

## SAFE-TO-REPORT POLICY DISPOSITION OF VICTIM'S ALLEGED COLLATERAL MISCONDUCT

### PRIVACY ADVISORY

This information will be used to document the special trial counsel's or commander's handling and final disposition of alleged collateral misconduct incidents involving a Service member who is the victim of an alleged sexual assault. When completed, this form contains personally identifiable information and is protected by the Privacy Act of 1974, as amended.

### A. Case Administrative Information

<b>1. Investigative Case Number for Associated Sexual Assault Report</b>	<b>2. DSAID Case Number</b>
<b>3. Victim Name</b> <i>(Last, First, MI)</i>	<b>4. Date of Report of Collateral Misconduct to DoD</b> <i>(MM/DD/YYYY)</i>

### B. Initial Case Information

#### 5. Description of the Alleged Collateral Misconduct

a. What collateral misconduct was alleged against the victim? *(Select all responses that apply)*

- ☐ (1) Underage drinking or other related alcohol offenses
- ☐ (2) Adultery
- ☐ (3) Fraternalization
- ☐ (4) Other

b. Were any actions, including formal disciplinary action(s), adverse administrative action(s) (including changes in duties or suspension of security clearance), or mandatory/elective referral(s) to substance abuse counseling or other intervention services taken against/provided to the victim for the alleged collateral misconduct? *(Select a response below)*

- ☐ (1) Yes
- ☐ (2) No

**- If yes, answer question 5c. If 5c is answered "yes," then skip to block 7. If 5c is answered "no" or "not applicable," continue to block 6.**  
**- If no, answer question 5c, then skip to block 9.**

c. Was the Victim a member of the National Guard and in Title 32 status at the time of the alleged collateral misconduct? *(Select a response below)*

- ☐ (1) Yes
- ☐ (2) No
- ☐ (3) Not applicable, Victim is not in the National Guard

### C. Offices of Special Trial Counsel Action(s) Taken

**6. Role of the Offices of Special Trial Counsel (OSTCs).** As set out by law and policy, OSTCs have exclusive authority over "covered offenses" and may exercise authority over "related offenses," including collateral misconduct allegedly committed by a Service member who is a sexual assault victim. When OSTCs exercise authority over a Service member victim's alleged collateral misconduct, the special trial counsel must determine that such alleged collateral misconduct is "non-minor" before court-martial charges alleging collateral misconduct by a victim are preferred or referred. OSTCs will use the analytical framework, criteria, and standards established in the Safe-to-Report Policy in DoDI 6495.02, vol. 1.

a. Actions involving the OSTC: Did the OSTC exercise authority over the alleged collateral misconduct? *(Select a response below)*

- ☐ (1) OSTC exercised authority
- ☐ (2) OSTC did not exercise authority

**If (2) is selected, skip to block 7.**

b. After OSTC exercised initial authority over the alleged collateral misconduct, what action did OSTC take? *(Select a response below)*

- ☐ (1) Referral to court-martial
- ☐ (2) Preferred to court-martial, deferred to command prior to any findings at court-martial
- ☐ (3) Deferral to command

**If (2) or (3) is selected, skip to block 7.**

c. What was the most serious offense under the Uniform Code of Military Justice charged by the OSTC?

d. If charges were referred by OSTC, what was the outcome? *(Select a response below)*

☐ (1) Convicted of any offense

Select the most serious offense of which the Service member was convicted:

- ☐ (a) Article 92: Underage drinking
- ☐ (b) Article 92: Sex in the barracks
- ☐ (c) Article 92: Unduly familiar relationships between Service members of different ranks
- ☐ (d) Article 92: Violation of other orders/regulations
- ☐ (e) Article 107: False official statements
- ☐ (f) Article 112a: Wrongful possession/use of illegal substances
- ☐ (g) Article 134: Extramarital sexual conduct
- ☐ (h) Article 134: Fraternization
- ☐ (i) Other *(include UCMJ Article and Description, e.g., Article 128b: Domestic Violence)*: \_\_\_\_\_
- ☐ (j) Unknown

☐ (2) Acquitted

☐ (3) Withdrawn/Dismissed with no further action

☐ (4) Withdrawn/Dismissed and deferred to command

☐ (5) Unknown

**If 6d(4) is selected, go to block 7. If block 6d(1), (2), (3), or (5) is selected, skip to block 8.**

**D. Commander Disciplinary Action(s) Taken When the OSTC Did NOT Exercise Authority Over the Alleged Collateral Misconduct or When They Deferred**

- When OSTCs do NOT exercise authority over the alleged collateral misconduct or when they defer, the commander will determine whether the Service member victim's alleged collateral misconduct is "minor" or "non-minor" utilizing the analytical framework, criteria, and standards established in the Safe-to-Report Policy in DoDI 6495.02, vol. 1. The commander shall consult with the servicing Staff Judge Advocate office when making these determinations.
- Disciplinary Action (if any) taken by the commander will be documented in **block 7**.
- Regardless of whether the commander determines the victim's alleged collateral misconduct to be "minor" or "non-minor," the commander may take non-disciplinary administrative action, such as referrals to substance abuse screening, temporarily suspending access to critical positions, etc. If the commander believes that it is appropriate to document alleged "non-minor" collateral misconduct in the interest of rehabilitation, the commander should consider actions that minimize or eliminate impacts on the victim's career. These actions will be documented in **block 8**.

**7. Disciplinary / Administrative Action (If Any) Taken By the Commander Against the Victim for the Alleged Collateral Misconduct**

a. For cases deferred to the commander by the OSTC, when was the disciplinary action taken? *(Select a response below)*

- ☐ (1) Withheld action on the alleged non-minor collateral misconduct until final disposition of the sexual assault case. (Commanders shall not be penalized for such a deferral decision.)
- ☐ (2) Took action on the alleged non-minor collateral misconduct BEFORE final disposition of the sexual assault case.

b. For cases deferred to the commander by the OSTC, what (if any) disciplinary and/or administrative action was taken in response to the victim's alleged collateral misconduct? *(Select all responses that apply)*

☐ (1) No action was taken

☐ (2) Court Martial *(If selected, provide a response to the three requirements below)*

Select the type of Court Martial:

- ☐ (a) Summary
- ☐ (b) Special
- ☐ (c) General

Select the most serious offense charged:

- ☐ (a) Article 92: Underage drinking
- ☐ (b) Article 92: Sex in the barracks
- ☐ (c) Article 92: Unduly familiar relationships between Service members of different ranks
- ☐ (d) Article 92: Violation of other orders/regulations
- ☐ (e) Article 107: False official statements
- ☐ (f) Article 112a: Wrongful possession/use of illegal substances
- ☐ (g) Article 134: Extramarital sexual conduct
- ☐ (h) Article 134: Fraternization
- ☐ (i) Other *(include UCMJ Article and Description, e.g., Article 128b: Domestic Violence)*: \_\_\_\_\_
- ☐ (j) Unknown

Select the most serious offense of which the Service member was convicted:

- ☐ (a) Article 92: Underage drinking
- ☐ (b) Article 92: Sex in the barracks
- ☐ (c) Article 92: Unduly familiar relationships between Service members of different ranks
- ☐ (d) Article 92: Violation of other orders/regulations
- ☐ (e) Article 107: False official statements
- ☐ (f) Article 112a: Wrongful possession/use of illegal substances
- ☐ (g) Article 134: Extramarital sexual conduct
- ☐ (h) Article 134: Fraternization
- ☐ (i) Other (include UCMJ Article and Description, e.g., Article 128b: Domestic Violence): \_\_\_\_\_
- ☐ (j) Unknown

- ☐ (3) Nonjudicial punishment
- ☐ (4) Administrative discharge
- ☐ (5) Adverse administrative action that will be placed in an official personnel file
- ☐ (6) Minor administrative action that will not be placed in an official personnel file
- ☐ (7) Unknown

### E. Commander Referral(s) Made and Other Action(s) Taken

#### 8. Referral(s) Made and/or Other Action(s) Taken by the Commander for Alleged Collateral Misconduct

a. What (if any) referral(s) and/or other action(s) was directed by the commander related to the victim's alleged collateral misconduct? (Select all responses that apply)

- ☐ (1) No action was taken
- ☐ (2) Referral to substance abuse screening
- ☐ (3) Referral to chaplain
- ☐ (4) Referral to behavioral health or medical providers
- ☐ (5) Temporarily reassigned from critical positions (i.e., Drill Sergeant, Recruiter, Instructor, Personnel Reliability Program (PRP) duty, Security Force/Law Enforcement, etc.):
- (a) From what duty was the victim reassigned? (100 character limit)

(b) Length of reassignment

- ☐ (1) Temporary
- ☐ (2) Permanent
- ☐ (6) Temporarily suspended/revoked security clearance
- (a) Length of suspension
- ☐ (1) Temporary
- ☐ (2) Permanent
- ☐ (7) Other: please explain (100 character limit)

☐ (8) Unknown

### F. Date Disciplinary Action Concluded / Date of Decision to Not Take Disciplinary Action

#### 9. Date Disciplinary Action Concluded / Date of Decision to Not Take Disciplinary Action (Provide a response to either block 9a or 9b below, as applicable)

a. What was the date final disciplinary action was taken by the OSTC/ commander? (MM/DD/YYYY)

b. What was the date the OSTC/commander informed the victim that no disciplinary action would be taken? (MM/DD/YYYY)

**G. Reporting Command Information****10. Command POC Information: Name, Rank, Position, Email, and Phone Number****11. Name and Contact Information for Judge Advocate Consulted by the Commander****INSTRUCTIONS**

**DEFINITIONS AND INSTRUCTIONS:** General definitions and instructions for this form are below. See Service instructions or regulations for more detailed information on completing this form.

**Section A: Case Administrative Data**

Investigative Case Number - Can be obtained from the Military Criminal Investigative Organization investigating the sexual assault incident (i.e., CID, NCIS, AFOSI, and CGIS).

DSAI Case Number - Can be obtained from SARC or Victim Advocate.

Date of Report of Collateral Misconduct to DoD - mm/dd/yyyy format; an accurate response to block 4 is important for statistical reporting to the Department of Defense.

**Section B: Initial Case Information**

Collateral Misconduct - Collateral misconduct refers to the adult sexual assault victim's alleged 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 allegedly 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 often be discovered as a direct result of the report of sexual assault or the ensuing investigation or prosecution of the sexual assault. (DoDI 6495.02, vol. 1)

**Section C: Offices of Special Trial Counsel Action(s) Taken**

OSTCs Authority - In accordance with 10 U.S.C. § 824a, OSTCs retain exclusive authority over covered offenses, as enumerated at 10 U.S.C. § 801(17), and may also exercise authority over known and related offenses as defined in Rule for Courts-Martial 303A (e.g., alleged collateral misconduct by a sexual assault victim).

**Section D: Commander Disciplinary Action(s) Taken When the OSTC Did NOT Exercise Authority Over the Alleged Collateral Misconduct or When They Deferred**

Before taking disciplinary action for alleged collateral misconduct, the commander must assess, in consultation with the command's servicing judge advocate, the alleged collateral misconduct against mitigating and aggravating circumstances.

**Section E: Commander Referral(s) Made and Other Action(s) Taken**

The Safe-to-Report policy does not preclude the commander from taking non-disciplinary administrative action such as referrals to substance abuse screening, or temporarily suspending access to critical positions, such as Drill Sergeant, Recruiter, Instructor, Personnel Reliability Program (PRP) duty, Security Force/Law Enforcement, etc.).

**Section F: Date Disciplinary Action Concluded / Date of Decision to Not Take Disciplinary Action**

mm/dd/year format; an accurate response to block 9a or 9b is important for statistical reporting to the Department of Defense.

**Section G: Reporting Command Information**

See Service instructions for who is responsible for completing this form.