THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

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MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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SUBJECT: Restricted Reporting Policy for Incidents of Domestic Abuse

References:
(a) Section 585 of the National Defense Authorization Act for Fiscal Year 2000, Pub. L. 106-65
(b) Under Secretary of Defense for Personnel and Readiness Policy Memorandum, "Domestic Abuse Victim Advocate Program," signed February 17, 2005
(c) DoD Directive 6400.1, "Family Advocacy Program," August 23, 2004
(d) DoD 6025.18-R, "DoD Health Information Privacy Regulation," January 2003

The DoD is committed to ensuring victims of domestic abuse are protected, treated with dignity and respect, and provided support, advocacy, and care. DoD policy also strongly supports effective command awareness and prevention programs and law enforcement and criminal justice activities that will maximize accountability and prosecution of perpetrators of domestic abuse. To achieve these dual objectives, DoD policy prefers that personnel report suspected domestic abuse incidents promptly to activate both victims' services and accountability actions. However, a requirement that all domestic abuse incidents be reported can represent a barrier for victims hoping to gain access to medical and victim advocacy services without command or law enforcement involvement.

OSD 17057-05

This directive-type memorandum establishes Department of Defense (DoD) guidelines for restricted reporting of incidents of domestic abuse, as defined in Attachment 1, and implements regulations required by Section 585 of Public Law 106-65 (reference (a)). This policy reflects consideration of factors set forth in Section 585(b) of Public Law 106-65 through the deliberations of the Defense Task Force on Domestic Violence, its recommendations, and review and consideration of such recommendations by the Military Departments and the Under Secretary of Defense for Personnel and Readiness. For the purposes of this policy, restricted reporting is limited to adult victims of domestic abuse. Restricted reporting is defined as allowing a victim of domestic abuse, who is eligible to receive military medical treatment, including civilians and contractors who are eligible to receive military healthcare outside the Continental United States on a reimbursable basis, the option of reporting an incident of domestic abuse to specified individuals without initiating the investigative process or notification to the victim's or alleged offender's commander. This option provides domestic abuse victims access to medical care and to victim advocacy services, as defined in Attachment 1, as provided under the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) Policy Memorandum, "Domestic Abuse Victim Advocate Program," (reference (b)).

Domestic abuse often goes unreported in society at large. Although the victim's decision to report the incident is a crucial step towards holding the offender accountable following a domestic abuse incident, it can have potential serious consequences for the safety and welfare of the victim and other family members. When domestic abuse is reported to military and or civilian authorities who fail to take appropriate action, the abuse may recur and escalate. In the military community, a victim is usually concerned that reporting will have immediate repercussions on the military career of the family-member offender, and thus affect the family's financial welfare. The result is that this potential impact may often deter the victim from seeking care at all or reporting the domestic abuse incident. Commanders have a responsibility to ensure community safety and due process of law, but they must also recognize the importance of protecting the safety and well-being of victims and other family members. A system that affords victims access to medical and victim advocacy services without immediate command or law enforcement involvement can encourage victims to feel more comfortable and safe about reporting domestic abuse.

In order to address these competing interests, adult victims of domestic abuse incidents will now have two reporting options, which are discussed below: unrestricted reporting and restricted reporting. Regardless of whether the victim elects restricted or unrestricted reporting, confidentiality of medical information will be maintained in accordance with DoD 6025.18-R, "DoD Health Information Privacy Regulation," (reference (d)).

Unrestricted Reporting: Victims of domestic abuse who want to pursue an official investigation of an incident should use current reporting channels, e.g., chain of

command, Family Advocacy Program (FAP), or law enforcement (reference (c)). Upon notification of a reported domestic abuse incident, victim advocacy services and FAP clinical services will be offered to the victim. Additionally, at the victim's discretion/request, the healthcare provider shall conduct any forensic medical examination deemed appropriate. Details regarding the incident will be limited to only those personnel who have a legitimate need to know.

Restricted Reporting: In cases where an adult victim instead elects restricted reporting, the victim advocate and healthcare providers may not disclose covered communications, as defined in Attachment 1, to either the victim's or offender's commander or to law enforcement either within or outside the DoD, except as provided in the exceptions below. However, for purposes of command responsibility and the gathering of accurate data, the victim advocate or his/her supervisor is responsible for reporting information concerning domestic abuse incidents, without information that could reasonably lead to personal identification of the victim or alleged offender, to command officials at the next Family Advocacy Committee (FAC) meeting following receipt of information about the alleged domestic abuse incident, or as directed by the commander responsible for convening the FAC. This will give commanders a clearer picture as to the number and type of domestic abuse incidents within their command, and enhance the commanders' ability to provide an environment that is safe and contributes to the well-being and mission-readiness of all of its Service members.

Restricted reporting is intended to give adult victims additional time, while benefiting from receiving relevant information and support, to make more informed decisions about reporting the domestic abuse incident to the appropriate commanders and possibly participating in a criminal investigation. A victim who receives appropriate care and treatment, and is provided an opportunity to make an informed decision about reporting to law enforcement or command and the possibility of a criminal investigation, is more likely to develop increased trust that his or her needs are of primary concern, and therefore decide to report the domestic abuse incident to the appropriate commander or law enforcement.

Restricted reporting allows an adult victim of domestic abuse to disclose the details of his or her abuse to specifically identified individuals and receive medical treatment and victim advocacy services without requiring that notice be provided to the alleged offender's commander or law enforcement. Victims of domestic abuse who desire restricted reporting under this policy must report the abuse to one of the following specified individuals: a victim advocate or healthcare provider, as defined in Attachment 1; or the supervisor of a victim advocate. The supervisor of a victim advocate will assure the assignment of a victim advocate to assist the victim.

Healthcare providers will initiate the appropriate care and treatment, and will report the domestic abuse only to a victim advocate or his/her supervisor. Upon receipt

of a report, the victim advocate will notify his or her supervisor as soon as possible if the supervisor is not already aware of the report. The victim advocate will contact the victim and provide the victim accurate information about the process of restricted reporting, as compared to unrestricted reporting, and victim advocacy services. The victim will acknowledge in writing his or her understanding that restricted reporting may limit the government's ability to prosecute the alleged offender in a domestic violence incident and an understanding of the reasons DoD policy favors unrestricted reporting. Additionally, in connection with an incident of domestic violence, at the victim's discretion/request, the healthcare provider, if appropriately trained and/or supervised, shall conduct any forensic medical examination deemed appropriate. In the absence of a DoD healthcare provider trained to conduct an examination of this nature, the victim will be appropriately referred for the forensic medical examination. If the victim elects to receive medical care at a civilian facility, regulations governing the release of medical information at that facility apply.

The Inspector General of the Department of Defense, in coordination with the Assistant Secretary of Defense (Health Affairs), shall establish, within 30 days from the date of this memorandum, guidelines for the collection and preservation of evidence, with non-identifying information about the victim and alleged offender, under the restricted reporting process. To the extent possible, the guidelines should be the same as those being developed for collecting and preserving sexual assault evidence under the sexual assault restricted reporting program.

Consistent with current policy regarding privileged communications, victims may also report the abuse to a chaplain. Although a report to a chaplain is not a restricted report under this policy, it is a communication that may be protected under the Military Rules of Evidence or applicable statutes and regulations. The restricted reporting process does not affect any privilege recognized under the Military Rules of Evidence. This restricted reporting policy is in addition to the current protections afforded privileged communications with a chaplain, and does not alter or affect those protections.

Exceptions to Confidentiality and Restricted Reporting and Limitations on Use. In cases in which a victim elects restricted reporting, the prohibition on disclosing covered communications to the following persons or entities will be suspended when disclosure would be for the following reasons:

- Named individuals when disclosure is authorized by the victim in writing.

- Command officials or law enforcement when necessary to prevent or lessen a serious and imminent threat to the health or safety of the victim or another person.

- FAP and any other agencies authorized by law to receive reports of child abuse or neglect when, as a result of the victim's disclosure, the victim advocate or healthcare provider has a reasonable belief that child abuse has also occurred. However, disclosure will be limited only to information related to the child abuse.

- Disability Retirement Boards and officials when disclosure by a healthcare provider is required for fitness for duty for disability retirement determinations, limited to only that information which is necessary to process the disability retirement determination.

- Supervisors of the victim advocate or healthcare provider when disclosure is required for the supervision of direct victim treatment or services.

- Military or civilian courts of competent jurisdiction when a military, Federal, or State judge issues a subpoena for the covered communications to be presented to the court or to other officials or entities when the judge orders such disclosure; or to other officials or entities when required by Federal or State statute or applicable U. S. international agreement.

Healthcare providers may also convey to the victim's commander, if applicable, any possible adverse duty impact related to an active duty victim's medical condition and prognosis in accordance with reference (d). Such circumstances however, do not otherwise warrant an exception to policy, and therefore the specific details of the domestic abuse incident will still be treated as covered communication and may not be disclosed.

If the victim advocate or healthcare provider believes that disclosure is warranted or required pursuant to one of the exceptions listed above, the victim advocate or healthcare provider shall first consult with his or her supervisor and servicing legal office prior to disclosure. When there is uncertainty or disagreement on whether an exception applies, the matter will be brought to the attention of the installation commander for decision. The victim advocate or healthcare provider must also make every reasonable effort to provide the affected victim advance notice of the intention to disclose a covered communication, with a description of the information to be disclosed, the basis for disclosure, and the individual, group or agency to which it will be disclosed. The disclosure will be limited to information necessary to satisfy the purpose of the disclosure in the event the disclosure is made under the authority of one of the exceptions stated above. Further disclosure will not be made unless the domestic abuse victim authorizes the disclosure in writing.

Improper disclosure of covered communications, improper release of medical information, and other violations of this policy are prohibited and may result in discipline under the Uniform Code of Military Justice, loss of credentials, and/or other adverse personnel or administrative actions.

In the event that information about a domestic abuse incident is disclosed to the commander or FAP, from a source independent of the restricted reporting avenues, law enforcement shall also be notified and conduct investigations when appropriate. FAP shall intervene with the family and conduct all appropriate assessments and provide all appropriate treatment. Additionally, a victim's disclosure of his or her domestic abuse to persons other than those covered by this policy may result in an investigation of the allegations by law enforcement and clinical intervention from FAP. Consistent with current policy, commanders acquiring information under these circumstances about a domestic abuse incident shall immediately notify law enforcement and FAP.

This policy does not create any actionable rights for the alleged offender or the victim, nor constitute a grant of immunity for any actionable conduct by the alleged offender or the victim, nor create any form of evidentiary or testimonial privilege. Covered communications that have been disclosed to persons other than those specified to receive them under the protections of this restricted reporting policy, even if disclosed improperly or inadvertently, may be used in administrative, nonjudicial, or judicial disciplinary proceedings against the alleged offender or the victim.

The DoD recognizes the potential impact of restricted reporting on investigations and a commander's ability to hold perpetrators accountable, and this policy decision represents the judgment that such risks have been carefully considered but were outweighed by the overall interest in providing domestic abuse victims this form of support. This directive-type memorandum supersedes all regulatory and policy guidance within the Department of Defense not expressly mandated by law that is inconsistent with its provisions or would preclude its execution.

This memorandum provides the framework for restricted reporting. The magnitude of this change requires extensive, in-depth training for DoD personnel and specialized training for commanders, senior enlisted personnel, victim advocates, investigators, law enforcement personnel, FAP personnel, chaplains, healthcare providers, and legal personnel.

All Military Services shall submit a copy of their proposed implementing guidance conforming to this policy not later than 60 days from the date of this memorandum. My point of contact for this action is Mr. Michael Hoskins, Director, Family Violence Policy Office, at (703) 588-0871.

To ensure consistent application across the Military Services, this restricted reporting policy will be effective 90 days from the date of this memorandum. Final implementation of this policy is contingent on approval of Military Department and Service policies consistent with the requirements outlined in this memorandum.

1-22-06

ATTACHMENT 1

DEFINITIONS

ADULT. For purposes of this memorandum, an adult is a service member or a person who is not a service member who has either attained the age of eighteen years of age or is married.

COVERED COMMUNICATION. An oral, written or electronic communication of personally identifiable information related to a domestic abuse incident made by a victim to the victim advocate, the supervisor of victim advocates, or to a healthcare provider, for the purposes of receiving medical care or information, referral to service providers, advice, or safety planning. It includes a record relating to such a communication (including statements, notations or reports) but does not include statistical data that does not identify an individual.

DOMESTIC ABUSE. Domestic abuse is (1) domestic violence or (2) a pattern of behavior resulting in emotional/psychological abuse, economic control, and/or interference with personal liberty when such violence or abuse is directed toward a person of the opposite sex who is: (a) A current or former spouse; (b) A person with whom the abuser shares a child in common; or (c) A current or former intimate partner with whom the abuser shares or has shared a common domicile.

DOMESTIC VIOLENCE. An offense under the United States Code, the Uniform Code of Military Justice, or State law that involves the use, attempted use, or threatened use of force or violence against a person of the opposite sex, or the violation of a lawful order issued for the protection of a person of the opposite sex, who is: (a) A current or former spouse; (b) A person with whom the abuser shares a child in common, or (c) A current or former intimate partner with whom the abuser shares or has shared a common domicile.

HEALTHCARE PROVIDER. For the purpose of this policy, this term applies to those individuals employed or assigned as healthcare professionals, or are credentialed to provide health care services (including clinical social workers), at a military medical or military dental treatment facility, or a military family support center, or who provide such care at a deployed location or in an official capacity. This term includes military personnel, DoD civilian employees or DoD contractor personnel.

VICTIM ADVOCACY SERVICES. Services that are offered to victims of domestic abuse with the goal of increasing victim safety and autonomy. Services shall include, but not necessarily be limited to, responding to victims' emergency and ongoing safety concerns and needs, providing information about programs and services available to victims and their children in both the civilian and military communities, and providing victims with ongoing support and referrals.

VICTIM ADVOCATE. An employee of the Department of Defense, a civilian working under contract for the Department of Defense, or a civilian providing services via a formal memorandum of understanding between the installation and a local victim advocacy service agency, whose role is to provide safety planning services and comprehensive assistance and liaison to and for victims of domestic abuse, and to educate personnel on the installation regarding the most effective responses to domestic abuse on behalf of victims and at-risk family members. The advocate may also be a volunteer military member, a volunteer civilian employee of the Military Department, or staff assigned as a collateral duty.