

THE COUNSELOR

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UPDATES TO SEXUAL ASSAULT REPORTING REQUIREMENTS

The Navy recently adopted two additional reporting requirements for sexual assault allegations: the Sexual Assault Incident Response Oversight (SAIRO) 8-day Report and the Sexual Offense Accountability Record (SOAR).

Updates to Sexual Assault Reporting Requirements

NAVADMIN 014/15 implemented the Sexual Assault Incident Response Oversight (SAIRO) 8-day Report. The SAIRO must be submitted via SITREP within eight calendar days following an earlier Navy Blue or Navy Unit SITREP for an adult sexual assault. The Navy is currently developing a fillable form that will replace the SITREP format later this year. The SAIRO is in addition to, not in place of, the existing reporting requirements.

For cases involving a service member victim, the victim's command is responsible for submitting the SAIRO. For cases involving a civilian victim and service member alleged offender, the alleged offender's command is responsible for submitting the report. This report fulfills multiple functions, including accounting for the provision of necessary support to an assault victim, verifying referral of the sexual assault allegation to criminal investigators, and notifying the chain of command.

Privacy is an important aspect of the SAIRO. Information in a SAIRO must be distributed only to personnel with an official need-to-know. Any information that might reasonably lead to the personal identification of the victim or alleged offender must be excluded. Depending on unit size and gender make-up, the gender, rank, and grade of the involved individuals may not be appropriate.

The Sexual Offense Accountability Record (SOAR), NAVPERS 1070/887, is a form added to a service member's Official Military Personnel File (OMPF) upon a court-martial conviction or award of non-judicial punishment (NJP) for certain sex-related offenses under the Uniform Code of Military Justice. NAVADMIN 025/15 requires SOARs to be submitted within 5 days of the adjudication of NJP or the completion of the NJP appeals process or within 5 days of a court-martial conviction. This requirement applies regardless of any recommendation for retention or separation from the Navy.

RECENT DEVELOPMENTS IN FEDERAL GENDER IDENTITY LAW

There have been several important developments in gender identity law over the last year. This article highlights several of those changes and their implications for federal employees and military members.

The Office of Personnel Management (OPM) has defined several of the core terms involved in this field of law. “Gender identity” is the individual’s internal sense of being male or female. A “transgender” individual is one whose gender identity is different than the sex assigned at birth. Some transgender individuals will “transition” from living and working as one gender to another; this transition may – but does not have to – include medical treatments such as counseling, hormone therapy, electrolysis, or reassignment surgery.

***Recent
Developments in
Federal Gender
Identity Law***

For federal employees, Executive Order 13672, signed by the President on 21 July 2014, prohibits discrimination based on sexual orientation and gender identity in federal employment and procurement. Federal employees who believe they have been discriminated against or harassed can file complaints with their supervisor, the NDW Equal Employment Opportunity (EEO) Office, or the Office of Special Counsel. The Equal Employment Opportunity Commission (EEOC) treats gender identity discrimination complaints as a form of sex discrimination under Title VII of the Civil Rights Act of 1964. Likewise, the Attorney General has interpreted Title VII to bar discrimination based on gender identity, including transgender status and the process of transitioning from one gender to another.

These changes do not apply to service members, however, as courts have ruled that Title VII does not apply to uniformed members of the armed forces. Under current law, Sailors cannot file an EEO complaint based solely on gender identity discrimination.

Transgender military members who are transitioning from one gender to the other have several restrictions to consider. Although there is no specific Navy policy or statute prohibiting cross-dressing in civilian clothes, service members remain subject to the Uniform Code of Military Justice and service uniform regulations. Members seeking civilian medical treatment as part of their transition must receive counseling from their assigned primary care manager or an appropriate military medical representative. In addition, they may require pre-approval from their Commanding Officer and a determination regarding the effect of the medical procedures on mission readiness and the ability of the member to perform their duties. These requirements are covered by the 4 December 2014 policy memo from Secretary of the Navy Ray Mabus on non-emergent self-referred civilian medical procedures.

In addition, Sailors diagnosed with gender identity dysphasias may be administratively separated under MILPERSMAN 1910-120 if the condition interferes with the performance of duties. Recent changes to DoD Instruction 1332.18 also create the possibility that such a disorder might be considered as a disability and referred to the Disability Evaluation System.

Any Commanding Officer with a transgender Sailor is encouraged to consult RLSO NDW and OPNAV N13 for further guidance on this constantly evolving field of law.

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RESULTS OF TRIAL, 2ND QUARTER 2015

Navy E-4 was sentenced to be confined for 3 years and discharged with a bad conduct discharge after being convicted of assault, 8 specifications of assault consummated by a battery, and 2 specifications of aggravated assault. This court was held on 19 March 2015.

*Results of Trial,
2nd Quarter 2015*

Navy E-6 was acquitted of failing to go to an appointed place of duty, 3 specifications of disobeying a petty officer, false official statement, and 2 specifications of disorderly conduct. This court was held on 12 March 2015.

Navy E-5 was sentenced to be confined for 1 year and to be discharged with a dishonorable discharge after being convicted of 3 specifications of abusive sexual contact. This court was held on 9 March 2015.

Navy E-6 was sentenced to reduction to paygrade E-1 and to be confined for 1 year after pleading guilty to fraud and false official statement. This court was held on 21 January 2015.

Navy E-7 was sentenced to reduction to paygrade E-5 and to be confined for 75 days after pleading guilty to providing alcohol to minors and assault consummated by a battery. This court was held on 9 January 2015.

OFFICER BOARD OF INQUIRY RESULTS, 2ND QUARTER 2015

Navy O-5 was ordered to show cause for retention due to misconduct: violations of UCMJ Articles 133 (conduct unbecoming an officer and gentleman) and 134 (fraternization); and substandard performance of duty: failure to conform to prescribed standards of military department. On 25 February 2015, the Board recommended separation.

*Officer Board of
Inquiry Results,
2nd Quarter 2015*

Navy O-3 was ordered to show cause for retention due to misconduct: violation of UCMJ Article 112a (wrongful use of marijuana); and substandard performance of duty: failure to conform to prescribed standards of military department. On 4 February 2015, The Board recommended separation.

Navy O-5 was ordered to show cause for retention due to misconduct: violation of UCMJ Article 134 (adultery); and substandard performance of duty: failure to conform to prescribed standards of military department. On 3 February 2015, the Board recommended retention.

Navy O-4 was ordered to show cause for retention due to misconduct: violations of UCMJ Articles 133 (conduct unbecoming an officer and gentleman) and 134 (drunk and disorderly conduct); and substandard performance of duty: failure to conform to prescribed standards of military department. On 21 January 2015, the Board recommended retention.

Navy O-6 was ordered to show cause for retention due to misconduct: violations of UCMJ Articles 92 (fraternization) and 134 (adultery); and substandard performance of duty: failure to conform to prescribed standards of military department and failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade. On 15 January 2015, The Board recommended separation and retirement at the paygrade of O-6.

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NO CHANGE TO FEDERAL MARIJUANA POLICY

Despite recent changes in D.C. law, the possession, sale, use, or distribution of Marijuana remains illegal for military members at all times and in all places. Marijuana also remains illegal anywhere on federal property, including all military installations and military housing facilities.

No Change to Federal Marijuana Policy

Although some states have decriminalized marijuana possession, the federal Controlled Substances Act is still in effect, criminalizing the use, possession, and distribution of marijuana. A 2013 Department of Justice memorandum states that prosecuting the possession of marijuana on federal property remains a priority.

In addition, federal employees, civilian or military, continue to be subject to their agency’s urinalysis standards. Military members who use or possess marijuana can be prosecuted under Article 112a of the Uniform Code of Military Justice. Offenders could face up to a dishonorable discharge and 5 years imprisonment if found guilty at a court-martial.

COMMAND SERVICES STAFF JUDGE ADVOCATE DIRECTORY

The mission of command services department is to provide prompt and effective legal services to commands throughout the Naval District Washington area of responsibility. The following is a list of contacts for each installation:

Command Services Staff Judge Advocate Directory

NSA WASHINGTON/WASHINGTON NAVY YARD
(202) 685-7046
(202) 685-7184

JOINT BASE ANACOSTIA-BOLLING
(202) 767-1767

NSA BETHESDA
(202) 767-1767

NSA ANNAPOLIS
(410) 293-9203

NAS PATUXENT RIVER
(301) 342-1934

NSA SOUTH POTOMAC
(301) 342-1934

COMMAND DUTY OFFICER: (202) 329-0249
E-MAIL: RLSO.NDW@NAVY.MIL

For NDW related issues, please contact:

*NAVAL DISTRICT WASHINGTON
Staff Judge Advocate
(202) 433-2424*

*Deputy Staff Judge Advocate
(202) 433-2423*

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