

71. (Services) Please provide any and all policies that provide guidance regarding the DoD's or a Service branch's decision whether to approve the resignation, retirement, or discharge of the subject of a sexual assault report, including if the accused is pending an investigation.

CJCS	<p>Alternative dispositions to courts-martial are appropriate in any cases when the commander believes that the accused did not commit misconduct that deserves the equivalent of a civilian criminal conviction. They are also appropriate when they better satisfy the interests of justice, maintaining of good order and discipline, and the victim. The interests of justice and the interest in maintaining good order and discipline require that bad conduct never be swept under the rug. However, for minor misconduct, administrative adjudication may be appropriate. This is particularly important in cases where the victim has bravely stepped forward, but does not wish to pursue court-martial. In those cases, a plea bargain for an administrative separation, if it satisfies the victim and the commander that the interests of justice have been upheld, could be an appropriate outcome.</p> <p>Commanders are given wide latitude to use their discretion on these matters. Most Service regulations address the level of command that is appropriate to adjudicate the question, but not how the decision should be made. Commanders have been chosen based in part on their judicial temperament and their ability to make these types of decisions. Especially at the highest level, their record of sound decision making at lower levels of command will qualify them for future selection to higher echelons.</p>
USA	<p>Army Regulation 600-8-2 requires the command to flag any Soldier under investigation, charges, or restraint, which immediately suspends any favorable personnel action (although that does not completely eliminate the possibility of resignation, retirement, or discharge). Also, the command must immediately suspend the Soldier's security clearance in accordance with Army regulation 380-67.</p> <p>The U.S. Army regulations governing administrative separation of Soldiers (Army Regulations 635-200, 135-178, 600-8-24, and 135-175) provide guidance to the separation authority in all cases, including sexual offenses. For example, when deciding retention or separation in any case, Army Regulation 635-200, Chapter 1-15, requires consideration of the following factors:</p> <ol style="list-style-type: none"> (1) The seriousness of the events or conditions that form the basis for initiation of separation proceedings. Also consider the effect of the Soldier's continued retention on military discipline, good order, and morale. (2) The likelihood that the events or conditions that led to separation proceedings will continue or recur. (3) The likelihood that the Soldier will be a disruptive or undesirable influence in present or future duty assignments. (4) The Soldier's ability to perform duties effectively now and in the future, including potential for advancement or leadership.

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	<p>(5) The Soldier’s rehabilitative potential.</p> <p>(6) The Soldier’s entire military record[.]</p> <p>In the scenario of an administrative discharge in lieu of court-martial, the separation authority is required by Army Regulation to be “selective in approving” such requests. When a Soldier submits a discharge in lieu of court-martial request, the Soldier’s immediate commander and the intermediate commanders may submit recommendations to the discharge authority. Per Army Regulation 635-200, Chapter 10-4, “[t]he discharge authority should not be used when the circumstances surrounding an offense warrant a punitive discharge and confinement. Nor should it be used when the facts do not establish a serious offense, even though the punishment, under the Uniform Code of Military Justice, may include a bad conduct or dishonorable discharge.” The Army Regulation further requires consideration of the “Soldier’s potential for rehabilitation, and his/her entire record should be reviewed before [approving a discharge in lieu of court-martial.]”</p> <p>It is noteworthy that post-conviction, Army Directive 2013-21 mandates the initiation of separation proceedings for any Soldier convicted of a sex offense (whose conviction did not result in a punitive discharge or dismissal). Under this policy, if a separation proceeding previously retained a Soldier, the separation authority will initiate a separation action under the Secretary of the Army’s plenary authority in Army Regulation 635-200, chapter 5. In the event that a Soldier is retained after the administrative separation process is complete, the Soldier is coded with a "L8" movement code by Human Resources Command that prohibits certain assignments, overseas assignments and housing entitlements.</p>
USAF	<p>AFI 36-3206, Administrative Discharge Procedures for Commissioned Officers, para. 3.3 addresses initiation of administrative discharge proceedings for officers who commit sexual assault. http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3206/afi36-3206.pdf</p> <p>AFI 51-201, Administration of Military Justice, Section 8F, provides guidance on Officer Resignations for the Good of the Service (RILO). http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</p> <p>AFI 36-3208, Administrative Separation of Airmen, para. 5.55 addresses initiation of administrative discharge proceedings for enlisted members who commit sexual assault. http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3208/afi36-3208.pdf</p> <p>AFI 36-3208, Administrative Separation of Airmen, Chapter 4, addresses enlisted members Request for Discharge In Lieu of Trial by Court-Martial. http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-3208/afi36-3208.pdf</p>

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USN	The Navy's policies and guidance on approvals of resignation, retirement, or discharge are not specific to the crime of sexual assault. However, service-members who are pending criminal investigation or charges are not normally approved for resignation, retirement or discharge.
USMC	As a general rule, 10 U.S.C. § 6329 directs that no Navy or Marine Corps officer may be retired because of misconduct for which trial by court-martial would be appropriate. Secretary of Navy Instruction 1920.6C governs the administrative separation of officers, and contains the procedures to involuntarily separate an officer from the Marine Corps. The Marine Corps Separations and Retirement Manual (MARCORSEPMAN), Marine Corps Order P1900.16F, contains various provisions that govern Service policy and procedures on resignations, retirements, and administrative discharges. Chapter 4 discusses the administrative separation of officers for cause, and chapter 6 discusses enlisted administrative separations, including involuntary separations. The Marine Corps Manual for Legal Administration (LEGADMINMAN) also contains policies and procedures for dealing with officer misconduct in chapter 4.
USCG	The Coast Guard does not have any policy guidance specifically regarding the decision whether to approve the resignation, retirement, or discharge in lieu of court-martial for a member subject to a sexual assault report or under investigation. The considerations set out in the answer to Question 70 apply to requests for this type of disposition.

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