



Changes to Military Justice in LSAM, Part I: Special Victim Cases, Processes, and Reporting

Purpose

This Practice Advisory summarizes changes in the pending Legal Services Administration Manual (LSAM) - the forthcoming successor instruction to the Manual for Legal Administration, MCO P5800.16A. Part I concerns the processing of special victim cases in the Marine Corps, and announces the publication of a revised Sexual Assault Disposition Report form. Part II will address additional new provisions in Volume 1, Chapter 3 of the LSAM, to include searching privileged office spaces, advice to law enforcement, and discovery.

The anticipated publication date of the LSAM is 1 May 2015. Until publication, the Staff Judge Advocate to the Commandant of the Marine Corps (SJA to CMC) directs implementation of the guidance found in Part I of this Practice Advisory. A copy of the pending LSAM may be found on SJA to CMC's secured portal.

Special Victim Case Processing

Special victim cases require additional tracking, processing, and reporting not found in non-special victim cases. The below describes these additional requirements from initial report to post-trial actions.

- **Special Victim Cases:** Special victim cases are those cases with alleged violations of UCMJ Articles 118, 119, 119a, 120, 120b, 125 (with a child or forcible), 128 (domestic violence involving aggravated assault or child abuse), 134 (child pornography or assault with intent to commit the previously listed articles), or 80 (attempts to commit the previously listed articles). All special victim cases will be tried by a complex trial team with a Special Victim Qualified Trial Counsel (SVTC) serving as the lead trial counsel. *LSAM, Para 3113.*
- **Case Management System (CMS):** CMS will be used to track military justice cases from notification to the Legal Services Support Section (LSSS) or Legal Services Support Team (LSST) by a Military Criminal Investigative Organization (MCIO) of a special victim case until conclusion of the case. *LSAM, Para 3108.*
- **Consultation with NCIS within 48 Hours:** The regional trial counsel (RTC) will ensure that SVTC meet or consult with NCIS Special Victim Investigation Prosecution (SVIP) members within 48 hours after designation of a special victim investigation and meet or consult with NCIS at least monthly to assess the progress of investigations and prosecutions. *LSAM, Para 3202.*
- **Sexual Assault Initial Disposition Authority (SA-IDA):** The withholding of initial disposition authority to the SA-IDA, an O-6 Special Court-Martial Convening Authority (SPCMCA), or higher, applies to the following offenses: rape, sexual assault, aggravated sexual contact and abusive sexual contact in violation of Article 120, UCMJ; rape of a child, sexual assault of a child, and sexual abuse of a child in violation of Article 120b, UCMJ; forcible sodomy in violation of Article 125, UCMJ; and attempts to commit those offenses in violation of Article 80, UCMJ. Before a SA-IDA makes an initial disposition decision under RCM 306, the SA-IDA must consider the victim's preference, review the report of investigation, and, if applicable, the Article 32 report, and consult with his or her SJA. *LSAM, Para 3115.*

- **Prosecution Merit Memorandum (PMM):** Before the SJA provides advice to the SA-IDA on an offense, he or she must receive a PMM from the servicing LSSS unless there is no UCMJ jurisdiction over the accused. The PMM must be written by a SVTC. The memorandum will discuss the relative strengths and weaknesses of the case and provide a recommended disposition of the case. After submission to the SJA, the PMM must be uploaded into CMS. *LSAM, Para 3115.*
- **Consultation Regarding Victim's Preference in Prosecution Venue:** For cases that occur within the United States, before the SA-IDA makes the initial disposition decision, he or she must consider the victim's preference on whether the offense should be prosecuted by court-martial or in a civilian court with jurisdiction over the offense. If the victim expresses a preference that the offense be prosecuted in a civilian court with jurisdiction over the offense, the SJA shall ensure that the appropriate civilian authority is notified of this preference. While persuasive, the victim's preference is not binding on the SA-IDA and, in appropriate cases, the SA-IDA may take initial disposition regardless of the victim's preference. Following notification to the appropriate civilian authority, the SA-IDA is responsible for notifying the victim if the convening authority learns of any decision by the civilian authority to prosecute or not prosecute the offense in a civilian court. *LSAM, Para 3115.*
- **Sexual Assault Disposition Report (SADR):** The SA-IDA memorandum will no longer be required. The revised SADR form combines the SA-IDA memorandum and SADR form requirements by adding a section for the SA-IDA to describe the documents reviewed and consultation received in making his or her decision. It also includes a block for the SA-IDA to digitally sign. No later than two business days after final disposition of a sexual assault case, a SADR form will be completed by the cognizant SA-IDA and submitted to JMJ. The default SA-IDA is the O-6 SPCMCA (or higher) in the chain of command of the reported assailant if the assailant is subject to the UCMJ or a member of the reserve component. If the reported assailant is not subject to the UCMJ or a member of the reserve component, the SA-IDA in the chain of command of the reported victim will be responsible for completing and submitting the SADR form. An updated SADR form is located on the SJA to CMC's public webpage under JAD forms. SADR forms should be generated from the website each time it is necessary to submit a SADR form. *LSAM, Para 3115.*
- **Elevated Review of Disposition Decisions by Deputy Director, Judge Advocate Division, Military Justice and Community Development (JAD)(MJCD):** In any case involving rape or sexual assault in violation of Article 120, UCMJ, forcible sodomy in violation of Article 125, UCMJ, or attempts to commit any of these offenses in violation of Article 80, UCMJ, which has been reviewed by the next superior commander (after the SJA pursuant to Article 34 recommended a sex-related offenses not be referred and the convening authority did not refer) and a sex-related offense is not referred to a court-martial, the detailed trial counsel may request that Deputy Director, JAD MJCD review the case file and determine whether to seek Secretary of the Navy review of the case file. The detailed TC shall forward this request through the Regional Trial Counsel (RTC). If the Deputy Director, JAD, MJCD determines the case has prosecutorial merit, Deputy Director, JAD, MJCD shall forward the case file to the Secretary of the Navy for review. *LSAM, Para 3115.*

Special Victim Personnel

- **Legal Services Support Team OIC/RTC Role:** The LSAM clarifies the responsibility for oversight of trial services within the LSSA. The LSST OIC is directly responsible for the provision and supervision of all trial services to commands supported by the LSST, unless the case is detailed by the RTC. The RTC's supervisory requirements are narrowed to those cases where he or she details the trial counsel. *LSAM, Para 3201.*
- **Special Victim Qualified Trial Counsel:** Trial Counsel may not serve as a SVTC if the trial counsel has a conviction for, a substantiated incident of, or is currently facing an open investigation for, sexual assault, domestic violence, child abuse, or any other felony-level offense. SVTC must meet the following qualifications:

(1) Be a General Court-Martial Qualified Trial Counsel (served as a trial counsel for six months, among others); (2) Demonstrated to the LSSS OIC's satisfaction that the TC possesses the requisite expertise, experience, education, innate ability, and disposition to competently prosecute special victim cases; (3) Prosecuted a contested special or general court-martial in a special victim case as an assistant trial counsel; (4) Attended an intermediate level trial advocacy training course for the prosecution of special victims cases (e.g., Prosecuting Alcohol Facilitated Sexual Assaults, TCAP Prosecuting Special Victim Cases Course); and (5) Received recommendations, in writing, from their STC, RTC, and, when applicable, LSST OIC. This paragraph also outlines the qualifications for a Special Victim Qualified RTI and Paralegal. *LSAM, Para 3206.*

- **Victim's Legal Counsel (VLC):** Victims of sexual assault and other crimes under the UCMJ may seek assistance from a VLC as permitted by 10 U.S.C. §§ 1044, 1044e, and 1565b, the Manual of the Judge Advocate General and pursuant to guidance published by the OIC, Victims' Legal Counsel Organization. *LSAM, Para 5003.*
- **Appointment of Article 6b Victim Representative:** Prior to referral of charges, the Convening Authority may appoint an individual to assume the rights of a victim who is incompetent, incapacitated, deceased, or a non-service member under 18 years of age. The representative is appointed for the sole purpose of assuming the legal rights of the victim under Article 6b, UCMJ, and is not a substitute for victims' legal counsel, victim advocate, or other victim services providers. *LSAM, Para 3114.*
- **Preliminary Hearing Officer (PHO) Qualifications:** Beyond meeting the general requirements for a PHO - in a special victim case - a judge advocate below the grade of O-4/Major may not be detailed as a PHO unless he or she has previously acted as a trial counsel, assistant trial counsel, defense counsel, associate defense counsel, or assistant defense counsel in at least one contested SVIP case. The PHO in a special victim case must be a judge advocate. *LSAM, Para 3112.*

Special Victim Post-Trial Review

- **Victim Record of Trial:** In preparing the record of trial for a qualifying victim, the post-trial review officer must redact all information that would unlawfully violate the privacy interests of any party, to include those afforded by the Privacy Act, 5 U.S.C. § 552a and SECNAVINST 5211.5E. *LSAM, Para 3408* provides a list of the information that must be redacted.
- **Requests for Audio Recordings of Courts and Boards:** Audio recordings of courts-martial, administrative separations boards, and boards of inquiry as a general rule will not be released unless provided for under law. *LSAM, Para 3409.*

Enclosures: (1) Revised SADR form: Download from <http://www.hqmc.marines.mil/sja/JADForms.aspx>
(2) Special Victim Case requirements chart – illustrating differences between SVIP cases

Points of Contact: Military justice questions may be directed to the Head, JMJ, LtCol Angela Wissman, at angela.wissman@usmc.mil or 703-693-9005; the OIC, TCAP, Maj Mark Sameit, at mark.sameit@usmc.mil or 703-693-8955 or the Policy and Legislation Deputy, Maj Robles, at benjamin.robles@usmc.mil.

USMC Special Victim Cases

- USMC: Art. 118, 119, 119a, 120, 120b, 125 (with child or forcible), 128 (DV involving aggravated assault or child abuse), 134 (child porn or assault w/ intent to commit previously listed), or 80 (attempts to commit previously listed) (LSAM Vol I, sec. 3113)
- Special Victim Qualified trial counsel is detailed lead TC on case (3206.3)
- Qualified Art 32 PHO detailed to case (3112)
- Enter case into CMS (3108.2) upon notification by MCIO

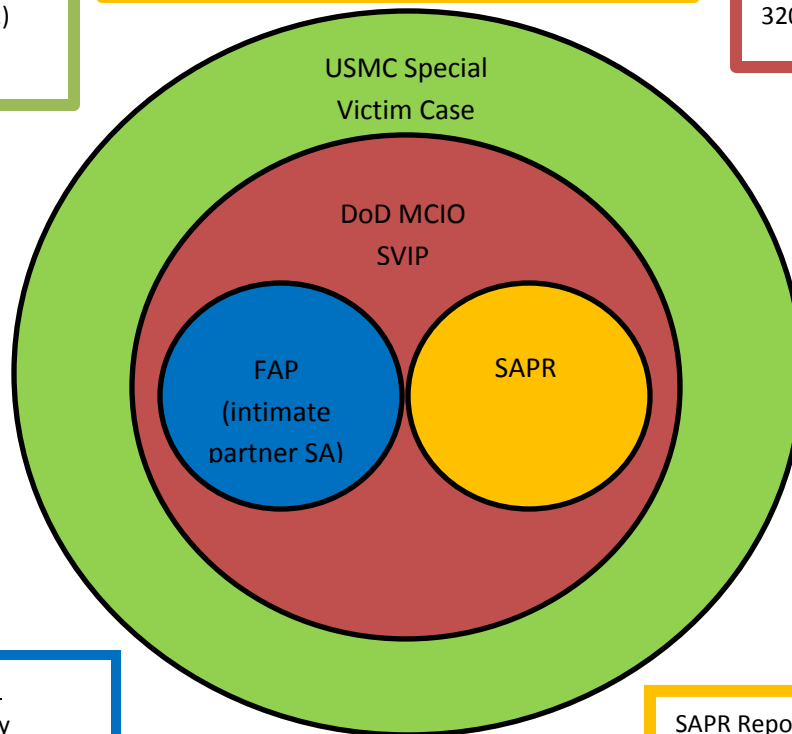
Special Victim Case Requirements

Sexual Assault Case Requirements

- Art 120, 120b, 125 (with child or forcible), or 80 (attempts to commit) (3115.1)
- SAIDA consults with SJA and considers victim preference before making RCM 306 initial disposition decision (3115.1&3)
- SJA obtains written PMM before providing disposition advice (3115.2) and PMM uploaded into CMS.
- Review if non-referred after Art 34 advice (NDAA FY14 and 15)(3115.5)

MCIO SVIP Cases

- MCIO: Art. 120, 125, 120b, 128 (child or domestic abuse w/ force likely to cause grievous bodily harm) (DODI 5505.19)
- MCIO must notify the responsible legal office within 24 hours of determining that an allegation meets the SVIP criteria
- SVTC will consult with MCIO SVIP members within 48 hours after designation of an offense as an SVIP offense (meet monthly to assess case) (DTM14-003)(LSAM 3202.a.3.I)



FAP Reporting (MCO 1754.11)

- SIR submitted if death, injury requiring hospitalization or permanent disability involving a spouse, child or intimate partner
- FAP provides victim advocate and counseling

FAP On-Going Requirements

- Installation commander and installation SJA must attend quarterly Family Advocacy Council (FAC) meeting
- Installation commander, O-5 unit commander, and installation SJA must attend IDC meetings
- Monthly clinical case staff meeting to make treatment recommendations to command.
- Final disposition: SADR form uploaded into CMS (3115.4)

Administrative Requirements

- MPO into NCIC (10 U.S.C. 1567a)
- OMPF review by CO for sexual assault offense history (MARADMIN 416/14)
- Sex Offender Registration (DoDI 1325.07 App. 4)
- Lautenberg Amendment (18 U.S.C. 922(g))
- Mandatory Administrative Processing (DoDI 1332.14, 1332.30)

SAPR Reporting (MCO 1752.5B)

- SIR must be submitted in every case by (in order of precedence) – 1) victim's CO, 2) offender's CO, 3) installation CO (if on base and no service member involvement) (MCO 3504.2A)
- SAIRO (8 day report)

SAPR On-Going Requirements

- Commander and SJA must attend monthly SAPR case management group (CMG) meeting if have an open case – CO will brief victim within 72 hours of CMG.
- Ensure victim receives monthly reports regarding status of the investigation
- Entry into DSAID
- Final disposition: SADR form uploaded into CMS (3115.4)

Definitions

Family Advocacy Program (FAP) – Sexual assault cases under FAP include victims of crimes committed by a: (1) current or former spouse of the victim; (2) person with whom the victim shares a child in common; or (3) current or former intimate partner with whom the victim shares or has shared a common domicile. FAP cases also include child victims.

Sexual Assault Prevention and Response (SAPR) – SAPR reporting is required for non-FAP adult cases involving sexual assault committed by a service member or when the service member is the victim. Service members who were victims of sexual assault PRIOR to enlistment or commissioning are considered SAPR cases as well.

MCIO Special Victims Investigation and Prosecution (SVIP) “Covered Offense” – The designated criminal offenses of adult sexual assault, child abuse involving child sexual assault and/or aggravated assault with grievous bodily harm, and domestic violence involving sexual assault and/or aggravated assault with grievous bodily harm.

Defense Sexual Assault Incident Database (DSAID) – In accordance with section 563 of Public Law 110-417, DSAID shall support Military Service SAPR program management and DoD SAPRO oversight activities. It shall serve as a centralized, case-level database for the collection and maintenance of information regarding sexual assaults falling under the SAPR program. DSAID will include information, if available, about the nature of the assault, the victim, services offered to the victim, the offender, and the disposition of the reports associated with the assault. DSAID will serve as the DoD's SAPR source for internal and external requests for statistical data on sexual assault. SARCs enter initial case information, then legal officers enter disposition information.

* SADR without Jurisdiction over the accused: a SADR is required to be submitted by the victim’s commander when the accused is unknown or outside of UCMJ jurisdiction

References

10 U.S.C. § 1567A(MPOs entered into NCIC)

DODI 5505.18 (Investigation of Adult Sexual Assault in DOD)

DODI 5505.19 (SVIP capability in MCIOs)

DODD 6400.1 (FAP)

DODI 6400.06 (FAP - DV)

DODI 6495.02 (SAPR)

DoD (P&R) Memo of 10 Aug 14 (FAP reporting)

DTM 14-003 (Special Victim Investigation/Prosecution)

DTM 14-007 (Special Assault Incident Response Oversight Report)

SECNAVINST 5430.107 (NCIS)

MCO 1752.5B (SAPR)

MCO 3504.2A, Operations Event/Incident Report (OPREP-3)