

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 1**

8. Services: Please provide any Service or command policies restricting disposition decisions for cases involving allegations of a sexual act or contact between either a trainer and trainee or a senior and subordinate.

USA	<p>See the response to RFI 7. In addition, in those cases where rape, sexual assault, forcible sodomy or attempts thereof are charged, the Secretary of Defense has withheld initial denial authority to at least the special court-martial convening authority. See http://www.dod.gov/dodgc/images/withhold_authority.pdf.</p>
USAF	<p>The Air Force does not have a policy restricting disposition decisions for cases involving allegations of a sexual act or sexual contact that is specific to when the alleged offense is between a trainer and trainee or a senior and subordinate.</p> <p>However, Air Education and Training Command has a policy that sets the initial disposition authority for sexual acts or sexual contact between faculty, staff, and recruiters and applications, recruits, Recruiter Assistance Program participants, trainees, cadets, students, and entry-level status Airmen. The Wing Commander (or equivalent) level and group commanders (or equivalent) who report directly to a general court-martial convening authority are the disposition authorities when the sexual acts or sexual contact constitutes an unprofessional relationship under AETCI 36-2909, fraternization under Article 134 and AFI 36-2909, or an attempt to commit these offenses. AETCI 36-2909, <i>Recruiting, Education, and Training Standards of Conduct</i>, para. 1.2.1. This withhold applies to all other alleged offenses arising from or related to the same incident, whether committed by the alleged perpetrator or the victim.</p> <p>The Air Force complies with the Secretary of Defense Withhold of Initial Disposition Authority, effective 28 June 2012. (Atch 8.3) The Air Force has implemented this policy in AFGM2 to AFI 51-201, <i>Administration of Military Justice</i>, paras. 4.13 – 4.16. Prior to implementation in AFGM2, the Military Justice Division had included the policy memo on our internal web-based Virtual Military Justice Deskbook and conducted training via Defense Connect Online (DCO) webcast and at military justice courses on implementation of the policy.</p> <p>The Air Force also has a service level policy, the General Court-Martial Convening Authority Review Policy, effective 27 June 2013. (Atch 8.4). The policy directs the Special Court-Martial Convening Authority to provide the General Court-Martial Convening Authority in the grade of O-7 or above written notice of the initial disposition action taken under R.C.M. 306 within 30 days following the date of the initial disposition decision. When disposition of the alleged offense is complete, the General Court-Martial Convening Authority will sign the written report of command action required to be produced on all covered offenses. This policy is implemented in AFGM2 to AFI 51-201, <i>Administration of Military Justice</i>, paras. 4.17 – 4.18.</p> <p>Both of the policies above apply to allegations of rape and sexual assault under Article 120, UCMJ, forcible sodomy under Article 125, UCMJ, and attempts thereof under Article 80, UCMJ, as well as all other alleged offenses arising from or relating</p>

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	<p>to the same incident, whether committed by the accused or the victim. These policies would not apply to allegations of consensual sex that are a violation of an offense under the UCMJ other than those Articles listed above. For example, an allegation of consensual sex that is charged as maltreatment of a subordinate under Article 93, UCMJ, would not fall under these policies.</p> <p>Air Force Special Operations Command, for example, has a withhold policy in effect for disciplinary actions against officers, E-9, and E-8, without regard to whether the allegation involves a sexual assault offense or trainer/trainee or senior/subordinate relationship. (Atch 8.1)</p> <p>325 FW at Tyndall Air Force Base has a command policy that requires all allegations of sexual harassment to be elevated to the Wing Commander, who takes action or returns the matter to a subordinate commander for disposition. (Atch 8.2)</p> <p>While not restricting disposition decisions, the AF has implemented Section 1744 of the FY14 NDAA in AFGM2 to AFI 51-201, paras. 4.19 – 4.24 and Figures 4.14 – 4.18. Additionally, Pacific Air Force has restricted the required superior general court-martial convening authority review referenced in Section 1744(d) to the Commander, Pacific Air Forces. (Atch 8.5)</p> <p><u>References:</u></p> <ul style="list-style-type: none"> - AETCI 36-2909, <i>Recruiting, Education, and Training Standards of Conduct</i>, http://static.e-publishing.af.mil/production/1/aetc/publication/aetci36-2909/aetci36-2909.pdf - AFGM2 to AFI 51-201, <i>Administration of Military Justice</i> http://static.e-publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf <p>ATTACHMENTS:</p> <ul style="list-style-type: none"> - Atch 8.1 – AFSOC Policy Memo – Withhold of Authority Regarding Commissioned Officers, Senior Master Sergeants and Chief Master Sergeant Misconduct in AFSOC (07 Aug 2014) - Atch 8.2 – 325 FW Policy Memo – Withhold Initial Disposition Authority for Sexual Harassment Cases (26 Jun 2013) - Atch 8.3 – SECDEF Policy Memo – Withhold of Initial Disposition Authority (20 Apr 2012) - Atch 8.4 – Under SECAF Policy Memo – GCMCA Review in Certain Sexual Assault Cases (17 Jun 2013) - Atch 8.5 – PACAF Policy Memo – Further Withholding of Superior GCMCA Review in Certain Sex-Related Offenses (21 Feb 2014)
USN	<p>In addition to the instructions listed in response to RFI#7, in cases involving penetration offenses or attempts to commit them, the Secretary of Defense (SECDEF) has withheld initial disposition authority to officers in the grade of O-6 who exercise special court-martial convening authority. See SECDEF letter dated 20 April 2012</p>

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	http://www.dod.gov/dodgc/images/withhold_authority.pdf .
<p>USMC</p>	<p>The Marine Corps does not have any Service or command policies restricting disposition decisions in such cases unless those cases involve allegations of sexual assault. The Secretary of Defense has withheld disposition of sexual assault cases to the O-6 commander, <i>see</i> http://www.dod.gov/dodgc/images/withhold_authority.pdf, and the Marine Corps has expanded this withhold to all cases arising under Article 120, 120b, 125 (by force), and 80 (attempts to commit the previously listed articles). This withhold is articulated in MARADMIN 372/12, <i>available at</i> http://www.marines.mil/News/Messages/MessagesDisplay/tabid/13286/Article/110494/withhold-of-initial-disposition-authority-in-certain-sexual-assault-cases.aspx, and MCO P5800.16A.</p> <p>Additional withhold policies are attached as enclosure (4).</p> <p>ENCLOSURE (4) Service or Command Policies Restricting Disposition Decisions:</p> <ul style="list-style-type: none"> a) Commanding General, Eastern Recruiting Region - Withholding of Authority to Impose Certain Types of Punishments at Non-judicial Punishment Proceedings (26 Aug 2014) b) Marine Corps Installations (MCI) Command Order 5800.1 - Court-Martial Convening Authority (8 Nov 2011) c) Commander, Training Command Policy Letter 07-14 - Withholding of Authority to Dispose of Cases Involving Officers or Cases Involving Marines or Sailors In The Grade of E-6 or Higher (28 Jul 2014)
<p>USCG</p>	<p>Coast Guard policy restricts initial disposition of all allegations that may result in charges under Article 120 to officers exercising general court-martial convening authority or officers exercising special court-martial convening authority who have achieved the rank of O-6 (Captain in the sea services) and have an assigned staff judge advocate. The commanding officers of all Coast Guard training commands are of the flag or O-6 pay grade, have been designated as at least special court-martial convening authorities, and have an assigned staff judge advocate. There are no further disposition restrictions.</p>