



**DEPARTMENT OF THE ARMY**  
OFFICE OF THE DEPUTY CHIEF OF STAFF G-1  
300 ARMY PENTAGON  
WASHINGTON DC 20310-0300

DAPE-AR (600-20)

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Expanded Eligibility to Elect the Option of a Restricted Report on DD Form 2910 and Process for Victims to Decline to Participate in Investigations

1. References:

a. Department of Defense Directive 6495.01 (Sexual Assault Prevention and Response (SAPR) Program), 23 January 2012, Incorporating Change 5, effective 10 November 2021

b. Department of Defense Instruction 6495.02 (Sexual Assault Prevention and Response (SAPR) Program Procedures), 28 March 2013, Incorporating Change 6, Volume 1, effective 10 November 2021

c. Department of Defense Instruction 5505.19 (Establishment of Special Victim Investigation and Prosecution (SVIP)) Capability within the Military Criminal Investigative Organizations (MCIO), 3 February 2015, Incorporating Change 2, 23 March 2017

d. Department of Defense Instruction 5505.18 (Investigation of Adult Sexual Assault in the Department of Defense), 22 March 2017, Incorporating Change 3, effective 10 November 2021

e. Deputy Secretary of Defense memorandum "Updates to Department of Defense Policy and Procedures for the Sexual Assault Prevention and Response Program and Adult Sexual Assault Investigations," 10 November 2021

f. AR 600-20 (Army Command Policy), 24 July 2020

2. Applicability. This guidance applies to Soldiers and their Family members age 18 and over.

3. Purpose: To provide implementation guidance on Expanded Eligibility to Elect the option of a Restricted Report on DD Form 2910 and Process for Victims to Decline to Participate in Investigations.

4. Expanded eligibility to elect the option of Restricted Report on DD Form 2910:

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a. Soldiers and Family members age 18 and over who are victims of sexual assault are eligible to elect the option of a Restricted Report, providing they did not personally report the sexual assault to law enforcement, to include U.S. Army Criminal Investigation Division (CID), and did not previously make an Unrestricted Report by signing a Victims Preference Statement (DD Form 2910) with a Sexual Assault Response Coordinator (SARC) or SHARP Victims Advocate (VA) for the same sexual assault incident. Eligible victims may elect the option of Restricted Reports on the DD Form 2910 even if:

(1) sexual assault was disclosed to a commander or to personnel in the chain of command, or

(2) there is an ongoing CID investigation of sexual assault reported by a third party and not due to the victim's disclosure to law enforcement, or

(3) the sexual assault investigation has been closed by CID.

b. Commanders at all levels will immediately report all acts of sexual assault of which they become aware involving persons affiliated with the Department of Defense (DoD) to CID. This includes all active duty personnel and their dependents, DoD contractors, and DoD civilian employees, regardless if the commander has authority over them or not. The policy expanding the eligibility of a victim to elect a restricted report does not relieve the commander of the statutory requirement to inform CID when a commander is made aware of a sexual assault within their command.

c. CID will initiate a criminal investigation in response to a report of adult sexual assault, in accordance with DoDI 5505.03 and DoDI 5505.18.

d. Commanders and personnel in the chain of command will encourage individuals who disclose or report experiencing a sexual assault to speak with a SARC or SHARP VA.

e. Commanders and personnel in the chain of command will inform the individual disclosing the sexual assault of their respective reporting requirements, including notifying the SARC and CID. Leaders will also inform the victim that this has no impact on the victim electing the option of a Restricted or Unrestricted report, nor does it require the victim to participate in the investigation.

5. Expanded eligibility for electing the option of Restricted Reporting on DD Form 2910 when victims disclose their Sexual Assault to another person.

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a. A victim's communication with another person (for example, roommate, friend, family member) does not, in and of itself, prevent the victim from later electing to make a Restricted Report. Restricted Reporting is confidential, not anonymous, reporting. However, if the person to whom the victim confided the information (for example, roommate, friend, family member) is law enforcement, there can be no Restricted Report.

b. A victim may disclose a sexual assault to someone in his or her chain of command without realizing that, as a result of doing so, personnel in the chain of command are required to immediately notify the commander and the commander is required to notify CID. In this circumstance, while a victim may still elect to file a Restricted Report, such an election does not preclude the initiation of an investigation into the sexual assault.

6. Expanded eligibility to elect the option of restricted reporting when there is an independent investigation.

a. An independent investigation by CID will not preclude the victim from being eligible to file a Restricted Report. If there is an ongoing investigation of a sexual assault and CID notifies the SARC of the investigation before the victim makes a Restricted Report, this has no impact on the victim's reporting options; eligible victims are still able to file a Restricted Report.

b. Even though the Restricted Report does not directly impact the status of the ongoing investigation, the Restricted Report does provide the victim a level of privacy.

c. Commanders, Leaders (for example, Squad Leader and above) and civilian supervisors will not ask the SARC or SHARP VA about the Restricted Report.

d. Commanders will not address the victim regarding the sexual assault.

e. SARCs and SHARP VAs will provide services as they would for any other Restricted Report, even if the victim's commander is aware of the sexual assault. The victim may not request a Military Protective Order (MPO), a Civilian Protective Order (CPO), an Expedited Transfer, or any other command action or assistance.

f. Victims retain eligibility for a Restricted Report after the investigation has closed to facilitate access to SHARP advocacy services. After filing a Restricted Report, victims can use completed DD Form 2910 with the Department of Veterans Affairs as

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documentation of their sexual assault report when seeking healthcare services or filing a disability claim.

7. Process for victims to decline to participate in sexual assault investigations:

a. For CID investigations that are initiated upon third-party reports or by commanders, a victim may submit a Section 540K Declination Letter to document his or her decision not to participate in the investigation and the reason for declining.

b. The Section 540K Declination Letter and reasons for declining participation in the investigation, if known, will be entered into Defense Sexual Assault Incident Database and may be used to comply with congressional reporting requirements or other requests for information, as appropriate.

c. The victim's declination to participate has no compulsory effect on the investigative or military justice process. However, in situations where victim's statement is required to identify the suspect and/or are essential to the furtherance of the case, the victim's declination to participate may result in the investigation being terminated.

d. In cases where a suspect has been identified, military law and policy requires the investigation to continue, despite the victim's wishes. Cases involving a suspect in a position of authority will be fully investigated in all circumstances, despite a victim filing a Section 540K Declination Letter.

e. A victim's declination to participate in an investigation will be fully acknowledged by criminal investigators. CID's acknowledgment will also make it clear to the victim that the victim's decision was considered, explain whether the victim's decision will drive closure of the case, and, in cases where investigation must proceed in spite of the victim's wishes, explain why the case was not closed.

f. If conditions allow an investigation to be terminated based on a victim's declination to participate, the Army will accede to the victim's choice.

g. Eligible victims may consult with an Special Victims Counsel (SVC) or retain private counsel, at their own expense, on a wide variety of military justice process matters, including a desire not to participate in an investigation.

8. Victims have the right to the following procedure:

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a. In investigations that are initiated upon third-party reports, by command, or pursuant to an exception to Restricted Reporting, CID will contact the victim as soon as possible after receipt of the report and, to the extent practicable, before contacting any other potential witnesses, to determine the victim's desired level of participation and to protect victim privacy. CID will clearly state that it is the victim's decision to participate in the investigation. CID is required to provide the victim the opportunity to speak to an SVC before conducting an interview with the victim, in accordance with 10 USC 1044e and DODI 5505.18. In situations where the victim intends to decline to participate in the investigation, CID will encourage the victim to consult with an SVC as soon as possible. CID will immediately contact the SARC and encourage the victim to speak with the SARC or SHARP VA to review reporting options and receive information about victims' rights and services.

b. To protect the loss of critical evidence and to protect the privacy of the victim, CID will prioritize other investigative activity associated with the sexual assault and proceed with investigating the offense without the involvement of the victim, until they have spoken to the victim about his or her intended level of participation or until CID has received the victim's declination letter. CID will formulate an investigative protocol that aims to protect the victim's privacy until CID has spoken with the victim.

c. In situations where the victim has met with a SARC or VA, if the victim opts to file a Restricted or Unrestricted Report through a DD Form 2910, the SARC MUST facilitate a Safety Assessment in accordance with DoDI 6495.02, volume 1 and notify the victim of the option to have a sexual assault forensic exam. If a victim chooses to file a Restricted Report, the SARC and SHARP VA will inform the victim of the opportunity to submit an entry into the Catch a Serial Offender database.

d. Regardless of whether the victim filed a DD Form 2910, the SARC and SHARP VA will refer the victim to an SVC, if eligible, and inform that the victim that the SVC or private counsel is equipped to advise the victim on their legal rights assist them in deciding to participate in an investigation.

(1) If a victim meets with an SVC, in the course of providing legal advice and representation to the victim, the following topics will be addressed:

(a) Potential consequences of requesting that an investigation be terminated, including the loss of evidence and investigative leads.

(b) The option of later requesting to reopen an investigation. The victim must also be notified that the passage of time may result in the loss of evidence and hinder

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(c) CID's ability to conduct a thorough investigation, limiting the ability to successfully resume the investigation.

(d) The victim's decision must be freely made and not subject to any external influences, such as retaliation, ostracism, coercion, or fear of reprisal.

(d) Assisting the victim with a Section 540K Declination letter and facilitating submitting the letter to CID.

(2) If the victim does not consult with an SVC or private counsel and informs the assigned CID investigator that he or she does not want to participate in the investigation, the investigator will give the victim a Section 540K Declination Letter Form and repeat the recommendation that the victim meet with an SVC for assistance with filling out the form, and the implications associated with doing so. The investigator will also ask the victim if:

(a) Anyone is influencing or coercing the victim to decline to participate in the investigation.

(b) Anyone is threatening or retaliating against the victim because of the open sexual assault investigation.

(c) He or she has any safety concerns related to the investigation of the sexual assault.

(3) If the victim submits a Section 540K Declination Letter, the CID investigator will notify their installation-level field supervisor and request a decision on whether the investigation should be closed. These decisions will follow established policy and involve legal coordination, as appropriate.

(a) The investigation will be paused pending approval by the CID installation-level field supervisor. The victim's Section 540K Declination Letter and the approval or disapproval to close the case will be documented in the case file with the date and the name of the supervisor.

(b) If the CID installation-level field supervisor approves closing the investigation, CID will notify the victim and the victim's legal representative that the investigation is closed, but can be reopened at any time if the victim changes his or her mind. The CID will document in the case file that the notification was made to the victim and their SVC or private counsel with the date, time, and method of notification.

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(c) If circumstances do not allow for the termination of the investigation, such as when the identity of the suspect is known or investigators have viable leads to discovery, the installation-level field supervisor will disapprove closing the investigation and require investigators to notify the victim of the Army's decision to continue the investigation and the reasons for doing so.

(d) In all circumstances, the victim's Section 540K Declination Letter will be retained by the appropriate CID, as this reflects an investigatory process and not a SARC advocacy function. SARCs should maintain a file copy.

(4) Third-party reporters of sexual assault will not be notified of CID's decision to honor the victim's request not to participate in the investigation. Third-party reports often reflect an individual's concern for the safety of the victim, the mission, and for society. However, it is not the Army's policy to inform a third-party reporter of the status of a criminal investigation. Consequently, CID will inform third-party reporters upon receiving a report that a status or eventual outcome of an investigation will not be shared with the reporter.

(5) Criminal investigations will proceed according to established policy and procedure when victims do not submit a Section 540K Declination Letter.

(6) A delay in submission of the letter may jeopardize the CID's ability to close the investigation.

9. The point of contact for this memorandum is Ms. Karoline Hay, (703) 571-7334 or karoline.r.hay.civ@army.mil.

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