

Updates to the Department of the Air Force Sexual Assault Discharge Policy

Air Force policy has always held that sexual assault is incompatible with military service, and members who commit these offenses are subject to discharge for misconduct. Commanders must initiate discharge when they have information indicating a member is subject to discharge for sexual assault. Once discharge is initiated, the member must prove the existence of certain criteria in order to be retained. Recent review of this process identified the need to clarify the policy, provide more objective criteria, and ensure retention of individuals who have committed sexual assault is limited to certain enumerated circumstances.

Overall Policy Changes		
Former Policy	New Policy	Explanation
Two stand-alone publications for officer (AFI 36-3207) and enlisted (36-3208) discharges	Combined into one publication (DAFI 36-3211) for officers, enlisted, Guard, and Reserve.	Consolidation of multiple publications to provide a comprehensive approach
	Adds the following sentence: “The presumption is that members who commit sexual assault will be discharged.”	Clarifies DAF policy that sexual assault is incompatible with military service, and remaining in service would be the rare exception to the general rule.
The specific criteria a member found to have committed sexual assault or sexual assault of a child had to prove in order to be considered for retention were called “Retention Criteria”	The criteria are now called “Exception Criteria.”	To clarify the criteria make you eligible for an “exception” to the general rule of presumption of discharge.
Separation authority and board members consider all “relevant” evidence in deciding whether a sexual assault occurred, whether the member met the criteria to be retained, whether the member should be discharged, and the characterization of discharge.	<u>Prohibits consideration</u> of a member’s: personal, family, or financial circumstances; good military character or service record; or medical or mental health condition <u>when determining whether a basis for a sexual assault discharge exists, whether a waiver is appropriate, and whether a member should be discharged</u> if they have committed a sexual assault.	To ensure the decision authority only uses factors and evidence relevant to the immediate decision before them. Factors such as mental health and military service are relevant as to characterization only.
No standard of proof for a member attempting to prove he or she meets the criteria	Establishes <u>preponderance of the evidence</u> as the <u>standard of proof</u> throughout the process	Clarifies the standard of proof to ensure consistency and objectivity
Listed six specific criteria to be met in order to be eligible for retention	Updates the criteria a member must meet in order to be considered for an exception to the general rule of discharge (see reverse page)	Provides more objective criteria that ensure exceptions to discharge occur in limited circumstances

Changes to Exception Criteria

(Member must meet all five criteria by a preponderance of the evidence to be considered for an exception to the mandatory discharge policy)

Old Criteria	New Criteria	Explanation
1. The conduct surrounding and including the sexual assault or sexual assault of a child is a departure from the member's usual and customary behavior.	1. The member does not have another substantiated allegation of sexual assault or sexual harassment at any point in their history, whether before joining the military or not and regardless of whether the member was on active duty at the time of the offense.	Creates more objective, measurable criteria.
2. The conduct surrounding and including the sexual assault or sexual assault of a child under all circumstances is not likely to recur.	<i>Criteria eliminated</i>	Previous criteria was speculative.
3. The sexual assault or sexual assault of a child did not involve the penetration, however slight, of the vulva or anus or mouth of another by any part of the body or by any object, with an intent to abuse, humiliate, harass, or degrade any person or to arouse or gratify the sexual desire of any person.	2. The sexual assault did not involve a child victim or a sexual act as defined in Article 120, UCMJ.	In addition to the previous criteria which prevented retention for a sexual assault involving penetration, this criteria creates an absolute bar to retention for any sexual assault of a child.
4. The sexual assault or sexual assault of a child was not committed by (1) using force causing or likely to cause death or grievous bodily harm to any person; (2) threatening or placing the other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping; (3) first rendering the other person unconscious; or (4) administering to the other person by force or threat of force, or without the knowledge or consent of the person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the other person to appraise or control conduct.	3. The sexual assault was not committed (1) by using or threatening such physical strength or violence as is sufficient to overcome, restrain, or injure a person, (2) by threatening or placing the other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping; (3) when the victim was incapable of consenting to the sexual contact due to impairment by a drug, intoxicant, or other similar substance, a mental disease or defect, or physical disability, and the person committing the assault knew or reasonably should have known the victim was incapable of consenting to the sexual contact due to impairment by a drug, intoxicant, or other similar substance, a mental disease or defect, or physical disability; (4) by administering to the other person by force or threat of force, or without the knowledge or consent of the person, a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the other person to appraise or control conduct; (5) by making a fraudulent representation that the sexual contact served a professional purpose; or (6) by inducing a belief by artifice, pretense, or concealment that the person committing the assault was another person.	Updated to mirror the language of Article 120, UCMJ.
5. The sexual assault or sexual assault of a child was not the result of an abuse of rank, grade, authority or position.	4. The sexual assault was not the result of an abuse of rank, grade, authority, or position. The government need not present any evidence and the member is presumed to have abused his/her authority in the following circumstances: (1) the member is a recruiter or trainer providing entry-level training and the victim was a prospective member, applicant, recruit, trainer, student, or cadet, (2) the member was the superior in a direct superior-subordinate relationship with the victim, to include civilian subordinates; (3) the victim is a civilian employee/contractor in a corresponding grade lower to the member; (4) the victim was enlisted and the member was senior in grade to the victim by two or more grades; or, (5) the member was in the grade of E-5 or higher and senior in grade to the victim. Lack of evidence of these five enumerated circumstances does not mean the sexual assault was not the result of an abuse of rank, grade, authority, or position; rather, that the presumption of such does not exist. Evidence may still be presented and a finding may be reached that the sexual assault was the result of an abuse of rank, grade, authority, or position.	Adds factors that, if present, create a presumption of abuse of rank, grade, authority or position. No further evidence need be presented. The member, however, may rebut the presumption with facts and evidence.
6. Under the particular circumstances of the case, the member's continued presence in the Air Force is consistent with the interest of the Air Force in maintaining proper discipline, good order, leadership, and morale.	5. Under the particular circumstances of the case, the member's continued presence in the Department of the Air Force is consistent with the interest of the Department of the Air Force in maintaining proper discipline, good order, leadership, morale, and a culture of respect for the safety, dignity, and personal boundaries of all members.	Adds additional, mission-focused language to the criteria.