



DoD INSTRUCTION 5505.18

INVESTIGATION OF ADULT SEXUAL ASSAULT IN THE DEPARTMENT OF DEFENSE

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| Approved by: | Glenn A. Fine, Acting Inspector General of the Department of Defense |
| Change 3 Approved by: | Kathleen H. Hicks, Deputy Secretary of Defense |

Purpose: This issuance, in accordance with DoD Directive (DoDD) 5106.01:

- Establishes policy, assigns responsibilities, and provides procedures for the investigation of adult sexual assault within the DoD, in accordance with the authority in the Inspector General Act of 1978, as amended, of Title 5, United States Code (U.S.C.), Appendix.
- Establishes the processes and procedures for the use, maintenance, and protection of certain information from a Restricted Report of adult sexual assault obtained by the military criminal investigative organizations (MCIOs) after the victim has elected to provide such information, but without affecting the restricted nature of the report, in accordance with Section 543 of Public Law 113-291.
- Establishes an exception to the initiation of an adult sexual assault investigation by an MCIO when information is received in accordance with Section 543 of Public Law 113-291 and clarifies eligibility.
- Incorporates a threshold of credible information, as defined in DoD Instruction (DoDI) 5505.07, for the initiation of an adult sexual assault investigation and a DoD nexus, as defined in DoDI 5505.03.
- Implements Executive Order 13825, effective January 1, 2019, and updates the definition of sexual assault.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY. This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

1.2. POLICY.

a. MCIOs will initiate a criminal investigation in response to all allegations of adult sexual assault, as defined in the Glossary, of which they become aware that occur within their jurisdiction, except under the provisions of Paragraph 3.6. The allegation(s) must be based on credible information, as defined in DoDI 5505.07, that a crime has occurred, and have a DoD nexus, as defined in DoDI 5505.03.

b. Other DoD law enforcement (LE) resources, as defined in the Glossary, may assist MCIOs while MCIOs investigate offenses of adult sexual assault provided they meet the training requirements established in Paragraph 3.3. LE first responders and LE resources have the responsibility to identify the reported sexual assault victim(s) and the location of the purported crime scene(s) to prevent the possible loss or contamination of evidence as well as determine jurisdictional responsibility. First responders and other DoD LE resources may have initial contact with the reported sexual assault victim(s) in order to obtain this information; only the MCIO will conduct the formal victim interview. First responders and other DoD LE resources must contact the Sexual Assault Response Coordinator (SARC) or Sexual Assault Prevention and Response (SAPR) Victim Advocate (VA), or the Family Advocacy Program (FAP), upon identification of a reported sexual assault victim. In accordance with DoDD 6495.01, all sexual assault cases must be treated as emergencies. Emergency care must consist of emergency healthcare (medical and mental health) and the offer of a sexual assault forensic examination (SAFE) when indicated.

c. Nothing in this instruction is intended to impinge on the authority of the IG DoD.

1.3. INFORMATION COLLECTIONS.

a. The “Catch a Serial Offender” (CATCH) Program Restricted and Unrestricted Reports, referred to in Paragraphs 2.2, 3.3.(a) (22) and 3.6 of this issuance, have been assigned Office of Management and Budget (OMB) Control Number 0703-0069 in accordance with the procedures in Volume 2 of DoD Manual 8910.01. The expiration date of this information collection is listed on the OMB Website at <http://www.reginfo.gov/public/jsp/PRA/prDashboard.jsp>.

b. The Defense Sexual Assault Incident Database (DSRID), referred to in Paragraph 2.2.g. of this issuance, has been assigned OMB Control Number 0704-0482 and is prescribed in Volume 1 of DoDI 6495.02. The expiration date of this information collection is listed on the OMB Website at <http://www.reginfo.gov/public/jsp/PRA/prDashboard.jsp>.

c. Department of Defense (DD) Form 2911, referred to in Paragraph 3.4. of this issuance, does not require licensing with a report control symbol or an OMB control number in accordance with Paragraphs 1.b.(1) and 1.b.(13) of Volume 1 of Enclosure 3 of DoD Manual 8910.01 and Paragraphs 8.a.(2)(a) and 8.b.(5) of Enclosure 3 of Volume 2 of DoD Manual 8910.01, respectively.

d. DD Form 2701, referred to in Paragraph 3.1.c of this issuance, does not require licensing with a report control symbol or an OMB control number in accordance with Paragraphs 1.b.(1) and 1.b.(13) of Volume 1 of Enclosure 3 of DoD Manual 8910.01 and Paragraphs 8.a.(2)(a) and 8.b.(5) of Enclosure 3 of Volume 2 of DoD Manual 8910.01, respectively.

1.4. SUMMARY OF CHANGE 3. This change updates and prescribes procedures for evidence retention and release of personal property in restricted and unrestricted sexual assaults in accordance with Section 540k of Public Law 116-92.

SECTION 2: RESPONSIBILITIES

2.1. IG DOD. The IG DoD will develop policy and procedures for MCIO adult sexual assault investigations and provide oversight pursuant to DoDD 5106.01.

2.2. OSD AND DOD COMPONENT HEADS. The OSD and DoD Component heads ensure:

a. Compliance with this issuance and prescribe additional procedures as necessary to implement its policy.

b. All allegations of adult sexual assault are immediately reported to the appropriate MCIO. This includes allegations made by persons affiliated with the DoD, including active duty personnel and their dependents, DoD contractors, and DoD civilian employees.

c. Procedures exist that allow eligible victims of a sexual assault to have, at their request, their allegation handled as a Restricted Report in accordance with DoDD 6495.01 and DoDIs 6400.01 and 6400.06. This reporting option must be explained to all eligible victims by a SARC, SAPR VA, Domestic Abuse Victim Advocate (DAVA), or FAP personnel.

d. Adequate resources are established to manage the CATCH Program.

e. The commander of the Service member who is a reported subject of investigation provides the MCIO, in writing, all disposition data, within 5 business days of disposition, to include:

(1) Any administrative, non-judicial punishment, or judicial action that occurs as a result of the investigation; or

(2) A declination of command action when no action is taken.

f. MCIOs participate as members in the monthly installation SAPR Case Management Group meeting in accordance with Volume 1 of DoDI 6495.02 and the Family Advocacy Program Incident Determination Committee in accordance with Paragraph 2.b.(5) of Enclosure 3 of Volume 3 of DoD Manual 6400.01.

g. MCIOs provide SARCs with the MCIO case number required for SARCs to enter information into the DSAID within 48 hours of the initiation of an investigation. The SARC will coordinate with FAP personnel if the reported sexual assault involves intimate partner abuse or reports involving individuals under 18 years of age who are not Service members. In deployed locations that have internet connectivity issues, the timeframe is extended to 96 hours.

h. Pursuant to its oversight role, the Office of the Under Secretary of Defense for Personnel and Readiness oversees the CATCH Program execution, in accordance with the December 28, 2016 Deputy Secretary of Defense Memorandum.

SECTION 3: PROCEDURES

3.1. COORDINATION AND NOTIFICATION REQUIREMENTS.

a. To ensure system accountability and collaboration, the MCIO investigator assigned as the lead investigator to an adult sexual assault investigation will notify each member of the Special Victim Investigation and Prosecution (SVIP) Capability, as required by DoDI 5505.19.

b. To ensure eligible victims of reported sexual assaults are aware of and afforded the assistance available to them:

(1) In accordance with Sections 1044e(f) and 1565b(a) of Title 10, U.S.C., a Service member; a member of the Reserve Component; a dependent; or a DoD civilian employee who is the victim of a reported sexual assault must be advised of the availability of representation by a special victims' counsel/victims' legal counsel (SVC or VLC). MCIOs should refer to their respective Service regulations regarding any additional victims eligible for SVC or VLC services. No sexual assault victim should be discouraged from requesting representation.

(a) This notice must occur before an MCIO investigator interviews or requests a statement from the individual regarding the reported sexual assault unless exigent circumstances apply, such as the need to collect evidence that is subject to degradation (e.g., sexual assault forensic exams and deoxyribonucleic acid (DNA) collection); or prevent or mitigate a serious and imminent threat to the health or safety of the victim of the reported sexual assault or another person.

(b) The MCIO investigators must document this notification to the victim or the exigent circumstances that delayed notification to the victim in the investigative file.

(2) To the extent provided by Section 1044e of Title 10, U.S.C., or pursuant to a determination by an authority empowered to make an SVC or VLC available to form an attorney-client relationship, victims of reported sexual assaults are entitled to have SVC or VLC representation during any proceeding in connection with the reporting, military investigation, and military prosecution of the reported sexual assault. Once represented by an SVC or VLC, further communications with the victim will be coordinated through the assigned SVC or VLC.

(3) If desired, victims of reported sexual assault may also have their SARC, SAPR VA, or FAP DAVA present during any proceeding in connection with the reporting, military investigation, and military prosecution of the reported sexual assault. MCIOs will document the date and time the SVC or VLC was notified and when they respond. Any delay or unavailability of the SVC or VLC must also be documented in the investigative file.

c. In accordance with DoDI 1030.2, the MCIO investigator assigned to conduct the adult sexual assault investigation will ensure the victim and, as appropriate, any witness(es) interviewed, have received a completed DD Form 2701, "Initial Information for Victims and Witnesses of Crime." If the victim has not yet received a DD Form 2701, the investigator must provide one to the victim and explain the information in the form. (All DD Forms referred to in

this instruction may be found at <https://www.esd.whs.mil/Directives/forms/>.) The MCIO investigator must document the provision of the DD Form 2701 to victims and witnesses in the investigative file.

d. Victims and witness(es) must be notified of their reporting options if allegations of retaliation or reprisal surface that can reasonably be attributed to the sexual assault investigation. If such allegations do not fall under the purview of the MCIO, the victim(s) and witness(es) must be referred to the appropriate DoD Component in accordance with DoDD 7050.06. If the retaliation or reprisal allegation is considered a felony level allegation and under the purview of the MCIO, the MCIO will investigate.

e. When an MCIO initiates an adult sexual assault investigation, it will also initiate and conduct subsequent investigations related to reported criminal act(s) directed toward a victim or witness(es) that could reasonably be related to the sexual assault matter under investigation. Related criminal conduct may include, but is not limited to, a communicated threat(s), physical assault(s), intentional damage to property, stalking, violation of a no-contact order, etc.

f. If an adult sexual assault allegation is referred to another law enforcement agency, the reason must be fully documented in an investigative file that identifies the agency and states whether or not the MCIO will be involved in either a joint investigation or monitoring capacity.

g. When an MCIO receives credible information from a military confinement facility regarding a report of sexual assault of a prisoner, the MCIO will initiate an investigation, if it is within the jurisdiction of the MCIO, in accordance with Chapter 147 of Title 42, U.S.C., also known and referred to in this issuance as the “Prison Rape Elimination Act (PREA) of 2003”; Title 28 Code of Federal Regulations (CFR) Part 115; DoDI 1325.07; and July 6, 2015 Acting Under Secretary of Defense for Personnel and Readiness Memorandum.

h. When an allegation of sexual assault is received that is reported to have occurred on a military installation or the Pentagon Reservation, and there is a reasonable basis to believe it has been committed by a person or persons some or all of whom are not subject to the UCMJ, the MCIO or the Pentagon Force Protection Agency will immediately notify the Department of Justice in accordance with DoDI 5525.07.

3.2. OTHER DOD LE RESOURCES. In accordance with Paragraph 1.2.b., other DoD LE resources may assist MCIOs while MCIOs investigate offenses of adult sexual assault under the following requirements:

a. Only the MCIOs will conduct the formal victim interview.

b. The investigation will be considered an MCIO investigation and the responsible MCIO will provide direct supervision of all investigative work conducted by the other DoD LE resources.

c. Under no circumstances may an MCIO refer an adult sexual assault investigation to another DoD LE resource regardless of the severity of the allegation.

d. When other DoD LE resources assist MCIOs with sexual assault investigations, the MCIO investigator will maintain full responsibility for the investigation and assign tasks. Before assisting the MCIOs, the other DoD LE resources will receive training on the topics required in Paragraph 3.3. by a certified MCIO sexual assault investigator. Ideally, the LE resources will receive the same training and certification as outlined in DoDI 5505.19, which is required for MCIO sexual assault investigators.

e. All criminal investigative files will be marked, used, transmitted, and stored in accordance with DoD privacy policies in DoDD 5400.11, DoD 5400.11-R, and Volume 4 of DoD Manual 5200.01.

f. All adult sexual assault investigations assumed by an MCIO will be investigated thoroughly and in compliance with DoDIs 5505.03, 5505.07, 5505.11, 5505.14, 5505.17, and 5505.19, in consideration of jurisdiction involved.

3.3. TRAINING.

a. The MCIO investigator(s) and the supporting other DoD LE resources assigned to conduct an investigation of adult sexual assault, including first responders, must be properly trained in conducting such investigations. Section 585 of Public Law 112-81 (codified in Section 1561, Title 10, U.S.C. note) requires the creation of a consistent training curriculum regarding sexual assault prevention and response for MCIO investigators, other DoD LE resources, and other LE first responders assigned to respond to and investigate adult sexual assault. In accordance with that requirement, training will, at a minimum, include:

- (1) Legal jurisdiction for conducting criminal investigations.
- (2) The elements of proof for criminal offenses associated with sexual assault.
- (3) Preliminary investigative procedures, including receiving and responding to notification of a sexual assault.
- (4) Crime scene management to include searching for, locating, identifying, preserving, obtaining, and transporting evidence.
- (5) Sensitivities associated with victims of reported sexual assault, including, but not limited to:
 - (a) Specific effects of trauma and stress on the victim of a reported sexual assault.
 - (b) Balancing investigative priorities with needs of the victim of a reported sexual assault.
 - (c) The provision that victims of reported sexual assaults may have a SARC, SAPR VA, domestic abuse victim advocate, SVC or VLC, or a support person present during interviews.

(d) The various methods used in the practice of interviewing victims of reported sexual assaults in DoD.

(6) Sexual assault forensic examination collection and submission.

(7) DNA collection for criminal investigations.

(8) Comprehensive instruction in SAPR policy, to include:

(a) Differences between Unrestricted and Restricted Reporting.

(b) SARC and SAPR VA roles, responsibilities, and limitations.

(c) SAPR Case Management Group responsibilities for MCIOs.

(d) Responsibilities to provide data elements to the SARC for timely entry into DSAID.

(e) Expedited transfers and corresponding MCIO responsibilities.

(9) Comprehensive instruction in Family Advocacy Program policy for first responder training requirements and Restricted Reporting.

(10) Victim Witness Assistance Program.

(11) Military protective orders.

(12) Military Rules of Evidence (MRE) privileges, in particular MRE 513 “Psychotherapist-Patient Privilege,” and MRE 514, “Victim Advocate-Victim and Department of Defense Safe Helpline Staff-Victim Privilege” in the MRE section of the Manual for Courts-Martial.

(13) Legal assistance for victims of sexual assault in accordance with Sections 1044e and 1565b of Title 10, U.S.C.

(14) Digital evidence.

(15) Handling false reports and official statements.

(16) Alcohol and drug-related incidents and timeliness of toxicology collection.

(17) The use of IG DoD administrative subpoenas in accordance with the Inspector General Act of 1978, as amended.

(18) The use of technical listening and recording equipment in accordance with DoDI 5505.09.

(19) The use of personally identifiable information (PII) in accordance with DoDI 5505.17 and Volume 4 of DoD Manual 5200.01.

(20) Required reporting in accordance with PREA.

(21) Reprisal and whistleblower policy and procedures in accordance with DoDD 7050.06.

(22) Policies and procedures associated with the CATCH Program, pursuant to Section 543 of Public Law 113-291.

(23) Policies and procedures associated with DoDI 5505.19.

(24) Claims of retaliation, which are reasonably associated with a sexual assault allegation in accordance with Section 546 of Public Law 114-328.

b. MCIOs will consider aligning training with Council of Inspectors General on Integrity and Efficiency Quality Standards for Investigations, as appropriate.

3.4. INVESTIGATIVE FILE.

a. All MCIO documentation generated as part of the adult sexual assault investigative report, to include case notes, the case activity record, the DD Form 2911, “DoD Sexual Assault Forensic Examination Report,” and the investigative plan, will be retained for a period of 50 years in accordance with Section 541 of Public Law 114-92 (codified in Section 1561, Title 10, U.S.C. note). When MCIOs are not the lead investigative agency in joint investigations, disposition data must be obtained from the lead investigative agency and archived in the final investigative report or database in accordance with Section 577(b)(8) and (9) of Public Law 108-375 (codified in Section 1561, 10 U.S.C. note) and Section 563 of Public Law 110-417.

b. MCIOs must include the DD Form 2911 or reports from civilian sexual assault forensic exams conducted at civilian healthcare facilities (when DoD retains jurisdiction) as part of the archived file. If creating digital records, the DD Form 2911 will be uploaded as part of the archived file.

c. All MCIOs will make available unrestricted sexual assault data elements, including the investigative case number, for incorporation into the DSAID, in support of requirements specified in DoDD 6495.01 and Volume 1 of DoDI 6495.02.

3.5. EVIDENCE.

a. Evidence, to include SAFE Kits, will be retained for Restricted Reports 10 years from the date of the seizure of evidence. Evidence for Unrestricted Reports will be retained for 10 years from the date of the seizure of evidence and until after the conclusion of all legal, adverse action, and administrative proceedings, unless otherwise provided for in this issuance.

b. These evidence retention periods are not applicable for individuals who obtained a sexual assault forensic exam at a civilian facility, and whose kit and personal property are maintained

by civilian law enforcement. It is also not applicable for evidence seized or maintained by civilian law enforcement.

c. The 10-year retention period is implemented to maintain the availability of evidence for the CATCH Program, wherein victim entries are active for 10 years.

d. In accordance with Volume 1 of DoDI 6495.02, the SARC will contact all victims who filed a Restricted Report (not just those who had a SAFE Kit) 1 year after the reporting date to inquire whether the victim wishes to change his or her reporting option to Unrestricted. If the victim does not change to an Unrestricted Report, the SARC will:

(1) Inform (or remind, if previously informed) the victim of the CATCH Program and ask if the victim would like to participate.

(2) Explain to victims who underwent a SAFE that the evidence maintained by the DoD, including the SAFE kit, will be retained for a total of 10 years from the time the SAFE Kit was completed and that any evidence from the SAFE will be destroyed at the end of the 10-year period.

(3) Explain that the victim has the right to request the return of any personal property collected as part the SAFE.

(4) Emphasize to the victim that he or she will not be contacted again by the SARC in order to respect his or her privacy.

(5) Emphasize that the victim may convert his or her report from Restricted to Unrestricted at any time. However, the victim should notify the SARC of the intent to convert to Unrestricted before the 10-year evidence retention period elapses so that evidence collected during the SAFE is not destroyed and can be used during the case.

3.6. RELEASE OF PERSONAL PROPERTY IN UNRESTRICTED SEXUAL ASSAULTS.

a. Evidence, to include SAFE Kits, will be retained for Unrestricted Reports for 10 years from the date of the seizure of evidence and until after the conclusion of all legal, adverse action, and administrative proceedings, if under the custody and control of DoD.

b. Section 1561 of Title 10, U.S.C., allows for the release of personal property.

(1) Personal property items, not including the SAFE Kit, collected as evidence in Unrestricted Reporting cases may be returned to their rightful owner before the 10-year period only:

(a) After written evidence disposition is obtained from the designated representative of the Military Department concerned.

(b) When:

1. It is determined that the allegation is unfounded (false or baseless); that is, the crime did not occur or it was determined through investigation to be a false allegation;

2. The evidence is taken from a suspect who is later deemed to be the wrong person, i.e., mistaken identity; or

3. All legal, adverse action, and administrative proceedings related to such allegation in accordance with Section 1561 of Title 10, U.S.C. have concluded.

(2) This return of personal property request is **not** applicable for Service members or National Guard members, adult dependents, or other victims covered by DoDI 6492.02, who obtained a sexual assault forensic exam at a civilian facility, and whose kit and personal property are maintained by civilian law enforcement.

3.7. RELEASE OF PERSONAL PROPERTY IN RESTRICTED SEXUAL ASSAULTS.

a. Evidence will be retained for 10 years from the date of the seizure of evidence, if under the custody and control of DoD.

b. In accordance with Section 536 of Public Law 116-92, adult sexual assault victims who filed a Restricted Report and underwent a SAFE pursuant to the Restricted Report can request the return of their personal property obtained during the SAFE. This return of personal property request is not applicable for Service members or National Guard members, adult dependents, or other victims covered by this policy who obtained a sexual assault forensic exam at a civilian facility, and whose kit and personal property are maintained by civilian law enforcement.

c. Requesting the return of personal property will not impact the Restricted nature of the victim's Restricted Report, in accordance with Section 536 of Public Law 116-92. As a result of this confidentiality requirement, evidence custodians and any assisting law enforcement personnel (including MCIO investigators) are exempted from the duty to report this crime and the requirement to initiate an investigation into this matter, when they discover the name of the victim or suspect with regard to Section 536 of Public Law 116-92.

d. MCIOs will develop procedures that allow for return of personal property to victims who have filed a Restricted Report and provide a DD Form 2910-3, "Return of Victim's Personal Property in Restricted Sexual Assault Cases Collected During a Sexual Assault Forensic Examination (SAFE)," signed by a SARC or SAPR VA, and bearing the Restricted Reporting Case Number (RRCN) of the SAFE Kit. The Military Services will develop procedures utilizing the DD Form 2910-3 in situations where the victim does not initiate the request with the SARC, but rather initiates the request at the Service SAPR leadership level or other locations.

(1) The SARC or SAPR VA will use the DD Form 2910-3 to document the victim's request, to describe the personal property to be released, and to document the RRCN that identifies the SAFE Kit in question.

(2) As required by Section 536 of Public Law 116-92, the SARC or SAPR VA will call the victim's attention to the DD Form 2910-3 notification that the request for the return of

personal property may negatively impact a future investigation and prosecution if the victim later decides to convert the Restricted Report to an Unrestricted Report, including information submitted into the CATCH Program.

(3) The DD Form 2910-3 will also notify the victim of the CATCH Program and, if eligible, the availability of assistance from an SVC or VLC before submitting his or her request for the property return.

(4) The DD Form 2910-3 will contain a notification for evidence custodians, law enforcement personnel, and MCIO investigators notifying them of the policy exemption, so when they discover the name of the victim or suspect, an investigation will **not** be initiated.

(5) After the victim signs the DD Form 2910-3, the SARC or SAPR VA will give the victim the original, signed DD Form 2910-3 for the victim to provide to the evidence custodian. The SARC will also provide the victim a copy of the signed DD Form 2910-3, which the victim should keep in his or her personal records.

(6) The SARC, or SAPR VA, will upload a copy of the DD Form 2910-3 into the DSAID File Locker for permanent storage, in accordance with established document retention procedures.

(7) Upon receipt of the victim's signed DD Form 2910-3, the SARC will contact the installation MCIO supervisory agent (or the MCIO's designated SAPR agent), provide the RRCN of the appropriate SAFE Kit, and request the kit be located.

(8) The installation MCIO supervisory agent will locate the SAFE Kit and arrange for it to be sent to the installation, if stored elsewhere, using appropriate security measures.

(9) Once the relevant SAFE Kit is in hand, the MCIO supervisory agent and the SARC will arrange for the victim to meet with the evidence custodian to retrieve the personal property in question.

(10) The SARC or SAPR VA will instruct the victim to bring the original signed DD Form 2910-3 with him or her to the meeting with the evidence custodian. If the victim has lost the form, he or she will request a copy from the SARC, who will retrieve it from the DSAID File Locker.

(11) The evidence custodian will confirm that the RRCN on the DD Form 2910-3 and the SAFE Kit match and, when provided a copy of the DD Form 2910-3, will ask the victim to confirm that it is his or her signature.

(a) If the requested personal property is inside the SAFE Kit box, the evidence custodian will open the SAFE Kit box and provide the victim with the requested personal property. The evidence custodian will then insert the original signed DD Form 2910-3 into the SAFE Kit box to account for the release of the item(s), and reseal the SAFE Kit box in accordance with established chain of custody procedures.

(b) If the personal property is in an evidence bag or container collected as part of the SAFE but not in the SAFE Kit box (e.g., if the forensic examiner collects large clothing items such as jeans that cannot fit in the SAFE kit box), the evidence custodian will **not** break the seal of the SAFE Kit box. In those circumstances, the evidence custodian will:

1. Open the external evidence bag or container and provide the victim with the requested personal property.

2. Insert the original signed DD Form 2910-3 into the external evidence bag or container to account for the release of the item(s), and then reseal the external evidence bag container in accordance with established chain of custody procedures.

(12) If the personal property is missing or damaged, the victim may consult with his or her SVC or VLC, if represented, or can ask the SARC for a referral to the SVC or VLC program of the Service concerned, for assistance in addressing this issue. The SARC cannot address evidentiary issues of missing or damaged personal property.

(13) The victim can also make additional requests for return of personal property if there are other pieces of personal property that the victim wants returned.

e. SAFE Kits taken pursuant to a Restricted Report will be disposed of according to established procedure at the end of the 10-year retention period. Law enforcement personnel, MCIO investigators, and support personnel that dispose of SAFE Kits will not initiate an investigation into this matter or report this crime, should they discover the name of the victim or suspect while disposing of the kit or associated evidence.

f. Personal property items gathered as evidence which are digital or electronic in nature may be returned to the rightful owner if a forensic copy of the digital or electronic evidence stored on or accessed through an electronic device has been made. The copy must be obtained in a forensically sound manner sufficient for command action or prosecution, as appropriate.

3.8. CATCH PROGRAM.

a. Per the December 28, 2016 Deputy Secretary of Defense Memorandum, the Secretary of the Navy (SECNAV) was designated as the Executive Agent for the implementation of the CATCH Program.

b. Participation in the CATCH Program is voluntary, in accordance with Section 543 of Public Law 113-291. The information provided to the CATCH Program will not be acted upon unless the victim of the reported sexual assault changes their reporting option to unrestricted and agrees to participate in the investigation. The victim may opt out at any time. The victim information (to include name, other PII, and contact information) will not be provided to the MCIO for an initial CATCH Program report. The victim will be assigned a unique identifying number by the SARC. This number will then be provided to the MCIO for tracking purposes.

c. The CATCH Program is voluntary and allows an eligible adult sexual assault victim to submit an anonymous entry into the CATCH database to discover if the suspect in their report may have also assaulted another person (i.e., a “potential match” in the CATCH website).

(1) Eligible adult sexual assault victims include those:

(a) Who file, or have already filed, a Restricted Report with a DD Form 2910, “Victim Reporting Preference Statement.” If notified of a potential match, the Restricted Reporting victim can decide whether to convert to Unrestricted and participate in the investigation. The Restricted Report will not be converted based on the information provided to the CATCH Program without the victim’s written permission on a revised DD Form 2910.

(b) Who file, or have already filed, an Unrestricted Report with a DD Form 2910, and the identity of their suspect was not disclosed by the victim or uncovered by law enforcement, to include MCIOs (e.g., third-party report with no suspect identification). If notified of a potential match, the Unrestricted Reporting victim can decide whether he or she now wants to participate in the investigation.

(2) The CATCH Program is implemented through the procedures in this issuance and the June 10, 2019 USD(P&R) Memorandum.

d. CATCH Program information received by an MCIO will be catalogued on a centralized, restricted, Naval Criminal Investigative Service server.

(1) Designated MCIO investigators and analysts will use automated tools to conduct appropriate database inquiries to determine if the information of suspects identified in the CATCH Program can be attributed to a reported subject in an unrestricted investigation of sexual assault allegation or another restricted CATCH Program data entry.

(2) Website procedures developed to implement the CATCH Program will preserve the presumption of innocence for suspects.

(3) Information concerning the identity of a suspect may not be disclosed to the victim or suspect’s chain of command, or any other individual, without a need to know. It may not be used for any purpose related to the suspect’s assignment, training, or advancement unless the reporting option is changed to Unrestricted by the victim and an MCIO initiates an investigation.

(4) Information will be retained for a period of 10 years from the date of the input of data or the last date of any query of data.

(5) Any PII reported to the MCIO will be protected in accordance with DoDI 5505.17, DoDD 5400.11, DoD 5400.11-R, Office of Management and Budget Memorandum M-07-16, and Volume 4 of DoD Manual 5200.01.

(6) The CATCH Program Website will be sequestered from unauthorized users in order to protect the integrity of the data.

e. If there are multiple victims tied to one perpetrator, and one of those victims changes their mind and changes their reporting option to unrestricted, the MCIO may investigate that allegation.

f. An individual eligible for the CATCH Program has the option to submit details of the incident to the appropriate MCIO via their SARC. Such information will be submitted anonymously and without affecting the restricted nature of the report, *if a Restricted Report*. The information obtained by the MCIO will be used in an effort to identify individuals who are suspected of perpetrating multiple sexual assaults.

(1) Information received via the CATCH Program will not trigger an investigation unless the victim(s) of the reported sexual assault agree to convert their reporting option from Restricted to Unrestricted, or, if originally an Unrestricted Report, the victim(s) now agree to participate in the investigation. If the victim(s) of the reported sexual assault change their reporting option to Unrestricted, the MCIO will proceed in accordance with the requirements in Paragraph 3.6.

(2) If the reporting option is changed to Unrestricted, the SVC or VLC must be notified before the MCIO proceeds with any investigation. If the victim is not represented by an SVC or VLC, the cognizant SARC, SAPR VA, or FAP DAVA must be notified.

g. The Naval Criminal Investigative Service (NCIS) is designated as the supported MCIO for collection, access, and use of CATCH Program data. NCIS:

(1) Directs support for the CATCH Program from supporting MCIOs, unless otherwise directed by the SECNAV or his or her designee. All other MCIOs are designated as supporting agencies.

(2) Provides overall program management for the DoD's use of the CATCH Program.

(3) Provides DoD oversight for the CATCH Program, consistent with Paragraph 3.6 of this issuance, including developing and overseeing policy for access, programming, and account management controls for the CATCH Program.

(4) Develops and conducts training for assigned, employed, and detailed personnel before initial access to the CATCH Program consistent with the requirements of this issuance and DoDD 5400.11, DoD 5400.11-R, and DoDI 5505.17.

(5) Establishes guidance and procedures as necessary to ensure that the DoD Components and DoD personnel with access to the CATCH Program receive training in the proper use of and safeguards for the CATCH Program.

3.9. RESTRICTED REPORTING ELIGIBILITY AND AUTHORITY TO USE SECTION 540K DECLINATION LETTERS.

a. Victims are eligible to file a Restricted Report, providing they did not personally report the sexual assault incident to law enforcement and they did not previously elect to make an

Unrestricted Report by signing a DD Form 2910 with a SARC or SAPR VA on the same sexual assault incident. Victims remain eligible to file Restricted Reports **even if**:

- (1) They disclosed the sexual assault incident to their commander or to personnel in the chain of command;
- (2) There is an ongoing MCIO investigation into the sexual assault incident initiated by a third party and not due to the victim's disclosure to law enforcement; or
- (3) The MCIO investigation into the sexual assault incident has been closed.

b. In accordance with Section 1742 of Public Law 112-81, a commander who receives a report of a sex-related offense involving a Service member within his or her chain of command will immediately refer the report to the MCIO of the Military Department concerned with responsibility for investigating that offense. A commander retains his or her duty in accordance with this issuance, Volume 1 of DoDI 6495.02, DoDI 5505.19, and Section 1742 of Public Law 112-81 to immediately contact the MCIO upon being notified of a sexual assault, whether or not the sexual assault is in his or her chain of command.

(1) Military law enforcement organizations and MCIOs retain their duty to initiate a criminal investigation in response to allegations of adult sexual assault, in accordance with DoDI 5505.03 and this issuance.

(2) Commanders and personnel in the chain of command will:

(a) Encourage all victims making such a disclosure to meet with a SARC or SAPR VA to be notified of reporting options and available services, to include eligibility for an SVC or VLC.

(b) Inform the victim of their respective reporting requirements, including notifying the SARC, but reassure the victim that this has no impact on him or her being eligible to file a Restricted or Unrestricted report.

(c) Victims choosing not to participate in MCIO investigations initiated upon third-party reports or by command (e.g., if a Service member reports a sex-related offense to a supervisor in the chain of command) may do so by submitting a Section 540K Declination to Participate in the MCIO Investigation letter (also known as a "Section 540K Declination Letter") in accordance with Paragraph 1.d. in Enclosure 4 of Volume 1 of DoDI 6495.02.

(d) A victim's communication with another person (e.g., roommate, friend, family member) does not, in and of itself, prevent the victim from later electing to make a Restricted Report. Restricted Reporting is confidential, not anonymous, reporting. However, if the person to whom the victim confided the information (e.g., roommate, friend, family member) is law enforcement or an MCIO (other than those involved in the CATCH Program), there can be no Restricted Report. All victim disclosures made directly to law enforcement, to include MCIO investigators, carry no expectation of confidentiality and are not eligible for a Restricted Report.

(e) A victim may disclose a sexual assault incident to someone in his or her chain of command without realizing that, as a result of doing so, personnel in the chain of command are required to immediately notify the commander and the MCIO. However, in this circumstance, while a victim may still elect to file a Restricted Report, such an election does not preclude the initiation of an investigation into the allegations.

c. In MCIO investigations that are initiated upon third-party reports by command (e.g, when a victim disclosed his or her sexual assault to a supervisor in the chain of command, not realizing the supervisor would contact criminal investigators), or pursuant to an exception to Restricted Reporting, the MCIO concerned will contact the individual alleged to have been victimized to determine the victim's desired level of participation and to protect victim privacy. This contact must be initiated as soon as possible after receipt of the allegation and, to the extent practicable, before contacting any other potential witnesses.

d.. To protect the loss of critical evidence and to protect the privacy of the victim, the MCIOs should, whenever practicable, prioritize other investigative activity associated with the allegation. MCIOs may proceed with investigating the offense consistent with this instruction, without the involvement of the victim who reported, until they have spoken to the victim about his or her intended level of participation or until the MCIOs have received the victim's declination letter.

(1) In addition, whenever practicable, the MCIO concerned will formulate an investigative protocol that aims to protect the victim's privacy until the MCIO has spoken with the victim.

(2) Victims must document their decision not to participate in an investigation, and if desired, their rationale for not participating in a 540K Declination Letter. The victim will then be encouraged to consult with an SVC or VLC and provide the MCIOs with written notice of his or her decision as soon as possible.

e. If the victim does not or declines to consult with an SVC, VLC, or private counsel and informs the assigned MCIO investigator that he or she does not want to participate in the investigation, the investigator will give the victim a Section 540K Declination Letter form. The MCIO investigator will repeat the recommendation that the victim meet with an SVC or VLC for assistance with filling out the letter, and the implications associated with doing so. The investigator will also ask the victim if:

(1) Anyone is influencing or coercing the victim to decline to participate in the investigation.

(2) Anyone is threatening or retaliating against the victim because of the open sexual assault investigation.

(3) He or she has any safety concerns related to the investigation of the sexual assault incident.

f. If the victim submits a Section 540K Declination Letter, the MCIO investigator will notify his or her installation-level field supervisor for a decision on whether the investigation should be closed. Such decisions will follow established policy and involve legal coordination, as appropriate.

(1) The investigation will be paused pending approval by the MCIO Installation-level field supervisor. The victim's Section 540K Declination Letter and the approval or disapproval to close the case will be documented in the case file with the date and the name of the supervisor.

(2) If the MCIO installation-level field supervisor approves closing the investigation, the MCIO will notify the victim or the victim's legal representative that the investigation is closed, but can be reopened at any time if the victim changes his or her mind. The MCIO will document in the case file that the notification was made to the victim (or his or her designated SVC, VLC, or private counsel) with the date, time, and method of notification.

(3) If circumstances do not allow for the termination of the investigation, such as when the identity of the suspect is known or investigators have viable leads to discover it, the installation-level field supervisor will disapprove closing the investigation, and require investigators to notify the victim of that decision to continue the investigation and the reasons for doing so.

(4) In all circumstances, the victim's Section 540K Declination Letter will be retained by the appropriate MCIO.

g. If the victim retains an SVC, VLC, or private counsel, the MCIO will follow similar procedures as described in Paragraph 3.9.f.(3) but instead direct all communication to victim's counsel, as appropriate.

h. Third-party reporters of sexual assault will not be notified of the MCIO's decision to honor the victim's request not to participate in the investigation. MCIOs will inform third-party reporters upon receipt of an allegation that a status or eventual outcome of an investigation will not be shared with the reporter.

i. Criminal investigations will proceed according to established policy and procedure when victims do not submit the Section 540K Declination Letter. A delay in submission of the letter may jeopardize the MCIO's ability to close the investigation.

GLOSSARY

G.1. ACRONYMS.

| | |
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| CATCH | Catch a Serial Offender Program |
| DAVA | Domestic Abuse Victim Advocacy |
| DD | Department of Defense (form) |
| DoDD | DoD directive |
| DoDI | DoD instruction |
| DSAID | Defense Sexual Assault Incident Database |
| FAP | Family Advocacy Program |
| LE | law enforcement |
| MCIO | military criminal investigative organization |
| MRE | Military Rules of Evidence |
| OMB | Office of Management and Budget |
| RRCN | Restricted Reporting Case Number |
| SAFE | sexual assault forensic examination |
| SAPR | sexual assault prevention and response |
| SARC | sexual assault response coordinator |
| SVC | special victims' counsel |
| U.S.C. | United States Code |
| VA | victim advocate |
| VLC | victims' legal counsel |

G.2. DEFINITIONS. Unless otherwise noted, these terms and their definitions are for the purposes of this issuance.

adult. A person who has attained the age of 16 years or older.

commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a DoD organization or prescribed territorial area. All references to “commander” in this issuance also include the military and civilian heads of DoD organizations and are authorized to request an investigation or act on the result of an investigation by a MCIO.

DAVA. Defined in DoDI 6400.06.

DSAID. Defined in DoDD 6495.01.

MCIO. U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

other DoD law enforcement resources. The U.S. Army Military Police, the U.S. Navy Master at Arms, the U.S. Air Force Security Forces, the U.S. Marine Corps Criminal Investigation Division, and the Pentagon Force Protection Agency.

restricted reporting. Defined in DoDD 6495.01 and DoDI 6400.06.

SARC. Defined in DoDD 6495.01.

Service members. Members of the Army, Navy, Air Force, Marine Corps, and Military Academies. In addition, National Guard and Reserve Component members on active duty, as defined in Section 101(d)(1) of Title 10, U.S.C; or inactive duty status while in training.

sexual assault. An intentional sexual contact characterized by the use of force, threats, intimidation, abuse of authority, or when the victim does not or cannot consent. This includes domestic abuse (as defined in DoDI 6400.06) related sexual assaults. The term “sexual assault” includes the following offenses under the Uniform Code of Military Justice:

Rape, in violation of Article 120.

Sexual assault, in violation of Article 120.

Aggravated sexual contact, in violation of Article 120.

Abusive sexual contact, in violation of Article 120.

Other sexual misconduct, in violation of Article 120c.

Attempts to commit any of the above offenses, in violation of Article 80.

Between 2007 and the present, amendments to the Uniform Code of Military Justice changed the Article 120 and Article 125 offenses in name and character. Depending upon the date the alleged offense was committed, investigators must refer to the name and character of the offense applicable to the Uniform Code of Military Justice provisions in effect at that time.

unrestricted reporting. Defined in DoDD 6495.01 and DoDI 6400.06.

REFERENCES

- Acting Under Secretary of Defense for Personnel and Readiness Memorandum, “Reporting Option for Prisoners in Military Correctional Facilities Under the Prison Rape Elimination Act,” July 6, 2015
- Code of Federal Regulations, Title 28, Part 115
- Deputy Secretary of Defense Memorandum, “Designation of the Navy as the Executive Agent for the Development and Maintenance of the “Catch a Serial Offender” Program Server and Searchable Database,” December 28, 2016
- DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007
- DoD Directive 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012, as amended
- DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014
- DoD Directive 6495.01, “Sexual Assault Prevention and Response (SAPR) Program,” January 23, 2012, as amended
- DoD Directive 7050.06, “Military Whistleblower Protection,” April 17, 2015
- DoD Instruction 1030.02, “Victim and Witness Assistance Procedures,” September 2, 2020, as amended
- DoD Instruction 1325.07, “Administration of Military Correctional Facilities and Clemency and Parole Authority,” March 11, 2013, as amended
- DoD Instruction 5505.03, “Initiation of Investigations by Defense Criminal Investigative Organizations,” March 24, 2011, as amended
- DoD Instruction 5505.07, “Titling and Indexing in Criminal Investigations,” February 28, 2018
- DoD Instruction 5505.09, “Interception of Wire, Electronic, and Oral Communications for Law Enforcement,” November 27, 2013, as amended
- DoD Instruction 5505.11, “Fingerprint Reporting Requirements,” October 31, 2019
- DoD Instruction 5505.14, “Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders,” December 22, 2015, as amended
- DoD Instruction 5505.17, “Collection, Maintenance, Use, and Dissemination of Personally Identifiable Information and Law Enforcement Information by DoD Law Enforcement Activities,” December 19, 2012, as amended
- DoD Instruction 5505.19, “Establishment of Special Victim Investigation and Prosecution (SVIP) Capability Within the Military Criminal Investigative Organizations (MCIOs),” February 3, 2015, as amended
- DoD Instruction 5525.07, “Implementation of the Memorandum of Understanding (MOU) Between the Departments of Justice (DOJ) and Defense Relating to the Investigation and Prosecution of Certain Crimes,” June 18, 2007
- DoD Instruction 6400.01, “Family Advocacy Program (FAP),” May 1, 2019
- DoD Instruction 6400.06, “Domestic Abuse Involving DoD Military and Certain Affiliated Personnel,” August 21, 2007, as amended

DoD Instruction 6495.02, Volume 1, “Sexual Assault Prevention and Response: Program Procedures,” March 28, 2013, as amended

DoD Manual 5200.01, Volume 4, “DoD Information Security Program: Controlled Unclassified Information (CUI),” February 24, 2012, as amended

DoD Manual 6400.01, Volume 3, “Family Advocacy Program: Clinical Case Staff Meeting and Incident Determination Committee,” August 11, 2016

DoD Manual 8910.01, Volume 1, “DoD Information Collections: Procedures for DoD Public Information Collections,” June 30, 2014, as amended

DoD Manual 8910.01, Volume 2, “DoD Information Collections: Procedures for DoD Public Information Collections,” June 30, 2014, as amended

Executive Order 13825, “2018 Amendments to the Manual for Court-Martial, United States,” March 1, 2018

Manual for Courts-Martial, United States, current edition, Part III (also known as the “Military Rules of Evidence”)

Office of Management and Budget Memorandum M-07-16, “Safeguarding Against and Responding to the Breach of Personally Identifiable Information (PII),” May 22, 2007

Public Law 108-375, “Ronald W. Regan National Defense Authorization Act for Fiscal Year 2005,” October 28, 2004

Public Law 110-417, “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009,” October 14, 2008

Public Law 113-291, “Carl Levin and Howard P. ‘Buck’ McKeon National Defense Authorization Act for Fiscal Year 2015,” December 19, 2014

Public Law 114-92, “National Defense Authorization Act for Fiscal Year 2016,” November 25, 2015

Public Law 114-328, “National Defense Authorization Act for Fiscal Year 2017,” December 23, 2016

Public Law 116-92, “National Defense Authorization Act for Fiscal Year 2020,” December 21, 2019

Under Secretary of Defense for Personnel and Readiness Memorandum, “Procedures to Implement the ‘Catch a Serial Offender’ Program,” June 10, 2019

United States Code, Title 5, Appendix

United States Code, Title 10

United States Code, Title 42, Chapter 147 (also known as the “Prison Rape Elimination Act (PREA) of 2003”)