DEPUTY SECRETARY OF DEFENSE

1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAR 1 6 2005

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, PROGRAM ANALYSIS AND EVALUATION
DIRECTOR, NET ASSESSMENT
DIRECTOR, FORCE TRANSFORMATION
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Confidentiality Policy for Victims of Sexual Assault (JTF-SAPR-009)

This directive-type memorandum establishes Department of Defense (DoD) guidelines for confidential, restricted reporting by victims of sexual assault. This memorandum implements Section 577(b) (5) of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, P. L. 108-375, October 28, 2004, which requires that DoD policy address confidential reporting of incidents of sexual assault. For the purposes of this policy, confidentiality or confidential reporting is defined as allowing a member of the DoD to report a sexual assault to specified individuals. This reporting option gives the member access to medical care, counseling and victim advocacy, without initiating the investigative process.

The DoD is committed to ensuring victims of sexual assaults are protected, treated with dignity and respect, and provided support, advocacy and care. DoD policy also strongly supports effective command awareness and prevention programs, and law enforcement and criminal justice activities that will maximize accountability and prosecution of sexual assault perpetrators. To achieve these dual objectives, DoD policy prefers complete reporting of sexual assaults to activate both victims' services and accountability actions. However, recognizing that a mandate of complete reporting may represent a barrier for victims to gain access to services when the victim desires no command or law enforcement involvement, there is a need to provide an option for confidential reporting.

Assuring privacy and providing a confidential disclosure option for sexual assault victims is critical to discharging our commitment. Sexual assault is the most under-reported violent crime in our society at large and in the military. Although the victim's decision to report is a crucial step following a sexual assault, reporting is often precluded by the victim's desire for no one to know what happened. Commanders have a responsibility to ensure community safety and due process of law, but they must also recognize the importance of protecting the privacy of victims under their command. Subject matter experts agree that a system which promotes privacy/confidentiality can have a positive impact in bringing victims forward to provide information about being assaulted.

Recognizing these DoD interests as a matter of DoD policy, service members who are sexually assaulted will now have the following reporting options:

Restricted Reporting: Restricted reporting allows a sexual assault victim, on a confidential basis, to disclose the details of his/her assault to specifically identified individuals and receive medical treatment and counseling, without triggering the official investigative process. Service members who are sexually assaulted and desire restricted reporting under this policy should report the assault to the Sexual Assault Response Coordinator (SARC) or a healthcare provider. Consistent with current policy, they may also report the assault to a chaplain. This policy on restricted reporting is in addition to the current protections afforded privileged communications with a chaplain, and does not alter or affect those protections. Healthcare providers will initiate the appropriate care and treatment, and report the sexual assault to the SARC in lieu of reporting the assault to law enforcement or the command. Upon notification of a reported sexual assault, the SARC will immediately assign a Victim Advocate *(See, Under Secretary of Defense (Personnel and Readiness) Memorandum "Response Capability for Sexual Assault, December 17, 2004).* The assigned Victim Advocate will provide the victim accurate information on the process to include the process of restricted vice unrestricted reporting. Additionally, with the victim's consent, the healthcare provider, if appropriately trained and supervised, shall conduct a forensic medical examination, which may include the collection of evidence. In the absence of a DoD provider, the victim will be appropriately referred for the forensic examination. The victim will acknowledge in writing his or her understanding that restricted reporting may limit the ability of the government to prosecute the assailant and an understanding of the reasons DoD policy favors unrestricted reporting.

The Inspector General of the Department of Defense, in coordination with the Assistant Secretary of Defense (Health Affairs), shall establish, within 30 days from the date of this signed memorandum, guidelines for the collection and preservation of evidence, with non-identifying information about the victim, under the restricted reporting process.

Restricted reporting is intended to give a victim additional time and increased control over the release and management of his/her personal information, and to empower him/her to seek relevant information and support to make more informed decisions about participating in the criminal investigation. A victim who receives appropriate care and treatment, and is provided an opportunity to make an informed decision about a criminal investigation is more likely to develop increased trust that his/her needs are of primary concern to the command and may eventually decide to pursue an investigation. Even if the victim chooses not to pursue an official investigation, this additional reporting avenue gives commanders a clearer picture of the sexual violence within their command, and enhances a commander's ability to provide an environment which is safe and contributes to the well-being and mission-readiness of all of its members.

Unrestricted Reporting: A service member who is sexually assaulted and desires medical treatment, counseling and an official investigation of his/her allegation should use current reporting channels, e.g. chain of command, law enforcement or he/she may report the incident to the SARC. Upon notification of a reported sexual assault, the SARC will immediately assign a Victim Advocate (*See, Under Secretary of Defense (Personnel and Readiness) Memorandum "Response Capability for Sexual Assault, December 17, 2004).* Additionally, with the victim's consent, the healthcare provider shall conduct a forensic medical examination, which may include the collection of evidence. Details regarding the incident will be limited to only those personnel who have a legitimate need to know.

Regardless of whether the member elects restricted or unrestricted reporting, confidentiality of medical information will be maintained in accordance with DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 2003. In cases where a victim elects restricted reporting, the SARC, assigned Victim Advocate (whether military or civilian), and healthcare providers may not disclose covered communications to law enforcement or command authorities, either within or outside the DoD, except as provided in the exceptions below. Covered communications are oral, written or electronic communications of personally identifiable information made by a victim to the SARC, assigned Victim Advocate or to a healthcare provider related to their sexual assault. However, for purposes of public safety and command responsibility, the SARC is responsible for reporting information concerning sexual assault incidents, without information that could reasonably lead to personal identification of the victim, to command officials within 24 hours of the incident.

Exceptions to confidentiality. In cases in which members elect restricted reporting, the prohibition on disclosing covered communications to the following persons or entities when disclosure would be for the following reasons:

- Command officials or law enforcement when disclosure is authorized by the victim in writing.

- Command officials or law enforcement when disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of victim or another.

- Disability Retirement Boards and officials when disclosure by a healthcare provider is required for fitness for duty for disability retirement determinations, limited to only that information which is necessary to process disability retirement determination.

- SARC, victim advocates or healthcare provider when disclosure is required for the supervision of direct victim services.

- Military or civilian courts of competent jurisdiction when disclosure is ordered by or is required by federal or state statute. SARC, victim advocates and healthcare providers will consult with the servicing legal office in the same manner as other recipients of privileged information to determine if the criteria apply and they have a duty to obey. Until those determinations are made, non-identifying information should only be disclosed.

Healthcare providers may also convey to the command any possible adverse duty impact related to the victim's medical condition and prognosis in accordance with DoD 6025.18-R Health Insurance Portability and Accountability Act. Such circumstances however, do not otherwise warrant an exception to policy, and therefore the specific details of the sexual assault will still be treated as covered communication and may not be disclosed.

Improper disclosure of covered communications, improper release of medical information, and other violations of this policy are prohibited and may result in discipline under the Uniform Code of Military Justice, loss of credentials, or other adverse personnel or administrative actions.

In the event that information about a sexual assault is disclosed to the commander from a source independent of the restricted reporting avenues, or to law enforcement from other sources, the commander may report the matter to law enforcement and law enforcement remains authorized to initiate its own independent investigation of the matter presented. Additionally, a victim's disclosure of his/her sexual assault to persons outside the protective sphere of the persons covered by this policy may result in an investigation of the allegations.

This policy does not create any actionable rights for the alleged offender nor the victim, nor constitute a grant of immunity for any actionable conduct by the offender or the victim. Covered communications that have been disclosed may be used in disciplinary proceedings against the offender or the victim, even if such communications were improperly disclosed.

The DoD recognizes the potential impact of restricted reporting on investigations and the commander's ability to hold perpetrators accountable, and this policy decision represents the judgment that such risks have been carefully considered but were outweighed by the overall interest in providing sexual assault victims this form of support. This directive-type memorandum supercedes all regulatory and policy guidance within the Department of Defense not expressly mandated by law that are inconsistent with its provisions, or would preclude its full implementation.

This memorandum provides the framework for confidentiality. The Joint Task Force for Sexual Assault Prevention and Response, in conjunction with the Military Departments, will coordinate specific implementation details. The magnitude of this change requires extensive, in-depth training for DoD personnel and specialized training for Commanders, Victim Advocates, Sexual Assault Response Coordinators, investigators, law enforcement, chaplains, healthcare providers and legal personnel.

All Military Departments shall submit a copy of their proposed implementing guidance, whether used at the Military Department or Service level, conforming to this policy not later than 60 days from the date of this signed memorandum. My POC for this action is Brigadier General K.C. McClain, Commander, Joint Task Force for Sexual Assault Prevention and Response, 703-696-9422.

To ensure consistent application across the Military Services, this confidentiality policy will be effective 90 days from the date of this signed memorandum. Final implementation of this policy is contingent on approval by USD (P&R) of Military Department and Service policies consistent with the requirements outlined in this memorandum.