

# COMMANDERS AND COMMANDING OFFICERS: NAVY'S SAFE-TO-REPORT POLICY



## NAVY SEXUAL ASSAULT PREVENTION & RESPONSE PROGRAM, OPNAV N170A

### WHAT IS THE SAFE-TO-REPORT POLICY?

The fear of punishment for collateral misconduct is one of the most significant barriers to victims reporting sexual assault. The National Defense Authorization Act (NDAA) for Fiscal Year 2021 mandates that DoD and military departments prescribe in regulation a Safe-to-Report policy that formulates the handling of minor collateral misconduct involving a member of the Armed Forces who is the alleged victim of sexual assault. DoD guidance states that a Service member victim of an alleged sexual assault for minor misconduct shall NOT be disciplined.

The Office of Special Trial Counsel (OSTC) will assess the alleged collateral misconduct first. When OSTC does not exercise authority over the alleged collateral misconduct, or when OSTC defers, the commanding officer, with guidance from their staff judge advocate, will make the assessment. OSTC and the commanding officer are both required to follow the Safe-to-Report Policy. For more information, refer to Enclosure 5, section 9 of DoD Instruction 6495.02 Vol 1, "Sexual Assault Prevention and Response (SAPR) Program Procedures."

### COMMANDER'S ROLE

When OSTC defers, commanding officers, in collaboration with their staff judge advocates, must determine whether the alleged collateral misconduct is "minor" or "non-minor" by assessing the alleged collateral misconduct against mitigating circumstances and aggravating circumstances.

- 1 Reference Article 15 Criteria** Reference criteria providing guidance on the implementation of Article 15 of the Uniform Code of Military Justice (UCMJ) in paragraph 1.e of Part V of the Manual for Courts-Martial (MCM).
- 2 Assess AGGRAVATING Circumstances** Increase the gravity of the alleged collateral misconduct or its impact on good order and discipline.
- 3 Assess MITIGATING Circumstances** Decrease the gravity of alleged collateral misconduct, its impact on good order and discipline, and concern that it may be service discrediting.
- 4 Make Final Determination on Collateral Misconduct**  
"Minor" collateral misconduct: Triggers Safe-to-Report Policy Protections, individual shall NOT be disciplined for the minor collateral misconduct.  
"Non-minor" collateral misconduct: Safe-to-Report Policy protections do not apply, and the victim could be subject to disciplinary actions.
- 5 NON-DISCIPLINARY ACTION** The Safe-to-Report Policy does not preclude the commanding officer from taking non-disciplinary action, such as referrals to substance abuse screening or temporarily suspending access to critical positions, such as those in the personnel reliability program.

### MITIGATING CIRCUMSTANCES:

Victim's age and military experience level

Whether the suspect is in a position of authority over the victim or a higher grade than the victim

Whether the suspect engaged in actions to stalk, harass, haze, coerce, and/or otherwise influence the victim to engage in sexual behavior

Whether the alleged collateral misconduct was known to command prior to the report of sexual assault

If the alleged collateral misconduct was not known, the likelihood that it would have been discovered

Victim engaging in misconduct after the sexual assault, which may be related to symptoms of exposure to trauma (for example: the victim engaged in underage drinking as a coping mechanism to alleviate sexual assault trauma symptoms)

### AGGRAVATING CIRCUMSTANCES:

Conduct/misconduct resulted or imminently threatened to result in failure of a specified military mission or objective

Conduct/misconduct threatened the health and safety of any person, not including acts of self-harm or acts of self-defense against the alleged perpetrator(s) of an assault

Conduct/misconduct resulted in significant damage to government property, or the personal property of others, except when such damage was the collateral result of an assault and/or resulted from an act of self-defense