

## **Fact Sheet on United Kingdom (UK) Military Justice<sup>1</sup>** **(Corrected Copy - Changes Highlighted)**

**1. Introduction.** During the Senate Armed Services Committee Hearing on June 4, 2013, some witnesses suggested that the UK military justice system may be a good model for centralization of courts-martial referrals under the authority of a central prosecutor, rather than military commanders.<sup>2</sup> This fact sheet traces the recent changes in the UK military justice system, describes the rationale for withdrawing the convening authority's ability to refer criminal cases to trial and transferring that authority to a central prosecution office, describes the magnitude of UK military justice prosecutions, and compares the disposition of US courts-martial and UK courts-martial with an emphasis throughout on disposition of sex offenses.

### **2. The United Kingdom System.**

a. **UK Armed Forces Strength.** On October 1, 2012, the UK active duty strength was 175,940 including 17,060 (9.7%) women.<sup>3</sup>

b. **European Court of Human Rights Calls for Systemic Changes.** On February 25, 1997, the European Court of Human Rights (ECHR) required structural changes in the role of the convening officer in UK cases because the convening officer had a role in the prosecution of cases. The ECHR required structural changes in the role of the convening officer in United Kingdom cases because the convening officer had a role in the prosecution of cases.

The [convening] officer . . . appointed the members of the court martial, who were subordinate in rank to him and fell within his chain of command. He also had the power to dissolve the court martial before or during the trial and acted as "confirming officer", with the result that the court martial's decision as to verdict and sentence was not effective until ratified by him.<sup>[4]</sup>

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<sup>1</sup> This document reflects the personal opinion of the author and does not represent the views of George Washington University or the Law School.

<sup>2</sup> Senate Armed Services Committee *Oversight Hearing to Receive Testimony on Pending Legislation Regarding Sexual Assaults in the Military*, (June 4, 2013) (statement of Senator Gillibrand at 49-50), <http://www.armed-services.senate.gov/Transcripts/2013/06%20June/13-44%20-%206-4-13.pdf>.

<sup>3</sup> Gavin Berman & Tom Rutherford, Social and General Statistics, *Defence Personnel Statistics*, House of Commons Library, Standard Note: SN/SG/02183 (Nov. 30, 2012) at 9, [www.parliament.uk/briefing-papers/sn02183.pdf](http://www.parliament.uk/briefing-papers/sn02183.pdf).

<sup>4</sup> *Morris v. the United Kingdom*, (2002) 34 EHRR 1253, [2002] ECHR 38784/97 at ¶ 60 (citing *Findlay v. the United Kingdom* (judgment of Feb. 25, 1997, *Reports of Judgments and Decisions* 1997-I)), <http://www.legislationline.org/documents/id/8251>. See *Grievs v. the United Kingdom*, (2003) 39 EHRR 52, [2003] ECHR 57067/00).

The ECHR found UK courts martial lacked independence and impartiality because of the convening officer's roles in the process. In response, the UK eliminated the "convening officer" role in the process and divided his main roles between "the higher authority, the prosecuting authority and the Court Martial Administration Officer."<sup>5</sup> The UK Government's goal was to increase the "appearance of fairness" for the accused and not to enhance justice for victims or to increase prosecutions.<sup>6</sup>

c. **Commanding Officer's Authority.** UK commanding officers retain authority to dispose of minor offenses using minor administrative awards.<sup>7</sup> Minor administrative awards are similar to nonjudicial punishment under Article 15, Uniform Code of Military Justice. Minor administrative awards permit imposition of extra work, muster parades, and extra duties. Procedures are simple and expeditious. In addition, minor criminal and military offenses may be investigated by the suspect's commanding officer, and punishment imposed, in a process known as Summary Dealing which is most similar to a summary court-martial in the US Armed Forces under the Uniform Code of Military Justice (UCMJ). The maximum punishment includes up to 90 days of detention; however, imposition of this punishment is limited to lower ranking personnel and specified offenses. The accused may elect to be tried by "court martial." When an election for court martial has been made, the punishment is limited to the maximum available to the commanding officer.<sup>8</sup> When a commanding officer learns of a possible serious offense, the commanding officer is required to ensure Service Police are aware of the allegation and circumstances "as soon as is reasonably practicable."<sup>9</sup>

d. **Higher Authority.** The UK term, "higher authority" means "any officer in the commanding officer's disciplinary chain of command who is superior in that chain of command to the commanding officer."<sup>10</sup> The commanding officer of the accused refers the allegation to the higher authority for "the initial decision whether or not to bring a prosecution. . . . who must decide whether [the] case . . . should be dealt with summarily,

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<sup>5</sup> *Morris*, *supra* note 4, at ¶ 50.

<sup>6</sup> See also Michael D. Conway, *Thirty-Ninth Kenneth J. Hodson Lecture in Criminal Law*, 213 Mil. L. Rev. 212, 224 (Fall 2012), [https://www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/20a66345129fe3d885256e5b00571830/256fb1f93504c34785257b0c006b99d4/\\$FILE/By%20Major%20General%20Michael%20D.%20Conway.pdf](https://www.jagcnet.army.mil/DOCLIBS/MILITARYLAWREVIEW.NSF/20a66345129fe3d885256e5b00571830/256fb1f93504c34785257b0c006b99d4/$FILE/By%20Major%20General%20Michael%20D.%20Conway.pdf)

<sup>7</sup> *Id.*, at 223-224.

<sup>8</sup> Armed Forces Act 2006 within the United Kingdom, from the UK Statute Law Database, [http://www.legislation.gov.uk/ukpga/2006/52/pdfs/ukpga\\_20060052\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/52/pdfs/ukpga_20060052_en.pdf) [Armed Forces Act of 2006]. See also Explanatory Notes to the Act and the Manual of Service Law (MSL), Ministry of Defence, Joint Service Publication (JSP) 830, Vol. 1. and 2 Edition 1.0 2009, Sections 164 to 165. <https://www.gov.uk/government/publications/joint-services-publication-jsp-830-manual-of-service-law-msl> [hereinafter MSL, JSP 830].

<sup>9</sup> Armed Forces Act of 2006, at 3 & 4 Eliz. II, *supra* note 8, at c. 52, pt. 5, § 113.

<sup>10</sup> *Id.* at c. 2, pt. 18, § 361 (defining the term "higher authority").

referred to the prosecuting authority, or dropped. Once the higher authority has taken this decision, he has no further involvement in the case.”<sup>11</sup>

e. **Prosecuting Authorities.** A military prosecuting authority receives the case from the higher authority or the Service Police (who informs the commanding officer after the referral),<sup>12</sup> and “the prosecuting authority has absolute discretion, applying similar criteria as those applied in civilian cases by the Crown Prosecution Service, to decide whether or not to prosecute, what type of court martial would be appropriate and precisely what charges should be brought. . . The prosecution is brought on behalf of the [UK] Attorney-General.”<sup>13</sup> Prosecuting authorities prosecute traditional military offenses, such as desertion, and civil offenses, such as sexual assault and robbery, at courts martial. In October 2009, the Service Prosecuting Authority (SPA) was formed through the merger of the Army, Air Force and Navy Prosecuting Authorities. The current head of the SPA is a Senior Civil Servant who is also the Director of Service Prosecutions. The Deputy Director of Service Prosecutions is a Brigadier General.<sup>14</sup>

f. **Service Civilian Court.** Under limited circumstances, civilians who commit offenses outside the UK,<sup>15</sup> may be tried by the service civilian court, which consists of a judge advocate sitting alone. If the offense is sufficiently serious, it can be referred to a court martial, or the defendant can elect trial by court martial in lieu of trial by the service civilian court. The maximum punishment includes imprisonment for up to 12 months (or 65 weeks for two or more offences). The findings or sentence of the service civilian court may be

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<sup>11</sup> *Morris*, *supra* note 4, at ¶ 20. See also *Conway*, *supra* note 6, at 220.

<sup>12</sup> Armed Forces Act of 2006, *supra* note 8, at Ch. 52, Part 5, Section 118.

<sup>13</sup> *Morris*, *supra* note 4, at ¶ 21. Major General Conway explained the current process as follows:

The most serious kinds of cases do not go to commanding officers for them to decide how they should be dealt with. They used to [go to the commanding officers] under the old system, but they go now to the police and then to the service prosecutors; and it's impossible under this system for a commanding officer to dismiss a charge of, say, murder, as he could and in at least one case did before this Act came into force. Judge advocates sit in all trials, including at the Summary Appeal Court. The Court Martial Appeal Court that hears appeals from courts-martial is made up of civilian judges, and it can be seen, therefore, that there has been a massive change in our system since the days of convening officers and confirming officers and the like.

*Conway*, *supra* note 6, at 222.

<sup>14</sup> Ministry of Defence, *Service Prosecuting Authority*, Gov.UK, <https://www.gov.uk/service-prosecuting-authority>.

<sup>15</sup> The circumstances and requirements for jurisdiction over civilians are complex and beyond the scope of this fact sheet. See MSL, JSP 830, *supra* note 8, at Vol. 1, ¶¶ 17-35, pages 1-3-8 to 1-3-16.

appealed to a court martial, which makes a de novo determination of the findings and any sentence. The court martial jury for a civilian is composed of civilians.<sup>16</sup>

g. **Court Martial.** Beginning November 1, 2009, the court martial was established as a permanent standing court. The distinction between levels of courts martial was abolished. The court martial may try any offense against service law. A judge advocate<sup>17</sup> presides over the court martial, and the jury or board is composed of officers and warrant officers. For sentencing, the judge advocate is included in the board. The maximum sentence includes imprisonment for life and dismissal, depending on the offense.

h. **Sexual Assault.** Jurisdiction over certain serious sexual assault offenses in Schedule 2 is limited to court martial—such offenses may not be summarily resolved and must be referred to Service Police for investigation.<sup>18</sup> The Service Police are required to refer investigations that substantiate Schedule 2 offenses to the Service Prosecuting Authority for disposition.<sup>19</sup> Schedule 2 includes most non-consensual sex offenses.<sup>20</sup>

i. **Victim Reports of Offenses.** The House of Commons Defence Committee expressed frustration about the failure of victims to report sex offenses based on surveys showing sexual abuse “offences [were] a lot higher than the number of complaints would indicate.”<sup>21</sup> The UK Service Complaints Commissioner for the Armed Forces’ press release for her annual report states, “After 5 years the Armed Forces complaints system is still inefficient and undermines confidence in the chain of command.”<sup>22</sup>

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<sup>16</sup> The information in this paragraph is from the Armed Forces Act of 2006, *supra* note 8, at Explanatory Notes, §§ 278-80, 285-86, sch. 3 (punishments), [http://www.legislation.gov.uk/ukpga/2006/52/pdfs/ukpgaen\\_20060052\\_en.pdf](http://www.legislation.gov.uk/ukpga/2006/52/pdfs/ukpgaen_20060052_en.pdf).

<sup>17</sup> Because of a decision of the European Court of Human Rights all judge advocates sitting on Service Civilian Courts and Courts Martial are civilian attorneys. Conway, *supra* note 6, at 221.

<sup>18</sup> MSL, JSP 830, *supra* note 8, at Vol. 1, ¶ 23d, page 1-6-11.

<sup>19</sup> Armed Forces Act of 2006, *supra* note 8, at c. 52, pt. 5, § 116.

<sup>20</sup> MSL, JSP 830, *supra* note 8, at Vol. 1, § 6, ¶ 234I(2), 234I(5), page 1-6-60 (“(2) An offence under the Sexual Offences Act 1956, sections 1 to 7, 9 to 11, 16, 17, 19 to 24, 26 to 29 or 32; . . . (5) An offence under the Sexual Offences Act 1967, section 4 or 5;”); *Id.* at Vol. 1, Ch. 6, Annex D, ¶ 1(12)(at), page 1-6-D-4 (“(at) Any offence under Part 1 of the Sexual Offences Act 2003 (c. 42) except one under section 3, 66, 67 or 71”).

<sup>21</sup> Global Legal Research Center, *Military Justice: Adjudication of Sexual Offenses: Australia, Canada, Germany, Israel, United Kingdom*, The Law Library of Congress, July 2013, at 66 (citing *Service Complaints Commissioner of the Armed Forces*, Annual Report 2012, at 22, [http://armedforcescomplaints.independent.gov.uk/linkedfiles/afcindependent/426354\\_ssc\\_ar\\_2012.pdf](http://armedforcescomplaints.independent.gov.uk/linkedfiles/afcindependent/426354_ssc_ar_2012.pdf) and *Defence Committee-Eighth Report: The Work of the Service Complaints Commissioner for the Armed Forces, 2012–13*, ¶ 30, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmdfence/720/72002.htm>) [hereinafter 2013 Library of Congress]).

<sup>22</sup> *Id.* at 67 (citing Press Release, Service Complaints Commissioner (SCC) for the Armed Forces, SCC No. 3/2013 (Mar. 21, 2013), <http://armedforcescomplaints.independent.gov.uk/linkedfiles/afcindependent/scc->

### 3. Statistics.

a. **Complaints.** In 2012, the UK Service Complaints Commissioner (SCC) received 572 “potential Service complaints” of bullying, harassment, and discrimination.<sup>23</sup> In 2012, the number of reports to the SCC increased by one third from 2011 and by nearly two thirds from 2010. The UK SCC did not explain why complaints increased so significantly. The SCC report notes, “there were still 582 Service complaints awaiting decision at Commanding Officer level. . . . At the end of 2012 the Army had 430 cases which had been in the system for over 6 months.”

b. **Military Sex Offense Investigations.** The following complaints or allegations of rapes, sexual assaults, and other sex offenses “within” the UK military services were investigated in the years 2005 to 2012:<sup>24</sup>

UK Investigations of Military Sex Crimes									
	2005	2006	2007	2008	2009	2010	2011	2012	Average
<b>Rape</b>	19	28	32	19	26	25	14	13	22
<b>Sexual Assault</b>	95	94	78	60	79	50	40	40	67
<b>Other Sex Offenses</b>	47	34	30	25	31	22			32
<b>Total</b>	161	156	140	104	136	97			132

c. Allegations reported by service personnel against service personnel were as follows: 2009 (2 rapes and 11 sexual assaults); 2010 (8 rapes and 44 sexual assaults); 2011 (14 rapes and 39 sexual assaults); and 2012 (13 rapes and 35 sexual assaults).<sup>25</sup>

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[annualreport2012.pdf](#) [SCC Press Release]). The Service Commissioner Press Release also states, “For the fifth year running, I find that the Armed Forces have failed to give Servicemen and Servicewomen an efficient, effective and fair system through which they can raise a complaint.” *Id.* at 2.

<sup>23</sup> *Id.* at 3 is the source for the remainder of this paragraph. See also 2012 SCC Report at 8 (“Fear of adverse impact at work or on one’s career is given by over half as the reason for not making a complaint, as is a view that the chain of command would do nothing.”) [http://armedforcescomplaints.independent.gov.uk/linkedfiles/afcindependent/426354\\_ssc\\_ar\\_2012.pdf](http://armedforcescomplaints.independent.gov.uk/linkedfiles/afcindependent/426354_ssc_ar_2012.pdf).

<sup>24</sup> The Ministry of Defence, Deputy Chief of Defence Staff (Personnel) Secretariat, Reference to FOI 14-09-2010-164757-003 (Oct. 12, 2010), Appendix, provided the statistics from 2005 to October 2010, [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/16793/FOI14092010164757005\\_Kerbaj.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/16793/FOI14092010164757005_Kerbaj.pdf). The source for the statistics for 2011 and 2012 is the 2013 Library of Congress, *supra* note 21, at 65 (citing April 25, 2013, Parl. Deb. H.C. (6<sup>th</sup> sir.) 1250W, <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm130425/text/130425w0009.htm> [hereinafter 2013 Parliament Report]). The 2013 Library of Congress article indicates in 2009, there were 12 sexual assaults and 2 rapes; in 2010, there were 54 sexual assaults and 8 rapes. *Id.*

<sup>25</sup> 2013 Parliament Report, *supra* note 24, at 1254W.

d. UK action on 135 sexual assault cases received by service police from November 1, 2009, the date of the implementation of the Armed Forces Act 2006, to December 31, 2012, are as follows:<sup>26</sup>

(1) 29 cases were not referred to the prosecuting authority; (a) 14 cases were not investigated because the complaint was not pursued; and (b) 15 cases were investigated, but not referred after the investigation.

(2) 106 cases were referred to the prosecuting authority: (a) 15 cases resulted in no action; (b) 49 cases resulted in a referral for a court martial or other disciplinary action, and of those 49 cases, 24 cases resulted in a court martial conviction or other disciplinary action, 10 cases did not result in a conviction or other adverse action, 15 cases resulted in a court martial or other disciplinary proceeding and conviction of a lesser offense, and (c) 23 cases are ongoing.

e. **UK Courts Martial Results.** The UK courts martial findings results for 2009-2011 are as follows:<sup>27</sup>

<b>UK Courts Martial Findings</b>				
	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>Average</b>
<b>Total Courts Martial Completed</b>	627	592	592	604
<b>Guilty Pleas</b>	546	469	456	490
<b>Not Guilty Pleas—Conviction</b>	27	48	72	49
<b>Not Guilty Pleas—Acquittal</b>	47	71	61	60

f. **Military Serious Sex Offense Cases Referred to the SPA.** The serious sex offense cases referred to the SPA are as follows: 2007—33 cases; 2008—35 cases; 2009—47 cases; 2010—69 cases; 2011—81 cases, and 2012—40 cases.<sup>28</sup> The average number of serious sex offenses cases referred from 2007 to 2011 is 53.

<sup>26</sup> 2013 Library of Congress, *supra* note 21, at 65 (citing 2013 Parliament Report, *supra* note 24, at 1250W). Please note, differences may exist between the UK and US military justice systems' required threshold for evidentiary sufficiency in order for investigators or military police to forward a sex crime case to the SPA and/or for the SPA to refer a case to trial.

<sup>27</sup> Service Prosecuting Authority, *Annual Report for 2011* at 19, [http://spa.independent.gov.uk/linkedfiles/spa/test/about\\_us/publication\\_scheme/annualreport2011.pdf](http://spa.independent.gov.uk/linkedfiles/spa/test/about_us/publication_scheme/annualreport2011.pdf) [hereinafter 2011 SPA Annual Report].

<sup>28</sup> *Id.* at 17. See also 2013 Parliament Report, *supra* note 24, at 1254W (indicating in 2010, there were 9 sex offense cases directed for trial and 12 not directed for trial; in 2011, there were 7 sex offense cases directed for trial and 11 not directed for trial; in 2012, 14 cases were directed for trial and 8 were not directed for trial).

g. **UK Courts Martial.** The number of UK courts martial for all offenses for the last five years is as follows:<sup>29</sup>

UK Courts Martial								
	2005	2006	2007	2008	2009	2010	2011	2012
<b>Courts Martial</b>	714	687	706	741	705	633	290	
<b>Discharges</b>	154	122	94	100	unk <sup>30</sup>	79	29	
<b>Unsuspected Custodial Detention (confinement) Adjudged</b>	39	50	38	42	unk	302	151	
<b>Sex Offense Trials<sup>31</sup></b>	40	23	42	41	39	34 (9)	40 (7)	38 (14)
<b>Sex Offense Convictions<sup>32</sup></b>						28	34	15

The SPA defines the term “sex offense” more broadly than the DoD Report. Using statistical data of the UK Military Court Centres available for November 1, 2011 to August 31, 2013, the trials involving pornography offenses, lewd language, sexual exposure without touching, and sexual abuse and rape of child victims have been subtracted from the totals to conform with the DoD Report’s definition of sex offense. The following table reflects an analysis of the Military Court Centres’ data, which makes available all charges, convictions, and

<sup>29</sup> Ministry of Defence, Deputy Chief of Defence Staff (Personnel) Secretariat, Reference to FOI 06-06-2011-151146-007 (July 7, 2011), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/16889/Response\\_to\\_06062011151146007\\_CourtMartial\\_Figures.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/16889/Response_to_06062011151146007_CourtMartial_Figures.pdf) [hereinafter 2011 MOD FOI]. In 2009, there were 1,227 cases referred to the SPA and 622 courts-martial; in 2010, there were 1,198 cases referred to the SPA and 579 courts-martial; and in 2011, there were 1,163 cases referred to the SPA and 585 courts-martial. 2011 SPA Annual Report, *supra* note 27, at 16-17.

<sup>30</sup> 2011 MOD FOI, *supra* note 29 (stating that statistics were not available due to a change in databases).

<sup>31</sup> *Id.* (providing Air Force courts-martial for 2008-2010; and Army and Navy courts-martial for 2005-2011). The Air Force courts-martial were estimated to be 4 in 2005-2007 and 2011 based on the average of 6 in 2008, 5 in 2009, and 2 in 2010. *Id.* See 2013 Parliament Report, *supra* note 24, at 1254W (listing sex offenses referred to trial in parenthesis for 2010 (9 cases), 2011 (7 cases), and 2012 (14 cases). See also September 19, 2013 email from UK Brigadier (Ret.) Anthony Paphiti (He received the UK prosecution statistics for 2010 to August 2012 from the Service Prosecuting Authority, indicating 25 prosecutions and 10 convictions for January to August 2012. I have assumed the same rate of prosecutions and convictions for the remaining four months and extrapolated 38 prosecutions and 15 convictions for 2012). I am grateful for UK Brigadier (Ret.) Paphiti’s comments regarding a previous version of this fact sheet. I have asked for additional UK data regarding confinement imposed for sex crimes and for an explanation for the inconsistency between the courts-martial statistics referred to Parliament and the numbers from the Service Prosecuting Authority).

<sup>32</sup> September 19, 2013 email from UK Brigadier (Ret.) Paphiti (indicating the conviction statistics for 2010 to 2012 were provided by the Service Prosecuting Authority).

imprisonment adjudged for courts-martial for November 1, 2011 to August 1, 2013, to provide a pertinent comparison of US and UK sex crime courts-martial:

<b>Sexual Assault and Rape Courts-Martial (Military Court Centres)</b>				
	<b>2011 (2 months)<sup>33</sup></b>	<b>2012<sup>34</sup></b>	<b>2013 (7 months)<sup>35</sup></b>	<b>Annual Average</b>
<b>Rape</b>	<b>2</b>	<b>6</b>	<b>6</b>	<b>8.0</b>
<b>Sexual Assault</b>	<b>3</b>	<b>15</b>	<b>14</b>	<b>18.3</b>
<b>Total</b>	<b>5</b>	<b>21</b>	<b>20</b>	<b>26.3</b>
<b>Convictions</b>	<b>5</b>	<b>15</b>	<b>6</b>	<b>14.9</b>
<b>Imprisonment Adjudged</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>4.0</b>

**4. Analysis.**<sup>36</sup>

<sup>33</sup> Statistical data of the UK Military Court Centres is available for November 1, 2011 to August 31, 2013, <https://www.gov.uk/government/publications/court-martial-results-from-the-military-court-centres>. From November 1, 2011 to December 30, 2011, all cases involving adult sexual assault victims resulted in convictions. *Id.* The two rape convictions are listed at 17 and 77; and the three sexual assault convictions are listed at 5, 19, and 59. Of these five cases, two were not sentenced to imprisonment listed at 5 and 19. *Id.*

<sup>34</sup> From January 1, 2012 to December 31, 2012, the six rape cases with adult victims are listed at: 218, 265, 266, 277, 370, and 568; and the 15 sexual assault cases with adult victims are listed at: 141, 172, 175, 183, 190, 213, 223, 278, 315, 316, 337, 366, 385, 441, and 475. *Id.* Of the 21 sex crimes trials, six were found not guilty of the sex crime, listed at: 141, 223, 265, 266, 277, and 370 and three were sentenced to imprisonment, listed at: 218, 366, and 568. *Id.*

<sup>35</sup> From January 1, 2013 to August 1, 2013, the six rape cases with adult victims are listed at: 692, 711, 716, 786, 823, and 827; and the 14 sexual assault cases with adult victims are listed at: 641, 654, 674, 677, 701, 714, 755, 771, 782, 830, 833, 838, 875, and 880. *Id.* The six January 1, 2013 to August 1, 2013 cases with adult sex offense victims resulting in convictions are listed at: 674, 677, 823, 830, 838, and 875; and the single case with a sentence to imprisonment is listed at 823. *Id.*

<sup>36</sup> Precise statistical comparisons of the courts-martial trial and conviction rates between the UK and US militaries is impossible because of differences between the UK and US militaries. The UK sex crimes statistics may not include a crime that might meet DoD's criteria for an attempted sexual assault. The timing of case counting may be different. A case may be counted when it is investigated, referred to trial, tried, or sentence adjudged. Care must be exercised to avoid double counting or overlooking cases. The percentages of males and females in each military are different: 9.7% of the UK active duty population are women, see note 3 *supra* and accompanying text, and 14.7% of the US active duty population are women, DoD Personnel and Procurement Statistics, <https://www.dmdc.osd.mil/appj/dwp/reports.do?category=reports&subCat=milActDutReg>. The UK 2013 Parliament Report reflects cases referred to trial, while the DoD FY 2012 number reflects 302 cases tried to verdict and does not include all the cases referred to trial. The low number of sex crimes tried in the UK military should not be construed as criticism of their decision making because a variety of factors including a low number of sex crimes reported to the police may be the primary cause of the low levels of prosecution.

a. In FY 2012, the active duty strength of the US Department of Defense (DoD) was 1,388,028 or eight times as large as the UK active duty forces total of 175,940.<sup>37</sup> From 2005 to 2010, the UK averaged 698 courts martial. In FY 2012, the DoD completed 2,510 courts-martial, including 1,183 general courts-martial and 1,327 special courts-martial. Without including the 1,346 summary courts-martial tried in FY 2012, the DoD had 3.6 times as many courts-martial as the UK, but the UK rate per thousand of 3.94 was more than twice as high as the US rate per thousand of 1.81.

b. In FY 2012, 1,714 investigations were referred by investigators to DoD commanders for consideration of disciplinary action against military subjects.<sup>38</sup> 302 DoD military personnel were tried by courts-martial for sexual assault offenses, resulting in a prosecution rate of 18% (302 cases tried divided by 1,714 cases referred by investigators) and 79% (238 convicted divided by 302 tried) were convicted.<sup>39</sup> The rate per thousand of DoD personnel tried by courts-martial for sexual assault offenses was .22 (302/1,388,000). The UK report with the highest number of courts martial indicates from 2005 to 2012, the UK tried an average of 37 sex offenses per year by courts-martial, and the UK annual prosecution rate per thousand is .21 (37/175,940). The DoD rate per thousand of prosecution of sex offenses is 3% higher than the UK rate per thousand. The 2013 Parliament Report (see *supra* note 31), however, indicates the number of sex offenses referred to trial as follows: 2010—9 cases; 2011—7 cases; and 2012—14 cases, or an average of 10 cases each year, resulting in a .057 (10/175,940) rate per thousand, whereas the DoD rate per thousand is at least 3.8 times higher than the UK rate per thousand. (The UK 2013 Parliament Report accounts for cases referred to trial, while the DoD number (302 cases) only includes cases tried to verdict and does not include all cases referred to trial.)

c. The most comparable UK metric to the DoD report is the UK's annual average of 26 sexual assault and rape trials completed, as reported by the UK judiciary, because sex crimes not included in the DoD report are deducted, such as child sexual assaults, child rapes, and pornography offenses. Under this measure, the UK prosecution rate per thousand is .15 (26/175,940). The DoD rate per thousand of sex offense prosecutions of .22 (302/1,388,000) is 47% higher than the UK rate per thousand.

d. The average number of UK military sexual assaults investigated by the police each year from 2005 to 2012 was 67 and the average number of UK rapes investigated by the police from 2005 to 2012 was 22.<sup>40</sup> An average of 89 UK sexual assaults and rapes were

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<sup>37</sup> On September 30, 2012, the total population on active duty was 1,388,028. DoD Personnel and Procurement Statistics, *Military Personnel Statistics*, <https://www.dmdc.osd.mil/appj/dwp/reports.do?category=reports&subCat=milActDutReg>.

<sup>38</sup> Department of Defense, *1 Annual Sexual Assault Report* 68 (2012), [http://www.sapr.mil/public/docs/reports/FY12\\_DoD\\_SAPRO\\_Annual\\_Report\\_on\\_Sexual\\_Assault-VOLUME\\_ONE.pdf](http://www.sapr.mil/public/docs/reports/FY12_DoD_SAPRO_Annual_Report_on_Sexual_Assault-VOLUME_ONE.pdf).

<sup>39</sup> *Id.* at 73 (indicating 302 sex offenses were tried by court-martial resulting in 238 convictions).

<sup>40</sup> See Table UK Investigations of Military Sex Crimes on page 5, *supra*.

investigated by the police each year from 2005 to 2012, and an average of 53 serious sex offenses cases (60% of investigated cases) were referred to the SPA from 2007 to 2010. The UK court martial prosecution rate is 70% (see *supra* note 31) (37 cases prosecuted by courts-martial divided by 53 cases referred by investigators to the SPA), or if determined based on the 2013 Parliament Report, possibly 19% (10 cases on average tried from 2010 to 2012 divided by 53 cases referred by investigators to the SPA). The US Department of Defense prosecution rate for sex offenses is 18%.

e. The UK changed to a system of centralized prosecutions handled by military lawyers in the aftermath of decisions by the European Court of Human Rights. Those appellate court decisions addressed protecting the rights of the accused. The modifications to the UK system were designed to protect the rights of the accused from any perception of an overbearing chain of command intent on achieving unjust convictions. The UK change in charging and referral authorities had nothing to do with increasing prosecution rates for crime in general or sex offenses in particular.

f. As an example, the Army installation of Fort Hood, Texas has 45,414 active duty military personnel,<sup>41</sup> compared to UK's 175,940. In FY 2011, Fort Hood prosecuted 18 sex offenses at general and special courts-martial, resulting in 13 sex offense convictions—the number of convictions would be higher, if cases were included where the accused was acquitted of a sex offense and convicted of a non-sex offense).<sup>42</sup> In FY 2012, Fort Hood prosecuted 26 sex offenses at general and special courts-martial, resulting in 21 sex offense convictions. More importantly, in FY 2011, ten Fort Hood military personnel were sentenced to more than one year of confinement; in FY 2012, 17 military personnel were sentenced to more than one year of confinement. However, UK's annual average of four military personnel sentenced to imprisonment for sexual assault and rape of adult victims, as reported by the UK judiciary, is strikingly lower than Fort Hood's confinement adjudged. In sum, assuming the report to Parliament is correct, Fort Hood by itself in FY 2012 tried more sex offenses by courts-martial than the entire UK military—with an active duty population 3.9 times larger than Fort Hood's—and obtained more sex offense convictions. However, if 26 is the accurate UK courts-martial number, Fort Hood has a higher prosecution rate per thousand than the UK, but about the same number of courts-martial per year. If the goal is to prosecute more sex crimes—the UK model may not work well for the US Armed Forces.

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<sup>41</sup> Fort Hood Fact Sheet No. 0703, <http://www.hood.army.mil/facts/FS%200703%20-%20Fort%20Hood%20Overview.pdf>.

<sup>42</sup> Fort Hood prosecution statistics provided from Clerk of Court's Office, Army Court of Criminal Appeals on July 15, 2013.