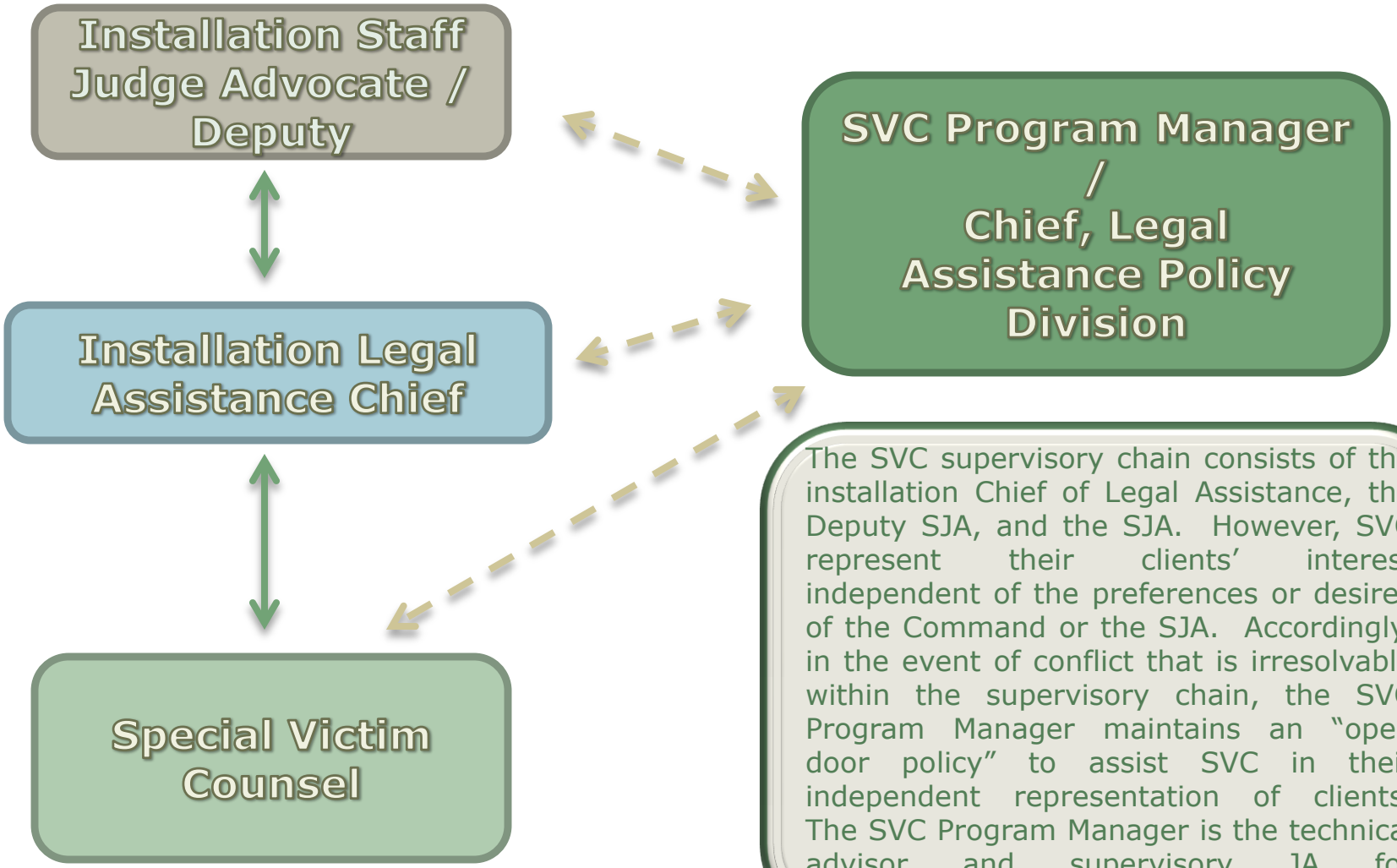
Army SVC Program Structure



The SVC supervisory chain consists of the installation Chief of Legal Assistance, the Deputy SJA, and the SJA. However, SVC represent their clients' interest independent of the preferences or desires of the Command or the SJA. Accordingly, in the event of conflict that is irresolvable within the supervisory chain, the SVC Program Manager maintains an "open door policy" to assist SVC in their independent representation of clients. The SVC Program Manager is the technical advisor and supervisory JA for professional responsibility per AR 27-26.

SECRETARY OF THE ARMY
WASHINGTON

07 MAY 2014

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2014-09 (Reserve Component Eligibility for the Special Victims' Counsel Program)

1. References:

a. National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 133-66, section 1716 (Designation and availability of Special Victims' Counsel for victims of sex-related offenses).

b. Memorandum, Secretary of Defense, Aug 14, 2013, subject: Sexual Assault Prevention and Response.

c. Department of Defense Instruction 1215.06 (Uniform Reserve, Training, and Retirement Categories for the Reserve Components), March 11, 2014.

d. Joint Publication 1-02, Department of Defense Dictionary of Military and Associated Terms, 8 November 2010 (as amended through 15 March 2014).

e. Army Regulation 27-3 (The Army Legal Assistance Program), 21 February 1996, including Rapid Action Revision issued 13 September 2011.

2. Pursuant to references 1a and 1b, The Judge Advocate General has implemented an Army Special Victims' Counsel Program. By this directive and effective immediately, I am ensuring that members of the Army National Guard and U.S. Army Reserve are eligible for the Special Victims' Counsel Program.

3. A reserve component Soldier (National Guard or Army Reserve) who is the victim of an alleged sexual assault, as defined in 10 United States Code (U.S.C.) section 1044e(g), which occurs while the Soldier or the alleged perpetrator is on active duty, full-time National Guard duty, performing inactive duty for training or performing inactive duty, as defined in references 1c and 1d, is entitled to the services of a Special Victims' Counsel as provided by 10 U.S.C. section 1044e. This includes, but is not limited to, reserve component Soldiers:

a. called or ordered and performing active duty for a period of 30 days or less;

b. performing training or other duty under 32 U.S.C. section 502;

c. performing service on funeral honors duty under 10 U.S.C. section 12503 or 32 U.S.C. section 115, to include when remaining overnight immediately before serving on funeral honors duty at or in the vicinity of where the Soldier was to serve the duty;

d. traveling directly to or from where that Soldier is to perform or has performed full-time National Guard duty, inactive duty for training or inactive duty, as defined in references 1c and 1d; or

e. remaining overnight immediately before the start of full-time National Guard duty, inactive duty for training or inactive duty, as defined in references 1c and 1d, or while remaining overnight between successive periods of such duty at or in the vicinity of the duty site.

4. Adult dependents of reserve component Soldiers will be entitled to the services of a Special Victims' Counsel as provided by 10 U.S.C. section 1044e if they are the victim of a sexual assault as defined in 10 U.S.C. section 1044e(g) and the alleged perpetrator is an active component Soldier or a reserve component Soldier serving on active duty or full-time National Guard duty, performing inactive duty for training, or performing inactive duty as defined in references 1c and 1d at the time of the alleged offense.

5. The scope of services provided to victims under this exception will be those set forth in 10 U.S.C. section 1044e(b)(1)–(9) and as further defined by The Judge Advocate General. Special Victims' Counsel services include assisting victims and representing their interests during military criminal and administrative proceedings against alleged perpetrators initiated as a result of the sexual assault. When the alleged offense is investigated and/or prosecuted by civil authorities, Special Victims' Counsel will not represent the victims before those civil investigative or prosecutorial agencies.

6. The Judge Advocate General is the proponent for this policy and will incorporate the provisions of this directive into the next revision of Army Regulation 27-3 as soon as possible. This directive will be rescinded upon publication of the revised regulation.

John M. McHugh

DISTRIBUTION:
Principal Officials of Headquarters, Department of the Army
(CONT)

SUBJECT: Army Directive 2014-09 (Reserve Component Eligibility for the Special Victims' Counsel Program)

DISTRIBUTION: (CONT)
Commander
- U.S. Army Forces Command
- U.S. Army Training and Doctrine Command
- U.S. Army Materiel Command
- U.S. Army Pacific
- U.S. Army Europe
- U.S. Army Central
- U.S. Army North
- U.S. Army South
- U.S. Army Africa/Southern European Task Force
- U.S. Army Special Operations Command
- Military Surface Deployment and Distribution Command
- U.S. Army Space and Missile Defense Command/Army Strategic Command
- U.S. Army Medical Command
- U.S. Army Intelligence and Security Command
- U.S. Army Criminal Investigative Command
- U.S. Army Corps of Engineers
- U.S. Army Military District of Washington
- U.S. Army Test and Evaluation Command
- U.S. Army Installation Management Command

Superintendent, U.S. Military Academy
Director, U.S. Army Acquisition Support Center
Executive Director, Arlington National Cemetery
Commander, U.S. Army Accessions Support Brigade
Commandant, U.S. Army War College
Commander, Second Army

CF:
Director, Army National Guard
Director of Business Transformation
Commander, Eighth Army
Commander, U.S. Army Cyber Command

SECRETARY OF THE ARMY
WASHINGTON

10 SEP 2014

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Army Directive 2014-23 (Conduct of Screening and Background Checks For Individuals Who Have Regular Contact With Children in Army Programs)

1. References. A complete list of references is at enclosure 1.

2. Purpose. This directive issues policy for screening and background check requirements for individuals who have regular contact with children in the execution and support of Army programs and activities. Everyone who regularly interacts with children must be of good character, law abiding and fit to have responsibility for children. The Army must ensure the health, safety and well-being of children and reduce the risk for child abuse and neglect in all Army programs and activities. Roles and responsibilities for conducting screening and background checks are at enclosure 2.

3. Policy

a. All individuals who regularly interact with children under 18 years of age in Army-sponsored and sanctioned programs are required to undergo specific initial background checks and periodic reverification. These individuals include Army employees (appropriated fund, nonappropriated fund and overseas foreign nationals); contractors (regular and recurring); military members of the active and reserve components; personnel who provide care in their homes (on or off a military installation) as part of an Army-sponsored or sanctioned program (family child care, foster care and respite care providers, as well as youth and adults living in these households); specified volunteers; and any other persons reasonably expected to have regular contact with children in the performance of their duties or services in an Army-sponsored or sanctioned program or activity, including a medical treatment facility.

b. Commands that provide child care services, as defined in Department of Defense (DoD) Instruction 1402.5 (Criminal History Background Checks on Individuals in Child Care Services), will designate a single entity (Commander Designated Entity) within their organization to be responsible for the initiation, coordination and tracking of background checks and for reviewing the results to identify whether they contain derogatory information. Commanders will not designate security specialists for this function. The command may use contractors to perform this function, however contractors are not authorized to perform inherently Governmental functions, such as rendering a determination on an individual's fitness for Army programs that have regular contact with children. The Commander Designated Entity will be supported by agencies that provide required background check data, as well as civilian and military personnel

offices; Family and morale, welfare and recreation personnel; medical personnel; and chaplains.

c. Individuals whose background checks reveal derogatory information will be vetted through a multi-tier, multidisciplinary review process in accordance with the guidance in this directive.

4. Process. Commanders are ultimately responsible for minimizing risk to children in the Army's care. This directive delineates roles and responsibilities for ensuring that initial screening and assessment and required background checks are conducted and properly adjudicated through a three-part process for all personnel identified in paragraph 3a.

a. Screening and Assessment. U.S. Army Civilian Human Resources Agency and/or the hiring/responsible organization (for example, Child, Youth and School Services; chaplains; or medical facility) are responsible for ensuring that an individual has the necessary skill sets for the position. Through a review of the application and related forms, personal interview and reference checks, they will assess the individual's eligibility, qualifications, temperament and suitability for working with children.

b. Background Checks

(1) The Commander Designated Entity is the office of primary responsibility for ensuring that background checks are conducted on the covered population. At the request of the hiring/responsible organization, the Commander Designated Entity will initiate required background checks. The Commander Designated Entity will track requests and, when completed, compile and review the results of the background checks to determine whether they contain derogatory information to be passed on to the commander. All organizations whose personnel have regular contact with children in Army Programs—including, but not limited to, the Provost Marshal/Director of Emergency Services; medical treatment facilities; Child, Youth and School Services; Army Substance Abuse Program; Chaplains; and Morale, Welfare and Recreation personnel, as well as civilian and military personnel offices—will work in close coordination with the Commander Designated Entity to accomplish this work. Specific requirements for background checks for covered individuals, including both initial checks and reverification requirements, are delineated at enclosures 3 through 5.

(2) The DoD Central Adjudication Facility (CAF) is responsible for making favorable suitability determinations in accordance with guidance from the Deputy Assistant Secretary of Defense (Civilian Personnel and Policy) (reference m). The DoD CAF will receive and review results from the Child Care National Agency Check and Inquiries (CNACI) to determine favorable suitability. In the event the CNACI results contain derogatory information, the DoD CAF will not make a suitability determination.

The CNACI results for these individuals will be transmitted to the requesting Commander Designated Entity, which is responsible for forwarding the CNACI results to the Command/Installation Program Review Board (PRB).

c. Adjudication of Derogatory Information. When derogatory information is identified during screening or background checks, in every case the results must first be adjudicated at the command level. Before an individual may be employed even provisionally in a position requiring regular contact with children, the individual's screening and preliminary background checks must be clear of derogatory information, or the garrison commander's written approval is required. If an individual is provisionally employed, such employment is subject to favorable adjudication of the remainder of the required background check and will be subject to line-of-sight supervision as delineated in enclosures 3 through 5. If the background check identifies derogatory information, adjudication will include the conduct of a PRB for a detailed review of the case file followed by a recommendation to the commander. If the commander recommends an individual as suitable despite the presence of derogatory information, the case file must be forwarded to Headquarters, Department of the Army for the suitability determination in accordance with DoD Instruction 1402.5. Guidance on suitability adjudication and the PRB process is at enclosure 6. This PRB process also applies to reverifications, the requirements for which are delineated in enclosures 3 through 5. Acronyms and terms used in this directive are defined at enclosure 7.

5. Effective immediately, all Army organizations will begin implementation of this directive with the responsibilities and guidance defined in the enclosures. Within 30 days of the date of this directive, all Army organizations will provide their Commander Designated Entity information, including organization name, point of contact and phone number, to the Assistant Chief of Staff for Installation Management (ACSIM). Army organizations will update this information annually by the end of the fiscal year, or when the commander changes the designated entity from one organization to another. The directive will be fully implemented within 6 months of issuance. The Assistant Secretary of the Army (Manpower and Reserve Affairs), in coordination with the ACSIM, will conduct necessary reviews of command programs to validate compliance. Commands must complete background checks not previously required on all current employees and others within 6 months. If it is discovered that a CNACI or other required background check was not completed for an individual, or that a PRB was never conducted although required, commands must immediately initiate completion of the background check or PRB process. Commands will act judiciously and apply the criteria and processes in this directive to ensure the well-being of children.

6. Within 1 year of the date of this directive, the ACSIM will develop a single overarching Army regulation and pamphlet(s), as necessary, that address all aspects of the screening, background check and adjudication processes for personnel covered by

this directive. The ACSIM will develop this documentation in concert with, but not limited to, the Deputy Chief of Staff, G-1; Deputy Chief of Staff, G-2; The Surgeon General; Director, Army National Guard; Commander, U.S. Army Reserve Command; the Chief of Chaplains; and the Provost Marshal General. The regulation and pamphlet(s) will contain standardized forms and detailed procedures for screenings, background checks and suitability adjudication under DoD Instruction 1402.5. Concurrently, all Army Secretariat and Staff proponents will update pertinent regulations to refer to the new Army regulation governing the processes for screenings and background checks.

7. All affected commands will update standing operating procedures and provide mandatory training to ensure implementation of the guidance in this directive. Where responsibilities overlap between organizations, commanders will develop memorandums of agreement to ensure compliance with this guidance.

8. To guarantee the appropriate vetting of foreign national employees at overseas installations, U.S. Army Installation Management Command will review all host nation agreements to determine if additional guidance is required to support the guidance in this directive. Any resulting additional guidance will be incorporated into the new Army regulation and/or pamphlet(s).

9. The Assistant Secretary of the Army (Manpower and Reserve Affairs) is the proponent for this policy and retains oversight for this guidance. I hereby delegate to the Assistant Secretary the authority to grant waivers to this policy when circumstances warrant and risk to the well-being, safety and health of children is mitigated. This waiver authority may be redelegated only to a Deputy Assistant Secretary of the Army. All waivers will be coordinated with the Office of the Army General Counsel.

10. This directive is effective immediately and supersedes all existing policy, including the guidance on background checks in Army Regulation 608-10 (Child Development Services) that conflicts with this directive. The requirements in this directive are subject to the satisfaction of applicable labor relations obligations.

11. This directive is rescinded upon publication of the new Army regulation referenced in paragraph 6.

John M. McHugh

Encls

DISTRIBUTION
(see next page)

SUBJECT: Army Directive 2014-23 (Conduct of Screening and Background Checks For Individuals Who Have Regular Contact With Children in Army Programs)

DISTRIBUTION:
Principal Officials of the Headquarters, Department of the Army
Commander
- U.S. Army Forces Command
- U.S. Army Training and Doctrine Command
- U.S. Army Material Command
- U.S. Army Pacific
- U.S. Army Europe
- U.S. Army Central
- U.S. Army North
- U.S. Army South
- U.S. Army Africa/Southern European Task Force
- U.S. Army Special Operations Command
- Military Surface Deployments Distribution Command
- U.S. Army Space and Missile Defense Command/Army Strategic Command
- U.S. Army Medical Command
- U.S. Army Intelligence and Security Command
- U.S. Army Criminal Investigation Command
- U.S. Army Corps of Engineers
- U.S. Army Military District of Washington
- U.S. Army Test and Evaluation Command
- U.S. Army Installation Management Command

Superintendent, U.S. Military Academy
Director, U.S. Army Acquisition Support Center
Executive Director, Arlington National Cemetery
Commander, U.S. Army Accessions Support Brigade
Commandant, U.S. Army War College
Commander, Second Army

CF:
Director, Army National Guard
Director of Business Transformation
Commander, Eighth Army
Commander, U.S. Army Cyber Command
Commander, U.S. Army Reserve Command

REFERENCES

a. The Crime Control Act of 1990, Pub. L. No. 101-647, 104 Stat. 4789 (1990).

b. U.S. Office of Personnel Management (OPM) Federal Investigative Services INV 15 (Requesting OPM Personnel Investigations), April 2012.

c. Department of Defense (DoD) 5400.11-R (Department of Defense Privacy Program), May 14, 2007.

d. DoD Directive 5015.2 (DoD Records Management Program), March 6, 2000.

e. DoD Directive 6400.1 (Family Advocacy Program (FAP)), August 23, 2004.

f. DoD Instruction 1100.21 (Voluntary Services in the Department of Defense), March 11, 2002, Incorporating Change 1, December 26, 2002.

g. DoD Instruction 1400.25, Subchapter 1403 (DoD Civilian Personnel Manual: Employment), December 1 1996, Incorporating Change 5, March 25, 2000.

h. DoD Instruction 1400.25, Volume 731 (DoD Civilian Personnel Management System: Suitability and Fitness Adjudication for Civilian Employees), August 24, 2012.

i. DoD Instruction 1400.25, Volume 1231 (DoD Civilian Personnel Management System: Employment of Foreign Nationals), July 5, 2011.

j. DoD Instruction 1402.5 (Criminal History Background Checks on Individuals in Child Care Services), January 19, 1993.

k. DoD Manual 6025.13 (Medical Quality Assurance (MQA) and Clinical Quality Management in the Military Health System (MHS)), October 29, 2013.

l. Memorandum, Assistant Secretary of Defense (Readiness and Force Management), Dec 4, 2013, subject: Waiver for Family Housing and Mental Health Records Checks for Individuals in Child Care Services.

m. Memorandum, Deputy Assistant Secretary of Defense (Civilian Personnel and Policy), Aug 26, 2013, subject: Responsibilities under the Department of Defense Suitability and Fitness Adjudications for Civilian Employees Programs.

n. Army Regulation (AR) 25-400-2 (The Army Records Information Management System (ARIMS)), 2 October 2007.

o. AR 40-68 (Clinical Quality Management), 26 February 2004, Incorporating Rapid Action Revision issued 22 May 2009.

p. AR 165-1 (Army Chaplain Corps Activities), 3 December 2009.

q. AR 190-45 (Law Enforcement Reporting), 30 March 2007.

r. AR 215-1 (Military Morale, Welfare and Recreation Programs and Nonappropriated Fund Instrumentalities), 24 September 2010.

s. AR 215-3 (Nonappropriated Funds Personnel Policy), 29 August 2003.

t. AR 340-21 (The Army Privacy Program), 5 July 1985.

u. AR 380-67 (Personnel Security Program), 24 January 2014.

v. AR 420-1 (Army Facilities Management), 12 February 2008, Incorporating Rapid Action Revision No. 2 issued 24 August 2012.

w. AR 608-1 (Army Community Service), 13 March 2013.

x. AR 608-10 (Child Development Services), 15 July 1997.

y. AR 608-18 (The Army Family Advocacy Program), 30 October 2007, Incorporating Rapid Action Revision issued 13 September 2011.

z. Department of the Army Personnel Security Investigation Portal (PSIP) Requestor Guide, November 2012.

aa. Department of the Army Personnel Security Investigation Portal Childcare Requestor Guide, November 2012.

ROLES AND RESPONSIBILITIES

1. The Assistant Secretary of the Army (ASA) (Manpower and Reserve Affairs) (M&RA) is the Army proponent for overall strategy, policy and supervision of the conduct of screenings and background checks for individuals who have regular contact with children. The ASA (M&RA) will delegate a Deputy Assistant Secretary of the Army to serve as the chair of the Headquarters, Department of the Army (HQDA) Program Review Board (PRB) Review Panel. The ASA (M&RA) will also designate two individuals to serve as voting members on the panel.

2. The ASA (Acquisition, Logistics and Technology) (ALT) is designated the Army Acquisition Executive, Senior Procurement Executive and Senior Official responsible for managing the acquisition of contract services.

3. The ASA (Financial Management and Comptroller) (FM&C) and DCS, G-8 will ensure the appropriate prioritization and resource guidance to support background checks of individuals providing Child and Youth Services.

4. The ASA (Installations, Energy and Environment) (IE&E) is the Army proponent for ensuring the integration of this policy into the Army's installation regulations, policies and operations. The ASA (IE&E) will designate two individuals to serve as voting members on the HQDA PRB Review Panel.

5. The Assistant Chief of Staff for Installation Management (ACSIM) is the Army proponent for developing specific policies for installation management and overseeing their execution.

a. The ACSIM will develop a single overarching Army regulation and pamphlet(s) as necessary that address all aspects of the screening, background check and adjudication processes for personnel covered by this directive. The ACSIM will develop this documentation in concert with, but not limited to, the DCS, G-1; DCS, G-2; The Surgeon General; Director, Army National Guard; Commander, U.S. Army Medical Command; Commander, U.S. Army Reserve Command; Chief of Chaplains; and Provost Marshal General. The DCS, G-2 will provide subject matter expertise in personnel security to support the ACSIM's development of the specific policy. The ACSIM will revise existing regulations, policies and quality assurance inspection documents as appropriate to ensure the health, safety and well-being of children. All revised policy will be coordinated with external accrediting bodies and synchronized with Army civilian and military personnel proponents.

b. The ACSIM will develop and maintain a list of Commander Designated Entities serving as central points of contact for Army commands and organizations to initiate, coordinate and track background checks and review results for derogatory information. The Commander Designated Entity will be supported by agencies that provide required background check data, as well as civilian and military personnel offices; Family and MWR personnel; medical personnel; and chaplains. Guidance will identify each office

responsible for providing information to the Commander Designated Entity and will specify the format and time restrictions for each check to ensure the timely receipt of information and completion of the check.

c. In addition, the ACSIM will designate two individuals to serve as voting members on the HQDA PRB Review Panel and provide the administrative coordinator for the panel.

6. The DCS, G-1 is responsible for policy development and approval in support of the appropriated fund (APF) and nonappropriated fund (NAF) application, hiring, suitability and employment processes for civilian personnel who have regular contact with children. The Assistant G-1 for Civilian Personnel Policy is the approval authority for any exceptions to currently published civilian personnel policy or personnel guidelines in this directive and its supporting enclosures. The DCS, G-1 will assist the ACSIM in developing policy and procedures to support implementation of this directive. The DCS, G-1 will also designate two individuals to serve as voting members on the HQDA PRB Review Panel.

7. The DCS, G-2 is responsible for personnel security policy and operational oversight of the Personnel Security Investigation Center of Excellence. The DCS, G-2 will ensure that organizations within a command that are responsible for the initiation, coordination and tracking of background checks (Commander Designated Entity) have the necessary guidance to initiate required background investigations with the Center of Excellence. The DCS, G-2 will program the necessary resources for required background investigations performed by authorized investigative service providers on all individuals covered by this directive. The DCS, G-2 is responsible for receiving, programming and reporting the projections for all the additional background investigations required under this directive. The DCS, G-2 will assist the ACSIM in the development of policy and procedures to support implementation of this directive. The DCS, G-2 will designate two individuals to serve as voting members on the HQDA PRB Review Panel.

8. The Chief, National Guard Bureau is responsible for implementing policies and programs within the Army National Guard (ARNG), including facilitating and coordinating processes and procedures with subordinate commands and organizations that are involved in the screening and background check process for all individuals covered by this directive. The Chief will ensure that subordinate commands and organizations designate a single entity (Commander Designated Entity) within their organization to be responsible for the initiation, coordination and tracking of background checks and for reviewing the results to determine whether they contain derogatory information. The Chief is also responsible for the policy and procedures governing required PRBs for the ARNG. The Chief will designate an appropriate review chain for PRB cases to ensure that applicable PRB case files are administratively complete before submission to the HQDA PRB Review Panel. The Director, ARNG will designate two individuals to serve as voting members on the panel.

9. The Chief, Army Reserve is responsible for strategy, policy and program implementation within the U.S. Army Reserve (USAR), including facilitating and

coordinating processes and procedures with subordinate commands and organizations that are involved in the screening and background check process for individuals who have regular contact with children. The Chief will ensure that subordinate commands and organizations designate a single entity (Commander Designated Entity) within their organization to be responsible for the initiation, coordination and tracking of background checks and for reviewing the results to determine whether they contain derogatory information. The Chief is also responsible for the policy and procedures governing required PRBs for the USAR. The Chief will designate an appropriate review chain for PRB cases to ensure that applicable PRB case files are administratively complete before submission to the HQDA PRB Review Panel. The Chief will designate two individuals to serve as voting members on the HQDA PRB Review Panel.

10. The Surgeon General oversees all medical programs and operations in support of background checks for individuals covered by this directive. The Surgeon General will ensure that subordinate commands and organizations designate a single entity (Commander Designated Entity) within their organization to be responsible for the initiation, coordination and tracking of background checks and for reviewing the results to determine whether they contain derogatory information. Commanders will not designate security specialists for this role. U.S. Army Medical Command (MEDCOM) will ensure that medical treatment facilities (MTFs) conduct the Army Central Registry check. The Surgeon General will designate two individuals to serve as voting members on the HQDA PRB Review Panel. In addition, the Office of the Surgeon General will work with U.S. Army Installation Management Command to ensure that the garrison PRB process is applied to MEDCOM suitability cases under DoD Instruction 1402.5 (Criminal History Background Checks on Individuals in Child Care Services). MEDCOM will ensure that applicable PRB case files are administratively complete before submission to the HQDA PRB Review Panel.

11. The Judge Advocate General, in conjunction with the Army General Counsel, is responsible for providing a legal sufficiency review for every case submitted to the HQDA PRB Review Panel.

12. The Chief of Chaplains is responsible for overseeing all religious support programs and operations in support of background checks for individuals covered by this directive. The Chief of Chaplains will issue annual guidance on the use of the Chapel Volunteer Management System and implementation of this child protection policy among all garrison and unit chaplain-sponsored events and programs. The Chief of Chaplains will designate an appropriate review chain for its PRB cases to ensure that applicable case files are administratively complete before submission to the HQDA PRB Review Panel. The Chief of Chaplains will designate two individuals to serve as voting members on the HQDA PRB Review Panel.

13. The Provost Marshal General oversees policy for all law enforcement programs and operations in support of background checks for individuals covered by this directive. The Provost Marshal General will designate two individuals to serve as voting members on the HQDA PRB Review Panel.

14. The Director, U.S. Army Civilian Human Resources Agency is responsible for issuing operational guidance on recruiting for child care services positions and on in-processing selectees for both APF and NAF positions.

15. The Commander, U.S. Army Criminal Investigation Command (CID) provides operational guidance on the conduct of noncriminal justice background name checks for all individuals covered by this directive. CID offices will submit requests to the U.S. Army Crime Records Center through the Army Criminal Investigation and Criminal Intelligence System. The Crime Records Center check will consist of queries of the Automated System Crime Records Center and the Defense Central Index of Investigations (DCII). CID will return name check results to the Commander Designated Entity within 15 calendar days.

16. The Commander, Installation Management Command (IMCOM) is responsible for developing implementing instructions to support the policies and procedures developed by ACSIM, providing overarching guidance, and developing standing operating procedures for conducting required background checks and suitability adjudications for individuals covered by this directive to ensure that processes and procedures are in place to correctly complete background checks and suitability assessments. IMCOM will coordinate the guidance and procedures with MEDCOM, the Civilian Human Resources Agency, U.S. Army Contracting Command, CID and all other affected commands and organizations. IMCOM will also establish procedures governing required PRBs at garrisons and will designate an appropriate review chain for PRB cases to ensure that applicable PRB case files are administratively complete before submission to the HQDA PRB Review Panel. Geographically dispersed organizations, garrisons and installations that IMCOM does not manage will adapt the IMCOM standing operating procedures to their unique circumstances. Generally, the following responsibilities apply, subject to command-unique modifications to accommodate specific needs:

a. Garrison Commander/Garrison Manager. The garrison commander or manager is responsible for overseeing the Director, Family and MWR programs (DFMWR) and operational control of the Provost Marshal Office (PMO)/Directorate of Emergency Services (DES) at IMCOM-managed garrisons. The garrison commander/manager is responsible for designating a single entity (Commander Designated Entity) within his/her organization to be responsible for the initiation, coordination and tracking of background checks and for reviewing the results to determine whether they contain derogatory information. Commanders/managers will not designate security specialists for this role. The commander/manager may use contractors to perform this function, but contractors are not authorized to perform inherently Governmental functions, such as rendering a determination on an individual's fitness for CYSS programs. The garrison commander or manager is responsible for conducting PRBs at the garrison level as needed.

b. Chaplain. The chaplain is responsible for overseeing religious support and religious education operations, the Chapel Volunteer Management System program, Watch Care and other chapel contractors at Army-managed garrisons. The chaplain is

responsible for ensuring that required screening and background checks have been completed for individuals under the chaplain's proponency who are covered by this directive.

c. Army Substance Abuse Program (ASAP). ASAP personnel are responsible for checking the name of individuals requiring an installation records check (IRC) against the Drug and Alcohol Management Information System records to identify individuals who may have substance abuse issues. This check requires the individual's consent. ASAP will provide the following information to the Commander Designated Entity within 5 business days:

- all illicit positive urinalysis tests and any positive test that has not been adjudicated by a medical review officer as authorized use,
- dates of screening when not enrolled with the primary basis and diagnosis if one is available, and
- enrollment period if enrolled, with primary basis and diagnosis and success or failure of rehabilitation.

d. Commander Designated Entity. The Commander Designated Entity is responsible for initiating required background checks with the appropriate offices, tracking and compiling results, reviewing the results to determine whether they contain derogatory information that must be referred to the garrison command, and forwarding case files as necessary for command adjudication. Although commanders may not designate security specialists for this purpose, they may use contractors or other appropriate sources of labor to perform this function. However, contractors are not authorized to perform inherently Governmental functions, such as rendering a determination on an individual's fitness for CYSS programs. The Commander Designated Entity will be supported by agencies that provide required background check data, as well as civilian and military personnel offices; Family and MWR personnel; medical personnel; and chaplains to complete background checks in a timely manner.

e. MTF. The MTF is responsible for checking the names of individuals requiring an IRC against the Army Central Registry. The MTF will return the results of the registry checks to the Commander Designated Entity within 5 business days.

f. DFMWR. The Director is responsible for overseeing all Child, Youth and School Services (CYSS); Army Community Service; and MWR programs and activities. The DFMWR is responsible for ensuring that required screening and background checks have been completed for all individuals covered by this directive.

g. PMO/DES. The organizations are responsible for conducting military police record checks. Where State laws allow, they will also conduct State law enforcement checks.

SCREENING AND BACKGROUND CHECKS FOR APPROPRIATED AND NONAPPROPRIATED FUND PERSONNEL, MILITARY PERSONNEL, FOREIGN NATIONAL EMPLOYEES OVERSEAS AND CONTRACTORS

1. **Purpose.** To establish screening and background check requirements and supporting guidelines for personnel considered for or in positions that have regular contact with children. Strict compliance with these requirements will help ensure the safety and welfare of children and reduce the risk of child abuse and neglect in Army programs and activities.

2. **Applicability.** The guidance in this enclosure applies to all APF and NAF employees; members of the military (active and reserve); foreign national employees overseas; and APF and NAF contractors, including subcontractors, who have regular contact with children under age 18, as well as applicants for those positions. All offices responsible for on-boarding and providing support for screening and background checks—including civilian and military personnel offices; chaplains, MTFs, PMO/DES, DFMWR, ASAP and contracting offices—will follow this guidance.

3. **Responsibilities.** The following organizations will establish guidance and standing operating procedures for their assigned responsibilities to ensure that the applicable personnel who have regular contact with children during the performance of their duties are fit to be responsible for children's safety and well-being. Federal Government activities are the only authorized offices to obtain and process fingerprints. Contractors may obtain an individual's fingerprints, process fingerprint checks and/or request Child Care National Agency Check and Inquiries (CNACI) background investigations from the Army's Personnel Security Investigation Center of Excellence. However, they must return the results of fingerprint checks and CNACI background investigations to the sponsoring Government activity for review and adjudicative processing.

a. IMCOM

(1) With input from the DCS, G-2, develop and issue operational guidance on initiating, screening and adjudicating background checks, in coordination with all commands and proponents that have a role in conducting background checks for individuals who have contact with children through Army programs and services. This includes all organizations that hire, contract for and bring on board individuals to work in such positions and who are involved in the management and oversight of such programs. The guidance will include step-by-step instructions for the preemployment screening process; the IRC and Federal Bureau of Investigation (FBI) fingerprint check; the CNACI; the PRB process; and the reverification of personnel, including the maintenance, storage, protection and disposal of personally identifiable information (PII).

(2) Address the process for handling cases where derogatory information is found during reverification or through some other means.

(3) Include specific language in the statement of work for all contracts that is consistent with the requirements in DoD Instruction 1402.5, enclosure 6, paragraph E6.4.

(4) Establish internal quality control checks, verifications and periodic reviews as part of program assurance regarding required background checks for all individuals. Incorporate this process into the Garrison Organizational Inspection Program.

b. MEDCOM

(1) Develop and publish standing operating procedures and specific guidance for medical personnel and supporting organizations that includes Commander Designated Entities; step-by-step instructions for the prescreening process; the IRC and advance FBI fingerprint check; the CNACI; the PRB process; and the reverification of personnel, including the maintenance, storage, protection and disposal of PII.

(2) Include specific language in the statement of work for all contracts that is consistent with the requirements in DoD Instruction 1402.5, enclosure 6, paragraph E6.4.

(3) Address how derogatory information will be handled and coordinated with the garrison as part of the installation PRBs on applicant and employee suitability. The results of background checks for MEDCOM personnel will be processed in consultation with IMCOM.

(4) Address required coordination with the garrison in reviewing and packaging a suitability case file for submission to the HQDA PRB Review Panel for adjudication (if required). The guidance must also address the process for handling cases when derogatory information is found during reverification or through some other means.

(5) Establish internal quality control checks, verifications and periodic reviews as part of program assurance related to background checks.

c. ARNG and USAR

(1) Develop supporting internal standing operating procedures as needed to ensure the completion of all screening and background check requirements for personnel, including contractors, based on unique circumstances and timelines for required support.

(2) Provide step-by-step instructions that address the screening process; the IRC and FBI fingerprint check; the CNACI; the PRB process; and the reverification of personnel, including the maintenance, storage, disposal and protection of PII.

(3) Address the process for handling cases when derogatory information is found during reverification or through some other means.

(4) Designate responsible agents at the unit, regional support command, State, headquarters or other levels (Commander Designated Entities), as appropriate, to initiate requests and track, compile and review the results of all required background checks.

(5) Include specific language in the statement of work for all contracts that is consistent with the requirements in DoD Instruction 1402.5, enclosure 6, paragraph E6.4.

(6) Establish internal quality control checks, verifications and periodic reviews as part of program assurance related to required background checks.

(7) Convene a PRB, as necessary, to review and adjudicate derogatory information and make suitability recommendations to the appropriate commander as designated by the Chief, National Guard Bureau or the Chief, Army Reserve. When the commander recommends suitability despite derogatory information, the commander will package the information properly and forward the PRB case file to the HQDA PRB Review Panel for consideration.

d. Headquarters, Civilian Human Resources Agency

(1) Develop and publish supporting standing operating procedures and internal controls for this directive and ensure appropriate coordination and synchronization with the IMCOM standing operating procedures.

(2) Issue guidance that designates Civilian Personnel Advisory Centers as a liaison between the program or functional manager and the Commander Designated Entity to ensure the submission of all forms and paperwork needed to complete screening and background checks for on-boarding prospective employees and completing reverification, as DoD Instruction 1402.5 requires, for employees. The guidance must address application requirements, the notification to individuals required by statute, unfavorable suitability assessments, and any procedures required for the on-boarding or reverification of APF and NAF employees and foreign national employees overseas, including the Civilian Personnel Advisory Center's involvement and interface with the applicant or employee and the functional proponent or program manager.

(3) Coordinate with IMCOM, other affected commands and the specific program managers to incorporate background check requirements into standardized position descriptions for all applicable APF and NAF positions.

(4) Standardize all job opportunity announcements and occupational assessment questionnaires for these positions across subordinate Civilian Personnel Advisory Centers, including conditions of employment related to background checks.

(5) Obtain the signature of the employee or prospective employee before seeking a background check, thus documenting that he or she has been notified of the

employer's obligation to require a records check as a condition of employment, the individual's right to obtain a copy of the criminal history report made available to the agency, and the right to challenge the accuracy and completeness of any information in the report.

e. ASA (ALT)

(1) Provide procurement guidance to support APF contracts for all requirements for contractors based on responsibilities and procedures as outlined and in accordance with applicable regulations, policies and this directive.

(2) Develop and publish standardized language related to requirements for background checks to be used in the statement of work for all applicable contracts that is consistent with the requirements in DoD Instruction 1402.5, enclosure 6, paragraph E6.4.

f. Chaplains

(1) Develop and publish standing operating procedures and specific guidance for medical personnel and supporting organizations that includes step-by-step instructions for the prescreening process; the IRC and advance FBI fingerprint check; the CNACI; the PRB process; and the reverification of personnel, including the maintenance, storage, protection and disposal of PII.

(2) Include specific language in the statement of work for all contracts that is consistent with the requirements in DoD Instruction 1402.5, enclosure 6, paragraph E6.4.

(3) Address how derogatory information will be handled and coordinated with the garrison as part of the installation PRBs on applicant and employee suitability. The results of background checks for chaplain personnel will be processed in consultation with IMCOM.

(4) Address required coordination with the garrison in reviewing and packaging a suitability case file for submission to the HQDA PRB Review Panel for adjudication (if required). The guidance must also address the process for handling cases when derogatory information is found during reverification or through some other means.

(5) Establish internal quality control checks, verifications and periodic reviews as part of program assurance related to background checks.

4. **Requirements**

a. Preemployment Screening and Assessment. In coordination with the appropriate human resource office, the hiring/responsible organization (for example, CYSS, chaplains, MTF) is responsible for ensuring that an individual has the necessary skill sets for the position. Through review of the application and related forms, personal

interview and reference checks, the hiring/responsible organization will assess the individual's eligibility, qualifications, temperament and suitability for work with children. The Commander Designated Entity will initiate the background check only after a tentative offer of employment is made.

b. Background Check. The background checks required for those individuals covered by this enclosure are IRC, local law enforcement check (where available), FBI fingerprint check and CNACI (or host nation checks). The IRC is required only for individuals with a prior or current DoD affiliation. Individuals with an unexpired National Agency Check and Inquiries (NACI) require only a State Criminal History Repository check and an IRC. This chart identifies the requirements for screenings and background checks and the responsible office by category of personnel:

Category (Proponent)	Requirement (Proponent if Different)	APF/ NAF or Military	Contractor	Foreign National Employees Overseas
Preemployment screening (hiring/responsible organization)	1) Application / solicitation 2) Interview / contract review 3) Reference check	X X X	X X X	X X X
Hiring/responsible organization makes a tentative offer of employment. Statement of Previous Arrest or Charge is required for all applicants and must be updated annually (see enclosure 4, paragraph 4f).				
Preliminary investigation (Commander Designated Entity)	1) IRC* a. Local Military Records (PMO) b. Local Law Enforcement (PMO/CPAC) c. Drug and Alcohol (ASAP) d. Army Central Registry (MTF) e. DCII/CID Records (CID) 2) FBI fingerprint check (Commander Designated Entity) 3) Local Law Enforcement** (PMO/CPAC)	X X X 	X X X 	X X X
* IRC only applies to individuals with prior or current DoD affiliation. The IRC check will be for the 5-year period preceding the date of application. • Checks of mental health records and family housing will be done only to the extent required by references j and l. • Individual can begin work under line-of-sight supervision (LOSS) with favorable results from the preliminary investigation or if the preliminary investigation reveals any derogatory information forwarded by the Commander Designated Entity, with the written approval of the garrison commander (or equivalent) • Appointments must be made subject to favorable adjudication of the remaining background checks. ** The local law enforcement check will be for the 5-year period preceding the date of application.				
Completed background check (Commander Designated Entity)	CNACI (includes the State Criminal History Repository Check)	X	X	X**

Category (Proponent)	Requirement (Proponent if Different)	APF/ NAF or Military	Contractor	Foreign National Employees Overseas
	Host nation background check / CNACI equivalent			X**
Individual is considered cleared and can work outside of LOSS if the results of the completed background check are favorable. If derogatory information is uncovered by the CNACI (or CNACI equivalent) and forwarded by the Commander Designated Entity, the case must be adjudicated through the PRB process.				
Reverification (IRC and FBI fingerprint check) is required every 5 years.				
Other relevant record checks may be initiated if deemed necessary to determine an individual's suitability under DoD Instruction 1402.5 **to the extent the law permits**. Any other checks must be approved by a general officer/member of the Senior Executive Service and found legally sufficient by the servicing legal office.				

** See the paragraph on Foreign National Employees Overseas on page 7.

(1) Once the hiring/responsible organization completes the preemployment screening and assessment process and makes a tentative offer of employment, the Commander Designated Entity will initiate the preliminary investigation. If the investigation identifies derogatory information, the garrison commander must provide his or her written approval **before** the individual will be allowed to begin work. The individual must be notified of the derogatory information and given an opportunity to respond. The garrison commander may—but is not required to—conduct a command-level PRB to obtain a recommendation on whether to provisionally hire the individual. If provisionally hired, the individual must work under LOSS until the results of the CNACI (or host nation check) are received and favorably adjudicated. Appointments will be made subject to favorable adjudication of the results of the completed background check.

(2) The Commander Designated Entity is responsible for initiating each check with the responsible office, tracking and compiling the results, and identifying derogatory information. When preliminary investigations return favorable results, the Commander Designated Entity will give the results to the Civilian Personnel Advisory Center and/or the hiring/responsible organization. If derogatory information is found, the Commander Designated Entity will give the results to the hiring/responsible organization for a decision on whether it wishes to pursue the hiring action. If the organization chooses to pursue hiring, the Commander Designated Entity will initiate the CNACI (or host nation check). If the Commander Designated Entity identifies derogatory information when the results of the CNACI (or host nation check) are available, it must forward the information to the command-level PRB for adjudication. The command-level PRB must review the individual's case and recommend whether the individual should be found suitable for a child care services position. The adjudication process is detailed in enclosure 6.

(3) Foreign National Employees Overseas

(a) When permissible by the laws of the host government, the Commander Designated Entity will directly request the host government checks. Where the host nation's agreement prevents a background check comparable to a criminal history check, foreign nationals will not be eligible for employment overseas where regular contact with children is required.

(b) For the preliminary investigation, foreign national employees overseas will, at a minimum, have a DCII check and, if they have prior or current DoD affiliation, a full IRC. An FBI fingerprint Special Agreement Check will be requested unless prohibited by the terms of the host nation agreement.

(4) Foreign Nationals Within the United States. Foreign nationals who have not resided in the U.S. for 3 of the last 5 years will be processed for an FBI fingerprint Special Agreement Check. Foreign nationals who have resided in the U.S. for at least 3 of the last 5 years will receive a CNACI.

c. Reverification Requirement. A reverification that includes an IRC and FBI fingerprint check must be completed every 5 years for APF/NAF employees, military members (active and reserve), foreign national employees overseas and contractors. The reverification covers the time period since completion of the last background check. If derogatory information is uncovered during a reverification, the individual must immediately be placed under LOSS pending adjudication through the PRB process. However, in the case of a mandatory disqualification, an incident for which the individual has been charged with a mandatory disqualifying offense but the charge has not yet been disposed of, or any other circumstances where the commander determines that the nature or seriousness of the derogatory information indicates a potential risk to children, the individual must be removed from any contact with children while on the job until the case is resolved or other personnel action is taken.

d. LOSS

(1) Individuals working under LOSS must be conspicuously identified by distinctive clothing (identifiable colors), badges, wristbands or other apparent markings that are fully visible when viewed from all angles.

(2) Individuals permitted to perform duties under LOSS must be supervised; that is, monitored constantly by an individual who:

(a) has undergone a CNACI and received a favorable suitability determination;

(b) has met periodic reverification requirements under this directive; and

(c) has not previously exhibited wanton or reckless disregard for an obligation to supervise an employee, contractor or volunteer in accordance with this guidance.

(3) Supervision in this context is not necessarily the same as supervision by the employee's supervisor for employment purposes.

(4) Individuals otherwise required to perform duties only under LOSS may perform duties without LOSS supervision if interaction with the child:

(a) occurs in the presence of the child's parent or guardian;

(b) is in a medical facility, subject to the supervisory policies of the facility and in the presence of a mandated reporter of child abuse; or

(c) is necessary to prevent the death of or serious harm to the child, and supervision is impractical or infeasible (for example, medical emergency or emergency evacuation of a child from a hazardous location).

e. Failure to Complete. Failure to complete a background check does not create a positive presumption of an applicant's suitability to perform duties in a position subject to a background check, nor does such a failure create any right to legal or procedural recourse.

f. Statement of Previous Arrest or Charge. As part of their application, all individuals must complete a statement answering these questions:

- Have you ever been arrested for or charged with a crime involving a child?
- Have you ever been asked to resign because of or been decertified for a sexual offense? If so, describe the case disposition.

The statement must be signed under penalty of perjury and updated annually.

5. **Special Instructions**

a. CYSS. Regular CYSS contractors (those whose services are anticipated to be required on a regular, recurring basis) must have a background check (an IRC (when applicable), a local law enforcement check (where available), an FBI fingerprint check and a CNACI) completed with a favorable suitability determination before working outside of LOSS. The determination of whether services are recurring is based on the frequency and duration of services. Recurring contacts may include services performed:

- more than an average of 1 day a week for 3 or more months, or
- daily for a period of 1 month or longer.

Recurring contracts may include instructors, sports officials, school bus drivers, and child care service providers. Examples include permanent and temporary child youth program assistants; permanent and temporary personnel working in programs and services offered under Army Child Care in Your Neighborhood, Army School Program in

Your Neighborhood and Army Youth Program in Your Neighborhood; Camp Adventure volunteers; personnel at seasonal sports camps; tutors at both home and school; driving school instructors; custodial services personnel; coaches; respite care providers under the Exceptional Family Member Program; performing arts camp instructors; medical family life counselors; regularly scheduled bus drivers; youth development specialists; technology specialists; homework specialists; State coordinators for Operation Military Kids; ARNG Child, Youth and School Services program coordinators; and USAR Child and Youth Services program specialists.

b. Medical. Military members, civilian employees and contractors filling any healthcare position involving regular interaction with children must have background checks (an IRC (when applicable), an FBI fingerprint check and a CNACI). This group includes pediatric clinic ward, nursery and specialty service personnel (including staff at neonatal and pediatric intensive care units); Family medicine clinic personnel; members of patient-centered medical home teams; operating room and anesthesia personnel (when pediatric surgery is performed); Exceptional Family Member Program personnel; early development intervention personnel; child behavioral health personnel; radiology, dental and laboratory personnel administering pediatric care; emergency department personnel; speech pathologists; audiologists; school-based clinic personnel; occupational and physical therapists who work with children; community and public health nurses; Family advocacy personnel; immunization clinic personnel; and obstetrics/gynecology clinic personnel.

c. Chaplains. Military members (active and reserve), civilian employees and contractors filling any position involving regular interaction with children must have background checks (an IRC (when applicable), a local law enforcement check (where available), an FBI fingerprint check and a CNACI). This group includes Family life chaplains, youth group leader chaplains, chaplain's assistants, directors of religious education, religious education coordinators, youth group leaders and extenders, youth ministry specialists, Watch Care personnel, and any contract clergy or other personnel who have regular, recurring contact with children in chapel or chaplain-sponsored events or activities. Determination of whether services are recurring is based on the frequency and duration of services. Recurring contacts may include services performed:

- more than an average of 1 day a week for 3 or more months, or
- daily for a period of 1 month or longer.

d. Other Contractors. Some contractors provide services on an occasional basis or for such a short duration that conducting the CNACI is not feasible. These contract individuals must have an IRC (when applicable), a local law enforcement check (if available), and an FBI fingerprint check with favorable results before working; otherwise, they may only work under LOSS. Examples include a sports official who is used a few times during the season as backup for youth games; or an individual whose contact occurs on a very infrequent basis (once or twice a year for a short period of time) in support of field trips, community carnivals, holidays or special entertainment events.

6. **PII**

a. All managers, hiring officials and supervisors will ensure that internal procedures and safeguards are developed, implemented and maintained to protect PII in accordance with AR 340-21 (The Army Privacy Program) and AR 25-400-2 (The Army Records Information Management System (ARIMS)).

b. All commanders will ensure that personnel who handle PII are aware of their responsibilities for protecting personal information collected and maintained under the Army's Privacy Program.

7. **Records Maintenance and Destruction**

a. Records of background checks will be maintained in accordance with applicable laws and regulations.

b. Disposal of materials must be completed to limit the reconstruction of documents or in the same manner as what is required to destroy classified material. Copies of For Official Use Only documents will be disposed of in accordance with the provisions of Title 44, U.S. Code, Chapter 33 (Disposal of Records), DoD Directive 5015.2 (DoD Records Management Program), and AR 25-400-2.

c. Before destroying any information that was used to determine suitability, the Commander Designated Entity will properly document the adjudication of suitability determination in the DoD Central Adjudication Tracking System. For inspection purposes, the Commander Designated Entity's documentation will serve as proof that required background checks were satisfactorily completed and adjudicated.

SCREENING AND BACKGROUND CHECKS FOR FAMILY CHILD CARE, HOMES OFF-POST AND OTHER IN-HOME PROVIDERS

1. **Purpose.** To establish screening and background check requirements and supporting guidelines for providers of Army Family Child Care (FCC), Homes Off-Post (HOPS), Army-sanctioned foster care (overseas only) and Army-sanctioned respite care. For the purposes of background check requirements, these caregivers will be referred to as "in-home care providers." Strict compliance with these requirements and command oversight are critical to ensure the health, safety and well-being of children and to reduce the risk of child abuse and neglect for children cared for in-home settings since no other supervision occurs in these settings.

2. **Applicability.** The guidance in this enclosure applies to all individuals who provide care in a home setting and to individuals 12 years and older living in the provider's home for more than 30 consecutive days. Commander Designated Entities, MTFs, PMOs/DESs, ASAP offices, and DFMWRs responsible for on-boarding and/or who support screening and background checks will use this guidance to ensure that all providers have favorable suitability determinations made before they are allowed to operate.

3. **Responsibilities**

a. DFMWR is responsible for screening all applicants to be in-home providers by reviewing resumes, conducting personal interviews and checking at least two references before initiation of the background check. Providers with a military spouse must have a letter of reference signed by the service member's commander. Once initial screening is assessed as favorable, DFMWR will ask the Commander Designated Entity to initiate the background check for the applicant and all individuals 12 years or older who have resided in the home for more than 30 days.

b. The Commander Designated Entity is responsible for initiating, receiving and processing requests for background checks, tracking and compiling results, and identifying derogatory information from the results of the background check.

c. These offices are responsible for completing portions of the IRC and submitting the information to the Commander Designated Entity for interpretation:

- PMO/DES: installation military police records and local law enforcement checks,
- ASAP: drug and alcohol abuse record,
- MTF: Army Central Registry, and
- CID: DCII/CID records.

d. Commanders are responsible for:

(1) providing operational guidance, standing operating procedures and oversight for managing the installation FCC and HOPS programs to ensure that all in-home care providers and those individuals aged 12 and older who reside in the provider's home are properly screened and a favorable adjudication of background checks occurs ***before*** they are allowed to accept children into care. LOSS is not permitted for this category of providers. The guidance must also address the requirement for ***immediate*** command review and adjudication should derogatory information be found during the annual background check reverification or through some other means. In-home care providers may not resume child care operations until favorable adjudication is reached.

(2) ensuring that cases with derogatory information are reviewed and submitted through the PRB for a suitability recommendation to the commander. All cases of individuals whom the commander recommends as suitable, despite derogatory findings, will be forwarded to the HQDA PRB Review Panel for a final determination of suitability.

(3) maintaining and storing all background check records in accordance with appropriate security measures.

(4) establishing internal quality control checks, verifications and periodic reviews as part of program assurance for all FCC and HOPS providers.

4. **Requirements**

a. Preemployment Screening and Assessment. DFMWR is responsible for ensuring that an individual has the necessary skill sets for the position and, through personal interview and reference checks, will assess the applicant's temperament and suitability for work with children as an in-home care provider. In addition, FCC and HOPS applicants who are military spouses must provide a specific letter of reference from the sponsor's unit commander addressing the suitability of the provider and all individuals 12 years or older who reside in the home. Only after this prescreening assessment is made will the Commander Designated Entity start the actual background check process.

b. Background Check. Once DFMWR completes the preemployment screening and assessment and believes the individual is suitable to work with children, the Commander Designated Entity will initiate the background check. The background check requirements for all in-home providers are the IRC (when applicable), local law enforcement check (where available), FBI fingerprint check and CNACI. The background check requirements for all individuals 18 years or older who have resided in the provider's home for over 30 days include the IRC and FBI fingerprint check. For youth 12 to 17 years of age who have resided in the provider's home for more than 30 days, only the IRC is required. This next chart illustrates the requirements for in-home care providers, including individuals 12 years or older who have resided in the home for 30 consecutive days or more:

Category (Proponent)	Requirement (Proponent if Different)	In-Home Providers: FCC/HOPS, Foster, Respite	Individuals 12 Years or Older Residing in the Home
Preemployment Screening (DFMWR)	1) Application 2) Interview review 3) Reference check 4) Unit commander letter of reference	X X X X	 X
A Statement of Previous Arrest or Charge is required for all applicants and must be updated annually (see enclosure 4, paragraph 4d).			
Preliminary Investigation (Commander Designated Entity)	1) IRC* a. Local Military Records (PMO) b. Local Law Enforcement (PMO/CPAC) c. Drug and Alcohol (ASAP) d. Army Central Registry (MTF) e. DCII/CID Records (CID) 2) FBI Fingerprint Check (Commander Designated Entity) 3) Local Law Enforcement** (PMO/CPAC)	X X X	X X** X
* IRC only applies to individuals with prior or current DoD affiliation. The IRC check will be for the 5-year period preceding the application date. ** FBI fingerprint check is only required for individuals 18 years and older. • If derogatory findings are identified at this point, DFMWR will decide whether to pursue the applicant. If decision is to proceed, the Commander Designated Entity will initiate the CNACI. • Checks of mental health records and family housing will be done only to the extent required by references j and l. ** The local law enforcement check will be for the 5-year period preceding the application date.			
Completed background check (Commander Designated Entity)	CNACI (includes the State Criminal History Repository Check)	X	
• In-home care provider is considered cleared and can begin providing care if results of the provider's IRC, local law enforcement check, FBI fingerprint check and CNACI are deemed favorable AND the results of the IRC and fingerprint check for all individuals (as required) living in the home are also deemed favorable. • ALL derogatory findings for both the in-home care provider and individuals living in the home must be adjudicated through the PRB process. • Because LOSS is not available, in-home care providers cannot perform any work until favorable suitability determinations have been made for the provider and all individuals residing in the home. • No CNACI is required for military members whose sole interaction with children is living in the same household as FCC providers.			
Annual Reverification	1) IRC 2) FBI fingerprint check	X X	X X**

** FBI fingerprint check is only required for individuals 18 years and older.

The Commander Designated Entity is responsible for initiating each check with the proponent office, tracking and compiling the results of the check, and identifying derogatory information. When the results of the preliminary investigation are favorable, the Commander Designated Entity will give the results to the DFMWR. If the preliminary investigation identifies derogatory information, the Commander Designated Entity will give the results to the DFMWR for a decision on whether to pursue the hiring action. If DFMWR decides to pursue the hiring, the Commander Designated Entity will initiate the completed background check. If the Commander Designated Entity identifies derogatory information in the results of the CNACI (or CNACI equivalent), it must forward the information to the command for adjudication. The installation PRB must review the individual's case and recommend whether the individual should be found suitable for working with children. In-home care providers, including individuals 12 years and older who are living in the home for more than 30 consecutive days, must have a favorable suitability determination before the provider can begin caring for children. The provider may not work under LOSS. The adjudication process is detailed in enclosure 6.

c. Failure to Complete. Failure to complete a background check does not create a positive presumption of an applicant's suitability to perform duties in a position subject to a background check, nor does such a failure create any right to legal or procedural recourse.

d. Statement of Previous Arrest or Charge. As part of the application for a child care provider position, all care providers and adults and children over 12 years of age residing in the household must complete a statement responding to these questions:

- Have you ever been arrested for or charged with a crime involving a child?
- Have you ever been asked to resign because of or been decertified for a sexual offense? If so, describe the case disposition.

The statement must be signed under penalty of perjury and updated annually.

5. **PII**

a. All managers, hiring officials and supervisors will ensure that internal procedures and safeguards are developed, implemented and maintained to protect PII in accordance with AR 340-21 and AR 25-400-2.

b. Commanders will ensure that personnel who handle PII are aware of their responsibilities for protecting personal information collected and maintained under the Army's Privacy Program.

6. **Records Maintenance and Destruction**

a. Records of background checks will be maintained in accordance with applicable laws and regulations.

b. Disposal of materials must be completed to limit the reconstruction of documents or in the same manner as what is required to destroy classified material. Copies of For Official Use Only documents will be disposed of according to the provisions of Title 44 United States Code, Chapter 33, DoD Directive 5015.2 and AR 25-400-2.

c. Before destroying any information that was used to determine suitability, the Commander Designated Entity will properly document the adjudication of the suitability determination in the OPM Central Verification System. For inspection purposes, this documentation will serve as proof that required background checks were satisfactorily completed and adjudicated.

SCREENING AND BACKGROUND CHECKS FOR VOLUNTEERS AND ALL OTHER CATEGORIES OF INDIVIDUALS

1. **Purpose.** To establish requirements for screening and background checks and supporting guidelines for determining the suitability of specified volunteers and other categories of individuals not previously referenced in this directive who have regular contact with children in Army programs. Strict compliance with these requirements and personal command oversight are critical to ensure the health, safety and well-being of children and reduce the risk of child abuse and neglect for children who interact with specified volunteers and others in Army-sponsored or sanctioned programs and activities.

2. **Applicability.** The guidance in this enclosure applies to all specified volunteers and all other categories of individuals who have regular contact with children through Army programs and services, except for APF/NAF employees, foreign national employees overseas, contractors and FCC/HOPS providers, who are covered by the guidance in enclosures 3 and 4. Commander Designated Entities, chaplains, MTFs, PMOs/DESs, ASAP offices, DFMWRs and all other offices responsible for on-boarding personnel and/or who support screening and background checks for these individuals will follow the guidance in this enclosure.

3. **General Responsibilities.** All organizations will establish guidance and standing operating procedures to ensure that specified volunteers and other individuals who have regular contact with children in the performance of their duties—and who are not otherwise covered in this guidance—possess a favorable suitability assessment. Specified volunteers and all other categories of personnel must have a favorable IRC and FBI fingerprint check (if they were or currently are affiliated with DoD) before offering their services. Unspecified volunteers must always work under LOSS and therefore do not require a background check.

a. Volunteer Proponent Office. The proponent office where the specified volunteer (or other individual) will provide services is responsible for screening all specified volunteer applicants and other individuals by reviewing resumes, conducting personal interviews and checking at least two references before initiation of the background check. Once the proponent office recommends that the individual serve in a position with regular contact with children, the proponent office will ask the Commander Designated Entity to initiate the background check for the specified volunteer or other individual.

b. Commander Designated Entity. The Commander Designated Entity is responsible for initiating, receiving and processing the results of background checks and for identifying derogatory information in the results of the background checks.

c. Other Organizations. These offices are responsible for conducting portions of the IRC and providing the information and results to the Commander Designated Entity for interpretation:

- PMO/DES: installation military police records and local law enforcement records,
- ASAP: drug and alcohol abuse record,
- MTF: Army Central Registry, and
- CID: DCII/CID records.

d. Commands. Commands will:

(1) provide operational guidance and oversight for the volunteer program and ensure that standing operating procedures and policies address requirements for background checks for specified volunteers and other individuals who work with children. The guidance must also address the handling of individuals when derogatory information is uncovered during the background check or through some other means.

(2) designate specified volunteers not included in the list at paragraph 5b of this enclosure (on page 5) who will be authorized to operate outside of LOSS provided a favorable suitability determination has been made.

(3) convene a PRB, as necessary, to review and adjudicate derogatory information and make suitability recommendations to the commander. When the commander recommends suitability despite derogatory findings, the commander will forward the suitability file to the HQDA PRB Review Panel for a final determination of suitability.

4. **Requirements**

a. Preemployment Screening and Assessment. The responsible organization where the specified volunteer (or other individual) will provide services will ensure that the individual has the necessary skill sets for the position and, through personal interview and reference checks, will assess the applicant's temperament and suitability for work with children.

b. Background Check. Once the responsible organization completes the preemployment screening and assessment and believes the individual is suitable for working with children, the Commander Designated Entity will initiate the background check. The background check requirements for all specified volunteers and other individuals not previously addressed in this guidance include an IRC (when applicable), a local law enforcement check (where available) and an FBI fingerprint check. If an organization requires a specified volunteer to be allowed to provide LOSS for other volunteers, a CNACI must also be conducted and favorably adjudicated for the specified volunteer before he or she is allowed to provide LOSS. The following chart illustrates the requirements for specified volunteers and other individuals not previously addressed in this directive:

Category (Proponent)	Requirement (Proponent if Different)	Specified Volunteer	Other Individuals Not Previously Addressed
Prescreening (functional proponent)	1) Application 2) Interview review 3) Reference check	X X X	X X X
A Statement of Previous Arrest or Charge is required for all applicants and must be updated annually (see enclosure 5, paragraph 7).			
Completed background check (Commander Designated Entity)	1) IRC:* a. Local Military Records (PMO) b. Local Law Enforcement (PMO/CPAC) c. Drug and Alcohol (ASAP) d. Army Central Registry (MTF) e. DCII/CID Records (CID) 2) FBI fingerprint check (Commander Designated Entity) 3) Local Law Enforcement (PMO/CPAC)**	X X X X	X X X X
* IRC only applies to individuals with prior or current DoD affiliation. The IRC check will be for the 5-year period preceding the date of application. • Checks of mental health records and family housing will be done only to the extent required by references j and l. • Specified volunteers and others are considered cleared and can begin providing services if the results of these background checks are favorable. They cannot do any work, even under LOSS, before they have favorable results from the background checks. • If an organization requires a specified volunteer to be allowed to provide LOSS for other volunteers, a CNACI must also be conducted and favorably adjudicated for the specified volunteer before he or she is allowed to provide LOSS. • All derogatory findings must be adjudicated through the PRB process. ** The local law enforcement check will be for the 5-year period preceding the date of application.			
Reverification (required every 3 years)	1) IRC 2) FBI fingerprint check	X X	X X

The Commander Designated Entity is responsible for initiating each check with the responsible office and tracking, compiling and identifying derogatory information. For favorable findings, the Commander Designated Entity will give the results to the requesting office. In the case of derogatory information, the Commander Designated Entity will give the results to the command for adjudication through the PRB process unless the responsible office chooses not to accept the volunteer. Specified volunteers and other individuals must have favorable suitability assessments ***before*** the individual can offer services. An unspecified volunteer must always operate under LOSS.

c. Requirement for Reverification of Background Checks. A reverification that includes an IRC and FBI fingerprint check must be completed every 3 years for specified volunteers and others. If derogatory information is uncovered through a periodic reverification or some other means, the specified volunteer must immediately be placed under LOSS pending adjudication through the PRB process. When the

nature or seriousness of the derogatory information poses a potential risk to children or the allegation meets the criteria for mandatory disqualification, the individual must be removed from contact with children pending the outcome of the investigation or an adjudication decision from the PRB. Upon receipt of a favorable suitability determination, the individual may return to their volunteer status. If an unfavorable determination is rendered, the commander will take appropriate action to have the person removed from contact with children.

d. **LOSS**

(1) Specified volunteers will not be allowed to begin work under LOSS; the IRC, local law enforcement check (if available) and FBI fingerprint check must be completed and any findings favorably adjudicated ***before*** the specified volunteer can offer services. Unspecified volunteers must operate under LOSS at all times. They must be conspicuously marked by distinctive clothing (identifiable colors), badges, wristbands or other apparent markings that are fully visible when viewed from all angles.

(2) Individuals permitted to volunteer or perform duties under LOSS must be supervised; that is, monitored constantly by an individual who has:

(a) undergone a CNACI and received a favorable suitability determination;

(b) met the periodic reverification requirement for a recurring background check; and

(c) not previously exhibited wanton and reckless disregard for an obligation to supervise an employee, contractor or volunteer in accordance with this guidance.

(3) Supervision in this context is not necessarily the same as the employee's supervisor for employment purposes.

(4) Individuals otherwise required to perform duties only under LOSS may perform duties without LOSS supervision if interaction with the child:

(a) occurs in the presence of the child's parent or guardian, except in a medical facility;

(b) is in a medical facility, subject to the supervisory policies of the facility and in the presence of a mandated reporter of child abuse; or

(c) is necessary to prevent the death of or serious harm to the child, and supervision is impractical or unfeasible (for example, medical emergency, emergency evacuation of a child from a hazardous location).

5. **Special Instructions**

a. All volunteers are considered unspecified unless they have a background check with a favorable suitability determination. If an individual's volunteer time is expected to be less than what is required to complete the IRC and FBI fingerprint check, the functional proponent will ensure that the individual works only under LOSS.

b. The following list, though not all-inclusive, identifies specified volunteers. Garrison commanders or military of like grade and responsibility within the ARNG and USAR must officially designate other positions not included:

(1) FMWR: youth sports coaches.

(2) Chaplains: teachers and assistant teachers (Sunday school, Awana, catechists and other leaders in Catholic religious education, children's church, small groups with children; etc.); Vacation Bible School volunteers (teachers, directors, station leaders, group leaders); workshop leaders; choir directors; acolyte coordinators; Youth of the Chapel volunteers; Watch Care volunteers (during worship services and any other chapel-sponsored events); and lock-in and retreat chaperones (whether these programs are Strong Bonds, congregation-based or other overnight events). The volunteers on this list are individuals 18 years of age and older who are working in chapel programs providing leadership with children.

(3) ARNG and USAR: Unit special events like Yellow Ribbon.

c. Unspecified volunteers who work ***only*** under constant LOSS by a cleared and vetted individual may perform some of the following functions: being a disc jockey for dances; chaperoning field trips or special events; assisting in classrooms as part of the parent participation program; reading or conducting activities as a subject matter expert; participating in unit sponsorship activities (Soldiers); serving as Vacation Bible School aides, assistants and youth for the chapel; serving as a youth volunteer (under 18 years of age); and driving buses.

6. **Failure to Complete.** Failure to complete a background check does not create a positive presumption of a prospective volunteer's suitability to perform duties in a position subject to a background check, nor does such failure create any right to legal or procedural recourse.

7. **Statement of Previous Arrest or Charge.** As part of the volunteer application to work with children and youth, all volunteers must complete a statement that answers these questions:

- Have you ever been arrested for or charged with a crime involving a child?
- Have you ever been asked to resign because of or been decertified for a sexual offense? If so, describe the case disposition.

The statement must be signed under penalty of perjury and updated annually.

8. **PII**

a. All managers, hiring officials and supervisors will ensure that internal procedures and safeguards are developed, implemented and maintained to protect PII in accordance with AR 340-21 and AR 25-400-2.

b. All commanders will ensure that personnel who handle PII are aware of their responsibilities for protecting personal information collected and maintained under the Army's Privacy Program.

9. **Records Maintenance and Destruction**

a. Records of background checks will be maintained in accordance with applicable laws and regulations.

b. The disposal of materials must be completed to limit the reconstruction of documents or in the same manner as what is required to destroy classified material. Copies of For Official Use Only documents will be disposed of according to the provisions of Title 44, U.S. Code, Chapter 33; DoD Directive 5015.2; and AR 25-400-2.

c. Before destroying any information that was used to determine suitability, the Commander Designated Entity will properly document the suitability adjudication determination in the OPM Central Verification System. For inspection purposes, this documentation will serve as proof that required background checks were completed and adjudicated satisfactorily.

ADJUDICATION OF DEROGATORY INFORMATION

1. **Derogatory Information**

a. Criteria for Mandatory Disqualification. Pursuant to DoD Instruction 1402.5, no person, regardless of circumstances, will be approved to provide child care services if the individual has been convicted of a sexual offense, a drug felony, a violent crime or a criminal offense involving a child or children.

b. Discretionary Criteria. Officials charged with making determinations pursuant to DoD Instruction 1402.5 must include in the record a written justification for any favorable determination made where the results of a background check include any of the following discretionary criteria:

- acts that may tend to indicate poor judgment, unreliability or untrustworthiness in working with children;
- any behavior, illness, or mental, physical, or emotional condition that, in the opinion of a competent medical authority, may cause a defect in judgment or reliability;
- offenses involving assault, battery or other abuse of a victim, regardless of the age of the victim;
- evidence or documentation of substance abuse dependency or addiction;
- illegal or improper use, possession or addiction to any controlled or psychoactive substance, narcotic, cannabis or other dangerous drug;
- sexual acts, conduct or behavior that, because of the circumstances they occur in, might indicate untrustworthiness, unreliability, lack of judgment or irresponsibility in working with children;
- offenses such as arson, homicide, robbery, fraud or any offense involving possession or use of a firearm;
- evidence that the individual is a fugitive from justice;
- evidence that the individual is an illegal alien who is not entitled to accept gainful employment for a position; and
- finding of negligence in a mishap causing death or serious injury to a child or dependent person entrusted to their care.

c. Identifying Derogatory Information. The Commander Designated Entity is responsible for reviewing all results of a background check on an individual and for identifying derogatory information. If the IRCs uncover derogatory information, the

Commander Designated Entity will forward the information to the commander for a decision to approve or disapprove the individual's duty under LOSS. If the CNACI (or host nation check) uncovers derogatory information, the Commander Designated Entity will compile a file and forward it to the command for adjudication through the PRB process. However, the Commander Designated Entity need not forward the following results unless the incidents are recurring. If any doubt exists that the result or record meets these criteria, the Commander Designated Entity should err on the side of caution and forward the information to command for adjudication:

(1) administrative violations (for example, lost identification card or common access card);

(2) parking and/or vehicle maintenance violations (for example, failure to register vehicle, inoperative tail light);

(3) finding or record where the individual was a victim or witness to a crime with no criminal involvement;

(4) traffic accidents or offenses that have no connection to the position, no drug or alcohol involvement and no indication of reckless driving;

(5) financial debt or credit issues, including bankruptcy, unless the debt or issue is linked to the position. For those positions with a nexus, all previous and current bad credit issues, delinquent financial debt and bankruptcy findings, any of which are more than $5,000, will be fully adjudicated through the PRB process;

(6) minor, isolated criminal conduct that occurred 10 years or more in the past; or

(7) minor discrepancies with educational, reference or employment checks (for example, minor error in dates of attendance or employment).

2. **Adjudication of Derogatory Information.** The PRB is the Army's standardized process to objectively evaluate derogatory information about an individual that is found during the background check or reverification process. In the event that screening or the results of background checks identify mandatory disqualification information, the individual is disqualified from working with children or youth in an Army-sponsored or sanctioned program. All other derogatory information found by the IRC, CNACI (or host nation check) or reverification and forwarded to command for adjudication will be considered by a command-level PRB.

a. Installation or Other Comparable Command-Level PRB. Each commander will publish detailed guidance for establishing and conducting PRBs. The installation PRB (or equivalent for the ARNG and USAR) serves as the commander's multidisciplinary board for reviewing derogatory information found through the completed background check process or a reverification. This requirement applies to all categories of

individuals this directive covers. Installation PRBs will review PRB case files for MTF personnel. In consultation with MEDCOM, the garrison commander will make a recommendation in cases of MTF personnel requiring adjudication through the HQDA PRB Review Panel. The ARNG and USAR must have a similar process in place to review derogatory information and obtain final adjudication determination by the Deputy ASA (DASA) designated by the ASA (M&RA).

(1) The garrison commander will appoint primary and alternate PRB members on orders. The PRB will include representatives from the following organizations as voting members: installation law enforcement; CID; Family Advocacy Program; social work services or behavioral health; ASAP; CYSS; and the applicable functional program manager (such as MWR, chaplain, medical and Army Community Services) based on the case(s) being reviewed. Advisory, nonvoting members will include representatives from the Office of the Staff Judge Advocate and human resources office/Civilian Personnel Advisory Center. Other organizations may attend as nonvoting members as needed based on the case(s) under review (for example, contracting officer, Child Protective Services, Equal Employment Opportunity). Voting PRB members will recuse themselves when a conflict of interest occurs. A quorum of five members is required to conduct business.

(2) The command-level PRB will review all files the Commander Designated Entity forwards to the command as containing derogatory information from the completed background check or reverification.

(3) Except for mandatory disqualifying information, the PRB and commander will consider these additional factors when assessing suitability to the extent they are considered pertinent to the individual case:

- the kind of position the individual is applying for or is employed in,
- the nature and seriousness of the conduct,
- the recentness of the conduct,
- the age of the individual at the time of the conduct,
- the circumstances surrounding the conduct,
- any contributing social or environmental conditions,
- the absence or presence of rehabilitation or efforts toward rehabilitation, and
- the nexus of the arrest(s) in regard to the job to be performed.

(4) The individual will be given due process and the opportunity to challenge the accuracy and completeness of reported information, as well as explain any mitigating factors or extenuating circumstances.

(5) After deliberate consideration, the PRB will make a suitability recommendation on each individual case to the commander. After consideration of the PRB recommendation and case file, the commander may determine that a person is not suitable for the position.

(6) Alternately, the commander may recommend a favorable suitability determination. When the commander recommends a favorable determination despite the derogatory information, the individual's PRB case file will be forwarded to the HQDA PRB Review Panel for consideration. The commander must include a written justification for a favorable determination.

(7) The HQDA PRB Review Panel process will determine suitability for ***all*** categories of individuals who have regular, recurring contact with children in Army programs and services when the commander recommends suitability despite derogatory information. This policy has no exceptions.

b. HQDA PRB Review Panel

(1) The HQDA PRB Review Panel is composed of senior individuals from the Army Secretariat and Staff with expertise in various areas related to this directive. The panel will be chaired by a DASA designated by the ASA (M&RA). Participation on the panel is rotated among the designated individuals and offices.

(2) The HQDA PRB Review Panel will operate through subpanels that have three voting members at all times. The voting panel members will review each file. When two or more members determine that the individual is not suitable, the decision is final and conveyed to the command. When the panel recommends a favorable suitability determination despite the derogatory information, the file is referred to the ASA (M&RA)-designated DASA.

(3) In such cases the ASA (M&RA)-designated DASA, in consultation with the Offices of the Judge Advocate General and Army General Counsel, will make the final determination on an individual's suitability for a child care services position.

(4) The determination by the HQDA PRB Review Panel or the ASA (M&RA)-designated DASA is not a suitability determination within the meaning of 5 Code of Federal Regulations Part 731, but is a determination pursuant to the Crime Control Act of 1990, as amended, and DoD Instruction 1402.5 with respect to suitability for employment in a child care services position.

3. **Responsibilities for the HQDA PRB Process**

a. ASA (M&RA). The ASA will:

(1) organize the HQDA PRB Review Panel and designate the chair,

(2) provide strategic direction and supervision for the entire HQDA PRB Review Panel process,

(a) appoint members to the HQDA PRB Review Panel who are senior personnel in the grades of GS-15 or colonel equivalent as an additional duty and ensure that training is provided, and

(b) provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

b. ASA (Installations, Energy and Environment). The ASA will provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

c. ACSIM. The ACSIM will:

(1) designate an Administrative Coordinator for the HQDA PRB Review Panel to provide administrative and logistical support to the review panel process supervised by the ASA (M&RA). The ACSIM Administrative Coordinator will ensure the administrative sufficiency of all PRB case files for review by the panel, support panel members by clarifying or obtaining additional information, and ensure the integrity of the voting process on individual suitability determinations.

(2) publish detailed procedures and specified timelines to govern the timely transmission of PRB case files from the commander through the IMCOM chain of command to the HQDA PRB Review Panel.

(3) administer the automated Child-Related Employment Suitability Review system in support of the HQDA PRB Review Panel process. The system transmits the case file from installations to HQDA through the chain of command and returns the case file to the requesting organization.

(4) conduct and direct all communication regarding the background check and suitability determination until the HQDA PRB Review Panel or the ASA (M&RA)-designated DASA makes a final determination.

(5) provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

(6) provide oversight to IMCOM for:

(a) publishing requirements on the contents of the local PRB case file and processing of cases in accordance with command-published standing operating procedures.

(b) ensuring that commanders and local PRBs review derogatory information as required. The local PRB recommends a favorable or unfavorable suitability determination to the commander.

(c) preparing the PRB case file for transmittal through the IMCOM chain of command (or other appropriate command), with recommendation and supporting documentation, and providing any additional information that higher headquarters may require.

(d) conducting and directing all communication with individuals regarding the background checks and suitability determination until the final suitability determination is made.

(e) ensuring that commanders take appropriate action pursuant to the applicable provisions of the references when derogatory information is received on APF/NAF applicants; employees; foreign national employees overseas; members of the military; contractors; in-home providers (FCC, HOPS, etc.); or specified volunteers.

(f) making sure commanders notify individuals of derogatory information and give all appropriate notices under DoD Instruction 1402.5 with respect to disputes and appeals.

(g) ensuring that commanders satisfy any applicable labor relations obligations.

d. DCS, G-1. The DCS, G-1 will:

(1) assist the ASA (M&RA) as needed and take actions necessary to carry out the requirements established by regulation and policy with regard to suitability determinations based on background checks.

(2) provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

e. DCS, G-2. The DCS, G-2 will:

(1) assist the ASA (M&RA) as needed by taking actions necessary to carry out the requirements established by regulation and policy with regard to suitability determinations based on background checks.

(2) provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

f. Chief, National Guard Bureau. The Chief, through the Director, ARNG, will:

(1) assist the ASA (M&RA) as needed by making files available or taking actions necessary to carry out the requirements established by regulation and policy with regard to suitability determinations based on background checks.

(2) set forth procedures necessary to carry out the requirements for background checks and suitability determinations and forward cases as required for consideration by the HQDA PRB Review Panel.

(3) provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

g. Chief, Army Reserve. The Chief will:

(1) assist the ASA (M&RA) as needed by making files available or taking actions necessary to carry out the requirements established by regulation and policy with regard to suitability determinations based on background checks.

(2) set forth procedures necessary to carry out the requirements for background checks and suitability determinations and forward cases as required for consideration by the HQDA PRB Review Panel.

(3) provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

h. The Surgeon General. The Surgeon General will:

(1) assist the ASA (M&RA) as needed by making files available, to the extent permitted by law, or taking actions necessary to carry out the requirements established by regulation and policy with regard to suitability determinations based on background checks.

(2) provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

(3) take appropriate actions pursuant to applicable provisions of the references and AR 40-68 (Clinical Quality Management) (reference o) when derogatory information is received on any individual working with children on a regular, recurring basis.

i. The Judge Advocate General. In conjunction with the Army General Counsel, the Judge Advocate General will:

(1) ensure the provision of appropriate legal support as necessary; and

(2) review every case submitted to the HQDA PRA Review Panel for legal sufficiency before the panel makes a final determination.

j. The Chief of Chaplains. The Chief of Chaplains will:

(1) assist the ASA (M&RA) as needed by taking actions necessary to carry out the requirements established by regulation and policy with regard to suitability determinations based on background checks.

(2) provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

k. Provost Marshal General. The Provost Marshal General will provide two representatives at the GS-15 or colonel level to serve on the HQDA PRB Review Panel.

l. HQDA PRB Review Panel. The panel will:

(1) operate as three-member voting subpanels drawn from the rotating duty roster of the HQDA PRB Review Panel subject to their availability.

(2) make suitability findings based on the available documentation and supporting evidence by a majority vote of the three-member voting subpanel.

(a) When a majority of the panel finds that the individual is not suitable, the panel's decision becomes the final suitability determination after the requisite legal review.

(b) When the panel finds that the individual may be suitable, the panel's recommendation will be forwarded to the ASA (M&RA)-designated DASA for final determination. In those cases, the DASA will review the entire case file and make a final determination of suitability.

(3) maintain the confidential nature of the information reviewed by not discussing the details or releasing records pertaining to any individual case file. This provision does not restrict disclosure of information to individuals with an official need to know, consistent with the Privacy Act and other applicable laws and regulations.

4. **Referral of Suitability Case Files**

a. Each recommendation regarding suitability rendered by a command-level PRB, together with an explanation of the rationale justifying the recommendation and all information the local PRB considered, will be documented in writing, signed by the chair and each participating member of the command PRB, and forwarded to the appropriate commander for review.

b. The commander will review each local PRB recommendation and applicable documentation and make his or her determination or recommendation, as the case may be, on the suitability of the individual at issue.

(1) Only those cases in which the commander recommends that the individual be found suitable will be forwarded through the chain of command to the ACSIM Administrative Coordinator. The commander's signed recommendation, together with his or her rationale and the local PRB case file, will be forwarded through the IMCOM, ARNG or USAR chain of command, which will review it for administrative sufficiency.

(2) The ACSIM Administrative Coordinator will acknowledge receipt of the submitted case file.

c. The ACSIM Administrative Coordinator will assemble the case files, including the respective recommendations, for transmission to the HQDA PRB Review Panel. The panel case file will be identical to the case file reviewed by the command-level PRB and commander, but will also include the commander's recommendation and rationale.

5. **Access to Information.** Organizations will make all information available to decision makers necessary to correlate significant verified information in the case file.

6. **Organization and Procedures for the HQDA PRB Review Panel**

a. Membership. The following will provide two representatives to serve on the panel: ASA (M&RA); ASA (IE&E); ACSIM; DCS, G-1; DCS, G-2; the Director, ARNG; Chief, Army Reserve; The Surgeon General; Chief of Chaplains; and the Provost Marshal General. Members will serve for 1 year. Members are scheduled to sit on voting subpanels drawn from the full membership using a rotating duty roster subject to availability. The three-member voting subpanels will review each case separately during the panel review.

b. Process. The HQDA PRB Review Panel process is as follows:

(1) The ACSIM Administrative Coordinator will send cases via the Child-Related Employment Suitability Review system to three voting members, with an automated email notification to the panel members that cases are awaiting action.

(2) Each subpanel member will review the case file, including supporting evidence and facts presented; indicate his or her vote regarding suitability; and document the rationale for his or her recommendation using the specified criteria. A simple majority vote rules. If panel members vote that the individual is unsuitable, subject to legal review the final determination of the case is that the individual is unsuitable under DoD Instruction 1402.5, and the case file is returned to the commander. Only when the panel recommends that the individual be found suitable is the case forwarded to the ASA (M&RA)-designated DASA for a final determination.

(3) The ACSIM Administrative Coordinator consolidates the input and votes of the panel members and forwards the case file with the panel's recommended decision to the legal advisor for review.

(4) The legal advisor reviews the panel's proposed determination, annotates the case file and notifies the ACSIM Administrative Coordinator via email that the legal review is complete.

(5) If the panel recommends that the individual be found suitable, the ACSIM Administrative Coordinator notifies the ASA (M&RA)-designated DASA of a pending case for review via email. The DASA reviews the panel's recommendation, the case file and legal review and makes a final determination on suitability.

(6) The final suitability determination is recorded in the case file and returned via the automated Child-Related Employment Suitability Review system database, with email notification to the ACSIM Administrative Coordinator, who will notify the commander and return the case file. The commander is responsible for taking any follow-on actions.

(7) HQDA PRB Review Panel members and the ASA (M&RA)-designated DASA will complete their respective reviews and render their findings within 5 working days from receipt of the case file.

7. **Determinations by the HQDA PRB Review Panel and ASA (M&RA)-Designated DASA**

a. Decisions will be based on:

(1) a review of the case file referred with supporting documentation and in accordance with the suitability criteria and additional factors outlined in paragraphs 1b and 2a(3) of this enclosure.

(2) the knowledge and best judgment of the panel members or the ASA (M&RA)-designated DASA, based on all known facts, in consultation with legal advisors as necessary.

b. All information of record—both favorable and unfavorable—will be assessed in terms of its relevance, recentness and seriousness. The determination will be based on the criteria in paragraph 1 and the additional consideration factors delineated in paragraph 2a(3).

8. **Recordkeeping**

a. Maintenance of an additional set of records of the cases reviewed by the HQDA PRB Review Panel or the ASA (M&RA)-designated DASA at the HQDA level is

not required. HQDA will maintain a database of the recommendations and suitability determinations the panel and designated DASA made for each case reviewed.

b. The HQDA PRB Review Panel will be supported by the automated Child-Related Employment Suitability Review workflow with the functionality to manage the distribution of case files, count votes and record results.

DEFINITION OF ACRONYMS AND TERMS

ACSIM	Assistant Chief of Staff for Installation Management
ALT	Acquisition, Logistics and Technology
APF	Appropriated Fund
AR	Army Regulation
ARNG	Army National Guard
ASA	Assistant Secretary of the Army
ASAP	Army Substance Abuse Program
CAF	Central Adjudication Facility
CID	Criminal Investigation Command
CNACI	Child Care National Agency Check and Inquiries
CYSS	Child, Youth and School Services
DASA	Deputy Assistant Secretary of the Army
DCII	Defense Central Index of Investigations
DCS	Deputy Chief of Staff
DES	Directorate of Emergency Services
DFMWR	Director(ate) of Family and Morale, Welfare and Recreation
DoD	Department of Defense
FBI	Federal Bureau of Investigation
FCC	Family Child Care
FM&C	Financial Management and Comptroller
HOPS	Homes Off-Post
HQDA	Headquarters, Department of the Army
IE&E	Installations, Energy and Environment
IMCOM	U.S. Army Installation Management Command
IRC	Installation Records Check
LOSS	Line of Sight Supervision
MEDCOM	U.S. Army Medical Command
MTF	Medical Treatment Facility
MWR	Morale, Welfare and Recreation
NACI	National Agency Check and Inquiries
NAF	Nonappropriated Fund
NCIC	National Crime Information Center
OPM	U.S. Office of Personnel Management
PII	Personally Identifiable Information
PMO	Provost Marshall Office
PRB	Program Review Board
USAR	U.S. Army Reserve

TERMS

Army-Sponsored or Sanctioned Programs. Any program, facility or service funded, operated or officially sanctioned by the Army, or any agency, unit or subdivision thereof. Examples include, but are not limited to, chapel programs, child development centers, in-home care programs, Drug Education for Youth programs, MTFs, DoD Education Activity schools, Scouts, and recreation and youth programs. This term does not include programs operated by other State or Federal agencies or private organizations without the official sanction of a DoD entity.

Central Verification System. A national database OPM manages that contains information on background investigations, credentialing and suitability determinations, and security clearances.

Chapel Volunteer Management System. A program the Army Chief of Chaplains established that provides oversight of all volunteers within Army chapels and chapel programs, separate and distinct from other garrison volunteer programs.

Child Care National Agency Check and Inquiries. The CNACI is a background investigation that includes the National Agency Check and Inquiries (NACI) and the State Criminal History Repository check.

a. **NACI.** A background investigation consisting of searches of the OPM Security/Suitability Investigations Index; the Defense Central Index of Investigations (DCII), fingerprint name file and fingerprint chart from the FBI's Identification Division; and FBI Records Management Division files. Additional written inquires about the applicant are sent to former employers, supervisors, references and schools.

b. **State Criminal History Repository check.** A check conducted of a State's central record of investigative files.

Child Care Services. DoD personnel and contractors who are involved in any of the following:

> . . . child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs and detention, correctional, or treatment services. . .

as defined in the Crime Control Act of 1990, Public Law 101-647, section 231 (reference a).

Child, Youth and School Services. A Department of the Army program designed to enhance military readiness by providing comprehensive on- and off-post child care

options and supervised programs for youth. CYSS covers the full gamut of child-based programs from child care options to teen youth centers and extracurricular sports programs, as well as programs executed by the reserve components, including camps and youth development activities.

Child, Youth and School Services Personnel. For the purposes of this directive, employees of the Federal Government or others who work directly in CYSS organizations or in support of CYSS, including APF, NAF and contracted personnel; providers of FCC/HOPS; Family members 12 years of age and older, and other authorized adults residing in the household; military and civilian volunteers who support CYSS as sports officials, coaches, youth hires; and others working in CYSS programs (such as MWR partners, interns and trainees).

Child(ren). As defined in DoD Directive 6400.1 (Family Advocacy Program (FAP)) (reference g), a "child" is a person under 18 years of age, whether a natural child, adopted child, foster child, stepchild, or ward, of a servicemember or DoD civilian or their spouse. The term also includes an individual of any age who is incapable of self-support because of a mental or physical incapacity and for whom treatment in a medical treatment facility is authorized.

Commander Designated Entity. A single entity within an organization that the commander has designated to be responsible for the initiation, coordination and tracking of background checks for individuals involved in child care services, as defined in DoD Instruction 1402.5. Commander Designated Entities also are responsible for reviewing the results of the background check to determine whether they contain derogatory information.

Complete Background Check. For APF and NAF personnel; military; foreign national employees overseas; contractors; and FCC, HOPS and other in-home providers, the complete background checks consists of the preliminary investigation (IRC and FBI fingerprint check) and the CNACI (including the State Criminal History Repository check) or host nation background check as applicable. For volunteers and all other categories of individuals, a complete background check consists of the IRC and FBI fingerprint check.

Contractor. An expert, consultant, licensee or certificate holder who performs work for or on behalf of the Department of the Army (but not a Federal employee). The term includes all subcontractors (personnel services contractor or any other category).

Derogatory Information. Information that may reasonably justify an unfavorable suitability or fitness determination because of the relationship between the issue or conduct and the core duties of the position.

DoD Affiliation. A prior or current association, relationship or involvement with DoD or local military installation.

Family Advocacy Program. The Family Advocacy Program is designed to address the prevention, identification, evaluation, treatment, rehabilitation, followup and reporting of Family maltreatment. Governed by DoD Directive 6400.1 (reference g), the program consists of coordinated efforts designed to prevent and intervene in cases of Family distress and to promote healthy Family life.

FBI Fingerprint Check. A scan or print of a person's fingerprints used to search FBI databases to screen for arrests and dispositions of arrests and other information in the databases.

Family Child Care. Quarters- or home-based child care services that are provided for military personnel, civilian employees or eligible employees of a contractor by an individual the Army has certified as qualified to provide those services. The individual normally provides care on a regular basis for compensation for 10 hours or more a week for one or more (up to six) children, including the provider's own children under 8 years of age. Also referred to as Family home child care, Family home care, child development homes and Family day care.

Family Child Care Provider. An individual 18 years of age or older who provides child care for 10 hours or more a week for a child on a regular basis in his or her home with the approval and certification of the garrison commander. The FCC provider is responsible for planning and carrying out a program that meets the needs of children at their various stages of development and growth.

Family Child Care Family Resident. Any person, 12 years of age or older, who resides in the FCC home for 30 or more consecutive days.

Foreign National Employees Overseas. Non-U.S. citizens DoD has hired for employment on an overseas installation.

Foster Care. A voluntary or court-mandated program that provides 24-hour care and supportive services in a Family home or group facility for children who cannot be properly cared for by their own Family. For the purposes of this directive, the term is only applicable outside the U.S. within Government-owned or leased quarters.

Healthcare Personnel. Personnel involved in the delivery of healthcare to children under the age of 18 on a frequent and regular basis. This may include:

a. **Medical and Dental Care Staff.** Physicians, dentists, nurse practitioners, clinical social workers, clinical psychologists, physicians' assistants, physical therapists and speech pathologists.

b. **Clinical Support Staff.** Clinical providers not granted defined clinical privileges, including residents, registered nurses, licensed practical nurses, nursing assistants, play therapists and technicians.

Homes Off-Post Provider. An individual 18 years of age or older who provides child care for 10 hours or more a week for a child on a regular basis in his or her home with the approval and certification of the garrison commander. The HOPS provider is responsible for planning and carrying out a program that meets the needs of children at their various stages of development and growth. HOPS providers must be State-certified.

Host Government Check. A background check conducted on foreign nationals in accordance with treaties or agreements between the United States and the host country.

Installation Records Check. An investigation conducted through the records of all installations of an individual's identified residences for the preceding 5 years before the date of the application. The IRC requirement applies to ***all*** individuals with a prior or current DoD affiliation who are involved in the provision of child care services and have regular contact with children. For the Department of the Army, the IRC consists of these checks:

a. **PMO/DES Check.** This check identifies military police records linked to the individual where that individual is identified as the subject of a founded offense. The check also includes bars and traffic tickets. The results of the check include:

(1) military police record number;

(2) report date;

(3) Social Security number;

(4) first and last names;

(5) date, location and description of offense; and

(6) disposition information:

- Status of DA Form 4833 (Commander's Report of Disciplinary or Administrative Action): pending, complete or never submitted;
- DA Form 4833: Action Taken (YES/NO);
- Action Taken: If "YES," whether the action was administrative, nonjudicial or judicial; and
- DA Form 4833: Finding.

b. **Local Civilian Law Enforcement Check.** This check identifies criminal offenses investigated by a civilian law enforcement agency off post and may include city police, county sheriff and magistrate or State records. Local civilian law enforcement checks will be conducted where State law permits. The PMO/DES will query their available

State police databases where the applicant resided during the 5 years preceding the date of application for employment. The PMO/DES will consult with the installation Staff Judge Advocate to determine if civilian law enforcement records are obtainable according to State law. The PMO/DES will notify the Commander Designated Entity at the time of request if State law restricts access to the checks.

c. **Army Substance Abuse Program Check.** Made only with consent of the individual, this check of the Drug and Alcohol Management Information System database by ASAP identifies individuals who may have had a substance abuse issue in the past. The ASAP office will provide the following information to the Commander Designated Entity within 5 business days:

- all illicit positive urinalysis tests and any positive test that has not been adjudicated by a medical review officer as authorized use,
- dates of screening when not enrolled with the primary basis and diagnosis if one is available, and
- enrollment period if enrolled with primary basis and diagnosis and success or failure of rehabilitation.

d. **Army Central Registry Check.** This check of the central database for the Armywide Family Advocacy Program identifies individuals who have "met criteria" as an offender in a case of Family maltreatment. See AR 608-18 (The Army Family Advocacy Program) (reference y). The MTF is responsible for providing the results of the query to the Commander Designated Entity within 5 business days.

e. **Criminal Investigation Division/Defense Clearance Index of Investigation Check.** This CID check identifies Army CID Reports of Investigation and U.S. Army Crime Records Center reports linked to individuals if they are the subject of an offense. CID will return name check results to the proponent Commander Designated Entity within 15 calendar days. The DCII check identifies central DoD records of investigative files and adjudicative actions, such as clearances and access determination, revocations, and denials concerning military, civilian and contractor personnel.

f. **Mental Health Records Check and Housing Check.** Checks of mental health records and family housing will be done only to the extent required by references j and l.

Line-of-Sight Supervision. LOSS requires continuous visual observation and supervision of an individual while engaged in child-interactive duties or in the presence of children in an Army-sponsored or sanctioned program or activity. The person providing supervision must have undergone IRC checks and a CNACI background check, received a favorable suitability determination and be current on the periodic reverification requirements in this directive. An individual permitted to work subject to LOSS must continue to function under LOSS until the results of his or her completed background check are received and favorably adjudicated. For more information for health care personnel, refer to DoD Instruction 1402.5, paragraphs E6.2.5 and E6.8.

Met Criteria. Reported incident of Family maltreatment that meets the relevant DoD criteria for alleged child or domestic abuse for entry into the Family Advocacy Program's central registry of child and domestic abuse reports.

Office of Personnel Management. The Army's investigative service provider for the conduct of background investigations to support a suitability or national security determination.

Personally Identifiable Information. Any information that could be used to uniquely identify, contact or locate a single person or trace a person's identity, including but not limited to, Social Security number, education, criminal or employment history, date and place of birth, biometric records, medical history or financial transactions.

Personnel Security Investigation Portal. The system authorized requesters use to request the initiation of a background investigation.

Preliminary Investigations. Those background checks (the IRC and FBI fingerprint check) that must be completed and favorably adjudicated before an individual may be permitted to perform duties under LOSS.

Program Review Board. A multidisciplinary board that a commander establishes to assess derogatory information found on individuals during the screening process or background check investigation, or when suitability issues arise during employment. After assessment of the findings, the PRB is responsible for making a suitability recommendation to the commander. The PRB will include representatives from the following organizations as voting members: installation law enforcement, CID, Family Advocacy Program, social work services or behavioral health, ASAP, CYSS and the applicable functional program manager (such as MWR, chaplain, medical and Army Community Service) based on the case(s) being reviewed. Advisory, nonvoting members will include representatives from the Office of the Staff Judge Advocate and human resources office/Civilian Personnel Advisory Center. Representatives from other organizations (such as contracting officer, Child Protective Services, Equal Employment Opportunity) may attend as nonvoting members as needed based on the case(s) under review. (See enclosure 6, paragraph 2a(1).)

PRB Case File. A file that contains source background check documents and other required documentation for use in the PRB process to consider an individual's suitability for a child care services position under DoD Instruction 1402.5.

Regular Contact With Children. Recurring and more than incidental contact with or access to children during the performance of duties on an Army installation, related to a program or as part of a military-sanctioned activity.

Reverification. A periodic reverification (an IRC and FBI fingerprint check) required every 5 years for all civilian employees, military personnel and contractors and every 3 years for volunteers. All FCC, HOPS, foster care and respite care providers and

Family members 12 years of age and older residing in the provider's home require reverification annually.

Respite Care. Short-term care and supportive services in a Family home or group facility for children to relieve stress, prevent child abuse and promote Family unity for a parent, foster parent, guardian or Family member.

Suitability (or Fitness) Determination. Based on review of the results of a background check, a decision whether an individual is suitable to perform duties in a child care services position. Suitability determination will be "favorable," meaning that the individual is fit to perform the duties, or "unfavorable," meaning that the individual is not.

Volunteer. Individuals who offer assistance to a program on an unpaid basis. For the purpose of background checks, volunteers supporting Army programs and activities will be statutory volunteers who are specified or unspecified volunteers.

a. **Statutory Volunteer.** Covered under Title 10, U.S. Code, section 1588, this term includes those individuals who donate their services to the Army, including programs that provide services to members of the Armed Forces and the Families of such members, including, but not limited to, Family support; CYSS; library and education; religious activities; MWR; and medical, dental, nursing or other healthcare-related services.

b. **Specified Volunteer Position.** A position designated by the component head or designee, such as the installation commander. Individuals filling these positions require an IRC and FBI fingerprint check because of the nature of the volunteer work in child care services. The individuals have extensive or frequent contact with children over a period of time outside of LOSS. They include, but are not limited to, positions involving extensive interaction alone, extended travel or overnight activities with children or youth.

c. **Unspecified Volunteer.** Individuals who usually provide services that are shorter in duration than is required to perform a background check and not otherwise specified (for example, chaperoning a 1-day class trip or class party). These individuals must always operate under LOSS.

Watch Care. A short-term service for infants and children whose parent or guardian is participating on location in a chapel activity. Chapel watch care is typically provided by approved chapel volunteers or individuals on a nonpersonal services contract working on a by event/by hour basis.

Youth Programs. DoD-sponsored activities, events, services, opportunities, information and individual assistance responding to the recreational, developmental, social, physiological, psychological, cultural, spiritual and educational needs of eligible children and youth, including before and after school programs, as well as holiday and summer camps. These activities support the acquisition of lifelong skills and facilitate

transition to adulthood. Youth programs are designed to be offered within a physically and emotionally safe environment that includes appropriately trained support staff in designated facilities and locations.

Special Victim Counsel Handbook

1 November 2013

...I told my commanders that combating sexual assault and sexual harassment within the ranks is our No. 1 priority. I said that because as chief, my mission is to train and prepare our Soldiers for war...These crimes cut to the heart of the Army's readiness for war. They destroy the fabric of our force, Soldier and unit morale... We will fix this problem.

- General Ray Odierno, Army Chief of Staff, 4 June 2013

PURPOSE: In our efforts to combat sexual assault within our ranks, the Special Victim Counsel Program (SVCP) was developed to strengthen our support of victims of sexual assault and enhance their rights within our military justice system, while neither causing unreasonable delay nor infringing upon the rights of an accused. The role of a Special Victim Counsel (SVC) is to zealously represent the client's interests throughout the military justice process within the scope of representation described in this Handbook. This Handbook establishes initial procedural rules and guidelines for the practicing SVC. SVCs will at all times act in accordance with Army Regulation 27-26, Rules of Professional Conduct for Lawyers, the rules of conduct of their particular State bar, and the high ethical standards of an Army Officer. Nothing in this Handbook will be read to alter these ethical standards of practice and, in case of conflict, SVCs will follow the ethical standards.

This handbook and the guidance contained herein may be revised, updated, and/or changed. It is the responsibility of SVCs, Chiefs of Legal Assistance (CLA), and Staff Judge Advocates (SJA) to maintain situational awareness of current practices through the SVC Program Manager (PM). Non-compliance with any of the guidelines contained within this Guide will not give rise to rights or remedies to the victim or the accused, and the guidelines will be interpreted in this context.

BACKGROUND: On 9 November 2012, General Counsel for the Secretary of Defense issued a memo titled "Legal Assistance to Victims of Sexual Assault." The issue examined in the memo was the scope of legal assistance that judge advocates can legally provide with support of paralegals to the victims of sexual assault. The memo concludes that "to the extent the victim could retain the advice or representation of private counsel, [10 U.S.C.] §§ 1044 and 1565b authorizes, and certainly does not prohibit, JAGs from providing the same legal advice and representation, to the same extent." The memo also states, "when read together, 1044 and 1565b authorize, and certainly do not preclude, legal assistance to a victim of a sexual assault in criminal contexts, including attending interviews of the victim and interfacing with military prosecutors, defense counsel and investigators."

The SVC Program does not increase a victim's standing in court-martial hearings or other military justice proceedings beyond the standing victims are currently afforded under existing law and rules (e.g., evidentiary hearings under MREs 412, 513, and 514). Victims, whether represented by SVC or civilian counsel, are not parties to a court-martial under Rules for Courts-Martial 103 and do not have the same entitlements as parties under the UCMJ.

FUNDAMENTAL PRINCIPLES FOR THE ARMY SPECIAL VICTIM COUNSEL PROGRAM:

SVCs are legal assistance attorneys who have received special training and are designated by their SJA's as an SVC. SVCs will provide zealous representation to their clients. Constrained only by ethical limits, SVCs shall represent the best interests of their clients as appropriate even when their client's interests do not align with those of the government of the United States. An SVC's primary duty is to his/her client and no other person, organization or entity.

SVCs are bound by applicable Army Regulations, the Army Rules of Professional Conduct for Lawyers, and the Rules of Practice Before Army Courts-Martial. Depending on the circumstances, they may also be bound by other laws, regulations, and instructions, as well as the ethics rules of their state bars.

SVCs will empower victims, foster victims' understanding of the military justice process and aid each victim with the legal assistance needed to allow full participation in applicable programs and services and the military justice process. This will be accomplished by providing effective and timely advice, being available to assist throughout the full spectrum of the military justice practice from initial investigation to convening authority action, and providing appropriate advocacy to assure rights afforded are fully realized.

TABLE OF CONTENTS

Chapter 1
Victim Eligibility

1-1 Eligibility for Army Members
1-2 Eligibility for Adult Dependents of Army Members
1-3 Eligibility for Members of Other Services
1-4 Eligibility for Adult Dependents of Members of Other Services
1-5 Eligibility for Other Categories of Victims
1-6 Basic Military Training and Technical Training
1-7 Deployed Victims
1-8 Determination of Eligibility

Chapter 2
Special Victim Counsel Representation Process

2-1 Victim Notification of Right to SVC
2-2 Victim Exercises Right to SVC
2-3 Solicitation of Victims

Chapter 3
Responsibility and Role of SVC

3-1 Primary Duty
3-2 Scope of Representation Letter
3-3 Duration of SVC Client Relationship
3-4 Special Victim Counsel Association with SARC and FAP
3-5 Special Victim Counsel Association with VWAP

Chapter 4
Scope of Representation

4-1 Victims Rights During the Military Justice Process
4-2 Notice of Representation
4-3 Attendance at Interviews by SVC
4-4 Notice to Judiciary of SVC Representation
4-5 Standing under the UCMJ
4-6 Advocacy to Army and Department of Defense Agencies
4-7 Notification to Third Parties by SVC
4-8 Access to Information

Chapter 5
Collateral Misconduct

5-1 Referral of Victim to USATDS

Chapter 6
Contact with Civilian Prosecutors and Agencies

6-1 Off-Installation Advocacy by SVC
6-2 Representing Victims in Civilian Courts Precluded
6-3 Notification to Third Parties by SVC
6-3 Interaction with Media

Chapter 7
Training and Certification Requirements

7-1 UCMJ Article 27(b) Certification Required
7-2 Special Victim Counsel Training Course Required
7-3 Special Victim Counsel's Ability to Deploy

Chapter 8
Oversight and Reporting Structure

8-1 Professional Oversight of SVCs
8-2 Functional and Policy Oversight of SVC Program
8-3 Communication between SJA and SVC
8-4 Office Space and Other Support

Appendixes

Appendix 1 – TJAG Sends
Appendix 2 – TJAG Policy Letter 14-01
Appendix 3 – Categories of Clients
Appendix 4 – Special Victim Counsel Representation Chart
Appendix 5 – Notification of Special Victim Counsel Services
Appendix 6 - Election of Special Victim Counsel
Appendix 7 – Scope of Representation Letter
Appendix 8 – Notification of Representation
Appendix 9 – Sexual Assault Response Flowchart
Appendix 10 – Termination Letter

Chapter 1
Victim Eligibility

The Army provides legal assistance to eligible beneficiaries as stated in Army Regulation 27-3 para.2-5, The Army Legal Assistance Program, to include active duty, reserve and guard members when in an active status or for mobilization and deployment related assistance, dependents and former members who are entitled to an ID card, civilian employees who are overseas, contractor personnel (IAW terms of contract), foreign military personnel and their dependents assigned to the United States under official orders, and unique situations.

To be eligible for SVC assistance, a victim of sexual assault must make an unrestricted or restricted report of sexual assault under the UCMJ, including rape, sexual assault, forcible sodomy and other unwanted sexual contact that is aggravated, abusive, or wrongful, and attempts to commit these offenses, which are crimes in violation of Articles 120, 125, and 80, respectively (including previous versions of UCMJ, Article 120) and circumstances contemplated in paragraph 1-6 of this handbook. Legal assistance is not categorically provided under AR 27-3 to victims of crime without a military nexus (e.g., a civilian who does not fall into any of the categories above). (See the Chart at Appendix 3 for a summary of client eligibility)

1-1. Eligibility for Army Members

a. All Army Active Duty and Army Reserve Component Soldiers on active duty pursuant to orders for 30 days or more at the time of the offense who report they are a victim of sexual assault are eligible for an SVC. In addition to the above listed crimes under the UCMJ, Soldiers who report that they are a victim of sexual assault under state and federal laws criminalizing sexual assault when the alleged perpetrator is a civilian or an unknown perpetrator are eligible for limited SVC assistance as described in Chapter 6.

b. Generally, Army members who are on active duty, but were victims of sexual assault prior to enlistment or commissioning are not eligible for the SVC Program. They are eligible for legal assistance IAW AR 27-3 and Sexual Assault Prevention Response (SAPR) services, including both unrestricted and restricted reporting options, IAW DoDI 6495.02, para. 2.e. For exceptions see paragraph 1-8 of this handbook.

1-2. Eligibility for Adult Dependents of Army Members

a. All adult dependents of Active Duty Army members who are an eligible dependent at the time of the offense and report that they are a victim of sexual assault under the UCMJ are eligible for an SVC when an Army commander may exercise jurisdiction over the alleged offender.

b. For purposes of this rule, the non-spouse dependents, as defined in AR 600-8-14, Identification Cards for Members of the Uniformed Services, their Eligible Family Members, and Other Eligible Personnel, must be unmarried between the ages of 18 and 20, a full time student between the ages of 18 and 22, or an incapacitated child over the age of 21.

1-3. Eligibility for Members of Other Services

a. All Navy, Marine Corps, Air Force, and Coast Guard Active Duty and Reserve Component members on active duty pursuant to orders for 30 days or more at the time of the offense who file an unrestricted or

restricted report of sexual assault under the UCMJ are eligible for an SVC when an Army commander may exercise jurisdiction.

b. The Army must have a possibility of obtaining jurisdiction. SVC representation is not authorized to victims in other Services when the alleged perpetrator is a civilian or a member of another Service.

c. When permitted by the rule of confidentiality, the SVC will provide a courtesy notification of representation to the victim's immediate commander.

1-4. Eligibility for Adult Dependents of Members of Other Services

a. All adult dependents of Active Duty members of other Services who are eligible dependents at the time of the offense and file an unrestricted or restricted report that they are a victim of sexual assault under the UCMJ are eligible for an SVC when an Army commander may exercise jurisdiction.

b. For purposes of this rule, non-spouse dependents, as defined in AR 600-8-14, Identification Cards for Members of the Uniformed Services, their Eligible Family Members, and Other Eligible Personnel, must be unmarried between the ages of 18 and 20, a full time student between the ages of 18 and 22, or an incapacitated child over the age of 21.

1-5. Eligibility for Other Categories of Victims

a. All remaining categories of individuals eligible for legal assistance under AR 27-3 are eligible for SVC assistance when they file an unrestricted or restricted report of sexual assault under the UCMJ when an Army commander may exercise jurisdiction.

b. The Army must have a possibility of obtaining jurisdiction in the case, meaning the alleged perpetrator is a member of the Army who committed the crime while in Title 10 status. SVC representation is not authorized to victims in this category when the alleged perpetrator is a civilian or a member of another Service.

c. Victims who are minors are not eligible for an SVC.

1-6. Basic Military Training and Technical Training

a. All entry-level status Army Active Duty and Reserve Component Soldiers who are alleged to have been involved in an unprofessional relationship (as defined by AR 600-20 para. 4-14) that involves physical contact of a sexual nature with basic military training or technical training faculty or staff are eligible for SVC assistance.

b. As defined in AR 350-6, Soldiers are considered to be in entry- level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service.

1-7. Deployed Victims

Representation will be provided to deployed victims through in-country SVCs directly or through coordination with the SVC PM.

1-8. Determination of Eligibility

The SVC PM has the final authority on determination of eligibility and may grant exceptions to policy on a case-by-case basis consistent with 10 U.S.C.§§1044 and 1565b.

Chapter 2
Special Victim Counsel Representation Process

10 U.S.C. § 1565b requires that servicemembers and their dependents, who are victims of sexual assault, be informed of the availability of legal assistance as soon as the member or dependent seeks assistance from a Sexual Assault Response Coordinator (SARC), Sexual Assault Prevention and Response Victim Advocate (SAPR VA), the Family Advocacy Program (FAP), military criminal investigator, victim liaison, or Trial Counsel (TC). (See the SVC Representation Chart at Appendix 4.)

2-1. Victim Notification of Right to SVC

a. The Victim Advocate (VA) (or first responsible party to make contact with a victim, e.g., SARC, SAPR, FAP, investigator, VWL, or TC) IAW 10 U.S.C. § 1565b, utilizing DD Form 2701 (Initial Information for Victims and Witnesses of Crime) will inform victims of their right to the services of an SVC. Victims will be provided a brief description of the role of the SVC and an explanation that the SVC is available and may be requested at any time throughout the duration of the justice process. It is not necessary for the victim to sign an acknowledgment or waiver of services. However, best practice is for the VA or responsible party to use the "Notification of Special Victim Counsel Services" form (see Appendix 5). The contact information for the local SARC or FAP, as determined by the victim's relationship with the alleged perpetrator, will be included on the DD Form 2701.

b. It is incumbent upon the VA or responsible party to ensure that the victim understands that an initial declination of SVC services does not permanently waive all right to SVC services and the victim may request an SVC at any time.

c. If charges are preferred as a result of the sexual assault, TC will provide an eligible victim who does not have an SVC with an additional notification of their right to the services of an SVC.

2-2. Victim Exercises Right to SVC

If the victim chooses to exercise the right to consult with an SVC, the following process will be followed. (see Special Victim Counsel Representation Chart in Appendix 4)

a. The VA, or responsible party, notifies Chief of Legal Assistance (CLA) of the victim's request/election for an SVC.

b. CLA performs a conflict check IAW AR 27-3 para. 4-9 and appoints an SVC to consult with the victim within 24 hours of the victim's request/election to right to SVC.

c. If the CLA determines that the office is unable to represent the victim, the CLA will coordinate with the Special Victim Counsel PM to ensure that the victim receives representation.

d. SVC meets and consults with victim.

e. During the initial meeting and consultation with appointed SVC, the victim will complete the Election of Special Victim Counsel (Appendix 6) choosing to continue to utilize SVC services or declining continued representation. If the victim chooses to continue utilizing SVC services, the scope of further representation will be explained and acknowledged by the victim (Appendix 7).

2-3. Solicitation of Victims

SVCs will not solicit clients. (See Army Rules of Professional Conduct for Lawyers, Rules 7.1, 7.2, and 7.3).

Chapter 3
Responsibility and Role of SVC

The Army and Department of Defense provide a wide range of services and support to victims of sexual assault through a variety of personnel, agencies and programs, including commanders, the Sexual Assault Prevention and Response Program, Surgeon General, Soldier & Family Readiness Center, Army Criminal Investigation Command otherwise known as CID, Chaplains, FAP, and the Judge Advocate General's Corps. While each of these agencies provides distinct and critical support and services to victims, there is also overlap in certain roles and responsibilities, requiring coordination in providing effective multi-disciplinary support to victims. (See Sexual Assault Response Flowchart at Appendix 9)

3-1. Primary Duty

An SVC's primary duty is to represent their client's interests within the boundaries of the SVCP.

3-2. Scope of Representation Letter

During the SVC's initial meeting/consultation with the victim, the SVC will review the scope of representation letter with the victim. The victim will sign the letter, acknowledging the scope of the attorney-client relationship (Appendix 7).

3-3. Duration of SVC Client Relationship

a. Once an SVC is appointed, that SVC remains the counsel for the victim for all matters relating to the sexual assault (except as limited by Chapter 5 of this handbook) until released by the victim.

b. Transfer of counsel due to deployments, PCS, ETS and other unique circumstances will be coordinated by the SJA through the SVC PM. The victim will be consulted throughout the process of any transfer of counsel. If a new SVC is appointed, coordination will be made between outgoing and incoming SVCs to ensure an effective transfer of services.

c. In general, the SVC-client relationship will terminate when case disposition is complete. This termination should be conducted in a face-to face meeting, if possible, and confirmed in writing (Appendix 10).

1. For courts-martial, the end of SVC representation will be upon initial action by the convening authority or earlier termination of charges.

2. For non-judicial punishment under Article 15, UCMJ, case disposition is complete upon the completion of any imposed punishments.

3. For administrative actions, case disposition differs depending on the type of administrative action. In cases of administrative separations, case disposition is considered complete when the separation authority takes final action; for memoranda of reprimand, case disposition is considered complete once filing determination is complete. For other administrative actions, case disposition is generally complete once the approval authority has taken final action after any procedural due process requirements are complete.

4. If a decision is made to take no action on the case, the SVC will consult with the client and ensure the client's legal needs have been met and then terminate representation.

d. An SVC may decline or terminate representation only IAW Army Rules of Professional Conduct for Lawyers, Rule 1.16, the scope of representation letter, and after consultation with the SJA or SVC PM.

e. A client may terminate the attorney client relationship at any time.

3-4. Special Victim Counsel Association with SARC and FAP

a. The SARC serves as the installation's single point of contact for integrating and coordinating sexual assault victim care services. The FAP fulfills this role for sexual assault victims who are in a domestic or intimate partner relationship. Services may begin at the initial report of sexual assault. As discussed above, the SARC or FAP should notify the CLA when a victim requests an SVC.

b. Once an attorney-client relationship is formed, SVCs will inform the SARC/FAP of this representation. This notice is intended to make SARCs and FAP aware that the victim is represented by legal counsel to facilitate effective multi-disciplinary support for the victim.

c. In support of the SARC/FAP, SVCs should advise victims of the services available. SVCs should work in conjunction with SARC/FAP to coordinate delivery of services and avoid duplication of services. SVCs may advocate to the responsible agencies when these services are either not being provided, or are not being provided in the manner intended.

d. The SVC will not act as a legal advisor for the SARC or commanders, but shall have access to commanders to represent the needs and interests of their clients as necessary.

3-5. Special Victim Counsel Association with VWAP

a. The Victim Witness Assistance Program (VWAP) (IAW AR 27-10 Chapter 17), through the SJA, VWAP Coordinator, and victim liaison, normally ensures that victims are afforded certain enumerated rights, such as consultation with TC and notification of all court-martial proceedings.

b. Under VWAP, a victim liaison may be assigned to each victim. Along with the SJA and TC, the victim liaison is the SVC's point of contact in the legal office for obtaining case updates and communicating questions and concerns from the victim. The victim liaison works for the SJA and as such, any communication by the victim or the SVC with the victim liaison will not have protection of confidentiality.

c. While there is overlap in the objectives of the SVCP and the VWAP, the SVCP does not supplant or augment VWAP, but is a separate program altogether. VWAP implements the DoD Directive 1030.01, Victim and Witness Assistance, and DoD Instruction 1030.2, Victim and Witness Assistance Procedure.

d. While an SVC may advocate for a victim's rights under federal law, there is no cause of action or defense in favor of any person arising out of a failure of the Army to comply with VWAP.

e. Establishment of the SVCP does not necessitate any change to the scope of VWAP.

Chapter 4
Scope of Representation

4-1. Victim's Rights During the Military Justice Process

a. Both 10 U.S.C. §§ 1044 and 1565b authorize legal assistance to a victim of a sexual assault in criminal contexts, including attending interviews of the victim and interfacing with military prosecutors, defense counsel, and investigators. The SVC may advocate a victim's interests to any actor in the military justice process, including, but not limited to, commanders, convening authorities, the SJA, TC, the accused's trial defense counsel, and, to the extent authorized by the MCM, the military judge. Victims will also be notified of the opportunity to provide input during the post-trial process. This includes matters in which the government is required to consult with the victim.

b. The government will consult with victims and obtain their views concerning:

1. Decisions not to prefer charges;

2. dismissal of charges;

3. pretrial restraint or confinement, particularly an accused's possible release from any pretrial restraint or confinement;

4. pretrial agreement negotiations, including PTA terms;

5. plea negotiations;

6. discharge or resignation in lieu of trial by court-martial; and

7. scheduling of judicial proceedings where the victim is required or entitled to attend.

c. During the investigation and prosecution of a crime, the VWL, trial counsel, or other Government representative will provide a victim the earliest possible notice of significant events in the case, to include:

1. The status of the investigation of the crime (to the extent that it will not interfere with the conduct of the investigation), the rights of the accused, or the rights of other victims or witnesses;

2. the apprehension of the suspected offender;

3. the decision on whether to prefer (or file in a civilian court) or dismiss the charges against a suspected offender;

4. the initial appearance of the suspected offender before a judicial officer at a pretrial confinement hearing or at an investigation under UCMJ, Art. 32;

5. the scheduling (date, time, and place) of each court proceeding that the victim is either required or entitled to attend and of any scheduling changes;

6. the detention or release from detention of an offender or suspected offender;

7. the acceptance of a plea of guilty or the rendering of a verdict after trial;

8. the opportunity to consult with trial counsel about providing evidence in aggravation concerning financial, social, psychological, and physical harm done to, or loss suffered by, the victim;

9. the result of trial or other disposition;

10. if the sentence includes confinement, the probable date by regulation on which the offender will be eligible for parole;

11. general information regarding the corrections process, including information about work release, furlough, probation, parole and other forms of release from custody, and the offender's eligibility for each;

12. the right to request, through the VWL, trial counsel, or designee of the commander of the corrections facility to which the offender is assigned, notice of the matters set forth below where the sentence includes confinement; and

13. how to submit a victim impact statement to the Army Clemency and Parole Board for inclusion in parole and clemency considerations (under AR 15–130).

d. Upon a sentence to confinement, the trial counsel or a representative for the Government will:

1. Formally inform the victim regarding post-trial procedures, and the right to be notified if the offender's confinement or parole status changes, and when the offender will be considered for parole or clemency by providing the victim with DD Form 2703 (Post-Trial Information for Victims and Witnesses of Crime); and

2. ensure the victim's election regarding notification is recorded on DD Form 2704 (Victim/Witness Certification and Election Concerning Inmate Status), in every case, regardless of election. One copy of DD

Form 2704 will be given to the victim. One copy of the form will be forwarded to the commander of the gaining confinement facility. One copy of the form will be forwarded to the Army Corrections Command (DAPM–ACC), 150 Army Pentagon, Washington, DC 20310-0150.

4-2. Notice of Representation

a. If the client has filed an unrestricted report, once an attorney-client relationship is formed, SVCs will serve the SJA, Chief of Military Justice, Senior Defense Counsel (SDC), CID, the victim's commander, and the SARC/VA/FAP with a notice of the representation (Appendix 8).

b. The trial counsel and the accused's trial defense counsel need to obtain consent from the SVC prior to communicating with represented victims pursuant to Army Rules of Professional Conduct for Lawyers, Rule 4.2.

c. Once a notice of representation is served on an office, the SVC will discuss with the office (e.g., TC, DC, etc) the matters, if any, about which the SVC's client may be contacted directly, without additional consent of the SVC.

d. SVC will communicate his or her schedule to the TC, which the TC will consider when scheduling Article 32 hearings, docketing courts-martial, and other military justice proceedings where the victim's presence is required.

4-3. Attendance at Interviews by SVC

SVCs are permitted to attend all interviews of the victim with investigators, TC, and DC. At these interviews, SVCs should require that the interviewer has an additional party present to reduce the likelihood that the SVC may be called later as a witness.

4-4. Notification of Judiciary of SVC Representation

When a victim is represented by an SVC or a civilian counsel, the SVC or civilian counsel will immediately notify TC of the SVC's contact information. The TC will provide that information to the military judge on the Electronic Docket Request (ERD) (IAW Rule 1 and Appendix A of the Rules of Practice Before Army Courts-Martial).

4-5. Standing under the UCMJ

Victims represented by a uniformed SVC are non-parties to a court-martial under RCM 103. The Court of Appeals for the Armed Forces addressed this and related issues in United States v. Kastenberg 72 MJ 364 (C.A.A.F. 2013). The language of Mil. R. of Evid. 412, 513, and 514 afford victims a reasonable opportunity to attend and be heard at hearings concerning these rules. The opportunity to attend and be heard includes argument and presentation of evidence by an SVC or victim's civilian counsel. The extent of argument and presentation of evidence is controlled by the military judge and is case dependent, IAW RCM 801. Presentation of evidence and argument by counsel will not preclude a victim's exercise of the

opportunity to be heard through unsworn statement or testimony. TC and DC will serve SVCs with copies of motions and responses (as well as any accompanying documents under Mil. R. Evid. 412, 513, and 514 filed by parties to the case. SVCs may file responses in the best interests of their clients. Any filings submitted by SVC s must comply with the pretrial order from the military judge if issued, or if absent such order, the Rules of Practice before Army Courts-Martial (including, but not limited to, format and timing).

4-6. Advocacy to Army and Department of Defense Agencies

SVCs may advocate a victim's interests to agencies and offices within the Army and Department of Defense where there is a nexus to the client's status as a victim.

4-7. Notification to Third Parties by SVC

SVCs will ensure that third parties understand that the victim is their client, and not the Army.

4-8. Access to Information

If the SVC attends court proceedings from which the victim is excluded under MRE 615 as a witness, the SVC will not inform the client about the testimony of any other witness.

Chapter 5
Collateral Misconduct

An investigation into the facts and circumstances surrounding a sexual assault may produce evidence that the victim engaged in misconduct. Collateral misconduct is misconduct that is committed by a victim of a sexual assault that has a direct nexus to the sexual assault. Typical examples of collateral misconduct include underage drinking, adultery, fraternization, and violations of regulations or orders, such as General Order 1 or curfews. Collateral misconduct will not preclude SVC representation.

5-1. Referral of Victim to USATDS

It is Army policy that USATDS will provide counsel for collateral misconduct. When the SVC becomes aware that the victim has allegedly committed collateral misconduct, the SVC will notify the victim that a TDS Counsel will be appointed to represent the victim in the event that non-punitative measures, administrative action, nonjudicial punishment, administrative discharge, and/or the court-martial process is initiated.

a. Victim Notification. The SVC will inform the victim of the availability of TDS Counsel. The SVC will inform the victim that the SVC <u>will not</u> serve as the victim's counsel for purposes of collateral misconduct.

b. Victim Referral. In the event that qualifying action is initiated or the victim indicates a desire to meet with TDS Counsel, the SVC will contact the servicing SDC or USATDS and provide the victim with the name and contact information for the detailed TDS Counsel.

Chapter 6
Contact with Civilian Prosecutors and Agencies

Representation in civilian court is not authorized under this program. In addition, most SVCs will be precluded from representing victims in civilian courts by state licensing requirements.

SVCs may provide assistance to a victim with respect to state and federal victim compensation and restitution programs. SVCs may provide assistance to a victim with respect to other civilian helping agencies such off -post rape crisis centers, and abused women shelters.

6-1. Off-Installation Advocacy by SVC

a. SVCs may generally advocate a Soldier victim's interests off-post to civilian prosecutors, law enforcement agencies, and other civilian and government agencies.

b. SVCs may not advocate a victim's interests to the Department of Veterans Affairs or represent a victim in the disability evaluation system. SVC's representation in VA matters is limited to providing advice in the scope of traditional legal assistance.

6-2. Representing Victims in Civilian Courts Precluded

As a matter of policy, SVCs are precluded from representing victims in civilian courts. SVCs will explain this limitation to the scope of representation to their client.

6-3. Notification to Third Parties by SVC

SVCs will ensure that third parties understand that the victim is their client. SVCs must avoid creating the impression that they represent the Army's interests in resolving the client's concerns or that the Army has an interest in the outcome of the matter.

6-4. Interaction with Media

Although SVCs are not parties to their clients' cases, SVCs will, as a matter of policy, interact with the media in accordance with Rule 3.6 of the Army Rules of Professional Conduct for Lawyers.

Chapter 7
Training and Certification Requirements

All Army Judge Advocates are licensed and competent to practice law and receive specialized instruction on the specific areas of law in which they practice. The Army Rules of Professional Conduct for Lawyers apply to all military and civilian lawyers and paralegals, to include SVCs. Army Judge Advocates follow Army Rules of Professional Conduct, Rule 1.1, to "provide competent representation…using legal knowledge, skill, thoroughness, and preparation reasonably necessary for representation."

7-1. UCMJ Article 27(b) Certification Required

Only Judge Advocates who are certified under Article 27(b), UCMJ, and sworn under Article 42(a), are authorized to serve as an SVC. SVCs need not be detailed to a court-martial, but will be required to state their qualifications on the record.

7-2. Special Victim Counsel Training Course Required

Judge Advocates who are selected to serve as SVCs must successfully complete a TJAG approved SVC course before assuming duty.

7-3. Special Victim Counsel's Ability to Deploy

Special consideration should be given to ensure that continuity is not broken between an SVC and the victims represented.

Chapter 8
Oversight and Reporting Structure

8-1. Professional Oversight of SVCs

Staff Judge Advocates will provide professional oversight of SVCs. If a situation arises in which the interests of the SVC client and the interests of the command are in conflict, the SVC will turn to the SVC PM for technical advice and supervision for professional responsibility under the provisions of AR 27-26.

8-2. Functional and Policy Oversight of SVC Program

a. SJAs will make the initial assignment to the position of SVC.

b. In general, CLAs will:

1. make individual appointments of SVCs to victims who request an SVC IAW Appendix 4, and

2. provide day-to-day supervision of SVCs

c. Functional and policy oversight of the SVCP will be provided by the SVC PM.

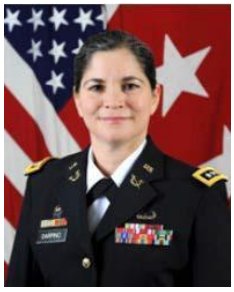
d. A tracking system will be used to track SVCs and their workload.

8-3. Communication Between SJA and SVC

SVCs will communicate their workload and schedule pertaining to SVC matters to their SJAs without violating attorney-client confidences. Additional discussions about the representation will comply with Rule 1.6 of the Army Rules of Professional Conduct for Lawyers.

8-4. Office Space and Other Support

A Staff Judge Advocate or equivalent whose command requires an SVC to travel to his or her installation is responsible for hosting and providing adequate administrative support to the traveling SVC. The Staff Judge Advocate will ordinarily host a traveling SVC through his or her legal assistance office.



TJAG Sends

A Message from The Judge Advocate General

SPECIAL VICTIM ADVOCATE PROGRAM

Today, I am pleased to announce the guidelines of the United States Army Special Victim Advocate Program (SVAP). The SVAP, created at the direction of the Secretary of Defense, exists to provide legal advice and representation to victims of sexual assault throughout the military justice process. The SVAP's initial operational capability (IOC) for offering services will be 1 November 2013.

Special Victim Advocates (SVAs) will be drawn from the Legal Assistance Division of the Offices of the Staff Judge Advocate. At this initial stage, forty-five active duty Judge Advocates will be appointed Corps-wide as SVAs by their respective Staff Judge Advocates (SJAs). Attached is a spreadsheet of where the SVAs will be located for IOC. For larger installations, SVCs will be on-site and the number of SVAs might even be two while for some of the smaller installations, the SVA will receive support from another installation. SJAs should appoint Judge Advocates who have defense or trial counsel experience and ensure completion of training prior to assumption of duties. Regardless of experience, the SVAs must have the maturity and judgment to assume these responsibilities.

Implementation of this program will add to the workload of the Legal Assistance Divisions and individual offices might find it taxing to continue providing the same level of outstanding legal assistance service that our Army community has come to expect. With this in mind, two mitigation measures have been taken. First, the Army's leadership has directed the mobilization of twenty Reserve Component Judge Advocates to provide legal assistance services at those offices where our active component legal assistance Judge Advocates will be impacted the most. The attached spreadsheet outlines the offices where the mobilized Judge Advocates will work. Second, SJAs have the authority to restrict services to Retirees and their Families. Before executing this restriction, however, you should implement mitigation measures to offset the loss of services. For example, consider weekend appointments for Retirees using local Reserve Component Judge Advocates or expanding services during Retiree Appreciation Days. Additional impacts on Legal Assistance may be inevitable but explore creative ways to keep these impacts to a minimum.

I have selected Colonel James "Jay" McKee to be the program manager for the SVAP; SJAs are to keep him informed of the challenges faced and the solution sets generated. COL McKee will provide the technical supervision over the SVAs throughout our Corps, while the Chiefs of the Legal Assistance Offices will have day-to-day supervisory responsibilities related to the on-going legal assistance duties and SVAP duties. COL McKee reports directly to the Assistant Judge Advocate General for Military Law and Operations. He will manage the program

CONTINUED

SPECIAL VICTIM ADVOCATE PROGRAM
Continued

in coordination with Personnel, Plans and Training Office (PP&TO), Criminal Law Division, Legal Assistance Policy Division, and the Legal Center and School (LCS). The goal will be to ensure that the program meets the intent of the Secretary of Defense, addresses the needs of sexual assault victims, and complements our practice of law. Policies, handbooks and other required documents on the SVAP will be published before IOC.

Training our future SVAs is of the highest priority, and we will dedicate the resources necessary to provide SJAs with an effective long-term SVA training model. We have developed specific curriculum that will be offered at a special SVA course in October to meet the IOC deadline. Additionally an online version of the course materials will be available shortly after 1 November 2013. Regardless of the method, SVAs must complete training before assuming their duties. The LCS will then continue planning for full integration across the Corps' education and training curriculum by 1 January 2014, the full operating capability date of the SVAP, in order to accomplish both long term development and sustainment of our SVA capability. Future SVAs will be selected by PP&TO for their knowledge, skill, and experience in both legal assistance and military justice. As we move forward with this unprecedented program, the SVAP reflects a dedication by the Army to the victims of sexual assault, while always ensuring that all Soldiers receive a fair trial.

Army Strong!

FLORA D. DARPINO
Lieutenant General, USA
The Judge Advocate General

CMD	# of SVAs	# of RC JAs for LA Duties	Supporting Installation
Afghanistan	2		
Hood	2	2	
Korea	2	2	
Stewart/Hunter	2	2	
Bliss	2	2	
Bragg	2	2	
Campbell	2	1	
7th JMTC	2	1	
Fort Sam	2	1	
Lewis	2	1	
Hawaii	2	1	
MDW (all 3)	2	1	
Carson	1	1	
Riley	1	1	
Leonard Wood	1	1	
Drum	1	1	
Kuwait	1		
Jackson	1		
21st TSC	1		
Lee	1		
Sill	1		
Benning	1		
Alaska	1		
Vicenza	1		
Irwin	1		
Knox	1		
Gordon	1		
West Point	1		
Polk	1		
Eustis	1		
Huachuca	1		
Wiesbaden	1		
Rucker	1		
Tampa			Fort Stewart
Monterey			Fort Irwin
Eglin			Fort Rucker
Japan			Korea
Leavenworth			Fort Riley
McCoy			Fort Knox
Dix			West Point
Hamilton			West Point
Okinawa			Korea
Redstone			Fort Benning
Totals	45	20	

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON, DC 20310-2200

REPLY TO
ATTENTION OF:

DAJA-ZA I November 2013

MEMORANDUM FOR Judge Advocate Legal Services Personnel

SUBJECT: Office of The Judge Advocate General Policy Memorandum# 14-01, Special Victim Counsel

1. This policy addresses Judge Advocates (JAs) assigned as Special Victim Counsel (SVCs) and is effective immediately.

2. Background. The Secretary of Defense has directed that each service stand-up a special victim advocacy program to provide advice and representation to victims of sexual assault throughout the military justice process. The Secretary specifically directed that initial operating capability (IOC) be established not later than 1 November 2013 and that full operating capability (FOC) be established not later than I January 2014.

3. Implementation. SVCs are part of the Army-wide effort to ensure that sexual assault victims are provided responsive and timely support throughout the investigation and judicial proceedings. In support of this Army priority, Staff Judge Advocates (SJAs) are authorized to limit legal assistance services for Retirees and their Family Members. However, each SJA will implement a mitigation strategy for the curtailment of retiree services, such as retiree weekends.

4. Mission. SVCs have the professional duty to provide advice to their clients and to represent their clients throughout the military justice process. The SVC's primary duty is to zealously represent the best interests of their clients as required by the attorney-client relationship even if their client's interests do not align with those of other interested parties, to include the government of the United States. The SVC also helps build and sustain victim resiliency. An SVC should make every effort to establish and maintain an effective, complementary and professional working relationship with all other attorneys associated with a given case, and with other parties involved, including but not limited to investigators, victim advocates, victim witness liaisons, trial counsel, trial defense attorneys, special victim prosecutors and those professionals working to meet the physical, spiritual, and emotional needs of the client.

5. Appointment of SVCs and Length of Assignments. SJAs will appoint JAs to serve as SVCs, who will be part of the Office of the Staff Judge Advocate (OSJA) Legal Assistance Office. While SVCs do not have to be selected from currently serving Legal Assistance Attorneys, SVCs will function as part of the OSJA Legal Assistance Office when performing SVC duties. They should have trial or defense counsel experience. Regardless of experience, the SVCs must have maturity and good judgment to handle this important duty. SVCs should serve no less than one year and no more than two years in the position.

6. Training. Training is essential to honing the expertise of SVCs. The SVC Program Manager (PM), in coordination with The Judge Advocate General's Legal Center and School, the Criminal Law Division and the Legal Assistance Policy Division, will determine training requirements for SVCs and develop and administer a training program for SVCs. Completion of the SVC course is mandatory unless an exception is approved by the SVC PM. Given the nature and timing of certain training events, individuals may attend SVC training courses prior to their actual assignment as an SVC.

7. Supervision. An SVC's professional duty is to their client. SJAs must ensure a proper balance of mentorship and guidance for their SVCs, including supervision by the OSJA Chief of Legal Assistance. SJAs must recognize that SVCs have an ethical obligation to advocate for their clients even when it is not in the best interest of the government. The SJA, through the Chief of Legal Assistance, shall provide day-to-day supervision of the SVC and ensure the SVC is provided the necessary material and resource support to carry out the SVC mission. The OSJA will facilitate SVCs' requests for official travel for cases within their jurisdiction.

8. Relationship with the SVC PM. The SVC PM is responsible for monitoring the overall execution of the SVC program. Chiefs of Legal Assistance and SJAs remain the primary day-to-day supervisory chain for SVCs. However, due to the nature of the SVC function, there will be some cases in which the interests of the SJA and the command are not in concert with the victim's. In those situations, the SVC's technical adviser and supervisory JA for professional responsibility per AR 27-26 is the SVC PM. Our goal is the SVC program should be effective, transparent, avoid conflicts of interest with other legal assistance clients and complement the way our Corps already delivers legal services.

Army Strong!

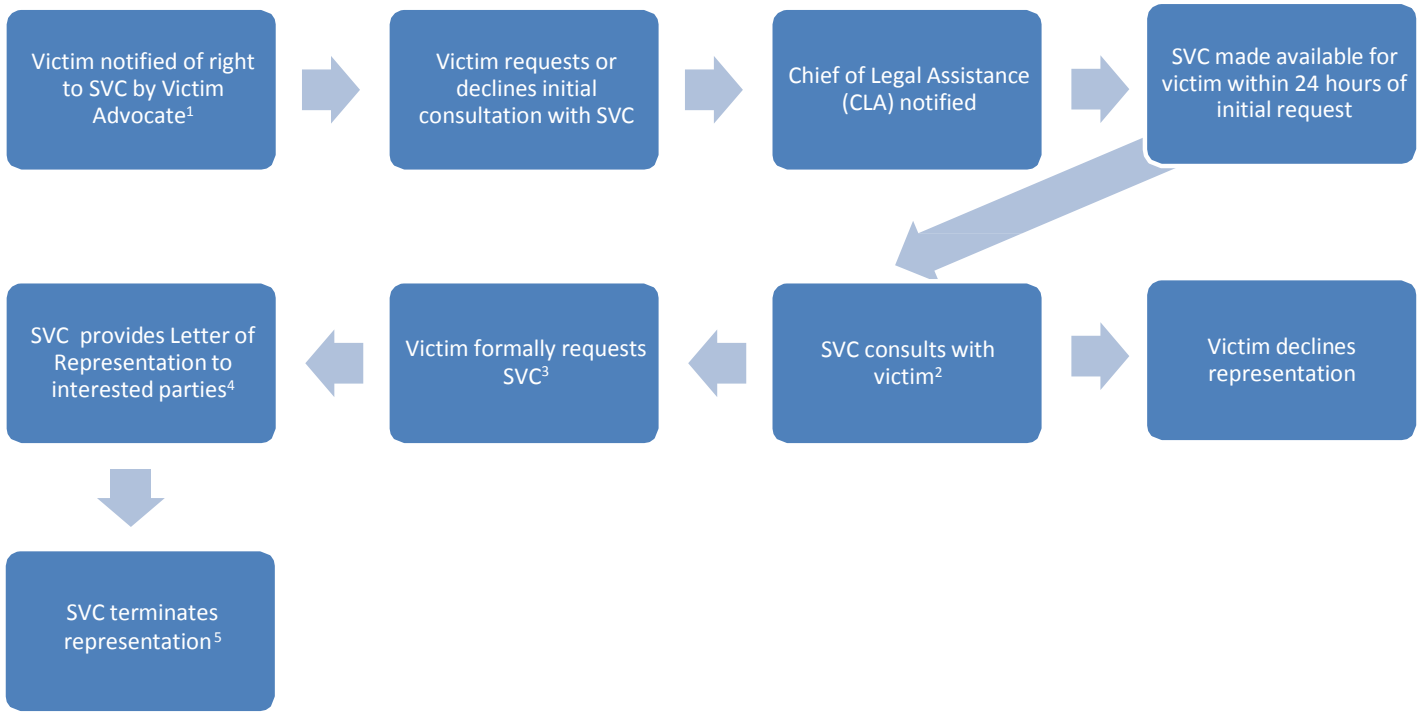
FLORA D. DARPINO
Lieutenant General, USA
The Judge Advocate General

CATEGORIES OF CLIENTS

This chart reflects the direction set out in the SVC Handbook. If there is any question as to client eligibility, SVCs should consult the SVC Program Manager.

Victim Status	Representation
Active Duty Army Army Reserve (active ≥ 30 days at time of the offense) Army National Guard (active ≥ 30 days at time of the offense)	Yes
Adult dependants of the above	Yes, if suspect is a Soldier
Active Duty other Services Other Services Reserve (active ≥ 30 days at time of the offense) Air National Guard (active ≥ 30 days at time of the offense)	Yes, if suspect is a Soldier
Adult dependants of the above	Yes, if suspect is a Soldier
Army National Guard (Title 32 for thirty days or less) Army Reserve (Inactive Duty for Training)	Yes, if suspect is a Soldier
Retired members and their adult dependants	Yes, if suspect is a Soldier
Deployed DoD civilian employees	Yes, if suspect is a Soldier
OCONUS DoD civilian employees and accompanying adult dependants	Yes, if suspect is a Soldier
Foreign military personnel assigned to the United States and accompanying adult dependants	Yes, if suspect is a Soldier
Minors	No
Civilians	No
Deployed civilian contractors	No

SPECIAL VICTIM COUNSEL (SVC) REPRESENTATION CHART



[1] Victim Advocate will provide SVC Notification form to victim
[2] SVC will provide Election of Representation form to victim
[3] SVC will provide Scope of Representation form to victim
[4] SVC will enter appearance with the court and provide Letter of Representation to Trial and Defense Counsel, law enforcement, and victim's commander
[5] SVC will provide notice of termination to victim

NOTIFICATION OF SPECIAL VICTIM COUNSEL SERVICES

I, _____, have been advised of my right to consult with a Special Victim Counsel (SVC) provided by the Government at no cost to me.

I understand that the SVC's mission is to provide victims with confidential legal representation related to issues that may arise as a result of being sexually assaulted. The SVC may provide the following services:

- Accompany to and advise client during interviews, examinations, hearings, and court-martial proceedings
- Represent client in court-martial as permitted by law
- Referral to Trial Defense Service for collateral misconduct, if necessary
- Advocate client's interest with Government counsel on disposition options
- Assist client with post-trial submissions to include victim impact statements
- Advise client on collateral civil issues arising from the crime
- Legal assistance services

I understand that I may speak with an SVC at anytime during the legal, medical, or investigative process.

_____ _____

(Signature of Victim) (Date)

_____ _____

(Signature of SARC/VA) (Date)

You may contact your servicing SVC by calling the following number:

_____

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL

MEMORANDUM FOR Chief, Legal Assistance, Fort XXXXXX

SUBJECT: Election of Special Victim Counsel (SVC) Representation

1. My initial consultation with [SVC Name], Special Victim Counsel, occurred on [date].

2. I understand that I may elect to have an SVC represent me in matters relating to my status as a sexual assault victim. If I decline representation at this time, I may elect representation at anytime in the future.

3. At this time (initial in the applicable blank),

a. _____I elect Special Victim Counsel representation.

b. _____I decline representation. Should I desire representation at a later time, I may request a Special Victim Counsel by contacting the Sexual Assault Response Coordinator (SARC), Victim Advocate (VA), or by calling the SVC at this number:

(XXX) XXX-XXXX

4. I have been provided a copy of this memorandum for my records.

_____ _____
Date Client Signature

_____
Client Name Printed

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

DATE

OFFICE SYMBOL

[Name of Client]
[Client Address]

Re: Special Victim Counsel Scope of Representation

Dear Client,

I am an attorney licensed to practice law and serve as a Legal Assistance Attorney with the United States Army. In that capacity, I will serve as your Special Victim Counsel. My duties as your Special Victim Counsel are to provide you with effective and timely advice, be available to assist you throughout the full spectrum of the military justice practice from initial investigation to convening authority action, and provide you with appropriate advocacy to assure that your rights are fully realized. This letter will provide you with the scope of legal assistance that I can provide you as well as the limits on my representation of you through this program.

Scope of Legal Assistance Provided:

1. Personal Civil Legal Affairs – I can answer your questions related to the Victim and Witness Assistance Program; the role of Victim Advocates and Victim Liaisons and the nature of your conversations with these persons; what medical and mental health services are available; the availability of protective orders from military or civilian authorities; and information concerning the difference between restricted and unrestricted reporting. I can also assist you with a host of other civil legal issues, including landlord-tenant and consumer laws that are related to your case.

2. Representation Throughout the Military Justice Process – I can advocate your interests to any actor in the military justice process, including commanders, convening authorities, Staff Judge Advocates, the accused's defense counsel, and military judges.

   a) I can attend your interviews with investigators, trial counsel, and defense counsel. If I am unable to attend in person, I can attend such interviews via VTC or telephonically.
   b) I can assist you in obtaining information relevant to the sexual assault case that you have a right to, such as the status of the investigation and the status of the accused.
   c) You have a right to consult with the government regarding certain decisions, such as whether or not charges will be preferred and plea negotiations. I can represent you during this process.

d) I can represent you in UCMJ proceedings, such as courts-martial, where you are afforded an opportunity to attend and be heard by the court.

3. Advocacy to Civilian Prosecutors and Agencies – In general, my representation of you will be more limited off base than for military justice matters on base. I will inform you if there is a matter where I cannot represent you, and you may obtain civilian counsel, at your own expense, for these purposes, while still retaining me to represent you in other matters, if you so choose.

a) I can advocate your interests to civilian prosecutors, law enforcement agencies, and other civilian and government agencies.
b) I cannot represent you in civilian court.

4. Collateral Misconduct – Covered collateral misconduct is misconduct that may have been committed by you that has a direct nexus to the sexual assault, such as underage drinking, adultery, fraternization, and violations of certain regulations or orders. If through our conversations, either you or I believe you may have committed misconduct, I will advise you of your options regarding representation.

a) I will provide you with the name and contact information for a Trial Defense Service attorney, separate from that representing the accused, who can represent you.
b) For misconduct that you may have committed that is not related to the sexual assault, you are eligible for representation through the Trial Defense Service program. I cannot represent you for such matters.

Confidentiality:

Since I am your lawyer, information related to this representation, including everything you tell me, is confidential. This means I have a general obligation not to disclose such information to others. I may need to discuss confidential information with others, such as your commander, the Legal Office, or investigators, in order to represent your interests. However, I will discuss such matters with you first and obtain your consent. There are some limited exceptions to this general rule of confidentiality that you should be aware of:

1. I am required by professional ethics rules to disclose information in order to prevent you from committing a criminal act that I believe is likely to result in imminent death or substantial bodily harm or significant impairment of national security or the readiness or capability of a military unit.

2. Additionally, I may disclose such information if necessary to defend myself in the event that you assert a claim against me or I need to defend myself in other proceedings related to this representation.

3. Finally, I could be required by competent authority to disclose communications you have made to me if those communications contemplate the future commission of a crime or fraud or if you sought my services to aid or enable anyone to commit a crime or fraud. Further, because I am prohibited from assisting you with engaging in

a criminal or fraudulent act, I would likely be required to withdraw from this representation in such a situation.

Duration of Representation:

In general, I will be your attorney for all matters related to the sexual assault, unless and until you release me.

1. If I am required to withdraw from representing you or ETS, I will take steps to protect your interests, such as giving you reasonable notice, allowing you time to obtain other counsel, and surrender papers and property to which you are entitled.

2. I will represent you until case disposition is complete. For example, in a court-martial, case disposition is considered complete at action or earlier termination of charges.

3. You may terminate this representation at any time that you desire.

Please feel free to contact as indicated below.

CPT John P. Smith
(123) 456-7899
john.p.smith.mil@mail.mil

JOHN P. SMITH
CPT, JA
Special Victim Counsel

I have read and understand the above letter describing the scope of representation. I agree to these terms of representation.

_____ _____
[Name of Client] [Date]

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

OFFICE SYMBOL Date

MEMORANDUM FOR

Criminal Investigative Division
Chief of Justice
Senior Defense Counsel
Victim's Commander

SUBJECT: Notification of Representation of [Client's Name]

1. I am the Special Victim Counsel for [client's name]. As you know, my client has specific rights during any investigation and subsequent court-martial. My goal is to represent [client's name] interests throughout the investigative and judicial processes and ensure that her rights are protected.

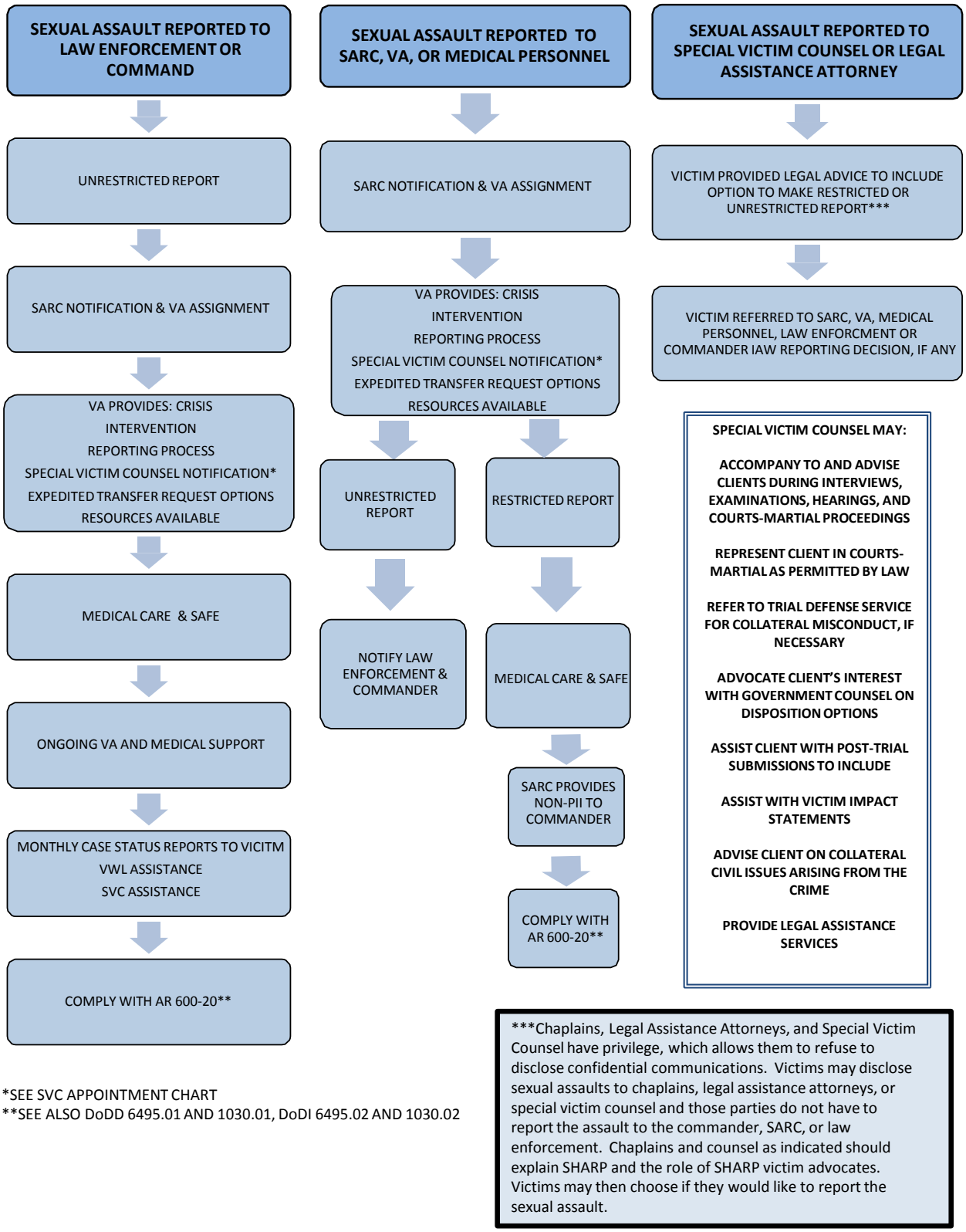
2. I will be present with [client's name] when she meets with trial counsel, defense counsel, and investigators. I plan to appear for and with her at all hearings or court-martial proceedings.

3. Please do not contact my client directly. As [client's name]'s legal representative, I request that you coordinate all contact and communication with her through me. Should you need to set up a meeting or interview with my client, I will facilitate her participation should she so desire.

4. Please contact me, any time that you need to do so. I can be reached by phone at (123) 456-7899 or via email at john.p.smith.mil@mail.mil.

NAME
Captain, JA
Special Victim Counsel

SEXUAL ASSAULT RESPONSE FLOWCHART



*SEE SVC APPOINTMENT CHART
**SEE ALSO DoDD 6495.01 AND 1030.01, DoDI 6495.02 AND 1030.02

***Chaplains, Legal Assistance Attorneys, and Special Victim Counsel have privilege, which allows them to refuse to disclose confidential communications. Victims may disclose sexual assaults to chaplains, legal assistance attorneys, or special victim counsel and those parties do not have to report the assault to the commander, SARC, or law enforcement. Chaplains and counsel as indicated should explain SHARP and the role of SHARP victim advocates. Victims may then choose if they would like to report the sexual assault.

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

Date

Special Victim Counsel

Client Name
Address
City, State, Zip Code

Dear Client Name:

On [date], [GCMCA name, rank] took initial action in the court-martial of Specialist Perpetrator [identify the event triggering termination]. On [date], we discussed [the event triggering termination] and the end of my duties as your Special Victim Counsel. This letter serves as official notification of the termination of our attorney-client relationship. My representation of you is terminated as of [date].

As we discussed, this termination does not mean that you cannot contact me should any new issues arise related to the case, but it is important to keep in mind that anything you choose to disclose to me in the future may not be confidential. Information you disclosed to me in confidence during the course of my representation remains confidential.

[If you chose to be contacted in the event of Specialist Perpetrator's release from confinement or requested notification of his parole opportunities, you will be contacted by a Victim Witness Liaison from the correctional facility so that you may provide input for consideration.]

Should you have any questions about this notification, please do not hesitate to contact me.

Sincerely,

James P. Smith
Captain, U.S. Army
Special Victim Counsel

INFORMATION PAPER

DAJA-LA
25 September 2014

SUBJECT: Special Victims Counsel Program

1. Purpose: Provide information about the Special Victims Counsel (SVC) Program

2. Facts.

a. The SVC Program is a legal assistance program to provide independent representation to victims of sexual assault by a Soldier aimed to empower victims and build their resiliency enabling their full participation in the military justice and administrative process.

b. SVC are legal assistance attorneys who are appointed by their staff judge advocate based on their maturity and judgment. SVC serve a one to two year tour and are supervised by their chief of legal assistance. The SVC Program Manager, who works directly for The Judge Advocate General (TJAG), provides direct professional responsibility and technical supervision. TJAG certifies each SVC after they complete an SVC training course.

c. Client eligibility is determined IAW 10 U.S.C. § 1044 and AR 27-3, The Army Legal Assistance Program. Eligible victims include Soldiers on Active Duty at the time of the offense and Reserve Component Soldiers on orders or in a drilling status at the time of the offense. In addition, dependents including children are eligible for SVC services when the alleged offender is a Soldier.

d. An SVC is available to eligible victims who make an unrestricted or restricted report. Victims may also consult an SVC without making a report. SVC may advocate their client's interests to DoD or Service agencies where there is a nexus to the client's status as a victim and represent their clients in courts-martial IAW the Military Rules of Evidence. SVC may not represent their clients in civilian court; however, SVC may advocate a victim's interests off-installation to civilian prosecutors, law enforcement agencies, and other civilian and government agencies. SVC may provide assistance with respect to state and federal victim compensation and restitution programs.

COL James R. McKee/571-256-7997
Approved by: MG Thomas E. Ayres

INFORMATION PAPER

DAJA-LA
30 May 2014
Note: updated with June numbers

1. This information paper addresses how the Army is implementing the Special Victim Counsel (SVC) Program. On October 15, 2013, The Judge Advocate General announced the establishment of the Army's Special Victim Counsel Program. This was followed on November 1, 2013 with Office of The Judge Advocate General Policy Memorandum #14-01, formally establishing the Army SVC program. Army Staff Judge Advocates (SJAs) were directed to appoint Judge Advocates to serve as SVC as a part of the SJA's Legal Assistance Office. Counsel should have Trial or Defense Counsel experience and must have the maturity and good judgment to handle SVC responsibilities.

a. The first Army official receiving a report of sexual assault will inform the victim of their right to an Army SVC. This may be a Victim Advocate, Trial Counsel, CID Agent, or medical personnel. The victim is provided the number to the installation SVC or the local Legal Assistance Office. An SVC is available to eligible victims who make either an Unrestricted or Restricted Report. Victims may also seek consultation from SVCs before making any report. Eligible clients include any Active Duty Soldier who is the victim of a sexual assault and eligible for legal assistance under 10 U.S.C. § 1044 or Army Regulation 27-3, The Army Legal Assistance Program. Army Directive 2014-09 expanded SVC coverage to include U.S. Army Reserve (USAR) Soldiers and National Guard Soldiers in a Title 32 status serving on Active Duty one day or more. Adults eligible for legal assistance are eligible when the alleged offender is a Soldier. Finally, entry-level status Soldiers who are alleged to have been involved in an unprofessional relationship that involves physical contact of a sexual nature with basic military training or technical training faculty or staff are eligible.

b. The preferred method of SVC consultation is in-person. However, if necessary, the communication can be telephonic. SVCs provide the full range of legal assistance services to victims along with consultation regarding: the confidential nature of communications with SVCs, Legal Assistance Attorneys, Victim Witness Liaisons (VWL), Sexual Assault Response Coordinator (SARC) and Victim Advocates (VA); potential criminal liability and referral to the Army Trial Defense Service if necessary; the roles of the VWAP, SARC, VA; potential third party civil liability; the nature of the military justice system and actors; services available from other agencies such as mental health and medical treatment; and, eligibility for military/Veterans Affairs benefits including transitional compensation. SVCs will also: accompany the victim to any interviews or court-martial proceedings; advocate the victim's interests on disposition options, advocate on behalf of the victim regarding Military Rules of Evidence 412, 513, and 514; advise the victim regarding a victim impact statement, and assist the victim in post-trial submissions.

c. Between November 1, 2013 and July 1, 2014, 1099 victims received SVC assistance. Special Victim Counsel have conducted 5,746 counseling sessions with

victims, accompanied victims to over 1,321 interviews and pretrial meetings, and appeared at 239 courts-martial.

2. Presently the Army has 70-75 Active Component SVCs, 70 USAR SVCs, and 47 ARNG SVCs to provide services to victims of sexual assault. These SVCs are located worldwide, including with deployed forces. The Army Chief of the Staff authorized the mobilization of 20 USAR Judge Advocates to back-fill some Active Component Legal Assistance Offices while the Army determines emerging manpower requirements.

3. The Army SVC budget for FY 14 is $1,824,924.00. This includes travel money for SVCs, Blackberries, laptop computers, 2 certification training courses, and a Continuing Legal Education Course (CLE). We have executed 1 training course, 1 CLE and the computer purchase as of 30 May 2014. The USAR SVC budget is $2,241,376.69 which includes 2 training courses, pay for 71 USAR SVCs, and travel.

4. The Army SVC program is centered and rooted in the Legal Assistance Office of each SJA Office (OSJA). This allows our SVCs to provide a holistic approach to assisting their clients in all aspects of the impacts of a sexual assault. By operating within the Legal Assistance Office, the Army is able to provide part-time SVCs at smaller installations so that victims can engage face-to-face with the SVCs as opposed to having to call a SVC at some larger installation elsewhere. Being a part of the Legal Assistance Office allows our SVCs to obtain guidance from very experienced Chiefs of Legal Assistance who can help them navigate the full range of legal assistance issues such as: breaking landlord-tenant leases, obtaining civilian restraining and military protective orders, as well as other actions that empower a client. In the majority of the cases both the government's interest and the client's interest are the same in seeking justice. Similarly, working within the OSJA allows the SVC to advocate forcefully and in conjunction with the Trial Counsel or Special Victim Prosecutor to the SJA for changes to or in support of the victim. Finally, and more importantly, the SVC working within the OSJA empowers the SVC to open doors on behalf of the client in seeking services provided within the community and controlled by the numerous stakeholders on base.

COL James R. McKee/571-256-799 or
james.r.mckee3.mil@mail.mil.
Approved by: BG Paul S. Wilson
Updated with June numbers

DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON, DC 20310-2200

REPLY TO ATTENTION OF:

DAJA-ZA

1 November 2013

MEMORANDUM FOR Judge Advocate Legal Services Personnel

SUBJECT: Office of The Judge Advocate General Policy Memorandum # 14-01, Special Victim Counsel

1. This policy addresses Judge Advocates (JAs) assigned as Special Victim Counsel (SVCs) and is effective immediately.

2. Background. The Secretary of Defense has directed that each service stand-up a special victim advocacy program to provide advice and representation to victims of sexual assault throughout the military justice process. The Secretary specifically directed that initial operating capability (IOC) be established not later than 1 November 2013 and that full operating capability (FOC) be established not later than 1 January 2014.

3. Implementation. SVCs are part of the Army-wide effort to ensure that sexual assault victims are provided responsive and timely support throughout the investigation and judicial proceedings. In support of this Army priority, Staff Judge Advocates (SJAs) are authorized to limit legal assistance services for Retirees and their Family Members. However, each SJA will implement a mitigation strategy for the curtailment of retiree services, such as retiree weekends.

4. Mission. SVCs have the professional duty to provide advice to their clients and to represent their clients throughout the military justice process. The SVC's primary duty is to zealously represent the best interests of their clients as required by the attorney-client relationship even if their client's interests do not align with those of other interested parties, to include the government of the United States. The SVC also helps build and sustain victim resiliency. An SVC should make every effort to establish and maintain an effective, complementary and professional working relationship with all other attorneys associated with a given case, and with other parties involved, including but not limited to investigators, victim advocates, victim witness liaisons, trial counsel, trial defense attorneys, special victim prosecutors and those professionals working to meet the physical, spiritual, and emotional needs of the client.

5. Appointment of SVCs and Length of Assignments. SJAs will appoint JAs to serve as SVCs, who will be part of the Office of the Staff Judge Advocate (OSJA) Legal Assistance Office. While SVCs do not have to be selected from currently serving Legal Assistance Attorneys, SVCs will function as part of the OSJA Legal Assistance Office when performing SVC duties. They should have trial or defense counsel experience. Regardless of experience, the SVCs must have maturity and good judgment to handle this important duty. SVCs should serve no less than one year and no more than two years in the position.

6. Training. Training is essential to honing the expertise of SVCs. The SVC Program Manager (PM), in coordination with The Judge Advocate General's Legal Center and School, the Criminal Law Division and the Legal Assistance Policy Division, will determine training requirements for SVCs and develop and administer a training program for SVCs. Completion of the SVC course is mandatory unless an exception is approved by the SVC PM. Given the nature and timing of certain training events, individuals may attend SVC training courses prior to their actual assignment as an SVC.

7. Supervision. An SVC's professional duty is to their client. SJAs must ensure a proper balance of mentorship and guidance for their SVCs, including supervision by the OSJA Chief of Legal Assistance. SJAs must recognize that SVCs have an ethical obligation to advocate for their clients even when it is not in the best interest of the government. The SJA, through the Chief of Legal Assistance, shall provide day-to-day supervision of the SVC and ensure the SVC is provided the necessary material and resource support to carry out the SVC mission. The OSJA will facilitate SVCs' requests for official travel for cases within their jurisdiction.

8. Relationship with the SVC PM. The SVC PM is responsible for monitoring the overall execution of the SVC program. Chiefs of Legal Assistance and SJAs remain the primary day-to-day supervisory chain for SVCs. However, due to the nature of the SVC function, there will be some cases in which the interests of the SJA and the command are not in concert with the victim's. In those situations, the SVC's technical adviser and supervisory JA for professional responsibility per AR 27-26 is the SVC PM. Our goal is the SVC program should be effective, transparent, avoid conflicts of interest with other legal assistance clients and complement the way our Corps already delivers legal services.

Army Strong!

FLORA D. DARPINO
Lieutenant General, USA
The Judge Advocate General

[Name of
[Name of Client]
[Client Address]

Re: Special Victims Counsel Scope of Representation of [Client Victim] **[Parents/Guardians]**

Dear **Parent/Guardian**,

1. I am a lawyer licensed to practice law and serve as a Legal Assistance Attorney with the United States Army. In that capacity, I will serve as your child's Special Victims Counsel (SVC). Your child, as a victim of sexual assault, is eligible for Special Victims Counsel services. The purpose of this representation is to assist your child in exercising your child's rights as a victim. In other words, I am not your lawyer, I am your child's lawyer, and your child is my client. However, when I use the words "you" or "your" throughout this letter, I am referring to your participation in the process as the victim's parent/guardian in exercising your child's rights as a victim. When I use the words "victim" or "your child," I am referring to your child as my client.

2. I am your child's lawyer. My sole responsibility and loyalty is to your child and what is in your child's best interests. This means that I am not your lawyer, and any conversations that your child and I have will be generally confidential between me and your child. Also, as your child's lawyer, I am bound to follow his or her directives regarding the representation, with the exception being that I am bound only so far as I believe that your child possesses the development and maturity to make a considered decision. In addition, although I am your child's lawyer, I will still communicate to you relevant information regarding your child's case, provided that it does not violate my duty of confidentiality and that it is in your child's best interest. These duties will be more fully described below.

3. My duties as your child's Special Victims Counsel are to provide your child with effective and timely advice, be available to assist your child throughout the full spectrum of the military justice process from initial investigation to completion of your child's case, and provide your child with appropriate advocacy to assure that your child's rights are fully realized. This letter will explain the scope of legal assistance that I can provide your child as well as the limits on my representation of your child through this program.

Scope of Legal Assistance Provided:

1. Personal Civil Legal Affairs – I can answer your questions and your child's questions related to the Victim Witness Assistance Program; the role of Victim Advocates and Victim Liaisons and the nature of conversations with these persons; what medical and mental health services are available for your child; and the availability of protective orders from military or civilian authorities. I can also assist you and your child with a host of other civil legal issues.

2. Representation Throughout the Military Justice Process – I can advocate your child's interests to any actor in the military justice process, including commanders, convening authorities, Staff Judge Advocates, trial counsel (prosecutors), the accused's defense counsel, and military judges.

a) I can attend your child's interviews with investigators, trial counsel, and defense counsel. If I am unable to attend in person, I can attend such interviews via video teleconference or telephonically.

b) I can assist you and your child in obtaining information relevant to the sexual assault case that your child has a right to, such as the status of the investigation and the status of the accused.

c) You and your child have a right to consult with the government regarding certain decisions, such as whether or not charges will be preferred against an accused and plea negotiations. I can represent your child during this process.

d) I can represent your child in proceedings under the Uniform Code of Military Justice (UCMJ), such as Courts-Martial, where your child is afforded an opportunity to attend and be heard by the court.

3. Advocacy to Civilian Prosecutors and Agencies – In general, my representation of your child will be more limited off post than for military justice matters on post. I will inform you and your child if there is a matter where I cannot represent your child. In these cases, you may obtain civilian counsel, at your own expense, for these purposes, while still retaining me to represent your child in other matters.

a) I can advocate your child's interests to civilian prosecutors, civilian law enforcement agencies, and other civilian and government agencies.

b) I cannot represent your child in civilian court.

Consultation Regarding Representation With Parent/Guardians and Others:

Your child is a minor, so the law recognizes that he or she does not possess the same level of development and maturity as an adult, and is therefore not qualified to make all of his or her decisions. To the extent that I determine your child possesses the requisite level of development and maturity to understand the circumstances of his or her case and the court proceedings, and make a considered decision, I will keep any discussion with your child confidential, and I will carry out your child's directives to the best of my ability. However, if I determine that your child lacks the requisite development and maturity to understand and make a considered decision in your child's case, I will consult with you and others to determine what is in your child's best interests. Other individuals I may consult with may be medical professionals, counselors, victims' advocates, and individuals from relevant federal or state agencies.

Confidentiality:

Since I am your child's lawyer, information related to this representation, including everything your child tells me, is generally confidential between me and your child. This means I have a general obligation not to disclose such information to others, including you. I may need to discuss normally confidential information with others, such as you the parent/guardian, your commander, the Staff Judge Advocate Office, or investigators, in order to represent your child's interests. However, to the extent your child's level of development and maturity permit, I will discuss such matters with your child first and obtain your child's consent. There are some limited exceptions to this general rule of confidentiality that you should be aware of:

1. Normally, when representing an adult, the rules of confidentiality require me to gain my client's consent before disclosing confidential information. When a client is a minor, however, this rule of confidentiality is modified. If, in my judgment, your child lacks the ability to make a considered decision on an issue, I will at my discretion, consult with you the parent/guardian,

and any other professionals I deem necessary. But, if I deem consultation with you or others necessary and in your child's best interests, I will still only disclose such information to the extent necessary to make a decision in your child's case on the specific issue in question.

2. I am required by professional ethics rules to disclose information in order to prevent you or your child from committing a criminal act that I believe is likely to result in imminent death or substantial bodily harm, or significant impairment of national security or the readiness or capability of a military unit.

3. Additionally, I may disclose such information if necessary to defend myself in the event that you or your child asserts a claim against me or I need to defend myself in other proceedings related to this representation.

4. Finally, I could be required by law or court order to disclose information.

Child Reaches Age of Majority During Pendency of Case:

If during the pendency of your child's sexual assault case your child reaches the age of majority, my representation of your child will continue, but I will no longer consult with you regarding any matter for which I am representing your child.

Duration of Representation:

In general, I will be your child's lawyer for all matters related to the sexual assault, unless and until your child or other competent authority releases me.

1. If I am required to withdraw from representing your child or if I leave the U.S. Army, I will take steps to protect your child's interests, such as giving you and your child reasonable notice, allowing you and your child time to obtain other counsel, and surrendering papers and property to which your child is entitled.

2. I will represent your child until case disposition is complete. For example, in a Court-Martial, case disposition is considered complete when the Convening Authority takes action or earlier at the termination of charges.

3. Your child may terminate this representation at any time that he or she desires.

Please feel free to contact as indicated below.

CPT John P. Smith
(123) 456-7899
john.p.smith.mil@mail.mil

JOHN P. SMITH
CPT, JA
Special Victims Counsel

I/we have read and understand the above letter describing the scope of representation. I/we agree to these terms of representation.

_____
[Name of Parent/Guardian] [Relation to Child][Date]

_____
[Name of Parent/Guardian] [Relation to Child][Date]

DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

DATE

OFFICE SYMBOL

[Name of Client]
[Client Address]

Re: Special Victim Counsel Scope of Representation

Dear Client,

I am an attorney licensed to practice law and serve as a Legal Assistance Attorney with the United States Army. In that capacity, I will serve as your Special Victim Counsel. My duties as your Special Victim Counsel are to provide you with effective and timely advice, be available to assist you throughout the full spectrum of the military justice practice from initial investigation to convening authority action, and provide you with appropriate advocacy to assure that your rights are fully realized. This letter will provide you with the scope of legal assistance that I can provide you as well as the limits on my representation of you through this program.

Scope of Legal Assistance Provided:

1. Personal Civil Legal Affairs – I can answer your questions related to the Victim and Witness Assistance Program; the role of Victim Advocates and Victim Liaisons and the nature of your conversations with these persons; what medical and mental health services are available; the availability of protective orders from military or civilian authorities; and information concerning the difference between restricted and unrestricted reporting. I can also assist you with a host of other civil legal issues, including landlord-tenant and consumer laws that are related to your case.

2. Representation Throughout the Military Justice Process – I can advocate your interests to any actor in the military justice process, including commanders, convening authorities, Staff Judge Advocates, the accused's defense counsel, and military judges.

   a) I can attend your interviews with investigators, trial counsel, and defense counsel. If I am unable to attend in person, I can attend such interviews via VTC or telephonically.
   b) I can assist you in obtaining information relevant to the sexual assault case that you have a right to, such as the status of the investigation and the status of the accused.
   c) You have a right to consult with the government regarding certain decisions, such as whether or not charges will be preferred and plea negotiations. I can represent you during this process.

d) I can represent you in UCMJ proceedings, such as courts-martial, where you are afforded an opportunity to attend and be heard by the court.

3. Advocacy to Civilian Prosecutors and Agencies – In general, my representation of you will be more limited off base than for military justice matters on base. I will inform you if there is a matter where I cannot represent you, and you may obtain civilian counsel, at your own expense, for these purposes, while still retaining me to represent you in other matters, if you so choose.

a) I can advocate your interests to civilian prosecutors, law enforcement agencies, and other civilian and government agencies.
b) I cannot represent you in civilian court.

4. Collateral Misconduct – Covered collateral misconduct is misconduct that may have been committed by you that has a direct nexus to the sexual assault, such as underage drinking, adultery, fraternization, and violations of certain regulations or orders. If through our conversations, either you or I believe you may have committed misconduct, I will advise you of your options regarding representation.

a) I will provide you with the name and contact information for a Trial Defense Service attorney, separate from that representing the accused, who can represent you.
b) For misconduct that you may have committed that is not related to the sexual assault, you are eligible for representation through the Trial Defense Service program. I cannot represent you for such matters.

Confidentiality:

Since I am your lawyer, information related to this representation, including everything you tell me, is confidential. This means I have a general obligation not to disclose such information to others. I may need to discuss confidential information with others, such as your commander, the Legal Office, or investigators, in order to represent your interests. However, I will discuss such matters with you first and obtain your consent. There are some limited exceptions to this general rule of confidentiality that you should be aware of:

1. I am required by professional ethics rules to disclose information in order to prevent you from committing a criminal act that I believe is likely to result in imminent death or substantial bodily harm or significant impairment of national security or the readiness or capability of a military unit.

2. Additionally, I may disclose such information if necessary to defend myself in the event that you assert a claim against me or I need to defend myself in other proceedings related to this representation.

3. Finally, I could be required by competent authority to disclose communications you have made to me if those communications contemplate the future commission of a crime or fraud or if you sought my services to aid or enable anyone to commit a crime or fraud. Further, because I am prohibited from assisting you with engaging in

a criminal or fraudulent act, I would likely be required to withdraw from this representation in such a situation.

Duration of Representation:

In general, I will be your attorney for all matters related to the sexual assault, unless and until you release me.

1. If I am required to withdraw from representing you or ETS, I will take steps to protect your interests, such as giving you reasonable notice, allowing you time to obtain other counsel, and surrender papers and property to which you are entitled.

2. I will represent you until case disposition is complete. For example, in a court-martial, case disposition is considered complete at action or earlier termination of charges.

3. You may terminate this representation at any time that you desire.

Please feel free to contact as indicated below.

CPT John P. Smith
(123) 456-7899
john.p.smith.mil@mail.mil

JOHN P. SMITH
CPT, JA
Special Victim Counsel

I have read and understand the above letter describing the scope of representation. I agree to these terms of representation.

_____ _____
[Name of Client] [Date]

[Name of
[Name of Client]
[Client Address]

Re: Special Victims Counsel Scope of Representation of [Client Victim]

Dear [**Child Victim**],

1. I am a lawyer for the United States Army. I will serve as your Special Victims Counsel (SVC). The purpose of this representation is to help protect your rights as a victim.

2. As your lawyer, my loyalty belongs to you. I am responsible for representing and guiding you throughout the entire legal process. My guidance includes advice and, when needed, I will speak for you to ensure your interests are heard. Furthermore, anything that you and I discuss or talk about in private will remain private between you and me. I promise not to talk to anyone about your case without your permission. This letter describes what I can and cannot do for you as your Special Victims Counsel.

Scope of Legal Assistance and Representation I Can Provide:

1. Personal Matters – If you choose, I can help guide you to available medical, mental health, and counseling resources.

2. Military Justice Process – I can speak on your behalf to anyone in the military justice process to include commanders, investigators, lawyers, and military judges.

a) I can attend interviews with the investigators, prosecutors, and defense counsel. If I am unable to attend in person, I can attend these interviews via telephone or video teleconference.

b) I can help gather information about the status of your case throughout the entire legal process.

c) You have a right to consult with the prosecutor regarding important decisions regarding your case.

d) I can also represent you in any military court proceeding where you are afforded an opportunity to attend and be heard.

3. Off-Post Criminal and Civil Matters – In general, my ability to represent you in non-military legal matters is limited. You may obtain another lawyer to represent you for these proceedings at your own expense. If you decide to obtain another lawyer, I will continue to represent you and your interests with any related military legal matters.

a) I cannot represent you in a non-military based court proceeding; however, I can help describe these proceedings to you.

b) I can advocate your interests to civilian lawyers, law enforcement agencies, and other civilian and government agencies.

c) I can help provide legal options to protect you and your property.

Confidentiality:

1. Consent. As your lawyer, any information we talk about is private. I will not discuss our conversations to anyone without your approval. This includes talking about your case to your parents, guardian, school counselor, therapist, doctor, investigator, and anyone else. Furthermore, there may be times when I need to get your consent to have access to certain records, or schedule appointments and/or meetings on your behalf.

You do not have to share what we discuss with anyone. You must tell me immediately if anyone tries to make you talk about our private conversations against your will. I will take the necessary steps to protect your right to speak with me confidentially as well as your right to privacy.

2. Emergency. There are limited exceptions regarding your right to speak with me confidentially and your right to privacy. I will need to talk to another person about our private discussions if one of these exceptions occurs:

a) To prevent you from committing a crime or an act that I believe is likely to result in a person's death or serious bodily harm,

b) To protect national security or the readiness or capability of a military unit,

c) To defend myself regarding any legal proceedings related to my representation of you, and

d) When the law requires or a court orders me to disclose what you and I talked about.

Duration of Representation:

I will be your lawyer until the completion of all matters related to this case, or until you, or another authority, releases me. Completion or termination includes:

a) When the Convening Authority takes action;

b) You may terminate my representation of you at any time;

c) When my representation of you would result in violation of the Rules of Professional Conduct or other law;

If I am withdrawn from your case, or if I leave the U.S. Army, I will take steps to protect your rights by giving you reasonable notice to allow you to have enough time to obtain another Special Victims Counsel, and I will surrender papers and/or property to which you are entitled.

Contact Information:
Please feel free to contact me as indicated below.

CPT Jane Doe
Special Victims Counsel, OSJA
Fort Sam Houston
2271 Reynolds Road
Fort Sam Houston, Texas 78234-7800
(123) 456-7899
jane.doe.mil@mail.mil

Jane Doe
Captain, JA
Special Victims Counsel

I have read and understand the above letter describing the scope of representation. I agree to these terms of representation.

_____ _____
Name Date

[Name of
[Name of Client]
[Client Address]

Re: Special Victims Counsel Scope of Representation of [Client Victim]

Dear [**Child Victim**],

1. I am your Lawyer. My job is to help you with this case. I work for you.

2. I have to keep everything you tell me private and secret. I cannot tell anybody anything you tell me unless you say it is okay, or in an emergency to help you, or if a judge tells me to.

3. I can help you with personal matters, like finding a doctor or counselor.

4. In a military court I can talk for you. I can also talk to the judge and other lawyers for you.

5. I can help you a little bit in civilian court, but not as much as in military court.

6. I will be your lawyer until the case is done.

7. Signing this letter means you want me to be your lawyer, and that you understand what I told you.

I want [NAME OF SVC] to be my lawyer and help me.

_____
[Name of Child Client][Date]
[Name of
[Name of Client]
[Client Address]

Re: Worksheet for Special Victims Counsel Scope of Representation of [Client Victim]

1. These instructions are to be used each time you enter directly into an attorney-client relationship with a child victim. This Scope of Representation Letter is only to be used after it has been determined that the child victim possesses the level of development and maturity to make considered decisions in his or her case, and that the child is capable of entering into an attorney-client relationship. If the child victim is an older teen, you may be able to use the Scope of Representation Letter for older children, or the one for adult victims. Otherwise, use this bullet point format.

2. Below are the same bullet points that are on the child victim's Scope of Representation Letter. First, review the Scope of Representation Letter for older children to ensure that you are prepared to properly discuss the terms and conditions of representation. Then, follow the instructions below, and in an *age appropriate manner*, you will read and discuss with the child victim each of these bullet points. When discussing the Scope of Representation try not to use Military Justice Terminology, and use the terms more common in civilian courts. Most children will have had exposure to the terminology in civilian criminal courts through crime dramas on television, and through other mass media, so use "prosecutor" instead of "Trial Counsel," or "defense lawyer" instead of "Trial Defense Counsel."

3. After you are satisfied that the child victim understands the bullet point in question, initial the bullet point on this worksheet, and continue to the next bullet point. When you are satisfied the child victim understands each and every bullet point, have the child victim sign the Scope of Representation Letter.

4. After the child victim signs the Scope of Representation Letter, sign these Instructions certifying that you discussed the Scope of Representation Letter with the child victim, and that you believe the child victim understands the conditions of the attorney-client relationship, and agrees to them. Staple these instructions to the Scope of Representation Letter the child signed, and keep in the client's file.

SCOPE OF REPRESENTATION WORKSHEET

1. I am your Lawyer. My job is to help you with this case. I work for you. ___

INSTRUCTIONS: Make sure the child victim understands that you are their lawyer and that your loyalty is to them. Make sure the child understands that it is your job to protect the child's interests, as well as discuss the options with the child victim. Also, make it clear that you are the child's lawyer, and will advise him or her on decisions, but the child will be the one making the decisions on matters where they have been deemed competent to decide that issue, even if you do not agree with them.

2. I have to keep everything you tell me private and secret. I cannot tell anybody anything you tell me unless you say it is okay, or in an emergency to help you, or if a judge tells me to.___

INSTRUCTIONS: Make sure you spend sufficient time to emphasize this point, because confidentiality could be a difficult concept for younger children. When discussing confidentiality with the child try to stay away from legal terms like "confidentiality" and "privilege," and instead use words like "private" and "secret." Some of the older teens will understand "confidentiality," but most child victims will not. Also, ensure the child victim understands that he or she does not need to reveal any confidential information to anyone else, including the child's parents or guardians, and that the child must immediately tell you if anyone tries to make him or her disclose confidential information.

3. I can help you with personal matters, like finding a doctor or counselor.___

INSTRUCTIONS: Make sure the child victim knows that your job is to help the child get the support he or she needs, whether medical, psychiatric, counseling, etc. Emphasize to the child victim that if he or she ever needs anything the child should not hesitate to ask you, and if you cannot do something yourself, you will do your best to find out who can help the child victim.

4. In a military court I can talk for you. I can also talk to the judge and other lawyers for you.___

INSTRUCTIONS: This can be tricky to explain to some of the younger children, but make sure they understand that after they make a decision, that you will advocate for that result to the best of your ability. Also, make sure they understand that you will be with them through all phases of the Military Justice Process, including the initial investigation and trial preparation. Furthermore, ensure that they understand that they may have to speak in court and be questioned by others, but that you will be there with them.

5. I can help you a little bit in civilian court, but not as much as in military court.___

INSTRUCTIONS: Make sure the child victim understands that you cannot go into a civilian court, and advocate for the child; but that you may be able to talk to the judge and others outside of the courtroom for the child victim. You can also tell the child that he or she may be able to get a civilian lawyer to help the child victim in civilian court.

6. I will be your lawyer until the case is done.___

INSTRUCTIONS: Explain to the child in an age appropriate manner, which usually means telling the child victim that you are the child's lawyer until the trial is over.

7. Signing this letter means you want me to be your lawyer, and that you understand what I told you.___

INSTRUCTIONS: Ask the child victim if they have any questions on anything. Question the child again if you think necessary. Then ask the child if he or she understands that when the child signs or prints his or her name on the letter, that he or she wants you to be the child's lawyer, and understands the Scope of Representation.

CERTIFICATION

I certify that I read and discussed the Scope of Representation Letter with [Child Victim Name], that the child understands and has agreed to the terms and conditions of representation.

_____
[Name of SVC][Date]

Victim Impact Statement Factsheet

I. What is a Victim Impact Statement?

A Victim Impact Statement (VIS) is an opportunity for you to provide input, in the form of a letter, as to whether or not a conviction and sentence should be approved. The statement may be made in addition to any testimony you may have given during the findings or sentencing phase of a court-martial. The VIS is voluntary and you do not have to complete one if you don't want to.

II. Why is it important?

In military courts-martial, the conviction and sentence the jury or judge awards is not final until it is approved by the court-martial convening authority. The court-martial convening authority is a military commander who likely did not observe the trial. Before the convening authority approves a conviction and/or sentence, the accused has an opportunity to submit matters in their behalf in an effort to obtain some form of clemency (leniency) from the convening authority. Clemency can take the form of a reduction in the sentence or, in rare cases, a setting aside of the conviction. No one knows better than you how the crime may have changed your life; a VIS ensures the convening authority considers your voice when determining whether to approve the findings and sentence or grant some form of clemency.

III. Who sees the VIS?

You will submit your findings to the trial counsel or staff judge advocate (SJA) whose office was responsible for prosecuting the case. In accordance with military law, they will provide the VIS to the accused (through his defense attorney) so that they may have an opportunity to respond. For this reason, you should not put anything into the VIS that you would like to keep private from the accused. After this opportunity, the statement will go to the convening authority along with the matters submitted by the accused and a record of the trial proceedings.

IV. What should I write?

As the name of the statement indicates, your focus while writing should be the impact the crime has had on you, as a victim, and your loved ones. There are many types of impact which typically result from a crime, not all of which are easily measured. The most common are physical, emotional, financial, social and spiritual. Has this crime affected you emotionally? Has it affected the emotions of those close to you? Has the crime had any effect on your ability to enjoy the things you did before (school, work, running a household, or any other activity)? Have you had to pay any money for bills as a result of the crime (moving costs, medical bills, lost property, changing door locks, etc)?

In order to give the convening authority a full picture of how the crime affected you, consider including a section on what kind of person you were prior to the crime. You can talk about the type of person you were before the crime and how that may have changed due to the accused's criminal actions.

V. Is there anything I shouldn't write?

It is important not to talk about crimes of which the accused was not convicted. This could prejudice the accused's post-trial rights which could result in a reduction in his or her sentence.

Finally, you should know that the convening authority does not have the option to impose a stronger or higher sentence. You may however make a recommendation that the convening authority approve the sentence adjudged.

Your Special Victims' Counsel is here to assist you and offer advice as you write your VIS. You are not alone and can discuss freely with your SVC what your options are regarding the VIS and how you would like to convey your message.