



THE SECRETARY OF THE NAVY
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DEPARTMENT OF THE NAVY SAFE-TO-REPORT POLICY

Sexual assault is a crime that betrays our sacred oath and solemn responsibility to our teammates and our Nation. Despite repeated efforts to eliminate barriers that might prevent victims of sexual assault from reporting this crime, data suggests that it remains substantially underreported within the Department of Defense (DoD) and the Department of the Navy (DON). Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting because of the victim's fear of punishment.

To best ensure that victims come forward and that offenders are held accountable, and in accordance with DoD guidance promulgated pursuant to Section 539A of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2021, I direct the following Safe-to-Report Policy for Sailor and Marine victims of sexual assault. Under this policy, **no member of the DON may discipline a Service Member victim of an alleged sexual assault for minor collateral misconduct.**

Applicability. This policy applies to all victims of sexual assault who file an unrestricted report of sexual assault through the Sexual Assault Prevention and Response Office or the Family Advocacy Program and are Service Members within the DON, specifically: active-duty military personnel, both Regular and Reserve; cadets and midshipmen of the Naval Academy and of the Naval Reserve Officer Training Corps; and Reserve personnel when performing active or inactive duty for training, or engaging in any activity directly related to the performance of a DoD reserve duty or function.

Definitions. The term "victim" refers to individuals who disclose or report a sexual assault allegation. It does not presume the guilt or innocence of an alleged offender. A determination by the Commanding Officer (CO), a judge advocate, an investigator, or any other person that the victim's report is credible is not required under this policy.

The term "sexual assault" refers to alleged penetrative and non-penetrative violations of the applicable version of Article 120, Uniform Code of Military Justice (UCMJ); alleged violations of Article 125, UCMJ, for acts of forcible sodomy of a victim age 16 or older occurring before January 1, 2019; alleged attempts and conspiracies to commit the same; and any similar or comparable offense under federal, state, or local criminal law. This policy applies regardless of to whom the victim makes the allegation of sexual assault, and regardless of whether the investigation and/or prosecution is handled by military or civilian authorities.

The term "collateral misconduct" refers to victim misconduct that might be in time, place or circumstance associated with the victim's sexual assault incident. Some reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct at or near the time of the sexual assault or at or near the time the victim reports the sexual assault to authorities. Collateral misconduct will most often be discovered as a direct

result of the report of sexual assault or the ensuing investigation or prosecution of the sexual assault.

The term "discipline" refers to any command action initiated against the victim in response to the alleged collateral misconduct, including but not limited to: letters or other record of counseling or reprimand, imposition of non-judicial punishment under Article 15, UCMJ, preferral of charges, initiation of involuntary administrative separation proceedings, administrative demotion, and remarks in fitness reports or evaluations. This includes discipline under midshipmen regulations at the United States Naval Academy and equivalent regulations governing the Naval Reserve Officers Training Corps.

Under SECNAVINST 1752.4C, Sexual Assault Prevention and Response Program Procedures, Enclosure (7), Para. 8, the initial disposition authority for alleged collateral misconduct is withheld from all commanders who do not possess at least special court-martial convening authority and who are not in the grade of O-6 (*i.e.*, Marine Colonel or Navy Captain) or higher. Accordingly, the term "CO" as used herein refers to those COs who possess initial disposition authority under existing DoD and DON policy. Nothing in this policy shall be construed to permit lower-level COs from determining whether alleged misconduct is collateral to the report of sexual assault or whether such alleged misconduct is minor or non-minor.

Minor Collateral Misconduct. This policy prohibits discipline for minor collateral misconduct. As a threshold determination, COs must assess whether the misconduct was collateral to the report of sexual assault. Collateral misconduct is close in time, place, or circumstance associated with the victim's sexual assault incident. If the misconduct is collateral, then the CO should examine whether the misconduct is, in fact, minor. COs shall do so in consultation with their servicing Staff Judge Advocate.

Whether collateral misconduct is minor depends on several factors. Paragraph 1.e of Part V of the Manual for Courts-Martial sets forth the following criteria for "minor offenses," which must be considered: the nature of the alleged collateral misconduct and the circumstances surrounding its commission; the sexual assault victim's age, rank, duty assignment, record and experience; and the maximum sentence for the alleged collateral misconduct if tried by general court-martial. Ordinarily, minor collateral misconduct is an offense for which the maximum sentence imposable would not include a dishonorable discharge or confinement for longer than one year if tried by general court-martial. However, the decision of whether alleged collateral misconduct is minor is a matter of considerable discretion for the CO. Accordingly, offenses that may be punishable by a dishonorable discharge or confinement for longer than one year if tried by general court-martial may nonetheless be minor collateral misconduct under this policy.

In addition to the criteria set forth above, COs must also consider mitigating and aggravating circumstances.

Mitigating circumstances decrease the gravity of the alleged collateral misconduct, its impact on good order and discipline, and concern that it may be service discrediting. Under this policy, examples of mitigating circumstances include but are not limited to:

- The victim's age and military experience level;
- Whether the alleged sexual assault offender is in a position of authority over the victim or a higher grade than the victim;
- Whether the alleged sexual assault offender engaged in actions to stalk, harass, haze, coerce and/or otherwise influence the victim to engage in sexual behavior;
- 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;
- Whether the victim engaged 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 or the victim was absent without authorization to avoid encountering the alleged sexual assault offender; and
- Whether the alleged collateral misconduct is a uniquely military offense that would not be punishable under federal, state, or local criminal law if committed by a civilian.

Aggravating circumstances increase the gravity of the alleged collateral misconduct and its impact on good order and discipline. Aggravating circumstances do not automatically preclude a finding that the alleged collateral misconduct is minor. Under this policy, examples of aggravating circumstances include but are not limited to:

- The alleged collateral misconduct intentionally or unintentionally resulted or imminently threatened to result in failure of a specified military mission or objective;
- The alleged collateral misconduct intentionally or unintentionally threatened the health and safety of any person, not including acts of self-harm or acts of self-defense against the alleged sexual assault offender(s); and
- The alleged collateral misconduct intentionally or unintentionally resulted in significant damage to government property, or the personal property of others, except when such damage resulted from the sexual assault and/or resulted from an act of self-defense.

If after considering the circumstances of the alleged collateral misconduct, including the mitigating and aggravating circumstances set forth above, the CO determines that the alleged collateral misconduct is minor, the victim shall not be disciplined. The CO may take non-disciplinary administrative action as appropriate, such as referral to substance abuse treatment if the minor alleged collateral misconduct involved any type of substance abuse, referral to

behavioral health or medical providers for a fitness for duty determination, or temporarily suspending access to critical positions in the personnel reliability program until appropriate evaluations may be conducted.

If after considering the circumstances of the alleged collateral misconduct, including the mitigating and aggravating circumstances set forth above, the CO determines that the alleged collateral misconduct is non-minor, the victim may be disciplined. However, the CO retains discretion as to whether to discipline the victim for non-minor alleged collateral misconduct.

Examples of Minor Collateral Misconduct.

As set forth above, COs, in consultation with their servicing Staff Judge Advocate, must determine whether the alleged collateral misconduct is minor. Without limiting CO's discretion, the following are examples of collateral misconduct that generally should be treated as minor for purposes of this policy:

- Underage drinking at or near the time of the sexual assault;
- An unprofessional relationship with the accused, i.e, a relationship that violated law, regulation, policy, or custom, at the time of the sexual assault; and
- A violation of lawful orders establishing curfews, off-limit locations, school standards, barracks/dormitory/berthing policies, or similar matters at the time of the sexual assault.

Data Collection.

Section 539A of the William M. (Mac) Thornberry NDAA for FY 2021 mandates the tracking of collateral misconduct subject to this policy. Beginning immediately, all alleged collateral misconduct must be documented via the data call spreadsheet promulgated by the Under Secretary of Defense for Personnel and Readiness through memorandum dated 18 November 2021, unless and until rescinded or modified by the Under Secretary of Defense for Personnel and Readiness.

The Navy 21st Century Sailor Office (OPNAV N17), the Office of the Judge Advocate General of the Navy, the Marine and Family Programs Division (DC M&RA (MF)), and Judge Advocate Division, Headquarters, U.S. Marine Corps, will coordinate on developing and implementing the process of collecting and compiling the required data.

Rescission. This policy shall remain in effect until such time as its terms are incorporated into SECNAVINST 1752.4C, at which time it shall be rescinded.



Carlos Del Toro