UNDER SECRETARY OF DEFENSE
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PERSONNEL AND
READINESS

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MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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SUBJECT: Commander Checklist for Responding to Allegations of Sexual Assault (JTF-SAPR-005)

This directive-type memorandum establishes policy that complies with Section 577 and of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108-375, October 28, 2004, and provides a DoD checklist for assisting commanders in safeguarding the rights of the victim and the accused, as well as addressing appropriate unit standards and interests, in sexual assault cases. Its primary objective is to ensure the appropriate balance between a victim's right to feel secure and the accused's rights to due process under the law.

The Department of Defense is fully committed to ensuring the safety and well-being of all members of its Armed Forces. Recognizing that a commander may only respond to one or two sexual assault allegations during his or her tenure, the attached sexual assault response checklist is provided to assist in successfully navigating the myriad of competing interests which may result once a sexual assault is reported. Each Military Service will use this checklist as a guide to respond to reported sexual assaults. Additional Service-specific guidelines may be incorporated as appropriate or needed.

Commanders notified of a reported sexual assault must immediately take steps to ensure the victim's physical safety, emotional security and medical treatment needs are met, and that the appropriate criminal investigative service is notified. Additionally, the victim's unit commander must take the necessary actions to assess and determine the need for

temporary reassignment of the of the victim or the accused being investigated, working with the accused's commander if different than the victim's commander, until there is a final legal disposition of the sexual assault allegation, or any physical safety or emotional security issues are resolved. This might include reassignment to a different unit, duty location, or living quarters on the same installation. To the maximum extent possible, commanders should consider the victim's desires prior to any reassignment decision.

In addition, commanders should also consider "no contact" orders or execute Military Protection Order, DD Form 2873. The victim's commander should consult with each of the members involved in the case response team (i.e., legal, medical, victim advocate, chaplain, etc.) and the commander of the accused, if appropriate, before making a final determination. While the ultimate goal of this analysis is to prevent further harm or victimization of the victim, mission requirements, especially in remote or overseas locations, may dictate other carefully tailor solutions. Commanders have the authority to expand upon this checklist, if necessary, to protect victims from further harm or trauma, or to safeguard the unit. Commanders may also exercise similar considerations for the subject of the investigation.

All Military Services shall submit a copy of their implementing guidance for a Commander's checklist not later than 28 February, 2005. My POC for this action is Brigadier General KC McClain, Commander, Joint Task Force for Sexual Assault Prevention and Response.

This guidance establishes DoD policy on sexual assault matters. This memorandum is effective immediately. This and other sexual assault policies will be consolidated into a DoD issuance within 180 days.

David S. C. Chu

Attachment:
As stated

COMMANDER RESPONSE PROTOCOLS
for
ALLEGATIONS OF SEXUAL ASSAULT

VICTIM

- Ensure the physical safety and emotional security of the victim--determine if the alleged assailant is still nearby and if the victim desires/needs protection.
- Determine if the victim desires/needs any emergency medical care.
- Notify the military criminal investigative organization, as soon as the victim's immediate safety is assured, and victim's medical treatment procedures are in motion (*See*, Under Secretary of Defense (Personnel and Readiness) Memorandum "Increased Victim Support and A Better Accounting of Sexual Assault Cases," November 22, 2004.);
    - Strictly limit the fact of or details regarding the incident to only those personnel who have a legitimate need to know.
    - Take action to safeguard the victim from any formal or informal investigative interviews or inquiries, except those conducted by the military criminal investigative organization.
- Collect only the necessary information (e.g. victim's identity, location and time of the incident, name and/or description of offender(s). DO NOT ASK DETAILED QUESTIONS AND/OR PRESSURE THE VICTIM FOR RESPONSES OR INFORMATION ABOUT THE INCIDENT.
- Advise the victim of the need to preserve evidence (by not bathing, showering, washing garments, etc.) while waiting for the arrival of representatives of the military criminal investigative organization.
- Assist with or provide immediate transportation for the victim to the hospital or other appropriate medical facility.
- Ensure the victim understands the medical, investigative, and legal process and is advised of his/her victim support rights.
- Ask if the victim needs a support person (can be a personal friend), advocate, or professional to immediately join the victim.
- Ensure the victim understands the role and availability of a Victim Advocate.
- Ask if the victim would like a Victim Advocate to be assigned; if so, contact the Sexual Assault Response Coordinator. The Sexual Assault Response Coordinator will assign a Victim Advocate to meet with and provide support to the victim.
- Ask if the victim would like a Chaplain to be notified and notify accordingly.

- Determine if the victim desires/needs a "no contact' order or a Military Protection Order, DD Form 2873, to be issued, particularly if the victim and the accused are assigned to the same command, unit, duty location, or living quarters.
- Determine the need for temporary reassignment to another unit, duty location, or living quarters on the installation of the victim or the accused being investigated, working with the accused's commander if different than the victim's commander, until there is a final legal disposition of the sexual assault allegation, and/or the victim is no longer in danger.
  - To the extent practicable, consider the desires of the victim when making any reassignment determinations.
- Determine how to best dispose of the victim's collateral misconduct. Absent overriding considerations, commanders should exercise their authority in appropriate cases, and defer disciplinary actions for the victim's minor misconduct until after the final disposition of the sexual assault case. (*See*, Under Secretary of Defense (Personnel and Readiness) Memorandum "Collateral Misconduct in Sexual Assault Cases," November 12, 2004.)
- Avoid automatic suspension or revocation of a security and/or personnel reliability program (PRP) clearance, when possible, understanding that the victim may be satisfactorily treated for his/her related trauma without compromising his/her PRP status. Consider the negative impact that suspension of a victim's security clearance may have on building a climate of trust and confidence in the service reporting system.
- Throughout the investigation, consult with the victim and, to the extent practicable, accommodate the victim's desires regarding safety, health, and security, as long as neither a critical mission nor a full and complete investigation are compromised.
- Listen/engage in quiet support of the victim, as needed. Be available in the weeks and months following the sexual assault, and assure the victim that she/he can rely on the commander's support.
- Emphasize to the victim the availability of additional avenues of support; refer to available counseling groups and other victim services.
- Ensure the victim receives monthly reports regarding the status of the sexual assault investigation until its final disposition. (*See*, Under Secretary of Defense (Personnel and Readiness) Memorandum "Increased Victim Support and A Better Accounting of Sexual Assault Cases," November 22, 2004.)
- Consult with the servicing legal office, criminal investigative organization, and notify the assigned Victim Advocate prior to taking any administrative or disciplinary action affecting the victim.

ACCUSED

- Contacts with a service member suspected of an offense under the Uniform Code of Military Justice (UCMJ) involve rules and procedures that may be unique within the military. Therefore, before questioning the suspected service member or discussing the case with the service member, commanders and other command representatives should first contact the servicing legal office for guidance. Follow the guidance provided to:
    - Avoid discussing or questioning the sexual assault allegation with the accused service member, to the extent practicable, since doing so may jeopardize the criminal investigation. However, if questioning does occur, prior to questioning the accused service member, advise the service member suspected of committing a UCMJ offense of his/her rights under Article 31 of the UCMJ, and right to defense counsel representation, before questioning him or her or before discussing the sexual assault allegations.
    - Notify the appropriate military criminal investigative organization as soon as possible after receiving a report of a sexual assault incident. (*See*, Under Secretary of Defense (Personnel and Readiness) Memorandum "Increased Victim Support and A Better Accounting of Sexual Assault Cases," November 22, 2004.)
    - Safeguard the accused's rights and preserve the integrity of a full and complete investigation, to include limitations on any formal or informal investigative interviews or inquiries by personnel other than those assigned to the military criminal investigative organization conducting the investigation.
    - Strictly limit information, the fact of and the details about the investigation to those who have a legitimate need to know.
    - Ensure procedures are in place to inform the accused service member about the investigative and legal processes that may be involved.
    - Ensure procedures are in place to inform the accused service member about available counseling support. As may be appropriate under the circumstances, refer the accused service member to available counseling groups and other services.
    - Emphasize that the accused is presumed innocent until proven guilty.
- With the benefit of legal and investigative advice, determine the need for a "no contact' order, or the issuance of a Military Protection Order, DD Form

2873, if the victim and the accused are assigned to the same unit, command, or location.

- Monitor the well-being of the accused service member, particularly any indications of suicide potential, and ensure appropriate intervention occurs if indicated.

UNIT

PREVENTION

- Establish a command climate of prevention that is predicated on mutual respect and trust, that recognizes and embraces diversity, and that values the contributions of all its members.
- Reassure members of your personal commitment to maintaining a healthy environment that is safe and contributes to their well-being and mission accomplishment.
- Reiterate your "zero tolerance" policy on sexual assault and the potential consequences for those who violate the law.
- Keep a "finger on the pulse" of the organization's climate and respond with appropriate action toward any negative trends that may emerge.

IN THE EVENT OF A SEXUAL ASSAULT

- Encourage members to be appropriately supportive of one another within the organization, to include both the victim and alleged offender in the incident.
- Advise those who may have knowledge of the events leading up to or surrounding the incident to fully cooperate with any investigation involved.
- Ensure proper authorities are available to explain to potential witnesses the potential consequences of discussing any details related to the on-going investigation.
- Discourage members from participating in "barracks gossip" or grapevine speculation about the case or investigation, reminding all to wait in reaching conclusions until all the facts are known and final disposition of the allegation has occurred.
- Consider some form of unit refresher training; or have an outside expert address the unit regarding preventive measures, as well as some of the emotional or psychological feelings that may manifest themselves, affect the unit, and require their response during the course of the investigation.