

Topics from Deputy Secretary of Defense Memo, "Updates to Department of Defense Policy and Procedures for the Sexual Assault Prevention and Response Program and Adult Sexual Assault Investigations," signed November 10, 2021. Available at www.sapr.mil/policy.

TOPIC: Procedures for Evidence Retention and Release of Personal Property in Adult Sexual Assault Cases

Enclosure 8 of DoDI 6495.02, volume 1, is revised as follows:

Corresponding changes are approved for Section 3.5 of DoDI 5505.18, Procedures on Evidence Retention and Release of Personal Property.

Retention of Evidence. Evidence, to include Sexual Assault Forensic Examination (SAFE) Kits, will be retained for Restricted Reports for 10 years from the date of the seizure of evidence. Evidence from Unrestricted Reports will be retained for 10 years from the date of the seizure of evidence **and** until after the conclusion of all legal, adverse action, and administrative proceedings, unless otherwise provided for in this instruction. The "retention period" or "storage period" for SAFE Kits will be updated from 5 years to 10 years throughout DoDI 6495.02, volume 1.

- a. These evidence retention periods are not applicable for individuals who obtained a SAFE at a civilian facility, and whose kit and personal property are maintained by civilian law enforcement. It is also not applicable for evidence seized and/or maintained by civilian law enforcement.
- b. The 10-year retention period is implemented to maintain the availability of evidence for the Catch a Serial Offender (CATCH) Program, wherein victim entries are active for 10 years.
- c. The SARC will contact all victims who filed a Restricted Report (not just those who had a SAFE Kit) one year after the reporting date to inquire whether the victim wishes to change his or her reporting option to Unrestricted. If the victim does not change to an Unrestricted Report, the SARC will inform (or remind, if previously informed) the victim of the CATCH Program and ask if the victim would like to participate. The SARC will also explain to victims who underwent a SAFE, that the evidence maintained by DoD including the SAFE Kit will be retained for a total of 10 years from the time the SAFE Kit was completed and that any evidence from the SAFE will be destroyed at the end of the 10-year period. However, the SARC will explain that the victim has the right to request the return of any personal property (e.g., phone, clothing, necklace/jewelry) collected as part the SAFE. The SARC will emphasize to the victim that he or she will not be contacted again by the SARC to respect his or her privacy. The SARC will emphasize that the victim may convert his or her Restricted Report to an Unrestricted Report at any time, but should notify the SARC of the intent to convert to Unrestricted before the 10-year evidence retention period elapses, so that evidence collected during the SAFE is not destroyed and can be used during the case.

Release of Personal Property in Unrestricted Sexual Assaults.

- a. Evidence, to include SAFE Kits, will be retained for Unrestricted Reports for 10 years from the date of the seizure of evidence, and until after the conclusion of all legal, adverse action, and administrative proceedings, if under the custody and control of DoD.
- b. Section 586 of Public Law 112–81, as revised by Section 538 of Public Law 113–291 (codified in 10 USC, Section 1561 note), allows for the release of personal property. Personal property items collected as evidence in Unrestricted Reporting cases may be returned to their rightful owner prior to the 10-year period only:
 - (1) After written evidence disposition is obtained from the designated representative of the Military Department concerned.
 - (2) When:

- (a) It is determined that the allegation is unfounded (false or baseless), that is, the crime did not occur or it was determined through investigation to be a false allegation; or
 - (b) The evidence is taken from a suspect who is later deemed to be the wrong person, i.e., mistaken identity; or
 - (c) All legal, adverse action, and administrative proceedings related to such allegation in accordance with Public Law 113–291, Section 538 (codified at 10 USC, Section 1561 note) have concluded.
- (3) This return of personal property request is not applicable for Service members, National Guard members, adult dependents, or other victims covered by DoDI 6495.02, volume 1, who obtained a SAFE at a civilian facility, and whose kit and personal property are maintained by civilian law enforcement.

Release of Personal Property in Restricted Sexual Assaults.

- a. Evidence will be retained for 10 years from the date of the seizure of evidence, if under the custody and control of DoD.
- b. In accordance with Public Law (P.L.)116-92, Section 536, adult sexual assault victims who filed a Restricted Report and underwent a SAFE pursuant to the Restricted Report can request the return of their personal property obtained during the SAFE. This return of personal property request is not applicable for Service members, National Guard members, adult dependents, or other victims covered by this policy who obtained a sexual assault forensic exam at a civilian facility, and whose kit and personal property are maintained by civilian law enforcement.
- c. Requesting the return of personal property will not impact the Restricted nature of the victim's Restricted Report, in accordance with P.L. 116-92, Section 536. As a result of this confidentiality requirement, evidence custodians and any assisting military law enforcement personnel, to include MCIO investigators, will not report this sexual assault allegation and will not initiate an investigation into this matter, when they discover the name of the victim and/or suspect with regard to the Section 536 Return of Victim's personal property in a Restricted Reporting case.
- d. MCIOs will develop procedures that allow for return of personal property to victims who have filed a Restricted Report and provide a DD Form 2910-3, signed by a SARC/SAPR VA and bearing the Restricted Reporting Case Number (RRCN) of the SAFE Kit. The Services will develop procedures utilizing the DD Form 2910-3 in situations where the victim does not initiate the request with the SARC, but rather initiates the request at the Service SAPR leadership level or other locations.
 - (1) The SARC or SAPR VA will use the [DD Form 2910-3](#), "Return of Victim's Personal Property in Restricted Sexual Assault Cases Collected During a Sexual Assault Forensic Examination (SAFE)," to document the victim's request, to describe the personal property to be released, and to document the RRCN that identifies the SAFE Kit in question.
 - (2) As required by Section 536, the SARC or SAPR VA will call the victim's attention to the DD Form 2910-3 notification that the request for the return of personal property may negatively impact a future investigation and prosecution if the victim later decides to convert the Restricted Report to an Unrestricted Report, including information submitted into the CATCH a Serial Offender Program (CATCH).
 - (3) The DD Form 2910-3 will also notify the victim of the CATCH Program and, if eligible, the availability of assistance from a Special Victims' Counsel (SVC)/Victims' Legal Counsel (VLC) prior to submitting his or her request for the property return.

- (4) The DD Form 2910-3 will contain a notification for evidence custodians, law enforcement personnel, and MCIO investigators notifying them of the policy exemption so when they discover the name of the victim and/or suspect, an investigation will NOT be initiated.
- (5) After the victim signs the DD Form 2910-3, the SARC/SAPR VA will give the victim the original, signed (or digitally signed) DD form 2910-3 for the victim to provide to the evidence custodian. The SARC will also provide the victim a copy of the signed DD Form 2910-3, which the victim should keep in his or her personal records.
- (6) The SARC, or authorized SAPR VA, will upload a copy of the DD Form 2910-3 into the Defense Sexual Assault Incident Database (DSAID) File Locker for permanent storage, in accordance with established document retention procedures.
- (7) Upon receipt of the victim's signed DD Form 2910-3, the SARC will contact the installation MCIO supervisory agent (or the MCIO's designated SAPR agent), provide the RRCN of the appropriate SAFE Kit, and request the kit be located.
- (8) The installation MCIO supervisory agent will locate the SAFE Kit and arrange for it to be sent to the installation, if stored elsewhere, using appropriate security measures.
- (9) Once the relevant SAFE Kit is at the victim's location, the MCIO supervisory agent and the SARC will arrange for the victim to meet with the evidence custodian to retrieve the personal property in question.
- (10) The SARC/SAPR VA will instruct the victim to bring the original (signed in person or digitally) signed DD Form 2910-3 with her/him to the meeting with the evidence custodian. If the victim has lost the form, the victim will request a copy from the SARC, who will retrieve it from the DSAID File Locker.
- (11) Evidence custodians will confirm that the RRCN on the DD Form 2910-3 and the SAFE Kit match, and when provided a copy of the DD Form 2910-3 the evidence custodian will ask the victim to confirm that it is his/her signature.
 - (a) **If the requested personal property is inside the SAFE Kit box:** The evidence custodian will then open the SAFE Kit box and provide the victim with the requested personal property. The evidence custodian will insert the original signed DD Form 2910-3 into the SAFE Kit box to account for the release of the item(s), and then reseal the SAFE Kit box in accordance with established chain of custody procedures.
 - (b) **If the personal property is in an evidence bag/container collected as part of the SAFE, but not in the SAFE Kit box:** The evidence custodian will not break the seal of the SAFE Kit box if the personal property is **not** inside the SAFE Kit box, but rather the personal property is maintained in **external evidence bag/container** collected as part of the SAFE (e.g., if the forensic examiner collects large clothing items like jeans that cannot fit in the SAFE Kit box, then an additional evidence bag is needed, which is also part of the SAFE Kit). In those circumstances, the evidence custodian will open the external evidence bag/container and provide the victim with the requested personal property. The evidence custodian will insert the original signed DD Form 2910-3 into the external evidence bag/container to account for the release of the item(s), and then reseal the external evidence bag/container in accordance with established chain of custody procedures.
- (12) If the personal property is missing or damaged, the victim may consult with his or her SVC/VLC, if represented, or can ask the SARC for a referral to the SVC/VLC program of the Service concerned, for assistance in addressing this issue. The SARC cannot address evidentiary issues of missing or damaged personal property.

(13)The victim can also make additional requests for return of personal property if there are other pieces of personal property that the victim wants returned.

- e. SAFE Kits taken pursuant to a Restricted Report will be disposed of according to established procedure at the end of the 10-year retention period. Law enforcement personnel, MCIO investigators, and support personnel that dispose of SAFE Kits shall not initiate an investigation into this matter or report this crime should they discover the name of the victim and/or suspect while disposing of the kit or associated evidence.
- f. **Return of Digital or Electronic Personal Property.** Personal property items gathered as evidence which are digital or electronic in nature may be returned to the rightful owner if a forensic copy of the digital or electronic evidence stored on or accessed through an electronic device has been made. The copy must be obtained in a forensically sound manner sufficient for command action or prosecution, as appropriate.