

49. (ALL) For each fiscal year from 2007 to 2013, how many instances has the service member who made a report of sexual assault been subjected to disciplinary action as a result of collateral misconduct? Please specify if the adverse action was taken as a result of the sexual assault report being deemed unfounded? If data does not exist, please provide any information available to address public concerns that victims are punished, but perpetrators are not.

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| DoD | Enclosure 5, Paragraph 7 of DoDI Instruction 6495.02, Sexual Assault Prevention and Response (SAPR) Procedures March 2013, located at www.sapr.mil , provides DoD policy regarding collateral misconduct in sexual assault cases. |
| USA | <p>The U.S. Army does not track the requested data; however, the following policies address concerns regarding victim collateral misconduct:</p> <ul style="list-style-type: none"> • DODI 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Para. 6.m.(1). Consult with legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct (see Glossary), to consult with defense counsel. • When the alleged perpetrator is the commander or in the victim’s chain of command, such victims shall be informed of the opportunity to go outside the chain of command to report the offense to other commanding officers or an Inspector General. Victims shall be informed that they can also seek assistance from the DoD Safe Helpline (see Glossary). • The victim shall be informed that legal assistance is optional and may be declined, in whole or in part, at any time. • Commanders shall require that information and services concerning the investigation and prosecution be provided to victims in accordance with Victim Witness Assistance Program (VWAP) procedures in DODI 1030.2 (Reference (x)). • DODI 6495.02, Para. 6.r. Establish Military Service-specific guidance to ensure collateral misconduct is addressed in a manner that is consistent and appropriate to the circumstances, and at a time that encourages continued victim cooperation. • DODI 6495.02, Enclosure 5, Para. 3.l. Require that each Service member who reports a sexual assault, pursuant to the respective Military Service regulations, be given the opportunity to consult with legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct, to consult with defense counsel. Victims shall be referred to VWAP. Information concerning the prosecution shall be provided to victims in accordance with VWAP procedures in Reference (y). The Service member victim shall be informed of this opportunity to consult with legal assistance counsel as soon as the victim seeks assistance from a SARC, SAPR VA, or any DOD law enforcement agent or judge advocate. • DODI 6495.02, Enclosure 5, Para. 7. COLLATERAL MISCONDUCT IN SEXUAL ASSAULT CASES |

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| | <ul style="list-style-type: none"> • Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim’s fear of punishment. Some reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct (e.g., underage drinking or other related alcohol offenses, adultery, fraternization, or other violations of certain regulations or orders). 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. • The Special Victim Counsel (SVC) Program: The existence of collateral misconduct will not preclude Special Victim Counsel representation of an alleged victim of sexual assault; however, Army Special Victim Counsel do not represent clients with respect to allegations of misconduct by that alleged victim. If a Special Victim Counsel becomes aware that a victim has allegedly committed collateral misconduct and the victim is subject to the UCMJ, that counsel will inform the alleged victim of the availability of Trial Defense Counsel. The Special Victim Counsel will inform the alleged victim that the Special Victim Counsel will not serve as the victim’s legal counsel for purposes of collateral misconduct. The Special Victim Counsel can, and will as appropriate, assist a client in contacting the U.S. Army Trial Defense Service. |
| USAF | <p>This information is not formally tracked in a way that JA can run a query in AMJAMS to retrieve results that would tie a victim making a report of sexual assault to disciplinary action for the victim’s collateral misconduct. In addition, AMJAMS does not track administrative actions such as letters of reprimand, admonishment, and counseling, and administrative separation. AF/JA has had preliminary discussions and have made basic plans for a new data system that will enable us to track military justice cases, to include sexual assaults, in a more synergistic manner from the time the incident is reported through final disposition of the case. A database designed to incorporate input and information from investigators, sexual assault response coordinators and judge advocates simultaneously will enhance our ability to both monitor and inform victims and address their interest in the case from the outset. Ultimately, such a system would give more reliable information to those involved in the case, as well as to commanders and senior leaders. This will allow more accurate targeting of concerns within the trial system and an ability to correct such issues rapidly and more appropriately.</p> <p>There are several safeguards built into the military justice system to ensure the fair treatment of all parties concerned:</p> <p>i. SecDef initial disposition authority withhold for sexual assault allegations – On 28 June 2012, Secretary Panetta instituted a policy that all allegations of rape, sexual assault, forcible sodomy, and attempts thereof must be referred to the first O-6 or</p> |

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| | <p>higher in the chain of command who is also a special court-martial convening authority. The accused's unit commander may not make the initial disposition decision. The disposition decision with regard to victim misconduct is also withheld to the first O-6 or higher in the chain of command who is also a special court-martial convening authority. Although this primarily safeguards against commanders taking inappropriate action regarding the disposition of sexual assault allegations, it also serves to make higher echelons of command aware of sexual assault allegations and all manner in which those cases are handled.</p> <p>ii. Mandatory consultation with SJA – Commanders must consult their SJAs before processing anyone for administrative separation.</p> <p>iii. Complaints against commanders under Article 138, UCMJ – Any military member who a) believes he/she has been wronged by his/her commander, b) seeks redress by that commander, and c) is refused redress, may complain to any superior officer. That superior officer must then forward the complaint to the GCMCA over the subject of the complaint. The general officer in receipt of the complaint must then investigate the complaint and, as soon as possible, report the findings to the Service secretary.</p> <p>iv. Inspector General – Airmen who feel they have been negatively affected by their commander's violation of a rule (for example: processing someone for an administrative discharge as a retaliatory measure) may complain to the IG office, who, upon confirmation of the complainant's standing to make the complaint and the IG's jurisdiction over the issue, will investigate the complaint.</p> <p>AF/A1Q does not keep or maintain records of sexual assault, only data on sexual harassment.</p> |
| USN | <p>This data is not maintained by the Navy.</p> <p>However, under new policy implemented 28 June 2012 (NAVADMIN 195/12), the Sexual Assault-Initial Disposition Authority (SA-IDA), in addition to determining the initial disposition for sexual assault allegations, is also responsible for handling collateral misconduct connected to reports of sexual assault. The SA-IDA must make a determination based on the facts and circumstances of each case as to whether to take action on any misconduct of the alleged victim, and when such action, if any, will be taken. Trial counsel, the SA-IDA's staff judge advocate, and Victims' Legal Counsel are available to advise on this decision.</p> <p>Commanders, including SA-IDAs, are obliged to hold personnel accountable for misconduct in order to preserve good order and discipline. However, they make determinations based on the facts of each case.</p> |
| USMC | <p>The Marine Corps does not currently track this information. However, as a result of recent policy changes, only a colonel SPCMCA or higher can make a disposition decision on covered sex offenses and the collateral misconduct in that same case once the law enforcement investigation is complete. On April 20, 2012 the Secretary of Defense (SecDef) issued a memorandum withholding initial disposition authority (IDA) in certain sexual assault offenses to the colonel, O-6, SPCMCA level. The SecDef withheld the authority to make a disposition decision for penetration offenses, forcible sodomy, and attempts to commit those crimes. This withholding of IDA to a Sexual Assault Initial Disposition Authority (SA-IDA) also applies to all other alleged offenses arising from or relating to the same incident, whether committed by the</p> |

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| | <p>alleged offender or the alleged victim (i.e., collateral misconduct). On June 20, 2012, the Commandant expanded the SecDef's SA-IDA withholding to include not just penetration and forcible sodomy offenses, but all contact sex offenses, child sex offenses, and any attempts to commit those offenses. The result is that the USMC now has a smaller group of more senior and experienced officers making disposition decisions for all sexual offense allegations and any related misconduct. In addition, the SA-IDA receives legal advice from his or her staff judge advocate (SJA), whose primary duty is to provide legal advice to the commander, and the prosecutors who would take the case to court-martial.</p> |
| USCG | <p>CGIS does not classify crimes as "unfounded" at the current time.</p> <p>Clearly, there are service members who report that they were the victim of a crime but there may be related or collateral misconduct. The decision as to whether to take disciplinary or administrative action against such a service member would be made by the affected Command; CGIS would neither make that decision nor make any recommendations in that regard. As of 28 June 2012, the Commandant has withheld the decision as to whether and to what extent to take administrative or disciplinary action against an alleged victim for collateral misconduct related to the allegation of sexual assault. Under this policy, if there is an allegation of collateral misconduct by the alleged victim, only a flag officer or, in limited cases, a senior O-6 in command, may decide to take action against the alleged victim. See question 67 for further information about this withholding policy. This policy does not prohibit a commander from taking administrative or disciplinary action against an alleged victim in a sexual assault case, but withholds that decision-making authority to a senior officer, who in most cases is an O-7 or above.</p> <p>CGIS was made aware of the following actions taken against reported victims of sexual assault for collateral misconduct:</p> <ul style="list-style-type: none"> • FY07 – 5 individuals. <ul style="list-style-type: none"> o Described actions: <ul style="list-style-type: none"> (1) One member discharged for "homosexual act". (2) One member was tried in civilian courts for driving under the influence (DUI)/reckless driving; charges were dismissed. (3) One member received a documented "Alcohol Incident" and completed Alcohol Dependency Program. (4) Two members received negative Administrative Remarks (form CG-3307) documenting inappropriate behavior in member's Personal Data Record (PDR). • FY08 – 2 individuals. <ul style="list-style-type: none"> o Described actions: <ul style="list-style-type: none"> <input type="checkbox"/> (1) Both members received Non-Judicial Punishment (NJP). • One member NJPd for "unrelated offenses" learned pursuant to the sexual assault investigation and received restriction and reduction in rate. |

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| | <ul style="list-style-type: none"> • One member discharged from the USCG for a “second alcohol incident”. • FY09 – 7 individuals. <p>o Described actions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> (1) Three members received negative CG-3307s documented in members’ PDRs. <li style="padding-left: 40px;">(2) One member was administratively discharged from the USCG. <li style="padding-left: 40px;">(3) Three members received NJP and received extra duty, restrictions and/or reduction in rank. <ul style="list-style-type: none"> • FY10 – 6 individuals. <p>o Described actions:</p> <ul style="list-style-type: none"> (1) Three members received NJP and received restriction, reduction in rank, documented alcohol incident, and/or other administrative actions. One of those members was discharged from the USCG. (2) One member was prohibited from graduating from USCG Training Center (TRACEN) Petaluma “A” school for violating TRACEN Petaluma’s “dating policy”. (3) One member received negative documentation in the member’s Enlisted Employee Reviews (EER). (4) One member received verbal counseling for the incident. <ul style="list-style-type: none"> • FY11 – 6 individuals <p>o Described actions:</p> <ul style="list-style-type: none"> (1) One member appeared before an “Assistant Commandant of Cadets” mast and was found guilty of violating several CG Academy (CGA) regulations. Member was awarded demerits, marching tours, administrative restriction, loss of recreational gear, was required to complete alcohol remediation and placed on suitability-for-service probation. <input type="checkbox"/> (2) One member received NJP at the CGA and was awarded demerits and administrative restriction. <input type="checkbox"/> (3) One member was administratively separated from the USCG. <input type="checkbox"/> (4) One member received NJP and received restriction, reduction in rate and extra duty. <li style="padding-left: 40px;">(5) One member received NJP and received reduction in rate, restriction (suspended), forfeiture of pay (suspended) and extra duty (suspended). <li style="padding-left: 40px;">(6) One member received negative CG-3307 documenting misconduct in member’s PDR. <ul style="list-style-type: none"> • FY12 – 4 individuals <p>o Described actions:</p> <ul style="list-style-type: none"> <input type="checkbox"/> (1) Two members received negative CG-3307 remarks, documented in their PDRs. <input type="checkbox"/> (2) One member received NJP and received a punitive letter of reprimand. <input type="checkbox"/> (3) One member was referred for alcohol screening; no other actions known. <ul style="list-style-type: none"> • FY13 – There are no known actions taken against any reported members in any FY13 cases that are currently completed and closed. |
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| | NOTE: This information was derived from a review of all sexual assault (completed and attempted acts) incidents reported to CGIS between FY07 to FY13. CGIS does not currently classify investigations as “unfounded” |
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