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Dispositions of Penetrative Sexual Offenses When an Article 32 Investigating / Preliminary Hearing Officer Determined No Probable Cause

Table 1. Number of cases in which the Article 32 investigating/preliminary hearing officer found no probable cause for a penetrative offense

	Army	Navy	Marine Corps	Air Force	Coast Guard	Total
FY 14: Number of Article 32s held (penetrative cases)	188	76	68	76	18	426
FY 14: Number of cases Art. 32 IO found no probable cause (penetrative offenses)	28 (14.9%)	14 (18.4%)	28 (41.2%)	17 (22.4%)	6 (33.3%)	93 (21.8%)
FY 15: Number of Article 32s held (penetrative cases)	207	48	51	131	14	451
FY 15: Number of cases Art. 32 IO/PHO found no probable cause (penetrative offenses)	31 (15.0%)	11 (22.9%)	13 (25.5%)	42 (32.1%)	4 (20.0%)	101 (22.4%)
FY 16: Number of Article 32s held (penetrative cases)	151	49	60	160	10	430
FY 16: Number of cases Art. 32 PHO found no probable cause (penetrative offenses)	28 (18.5%)	9 (18.4%)	14 (23.3%)	35 (21.9%)	2 (20.0%)	88 (20.5%)
FY 17: Number of Article 32s held (penetrative cases)	146	46	36	133	7	368
FY 17: Number of cases Art. 32 PHO found no probable cause (penetrative offenses)	27 (18.5%)	7 (15.2%)	7 (19.4%)	37 (27.8%)	2 (28.6%)	80 (21.7%)

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FY 18: Number of Article 32s held (penetrative cases)	126	46	27	116	3	318
FY 18: Number of cases Art. 32 PHO found no probable cause (penetrative offenses)	13 (10.3%)	10 (21.7%)	7 (25.9%)	20 (17.2%)	2 (66.7%)	52 (16.4%)

Changes to Article 32, UCMJ:

- The Fiscal Year 2014 National Defense Authorization Act, which went into effect December 26, 2014, introduced major changes to the Article 32 process—changing it from an investigation into the truth and form of the charges into a more limited preliminary hearing to determine probable cause.
 - All of the FY 14 cases in this document involved Article 32 investigations that fell under the “old” Article 32 investigation process
 - More than half of the FY 15 cases fell under the “old” Article 32 process and less than half fell under the “new” procedures
 - All of the FY 16 through FY 18 cases involve Article 32 preliminary hearings under the “new” procedures.

Witness / Victim Testimony:

- In FY 14, victims testified in 92% of the Article 32 hearings; almost all Article 32 hearings involved witness testimony
 - Though almost all of the FY 14 cases involved victim and witness testimony, the percentage of cases in which the investigating officer found no probable cause for a penetrative offense was similar to the percentage from the FY 15 through FY 18 cases.
- In FY 15, victims testified in 62% of the Article 32 hearings; data on the percentage of witnesses who testified is forthcoming
- In FY 16, victims testified in 25% of the Article 32 hearings; data on the percentage of witnesses who testified is forthcoming
- In FY 17 and FY 18, victims testified in only 8% and 3% of Article 32 hearings, respectively; witnesses testified in 40% and 36% of Article 32 hearings, respectively

Article 32, UCMJ, Hearing Waivers:

- In FY 14, Article 32 hearing waivers in penetrative sexual offense cases were relatively rare—19 waivers compared to 425 hearings` 1
- In FY 15, there were 47 waivers compared to 451 hearings (
- In FY 16, there were 112 waivers compared to 430 hearings
- In FY 17, there were 98 waivers compared to 368 hearings
- In FY 18, there were 84 waivers compared to 318 hearings

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Table 2. Number of victims and other witnesses who testified in Article 32 hearings

	FY 14: Number of Article 32s (penetrative cases)	FY 14: Number of Art. 32s with witness testimony	FY 14: Number of Art. 32s with victim testimony	FY 15: Number of Article 32s (penetrative cases)	FY 15: Number of Art. 32s with witness testimony	FY 15: Number of Art. 32s with victim testimony	FY 16: Number of Article 32s (penetrative cases)	FY 16: Number of Art. 32s with witness testimony	FY 16: Number of Art. 32s with victim testimony
Army	188	188 (100%)	176 (94%)	207	TBD	141 (68%)	126	TBD	42 (33%)
Navy	76	70 ¹ (92%)	66 (87%)	48	TBD	30 (63%)	46	TBD	8 (17%)
Marine Corps	68	67 (99%)	61 (90%)	51	TBD	28 (55%)	27	TBD	11 (41%)
Air Force	76	75 ² (99%)	72 (95%)	131	TBD	73 (56%)	116	TBD	16 (14%)
Coast Guard	18	18 (100%)	16 (89%)	14	TBD	9 (64%)	3	TBD	1 (33%)
Total	425	418 (98%)	391 (92%)	451	TBD	281 (62%)	318	TBD	78 (25%)

	FY 17: Number of Article 32s (penetrative cases)	FY 17: Number of Art. 32s with witness testimony	FY 17: Number of Art. 32s with victim testimony	FY 18: Number of Article 32s (penetrative cases)	FY 18: Number of Art. 32s with witness testimony	FY 18: Number of Art. 32s with victim testimony
Army	146	66 (45%)	8 (5%)	126	40 (32%)	2 (2%)
Navy	46	12 (26%)	4 (9%)	46	21 (46%)	1 (2%)
Marine Corps	36	13 (36%)	8 (22%)	27	8 (30%)	1 (4%)
Air Force	133	50 (38%)	6 (5%)	116	45 (39%)	4 (3%)
Coast Guard	7	7 (100%)	2 (29%)	3	2 (67%)	1 (33%)
Total	368	148 (40%)	28 (8%)	318	116 (36%)	9 (3%)

¹ Six of the 76 Article 32 reports were sealed or unavailable so it is unknown whether victims or other witnesses testified in those Article 32 hearings.

² One of the 76 Article 32 reports was unavailable so it is unknown whether victims or other witnesses testified in that Article 32 hearing.

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Table 3. Disposition of cases for which the Article 32 IO / PHO found no probable cause for a penetrative offense

	Army	Navy	Marine Corps	Air Force	Coast Guard	Total
FY14 no-PC cases	28	14	28	17	6	93
No-PC offenses dismissed (not referred)	15 (54%)	10 (71%)	21 (75%)	10 (59%)	5 (83%)	61 (66%)
No-PC offenses referred	13 (46%)	4 (29%)	7 (25%)	7 (41%)	1 (17%)	32 (34%)
FY15 no-PC cases	31	11	13	42	4	101
No-PC offenses dismissed (not referred)	13 (42%)	7 (64%)	7 (54%)	26 (62%)	2 (50%)	55 (54%)
No-PC offenses referred	18 (58%)	4 (36%)	6 (46%)	16 (38%)	2 (50%)	46 (46%)
FY16 no-PC cases	28	9	14	35	2	88
No-PC offenses dismissed (not referred)	4 (14%)	6 (67%)	13 (93%)	28 (80%)	0 (0%)	51 (58%)
No-PC offenses referred	24 (86%)	3 (33%)	1 (7%)	7 (20%)	2 (100%)	37 (42%)
FY17 no-PC cases	27	7	7	37	2	80
No-PC offenses dismissed (not referred)	11 (41%)	5 (71%)	4 (57%)	28 (76%)	0 (0%)	48 (60%)
No-PC offenses referred	16 (59%)	2 (29%)	3 (43%)	9 (24%)	2 (100%)	32 (40%)
FY18 no-PC cases	13	10	7	20	2	52
No-PC offenses dismissed (not referred)	2 (15%)	9 (90%)	4 (57%)	17 (85%)	2 (100%)	34 (65%)
No-PC offenses referred	11 (85%)	1 (10%)	3 (43%)	3 (15%)	0 (0%)	18 (35%)

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- On average, convening authorities took action consistent with the Article 32 investigating / preliminary hearing officer's determination(s) of no probable cause—i.e., dismissed the charges lacking probable cause—in a majority of the Navy, Marine Corps, Air Force, and Coast Guard cases.
- In the Army, convening authorities took action consistent with the Article 32 investigating / preliminary hearing officer's determination(s) of no probable cause in just over half of the cases in FY 14, but in a minority of cases in FY 15 through FY 18.
- The average grade of investigating / preliminary hearing officers was somewhat lower in FY 14 through FY 16 hearings than in FY 17 and FY 18 hearings. For example, from FY 14 through FY 16, there were between 23 and 27 Article 32 hearing officers in the grade of O-3 each year, but in FY 17 and FY 18, there were only 7 and 5, respectively, Article 32 hearing officers in the grade of O-3.

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Table 4. Results of no-probable cause cases referred to court-martial

	FY 14 cases no-PC offenses referred	FY 14: Results of referred cases		FY 15 cases no-PC offenses referred	FY 15: Results of referred cases		FY 16 cases no-PC offenses referred	FY 18: Results of referred cases	
Army	13	2: guilty 6: not guilty 2: mixed findings	2: dismissed	18	3: guilty 7: not guilty 1: mixed	7: dismissed	24	2: guilty 10: not guilty 1: mixed	11: dismissed
Navy	4	1: not guilty 2: mixed findings	1: dismissed	4	1: guilty 3: not guilty		3		3: dismissed
Marine Corps	7	4: not guilty 1: MJ found NG as matter of law	2: dismissed	6	3: not guilty	3: dismissed	1		1: dismissed
Air Force	7	4: not guilty	2: dismissed 1: unknown	16	8: not guilty	8: dismissed	7	3: not guilty	4: dismissed
Coast Guard	1	1: not guilty		2	1: not guilty	1: dismissed	2		2: dismissed
Total	32	2: guilty 16: not guilty 4: mixed findings 1: MJ found NG as matter of law	8: dismissed 1: unknown	46	4: guilty 22: not guilty 1: mixed	19: dismissed	37	2: guilty 13: not guilty 1: mixed	21: dismissed

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	FY 17 cases no-PC offenses referred	FY 17: Results of referred cases		FY 18 cases no-PC offenses referred	FY 18: Results of referred cases	
Army	16	2: guilty 7: not guilty	7: dismissed	11	2: guilty 5: not guilty	4: dismissed
Navy	2	1: not guilty	1: dismissed	1		1: dismissed
Marine Corps	3	1: not guilty	2: dismissed	3	1: guilty 1: not guilty	1: dismissed
Air Force	9	2: guilty 4: not guilty	5: dismissed	3	2: not guilty	1: dismissed
Coast Guard	2		2: dismissed	0		
Total	32	4: guilty 13: not guilty	15: dismissed	18	3: guilty 8: not guilty	7: dismissed

- In FY 14, 32 cases were referred to court-martial after an Article 32 investigating officer determined that there was no probable cause to believe a penetrative sexual offense occurred.
 - 8 of the 32 referred cases (25%) resulted in dismissal of the penetrative sexual offense(s).
 - In 23 of the 32 cases (72%), the penetrative sexual offenses were tried by court-martial.
 - Of those penetrative sexual offense cases that were tried by court-martial, 2 (9%) resulted in verdicts of guilty, 16 (70%) resulted in verdicts of not guilty, and 4 (17%) resulted in mixed findings. In one additional case, the military judge found the accused not guilty of the penetrative offense as a matter of law.

- In FY 15, 46 cases were referred to court-martial after an Article 32 investigating / preliminary hearing officer determined that there was no probable cause to believe a penetrative sexual offense occurred.
 - 19 of the 46 referred cases (41%) resulted in dismissal of the penetrative sexual offense(s).
 - In 27 of the 46 cases (59%), the penetrative sexual offenses were tried by court-martial.
 - Of those penetrative sexual offense cases that were tried by court-martial, 4 (15%) resulted in verdicts of guilty, 22 (81%) resulted in verdicts of not guilty, and 1 (4%) resulted in mixed findings.

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- In FY 16, 37 cases were referred to court-martial after an Article 32 preliminary hearing officer determined that there was no probable cause to believe a penetrative sexual offense occurred.
 - 21 of the 37 referred cases (57%) resulted in dismissal of the penetrative sexual offense(s).
 - In 16 of the 37 cases (43%), the penetrative sexual offenses were tried by court-martial.
 - Of those penetrative sexual offense cases that were tried by court-martial, 2 (13%) resulted in verdicts of guilty, 13 (81%) resulted in verdicts of not guilty, and 1 (6%) resulted in mixed findings.
- In FY 17, 32 cases were referred to court-martial after an Article 32 preliminary hearing officer determined that there was no probable cause to believe a penetrative sexual offense occurred.
 - 15 of the 32 referred cases (47%) resulted in dismissal of the penetrative sexual offense(s).
 - In 17 of the 32 cases (53%), the penetrative sexual offenses were tried by court-martial.
 - Of those penetrative sexual offense cases that were tried by court-martial, 4 (24%) resulted in verdicts of guilty and 13 (76%) resulted in verdicts of not guilty. Notably, one of the guilty verdicts was overturned on appeal due to lack of evidence.
- In FY 18, 18 cases were referred to court-martial after an Article 32 preliminary hearing officer determined that there was no probable cause to believe a penetrative sex offense occurred.
 - 7 of the 18 referred cases (39%) resulted in dismissal of the penetrative sexual offense(s).
 - In 11 of the 18 cases (61%), the penetrative sexual offenses were tried by court-martial.
 - Of those penetrative sexual offense cases that were tried by court-martial, 3 (27%) resulted in verdicts of guilty and 8 (73%) resulted in verdicts of not guilty.

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Methodology:

For fiscal years 2014 through 2018, the staff reviewed all cases in which—

- The most serious offense charged was a penetrative sexual offense;
- An Article 32 investigation / preliminary hearing was held; and
- The Article 32 investigating officer (IO) / preliminary hearing officer (PHO) found probable cause did not exist for one or more distinct penetrative sexual offenses

The staff then followed these cases to their ultimate dispositions. For cases in which the investigating / preliminary hearing officer found probable cause for some penetrative offenses, but no probable cause for others, the staff followed only the no-probable cause offenses. Each penetrative offense was for a different penetrative act, even when occurring with the same victim during the same sexual encounter. For example, a case may involve separate charged specifications of digital, vaginal, and anal penetration of the same victim. In these cases, the staff reviewed each specification separately and followed those for which the investigating / preliminary hearing officer found no probable cause, even if the investigating / preliminary hearing officer found probable cause for one or more of the other penetrative sexual offenses.

The staff disregarded cases in which the no-probable cause offense was charged in the alternative and the investigating / preliminary hearing officer found probable cause under a different legal theory. In other words, if the accused was charged with a penetrative sexual offense under two theories of liability (for example, both by causing bodily harm and when the alleged victim was incapable of consent), and the investigating / preliminary hearing officer found probable cause for one theory of liability but not the other, the staff disregarded the case, as the investigating / preliminary hearing officer found probable cause that the penetrative sexual offense occurred.

Abbreviations:

IO – Article 32 investigating officer (for FY 14 cases and some FY 15 cases)

PHO – Article 32 preliminary hearing officer (for some FY 15 cases and FY 16 through 18 cases)

PC – probable cause

MJ – military judge

GCMCA – general court-martial convening authority

SPCMCA – special court-martial convening authority

PTA – pretrial agreement

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TABLE 5a. Fiscal Year 2014 Article 32 Investigations

	Army	Navy	Marine Corps	Air Force	Coast Guard	Total	Victim Testified
Number of Art 32s held (all sexual assault cases)	238	90	83	85	23	519	
Number of Art 32s held (penetrative cases)	188	76	67	76	18	425	391 (92%)
Number of Art 32s waived (penetrative)	12	2	3	1	1	19	
Number of Cases Art 32 investigating officer determined no reasonable grounds (probable cause) for 1 or more penetrative sexual offenses	28 (14.9%)	14 (18.4%)	28 (41.8%)	17 (22.4%)	6 (33.3%)	93 (21.9%)	83 (89.2%)

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TABLE 5b. Fiscal Year 2014 Article 32 Investigating Officer Determinations of No Reasonable Grounds and Case Dispositions

	Number of cases Art. 32 IO determined no reasonable grounds for 1 or more penetrative sexual offenses	Number of cases GCMCA or SPCMCA dismissed no-reasonable grounds offenses	Number of cases GCMCA referred no-reasonable grounds offense(s)	Results of cases where penetrative sexual offenses referred to GCM despite Art. 32 IO determination of no reasonable grounds
Army	28	15 ³ 6 SPCMCA / 4 GCMCA / 5 ? (54%)	13 (46%)	2: guilty 6: not guilty 2: mixed findings 2: discharge in lieu of court-martial (1 before referral) 1: dismissed per PTA (1 before referral)
Navy	14	10 ? SPCMCA / ? GCMCA (71%)	4 (29%)	1: not guilty 2: mixed findings ⁴ 1: dismissed per PTA
Marine Corps	28	21 20 SPCMCA / 1 GCMCA (75%)	7 (25%)	4: not guilty 1: MJ found not guilty as matter of law 1: dismissed per PTA 1: dismissed after referral to SPCM
Air Force	17	10 9 SPCMCA / 1 ? (59%)	7 (41%)	4: not guilty 1: dismissed by MJ (evidentiary reasons) 1: dismissed after referral 1: unknown (no paperwork in file)
Coast Guard	6	5 1 SPCMCA / 4 GCMCA (83%)	1 (7%)	1: not guilty
Total	93	61 36 SPCMCA / 9 GCMCA / 16 ? (66%)	32 (34%)	2: guilty 16: not guilty 4: mixed findings 1: MJ found not guilty as matter of law 3: dismissed per PTA 2: discharged in lieu of court-martial 1: dismissed by MJ (evidentiary reasons) 2: dismissed after referral 1: unknown

³ Includes one (1) discharge in lieu of court-martial accepted prior to referral and one (1) pretrial agreement accepted prior to referral.

⁴ In one case, the Navy-Marine Corps Court of Criminal Appeals set aside the guilty verdict due to factual insufficiency, and in one case, the Navy-Marine Corps Court of Criminal Appeals set aside the guilty verdict due to a Military Rule of Evidence 412 issue.

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TABLE 5c. Fiscal Year 2014 Article 32 Determinations of No Reasonable Grounds, According to the Grade of the Investigating Officer

	Number of cases Art 32 IO determined no reasonable grounds for 1 or more penetrative sexual offenses, by IO grade	Number of cases GCMCA or SPCMCA dismissed no-reasonable grounds offenses (did not refer)	Number of cases GCMCA referred no-reasonable grounds offense(s)	Results of cases in which penetrative sexual offenses referred despite Art 32 IO determination of no reasonable grounds
Army	O-3: 7 (6 JA / 1 LO) O-4: 13 (5 JA / 8 LO) O-5: 7 (6 JA / 1 LO) Grade unknown: 1	O-3: 4 (3 JA / 1 LO) (57%) O-4: 7 (3 JA / 4 LO) (54%) O-5: 3 (3 JA) (43%) Rank unknown: 1 (100%)	O-3: 3 (3 JA) (43%) O-4: 6 (2 JA / 4 LO) (46%) O-5: 4 (3 JA / 1 LO) (57%)	2: guilty (1 O-4 LO; 1 O-5 JA) 6: not guilty (2 O-3 JA; 1 O-4 JA; 2 O-4 LO; 1 O-5 LO) 2: mixed findings (1 O-3 JA; 1 O-4 LO) 2: discharge in lieu of court (2 O-5 JA) 1: dismissed per PTA (1 O-4 JA)
Navy	O-3: 6 O-4: 5 O-5: 2 O-6: 1	O-3: 4 (67%) O-4: 3 (60%) O-5: 2 (100%) O-6: 1 (100%)	O-3: 2 (33%) O-4: 2 (40%) O-5: 0 (0%) O-6: 0 (0%)	1: not guilty (1 O-4) 2: mixed findings (1 O-3; 1 O-4) 1: dismissed per PTA (1 O-3)
Marine Corps	O-3: 5 O-4: 13 O-5: 8 O-6: 2	O-3: 3 (60%) O-4: 10 (77%) O-5: 7 (88%) O-6: 1 (50%)	O-3: 2 (40%) O-4: 3 (23%) O-5: 1 (12%) O-6: 1 (50%)	4: not guilty (1 O-3; 2 O-4; 1 O-6) 1: MJ found not guilty as matter of law (1 O-4) 1: dismissed per PTA (1 O-3) 1: dismissed after referral to SPCM (1 O-5)
Air Force	O-3: 5 O-4: 7 O-5: 2 (1 MJ) O-6: 3 (3 MJ)	O-3: 3 (60%) O-4: 2 (29%) O-5: 2 (1 MJ)(100%) O-6: 3 (3 MJ)(100%)	O-3: 2 (40%) O-4: 5 (71%) O-5: 0 (0%) O-6: 0 (0%)	4: not guilty (4 O-4) 1: dismissed by MJ (evidentiary reasons) (1 O-3) 1: dismissed after referral (1 O-4) 1: unknown (no paperwork in file) (1 O-3)
Coast Guard	O-4: 4 O-5: 2	O-4: 3 (75%) O-5: 2 (100%)	O-4: 1 (25%) O-5: 0 (0%)	1: not guilty (1 O-4)
Total	O-3: 23 O-4: 42 O-5: 21 O-6: 6 Grade unknown: 1	O-3: 14 (61%) O-4: 25 (60%) O-5: 16 (76%) O-6: 5 (83%) Grade unknown: 1 (100%)	O-3: 9 (39%) O-4: 17 (40%) O-5: 5 (24%) O-6: 1 (17%)	2: guilty (1 O-4; 1 O-5) 16: not guilty (3 O-3; 11 O-4; 1 O-5; 1 O-6) 4: mixed findings (2 O-3; 2 O-4) 1: MJ found not guilty as matter of law (1 O-4) 3: dismissed per PTA (2 O-3; 1 O-4) 2: discharged in lieu of court-martial (2 O-5) 1: dismissed by MJ (evidentiary reasons) (1 O-3) 2: dismissed after referral (1 O-4; 1 O-5) 1: unknown (1 O-3)

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TABLE 6a. Fiscal Year 2015 Article 32 Investigations / Preliminary Hearings

	Army	Navy	Marine Corps	Air Force	Coast Guard	Total	Victim Testified
Number of Art 32s held (all sexual assault cases)	244	61	66	153	16	540	
Number of Art 32s held (penetrative cases)	207	48	51	131	14	451	281 (62.3%)
Number of Art 32s waived (penetrative)	34	6	3	2	2	47	
Number of Cases Art 32 investigating / preliminary hearing officer determined no probable cause for 1 or more penetrative sexual offenses	31* 20 old / 12 new (15.0%)	11 8 old / 3 new (22.9%)	13 7 old / 6 new (25.5%)	42 22 old / 20 new (32.1%)	4 1 old / 3 new (20.0%)	101 58 old / 44 new (22.4%)	52 (51.5%)

*In one Army case, two Article 32 hearings were held—one prior to Dec 26, 2014 and one after.

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7

TABLE 6b. Fiscal Year 2015 Article 32 Investigating / Preliminary Hearing Officer Determinations of No Probable Cause and Case Dispositions

	Number of cases Art 32 IO / PHO determined no probable cause for 1 or more penetrative sexual offenses	Number of cases general or special court-martial convening authority (GCMCA or SPCMCA) dismissed no-probable cause offenses	Number of cases GCMCA referred no-probable cause offense(s)	Results of cases in which penetrative sexual offenses referred despite Art 32 IO / PHO determination of no probable cause
Army	31	13 4 GCMCA / 7 SPCMCA / 2? (42%)	18 (58%)	3: guilty 7: not guilty 1: mixed findings 3: dismissed per PTA 1: discharged in lieu of trial 3: dismissed after referral
Navy	11	7 1 GCMCA / 6 SPCMCA (64%)	4 (36%)	3: not guilty 1: 1 guilty / 1 dismissed per PTA
Marine Corps	13	7 ? GCMCA / 5 SPCMCA / 2? (54%)	6 (46%)	3: not guilty 2: dismissed per PTA 1: dismissed after referral
Air Force	42	26 11 GCMCA / 15 SPCMCA (62%)	16 (38%)	8: not guilty 2: dismissed per PTA 2: discharged in lieu of trial 4: dismissed after referral
Coast Guard	4	2 2 GCMCA / 0 SPCMCA (50%)	2 (50%)	1: not guilty 1: dismissed per PTA
Total	101	55 18 GCMCA / 33 SPCMCA / 4? (54%)	46 (46%)	3: guilty 1: 1 guilty / 1 dismissed per PTA 22: not guilty 1: mixed findings 8: dismissed per PTA 3: discharged in lieu of trial 8: dismissed after referral

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TABLE 6c. Fiscal Year 2015 Article 32 Determinations of No Probable Cause, According to the Grade of the Investigating / Preliminary Hearing Officer

	Number of cases Art 32 PHO determined no probable cause for 1 or more penetrative sexual offenses, by PHO grade	Number of cases GCMCA or SPCMCA dismissed no-probable cause offenses (did not refer)	Number of cases GCMCA referred no-probable cause offense(s)	Results of cases in which penetrative sexual offenses referred despite Art 32 PHO determination of no probable cause
Army	O-3: 16 O-4: 10 O-5: 5	O-3: 6 (38%) O-4: 4 (40%) O-5: 3 (60%)	O-3: 10 (63%) O-4: 6 (60%) O-5: 2 (40%)	3: guilty 7: not guilty 1: mixed findings 3: dismissed per PTA 1: discharged in lieu of trial 3: dismissed after referral
Navy	O-3: 4 O-4: 4 O-5: 1 O-6: 2	O-3: 3 (75%) O-4: 3 (75%) O-5: 0 (0%) O-6: 1 (50%)	O-3: 1 (25%) O-4: 1 (25%) O-5: 1 (100%) O-6: 1 (50%)	3: not guilty 1: 1 guilty / 1 dismissed per PTA
Marine Corps	O-3: 5 O-4: 5 O-5: 1 O-6: 2	O-3: 2 (40%) O-4: 2 (40%) O-5: 1 (100%) O-6: 2 (100%)	O-3: 3 (60%) O-4: 3 (60%) O-5: 0 (0%) O-6: 0 (0%)	3: not guilty 2: dismissed per PTA 1: dismissed after referral
Air Force	O-3: 2 O-4: 12 (1 MJ) O-5: 20 (13 MJ) O-6: 8 (8 MJ)	O-3: 1 (50%) O-4: 8 (1 MJ)(67%) O-5: 10 (6 MJ)(50%) O-6: 7 (7 MJ)(88%)	O-3: 1 (50%) O-4: 4 (33%) O-5: 10 (7 MJ)(50%) O-6: 1 (1 MJ)(12%)	8: not guilty 2: dismissed per PTA 2: discharged in lieu of trial 4: dismissed after referral
Coast Guard	O-4: 3 O-5: 1	O-4: 1 (33%) O-5: 1 (100%)	O-4: 2 (67%) O-5: 0 (0%)	1: not guilty 1: dismissed per PTA
Total	O-3: 27 O-4: 34 O-5: 28 O-6: 12	O-3: 12 (44%) O-4: 18 (53%) O-5: 15 (54%) O-6: 10 (83%)	O-3: 15 (56%) O-4: 16 (47%) O-5: 13 (46%) O-6: 2 (17%)	3: guilty 1: 1 guilty / 1 dismissed per PTA 22: not guilty 1: mixed findings 8: dismissed per PTA 3: discharged in lieu of trial 8: dismissed after referral

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TABLE 7a. Fiscal Year 2016 Article 32 Preliminary Hearings

	Army	Navy	Marine Corps	Air Force	Coast Guard	Total	Victim Testified
Number of Art 32s held (all sexual assault cases)	174	57	78	179	10	498	
Number of Art 32s held (penetrative cases)	151	49	60	160	10	430	78 (18.1%)
Number of Art 32s waived (penetrative)	67	17	6	19	3	112	
Number of Cases Art 32 preliminary hearing officer (PHO) determined no probable cause for 1 or more penetrative sexual offenses	28 (18.5%)	9 (18.4%)	14 (23.3%)	35 (21.9%)	2 (20.0%)	88 (20.5%)	19 (25.7%)

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TABLE 7b. Fiscal Year 2016 Article 32 Preliminary Hearing Officer Determinations of No Probable Cause and Case Dispositions

	Number of cases Art 32 PHO determined no probable cause for 1 or more penetrative sexual offenses	Number of cases general or special court-martial convening authority (GCMCA or SPCMCA) dismissed no-probable cause offenses	Number of cases GCMCA referred no-probable cause offense(s)	Results of cases in which penetrative sexual offenses referred despite Art 32 PHO determination of no probable cause
Army	28	4 1 GCMCA / 3 SPCMCA (14%)	24 (86%)	2: guilty 10: not guilty 1: mixed findings 5: dismissed per PTA 2: discharged in lieu of trial 4: dismissed after referral
Navy	9	6 2 GCMCA / 4 SPCMCA (67%)	3 (33%)	1: discharged in lieu of trial 2: dismissed per PTA
Marine Corps	14	13 2 GCMCA / 11 SPCMCA (93%)	1 (7%)	1: dismissed per PTA
Air Force	35	28 7 GCMCA / 21 SPCMCA (80%)	7 (20%)	3: not guilty 4: dismissed after referral
Coast Guard	2	0 (0%)	2 (100%)	1: discharged in lieu of trial 1: dismissed after referral
Total	88	51 12 GCMCA / 39 SPCMCA (58%)	37 (42%)	2: guilty 13: not guilty 1: mixed findings 8: dismissed per PTA 4: discharged in lieu of trial 9: dismissed after referral

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TABLE 7c. Fiscal Year 2016 Article 32 Determinations of No Probable Cause, According to the Grade of the Preliminary Hearing Officer

	Number of cases Art 32 PHO determined no probable cause for 1 or more penetrative sexual offenses, by PHO grade	Number of cases GCMCA or SPCMCA dismissed no-probable cause offenses (did not refer)	Number of cases GCMCA referred no-probable cause offense(s)	Results of cases in which penetrative sexual offenses referred despite Art 32 PHO determination of no probable cause
Army	O-3: 14 O-4: 13 O-5: 1	O-3: 2 (14%) O-4: 2 (15%) O-5: 0 (0%)	O-3: 12 (86%) O-4: 11 (85%) O-5: 1 (100%)	2: guilty (2 O-3) 10: not guilty (2 O-3, 7 O-4, 1 O-5) 1: mixed findings (O-3) 5: dismissed per PTA 2: discharged in lieu of trial 4: dismissed after referral
Navy	O-3: 6 O-4: 1 O-5: 1 O-6: 1	O-3: 4 (67%) O-4: 0 (0%) O-5: 1 (100%) O-6: 1 (100%)	O-3: 2 (33%) O-4: 1 (100%) O-5: 0 (0%) O-6: 0 (0%)	1: discharged in lieu of trial 2: dismissed per PTA
Marine Corps	O-3: 2 O-4: 8 O-5: 4	O-3: 2 (100%) O-4: 7 (88%) O-5: 4 (100%)	O-3: 0 (0%) O-4: 1 (12%) O-5: 0 (0%)	1: dismissed per PTA
Air Force	O-3: 1 O-4: 12 O-5: 15 (8 MJ) O-6: 6 (5 MJ) Grade not listed: 1	O-3: 0 (0%) O-4: 9 (75%) O-5: 13 (8 MJ)(87%) O-6: 6 (5 MJ)(100%)	O-3: 1 (100%) O-4: 3 (25%) O-5: 2 (0 MJ)(13%) O-6: 0 (0%) Grade not listed: 1 (100%)	3: not guilty (1 O-3, 1 O-4, 1 O-5) 4: dismissed after referral
Coast Guard	O-4: 1 O-5: 1	O-4: 0 (0%) O-5: 0 (0%)	O-4: 1 (100%) O-5: 1 (100%)	1: discharged in lieu of trial 1: dismissed after referral
Total	O-3: 23 O-4: 35 O-5: 22 O-6: 7 Grade not listed: 1	O-3: 8 (35%) O-4: 18 (51%) O-5: 18 (82%) O-6: 7 (100%)	O-3: 15 (65%) O-4: 17 (49%) O-5: 4 (18%) O-6: 0 (0%) Grade not listed: 1 (100%)	2: guilty (2 O-3) 13: not guilty (3 O-3, 8 O-4, 2 O-5) 1: mixed findings (O-3) 8: dismissed per PTA 4: discharged in lieu of trial 9: dismissed after referral

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TABLE 8a. Fiscal Year 2017 Article 32 preliminary hearings

	Army	Navy	Marine Corps	Air Force	Coast Guard	Total	Victim Testified
Number of Art 32s held (all sexual assault cases)	169	56	46	145	9	425	
Number of Art 32s held (penetrative cases)	146	46	36	133	7	368	28 (7.6%)
Number of Art 32s waived (penetrative)	64	19	7	6	2	98	
Number of Cases Art 32 preliminary hearing officer (PHO) determined no probable cause for 1 or more penetrative sexual offenses	27 (18.5%)	7 (15.2%)	7 (19.4%)	37 (27.8%)	2 (28.6%)	80 (21.7%)	10 (12.5%)

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TABLE 8b. Fiscal Year 2017 Article 32 Preliminary Hearing Officer Determinations of No Probable Cause and Case Dispositions

	Number of cases Art 32 PHO determined no probable cause for 1 or more penetrative sexual offenses	Number of cases general or special court-martial convening authority (GCMCA or SPCMCA) dismissed no-probable cause offenses	Number of cases GCMCA referred no-probable cause offense(s)	Results of cases in which penetrative sexual offenses referred despite Art 32 PHO determination of no probable cause
Army	27	11 2 GCMCA / 9 SPCMCA (41%)	16 (59%)	2: guilty 7: not guilty 1: dismissed per PTA 3: discharged in lieu of trial 3: dismissed after referral
Navy	7	5 3 GCMCA / 2 SPCMCA (71%)	2 (29%)	1: not guilty 1: discharged after adverse appeal ruling
Marine Corps	7	4 1 GCMCA / 3 SPCMCA (57%)	3 (43%)	1: not guilty 2: dismissed per PTA
Air Force	37	28 6 GCMCA / 22 SPCMCA (76%)	9 (24%)	2: guilty** 4: not guilty 1: dismissed per PTA 1: alternate disposition 1: dismissed after referral
Coast Guard	2	0 (0%)	2 (100%)	1: dismissed per PTA 1: dismissed after referral
Total	80	48 12 GCMCA / 36 SPCMCA (60%)	32 (40%)	4: guilty** 13: not guilty 5: dismissed per PTA 3: discharged in lieu of trial 7: dismissed after referral

** In one of these two cases, the Air Force Court of Criminal Appeals found the evidence factually insufficient to sustain the conviction for a penetrative SA offense and dismissed the specification with prejudice.

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TABLE 8c. Fiscal Year 2017 Article 32 Determinations of No Probable Cause, According to the Grade of the Preliminary Hearing Officer

	Number of cases Art 32 PHO determined no probable cause for 1 or more penetrative sexual offenses, by PHO grade	Number of cases GCMCA or SPCMCA dismissed no-probable cause offenses (did not refer)	Number of cases GCMCA referred no-probable cause offense(s)	Results of cases in which penetrative sexual offenses referred despite Art 32 PHO determination of no probable cause
Army	O-3: 4 O-4: 18 O-5: 5	O-3: 2 (50%) O-4: 7 (39%) O-5: 2 (40%)	O-3: 2 (50%) O-4: 11 (61%) O-5: 3 (60%)	2: guilty (1 O-4, 1 O-5) 7: not guilty (2 O-3, 5 O-4) 1: dismissed per PTA 3: discharged in lieu of trial 3: dismissed after referral
Navy	O-3: 2 O-4: 2 O-5: 1 O-6: 2	O-3: 1 (50%) O-4: 2 (100%) O-5: 1 (100%) O-6: 1 (50%)	O-3: 1 (50%) O-4: 0 (0%) O-5: 0 (0%) O-6: 1 (50%)	1: not guilty (O-6) 1: discharged following adverse interlocutory appeal ruling
Marine Corps	O-4: 4 O-5: 2 Rank not listed: 1	O-4: 2 (50%) O-5: 1 (50%) Rank not listed: 1 (100%)	O-4: 2 (50%) O-5: 1 (50%)	1: not guilty (O-5) 2: dismissed per PTA
Air Force	O-3: 1 O-4: 13 O-5: 15 (11 MJ) O-6: 8 (7 MJ)	O-3: 0 (0%) O-4: 10 (77%) O-5: 11 (8 MJ)(73%) O-6: 7 (6 MJ)(88%)	O-3: 1 (100%) O-4: 3 (23%) O-5: 4 (3 MJ)(27%) O-6: 1 (1 MJ)(12%)	2: guilty** (2 O-5 MJ) 4: not guilty (1 O-4, 2 O-5 [1 MJ], 1 O-6 MJ) 1: dismissed per PTA 1: alternate disposition 1: dismissed after referral
Coast Guard	O-4: 2	O-4: 0 (0%)	O-4: 2 (100%)	1: dismissed per PTA 1: dismissed after referral
Total	O-3: 7 O-4: 39 O-5: 23 O-6: 10 Rank not listed: 1	O-3: 3 (43%) O-4: 21 (54%) O-5: 15 (65%) O-6: 8 (80%) Rank not listed: 1 (100%)	O-3: 4 (57%) O-4: 18 (46%) O-5: 8 (35%) O-6: 2 (20%)	4: guilty** (1 O-4, 3 O-5) 13: not guilty (2 O-3, 6 O-4, 3 O-5, 2 O-6) 5: dismissed per PTA 3: discharged in lieu of trial 7: dismissed after referral

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TABLE 9a. Fiscal Year 2018 Article 32 preliminary hearings

	Army	Navy	Marine Corps	Air Force	Coast Guard	Total	Victim Testified
Number of Art 32s held (all sexual assault cases)	150	53	37	126	7	373	
Number of Art 32s held (penetrative cases)	126	46	27	116	3	318	9 (2.8%)
Number of Art 32s waived (penetrative)	51	13	14	5	1	84	
Number of Cases Art 32 preliminary hearing officer (PHO) determined no probable cause for 1 or more penetrative sexual offenses	13 (10.3%)	10 (21.7%)	7 (25.9%)	20 (17.2%)	2 (66.7%)	52 (16.4%)	2 (3.8%)

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TABLE 9b. Fiscal Year 2018 Article 32 Preliminary Hearing Officer Determinations of No Probable Cause and Case Dispositions

	Number of cases Art 32 PHO determined no probable cause for 1 or more penetrative sexual offenses	Number of cases general or special court-martial convening authority (GCMCA or SPCMCA) dismissed no-probable cause offenses	Number of cases GCMCA referred no-probable cause offense(s)	Results of cases in which penetrative sexual offenses referred despite Art 32 PHO determination of no probable cause
Army	13	2 2 GCMCA / 0 SPCMCA (15%)	11 (85%)	2: guilty 5: not guilty 1: dismissed per PTA 3: dismissed after referral
Navy	10	9 0 GCMCA / 9 SPCMCA (90%)	1 (10%)	1: dismissed per PTA
Marine Corps	7	4 1 GCMCA / 3 SPCMCA (57%)	3 (43%)	1: guilty on 2 charges 1: not guilty 1: dismissed after referral
Air Force	20	17 3 GCMCA / 14 SPCMCA (85%)	3 (15%)	2: not guilty 1: discharged in lieu of trial
Coast Guard	2	2 0 GCMCA / 2 SPCMCA (100%)	0 (0%)	N/A
Total	52	34 6 GCMCA / 28 SPCMCA (65%)	18 (35%)	3: guilty 8: not guilty 2: dismissed per PTA 1: discharged in lieu of trial 4: dismissed after referral

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TABLE 9c. Fiscal Year 2018 Article 32 Determinations of No Probable Cause, According to the Grade of the Preliminary Hearing Officer

	Number of cases Art 32 PHO determined no probable cause for 1 or more penetrative sexual offenses, by PHO grade	Number of cases GCMCA or SPCMCA dismissed no-probable cause offenses (did not refer)	Number of cases GCMCA referred no-probable cause offense(s)	Results of cases in which penetrative sexual offenses referred despite Art 32 PHO determination of no probable cause
Army	O-3: 2 O-4: 10 O-5: 1	O-3: 0 (0%) O-4: 2 (20%) O-5: 0 (0%)	O-3: 2 (100%) O-4: 8 (80%) O-5: 1 (100%)	2: guilty (1 O-3, 1 O-4) 5: not guilty (1 O-3, 4 O-4) 1: dismissed per PTA 3: dismissed after referral
Navy	O-3: 3 O-4: 3 O-5: 2 O-6: 2	O-3: 3 (100%) O-4: 2 (67%) O-5: 2 (100%) O-6: 2 (100%)	O-3: 0 (0%) O-4: 1 (33%) O-5: 0 (0%) O-6: 0 (0%)	1: dismissed per PTA
Marine Corps	O-4: 5 O-5: 2	O-4: 2 (40%) O-5: 2 (100%)	O-4: 3 (60%) O-5: 0 (0%)	1: guilty on 2 charges (O-4) 1: not guilty (O-4) 1: dismissed after referral
Air Force	O-4: 5 O-5: 13 (5 MJ) O-6: 2	O-4: 4 (80%) O-5: 11 (5 MJ)(85%) O-6: 2 (100%)	O-4: 1 (20%) O-5: 2 (15%) O-6: 0 (0%)	2: not guilty (2 O-5) 1: discharged in lieu of trial
Coast Guard	O-4: 2	O-4: 2 (100%)	O-4: 0 (0%)	N/A
Total	O-3: 5 O-4: 25 O-5: 18 O-6: 4	O-3: 3 (60%) O-4: 12 (48%) O-5: 15 (83%) O-6: 4 (100%)	O-3: 2 (40%) O-4: 13 (52%) O-5: 3 (17%) O-6: 0 (0%)	3: guilty (1 O-3, 2 O-4) 8: not guilty (1 O-3, 5 O-4, 2 O-5) 2: dismissed per PTA 1: discharged in lieu of trial 4: dismissed after referral