

55. (Services) At any time, from 2007 to the present, could the person responsible for initiating the investigation of an unrestricted sexual assault report take into account the value of the accused to the unit in determining whether to report the incident to the MCIO? If yes, please explain. If not, what policies are in place to ensure commanders report all sexual assault allegations to MCIOs?

CJCS	<p>The new DOD policy establishes that all sexual assault allegations must be investigated by MCIOs, and not through another investigative agency. However, the process does not usually involve commanders themselves reporting cases to agencies. Through training and education, anyone who receives an unrestricted report will immediately contact the MCIO to begin the investigation – commanders are almost never in the position to receive a report of sexual assault themselves, and therefore the process typically gets kicked-off without commander involvement. The command Sexual Assault Response Coordinator (SARC) or any of the 10 reporting options for the victim would intake the report, and then refer the victim to the MCIO for investigation. Reforms over the past few years have ensured there are no loopholes through which a commander can avoid having a sexual assault allegation investigated by the MCIO, regardless of the performance of the accused, or any other surrounding circumstances.</p>
USA	<p>No. The value of the accused to the unit cannot be taken into account when reporting incidents of sexual assault. Commanders are required to report all sexual assaults to CID in accordance with Army Regulation (AR) 195-2, Criminal Investigation Activities and AR 600-20, Army Command Policy.</p>
USAF	<p>Air Force Policy Directive 71-1, Criminal Investigations and Counterintelligence, published 1 July 1999, establishes Air Force policy pertaining to this question. Relevant excerpts are as follows:</p> <p>7.5. Air Force commanders:</p> <p>7.5.1. Refer to AFOSI all criminal matters and offenses for which AFOSI is responsible.</p> <p>7.5.3. Do not reassign, order or permit any type of investigation, or take any other official action against someone undergoing an AFOSI investigation before coordinating with AFOSI and the servicing SJA.</p> <p>Air Force Instruction 71-101V1, Criminal Investigations, published 8 April 2011, states:</p> <p>1.5. Commanders/Directors. Commanders/Directors at all levels shall ensure that criminal allegations or suspected criminal allegations involving persons affiliated with the Department of Defense or any property or programs under their control or authority are referred to the appropriate Military Criminal Investigative Organization (MCIO) or law enforcement organization. Action authorities, or designees, will not order or permit any type of commander directed investigation or inquiry when there is an ongoing AFOSI investigation without coordinating with AFOSI and the servicing Staff Judge Advocate (SJA).</p>

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USN	<p>The Rules for Court-Martial, in effect in 2007 and presently, do not authorize commanders to take into account the value of the accused to the unit in determining whether to report potential criminal misconduct to the MCIO.</p> <p>Rule for Court-Martial 303 governs preliminary inquiries into reported offenses. It states that the immediate commander shall, “[u]pon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial... make or cause to be made a preliminary inquiry into the charges or suspected offenses.” The discussion section to the rule advises commanders to consider seeking the assistance of law enforcement personnel to conduct the investigation in serious or complex cases, which would include allegations of sexual assault.</p> <p>SECNAVINST 1752.4B requires unit commanders who receive an unrestricted report of sexual assault to immediately refer the matter to NCIS or appropriate MCIO, “regardless of the severity of the allegation, offense, or potential punishment authorized” by the UCMJ. The previous version of the instruction, SECNAVINST 1752.4A of 1 December 2005, did not contain this express direction.</p>
USMC	<p>RCM 306 governs a commander’s initial disposition decision. The discussion to this RCM, which is not binding on the commander, states that:</p> <p>In deciding how an offense should be disposed of, factors the commander should consider, to the extent they are known, include:</p> <ul style="list-style-type: none"> <li>(A) the character and military service of the accused;</li> <li>(B) the nature of and circumstances surrounding the offense and the extent of the harm caused by the offense, including the offense’s effect on morale, health, safety, welfare, and discipline;</li> <li>(C) appropriateness of the authorized punishment to the particular accused or offense;</li> <li>(D) possible improper motives of the accuser;</li> <li>(E) reluctance of the victim or others to testify;</li> <li>(F) cooperation of the accused in the apprehension or conviction of others;</li> <li>(G) availability and likelihood of prosecution of the same or similar and related charges against the accused by another jurisdiction;</li> <li>(H) availability and admissibility of evidence;</li> <li>(I) existence of jurisdiction over the accused and the offense; and</li> <li>(J) likely issues.</li> </ul> <p>However, RCM 306 does not deal with investigations and a commander does not make his or her initial disposition decision until after the investigation. Military character is not relevant for criminal investigations or under RCM 303, which governs the preliminary inquiry into reported offenses.</p> <p>The value of the accused to the unit is not a factor in reporting a case to the MCIO. DoD Instruction 5500.18 requires the MCIO to initiate investigations of all offenses of adult sexual assault of which they become aware. Additionally, that Instruction states that: “[a]ll Unrestricted Reports of sexual assault (and attempts) against adults will be immediately reported to the MCIO, regardless of the severity of the</p>

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	<p>allegation.” The USMC SAPR order, MCO 1752.5B, emphasizes that referral to the MCIO is mandatory. Therefore, commanders and others do not have any discretion regarding reporting unrestricted reports of sexual assault to NCIS. Mandatory referral is required by order.</p>
USCG	<p>Coast Guard policy affords no discretion to commanders or anyone else on whether to report an incident of sexual assault to Coast Guard Investigative Services (CGIS). After the unit command has received a report, he or she will immediately notify CGIS. There are no exceptions to this requirement. Considerations regarding the accused, including possible value to the unit, play no role in the initiation of an investigation. If there is an unrestricted report of sexual assault, it is required to be reported to CGIS and CGIS is required to investigate.</p> <p>Sexual Assault Prevention and Response (SAPR) Program, COMDTINST M1754.10D, Article 3.C.1.a. states: “When a service member, who is not one of the designated individuals authorized to receive a Restricted Report, becomes aware that a sexual assault has occurred, that information is Unrestricted and the member must notify their chain of command. Per reference (d), CGIS must be notified immediately when an Unrestricted Report of sexual assault is received.” Article 3.C.1.d states: “CGIS has sole responsibility for conducting the criminal investigation of a sexual assault allegation. Commands are prohibited from taking any formal or informal investigative action, to include preliminary inquiry or interview of alleged victims, suspects or witnesses regarding the assault.</p> <p>Coast Guard Investigative Service Roles and Responsibilities, COMDTINST 5520.5F, Article 7 also requires mandatory reporting to CGIS, among others, for all “Felony-Level UCMJ Violations” when the accused is a Coast Guard member, a reserve member serving on active duty, or a former Coast Guard member who was on active duty when the offense was committed. Mandatory reporting is also required for “Violations of Federal Criminal Law” when the suspect is a covered person, the offense occurred on Coast Guard property, or the Coast Guard has law enforcement authority over the offense. Moreover, “CGIS must be notified whenever a victim of an actual, alleged, or suspected felony-UCMJ violation or federal offense is a covered person.”</p> <p>“Covered persons” include: Active Duty Coast Guard personnel; Reserve Coast Guard personnel on active duty; Auxiliary Coast Guard personnel while assigned to duty; Civilian Coast Guard employees; Public Health Service (PHS) personnel assigned to the Coast Guard; Department of Defense (DoD) military and General Defense Intelligence Program (GDIP) civilian personnel assigned to the Coast Guard; and Visitors to Coast Guard facilities.</p> <p>This policy was in effect in CGIS earlier instruction versions, COMDTINST 5520.5E, which was promulgated in 2002. Similarly, a 2004 instruction, Reporting and Responding to Rape and Sexual Assault Allegations, COMDTINST 1754.10B, also required mandatory and immediate reporting to CGIS.</p>

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