
New Military Sexual Assault Policies— Building a Bridge of Trust

By Mr. Russell W. Strand

Sergeant “Ronald Hall” was drinking with his buddies in the barracks and subsequently passed out. He woke up later to find his roommate sexually assaulting him.

First Lieutenant “Jennifer Robinson” went on a blind date set up by her roommate. After dinner, Jennifer and her date went out for an evening of dancing, which was the last thing she remembers. She woke up in the hallway outside her room and discovered she had been raped. She suspects that her date slipped an unknown drug into her drink.

Private First Class “Chris St. James” was on guard duty when she was jumped by an unknown soldier who indecently assaulted and attempted to rape her.

These soldiers have something in common. They are victims of sexual assault, and new Department of Defense (DOD) and Department of the Army (DA) policies will help them gain control over what happened to them and give them additional options after these devastating crimes.

Traditionally, if these victims went to a military medical treatment facility for medical care, to social services for counseling, or to a victim’s advocate (VA) for assistance or advice, their cases would have been reported immediately to the military police or the Criminal Investigation Division (CID) for appropriate intervention and investigation, even if that was against their wishes. Unfortunately, many victims do not report sexual assaults due to embarrassment, fear of reprisal, mistrust, and misunderstanding of the criminal justice system, among other factors. It is estimated that only 18 percent of all sexual assaults are reported. In an effort to provide a better response and caring support to victims of sexual assault, DOD and DA have enacted new policies to support these victims and help them with their medical and emotional needs. The hope is that many of these victims will be able to overcome their fears and report these crimes to law enforcement.

During this past year, policy changes on how we respond to sexual assaults have been fast and furious, presenting new opportunities and challenges for the Military Police Regiment. The purpose of this article is to provide an update and a look ahead as the Regiment assimilates these changes and to help understand the cultural shift DOD and DA have directed.

First and foremost, sexual assault is a crime. This is a basic tenet of the DOD and DA policy. Sexual assault is defined as intentional sexual contact characterized by the use of force or physical threat, by the abuse of authority, or by a victim who does not or cannot consent. Sexual assault includes rape, nonconsensual sodomy (oral or anal sex), indecent assault (unwanted, inappropriate sexual contact or fondling), or attempts to commit these acts. Sexual assault can occur without regard to gender, spousal relationship, or age of the victim. “‘Consent’ shall not be deemed or construed to mean failure by the victim to offer physical resistance. Consent is not given when a person uses force, threat of force, coercion, or when the victim is asleep, incapacitated, or unconscious.”¹

Although DOD and DA acknowledge sexual assault as a crime, it is the most underreported crime. Therefore, in an attempt to encourage victims to report sexual assaults and receive appropriate medical care and services, the military has made some very bold policy changes. One of these policy changes offers a restricted reporting option for service members who are victims of sexual assault. They may report the assault to a health care provider, a VA, a sexual assault response coordinator (SARC), or a chaplain for treatment and assistance without triggering an investigation.

In simple terms, that means the victim can receive services from any of those professionals and, if the victim chooses restricted reporting, the professionals are prohibited from making a report to unit commanders or law enforcement personnel (unless otherwise required by law) or from making any other

official report. This is a fundamental change in how military police have reacted to reports of sexual assault in the past. It is important to note that this policy only applies to active duty service members or National Guard and reserve service members on federal active duty. If the victim is not on active duty, law enforcement will be called and an investigation will be initiated, as appropriate.

The purpose of providing the service member with reporting options is to ensure that victims receive medical, counseling, and advocacy services. It is also meant to remove barriers to disclosure, such as the perceived lack of privacy and confidentiality; the embarrassment and stigma of sexual assault; the fear of reprisal from the offender; a lack of confidence in the chain of command; the fear of repercussions regarding collateral misconduct; and concerns about how the report will affect their careers, units, and mission accomplishment. The overarching purpose is to build the victim's trust in the system in order to increase reporting. If the victim chooses to make a restricted report, the SARC is required to notify the senior mission commander within 24 hours, provide that commander with details of the sexual assault, and omit all identifying personal information. This will inform the senior mission commander of the sexual assault problem within the command and allow him to make changes to prevent further assaults from occurring.

As with any policy, there are some unintended consequences of delayed reporting. Crime scene evidence cannot be gathered, the victim cannot receive a military protective order, the offender may continue to have access to the victim, and the victim is unable to discuss the offense with personnel outside the restricted reporting chain. The greatest consequence is that the offender will not be held accountable. This can be a tough pill to swallow for law enforcement professionals who are concerned about offender accountability, public safety, and the rule of law. It is true that—

- Some offenders will go unpunished.
- Other people may be victimized if we do not intervene, investigate, and hold the offender accountable.
- Public safety is threatened each time someone gets away with committing a crime as serious as sexual assault. However, most offenders already do get away with sexual assault,

because most victims do not report the crime anyway.

There are exceptions to the restricted reporting policy. Unrestricted reporting is allowed when—

- The victim consents in writing.
- Disclosure is necessary to prevent or lessen a serious and imminent threat to the victim or another person.
- It is required to determine fitness for duty or disability retirement.
- It is necessary to provide supervision of VAs and SARCs to ensure that adequate services are provided.
- It is ordered by federal or state statute.

These exceptions are determined by the SARC after consultation with the local staff judge advocate and the senior mission commander, as appropriate. In addition to these exceptions to the restricted reporting policy, an independent investigation may be initiated if the following occur:

- The commander receives information from a source independent of the restricted reporting chain.
- The victim discloses circumstances of the sexual assault to someone other than restricted reporting chain personnel (chaplain, health care professional, VA, or SARC).
- Law enforcement obtains information about a sexual assault from any source other than the victim or restricted reporting chain personnel.

If a service member victim reports the sexual assault to a military police Soldier, a military police investigator, or a CID special agent, the local SARC must be notified and an investigation will be initiated because the incident was not reported in a manner in which the restricted reporting policy applies. Once victims make an unrestricted report, they do not have the option of a restricted report.

Another extremely important feature of the new sexual assault policy for the military police is the collection of sexual assault kits and associated potential evidence. If a service member victim reports a sexual assault within the restricted reporting chain and requests restricted reporting, the victim may still choose to have a sexual assault forensic examination. If a sexual assault kit, clothing, or other evidence associated with the sexual assault is collected by health care personnel, the SARC will be notified. The SARC

will then notify the local military police desk. A military police patrol will be dispatched to the medical treatment facility to collect the property and sexual assault kit from the health care professional. The items collected will be documented on an evidence/property custody document and secured in the evidence depository. The SARC will also provide a restricted report identification number that will be used to cross-reference identification data with the information the SARC will maintain in the restricted file. The military police will maintain the sexual assault evidence for one year unless the victim chooses to change the report from restricted to unrestricted. In that case, the SARC will notify the Provost Marshal's Office (PMO) and the military police will release the evidence to the CID or another investigative agency, as appropriate.

However, if the report remains restricted, the PMO will put a one-year suspense on the evidence/property custody document. The PMO will contact the SARC 60 days before the end of the one-year holding period and advise the SARC that if the victim does not wish to make an unrestricted report, the evidence will be disposed of according to proper procedures. If the victim chooses to change the report from restricted to unrestricted, the military police will release the evidence to the CID or another investigative agency, as appropriate.

The US Army Military Police School (USAMPS) has been working diligently with other agencies to get the word out and to train all personnel involved in the prevention of and intervention in sexual assaults. USAMPS instructors have been sent to numerous locations in support of the DOD and DA Sexual Assault Prevention and Response Mobile Training Teams. USAMPS has also developed a three-day sexual assault investigations course and has begun presenting this course to special agents at CID battalions around the world. USAMPS will also

develop and distribute Sexual Assault Response Training Support Packages for military police.

There are numerous other provisions of the DOD and DA sexual assault policies, such as required training for first responders and investigators, sexual assault prevention and response guidance, collateral misconduct, collaboration with civilian authorities, implementation policies for unit VAs and deployable SARCs, and numerous other aspects. Some of the resources available for additional information, training, and policy guidance include your local family advocacy program manager, SARC, or VA. You may also go online to <www.sexualassault.army.mil> or check out Army Regulation 600-20, Chapter 8.

Bridges of trust need to be built with victims of crime by showing true empathy and caring concern and with those who help victims, such as health care professionals, VAs, and SARCs. If the military police build good relationships with other professionals, we can build a bridge of trust, collectively helping the victims become strong and healthy enough to cross that bridge they may have never been able to cross before.

Assist–Protect–Defend

Reference:

¹From Directive-Type Memorandum, 13 December 2004, Under Secretary of Defense Dr. David S. Chu, *DOD Definition of Sexual Assault* (JTF-SAPR-006).