

WITHHOLD OF INITIAL DISPOSITION AUTHORITY IN CERTAIN SEXUAL ASSAULT CASES

By | July 13, 2012

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UNCLASSIFIED//

MARADMIN 372/12

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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).//

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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 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.//