



SECRETARY OF THE ARMY
WASHINGTON

JUL 06 2022

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2022-10 (Safe-to-report for Victims of Sexual Assault)

1. References.

- a. Public Law 116-283 (William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021), Section 539A (Safe-to-Report)
- b. Department of Defense (DoD) Instruction 6495.02, (Sexual Assault Prevention and Response Program Procedures), Volume 1, 28 March 2013, incorporating Change 6, effective 10 November 2021
- c. Under Secretary of Defense (Personnel and Readiness) memorandum (Safe-to-report Policy for Service Member Victims of Sexual Assault), 25 October 2021
- d. Under Secretary of Defense memorandum (Fiscal Year 2022 Data Call on the Safe-to-report Policy), 18 November 2021
- e. Army Regulation (AR) 27-10 (Military Justice), 20 November 2020
- f. AR 600-8-4 (Line of Duty Policy, Procedures, and Investigations), 12 November 2020
- g. Army Regulation 600-20 (Army Command Policy), 24 July 2020

2. Purpose. To prescribe policy and procedures for the identification and treatment of alleged minor and non-minor collateral misconduct by servicemember victims of sexual assault.

3. Applicability. The provisions of this directive apply to the Regular Army, Army National Guard/Army National Guard of the United States, and U.S. Army Reserve.

4. Background. As required by section 539A of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 and DoD's safe-to-report policy, this directive requires commanders to assess collateral misconduct against aggravating and mitigating circumstances in sexual assault cases. Victims will not be subject to discipline for minor collateral misconduct pursuant to this policy.

SUBJECT: Army Directive 2022-10 (Safe-to-report for Victims of Sexual Assault)

5. Definitions. The following definitions apply for the purposes of the policy:

a. Collateral misconduct is any victim misconduct that might be in time, place, or circumstance associated with the victim's sexual assault incident.

b. Sexual assault is any penetrative and non-penetrative reported violations of the applicable version of Article 120, Uniform Code of Military Justice (UCMJ); reported violations of Article 125, UCMJ, of a victim age 16 or older occurring prior to 1 January 2019; and any reported attempts and conspiracies to commit any of these offenses.

c. Discipline (including discipline under cadet regulations at the United States Military Academy) includes an officially documented command action that has been initiated against the victim in response to alleged collateral misconduct, including: letters of reprimand or written records of individual counseling in official personnel files, imposition of nonjudicial punishment, preferral of charges, initiation of involuntary administrative separation proceedings, or administrative demotion.

6. Policy.

a. This policy applies to all servicemembers who are victims of sexual assault, including cadets at the United States Military Academy, regardless of who receives the victim's report of sexual assault or whether the investigation and/or prosecution is handled by military or civilian authorities.

b. Commanders in the grade of O-6 and above who possess special court-martial convening authority must assess alleged collateral misconduct against aggravating and mitigating circumstances. Such commanders retain discretion to make the final determination of whether the alleged collateral misconduct is minor or non-minor based on their analysis of aggravating and mitigating circumstances. Commanders will consult with their servicing Staff Judge Advocate in reaching these determinations.

(1) Aggravating Circumstances. The existence of aggravating circumstances does not automatically result in a determination that the alleged collateral misconduct is non-minor. Aggravating circumstances include, but are not limited to, whether the alleged collateral misconduct intentionally or unintentionally:

(a) resulted or imminently threatened to result in failure of a specified military mission or objective

SUBJECT: Army Directive 2022-10 (Safe-to-report for Victims of Sexual Assault)

(b) threatened the health and safety of any person, not including acts of self-harm or acts of self-defense against the subject(s) of an investigation of sexual assault

(c) resulted in significant damage to government property, or to the personal property of others, except when such damage was the collateral result of an assault and/or resulted from an act of self-defense

(2) Mitigating Circumstances. Mitigating circumstances include, but are not limited to:

(a) the victim's age and military experience level

(b) whether the subject is in a position of authority over the victim or a higher grade than the victim

(c) whether the subject engaged in actions to stalk, harass, haze, coerce, and/or otherwise influence the victim to engage in sexual behavior

(d) whether the alleged collateral misconduct was known to command prior to the report of sexual assault, and if not known, the likelihood that the alleged collateral misconduct would have otherwise been discovered, but for the victim disclosing or reporting the sexual assault

(e) the victim engaging in misconduct after the sexual assault, which may be related to symptoms of trauma (for example, if the victim engaged in underage drinking as a coping mechanism to alleviate sexual assault trauma symptoms)

c. Determination of Non-Minor Collateral Misconduct. If the commander determines a victim's collateral misconduct is non-minor, the commander retains discretion on whether to discipline and when to discipline.

(1) Commanders have discretion to defer action on alleged non-minor collateral misconduct until final disposition of the sexual assault case. Commanders may take into account the trauma to the victim and respond appropriately to encourage reporting of sexual assault and continued victim cooperation while balancing the right to speedy trial and statute of limitations concerns.

(2) Commanders should consult with Judge Advocates in understanding the impact of disciplinary actions on ongoing prosecutions.

SUBJECT: Army Directive 2022-10 (Safe-to-report for Victims of Sexual Assault)

d. Determination of Minor Collateral Misconduct. If the commander determines a victim's collateral misconduct is minor, safe-to-report protections are triggered. The victim will not be subject to discipline for minor collateral misconduct.

(1) Examples of collateral misconduct that should generally be considered minor include, but are not limited to:

(a) The victim was drinking underage at the time of the assault.

(b) The victim was engaged in an unprofessional relationship with the subject at the time of the sexual assault. An "unprofessional relationship" is a relationship that violated law, regulation, or policy in place at the time of the sexual assault.

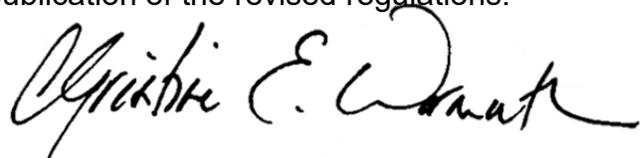
(c) The victim was in violation of lawful orders establishing curfews, off-limit locations, school standards, barracks/dormitory/berthing policies, or similar matters at the time of the reported sexual assault.

(2) Safe-to-report protections do not preclude the commander from fulfilling certain administrative requirements, for example, referral to substance abuse screening if the minor collateral misconduct involves any kind of substance abuse, referral to behavioral health or medical providers for a fitness for duty determination, or temporary suspension of access to critical positions (such as positions in the Personnel Reliability Program).

e. Reporting. The Director, Army Resilience Directorate is responsible for responding to DoD data calls regarding this policy, including data calls required by reference 1d. Data collection and reporting is the responsibility of the local Lead Sexual Assault Response Coordinator with support from the local Staff Judge Advocate.

7. Proponent. Under the policy oversight of the Assistant Secretary of the Army (Manpower and Reserve Affairs), The Judge Advocate General and the Deputy Chief of Staff, G-1 will incorporate the provisions of this directive into applicable regulations within 2 years of the date of this directive.

8. Duration. This directive is rescinded on publication of the revised regulations.



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SUBJECT: Army Directive 2022-10 (Safe-to-report for Victims of Sexual Assault)

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