



OFFICE OF THE SUPERINTENDENT
UNITED STATES MILITARY ACADEMY
WEST POINT, NEW YORK 10996-5000

MASP

AUG 14 2023

MEMORANDUM FOR All Personnel Assigned or Attached to the West Point Military Reservation and Fort Hamilton

SUBJECT: Command Policy Letter #6 – Sexual Harassment/Assault Response and Prevention

1. REFERENCES. See Appendix A for references.

2. PURPOSE. To provide Sexual Harassment/Assault Response and Prevention (SHARP) Policy to all personnel assigned to the West Point Military Reservation and Fort Hamilton.

3. APPLICABILITY. This policy applies to all personnel assigned or attached to the West Point Military Reservation and USMA, including tenant units. This policy is punitive, and any violations may constitute a violation of Article 92 of the Uniform Code of Military Justice (UCMJ).

4. CONTEXT.

a. The United States Military Academy's (USMA's) number one priority is to develop leaders of character prepared to fight and win America's wars. An inseparable element of developing leaders of character is fostering a climate and culture free of sexual harassment and sexual assault. We must continue to build a climate in which everyone is always treated with dignity and respect, where everyone is safe and secure, both physically and emotionally, and is valued as part of the West Point Team. Ultimately, I expect that Cadets, staff, and faculty personify these principles and implement them to maintain inclusive and respectful climates in their own organizations.

b. Sexual assault committed by Cadets, military, and civilian personnel is punishable under state and federal laws, including UCMJ and applicable regulations and policies, and is incompatible with Army and West Point values.

c. Sexual harassment and retaliatory behaviors are incompatible with Army and West Point values and are punishable under UCMJ and applicable regulations and policies.

d. The Army, West Point Military Reservation, and Fort Hamilton do not tolerate sexual assault, sexual harassment, or associated retaliatory behaviors.

5. DEFINITIONS.

a. Sexual Harassment – AR 600-20, paragraph 7-7, and DoDI 1020.03, define the term “sexual harassment” to mean any of the following:

(1) Conduct that involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when:

(a) Submission to such conduct is made either explicitly or implicitly, a term or condition of a person’s job, pay, or career; or

(b) Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment; and

(d) Is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive.

(2) Any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the Armed Forces or a Civilian employee of the DoD.

(3) Any deliberate or repeated unwelcome verbal comment or gesture of a sexual nature by any member of the Armed Forces or Civilian employee of the DoD.

(4) Behaviors that qualify as harassment can be unwelcome physical, verbal, or non-verbal, including electronic communications, social media, and in person. Harassing behaviors of a sexual nature can include offensive jokes, epithets, ridicule or mockery, insults or put-downs, displays of offensive objects or imagery, stereotyping, intimidating acts, veiled threats of violence, and threatening or provoking remarks.

b. Sexual Assault – Sexual assault is intentional sexual contact characterized by use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, other sexual misconduct, or attempts to commit these acts. There are two reporting options for sexual assault: restricted reporting and unrestricted reporting.

c. Retaliation – Retaliation occurs when any person subject to UCMJ wrongfully takes or threatens to take an adverse personnel action, or wrongfully withholds or

threatens to withhold a favorable personnel action with the intent to discourage or retaliate against any person for reporting or planning to report a criminal offense, or making, or planning to make a protected communication.

d. Reprisal – Reprisal occurs when a person takes, or threatens to take, an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, or any other act of retaliation, against a Soldier or Family member for making or preparing a formal Military Equal Opportunity (MEO) complaint, a DA Civilian for engaging in activity in opposition to perceived discrimination, or against an alleged subject under investigation.

e. Collateral Misconduct – Collateral misconduct is any victim misconduct (e.g., alcohol or drug-related offense, fraternization, adultery, etc.) that might be in time, place, or circumstance associated with the victim's sexual assault incident. In accordance with Army Directive 2022-10, the Army directs the following:

(1) Commanders in the grade of O-6 and above who possesses special court-martial convening authority must assess alleged collateral misconduct against aggravating and mitigating circumstances. Such commanders 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 circumstances.

(2) Commanders will consult with their servicing Staff Judge Advocate in reaching the determination of minor or non-minor collateral misconduct.

(3) If the commander determines a victim's collateral misconduct is non-minor, the commander retains discretion on whether to discipline and when to discipline. Commanders have discretion to defer action on alleged non-minor collateral misconduct until final disposition of the sexual assault case. The commander should consult with Judge Advocates in understanding the impact of disciplinary actions on ongoing prosecutions.

(4) If the commander determines a victim's collateral misconduct is minor, safe-to-report protections are triggered and the victim will not be subject to discipline for minor collateral misconduct.

6. SEXUAL HARASSMENT POLICY.

a. Personnel have the right to present a complaint of any sexual harassment behaviors to the command without fear of intimidation, reprisal, ostracism, or retaliation (see West Point Policy, "Prohibition of Retaliation Against Personnel for Reporting an Allegation of Sexual Assault").

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b. There are three ways servicemembers can submit a Sexual Harassment complaint:

(1) Informal complaints. An informal complaint is one that is not in writing on a DA Form 7746 and may be voiced to the offending person, someone in a position of authority, or both. The intention is that the offending behavior will stop with no further action required. A memorandum of record on resolution is highly recommended by whomever resolved the complaint.

(2) Formal Complaints. Service members and Cadets are encouraged to file formal complaints within 60 calendar days from the date of aggravating behavior. A formal complaint is a written statement of the behavior and/or situation submitted to the proper authority and/or a certified Sexual Assault Response Coordinator (SARC) for processing through official complaint channels on a DA Form 7746. All formal complaints will be reported within 72 hours to the first General Courts-Martial Convening Authority (GCMCA) in the chain of command.

(3) Anonymous Complaints. An anonymous complaint is a report of sexual harassment, regardless of the means of transmission, from an unknown or unidentified source. The individual reporting the information is not required to divulge any Personally Identifiable Information. Actions taken regarding anonymous complaints will depend upon the extent of information provided by complainants. If an anonymous complaint contains sufficient information to permit the initiation of an investigation, the investigation will be initiated by the appropriate commander. If an anonymous complaint does not contain sufficient information to permit the initiation of an investigation, the complaint will be documented in a Memorandum for Record and maintained on file in accordance with AR 600-20, paragraph 7-8(I)(3). Commanders and Tactical Officers are expected to consult with the brigade-level SARC when handling anonymous complaints.

c. Pursuant to AD 2022-13, if sufficient information exists to permit the initiation of an investigation, commanders will appoint investigating officers (IO) from outside the subject's assigned brigade-sized element to conduct sexual harassment complaint investigations under AR 600-200, Chapter 7. Given the command structure at West Point, the following guidelines should be followed when appointing an IO: (1) for USMA staff and faculty, if the subject is assigned to the office of the Dean, the IO will not be assigned to the office of Dean; (2) if the subject is assigned to the USCC staff and faculty, the IO will not be assigned to USCC; (3) if the subject is a Cadet, the IO will not be assigned to the Brigade Tactical Division (BTD); (4) if the subject is assigned to Garrison, the IO must not be assigned to Garrison. Exceptions requiring appointment of an IO from the same brigade-sized element as the subject will be approved in writing by the first general officer in the chain of command and be included as an enclosure to the investigation; this authority may not be delegated. Reasons for exceptions may include, but are not limited to, unit geographic location and type of mission.

d. The Equal Opportunity Office (EEO) is responsible for processing formal and informal sexual harassment complaints for the Department of the Army Civilian personnel. Sexual harassment complaints must be filed with EEO within 45 days of the incident.

7. SEXUAL ASSAULT POLICY.

a. Sexual Assault is a criminal offense that has no place in the Army. It degrades mission readiness by devastating the Army's ability to work effectively as a team. Anyone who is aware of a sexual assault should immediately report the incident(s). Sexual assault is incompatible with Army values and is punishable under state and federal laws, including UCMJ.

b. Communications, consultations, and information shared with the following personnel are privileged and confidential due to their official role: SARC, Victim Advocates (VAs), Chaplains, Behavioral Health Providers, Sexual Assault Medical Forensic Examiner (SAMFE), Legal Assistance Attorneys, and Special Victims' Counsel (SVC). Each of the above-named individuals are responsible for informing victims of the limits of their confidentiality. Communications regarding sexual assault with other personnel assigned to West Point are not confidential or privileged. In accordance with reference D, the DoD distinguishes between the disclosure of information related to a sexual assault and the making of an official report of sexual assault. An official report of sexual assault requires one of the following: a) the victim signs a DD Form 2910, Victim Reporting Preference Statement, electing to file either a restricted or unrestricted report of sexual assault; or b) An individual, either the victim or a third party, discloses information related to a sexual assault directly to a law enforcement agency. Victims are encouraged to seek medical care and can disclose to any of the confidential resources; however, victims can only make an official report, either restricted or unrestricted, of sexual assault with a SARC or VA in accordance with reference E.

c. Restricted reporting allows an individual who is a sexual assault victim, on a confidential basis, to disclose the details of their assault to specifically identified individuals and receive medical treatment and counseling, without triggering the official investigative process. Soldiers who are sexually assaulted and desire restricted reporting under this policy should report the assault to the SARC, VA, or healthcare personnel.

d. Unrestricted reporting allows a military member or a DA Civilian who is sexually assaulted and desires medical treatment, counseling, and an official investigation of his/her allegation to use current reporting channels (e.g., the chain of command, law enforcement, SARC, or the on-call VA). Upon notification of a reported sexual assault, the SARC will immediately notify a VA. Additionally, with the victim's consent, the healthcare provider will conduct a forensic examination, which may include the collection of evidence. Details regarding the incident will be limited to only those personnel authorized to receive information during the course of their official duties.

e. If a law enforcement agency is notified and investigates the report of a sexual assault, the law enforcement investigative agency is responsible, within its policies, to identify, collect, and preserve any potential evidence of the sexual assault. To protect the loss of critical evidence and to protect the privacy of the victim, the law enforcement agency should, whenever practicable, prioritize other investigative activity actively associated with the allegation. If the victim chooses to undergo a forensic examination, the sexual assault forensic examiner will be responsible to identify, collect, and safeguard all potential evidence.

f. Mandatory reporters are those who are required to immediately report allegations of sexual assault to law enforcement. Mandatory reporters include those in a command position (e.g., Tactical Officer, Tactical NCO, Regiment Tactical Officer, Brigade Tactical Officer's Executive Officer, Brigade Senior Enlisted Advisor, Brigade Tactical Officer, Commandant's Executive Officer, Deputy Commandant, Commandant, USMA and USCC Command Sergeants Major, and Superintendent). Law enforcement personnel and attorneys within the Office of the Staff Judge Advocate not assigned to the Legal Assistance Office or a Special Victims' Counsel position are also mandatory reporters.

g. Cadets and cadet candidates have no reporting requirements, nor do they have confidentiality with other cadets or cadet candidates. All permanent party individuals employed at or with duty at West Point who are not named in paragraph 7.b as having confidentiality or not named in paragraph 7.f as being a mandatory reporter, are required to report all allegations of sexual assault, as defined below, to the SHARP Program Office and inform the cadet or cadet candidate of their reporting requirements.

(1) The reporting entity will share the victim's gender and class year with the SHARP Program Office. The SHARP Program Office will appropriately document the allegation as a SAPR Related Inquiry (SRI) in the Defense Sexual Assault Incident Database (DSAID).

(2) Allegations of sexual assault include any awareness or knowledge of an incident that may be categorized as sexual assault to include anything from a victim's disclosure of sexual assault to a rumor about an incident of sexual assault.

h. A victim may disclose a sexual assault incident to someone in his or her officer or non-commissioned officer chain of command without realizing that personnel in the chain of command must report the incident. In this circumstance, while a victim may still later elect to file a restricted report, such an election does not preclude the initiation of an investigation into the allegations. Similarly, a victim may elect to file a restricted report where a third party initiates a law enforcement investigation into a sexual assault incident. A victim may not, however, elect to file a restricted report after reporting the sexual assault directly to law enforcement.

i. Victims of a sexual assault may confide in someone (e.g., roommate, friend, family member) about the assault before considering whether to file a restricted or an unrestricted report, and these communications do not prevent a victim from later electing to make a restricted report; however, these communications are not confidential. These personnel should encourage the victim to fully understand all their reporting options and the available resources.

j. Commanders must be familiar with the expedited transfer policy established in AR 600-20, Appendix I. In addition, Cadets who have filed an official unrestricted report of sexual assault and signed a DD Form 2910, may request a transfer to another Military Service Academy (MSA) or Reserve Officer Training Corps (ROTC) program.

k. All victims will be informed of the availability of legal assistance and the right to consult with an SVC, in accordance with DoD 6495.01, paragraph 4(l). If a victim wishes to consult with an SVC, the SARC will generally facilitate that request.

8. VICTIMS RIGHTS.

a. As a victim of sexual assault, you have the following rights:

(1) The right to be treated with fairness and respect for your dignity and privacy;

(2) The right to be reasonably protected from the accused offender;

(3) The right to reasonable, accurate, and timely notice of public preliminary hearings, pretrial confinement hearings, court proceedings, clemency, and parole hearings related to the offense;

(4) The right to be present at all public proceedings related to the offense unless the hearing officer or military judge determines that your testimony would be materially altered if you as the victim heard other testimony;

(5) The right to reasonably confer with the prosecutor/Trial Counsel in the case;

(6) The right to receive available restitution;

(7) The right to be reasonably heard at: 1) a public hearing concerning the continuation of any pretrial confinement of the accused; 2) a sentencing hearing related to the offense; 3) a public Military Department Clemency and Parole Board hearing related to the offense;

(8) The right to submit a written statement for the consideration of the Convening Authority prior to taking action on findings and sentence;

(9) The right to proceedings free from unreasonable delay;

(10) The right to be provided information, if applicable, about the conviction, sentencing, imprisonment, Convening Authority's action, appellate review, and release of the offender.

b. For further information on crime issues, see the DoD Victim and Witness Assistance Council web page at: <http://vwac.defense.gov/>.

9. RESPONSIBILITIES.

a. Preventing Sexual Harassment and Sexual Assault is everyone's responsibility. Individuals, particularly bystanders, who witness or become aware of sexual harassment and/or sexual assault should act either by direct/indirect intervention, ensuring the victim is provided appropriate resources, or reporting to proper authority as requested by the victim. All unrestricted reports of sexual assault will be immediately referred to the CID for investigation.

b. A victim's chain of command will exercise the utmost care when handling any report of sexual assault. The chain of command will protect the privacy of the victim by ensuring that all victim activities related to processing the report are handled with discretion, and that information related to the incident is limited to only those personnel authorized to receive the information during the course of their official duties.

c. Pursuant to AD 2022-13, for all sexual harassment and sexual assault complaints, the first O-6 in the subject's chain of command will, as soon as possible, but no later than 6 hours after determining a Military Protective Order (MPO) is warranted (such as presence of a threat of physical harm), ensure that the subject's commander issues a DD Form 2873 to the subject, submits it to the installation DES/PMO, and provides a copy to the protected individual (victim). If the command determines an MPO is not warranted, the subject's commander, in coordination with the victim's commander, will make a secondary determination as to whether a no-contact order is appropriate to ensure good order and discipline and the safety of all involved parties.

d. For unrestricted reports, the lead SARC, VA, or chain of command will summarize the appropriate information for notification as a Serious Incident Report (SIR) or Commander's Critical Information Requirements (CCIR).

e. Once an unrestricted sexual assault report is received by either a SARC, VA or CID, they will notify the immediate commander who will prepare a Sexual Assault Incident Response Oversight (SAIRO) report in accordance with AR 600-20.

f. For restricted reports, the Lead SARC will summarize non-identifying personal information, such as, rank, gender, age, race, status, time, and/or location of the

incident and submit the information to the first general officer in the chain of command and the Superintendent, USMA, within 24 hours.

g. The Lead SARC will ensure a CCIR is prepared when required in accordance with reference b. The CCIR will be completed and forwarded to the Army Operations Center (AOC) within 24 hours of command notification of the triggering event.

h. The SHARP program professionals are responsible to develop and implement prevention and awareness programs to promote awareness of sexual offense of a criminal nature that involve Cadets and academy personnel. Program elements may include a variety of primary, secondary, tertiary, or awareness activities and procedures including, but not limited to, coordinating Sexual Assault Awareness Prevention Month activities, peer-to-peer activities, leadership discussions, education on risk and protective factors, and sexual violence prevention education and training.

i. All Cadets, military, and civilian personnel will be provided annual sexual harassment and sexual assault training as outlined in references b and h. This training will be led by the unit's immediate commander with SHARP support.

j. The United States Corps of Cadets will ensure all Cadets receive required information/education on sexual harassment/sexual assault within 14 days of their arrival at USMA.

k. All full-time SHARP personnel will be appointed, in writing; trained, certified, and prepared to perform installation-wide advocacy duties as soon as possible (goal is six months, but not to exceed twelve months). Once credentialed, all SHARP personnel will be appointed by their commander or appropriate appointing authority.

l. Available resources include, but are not limited to:

(1) 24/7 USMA SHARP Hotline, 845-659-7467 - This number will be monitored 24/7 by a local DoD Sexual Assault Advocate Certification Program (D-SAACP) credentialed SHARP Professional who will provide immediate response to victims or other USMA personnel who are seeking assistance regarding sexual assault or harassment incidents.

(2) DoD Safe Helpline (1-877-995-5247 or www.safehelpline.org).

(3) Keller Army Community Hospital Emergency Room, 845-938-4004 – The emergency room is open 24/7. Victims can access privileged and confidential communication through this resource. Individuals can also be connected to someone who can support them in filing both restricted and unrestricted reports of sexual assault through this resource.

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(4) On-Duty Chaplain, 845-401-8171 – Chaplains cannot take official restricted or unrestricted reports of sexual assault. Conversations with Chaplains are considered privileged/confidential communications and nothing said will leave their office without the victim's consent.

(5) Sexual Assault Medical Forensic Examiner (SAMFE), 845-476-4715 – Communication with the SAMFE is privileged/confidential. Support is also available through this number via text.

m. The maintenance of a healthy command climate demands that all individuals in the organization be treated with dignity and respect. This is particularly important when an organization is dealing with a reported sexual assault or sexual harassment. All members of the unit will, without prejudice or personal agenda, always treat all involved parties with dignity and respect.

10. PUBLICATION REQUIREMENTS.

a. All subordinate commanders and tenant units will ensure this policy is widely published and disseminated to the company level.

b. This policy memorandum and a list of victim resources will be posted in all unit and agency areas.

c. This policy will also be posted on all West Point knowledge management websites and mobile applications.

11. **EXPIRATION.** This policy is effective until superseded or rescinded.

12. **PROponent.** The USMA SHARP Office is the proponent for this policy and can be reached at (845) 938-2028.



STEVEN W. GILLAND
Lieutenant General, U.S. Army
Superintendent

Distribution:
Electronic

Appendix A: References

- a. 10 U.S.C. § 7461.
- b. Department of Defense Directive (DoDD) 6495.01, Sexual Assault Prevention and Response (SAPR) Program, 23 January 2012, incorporating Change 5, effective 10 November 2021.
- c. Department of Defense Instruction (DoDI) 1020.03, Harassment Prevention and Response in the Armed Forces, 8 February 2018, incorporating Change 2, effective 20 December 2022.
- d. DoDI 6495.02-Vol 1, Sexual Assault Prevention and Response: Procedures, 28 March 2013, incorporating Change 7, effective 6 September 2022.
- e. DoDI 6495.02-Vol 2, Sexual Assault Prevention and Response: Education and Training, 9 April 2021.
- f. DoDI 6495.02-Vol 3, Sexual Assault Prevention and Response: Retaliation Response for Adult Sexual Assault Cases, 24 June 2022.
- g. DoDI 1020.03 (Harassment Prevention and Response in the Armed Forces), 8 February 2018, incorporating Change 2, effective 20 December 2022.
- h. DoDI 5505.18, Investigation of Adult Sexual Assault in the Department of Defense, 22 March 2017, incorporating Change 4, effective 6 September 2022.
- i. Army Regulation (AR) 600-20, Army Command Policy, 24 July 2020.
- j. AR 350-1, Army Training and Leadership Development, 10 December 2017.
- k. AR 690-600, Equal Employment Opportunity Discrimination Complaints, 9 February 2004.
- l. Army Directive (AD) 2022-13 (Reforms To Counter Sexual Harassment/Sexual Assault in the Army), 20 September 2022.
- m. AD 2022-10 (Safe to Report for Victims of Sexual Assault), 6 July 2022.
- n. AD 2021-30 (Sexual Harassment/Assault Response and Prevention Services for Department of the Army Civilians), 2 September 2021.
- o. AD 2018-23 (Improving Essential Programs), 8 November 2018.