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APVG-CG

04 AUG 2016

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: U.S. Army Hawaii Policy Letter #7 - Prevention of Sexual Harassment/Sexual Assault and Treatment of Victims for Military and Civilian Personnel

1. References.

a. ALARACT 123/2011, Subject: Mandatory Unit Sexual Harassment/Assault Response and Prevention (SHARP) training, 4 April 2011.

b. AR 600-20 Army Command Policy, 6 November 2014.

c. AR 690-600, Equal Employment Opportunity discrimination complaints, 9 February 2004, 3-11.

d. DOD Instruction 6495.01, Sexual Assault Prevention and Response (SAPR) program, 23 January 2012, incorporating change 2, 20 January 2015.

e. DOD Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) program procedures, 28 March 2013, incorporating change 2, 7 July 2015.

f. HQDA EXORD 221-2012, Sexual Harassment/Assault Response and Prevention Program (SHARP) synchronization Order, 23 June 2012.

g. ALARACT 007-2012, Sexual Harassment/Assault Response and Prevention (SHARP) Program Implementation Guidance, 12 January 2012.

h. Army Directive 2013-20, Assessing Officers and Non-Commissioned Officers on Fostering Climates of Dignity and Respect and on Adhering to the Sexual Harassment/ Assault Response and Prevention Program, 27 September 2013.

i. Army Directive 2013-21, Initiating Separation Proceedings and Prohibiting Overseas Assignments for Soldiers Convicted of Sex Offenses, 7 November 2013.

j. DOD Instruction 6495.03, Defense Sexual Assault Advocate Certification Program (D-SAACP), 10 September 2015.

k. HQDA EXORD 193-14, Screening of Sexual Harassment/Assault Response and Prevention Program Personnel and Others in Identified Positions of Significant Trust, 26 July 2014.

l. Army Directive 2015-16, Command Engagement to Prevent Retaliation, 4 March 2015.

2. Intent. To establish the policy on the prevention of sexual harassment and sexual assault, treatment of victims, and accountability for those who commit sexual harassment and assault.

3. As the Senior Commander for US Army Hawaii (USARHAW), I am committed to the Army's zero-tolerance policy against sexual harassment and sexual assault. Army leadership at all levels will be committed to creating and maintaining an environment conducive to maximum productivity and respect for human dignity. To that end, leaders will report all incidents of sexual assault to the appropriate authorities as defined below. In addition, leaders will examine all allegations of sexual harassment, ensuring these incidents are reported to their unit Sexual Assault Response Coordinator (SARC) and addressed in a swift and fair manner.

4. Sexual Harassment. Sexual harassment is defined as a form of gender discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal physical conduct of a sexual nature when:

a. Submission to, or rejection of such conduct is made--either explicitly or implicitly--a term or condition of a person's job, pay, or career;

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

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.

5. Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay or job of personnel is engaging in sexual harassment. Similarly, anyone who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment.

6. Soldiers and/or eligible Civilians who experience sexual harassment have various resolution options, starting with informal resolution. Individuals can use the direct approach which means the person being harassed can confront the harasser themselves. The indirect approach requires the person to send a letter to the harasser asking them to quit the inappropriate behavior, and expect resolution. Third Party intervention requires assistance from another person or someone in his or her chain of command. Soldiers and/or eligible Civilians who wish to file a formal complaint should report to their SARC to ensure proper procedure and timelines are followed.

7. Sexual Assault. 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. Leaders at all levels who are aware of a sexual assault should immediately (within 24 hours) report the incident. Sexual assault is incompatible with Army values and is punishable under the Uniform Code of Military Justice (UCMJ) and other federal and state laws.

a. Sexual assault is the intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. Sexual assault can occur without regard to gender, spousal relationship or age of the victim. Sexual assault includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these offenses.

b. Consent is defined as a freely given agreement to the conduct at issue by a competent person. An expression of lack of consent through words or conduct means there is no consent. Lack of verbal or physical resistance or submission resulting from the use of force, threat of force, or placing another person in fear does not constitute consent.

8. Leaders will take an active role in eliminating sexual assault. Leaders will provide a safe, respectful environment for victims of sexual assault. As soon as commanders/directors are notified of a sexual assault, they will contact CID immediately and then call their brigade/organizational SARC. Leaders will account for the rights of both the victim and the accused. Creating an environment of dignity and respect is imperative to changing the culture that prevents and combats sexual assault within our ranks.

9. Reporting Options. Soldiers, their adult dependents and eligible Department of the Army Civilians (DACs) who experienced a sexual assault can choose to make a

restricted report or unrestricted report, as described below. Additional resources and information are available at the USARHAW SHARP Resource Center. Building 692, Grant Hall, 3585 McCornack Road, Schofield Barracks, Hawaii 96857.

a. Restricted Reporting: The victim confidentially discloses the details of his/her assault to the individuals specified below and will receive the opportunity for medical treatment, victim advocacy, counseling services and Special Victims Counsel (SVC) legal assistance.

(1) Treatment occurs without triggering the official investigation process.

(2) A restricted report can be made by contacting the 24-hour SHARP Hotline at (808) 655-9474, any appointed SHARP personnel (SARC and VAs), the USARHAW SHARP Resource Center, TAMC Emergency Room at (808) 433-3710, a medical primary care provider, or any Chaplain after duty hours via Field Officer of the Day (FOD) at (808) 655-8707 (ask for the on-call Chaplain).

b. Unrestricted reporting: The victim discloses the details of his/her assault to law enforcement and an official investigation begins. Victims may receive medical treatment, victim advocacy, counseling services, SVC legal assistance, and administration rights, including expedited transfer and protection orders.

(1) An unrestricted report can be made by contacting the 24-hour SHARP Hotline at (808) 655-9474, any appointed SHARP personnel (SARC and VAs), the USARHAW SHARP Resource Center, TAMC Emergency room at (808) 433-3710, a medical primary care provider, or any Chaplain after duty hours via FOD at (808) 655-8707 (ask for the on-call Chaplain). In addition, an unrestricted report can be made when a victim reports an assault to his/her chain of command, or when the victim requests healthcare providers to notify law enforcement. Unrestricted reporting triggers the official investigation process.

(2) Victims may directly contact the Military Police at 911 or (808) 655-5555, or the Criminal Investigation Command (CID) at (808) 655-8371. Details regarding the incident will be limited to those who have a legitimate need to know in order to protect the privacy and maintain the dignity of those affected by sexual assault.

(3) O-6 (or civilian equivalent) brigade-level commanders will process, maintain investigative liaison with CID and Staff Judge Advocate (SJA), and adjudicate an unrestricted sexual assault report.

(4) Expedited transfers will be processed at the victim's request, only under the unrestricted reporting option.

(a) If a Soldier/DAC files a restricted report, but then seeks an expedited transfer, he/she must change his/her report to unrestricted.

(b) When the commander/director determines that the report is credible, there is a presumption in favor of granting a request for an expedited transfer. The SARC will hand walk all expedited transfer paperwork to the appropriate personnel. These requests will not be sent through the orderly room or the S1.

(c) The commander/director must act on the request within 72 hours of receiving the request. If denied, the action is sent to the first general officer in the Soldier's/DAC's chain of command.

(d) If the expedited transfer or compassionate reassignment (depending on the circumstances) is approved, the request will be sent to USARPAC SHARP Office through the USARHAW SHARP Office to process with Human Resources Command (HRC).

(5) Sexual assaults involving a victim who is the offender's spouse/intimate partner or a victim who shares a child with the offender must be reported to the Family Advocacy Program at (808) 433-8579.

(6) Sexual assaults involving a minor child, under the age of 18, must be reported to the civilian Child Advocacy Center where the child resides. The state of Hawaii requires mandatory reporting for all child abuse cases.

10. If information about a sexual assault comes to the commander's/director's attention from a source other than the victim who has elected restricted reporting, or where no election has been made by the victim, that commander shall report the matter to CID and an official (independent) investigation may be initiated based on that independently acquired information.

a. If there is an ongoing independent investigation, the sexual assault victim will no longer have the option of restricted reporting when:

(1) DoD law enforcement informs the SARC of the investigation, and

(2) The victim has not already elected restricted reporting.

b. The timing of filing out a restricted report is crucial. The victim MUST take advantage of the restricted reporting option BEFORE the SARC is informed of the investigation. If the independent investigation begins before a restricted report is filed, the SARC then shall inform the victim of an ongoing independent investigation of the sexual assault. If the independent investigation begins AFTER the victim has formally elected restricted reporting, the independent investigation has no impact on the victim's restricted report and the victim's communications and Sexual Assault Forensics Exam (SAFE) kit remains confidential to the extent authorized by law.

11. Commanders/Directors will initiate the administrative separation of any Soldier convicted of a sex-offense, as defined by AR 27-10 and Title 42 USC, whose conviction did not result in a punitive discharge or dismissal. This policy applies to all personnel currently in the Army, regardless of when the conviction for a sex offense occurred and regardless of component of membership and current status in that component.

12. Commanders/Directors will consult with the USARHAW SHARP office and the SJA on all instances of victim collateral misconduct involving a sexual assault prior to taking any disciplinary action.

13. Sexual assault victims, witnesses, bystanders (who intervened), SARCs, VAs, first responders, or other parties to the incident who experienced any retaliation or reprisal stemming from the incident should report the matter to their SARC, VA, Program Manager, SVC, or law enforcement. O-5 and higher commanders/DAC equivalent will develop a plan to immediately address the reprisal or retaliation and forward the plan to me and the USARHAW SHARP Program. Reprisals and retaliation will be discussed at the SARB until it has been addressed.

14. Commanders/Directors will schedule and conduct training concerning the prevention of sexual assault/sexual harassment one hour per quarter for a total of four hours annually, not to be given consecutively at the end of the calendar year. All Soldiers/DACs within the chain of command will attend this training and SARCs will maintain copies of the lesson as well as the sign-in rosters. All unit training will be conducted in accordance with ALARACT 007-2012.

15. Commanders/Directors will ensure all pre-deployment and post-deployment training is conducted in accordance with AR 600-20, paragraph 8-7c. Every instance of pre-deployment training will incorporate SHARP definitions and reporting options, as well as information to increase awareness of the customs of the host country and any coalition partners, in an effort to help prevent further sexual assaults.

a. Ensure that Soldiers/DACs who deploy to locations outside the United States are cognizant of sexual assault issues, as well as DOD and specific Army policies about sexual assault prevention. This training will include risk reduction factors that are tailored to the specific deployment locations.

b. Address procedures for reporting a sexual assault to ensure that service members are aware of the full range of options available and have knowledge of location and contact information for response agencies in the deployed theater.

c. Post-deployment training. Commanders/Directors will ensure service members receive SHARP unit refresher training during reintegration activities and are provided an opportunity to report a sexual assault if they experienced one while deployed.

16. Individuals who perform the duties of SHARP Program Managers, SARCs and VAs and who have direct access to victims, must undergo the required background investigation and complete the D-SAACP certification process in accordance with references j and k herein. D-SAACP initial and renewal packets must go through the USARHAW SHARP office for transmittal to the USARPAC SHARP office. D-SAACP credentials are solely for individuals who are on SHARP appointment orders.

17. This memorandum supersedes USARHAW Policy Letter #7, dated 4 January 2016 and remains in effect until superseded or rescinded in writing.

18. Proponent. The USARHAW SHARP office is the proponent staff agency for this policy memorandum. Questions concerning this policy should be directed to Mrs. Lisa Charles at (808) 655-9442/9441/9435/1603.

CHRISTOPHER G. CAVOLI
Major General, USA
Commanding

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