

RSP SUPPLEMENTAL REQUESTS FOR INFORMATION

SUSPENSE: APRIL 11, 2014

Investigations

132. Describe the qualification criteria used to hire civilian special victim investigators?¹

133. Provide information on the average case load of agents assigned to investigate adult sexual assault cases. Please break this information down to indicate numbers of cases for allegations of penetrations and attempted penetrations from non-penetration cases, and what percentage of the total number of cases in each office are sexual assault cases. Also, please indicate how many of these cases involve intimate partners.

134. Provide any policy or instructions developed to change the language used in sexual assault reports to better reflect the actual acts reported in order to avoid victim blaming language.

135. Provide your input on the best way Services could maintain a database with the information from a restricted report regarding the alleged offender and other details of the offense in order to identify repeat offenders.² Could this be done through DSAIDs or any other criminal intelligence databases maintained in accordance with DoDI 5525.18, Law Enforcement Criminal Intelligence (CRIMINT) in DoD? If so, please explain how that could be accomplished. If current databases do not have that potential capability, please explain the databases' limitations.

Victim collateral misconduct³

136. What are the Services' policies and procedures for investigators, prosecutors, and commanders to follow when they suspect a victim may have committed collateral misconduct in a sexual assault case?

¹ Please note this is a follow up question from RFI # 75.

² FY14 NDAA tasked the RSP to:

Do an assessment of the means by which the name, if known, and other necessary identifying information of an alleged offender that is collected as part of a restricted report of a sexual assault could be compiled into a protected, searchable database accessible only to military criminal investigators, Sexual Assault Response Coordinators, or other appropriate personnel only for the purposes of identifying individuals who are subjects of multiple accusations of sexual assault and encouraging victims to make an unrestricted report of sexual assault in those cases in order to facilitate increased prosecutions, particularly of serial offenders. The assessment should include an evaluation of the appropriate content to be included in the database, as well as the best means to maintain the privacy of those making a restricted report.

³ Collateral misconduct defined according to the Memorandum from the Under Secretary of Defense to Service Secretaries on November 12, 2004, which stated:

One of the most significant barriers to the reporting of a sexual assault is the victim's fear of punishment for some of the victim's own actions leading up to or associated with the sexual assault incident. Many reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct (i.e., underage drinking or other related alcohol offenses, adultery, fraternization or other violations of certain regulations or orders). Such behavior may be considered collateral misconduct, and may be viewed as a contributing factor to the sexual assault.

137. In practice, do investigators read a victim his/her Article 31 rights at any point in time when they suspect that the victim committed “collateral misconduct” (i.e., if the investigator reasonably believes that the victim committed some offense under the UCMJ)?

138. What usually happens to victims in sexual assault cases who engaged in collateral misconduct at the time of the alleged incident? In what percentage of cases do victims face adverse action for collateral misconduct? Please break down percentages based on: (1) adverse action taken prior to testifying at a court-martial (2) action taken after the court-martial, or (3) no action taken at all.

139. Of cases involving collateral misconduct, what percentage involve alcohol-related offenses by the victim?

140. Please list types and approximate percentages of collateral misconduct that commonly occur in sexual assault cases other than alcohol-related offenses(e.g., adultery, fraternization, or other regulations/orders violations).

141. What likely anticipated impact would a policy granting immunity to victims for the most common types of collateral misconduct have on:

- A. victim reporting?
- B. the prosecution of sexual assault cases?

142. DD Form 2910⁴ warns service members reporting allegations of sexual assault that they could be subject to adverse action for collateral misconduct.

- A. What is the intent of warning service members on DD Form 2910 that they could be subject to adverse action for collateral misconduct?
- B. What practical effect on reporting does this warning usually have (or seem to have)?

Special Victim Counsel

143. Are Special Victim Counsel trained on Undue Command Influence and its potential impact on prosecution of sexual assault cases?

144. Describe what, if any, formal or informal processes have been established for communication of best practices or other issues related to the SVC program and/or representation of sexual assault victims between the military services as well as the frequency and nature of such communications.

⁴ Form 2910 states, “My Commanding Officer may take appropriate punishment action if there is evidence I committed misconduct around the time of the sexual assault. However, my Commanding Officer is to take into account the sexual assault investigation and circumstances when considering how to address my misconduct.”

Trial & Defense Counsel

145. Provide the average caseload for the personnel in the following positions, as well as the percentage of their caseload that are sexual assault cases:

- A. Trial counsel (general practitioners),
- B. Specialized Prosecutors specifically designated to fulfill the Special Victim Capability (SVPs, Senior Trial Counsel, etc),
- C. Defense counsel.

146. Some of the defense counsel interviewed have stated that the defense counsel training budget is both insufficient and significantly less than that for trial counsel, even when adjusted to correct for number of counsel.

- A. Do the Defense Services Organizations/Trial Defense Services have their own budget for training (including travel)?
- B. If so, what is the annual training budget for defense counsel versus trial counsel?
- C. Please include relevant comparable annual figures for trial counsel/TCAP/prosecution training.
- D. Please be sure to make the numbers meaningfully comparable by including any external funding sources for training programs that may be used to augment nominal funding (e.g., NAC, NDAA, NCMEC, etc.). In other words, include a total per capita spending estimate for the past year for trial counsel training versus defense counsel training, regardless of the source from which the funding originated to ensure that spending on counsel training is fairly represented.

Military Judges

147. Selection & Tenure of Military Judges

- A. How are military judges selected for each Service?
- B. What training do they receive?
- C. How long do they serve as military judges?
- D. What specific training do military judges receive regarding sentencing?
- E. What training do military judges receive regarding adult sexual assault cases, including selecting appropriate sentences?

Sentencing

148. What are the potential benefits or disadvantages to eliminating sentencing by military panel members and implementing judge-alone sentencing? Please provide the Services' position on this topic.

149. What is the potential impact of changing unitary sentencing with one potential maximum for all of the offenses joined together to requiring specification of the maximum sentence term for each offense separately (and requiring a finding by the sentencing authority listing punishment awarded for each offense)? Please provide the Services' position on this topic.

Follow Up Information & Statistics:

150. Provide any statistics or information you have on the following:⁵

- A. The number of instances when the convening authority's referral decision did not align with the Article 32 investigating officer's (IO) recommendation.
 - (1) In particular, how often (by number and percentage of like cases) did the IO recommend going forward, but the convening authority declined to refer to court-martial?
 - (2) How many cases did the IO recommend against going to trial, but the convening authority decided to refer the case to a court-martial anyway?
- B. Prosecution and conviction rates for other crimes such as robbery, burglary, homicide.

151. (Follow-up to RFI 28) Provide copies of PowerPoint presentations, reports, recommendations, or letters from DoD and the Services' leadership to Congressional members and their staffs that pertain to sexual assault since January 2012, which have not been previously provided to the RSP. In particular, please provide all communications to Congressional members or their staffs since DoD's previous response to this RFI request in November 2013.

152. (Follow-up to RFI 33 for SAPRO and ODMEO) Provide copies of all monthly SAPR climate data reports reported to DoD SAPRO since implementation of DEOCS 4.0 on 1 Jan 14. Please provide copies of any quarterly SAPR climate data reports provided to DoD or the Services since implementation of DEOCS 4.0 on 1 Jan 14. Please provide copies of all reports, reviews or assessments the revised SAPR assessment questions in DEOCS 4.0 from DEOMI, USD P&R and its subordinate organizations, DoD SAPRO, or the Military Departments.

153. (Follow-up to RFI 116 for DoD SAPRO) In addition to the information provided on recommendations from DTF-SAMS and GAO reviews that remain open, please provide information on all recommendations from DTF-SAMS and GAO SAPR program reviews in the last 5 years indicating whether the recommendation was implemented or not. If the recommendation was not implemented, please explain why. If the recommendation was implemented, please explain whether the recommendation was effective or not and how SAPRO or the responsible agency is monitoring implementation and effectiveness.

⁵ Question 19 is to follow up from the panel members' questions asked at the RSP Public Meeting on December 12, 2013.