



SECRETARY OF THE AIR FORCE
WASHINGTON

MEMORANDUM FOR DISTRIBUTION C
ALMAJCOM-ALFLDCOM-FOA-DRU

AUG 25 2022

SUBJECT: Department of the Air Force Safe-to-Report Policy for Service Member Victims of Sexual Assault

By order of the Secretary of the Air Force, and as required by section 539A of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021, this Policy Memorandum provides guidance associated with the implementation of the Department of the Air Force's Safe-to-Report Policy. This policy will detail the process and procedures for the identification, analysis, and handling of alleged "minor" and "non-minor" collateral misconduct by Service member victims of sexual assault.

The policy guidance outlined in this memorandum is effective immediately. This policy is applicable to all members of the Department of the Air Force (DAF), including Airmen, Guardians, Reserve members, United States Air Force Academy cadets, and the Air National Guard in a federalized status. There are no release restrictions on this publication.

Ensure all records generated as a result of processes prescribed in this publication adhere to AFI 33-322, *Records Management and Information Governance Program*, and are disposed in accordance with the Air Force Records Disposition Schedule, which is located in the Air Force Records Information Management System. This Memorandum becomes void after one year has elapsed from the date of this Memorandum, or upon incorporation by interim change to, or rewrite of, DAFI 51-201 and AFI 90-6001, whichever is earlier.


Frank Kendall

Attachments:

1. Policy Guidance for Implementation of Safe-to-Report
2. Glossary of Reference and Supporting Information
3. Safe to Report Data Tracking

NO CREATION OF SUBSTANTIVE RIGHTS

This policy constitutes guidance for commanders exercising disciplinary discretion, and nothing in this policy shall be construed as creating any substantive rights for Airmen and Guardians charged with misconduct. The decision to discipline or criminally charge Airmen or Guardians for collateral misconduct remains within the discretion of supervisors, commanders and the Department of the Air Force until and through December 27, 2023. On December 28, 2023, the Office of Special Trial Counsel (OSTC) will assume responsibility for making disciplinary decisions consistent with this policy. Airmen and Guardians who believe that they have been disciplined contrary to the intent of this policy may raise such concerns to their chain of command, other appropriate channels, or appropriate agencies within the Air Force Review Boards Agency, to include the Air Force Board for Correction of Military Records. However, at all levels, the decision to discipline, or modify or overturn such discipline, remains a matter of equitable discretion for the Department of the Air Force.

ATTACHMENT 1

Policy Guidance for Implementation of Safe-to-Report

1. SECTION I: Applicability

This Safe-to-Report policy memorandum implements processes, procedures, training, and a tracking mechanism for the identification, analysis, and handling of “minor” and “non-minor” collateral misconduct¹ allegedly committed by Service member victims² of sexual assault.³ This policy applies regardless of to whom a victim makes the allegation of sexual assault and regardless of whether the investigation and/or prosecution is handled by military or civilian authorities.³ This policy does not preclude the Air Force Office of Special Investigations (AFOSI) or any other Military Criminal Investigative Organizations (MCIOs) from continuing to investigate and document alleged collateral misconduct incidents revealed during associated investigative processes in final MCIO reports, but it may impact the commander’s action or response to such misconduct. If the MCIO discovers allegations of collateral misconduct during an ongoing investigation, it will notify the victim’s commander within 24 hours. This

¹ Collateral misconduct, misconduct that is punishable under the UCMJ and is directly related to the incident that was the basis of the sexual assault allegation. Additionally, the collateral misconduct must have been discovered as a direct result of the investigation into the sexual assault. Examples include, but are not limited to: underage drinking, fraternization, adultery, illegal drug use or possession, etc.

² Use of the term “victim(s)” refers to individuals who disclose or report a sexual assault allegation. It is not intended to presume the guilt or innocence of an alleged offender.

³ For purposes of this Safe-To-Report Policy, sexual assault is defined as: alleged penetrative and non-penetrative violations of the applicable version of Article 120, Uniform Code of Military Justice; alleged violations of Article 125 for acts of forcible sodomy of a victim age 16 y/o or older occurring before January 1, 2019; and alleged attempts and conspiracies to commit any of these offenses.

³ It is uncertain what effect, if any, the DAF policy on Safe-to-Report will have on civilian authorities’ decisions on investigation/prosecution of alleged collateral misconduct by an adult victim of sexual assault.

notification will be documented in the Investigative Information Management System and should include the commander's name and date the notification was made.

2. SECTION II: DETERMINATION OF WHETHER THE COLLATERAL MISCONDUCT IS DEEMED "MINOR" OR "NON-MINOR"

The threshold issue for the applicability of the Safe-to-Report Policy is determining whether the alleged collateral misconduct in question is "minor" or "non-minor." Commanders must assess the alleged collateral misconduct against aggravating and mitigating circumstances. If the alleged collateral misconduct is non-minor, then the Safe-to-Report Policy does NOT apply and the victim could be subject to disciplinary action. However, if the alleged collateral misconduct is deemed minor, then the Safe-to-Report Policy does apply and the victim shall not be disciplined.

Convening authorities exercising Initial Disposition Authority 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 factors. Commanders shall consult with their servicing Staff Judge Advocate in reaching these determinations.

For purposes of determining whether an offense is "minor" under the Safe-to-Report Policy, the criteria providing guidance on the implementation of Article 15 of the Uniform Code of Military Justice (UCMJ) in paragraph 1.e of Part V of the Manual for Courts-Martial (MCM) generally apply. Commanders have considerable discretion in deciding whether an offense is a minor offense. The guidance related to nonjudicial punishment can be used to cover a wide variety of offenses, ranging from an incidental infraction during initial training to a significant dereliction. Therefore, alleged minor collateral misconduct may in some instances include UCMJ offenses that may be punishable by more than one year of confinement if tried by general court-martial. The following are examples of collateral misconduct that generally should be treated as minor for purposes of the Safe-to-Report Policy:

- (a) The victim was underage and drinking or in possession of alcohol at the time of the assault;
- (b) The victim was engaged in an unprofessional relationship with the accused 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 alleged sexual assault.

Aggravating Circumstances. The following aggravating circumstances may increase the gravity of alleged collateral misconduct or its impact on good order and discipline. Commanders shall take into account these factors in determining whether the alleged collateral misconduct is minor. Aggravating circumstances include, but are not limited to, whether the alleged misconduct intentionally or unintentionally:

- (a) Resulted or imminently threatened to result in failure of a specified military mission or objective;

- (b) Threatened the health and safety of any person, not including acts of self-harm or acts of self-defense against the alleged perpetrator(s) of an assault; or
- (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.

The existence of aggravating circumstances does not automatically result in making the alleged collateral misconduct non-minor. The commander retains the discretion whether, or not, to take disciplinary action against a victim for alleged collateral misconduct where aggravating circumstances render the misconduct more serious.

Mitigating Circumstances. The following mitigating circumstances may decrease the gravity of alleged collateral misconduct, its impact on good order and discipline, and concern that it may be service discrediting. Commanders shall take into account these factors in determining whether the alleged collateral misconduct is minor. Mitigating circumstances include, but are not limited to:

- (a) The victim's age and military experience level.
- (b) Whether the alleged perpetrator is in a position of authority over the victim or a higher grade or rank than the victim.
- (c) Whether the alleged perpetrator 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 exposure to trauma; e.g., the victim engaged in underage drinking as a coping mechanism to alleviate sexual assault trauma symptoms.

DETERMINATION THAT THE COLLATERAL MISCONDUCT IS NON-MINOR

If the victim's alleged collateral misconduct is determined to be non-minor, the commander still retains discretion on whether to discipline⁴ and when to discipline. In accordance with Enclosure 5, section 8, of DoD Instruction 6495.02, Volume 1, *Sexual Assault Prevention and Response (SAPR) Program Procedures*, commanders in the grade of O-6 and above who possess special court-martial convening authority shall have discretion to defer action on alleged non-minor collateral misconduct by sexual assault victims (and commanders shall not be penalized for such a deferral decision), until final disposition of the sexual assault case.

⁴ If the victim's alleged collateral misconduct is determined to be non-minor, the commander still retains discretion on whether to discipline and when to discipline. In this context, the term "discipline" includes an officially documented command action that has been initiated against the victim in response to alleged collateral misconduct, including but not limited to: 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. This also includes discipline under Air Force Cadet Wing Instruction 36-3501, *Cadet Standards and Duties*.

Under this policy, commanders may take into account the trauma to the victim and respond appropriately so as to encourage reporting of sexual assault and continued victim cooperation, while also bearing in mind any potential speedy trial and statute of limitations concerns. Commanders may wait to take action, if any, on the alleged collateral misconduct, until after final disposition of the sexual assault case. If a commander believes that it would be appropriate to document alleged non-minor collateral misconduct in the interest of rehabilitation, he or she should consider actions that minimize or eliminate impacts on the victim's career.

DETERMINATION THAT THE COLLATERAL MISCONDUCT IS MINOR - TRIGGERING OF SAFE-TO-REPORT POLICY PROTECTIONS

Once the final determination is made that the alleged collateral misconduct is minor, the victim shall not be disciplined for the alleged minor collateral misconduct pursuant to this Safe-to-Report Policy. However, this policy does 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 temporarily suspending access to critical positions such as positions in the Personnel Reliability Program (PRP). It may be appropriate to temporarily decertify the victim from PRP status or other critical positions until appropriate evaluations can be conducted.

TRACKING USE OF SAFE-TO-REPORT POLICY

Section 539A of the NDAA for FY 2021 requires the DAF to implement a process to track incidents of collateral misconduct that may be subject to the Safe-to-Report Policy regardless of whether the alleged sexual assault is reported via SAPR, FAP, or independent investigation channels. Commanders are responsible for collecting victim collateral misconduct information implicating the Safe-to-Report policy by utilizing Attachment 3 - Safe to Report Data Tracking Spreadsheet.⁴ If applicable, SARCs will provide commanders the Defense Sexual Assault Incident Database (DSAID) Case Control Number⁵ and the date the victim signed the DD Form 2910, Victim Reporting Preference Statement. Commanders will annotate the Service, pay grade and gender of the victim. In consultation with their SJA, the commander will determine if the Safe-to-Report policy was used, provide a reason if the policy was not used, note the timing of action taken for “non-minor” collateral misconduct, document any adverse action(s) taken, provide the date the action was taken, and provide a short narrative of the Safe-to-Report incident. This information will be uploaded into the online form which can be accessed at https://usaf.az1.qualtrics.com/jfe/form/SV_6rrlBTDiQcldW3c

TRAINING/AWARENESS OF THE SAFE-TO-REPORT PROGRAM

The Installation Commander will ensure that all commanders (e.g., squadron, group, delta, detachment, deputy, and civilian equivalent), including tenants, receive Safe-to-Report training within 60 days of implementation of this memo. This training should be a joint effort by the SARC and the local SJA. SARCs will continue to provide awareness of the Safe-To-Report program during the one-on-one SAPR training required for all new commanders. SARCs and SJAs will provide training for all new and existing case management group members.

⁴ System of Record Notification (SORN) for the Safe-to-Report Data Tracking Spreadsheet - Equal Opportunity and Sexual Assault Prevention and Response Records, FO36 AF DP G (January 22, 2009, 74 FR 4020)

⁵ SORN reference for the Defense Sexual Assault Incident Database (DSAID), DHRA 06 DoD. (October 9, 2019; 84 FR 54127)

ATTACHMENT 2

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

References

Public Law 116-283, *The William M. (MAC) Thornberry National Defense Authorization Act for FY 2021*, January 2021

Manual for Courts-Martial, United States, 2019

DODI 6495.02, Volume 1, *Sexual Assault Prevention and Response (SAPR) Program Procedures*, 28 March 2013, Incorporating Change 6, November, 10, 2021

DAFI 51-201, *Administration of Military Justice*, 14 April 2022

DAFI 90-160, *Publications and Forms Management*, 14 April 2022

AFI 90-6001, *Sexual Assault Prevention and Response (SAPR) Program*, 15 July 2020, Incorporating Change 1, 26 March 2021

AFI 33-322, *Records Management and Information Governance Program* 23 March 2020, Incorporating Change 1, 28 July 2021

Report on Allegations of Collateral Misconduct against Individuals Identified as the Victim of Sexual Assault in the Case Files of a Military Criminal Investigative Organization, 2 October 2019

Prescribed Forms

None

Adopted Forms

None

Abbreviations and Acronyms

AFI – Air Force Instruction

DAF – Department of the Air Force

DAFI – Department of the Air Force Instruction

DAFGM – Department of the Air Force Guidance Memorandum

DoD – Department of Defense

DSAID – Defense Sexual Assault Incident Database

FY – Fiscal Year

JSC – Joint Service Committee on Military Justice

MCM – Manual for Courts-Martial
OGC – DoD Office of General Counsel
PRP – Personnel Reliability Program
SARC – Sexual Assault Response Coordinator
UCMJ – Uniform Code of Military Justice
USD(P&R) – Under Secretary of Defense for Personnel and Readiness

Terms

Collateral Misconduct- This includes any allegation of misconduct that is punishable under the UCMJ and is directly related to the incident which formed the basis of the sexual assault allegation. Additionally, the collateral misconduct must have been discovered as a direct result of the investigation into the sexual assault. Examples include, but are not limited to: underage drinking, fraternization, adultery, illegal drug use or possession, etc. Adverse actions against a person who filed a completely false allegation of sexual assault were not included.

Discipline - In the Safe-To-Report context, the term "discipline" includes an officially documented command action that has been initiated against the victim in response to alleged collateral misconduct, including: letters of reprimand (or Service equivalent) 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. This also includes discipline under cadet/midshipman regulations at the Military Service Academies.

Sexual Assault - For purposes of this Safe-To-Report Policy, sexual assault is defined as: alleged penetrative and non-penetrative violations of the applicable version of Article 120, Uniform Code of Military Justice; alleged violations of Article 125 for acts of forcible sodomy of a victim age 16 y/o or older occurring before January 1, 2019; and alleged attempts and conspiracies to commit any of these offenses.

Victim - Refers to individuals who disclose or report a sexual assault allegation. It is not intended to presume the guilt or innocence of an alleged offender.

Attachment 3 continued

Safe to Report Data Tracking Spreadsheet for Commanders

IMPORTANT INSTRUCTIONS, PLEASE READ CAREFULLY: To maintain data integrity and consistency, use only the response options provided. Please complete for all victims of sexual assault who were suspected of collateral misconduct under the Safe-to-Report Policy. **Items A and E will be provided to you by your SARC. Please consult with your SJA to complete F-M. Once the information has been collected, please go to the following site at https://usaf.az1.qualtrics.com/jfe/form/SV_6r1BTDiQcldW3c to upload your answers. DO NOT INCLUDE ANY VICTIM OR SUBJECT PERSONALLY IDENTIFIABLE INFORMATION (no PII in columns G-N)**

Adverse Action Taken 1	Adverse Action Taken 2	Adverse Action Taken 3	Date Action Taken	Short Narrative of the Safe-to-Report Incident
<p>What, if any adverse action was taken in response to the collateral misconduct? If multiple actions were taken, please put ONE in each column: one in column I, one in column J, one in column K. If only one action was taken, fill out column I, and leave columns J and K blank.</p> <ul style="list-style-type: none"> • Court-martial charge(s) preferred • Nonjudicial punishment • Administrative discharge • Other adverse administrative action (e.g., letter of reprimand (or Service equivalent) added to SM's official personnel file, bar to reenlistment, relief from duties, negative efficiency report (related to the collateral misconduct), or other actions that will likely impact the Service member's career) • Minor administrative action (e.g., written counseling (not placed in the official personnel file), verbal counseling, or other actions that likely won't impact the Service member's career) • Action pending • No action taken (PLEASE EXPLAIN IN COLUMN M – Narrative of Incident) • Other (PLEASE EXPLAIN IN COLUMN M – Narrative of Incident) 	<p>What, if any adverse action was taken in response to the collateral misconduct? If multiple actions were taken, please put ONE in each column: one in column J, one in column K, one in column L. If only one action was taken, fill out column J, and leave columns K and L blank.</p> <ul style="list-style-type: none"> • Court-martial charge(s) preferred • Nonjudicial punishment • Administrative discharge • Other adverse administrative action (e.g., letter of reprimand (or Service equivalent) added to SM's official personnel file, bar to reenlistment, relief from duties, negative efficiency report (related to the collateral misconduct), or other actions that will likely impact the Service member's career) • Minor administrative action (e.g., written counseling (not placed in the official personnel file), verbal counseling, or other actions that likely won't impact the Service member's career) • Action pending • No action taken (PLEASE EXPLAIN IN COLUMN N – Narrative of Incident) • Other (PLEASE EXPLAIN IN COLUMN N – Narrative of Incident) 	<p>What, if any adverse action was taken in response to the collateral misconduct? If multiple actions were taken, please put ONE in each column: one in column I, one in column J, one in column K. If only one action was taken, fill out column I, and leave columns J and K blank.</p> <ul style="list-style-type: none"> • Court-martial charge(s) preferred • Nonjudicial punishment • Administrative discharge • Other adverse administrative action (e.g., letter of reprimand (or Service equivalent) added to SM's official personnel file, bar to reenlistment, relief from duties, negative efficiency report (related to the collateral misconduct), or other actions that will likely impact the Service member's career) • Minor administrative action (e.g., written counseling (not placed in the official personnel file), verbal counseling, or other actions that likely won't impact the Service member's career) • Action pending • No action taken (PLEASE EXPLAIN IN COLUMN M – Narrative of Incident) • Other (PLEASE EXPLAIN IN COLUMN M – Narrative of Incident) 	<p>Please provide the date the commander elected not to pursue any disciplinary action against the Service member, or if disciplinary action was taken, the date of the last action(s) taken in columns I, J, and/or K.</p>	<p>Provide a short narrative of the alleged collateral misconduct incident. The narrative should include:</p> <ul style="list-style-type: none"> • whether the collateral misconduct was deemed "minor" or "non-minor" • the reason(s) why the collateral misconduct was deemed "minor" or "non-minor" • an explanation of any applicable aggravating or mitigating circumstances (as described in the Safe-to-Report Policy) in determining whether the Service Member's conduct was deemed "minor" or "non-minor," respectively" • a description of disciplinary action(s) taken for the collateral misconduct (if any) • a listing of referrals to support services or removal from duty position (if any)** <p>PLEASE DO NOT INCLUDE ANY PERSONALLY IDENTIFIABLE INFORMATION.</p> <p>* See guidance on what constitutes aggravating and mitigating circumstances in the USD-P&R Memo, "Safe-to-Report Policy for Adult Victims of Sexual Assault," October 25, 2021, and Military Department/NGB policy. ** The Safe-to-Report policy does 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 temporarily suspending access to critical positions such as positions in the personnel reliability program (PRP). It may be appropriate to temporarily decertify the victim from PRP status or other critical positions until appropriate evaluations can be conducted.</p>
<p>Other (PLEASE EXPLAIN IN COLUMN M – Narrative of Incident)</p>			<p>10/15/2021</p>	<p>An Army E-2 reported a sexual assault, and in the course of the investigation, it was discovered that the victim engaged in underage drinking at the time of the alleged sexual assault. After the final disposition of the sexual assault case, the commander took no disciplinary action against the Service member since this was a first offense and a Noncommissioned Officer pressured her to drink. The commander referred the Service member for alcohol abuse counseling.</p>