

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.

USA	<p>The Army does not centrally track actions taken against victims for collateral misconduct. The Office of The Judge Advocate General conducted an Army-wide data call for Fiscal Year 2013 to Staff Judge Advocate offices and Special Victim Prosecutors on victim collateral misconduct. Empirically, Army-wide, less than 5% of sexual assault victims were punished for collateral misconduct that arose from a sexual assault allegation.</p> <p>To demonstrate the rarity of adverse action against sexual assault victims, the Army lists here known actions against a sexual assault victim.</p> <p>FIELD RESPONSES CONCERNING VICTIM COLLATERAL MISCONDUCT:</p> <ul style="list-style-type: none"> • “We have had one victim in an Article 120 court-martial case face adverse action. She received a counseling for underage drinking prior to testifying at court-martial.” • “One victim in our jurisdiction received an Article 15 for fraternization (cohabitation in violation of AR 600-20) prior to testifying at court-martial.” • “At this Corps installation, 0% of sexual assault victims faced adverse action for collateral misconduct, although we should report that we did have one case where a sexual assault victim received an Article 15 for a General Order Number One violation for drinking with the individual who was later named as the subject of a sexual assault against the victim. Her Article 15 was completed prior to the allegation of sexual assault (and therefore, prior to the court-martial).” • “85% of those who reported being a victim of sexual assault in our jurisdiction faced no adverse action. 5-10% of them faced adverse action prior to testifying at a court-martial (i.e., Article 15 for underage drinking). We also had someone initially report nonconsensual intercourse who recanted the nonconsensual allegation, and later received an Article 15 for adultery.” • “Based on anecdotal evidence, less than 5% of sexual assault victims face any adverse action at our Division. In a survey of all BJAs and TCs, I was unable to identify even one instance over the last year where a victim of sexual assault faced adverse action based on collateral misconduct. Note that there was one case where a victim received an Article 15 because of multiple failures to report and disrespect to her superiors. In that case, the behavior was having an impact on good order and discipline and had to be addressed. In two other instances, the victim reported a sexual assault while she was undergoing disciplinary action. In both instances, the ongoing disciplinary proceedings were suspended or dismissed. In a final case, a victim was titled with a false official statement
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	<p>when incontrovertible evidence surfaced that she had fabricated a report of sexual assault. That case is still pending adjudication by the command.”</p> <ul style="list-style-type: none"> • “In the vast majority of cases in our jurisdiction, victims were not punished. When victims were punished, they received an Article 15 and/or administrative separation (underage drinking, local alcohol related policies, drugs) at most.” • “At this Corps, less than 10% of the victims faced adverse action. Article 15s were administered for one false official statement, one failure to repair, and one incident of disrespect. All of them were administered before court-martial.” • “5% of the victims in my jurisdiction received Article 15s for alcohol-related offenses prior to court-martial.” • “At this Division, one victim received a General Officer Memorandum of Reprimand for DUI after the court-martial was completed.” • “5% (1 out of 20) of the sexual assault victims in this jurisdiction faced adverse action for collateral misconduct over the last year. She is presently facing an Article 15 for underage drinking. Note that the trial against the assailant is complete.” • “Of all the victims in my jurisdiction, only one faced adverse action. It was an Article 15 for violation of a no contact order, with action taken prior to testifying at the court-martial.” • “We had one victim receive an Article 15 for underage drinking prior to court-martial.” • “At our Division, there was only one case since summer 2012 in which a sexual assault victim faced adverse action for collateral misconduct. There were four cases in which a sexual assault victim faced adverse action for misconduct that was tangentially related to the sex assault. That's less than ten percent of our sex assault allegations. The violations were drug use, DUI, underage drinking, adultery, and disrespect. The victims faced punishment in the form of two Article 15s, one memorandum of reprimand, one separation, and one civilian prosecution.” • “In three sexual assault cases here, commanders considered Article 15s (two of those were for underage alcohol, one for fraternization), but in all three cases those Article 15s were never actually given.” • “We had one individual female officer who was investigated for fraternization/adultery. Once she was under investigation she alleged she had been sexually assaulted by an unknown offender. She subsequently recanted the allegation and it was unfounded. She has since been processed for administrative separation.”
USAF	<p>DoDI 6495.02, Enclosure 5, para. 7, addresses DoD policy on collateral misconduct in sexual assault cases. The policy states: “Commanders shall have discretion to defer action on alleged collateral misconduct by the sexual assault victims (and shall not be penalized for such a deferral decision), until final disposition of the sexual assault case, taking into account the trauma to the victim and responding appropriately so as to encourage reporting of sexual assault and continued victim cooperation, while also bearing in mind any potential speedy trial and statute of limitations concerns.”</p>

Additionally, with respect to the alleged offenses of rape, sexual assault, forcible sodomy, and all attempts to commit such offenses, in violation of Articles 120, 125, and 80 of the UCMJ, the Secretary of Defense initial disposition authority withhold policy applies, meaning that the initial disposition decision as to the victim's collateral misconduct must be acted on by at least a special court-martial convening authority in the grade of O-6 or higher. Commanders may defer taking action on a victim's alleged collateral misconduct arising from or that relates to the sexual assault incident until disposition action for the sexual assault investigation is completed.

The policy also advises that "commanders and supervisors should take appropriate action for the victim's alleged collateral misconduct (if warranted), responding appropriately in order to encourage sexual assault reporting and continued cooperation, while avoiding those actions that may further traumatize the victim. Ultimately, victim cooperation should significantly enhance timely and effective investigations, as well as the appropriate disposition of sexual assaults."

The policy ensures that commanders are able to ensure good order and discipline in their units, while providing the flexibility to defer action for collateral misconduct. In the majority of cases the collateral misconduct constitutes minor offenses compared to the sexual assault allegation. Each allegation and situation is handled on a case by case basis. Commanders are advised by their Staff Judge Advocate (SJA) as to both the type of appropriate administrative or disciplinary action and the timing of that action. In addition, the victim's Area Defense Counsel (ADC) and/or Special Victims' Counsel (SVC) has the opportunity to advocate to the Commander as to these issues as well. ADCs and SVCs are trained to take into consideration the impact of the disciplinary action on their client's mental health and recovery and how it may impact prosecution of the sexual assault allegation. For example, if the alleged collateral misconduct is underage drinking, the SVC may advocate to the SJA and Commander that their client would prefer to receive the pending action before the court-martial so that it is one less issue weighing on their mind and they are better shielded on the issue during cross-examination by the accused's ADC.

- Approximately 15% of clients represented by SVCs have allegedly engaged in some form of collateral misconduct (recognizing that a percentage of clients represented by SVCs are not military members). About 75% of the time, no action has been taken. Of the 25% of victims where some action is taken, 90% of victims receive some form of administrative action. A very small percentage received NJP.

AF-Wide³ – Of the 169 SA CMs in CY13, 26 involved collateral misconduct by a total of 28 victims.

-5 of the 28 victims were disciplined for their collateral misconduct.

-2 of the 5 victims were disciplined before the subject's trial: LOR for marijuana use; LOR for adultery.

-3 of the 5 victims were disciplined after the subject's trial: SPCM for drug abuse

³ AFRC did not prosecute any CMs in CY13. However, there were 6 victims who belonged to AFRC whose assailant was prosecuted. 5 of these 6 were involved in collateral misconduct. These victims are accounted for in the totals of the MAJCOMs who prosecuted the subjects. None of them were disciplined.

	<p>(acquitted); 2 LORs for providing alcohol to minors.</p> <p>ACC – Of the 29 SA CMs in CY13, 7 involved collateral misconduct by the victim: 6 involving alcohol use; and 1 for marijuana use. -The victim was disciplined for the collateral misconduct before trial in 1 of those cases. The victim received a letter of reprimand for marijuana use. -The other 6 victims received no discipline for their collateral misconduct.</p> <p>AMC – Of the 29 SA CMs in CY13, 6 involved collateral misconduct by the victim: 4 for underage drinking; 1 for fraternization; and 1 for an unprofessional relationship. -In two cases, the victim was disciplined for the collateral misconduct after the subject’s trial. Both were LORs for providing alcohol to minors. -The collateral misconduct was alcohol-related in 4 of the 6 cases.</p> <p>USAFE – Of the 13 SA CMs in CY13, 2 involved collateral misconduct by the victim: 1 for adultery; and 1 for abusive sexual contact. -The Air Force did not discipline either of the 2 victims, however, one of the victims was an Army Warrant Officer.</p> <p>AETC – Of the 31 SA CMs in CY13, 5 involved collateral misconduct by the victim. -In two of the cases, the victim was disciplined for the collateral misconduct: 1 a LOR before the subject’s trial for adultery; and 1 trial by SPCM for drug abuse (which resulted in acquittal) after the subject’s trial.</p> <p>AFGSC – Of the 20 SA CMs in CY13, none involved collateral misconduct by the victim.</p> <p>AFDW – Of the 3 SA CMs in CY13, none involved collateral misconduct by the victim.</p> <p>AFMC – Of the 17 SA CMs in CY13, 3 involved collateral misconduct by the victim. -The Air Force did not discipline any of the 3 victims. One was a civilian.</p> <p>USAF A – Of the 3 SA CMs in CY 13, 1 case involved collateral misconduct by 3 victims: underage drinking. -None of the victims were disciplined for their collateral misconduct.</p> <p>AFSPC – Of the 3 SA CMs in CY13, 1 case involved collateral misconduct by the victim. The victim was not disciplined for the collateral misconduct.</p> <p>PACAF – Of the 16 SA CMs in CY13, 1 case involved collateral misconduct by a victim.</p> <p>AFSOC – Of the 5 SA CMs in CY13, none involved collateral misconduct by the victim.</p>
USN	Navy does not collect or evaluate this data.
USMC	The Marine Corps does not currently track these statistics.
USCG	The Coast Guard has no historical data categorizing misconduct according to whether an accused was a victim in another case and cannot provide a statistically reliable answer.