

110. (ALL) What impact does DoD and each of the Services foresee on sexual assault cases if sentencing guidelines or mandatory minimums were implemented for sexual assault offenses (including collateral impacts on sexual assault reporting, guilty pleas, and conviction rates)? If the Service has established a position regarding sentencing guidelines or mandatory minimums for sexual assault offenses, please state the reasons for that position for the RSP to consider.

DoD	<p>We are unaware of any studies that would inform an empirical assessment of the likely effect of sentencing guidelines or mandatory minimums for sexual assault cases. However, it is the view of many experienced military defense lawyers that adopting mandatory minimums for sexual assault offenses, such as a requirement to subject the accused to a punitive discharge upon conviction, would likely decrease the percentage of sexual assault cases that are resolved by guilty plea. Anecdotally, experienced defense counsel report that concern over sex offender registration already leads some clients to choose to contest sexual assault cases that would likely be resolved by a guilty plea but for the sex offender registration requirement. The addition of, say, a mandatory punitive discharge would likely lead to more such contested cases, since the “downside” of a guilty plea would be increased (a certain punitive discharge) and the potential “upside” diminished. (Those determinations might be different if in a substantial percentage of cases the convening authority agreed as part of a pretrial agreement to suspend or disapprove a portion of the mandatory minimum sentence. But it is possible that Congress would preclude convening authorities from disapproving or suspending execution of a mandatory minimum sentence.)</p> <p>An increase in the percentage of contested sexual assault cases would almost certainly lead to an increase in the raw number of acquittals, since some number greater than zero of those contested cases would likely end in acquittals. On the other hand, it may lead to a diminution of percentage of contested cases that end in acquittal (though an increase in the percentage of all cases that end in acquittal) since cases that would have been resolved by guilty plea but for the existence of a mandatory minimum sentence are likely to be on average stronger for the prosecution compared to cases that are currently contested in the absence of mandatory minimum sentences. Thus, the conviction rate for those offenses would likely be higher than the current conviction rate for contested sexual assault cases. The result would be a smaller number of convictions but a larger percentage of contested cases that end in a conviction.</p> <p>Any prediction of how mandatory minimum sentences or sentencing guidelines would affect reporting rates would be highly conjectural. If, as suggested above, such mandatory minimums or sentencing guidelines increase the percentage of contested sexual assault cases, it would become more likely that some cases will be contested that the victim would have preferred by resolved through a guilty plea that would spare the victim from having to testify. If so, it is possible that such a change would lead to fewer unrestricted reports with a possible offsetting increase in restricted reports. But, again, that possibility is highly speculative.</p>
USA	<p>The implementation of sentencing guidelines or mandatory minimum sentences, such as those imposed in the Fiscal Year 2014 National Defense Authorization Act, could</p>

**Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.**

	<p>have unintended effects on reporting, negotiation of plea agreements and a panel's willingness to convict an accused. Implementation of the mandatory minimums should be closely monitored to determine what, if any, consequences result from this change. As Lieutenant General Darpino testified at the public hearing on September 25, the Army does not oppose the concept of mandatory minimum sentences or sentencing guidelines, but believes that a full study, which takes into account comprehensive data on sentencing, is required.</p>
USAF	<p>DoD is collecting and consolidating the answer to this question from all of the services and will provide a single response.</p>
USN	<p>Responses are to be provided by OSD.</p>
USMC	<p>DoD Office of General Counsel will provide this answer.</p>
USCG	<p>Imposition of sentencing guidelines needs to be done with care given the Supreme Court's rulings on the subject as well as the experience of federal courts in working with them. Similarly, establishing mandatory minimums should be done after carefully examining state jurisdictions which employ them and then comparing those systems with the UCMJ procedure for sentencing, which allows for member-sentencing.</p> <p>As the system is currently constructed, the sentencing portion of a court-martial allows for an adversarial system in which defense counsel presents arguments that militate against a strict sentence, and on the other hand government counsel offers reasons to impose a more severe punishment. If members sentence, any knowledge by members of a mandatory minimum could increase the possibility of jury nullification if members believe the mandatory minimum is too harsh. With respect to sentencing guidelines, because the number of courts-martial convened in the Coast Guard is relatively small, members often are serving for the first time, with no prior court experience. Asking inexperienced members to apply complicated guidelines will inevitably lead to confusion and error. Sentencing guidelines should only be considered if the UCMJ is amended to eliminate member sentencing.</p>

**Narrative responses have been consolidated by the Response Systems Panel (RSP). Please forgive formatting errors in text and data. Source documents for narrative responses can be obtained by contacting the RSP.**