



THE DEFENSE ADVISORY COMMITTEE ON
INVESTIGATION, PROSECUTION, AND DEFENSE
OF SEXUAL ASSAULT IN THE ARMED FORCES

September 16, 2019

The Honorable Mark T. Esper
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Mr. Secretary:

As the Chair of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (the Committee or DAC-IPAD), a federal advisory committee established by section 546 of the National Defense Authorization Act for Fiscal Year 2015 (Public Law No. 113-291), I respectfully submit the analysis and recommendations of the DAC-IPAD regarding the Department of Defense's (DoD's) draft *Report on Allegations of Collateral Misconduct Against Individuals Identified as the Victim of Sexual Assault in the Case Files of a Military Criminal Investigative Organization*. This analysis is offered pursuant to section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Public Law No. 115-232) (hereinafter FY19 NDAA), which directs the Secretary of Defense to work with the DAC-IPAD in submitting to the congressional defense committees a biennial report on the number of instances of collateral misconduct committed by alleged sexual assault victims.

Section 547 requires the Secretary's reports to include three statistical data elements: (1) the number of instances in which an individual identified as a victim of a sexual assault in the case files of a military criminal investigation was accused of misconduct or crimes considered collateral to the investigation of sexual assault, (2) the number of instances in which adverse action was taken against those individuals for collateral misconduct or crimes, and (3) the percentage of sexual assault investigations that involved such an accusation or adverse action against those individuals. Each report is to cover the two years preceding the report due date. The first report is to be submitted to the congressional defense committees by September 30, 2019.

The Committee received a draft DoD collateral misconduct report and a request for its input regarding the report from the DoD General Counsel on June 11, 2019; that report included the collateral misconduct data collected by the Army, Navy, Marine Corps, and Air Force. The Coast Guard provided its report on allegations of collateral misconduct to the DAC-IPAD on August 16, 2019.¹ To better understand how the information in the reports was identified and gathered in each Service, the Committee requested representatives from the Services who were involved in the data collection process to meet with the DAC-IPAD staff and provide additional

¹ See Enclosure 1 for the Department of Defense's draft report and the Coast Guard report. The Air Force provided a supplemental report to the DAC-IPAD on August 22, 2019, and it is also included in Enclosure 1.

information regarding the data reported and methodologies employed. Following this meeting and at the request of the DAC-IPAD, the Services provided additional details to the Committee regarding the types of collateral misconduct reported and adverse actions taken. Service representatives were then invited to appear at the August 23, 2019, DAC-IPAD public meeting to respond directly to Committee members' questions regarding the draft reports. Based on the Committee's review of the draft reports, the additional information provided by the Services, and the testimony received at the public meeting, the Committee offers the following observations and analysis.

Analysis of the Services' Definitions and Methodologies

In reviewing the draft reports and additional information provided by the Services, the Committee identified inconsistencies in the methodologies for data collection and the definitions of terms applied by the Services.² These inconsistencies can be attributed, in substantial part, to the relevant statute's use of key terms without defining them. That the Services, in the absence of uniform guidance, employed nonstandard and inconsistent definitions to collect collateral misconduct data underscores the critical need for, and difficulty in obtaining, uniform, accurate, and complete information on sexual assault cases across the military. The DAC-IPAD notes that this difficulty was the driving force behind the Committee's recommendation in its September 13, 2018, letter to the Secretary of Defense—regarding Article 140a of the Uniform Code of Military Justice (UCMJ)—that DoD develop a single electronic database for the uniform collection, storage, and analysis of standardized military justice documents across the Services.³

Inconsistencies in Data Collection

One example of the significant differences in the Services' collection of collateral misconduct data was in how each Service determined its total number of sexual assault investigations and victims. One Service included only investigations of penetrative sexual offenses in its data, while the other Services included investigations for both penetrative and contact sexual offenses. Some Services included both cases in which investigations were complete but command action was pending and cases in which command action was complete. Others included only cases with completed command action. In addition, the Services differed in whether they included reservists and members of the National Guard in federal status who were victims of sexual assault, and whether they included victims from their Service if the case was investigated by another Service's military criminal investigative organization (MCIO).

Another critical difference across Services in their reporting criteria was in the definition each assigned to the term "accused" when determining the number of instances in which a victim of sexual assault was accused of collateral misconduct. Under the definition used by some Services, a victim was considered to be accused of collateral misconduct if the MCIO's sexual assault investigation revealed circumstances that could potentially support the taking of adverse

² See Enclosure 2 for more details on the variances in the Services' definitions and methodologies.

³ See Letter from DAC-IPAD to the Secretary of Defense Regarding Article 140a, Uniform Code of Military Justice (Sept. 13, 2018), available at https://dacipad.whs.mil/images/Public/08-Reports/03_DACIPAD_InterimReport_Article140a_20180913_Final.pdf.

action against the victim. Other Services employed more restrictive criteria, considering a victim to be accused of collateral misconduct only if an inquiry into the collateral misconduct was actually initiated. The Committee finds that in the context of this report, the statutory language describing a victim as “accused” of collateral misconduct is extremely confusing. In the military justice system, that term is typically used of a Service member only after charges have been preferred against him or her; during the investigative stage, a person suspected of engaging in misconduct is typically referred to as a “suspect.” Consequently, the lack of clear guidance on what Congress meant for a victim to be accused of collateral misconduct was a significant obstacle to drafting a meaningful report.

False Allegations of Sexual Assault

The Services were also inconsistent in how they treated what they considered to be false allegations of sexual assault; some Services included false allegations in their data as collateral misconduct, while others did not. To clarify whether a Service included false allegations in the reported number of cases involving collateral misconduct, the DAC-IPAD asked all of the Services to separately provide data concerning false allegations and adverse actions taken.⁴ None of the Services provided a written definition of what they classified as a “false allegation of sexual assault” or specified the evidentiary threshold necessary to classify an allegation as false.

During the August 23, 2019, public meeting, the Committee members questioned the Service representatives on this issue and learned that at least one Service classified cases in which a mistaken report was made by a third party as a false report. The Service representatives also mentioned instances in which a suspect makes a “cross-claim” of sexual assault, meaning that one person reported the sexual assault and the suspect in that case then countered by accusing the reporter of sexual assault. Several Service representatives noted that they had difficulty determining how to classify these reports.⁵

The Committee finds that a factually false allegation of sexual assault constitutes its own category of misconduct, rather than being misconduct collateral to a sexual assault, and therefore should not be counted as an instance of collateral misconduct.

Analysis of Collateral Misconduct Data Provided by the Services

Incidence of Collateral Misconduct

Congress requested the percentage of Service members who are sexual assault victims and are accused of collateral misconduct. Notwithstanding the inconsistencies in the Services’

⁴ There were a total of 5,733 reported Service member victims: of this number, the Army reported 8 cases involving false allegations of sexual assault; the Navy, Marine Corps, and Air Force each reported 5 cases involving false allegations of sexual assault; and the Coast Guard reported 2 cases involving false allegations of sexual assault (the Services reported these numbers using their own definitions of the term “false allegation”).

⁵ See *Transcript of DAC-IPAD Public Meeting* 46–49 (Aug. 23, 2019) (testimony of Lieutenant Adam Miller, U.S. Coast Guard, Legal Intern, Office of Military Justice; testimony of Lieutenant Colonel Jane M. Male, U.S. Air Force, Deputy of the Military Justice Division, Air Force Legal Operations Agency).

methodologies and definitions, the Services' data made clear that whatever criteria each employed, the incidence of victim collateral misconduct in criminally investigated sexual assault cases is fairly low, ranging from 1% of the Service members who are sexual assault victims in the Navy and Marine Corps to a high of 20% in the Coast Guard.⁶ In the largest Service, the Army, 12% of Service member victims were accused of collateral misconduct in penetrative cases. Based on the combined DoD and Coast Guard reports, as well as the Services' varying definitions of "accused of collateral misconduct," an average of 6% of Service member victims were accused of collateral misconduct in the two-year period studied.

Likelihood of Adverse Action

Congress also requested the percentage of Service members who are sexual assault victims and receive adverse action for collateral misconduct. The Services provided the percentage of *all* Service member victims who received adverse action for collateral misconduct, regardless of whether they were even accused of such misconduct. However, the figure that may also be helpful to policymakers is the likelihood of adverse action for those who are accused of collateral misconduct. The Committee's calculations show that the likelihood of a Service member victim receiving adverse action when accused of collateral misconduct varied widely across the Services, ranging from a 10% likelihood of adverse action in the Army to a 91% likelihood of adverse action in the Marine Corps. But this statistic provides no basis for reliable comparisons between the Services, because they did not have a single interpretation of the term "accused." As would be expected, the Services that defined "accused" more broadly showed less likelihood of adverse action than the Services that defined the term more restrictively.

Types of Collateral Misconduct and of Adverse Action Received

In the data initially provided, the Services did not include the type of collateral misconduct each victim was accused of or the type of adverse action received, though several Services mentioned in their reports that they did collect this information. The Committee subsequently requested this information from the Services for analysis.⁷ The frequency of each type of collateral misconduct differed depending on the Service. In the Army, the most common collateral misconduct offenses were underage drinking (38%), adultery (14%), violation of an order or policy (14%), and fraternization (13%). In the Navy, the most common collateral misconduct offenses were fraternization (29%), underage drinking (19%), and liberty policy violations (14%). In the Marine Corps, the most common collateral misconduct offenses were orders violations (36%) and underage drinking (27%). In the Air Force, the most common collateral misconduct offenses were underage drinking (24%), orders or policy violations (19%), and adultery, fraternization, or unprofessional relationships (14%). Finally, in the Coast Guard, the most common collateral misconduct offenses were prohibited relationship (51%), underage drinking (15%), and sex in the barracks (13%). The type of adverse action received for these offenses also varies across the Services.

⁶ See Enclosure 3 for a detailed breakdown on the percentage of victims who were accused of collateral misconduct in each Service and the percentage of victims who received adverse action in each Service.

⁷ See Enclosure 4 for supplemental information from each Service on the type of collateral misconduct and adverse action taken.

Recommendations

Because the Services did not use the same methodology to collect data, the DAC-IPAD is unable to base substantive recommendations regarding collateral misconduct on the information contained in the reports and supplemental information received. The Committee believes that before meaningful substantive analysis can take place, a thorough and consistent methodology must be applied across the Services in collecting the relevant data. If the inconsistencies in the Services' definitions and methodologies for data collection are not resolved promptly, future reports on collateral misconduct will face the same obstacles as those discussed in this letter.

Drawing on their experiences in collecting the data required for this year's initial collateral misconduct report, the Services provided the DAC-IPAD with helpful input to clarify and standardize definitions and the collection methodology in reports going forward. Based on this input, the testimony at the August 23 public meeting, and the Committee's deliberations, the DAC-IPAD offers the following recommendations to the Secretary of Defense to improve the uniformity, accuracy, and utility of the collateral misconduct data in future reports.

Recommendation 1: The Department should publish a memorandum outlining sufficiently specific data collection requirements to ensure that the Services use uniform methods, definitions, and timelines when reporting data on collateral misconduct (or, where appropriate, the Department should submit a legislative proposal to Congress to amend section 547 by clarifying certain methods, definitions, and timelines). The methodology and definitions should incorporate the following principles:

a. Definition of "sexual assault":

- The definition of "sexual assault" for purposes of reporting collateral misconduct should include:
 - Both penetrative and non-penetrative violations of Article 120, UCMJ (either the current or a prior version, whichever is applicable at the time of the offense);
 - Violations of Article 125, UCMJ, for allegations of sodomy occurring prior to the 2019 version of the UCMJ; and
 - Attempts, conspiracies, and solicitations of all of the above.
- The definition of sexual assault should not include violations of Article 120b, UCMJ (Rape and sexual assault of a child), Article 120c, UCMJ (Other sexual misconduct), Article 130, UCMJ (Stalking), or previous versions of those statutory provisions.

b. Definition of “collateral misconduct”:

- Current DoD policy defines “collateral misconduct” as “[v]ictim misconduct that might be in time, place, or circumstance associated with the victim’s sexual assault incident.”⁸
- However, a more specific definition of collateral misconduct is necessary for purposes of the section 547 reporting requirement. That recommended definition should be as follows: “Any misconduct by the victim that is potentially punishable under the UCMJ, committed close in time to or during the sexual assault, and directly related to the incident that formed the basis of the sexual assault allegation. The collateral misconduct must have been discovered as a direct result of the report of sexual assault and/or the ensuing investigation into the sexual assault.”
- Collateral misconduct includes (but is not limited to) the following situations:
 - The victim was in an unprofessional relationship with the accused at the time of the assault.⁹
 - The victim was drinking underage or using illicit substances at the time of the assault.
 - The victim was out past curfew, was at an off-limits establishment, or was violating barracks/dormitory/berthing policy at the time of the assault.
- To ensure consistency across the Services, collateral misconduct, for purposes of this report, should *not* include the following situations (the list is not exhaustive):
 - The victim is under investigation or receiving disciplinary action for misconduct and subsequently makes a report of sexual assault.
 - The victim used illicit substances at some time after the assault, even if the use may be attributed to coping with trauma.
 - The victim engaged in misconduct after reporting the sexual assault.
 - The victim had previously engaged in an unprofessional relationship with the subject, but had terminated the relationship prior to the assault.
 - The victim engaged in misconduct that is not close in time to the sexual assault, even if it was reasonably foreseeable that such misconduct would be discovered during the course of the investigation (such as the victim engaging in an adulterous relationship with an individual other than the subject).
 - The victim is suspected of making a false allegation of sexual assault.

⁸ Dep’t of Def. Instr. 6495.02, Sexual Assault Prevention and Response (SAPR) Program Procedures, Glossary (Mar. 28, 2013, Incorporating Change 3, May 24, 2017), 117.

⁹ An “unprofessional relationship” is a relationship between the victim and accused that violated law, regulation, or policy in place at the time of the assault.

- The victim engages in misconduct during the reporting or investigation of the sexual assault (such as making false official statements during the course of the investigation).

c. Methodology for identifying sexual assault cases and victims:

- To identify sexual assault cases and victims, all closed cases from the relevant time frame that list at least one of the above included sexual offenses as a crime that was investigated should be collected from the MCIOs.
- A case is labeled “closed” after a completed MCIO investigation has been submitted to a commander to make an initial disposition decision, any action taken by the commander has been completed, and documentation of the outcome has been provided to the MCIO.¹⁰
- Each Service should identify all of its Service member victims from all closed cases from the relevant time frame, even if the case was investigated by another Service’s MCIO.

d. Time frame for collection of data:

- The Services should report collateral misconduct data for the two most recent fiscal years preceding the report due date for which data are available. The data should be provided separately for each fiscal year and should include only closed cases as defined above. For example, the Department’s report due September 30, 2021, should include data for closed cases from fiscal years 2019 and 2020.

e. Definition of “covered individual”:

- Section 547 of the FY19 NDAA defines “covered individual” as “an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.” This definition should be clarified as follows: “an individual identified in the case files of a MCIO as a victim of sexual assault while in title 10 status.”
- For the purposes of this study, victims are those identified in cases closed during the applicable time frame.

f. Replacement of the term “accused”:

- Section 547 of the FY19 NDAA uses the phrase “accused of collateral misconduct.” To more accurately capture the frequency with which collateral misconduct is occurring, the term “accused of” should be replaced with the term

¹⁰ This definition of “closed case” mirrors the definition used by the DAC-IPAD’s Case Review Working Group. See DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES THIRD ANNUAL REPORT 21 n.28 (Mar. 2019), available at https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Report_03_Final_20190326_Web.pdf.

“suspected of,” defined as follows: instances in which the MCIO’s investigation reveals facts and circumstances that would lead a reasonable person to believe that the victim committed an offense under the UCMJ.¹¹

- Examples of a victim suspected of collateral misconduct include (but are not limited to) the following situations:
 - The victim disclosed engaging in conduct that could be a violation of the UCMJ (and was collateral to the offense).
 - Another witness in the sexual assault investigation stated that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
 - The subject of the investigation stated that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
 - In the course of the sexual assault investigation, an analysis of the victim’s phone, urine, or blood reveals evidence that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
- This definition of “suspected of” does not require preferral of charges, a formal investigation, or disciplinary action against the victim for the collateral misconduct. However, if any of those actions have occurred regarding collateral misconduct, or if there is evidence of collateral misconduct from other sources available, such victims should also be categorized as suspected of collateral misconduct even if the MCIO case file does not contain the evidence of such misconduct.
 - For example, if in pretrial interviews the victim disclosed collateral misconduct, such a victim would be counted as suspected of collateral misconduct.

g. Definition of “adverse action”:

- The term “adverse action” applies to an officially documented command action that has been initiated against the victim in response to the collateral misconduct.
- Adverse actions required to be documented in collateral misconduct reports are limited to the following:
 - Letter of reprimand (or Service equivalent) or written record of individual counseling in official personnel file;
 - Imposition of nonjudicial punishment;
 - Preferral of charges; or

¹¹ *Cf. United States v. Cohen*, 63 M.J. 45, 50 (C.A.A.F. 2006) (stating that determining whether a person is a “suspect” entitled to warnings under Article 31(b) prior to interrogation “is an objective question that is answered by considering all the facts and circumstances at the time of the interview to determine whether the military questioner believed or reasonably should have believed that the servicemember committed an offense”) (internal citations omitted).

- Initiation of an involuntary administrative separation proceeding.
- The Committee recommends limiting the definition of adverse action to the above list for purposes of this reporting requirement to ensure consistency and accuracy across the Services in reporting and to avoid excessive infringement on victim privacy. The Committee recognizes the existence of other adverse administrative proceedings or actions that could lead to loss of special or incentive pay, administrative reduction of grade, loss of security clearance, bar to reenlistment, adverse performance evaluation (or Service equivalent), or reclassification.

h. Methodology for counting “number of instances”:

- Cases in which a victim is suspected of more than one type of collateral misconduct should be counted only once; where collateral misconduct is reported by type, it should be counted under the most serious type of potential misconduct (determined by UCMJ maximum punishment) or, if the victim received adverse action, under the most serious collateral misconduct identified in the adverse action.
- For cases in which a victim received more than one type of adverse action identified above, such as nonjudicial punishment and administrative separation, reporting should include both types of adverse action.

Recommendation 2: Victims suspected of making false allegations of sexual assault should not be counted as suspected of collateral misconduct.

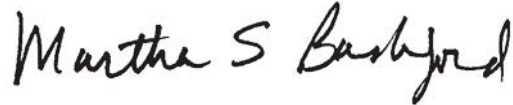
Recommendation 3: For purposes of the third statistical data element required by section 547, the Department should report not only the percentage of all Service member victims who are suspected of collateral misconduct but also the percentage of the Service member victims who are suspected of collateral misconduct and then receive an adverse action for the misconduct. These two sets of statistics would better inform policymakers about the frequency with which collateral misconduct is occurring and the likelihood of a victim receiving an adverse action for collateral misconduct once he or she is suspected of such misconduct.

Recommendation 4: The Department should include in its report data on the number of collateral offenses that victims were suspected of by type of offense (using the methodology specified in section h of Recommendation 1) and the number and type of adverse actions taken for each of the offenses, if any. This additional information would aid policymakers in fully understanding and analyzing the issue of collateral misconduct and in preparing training and prevention programs.

Recommendation 5: To facilitate production of the future collateral misconduct reports required by section 547, the Services should employ standardized internal documentation of sexual assault cases involving Service member victims suspected of engaging in collateral misconduct as defined for purposes of this reporting requirement.

The Committee would like to express its sincere appreciation to the Services for their collaboration and feedback on how to improve this reporting requirement, and to the Department for the opportunity to provide input on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Martha S. Bashford". The signature is written in a cursive style with a large, prominent "M" and "B".

Martha S. Bashford
Chair

Enclosures:

1. Department of Defense's draft *Report on Allegations of Collateral Misconduct Against Individuals Identified as the Victim of Sexual Assault in the Case Files of a Military Criminal Investigative Organization*; *U.S. Coast Guard Report on Allegations of Collateral Misconduct Against Victims of Sexual Assault*; and *Department of the Air Force Supplemental Report on Allegations of Collateral Misconduct Against Victims of Sexual Assault*
2. Comparison of Service Collateral Misconduct Definitions and Methodologies
3. Comparison of Service Collateral Misconduct Data
4. Supplemental Information from the Services Related to the June 2019 Department of Defense Draft Report on Collateral Misconduct

ENCLOSURE 1



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

JUN 11 2019

GENERAL COUNSEL

Ms. Martha Bashford
Chair
Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in
the Armed Forces
One Liberty Center
875 N. Randolph Street, Suite 150
Arlington, VA 22203

Dear Ms. Bashford:

Pursuant to section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, the Secretary of Defense is required to submit biennial reports, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD), addressing allegations of collateral misconduct against individuals identified as the victim of sexual assault in the case files of a military criminal investigative organization. Responsibility for that report has been delegated to me. The first report is due to the Congressional defense committees by September 30, 2019.

Consistent with the letter I sent to you on March 12, 2019, enclosed is a draft report including the information sought by section 547. That report is attached. I am providing the draft report to you to give the DAC-IPAD an opportunity to offer any additional information or analysis it deems appropriate. To facilitate submitting the report to Congress by the September 30, 2019, statutory deadline, please provide me with any input from the DAC-IPAD no later than September 16, 2019.

If you have any questions concerning this request, please contact Dwight Sullivan of my office. You can reach him at 703-695-1055 or dwight.h.sullivan.civ@mail.mil.

Please accept and convey to the other DAC-IPAD members my thanks for your dedication, selfless service, and high-quality analyses.

Sincerely,

A handwritten signature in blue ink, reading "Paul Ney", is written over a blue oval-shaped scribble.

Paul C. Ney, Jr.
DoD General Counsel

Enclosure:
As stated

Report on Allegations of Collateral Misconduct against Individuals Identified as the Victim of Sexual Assault in the Case Files of a Military Criminal Investigative Organization



The estimated cost of this report or study for the Department of Defense is approximately \$_____ for the 2019 Fiscal Year. This includes \$0 in expenses and \$_____ in DoD labor.

Prepared by the Department of Defense

[Date Submitted]

Report on Allegations of Collateral Misconduct against Individuals Identified as the Victim of Sexual Assault in the Case Files of a Military Criminal Organization

Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 (2019), provides:

(a) Report. Not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

(1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.

(2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).

(3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

(b) Covered individual defined. In this section, the term “covered individual” means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

This report includes relevant data from each of the Military Departments for the two-year period from April 1, 2017, to March 31, 2019. It is being provided to the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces for such input as that Committee deems appropriate.



DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
2200 ARMY PENTAGON
WASHINGTON, DC 20310-2200

**THE DEPARTMENT OF ARMY REPORT ON ALLEGATIONS OF COLLATERAL MISCONDUCT
AGAINST VICTIMS OF SEXUAL ASSAULT**

I. INTRODUCTION

On 12 March 2019, pursuant to section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19), each Service is required to report the following information pertaining to victims of sexual assault for the period of April 1, 2017 to March 31¹, 2019: (1) the number of instances an identified victim of sexual assault in a military criminal investigation was accused of misconduct or crimes collateral to the sexual assault; (2) the number of instances in which adverse action was taken against those individuals for collateral misconduct; and (3) the percentage of sexual assault investigations that involved such an accusation or adverse action.

II. RELEVANT DEFINITIONS

In order to ensure accuracy of the data and consistency across the Services, the Joint Service Committee reviewed the request and defined the following terms:

a. **Sexual Assault Investigation**: Investigation into an alleged violation of Article 120 or Article 125 (forcible sodomy) of the Uniform Code of Military Justice, conducted by the Service's Military Criminal Investigative Organization (MCIO). These investigations are conducted into allegations of sexual assault that have a Department of Defense nexus, regardless of the identity or status of the victim. The number of investigations was determined by the number of subjects and not how many victims because a victim could have multiple allegations against different subjects.

b. **Victim of Sexual Assault**: Victim is defined as any Army member on active duty or in a reserve component at the time of the alleged sexual assault. Only service members per the UCMJ can be subject to adverse actions for collateral misconduct.

c. **Collateral Misconduct**: This includes any allegation of misconduct that is punishable under the UCMJ and is directly related to the incident which formed the basis of the sexual assault allegation. Additionally, the collateral misconduct must have been discovered as a direct result of the investigation into the sexual assault. Examples include, but are not limited to: underage drinking, fraternization, adultery, illegal drug use or possession, etc. Adverse actions against a person who filed a completely false allegation of sexual assault were not included.

d. **Accused**: ARMY definition: A qualifying victim is considered accused of collateral misconduct if the MCIO's sexual assault investigation revealed a potential UCMJ violation by the victim, directly related to the sexual assault that could support the taking of adverse action against the victim (e.g. underage drinking). Accused does not imply charges were preferred.

¹ The Memorandum from the DoD Office of General Counsel requested data from April 1, 2017 to March 30, 2019. Because the month of March has 31 days, the Services included March 31st into the reporting period.

e. **Adverse Action:** This includes any documented disciplinary action taken in response to the collateral misconduct, including: written counseling, letter of reprimand, Article 15 punishment, administrative separation proceedings, and court-martial.

III. METHODOLOGY

In coordination with the Army Criminal Investigative Division (CID), a list was generated of all sexual assault investigations closed or placed in a Final Investigation status between 1 April 2017 to 31 March 2019. From this list, CID was able to identify the named victims in each investigation. This information was provided to the U.S. Army Office of the Judge Advocate General (OTJAG) for review.

The Army initially reviewed the list to determine the number of Army victims (RA & USAR). The CID list of investigations with named victims was then separated by jurisdiction and sent to Judge Advocates at the field offices to perform an independent review of the identified CID investigations and any subsequent inquiry, investigation or adverse action to answer the following questions for each victim: (1) was the victim involved in misconduct collateral to their report of sexual assault; (2) if yes, did the command take adverse action against the victim for that collateral misconduct; and (3) if yes, what type of adverse action did the command take? The information received during this review is the basis for the data below.

IV. DATA

The data below pertains to the period of April 1, 2017 to March 31, 2019:

Total Number of Sexual Assault Investigations Closed or in Final Investigation Status	Total Number of Sexual Assault Investigations involving an Army victim	Total Number of instances where victim was accused of collateral misconduct	Total Number of instances where adverse action was taken as a result of collateral misconduct
1586	1206	154	15

Based on the data received above, the following calculations were determined:

Percentage of investigations where victim was accused of collateral misconduct	Percentage of investigations where victim received adverse action.
13%	1%



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD
1322 PATTERSON AVENUE SE SUITE 3000
WASHINGTON DC 20374-5066

THE DEPARTMENT OF THE NAVY REPORT ON ALLEGATIONS OF COLLATERAL MISCONDUCT AGAINST VICTIMS OF SEXUAL ASSAULT

I. INTRODUCTION

The Department of the Navy submits the following report pursuant to Public Law 115-23, the National Defense Authorization Act for Fiscal Year 2019. The report contains the following information: (1) the number of instances in the Navy and Marine Corps where an identified victim of sexual assault in a military criminal investigation was accused of misconduct or crimes collateral to the sexual assault; (2) the number of instances in which adverse action was taken against those individuals for collateral misconduct; and (3) the percentage of sexual assault investigations that involved such an accusation or adverse action.

II. DEFINITIONS

The following definitions were used in compiling this report:

a. **Sexual Assault Investigation:** Investigation into an alleged violation of Article 120 or Article 125 (forcible sodomy) of the Uniform Code of Military Justice (UCMJ), where a Navy or Marine Corps victim is identified. Only completed sexual assault investigations were reviewed. A completed investigation is one where the Naval Criminal Investigative Service (NCIS) has submitted its report to the command for action.

b. **Victim of Sexual Assault:** Victim, for purposes of this report, is an active or reserve member of the Navy or Marine Corps who is listed as a sexual assault victim in an NCIS report. Only service members per the UCMJ can be subject to adverse actions for collateral misconduct.

c. **Collateral Misconduct:** Misconduct that is punishable under the UCMJ and is directly related to the incident that was the basis of the sexual assault allegation. Additionally, the collateral misconduct must have been discovered as a direct result of the investigation into the sexual assault. Examples include, but are not limited to: underage drinking, fraternization, adultery, illegal drug use or possession, etc.

d. **Accused:** For purposes of this report, an identified sexual assault victim is considered to be "accused" of collateral misconduct if an inquiry into the collateral misconduct was actually initiated.

e. **Adverse Action:** Any documented formal action taken in response to substantiated collateral misconduct, including: formal written counseling, letter of reprimand, nonjudicial punishment, administrative separation proceedings, and/or court-martial.

f. **Date Range:** The DoD OGC requested data for the period between 1 April 2017, through 31 March 2019.

III. METHODOLOGY

NCIS provided to the Navy and Marine Corps a list of completed sexual assault investigations for the period between 1 April 2017 and 31 March 2019 where the identified victim was a Navy or Marine Corps service member. In addition to the names provided by NCIS, the Navy and Marine Corps collected victim names from the other Services in cases where a victim affiliated with the Navy or Marine Corps reported a sexual assault to the Military Criminal Investigative Organization of another Service. Those victims are included in the numbers reported by the Navy and Marine Corps.

A team of judge advocates organized the list of victims provided by NCIS and forwarded those names to the commands responsible for each individual case for a determination of whether (1) the victim was accused of (an inquiry was initiated into) misconduct collateral to their report of sexual assault; (2) if so, whether the command took adverse action against the victim for that collateral misconduct; and (3) if so, the type of adverse action taken.

The information received during this review is reflected in section IV on the following page.

IV. DATA

During the period of April 1, 2017 to March 31, 2019:

Total number of sexual assault investigations involving Navy or Marine Corps victims		Total number of instances where a Navy or Marine Corps victim was accused of collateral misconduct		Total number of instances where adverse action was taken as a result of collateral misconduct	
Navy	USMC	Navy	USMC	Navy	USMC
1,686	826	*52	**12	22	11
Total USN/USMC		Total USN/USMC		Total USN/USMC	
2,512		64		33	

Based on the data received above, the following calculations were determined:

Percentage of total sexual assault investigations where a Navy or Marine Corps victim was accused of collateral misconduct		Percentage of investigations where victim received adverse action.	
Navy	USMC	Navy	USMC
3.0%	1.4%	1.3%	1.3%
Total USN/USMC		Total USN/USMC	
2.5%		1.3%	

* In the Navy, three service members who were initially identified as victims were subject to adverse action for making false allegations of sexual assault. This is in addition to the 52 victims who were accused of collateral misconduct and represents .2% of all victims.

** In the Marine Corps, five service members who were initially identified as victims were subject to adverse action for making false allegations of sexual assault. This is in addition to the 12 victims who were accused of collateral misconduct and represents .6% of all victims.



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON DC 20330

THE DEPARTMENT OF THE AIR FORCE REPORT ON ALLEGATIONS OF COLLATERAL MISCONDUCT AGAINST VICTIMS OF SEXUAL ASSAULT

I. INTRODUCTION

On 12 March 2019, pursuant to section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19), each Service was required to report the following information pertaining to victims of sexual assault for the period of April 1, 2017 to March 31¹, 2019: (1) the number of instances an identified victim of sexual assault in a military criminal investigation was accused of misconduct or crimes collateral to the sexual assault; (2) the number of instances in which adverse action was taken against those individuals for collateral misconduct; and (3) the percentage of sexual assault investigations that involved such an accusation or adverse action.

II. RELEVANT DEFINITIONS

In order to ensure accuracy of the data and consistency across the Services, the Air Force adopted the following definitions from the Joint Service Committee for purposes of this report:

a. **Sexual Assault Investigation:** Investigation into an alleged violation of Article 120 or Article 125 conducted by the Service's Military Criminal Investigative Organization (MCIO). These investigations are conducted into allegations of sexual assault that have a Department of Defense nexus, regardless of the identity or status of the victim.

b. **Victim of Sexual Assault:** Victim is defined as any Air Force member on active duty or in a reserve component at the time of the alleged sexual assault. Only Air Force members are subject to disciplinary action for collateral misconduct.

c. **Collateral Misconduct:** This includes any allegation of misconduct that is punishable under the Uniform Code of Military Justice (UCMJ) and is directly related to the incident which formed the basis of the sexual assault allegation. Additionally, the collateral misconduct must have been discovered as a direct result of the investigation into the sexual assault and during the criminal investigation. Examples include, but are not limited to: underage drinking, fraternization, adultery, illegal drug use or possession, etc.

d. **Accused:** A qualifying victim is considered accused of collateral misconduct if the MCIO's sexual assault investigation revealed circumstances that could potentially support the taking of adverse action against the victim (e.g. underage drinking). Accused in this context is

¹ The Memorandum from the DoD Office of General Counsel requested data from April 1, 2017 to March 30, 2019. Because the month of March has 31 days, the Services included March 31st in the reporting period.

not triggered by the preferral of court-martial charges and does not necessarily mean that a separate investigation was opened against a qualifying sexual assault victim.

e. **Adverse Action:** This includes any documented disciplinary action taken in response to the collateral misconduct, including: written counseling; Article 15 punishment; administrative separation; and court-martial.

III. METHODOLOGY

In coordination with the Air Force Office of Investigation (AFOSI), a list of all sexual assault investigations that were investigatively closed (completed) between 1 April 2017 and 31 March 2019 was obtained. This data was further filtered to focus on those cases specifically involving an active duty victim. From this list, AFOSI was able to identify the named victims in each investigation; some investigations contained more than one victim. This information was provided to a team of judge advocates to review. In addition to the names provided by AFOSI, the Army provided names of Air Force victims that reported a sexual assault to their MCIO.

Because the Air Force does not maintain the requested information in a central database or case management system, a team of judge advocates performed an independent review of the identified investigations to answer the following questions for each victim: (1) was the victim investigated for misconduct collateral to their report of sexual assault; (2) if yes, did the command take adverse action against the victim for that collateral misconduct; and (3) if yes, what type of adverse action did the command take? The information received during this review is the basis for the data below.

IV. DATA

The data below pertains to the period of April 1, 2017 to March 31, 2019:

Total Number of SA Investigations Completed ²	Total Number of SA Investigations Involving Air Force Victims	Total Number of Instances in SA Investigations Where Victim Was Accused of Collateral Misconduct	Total Number of Instances in SA Investigations Where Adverse Action Was Taken as a Result of Collateral Misconduct
2,895	1,753	130**	45**

Based on the data received above, the following calculations were determined:

Overall % of SA Investigations Where Victim was Accused of Collateral Misconduct ³	% of SA Investigations Involving Air Force Victims Where Victim Was Accused of Collateral Misconduct	Overall % of SA Investigations Where Victim Received Adverse Action ³	% of SA Investigations Involving Air Force Victims Where Victim Received Adverse Action
4.49%	7.42%	1.55%	2.57%

² A "completed" or "investigatively closed" investigation refers to those cases where the Air Force Office of Special Investigation (AFOSI) report of investigation is published and disseminated for command action.

³ Includes all sexual assault allegations, regardless of whether victim was an Air Force member.

**** Of the total number of victims who were accused of and received adverse action, two of those victims received adverse action for making false allegations of sexual assault.**



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS UNITED STATES AIR FORCE
WASHINGTON DC 20330

**THE DEPARTMENT OF THE AIR FORCE SUPPLEMENTAL REPORT ON ALLEGATIONS OF
COLLATERAL MISCONDUCT AGAINST VICTIMS OF SEXUAL ASSAULT**

I. INTRODUCTION

On 12 March 2019, pursuant to section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19), each Service was required to report the following information pertaining to victims of sexual assault for the period of April 1, 2017 to March 31¹, 2019: (1) the number of instances an identified victim of sexual assault in a military criminal investigation was accused of misconduct or crimes collateral to the sexual assault; (2) the number of instances in which adverse action was taken against those individuals for collateral misconduct; and (3) the percentage of sexual assault investigations that involved such an accusation or adverse action.

II. RELEVANT DEFINITIONS

In order to ensure accuracy of the data and consistency across the Services, the Air Force adopted the following definitions from the Joint Service Committee for purposes of this report:

- a. **Sexual Assault Investigation**: Investigation into an alleged violation of Article 120 or Article 125 conducted by the Service's Military Criminal Investigative Organization (MCIO). These investigations are conducted into allegations of sexual assault that have a Department of Defense nexus, regardless of the identity of the alleged victim.
- b. **Victim of Sexual Assault**: Victim is defined as any Air Force member on active duty or in a reserve component at the time of the alleged sexual assault. Only Air Force members are subject to disciplinary action for collateral misconduct.
- c. **Collateral Misconduct**: This includes any allegation of misconduct that is punishable under the Uniform Code of Military Justice (UCMJ) and is directly related to the incident which formed the basis of the sexual assault allegation. Additionally, the collateral misconduct must have been discovered as a direct result of the investigation into the sexual assault and during the criminal investigation. Examples include, but are not limited to: underage drinking, fraternization, adultery, illegal drug use or possession, etc.
- d. **Accused**: A qualifying victim is considered accused of collateral misconduct if the MCIO's sexual assault investigation revealed circumstances that could potentially support the taking of adverse action against the victim (e.g. underage drinking). Accused in this context is

¹ The Memorandum from the DoD Office of General Counsel requested data from April 1, 2017 to March 30, 2019. Because the month of March has 31 days, the Services included March 31st in the reporting period.

not triggered by the preferral of court-martial charges and does not necessarily mean that a separate investigation was opened against a qualifying sexual assault victim.

e. **Adverse Action:** This includes any documented disciplinary action taken in response to the collateral misconduct, including: written counseling; Article 15 punishment; administrative separation; and court-martial.

III. METHODOLOGY

In coordination with the Air Force Office of Investigation (AFOSI), a list of all sexual assault investigations that were investigatively closed (completed) between 1 April 2017 and 31 March 2019 was obtained. This data was further filtered to focus on those cases specifically involving an active duty victim. From this list, AFOSI was able to identify the named victims in each investigation; some investigations contained more than one victim. This information was provided to a team of judge advocates to review. In addition to the names provided by AFOSI, the Army provided names of Air Force victims that reported a sexual assault to their MCIO.

Because the Air Force does not maintain the requested information in a central database or case management system, a team of judge advocates performed an independent review of the identified investigations to answer the following questions for each victim: (1) was the victim investigated for misconduct collateral to their report of sexual assault; (2) if yes, did the command take adverse action against the victim for that collateral misconduct; and (3) if yes, what type of adverse action did the command take? The information received during this review was the basis for the data initially provided in the prior report. The information received did not include the details of the alleged misconduct, except to specify cases where Air Force victims were identified as having been accused of making false allegations.

Subsequent to the prior report, the DAC-IPAD requested “a list of the collateral misconduct that each accused victim in the report was accused of and the adverse action taken, if any,” and “the number of cases in which a victim was investigated for a false allegation of sexual assault and the adverse action taken, if any in each case.”

In order to compile this information, base-level judge advocates reviewed each case file and any other information available to provide the nature of the misconduct the victim was accused of and the type of action, if any. In reviewing this information, a number of cases previously included in the data set in error were excluded², and a number of cases that had not previously been identified as containing accusations of false allegations were also identified.

IV. DATA

The data below pertains to the period of April 1, 2017 to March 31, 2019:

² The cases excluded either (1) did not in fact contain evidence that the victim was accused of or disciplined for misconduct, (2) did not contain evidence of misconduct that met the above definition of collateral misconduct, (3) were duplicate cases where the same victim and same alleged misconduct were reported multiple times or as both an alleged false allegations and as collateral misconduct, or (4) were not Air Force victims.

Total Number of SA Investigations Completed ³	Total Number of SA Investigations Involving Air Force victim	Total Number of Instances in SA Investigations Where Victim Was Accused of Collateral Misconduct	Total Number of Instances in SA Investigations Where Adverse Action Was Taken as a Result of Collateral Misconduct
2,895	1,753	105**	40**

Of the collateral misconduct reported, 5 cases involved an allegation that the victim’s report of sexual assault was falsified. Two of those cases resulted in adverse action. The affected numbers are marked with asterisks (**). Based on the data received above, the following calculations were determined:

Over % of SA Investigations Where Victim Was Accused of Collateral Misconduct ⁴	% of SA Investigations Involving Air Force Victims Where Victim Was Accused of Collateral Misconduct	Over % of SA Investigations Where Victim Received Adverse Action for Collateral Misconduct	% of SA Investigations Involving Air Force Victims Where Victim Received Adverse Action for Collateral Misconduct
3.63%	5.99%	1.38%	2.28%

Based on the additional details of the collateral misconduct reviewed, the following allegations and adverse actions were totaled:

Primary Allegation of Collateral Misconduct**	Number of Victims Accused	%	LOC/LOA /LOR	Article 15 NJP	LOR & Discharge	NJP & Discharge	Court-martial & Discharge
	105		19	12	2	5	2
Underage Drinking	25	23.81%	1	2			
Orders or Policy Violations (Other than Underage Drinking or Unprofessional Relationship)	20	19.05%	2	2	1	1	
Adultery, Fraternization, or Unprofessional Relationship	15	14.29%	5	2			
Drug Use	10	9.52%	1	2	1	1	1
Sexual Assault or Abusive Sexual Contact	10	9.52%	2	1			
Assault & Battery	8	7.62%	5	1		1	1
False Official Statement (Other than False Allegation)	6	5.71%	2	1		1	

³ A “completed” or “investigatively closed” investigation refers to those cases where the Air Force Office of Special Investigations (AFOSI) report of investigation is published and disseminated for command action.

⁴ Includes all sexual assault allegations, regardless of whether victim was an Air Force member.

False Allegation of Sexual Assault	5	4.76%	1			1	
Drunk Driving	4	3.81%					
Absent Without Leave	1	0.95%					
Insubordination	1	0.95%		1			

** Cases where the victim was accused of multiple types of collateral misconduct are listed under the most serious alleged misconduct. Cases where the victim was accused of making a false allegation as well as other misconduct are listed under alleged false allegations.

U.S. Department of
Homeland Security

United States
Coast Guard



Commandant
United States Coast Guard

2703 Martin Luther King Jr. Ave, SE
Stop 7213
Washington, DC 20593-7213
Phone: (202) 372-3734

5800
AUG 16 2019

The Honorable Martha Bashford, Chair
Defense Advisory Committee on Investigation,
Prosecution and Defense of Sexual Assault in
The Armed Forces (DACIPAD)
One Liberty Center
875 North Randolph Street
Arlington, Virginia 22203-1995

Dear Madam Chair:

Enclosed please find the Coast Guard report addressing allegations of collateral misconduct against individuals identified as the victim of sexual assault in the case files of a Coast Guard criminal investigation.

Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, requires the Secretary of Defense to submit this report to Congress, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces. As written, the law applies to only those military services within the Department of Defense. Nevertheless, I believe it is practical to submit the information sought in this particular request to allow the appropriate congressional defense committees to assess those obstacles that may inhibit victims' cooperation in sexual assault cases within the Armed Forces.

If your staff needs anything further with regard to these responses, please have them contact CAPT Vasilios Tasikas, Chief, Office of Military Justice, at Vasilios.Tasikas@uscg.mil, or (202) 372-3806.

Thank you for the opportunity to provide input on the matter.

Sincerely,

A handwritten signature in blue ink that reads "S. J. Andersen".

S. J. ANDERSEN
Rear Admiral, U.S. Coast Guard
Judge Advocate General

Enclosure



U.S. COAST GUARD REPORT ON ALLEGATIONS OF COLLATERAL MISCONDUCT AGAINST VICTIMS OF SEXUAL ASSAULT

I. INTRODUCTION.

Pursuant to section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (NDAA FY19), each Service was required to report the following information pertaining to victims of sexual assault for the period of April 1, 2017 to March 31, 2019: (1) the number of instances an identified victim of sexual assault in a military criminal investigation was accused of misconduct or crimes collateral to the sexual assault; (2) the number of instances in which adverse action was taken against those individuals for collateral misconduct; and, (3) the percentage of sexual assault investigations that involved such an accusation or adverse action.

II. RELEVANT DEFINITIONS.

In order to ensure accuracy of the data and consistency across the Services, the Coast Guard adopted the following definitions from the Joint Service Committee for purposes of this report:

- a. **Sexual Assault Investigation**: Investigation into an alleged violation of Article 120 or Article 125 conducted by the Service's Military Criminal Investigative Organization (MCIO). These investigations are conducted into allegations of sexual assault that have a nexus to the Armed Forces, regardless of the identity or status of the victim.
- b. **Victim of Sexual Assault**: Victim is defined as any Coast Guard member on active duty at the time of the alleged sexual assault. Only Coast Guard members are subject to disciplinary action under the Uniform Code of Military Justice (UCMJ) for collateral misconduct. This does include Coast Guard Reservists on active duty orders.
- c. **Collateral Misconduct**: This includes any allegation of misconduct that is directly related to the incident that is the basis of the sexual assault allegation and that was revealed during the investigation. Examples include, but are not limited to: Failure to obey order or regulation (prohibited relationship), underage drinking, fraternization, adultery, illegal drug use or possession, etc.
- d. **Accused of Collateral Misconduct**: A qualifying victim is considered accused of collateral misconduct if the MCIO's sexual assault investigation revealed circumstances that could *potentially* support the taking of adverse action against the victim (e.g., underage drinking, prohibited relationship, etc.). Accused in this context is *not* triggered by the preferral of court-martial charges.

e. **Adverse Action:** This includes any *documented* disciplinary action taken in response to the collateral misconduct, including: written counseling; Article 15 punishment; administrative separation; and court-martial.

III. METHODOLOGY.

The Coast Guard Investigative Service (CGIS) provided a list of all sexual assault investigations between 1 April 2017 and 31 March 2019 including victim names, victims' civil or military status, case status, and a summary of investigation to the Office of Military Justice (CG-LMJ). This data was filtered to include only completed cases. The cases were further filtered by removing cases with civilian victims (including dependents) and unknown victims, leaving cases specifically involving an active duty victim. From this list, CG-LMJ requested the personnel files of those listed from the Coast Guard Personnel Service Center, Military Records Section.

Each victim's personnel file was reviewed for adverse action. Any adverse action was checked against the investigation summary. If adverse action documented actions uncovered during the investigation, the victim was determined to have received an adverse action for collateral misconduct. Further information was requested from CGIS and local units when apparent collateral misconduct could not be verified. The information received during this review is the basis for the data below.

IV. DATA.

The data below pertains to the period of April 1, 2017 to March 31, 2019:

Total Number of SA Investigations Completed by Subject	Total Number of SA Investigations Involving Coast Guard Victims	Total Number of Instances in SA Investigations Where There was Potential Misconduct by the Victim	Total Number of Instances in SA Investigations Where Adverse Action Was Taken as a Result of Misconduct
465	262	53	6

Based on the data received above, the following calculations were determined:

% of Instances in SA Investigations Where There was Potential Misconduct by the Victim	% of SA Investigations Involving Coast Guard Victims Where Victim Received Adverse Action
20%	2%

ENCLOSURE 2

DAC-IPAD Analysis of Draft DoD Collateral Misconduct Report

ENCLOSURE 2 -- Comparison of Service Collateral Misconduct Definitions and Methodologies

	Definition of "accused" of collateral misconduct	Service Data Collection Methodology	Collateral Misconduct Criteria
Army Study	accused = MCIO's SA investigation revealed a potential UCMJ violation by the victim, directly related to the sexual assault that could support the taking of adverse action against the victim (e.g., underage drinking). "Accused" does not imply charges were preferred.	CID generated list of all SA investigations closed or placed in final investigation status. CID identified named Army victims (RA & USAR). OTJAG separated CID list by jurisdiction and sent to trial counsel at field offices to review CID investigations and any subsequent inquiry, investigation, or adverse action to answer the following questions:	(1) was the victim involved in misconduct collateral to their report of sexual assault; (2) if yes, did command take adverse action against victim for the misconduct; (3) if yes, what type of adverse action did command take?
Navy/MC Study	accused = inquiry into the collateral misconduct was actually initiated.	NCIS provided list of completed SA investigations with Navy or MC victim. Navy also collected names of Navy and MC victims in SAs reported to other Services. Names of victims forwarded to commands responsible for each individual case for determination of whether:	(1) the victim was accused of (an inquiry was initiated into) misconduct collateral to their report of SA; (2) if so, whether command took adverse action for that misconduct; (3) if so, the type of adverse action taken.
Air Force Study	accused = MCIO's SA investigation revealed circumstances that could potentially support the taking of adverse action against the victim (e.g., underage drinking). Does not require a separate investigation to be opened against victim or the preferal of charges.	AFOSI provided list of all SA investigations investigatively closed (completed). Data filtered to focus on active duty victims. AFOSI identified victim names. Info provided to JA team to review. Army provided names of AF victims in CID investigations. Team of JA performed independent review of identified investigations to answer following questions:	(1) was the victim investigated for misconduct collateral to their report of SA; (2) if yes, did command take adverse action for that misconduct; (3) if yes, what kind of adverse action did command take?
Coast Guard Study	accused = MCIO's SA investigation revealed circumstances that could potentially support the taking of adverse action against the victim (e.g., underage drinking, prohibited relationship, etc.). "Accused" in this context is not triggered by the preferal of court-martial charges.	CGIS provided a list of all SA investigations including victim names, military or civilian status, case status, and a summary of the investigation. Data filtered to include only completed cases and removing civilian and unknown victims. CG-LMJ requested the personnel files of those listed. Any adverse action in the personnel file was reviewed against the investigation summary.	If the adverse action documented that the actions were uncovered during the investigation, the victim was determined to have received an adverse action for collateral misconduct. Further information was requested from CGIS and local units when apparent collateral misconduct couldn't be verified.

Variations Across the Services:

- Definition of "accused":** Army, AF, and CG had JAs look at investigative files to identify potential collateral misconduct. Navy and MC went to victim commanders to request information.
- Investigative status of cases reviewed:** Army included both cases with complete investigations pending command action and cases with completed command action. AF looked at cases with complete investigations with either pending or completed command action. Navy and MC looked only at cases with completed command action. CG didn't specify.
- Inclusion of Reservists and National Guard:** Army included reservists in federal status but not NG. AF and CG included only active duty members. It is unclear whether Navy, MC, or CG included reservists.
- Inclusion of victims from cases investigated by other Service MCIOs:** Army did not include any Army victims if case investigated by other Service MCIO. Navy and MC included all Navy and MC victims from other Service MCIO investigations. AF included AF victims from MCIO investigations conducted by other Services, where known. CG doesn't specify.
- Treatment of false SA reports by victims:** Navy and MC did not include these victims in study but did indicate their numbers.
The Army, AF, and CG did include these Service members in study.
- Definition of sexual assault investigation:** The Army included only penetrative sexual assault investigations in its data collection. The other Services included both penetrative and contact offenses and possibly additional Article 120 offenses.

ENCLOSURE 3

DAC-IPAD Analysis of Draft DoD Collateral Misconduct Report (September 2019)

ENCLOSURE 3: Comparison of Service-Provided Collateral Misconduct Data

Collateral Misconduct and Service Member Victims	U.S. Army*	U.S. Navy**	U.S. Marine Corps***	U.S. Air Force****	U.S. Coast Guard	Total for All Services
Number of Service member victims in cases closed between Apr 1, 2018, and Mar 31, 2019	1,206	1,686	826	1,753	262	5,733
Number of Service member victims "accused" of collateral misconduct in cases closed between Apr 1, 2018, and Mar 31, 2019	146	21	11	105	53	336
Number of instances when adverse action was taken against a Service member victim "accused" of collateral misconduct	15	12	10	40	6	83
Percentage of Service member victims <u>accused</u> of collateral misconduct	12%	1%	1%	6%	20%	6%
Percentage of <u>accused</u> Service member victims who <u>receive adverse action</u> for collateral misconduct	10%	57%	91%	38%	11%	25%
Percentage of (all) Service member victims who receive adverse action for collateral misconduct	1%	1%	1%	2%	2%	1%

* U.S. Army originally reported 154 accused of collateral misconduct.

** U.S. Navy: originally reported 52 accused of collateral misconduct; 22 received adverse action.

*** U.S. Marine Corps originally reported 12 accused of collateral misconduct; 11 received adverse action.

**** U.S. Air Force originally reported 130 accused of collateral misconduct; 45 received adverse action.

Type of Alleged Collateral Misconduct	U.S. Army (n=146)	U.S. Navy (n=21)	U.S. Marine Corps (n=11)	U.S. Air Force (n=105)	U.S. Coast Guard (n=53)
Underage Drinking	38%	19%	27%	24%	15%
Adultery/Fraternization/ Inappropriate Relationship	30%	38%	9%	14%	60%
Drug Use	3%	10%	9%	10%	2%
Violation of Order or Policy	14%	24%	36%	19%	15%
False Report*	0%	0%	0%	5%	0%
Other (i.e., DUI, Assault, AWOL, Art. 133, etc.)	15%	10%	18%	29%	8%
	100%	100%	100%	100%	100%

*A false report as defined by each Service.

Adverse Action Taken for Collateral Misconduct	U.S. Army (n=15)	U.S. Navy (n=12)	U.S. Marine Corps (n=10)	U.S. Air Force (n=40)	U.S. Coast Guard (n=6)
Verbal Counseling	27%	0%	0%	0%	0%
Letter of Reprimand (LOR) (or Service equivalent)	27%	8%	30%	48%	33%
Article 15 Nonjudicial Punishment	40%	67%	50%	30%	50%
Discharge/Separation	7%	17%	0%	0%	0%
Court Martial/CM & Discharge	0%	0%	0%	5%	17%
Liberty Restriction	0%	8%	0%	0%	0%
LOR/Article 15 + Discharge	0%	0%	10%	18%	0%
Retirement	0%	0%	10%	0%	0%
	100%	100%	100%	100%	100%

ENCLOSURE 4

**ENCLOSURE 4 -- Supplemental Information from the Services Related to the June 2019
Department of Defense Draft Report on Collateral Misconduct**

<p align="center">TYPE OF COLLATERAL MISCONDUCT</p>	<p>The DAC-IPAD requested from each Service, a list of the collateral misconduct that each accused victim in the report was accused of and the adverse action taken, if any. Adverse action information was also requested for the cases identified by the Services as false allegations of sexual assault.</p>
<p>U.S. Army</p>	<p>Of the 146 cases involving a victim "accused" of collateral misconduct:</p> <ul style="list-style-type: none"> • 37.7% (55) involved underage drinking: 4 received Article 15 nonjudicial punishment (NJP), 1 received a counseling. • 13.7% (20) involved adultery: 1 received a general officer memorandum of reprimand (GOMOR). • 14.4% (21) involved violation of an order or policy: 1 received a GOMOR, and 1 received an administrative separation (ADSEP). • 13% (19) involved fraternization: 2 received NJP, 2 received a counseling, and 1 received a GOMOR. • 4.8% (7) involved sexual assault. • 3.4% (5) involved false statements [not including false reports]. • 3.4% (5) involved inappropriate/prohibited relationship: 1 received a Battalion-level letter of reprimand (LOR), and 1 received a counseling. • 2.7% (4) involved drug use. • 2.1% (3) involved indirect collateral misconduct (future misconduct attributed to sexual trauma). • 2.1% (3) were reported by unit as "unknown". • (2) involved assault. • (1) involved DUI [driving under the influence]. • (1) involved AWOL [absent without leave]. <p>8 cases involved an investigation or allegation of false reporting by the victim. Of those, 3 resulted in an Article 15, 2 resulted in separation, 2 resulted in no adverse action, and 1 is still pending.</p> <p>One final note concerning the disparity between the number of investigations by the Army and those by other Services: when running the initial data call, CID included only investigations of sexual assault, per the legal definition. Therefore, only penetrative offenses or attempted offenses—rape, sexual assault, forcible sodomy—were included.</p> <p>(Email from LTC Stephanie Cooper, USA, to COL Steven Weir et al, July 15, 2019, 3:58 p.m.; email from LTC Stephanie Cooper, USA, to COL Steven Weir, August 15, 2019, 4:00 p.m.; email from Janet Mansfield to Julie Carson et al, Sept. 9, 2019, 10:11 a.m., on file with the DAC-IPAD)</p>

**ENCLOSURE 4 -- Supplemental Information from the Services Related to the June 2019
Department of Defense Draft Report on Collateral Misconduct**

<p>U.S. Navy</p>	<p>The Navy originally reported 55 victims accused of collateral misconduct, with adverse action taken in 22 cases. Further review of the misconduct reported by commands revealed that only 21 victims had been accused of collateral misconduct, with only 12 of those cases resulting in adverse action. The original error in reporting was due to a misunderstanding by commands of what constituted "collateral" misconduct.</p> <p>Out of the revised number of cases involving collateral misconduct, there were:</p> <ul style="list-style-type: none">• 6 cases of fraternization: 3 resulted in NJP, 1 resulted in written counseling.• 4 cases of underage drinking: 1 resulted in NJP.• 3 cases of liberty policy violation (drinking or missing curfew): 2 resulted in NJP, 1 resulted in imposition of liberty restriction.• 2 cases of adultery: 1 resulted in NJP.• 2 cases of drug use (cocaine in both cases): 1 resulted in administrative separation (ADSEP).• 2 cases of being “drunk and disorderly” (onboard ship): neither resulted in adverse action.• 1 case of drunk driving: resulted in NJP• 1 case of “sexual imprisonment” (civilian conviction): resulted in ADSEP for commission of serious offense (the sexual imprisonment perpetrated by the subject as part of a group occurred in same timeframe that the subject was himself sexually assaulted by another member of that same group). <p>Upon further review, there were 5 cases involving false allegations of sexual assault during the reporting period [not included in report as collateral misconduct]. Of those 5 cases, 2 resulted in adverse action by the Navy (NJP) while 1 is the subject of federal prosecution that is still ongoing at this time.</p> <p>Summary: Of the 1,686 cases involving sexual assault during the reporting period, 1.2% involved an accusation against the victim of collateral misconduct. Of the accusations of collateral misconduct, 57.1% resulted in adverse action against the victim (0.7% of the total number of cases).</p> <p>(Email from LT James Kraemer, USN, to COL Steven Weir et al., August 9, 2019, 12:03 p.m., on file with the DAC-IPAD.)</p>
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<p>U.S. Marine Corps</p>	<p>The Marine Corps reported 12 victims accused of collateral misconduct and adverse action taken in 11 cases. Further review revealed that 1 case was included by mistake, and adverse action was actually taken in 10 cases.</p> <ul style="list-style-type: none">• Orders violation: 4 cases (all received NJP)• Underage drinking: 3 cases (all received formal counseling)• 1 case each of DUI, 112a [drug use], and 133 [conduct unbecoming]: (10% each) (NJP for DUI, NJP and ADSEP for 112a, retirement in grade for 133).• 1 case of adultery (not with the accused, no adverse action) <p>In more than 98% of the sexual assault cases, the victim was neither accused of nor punished for collateral misconduct. In the small number of cases in which commanders did investigate the victim's alleged misconduct, 70% involved prior misconduct by the victim (underage drinking that received prior counseling, for example). In the remaining 3 cases (DUI, 112a, conduct unbecoming) out of a total of 826 cases, the timing and nature of the sexual assault allegation together with the nature of the misconduct, caused the commander to believe that punishment for the victim's misconduct was appropriate, notwithstanding the report of sexual assault.</p> <ul style="list-style-type: none">• The Marine Corps had 5 cases [not included in the report as collateral misconduct] in which the person reporting the sexual assault was investigated for a false allegation. In 4 of the 5 cases, the person received nonjudicial punishment for making a false allegation. In the 5th case, the person pled guilty at summary court-martial and was administratively separated for commission of a serious offense (making a false statement) and for extortion (receiving money by threatening to make a false report). <p>(Email from Maj Paul Ervasti, USMC, to COL Steven Weir et al., July 31, 2019, 4:59 p.m.; email from Maj Paul Ervasti, USMC, to Julie Carson, Sept. 4, 2019, 3:49 p.m.; email from Maj Paul Ervasti, USMC, to Julie Carson, Sept. 4, 2019, 5:02 p.m., on file with the DAC-IPAD.)</p>
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<p>U.S. Air Force</p>	<p>Of the 105 cases* involving a victim “accused” of collateral misconduct:</p> <ul style="list-style-type: none">• 23.8% (25) involved underage drinking: 1 received a letter of counseling/letter of reprimand (LOC/LOA/LOR), 2 received NJP• 19.0% (20) involved orders or policy violations (other than underage drinking, fraternization or unprofessional relationship): 2 received LOC/LOA/LOR, 2 received NJP, 1 received LOR & discharge, and 1 received NJP & discharge.• 14.3% (15) involved adultery, fraternization, or unprofessional relationship: 5 received LOC/LOA/LOR, and 2 received NJP• 9.5% (10) involved drug use: 1 received LOC/LOA/LOR, 2 received NJP, 1 received LOR & discharge, 1 received NJP & discharge, and 1 was court-martialed and discharged.• 9.5% (10) involved sexual assault (counterclaim that was not a false allegation): 2 received LOC/LOA/LOR and 1 received NJP.• 7.6% (8) involved assault: 5 received LOC/LOA/LOR, 1 received NJP, 1 received NJP & discharge, and 1 was court-martialed and discharged.• 5.7% (6) involved false official statement (not related to a false allegation): 2 received LOC/LOA/LOR, 1 received NJP, and 1 received NJP & discharge.• 3.8% (4) involved drunk driving: no adverse action taken.• 1% (1) involved AWOL [absent without leave]: no adverse action taken.• 1% (1) involved insubordination: received NJP• 4.8% (5) involved a false allegation of sexual assault: 1 received LOC/LOA/LOR, and 1 received NJP & discharge. <p>In cases in which there were multiple allegations of collateral misconduct, the most serious allegation was counted for this purpose.</p> <p>There were 5 cases investigated for a false allegation, as noted above, but only 2 resulted in adverse action: an LOC/LOA/LOR in 1 case, and Article 15 and discharge in 1 case.</p> <p>* The Air Force will provide a supplemental report. After further review of the cases, we determined that there were cases previously reported as collateral misconduct that did not meet the definition.</p> <p>(Email from Lt Col Jane Male, USAF, to COL Steven Weir et al, August 9, 2019, 11:16 a.m., on file with the DAC-IPAD, and <i>The Department of the Air Force Supplemental Report on Allegations of Collateral Misconduct Against Victims of Sexual Assault</i> (2019), pp. 3–4.)</p>
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U.S. Coast Guard

Cases were counted only for 1 offense, although some cases had multiple offenses (e.g., underage drinking and prohibited relationship).

“Accused” (Potential) Collateral Misconduct by Charge

underage drinking	8	15%
prohibited relationship (Art. 92)	27	51%
fraternization	4	8%
adultery	1	2%
false official statement (not false reports)	2	4%
drug use	1	2%
sex in the barracks (Art. 92)	7	13%
rape	1	2%
prostitution (Art. 134)	1	2%
failure to obey	1	2%
	53	100%

Six (6) Cases with Adverse Action

- 1. Prohibited relationship—negative administrative comment**
- 2. Prohibited relationship—nonjudicial punishment**
- 3. Prostitution—nonjudicial punishment**
- 4. Rape—general court-martial (scheduled for August 2019)**
- 5. Prohibited relationship—negative administrative comment**
- 6. False official statement—nonjudicial punishment**

There were only 2 cases of false official statements and only 1 ended in NJP (Art. 15) for a violation of Art. 107.

(Email from LT Adam Miller, USCG, to Ms. Julie Carson, July 16, 2019, 5:00 p.m., on file with the DAC-IPAD.)