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Report to the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives

June 2011

MILITARY JUSTICE

Oversight and Better Collaboration Needed for Sexual Assault Investigations and Adjudications

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GAO-11-579

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Highlights

Highlights of GAO-11-579, a report to the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives

Why GAO Did This Study

The crime of sexual assault has serious consequences for both the aggrieved and the accused. The severity of these consequences underscores the importance of impartially administering justice in order to promote accountability and confidence that such allegations are taken seriously. GAO was asked to address the extent to which (1) the Department of Defense (DOD) conducts oversight of the military services' investigative organizations and (2) the services provide resources for investigations and adjudications of alleged sexual assault incidents. GAO also identified an issue relating to the military's criminal code during this review. GAO analyzed relevant DOD and service policies and procedures; reviewed applicable laws, including provisions of the Uniform Code of Military Justice; and interviewed senior DOD and service officials, including a total of 48 judge advocates and DOD civilian lawyers, at the headquarters level and at five selected military installations.

What GAO Recommends

GAO is recommending that DOD develop policy and provide oversight for sexual assault investigations and related training, and for the services to develop a plan to better leverage expertise and limited resources. DOD and the Inspector General concurred with the recommendations, although the Inspector General disagreed with the characterization of its performance. GAO believes its findings are accurate, as addressed more fully in the report.

View GAO-11-579 or key components. For more information, contact Brenda S. Farrell at (202) 512-3604 or farrellb@gao.gov.

What GAO Found

Pursuant to the National Defense Authorization Act for Fiscal Year 2005, the Office of the Secretary of Defense (OSD) developed a policy on sexual assault prevention and response. In June 2006, OSD published DOD Instruction 6495.02, which specifies that the DOD Inspector General's Office shall develop policy and oversee sexual assault investigations and related training for the DOD criminal investigative organizations. However, the Inspector General's Office has not performed these responsibilities, primarily because it believes it has other, higher priorities. For example, GAO found no evidence of Inspector General oversight at the service level for any of the 2,594 sexual assault investigations that DOD reported the services completed in fiscal year 2010. Without a policy and plan for conducting oversight, the Inspector General's Office will remain limited in its ability to help ensure consistency and accountability, and that training is being conducted in the most effective manner.

Consistent with the Secretary of Defense's priorities for sexual assault prevention and response, each service provides various resources to support investigations and adjudications of alleged sexual assault incidents. Specifically, each service has provided personnel who advise and assist on investigations and adjudications of sexual assault incidents. Each service's investigative and legal organizations also received funding, above their operating budgets, for efforts to enhance investigations and adjudications of sexual assault. For example, in fiscal year 2009, Army investigators received $4.4 million to redesign training on sexual assault investigations. However, the services' investigative and legal organizations are not fully capitalizing on opportunities to leverage each other's expertise and limited resources. For example, the Secretary of Defense, as part of the Base Realignment and Closure process, recommended that the services' investigative organizations co-locate to achieve operational synergies. However, the services currently have no plan for using opportunities such as the co-location—a move that has cost over $426 million and reportedly saved about $53 million for infrastructure support from fiscal years 2006 through 2011—to better leverage expertise and limited resources. Judge advocates also collaborate on some initiatives, but do not have a plan for leveraging resources either. Without a plan, the services cannot help ensure that resources are sustained and efficiencies are maximized.

GAO met with judge advocates who consistently expressed concerns, similar to those noted in a 2009 Defense Task Force report, that a 2007 amendment to Article 120 of the Uniform Code of Military Justice complicates sexual assault prosecutions and may be causing unwarranted acquittals. Specifically, judge advocates stated that there is a lack of clarity with regard to the meaning of certain terms in the amended article, which makes it more difficult to prosecute these cases. Further, recent opinions issued by the Court of Appeals for the Armed Forces addressed constitutional issues that may arise related to the burden of proof in certain situations. For fiscal year 2012, DOD proposed revisions to Congress intended to remedy some of these issues.

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Abbreviations

AFOSI	Air Force Office of Special Investigations
CID	Army Criminal Investigation Command
DOD	Department of Defense
OSD	Office of the Secretary of Defense
NCIS	Naval Criminal Investigative Service

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Accountability * Integrity * Reliability
United States Government Accountability Office
Washington, DC 20548

June 22, 2011

The Honorable Joe Wilson
Chairman
The Honorable Susan A. Davis
Ranking Member
Subcommittee on Military Personnel
Committee on Armed Services
House of Representatives

Sexual assault is a crime that can lead to serious physical, emotional, and psychological consequences for the aggrieved and severe punishment for the accused. The military services' handling of alleged sexual assault incidents is particularly important because it promotes good order and discipline, demonstrates a commitment to accountability, and helps to engender confidence that such allegations are taken seriously. According to judge advocates from each of the military services,[1] the administration of justice in sexual assault cases is often complicated by the limited availability of forensic evidence and by conflicting testimonial accounts by the parties involved. In light of the unique challenges that arise while investigating and adjudicating these types of cases, a vigilant approach is vital in order to help ensure the proper administration of justice and to send the appropriate message to servicemembers regarding sexual assault prevention and response in the military services.

Since 2004, Congress has passed various legislative provisions related to the military services' investigation and adjudication of sexual assault incidents. For example, provisions in the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 required the Department of Defense (DOD), among other things, to develop a comprehensive policy that covers topics such as the investigation of alleged sexual assault incidents,[2] and to conduct a review of how sexual assault offenses are covered by the Uniform Code of Military Justice.[3] Additionally, we have

[1]For purposes of this report, we use "military services" to refer collectively to the Army, the Navy, the Marine Corps, and the Air Force. While the Coast Guard is a military service, it generally falls under the control of the Department of Homeland Security and not DOD. We did not include the Coast Guard in the scope of this engagement.

[2]Pub. L. No. 108-375, § 577 (2004).

[3]Pub. L. No. 108-375, § 571 (2004).

conducted a number of reviews to help inform congressional deliberations on issues related to sexual assault in the military. In 2008, we issued two reports that generally address the prevention of and response to sexual assault: the first, issued in January,[4] addresses sexual assault at the DOD and Coast Guard academies, and the second, issued in August,[5] addresses sexual assault in the military and Coast Guard services. In February 2010[6] we reported on DOD and Coast Guard efforts to strengthen the implementation and oversight of their respective sexual assault prevention and response programs, and on the status of their efforts to implement the recommendations made in our August 2008 report.[7] As a supplement to these reports, we testified three times before the Subcommittee on National Security and Foreign Affairs, House Committee on Oversight and Government Reform, on our findings. A list of these and other related GAO products is included at the end of this report.

In October 2009, the National Defense Authorization Act for Fiscal Year 2010[8] included a mandate for GAO to review various aspects of the military services' investigations and adjudications of alleged sexual assault incidents involving servicemembers. In October 2010, we satisfied our mandate by providing the House and Senate Committees on Armed Services with a briefing that detailed our observations. The House Armed Services Subcommittee on Military Personnel requested that we build on the observations in our briefing to include an assessment of how the military services' investigative and legal policies and procedures are being implemented at military installations. This report responds to the Subcommittee's request and expands on our observations of the military services' investigations and adjudications of alleged sexual assault incidents. Specifically, it addresses the extent to which (1) DOD is conducting oversight of the military services' investigative organizations

[4]GAO, *Military Personnel: The DOD and Coast Guard Academies Have Taken Steps to Address Incidents of Sexual Harassment and Assault, but Greater Federal Oversight Is Needed*, GAO-08-296 (Washington, D.C.: Jan. 17, 2008).

[5]GAO, *Military Personnel: DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs Face Implementation and Oversight Challenges*, GAO-08-924 (Washington, D.C.: Aug. 29, 2008).

[6]GAO, *Military Personnel: Additional Actions Are Needed to Strengthen DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs*, GAO-10-215 (Washington, D.C.: Feb. 3, 2010).

[7]GAO-08-924.

[8]Pub. L. No. 111-84, § 567 (2010).

and (2) the military services provide resources for investigations and adjudications of alleged sexual assault incidents. During the course of our review, we identified an additional issue regarding revisions to the Uniform Code of Military Justice that may be complicating the adjudication of alleged sexual assault incidents.

For our first objective, we reviewed and analyzed Office of the Secretary of Defense (OSD) and DOD Inspector General policies, guidance, and procedures to identify department-level oversight responsibilities for the military criminal investigative organizations. We also reviewed and analyzed each of the service's investigative policies and procedures to identify the extent to which similarities and differences exist in their respective processes for conducting sexual assault investigations. Further, we interviewed senior officials in OSD, the DOD Inspector General's Office, and the military services to gain their perspectives on responsibilities for and oversight of the military criminal investigative organizations, and how the services' investigative policies and procedures compare. For our second objective, we reviewed OSD, DOD Inspector General, and the military services' policies to identify responsibilities and processes for providing personnel and fiscal resources for investigations and adjudications of alleged sexual assault incidents. We obtained and analyzed budget information from OSD and the military services to determine the extent and consistency of funding that has been provided to enhance investigations and adjudications of alleged sexual assault incidents. We also interviewed OSD, DOD Inspector General, and senior military service officials to obtain their perspectives on the provision of resources for investigations and adjudications of alleged sexual incidents. To address the additional issue regarding a 2006 revision to Article 120 of the Uniform Code of Military Justice, we reviewed the text of the statute and the corresponding sections of the *Manual for Courts-Martial* that were effective before and after the amendment. We also reviewed DOD's fiscal years 2011 and 2012 legislative proposals for amending Article 120 in order to understand DOD's concerns with the current version of Article 120. We also interviewed senior officials from OSD and a total of 48 judge advocates and DOD civilian lawyers at the services' headquarters and at five selected installations to gain their perspectives on the impact of the amended Article 120 on adjudications of sexual assault cases. Further information on our scope and methodology can be found in appendix I.

We conducted this performance audit from April 2010 through June 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our

findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

The Military Justice System

The military justice system is governed by a collection of statutes and regulations, including the Uniform Code of Military Justice, which is codified in Title 10 of the United States Code.[9] According to the *Manual for Courts-Martial*, the purpose of military law is to promote justice, to assist in maintaining good order and discipline in the armed forces, to promote efficiency and effectiveness in the military establishment, and thereby to strengthen the national security of the United States.[10] All members of the armed forces are subject to the Uniform Code of Military Justice, including the punitive articles that define specific offenses. The punitive articles include offenses similar to those found in civilian criminal law (e.g., murder, rape, wrongful use of controlled substances, larceny, and drunken driving) as well as other offenses that specifically affect good order and discipline in the military (e.g., absence without leave, disrespect toward superior commissioned officer, or dereliction of duty).

When a servicemember is accused of an offense such as sexual assault, military criminal investigators, commanding officers, and military lawyers—known as judge advocates—have responsibilities related to the investigation and adjudication of the alleged criminal conduct. An investigation is usually conducted by one of the three military criminal investigative organizations—the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service,[11] or the Air Force Office of Special Investigations. Each organization has criminal investigators who are responsible for interviewing witnesses, alleged victims, and suspects, and gathering physical evidence. These investigators present the results of the completed investigation to the commanding officer of an accused servicemember for disposition. Military

[9]Chapter 47 of Title 10 of the U.S. Code.

[10]*Manual for Courts-Martial United States* (2008 Edition).

[11]The Naval Criminal Investigative Service has responsibility for investigating alleged sexual assault incidents that occur in the Navy and Marine Corps.

commanding officers are responsible for good order and discipline in their commands, and they have a number of judicial and administrative options at their disposal. Commanding officers have access to judge advocates who may advise throughout the process of determining an appropriate disposition for an alleged offense, but ultimately, commanding officers are accountable for disposing of allegations of offenses in a timely manner and at the lowest appropriate level of disposition using one of the following options:

- **No action:** A commanding officer may decide to take no action.
- **Administrative action:** A commanding officer may elect to take administrative actions, which include corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, the administrative withholding of privileges, or any combination of the above.
- **Nonjudicial punishment:** Article 15 of the Uniform Code of Military Justice allows for a number of disciplinary actions, or "nonjudicial punishments," that are more serious than corrective measures taken in an administrative action, but less serious than a trial by court-martial. Nonjudicial punishments include admonition, reprimand, reducing a member's grade, forfeiture of pay, adding extra duty, and imposing restrictions on freedom.
- **Court-martial:** This option provides for the most severe punishments, including death, prison time, forfeiture of pay and allowances, reduction in rank, and punitive separation from military service. Commanders may choose from three types of courts-martial—summary, special, or general. While commanders have access to judge advocates who may advise them throughout the process of determining the appropriate disposition for an alleged offense, other judge advocates serve as trial and defense counsel in both special and general courts-martial.

Investigative and Judge Advocate Guidance and Procedures

The military services' guidance addressing investigative procedures along with the Uniform Code of Military Justice are generally applicable to criminal activity involving servicemembers. Further, each service provides sexual assault–specific guidance as well as standard operating and

reporting procedures for responding to alleged sexual assault incidents. Guidance for each military criminal investigative organization[12] specifically provides details on how sexual assault incidents should be investigated, and stipulates that investigative personnel must respond to all reported sexual assault complaints.

DOD and military service policies and procedures for investigating and adjudicating alleged sexual assault incidents also apply to combat areas of interest.[13] DOD Directive 6495.01[14] notes that it is DOD's policy to provide an immediate, trained response capability for each report of sexual assault in all locations, including deployed locations, and it charges the secretaries of the military departments with programming appropriate resources to enable the combatant commands to achieve compliance with the policies set forth in the directive. Each military service also deploys investigators and conducts sexual assault criminal investigations in combat areas of interest and investigations in multiservice environments, and these investigations often cross service lines. Given the preponderance of Army personnel among servicemembers in theater, however, most sexual assault criminal investigations involving personnel from any service are initiated by the Army. Each military service also provides legal support in combat areas of interest, but the availability of judge advocates and the conduct of criminal justice proceedings in combat areas of interest vary, according to service component and operational needs. Service policies for military operations describe ways in which legal support is provided to the deployable force, sourced either through the deployment of personnel or by personnel situated at another location.

[12]DOD Instruction 5505.03, *Initiation of Investigations by Military Criminal Investigative Organizations* (Mar. 24, 2011), defines military criminal investigative organizations as the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.

[13]DOD designates the following countries as "combat areas of interest": Bahrain, Iraq, Jordan, Lebanon, Syria, Yemen, Egypt, Djibouti, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates, Iran, Pakistan, Afghanistan, and Kyrgyzstan.

[14]DOD Directive 6495.01, *Sexual Assault Prevention and Response (SAPR) Program* (Oct. 6, 2005).

Roles and Responsibilities of the DOD Inspector General

The DOD Office of the Inspector General was established by the Department of Defense Authorization Act of 1983[15] to, among other things, serve as the principal adviser to the Secretary of Defense on matters relating to the prevention and detection of fraud, waste, and abuse, and to be an independent organization responsible for conducting and supervising audits and investigations of the programs and operations of the department. DOD Directive 5106.01[16] specifies that the DOD Inspector General shall establish policy and provide guidance on all DOD activities relating to criminal investigations and law enforcement programs, which include activities of the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations. The DOD Inspector General's Office is divided into the following areas, each of which is headed by a deputy, assistant, or special inspector general: auditing; investigations; policy and oversight; intelligence; administration and management; communications and congressional liaison; general counsel; office of professional responsibility; special plans and operations; administrative investigations; and southwest Asia.

DOD's Sexual Assault Prevention and Response Program

Within OSD, the Under Secretary of Defense for Personnel and Readiness has the responsibility for developing the overall policy and guidance for the department's sexual assault prevention and response program except for criminal investigative policy matters assigned to the DOD Inspector General. Under the Office of the Under Secretary of Defense for Personnel and Readiness, OSD's Sexual Assault Prevention and Response Office (within the Office of the Deputy Under Secretary of Defense for Plans) serves as the department's single point of responsibility for most sexual assault policy matters.[17] DOD guidance defines sexual assault, for purposes of specified guidance and sexual assault prevention and response awareness training and education, as intentional sexual contact, characterized by the use of force, threats, intimidation, or abuse of authority, or by situations in which the victim does not or cannot consent.

[15]Pub. L. No. 97-252, codified at Appendix 3 of Title 5 of the United States Code.

[16]Department of Defense Directive 5106.01, *Inspector General of the Department of Defense* (Apr. 13, 2006).

[17]Except for legal processes provided under the Uniform Code of Military Justice and *Manual for Courts-Martial*, and criminal investigative policy matters that are assigned to the Judge Advocates General of the military services and DOD's Inspector General, respectively.

Sexual assault includes rape, forcible sodomy (oral or anal sex), and other unwanted sexual contact that is aggravated, abusive, or wrongful (to include unwanted and inappropriate sexual contact), or attempts to commit these acts. The definition generally encompasses offenses classified under Articles 120 and 125 of the Uniform Code of Military Justice.

The Secretary of Defense is required by law to implement a centralized, case-level database for the collection and maintenance of information regarding sexual assaults involving members of the armed forces, and to make that database available to the Sexual Assault Prevention and Response Office.[18] The law specifies that the database include information, if available, about the nature of the assault, the victim, the offender, and the outcome of any legal proceedings associated with the assault. In February 2010, we reported[19] on and testified[20] that although the office had taken preliminary steps to develop this database, it had not been implemented by the statutorily mandated deadline of January 2010. Further, we made a number of recommendations in our February 2010 report[21] pertaining to DOD's adherence to key system acquisition best practices when developing this database. DOD concurred with all of these recommendations. In March 2011, the Under Secretary of Defense for Personnel and Readiness provided Congress with a status report of the department's efforts to implement the database. Specifically, the status report noted that a contract was awarded in August 2010 for the development, implementation, and maintenance of the database, and that the database was expected to be functional by August 2012. The report also highlighted the department's adherence to key information technology management practices, and that its actions were consistent with the recommendations in our own February 2010 report.

[18]The Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (2008), Pub. L. No. 110-417, § 563 (2008).

[19]GAO-10-215.

[20]GAO, *Military Personnel: DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs Need to Be Further Strengthened*, GAO-10-405T (Washington, D.C.: Feb. 24, 2010).

[21]GAO-10-215.

DOD Inspector General's Office Has Not Performed Its Designated Policy Development and Oversight Responsibilities for Sexual Assault Investigations

The DOD Inspector General's Office has not carried out its responsibilities pursuant to DOD Instruction 6495.02,[22] which was required by statute.[23] The instruction directs that office to develop policy for the DOD criminal investigative organizations, to oversee sexual assault investigations, and to provide oversight over sexual assault training within the DOD investigative community. Specifically, the DOD Inspector General's Office has developed some guidance on the general conduct of criminal investigations, but it has not developed a policy specifically for investigations of sexual assault incidents. Further, the DOD Inspector General's Office is not monitoring or evaluating the services' investigations of sexual assault and the related training of investigators.[24]

DOD Inspector General's Office Has Not Developed a Policy for Sexual Assault Investigations

The National Defense Authorization Act for Fiscal Year 2005 required the Secretary of Defense to develop a comprehensive policy for sexual assault prevention and response that addresses, among other things, command and law enforcement personnel's investigation of such complaints.[25] In response to this requirement, in June 2006, OSD's Sexual Assault Prevention and Response Office published DOD Instruction 6495.02, in which it specifies that the DOD Inspector General's Office shall develop sexual assault–related policy for the services' criminal investigative organizations. While the DOD Inspector General's Office has developed some guidance on the general conduct of criminal investigations, it has not developed policy that specifically addresses sexual assault, as required by DOD's instruction. For example, the DOD Inspector General's Office has developed an instruction that outlines responsibilities and requirements

[22]DOD Instruction 6495.02, *Sexual Assault Prevention and Response Procedures* (June 23, 2006).

[23]Pub. L. No. 108-375, § 577 (2004).

[24]During the course of our review, we also found that the DOD Inspector General's Office is not performing its responsibilities for monitoring and evaluating program performance with respect to all DOD activities relating to criminal investigation programs as required by section 5.8 of DOD Directive 5106.01, *Inspector General of the Department of Defense* (Apr. 13, 2006).

[25]Pub. L. No. 108-375, § 577 (2004).

for collecting DNA in criminal investigations[26] and another that prescribes procedures for reporting offender criminal history data.[27]

These instructions and other guidance from the DOD Inspector General's Office have relevance to investigations of sexual assault, but neither is tailored to the unique circumstances that are typically associated with this crime. For example, the DOD Inspector General's instruction on DNA collection generically delineates requirements for consulting with a judge advocate before testing evidence, where evidence should be sent for testing, and that Privacy Act information must be provided to any individual providing a DNA sample. However, the instruction does not identify procedural differences associated with evidence collection in cases of sexual assault. Senior officials from the DOD Inspector General's Office stated that when the services' military investigative organizations notify their office of a concern regarding investigative practices, the office then takes action, which has in the past resulted in guidance being issued. The officials also confirmed, however, that there is no DOD-level policy or guidance specifically addressing how sexual assault investigations should be conducted.

Absent DOD-level guidance, the services have individually developed and implemented their own guidance, and in some cases they take different approaches in conducting their investigations. Specifically, we determined that the services differed in their approaches with regard to six out of nine elements of investigative policies and procedures, which we selected based on their applicability to sexual assault investigations and the consistency with which they were discussed by agency officials.[28] For example, the Army's Criminal Investigation Command will assess a case as

[26]DOD Instruction 5505.14, *Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations* (May 27, 2010).

[27]DOD Instruction 5505.11, *Fingerprint Card and Final Disposition Report Submission Requirements* (Jul. 9, 2010).

[28]The elements that we selected for our comparison do not represent an exhaustive list of criminal investigative policies and procedures. These elements are intended only as examples and to illustrate that differences exist in how the services approach criminal investigations.

founded or unfounded[29]—that is, whether the alleged criminal offense is substantiated by an investigation—prior to forwarding it for adjudication. In contrast, the Navy's and Air Force's investigative organizations told us that they do not make a similar determination because they believe that it would conflict with their role as independent fact finders. Additionally, each service has experts available for consultation during a sexual assault investigation, but only the Air Force requires its investigators to consult with such experts. See figure 1 for more examples of the variances that we identified in the military services' investigative policies and procedures.

[29]"Founded" offenses are defined by the Army as criminal offenses that the commission of which has been adequately substantiated by police investigation. The determination that a founded offense exists is made by the appropriate police agency and does not depend on judicial decision. An offense is considered "unfounded" by the Army when it is determined by its Criminal Investigation Command, based on a review of the results of a criminal investigation, that the alleged criminal offense did not occur.

Figure 1: Comparison of Selected Elements of Military Service Investigative Policies and Procedures That Relate to Sexual Assault Incidents

	Army Criminal Investigation Command (CID)	Air Force Office of Special Investigations (AFOSI)	Naval Criminal Investigative Service (NCIS)[a]
Investigative guidance with sexual assault-specific provisions	Yes.	Yes.	Yes.
Determining a case founded or unfounded	CID agents make the determination on whether a case is founded or unfounded, in consultation with a judge advocate, before closing a case.	Founded and unfounded determinations are not applicable for cases investigated by AFOSI agents.	Founded and unfounded determinations are not applicable for cases investigated by NCIS agents.
Titling of subjects[b]	While CID's guidance is not specific in timing, agents told us they title subjects as soon as there is credible evidence to support an alleged crime occurred.	A subject is titled when it is determined that he/she is a logical suspect based on credible information.	A subject is titled when the investigator determines that there is credible evidence to support an alleged crime occurred.
Responsibility for and frequency of updating victim on investigation	• CID agent: Once every 30 days during investigation. • Battalion commander: Once every 30 days until final disposition.	• No specific requirement for AFOSI agents to provide victim with case updates. • Victim's unit commander charged with ensuring that victim receives, at a minimum, monthly updates on the status of all related investigative, medical, legal, and command proceedings until final disposition.	• NCIS agent: Monthly updates on the status of the investigation until the active investigation is complete. • Commanders charged with ensuring victim receives monthly updates on the case.
Requirement to provide victim with formal notification of rights	Agents are required to provide all victims with DD Form 2701, "Initial Information for Victims and Witnesses of a Crime."	Agents are required to provide all victims with DD Form 2701, "Initial Information for Victims and Witnesses of a Crime."	Guidance suggests that agents should provide victims with a Victim Witness Assistance Program pamphlet, which outlines the rights of crime victims.
Forensic evidence maintenance standards	**Unrestricted cases[c]:** • Unsolved rapes and aggravated sexual assaults: Evidence retained indefinitely. • Solved rapes: Evidence retained until disposition approval. **Restricted cases[d]:** • Evidence stored by the installation law enforcement authority for 1 year.[e]	**Unrestricted cases:** • AFOSI's guidance does not specify timeframes for maintaining evidence in these cases, but officials told us that evidence is disposed of when no longer required, after a judge advocate approves the disposition. **Restricted cases:** • Evidence is stored for at least 1 year, then destroyed if victim does not convert to an unrestricted report after being notified of the expiration of the storage period.[e]	**Unrestricted cases:** • Unsolved rape cases: Evidence will be held for a minimum of 50 years. **Restricted cases:** • Forensic examination kits are stored for 12 months, then destroyed if victim does not convert to an unrestricted report.[e]
Expert consultation requirements	Guidance does not require expert consultation, but in FY 2009 CID authorized positions for seven highly qualified experts who will advise and train agents on sexual assault investigations.	Any rape investigation must be coordinated with a forensic science consultant to provide guidance on evidence collection.	Policy does not require expert consultation, but NCIS maintains a cadre of investigators whose primary responsibility is to conduct sexual assault investigations.
Requirement for initial and refresher Sexual Assault Prevention and Response training	Yes.	Yes.	Yes.
Requirement for specialized training on investigating sexual assault incidents	Yes.	Yes.	Yes.

Source: GAO analysis of the military services' investigative organizations' policies and procedures.

[a]The Naval Criminal Investigative Service (NCIS) has responsibility for investigating alleged sexual assault incidents that occur in the Navy and Marine Corps.

[b]Titling of a subject is the process of placing a subject's name in the title block of a related criminal investigative report.

[c]Unrestricted reporting option entails the notification of the chain of command and may trigger a criminal investigation.

[d]Restricted reporting option allows victims of sexual assault to disclose a sexual assault incident to specific individuals and receive medical care and other victim advocacy services without initiating a criminal investigation.

*The services' standards for maintaining restricted evidence are based upon a requirement contained in DODI 6495.02, which states that evidence shall be stored until a victim changes to unrestricted reporting, but may not exceed one year from the date of the victim's restricted report of the sexual assault.

We discussed the services' investigative policies and procedures with senior officials in the DOD Inspector General's Investigative Policy and Oversight Office who told us that a DOD-level policy on criminal investigations is unnecessary, since each of the service's criminal investigative organizations has developed and implemented its own policy. These officials further stated that they do not believe the quality or the outcome of the services' criminal investigations to be substantively affected by the differences that we identified. However, senior officials from the services' investigative organizations told us that there is no one person in charge of the services' criminal investigative organizations at the DOD level, and noted that it may be a problem at the DOD level because it limits, if not eliminates, the execution of centralized oversight. Without a DOD-wide investigative policy, the DOD Inspector General's Office does not have a foundation on which it can base such a determination and help assure decision makers that sexual assault investigations are being consistently conducted.

The DOD Inspector General's Office Is Not Conducting Oversight of Sexual Assault Investigations or Related Training

In addition to its responsibilities for developing policy, DOD Instruction 6495.02 also specifies that the DOD Inspector General's Office shall oversee sexual assault investigations and related training within the DOD investigative community.[30] However, the DOD Inspector General's Office is not performing these responsibilities primarily due to its reported focus on other, higher priorities.[31] For example, DOD reported[32] that in fiscal year 2010, the services' criminal investigative organizations collectively completed 2,594 investigations of alleged sexual assault.[33] However, we

[30]DOD Instruction 6495.02, *Sexual Assault Prevention and Response Procedures*, sec. 5.6 (Jun. 23, 2006).

[31]Department of Defense Office of the Inspector General, *Department of Defense Inspector General Requirements Plan for Increased Oversight Capabilities Fiscal Years 2011-2016* (Aug. 31, 2010).

[32]Department of Defense, *Fiscal Year 2010 Annual Report on Sexual Assault in the Military* (March 2011).

[33]In fiscal year 2010, DOD reported that the services' criminal investigative organizations collectively completed 2,594 investigations of alleged sexual assault. Of these investigations, 1,614 investigations involved cases that were reported in fiscal year 2010, while the remaining 980 investigations completed originated prior to fiscal year 2010.

found no evidence that the DOD Inspector General's Office conducted oversight of any of these investigations—a finding with which senior officials in the Inspector General's Office concurred. We also found that the DOD Inspector General's Office is not conducting its designated oversight responsibilities for the services' sexual assault–specific training programs. For example, each of the services has developed and implemented sexual assault–specific training for its respective investigators, but the DOD Inspector General's Office has not worked with the services to assess the content or the effectiveness of the training that is being provided. Further, the DOD Inspector General's Office has not assessed the training that is provided by the services on sexual assault investigations, such as evaluating how many agents are currently meeting a minimum standard of competency. (For a discussion of the services' sexual assault–specific training initiatives, see a later section of this report.)

In August 2010, the DOD Inspector General's Office published its *Requirements Plan for Increased Oversight Capabilities*, in which it noted that proactive evaluations of the services' criminal investigative organizations had been lacking for several years because of other, higher priorities, such as an increase in demand for Inspector General services to support the department's overseas contingency operations. The Requirements Plan includes a general outline of program objectives and funding that the DOD Inspector General's Office estimates are needed to augment its oversight capabilities, but it does not specify plans for conducting oversight of sexual assault investigations, including goals, implementation steps, key milestones, or performance standards. Our prior work has demonstrated that substantive planning is necessary to establish clear goals and objectives as well as performance data that are needed for gauging program progress and identifying weaknesses.[34] However, senior officials in the DOD Inspector General's Office told us that they had no plans to expand its oversight of the services' investigative efforts, including those related to sexual assault, because they do not expect to receive any additional resources, given the current fiscal challenges of the federal government. Until the DOD Inspector General's Office develops and implements an action plan, which includes a process or standards by which it can evaluate the performance of the services'

[34]GAO, *A Call for Stewardship: Enhancing the Federal Government's Ability to Address Key Fiscal and Other 21st Century Challenges*, GAO-08-93SP (Washington, D.C.: December 2007).

investigative organizations, it will remain limited in its ability to oversee and initiate any needed corrective action, and to help ensure consistency and accountability.

The Services Are Not Maximizing Opportunities to Leverage Resources Provided for Investigations and Adjudications of Sexual Assault Incidents

Consistent with the Secretary of Defense's priorities for sexual assault prevention and response, the military services provide various resources to support their investigations and adjudications of alleged sexual assault incidents. Specifically, the services have provided experts who advise and assist personnel in the investigation and adjudication of sexual assault incidents, as well as fiscal resources to enhance investigators' and judge advocates' response to such incidents. However, the services' investigative organizations and judge advocate offices are not fully capitalizing on available opportunities to leverage each other's expertise and limited resources.

The Military Services Provide Personnel Who Advise and Assist on Investigations and Adjudications of Sexual Assault

The military services' investigative and judge advocate offices are largely organized and resourced according to their general responsibilities for investigating and adjudicating all criminal activity involving servicemembers. But each service has provided its investigators and judge advocates with additional resources that are specifically designed to enhance investigations and adjudications of alleged sexual assault incidents. In fiscal year 2008, the Secretary of Defense identified four priorities for sexual assault prevention and response programming, including one to help ensure investigator training and resourcing and another to help ensure trial counsel training and resourcing.[35] In accordance with these priorities, the military services have provided personnel who support investigators' and judge advocates' handling of alleged incidents of sexual assault. Specifically, the Army, the Navy, and the Air Force have authorized additional positions within their respective investigative organizations for personnel who will focus primarily on handling sexual assault cases. See table 1 for details on the services' efforts to augment sexual assault investigative expertise.

[35]Department of Defense, *Department of Defense Fiscal Year 2009 Annual Report on Sexual Assaults in the Military* (Washington, D.C.: March 2010). The other two priorities announced by the Secretary of Defense were reducing stigma associated with sexual assault reporting and ensuring sufficient commander training.

Table 1: Status of Service Efforts to Augment Sexual Assault Investigative Expertise (as of June 2011)

Service	Status of positions authorized	Purpose of positions
Army	• Twenty-five of 30 special victim unit investigator billets have been filled • Seven of 7 highly qualified expert[a] billets have been filled • Thirty-three of 35 laboratory examiner and technician positions have been filled • Twenty-one of 21 forensic science specialists	• To focus exclusively on sexual assault cases • To advise Army leadership on and support the coordination of training in sexual assault investigations • To focus on sexual assault forensic examinations, including DNA examinations and processing • To provide forensic science support to field investigators
Navy	• Fifty-six of 56 family and sexual violence agent billets have been filled • Seven of 7 forensic consultant agent positions have been filled	• To focus exclusively on sexual assault and family violence cases • To provide specialized forensic science support to field investigators
Air Force	• Eighteen of 22 sexual offense investigators have been hired (the other four are projected to be hired by the end of fiscal year 2011) • Twelve of 12 forensic science specialists • One of 2 sexual assault specialists have been hired (the second is projected to be hired by the end of fiscal year 2011)	• To focus primarily on sexual assault offenses at Air Force installations with the highest historical sex crimes caseloads • To provide specialized forensic science support to field investigators • One to train investigators on sex crime cases, and another to provide worldwide support to major or especially complex sexual assault investigations

Source: GAO summary of the military services' personnel data.

[a]According to a memo published in 2006 by the Under Secretary of Defense for Personnel and Readiness, a "highly qualified expert" is defined as an individual who possesses uncommon and recognized knowledge, skills, and experience in an occupational field and judgment that is accorded authority and status by peers or the public. Such an individual has substantive experience, education, or both; is generally credentialed; and has proven ability in a particular field or fields.

Senior officials at each of the service's investigative organizations provided positive perspectives on the addition of sexual assault–specific positions. For example, senior Army officials at Fort Jackson, South Carolina, told us that the civilian special investigators are especially important in that they provide continuity at the installation's criminal investigation offices, whereas military investigators typically rotate in and out every 2 years. We met with Navy investigators in the Family and Sexual Violence Program at Camp Lejeune, North Carolina, who told us that their senior-level investigators share their expertise with junior investigators by serving as mentors, which ultimately enhances their sexual assault investigative skills. Further, the Air Force employs forensic science consultants and requires its investigators to work with a consultant immediately after being notified of a sexual assault incident. Investigators at Sheppard Air Force Base in Texas told us that the consultants have attained master's degrees in forensic science, and that these consultants provide valuable insights on conducting sexual assault investigations.

The military services' judge advocate offices have also taken steps to enhance the expertise of counsel assigned to sexual assault cases. Specifically, each military service has created positions within its respective trial counsel office for personnel who specialize in the prosecution of sexual assault cases. For example, in fiscal year 2009, the Secretary of the Army directed that 15 special victim prosecutor positions be authorized—all of which have been filled—to enhance the Army's focus on the litigation of sexual assault and family violence cases. Senior officials in the Army's Judge Advocate General's Office and at Army installations we visited told us that the personnel filling these positions are high-demand assets in the prosecution of sexual assault cases, and that the Army has authorized 8 additional special victim prosecutor positions because of the program's success. In addition, the Army hired a total of seven civilian highly qualified experts to provide assistance and training to both trial and defense counsel. The Navy hired two civilian sexual assault litigation specialists who provide support to Navy trial counsel handling sexual assault cases at installations worldwide. The Marine Corps' judge advocate division was denied its request for a sexual assault litigation expert in fiscal year 2011 because of funding limitations; however, senior Marine Corps judge advocate officials told us that they have access to and utilize the Navy's experts. The Air Force established a group of 16 senior trial counsel who travel to installations to assist junior litigators in prosecuting sexual assault cases. These are positive examples of the services' continued efforts to address sexual assault. It is too early to assess their effectiveness, however, as the services are still in the process of funding these initiatives and, as we have previously reported, performance measures for sexual assault prevention and response programs are still being developed.[36]

Investigative and Legal Organizations Receive Fiscal Resources to Enhance Investigations and Adjudications of Sexual Assault Incidents

In addition to personnel, the services' investigative and legal organizations have received fiscal resources, beyond their regular operating budgets, for initiatives to enhance investigations and adjudications of alleged sexual assault incidents. These funds are provided through multiple sources and vary annually relative to other programmatic priorities. According to the Army Sexual Harassment/Assault Response and Prevention Program Manager, in fiscal year 2009, the Army's Criminal Investigation Command received $4.4 million above its general operating budget to redesign investigator training. The Naval Criminal Investigative Service received

[36]GAO-10-215.

approximately $22,000 in fiscal year 2010 from the Department of the Navy's Sexual Assault Prevention and Response Office, to send its investigators to a class, put on by its Mobile Training Team, related to sexual assault investigations.[37] Additionally, the Naval Criminal Investigative Service funded an 8-day advanced family and sexual violence training course, which was attended by 42 investigators. Senior officials from the Air Force Office of Special Investigations told us that they utilized a portion of their $1.1 million fiscal year 2010 advanced investigations training budget—including $300,000 received from the Air Force Sexual Assault Prevention and Response Program—to fund training courses related to the investigation of sexual assault. These courses included two 2-week advanced general crimes investigations courses that covered such topics as victim sensitivity and how to process reports containing inconsistencies, as well as a special agent laboratory training course that covered advanced protocols for collecting physical and biological evidence in sexual assaults cases and other crimes of violence.

Judge advocates, like military criminal investigators, have received funding from multiple sources to conduct initial and periodic refresher training on their responsibilities in responding to an alleged sexual assault and for other advanced courses designed to improve their ability to litigate sexual assault cases. For example, OSD's Sexual Assault Prevention and Response Office provided the Navy, the Marine Corps, and the Air Force with nearly $3 million in fiscal years 2009 and 2010 to support service efforts to enhance training for trial counsel on the prosecution of sexual assault cases.[38] Each of the services used this and other service-level funding to implement training initiatives for judge advocates handling sexual assault cases. For example, the Army judge advocate office used the $2.1 million it received from the Army's Sexual Harassment/Assault Response and Prevention program in fiscal year 2010 for the improvement of sexual assault litigation efforts, including conducting seven conferences led by subject matter experts who trained Army prosecutors on the litigation of special victim sexual assault cases. The Navy's judge advocate office used a portion of the $350,000 that it received from OSD's Sexual

[37]According to Department of the Navy officials, the $22,000 provided in fiscal year 2010 was part of the $100,000 provided by the Department of the Navy Sexual Assault Prevention and Response Office to fund the attendance of Navy and Marine Corps Trial Counsel and Naval Criminal Investigative Service agents at this training.

[38]OSD officials said that the Army was also offered funding but declined, noting that it had already fully funded its judge advocate training in fiscal years 2009 and 2010.

Assault Prevention and Response Office in fiscal year 2009 to provide a course at the Naval Justice School for Navy and Marine prosecutors on handling complex sexual assault cases. In addition, the Navy's judge advocate office used some of its general program funds to send defense counsel to the defense-specific portions of this sexual assault litigation course. The Air Force's judge advocate office used nearly half of the $2.3 million provided to the services by OSD's Sexual Assault Prevention and Response Office in fiscal year 2009 to develop joint training on sexual assault prosecution for each of the service's trial counsel. Separate Air Force funds were also applied to the development of this joint training program, which includes modules on collaborating with criminal investigators, case strategy, and working with victims, among other topics.

Service Investigative Organizations and Judge Advocate Offices Are Not Maximizing Opportunities to Leverage Expertise and Limited Resources

The services have taken positive steps to enhance investigations and adjudications of alleged sexual assault incidents, but they have not fully capitalized on existing opportunities to leverage each other's expertise and limited resources. Our prior work has shown that by exploring ways to collaborate, including leveraging resources, organizations can obtain additional benefits that would not have been available if they were working separately.[39] Recognizing the potential to achieve such benefits, the Secretary of Defense recommended, as part of the 2005 Base Realignment and Closure process, that the services' investigative organizations colocate to Marine Corps Base Quantico. According to the justification set out by the Secretary of Defense in the Base Realignment and Closure Commission's report, the co-location would produce operational synergies by locating entities with similar or related missions in one place.[40] The Base Realignment and Closure Commission subsequently adopted a modified version of the Secretary's recommendation.[41] However, senior officials from each service's investigative organization told us that there are currently no plans to use opportunities such as this co-location to develop joint initiatives, including advanced-level training on investigating sexual assaults, that could allow

[39]GAO, *Results-Oriented Government: Practices That Can Help Enhance and Sustain Collaboration among Federal Agencies*, GAO-06-15 (Washington, D.C.: Oct. 21, 2005).

[40]Defense Base Realignment and Closure Commission, *2005 Defense Base Realignment and Closure Commission Report* (Arlington, Va.: Sept. 8, 2005).

[41]While the Base Realignment and Closure Commission modified the Secretary of Defense's recommendation, it substantially adopted the proposal to co-locate the services' investigative organizations to Quantico.

the services to better leverage each other's expertise and limited resources to achieve the operational synergies noted by the Secretary of Defense. Further, the services reported in their fiscal year 2012 budget justifications to Congress that the co-location efforts have cost over $426 million,[42] and produced a total of about $53 million in savings from fiscal years 2006 to 2011, which were derived, in part, through the reduction in costs to support infrastructure. An additional $5.6 million in net annual recurring savings[43] is projected after this co-location is completed in fiscal year 2011. However, as we have previously reported, we believe that DOD's net annual recurring savings estimates may be overstated because they include savings from eliminating military personnel positions without corresponding decreases in end strength.[44] The low amount of savings estimated relative to the high cost of implementing the initiative underscores the importance of continued efforts by the services to maximize and extend the cost saving once the co-location is completed by September 2011.

Like investigators, judge advocates perform similar responsibilities that are based on a common set of legal principles. During our review, senior officials in the judge advocate general offices told us that the services' judge advocates regularly communicate on issues such as sexual assault and collaborate, where appropriate. For example, in fiscal year 2010, the services collaborated to develop an interactive training program that uses a simulated court-martial trial for a sexual assault offense to develop and test judge advocates' competence at each stage of the trial. While this is a positive step toward better leveraging of each other's expertise and resources, the services have no formal plan to help ensure that such efforts will be sustained. Without such plans for mutually leveraging resources, the efficiencies to be achieved from efforts such as a co-location will be limited.

[42]The cost of the co-location spans a period from fiscal year 2006 to fiscal year 2011, and only includes costs associated with colocating the services' investigative organizations. Further, these costs include the construction of the new facility at Marine Corps Base Quantico, the purchase of necessary equipment, and the installation of the necessary information technology assets.

[43]The net annual recurring savings were calculated using OSD data.

[44]GAO, *Military Base Realignments and Closures: DOD Faces Challenges in Implementing Recommendations on Time and Is Not Consistently Updating Savings Estimates*, GAO-09-217 (Washington, D.C.: Jan. 30, 2009).

DOD Has Expressed Concerns with Article 120 Revisions

During the course of our review, service judge advocates consistently told us that a 2007 revision to Article 120 of the Uniform Code of Military Justice, the article encompassing most sexual assault crimes, has complicated the process for adjudicating sexual assault incidents. Concerns about the 2007 revision have also been raised by the 2009 Defense Task Force on Sexual Assault in the Military Services and the Joint Service Committee on Military Justice.[45] Additionally, the Court of Appeals for the Armed Forces has recently issued opinions addressing issues with the application of Article 120.

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 directed the Secretary of Defense to review the Uniform Code of Military Justice and the *Manual for Courts-Martial* in order to determine what changes were required to improve the ability of the military justice system to address issues related to sexual assault, and to conform those authorities more closely to other federal laws and regulations that address such issues.[46] The Secretary of Defense subsequently submitted a report, as required, on the review that included proposed revisions as well as the rationale for those revisions. Following that review, the National Defense Authorization Act for Fiscal Year 2006 amended Article 120, effective October 1, 2007.[47] Among other things, the amendment brought certain types of sexual misconduct into the category of sexual assault, including indecent assault, indecent acts or liberties with a child, indecent exposure, and indecent acts with another, which were previously addressed by the Uniform Code of Military Justice's General Article, Article 134.

In a December 2009 report, the Defense Task Force on Sexual Assault in the Military Services recommended a review of the effectiveness of Article

[45]Department of Defense Directive 5500.17, *Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice* (May 3, 2003) establishes the role and mission of the Joint Service Committee on Military Justice. Among its responsibilities, the Joint Service Committee on Military Justice is required to conduct an annual review of the *Manual for Courts-Martial* in light of judicial and legislative developments in civilian and military practice. Under the direction of the DOD General Counsel, the Joint Service Committee consists of voting group members and working group members from the judge advocate general offices of the Navy, Air Force, Army, and Coast Guard and the Staff Judge Advocate to the Commandant of the Marine Corps.

[46]Pub. L. No. 108-375, § 571 (2004).

[47]Pub. L. No. 109-163, § 552 (2006).

120 after learning that practitioners had concerns with the revised article.[48] According to the report, the task force noted that significant issues had evolved related to lesser included offenses as well as the Constitutionality of Article 120. The task force also reported that practitioners consistently advised its members that the new Article 120 is cumbersome and confusing, and stated that prosecutors had expressed concern that the new Article may be causing unwarranted acquittals. Although the task force did not elaborate on these issues, judge advocates consistently expressed similar concerns to us during the course of our work. For example, service judge advocates told us that there is a lack of clarity with regard to the meaning of certain terms in the amended article, which makes it more difficult to prosecute these cases. Moreover, recent opinions issued by the Court of Appeals for the Armed Forces addressed issues that were raised in our discussions with judge advocates, including constitutional issues that may arise related to the burden of proof in certain situations.[49]

Subsequently, the Joint Service Committee on Military Justice, which includes representatives from each of the military service's judge advocate offices, completed a review in fiscal year 2010 in response to the task force's 2009 recommendation and submitted to Congress proposed amendments to Article 120 along with the rationale for the proposed revisions. Among other changes, the revisions they proposed would have split Article 120 into three parts: rape and sexual assault of any person, rape and sexual assault of a child, and other sexual misconduct. According to the committee's proposal, the suggested language would have simplified the statutory treatment of consent, simplified definitions overall, and reduced the number of offenses. Section 561 of a bill for the National Defense Authorization Act for Fiscal Year 2011 (S. 3454) contained language that would have amended Article 120 consistent with the committee's proposal. However, that bill was not enacted. In April 2011, DOD submitted a new proposal for revisions to Article 120 as part of the legislative proposals provided to Congress in conjunction with the department's fiscal year 2012 spending request.

[48]The Defense Task Force on Sexual Assault in the Military Services issued the report in response to section 576 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

[49]See, for example, *U.S. v. Neal*, 68 M.J. 289 (C.A.A.F. 2010); *U.S. v. Medina*, 69 M.J. 462 (C.A.A.F. 2011); and *U.S. v. Prather*, 69 M.J. 338 (C.A.A.F. 2011).

Conclusions

Given that sexual assault crimes undermine the core values of the military services and degrade mission readiness, the effective and efficient administration of military justice for addressing these offenses is essential to the maintenance of good order and discipline in the armed forces, and consequently contributes to the national security of the United States. The inherent complexities of administering justice in sexual assault cases requires the focused attention of DOD and service personnel in order that the investigations and adjudications are properly conducted. DOD and the services have taken a series of positive steps toward enhancing the investigations and adjudications of alleged sexual assault incidents. However, the DOD Inspector General's Office has not instituted oversight of criminal investigations or established comprehensive guidance for conducting sexual assault investigations—both of which are requirements specified in DOD's sexual assault prevention and response policy. If these issues are not addressed, the DOD Inspector General's Office will not be poised to help ensure that a consistent and effective approach is being applied to sexual assault investigations across the services. Further, the current budgetary environment may jeopardize the sustainability of funding for DOD's and the services' initiatives to enhance investigations and adjudications of sexual assault, and until a plan is developed to leverage resources and generate operational synergies among the respective offices, DOD will not be in the best position to help support the continuation of these efforts. Finally, concerns raised by judge advocates and others related to Article 120 and their resolution will continue to be important in the ongoing debate about the need for any future revisions to the Uniform Code of Military Justice.

Recommendations for Executive Action

We recommend that the Secretary of Defense take the following three actions:

- To provide oversight of the services' criminal investigative organizations, direct the DOD Inspector General, in conjunction with the military services, to develop and implement
  - a policy that specifies procedures for conducting sexual assault investigations and
  - clear goals, objectives, and performance data for monitoring and evaluating the services' sexual assault investigations and related training.

- To help ensure the most efficient use of resources for investigations and adjudications of alleged sexual assault incidents, direct the service secretaries to develop a plan for leveraging each other's resources and

expertise for investigating and adjudicating alleged sexual assault incidents, such as by consolidating training programs and sharing resources, including highly qualified experts who are used to advising criminal investigators and judge advocates.

Agency Comments and Our Evaluation

In written comments on a draft of this report, the Office of the Under Secretary of Defense (OSD) for Personnel and Readiness concurred with all three of our recommendations and provided technical comments, which we addressed where appropriate. The DOD Inspector General's Office also provided written comments on a draft of this report in which the Inspector General concurred with the two recommendations that are relevant to its organization. OSD's written comments are reprinted in appendix II, and the DOD Inspector General's Office comments are reprinted in appendix III.

In concurring with our first recommendation that the DOD Inspector General, in conjunction with the military services, develop and implement a policy that specifies procedures for conducting sexual assault investigations, the DOD Inspector General's Office noted its commitment to ensuring that the necessary policies are in place. The DOD Inspector General's Office further added that it is currently coordinating with the military services to develop overarching policy guidance on sexual assault investigations that will address the responsibilities of military commanders and the services' criminal investigative organizations that are critical for successfully responding to sexual assault investigations. We commend the DOD Inspector General's Office for taking immediate steps to address our recommendation, and encourage it to continue taking positive action toward its full implementation.

In concurring with our second recommendation that the DOD Inspector General, in conjunction with the military services, develop and implement clear goals, objectives, and performance data for monitoring and evaluating the services' sexual assault investigations and related training, the DOD Inspector General's Office commented that it is currently preparing its fiscal year 2012 oversight plans, which will include initiatives that correspond to its newly developed policy on sexual assault investigations that is currently in coordination with the military services. Further, the DOD Inspector General's Office noted that it is currently in discussions with the services to develop a peer review–type process that will provide oversight of the services' criminal investigative organizations, including sexual assault investigations. In addition, the DOD Inspector General's Office noted that during fiscal year 2012, it plans to initiate an

evaluation of sexual assault training provided to criminal investigators within DOD.

However, while the DOD Inspector General's Office agreed with our recommendations and described actions it plans to take in response, in its comments it stated that our draft report mischaracterized its performance of its responsibilities. We disagree with this statement and believe our report accurately reflects oversight exercised by the DOD Inspector General's Office. Our report is solely focused on the DOD Inspector General's Office responsibilities for developing policy and conducting oversight of sexual assault investigations. Specifically, we reviewed DOD Inspector General's Office policies related to criminal investigations, including the five it notes in its comments, and our report credits the DOD Inspector General with developing some guidance on the general conduct of criminal investigations that has relevance to investigations of sexual assault. Further, we recognize that the DOD Inspector General's Office initiated other efforts related to sexual assault during our review, including hosting forums, that it notes in its comments, facilitated the development of standardized definitions for sexual assault investigation reporting requirements. However, as we note in our report and it concurs with in its response, the DOD Inspector General's Office has not developed a policy or a process to monitor and evaluate sexual assault investigations and related training, as is specified in DOD guidance. Further, we disagree with the DOD Inspector General's Office comment that investigative policies and procedures are the same for all criminal investigations, including those conducted on incidents of sexual assault. DOD has established policies specific to sexual assault incidents, such as restricted reporting, which necessitates that first responders, including criminal investigators, distinguish how they respond to sexual assault incidents. Additionally, we reiterate that Congress, in the National Defense Authorization Act for Fiscal Year 2005, directed the development of a comprehensive policy to address sexual assault–specific matters in a variety of areas, to include investigations of sexual assault complaints.[50] Finally, the DOD Inspector General's Office is correct in noting that it completed five evaluations from 2003 through 2011 related to sexual assault in the military; however, none of these evaluations were self-initiated but rather were conducted at the direction of others, such as Congress. For all of these reasons, we maintain that our report accurately reflects the extent to which the DOD Inspector General's Office has

[50]Pub. L. No. 108-375, § 577 (2004).

performed its designated policy development and oversight responsibilities for sexual assault investigations.

In concurring with our third recommendation that the service secretaries develop a plan for leveraging each other's resources and expertise for investigating and adjudicating alleged sexual assault incidents, DOD noted that representatives from each service's criminal investigative organization currently meet on a regular basis to share best practices, collaborate, and leverage each other's expertise. The department further noted that as part of the co-location of the services' criminal investigative organizations at Quantico, Virginia, the Army's Criminal Investigation Command has volunteered to lead this working group in the development of a plan for leveraging each service's resources and expertise for investigating sexual assaults. We commend the department for taking immediate steps in response to our recommendation, and encourage it to continue taking positive actions toward helping to ensure the most efficient use of resources for investigations and adjudications of alleged sexual assault incidents.

We are sending copies of this report to interested members of Congress; the Secretary of Defense; the Under Secretary of Defense for Personnel and Readiness; the Secretaries of the Army, the Navy, and the Air Force; the Commandant of the Marine Corps; and the DOD Inspector General. The report also is available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-3604 or farrellb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made major contributions to this report are listed in appendix IV.

Brenda S. Farrell

Brenda S. Farrell
Director
Defense Capabilities and Management

Appendix I: Scope and Methodology

To determine the extent to which the Department of Defense (DOD) is conducting oversight of the military services' investigative organizations, we reviewed and analyzed relevant Office of the Secretary of Defense (OSD) and DOD Inspector General policies, guidance, and procedures to identify department-level policy development and oversight responsibilities for the services' military criminal investigative organizations. We also reviewed and analyzed each service's investigative policies and procedures to identify the extent to which similarities and differences exist in their respective processes for conducting sexual assault investigations. To supplement our analyses, we interviewed senior officials in OSD, the DOD Inspector General's Office, and the military services to gain their perspectives on responsibilities for and oversight of the military criminal investigative organizations, and the extent to which the services' investigative policies and procedures compare.

To determine the extent to which the military services provide resources for investigations and adjudications of alleged sexual assault incidents, we reviewed OSD, DOD Inspector General, and the military service investigative and legal policies to identify responsibilities and processes for providing personnel and fiscal resources to initiatives that relate to investigations and adjudications of alleged sexual assault incidents. We also obtained information on personnel and fiscal resources from OSD and the military services to determine the extent and consistency of funding that has been identified and provided to enhance investigations and adjudications of alleged sexual assault incidents. For the purposes of our report, we found that data on the military criminal investigative organizations' status of efforts to augment sexual assault investigative expertise were sufficiently reliable to report. To supplement our analyses, we interviewed senior-level officials in OSD's Sexual Assault Prevention and Response Office about previous and current efforts to provide the services with funding to support initiatives to enhance investigations and adjudications of alleged sexual assault incidents. We also interviewed senior officials in the DOD Inspector General's Office and in the military services to gain their perspectives on the extent to which such initiatives are provided the resources necessary to investigate and adjudicate alleged sexual assault incidents and the impact of fiscal challenges on current and planned initiatives.

To address the additional issue regarding a 2007 revision to Article 120 of the Uniform Code of Military Justice, we reviewed the prior version of Article 120 as well as the current version adopted in 2007 in order to better understand how the two versions differ. We also reviewed proposed legislative amendments to Article 120 and the accompanying analysis in

the fiscal year 2010 report of the Joint Service Committee on Military Justice to further inform our understanding of the issues arising from the 2007 revision that were intended to be addressed by the proposed legislative amendments from fiscal year 2010. To supplement our analyses, we interviewed senior officials from OSD and spoke with a total of 48 judge advocates and DOD civilian lawyers, between the services' headquarters and at selected installations, to gain their perspectives on the impact of the revisions made in 2007 to the Uniform Code of Military Justice as well as their recommendations for any suggested modifications.

The installations that we visited during our review were selected based on multiple criteria, including the number of sexual assaults reported at each installation, the size of its military population, its function (i.e., training base), and its geographical location. Using these criteria, we identified and subsequently visited the following five installations: Fort Bragg, North Carolina; Fort Jackson, South Carolina; Naval Station Norfolk, Virginia; Marine Corps Base Camp Lejeune, North Carolina; and Sheppard Air Force Base, Texas.

Department of Defense	• Sexual Assault Prevention and Response Office, Arlington, Virginia • Department of Defense Inspector General's Office, Arlington, Virginia
Department of the Army	• United States Army Criminal Investigation Command, Fort Belvoir, Virginia • United States Office of The Judge Advocate General, Arlington, Virginia • United States Army Sexual Harassment/Assault Response and Prevention Program Office, Arlington, Virginia • Fort Bragg, North Carolina • Fort Jackson, South Carolina
Department of the Air Force	• Air Force Office of Special Investigations, Andrews Air Force Base, Maryland • Air Force Office of the Judge Advocate, Arlington, Virginia • Air Force Sexual Assault Prevention and Response Office, Arlington, Virginia • Sheppard Air Force Base, Texas

Department of the Navy	• Naval Criminal Investigative Service, Washington Navy Yard, Washington, D.C. • United States Navy Office of the Judge Advocate, Washington Navy Yard, Washington, D.C. • Sexual Assault Prevention and Response Office, Washington, D.C. • Naval Station Norfolk, Virginia
United States Marine Corps	• United States Marine Corps Office of the Judge Advocate to the Commandant, Arlington, Virginia • United States Marine Corps Sexual Assault Prevention and Response Office, Quantico, Virginia • Camp Lejeune, North Carolina

We conducted this performance audit from April 2010 through June 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Defense

UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

JUN 7 2011

Ms. Brenda S. Farrell
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Farrell:

This is the Department of Defense (DoD) response to the General Accountability Office's (GAO) draft report, GAO-11-579, *"Military Justice: Oversight and Better Collaboration Needed for Sexual Assault Investigations and Adjudications"* dated May 11, 2011 (GAO-351553). I appreciate the opportunity to review and comment on the draft GAO report.

The Department concurs with the recommendations and provides comments concerning each of the recommendations for your consideration. In addition, there were eight technical comments received from the Navy, and five technical comments received from the Army that were forwarded separately to the GAO staff.

We will keep the GAO and the House Oversight and Government Reform Committee apprised of our progress as requested. I appreciate the opportunity to respond. My point of contact is Ed Rushin, Deputy Director, Sexual Assault Prevention and Response Office. He may be reached at 703-696-9429.

Sincerely,

Clifford L. Stanley

Enclosure:
As stated

GAO DRAFT REPORT DATED MAY 11, 2011
GAO-11-579 (GAO CODE 351553)

"MILITARY JUSTICE: OVERSIGHT AND BETTER COLLABORATION NEEDED FOR SEXUAL ASSAULT INVESTIGATIONS AND ADJUDICATIONS"

DEPARTMENT OF DEFENSE COMMENTS TO THE GAO RECOMMENDATIONS

RECOMMENDATION 1: The GAO recommends that the Secretary of Defense direct the DoD Inspector General, in conjunction with the Military Services, to develop and implement a policy that specifies procedures for conducting sexual assault investigations.

DoD RESPONSE: The Department concurs with Recommendation 1.

RECOMMENDATION 2: The GAO recommends that the Secretary of Defense direct the DoD Inspector General, in conjunction with the Military Services, to develop and implement clear goals, objectives, and performance data for monitoring and evaluating the Services' sexual assault investigations and related training.

DoD RESPONSE: The Department concurs with Recommendation 2.

RECOMMENDATION 3: The GAO recommends that the Secretary of Defense direct the Service secretaries to develop a plan for leveraging each others' resources and expertise for investigating and adjudicating alleged sexual assault incidents, such as by consolidating training programs and sharing resources, including highly qualified experts who are used to advising criminal investigators and judge advocates.

DoD RESPONSE: The Department concurs with recommendation 3. The Services' criminal investigative organizations regularly meet as a Defense Enterprise Working Group to share best practices, collaborate and leverage each other's expertise. With the collocation of all the military criminal investigative agencies at Quantico, VA, the US Army Criminal Investigation Command (CID) has volunteered to take the lead in the Defense Enterprise Working Group to develop a plan for leveraging each agency's resources and expertise for investigating sexual assaults, especially in the area of consolidated training programs and sharing of highly qualified experts.

Appendix III: Comments from the Office of the DOD Inspector General

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202–4704

JUN 07 2011

Ms. Brenda S. Farrell
Director, Defense Capabilities and Management
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Farrell:

This is the Department of Defense Inspector General (DoD IG) response to the GAO draft report, GAO-11-579, "MILITARY JUSTICE: Oversight and Better Collaboration Needed for Sexual Assault Investigations and Adjudications," dated May 11, 2011 (GAO Code351533).

The DoD IG concurs with recommendations 1 and 2. Our detailed response is enclosed. We disagree, however, with the characterization of the GAO draft report that the DoD IG has not performed its responsibilities. In fact, the DoD IG has been working closely with the Sexual Assault Prevention and Response Office (SAPRO) and the Military Services regarding SAPRO policy, training requirements for sexual assault criminal investigations, restricted reporting requirements for victims of sexual assault, and the preservation of Sexual Assault Forensic Examination (SAFE) kits during restricted reporting. The DoD IG also participated on the DoD Sexual Assault Advisory Council and has hosted forums with the Military Criminal Investigative Organizations (MCIOs), Military Service Legal Advisors, and SAPRO to develop standardized definitions for sexual assault investigation reporting requirements. The DoD IG also provided feedback to recommendations of the Joint Task Force on Sexual Assault in the Military Services, and currently participates in the Sexual Assault Prevention Response Integrated Product Team

Investigative policy and procedures for conducting sexual assault investigations are the same as other types of investigations, especially complaints concerning violent crimes. For example, the collection and preservation of evidence, crime scene processing, interview protocol, and preparation of sworn statements for sexual assault investigations are similar to other types of investigations such as homicide, robbery, or aggravated assault. These procedures are mandated by standard investigatory practices and evidentiary requirements under the Manual for Courts-Martial. In furtherance of the Inspector General Act requirement for the DoD IG to provide policy direction for investigations, the DoD IG has established and issued policies that are applicable to all criminal investigations, including sexual assault investigations. These policies include the following:

- DoDI 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," March 24, 2011
- DoDI 5505.7, "Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense," January 7, 2003 (currently being updated)

- DoDI 5505.8, "Defense Criminal Investigative Organizations and Other Department of Defense Law Enforcement Organizations Investigations of Sexual Misconduct," January 24, 2005
- DoDI 5505.11, "Fingerprint Card and Final Disposition Report Submission Requirements," July 9, 2010
- DoDI 5505.14, "DNA Collection Requirements for Criminal Investigations," May 27, 2010

Thank you for the opportunity to review the report. If you have any questions regarding these comments, please contact me at (703) 604-8324.

Sincerely,

John R. Crane
Assistant Inspector General
Communications & Congressional Liaison

Enclosure

DoD Office of Inspector General

Response to Draft GAO Report No. 11-579, "Military Justice: Oversight and Better Collaboration Needed for Sexual Assault Investigations and Adjudications"

RECOMMENDATION 1. The GAO recommends that the Secretary of Defense direct the DoD Inspector General (DoD IG), in conjunction with the Military Services, to develop and implement "a policy that specifies procedures for conducting sexual assault investigations."

DoD IG RESPONSE. The DoD IG concurs with establishing policies to enhance the current process for investigating sexual assaults. The DoD IG recognizes the importance of its role in the oversight of sexual assault investigations and is committed to ensuring necessary policies are in place to accomplish this. The DoD IG, in coordination with the Military Services, is currently developing overarching policy guidance on sexual assault investigations conducted by the Military Services. On June 15, 2011, the Deputy IG for Policy and Oversight will host an MCIO Commanders meeting to ensure the timely coordination of the overarching policy. The proposed DoD policy will address responsibilities of military commanders and MCIOs that are critical for successfully responding to sexual assault investigations within DoD. On June 24, 2011, the DoD IG will Chair the quarterly meeting of the Defense Council on Integrity and Efficiency, which is in part comprised of the Service Inspectors General, that will focus on issues to directly confront the incidence of sexual assault in the DoD.

RECOMMENDATION 2: The GAO recommends that the Secretary of Defense direct the DoD IG, in conjunction with the Military Services, to develop and implement "clear goals, objectives, and performance data for monitoring and evaluating the Services' sexual assault investigations and related training."

DoD IG RESPONSE: The DoD IG concurs with the need to develop clear goals, objectives and performance data, and is currently preparing its Fiscal Year 2012 Oversight plans. The criminal investigative oversight plan will include future initiatives pursuant to the requirements of the new instruction on "Investigation of Sexual Assault in the Department of Defense" that is in coordination within the Department. We are also in discussion with the MCIOs to develop a peer review-type process that will provide oversight of the MCIOs, to include the area of sexual assault investigations. Additionally, during fiscal year 2012, we will plan and initiate an evaluation of sexual assault training provided to DoD criminal investigators.

In addition to our policy work outlined in response to Recommendation 1, the DoD IG has conducted oversight of sexual assault-related matters and continues to do so today:

- In 2003, the DoD IG evaluated the perceptions of female cadets at the United States Air Force Academy regarding the academy's response to sexual assault ("Interim Report on the United States Air Force Academy," Project No. 2003C004)
- In 2004, the DoD IG evaluated the multidisciplinary response to sexual assaults at the Air Force Academy over the previous 10 years ("Evaluation of Sexual Assault, Reprisal, and Related Leadership Challenges at the United States Air Force Academy," Report No. IPO2004C003, the report is marked "For Official Use Only")
- In 2005, the DoD IG conducted and published the first ever common sexual assault survey of male and female cadets and midshipman ("Report on the Service Academy Sexual Assault and Leadership Survey," Report No. IPO2005E001)
- In 2009, the DoD IG evaluated the DoD response to sexual assault involving DoD contractors in foreign country contingency operations ("Evaluation of DoD Sexual Assault Response in Operations Enduring and Iraqi Freedom Areas of Operation," Report No. IPO2010E001)
- In 2010 and 2011, the DoD IG evaluated the U.S. Navy and U.S. Marine Corps response to a sexual assault complainant, Lance Corporal Maria Lauterbach, who was later murdered by the person she accused of the sexual assault (report pending)

Appendix IV: GAO Contact and Staff Acknowledgments

GAO Contact

Brenda S. Farrell, (202) 512-3604 or farrellb@gao.gov

Staff Acknowledgments

In addition to the contact named above, key contributors to this report include Marilyn K. Wasleski, Assistant Director; Melissa Blanco; K. Nicole Harms; Kim Mayo; Jeanett Reid; Norris Smith; Terry Richardson; Cheryl Weissman; and Elizabeth Wood.

Related GAO Products

Military Personnel: DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs Need to Be Further Strengthened. GAO-10-405T. Washington, D.C.: February 24, 2010.

Military Personnel: Additional Actions Are Needed to Strengthen DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs. GAO-10-215. Washington, D.C.: February 3, 2010.

Military Personnel: Actions Needed to Strengthen Implementation and Oversight of DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs. GAO-08-1146T. Washington, D.C.: September 10, 2008.

Military Personnel: DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs Face Implementation and Oversight Challenges. GAO-08-924. Washington, D.C.: August 29, 2008.

Military Personnel: Preliminary Observations on DOD's and the Coast Guard's Sexual Assault Prevention and Response Programs. GAO-08-1013T. Washington, D.C.: July 31, 2008.

Military Personnel: DOD and the Coast Guard Academies Have Taken Steps to Address Incidents of Sexual Harassment and Assault, but Greater Federal Oversight Is Needed. GAO-08-296. Washington, D.C.: January 17, 2008.

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