

Extracts from FY 2014 SAPRO Report- Withholding Policy

In the FY14 DoD SAPRO Report, each Service provided answers to specific questions asked by DoD. Below are the Services' responses to question 3.6:

Describe your effort to ensure the withholding of initial disposition authority in certain sexual assault cases from all commanders who do not possess at least Special Court Martial Convening Authority and who are not in the grade of O6 or higher.

Army Response¹

After the Secretary of Defense directed that the initial disposition authority in penetrative sexual assault offenses be withheld to O-6 SPCMCA, the OTJAG provided an information paper and other training to SJAs and Chiefs of Criminal Law at all Army installations. The new withhold policy was incorporated into all pre-command and legal training courses and published to all Judge Advocates through MilSuite. Finally, TJAGLCS updated the Commander's Legal Handbook, providing guidance on the disposition authority in sexual assault cases.

Navy Response²

Within Navy, all allegations of sexual assault are appropriately forwarded to the SAIDA. Pursuant to ALNAV 052/14, the authority to dispose of the sex-related offenses is withheld to an SA-IDA officer in the grade of O-6 or above with special court-martial convening authority.

Marine Corps Response³

Grade requirements for convening authorities to dispose of sexual assaults have also increased. In April 2012, the SecDef withheld initial disposition authority (IDA) in sexual assault offenses (SA-IDA)—including penetration offenses, forcible sodomy, and attempts to commit those crimes—to the Colonel/special court-martial convening authority (SPCMCA) level. The CMC expanded SA-IDA to include all contact sex offenses, child sex offenses, and any attempts to commit those offenses. As a result, the Marine Corps now has a smaller group of more senior and experienced officers

¹ U.S. DEP'T OF DEF., SAPRO, DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2014, at Encl 1, ¶3.6 (Apr. 2015), *available at*

http://sapr.mil/public/docs/reports/FY14_Annual/FY14_Annual_Report_Enclosure_1_Army.pdf

² U.S. DEP'T OF DEF., SAPRO, DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2014, at Encl 2, p 38, ¶3.6 (Apr. 2015), *available at*

http://sapr.mil/public/docs/reports/FY14_Annual/FY14_Annual_Report_Enclosure_2_Navy.pdf

³ U.S. DEP'T OF DEF., SAPRO, DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2014, at Encl 2, p 132, ¶3.6 (Apr. 2015), *available at*

http://sapr.mil/public/docs/reports/FY14_Annual/FY14_Annual_Report_Enclosure_2_Navy.pdf

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making disposition decisions for all sexual offense allegations and any related collateral misconduct. These requirements have been implemented in the Marine Corps in the Legal Administrative Manual. Commander's courses and the Legal Community Training discuss the requirements with Commanders and SJAs. In addition, reports of dispositions of sexual assault cases are sent to Judge Advocate Division on the Secretary of Navy's required SADR form, which lists the grade and name of the Commander making the disposition decision.

Air Force Response⁴

In accordance with Secretary of Defense Memorandum, "Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases," April 20, 2012, initial disposition authority is withheld from all commanders who do not possess at least special court-martial convening authority for certain Article 120 and Article 125, Uniform Code of Military Justice, offenses.

On April 12, 2012, the acting Secretary of the Air Force directed that, in all cases involving rape under Article 120(a) of the Uniform Code of Military Justice, sexual assault (Article 120(b)), forcible sodomy (Article 125) and attempts to commit those offenses (Article 80), the special court-martial convening authority is required to provide the general court-martial convening authority (in the grade of brigadier general or higher) written notice of the initial disposition action taken within 30 days of taking such action. This notification increases the visibility of actions taken on sexual assault offenses by ensuring the general court-martial convening authorities are notified of the initial disposition of these cases by their subordinate commanders.

On June 28, 2012, the Air Force implemented the requirement to elevate initial disposition authority for the most serious sexual assault offenses (rape, sexual assault, forcible sodomy, and attempts to commit these offenses) to a special court martial convening authority who is a commander serving at the colonel level or higher. That implementation is now memorialized in Air Force Guidance Memorandum to Air Force Instruction 51-201, *Administration of Military Justice*, dated September 25, 2014, paragraph 4.13. This action, in addition to the notification requirement above, greatly increases the visibility of actions taken on sexual assault offenses by ensuring a review of the disposition in sexual assault cases is made at the appropriate level. This additional level of oversight contributes to holding perpetrators appropriately accountable.

Additionally, the acting Secretary of the Air Force also directed on June 17, 2013, that the Air Force Office of Special Investigations will not close out investigative files in cases of sexual assault until the general court-martial convening authority has signed a written memorandum of command action for the cases. This ensures that every sexual assault investigation is appropriately reviewed at all levels. As an enhancement to command oversight policies already in place at the direction of the Secretary of Defense and Secretary of the Air Force for sexual assault cases, section 1744 of the National Defense Authorization Act for fiscal year 2014

⁴ U.S. DEP'T OF DEF., SAPRO, DEPARTMENT OF DEFENSE ANNUAL REPORT ON SEXUAL ASSAULT IN THE MILITARY, FISCAL YEAR 2014, at Encl 3, p 49-50, ¶3.6 (Apr. 2015), available at http://sapr.mil/public/docs/reports/FY14_Annual/FY14_Annual_Report_Enclosure_3_Air_Force.pdf

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required additional high level review by the superior general court-martial convening authority (usually an Air Force Major Command Commander) or Secretary of the Air Force in certain sexual assault cases not referred to a court-martial. The Air Force has implemented this change through an Air Force Guidance Memorandum to Air Force Instruction 51-201, *Administration of Military Justice*, dated September, 25 2014, adding webcast training availability for all judge advocates and paralegals and new training to be included in the military justice courses taught at The Judge Advocate General's School.

Additionally, some major commands have adopted a policy wherein initial disposition authority is withheld for all Article 120, Uniform Code of Military Justice offenses, beyond those identified in the Secretary of Defense memorandum.