GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

GENERAL COUNSEL

OCT - 2 2019

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

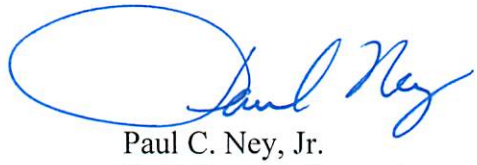
Dear Ms. Bashford:

Thank you for the report of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) on alleged collateral misconduct by individuals identified as a victim of sexual assault in case files of a Military Criminal Investigative Organization. The care with which the DAC-IPAD studied the relevant issues is apparent.

The email forwarding the DAC-IPAD's analysis to my office included a request that the Secretary of Defense provide a written response to the DAC-IPAD of his approval or disapproval of the DAC-IPAD's recommendations or other comments by November 1, 2019. It will not be possible to provide the DAC-IPAD with a response by that date. I have forwarded the DAC-IPAD's recommendations to the Joint Service Committee on Military Justice (JSC) for its analysis, including determining which recommendations could be executed under the existing statutory framework and which recommendations could not be implemented absent statutory amendment. Given the considerable existing workload of the JSC – including the completion of this year's annual review of the Uniform Code of Military Justice and Manual for Courts-Martial as well as drafting a specific "sexual harassment" criminal offense for the military, considering a Government Accountability Office recommendation concerning inclusion of certain demographic information in annual military justice reports, and drafting a report requested by the House Armed Services Committee concerning access by special victims' counsel to certain court filings and investigative materials, in addition to the heavy workload of the JSC's members in their individual Service capacities – it would not be possible to complete the detailed analysis the collateral misconduct issues deserves within the timeframe suggested by the email. Given the JSC's many commitments, I have asked for its recommendations by March 13, 2020. Because the next collateral misconduct report is not due to Congress until September 30, 2021, that will still provide ample opportunity to implement appropriate changes.

Thank you again for the DAC-IPAD's outstanding work on the collateral misconduct issue and your ongoing work evaluating other aspects of the military's investigation and litigation of sexual assault cases.

Sincerely,



Paul C. Ney, Jr.
DoD General Counsel

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 31[1], 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.

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[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 31[1], 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

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[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 31[1], 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 excluded[2], 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

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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,

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

Enclosure

U.S. Department of Homeland Security
United States Coast Guard

Commandant
United States Coast Guard

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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 furthered 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 preferral 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 preferral 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.

Variances Across the Services:

1. **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.
2. **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.
3. **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.
4. **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.
5. **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.
6. **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 accused of collateral misconduct	12%	1%	1%	6%	20%	6%
Percentage of accused Service member victims who receive adverse action 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

TYPE OF COLLATERAL MISCONDUCT	**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.**
U.S. Army	Of the 146 cases involving a victim "accused" of collateral misconduct: • 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]. 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. 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. (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)

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

U.S. Navy	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. Out of the revised number of cases involving collateral misconduct, there were: • 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). 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. 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). (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.)

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

U.S. Marine Corps	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. • 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) 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. • 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). (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.)

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

U.S. Air Force	Of the 105 cases* involving a victim "accused" of collateral misconduct: • 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. In cases in which there were multiple allegations of collateral misconduct, the most serious allegation was counted for this purpose. 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. * 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. (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 *The Department of the Air Force Supplemental Report on Allegations of Collateral Misconduct Against Victims of Sexual Assault* (2019), pp. 3–4.)

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

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.)