

14. (ALL) What impact would removing prosecutorial authority from the chain of command have on sexual assault reporting, and what tangible evidence supports this conclusion?

DOD	<p>DOD OGC:</p> <p>There is no empirical data to support statements by critics that removing prosecutorial authority from the chain of command would increase sexual assault reporting. In the existing DoD chain of command structure, reports of sexual assault have increased by over 50% since 2007. The Department believes that the increase is due in part to the prevention and response measures that have been implemented and an increase in victim confidence. Recent testimony by officials from Canada, United Kingdom, Israel, and Australia, whose military justice systems charge lawyers with prosecutorial decisions vice commanders, reveals that those countries do not have empirical data to support or refute the assertion that removing prosecutorial discretion from the commander increases sexual assault reporting. The United States military provides multiple reporting options outside of the chain of command.</p> <p>DOD SAPRO:</p> <p>The Department is not aware of any study, model or data that would accurately predict the impact of removing prosecutorial authority from the chain of command on sexual assault reporting. However, there is substantial data that the chain of command can have a positive impact on the reporting of sexual assault. The Department’s sexual assault reporting data indicate that in FY13, there was an unprecedented increase in the reports of sexual assault. In fact, the Department is currently tracking a dramatic 46% increase in reports of sexual assault through the 3rd Quarter of FY13 when compared to the 3rd Quarter of FY12 (our previous highest year on record).</p> <p>The Department assesses this increase is not due to a sudden increase in crime. Rather, over the past 6 years, there has been a relatively stable prevalence of sexual assault – about 6% of women and 1% of men have indicated experiencing some form of unwanted sexual contact in the year prior to being surveyed. Given these conditions, this increase in reports in FY13 is more likely related to an increase victim confidence as a result of improved victim support services, sustained senior leader engagement, enhanced investigative and legal capabilities, and a better-educated force. This is tangible evidence that the chain of command can make a positive impact on the reporting of sexual assault, an outcome that alternative proposals have not demonstrated either in theory or in practice.</p>
CJCS	<p>Removing the prosecutorial authority from the chain of command will diminish the commander's authority over discipline within the joint force. The military has always been organized with the commander retaining the utmost authority over the unit, to ensure its operational readiness and discipline such that the unit may perform the riskiest and most violent of tasks. This change is extremely risky, as it represents a revolutionary overhaul of the principles underlying the military justice system and would require wholesale revision of both the Uniform Code of Military Justice and the Manual for Courts-Martial.</p>

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	<p>Reporting rates are based on victims' trust that their commands, including their peers and junior level leaders, will provide them with the resources they need, and that they will be treated with the utmost respect. The commander is best positioned to ensure that such a command climate exists, and when it does not, he or she must be held accountable. Based on the substantial increase in reporting over the first three quarters of FYI3, it appears that current initiatives to instill that trust are working. An overhaul of prosecutorial authority at this point runs the risk of turning the system on its head, just as we are making headway in addressing this problem.</p>
USA	<p>There is no statistical or tangible evidence to support the claim that removing the Commander from disposition of sexual assault would increase reporting. Data from the Department of Defense Workplace and Gender Relations Survey establishes that the overwhelming reason victims (70%) do not report is because they “. . . do not want anyone to know.” The next two reasons cited, (66%) feeling “uncomfortable making a report,” and (51%), not believing that the report “would be kept confidential,” also deal with privacy concerns. This survey data is corroborated by sensing sessions and Army Red Team investigations. When Soldiers do cite a fear of retaliation for failure to report (47%), Soldiers are referring to “the person who did it or their friends,” not the commander.</p> <p>Data from our allies, in which the commander’s disposition role has been degraded or eliminated, also does not support the conclusion that removing the commander from disposition has any impact on reporting. Our allied forces are a decade behind the U.S. military in measuring and studying reporting rates. What is clear is that any survey data available indicates that our allies have high rates of incident and issues with underreporting. In June 2013, the Australian Minister of Defence stated that initial analysis of the first of its kind gender relations survey concluded that only 20% of sexual assault victims reported the offense. In the United Kingdom, a survey conducted in 2006 found that 70% of female service members experienced unwelcome sexual behavior. Of the 13% who reported experiencing a sexual assault, only 5% chose to report that assault to their command. A 2008 survey conducted on the Israeli Defense Forces found that 1 in 7 female service members reported being sexually harassed. Regardless of the data, one conclusion that all our allies agree upon is that changes in the role of the commander in military justice had no effect on reporting or prosecution of sexual assault offenses.</p>
USAF	<p>There is no tangible evidence to allow the Air Force to predict the impact of removing prosecutorial authority from the chain of command on sexual assault reporting.</p> <p>To be clear, such a change will not change the reporting options a victim has in the military. In addition to anyone in their chain of command, victims can report to law enforcement; legal office personnel; medical personnel; a chaplain; a SARC; a victim advocate; or, in the Air Force, a Special Victims’ Counsel. All of those reporting options exist today and lie outside the chain of command. Having said that, relieving</p>

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	<p>commanders of their prosecutorial authority does not impact sexual assault reporting. In fact, it could have a detrimental effect by negating any positive effects commanders have on promoting sexual assault reporting.</p> <p>As indicated in the annual DoD SAPR report, the vast majority of sexual assault victims are in the grades of E1-E4. When a commander prefers charges against an accused, it can have the effect of validating a victim’s accusation, sometimes even when there is no conviction. For junior enlisted members of the armed forces, their commander is often the most senior person they know in the military. They often do not know who their commander’s boss is, or who the JAG is. Their job, mission, and daily life in the military revolves around their local chain of command, which usually does not extend beyond their commander. If the commander loses the ability to “validate” the victim’s accusation by preferring charges, it could reasonably have the effect of discouraging sexual assault reporting.</p>
USN	<p>The Department of Defense 2012 Workplace and Gender Relations Survey, supports the conclusion that a concern for privacy, not fear of retaliation, is the primary reason victims fail to report sexual assaults. The overwhelming reason cited by female victims who do not report (70%) is that they “. . . do not want anyone to know.” The next two reasons identified also relate to privacy concerns, not retaliation. The majority of women (70%) actually state they “would feel free to report sexual assault without fear of reprisal to a large extent.” In other words, privacy is the overriding concern – not fear of retaliation. Even if certain victims of sexual assault did fear retaliation from their commander, they have several options for reporting that do not require a reporting to their commander or anyone in their chain of command. They may report the assault to civilian or military law enforcement, specially trained victim advocates, chaplains, judge advocates, or health care providers. They may also report crimes through a process that allows the allegation to remain confidential while providing the victim the services they need to deal with their trauma. Studies of systems that have removed the prosecutorial authority from the chain of command could not draw a correlation between their new system and any increased (or decreased) reporting by victims of sexual assault. There was no statistical or anecdotal evidence that removing commanders from the charging decision had any effect on victims' willingness to report crimes. Similarly, there have not been any studies to examine the impact of the changes on prosecution rates, conviction rates, or processing times. The Department of Defense 2012 Workplace and Gender Relations Survey and the evidence from our allies show, there is no evidence that removing prosecutorial authority from the chain of command will have any impact on sexual assault reporting.</p>
USMC	<p>The Marine Corps is not aware of any empirical evidence that demonstrates a proven correlation between removing the prosecution authority from the chain of command and sexual assault reporting. The most relevant source for data regarding this correlation would be from our Allies who have in some manner removed the commander from prosecution decision for sexual assaults. At the September 24, 2013 RSP session, representatives from Canada, the United Kingdom, Israel, and Australia testified that they have no evidence that removing the commander from military justice affected sexual assault reporting. They were unable to say if</p>

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	<p>reporting increased or decreased because of the change in the commander's role.</p> <p>The Marine Corps views victim reporting as a bridge to both victim care and accountability. To that end, the efforts of Marine commanders over the last year have created an environment that encourages victim reporting, both restricted and unrestricted. In FY13, under the policies and direction of the Commandant's Sexual Assault Campaign Plan, the Marine Corps saw approximately an 85% increase in overall reporting. Approximately 10% of this reporting involved events that occurred prior to the Marine entering active duty. Of the remaining reports, approximately another 15% involved events that occurred over one year prior to the actual report. This shows that a significant number of the reports made by Marines last year involve Marines who trust the Marine Corps of today more than they trusted the civilian sector, or the Marine Corps of one year ago.</p> <p>As Marine commanders continue to be heavily involved in all aspects of sexual assault prevention and response, we expect that victims will continue to come forward and be comfortable with reporting. This is based on what recent surveys tell us about why victims do not report. The Department of Defense 2012 Workplace and Gender Relations Survey (WGRA) reported that 73% of female victims did not report because they "do not want anyone to know." Although fear of reprisal has often been cited as the reason military victims do not report alleged sexual assaults, the WGRA also found that 64% of female Marines said they "would feel free to report sexual assault without fear of reprisal to a large extent." The Marine Corps understands that privacy is the leading reason victims choose not to make a report and will continue to use its commanders to create and maintain a climate of dignity and respect for all victims, and making them feel more comfortable with making a report.</p> <p>With no evidence that removing the commander from the prosecution decision will lead to the positive result of increase reporting, the Marine Corps has significant concerns about the effect of such a change on the administration of military justice. The Marine Corps has by no means "won" the fight against sexual assault, and there is still much to be done, but the Marine Corps is making good progress in the areas of prevention and response. The worst thing that could happen at this time is to make a policy change that reverses the current positive momentum and gives victims a reason to not report. One such reason would be a military justice system that is inefficient and/or unable to successfully prosecute cases at the trial level that will survive appellate scrutiny. The current proposal to remove commanders from the initial disposition decision in certain offenses would create two parallel systems of justice that would require significant extra resources. For specific information on the extensive resource costs of removing the commander from the prosecution decision, please see the answer to Question 20.</p>
USCG	<p>The Coast Guard is not aware of any evidence that supports a tangible link between removing the prosecutorial authority from the chain of command and reports of sexual assault.</p>

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	<p>The Coast Guard believes that reports of sexual crimes will increase by providing support to victims, building and sustaining victim resiliency, empowering victims, and create an environment in which victims believe that the Coast Guard will support them. Victims are more likely to come forward when they are made aware of support services, receive immediate assistance to ensure their safety, and are provided sustained medical care. Commanders play a significant role in creating and maintaining a climate of respect and dignity, ensuring victims feel safe to make a report, and taking action against offenders. As victims are made aware of the holistic support network, which include responses by their commanders, including the initiation of disciplinary action against offenders, the Coast Guard concludes that victims are more likely to come forward and make reports.</p>
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