

## The Case Review Committee: Purpose, Players, and Pitfalls

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*Domestic violence is an offense against the institutional values of the Military Services of the United States of America. Commanders at every level have a duty to take appropriate steps to prevent domestic violence, protect victims, and hold those who commit it accountable.*<sup>1</sup>

### I. Introduction

Recent reports on domestic violence in the military paint a picture that does little to inspire national confidence in the men and women that serve our country. According to these reports, domestic violence in the military occurs with alarming frequency. For example, between 1992 and 1996, domestic violence occurred as much as five times more frequently in the military population than in civilian homes.<sup>2</sup> Between 2002 and 2004, there were 832 victims of domestic violence at Fort Bragg alone,<sup>3</sup> and in Fiscal Year 2000, the Department of Defense (DoD) Family Advocacy Program substantiated more than 10,500 abuse cases across the DoD.<sup>4</sup>

These figures have not gone unnoticed by both military and civilian leadership. Due to the significant number of reported instances of domestic violence in the Department of Defense, Congress mandated the creation of a Domestic Violence Task Force in the Fiscal Year 2000 Defense Authorization Act.<sup>5</sup> The Defense Authorization Act required the Secretary of Defense to establish this task force, comprised of twenty four military and non-military members, to formulate a comprehensive plan to deal with the ongoing issue of domestic violence.<sup>6</sup> One of the areas that received particular attention from this committee and its subsequent reports was the Case Review Committee (CRC).<sup>7</sup>

Case Review Committees at most major installations review a significant number of cases each year. Judge advocates are required to participate in the CRC, so it is imperative that they understand the CRC process. The CRC is a unique organization due to its mission, purpose, and composition, and advising judge advocates must understand its subtle nuances and intricacies prior to participating as a member of the committee.

This article will focus on the judge advocate's role in advising the CRC from four perspectives. First, it will examine what the CRC is, why it exists, who participates in it, and how it is structured. Next, the article will examine pre-meeting requirements, focusing on the documents necessary to properly convene and implement the CRC. Thirdly, the article will focus on the meetings of the committee and how judge advocates must be prepared to advise on issues such as presenting evidence, arriving at findings, and reviewing prior committee decisions. These three sections will also highlight helpful tips and potential areas of concern to provide practical guidance on commonly encountered issues. Finally, the article will briefly review the proposed changes recommended by the DoD task force and how they may impact the future of the CRC. The goal of this article is to provide judge advocates the tools necessary to assist the CRC in fulfilling its mission.

### II. Overview of the Case Review Committee

To fully understand the CRC, it is important to review its creation, implementation, chain of command, and mission. Understanding what the CRC is required to do, who the key players are, and how it is structured will not only help keep the mission of this committee in focus, but will also assist judge advocates in their advisory role.

#### A. Purpose and History

Primary guidance on the CRC is found in Army Regulation (AR) 608-18.<sup>8</sup> This regulation defines the CRC as "a multidisciplinary team appointed on orders by the installation commander and supervised by the [Military

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<sup>1</sup> Memorandum from Deputy Sec'y of Def., to Secretaries of the Military Dep'ts, subject: Domestic Violence (19 Nov. 2001) [hereinafter Domestic Violence Memo].

<sup>2</sup> Simeon Stamm, *Intimate Partner Violence in the Military: Securing Our Country, Starting With the Home*, 47 FAM. CT. REV. 321 (2009).

<sup>3</sup> Karen Houppert, *Base Crimes*, MOTHER JONES, July/Aug. 2005, <http://www.motherjones.com/politics/2005/07/base-crimes>.

<sup>4</sup> Domestic Violence Memo, *supra* note 1 (including both physical and sexual assaults).

<sup>5</sup> Press Release, U.S. Dep't of Def., Defense Task Force on Domestic Violence Releases Annual Report and Strategic Plan (Mar. 9, 2001), available at <http://www.defenselink.mil/releases/release.aspx?releaseid=2851>.

<sup>6</sup> Department of Defense Appropriations Act, 2000, Pub. L. No. 106-79, 113 Stat. 1212.

<sup>7</sup> Nat'l Ctr. on Domestic & Sexual Violence, *Defense Task Force on Domestic Violence Calls for Culture Shift in the Military*, Apr. 29, 2003, available at [http://www.ncdsv.org/ncd\\_newsspeak.html](http://www.ncdsv.org/ncd_newsspeak.html).

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<sup>8</sup> See generally U.S. DEP'T OF ARMY, REG. 608-18, THE ARMY FAMILY ADVOCACY PROGRAM para. 2-3(b) (30 Oct. 2007) [hereinafter AR 608-18] (defining the CRC and providing the foundation for numerous additional requirements pertaining to the CRC throughout the remainder of the regulation).

Treatment Facility] Commander.”<sup>9</sup> The committee exists to “coordinate medical, legal, law enforcement, and social work assessment, identification, command intervention, and investigation and treatment functions from the initial report of spouse or child abuse to case closure.”<sup>10</sup> The CRC operates under the oversight of the Army Family Advocacy Program (FAP) whose stated purpose is similar to the CRC’s: “to prevent spouse and child abuse, to encourage the reporting of all instances of such abuse, to ensure the prompt assessment and investigation of all abuse cases, to protect victims of abuse, and to treat all Family members affected by or involved in abuse.”<sup>11</sup> The CRC and FAP are command programs focused on the preservation, safety, stability, and promotion of the family.<sup>12</sup> Their purpose is to promote and encourage stable and productive families in the Army.<sup>13</sup>

The FAP was originally conceived of as the Army Child Advocacy Program in 1975.<sup>14</sup> This program was implemented following a 1979 General Accounting Office study of domestic violence issues in the military.<sup>15</sup> As a result of the study, Department of Defense (DoD) Directive 6400.1, Family Advocacy Program, was drafted in 1981, mandating the creation of programs to address the prevention of domestic violence and the treatment of victims of spouse and child abuse.<sup>16</sup> The directive defines the Family Advocacy Program as “[a] program designed to address prevention, identification, evaluation, treatment, rehabilitation, follow-up, and reporting of family violence,”<sup>17</sup> and specifically required the development of guidelines for case management.<sup>18</sup> Enclosure 1 of the directive defines the CRC similarly to AR 608-18 and includes the language “at the installation level.”<sup>19</sup> The DoD also published a manual on the Family Advocacy Program in

August of 1992<sup>20</sup> that “prescribes uniform standards for all installation Family Advocacy Programs (FAPs) and provides installation FAP Officers (FAPOs) with an instrument for executing their programs.”<sup>21</sup> This manual required each of the military services to establish programs addressing the reporting, investigation, prevention and treatment of instances of domestic abuse.<sup>22</sup> The DoD Directive, DoD Manual, and Army Regulation provide the guidance for implementing and running the CRC.

## B. Command Structure and Personnel

The CRC is an installation program, and garrison commanders have primary responsibility for overseeing the FAP and appointing members to the CRC.<sup>23</sup> The garrison commander is also responsible for appointing a Family Advocacy Program Manager (FAPM), who oversees the FAP and works under the direction of the Army Community Services director.<sup>24</sup> The commander of the garrison military treatment facility (MTF) supervises the CRC.<sup>25</sup> Unit commanders are required to report instances of suspected child or spouse abuse, ensure their Soldiers participate in FAP programs and assessments, and attend CRC case presentations pertaining to Soldiers in their command.<sup>26</sup>

The CRC is composed of the Chief of Social Work Services, who serves as the chairperson, a physician, the installation chaplain, a U.S. Army Criminal Investigation Command Division (CID) representative, the Army Substance Abuse Program (ASAP) Clinical Director, the Provost Marshal, a judge advocate, the FAPM, and the case manager.<sup>27</sup> These individuals meet regularly to review cases of domestic violence and recommend treatment and prevention programs. In light of the requirement for judge advocate involvement and the unique mission of the CRC, the specific duties of the judge advocate tasked with advising this committee are discussed below.

## III. The Role of Judge Advocates

Judge advocates play a key role in the administration of the CRC. At the highest levels, The Judge Advocate General is required to advise on all legal issues involved in

<sup>9</sup> *Id.* para. 2-3(b)(1).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* para. 1-6.

<sup>12</sup> U.S. DEP’T OF DEF., DIR. 6400.1, FAMILY ADVOCACY PROGRAM para. E1.1.4 (23 Aug. 2004) [hereinafter DoDD 6400.1].

<sup>13</sup> AR 608-18, *supra* note 8, para. 3-19(b) (“The CRC is an advisory team that can make recommendations to commanders, supervisors, and courts regarding administrative and disciplinary actions for child/spouse abuse offenses. The purposes of the CRC are to identify whether someone has been the victim of abuse, determine if the victim is at immediate risk of further trauma, and coordinate the necessary support services to protect the victim and ameliorate the situation.”).

<sup>14</sup> Lieutenant Colonel Alfred F. Arguilla, *Crime in the Home*, ARMY LAW., Apr. 1988, at 3, 3.

<sup>15</sup> *Id.* at 3 n.7.

<sup>16</sup> *Id.*

<sup>17</sup> DoDD 6400.1, *supra* note 12, para. E1.1.4.

<sup>18</sup> *Id.* para. 5.2.14.

<sup>19</sup> *Id.* para. E1.1.1.

<sup>20</sup> U.S. DEP’T OF DEF., MAN. 6400.1-M, FAMILY ADVOCACY PROGRAM STANDARDS AND SELF-ASSESSMENT TOOL (Aug. 1992) [hereinafter DOD 6400.1-M].

<sup>21</sup> *Id.* at foreword.

<sup>22</sup> *Id.* para. II.1.1.

<sup>23</sup> AR 608-18, *supra* note 8, para. 1-8(a).

<sup>24</sup> *Id.* para. 1-8(a)(2), (d)(1).

<sup>25</sup> *Id.* para. 1-8(f)(1).

<sup>26</sup> *Id.* para. 1-8(b)(4)–(6).

<sup>27</sup> *Id.* para. 2-3(b).

the FAP, train and educate installation judge advocate officers on the legal issues involved in spouse and child abuse cases, and provide staff assistance in the formulation of FAP policy.<sup>28</sup> At the installation level, the Staff Judge Advocate (SJA) must provide a representative to the CRC and advise the CRC on all applicable rules and regulations.<sup>29</sup> Often this requirement is satisfied by the SJA's appointment of a representative to attend CRC meetings, usually an attorney assigned to the Administrative and Civil Law section of the legal office. The duties of SJAs or their representatives, are clearly defined in AR 608-18.<sup>30</sup> These duties include advising commanders and the CRC on applicable laws and regulations affecting current abuse cases, coordinating with federal, state, local, and foreign authorities on criminal prosecutions, participating in the drafting of installation and local memoranda of agreement, and advising the commander and CRC on mandatory reporting requirements.<sup>31</sup> All personnel involved with the CRC bear responsibility for ensuring compliance with the regulatory requirements.<sup>32</sup> Judge advocates will often be consulted on issues involving the CRC and must be well-versed in the regulations governing this committee.

#### A. Convening the Committee

Several documents must be drafted and reviewed before the CRC meets. These documents, which include appointment orders and memoranda of agreement (MOA), ensure that the committee is established and conducted properly, and provide proper accountability, continuity and efficiency.

##### 1. Appointment Orders

Members of the CRC must be appointed by name on written orders to serve for a specified period of time, usually one year.<sup>33</sup> The CRC has a limited membership, and is not a public meeting.<sup>34</sup> Appointment orders are important for two reasons. First, the CRC, as stated above, will convene often to hear cases. The more regular the membership, the more efficient the committee will be in discharging its responsibilities.

The second reason stems from the requirement to conduct training and periodic quality reviews.<sup>35</sup> This requirement will be explored more fully below, but the intent is for members to achieve proficiency in their duties and enable the work of the committee to be reviewed and critiqued. This cannot be accomplished if the membership is not fixed. The regulation allows the garrison commander to appoint members and alternates, which provides a workable solution to the persistent problem of permanent members missing meetings due to leave, temporary duty, or other mission requirements.

##### 2. Memoranda of Agreement

Memoranda of Agreement (MOA) are important in the administration of the CRC. Memoranda of Agreement between Army installations and the local community addressing domestic violence issues are required.<sup>36</sup> Army Regulation 608-18, appendix E, provides two suggested MOA formats to assist in drafting these agreements. The regulation specifically requires MOAs in two specific areas: within the local command and with local community agencies. An MOA is required within the local command to ensure coordination "between military and civilian agencies involved in the FAP to facilitate collaboration . . . and . . . delineate local policies, responsibilities, and functions according to [AR 608-18]."<sup>37</sup>

Additionally, the regulation requires an MOA between Army installations and local community agencies to ensure coordination in addressing domestic violence issues.<sup>38</sup> This requirement applies to all installations, whether located within the United States or in a foreign country.<sup>39</sup> The majority of military installations adjoin civilian communities, and allegations of domestic violence that arise from conduct that occurred off-post requires significant coordination between the Army and civilian authorities. Army Regulation 608-18 defines the optimal relationship between these entities as a "cooperative approach," requiring a "relationship with local communities in identifying, reporting, and investigating child and spouse abuse cases; in protecting abused victims from further abuse in both emergency and nonemergency situations; and in providing services and treatment to Families in which child abuse has occurred."<sup>40</sup>

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<sup>28</sup> *Id.* para. 1-7(f).

<sup>29</sup> *Id.* para. 1-8(l)(1).

<sup>30</sup> *Id.* para. 1-8(l).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* paras. 2-5(d), 2-10(d).

<sup>33</sup> *Id.* para. 2-3(b)(3).

<sup>34</sup> *Id.*

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<sup>35</sup> *Id.* paras. 2-5(d), 2-10(d).

<sup>36</sup> *Id.* para. 2-12.

<sup>37</sup> *Id.* para. 2-15.

<sup>38</sup> *Id.* para. 2-12(a).

<sup>39</sup> *Id.* para. 2-12(b); *see generally* U.S. DEP'T OF ARMY, REG. 550-51, FOREIGN COUNTRIES AND NATIONALS INTERNATIONAL AGREEMENTS (2 May 2008) (detailing the specific requirements that must be satisfied in negotiating and entering into Memoranda of Agreement with foreign governments).

<sup>40</sup> AR 608-18, *supra* note 8, para. 2-11.

The MOA must focus on two key areas: personnel and duties. Not all parties involved in domestic violence cases are required to sign the MOA, but their duties and responsibilities should be specifically delineated.<sup>41</sup> The MOA must address the common issues that arise when dealing with these cases.<sup>42</sup> These matters include the authority of the installation commander to maintain good order and discipline on the installation, the legal basis for the exercise of civilian authority on the installation, the extent to which information will be shared between the parties to the MOA, delineation of responsibility for investigating and assessing child and spouse abuse cases, emergency and non-emergency response duties, services and treatment of families, and use of local shelters.<sup>43</sup>

The significance of the MOA is clear. As domestic violence occurs, it must be identified and brought before the CRC, which requires significant coordination between the involved agencies. The recommended treatment plan may require the use of civilian facilities and programs, especially at smaller installations that lack the resources necessary to implement the appropriate treatment plans. In those cases, the governing MOA should address the “agencies primarily responsible for providing services and treatment to Families in which child and spouse abuse has occurred.”<sup>44</sup>

Additionally, when domestic violence occurs off-post, the Soldier may be subjected to interviews or questioning by civilian agencies, and the evidence collected may be retained by the local authorities. The MOA can assist in defining the duties and responsibilities of the parties and outlining the collection and transfer of relevant evidence to the proper channels to ensure efficient and meaningful CRC review.

Judge advocate involvement is required in the MOA drafting, review, and updating process.<sup>45</sup> The installation SJA is required to review all MOA and other agreements to ensure their legal compliance.<sup>46</sup> The FAPM is required to conduct an annual review of all applicable MOA to ensure compliance with AR 608-18, identify procedures that do not comply with the regulation, and make recommendations to the installation commander regarding changes and the correction of deficiencies.<sup>47</sup> The advising judge advocate

should assist the FAPM in conducting this review. Finally, new or modified MOA require a legal review prior to implementation.<sup>48</sup>

Advising judge advocates must ensure the necessary documentation is drafted and reviewed. However, their input does not end there. The meetings of the committee, presentation of evidence, findings determinations, and proposed treatment plans present additional issues and concerns.

## B. Conducting the Hearing

Case Review Committee hearings require extensive judge advocate involvement, because they are the most complex part of the process. Allegations of domestic violence are evaluated using a two-part procedure: investigating available evidence to determine whether a particular allegation can be substantiated and assessing the best way to protect the victim and properly treat and rehabilitate the offender.<sup>49</sup> Evidence is gathered by identifying witnesses, interviewing available witnesses, and collecting physical evidence.<sup>50</sup> All evidence must be gathered lawfully, to ensure the process is fair and equitable.<sup>51</sup> Case presentation may generate specific questions regarding the type of evidence gathered, the legality of the evidence, the weight of the evidence, and proper findings and treatment recommendations. Judge advocates must be prepared for these questions.

The advising judge advocate’s best means to address these questions is to conduct training for the members of the committee. Annual training, coordinated by the FAPM, is required for all staff officers and tenant organizations.<sup>52</sup> This training must focus on the proper procedures used to identify and respond to reports of domestic abuse, and the complexities and difficulties likely to be encountered through the duration of these cases.<sup>53</sup> Judge advocates should coordinate with the FAPM to provide instruction during this training, which provides judge advocates the opportunity to instruct on legal issues, such as rights warning requirements, access to medical reports, and findings determinations. Leaning forward on this key requirement will highlight deficiencies, answer questions, and prepare committee members for their duties.

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<sup>41</sup> See generally *id.* para. 2-13 (describing the following as key military personnel to be addressed in the MOA: Installation or Army community commander; DCA; ACS director; MTF commander; Chief, SWS; FAPM; CRC; RPOC; PM; USACIDC; SJA; Chaplain; and FAC. Key civilian personnel include: Chief, CPS; county or district attorney; presiding judge of family or juvenile court; and other agencies as appropriate).

<sup>42</sup> *Id.* para. 2-14.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* para. 2-14(g).

<sup>45</sup> *Id.* para. 1-8(l)(6), (7).

<sup>46</sup> *Id.* para. 2-12(c).

<sup>47</sup> *Id.* para. 2-16.

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<sup>48</sup> *Id.*

<sup>49</sup> *Id.* para. 3-8(a).

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* para. 3-9(a), (c).

<sup>52</sup> *Id.* para. 2-10(d).

<sup>53</sup> *Id.*

This training helps achieve several key objectives. First, it helps ensure the evidence presented to the CRC is gathered “by every lawful means available.”<sup>54</sup> Secondly, it enables the FAP and unit commander to have the best and most reliable evidence available to ensure the program goals of identification, treatment, and prevention are met. Finally, it assists in making this process a cooperative effort “by law enforcement, medical and social work personnel in responding to all spouse and child abuse reports.”<sup>55</sup> The proper gathering of evidence at the onset of a domestic violence allegation will enable all parties to effectively fulfill their duties and responsibilities, regardless of whether the goal is treatment, prevention, criminal prosecution, or all of the above.

### 1. Statements

Pursuant to basic principles of constitutional law and criminal procedure, all statements taken from a Soldier suspected of committing a criminal offense must be preceded by a rights advisement under Article 31, UCMJ.<sup>56</sup> When the incident of alleged abuse is reported through the chain of command, or when the alleged perpetrator is interviewed by CID or the military police as part of a criminal investigation, the rights advisement requirement should be satisfied, and any issues that arise should be answered by the judge advocate assigned to advise those organizations. However, advising judge advocates often must address incriminating statements made by Soldiers outside the context of a criminal investigation, such as those voluntarily made to a social worker when seeking treatment or counseling. Army Regulation 608-18 extensively discusses rights warnings in chapter 3 and appendix H.

Individuals who perpetrate domestic violence crimes are encouraged to seek treatment or assistance by voluntarily disclosing their abuse problems to an FAP counselor.<sup>57</sup> A FAP case manager or social worker who interviews a Soldier for the purpose of diagnosis and treatment is not required to read the Soldier his rights under Article 31.<sup>58</sup> Under these

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<sup>54</sup> *Id.* para. 3-9(a).

<sup>55</sup> *Id.* para. 3-10.

<sup>56</sup> *Id.* para 3-14(a)(1); *see also* U.S. CONST. amend. V; UCMJ art. 31 (2008).

<sup>57</sup> AR 608-18, *supra* note 8, para. 3-25 (describing this process as “Self-Referral”).

<sup>58</sup> *Id.* at app. H-2.

FAP case managers/social workers generally are not required to provide UCMJ, Art. 31 warnings when interviewing a Soldier for the purpose of diagnosis and treatment. If on the other hand, an FAP case manager/social worker questions a Soldier for the purpose of gathering incriminating statements to advance a criminal investigation (in other words, when there is not a medical/clinical reason to ask the question), then the counselor is not acting for the purpose of diagnosis and treatment and should

circumstances, case managers or social workers are not law enforcement officials gathering information for an investigation.<sup>59</sup> “Their primary concerns are protecting the victim from further harm, gathering information concerning the psychosocial and Family dynamics in order to develop effective treatment plans, and providing the necessary support services.”<sup>60</sup> However, this does not relieve social workers of their duty to report offenses, nor does it preclude taking action against a Soldier based on his admission.<sup>61</sup>

In light of this reporting requirement, the regulation provides scenarios that may require a rights advisement, instructs social workers to read rights to Soldiers, and encourages them to seek advice from law enforcement personnel or their judge advocate when they have questions. When a Soldier self-refers or visits a social worker or FAP counselor and discloses that he may have committed an offense, the social worker should stop the interview and contact CID or the MP for advice pertaining to rights advisement.<sup>62</sup> Additionally, when a Soldier is the subject of a domestic violence investigation, social workers should not conduct an interview with the Soldier without first contacting law enforcement personnel.<sup>63</sup> When social workers are unsure whether a rights warning is needed, they should obtain legal advice prior to conducting the interview.<sup>64</sup> The regulation specifically highlights the need for legal advice concerning potential privileged communications.<sup>65</sup>

However, though the regulation clearly encourages the use of rights advisements, it is silent regarding the admissibility of a statement made by a Soldier without a rights warning under Article 31. The regulation fails to address whether these statements can be used to substantiate

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therefore provide the suspect with UCMJ, Art. 31 warnings prior to questioning the Soldier.

*Id.*

<sup>59</sup> *Id.* para. 3-18(e).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.* para 3-25(b); *see also id.* para. 3-6 (requiring notification of unit commanders in all abuse cases).

<sup>62</sup> *Id.* para. 3-18(e) (“When a Soldier walk-in or self-referral discloses to a social worker or medical personnel that he or she physically or sexually abused a Family member, the social worker should at this point stop the interview and contact the MP or USACIDC for advice pertaining to proper rights advisement.”).

<sup>63</sup> *Id.*

<sup>64</sup> *Id.* at app. H-3.

<sup>65</sup> Particular attention must also be paid to those circumstances that may invoke privileged communications. Appendix G of AR 608-18 addresses privileged communications. While an extensive review of privileged communications is outside the scope of this article, one particular issue pertaining to privileges that may arise concerns chaplains. Chaplains are required to sit on CRCs and care must be exercised in identifying potential conflicts, such as a CRC hearing where they have advised a Soldier or obtained privileged information from a Soldier whose case is being reviewed.

a case against a Soldier. However, this is not surprising considering the regulation was not drafted with a view toward criminal prosecutions. Ultimately, because the committee is administrative in nature, incriminating statements made to a social worker without a proper rights advisement are likely admissible at CRC hearings to substantiate allegations of domestic abuse. Judge advocates must be aware that this particular issue is not addressed by the regulation and should strive to minimize its occurrence by stressing the importance of rights advisements and encouraging social workers to seek legal advice whenever advisement questions arise.

## 2. Medical Records

Army Regulation 608-18 requires MTF commanders to ensure a physician or other health care professional examines all alleged victims of domestic abuse as soon as possible after receiving an initial report of abuse.<sup>66</sup> If physical injury is alleged, medical reports can provide the necessary evidence to support the claim. In many cases, medical reports, along with statements by the involved parties or witnesses, comprise the evidence that is presented to the CRC during a hearing. In some cases, obtaining and releasing medical reports may present challenges, especially when dealing with civilian organizations. Army Regulation 608-18 addresses the use of medical reports, including how to access, share, and release them.

Subject to certain legal and regulatory restrictions, social workers, physicians, dentists, nurses, and civilian and military law enforcement personnel may share investigative information and records on domestic abuse or violence.<sup>67</sup> Additionally, a CRC case file must be maintained for all individuals treated or evaluated for suspected child or spouse abuse.<sup>68</sup> This file must contain information and documents relating to diagnosis, assessment, and treatment of abuse.<sup>69</sup> The case file ensures that the committee has access to all known facts and evidence, including evidence of medical treatment and diagnosis, when preparing its findings and diagnosis.<sup>70</sup>

However, although the CRC has access to the medical records of victims of domestic abuse, those records are sensitive and must be used with great care to ensure only relevant information is disclosed for the limited purpose of

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<sup>66</sup> *Id.* para. 3-16(a).

<sup>67</sup> *Id.* para. 6-2.

<sup>68</sup> *Id.* para. 6-3(a).

<sup>69</sup> *Id.* para. 6-3(b).

<sup>70</sup> *Id.* para. 6-2 (“To the extent permitted by applicable law and regulation, social workers, physicians, dentists, nurses, and law enforcement personnel, both civilian and military, may share investigative leads, information, and records to ensure that all facts are fully developed given the total resources and means available.”).

performing official duties.<sup>71</sup> When releasing this information to commanders and supervisors in the course of their official duties, all third party information must be redacted from the copy prior to release.<sup>72</sup> There is similar guidance in the regulation regarding the release of these records within the DoD, outside the DoD, pursuant to a court order, or when the records are classified as special category records.<sup>73</sup>

Advising judge advocates must ensure that FAP personnel are aware of the sensitivity of medical records. Review of a case by the CRC is not a blanket release of all medical information pertaining to an individual. Judge advocates are specifically required to provide advice when necessary to resolve any issues that arise regarding access to or disclosure of records.<sup>74</sup>

## 3. Findings

Every report of spouse or child abuse must be promptly and completely investigated to determine whether an allegation is substantiated or unsubstantiated.<sup>75</sup> There are three possible CRC findings—substantiated, unsubstantiated, and suspected—and a quorum (two-thirds) of the CRC members on orders must be present to vote at each CRC meeting; a majority of the members must vote to substantiate a case.<sup>76</sup> The complex nature of the cases, the seriousness of the subject matter, and the need to balance Soldier rights and family member protection make case substantiation a contentious aspect of the CRC process. Because case substantiation has significant ramifications and consequences to Soldiers,<sup>77</sup> the decision must not be made lightly, and proper training and understanding by those involved can ensure that cases are decided fairly and properly. Training by judge advocates on the nature of evidence, burden of proof, and possible decision alternatives will ensure effective operation of the committee.

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.* para. 6-4(c).

<sup>73</sup> *See id.* paras. 6-5 to -8.

<sup>74</sup> *Id.* para. 6-9. All judge advocates should review the following: The Privacy Act, 5 U.S.C. § 552a, *as amended* (1974); U.S. DEP’T OF ARMY, REG. 340-21, THE ARMY PRIVACY PROGRAM (5 July 1985); Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 104 Stat. 1996.

<sup>75</sup> AR 608-18, *supra* note 8, para. 3-19(a).

<sup>76</sup> *Id.* para. 2-4(r).

<sup>77</sup> *Id.* para. 4-4(a) (including courts-martial, non-judicial punishment, letters of reprimand, administrative discharge, bars to reenlistment, termination of government housing, and bars from military installations as possible consequences); *see also id.* ch. 5 (requiring all substantiated cases of domestic violence to be reported to the Army Central Registry and be maintained for twenty-five years).

A case should be substantiated if a preponderance of the information available indicates that abuse occurred.<sup>78</sup> A preponderance of the evidence, according to the DoD Directive, is met when the information that supports the occurrence of abuse is of greater weight or is more convincing than the information indicating that abuse did not occur.<sup>79</sup> This definition, however, does little to help resolve the question of when evidence amounts to a greater weight than other evidence. Comparing this definition to the one contained in AR 15-6 provides some insight. In AR 15-6, preponderance of the evidence is defined as “evidence which, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion.”<sup>80</sup> Army Regulation 15-6 offers further guidance by explaining that this decision is not based solely on the amount of evidence provided or the number of witnesses or exhibits presented, but rather on the quality of the evidence, including “the witness’s demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.”<sup>81</sup> Although reasonable minds can disagree over whether evidence substantiating an allegation outweighs evidence to the contrary, arming the members of the CRC with the understanding of how to arrive at that determination is a crucial aspect of the judge advocate’s role in the process.

An unsubstantiated case is one in which the evidence is found insufficient to support the allegation of domestic abuse, and, most importantly for the Soldier, in which the family of the alleged victim is determined to need no services, counseling, or treatment.<sup>82</sup> This determination closes the case, and the CRC chairperson must notify the commander that the case has been closed.<sup>83</sup>

The third possible determination is suspected,<sup>84</sup> which is also referred to as unsubstantiated-unresolved in AR 608-18.<sup>85</sup> This determination should be made when the case is still under investigation.<sup>86</sup> A case must be presented to the CRC within thirty days of the initial report to Social Work

Services,<sup>87</sup> but this is often not sufficient time for a case to be fully investigated. To ensure cases are brought to resolution in a timely manner, the Army regulation and DoD directive allow for up to twelve weeks of further investigation before a case is finally decided by the CRC.<sup>88</sup> These circumstances necessitate a finding of suspected (or unsubstantiated-unresolved). Army Regulation 608-18 places additional administrative requirements on these types of cases. It requires the minutes of the meeting to include a brief summary of the facts, reasons for the delay, and subsequent updates at each CRC meeting until the case is ready for final determination.<sup>89</sup>

A substantiated allegation requires assessment of the severity of the abuse to determine a treatment plan and provide interim protection to the family if necessary.<sup>90</sup> The severity of the abuse is determined by analyzing the context and type of abuse: child physical maltreatment, child sexual maltreatment, child neglect, child emotional maltreatment, and spouse/partner maltreatment.<sup>91</sup> Army Regulation 608-18 provides an incident severity index. This index is a helpful tool for classifying differing levels of severity, and it should be provided to all members of the CRC and be available throughout the course of their meeting. The index is not, however, comprehensive or determinative, and it is unlikely to apply perfectly to any particular case.

#### 4. Treatment Plans and Options

Finally, if a case is substantiated, the CRC must determine the type and extent of treatment and prevention training that will be implemented. Some cases of domestic abuse are so severe that disciplinary action must be taken immediately. However, in many situations, treatment, education, and training are recommended to prevent further instances of abuse. These treatment programs are generally described as Level-One and Level-Two Intervention Services.<sup>92</sup> The treatment programs are diverse and include programs such as parent education and support programs, new parent support programs, general counseling, anger management counseling, and financial management classes.<sup>93</sup> The level of treatment and services required in each case will vary by the nature and severity of the incident. The FAPM is required to coordinate prevention and treatment programs and address the available programs

<sup>78</sup> DODD 6400.1, *supra* note 12, para. E1.1.2.1.

<sup>79</sup> *Id.*

<sup>80</sup> U.S. DEP’T OF ARMY, REG. 15-6, PROCEDURES FOR INVESTIGATING OFFICERS AND BOARDS OF OFFICERS para. 3-10(a) (2 Oct. 2006) [hereinafter AR 15-6].

<sup>81</sup> *Id.*

<sup>82</sup> DODD 6400.1, *supra* note 12, para. E1.1.2.3; *see also* AR 608-18, *supra* note 8, para. 2-4(r) (defining this as unsubstantiated-did not occur).

<sup>83</sup> AR 608-18, *supra* note 8, para. 3-26(a)(1)(c). A sample memorandum from the CRC chairperson is included at Figure 3-6 of AR 608-18.

<sup>84</sup> DODD 6400.1, *supra* note 12, para. E1.1.2.2 (defining a “suspected” case as one “pending further investigation”).

<sup>85</sup> AR 608-18, *supra* note 8, para. 2-4(r) (explaining that every case should receive “a case determination of substantiated, unsubstantiated-unresolved, or unsubstantiated-did not occur”).

<sup>86</sup> DODD 6400.1, *supra* note 12, para. E1.1.2.2.

<sup>87</sup> AR 608-18, *supra* note 8, para. 2-4(t).

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* para. 3-8(a).

<sup>91</sup> *Id.* at app. C.

<sup>92</sup> *See* DoD 6400.1-M, *supra* note 20, paras. C4.7, C4.8, C5.7, C5.8; *see also* AR 608-18, *supra* note 8, para. 3-2.

<sup>93</sup> AR 608-18, *supra* note 8, para. 3-2.

in the installation MOA.<sup>94</sup> Additionally, FAPMs are required to inform the military community of available services “to promote community support and encourage early referral.”<sup>95</sup> This requirement includes mandatory briefings to commanders and senior enlisted advisers and annual unit briefings by FAP personnel for all Soldiers.<sup>96</sup> Finally, all CRC members must receive training at least annually on these programs and services to ensure awareness of the options they can recommend.<sup>97</sup> Judge advocates must be proactive in reviewing documents, ensuring FAPMs are aware of their duties under the regulation, and training CRC members on relevant treatment programs and options.

### C. Post Committee Matters

The responsibilities of the CRC do not end after a case is reviewed. The regulation lists several post-hearing responsibilities essential to the management of the committee.<sup>98</sup> Although, the responsibilities are too numerous to list in detail here, judge advocates must be aware of the continuing duties of the committee they advise. One issue that may arise is the review of a committee’s decision on an allegation of abuse. A Soldier, family member, commander, or the CRC itself may request reconsideration of the committee’s determination.<sup>99</sup> This review must be requested in writing and must be based on one of the following: (1) an assertion that the CRC did not have all relevant information when it made its finding<sup>100</sup> or (2) a belief that the CRC did not follow the published Department of the Army policy contained in the regulation.<sup>101</sup> As is evident from the second basis for challenge, governing the CRC in accordance with the published guidance and regulations is of utmost importance. Though the rehearing of a case is conducted in the same manner as the initial presentation, important additional requirements must also be satisfied. These additional requirements are found in AR 608-18, paragraph 2-6, and should be reviewed by advising judge advocates.

## IV. The Way Ahead

The Task Force on Domestic Violence, commissioned in FY 2000, addressed many concerns surrounding the number of domestic violence cases occurring in the military.

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<sup>94</sup> *Id.*

<sup>95</sup> *Id.* para. 3-2(a).

<sup>96</sup> *Id.* paras. 3-2(b)(6), (c).

<sup>97</sup> *Id.* para. 2-10(d).

<sup>98</sup> *See id.* paras. 2-4 to -5.

<sup>99</sup> *Id.* para. 2-6(a).

<sup>100</sup> *Id.* para. 2-6(a)(1).

<sup>101</sup> *Id.* para. 2-6(a)(2).

The overall goal of the task force was “to provide the Secretary of Defense with recommendations that will be useful in enhancing existing programs for preventing and responding to domestic violence, and, where appropriate, to suggest new approaches to addressing the issue.”<sup>102</sup> This task force submitted three annual reports and made over two hundred specific recommendations.<sup>103</sup> The task force specifically discussed the CRC and made several recommendations.<sup>104</sup>

The task force expressed concern with the efficiency and purpose of the CRC.<sup>105</sup> To alleviate these concerns, the task force recommended the creation of a Domestic Violence Assessment and Intervention Team (DVAIT).<sup>106</sup> The DVAIT would be a multidisciplinary team managed by the FAP, similar to the CRC.<sup>107</sup> However, unlike the CRC, the DVAIT would not substantiate allegations but, rather, would focus on assisting victim advocates with safety plans for victims, determining offenders’ suitability for intervention, and devising intervention plans for offenders, when feasible.<sup>108</sup> The DVAIT would concentrate on the needs of victims in areas such as medical aid, safe housing, financial assistance, child care, legal consultation, and support services.<sup>109</sup> Creating the DVAIT would properly place attention on the victim, and leave commanders and law enforcement personnel to assess the criminality of actions and determine the proper adjudication of cases.<sup>110</sup>

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<sup>102</sup> Lieutenant General Garry L. Parks & Ms. Deborah Tucker, Co-Chairs, Defense Task Force on Domestic Violence, Address Before the Subcommittee on Total Force, House Armed Services Committee, United States House of Representatives (Mar. 19, 2003), *available at* <http://armedservices.house.gov/comdocs/openingstatementsandpressrelease/s/108thcongress/03-03-19parks.html>.

<sup>103</sup> *Id.*

<sup>104</sup> DEFENSE TASK FORCE ON DOMESTIC VIOLENCE, THIRD YEAR REPORT 2003, at 113, *available at* [http://www.militaryhomefront.dod.mil/davlsn/LSN\\_BINARY\\_RESOURCE/BINARY\\_CONTENT/1862501.pdf](http://www.militaryhomefront.dod.mil/davlsn/LSN_BINARY_RESOURCE/BINARY_CONTENT/1862501.pdf) [hereinafter DEFENSE TASK FORCE ON DOMESTIC VIOLENCE].

<sup>105</sup> *Id.*

The CRC was originally intended to be a case management body focused on clinical intervention in abuse cases. The lines between clinical intervention and command judicial action are often blurred. Some commanding officers defer to the CRC case status decision (substantiation or unsubstantiation) to determine administrative action and referral for clinical intervention. The CRC is often viewed as a quasi-legal body. Victims feel they do not have a voice in the system due to being assisted by the same case manager that assessed the offender, and likewise, accused offenders feel they are being denied due process.

*Id.*

<sup>106</sup> *Id.* at 116.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at 113.

Second, the task force addressed the use of the Incident Severity Index,<sup>111</sup> which the task force found problematic for several reasons. First, the DoD and each of the Service FAP regulations define severity levels differently, resulting in a lack of uniformity.<sup>112</sup> Second, the military differs significantly from the civilian communities, which classify abuse simply at the misdemeanor or felony level.<sup>113</sup> Finally, because the current severity index focuses on the extent of injury, rather than potential risk, most substantiated cases are assessed as mild on the severity index. This creates a perception that severe abuse is not common in the military.<sup>114</sup> These findings prompted the task force to recommend discontinuing the collection and reporting of severity level data and instead report only risk assessment data using a DoD-wide risk assessment grid.<sup>115</sup>

Currently, the recommendations of the task force have not been implemented. Additionally, the number of proposed changes suggests that the entire FAP may be overhauled in the near future. Judge advocates must ensure they are aware of the upcoming changes and are prepared to advise on their implementation when that occurs.

## V. Conclusion

The CRC process is complex and labor intensive. This makes the CRC cumbersome to administer, run, and oversee. The emotion, anger, danger, and fear that accompany cases of domestic violence add to the difficulty. For committees to be successful, an understanding of and strict compliance with the regulatory requirements is essential. Judge advocates play a key role in this process, and have the ability and opportunity to positively impact the overall performance and effectiveness of this committee. Early involvement in the process can establish the committee on a solid footing, and a thorough understanding of its policies and procedures can assist all members in the performance of their duties. Finally, proactive training and instruction can address many issues before they arise. The stakes are high, and commanders, Soldiers, and victims deserve nothing less than excellence in this mission. Well-trained and knowledgeable judge advocates who are willing to assert themselves in the process will add tremendous value to this important command program.

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<sup>111</sup> *Id.* at 133; *see also* Stamm, *supra* note 2 (focusing on the severity index in the military and the need for a revamped system consistent with the civilian scheme).

<sup>112</sup> DEFENSE TASK FORCE ON DOMESTIC VIOLENCE, *supra* note 105, at 133.

<sup>113</sup> *Id.* at 134.

<sup>114</sup> *Id.* at 134–35.

<sup>115</sup> *Id.* at 135–36.