

Appendix G Confidentiality/Restricted Reporting

G-1. Purpose

This appendix establishes the Army's guidelines for restricted and unrestricted reporting by victims of sexual assault.

G-2. Mission

The Army is committed to ensuring victims of sexual assault are protected, treated with dignity and respect, and provided support, advocacy and care. Army policy 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, the Army 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 access services when the victim desires no command or law enforcement involvement, there is a need to provide an option for confidential reporting.

G-3. Commander's responsibility

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 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 that promotes privacy/confidentiality can have a positive impact in bringing victims forward to provide information about being assaulted.

G-4. Confidential reporting

Confidentiality or confidential reporting allows a uniformed Service member to report a sexual assault to specified individuals. Confidential reporting consists of two components: restricted and unrestricted reporting.

a. Restricted reporting. A Soldier who is sexually assaulted and desires medical care, counseling and victim advocacy, without initiating the investigative process should use the restrictive reporting option. Restricted reporting allows a sexual assault victim to confidentially disclose the details of his/her assault to specifically identified individuals and receive medical treatment and counseling, without triggering the official investigative process. Restricted reporting is intended to give victims additional time and increased control over the release and management of their personal information, and to empower them 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 that is safe and contributes to the Well-being and mission-readiness of all of its members. Restricted reporting procedures follow:

(1) Soldiers who are sexually assaulted and desire restricted reporting under this policy should report the assault to the SARC, a VA, or a healthcare provider.

(2) Consistent with current policy, Soldiers 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.

(3) Upon notification of a reported sexual assault, the SARC will immediately assign an IVA or UVA.

(4) The assigned VA will provide the victim accurate information on the process to include the process of restricted vice unrestricted reporting.

(5) The SARC or VA will ensure the victim acknowledges in writing his or her understanding that restricted reporting may limit the ability of the Government to prosecute the assailant, restrict the Army's ability to provide adequate measures to limit contact between the victim and the assailant, and an understanding of the reasons Army policy favors unrestricted reporting.

(6) Healthcare providers will, with the consent of the victim, 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 chain of command.

Additionally, at the victim's discretion/request, the healthcare provider, if appropriately trained and supervised, will conduct a forensic medical examination, which may include the collection of evidence. Disposition instructions for such evidence are provided in appendix J.

(7) If a DOD healthcare provider is not available, the victim will be appropriately referred to a civilian provider for the forensic examination, if the victim requests such a forensic examination.

b. Unrestricted reporting. A Soldier who is sexually assaulted and desires medical treatment, counseling and an official investigation of his/her allegation should use current reporting channels, for example, chain of command, law enforcement or report the incident to the SARC. Upon notification of a reported sexual assault, the SARC will immediately assign a VA. Healthcare providers will, with the consent of the victim, initiate the appropriate care and treatment, and report the sexual assault to law enforcement or the chain of command. Additionally, at the victim's discretion/request, the healthcare provider will 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.

G-5. Confidential communication

a. Regardless of whether the Soldier elects restricted or unrestricted reporting, confidentiality of medical information will be maintained in accordance with current guidelines on the HIPAA.

b. In cases where a victim elects restricted reporting, the SARC, assigned VA (whether uniformed 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.

c. Covered communications are oral, written, or electronic communications of personally identifiable information made by a victim to the SARC, assigned VA or to a healthcare provider related to their sexual assault.

d. 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 installation command officials within 24 hours of the incident.

e. 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 will 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.

f. This policy does not create any actionable rights for the alleged offender or 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.

g. 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 UCMJ, loss of credentials, or other adverse personnel or administrative actions.

G–6. Exceptions to confidentiality

a. In cases in which victims elect restricted reporting, the prohibition on disclosing covered communications is waived to the following persons or entities when disclosure would be for the following reasons:

(1) Command officials or law enforcement when disclosure is authorized by the victim in writing.

(2) 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.

(3) 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 that is necessary to process disability retirement determination.

(4) SARC, VAs, or healthcare provider when disclosure is required for the supervision of direct victim services.

(5) Military or civilian courts of competent jurisdiction when disclosure is ordered by or is required by Federal or state statute. SARC, VAs, 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, only non-identifying information should be disclosed.

b. Healthcare providers may 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. 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.

G–7. Covered communication

a. 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 UCMJ, loss of credentials, or other adverse personnel or administrative actions.

b. 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.

c. This policy does not create any actionable rights for the alleged offender or 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.

d. The Army 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 policy supersedes all regulatory and policy guidance within the Department of Army not expressly mandated by law that is inconsistent with its provisions, or would preclude execution.

