UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUN 30 2005

PERSONNEL AND
READINESS

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: Sexual Assault Evidence Collection and Preservation Under Restricted Reporting (JTF-SAPR-014)

This directive-type memorandum and its attachment establish Department of Defense (DoD) guidelines for the collection and preservation of sexual assault evidence under restricted reporting. Restricted reporting allows sexual assault victims to confidentially disclose the details of their assault to specifically identified individuals and receive medical treatment and counseling, without triggering the official investigative process per "Confidentiality Policy for Victims of Sexual Assaults (JTF-SAPR-009)," dated March 16, 2005.

Sexual Assault reporting procedures require the Sexual Assault Response Coordinator (SARC) to be notified. The SARC, in turn, will assign a Victim Advocate (VA) to a victim. If a victim initially presents at a medical facility, SARC notification must not delay the treatment of any medical conditions requiring immediate attention for the health of a victim. The SARC or VA will advise victims about their reporting options and document their choice. A DoD form is in the process of development for this purpose. In the interim, the SARC or VA should advise the victim in accordance with Attachment 2, Confidentiality Policy for Victims of Sexual Assaults (JTF-SAPR-009), dated March 16, 2005, and obtain the victim's written choice. The SARC or VA will also inform victims about the optional sexual assault forensic exam (SAFE). If a victim chooses to undergo a SAFE, and a SAFE is indicated by the facts of the case, healthcare providers (HCPs) at military facilities will conduct the examination according to the most

current Department of Justice "National Protocol for Sexual Assault Medical Forensic Examinations." HCPs should also refer to the "Response Protocol for Sexual Assault Examination Under Restricted Reporting" (Attachment 1) for further guidance.

Installations that do not have a SAFE capability will transport a victim to a military facility or local off-base non-military facility that has a SAFE capability. Whenever possible, military installations should have established formal memoranda of understanding (MOU) with military facilities or off base non-military facilities for the purpose of conducting sexual assault examinations. The SARC or VA will ensure that a victim is aware of any local or state sexual assault reporting requirements that may limit the possibility of restricted reporting, prior to proceeding with the SAFE at the local off base non-military facility.

Each Military Service will designate a military agency to generate an alpha-numeric "Restricted Report Case Number" (RRCN), unique to each incident, that will be used in lieu of personal-identifying information to label and identify the evidence collected from a SAFE (i.e., Sexual Assault Evidence Collection kit (SAE kit), accompanying documentation, personal effects, clothing). Upon completion of the SAFE, the HCP will package and label the evidence with the RRCN and notify the service-designated military agency trained and capable of collecting and preserving evidence (hereinafter "military agency"), to assume custody of the evidence using established "chain of custody" procedures. MOUs with off-base non-military facilities should include instructions for the notification of a SARC, receipt and application of a RRCN and disposition of evidence back to the military agency. The RRCN and general description of the evidence shall be entered into a log to be maintained by the military agency. Evidence will be stored for one year from the report of the assault.

Thirty days prior to the expiration of the one-year storage period, the military agency shall notify the appropriate SARC that the one-year storage period is about to expire. The SARC shall notify victims accordingly. If a victim does not desire to change to an unrestricted report and does not request the return of any personal effects or clothing maintained as part of the evidence prior to the expiration of the one-year storage period, in accordance with established procedures for the destruction of evidence, the military agency shall destroy the evidence maintained under that victim's RRCN. The evidence shall similarly be destroyed if, at the expiration of one year, victims do not advise the SARC of their decision or the SARC is unable to notify a victim because the victim's whereabouts are no longer known. If, at any time, a victim elects to change their reporting preference to the unrestricted reporting option, the SARC shall notify the respective Military Criminal Investigative Organization (MCIO), who will then assume custody of the evidence maintained by the Restricted Report Case Number from the military agency under established "chain of custody" procedures. MCIO established procedures for documenting, maintaining, and storing the evidence will thereafter be followed.

These guidelines apply whenever active duty military personnel or Guard/Reserve members subject to military jurisdiction under the Uniform Code of Military Justice are the victims of sexual assault and elect restricted reporting.

The Military Departments shall incorporate these guidelines into their sexual assault policies. These guidelines are effective immediately. This and other sexual assault policies will be consolidated into a DoD issuance within 180 days. My POC for this action is Brigadier General K. C. McClain, Commander, Joint Task Force for Sexual Assault Prevention and Response, 703-696-9422.

David S. C. Chu

Attachments:
As stated

RESPONSE PROTOCOL FOR SEXUAL ASSAULT EXAMINATION UNDER RESTRICTED REPORTING

- Unless medical conditions require immediate attention for the health of the patient, the Healthcare Provider (HCP) should wait for the Sexual Assault Response Coordinator (SARC) or Victim Advocate (VA) to arrive and explain the sexual assault "restricted reporting" and "unrestricted reporting" options available to the patient.

- The HCP, when not already at the medical facility, will respond rapidly to the medical facility where the sexual assault patient was brought or presented.

- The SARC will be notified.

- The service-designated military agency will assign an alpha-numeric Restricted Report Case Number (RRCN) to the patient's case.

- The SARC will assign the patient a VA.

- Military Criminal Investigative Organizations (MCIOs) will **NOT** be informed of the sexual assault case.

- The patient's name will NOT be reported, except when required under the "restricted reporting" program.

- The patient will be evaluated for any emergent injuries or illness.

- Standard Military Treatment Facility (MTF) labs will be collected to include testing for: sexually transmitted infections (STI), pregnancy and other clinically indicated labs. STI testing will be serially repeated following current Center for Disease Control (CDC) guidelines.

- The patient has the option to request a SAFE.

- The HCP will fully explain the SAFE process to the patient and obtain the patient's written consent on the consent form provided prior to interviewing the patient or commencing with the examination, if a SAFE is indicated by the facts of the case.

- The patient will be strongly encouraged to not shower, have anything by mouth, or void, or defecate until after the evidentiary examination is completed or the victim has declined a SAFE after explanation by the HCP.

- The patient has the option to request the SARC or VA to be present during the HCP interview or SAFE.

- Depending on the patient's history and clinical findings, the SAFE should include the following components if they are available:
  - Sexual Assault Evidence Collection Kit (SAE kit).
  - Photography of any non-genital trauma.
  - Woods Lamp and Alternate Light Source examination.
  - Wet Prep for motile or non-motile spermatazoa, or the presence of Trichomonas.
  - Photography of any genital or anal/rectal trauma utilizing magnification via coloposcope or other acceptable magnifying lens.

- Consult appropriate medical specialty if there is suspicion of genital or rectal injuries or other physical injuries.

- Appropriate written after-care instructions will be provided upon completion of the SAFE, including:
  - Sexually transmitted diseases (STDs) testing , prophylaxis, and the need for follow-up testing per current CDC guidelines.
  - Human Immunodeficiency Virus (HIV) testing , prophylaxis, and need for follow-up testing per current CDC guidelines.
  - Emergency Contraception (EC) information, pregnancy testing and follow-up pregnancy testing, if needed, in 2-4 weeks if no menses.

- Appropriate documentation will be sealed inside the SAE kit.

- The HCP will label and package all evidence as per SAE kit instructions to ensure it is properly preserved.

- The HCP, and the SARC or VA, will verify that the correct Restricted Report Case Number was designated on the documentation forms, the SAE kit, and any other containers holding evidence.

- All information of the case will remain with the HCP, the SARC, and the VA, with the exception of the following:

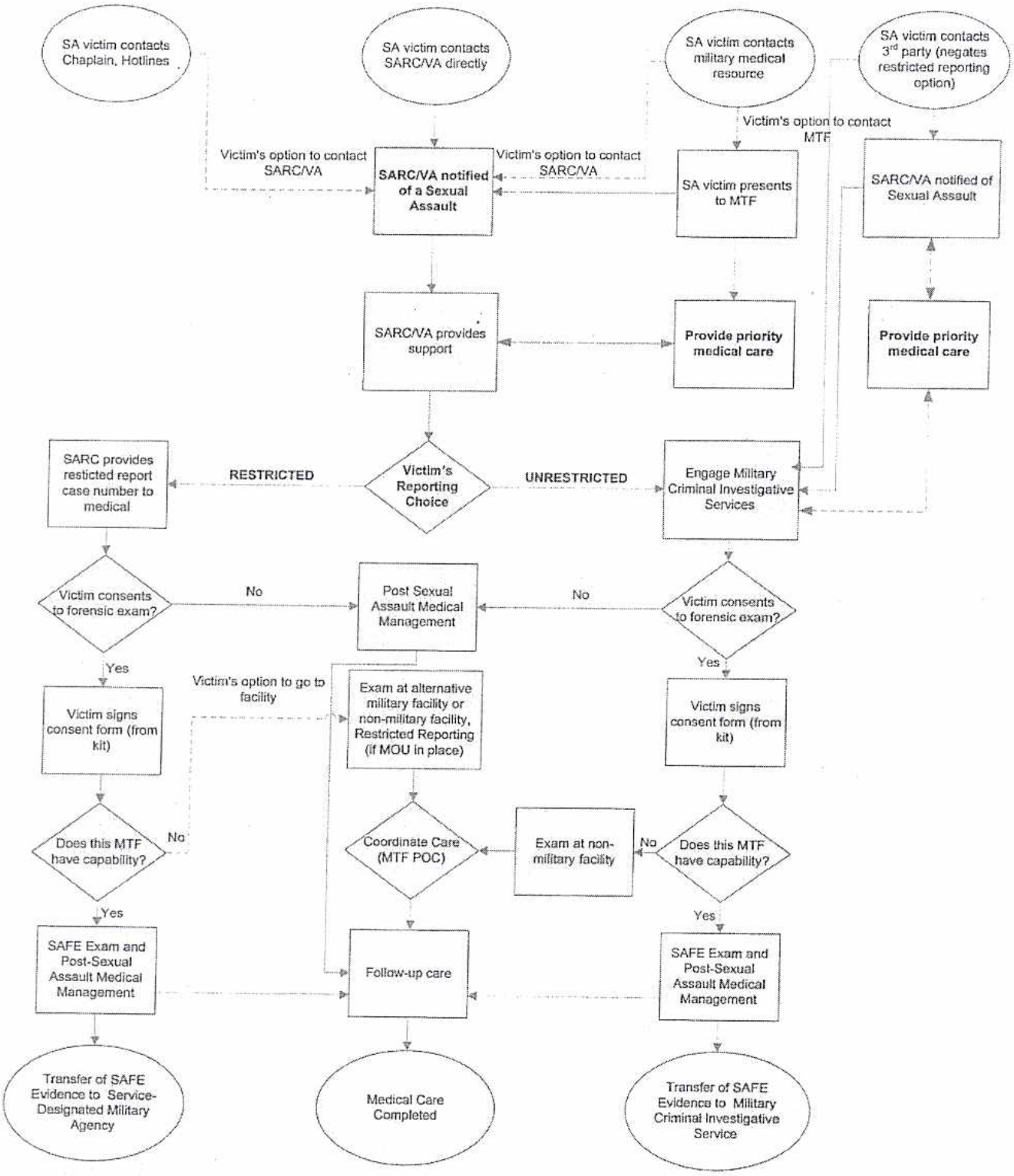
  - Information concerning the sexual assault that does not identify the victim or alleged perpetrator.
  - Medical record documentation that will remain with the patient's medical record.

- VA or SARC will ensure that replacement clothing is provided for the patient if their clothing is taken as part of the evidence collection.

- The HCP will confirm that a VA is available to escort the patient to their place of residence, or a place of safety.

- The HCP will notify the service-designated military agency trained and capable of collecting and preserving evidence, to assume custody of the SAE kit, documents and evidence related to the SAFE for storage, under established "chain of custody" procedures.

Sexual Assault Response Pathway



Attachment 1

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
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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.

DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
1411 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202-3231

SEP 8 2005

NGB-J1

MEMORANDUM FOR THE ADJUTANTS GENERAL OF ALL STATES, PUERTO RICO, THE US VIRGIN ISLANDS, GUAM, AND THE COMMANDING GENERAL OF THE DISTRICT OF COLUMBIA NATIONAL GUARD

SUBJECT: All States (Log Number P05-0005) National Guard Bureau Policy on Sexual Assault

1. Sexual assault is a crime that will not be tolerated in the National Guard. Sexual assault has a devastating and often lasting impact on the victim, a fellow Guardsmen. Sexual assault degrades our readiness and tears at unit cohesion – every member of the unit is affected. Sexual assault has no place in the National Guard.

2. The National Guard Bureau has formed a Sexual Assault Working Group (SAWG) and hired a full time Sexual Assault Response Coordinator (SARC). The SAWG and SARC will focus on the National Guard's implementation of the Department of Defense's Sexual Assault Prevention and Response program. While you should expect additional information and guidance in the future, make no mistake about my support for this program and what I expect of you.

3. National Guard leaders at every level will create and promote a positive command climate in which victims have the confidence in their chain of command and civil/military investigators to report these crimes immediately. Leaders must ensure that Guardsmen and other members of the Guard community treat sexual assault victims with dignity, fairness, and respect for their privacy. Leaders will make victims aware of existing civilian and military medical facilities, legal offices, and other programs to assist victims in seeking immediate medical care, counseling and seamless victim assistance. Bottom line: Prevent sexual assault and fully assist victims if it does occur!

4. This memorandum will expire one year from date of publication unless sooner rescinded or superseded.

5. Point of contact is Ms. Deborah White, NGB SARC at DSN 327-9193 or 703 607-9193.

H STEVEN BLUM
Lieutenant General, US Army
Chief, National Guard Bureau