114. (Services) What is each service branch's policy or practice regarding whether to retain a service member who has been convicted of sexual assault in a civilian court by court-martial?

USA	Under Army Regulations 600-20, 635-200 and 27-10, Soldiers convicted by a civilian or foreign court of a sexual assault offense and Soldiers convicted at court-martial who do not receive a punitive discharge are required to be processed for separation. The Criminal Law Division of the Office of The Judge Advocate General and the Office of The Provost Marshall General's office run data calls periodically to identify these Soldiers and reminders of the regulatory requirements are sent to Staff Judge Advocate offices by the Criminal Law Division to ensure compliance. In the event that a Soldier is retained after the administrative separation process is complete, the Soldier is coded with a "L8" movement code by Human Resources Command that prohibits certain assignments, overseas assignments and housing entitlements. Additionally, as of 7 November 2013, the Secretary of the Army published Army Directive 2013-21 requiring any Soldier who was retained after the administrative separation proceedings to be considered for separation under the Secretary's plenary authority in Army Regulation 635-200, Chapter 5.
USAF	The question of whether to retain a service member who has been convicted of a sexual assault is answered above. Of note, this determination is made regardless of whether the sexual assault conviction was accomplished by a civilian or military court-martial.
USN	OPNAVINST 1752.3 (enclosed) establishes policy, guidance, and areas of responsibility for implementation of Navy's policy on sex offender tracking assignment and access restrictions. In accordance with this instruction, sex offenders shall not be allowed to enlist or be processed for commissioning into the Navy. Navy members who are convicted of a sex offense while on active duty, or in a reserve status, and who are not punitively discharged, shall be processed for administrative separation.
USMC	See answer to question 113.
USCG	Commanding Officer's may request discharge authority from Coast Guard Personnel Services Command (CG PSC) when a member has committed a serious offense. Sexual assault is not singled out as a causative reason, however the offense must have a maximum penalty under UCMJ that includes punitive discharge. Officers may be separated under the "Separating Regular Officers for Cause" provision. This policy is located in Article 1.B.17.b(3) of the Military Separation Manual, (COMDTINST M1000.4) http://www.uscg.mil/directives/cim/1000-1999/CIM_1000_4.pdf

NAVY Q114

RSP Q114 supporting document for USN

DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON, D.C. 20350-2000

OPNAVINST 1752.3
N135
27 May 09

OPNAV INSTRUCTION 1752.3

From: Chief of Naval Operations

Subj: POLICY FOR SEX OFFENDER TRACKING, ASSIGNMENT AND ACCESS RESTRICTIONS WITHIN THE NAVY

Ref: (a) SECNAV Memo of 7 Oct 08, Policy for Sex Offender Tracking and Assignment and Access Restrictions within the Department of the Navy (NOTAL)
(b) Sex Offender Registration and Notification Act of 2006 (SORNA) (Section 16912 of Title 42, United States Code)
(c) Department of Justice, Office of the Attorney General, The National Guidelines for Sex Offender Registration and Notification of 2 Jul 08 (Pages 38030-38070 of Volume 73, Number 128, Federal Register)
(d) SECNAVINST 1640.9C
(e) MILPERSMAN 1900-040
(f) SECNAV Memo of 11 Jun 08, Delegation of Authority to Issue Debarment Letters (NOTAL)

1. Purpose. This instruction establishes policy, guidance, and areas of responsibility to implement reference (a), the Navy policy on sex offender tracking, assignment and access restrictions within the Navy.

2. Background. Reference (a) incorporates the sex offender definitions provided by references (b) and (c), establishes requirements for sex offender tracking, and imposes restrictions regarding assignment and access within the Navy.

3. Policy

a. To the maximum extent permitted by law, unless waived by competent authority, sex offenders are to be identified and prohibited from accessing Navy facilities. This provision does not apply to prisoners within Navy confinement facilities who are separately controlled pursuant to reference (d).

b. Except where prohibited by law, or otherwise waived by competent authority, sex offenders shall not occupy Navy owned or leased military housing or Public-Private Venture (PPV) housing.

c. Sex offenders shall not be allowed to enlist or be processed for commissioning into the Navy.

d. Navy members who are convicted of a sex offense while on active duty, or in a reserve status, and who are not punitively discharged, shall be processed for administrative separation per reference (e).

e. Sex offenders on active duty shall not be assigned Outside Continental United States (OCONUS) or its territories. Navy personnel whose sponsored family members are sex offenders shall not be stationed OCONUS or its territories on accompanied orders, unless waived by competent authority.

f. Navy members who are convicted of qualifying sex offenses while on active duty and retire, or are transferred to the Fleet Reserve, shall have the sex offense conviction recorded in their permanent military record. Such sex offenders shall not be subject to recall for any purpose without express authority of the Secretary of the Navy (SECNAV). Likewise, Navy members who are retired, or transferred to the Fleet Reserve, and who are later convicted of a qualifying sex offense, shall not be subject to recall without express authority of SECNAV.

4. Definitions. A sex offender is defined as a person convicted of a criminal offense per guidelines in reference (c) and all persons who are required to be registered as sex offenders according to this same reference.

5. Action

a. Commander, Navy Installations Command (CNIC) shall:

(1) In coordination with Assistant Secretary of the Navy (Installations and Environment) (ASN(I&E)), establish procedures governing the prohibition of sex offenders in Department of the Navy owned or leased housing, or PPV housing, under the cognizance of the Navy.

(2) Establish procedures to identify sex offenders incident to application for housing assignment, base access, vehicle registration and renewal of identification cards.

(3) Pursuant to reference (f) authority, issue Navy-wide debarment letters to identified sex offenders who might otherwise have access to Naval facilities.

b. Chief of Naval Personnel shall:

(1) In liaison with the Department of Justice and in coordination with Assistant Secretary of the Navy (Manpower and Reserve Affairs) and Deputy Commandant of the Marine Corps (Manpower and Reserve Affairs), develop initial and periodic update procedures to identify and track sex offenders who are on active duty, reserve, retired, Fleet Reserve or civilian employee status within the Navy.

(2) Pursuant to reference (f), issue Navy-wide debarment letters to identified sex offenders who might otherwise have access to naval facilities.

c. Commander, Navy Recruiting Command shall establish and publish procedures to prevent the enlistment or commissioning of sex offenders within the Navy.

d. Commander, Navy Personnel Command shall:

(1) Establish procedures to ensure that Navy members who are convicted of a sex offense while on active duty, or in a reserve status, but were not discharged, are processed for administrative separation per reference (e).

(2) In coordination with CNIC and ASN(I&E), develop procedures for archiving, researching and retrieving Navy-wide debarment letters.

(3) Establish procedures to prevent the overseas assignment of Navy members who are sex offenders.

(4) Establish procedures to prevent accompanied overseas permanent change of station assignments to Navy members whose sponsored family members are sex offenders.

(5) Establish procedures to ensure that Navy members convicted of sex offenses while on active duty and who retire, or are transferred to the Fleet Reserve, have the sex offense conviction recorded in their permanent records and are not recalled to active duty.

(6) Establish procedures to screen retirees and Fleet Reserve personnel for sex offense convictions prior to recall in order to ensure members with such convictions are not subject to recall to active duty.

6. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed per SECNAV Manual 5210.1 of November 2007.

7. Waiver of policy. All requests for waivers of the above policy shall be submitted to SECNAV for approval.

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