

**COMPARATIVE SYSTEMS SUBCOMMITTEE
ISSUE ASSESSMENT- INVESTIGATIONS**

SUBCOMMITTEE MISSION STATEMENT:

Assess and compare military and civilian systems used to investigate, prosecute, and adjudicate crimes involving adult sexual assault and related offenses, under 10 U.S.C. 920 (Article 120, Uniform Code of Military Justice (UCMJ)).

SUBCOMMITTEE OBJECTIVES AND SCOPE:

- Compare military and civilian systems for the investigation, prosecution, and adjudication of adult sexual assault crimes.
- Compare and assess the sexual assault training of law enforcement personnel, to include first responders, police, and special investigators and the protocols.
- Identify best practices from civilian jurisdictions that may be incorporated into any phase of the military system.

ISSUE:

Should the training, protocols, or practices in the military be changed to improve investigations of sexual assault in the military?

REPORT OUTLINE:

I. Methodology and Overview of Subcommittee Analysis

- a. Meetings/discussions held
 - 21 Oct 13: administrative meeting, no substantive information
 - 14 Nov 2013: visits to DFSC/USACIL and GBI Lab
 - 19 Nov 2013: Investigative Training (Patrol, MCIOs, and SAFME)
 - 11/12 Dec 2013: Open Meeting
 - 7 Jan 2014: Attorney training
 - 15 Jan 2014: Discussions on collection to date and future needs
 - 31 Jan 2014: Discussion
 - 11 Feb 2014: Sentencing
- b. Presenters heard
 - See Appendix A
- c. Materials reviewed
 - See Appendix B
- d. Installations visited
 - 10 Dec 2013: visit to Fort Hood TX
 - 13 Dec 2013: visit to Lackland AFB/37th Training Wing
 - 5-6 Feb 2014: visit to WA State
 - 19 Feb 2014: visit to Norfolk VA
 - 19 Feb 2014: visit to Philadelphia
 - 5 Mar 2014: visit to Quantico

II. Overview of Military & Civilian Investigative Personnel & Organizations

- a. Multidisciplinary approach
 - 1. Organizational structure and location of office
 - SVU or General Investigator
 - Onsite, distance, co-location

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2. Separate or co-located with prosecutor, victim advocates/coordinators/witness liaisons, rape crisis center personnel and/or victim services' agencies
 - Separate (JMSA)
 - Co-located (Ft Hood TX)
 - Multi-disciplinary location (Ft Lewis, Dawson Place, Philly)
- b. Culture change issues
 1. Credibility of victim
 2. Rape myths
 3. Trauma
 - These issues and others are addressed in training provided in SV courses in the military and civilian (19 Nov CSS and 11 Dec)
 - DODIG Report on Training of MCIOs
 - RFI #50/53/75
- c. First responders, Police, SANE, and Investigator's role
 - DODIG Report on Training of MCIOs
 - Covered 19 Nov CSS
 - RFI # 53/54/72/75
- d. Specialization of investigators or general investigative work
 - DODIG report on investigations
 - 19 Nov CSS/11 Dec
- e. Investigators' role & authority (19 Nov/11 Dec; RFI 58/59)
 1. Role & relationship to: prosecutor, defense counsel, victim, victim advocate, victim's attorney, and in the military, the commander and medical community/health professionals (common practice & best practice). Examine level of interaction and the points during the process the investigator communicates with each of these stakeholders. (RFI 69)
 2. Authority of investigators to make a charging decision (Should this be titling decision?)
 3. Level of discretion (19 Nov/11 Dec)
 4. Authority to unfound cases (RFI 65/66, GAO Report 11-579)
 5. Case determination
 6. Authority of investigators to close cases
 7. Role of investigator at trial – sit at the prosecution or defense table, or is the investigator sequestered as a witness?

III. Investigative Procedures for Sexual Assaults (19 Nov/11-12 Dec)(RFI 56/57)

- a. Limited role First responders to the authority of investigators making the charging decision (RFI 53)
- b. Evidence collection & issues
 1. Pretext phone calls (11 Dec)
 - a. Existing policy
 - b. Consent
 - c. Recording
 2. Pretext text messaging
 3. Polygraph use (for accused)(I do not think this is an issue??)

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4. Interview techniques (19 Nov/11 Dec)
 - a. Accused
 - b. Victim
 - c. Video recording (RFI 60)
 - d. FETI/Cognitive/other methods
5. Forensic evidence (DFSC/GBU Lab 14 Nov)(RFI 72/74)
 - a. Collection
 - b. Which exams to request
 - c. Lab processing time
 - d. Lab capabilities
6. Obtaining other collaborative information
7. Existing policy
- c. Collateral misconduct (RFI 64; GAO Report 11-579)
 1. Investigators' approach
 2. Requirement to advise victims of their rights
 3. Obtaining immunity for victims
- d. Investigative reports
 1. Report procedures
 2. Report writing – language and word choice
- e. Labs (Is this a repeat of b5?)
 1. Processing time
 2. Impact of sequestration
- f. Length of investigations

IV. Sexual Assault Investigators' Training & Experience (RFI 75)(19 Nov/11 Dec/15 Jan)

- a. Training: SVU Team chief, SVU agents, lead agent, all agents, all law enforcement personnel
- b. Experience level: SVU Team chief, team member, lead agent
- c. Specialized career track or general investigative work
- d. Case load
- e. DOD IG Report on Investigator Training & progress since its publication

V. SANE/SAMFE (RFI 72)

- a. Roles
- b. Availability/location of examiners (including deployments)
 1. Military service provided or contracted
 2. Civilian jurisdictions
- c. Training/certification
- d. Interaction with and relationship to SVUs (RFI 73)

VI. Oversight of Investigations: Audit & Review

- a. Audit of case files
 1. Baltimore SARC (Baltimore Annual Reports 2011/2012)
 2. DOD IG Reviews (GAO 11-579)(RFI 62/63)
- b. Remedial procedures for mistakes (DODIG Report on Inv)
- c. Terminology review – unbounding vs. unsubstantiated vs. false report

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VII. Reporting & Identifying Serial offenders (19 Nov/11-12 Dec)(RFI 57)

- a. Anonymous reporting
 1. Military Restricted report vs. Civilian anonymous reporting
 2. Law enforcement being notified
 3. Law enforcement notifying others
 4. Preservation of evidence
 5. Notification of destruction of evidence
- b. *An assessment of the means by which the name, if known, and other necessary identifying information of an alleged offender that is collected as part of a restricted report of a sexual assault could be compiled into a protected, searchable database accessible only to military criminal investigators, Sexual Assault Response Coordinators, or other appropriate personnel only for the purposes of identifying individuals who are subjects of multiple accusations of sexual assault and encouraging victims to make an unrestricted report of sexual assault in those cases in order to facilitate increased prosecutions, particularly of serial offenders. The assessment should include an evaluation of the appropriate content to be included in the database, as well as the best means to maintain the privacy of those making a restricted report.*
- c. How do civilian jurisdictions track alleged offenders when anonymous reports are made to police? Is there any effort to track alleged offenders when no report is made to civilian police authorities and instead, victims choose report to a civilian victim advocate or rape crisis center who has no reporting requirement?

VIII. Recent Changes Pursuant to Law and Policy

- a. NDAA changes (2012-14)
- b. Special victim capability (NDAA 2013)
- c. DoD policy withhold authority to resolve sexual assault allegations
- d. Other SecDef initiatives and policies
- e. SVC program
- f. Victims' Rights
- g. Allowing time for agents/officers to implement existing programs
- h. Metrics to measure success of investigations

IX. Proposed Legislative Changes to Investigating Sexual Assault Crimes

- a. Military Justice Improvement Act provisions
- b. Other legislative proposals to modify convening authority for sexual assault crimes

X. DoD Sexual Assault Reporting Trends (DoD SAPRO FY 2014)

- a. Historical trends (DoD SAPRO reports – actual reports & estimated incidents)
- b. Recent reporting trends & comparison to civilian reporting statistics
- c. Identified barriers to victim reporting (reasons victims say they do not report)
- d. Current DoD initiatives to increase reporting
- e. DoD metrics to track/evaluate reporting trends
- f. Future reporting indicators (connections to current policies/concerns)

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XI. Findings Based on Above Evidence

a. Public

XII. Recommendation(s)

Summary of Discussion/Findings from 15 Jan 14 Meeting:

Investigative Training: The military training programs are designed to develop qualified sexual assault investigators. The military programs require investigators to attend a basic agent's course and numerous advanced courses throughout their career. The training is organized and consistent within each service.

Few state agencies have required training for personnel who move from uniform patrol to investigations relying on on-the-job-training. One exception was Los Angeles which had required initial and on-going training for their detectives. Few agencies have mandatory specialized training for investigators assigned to sexual assault cases. Many agencies are taking advantage of courses offered by state and national organizations or send their detectives to advertised training events or events they organize, but this training is not required. Most agencies do in-house training on a wide-range of topics.

Attorney Training: The military judge advocate general schools have developed robust systematic training plans to prepare their attorneys to prosecute and defend sexual assault cases. Military attorneys attend a basic course to learn about military justice, but also to learn and practice skills required to be a successful litigator. The services require their attorneys to attend a number of tiered schools designed to address litigation skills and specialized training in the prosecution and defense of sexual assault cases. The services also have individuals who are available to mentor or counsel attorneys to assist them in preparing for these and other complex cases.

Civilian attorneys prosecuting sexual assault cases have many more years of experience as a litigator than most military attorneys. Although there are civilian national organizations that offer training for prosecutors and others that offer training for defense attorneys the training is not mandatory and may not be provided when an attorney is new to the field, but attended by more senior attorneys who already have experience. Some of the larger offices have required orientation training and many rely on mentorship programs and on-the-job training as their attorneys progress from handling minor cases to felonies prior to being assigned to sexual assault cases. Many agencies provide in-house training relying on senior attorneys to work with those less experienced.

Culture change: All of the training programs, military investigations and legal, as well as the civilian programs address the culture issues associated with sexual assault cases. Universally the criminal justice community is aware that for their programs to be successful they needed to address and overcome any previously held false beliefs of their personnel. Training programs

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address rape myths, victim trauma, victim blaming, and forensic capabilities and limitations. The police in Baltimore, Philadelphia, and Austin, changed their programs by addressing the cultural biases of their officers and detectives. This training extends to the language used to document the criminal conduct, ensuring that the terms used and not those that imply consent.

Sustainability of Training: A major issue in training is the availability of resources. Civilian agencies do not have the same resources as the military to require systematic training. There is a concern that the military may not be able to maintain the current level of training if funds are not programmed, or if other issues become more important. Funds need to be earmarked.

SANEs: The military has taken several approaches to ensure that Sexual Assault Forensic Examinations are available for military personnel. In many instances this entails having a memorandum of understanding with a civilian hospital that provides examinations for a regional area, either at the civilian facility or a military facility dependent on the resources available. The concern was if this provided military medical personnel with the training and experience they would need to conduct these examinations in a deployed location.

Collateral Misconduct: This issue overlaps with the other subcommittees who will be looking at the subject from different perspectives. The concern for agents is the barrier dealing with collateral misconduct issues can have in their investigations. The requirement to read a victim his or her rights for a minor offense when the focus of the investigation is a sexual assault can cause a victim to withdraw cooperation. None of the MCIOs title the victim for the minor offense in their reports of investigation providing the information to the command separately for appropriate action. The concern has been heightened with the new Special Victim Counsel Program. Agents are concerned that the SVC will counsel their clients not to discuss the misconduct which may be an important issue in the case.

Crime Lab Support: Processing times for the military lab DFSC/USACIL are provided for the time to process an entire case. Processing times for civilian labs (GBI) are for individual examinations and are not the total time required for processing a case. DFSC is actively involved in research and training. There is a concern that the current resources will not be able to maintain the current level of support if the military experiences an increase in reporting and adjudication of sexual assault cases.

Investigators for Prosecution and Defense: The MCIOs are independent investigative agencies tasked to investigate all felony crimes without prejudice, seeking to document the facts of the incident to prove or disprove the allegations. They do not work for the prosecution although they work in collaboration with prosecutors to ensure they fully document the required elements of proof. Military prosecutors and defense attorneys do not have independent investigators assigned to their offices to pursue other aspects of a case germane to their case preparation. Civilian defense attorneys routinely have the assistance of investigators to look into matters that the police do not. Military defense attorneys may request that an investigator be assigned but except for murder cases these requests are routinely denied. Defense attorneys are hesitant to ask the MCIO agents to investigate specific issues as they would not have privilege and the information developed may be prejudicial to their client. If investigators are assigned to the military prosecution and or defense, those assigned must be of equal skill level.