

64. (Services) Please provide any policies in place regarding how (a) investigators and (b) commanders handle an alleged victim's collateral misconduct arising from the circumstances of the alleged sexual assault incident.

USA	<p>a. Investigators: If the allegation of collateral misconduct (e.g., underage drinking, adultery) supports or contradicts the allegation of sexual assault, then the allegation of misconduct will be investigated only to the extent necessary to develop the primary offense of sexual assault. The misconduct will not be listed in the subject/suspect and/or victim blocks of the ROI, unless approved by the CG, USACIDC. Collateral misconduct will be referred to the commander, in writing, for action deemed appropriate. This policy is codified in Chapter 15, CIDR 195-1, which was previously provided. In accordance with Article 31 of the Uniform Code of Military Justice, a Soldier must be advised of his/her rights if he/she is suspected of committing an offense. Thus, before a CID agent can ask any victim any questions concerning his/her alleged misconduct, he must advise the victim of her rights.</p> <p>b. Commanders: U.S. Army policies and regulations regarding disposition of victim collateral misconduct are intended to encourage reporting and victim cooperation throughout the investigative and judicial proceedings.</p> <ul style="list-style-type: none"> • First, the disposition of victim collateral misconduct is reserved to senior, experienced officers. Victim collateral misconduct arising from the report of a penetrative offense is withheld the brigade commander (O6) Special Court-Martial Convening Authority, whereas victim collateral misconduct arising from contact offenses is reserved to the battalion commander (O5) under Army Regulation (AR) 600-20, paragraph 8-5m(5). Second, U.S. Army commanders are instructed in AR 600-20, paragraph 8-5o(24) to defer any disciplinary actions regarding victim collateral misconduct until after the final disposition of the sexual assault allegation and to "take into account the trauma to the victim and respond appropriately so as to encourage reporting of the sexual assault and continued cooperation of the victim." • U.S. Army Special Victim Prosecutors (SVP) and trial counsel are specifically trained that taking care of victims is an essential element of a successful prosecution. This training includes appropriate handling of victim collateral misconduct that does not result in re-victimization or a perception of retaliation, but still promotes good order and discipline.
USAF	<p>AFI 36-6001, Sexual Assault Prevention and Response Program, para. 6.3 provides guidance for how commanders handle a victim's collateral misconduct: http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-6001/afi36-6001.pdf</p> <p>Commanders have the authority to determine the appropriate disposition of alleged victim misconduct, to include deferring disciplinary action until after disposition of the sexual assault case. When considering what corrective actions may be appropriate, commanders must balance the objectives of holding members accountable for their</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>own misconduct with the intent to avoid unnecessary additional trauma to sexual assault victims and the goal of encouraging reporting of sexual assaults. The gravity of any collateral misconduct by the victim, and its impact on good order and discipline, should be carefully considered in deciding what, if any, corrective action is appropriate. Commanders should consult with the servicing SJA prior to taking any action regarding collateral misconduct.</p>
USN	<p>Investigators SECNAVINST 5430.107 “Mission and Function of the Naval Criminal Investigative Service” sets forth NCIS authority and responsibilities. Specifically, SECNAVINST 5430.107 establishes NCIS responsibility to investigate major criminal offenses within the DON. Major criminal offenses are generally defined as offenses punishable under the UCMJ, or similarly framed federal, state, or local statute, by confinement for a term of more than one year – commonly referred to as felonies.</p> <p>In the majority of NCIS sexual assault investigations, the victim’s collateral misconduct does not rise to the felony level. Often, the misconduct is a status offense such as underage drinking or adultery or other minor UCMJ violation. That said, if misconduct is uncovered by the investigator during the course of the investigation, that information will be included in the NCIS investigative report and available for a commander to decide a course of action.</p> <p>In the event the collateral misconduct is a felony level offense, NCIS has the responsibility to investigate. However, the focus of the investigation would be directed at the most serious offense known to the investigator.</p> <p>Commanders 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 VLC are available to advise on this decision.</p> <p>As a general practice at the US Naval Academy, collateral misconduct charges are deferred until after the sexual assault charges are adjudicated.</p>
USMC	<p>Investigators: SECNAVINST 5430.107 “Mission and Function of the Naval Criminal Investigative Service” sets forth NCIS’ authority and responsibilities. Specifically, SECNAVINST 5430.107 establishes NCIS’ responsibility to investigate major criminal offenses within the DON. Major criminal offenses are generally defined as offenses punishable under the UCMJ, or similarly framed federal, state, or local statute, by confinement for a term of more than one year – commonly referred to as felonies. In the majority of NCIS sexual assault investigations, the victim’s collateral misconduct does not rise to the felony level.</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>Often, the misconduct is a status offense such as underage drinking or adultery or other minor UCMJ violation. In short, the collateral misconduct falls below NCIS' threshold, as identified by SECNAVINST 5430.107, and NCIS typically does not expend resources to investigate low level misconduct. However, if misconduct is uncovered by the investigator during the course of the investigation, that information will be included in the NCIS investigative report and available for a commander to decide a course of action. In the event the collateral misconduct is a felony level offense, NCIS has the responsibility to investigate. However, the focus of the investigation would be directed at the most serious offense known to the investigator and, generally speaking, very few offenses are higher priority than sexual assault (i.e., homicide).</p> <p>Commanders: See answer to question 55.</p>
USCG	<p>There are service members who report that they were the victim of a crime but there may be related or collateral misconduct. Investigators document any collateral misconduct in the report of investigation. The decision as to whether to take disciplinary or administrative action against such a service member would be made by the affected command. Investigators would neither make that decision nor make any recommendations in that regard.</p> <p>The SAPR Program Manual, COMTINST M1754.10D, states the following regarding collateral misconduct by the victim (Article 5.F):</p> <p>COs/OICs shall consider the following items when responding to a report of a sexual assault and exercise their command discretion.</p> <ol style="list-style-type: none"> 1. Not taking action on a victim's collateral misconduct (e.g., minor offenses such as underage drinking) until the final disposition of the sexual assault case to ensure priority is placed on the sexual assault and not the collateral misconduct. 2. That consumption of alcohol by the victim could be regarded as an alcohol-related situation rather than as an alcohol incident. The victim may be referred for alcohol treatment screening on a case-by-case basis, if warranted. 3. Use of a Military Protective Order, Form CG-6070. It may be appropriate to bar the alleged offender from contact with the victim. In cases under investigation by CGIS, the use of an MPO shall be coordinated between the unit, the servicing SJA's Office, and CGIS to ensure that any on-going investigative activity is not compromised or otherwise hampered. 4. Reassignment of the victim if requested by the victim or is in the victim's best interest, may be appropriate based on the needs of the mission and the victim's performance, and does not compromise or hamper ongoing investigative activity by CGIS; for cases under investigation, coordinate with CGIS, the servicing SJA's Office, and the Coast Guard Personnel Command prior to reassignment. Note: Often victims do not want to be transferred as their support system is at their unit and they may view a transfer as a punitive measure for reporting a sexual assault. 5. Reassignment of the alleged offender when it is in the best interest of the victim and the unit.

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>a. Consult with the servicing SJA's Office and Coast Guard Personnel Command.</p> <p>b. Coordinate with CGIS to ensure that any on-going investigative activity is not compromised or otherwise hampered.</p> <p>Additionally, on 25 June 2012, the Commandant of the Coast Guard announced that he had withheld initial disposition authority from all commanders in cases arising under Article 120 and 125, and attempts thereof, who do not meet the following three criteria: (1) possess special court-marital convening authority; (2) achieved the rank of captain (O-6); and (3) have an assigned staff judge advocate. The practical effect of this withholding is that only flag officers (O-7 and above) and a few senior captains may dispose of sexual assault cases within the Coast Guard. Those officers who may dispose of sexual assault offenses are referred to as Sexual Assault Initial Disposition Authorities (SA-IDA). The Commandant also withheld to the SA-IDA the authority to act on collateral misconduct of the alleged victim. Therefore, as of June 2012, the subordinate commander is prohibited from taking disciplinary action against an alleged victim for collateral misconduct related to the sexual assault until and unless the SA- IDA authorizes the subordinate command to do so.</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.