

66. (Services) Please describe whether it is the Service’s policy to have the MCIO or a commander determine whether sexual assault allegations are considered substantiated or founded. In light of the variation amongst the Services, indicate why the Service believes the investigator or commander is the appropriate decision maker (according to Page 71 of DoD’s FY11 Annual Report on Sexual Assault variation exists amongst the Services.)

| | |
|------|--|
| USA | <p>It is not a CID investigator’s responsibility to determine whether a sexual assault is founded or unfounded. The decision as to whether an offense is founded or not, and whether the accused should be indexed as having committed a founded offense belongs to the supported prosecutor. The CID report merely reflects the opinion or decision of the supported prosecutor as to the founding or unounding of an offense. This is basically the same process that all civilian law enforcement agencies in the United States employ with their District Attorneys or prosecutors when founding offenses and effecting arrest warrants.</p> |
| USAF | <p>In the Air Force, only commanders may conclude that a sexual assault allegation is unfounded. Once AFOSI receives a sexual assault allegation, and investigators complete their investigation, AFOSI forwards the investigation to the accused Airman’s commander in a report that evaluates the evidence and makes a recommendation as to disposition. The commander, with the advice of his/her SJA, then determines whether the allegation is founded, and proceeds to whatever disposition of the case is deemed appropriate.</p> <p>AFOSI does not determine whether sexual assault allegations are considered substantiated or founded. It is AFOSI’s position that having AFOSI personnel render such an opinion presents an inappropriate conflict with the requirement to conduct objective and impartial investigations. AFOSI’s Standards of Professional Conduct specifically require agents to remain objective and unbiased in their investigation and reporting of investigative information.</p> <p>AFOSI further believes having criminal investigators render an opinion regarding substantiated/founded or unsubstantiated/unfounded is contrary to the guidance prescribed by the Council of the Inspectors General on Integrity and Efficiency, Quality Standards for Investigations. These Standards specifically call for investigators to “...not allow conjecture, unsubstantiated opinion, bias, or personal observations or conclusions ...”</p> <p>Finally, in an August 6, 2013 Memorandum to senior DoD and Services’ senior leaders, the Secretary of Defense emphasized commanders must “... base their decision [in matters of military justice] on their independent judgment.” Having AFOSI investigators convey judgment as to whether an allegation is substantiated/founded or unsubstantiated/unfounded could be prejudicial to a commander forming his or her independent judgment and, as such, at variance with SECDEF’s direction.</p> |
| USN | <p>NCIS investigators do not make determinations regarding substantiated or unfounded allegations, regardless of the type of case (sexual assault, robbery, domestic violence, etc.). NCIS investigators obtain facts and evidence and present those findings to the</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.

appropriate convening authority. As NCIS fills the role of a neutral fact-finding and investigative body, placing the determination decision on them could compromise their mission, impede the case investigation or raise questions of partiality.

Once an NCIS investigation is complete, the case is forwarded to the accused's commander. In accordance with Secretary of Defense policy, the initial disposition decision for reports of rape, sexual assault, forcible sodomy, and attempts to commit these offenses must be made by Sexual Assault Initial Disposition Authorities (SA-IDAs), who are Navy Captains (pay grade O-6) or above designated as Special Court-Martial Convening Authorities. If the accused's commander is not an SA-IDA, the commander must forward the case to the appropriate SA-IDA in the chain of command for the initial disposition decision. SA-IDAs must consult with a judge advocate prior to making disposition decisions, ensuring that appropriate legal considerations for these major offenses are fully evaluated and balanced with good order and discipline. Having received legal advice from a trained and experienced staff judge advocate and/or prosecutor, based on the nature of the offenses and an analysis of the evidence available, the SA-IDA may recommend that the suspect face charges at a general court-martial. The SA-IDA also has the option, when appropriate, to send charges to a special court-martial, summary court-martial, or non-judicial punishment and may also process the suspect for administrative separation. If the SA-IDA does not recommend general court-martial, the SA-IDA can also return the case to the suspect's commanding officer for disposition deemed appropriate by that commanding officer, based on the nature of the offenses and an analysis of the evidence available, including special court-martial, summary court-martial, non-judicial punishment, or administrative separation processing.

The commander plays a role in disposition of cases because preventing and responding to sexual assault is not just a legal issue – it is a leadership issue. The performance, safety and climate of a unit begin and end with the commander. As described in the "Charge of Command" that all Navy officers sign in the presence of their reporting senior upon taking command, the commanding officer is responsible and accountable for everything that happens in their ship, squadron or unit. By virtue of experience, skill and training, our commanders are the best assessors of their people and are the key to sustaining the readiness of their unit. If we want to implement effective, permanent change in our military, we must do so through our commanders.

From our analysis of sexual assault reports and cases, we know many of the factors surrounding the majority of sexual assaults. The commander is responsible to address these factors by fostering an appropriate command climate of dignity and respect for everyone and ensuring a safe workplace and living areas. Overall, the commanding officer is responsible for good order and discipline of the unit and the wellbeing of his or her Sailors.

The responsibility, authority, and accountability we repose in the commander requires that we provide him or her tools to maintain appropriate readiness and safety every day. Military justice is one of those tools. The fundamental structure of the military

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>justice system and UCMJ, centered on the role of the commander as the convening authority, is sound. Navy commanders are often required to make independent decisions far from shore, in uncertain or hazardous conditions. In this environment, it is essential that our commanders be involved in each phase of the military justice process, from the report of an offense through adjudication under the UMCJ.</p> |
| USMC | <p>NCIS investigators do not make determinations regarding substantiated or unfounded allegations, regardless of the type of case (sexual assault, robbery, domestic violence, etc.). NCIS investigators obtain facts and evidence and present those findings to the appropriate convening authority.</p> <p>Sexual Assault Initial Disposition Authorities (SA-IDAs) determine whether sexual assault allegations are considered substantiated or founded. SA-IDAs are commanders in pay-grade O-6 or above who are Special Court-Martial Convening Authorities (SPCMCA). The SA-IDAs consult with staff judge advocates (SJA) and receive advice from them relating to military justice matters. In addition, the SA-IDA will receive advice from the applicable Region Legal Service Office (RLSO). As NCIS fills the role of a neutral fact-finding and investigative body, placing the determination decision on them could compromise their mission, impede the case investigation or raise questions of partiality.</p> |
| USCG | <p>CGIS conducts neutral, fact finding investigations. The results of these investigations are then provided to the Command who, supported by Legal, makes the appropriate adjudication in accordance with R.C.M. 401. The role of the investigators is simply to get to the “truth of the matter”; the decision as to what disposition is made in the case is correctly left to the Command of the subject individual(s), after consultation with the servicing legal office. They are responsible for member conduct, discipline (or criminal prosecution when appropriate), and mission execution. Likewise, CGIS does not make a recommendation as to whether it found allegations to be substantiated or founded.</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.



**SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000**

APR 20 2012

**MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
COMMANDERS OF THE COMBATANT COMMANDS
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE**

SUBJECT: Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases

Pursuant to my general court-martial convening authority under Article 22 of the Uniform Code of Military Justice (UCMJ) and Rules for Courts-Martial 306, 401, and 601, I hereby withhold initial disposition authority from all commanders within the Department of Defense who do not possess at least special court-martial convening authority and who are not in the grade of O-6 (i.e., colonel or Navy captain) or higher, with respect to the following alleged offenses: (i) rape, in violation of Article 120; (ii) sexual assault, in violation of Article 120 of the UCMJ; (iii) forcible sodomy, in violation of Article 125 of the UCMJ; and (iv) all attempts to commit such offenses, in violation of Article 80. Additionally, this withholding applies to all other alleged offenses arising from or relating to the same incident(s), whether committed by the alleged perpetrator or the alleged victim of the rape, sexual assault, forcible sodomy, or the attempts thereof.

The effective date of this action will be June 28, 2012. The Services have discretion to further elevate initial disposition authority for these offenses.

The special court-martial convening authority shall be responsible for determining what initial disposition action is appropriate, to include whether further action is warranted and, if so, whether the matter should be resolved by court-martial, nonjudicial punishment, or adverse administrative action. The special court-martial convening authority's initial disposition decision shall be based upon his or her review of the matters transmitted, any independent review and recommendation received (including court-martial charges, if any), and consultation with a judge advocate. Subordinate unit commanders are encouraged to provide their own recommendations regarding initial disposition.

Nothing in this directive removes the responsibility of commanders, at every level, to maintain an environment free of sexual assault, to provide support and assistance to victims, and to maintain good order and discipline within their units.

cc:
Acting USD(P&R)
Director, Sexual Assault Prevention and Response Office

301426