

The Services' Directives
Withholding the
Initial Disposition
Authority in
Sexual Assault Cases

Army

ALARACT 299/2013

DTG: 080700Z NOV 13

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THIS MESSAGE HAS BEEN SENT BY THE UNITED STATES ARMY INFORMATION
TECHNOLOGY AGENCY (USAITA) ON BEHALF OF DA WASHINGTON
DC//OTJAG//

SUBJECT: ARMY RESPONSIBILITIES, ROLES, PROCEDURES, AND
AUTHORITIES FOR RESPONDING TO SEXUAL ASSAULT ALLEGATIONS

(U) REFERENCES.

REF//A/ SECDEF MEMORANDUM "WITHHOLDING INITIAL DISPOSITION
AUTHORITY UNDER THE UNIFORM CODE OF MILITARY JUSTICE IN CERTAIN
SEXUAL ASSAULT CASES," DATED: 20 APR 12//

REF//B/ AR 600-20, ARMY COMMAND POLICY, DATED: RAR, 20 SEP 12//

REF//C/ AR 195-2, CRIMINAL INVESTIGATION ACTIVITIES, DATED: RAR
6 SEP 11//

REF//D/ 10 USC-673, DATED: 31 DEC 11//

REF//E/ SECDEF MEMORANDUM "SEXUAL ASSAULT PREVENTION AND
RESPONSE," DATED: 14 AUG 13//

REF//F/ DODI 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE
(SAPR) PROGRAMS AND PROCEDURES, DATED 28 MAR 13//

REF//G/SECARMY MEMORANDUM "ARMY DIRECTIVE 2011-19 (EXPEDITED
TRANSFER OR REASSIGNMENT PROCEDURES FOR VICTIMS OF SEXUAL
ASSAULT)" DATED 3 OCT 11//

REF//H/ALARACT 007/2012, 121650Z JAN 12, SUBJECT: SEXUAL
HARASSMENT/ASSAULT RESPONSE AND PREVENTION PROGRAM (SHARP)
IMPLEMENTATION GUIDANCE//

REF//I/MILPER MESSAGE 12-092, DATED 21 MAR 12//

NARR// (U) THIS MESSAGE IS TO REMIND THE FIELD OF CERTAIN
CRITICAL ROLES, RESPONSIBILITIES, PROCEDURES, AND AUTHORITIES
RELATING TO SEXUAL ASSAULT REQUIREMENTS THAT HAVE CHANGED OR
HAVE BEEN MODIFIED OVER THE PAST FEW YEARS//

1. (U) IAW REF A, ANY ALLEGATION OF RAPE, SEXUAL ASSAULT,
FORCIBLE SODOMY, OR ANY ATTEMPT TO COMMIT SUCH AN OFFENSE IS
WITHHELD TO THE FIRST O-6 -- THE SPECIAL COURT-MARTIAL CONVENING
AUTHORITY (SPCMCA) -- IN THE CHAIN OF COMMAND FOR INITIAL
DISPOSITION. IF THE SPCMCA IS BELOW THE GRADE OF O-6, THEN THE
CASE IS WITHHELD TO THE GENERAL COURT-MARTIAL CONVENING
AUTHORITY (GCMCA). SUBORDINATE COMMANDERS MAY MAKE
RECOMMENDATIONS AS TO DISPOSITION TO THE O6 SPCMCA AND MAY ONLY
TAKE ACTION ON SUCH OFFENSE WHEN THE SPCMCA RELEGATES THE CASE
BACK TO THEIR LEVEL. ALL OTHER OFFENSES ARISING FROM OR RELATED

TO THE SAME INCIDENT/S ARE ALSO WITHHELD TO THE SPCMCA, INCLUDING OFFENSES COMMITTED BY THE ALLEGED VICTIM.

2. (U) IAW REF B, C, AND F, ANY ALLEGATION OF SEXUAL ASSAULT THAT IS REPORTED AS AN UN(RES)TRICTED REPORT WILL BE FORWARDED IMMEDIATELY TO THE CRIMINAL INVESTIGATION COMMAND (CID) FOR INVESTIGATION. COMMANDERS WILL NOT INITIATE AN AR 15-6 INVESTIGATION INTO THE ALLEGATION. THE COMMANDER WILL ALSO NOT MAKE A CREDIBILITY ASSESSMENT AS A PRE-CURSOR TO FORWARDING TO CID. ALL ALLEGATIONS WILL BE FORWARDED TO CID. THIS REQUIREMENT DOES NOT PRECLUDE A COMMANDER FROM APPOINTING AN AR 15-6 INVESTIGATION INTO COMMAND CLIMATE, RESPONSE, REPORTING PROCEDURES UPON DISCOVERY, ETC., BUT ANY SUCH INVESTIGATION WILL NOT INTERFERE WITH THE CRIMINAL INVESTIGATION BY CID.

3. (U) IAW REF G, H, AND I, COMMANDERS MUST BE FAMILIAR WITH THE EXPEDITED TRANSFER POLICY SET FORTH IN ARMY DIRECTIVE 2011-18, ALARACT 007 2012 SHARP, AND MILPER MESSAGE 12-092, TO INCLUDE FAMILIARITY WITH RELEVANT TIMELINES AND APPROVAL/DISAPPROVAL AUTHORITIES. CHANGES TO POLICY ON THIS IMPORTANT VICTIM RESPONSE CAN BE EXPECTED NLT 1 JAN 2014.

4. (U) IAW REF E, A JUDGE ADVOCATE IN THE GRADE OF O3 OR ABOVE WILL BE APPOINTED TO SERVE AS THE ARTICLE 32 INVESTIGATING OFFICER IN ALL CASES WHERE RAPE, SEXUAL ASSAULT, OR FORCIBLE SODOMY IS ALLEGED UNDER ARTICLES 120 OR 125 OF THE UCMJ OR AN ATTEMPT TO COMMIT SUCH AN OFFENSE IS ALLEGED UNDER ARTICLE 80 OF THE UCMJ. STAFF JUDGE ADVOCATES WILL NOMINATE JUDGE ADVOCATES WHO POSSESS THE REQUISITE JUDGMENT, MATURITY, AND EXPERIENCE TO PROPERLY INVESTIGATE SUCH OFFENSES.

5. (U) IAW REF E, VICTIMS OF SEXUAL ASSAULT WHO ARE ELIGIBLE LEGAL ASSISTANCE CLIENTS WILL BE ASSIGNED A SPECIAL VICTIM COUNSEL, IF REQUESTED. THE SPECIAL VICTIMS COUNSEL WILL BE AN ATTORNEY FROM THE SERVICING STAFF JUDGE ADVOCATE OFFICE. BECAUSE OF THE INCREASED DEMANDS ON JUDGE ADVOCATES TO BE SPECIAL VICTIM COUNSEL AND ARTICLE 32 INVESTIGATING OFFICERS, STAFF JUDGE ADVOCATES HAVE BEEN AUTHORIZED TO LIMIT LEGAL ASSISTANCE SERVICES PROVIDED TO RETIREES AND THEIR FAMILY MEMBERS; STAFF JUDGE ADVOCATES WILL IMPLEMENT MITIGATION MEASURES, SUCH AS, WEEKEND APPOINTMENTS FOR RETIREES USING LOCAL RESERVE COMPONENT JUDGE ADVOCATES WHERE AVAILABLE AND/OR EXPANDING LEGAL ASSISTANCE SERVICES DURING RETIREE APPRECIATION DAYS.

6. (U) COMMANDERS AND THEIR STAFF JUDGE ADVOCATES MUST CONTINUE TO WORK TOGETHER TO COMBAT SEXUAL HARASSMENT AND SEXUAL ASSAULT IN OUR RANKS. SPECIAL AND GENERAL COURTS-MARTIAL CONVENING

AUTHORITIES SHOULD SEEK THE ADVICE OF THEIR STAFF JUDGE ADVOCATES WHEN SEEKING TO IMPLEMENT THE POLICIES DISCUSSED IN THIS ALARACT MESSAGE TO ENSURE THAT FEDERAL STATUTES, THE MANUAL FOR COURTS-MARTIAL, AND (SEC)RETARIAL LEVEL DIRECTIVES ARE APPROPRIATELY COMPLIED WITH AND DONE SO WITHIN THE TIME FRAMES PRESCRIBED BY THOSE POLICIES.

7. (U/FOUO) POINTS OF CONTACT: HQDA, OTJAG POCS: LTC JOHN KIEL, JR., COMM: (571) 256-8136, E-MAIL: JOHN.L.KIEL2.MIL@MAIL.MIL; OR MRS. JANET MANSFIELD, COMM: (571) 256-8138, E-MAIL: JANET.K.MANSFIELD.CIV@MAIL.MIL.

8. (U) EXPIRATION OF THIS MESSAGE IS WHEN SUPERSEDED BY OTHER DA GUIDANCE OR REGULATION.

Air Force

AFI51-201_AFGM2015-01¹
30 July 2015

SUBJECT: Air Force Guidance Memorandum 2015-01 to AFI 51-201, *Administration of Military Justice*

(ADD New) 4.13. Secretary of Defense Withhold of Initial Disposition Authority. See Figures 4.9 and 4.10. Effective 28 June 2012, the Secretary of Defense withheld initial disposition authority from all commanders within the Department of Defense who do not possess at least special court-martial convening authority (SPCMCA) and who are not in the grade of O-6 or higher, with respect to the following alleged offenses:

(ADD New) 4.13.1. Rape, in violation of Article 120;

(ADD New) 4.13.2. Sexual assault, in violation of Article 120;

(ADD New) 4.13.3. Forcible sodomy, in violation of Article 125; and

(ADD New) 4.13.4. Attempts to commit the above offenses, in violation of Article 80.

(ADD New) 4.14. The withholding of initial disposition authority applies to all other alleged offenses arising from or relating to the same incident(s), whether committed by the accused or the victim. For those offenses to which initial disposition authority is withheld, the subordinate commander shall forward the case file, along with his/her written recommendation, to the initial disposition authority. See Figure 4.9.

(ADD New) 4.15. The SPCMCA is responsible for taking an initial disposition action under R.C.M. 306. The SPCMCA's initial disposition decision shall, at a minimum, be based upon review of:

(ADD New) 4.15.1. Matters transmitted;

(ADD New) 4.15.2. Court-martial charges, if any;

(ADD New) 4.15.3. Any independent review and recommendation received; and

(ADD New) 4.15.4. Consultation with the Staff Judge Advocate.

(ADD New) 4.16. The factors in the discussion under R.C.M. 306(b) may also be considered in the SPCMCA's initial disposition decision.

Navy

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ATTENTION INVITED TO

ROUTINE

R 280139Z JUN 12 PSN 005665K22

FM CNO WASHINGTON DC

TO NAVADMIN

ZEN//OU=DOD/OU=NAVY/OU=ADDRESS LISTS(UC)/CN=AL NAVADMIN(UC)

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SUBJ: IMPLEMENTATION OF SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY

UNCLASSIFIED/ PASS TO ALL OFFICE CODES:

FM CNO WASHINGTON DC//N09//

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MSGID/GENADMIN/CNO WASHINGTON DC/N09/JUN//

SUBJ/IMPLEMENTATION OF SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY//

REF/A/LTR/SECDEF/20APR12//

REF/B/DOC/OPNAVINST F3100.6J//

NARR/REF A SETS FORTH DOD POLICY ON THE USE OF AN INITIAL DISPOSITION AUTHORITY IN CASES INVOLVING ALLEGATIONS OF SEXUAL ASSAULT. REF B IS THE SPECIAL INCIDENT REPORTING PROCEDURES.// POC/NELL EVANS/LCDR/-/TEL: (202)685-7429/E-MAIL: NELL.EVANS(AT)NAVY.MIL// POC/MANDY GARDNER/LT/-/TEL: (202) 685-7056/E-MAIL: MANDY.GARDNER(AT)NAVY.MIL//

RMKS/1. THIS NAVADMIN PROVIDES GUIDANCE ON THE NEW SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY (SA-IDA) POLICY AND MANDATORY TRAINING.

2. PER REF A, EFFECTIVE 28 JUNE 2012, AUTHORITY TO DISPOSE OF CERTAIN SEXUAL ASSAULT (SA) CASES WILL BE WITHHELD AT THE O6 SPECIAL COURT-MARTIAL CONVENING AUTHORITY (SPCMCA) LEVEL. THIS OFFICER WILL BE KNOWN AS THE SA-IDA. CASES INVOLVING ALLEGATIONS OF RAPE AND SEXUAL ASSAULT UNDER ARTICLE 120, UCMJ, FORCIBLE SODOMY UNDER ARTICLE 125, UCMJ, AND ATTEMPTS TO COMMIT THOSE OFFENSES UNDER ARTICLE 80, UCMJ, WILL BE FORWARDED TO THE SA-IDA FOR ACTION. ADDITIONALLY, THIS APPLIES TO OTHER ALLEGED OFFENSES ARISING FROM OR RELATING TO THE SAME INCIDENT(S) WHETHER COMMITTED BY THE ALLEGED PERPETRATOR OR THE ALLEGED VICTIM OF THE RAPE, SEXUAL ASSAULT, FORCIBLE SODOMY, OR ATTEMPTS THEREOF. INITIAL DISPOSITION AUTHORITY FOR OFFENSES ALLEGEDLY COMMITTED BY ALLEGED VICTIMS IS ALSO WITHHELD TO THE O6 SPCMCA LEVEL WITHIN THE ALLEGED VICTIM'S CHAIN OF COMMAND.

3. AS DESCRIBED IN REF A, THE SA-IDA HAS THE NON-DELEGABLE RESPONSIBILITY FOR INITIAL DISPOSITION AS DEFINED IN RULE FOR COURT- MARTIAL 306:

- A. PRIOR TO MAKING THE INITIAL DISPOSITION DETERMINATION, THE SA-IDA MUST CONSULT WITH A STAFF JUDGE ADVOCATE AND, WHEN PRACTICABLE, NCIS.
 - B. DOCUMENT THE IDA DECISION.
 - C. ONCE THE INITIAL DISPOSITION DECISION IS MADE AND DOCUMENTED THE IDA MAY TAKE ANY ACTION AS SET FORTH IN RULE FOR COURT-MARTIAL 306(C).
4. ALL COMMANDERS WILL BECOME FAMILIAR WITH THE CHANGES TO ARTICLE 120 AND THE SA-IDA WITHHOLDING GUIDANCE AND ITS IMPACT ON THEIR HANDLING OF SA ALLEGATIONS IN THEIR RESPECTIVE COMMANDS. TO HELP ACCOMPLISH THIS, THE OFFICE OF THE JUDGE ADVOCATE GENERAL, IN COOPERATION WITH OPNAV N135, WILL PROVIDE TRAINING AT VARIOUS LOCATIONS THROUGHOUT THE FLEET. ALL COMMANDING OFFICERS, STAFF JUDGE ADVOCATES, VICTIM ADVOCATES, AND SEXUAL ASSAULT RESPONSE COORDINATORS ARE REQUIRED TO ATTEND A SESSION OF THIS TRAINING. THE DETAILS OF THIS TRAINING WILL BE PROMULGATED SEPCOR.
5. PER REF B, ANY COMMANDER EVALUATING A SEXUAL ASSAULT ALLEGATION OF ANY KIND MUST CONSULT WITH A STAFF JUDGE ADVOCATE PRIOR TO DISPOSING OF THE CASE. CONTACT YOUR LOCAL REGION LEGAL SERVICE OFFICE FOR FURTHER INFORMATION AND GUIDANCE.
6. VICE CHIEF SENDS.//

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Marine Corps



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2 PRINT

WITHHOLD OF INITIAL DISPOSITION AUTHORITY IN CERTAIN SEXUAL ASSAULT CASES

Date Signed: 7/13/2012

MARADMINS Active Number: 372/12

R 131427Z JUL 12

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MARADMIN 372/12

MSGID/GENADMIN/CMC WASHINGTON DC DMCS //

SUBJ/WITHHOLD OF INITIAL DISPOSITION AUTHORITY IN CERTAIN SEXUAL ASSAULT CASES//

REF/A/MSGID:DOC/SECDEF WASHINGTON DC/YMD:20120420//

REF/B/MSGID:DOC/SECNAV WASHINGTON DC/YMD:20120614//

REF/C/MSGID:DOC/CMC WASHINGTON DC/YMD:20120620//

REF/D/MSGID:DOC/MANUAL FOR COURTS-MARTIAL/-//

NARR/REF A IS SECRETARY OF DEFENSE MEMORANDUM, WITHHOLDING INITIAL DISPOSITION AUTHORITY UNDER THE UCMJ IN CERTAIN SEXUAL ASSAULT CASES. REF B IS SECRETARY OF THE NAVY MEMORANDUM, SEXUAL ASSAULT INITIAL DISPOSITION AUTHORITY. REF C IS MARINE CORPS SEXUAL ASSAULT PREVENTION AND RESPONSE CAMPAIGN PLAN 2012. REF D IS THE MANUAL FOR COURTS-MARTIAL, UNITED STATES (2012 EDITION).//

POC/D. J. BROSTEK/LTCOL/UNIT:JAD (JAM)/-/TEL:703-614-4250//

POC/S. F. THOMPSON/MAJ/UNIT:JAD (JAM)/-/TEL:703-693-8901//

GENTEXT/REMARKS/1. THIS MARADMIN PROVIDES INFORMATION REGARDING THE SECRETARY OF DEFENSE (SECDEF) AND COMMANDANT OF THE MARINE CORPS (CMC)-DIRECTED WITHHOLDING OF AUTHORITY TO DISPOSE OF CERTAIN SEXUAL ASSAULT OFFENSES.

2. PER REFS A, B, AND C, AND IN ACCORDANCE WITH RULE FOR COURTS-MARTIAL 306 OF REF D, INITIAL DISPOSITION AUTHORITY (IDA) FOR CERTAIN SEXUAL ASSAULT (SA) CASES IS WITHHELD TO THE O-6 SPECIAL COURT-MARTIAL CONVENING AUTHORITY (SPCMCA) LEVEL EFFECTIVE 28 JUNE 2012. "INITIAL DISPOSITION" IS DESCRIBED IN RULE FOR COURTS-MARTIAL 306 OF REF D AND INCLUDES: NO ACTION; ADMINISTRATIVE ACTION; NONJUDICIAL PUNISHMENT; DISPOSITION OF CHARGES; AND FORWARDING OF CHARGES. THE O-6 SPCMCA WILL BE REFERRED TO AS THE SA-IDA.

3. IN REF A, SECDEF WITHHELD IDA TO THE SA-IDA WITH RESPECT TO THE FOLLOWING ALLEGED OFFENSES: RAPE, IN VIOLATION OF ARTICLE 120, UCMJ; SEXUAL ASSAULT, IN VIOLATION OF ARTICLE 120, UCMJ; FORCIBLE SODOMY, IN VIOLATION OF ARTICLE 125, UCMJ; AND ALL ATTEMPTS TO COMMIT SUCH OFFENSES, IN VIOLATION OF ARTICLE 80, UCMJ. REF B DIRECTED DEPARTMENT OF THE NAVY IMPLEMENTATION OF REF A.

4. PER REF C, CMC EXPANDED THIS WITHHOLDING OF IDA TO THE SA-IDA TO ALSO INCLUDE THE FOLLOWING ALLEGED OFFENSES: AGGRAVATED SEXUAL CONTACT AND ABUSIVE SEXUAL CONTACT IN VIOLATION OF ARTICLE 120, UCMJ; RAPE OF A CHILD, SEXUAL ASSAULT OF A CHILD, AND SEXUAL ABUSE OF A CHILD, IN VIOLATION OF ARTICLE 120B, UCMJ; AND ALL ATTEMPTS TO COMMIT SUCH OFFENSES, IN VIOLATION OF ARTICLE 80, UCMJ.

5. THIS WITHHOLDING ALSO APPLIES TO ALL OTHER ALLEGED OFFENSES ARISING FROM OR RELATING TO THE SAME INCIDENT, WHETHER COMMITTED BY THE ALLEGED OFFENDER OR THE ALLEGED VICTIM. THE SA-IDA HAS THE NON-DELEGABLE RESPONSIBILITY FOR INITIAL DISPOSITION AS DEFINED IN RULE FOR COURTS-MARTIAL 306 OF REF D. COMMANDERS THAT ARE NOT SA-IDA'S MAY NOT MAKE AN INITIAL DISPOSITION IN CASES INVOLVING THESE OFFENSES, BUT INSTEAD MUST FORWARD THE MATTER TO THE APPROPRIATE SA-IDA. THIS WITHHOLDING DOES NOT PREVENT INITIAL DISPOSITION DECISIONS FROM BEING FURTHER WITHHELD TO THE GENERAL COURT-MARTIAL CONVENING AUTHORITY LEVEL AT THE DISCRETION OF THOSE COMMANDERS PURSUANT TO RULE FOR COURTS-MARTIAL 306 OF REF D.

6. PRIOR TO MAKING AN INITIAL DISPOSITION DECISION, THE SA-IDA MUST CONSULT WITH A JUDGE ADVOCATE. ONCE THE INITIAL DISPOSITION DECISION IS MADE, THE SA-IDA MUST DOCUMENT THAT DECISION.

7. ALL CASES STILL PENDING AN INITIAL DISPOSITION DECISION AS OF 28 JUNE 2012 ARE SUBJECT TO THIS POLICY. THIS WITHHOLDING ALSO APPLIES TO ANALOGOUS SEXUAL ASSAULT OFFENSES COMMITTED PRIOR TO THE 28 JUNE 2012 EFFECTIVE DATE OF THE 2012 AMENDMENTS TO REF D.

8. COMMANDERS AT EVERY LEVEL REMAIN RESPONSIBLE FOR PROVIDING SUPPORT AND ASSISTANCE TO



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ALLEGED VICTIMS, SAFEGUARDING THE DUE PROCESS RIGHTS OF ALLEGED OFFENDERS, AND MAINTAINING GOOD ORDER AND DISCIPLINE WITHIN THEIR UNITS.

9. THIS MARADMIN IS APPLICABLE TO THE TOTAL FORCE MARINE CORPS.

10. SEMPER FIDELIS, JAMES F. AMOS, GENERAL, U.S. MARINE CORPS, COMMANDANT OF THE MARINE CORPS.//

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Coast Guard

R 272000Z JUN 12

ALCOAST 308/12

COMDTNOTE 1620

SUBJ: WITHHOLDING INITIAL DISPOSITION AUTHORITY UNDER UCMJ IN CERTAIN SEXUAL ASSAULT CASES

A. COMDT COGARD WASHINGTON DC 271439Z JAN 12/ ALCOAST 037/12

B. CCG DECISION MEMO 5810 OF 25 JUN 12 (NOTAL)

C. THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012, PUBLIC LAW 111-84

D. UNIFORM CODE OF MILITARY JUSTICE, TITLE 10 USC 801-941

E. SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM, COMDTINST M1754.10 (SERIES)

F. COAST GUARD INVESTIGATIVE SERVICE ROLES AND RESPONSIBILITIES, COMDTINST 5520.5 (SERIES)

G. MILITARY JUSTICE MANUAL, COMDTINST M5810.1 (SERIES)

1. IN REF (A) THE COMMANDANT REITERATED THE DUTY OF ALL MEN AND WOMEN IN THE COAST GUARD TO RESPECT THEIR SHIPMATES BY ACTING WITH COURAGE TO PREVENT OR STOP INCIDENTS OF SEXUAL ASSAULT, HAZING, HARASSMENT, AND DISCRIMINATION, AND TO REPORT SUCH INCIDENTS IF THEY DO OCCUR. ON 25 JUNE 2012, THE COMMANDANT ISSUED FURTHER DIRECTION IN REF (B) WITH RESPECT TO OUR GOAL OF ELIMINATING SEXUAL ASSAULT IN THE COAST GUARD.

2. ON 31 DECEMBER 2011, PRESIDENT OBAMA SIGNED REF (C), THE 2012 NATIONAL DEFENSE AUTHORIZATION ACT (NDAA). THE NDAA INCLUDES SIGNIFICANT AMENDMENTS TO THE UNIFORM CODE OF MILITARY JUSTICE (UCMJ), INCLUDING CHANGES AFFECTING SEX OFFENSES, INCLUDING A COMPLETE REWRITE OF ARTICLE 120 (RAPE AND SEXUAL ASSAULT). THE SEX OFFENSE AMENDMENTS IN REF (D) TAKE EFFECT ON 28 JUNE 2012. THE FULL TEXT OF THESE AMENDMENTS IS AVAILABLE AT:

[HTTP://WWW.USCG.MIL/LEGAL/MJ/MJ\(UNDERSCORE\)DOC/MCM2012.PDF](http://www.uscg.mil/legal/mj/mj(underscore)doc/mcm2012.pdf)

3. BECAUSE SEXUAL ASSAULT PREVENTION AND RESPONSE IS SO IMPORTANT, AS OF 28 JUNE 2012, THE COMMANDANT IN REF (B) WITHHOLDS INITIAL DISPOSITION AUTHORITY FROM ALL COMMANDERS WHO DO NOT POSSESS AT LEAST SPECIAL COURT-MARTIAL CONVENING AUTHORITY, HOLD THE RANK OF CAPTAIN (O-6) AND HAVE AN ASSIGNED STAFF JUDGE ADVOCATE FOR ANY ALLEGATION OF RAPE, SEXUAL ASSAULT, AGGRAVATED SEXUAL CONTACT, ABUSIVE SEXUAL CONTACT, FORCIBLE SODOMY, AND ALL ATTEMPTS TO COMMIT SUCH OFFENSES, IN VIOLATION OF ARTICLES 120, 125, AND 80 OF THE UCMJ. THE COMMANDANTS WITHHOLDING DECISION ALSO INCLUDES ANY ALLEGED COLLATERAL MISCONDUCT RELATED TO THE SEXUAL OFFENSES LISTED ABOVE, INCLUDING ANY ALLEGED MISCONDUCT OF THE ALLEGED VICTIM (I.E., UNDERAGE DRINKING, UA, ETC.). LEGAL SERVICE COMMAND IS CONSIDERED THE ASSIGNED STAFF JUDGE ADVOCATE FOR O-6 BASE COMMANDERS.

4. THIS DECISION MEANS THAT ONLY THE FOLLOWING COMMANDERS HAVE INITIAL DISPOSITION AUTHORITY:

A. FLAG OFFICERS DESIGNATED AS GENERAL COURT-MARTIAL CONVENING AUTHORITY (I.E., AREA COMMANDERS, DISTRICT COMMANDERS, SUPERINTENDENT, COAST GUARD ACADEMY, DIRECTOR OF OPERATIONAL LOGISTICS, COMMANDER, PSC),

B. TRAINING CENTERS WITH AN ASSIGNED STAFF JUDGE ADVOCATE,

C. BASE COMMANDERS IN PAYGRADE O-6, AND,

D. COMMANDER, DEPLOYABLE OPERATIONS GROUP.

5. ALL COMMANDERS WITHOUT INITIAL DISPOSITION AUTHORITY (I.E., COMMANDING OFFICERS, COMMANDERS AND OFFICERS IN CHARGE NOT LISTED IN PARAGRAPH 4, ABOVE) WHO RECEIVE A REPORT THAT A SEXUAL ASSAULT MAY HAVE OCCURRED MUST REPORT THAT ALLEGATION TO THE NEXT OFFICER IN THE CHAIN OF COMMAND LISTED IN PARAGRAPH 4, ABOVE. THE ALLEGATION OF SEXUAL ASSAULT MUST ALSO BE REPORTED TO THE SERVICING LEGAL OFFICE

AND TO CGIS TO COMMENCE AN APPROPRIATE INVESTIGATION IAW REF (E) AND (F). COMMAND LEVEL INVESTIGATIONS OF SEXUAL ASSAULT PREDICATED BY COMMANDERS NOT LISTED IN PARAGRAPH 4 ARE PROHIBITED.

6. ALL COMMANDERS WITHOUT INITIAL DISPOSITION AUTHORITY (I.E., COMMANDING OFFICERS, COMMANDERS AND OFFICERS IN CHARGE NOT LISTED IN PARAGRAPH 4, ABOVE) WHO RECEIVE A REPORT THAT A SEXUAL ASSAULT MAY HAVE OCCURRED MAY NOT TAKE ANY ACTION TO DISPOSE OF THE CASE WITHIN THE MEANING OF RULES FOR COURTS-MARTIAL (RCM) 306 OR RCM 401. THIS PROHIBITION INCLUDES TAKING THE ACCUSED OR VICTIM TO MAST OR DISMISSING THE CASE WITH NO ACTION. HOWEVER, NOTHING IN THIS DIRECTIVE AFFECTS THE AUTHORITY OR RESPONSIBILITY OF COMMANDERS OF AN ACCUSED OR VICTIM FROM TAKING OTHER DISCRETIONARY ACTIONS RELATED TO THE SUSPECT OR VICTIM SUCH AS PLACING A SUSPECT OF AN INVESTIGATION INTO PRETRIAL RESTRAINT UNDER RCM 304 OR PRETRIAL CONFINEMENT UNDER RCM 305, ISSUING MILITARY PROTECTIVE ORDERS, AND PROVIDING AND COORDINATING VICTIM SUPPORT AND ADVOCACY AS MANDATED IN REF (E).

7. ONLY COMMANDERS WITH DISPOSITION AUTHORITY AS IDENTIFIED IN PARAGRAPH 4 MAY TAKE INITIAL DISPOSITION ACTION. INITIAL DISPOSITION INCLUDES:

- A. TAKING NO ACTION,
- B. IMPOSING NON-JUDICIAL PUNISHMENT (MAST),
- C. TAKING ADVERSE ADMINISTRATIVE ACTION,
- D. FORWARDING OR DISPOSING OF COURT-MARTIAL CHARGES UNDER RCM 401, OR,
- E. FORWARDING THE MATTER FOR DISPOSITION BY ANOTHER COMMANDER.

8. COMMANDERS HOLDING INITIAL DISPOSITION AUTHORITY MUST CONSULT WITH THEIR ASSIGNED STAFF JUDGE ADVOCATE BEFORE ELECTING ANY INITIAL DISPOSITION. IF, AFTER CONSIDERING THE FACTS AND CIRCUMSTANCES OF THE CASE, THE COMMANDER WITH INITIAL DISPOSITION AUTHORITY DECIDES THAT THE APPROPRIATE COURSE OF ACTION IS TO RETURN THE CASE TO A SUBORDINATE COMMANDER IN THE BEST INTEREST OF GOOD ORDER AND DISCIPLINE, THAT DECISION MUST BE ACCOMPANIED BY WRITTEN ADVICE FROM THEIR ASSIGNED STAFF JUDGE ADVOCATE. IF THE CASE IS RETURNED TO A SUBORDINATE FOR APPROPRIATE ACTION, THE SUBORDINATE COMMANDER THEN HAS THE FULL RANGE OF DISCIPLINARY AND ADMINISTRATIVE ACTIONS WITHIN THEIR JURISDICTION AT THEIR DISPOSAL.

9. THE EFFECTIVE DATE OF THE COMMANDANTS WITHHOLDING DECISION IS 28 JUNE 2012. ALL CASES NOT IN THE POSSESSION OF OR PREVIOUSLY REVIEWED BY THE SUBORDINATE DISPOSITION AUTHORITY AS OF 28 JUNE 2012 ARE THEREAFTER SUBJECT TO THIS ACTION.

10. THIS ORDER WILL BE INCORPORATED IN THE NEXT CHANGE TO REF (G).

11. EVERY COMMANDER AND OFFICER IN CHARGE AT EVERY LEVEL SHOULD WORK TOWARD ESTABLISHING AN ENVIRONMENT FREE OF SEXUAL ASSAULT, TO PROVIDE SUPPORT AND ASSISTANCE TO VICTIMS, AND TO TREAT VICTIMS WITH DIGNITY, ALLEGED OFFENDERS WITH DUE PROCESS AND MAINTAIN GOOD ORDER AND DISCIPLINE WITHIN THEIR UNITS.

12. FURTHER EXPLANATION AND/OR TRAINING ON THIS DIRECTIVE IS AVAILABLE TO ALL COMMANDS EXERCISING MAST AUTHORITY AND/OR COURT-MARTIAL CONVENING AUTHORITY. CONTACT YOUR SERVICING LEGAL OFFICE.

13. POC: CAPT S. K. SELMAN, COMDT (CG-0946), (202) 372-8805

14. MR. C. M. LEDERER, ACTING JUDGE ADVOCATE GENERAL, US COAST GUARD, SENDS.

15. INTERNET RELEASE AUTHORIZED.