

# JUSTICE CHRONICLES

REGION LEGAL SERVICE OFFICE SOUTHWEST

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## New SAPR Instruction

**Megan Rutkowski, RLSO SW Legal Intern**

A new Navy Sexual Assault Prevention and Response (SAPR) instruction, OPNAVINST 1752.1c, was released 13 August 2015. It revises the policies and standards used to aid in the prevention of sexual assault throughout the Navy. One of the most important additions is the requirement that commanders consult a judge advocate prior to the disposition of any sexual assault case. Sexual assault is defined as an intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority; or when the victim does not, or cannot, consent. This term includes a broad category of offenses consisting of specific UCMJ crimes: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy, or attempts to commit any of these offenses.

Within 30 days of assuming command, all Commanders, COs, Deputy Commanders, XOs, OICs, Assistant OICs, and Senior Enlisted Leaders must be trained in the requirements of Military Rule of Evidence 514 as it pertains to privilege, retaliation, sexual assault, initial disposition authority, and case disposition reporting requirements in addition to obtaining a one-on-one SAPR brief by the SARC.

Below is a selected list of the key regulations:

**Initial Reporting and Investigation:**

- OPNAVINST 1752.1c reinforces the rule that all allegations of sexual assault must be immediately reported to the Naval Criminal Investigative Service (NCIS) or another Military Criminal Investigative Organization (MCIO). Internal command inquiries or investigations regarding such allegations may not be conducted until an initial report is made to an MCIO and MCIO or civilian law enforcement declines to investigate.

- The naval command with cognizance over the victim is responsible for forwarding required personnel incident reports and filing the SITREP.

**Victim Rights:**

- Victims must immediately be offered assistance from a SAPR Victim Advocate (VA). Additionally, the SAPR VA must immediately notify the Sexual Assault Response Coordinator (SARC).
- Victims have the option to report assaults to other COs or the Inspector General if the offender is the victim's CO or an individual within the chain of command.
- Instead of the victim being moved, the Alleged Offender Checklist codifies a CO's authority to move an alleged offender.
- Requires flag officer review for any proposed involuntary separation of a Service member victim who is recommended for involuntary separation within 1 year of final disposition of a reported sexual assault.

*OPNAVINST 1752.1c is a complete revision and should be reviewed in its entirety.*

**Other Requirements:**

- New rank restriction in place on roving barracks patrols. Roving patrols will be led by an E-7 or experienced officer (O-3 or above) and augmented with E-6 personnel.
- Within 30 days of a service member reporting to a permanent assignment, Commanders, COs, and OICs must review official military personnel files for entries in designated filed code 91 or NAVPERS 1070/887, Sex Offender Accountability Record (SOAR).

For further explanation and clarification of SAPR policy, contact a staff judge advocate or RLSO SW Command Services at (619) 556-5977.

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**Need to Know:****Victim Privilege Under Military Rule of Evidence 514**

**LT Nadine N. Jenkins, RLSO SW**

Military Rule of Evidence (M.R.E) 514 creates a rule of privilege applicable to victims of sexual assault. Under M.R.E. 514, a victim has the privilege to refuse to disclose and prevent any other person from disclosing confidential communications made with his/her victim advocate or DoD Safe Helpline staff when those conversations:

- Are made for the purpose of facilitating advice or supportive assistance to the victim, **and**
- Are not intended to be disclosed to a third party other than those to whom disclosure is made in furtherance of advice or assistance.

Additionally, a victim advocate, including the Sexual Assault Response Coordinator (SARC), can refuse to disclose these conversations on behalf of the victim.

With this privilege, statements between a victim and victim advocate are given similar protection as statements between a patient and a mental health professional.

Note: There are some limited exceptions to this rule.

Consult with a JAG if you have any further questions.

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## Navy's PFA Changes

Megan Rutkowski, RLSO SW Legal Intern

The new NAVADMIN 178/15 delineates significant changes to the Navy's Physical Readiness Program. The updated program implements a series of short and long term changes in order to strike a better balance between health and physical readiness. COs must now conduct PFA spot checks.

### **CURRENT PENDING ADMINISTRATIVE SEPARATIONS**

Effective immediately, a Sailor subject to an approved/pending administrative separation due to multiple PFA failures (BCA or PRT), who has not yet been separated, shall be offered an opportunity to be retained. Sailors who desire to be separated will continue processing.

- Sailors who desire to be retained must:
  - Notify their commanding officer
  - Be medically cleared to participate in the PRT, and
  - Pass either a mock or official PRT *before* 1 December 2015
- Sailors currently pending separation who do not meet all of the above criteria will continue to be processed for separation.
- Policy of separation for 3 failures in the most recent 4-year period will continue through 31 December 2015.

**2015 (CYCLE 2 EFFECTIVE 1 JULY 2015 TO 31 DECEMBER 2015)**

Current standards will remain in place, and BCA measurements will still be taken according to the old standards. However, failing measurements will not count as an overall PFA failure even though they will be recorded.

- Sailors who fail the BCA in cycle 2 2015 will still take the PRT if medically cleared.
- PRT failures in cycle 2 2015 will be recorded in PRIMS as PFA failures. Those who fail will be enrolled in FEP and nutritional counseling.
- A failure of any portion of the PRT during Cycle 2 2015 will count as a failure towards administrative separation.

**2016 (CYCLE 3 EFFECTIVE 1 JANUARY 2016)**

All PFA (BCA or PRT) failures in the most recent 3-year period will be reset to a single failure. A Sailor's most recent failure will carry over to Cycle 1 2016

- A Cycle 2 2015 BCA failure will not count in this carry-over system
- A Cycle 2 2015 PRT failure *will* count as a failure in the carry-over system

**NEW ADSEP PROCEDURE:**

Under the new system, effective 1 Jan 2016, a Sailor who fails **two** PFA cycles in the most recent 3-year period will be processed for administrative separation.

## Permitted and Prohibited Political Activity for Service Members

LTJG Lauren Yutchishen, RLSO SW

Members of the Armed Forces reaffirm their vow to protect citizens' civic rights each time they put on their uniform. While the Department of Defense (DoD) has always encouraged service members to carry out their own obligations of citizenship, it can be difficult balancing the exercise of personal civic rights while upholding military obligations. As the country heads into a presidential election year, it is important for service members to follow the DoD guidelines that expressly state what is permitted and prohibited political activity.

Permitted Political Activity: A member of the Armed Forces on active duty may:

1. Register, vote, and express personal opinions on political candidates and public issues;
2. Display a bumper sticker on a member's private vehicle;
3. Write letters to the editor expressing personal views (required disclaimer that the views are those of the individual and not DoD if identified as military);

4. Make permissible monetary contributions to a political organization, party, or committee.

**When not in uniform:** A member of the Armed Forces on active duty may join a political club (even if partisan) and *attend* political meetings or rallies.

**When not in uniform and when no appearance of sponsorship or endorsement can be reasonably drawn:** A member of the Armed Forces on active duty may *attend* a partisan or nonpartisan political fundraising activity, meeting, rally, or debate.

Prohibited Political Activity: A member of the Armed Forces on active duty shall not:

1. **Regardless of in uniform or not:** *Participate* in partisan political fundraising activities, rallies, conventions, management of campaigns, or debates;
2. Solicit votes for a particular candidate;
3. Publish partisan political articles or letters that solicit votes for or against a partisan political party, candidate, or cause. Letters to the editor may be allowed as noted above;
4. Participate in any radio, television, or other program or group discussion as an advocate for or against a partisan political party, candidate, or cause;
5. March or ride in partisan campaigns;
6. Engage in fundraising activity for any political candidate or cause in Federal offices, facilities, or on military reservations;
7. Work for a partisan political committee or candidate during a campaign, on election day or while closing out a campaign;
8. Display a partisan political sign visible to the public at one's residence on a military installation;
9. Make a campaign contribution to or receive or solicit a campaign contribution from any other member of the Armed Forces on active duty.

*The DoD has a longstanding policy of encouraging military personnel to carry out the obligations of citizenship. Refer to DoDD 1344.10 for the complete guideline regarding permitted and prohibited political activity.*

For further questions involving permitted and prohibited political activities, contact a Judge Advocate.

## Results of Trial 4th Quarter 2015

**The following reports the results of every General and Special Court-Martial convened by Navy Region Southwest from June - August 2015.**

### General Court-Martial

- Navy E-5 was tried for attempted sexual assault and sexual assault. On 5 June 2015, the panel of members returned a verdict of guilty to sexual assault and sentenced him to no punishment.
- Navy E-5 was tried for aggravated sexual abuse of a child and abusive sexual contact with a child. On 9 June 2015, the panel of members returned a verdict of guilty to the charge and sentenced him to a Dishonorable Discharge, reduction in rank to E-1, and 24 months confinement.
- Navy E-5 pled guilty to conspiracy to commit larceny and larceny. On 30 June 2015, the military judge sentenced him to a Bad Conduct Discharge, reduction in rank to E-1, a fine of \$5,000, and 17 months confinement.
- Navy O-3 pled guilty to conspiracy to commit larceny, wrongful selling of military property, and larceny. On 8 July 2015, the military judge sentenced him to a reprimand, a fine of \$23,000, and 364 days confinement.
- Navy E-3 pled guilty pursuant to a pretrial agreement to assault consummated by a battery. On 6 August 2015, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rank to paygrade E-1, and confinement for 10 months. Pursuant to the pretrial agreement, confinement greater than 6 months is to be suspended. The suspended confinement may be served if the service member violates the terms of the pretrial agreement.

### Special Court-Martial

- Navy E-4 pled guilty to conspiracy to commit larceny and bank fraud. On 2 June 2015, the military judge sentenced him to reduction in rank to E-2 and 95 days confinement
- Navy E-5 pled guilty to absence without leave. On 9 June 2015, the military judge sentenced him to reduction in rank to E-4 and 60 days confinement.
- Navy E-5 pled guilty to dereliction of duty, larceny, and wrongful appropriation. On 29 June 2015, the military judge sentenced him to reduction in rank to E-3, a fine of \$2,000, and 89 days confinement.

- Navy E-2 pled guilty to restriction breaking. On 1 July 2015, the military judge sentenced him to forfeiture of \$500 per month for 1 month, reduction in rank to E-1, and 25 days confinement.
- Navy E-5 pled guilty to false official statements, damaging non-military property, adultery, and disorderly conduct. On 2 July 2015, the military judge sentenced him to reduction in rank to E-4 and 20 days confinement.
- Navy E-3 pled guilty to assault. On 16 July 2015, the military judge sentenced him to a reprimand and 45 days restriction.
- Navy E-4 pled guilty to conspiracy to commit larceny and larceny. On 21 July 2015, the military judge sentenced him to reduction in rank to E-3, a fine of \$2,000, and 45 days confinement.
- Navy E-3 pled guilty pursuant to a pretrial agreement to assault consummated by a battery. On 4 August 2015, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rank to paygrade E-1, and confinement for 75 days. The pretrial agreement has no effect on his sentence.
- Navy E-6 pled guilty pursuant to a pretrial agreement to larceny and wrongful appropriation. On 5 August 2015, the military judge sentenced him to be discharged with a Bad Conduct Discharge, reduction in rank to paygrade E-3 and confinement for 6 months. Pursuant to the pretrial agreement, the Bad Conduct Discharge is to be suspended until the administrative separation process is completed and he has received his DD214. Confinement greater than 75 days is to be suspended. Automatic forfeitures will be deferred provided that he establish and maintain a dependent's allotment in the total amount of the deferred forfeiture amount during the entire period of deferment. Adjudged reduction in rank is to be disapproved. Automatic reduction in pay grade will be deferred for 3 months and then remitted. The suspended sentences may be executed if the service member violates the terms of the pretrial agreement.
- Navy E-5 pled guilty to wrongful use of a methamphetamine. On 6 August 2015, the military judge sentenced him to a reprimand, to be discharged with a Bad Conduct Discharge, reduction in rank to paygrade E-3, and 45 days confinement. Pursuant to the pretrial agreement, the Bad Conduct discharge is to be suspended. Confinement greater than time served will be suspended from the period of confinement served plus 6 months thereafter. The suspended sentence may be executed if the service member violates the terms of the pretrial agreement.
- Navy E-3 pled guilty pursuant to a pretrial agreement to larceny and wrongful appropriation. On 7 August 2015 the military judge sentenced him to be discharged with a Bad Conduct Discharge, to forfeit \$1,292 pay per month for 12 months, reduction in rank to paygrade E-1, and confinement for 12 months. Pursuant to the pretrial agreement, confinement greater than 89 days is to be suspended. The suspended confinement may be served if the service member violates the terms of the pretrial agreement.

- Navy E-7 pled guilty to a pretrial agreement to assault and disorderly conduct drunkenness. On 20 August 2015 the military judge sentenced him to forfeit \$1,000 per month for 2 months, restriction for 45 days, and hard labor without confinement for 45 days. The pretrial agreement has no effect on his sentence.
- Navy E-4 pled guilty to a pretrial agreement to assault and disorderly conduct drunkenness. On 24 August 2015 the military judge sentenced him to forfeit \$500 per month for 4 months, restriction for 45 days, and hard labor without confinement for 45 days. The pretrial agreement has no effect on his sentence.

## LEGAL ASSISTANCE

For assistance with consumer affairs, family law, wills, or powers of attorney please call (619) 556-2211 to make an appointments for these services. Emergency walk-in clients will be seen on a case by case basis. For power-of-attorney and notary services, walk-in hours are Monday, 0800-1100 and 1245 -1500, Tuesday - Thursday from 0845-1145 and 1245-1500 and Fridays from 0900-1100. All customers must present two forms of identification for services:

1. Valid military identification card
2. Valid state-issued driver's license or state-issued identification card, or valid United States Passport.

**Mailing Address:**  
3395 Sturtevant St.,  
Suite 9, San Diego,  
CA 92136

**Commercial Phone Numbers:**  
(619) 556-0049  
DSN: 526-0049  
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Monday- Friday

## SOUTHWEST REGION STAFF JUDGE ADVOCATE DIRECTORY

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