

Military Members & Families Project Tip Sheet: Military Protective Orders & No Contact Orders

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What are Military Protective Orders?

The accused's Commanding Officer (CO) can issue an Military Protective Order (MPO) to ensure an active duty member does not have contact with an individual that they are alleged to have committed a crime against.¹ MPOs can help "safeguard a victim, quell a disturbance, and maintain good order and discipline"; and provide protection for other persons "alleged or known to be at risk" of domestic violence.² To qualify for an MPO, a victim must have an "Unrestricted Report."³ An MPO should address the specific needs of a victim while avoiding any actual, or the appearance of, pretrial punishment or restraint on the accused.⁴

COs will sometimes issue a verbal protective order, but this must be followed by documentation on a Department of Defense (DD) Form 2873 (Military Protective Order Form).⁵ An MPO can limit third-party contact to protect victims, such as preventing the accused from contacting the victim on social media and preventing others from contacting the victim on the accused's behalf.⁶

Note: The accused's CO may carve out exceptions to the "no contact" provision of an MPO to allow for select communication between the victim and accused (e.g., discussing childcare, dividing personal belongings, filing taxes). The victim, victim advocate

Reporting Options



When reporting a crime on an installation, there are two reporting options for adult victims of sexual assault and domestic violence: Restricted Reports and Unrestricted Reports.²²

Note: Reporting options are available for victims of stalking

or victims' rights attorney should inform the Staff Judge Advocate of any issues with the exceptions.

When Can an MPO Be Requested?

While victims typically request MPOs at the beginning of a criminal investigation, crime victims can request MPOs at any time following a victimization. After a victim reports to military law enforcement, the agent should inform the victim of their right to request an MPO from the accused's CO. The victim's CO, victim advocate and the victim's attorney can notify the victim of their right to an MPO as well. Some victims might feel pressure to delay or forego a request for an MPO if military law enforcement has pending investigative tactics. The victim's safety must be the primary concern when deciding when to request an MPO.

When Do MPOs Expire?

MPOs are in effect until they are terminated by the issuing CO.⁷ They are reviewed monthly to determine whether they are still effective and when they should be canceled.⁸

Note: Once an allegation is adjudicated, either through a court-martial or at the command level (i.e., through administrative action, non-judicial punishment, or no action), the accused's CO is sometimes ready to cancel the MPO since the case is "completed." This, however, may be problematic for the victim, whose original concerns for safety may still exist, so advocacy to keep the MPO in place may be necessary.

Does the Military Enforce MPOs?

Yes. While MPOs are administrative in nature and not intended to be punitive, violators of MPOs can be prosecuted under the Uniform Code of Military Justice (UCMJ) for failure to follow a lawful general order or regulation, or willfully disobeying a lawful order from a superior officer.⁹ These charges may be included on a charge sheet for the violations currently under criminal investigation or may be

and dating violence as well. Depending on the facts of the case, the support structure may vary and there may be instances, as with all crimes, where a restricted report may not be accepted. Victims can always consult with a victims' rights attorney before making a formal report to ensure informed decision making on part of the victim.



Restricted Reports: These reports are available for adult victims whose priority are safety services, such as a sexual assault medical forensic exam or personal services, such as

handled instantly by the accused's CO in the form of non-judicial punishment or administrative action.

Note: If an accused is transferred, COs must inform the gaining CO within 7 calendar days of notification of the pending transfer; and recommend that the gaining CO issue a new MPO if an MPO is still necessary to protect a victim.¹⁰



Does Civilian Law Enforcement Enforce MPOs?

The short answer is no. When the accused's CO issues an MPO, the CO is required to notify the appropriate civilian authorities of the MPO within 7 days of the issuance of the order; and "[COs] will, through their installation law enforcement agency, place an active MPO in the National Crime Information Center (NCIC) for the duration of the order."¹¹ Once filed with NCIC, the MPO should appear in civilian law enforcement's NCIC or background checks.¹² MPOs are not enforceable by civilian law enforcement, but there is usually a Memorandum of Understanding (MOU) between civilian and military law enforcement agencies that aim to ensure that the civilian law enforcement agency will inform the military law enforcement agency of any incident between the victim and accused.¹³ The victim, accused, accused's CO, installation commander, victim advocate and victims' rights attorney should all receive a copy of the MPO.¹⁴

Note: MPOs do not themselves prohibit the possession of firearms, but will defer to the civilian jurisdiction's laws on this issue.¹⁵

Can Victims Also Request a Civilian Protective Order?

Yes. Military-connected victims can have both a Military Protective Order and a Civilian Protective Order.¹⁶ If on installation, military-connected victims can receive assistance from the Sexual Assault Response Coordinators

counseling and legal advice.²³ Military and civilian law enforcement are not notified of this type of report; therefore, there is no criminal investigation.²⁴ In addition, the victim's name and the accused's name are not provided to their CO.²⁵

Unrestricted Reports: These reports are available for victims who want an investigation, CO notification and access to services as well as safety mechanisms, such as the issuance of Military Protective Orders or Expedited Transfer Requests.²⁶

Victims' Rights Note: Victims who select

(SARC) and Family Advocacy Center (FAP) victim advocates in requesting a Civilian Protective Order.¹⁷ If seeking assistance off installation, military-connected victims can access a number of civilian victim services for assistance, including civilian victim advocates and victims' rights attorneys. Notably, military authorities must enforce Civilian Protective Orders on a military installation.¹⁸

Note: If the accused has a fellow servicemember present on their behalf at a CPO hearing, the fellow servicemember should not be construed as having the authority to speak on behalf of the CO. If the victim and accused are from the same command, a fellow servicemember's presence may feel intimidating. Notably, victims can request the presence of a victim advocate, support person and/or victims' rights attorney to include civilian victim service professionals, who may have fewer limitations in civilian criminal justice systems.

What are Military No Contact Orders?

COs can issue and enforce no military contact orders.¹⁹ "Military no contact orders are similar to civilian temporary restraining orders. They may be *ex parte* if the issuing authority considers it necessary to ensure the safety and security of persons for whom the [CO] is responsible."²⁰ Notably, "[a] no contact order should not take the place of an MPO, when an MPO is warranted or requested by the victim, but can be used to address immediate safety concerns."²¹

Note: There have been instances when COs have issued a No Contact Order or an MPO against both the victim and accused.

Where Can I Request Legal TTA on Victims' Rights?

For legal training and technical assistance relating to the assertion and enforcement of military-connected victims' rights, please contact us at www.ncvli.org.

an Unrestricted Report still have rights as victims of crime, such as the right to privacy and to protection.

Military Law Enforcement

Military law enforcement is service-specific and includes the:

- Navy Criminal Investigative Services (NCIS),
- Army Criminal Investigative Division (CID),
- Air Force Office of Special Investigations (OSI), and
- Coast Guard Investigative Services (CGIS).

¹ See, e.g., DoDI 6400.06, December 15, 2021, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel, Section 3 Responsibilities and Procedures for Addressing Domestic Abuse, Subsection 3.5(d) Commanders: MPO*, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640006p.pdf> (beginning on page 40, and discussing, *inter alia*, how military commanders issue MPOs to service members to “[p]rohibit the member from contacting or communicating (through any or certain specified means) with” a victim or “[m]embers of the [victim’s] family or household”); DoDI 6495.02, Volume 1, March 28, 2013, Incorporating Change 6, November 10, 2021, *Sexual Assault Prevention and Response: Program Procedures, Enclosure 5, Section 8: Commander and Management SAPR Procedures*, https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/649502_vol1.PDF (beginning on page 72, and discussing, *inter alia*, some of the military protective order procedures that military commanders shall follow when an unrestricted report has been filed).

² See, e.g., DoDI 6400.06, December 15, 2021, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel, Section 3 Responsibilities and Procedures for Addressing Domestic Abuse, Subsection 3.5(d) Commanders: MPO*.

³ See, e.g., DoDI 6495.02, Volume 1, March 28, 2013, Incorporating Change 6, November 10, 2021, *Sexual Assault Prevention and Response: Program Procedures, Enclosure 5, Section 8: Commander and Management SAPR Procedures*.

⁴ See, e.g., R.C.M. 304-304(a)(a1) (defining and describing what constitutes pretrial restraint), [https://jsc.defense.gov/Portals/99/Documents/2019%20MCM%20\(Final\)%20\(20190108\).pdf?ver=2019-01-11-115724-610](https://jsc.defense.gov/Portals/99/Documents/2019%20MCM%20(Final)%20(20190108).pdf?ver=2019-01-11-115724-610).

⁵ See DD Form 2873, *Military Protective Order*, <https://www.hqmc.marines.mil/Portals/135/Docs/JAM/DD%20Form%202873%20-%20Military%20Protective%20Order.pdf>.

⁶ *Id.*

⁷ See, e.g., 10 U.S.C. §1567 (providing that “[a] military protective order issued by a military commander shall remain in effect until such time as the military commander terminates the order or issues a replacement order”); DoDI 6495.02, Volume 1, March 28, 2013, Incorporating Change 6, November 10, 2021, *Sexual Assault Prevention and Response: Program Procedures, Enclosure 5, Section 8: Commander and Management SAPR Procedures* (providing that “[a]n MPO issued by a military commander shall remain in effect until such time as the commander terminates the order or issues a replacement order”).

⁸ See, e.g., DoDI 6495.02, Volume 1, March 28, 2013, *Enclosure 2, Section 6: Commander and Management SAPR Procedures, Subsection (ah)(1)(c)* (requiring, for the monthly CMG meetings, that “the installation commander or the deputy installation commander chair the multi-disciplinary CMG (see Enclosure 9 of this volume) on a monthly basis to review individual cases of Unrestricted Reporting of sexual assault, facilitate monthly victim updates, direct system coordination, accountability, and victim access to quality services”).

⁹ 10 U.S.C. §890 (addressing the crime of willfully disobeying a superior commissioned officer); 10 U.S.C. §892 (addressing the crime of failure to obey an order or regulation).

¹⁰ See, e.g., DoDI 6400.06, December 15, 2021, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel, Section 3 Responsibilities and Procedures for Addressing Domestic Abuse, 3.5(d)(4) Commanders: MPO* (“Commanders will: . . . [c]ontact the gaining command within 7 calendar days of notification of the pending transfer; and recommend the gaining command issue a new MPO when: (a) [t]he Service member is transferred to another unit; and (b) An MPO is still necessary to protect the victim(s).”).

¹¹ 10 U.S.C. § 1567a(a) (“In the event a military protective order is issued against a member of the armed forces, the commander of the unit to which the member is assigned shall, not later than seven days after the date of the issuance of the order, notify the appropriate civilian authorities of-- (1) the issuance of the protective order; and (2) the individuals involved in the order.”); DoDI 6495.02, Volume 1, March 28, 2013, Incorporating Change 6, November 10, 2021, *Enclosure 5, Section 8: Commander and Management SAPR Procedures* (explaining that “[m]ilitary commanders will, through their installation law enforcement agency, place an active MPO in the National Crime

Information Center (NCIC) for the duration of the order[;] [and] [i]nstitution law enforcement will initiate a police report for the MPO, creating the required Originating Agency Case Number, and place the MPO in the NCIC Protective Order File”).

¹² See DoDI 6495.02, Volume 1, March 28, 2013, Incorporating Change 6, November 10, 2021, *Enclosure 5, Section 8: Commander and Management SAPR Procedures*.

¹³ See *id.* (discussing the purpose of MOUs and MOAs with local civilian authorities).

¹⁴ See DoDI 6400.06, December 15, 2021, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel, Section 3 Responsibilities and Procedures for Addressing Domestic Abuse, Subsection 3.5(d) Commanders: MPO* (“Immediately upon issuance, provide a copy of the signed MPO to: 1. The Service member who is the subject of the order. 2. Protected person (or the custodial parent or guardian of the protected person, if the protected person is a child victim). 3. Installation LEA for submission to the protection order file of the NCIC, pursuant to Section 1567 of Title 10, U.S.C.”).

¹⁵ See DD Form 2873, *Military Protective Order*.

¹⁶ See, e.g., DoDI 6400.06, December 15, 2021, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel, Section 3 Responsibilities and Procedures for Addressing Domestic Abuse, Subsection 3.5(d)-(e) Commanders: MPO and CPO*; DoDI 6495.02, Volume 1, March 28, 2013, Incorporating Change 6, November 10, 2021, *Sexual Assault Prevention and Response: Program Procedures, Enclosure 5, Section 8: Commander and Management SAPR Procedures, Subsection (d)*.

¹⁷ *Id.*

¹⁸ 10 U.S.C. § 1561a(a) (providing that “[a] civilian order of protection shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order”); DoDI 6495.02, Volume 1, March 28, 2013, Incorporating Change 6, November 10, 2021, *Sexual Assault Prevention and Response: Program Procedures, Enclosure 5, Section 8: Commander and Management SAPR Procedures, Subsection (d)* (“Pursuant to section 1561a of Reference (d), a CPO shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order. Commanders, MCIOs, and installation DoD law enforcement personnel shall take all reasonable measures necessary to ensure that a CPO is given full force and effect on all DoD installations within the jurisdiction of the court that issued such order.”).

¹⁹ DoDI 6400.06, December 15, 2021, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel, Section 3 Responsibilities and Procedures for Addressing Domestic Abuse, Subsection 3.5(c) Commanders: Initial Response and Assessment* (providing that “commanders will . . . [i]ssue and enforce a no contact order, if appropriate”; and that “[a] no contact order should not take the place of an MPO, when an MPO is warranted or requested by the victim, but can be used to address immediate safety concerns”).

²⁰ *Id.* at *Glossary, G.2. Definitions* (“Military no contact orders are similar to civilian temporary restraining orders. They may be *ex parte* if the issuing authority considers it necessary to ensure the safety and security of persons for whom the command is responsible. Military no contact orders are administrative in nature, unlike most pre-trial restraint and pretrial confinement, but they do constitute conditions on liberty and must be tailored appropriately after consulting with the servicing JA or legal advisor.”);

²¹ *Id.* at *Section 3 Responsibilities and Procedures for Addressing Domestic Abuse, Subsection 3.5(c) Commanders: Initial Response and Assessment*.

²² See DoDI 6400.06, December 15, 2021, *DoD Coordinated Community Response to Domestic Abuse Involving DoD Military and Certain Affiliated Personnel, Section 5: Restricted and Unrestricted Reporting Policy*; DoDI 6495.02, Volume 1, March 28, 2013, Incorporating Change 6, November 10, 2021, *Sexual Assault Prevention and Response: Program Procedures, Enclosure 4: Reporting Options and Sexual Assault Reporting Procedures*; see also DoD Form 2910, <https://www.esd.whs.mil/Portals/54/Documents/DD/forms/dd/dd2910.pdf>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*