

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



Assessment on Collateral Misconduct

September 2023



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

September 21, 2023

The Honorable Ruth M.S. Vetter
Deputy General Counsel
Personnel & Health Policy
1600 Defense Pentagon
Washington, DC 20301-1600

Dear Ms. Vetter:

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), as amended, I respectfully submit the DAC-IPAD's assessment of the 2023 reports of the Army, Department of the Air Force, Marine Corps, and Navy, enumerating the total instances of suspected collateral misconduct engaged in by Service members identified as the victim of a sexual offense in the case files of a military criminal investigative organization (MCIO) for cases closed in fiscal years 2021 and 2022. These reports were prepared by the Military Services as prescribed by section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 (FY19 NDAA), as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283 (FY21 NDAA), which requires the Secretary of Defense, acting through the DAC-IPAD, to submit the designated reports to the congressional defense committees on a biennial basis.

Section 547 of the FY19 NDAA describes three statistical data elements for which data are to be collected and submitted by the Secretary of Defense: (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 was required to be submitted to the congressional defense committees by September 30, 2019.

The DAC-IPAD received Military Service-specific collateral misconduct reports from the DoD Office of the General Counsel on August 7, 2023, covering fiscal years 2021 and 2022. Based on the members' review of these reports and deliberations held during the 31st DAC-IPAD public meeting on September 20, 2023, the Committee offers the following observations, analysis, and recommendations to the Secretary of Defense and the defense committees of the U.S. Senate and U.S. House of Representatives.

Department of Defense Definitions and Methodology

In reviewing the 2023 Military Service-specific reports, the Committee is pleased to note that as recommended by the DAC-IPAD in its initial 2019 collateral misconduct data assessment, the DoD General Counsel (DoD GC) promulgated written guidance to the Military Departments establishing standardized definitions and methodologies for collateral misconduct reports. The DoD GC promulgated this guidance in March 2020 and again in May 2021, after Congress specifically adopted several of the DAC-IPAD-recommended definitions in section 536 of the FY21 NDAA.

In the FY21 NDAA, Congress also enacted a new directive to the Department related to victim collateral misconduct. Section 539A requires that DoD develop a “safe-to-report policy” for handling minor victim collateral misconduct. This provision also included a victim collateral misconduct data-tracking component.

In February 2021, the Secretary of Defense directed a “zero-based review” of DoD federal advisory committees that halted the operations of the DAC-IPAD until the Committee was reestablished in 2022. It was therefore not possible for the DAC-IPAD to execute its statutorily required review of the 2021 DoD collateral misconduct report prior to that report’s submission to Congress by the DoD GC.

In May 2021, and again in June 2023, the DoD GC issued standardized guidance to the Military Departments for collecting data and preparing the Service-specific victim collateral misconduct reports. The standardized definitions and methodology established by the DoD GC are as follows:

Definitions:

“Sexual offense” means the following offenses when they result in an MCIO case file: (1) penetrative and non-penetrative alleged violations of the applicable version of Article 120, Uniform Code of Military Justice (UCMJ); (2) alleged violations of Article 125, UCMJ, for acts of forcible sodomy of a victim 16 years of age or older occurring before January 1, 2019; and (3) alleged attempts and conspiracies to commit any offense listed in (1) or (2).

“Collateral misconduct” means any misconduct that is potentially punishable under the UCMJ that: (1) is committed close in time to or during the alleged sexual offense and is directly related to the incident that formed the basis of the sexual offense allegation; and (2) is discovered as a direct result of the report of the sexual offense or the ensuing investigation into the sexual offense.

“Adverse action” means an officially documented command action that has been initiated against an alleged victim in response to collateral misconduct. The kinds of adverse action that will be documented in your report are limited to: (1) letters of reprimand (or Service equivalent) and written records of individual

counseling in permanent official personnel files; (2) imposition of nonjudicial punishment; (3) preferral of charges; (4) initiation of involuntary separation proceedings; and (5) administrative demotion.

Methodology:

- Include only cases in which all command action on both the alleged sexual offense and any associated alleged collateral misconduct is complete.
- Include all cases in which the alleged victim suspected of collateral misconduct was a member of the Military Service or Department for which data is being reported, even if the case is investigated by an MCIO from another Service.
- Include cases in which either the subject or the alleged victim was a member of the Reserve Component, limiting Army National Guard and Air National Guard cases to those in which the alleged victim was in a Title 10 status when he or she became suspected of collateral misconduct.

Analysis of the Definitions and Methodology

The uniform definitions and methodology established by the DoD GC closely reflect the recommendations of the DAC-IPAD in its 2019 assessment of that year's report. This standardization has made a tremendous improvement in the comparability of the Services' data. The DAC-IPAD commends the DoD GC for developing and disseminating these uniform standards.

Analysis of Collateral Misconduct Data Provided by the Services

The Committee consolidated the data reported by each Military Service into a chart for analysis. This chart is attached as an enclosure. The combined data submitted by the Services indicate that there were 8,376 total Service member victims in DoD sexual offense cases in which command action was completed between October 1, 2020, and September 30, 2022. Of these victims, 463 (6%) were suspected of engaging in collateral misconduct, and 275 (59%) of those suspected of engaging in collateral misconduct received adverse actions for the misconduct. The DoD GC did not request that a report be provided by the Coast Guard and therefore only the DoD Military Services are evaluated in this report.

DoD Safe-to-Report Policy

Section 539A of the FY21 NDAA requires DoD to establish a "safe-to-report policy" that prescribes the handling of alleged minor collateral misconduct involving a Service member who is the victim of an alleged sexual assault. This policy is required by law to include all members of the Military Departments, including Reservists and cadets and midshipmen at the Military Service Academies. The policy specifically excludes the Coast Guard.

In accordance with section 539A, the Undersecretary of Defense for Personnel & Readiness issued a memorandum to the Secretaries of the Military Departments on October 25, 2021, outlining a new “Safe-to-Report Policy for Service Member Victims of Sexual Assault.” The essence of the DoD policy is that collateral misconduct deemed to be “minor” is exempt from discipline. Collateral misconduct that is deemed “non-minor” is subject to disciplinary action following the guidance in the DoD sexual assault policy set forth in DoD Instruction 6495.01. According to the policy, commanders have discretion to make the final determination of whether alleged collateral misconduct is minor or not, based on their analysis of aggravating and mitigating factors. In this determination, commanders are required to consult with their legal advisors.

The DoD policy further requires each Secretary of a Military Department and the Chief of the National Guard Bureau (CNGB) to issue a Service-specific Safe-to-Report Policy that complies with the DoD policy and that details the Service-specific processes and procedures for the identification of and treatment of alleged “minor” and “non-minor” collateral misconduct by victims of sexual assault. The DoD policy indicates that it applies to victims of collateral misconduct regardless of the person to whom the victim makes the allegation of sexual assault and regardless of whether the investigation and/or prosecution is handled by military or civilian authorities.

DoD Safe-to-Report Policy’s Collateral Misconduct Data Reporting Requirement

Section 539A(d) requires the Secretary of Defense to develop and implement a process to track incidents of minor collateral misconduct that are subject to the Safe-to-Report Policy. The DoD policy directs the Secretaries of the Military Departments to collect and provide these data to the DoD Sexual Assault Prevention and Response Office (SAPRO). The DoD policy also requires that each of the incidents reported include a description of why the collateral misconduct was deemed non-minor, or why the collateral misconduct was considered minor and subject to the Safe-to-Report Policy. It is not clear from the DoD policy how, when, or in what form collateral misconduct data are to be reported to DoD SAPRO.

The Safe-to-Report Policy required pursuant to section 539A is relevant to this report because it expands the statutory collateral misconduct data collection requirements, definitions, and scope beyond the FY19 NDAA section 547 biennial collateral misconduct reporting requirements. The statutorily required Safe-to-Report Policy could be legislatively aligned with the reporting requirements for the section 547 reports to improve the value of this report to policymakers and to clarify the relationship of the two provisions.

Observations

The Committee makes three observations from these data. The first is that the data in this report, which are for fiscal years 2020 through 2022, predate the implementation of the DoD “Safe-to-Report Policy.” The rationale for this policy is that victims of sexual offenses may not

report the sexual offense because they fear punishment for collateral misconduct. Consequently, when the Service-specific policies proscribing punishment for minor victim collateral misconduct are in place, the expected outcome is that victims who may have engaged in misconduct close in time to or related to a sexual offense will be more willing to report the sexual offense. The effect of the policy should be observable in the next biennial report, due September 30, 2025.

The Committee's second observation based on its review of the data is that the occurrence of collateral misconduct by Service member victims of investigated sexual offenses is quite rare. The data indicate that 5% of Service member victims in the Army are suspected of collateral misconduct; in the Navy and Air Force, 6% of Service member victims; and in the Marine Corps, 9%. On average across DoD, 6% of Service member victims are suspected of engaging in collateral misconduct.

The third observation the Committee notes is that for fiscal years 2021 and 2022, the Army reports a significantly higher percentage of victims suspected of collateral misconduct who received adverse action for the misconduct (85%) than do the other Services. For the Navy 33% of those Service member victims suspected of collateral misconduct received adverse action; for the Marine Corps, 16%; and for the Air Force, 18%. The methodology described in the Army report indicates that Service member victims who were "accused" of collateral misconduct in the investigation of the alleged sexual offense were identified. The inference from this description is that only collateral misconduct that was formally investigated was captured, and any more minor or "suspected" collateral misconduct was not identified. The Navy, Marine Corps, and Air Force all explained in their methodologies that they provided the names of all Service member victims identified by the investigative organizations to each victim's local command to ascertain whether there was suspected collateral misconduct and/or adverse action. This was not the method employed by the Army. Including and communicating with local commands as was done by the other Services to identify Service members "suspected" of collateral misconduct would likely yield more reliable data results for the Army and would be consistent with the other Services' methodology if followed in future reports.

Recommendations

Based on the 2023 collateral misconduct data reports reviewed by the committee, the DAC-IPAD makes two recommendations to Congress to improve the usefulness of the biennial collateral misconduct reports to policymakers. Because the Safe-to-Report Policy is too new to be reflected in the data, the Committee considers the data presented in this report to be the baseline against which the efficacy of the policy will be evaluated in future years' reports.

Recommendation 1: The DAC-IPAD recommends that Congress amend section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, to require the Military Services to report the number of incidents of collateral misconduct by type of offense and adverse action taken, if any, in future victim collateral misconduct reports.

Recommendation 2: The DAC-IPAD recommends that Congress require DoD to provide the Service-specific data collected pursuant to its Safe-to-Report policy in accordance with section 539A of the FY21 NDAA, to the DAC-IPAD at the same time and covering the same time periods that it currently collects and submits victim collateral misconduct data to the DAC-IPAD pursuant to FY19 NDAA section 547 biennial collateral misconduct reports.

The Committee would like to express its sincere appreciation to the Military Services for their efforts and to the Department for the opportunity to provide input on this important matter.

Sincerely,



Karla N. Smith
Chair

Enclosure:
As stated



2023 Biennial Collateral Misconduct Report

DAC-IPAD Analysis of Draft DoD Collateral Misconduct Report (September 2023)

Comparison of Service-Provided Collateral Misconduct Data

Service Member-Victim Collateral Misconduct	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 October 1, 2020, and September 30, 2022	5,356	1,120	580	1,320	N/A	8,376
Number of Service member victims " suspected " of collateral misconduct in cases closed between October 1, 2020, and September 30, 2022	272	64	51	76	N/A	463
Number of instances adverse action was taken against a Service member victim " suspected " of collateral misconduct	231	21	8	14	N/A	274
Percentage of Service member victims <u>suspected</u> of collateral misconduct	5%	6%	9%	6%	N/A	6%
Percentage of <u>suspected</u> Service member victims who <u>receive adverse action</u> for collateral misconduct	85%	33%	16%	18%	N/A	59%
Percentage of (all) Service member victims who receive adverse action for collateral misconduct	4.3%	2%	1%	1%	N/A	3%



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

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

I. INTRODUCTION

a. Pursuant to section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 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 a sexual offense in the case files of a military criminal investigative organization (MCIO).

b. To meet this statutory requirement, on 3 June 2023, the Department of Defense Office of General Counsel requested The Judge Advocate General of the Army provide the following information:

1. For the period 1 October 2020 through 30 September 2022, the number of instances in which an individual identified as a victim of a sexual offense in an MCIO report was suspected of misconduct or crimes considered collateral to the investigation of a sexual offense committed against the individual;

2. For the same time period, the number of instances in which adverse action was taken against such an individual for such collateral misconduct; and

3. For the same time period, the percentage of investigations of sexual offenses that involved suspicion of, or adverse action against, such an individual.

II. RELEVANT DEFINITIONS

a. As directed in the Office of General Counsel memorandum dated 3 June 2023, the relevant definitions include:

1. "Sexual offense" means the following offenses when they result in an MCIO case file: (1) penetrative and non-penetrative alleged violations of the applicable version of Article 120, Uniform Code of Military Justice (UCMJ); (2) alleged violations of Article 125, UCMJ, for acts of forcible sodomy of a victim 16 years of age or older occurring before 1 January 2019; and (3) alleged attempts and conspiracies to commit any offense listed in (1) or (2).

2. "Collateral misconduct" means any misconduct that is potentially punishable under the UCMJ that: (1) is committed close in time to or during the alleged sexual offense and is directly related to the incident that formed the basis of the sexual offense allegation; and (2) is discovered as a direct result of the report of the sexual offense or the ensuing investigation into the sexual offense.

3. "Adverse action" means an officially documented command action that has been initiated against an alleged victim in response to collateral misconduct. The kinds of adverse action are limited to: (1) letters of reprimand (or Service equivalent) and written records of individual counseling in permanent official personnel files; (2) imposition of nonjudicial punishment; (3) preferral of charges; (4) initiation of involuntary separation proceedings; and (5) administrative demotion.

III. METHODOLOGY

- a. The Army Criminal Investigation Division (CID) generated a list of all sexual offense investigations closed between 1 October 2020 and 30 September 2022. From this list, CID was able to identify the named victim(s) in each investigation. Additionally, CID was able to generate a list where named victims were accused of collateral misconduct and listed as subjects within the same investigation.
- b. This information was provided to the U.S. Army Office of the Judge Advocate General for review. The Army initially reviewed the list to determine the number of Army victims, including members of the Reserve Component when the victim was in a Title 10 status. For victims from other services, victim and offense information was provided to the appropriate service for inclusion in that service’s report. Army victims where the law enforcement investigation was conducted by another service are included in this report.
- c. Named victim information from the CID generated list of sexual offenses was compared to information contained within the Army’s military justice database, Military Justice Online (MJO). Military justice records from MJO were then reviewed to determine: (1) whether the victim was involved in misconduct collateral to their report of a sexual offense; (2) if yes, whether the command initiated adverse action against the victim for the collateral misconduct; and (3) if yes, what type of adverse action the command initiated.

IV. DATA

- a. The data below pertains to the period 1 October 2020 through 30 September 2022:

Total Number of Sexual Assault Investigations involving an Army victim	Total Number of Identified Army Victims	Total Number of instances where victim was accused of collateral misconduct	Total Number of instances where adverse action was initiated as a result of collateral misconduct
5,209	5,356	272 ¹	231

- b. 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
5.22%	4.43%

¹ This total includes instances where a named victim was also identified as a subject within the same CID investigation. It also includes instances of “collateral misconduct” where “adverse action” was initiated as those terms are defined in Section II.

The Department of the Air Force Report on Allegations of Collateral Misconduct Against Victim of Sexual Offenses

I. INTRODUCTION

Pursuant to section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 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 a sexual offense in the case files of a military criminal investigative organization (MCIO).

This report includes relevant data from the Department of the Air Force (DAF) for the period from 1 October 2020 through 30 September 2022 on: 1) the number of instances in which an individual identified as a victim of a sexual offense in an MCIO report was suspected of misconduct or crimes considered collateral to the investigation of a sexual offense committed against the individual; 2) the number of instances in which adverse action was taken against such an individual for such collateral misconduct; and 3) the percentage of investigations of sexual offenses that involved suspicion of, or adverse action against, such an individual.

II. RELEVANT DEFINITIONS

The Department of Defense Office of General Counsel provided the following definitions for the purpose of preparing this report:

a. “Sexual offense” means the following offenses when they resulted in an MCIO case file: (1) penetrative and non-penetrative alleged violations of the applicable version of Article 120, Uniform Code of Military Justice (UCMJ); (2) alleged violations of Article 125, UCMJ, for acts of forcible sodomy of a victim 16 years of age or older occurring before January 1, 2019; and (3) alleged attempts and conspiracies to commit the offenses listed in (1) or (2).

b. “Collateral misconduct” means any misconduct that is potentially punishable under the UCMJ that: (1) is committed close in time to or during the alleged sexual offense and is directly related to the incident that formed the basis of the sexual offense allegation; and (2) is discovered as a direct result of the report of the sexual offense or the ensuing investigation into the sexual offense.

c. “Adverse action” means an officially documented command action that has been initiated against an alleged victim in response to collateral misconduct. The kinds of adverse action addressed by this report are limited to: (1) letters of reprimand (or Service equivalent) and written records of individual counseling in permanent official personnel files; (2) imposition of nonjudicial punishment; (3) preferral of charges; (4) initiation of involuntary separation proceedings; and (5) administrative demotion.

III. METHODOLOGY

The Air Force Office of Investigations (AFOSI) compiled a list of all investigations into a qualifying sexual offense defined above with a case closed date between 1 October 2020 and 30 September 2022. This data included all victims in the Regular Air Force, Regular Space Force, Reserve Corps, or in the National Guard on Title 10 orders when they reported the sexual offense. This list was then filtered down to every local installation legal office to report on the cases investigated at their installation. Conducting reviews at the installation level ensured the most accurate information on victim misconduct as local installations have the most visibility and access to case information. In addition to the names provided by AFOSI, the Department of the Army and the Department of the Navy provided names of DAF victims who reported a sexual offense investigated by their respective MCIO.

The installation legal offices reviewed each instance involving a sexual offense to confirm: 1) command action for the alleged offense and for any collateral misconduct occurred during the required timeframe; 2) whether the victim was suspected of any collateral misconduct, and if so, what type of alleged misconduct; and 3) whether the command took action on any victim collateral misconduct. The Air Force Military Justice Law and Policy Division (AF/JAJM) consolidated this information into one complete report for data analysis.

In determining the total number of investigations, DAF noted one investigation may have several victims or several subjects. To appropriately capture the percentage of cases in which victim collateral misconduct exists, DAF treated every unique report, meaning every case where there is a different subject and different victim, as one case. If a subject was alleged to have assaulted three individuals, there would be three cases. Similarly, if one victim was allegedly assaulted by two different subjects, there would be two cases. If a subject and victim made a claim against each other, this was counted as two cases.

Additionally, in collecting information from installation legal offices, DAF noted an inconsistency in interpreting “command action,” specifically, for courts-martial. DAF defined command action in a court-martial as preferral of charges and updated the information received to reflect case closure when preferral of charges had taken place during the required timeframe.

IV. DATA

During the reporting period, AF/JAJM totaled 1,320 sexual assault investigations involving DAF victims with 76 instances (5.76% of investigations) in which command suspected a victim of collateral misconduct. Of the 76 victims suspected of collateral misconduct, 14 DAF victims received adverse action as a result of the collateral misconduct. The following includes every instance of suspected collateral misconduct reported.

Primary Allegation of Collateral Misconduct	Number of Victims Accused	%	LOR/LOA/LOC¹ (maintained in personnel file)	Nonjudicial Punishment	Preferral of Charges	Initiation of Invol. Separation	Admin. Demotion
	Total: 76						
Underage Drinking	28	36.8%					
Violation of Order or Policy (other than underage drinking or unprofessional relationship)	9	11.84%	2	2			
Adultery, Fraternization, or Unprofessional Relationship	13	17.11%	2	1			
Drug Use	2	2.63%					
Counterclaim of Sexual Assault for Same Instance	14	18.42%	1	1	1		
Assault & Battery	5	6.58%	3				
False Official Statement (not false allegation)	4	5.26%	1				
Drunk Driving	1	1.32%					

¹ Letter of Reprimand (LOR); Letter of Admonishment (LOA); Letter of Counseling (LOC)



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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5860
Ser 00/0131
17 Jul 23

From: Judge Advocate General of the Navy
To: Mr. Dwight Sullivan, Office of the General Counsel

Subj: REPORT ON ALLEGATIONS OF COLLATERAL MISCONDUCT BY VICTIMS OF SEXUAL OFFENSES

Encl: (1) Navy Report on Allegations of Collateral Misconduct Against Victims of Sexual Assault for FY21 and FY22

1. Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, as amended by Section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, and codified by 10 U.S.C. § 1561, requires the military services to report on instances in which service member victims of sexual offenses are alleged to have committed misconduct collateral to the sexual offense investigation. Enclosure (1) is the Navy's contribution to the report.

2. Should you have questions, my point of contact for this matter is CDR Chad Temple, JAGC, USN, Director, Criminal Law Division, at chad.c.temple.mil@us.navy.mil or 202-685-7057.

D. E. Crandall
D. E. CRANDALL

Copy to:
OJAG Code 20

SUBJECT: Navy Report on Allegations of Collateral Misconduct Against Victims of Sexual Assault

I. INTRODUCTION

The U.S. Navy submits the following report pursuant to Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, as amended by Section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283. Codified by 10 U.S.C. § 1561. The report contains the following information for the period 1 October 2020 through 30 September 2022: 1) the number of instances in which an individual identified as the victim of a sexual offense in a military criminal investigative organization (MCIO) report was suspected of misconduct or crimes considered collateral to the investigation of a sexual offense committed against the individual; 2) the number of instances in which adverse action was taken against such an individual for such collateral misconduct; and 3) the percentage of investigations of sexual offenses that involved suspicion of or adverse action against such an individual.

II. DEFINITIONS

The following definitions were used in compiling this report:

- (a) **Sexual offense:** (1) penetrative and non-penetrative alleged violations of the applicable version of Article 120, Uniform Code of Military Justice (UCMJ); (2) alleged violations of Article 125, UCMJ, for acts of forcible sodomy on a victim 16 years of age or older occurring before January 1, 2019; and 3) alleged attempts and conspiracies to commit the offenses listed in (1) or (2).
- (b) **Collateral misconduct:** any misconduct that is potentially punishable under the UCMJ that (1) is committed close in time to or during the alleged sexual offense and is directly related to the incident that formed the basis of the sexual offense allegation and (2) is discovered as a direct result of the report of the sexual offense or the ensuing investigation into the sexual offense.
- (c) **Adverse action:** an officially documented command action that has been initiated against an alleged victim in response to collateral misconduct, limited to: (1) letters of reprimand and written records of individual counseling in permanent official personnel files; (2) imposition of nonjudicial punishment; (3) preferral of charges; (4) initiation of involuntary separation proceedings; and (5) administrative demotion.

III. METHODOLOGY

Naval Criminal Investigative Service (NCIS) collected all completed investigations for the specified time period where the identified victim was a member of the Navy. Additionally, the

SUBJECT: Navy Report on Allegations of Collateral Misconduct Against Victims of Sexual Assault

Navy coordinated with the other Services to collect cases in which a victim affiliated with the Navy reported to another Service's MCIO. Both categories of completed cases, where the identified victim's attached unit or organization at time of reporting was available, have been included in this report. A team of active and reserve judge advocates organized the list of cases provided by NCIS and contacted the commands responsible for each individual for a determination of (1) whether the victim was suspected of misconduct collateral to their report; and (2) if so, whether the command took adverse action against the victim.

The information received during this review is below.

IV. DATA

Total number of sexual offense investigations involving identifiable Navy victims	Total number of instances where a Navy victim was suspected of collateral misconduct	Total number of instances where adverse action was taken as a result of collateral misconduct
1,120	64	21
	Percentage of total sexual offense investigations in which the victim was suspected of collateral misconduct	Percentage of investigations where victim received adverse action
	5.71%	1.87%



**UNITED STATES MARINE CORPS REPORT ON ALLEGATIONS OF COLLATERAL MISCONDUCT
AGAINST VICTIMS OF SEXUAL OFFENSES**

I. INTRODUCTION

The United States Marine Corps submits the following report pursuant to Section 547 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Public Law 115-23, as amended by Section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283. The report contains the following information for the period of October 1, 2020 through September 30, 2022: (1) the number of instances in the Marine Corps where an identified victim of a sexual offense in a military criminal investigative organization report was suspected of misconduct or crimes considered collateral to the investigation of a sexual offense committed against the individual; (2) the number of instances in which adverse action was taken against such an individual for such collateral misconduct; and (3) the percentage of investigations of sexual offenses that involved suspicion of, or adverse action against, such an individual.

II. DEFINITIONS

The following definitions were used in compiling this report:

a. **Sexual Offense**: (1) penetrative and non-penetrative alleged violations of the applicable version of Article 120, Uniform Code of Military Justice (UCMJ); (2) alleged violations of Article 125, UCMJ, for acts of forcible sodomy on a victim 16 years of age or older occurring before January 1, 2019; and (3) alleged attempts and conspiracies to commit the offenses listed in (1) or (2).

b. **Collateral Misconduct**: any misconduct that is potentially punishable under the UCMJ that (1) is committed close in time to or during the alleged sexual offense and is directly related to the incident that formed the basis of the sexual offense allegation; and (2) is discovered as a direct result of the report of the sexual offense or the ensuing investigation into the sexual offense.

c. **Adverse Action**: an officially documented command action that has been initiated against an alleged victim in response to collateral misconduct, limited to: (1) letters of reprimand and written records of individual counseling in permanent official personnel files; (2) imposition of nonjudicial punishment; (3) preferral of charges; (4) initiation of involuntary separation proceedings; and (5) administrative demotion.

III. METHODOLOGY

The Naval Criminal Investigative Service (NCIS) collected all sexual offense investigations for the specified time period where the identified victim was a Marine Corps Service member. In

addition to the names provided by NCIS, the Marine Corps collected victim names from the other Services in cases where a Marine Corps victim reported a sexual offense to the MCIO of another Service. A list of victims provided by NCIS and the other Service MCIO's was forwarded to the commands responsible for each individual case for a determination of whether (1) the victim was suspected of misconduct collateral to their report of sexual assault; (2) if so, whether the command took adverse action against the victim for that collateral misconduct. The information received during this review is reflected in section IV on the following page.

IV. DATA

During the period of October 1, 2020 through September 30, 2022:

Total number of sexual offense investigations involving Marine Corps victims	Total number of instances where a Marine Corps victim was suspected of collateral misconduct	Total number of instances where adverse action was taken as a result of such collateral misconduct
580	51	8
	Percentage of total sexual offense investigations in which the victim was suspected of collateral misconduct	Percentage of investigations where the victim received adverse action for such collateral misconduct
	8.79%	1.38%