to be held accountable for sexual assault offenses and criminal dispositions, as appropriate. To achieve these dual objectives, DoD preference is for complete Unrestricted Reporting of sexual assaults to allow for the provision of victims' services and to pursue accountability. However,

Unrestricted Reporting may represent a barrier for victims to access services, when the victim desires no command or law enforcement involvement. Consequently, the Department recognizes a fundamental need to provide a confidential disclosure vehicle via the Restricted Reporting option.

(iii) Designated Personnel Authorized to Accept a Restricted Report. Only the SARC, SAPR VA, or healthcare personnel are designated as authorized to accept a Restricted Report.

(iv) SAFE Confidentiality Under Restricted Reporting. A SAFE and its information shall be afforded the same confidentiality as is afforded victim statements under the Restricted Reporting option. See DoDI 6495.02 for additional information.

(v) Disclosure of Confidential Communications. In cases where a victim elects Restricted Reporting, the SARC, assigned SAPR VA, and healthcare personnel may not disclose confidential communications or SAFE Kit information to law enforcement or command authorities, either within or outside the DoD, except as provided in DoDI 6495.02. In certain situations when information about a sexual assault comes to the commander's or law enforcement official's attention from a source independent of the Restricted Reporting avenues and an independent investigation is initiated, a SARC, SAPR VA, or healthcare personnel may not disclose confidential communications if obtained under Restricted Reporting (see exceptions to Restricted Reporting in DoDI 6495.02). Improper disclosure of confidential communications under Restricted Reporting, improper release of medical information, and other violations of this part are prohibited and may result in discipline pursuant to the UCMJ, or other adverse personnel or administrative actions.

(l) Enlistment or commissioning of personnel in the Military Services shall be prohibited and no waivers allowed when the person has a qualifying conviction (see §103.3) for a crime of sexual assault.

(m) The focus of this part and DoDI 6495.02 is on the victim of sexual assault. The DoD shall provide support to an active duty Service member regardless of when or where the sexual assault took place.

### **§103.5 Responsibilities.**

(a) In accordance with the authority in DoDD 5124.02, the USD(P&R) shall:

(1) Develop overall policy and provide oversight for the DoD SAPR Program, except legal processes in the UCMJ and criminal investigative matters assigned to the Judge Advocates General of the Military Departments and IG, DoD respectively.

(2) Develop strategic program guidance, joint planning objectives, standard terminology, and identify legislative changes needed to ensure the future availability of resources in support of DoD SAPR policies.

(3) Develop metrics to measure compliance and effectiveness of SAPR training, awareness, prevention, and response policies and programs. Analyze data and make recommendations regarding the SAPR policies and programs to the Secretaries of the Military Departments.

(4) Monitor compliance with this part and DoDI 6495.02, and coordinate with the Secretaries of the Military Departments regarding Service SAPR policies.

(5) Collaborate with Federal and State agencies that address SAPR issues and serve as liaison to them as appropriate. Strengthen collaboration on sexual assault policy matters with U.S. Department of Veterans Affairs on the issues of providing high quality and accessible health care and benefits to victims of sexual assault.



(6) Oversee the DoD SAPRO. Serving as the DoD single point of authority, accountability, and oversight for the SAPR program, SAPRO provides recommendations to the USD(P&R) on the issue of DoD sexual assault policy matters on prevention, response, and oversight. SAPRO is responsible for:

(i) Implementing and monitoring compliance with DoD sexual assault policy on prevention and response, except for legal processes in the UCMJ and Manual for Courts-Martial and criminal investigative matters assigned to the Judge Advocates General of the Military Departments and IG respectively.

(ii) Providing technical assistance to the Heads of the DoD Components in addressing matters concerning SAPR.

(iii) Acquiring quarterly and annual SAPR data from the Military Services, assembling annual congressional reports involving persons covered by this part and DoDI 6495.0, and consult with and relying on the Judge Advocates General of the Military Departments in questions concerning disposition results of sexual assault cases in their respective departments.

(iv) Establishing reporting categories and monitoring specific goals included in the annual SAPR assessments of each Military Service, in their respective departments.

(v) Overseeing 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.

(b) The Assistant Secretary of Defense for Health Affairs (ASD(HA)), under the authority, direction, and control of the USD(P&R), shall advise the USD(P&R) on DoD sexual assault healthcare policies, clinical practice guidelines, related procedures, and standards governing

DoD healthcare programs for victims of sexual assault. The ASD(HA) shall direct that all sexual assault patients be given priority, so that they shall be treated as emergency cases.

(c) The Director of the Defense Human Resources Activity (DoDHRA), under the authority, direction, and control of USD(P&R), shall provide operational support to the USD(P&R) as outlined in paragraph 1.f. of §103.5.

(d) The General Counsel of the DoD (GC, DoD), shall provide advice and assistance on all legal matters, including the review and coordination of all proposed issuances and exceptions to policy and the review of all legislative proposals affecting mission and responsibilities of the DoD SAPRO.

(e) The IG, DoD, shall:

(1) Develop and oversee the promulgation of criminal investigative and law enforcement policy regarding sexual assault and establish guidelines for the collection and preservation of evidence with non-identifiable personal information on the victim, for the Restricted Reporting process, in coordination with the ASD(HA).

(2) Oversee criminal investigations of sexual assault conducted by the DoD Components.

(3) Collaborate with the DoD SAPRO on sexual assault matters.

(f) The Secretaries of the Military Departments shall:

(1) Establish departmental policies and procedures to implement the SAPR Program consistent with the provisions of this part and DoDI 6495.02, to include the Military Academies within their cognizance; monitor departmental compliance with this part and DoDI 6495.02.

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

- (3) In coordination with USD(P&R), implement recommendations regarding Military Service compliance and effectiveness of SAPR training, awareness, prevention, and response policies and programs.
- (4) Align Service SAPR Strategic Plans with the DoD SAPR Strategic Plan.
- (5) Align Service prevention strategy with the Spectrum of Prevention, consistent with the DoD Sexual Assault Prevention Strategy, which consists of six pillars:
  - (a) Influencing Policy
  - (b) Changing Organizational Practices
  - (c) Fostering Coalitions and Networks
  - (d) Educating Providers
  - (e) Promoting Community Education
  - (f) Strengthening Individual Knowledge and Skills
- (6) Require commanders to ensure that medical treatment (including emergency care) and SAPR services are provided to victims of sexual assaults in a timely manner unless declined by the victim.
- (7) Utilize the terms “Sexual Assault Response Coordinator (SARC)” and “SAPR Victim Advocate (VA),” as defined in this part and DoDI 6495.02, as standard terms to facilitate communications and transparency regarding sexual assault response capacity.
- (8) Establish the position of the SARC to serve as the single point of contact for ensuring that sexual assault victims receive appropriate and responsive care. The SARC should be a Service member, DoD civilian employee, or National Guard technician.
- (9) Provide program-appropriate resources to enable the Combatant Commanders to achieve compliance with the policies set forth in this part and DoDI 6495.02.

- (10) Establish and codify Service SAPR Program support to Combatant Commands and Defense Agencies, either as a host activity or in a deployed environment.
- (11) Provide SAPR Program and obligation data to the USD(P&R), as required.
- (12) Submit quarterly reports to the USD(P&R) that include information regarding all sexual assaults reported during the quarter, until DSAID becomes fully operational for each individual Service. Require confirmation that a multi-disciplinary case management group tracks each open Unrestricted Report and that a multi-disciplinary case management group meetings are held monthly for reviewing all Unrestricted Reports of sexual assaults.
- (13) Provide annual reports of sexual assaults involving persons covered by this part and DoDI 6495.02 to the DoD SAPRO for consolidation into the annual report to Congress in accordance with sections 577 of Public Law 108-375.
- (14) Provide data connectivity, or other means, to authorized users to ensure all sexual assaults reported in theater and other joint environments are incorporated into the DSAID, or authorized interfacing systems for the documentation of reports of sexual assault, as required by section 563 of Public Law 110-417.
- (15) Ensure that Service data systems used to report case-level sexual assault information into the DSAID are compliant with DoD data reporting requirements, pursuant to section 563 of Public Law 110-417.
- (16) Require extensive, continuing in-depth SAPR training for DoD personnel and specialized SAPR training for commanders, senior enlisted leaders, SARCs, SAPR VAs, investigators, law enforcement officials, chaplains, healthcare personnel, and legal personnel in accordance with DoDI 6495.02.
- (17) Oversee sexual assault training within the DoD law enforcement community.

(18) Direct that Service military criminal investigative organizations require their investigative units to communicate with their servicing SARC and participate with the multi-disciplinary Case Management Group convened by the SARC, in accordance with this part and DoDI 6495.02.

(19) Provide commanders with procedures that:

(i) Establish guidance for when a Military Protective Order (MPO) has been issued, that the Service member who is protected by the order is informed, in a timely manner, of the member's option to request transfer from the command to which that member is assigned in accordance with section 567(c) of Public Law 111-84.

(ii) Ensure that the appropriate civilian authorities shall be notified of the issuance of an military protective order (MPO) and of the individuals involved in the order, when an MPO has been issued against a Service member or when any individual addressed in the MPO does not reside on a military installation at any time when an MPO is in effect. 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. (See section 561 of Public Law 110-417.) The issuing commander also shall notify the appropriate civilian authorities of any change made in a protective order covered by Chapter 80 of Title 10, U.S.C., and the termination of the protective order.

(iii) Ensure that the person seeking the MPO shall be advised that the MPO is not enforceable by civilian authorities off base and that victims desiring protection off base are advised to seek a civilian protective order (see section 561 of 110-417 and section 567(c) of Public Law 111-84).

(g) The Chairman of the Joint Chiefs of Staff shall:

(1) Assess SAPR as part of the overall force planning function of any force deployment decision, and periodically reassess the SAPR posture of deployed forces.

- (2) Monitor implementation of this part, DoDI 6495.02, and implementing instructions, including during military operations.
  - (3) Utilize the terms “Sexual Assault Response Coordinator (SARC)” and “SAPR Victim Advocate (VA),” as defined in this part and DoDI 6495.02, as standard terms to facilitate communications and transparency regarding sexual assault response capacity.
  - (4) Review relevant documents, including the Combatant Commanders’ joint plans, operational plans, concept plans, and deployment orders, to ensure they identify and include SAPR Program requirements.
- (h) The Commanders of the Combatant Commands, in coordination with the other Heads of the DoD Components and through the Chairman of the Joint Chiefs of Staff, shall:
- (1) Establish policies and procedures to implement the SAPR Program and oversee compliance with this part and DoDI 6495.02 within their areas of responsibility and during military operations.
  - (2) Formally document agreements with installation host Service commanders, component theater commanders, or other heads of another agency or organization, for investigative, legal, medical, counseling, or other response support provided to incidents of sexual assault.
  - (3) Direct that relevant documents are drafted, including joint operational plans and deployment orders, that establish theater-level requirements for the prevention of and response to incidents of sexual assault that occur, to include during the time of military operations.
  - (4) Require that sexual assault response capability information be provided to all persons within their area of responsibility covered by this part and DoDI 6495.02, to include reporting options and SAPR services available at deployed locations and how to access these options.

- (5) Ensure medical treatment (including emergency care) and SAPR services are provided to victims of sexual assaults in a timely manner unless declined by the victim.
- (6) Direct subordinate commanders coordinate relationships and agreements for host or installation support at forward-deployed locations to ensure a sexual assault response capability is available to members of their command and persons covered by this part and DoDI 6495.02 as consistent with operational requirements.
- (7) Direct that sexual assault incidents are given priority so that they shall be treated as emergency cases.
- (8) Direct subordinate commanders provide all personnel with procedures to report sexual assaults.
- (9) Require subordinate commanders at all levels to monitor the command climate with respect to SAPR, and take appropriate steps to address problems.
- (10) Require that SAPR training for DoD personnel and specialized training for commanders, senior enlisted leaders, SARCs, SAPR VAs, investigators, law enforcement officials, chaplains, healthcare personnel, and legal personnel be conducted prior to deployment in accordance with DoDI 6495.02.
- (11) Direct subordinate commanders to develop procedures that:
  - (i) Establish guidance for when an MPO has been issued, that the Service member who is protected by the order is informed, in a timely manner, of the member's option to request transfer from the command to which that member is assigned in accordance with section 567(c) of Public Law 111-84.
  - (ii) In OCONUS areas, if appropriate, direct that the appropriate civilian authorities be notified of the issuance of an MPO and of the individuals involved in an order when an MPO has been

issued against a Service member or when any individual involved in the MPO does not reside on a military installation when an MPO is in effect. 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. (See section 561 of Public Law 110-417.) The issuing commander also shall notify the appropriate civilian authorities of any change made in a protective order covered by Chapter 80 of Title 10, U.S.C. and the termination of the protective order.

(iii) Ensure that the person seeking the MPO is advised that the MPO is not enforceable by civilian authorities off base and victims desiring protection off base should be advised to seek a civilian protective order in that jurisdiction pursuant to section 562 of Public Law 110-417.

(i) The Director, DoDHRA, shall provide operational support to the USD(P&R) as outlined in paragraph a(6) of §103.5.

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