

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



**REPORT ON INVESTIGATIVE CASE FILE REVIEWS FOR
MILITARY ADULT PENETRATIVE SEXUAL OFFENSE
CASES CLOSED IN FISCAL YEAR 2017**

October 2020

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October 2020



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

October 19, 2020

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The Honorable Mac Thornberry
Ranking Member
Committee on Armed Services
U.S. House of Representatives
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The Honorable Mark T. Esper
Secretary of Defense
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Dear Chairs, Ranking Members, and Mr. Secretary:

We are pleased to provide you with the *Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017*. The mission of the DAC-IPAD is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, sexual assault, and forcible sodomy, in violation of Articles 120 and 125 of the Uniform Code of Military Justice (UCMJ)—referred to in this report as “penetrative sexual offenses”—and other sexual misconduct involving members of the Armed Forces against adult victims. In order to provide that advice, Congress directed the DAC-IPAD to review, on an ongoing basis, cases involving allegations of sexual misconduct.

This report culminates a three-year project in which committee members and professional staff performed in-depth quantitative and qualitative case reviews of 1,904 criminal investigative cases and any related courts-martial cases involving adult penetrative sexual offenses. The 1,904 investigative cases reviewed comprise every investigation with an active duty Service member as the subject of a penetrative sexual offense against an adult victim conducted by the services’ military criminal investigative organizations (MCIOs) closed between October 1, 2016 and September 30, 2017.

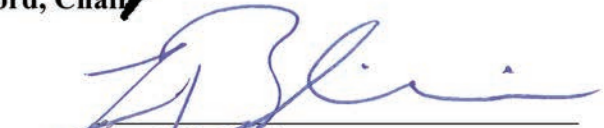
As a result of the case review, this report makes two key findings. First, there is not a systemic problem with an initial disposition authority's decision either to prefer a penetrative sexual offense charge or to take no action. Second, there is a systemic problem with the referral of penetrative sexual offense charges to trial by general court-martial when there is not sufficient admissible evidence to obtain and sustain a conviction. In the Committee's view, the decision to refer charges to trial by general court-martial in the absence of sufficient admissible evidence to obtain and sustain a conviction has significant negative implications for the accused, the victim, and the military justice process. Accordingly, as a remedy, the Committee recommends that Congress amend Article 34, UCMJ.


The members of the DAC-IPAD would like to express our continuing sincere gratitude and appreciation for the opportunity to make use of our collective experience and expertise in this field to develop recommendations for improving the military's response to sexual misconduct within its ranks.

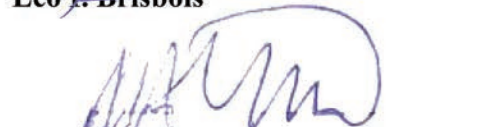
Respectfully submitted,



Martha S. Bashford, Chair


Marcia M. Anderson

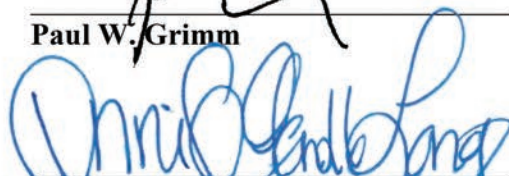

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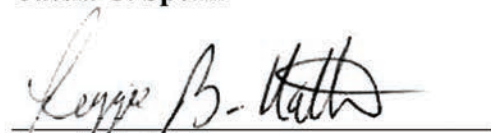

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CONTENTS

<i>Executive Summary</i>	1
<i>Summary of Findings, Directives, and Recommendation</i>	11
I. Introduction	25
A. DAC-IPAD Establishment and Mission	25
B. Overview of the Case Review Project	25
C. Developing the Objectives and Scope of the Case Review Project.	28
D. Preliminary Assessment of Random Sample – March 2019	30
E. Non-empirical Case Review Findings and Observations – March 2020	31
II. Case Review Project Methodology	33
A. Case Data Provided by the MCIOs	33
B. Case Data Collection and Review Process	34
C. Subjective and Empirical Data Analysis	35
III. Initial Disposition Authority Decisions for Adult Penetrative Sexual Offense Cases Closed in FY 2017.	37
A. Background and Methodology for Classifying Disposition Decisions	37
B. Initial Disposition Authority Decisions	38
C. Post-preferral Command and Convening Authority Dispositions.	38
IV. Reasonableness of Initial Disposition Authority Decisions Regarding Whether to Prefer an Adult Penetrative Sexual Offense Charge or to Take No Action Against the Subject on That Offense.	43
A. Background for Assessing the Reasonableness of Disposition Decisions	43
B. Methodology for Assessing the Reasonableness of Disposition Decisions	44
C. Reasonableness of Initial Disposition Authority’s Decision to Take No Action Against the Subject on the Adult Penetrative Sexual Offense Allegation	45
D. Reasonableness of Initial Disposition Authority’s Decision in Cases Resulting in a Preferred Adult Penetrative Sexual Offense Charge	45
E. Factors Influencing an Initial Disposition Authority’s Decision Regarding Whether to Prefer an Adult Penetrative Sexual Offense Charge or to Take No Action Against the Subject on That Offense	48

<i>V.</i>	<i>Assessing the Strength of the Evidence in Cases Resulting in a Preferred Adult Penetrative Sexual Offense Charge</i>	<i>53</i>
A.	Background	53
B.	Analysis of Legal Standards for Initial Disposition Authority Decisions in Cases Resulting in a Preferred Adult Penetrative Sexual Offense Charge	54
<i>VI.</i>	<i>Data Analysis of Adult Penetrative Sexual Offense Investigative Cases Closed in FY 2017</i>	<i>65</i>
A.	Descriptive Data	65
B.	Bivariate Relationships	107
C.	Multivariate Analysis	122
	<i>Appendixes</i>	
A.	Committee Authorizing Statute, Amendments, and Duties	A-1
B.	Committee Charter and Balance Plan	B-1
C.	Committee Members	C-1
D.	Committee Professional Staff.	D-1
E.	Committee Recommendations to Date	E-1
F.	Investigation of Adult Penetrative Sexual Offense Cases Closed in the Military Services During Fiscal Year 2017.	F-1
G.	List Of Tables And Figure.	G-1
H.	Data Collection Instrument	H-1
I.	Legislative Proposal for Amendment to Article 34, UCMJ.	I-1
J.	Committee Public Meetings, Preparatory Sessions, and Presenters	J-1
K.	Acronyms and Abbreviations.	K-1
L.	Sources Consulted	L-1

EXECUTIVE SUMMARY

Overview of the Case Review Project

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD or Committee) was established by the Secretary of Defense in February 2016, pursuant to section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (FY15 NDAA), as amended.¹ The mission of the DAC-IPAD is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, sexual assault, and forcible sodomy, in violation of Articles 120 and 125 of the Uniform Code of Military Justice (UCMJ)—referred to in this report as “penetrative sexual offenses”—and other sexual misconduct involving members of the Armed Forces against adult victims.² In order to provide that advice, Congress directed the Committee to review, on an ongoing basis, cases involving allegations of sexual misconduct.³ To complete the statutorily required case reviews, the Case Review Subcommittee (CRSC), composed of seven DAC-IPAD members, was created and directed to individually review military sexual offense cases.

This report is the culmination of a nearly three-year project in which CRSC members and professional staff performed in-depth reviews of 1,904 cases documenting investigations of adult penetrative sexual offenses. The 1,904 investigative cases encompass every investigation conducted by the Services’ military criminal investigative organizations (MCIOs) and closed between October 1, 2016, and September 30, 2017, that involved an allegation that a Service member on active duty committed a penetrative sexual offense against an adult victim.⁴ CRSC members and professional staff also reviewed additional documentation relating to the court-martial process for the subset of cases that resulted in penetrative sexual offense charges being preferred against the Service member who was the subject of the investigation. For purposes of this project, the CRSC counted each subject–victim combination as a single case. For example, an investigative file with one subject and three victims was counted as three cases; an investigative file with two subjects and one victim was counted as two cases; and so on.

Goals of the Case Review Project

The Committee’s case review project had two main goals. The first was to gather and analyze numerous points of objective descriptive data about the cases. In total, reviewers gathered 231 points of data from each case file. Dr. William

1 Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 546, 128 Stat. 3292 (2014) [FY15 NDAA]. *See also* National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 535, 133 Stat. 1198 (2019) [FY20 NDAA] (extending the DAC-IPAD’s term from 5 to 10 years).

2 FY15 NDAA, *supra* note 1, § 546(c)(1). *See* 10 U.S.C. § 920, 925 (Articles 120, 125, UCMJ) (2016). The scope of this project also includes attempts to commit rape, sexual assault, and forcible sodomy, in violation of Article 80, UCMJ. *See* 10 U.S.C. § 880 (Article 80, UCMJ) (2016). Subsequent to the time period of the offenses covered by this project, forcible sodomy was incorporated within Article 120, UCMJ, and is no longer a separate enumerated offense. *See* 10 U.S.C. § 920 (Article 120, UCMJ) (2019). In addition, further amendments to Article 120, UCMJ, and other articles discussed in this report took effect on January 1, 2019, as a result of the Military Justice Act of 2016. National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, Division E, 130 Stat. 2000 (2016) [Military Justice Act of 2016].

3 FY15 NDAA, *supra* note 1, § 546(c)(1).

4 The MCIOs are the U.S. Army Criminal Investigation Command [CID], the Naval Criminal Investigative Service [NCIS], and the Air Force Office of Special Investigations [AFOSI]. U.S. DEP’T OF DEF. INSTR. 5505.19, ESTABLISHMENT OF SPECIAL VICTIM INVESTIGATION AND PROSECUTION (SVIP) CAPABILITY WITHIN THE MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS (MCIOs), Glossary (Feb. 3, 2015, Incorporating Change 2, Mar. 23, 2017), *available at* <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/550519p.pdf?ver=2019-08-12-152401-387>. The Coast Guard Investigative Service [CGIS] is not formally considered an MCIO, because it falls under the Department of Homeland Security, but it provides the same function and capability. For purposes of this report, CGIS is treated as an MCIO.

Wells, a professional criminologist retained by the DAC-IPAD, analyzed these data to identify factors that may predict three distinct events: whether a Service member who has been investigated for an adult-victim penetrative sexual offense allegation is charged with that offense, whether a Service member is convicted at court-martial of that offense, and whether a victim participates in the military justice process. Dr. Wells's analyses also examined patterns of relationships with respect to those same three events.

The second goal of the project was to draw on the extensive collective expertise of both the CRSC members and the professional staff to perform subjective assessments of the evidence in all 1,904 investigative case files reviewed by the CRSC. For the first time in a study of decision making in military sexual assault investigations, reviewers assessed whether military commanders' initial disposition decisions were reasonable—that is, within a permissible zone of discretion—with particular focus on those commanders' decisions either to prefer penetrative sexual offense charges against a Service member or to take no action against the Service member on that offense. Commanders tasked with the responsibility to make these decisions are known as “initial disposition authorities.”⁵ In practice, commanders make initial disposition decisions after receiving advice from judge advocates.

Also for the first time, the CRSC qualitatively evaluated the evidence for the subset of cases that resulted in preferred penetrative sexual offense charges. In making these assessments, reviewers determined whether the investigative files and additional court-martial materials met two evidentiary standards commonly applied by state and federal prosecutors in deciding whether to charge citizens with criminal offenses or to seek a grand jury indictment: first, whether the evidence established probable cause to believe that the subject committed a penetrative sexual offense; and second, whether the admissible evidence was sufficient to obtain and sustain a conviction on the penetrative sexual offense. Probable cause is a well-known legal standard, defined as evidence sufficient to cause a reasonable person to believe that a crime was committed and the subject committed it.⁶ An assessment of whether the evidence is sufficient to obtain and sustain a conviction is a policy requirement of the Department of Justice with respect to federal prosecutions, and it is also a key consideration in state prosecution decisions.

As is true of other civilian studies of decision making in sexual assault cases,⁷ the CRSC's reviews and subjective qualitative analyses of the evidence were limited to documents and other materials contained in the investigative materials—in this instance, those provided by the MCIOs and, for cases with a preferred penetrative sexual offense, pretrial and trial materials provided by the Military Service judge advocate organizations. The CRSC did not have access to—and thus did not consider—any additional evidence or information outside of these materials that may have been developed and made available to trial or defense counsel, victims' counsel, staff judge advocates, or convening authorities.

Two Key Findings

As a result of its review of 1,904 investigative cases closed in fiscal year 2017 (FY17) involving an allegation that an active-duty Service member committed a penetrative sexual offense against an adult victim, the Committee in this report makes 47 findings, one recommendation, and nine directives for further study. The Committee also reaffirms its 34

5 Effective June 28, 2012, the Secretary of Defense withheld the authority to dispose of allegations of penetrative sexual offenses from all commanders who are not at least special court-martial convening authorities and who are not in the grade of O-6 or higher (i.e., colonel or Navy captain). See U.S. Dep't of Def., Memorandum from the Secretary of Defense on Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (Apr. 20, 2012) [2012 Withholding Memorandum].

6 See Manual for Courts-Martial, United States (2019) [2019 MCM], Rule for Courts-Martial (R.C.M.) 405(a), 406 (defining probable cause as a reasonable belief that the accused committed the offense or offenses charged).

7 See *infra* note 53.

findings, observations, and recommendations presented in its 2019 and 2020 Annual Reports.⁸ This report makes two key findings:

- There is not a systemic problem with the initial disposition authority's decision either to prefer a penetrative sexual offense charge or to take no action against the subject for that offense. In 94.0% and 98.5% of cases reviewed, respectively, those decisions were reasonable.⁹
- There is a systemic problem with the referral of penetrative sexual offense charges to trial by general court-martial when there is not sufficient admissible evidence to obtain and sustain a conviction on the charged offense.¹⁰ In 31.1% of cases reviewed that were tried to verdict on a penetrative sexual offense charge, the evidence in the materials reviewed did not meet that threshold.¹¹

The Committee's three-year project revealed that of 235 penetrative sexual offense cases referred to trial by general court-martial that were tried to verdict, 73 did not contain sufficient admissible evidence to convict the accused Service member of the penetrative sexual offense. Predictably, 71 of those cases resulted in acquittals of the accused on those offenses at trial. In one of the two cases that resulted in a conviction, the conviction was later overturned on appeal because the evidence was factually insufficient.¹²

The Committee recognizes that staff judge advocates and convening authorities are doing what the military justice system allows; however, the Committee criticizes the military justice system itself for allowing the referral of charges that are not supported by sufficient admissible evidence to obtain and sustain a conviction. In the Committee's view, the decision to refer charges to trial by general court-martial in the absence of sufficient admissible evidence to obtain and sustain a conviction has significant negative implications for the accused, the victim, and the military justice process.

The DAC-IPAD identified a potential cause of and several consequences that flow from the systemic problem of referring penetrative sexual offense charges to trial without sufficient admissible evidence to obtain and sustain a conviction. While Articles 32 and 34, UCMJ, both require assessments of whether the evidence in a case establishes probable cause to believe that the accused committed a penetrative sexual offense, there is no similar statutory or regulatory requirement for preliminary hearing officers, staff judge advocates, or convening authorities to assess whether the admissible evidence is sufficient to obtain and sustain a conviction on the charged offenses prior to referral of a case to trial by general court-martial.¹³ Consequently, the requirements and practical application of Articles 32 and 34, UCMJ—designed to shield

8 DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES THIRD ANNUAL REPORT 21–59 (Mar. 2019) [DAC-IPAD THIRD ANNUAL REPORT], available at https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Report_03_Final_20190326_Web.pdf; DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES FOURTH ANNUAL REPORT 22–42 (Mar. 2020) [DAC-IPAD FOURTH ANNUAL REPORT], available at https://dacipad.whs.mil/images/Public/08-Reports/06_DACIPAD_Report_20200331_Final_Web.pdf.

9 See *infra* Findings 91, 92, and 110 and Tables IV.1 and IV.2. These findings confirm the CRSC's initial review and assessment of a random sample of 164 investigative case files reported in the DAC-IPAD's Third Annual Report in March 2019. DAC-IPAD THIRD ANNUAL REPORT, *supra* note 8, at 24, 28–31.

10 See *infra* Finding 111.

11 See *infra* Finding 98 and Table V.2.

12 *Id.*

13 See *infra* Finding 100. The Military Justice Act of 2016 amended Article 33, UCMJ, to require that the Secretary of Defense establish Disposition Guidance “regarding factors that commanders, convening authorities, staff judge advocates, and judge advocates should take into account when exercising their duties with respect to disposition of charges and specifications in the interest of justice and discipline under [Articles 30 and 34, UCMJ].” Military Justice Act of 2016, *supra* note 2, § 5204. The amendment and the subsequently issued Disposition Guidance were not in effect until January 1, 2019. 2019 MCM, *supra* note 6, App. 2.1. Instead, during the time period of the cases covered in this report, commanders were directed to consider the factors listed in the Discussion accompanying R.C.M. 306(b). Manual for Courts-Martial, United States (2016) [2016 MCM], R.C.M. 306(b) (Discussion). Accordingly, the requirements and practical application of the Article 33 Disposition Guidance were not assessed in this project. For a comparison of the R.C.M. 306(b)

the accused from trial by general court-martial on unsupported charges—do not prevent referral and trial of penetrative sexual offense charges that fail to meet that standard.¹⁴ The absence of a requirement to conduct such an evidentiary assessment prior to referral directly contributes to the 61.3% acquittal rate for these offenses that is documented in this report.¹⁵

Based on the above, this report concludes that no penetrative sexual offense charge should be referred to trial by general court-martial without sufficient admissible evidence to obtain and sustain a conviction on the charged offense and that Article 34, UCMJ, should incorporate this requirement.¹⁶ Accordingly, the Committee recommends that Congress amend Article 34, UCMJ, to require the staff judge advocate to advise the convening authority in writing that there is sufficient admissible evidence to obtain and sustain a conviction on the charged offenses before a convening authority may refer a charge and specification to trial by general court-martial.¹⁷

Additional Issues of Concern Identified in Case Reviews

The CRSC's subjective assessments of whether the evidence established probable cause to believe that the subject or accused committed a penetrative sexual offense also revealed several issues of concern that should be examined further, as set forth in detail in this report.¹⁸ The Committee has previously identified some of these issues and has directed the Policy and Case Review Subcommittees to further analyze them.¹⁹ The Subcommittees should use the data in this report to inform their analyses and, ultimately, any findings and recommendations. For example, the data show that victims provide statements to law enforcement in 96.4% of cases.²⁰ However, victim's statements established probable cause to believe that the subject committed a penetrative sexual offense in 57.9% of these cases and did not establish probable cause in 41.3% (in 0.7% of them, the information was not available). These data raise the issue of why so few victim's statements meet the probable cause standard.

In addition, in 76.1% of the cases a judge advocate provided an opinion on whether the evidence in the investigation established probable cause to believe that the Service member committed a penetrative sexual offense, for purposes of indexing fingerprints and DNA in federal databases. In 54.6% of those cases the judge advocate opined that there was probable cause, and in the remaining 45.4% there was no probable cause.²¹ These data raise the issue of why so few investigations contain sufficient evidence to reach even the minimal level of probable cause to believe that the Service member subject committed a penetrative sexual offense.

A case was more likely to result in a preferred penetrative sexual offense charge if a judge advocate opined that the investigation established probable cause to believe that the subject committed a penetrative sexual offense.²² Overall, however, in 13.2% of cases with preferred penetrative sexual offense charges, the evidence was not sufficient to establish

factors and the Article 33 Disposition Guidance factors, *see* DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 33.

14 *See infra* Finding 101.

15 *See infra* Finding 105 and Table V.3.

16 *See infra* Finding 102.

17 *See infra* DAC-IPAD Recommendation 32. *See also* Appendix I for draft legislative and regulatory language to implement the recommendation.

18 *See infra* Directives 1–9.

19 *See* DAC-IPAD THIRD ANNUAL REPORT, *supra* note 8, at 52–59; DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 22–42.

20 *See infra* Finding 125 and Table VI.34.

21 *See infra* Finding 126 and Table VI.38. Note that percentages may not add up to 100% in all instances, for reasons addressed in the body of the report.

22 *See infra* Findings 127 and 132.

probable cause.²³ These data raise the issue of why charges are preferred when there is not even probable cause to support the penetrative sexual offense charge.

In 10.6% of cases tried to verdict on the penetrative sexual offense, the evidence was not sufficient to establish probable cause to believe that the accused committed the charged offense. Predictably, the government was unable to sustain a conviction in any of those cases.²⁴ These data raise the issue of how a charge unsupported by probable cause could be referred to trial by court-martial.

Finally, 44.4% of penetrative sexual offense charges referred to trial by general court-martial were dismissed after referral.²⁵ Further study and analysis should be undertaken to determine the reasons for post-referral dismissals of penetrative sexual offenses, in light of the significant impacts already felt by the accused, victim, and command by that point in the military justice process.²⁶

Taken together, these data raise issues of grave concern regarding the fairness and integrity of the military justice system.

Organization and Content of the Report

In its report, the Committee has organized its additional findings, recommendation, and directives for further study into four main sections. Each is summarized below.

Review of Initial Disposition Authority Decisions and Post-Preferral Outcomes for Adult Penetrative Sexual Offenses in Cases Closed in Fiscal Year 2017

The CRSC organized the 1,904 investigative files into three categories, depending on the initial disposition authority's decision regarding the penetrative sexual offense.

The first disposition category comprises those cases in which the command took no action with respect to the penetrative sexual offense. "No action"—an authorized disposition under the Manual for Courts-Martial—means that the relevant MCIO investigated the criminal allegation, completed a report of investigation, and submitted it to the appropriate initial disposition authority, and that authority took no administrative, nonjudicial, or judicial action for that offense against the Service member subject of the investigation.²⁷ For purposes of this project, if a report of a penetrative sexual offense was investigated and the initial disposition authority took no action on the alleged penetrative sexual offense but instead took adverse action for another non-penetrative sexual offense or a non-sexual offense, the case was still assigned to the category of "no action," because the focus of the case review project was on the disposition of the penetrative sexual offense allegation.

The second disposition category comprises those cases in which the initial disposition authority took adverse administrative action—such as administrative separation or a letter of reprimand—or imposed nonjudicial punishment

23 See *infra* Finding 96 and Table V.1.

24 See *infra* Finding 97 and Table V.2.

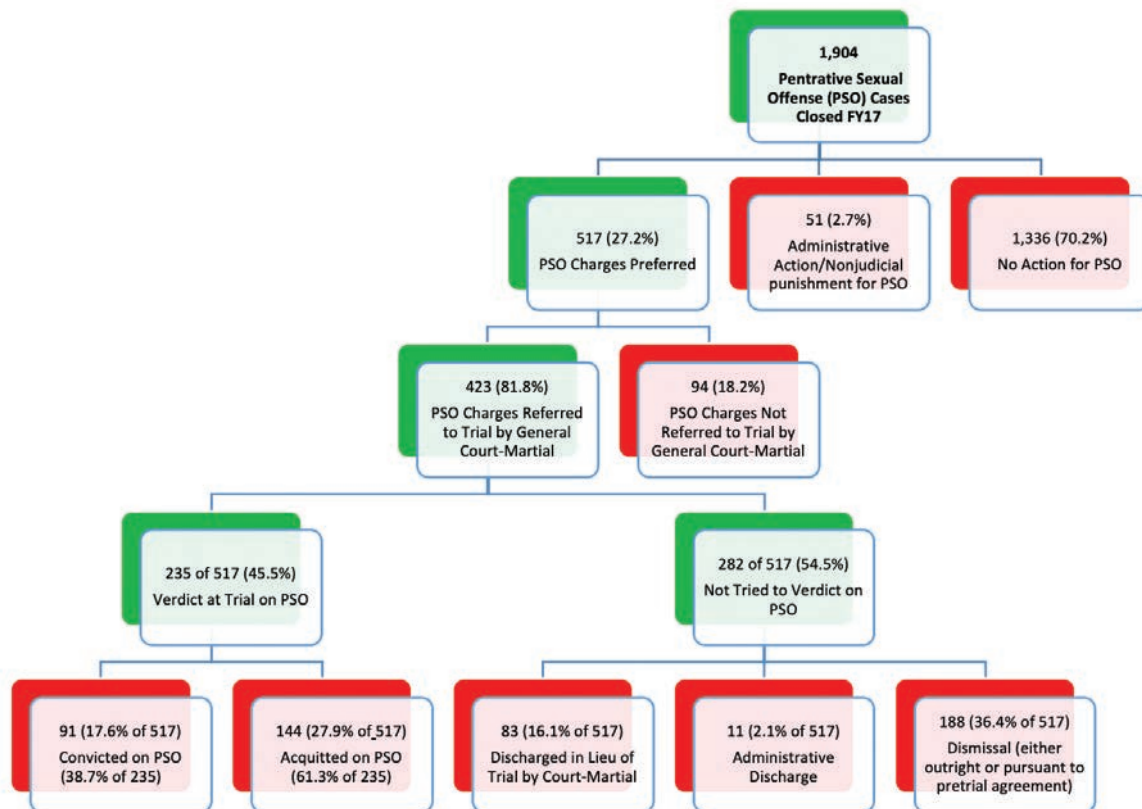
25 See *infra* Finding 109 and Table V.8.

26 See *infra* Directive 5 to Case Review Subcommittee.

27 2016 MCM, *supra* note 13, R.C.M. 306(c).

for the penetrative sexual offense without preferring charges for that offense.²⁸ The third disposition category consists of those cases that resulted in preferred penetrative sexual offense charges.²⁹

The CRSC collected data on the commander’s initial disposition decision for each of the 1,904 cases reviewed that involved a penetrative sexual offense allegation against a Service member with an adult victim that was closed in FY17 as well as on post-preferred outcomes of cases that resulted in a preferred penetrative sexual offense charge. The following flow chart depicts the results of commanders’ initial and subsequent decisions as well as the ultimate disposition of the penetrative sexual offense allegations.



CRSC Assessment of Reasonableness of Initial Disposition Authority Decisions to Take No Action on the Alleged Adult Penetrative Sexual Offense or to Prefer a Penetrative Sexual Offense Charge

The CRSC drew on the extensive collective expertise of its members and professional staff in investigating and adjudicating sexual offense cases to assess the reasonableness of the decisions of commanders who are initial disposition authorities. This report assesses whether, from an investigatory and legal standpoint, commanders are systemically exercising their authority to dispose of sexual offenses appropriately under the UCMJ, particularly when the initial

28 For purposes of the initial disposition decision, other adverse administrative actions that commanders typically impose against subjects of a criminal offense investigation, such as suspension of security clearance, suspension of favorable personnel actions, and the like, are not included. The DAC-IPAD addressed these types of adverse actions in its March 2020 Report. DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 26–28.

29 See 2016 MCM, *supra* note 13, R.C.M. 307.

disposition authority declines to prefer charges and instead takes no action on an alleged penetrative sexual offense. While such assessments are inherently subjective, the collective judgment of the experienced civilian and military justice experts—including prosecutors, defense counsel, and sexual assault investigators—that make up the CRSC and the Committee’s professional staff provides an important way to gauge whether the military’s criminal justice system is handling these cases fairly.

In the 1,336 cases in which the investigation of a penetrative sexual offense complaint resulted in no action taken for that offense, the reviewers evaluated whether the decision was reasonable. Reviewers assessed not whether they would have reached a different conclusion in a specific case but whether the decision regarding the penetrative sexual offense, based on all of the evidence reviewed in the investigative file, was within the range of appropriate outcomes.

The CRSC determined that the initial disposition authority’s decision to take no action against the subject for a penetrative sexual offense was reasonable in 98.5% of no action cases.³⁰ Similarly, the CRSC determined that the decision to prefer a penetrative sexual offense charge was reasonable in 94.0% of preferred cases.³¹ Overall, the CRSC determined that in 97.2% of these cases, the commander’s initial disposition decision was reasonable.³²

CRSC Assessment of the Strength of the Evidence in Cases Resulting in Preferred Adult Penetrative Sexual Offense Charges

Cases with a preferred charge. In the 517 cases that resulted in penetrative sexual offense charges being preferred, the CRSC analyzed whether the materials provided for review established probable cause to believe that the accused had committed a penetrative sexual offense and whether the materials contained sufficient admissible evidence to obtain and sustain a conviction on the penetrative sexual offense. The majority of cases contained sufficient evidence to establish probable cause. However, the data reveal a significant number of cases did not contain sufficient admissible evidence to obtain and sustain a conviction.

In cases with a preferred penetrative sexual offense charge, 86.3% had evidence sufficient to establish probable cause to believe that the accused had committed the charged offense. In 13.2% of cases, the evidence was not sufficient to establish probable cause. In cases with a preferred penetrative sexual offense charge, 58.0% had sufficient admissible evidence to obtain and sustain a conviction on the penetrative sexual offense while 41.2% of preferred cases did not.³³

Cases referred to trial by general court-martial and tried to verdict. The CRSC also compiled data regarding the strength of the evidence in cases in which the penetrative sexual offense charge was referred to trial by general court-martial and resulted in a verdict on that offense. The evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense in 89.4% of such cases. The government obtained a conviction on the penetrative sexual offense in 42.9% of these cases. Conversely, in 10.6% of the cases that were tried to verdict, the

30 See *infra* Finding 91 and Table IV.1.

31 See *infra* Finding 92 and Table IV.2.

32 The CRSC did not assess the reasonableness of the decisions in the 51 cases that resulted in adverse administrative action or nonjudicial punishment because the files did not contain the source materials for analysis and the CRSC felt that information that may have led to the decision to take administrative separation would not necessarily have been reflected in the investigative materials (e.g., a victim that could not be located). Likewise, reviewer assessments of whether post-preferred command dispositions were reasonable were not analyzed because the CRSC lacked complete documentation of the post-preferred disposition and the information available to the convening authority in making the post-preferred disposition of penetrative sexual offense charges.

33 See *infra* Finding 96 and Table V.1.

evidence in the materials reviewed was not sufficient to establish probable cause. The government obtained a conviction on the penetrative sexual offense in only one of those cases, which was later overturned for factual insufficiency.³⁴

In 68.9% of cases with a penetrative sexual offense tried to verdict, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense. The government obtained such a conviction in 54.9% of these cases. However, in 31.1% of cases with a penetrative sexual offense tried to verdict, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on the charged offense. The government obtained a conviction on the penetrative sexual offense in only two of these cases, one of which was later overturned for factual insufficiency.³⁵

Cases resulting in convictions or acquittals of the penetrative sexual offense. Finally, the CRSC specifically assessed the evidence in the cases resulting in conviction of the accused on the penetrative sexual offense and in those resulting in acquittal on that offense. In 98.9% and 83.3% of the cases that resulted in conviction or acquittal, respectively, there was sufficient evidence to establish probable cause to believe that the accused had committed the charged penetrative sexual offense. However, in 16.7% of these cases that resulted in acquittal of the accused, the evidence was not sufficient to establish probable cause, and in 49.3% of the cases that resulted in acquittal, there was not sufficient admissible evidence to obtain and sustain a conviction on the charged offense. Conversely, 50.7% of the cases that resulted in acquittal did have sufficient evidence to obtain and sustain a conviction, though that outcome was not achieved.³⁶

The Committee recognizes that not all cases with sufficient admissible evidence to obtain a conviction will, in fact, result in a verdict of guilty. Moreover, this assessment was made in the absence of any evidence presented by the defense at trial. However, these data raise the issues of why cases lacking sufficient admissible evidence to obtain and sustain a conviction are being referred and why cases with sufficient admissible evidence to obtain and sustain a conviction are resulting in acquittals. Accordingly, the DAC-IPAD directs the CRSC to consider if there are common characteristics in the cases that might help explain the conviction and acquittal rates for these offenses.³⁷

Statistical Data for Adult Penetrative Sexual Offense Investigations Closed in FY 2017

The final section of this report contains objective data assembled from the 231 data points gathered during the review of each investigative file, together with bivariate and multivariate analyses of the data conducted by Dr. Wells. The Committee reported objective data about various characteristics of victims, subjects, offenses, and investigations in the 1,904 cases. Section VI of the report includes the results from the collection of descriptive data.³⁸

Dr. Wells's bivariate analyses identified the factors that influenced the likelihood of three separate outcomes: whether a charge was preferred for the penetrative sexual offense against the accused, whether the accused was convicted or acquitted of the charged penetrative sexual offense at court-martial, and whether the victim participated in the military justice process. Dr. Wells's multivariate analyses examined relationships and patterns in the data with respect to those same three outcomes.³⁹ Those findings can be summarized in the following tables.

34 See *infra* Finding 97 and Tables V.2 and V.4.

35 See *infra* Finding 98 and Tables V.2 and V.4.

36 See *infra* Findings 103 and 104 and Tables V.3 and V.4.

37 See *infra* Directive 4 to Case Review Subcommittee.

38 See *infra* Findings 112–26 and Tables VI.1 through VI.38.

39 See *infra* Findings 127–31 (bivariate analyses), Findings 132–34 (multivariate analyses), and Appendix F, *Investigation of Penetrative Sexual Offense Cases Closed in the Military Services During Fiscal Year 2017*, for the comprehensive results of Dr. Wells's bivariate and multivariate analyses.

Summary of Statistically Significant Multivariate Relationships Between Case Variables and the Decision to Prefer a Penetrative Sexual Offense Charge or to Take No Action on That Offense

	Total
DNA Evidence Tested	+
Victim Participated	+
Judge Advocate Opined Probable Cause Existed	+
Victim Represented by Attorney	+
Threat or Use of Force Occurred	+
Subject Confessed	+
At Least One Suspect Complexity Factor Existed	+
Victim Impaired	+
At Least One Victim Complexity Factor Existed	-
Command or Third Party Reported Incident	-

+ indicates that the presence of this case characteristic was associated with a statistically significant increased chance the case was preferred.
 - indicates that the presence of this case characteristic was associated with a statistically significant reduced chance the case was preferred.

Summary of Statistically Significant Multivariate Relationships Between Case Variables and Convictions on the Penetrative Sexual Offense

	Total
Subject Confessed	+
Victim Represented by Attorney	-
At Least One Victim Complexity Factor Existed	-

+ indicates that the presence of this case characteristic was associated with a statistically significant increased chance the case resulted in conviction.
 - indicates that the presence of this case characteristic was associated with a statistically significant reduced chance the case resulted in a conviction.

Summary of Statistically Significant Multivariate Relationships Between Case Variables and Victim Participation in the Military Justice Process

	Total
Pretextual Communication Occurred	+
Victim Was a Service Member	+
Subject Behavioral Health Concerns	+
Subject Confessed	+
Subject Alcohol Use	+
DNA Evidence Tested	+
At Least One Subject Complexity Factor Existed	+
Command or Third Party Reported the Incident	-

+ indicates that the presence of this case characteristic was associated with a statistically significant increased chance the victim participated.
 - indicates that the presence of this case characteristic was associated with a statistically significant reduced chance the victim participated.

Recognition of Committee Staff and Military Services

Finally, the truly exceptional work of the Committee staff and the sterling support provided by the Military Services need to be recognized. This report would not have been possible without the extraordinary efforts of the Committee staff during the past three years. The staff Director, Colonel Steven Weir, and the Deputy Director, Julie Carson, superbly led the entire staff on this unprecedented journey. The Services expeditiously provided the Committee with the full investigative files for all adult penetrative sexual offenses closed in fiscal year 2017, which was a massive undertaking.

Each member of the staff participated in the detailed review of these almost 2,000 investigative files and significantly contributed to the analysis, writing, and editing of this report. But the key to this sustained effort and final work product were the four staff assigned to the Case Review Subcommittee, Theresa Gallagher, Stacy Powell, Kate Tagert, and Glen Hines. Their many, many hours of toil and, at times, struggle developing our case review checklist, obtaining and preparing the investigative files for review, compiling the results of the reviews, and drafting this report epitomize all of the very best qualities of a truly exceptional civil servant. To them, to all of the other members of the Committee's staff, and to the Military Services, the members extend our deepest and sincerest thanks.

SUMMARY OF FINDINGS, DIRECTIVES, AND RECOMMENDATION*

Disposition Data for Adult Penetrative Sexual Offense Cases Closed in FY 2017

Finding 88: In the 1,904 cases reviewed by the Case Review Subcommittee (CRSC) involving a military criminal investigation of a penetrative sexual offense alleged to have been committed by an active duty Service member against an adult victim,

- 1,336 (70.2%) of the cases, resulted in the initial disposition authority taking no administrative, nonjudicial, or judicial action against the subject for the penetrative sexual offense;
- 517 (27.2%) of the cases, resulted in preferred penetrative sexual offense charges; and
- 51 (2.7%) of the cases, resulted in adverse administrative action or nonjudicial punishment for the penetrative sexual offense.

Finding 89: Of the 517 adult-victim cases closed in FY17 resulting in preferred penetrative sexual offense charges against the Service member,

- 235 (45.5%) of the cases, resulted in a verdict at trial on the penetrative sexual offense;
- 11 (2.1%) of the cases, resulted in the accused receiving an administrative separation for the penetrative sexual offense;
- 83 (16.1%) of the cases, resulted in the accused receiving a discharge in lieu of court-martial for the penetrative sexual offense; and
- 188 (36.4%) of the cases, resulted in dismissal of the penetrative sexual offense either outright or pursuant to a pretrial agreement.

Finding 90: Of the 235 adult-victim cases closed in FY17 resulting in preferred penetrative sexual offense charges with a verdict at trial on that offense,

- 144 (61.3%) of the cases, resulted in an acquittal for the penetrative sexual offense; and
- 91 (38.7%) of the cases, resulted in a conviction for the penetrative sexual offense.

Reasonableness of Initial Disposition Authority Decisions in Adult Penetrative Sexual Offense Cases Closed in FY 2017

Finding 91: The initial disposition authority's decision to take no administrative, nonjudicial, or judicial action against a Service member for an alleged penetrative sexual offense was reasonable in 1,316 (98.5%) of 1,336 of the adult-victim cases closed in FY17.

* The percentages in the findings may not always total 100%, for reasons addressed in the body of the report. Findings 1–87 and Recommendations 1–31 were included in previous DAC-IPAD Reports available at <https://www.dacipad.whs.mil>.

Finding 92: The decision to prefer a penetrative sexual offense charge was reasonable in 486 (94.0%) of the 517 adult-victim cases closed in FY17.

Directive 1 to Policy Subcommittee: The Policy Subcommittee review and assess how the Military Services have implemented the Article 33, UCMJ, Disposition Guidance with regard to penetrative sexual offense allegations. In particular, the Policy Subcommittee examine the uniformity of training on the Article 33 guidance across the Military Services, the content and quality of judge advocates' advice to commanders regarding the sufficiency of admissible evidence to obtain and sustain a conviction, and the documentation of disposition decisions by commanders and convening authorities. The Policy Subcommittee consider policy changes to require mandatory consideration of the sufficiency of admissible evidence to obtain and sustain a conviction on the charged offense as part of the initial disposition decision.

Victim Participation in the Military Justice Process and Statements to Law Enforcement in Adult Penetrative Sexual Offense Cases Closed in FY 2017

Finding 93: The victim declined to participate in the military justice process at some point after the initial unrestricted report of the alleged penetrative offense,

- 510 (38.2%) of the 1,336 adult-victim cases closed in FY17 in which the initial disposition authority took no action against the Service member subject for an alleged penetrative sexual offense; and
- 54 (10.4%) of the 517 adult-victim cases resulting in a preferred penetrative sexual offense charge against the Service member.

Finding 94: The victim's statement alone established probable cause to believe that the subject committed an adult penetrative sexual offense,

- 596 (46.9%) of the 1,270 cases closed in FY17 in which the victim provided a statement to law enforcement and the initial disposition authority took no action against the Service member subject for the alleged penetrative sexual offense; and
- 428 (83.1%) of the 515 cases in which the victim provided a statement to law enforcement and that resulted in a preferred penetrative sexual offense charge against the Service member.

Finding 95: The victim's statement alone did not establish probable cause to believe that the subject committed an adult penetrative sexual offense,

- 667 (52.5%) of the 1,270 cases closed in FY17 in which the victim provided a statement to law enforcement and the initial disposition authority took no action against the Service member subject for the alleged penetrative sexual offense; and
- 81 (15.7%) of the 515 cases in which the victim provided a statement to law enforcement and that resulted in a preferred penetrative sexual offense charge against the Service member.

Directive 2 to Case Review Subcommittee: The CRSC conduct a review of a random sample of military criminal investigative organization (MCIO) investigations of penetrative sexual offenses within five years, to further assess the quality of investigations and the progress made in light of statutory and regulatory modifications as well as implementation of previous DAC-IPAD recommendations.

Directive 3 to Case Review Subcommittee: In light of the Committee's determination that 41.3% of victim statements to law enforcement do not establish probable cause that the subject committed the alleged penetrative sexual offense, the CRSC continue to review and assess such statements in order to examine the factors that may contribute to this result, and make appropriate findings and recommendations.

Assessments of the Evidence in Investigative Cases Closed in FY 2017 Resulting in Preferred Adult Penetrative Sexual Offense Charges

Finding 96: Of the 517 adult-victim cases closed in FY17 resulting in a preferred penetrative sexual offense charge against a Service member,

- 446 (86.3%) of the cases, the evidence in the materials reviewed established probable cause to believe that the accused committed the penetrative sexual offense. In 68 (13.2%) of these cases, the evidence in the materials reviewed did not establish probable cause to believe that the accused committed the penetrative sexual offense; and
- 300 (58.0%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction for the penetrative sexual offense. In 213 (41.2%) of these cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction for the penetrative sexual offense.

Finding 97: Of the 235 cases tried to verdict on the adult penetrative sexual offense charge,

- 210 (89.4%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense. The government obtained a conviction on the penetrative sexual offense in 90 (42.9%) of these cases; and
- 25 (10.6%) of the cases, the evidence in the materials reviewed was not sufficient to establish probable cause to believe that the accused committed the charged offense. The government obtained a conviction on the penetrative sexual offense in 1 (4.0%) of these cases, and this conviction was overturned on appeal because the evidence was factually insufficient.

Finding 98: Of the 235 cases tried to verdict on the adult penetrative sexual offense charge,

- 162 (68.9%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on that offense. The government obtained a conviction on the penetrative sexual offense in 89 (54.9%) of these cases; and
- 73 (31.1%) of these cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on that offense. The government obtained a conviction on the penetrative sexual offense in 2 (2.7%) of these cases. In one of the two cases that resulted in a conviction, the conviction was later overturned on appeal because the evidence was factually insufficient.

Finding 99: In all Services except the Coast Guard, in 25.5% to 32.5% of cases including an adult penetrative sexual offense charge tried to verdict, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

Finding 100: While all Services report that they consider whether there is sufficient admissible evidence to obtain and sustain a conviction on the charged penetrative sexual offense, in military prosecutions, unlike in federal civilian prosecutions, there is no policy requirement to do so before either preferral or referral.

Finding 101: The requirements and practical application of Articles 32 and 34, UCMJ, and their associated Rules for Courts-Martial did not prevent referral and trial by general court-martial of adult penetrative sexual offense charges in the absence of sufficient admissible evidence to obtain and sustain a conviction, to the great detriment of the accused, the victim, and the military justice system.

Finding 102: The data clearly indicate that no adult penetrative sexual offense charge should be referred to trial by general court-martial without sufficient admissible evidence to obtain and sustain a conviction on the charged offense, and Article 34, UCMJ, should incorporate this requirement.

Finding 103: Of the 91 cases closed in FY17 resulting in a conviction for an adult penetrative sexual offense,

- 90 (98.9%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense; and
- 89 (97.8%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

Finding 104: Of the 144 cases closed in FY17 resulting in an acquittal for the adult penetrative sexual offense,

- 120 (83.3%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense; and
- 73 (50.7%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

Finding 105: The decision to refer to trial by general court-martial an adult penetrative sexual offense charge that lacks sufficient admissible evidence to obtain and sustain a conviction directly contributes to the 61.3% acquittal rate for these offenses.

Directive 4 to Case Review Subcommittee: The Committee recognizes that not all cases with sufficient admissible evidence to obtain a conviction will, in fact, result in a verdict of guilty. Moreover, this assessment was made in the absence of any evidence presented by the defense at trial. However, in light of the data demonstrating that in just over half (50.7%) of cases resulting in acquittal on a penetrative sexual offense charge, the materials reviewed contained sufficient admissible evidence to obtain a conviction on the charged offense and in 49.3% of cases such evidence was not present, the CRSC should consider if there are common characteristics in the cases that might help explain the conviction and acquittal rates for these offenses. Part of the CRSC's assessment and consideration of these matters should involve observation of courts-martial. These data raise the issues of why cases lacking sufficient admissible evidence to obtain and sustain a conviction are being referred and why cases with sufficient admissible evidence to obtain and sustain a conviction are resulting in acquittals.

Finding 106: Of the 282 cases closed in FY17 resulting in no verdict on the preferred adult penetrative sexual offense charge,

- 236 (83.7%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense. In 43 (15.2%) cases, the evidence was not sufficient to establish probable cause to believe the accused committed the charged penetrative sexual offense; and
- 138 (48.9%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the penetrative sexual offense. In 140 (49.6%) cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction.

Finding 107: In 94 (18.2%) of 517 cases resulting in a preferred adult penetrative sexual offense charge, the general court-martial convening authority approved the accused's request for a discharge in lieu of trial by general court-martial or the accused was otherwise subjected to an administrative separation action.

- 87 (92.6%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged adult penetrative sexual offense. In 6 (6.4%) of these cases, the evidence in the materials reviewed was not sufficient to establish probable cause to believe that the accused committed the charged penetrative sexual offense.
- 59 (62.8%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense. In 33 (35.1%) of these cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

Finding 108: Of the 188 cases closed in FY17 resulting in dismissal outright or as part of a pretrial agreement of the adult penetrative sexual offense charge,

- 150 (79.8%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe the accused committed the charged offense. In 36 cases (19.1%), the evidence was not sufficient to establish probable cause to believe the accused committed the charged adult penetrative sexual offense; and
- 107 (56.9%) of the cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction. In 79 cases (42.0%), there was sufficient admissible evidence to obtain and sustain a conviction on the adult penetrative sexual offense.

Referral of Adult Penetrative Sexual Offense Charges to Trial by General Court-Martial

Finding 109: Of the 517 cases closed in FY17 resulting in the referral of charges against a Service member for an adult penetrative sexual offense,

- 94 (18.2%) of the cases, the adult penetrative sexual offense was not referred to trial by general court-martial;
- 423 (81.8%) of the cases, the adult penetrative sexual offense was referred to trial by general court-martial;
 - 235 (55.6%) of the 423 cases, the trial resulted in a verdict on the adult penetrative sexual offense: 144 (34.0%) were acquittals and 91 (21.5%) were convictions; and
 - 188 (44.4%) of the 423 cases, referred to trial by general court-martial, the adult penetrative sexual offense charge was dismissed after referral.

Directive 5 to Case Review Subcommittee: The CRSC review and assess the reasons for post-referral dismissals of penetrative sexual offenses in light of the significant impacts that the accused, victim, and command have already experienced by this point in the military justice process, and make appropriate findings and recommendations.

Assessment of Whether There Are Systemic Problems with Initial Disposition Authority and Referral Decisions Regarding Adult Penetrative Sexual Offense Cases Closed in FY 2017

Finding 110: The review of 1,904 adult penetrative sexual offense investigative case files closed in FY17 reveals that there is not a systemic problem with the initial disposition authority's decision either to prefer an adult penetrative sexual offense charge or to take no action against the subject for that offense.

Finding 111: The review of 1,904 adult penetrative sexual offense investigative cases files closed in FY17 reveals, however, that there is a systemic problem with the referral of penetrative sexual offense charges to trial by general court-martial when there is not sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

DAC-IPAD Recommendation 32: Congress amend Article 34, UCMJ, to require the staff judge advocate to advise the convening authority in writing that there is sufficient admissible evidence to obtain and sustain a conviction on the charged offenses before a convening authority may refer a charge and specification to trial by general court-martial.

Data Analysis of Adult Penetrative Sexual Offense Investigations Closed in FY 2017

Location of Incident

Finding 112: In 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 998 (52.4%) of the cases, occurred in off-installation locations;
- 1,429 (75.1%) of the cases, occurred in the continental United States;
- 446 (23.4%) of the cases, occurred outside of the continental United States;
- 15 (0.8%) of the cases, occurred on a vessel;
- 4 (0.2%) of the cases, occurred in deployed locations (Afghanistan or Iraq); and
- 14 (0.7%) of the cases, involved incidents that occurred in more than one of these locations.

Demographic Information Regarding Victims and Subjects

Finding 113: In 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 1,860 (97.7%) of the subjects, were male and 44 (2.3%) were female;
- 1,771 (93.0%) of the subjects, were enlisted Service members, 130 (6.8%) were officers, and 3 (0.2%) were of unknown military pay grade;
- 1,455 (82.1%) of the subjects, were in the pay grade of E-5 or lower;
- 493 (27.8%) of the subjects, were in the pay grade of E-4; and
- Subjects ranged in age from 18 to 58, with a mean age of 25.5 years old.

Finding 114: In 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 1,802 (94.6%) of the victims, were female and 102 (5.4%) were male;
- 1,056 (55.5%) of the victims, were Service members;
 - of those, 1,004 (95.1%) were enlisted Service members, 48 (4.5%) were officers, and 4 (0.4%) were Service members of unknown pay grade;

- 953 (94.9%) enlisted Service member victims were in the pay grade of E-5 or lower;
- 15 (31.3%) of the 48 officer victims were cadets/midshipmen, and 25 (52.1%) were in the pay grade of O-1 through O-3;
- 413 (21.7%) of the victims, were civilians (and not military spouses);
- 435 (22.8%) of the victims, were civilian military spouses;
 - 307 (70.6%) of the cases, the victim was married to the Service member subject; 128 (29.4%) of the cases, the subject was not the victim's spouse; and
- Victims ranged in age from 16 to 60, with a mean age of 23.6 years old.

Relationship of Victim and Subject

Finding 115: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 483 (25.4%) of the cases, the victim and subject were classified as “friends”;
- 367 (19.3%) of the cases, the victim and subject were current or former spouses;
- 274 (14.4%) of the cases, the victim and subject were acquaintances;
- 240 (12.6%) of the cases, the victim and subject were intimate partners;
- 74 (3.2%) of the cases, the victim and subject were subordinate–supervisor or recruit–recruiter; and
- 49 (2.6%) of the cases, the victim and subject met online and may have had a virtual relationship before meeting in person.

Reporting Individual

Finding 116: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 699 (36.7%) of the cases, the victims reported the allegation to law enforcement;
- 352 (18.5%) of the cases, the command reported the allegation to law enforcement;
- 548 (28.8%) of the cases, victim-authorized representative reported the allegation to law enforcement; and
- 303 (15.9%) of the cases, third party reported the allegation to law enforcement.

Use of Force or Threat of Force

Finding 117: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 288 (15.1%) of the cases, involved the use of physical force, coercion, or the threat of force.
 - 262 (13.8%) of the cases, involved physical force;
 - 16 (0.8%) of the cases, involved a weapon;

- o 34 (1.8%) of the cases, involved coercion; and
- o 36 (1.9%) of the cases, involved a threat and/or placing the victim in fear.
- 1616 (84.9%) of the cases, did not involve physical force, coercion, or the threat of force.

Finding 118: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 287 (15.1%) of the cases, involved physical injuries reported by the victim.
- The most common injuries reported were bruising and/or redness, which occurred in 179 (9.4%) and 112 (5.9%) of the cases, respectively.

Sexual Assault Forensic Examination (SAFE) and DNA Testing

Finding 119: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- SAFE exams were performed in 579 (30.4%) cases.
 - o 470 (81.2%) of the exams, were performed within three days of the sexual assault;
 - o 274 (47.3%) of the exams, took place at a civilian health care facility;
 - o 304 (52.5%) of the exams, took place at a military health care facility;
 - o 277 (47.8%) of the exams, were performed by a SANE;
 - o 200 (34.5%) of the exams, were performed by a military SAMFE; and
 - o 98 (16.9%) of the exams, were performed by a civilian SAMFE.

Finding 120: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, DNA testing occurred in 408 (21.4%) cases.

Directive 6 to Case Review Subcommittee: The CRSC examine the law, policy, and practices concerning sexual assault forensic examinations and DNA collection and testing in adult penetrative sexual offense cases and make appropriate findings and recommendations.

Witnesses and Pretextual Communications

Finding 121: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, there were one or more witnesses to the incident in 283 (14.9%) cases.

Finding 122: In 268 (14.1%) of the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, there was a documented pretextual communication, and

- 171 (63.8%) of the cases, the communication did not corroborate either the victim's or the subject's account;
- 51 (19.0%) of the cases, the communication supported the subject's account; and
- 46 (17.2%) of the cases, the communication supported the victim's account.

Victim and Subject Complexity Factors

Finding 123: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, reviewers recorded “complexity” or “credibility” factors because of their potential impact on the decision to prefer a penetrative sexual offense charge, the prosecutor’s ability to obtain and sustain a conviction, and the defense counsel’s ability to raise reasonable doubt.

- 1,086 (57.0%) of the cases, involved alcohol use by a victim; 149 (7.8%) involved drug use.
- 1,056 (55.5%) of the cases, involved alcohol use by the subject; 31 (1.6%) involved drug use.
- 886 (46.5%) of the cases, involved victims who reported being impaired (blacked out, passed out, unconscious, asleep, partial or no memory) at the time of assault.⁴⁰
- 617 (32.4%) of the cases, involved a loss of memory or consciousness for the victim.⁴¹
- 94 (4.9%) of the cases, involved a loss of memory or consciousness for the subject.
- 566 (29.7%) of the cases, involved inconsistent statements by victims.
- 209 (11.0%) of the cases, involved inconsistent statements by subjects.
- 253 (13.3%) of the cases, involved evidence that contradicted the victim’s statements.
- 75 (3.9%) of the cases, involved evidence that contradicted the subject’s statements.
- 802 (42.1%) of the cases, involved a possible motive for the victim to lie as noted by the case reviewers.
- 1,672 (87.8%) of the cases, contained no indication that the subject had committed other sexual offenses.
- 503 (26.4%) of the cases, contained evidence that a victim engaged in collateral misconduct. Underage drinking was the misconduct in 300 (60.0%) of the cases.
- 679 (35.7%) of the cases, contained evidence that a subject engaged in collateral misconduct.
- 311 (16.3%) of the cases, contained evidence of other misconduct committed by the victim not related to the sexual offense.
- 471 (24.7%) of the cases, contained evidence of other misconduct committed by the subject not related to the sexual offense.

Directive 7 to Case Review Subcommittee: The CRSC examine adult penetrative sexual offense cases in which the victim reported being impaired, in order to assess MCIO interview and investigative techniques utilized in such cases and make appropriate findings and recommendations.

Directive 8 to Case Review Subcommittee: The CRSC examine adult penetrative sexual offense investigative files in which the victim reports both no impairment and no use of physical force or the threat of force, in order to further assess how the facts in these cases influence the initial disposition decision to prefer a penetrative sexual offense charge or take no action on that offense and, in cases resulting in a preferred penetrative sexual offense charge, how they influence the post-preferred outcomes for those offenses.

⁴⁰ These data are based on the victims’ descriptions and are not mutually exclusive conditions.

⁴¹ These data are based on the reviewers’ judgments of the materials in the case file, as are data regarding the subject’s memory or loss of consciousness.

Victim and Subject Statements to Law Enforcement

Finding 124: In the 1,904 adult-victim cases closed in FY17 involving allegations of a penetrative sexual offense committed by a Service member subject,

- 1,226 (64.4%) of the cases, the subject gave a statement to law enforcement;
- 109 (5.7%) of the cases, the subject was represented by a lawyer at the time they were advised of their rights;
- 44 (3.1%) of statements made to law enforcement or a third party, the subject stated that they had partial or no memory or recollection of the event; and
- 102 (7.2%) of the cases, the subject confessed to the penetrative sexual offense.

Finding 125: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 1,836 (96.4%) of the victims, gave statements to law enforcement or MCIOs;
- 546 (29.7%) of the victims, who gave statements were represented by a lawyer at the time of the statement; and
- 1,005 (52.8%) of all victims, were represented by a lawyer at some point in the process.

Judge Advocate Opinions on Probable Cause

Finding 126: In 1,448 (76.1%) of the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, the materials reviewed included a judge advocate's opinion on whether there was probable cause to believe that the Service member committed a penetrative sexual offense.

- 790 (54.6%) of the cases, the judge advocate opined that the evidence established probable cause to believe that the subject committed a penetrative sexual offense.

Factors Influencing Likelihood of Preferred Penetrative Sexual Offense Charge

Finding 127: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, a preferred penetrative sexual offense charge against the subject was more likely when

- The report was made within seven days of the incident.
- The victim was an officer.
- The victim was White.
- Pretextual communication occurred and the pretextual communication supported the victim's account of the incident.
- The victim reported physical injury and the report alleged that the subject used or threatened to use force.
- A SAFE was performed on the victim.
- DNA evidence was tested.
- One or more of the subject complexity factors of memory loss, inconsistent statements and contradictory evidence, collateral and other forms of misconduct, behavioral health concerns, and evidence of other sex offenses and/or related misconduct were present.

- The victim described being impaired.
- The victim used drugs.
- The subject used alcohol or drugs.
- The victim participated in the investigation.
- The victim was represented by counsel.
- A judge advocate made a finding that there was probable cause to believe that the subject committed a penetrative sexual offense for indexing purposes.

Finding 128: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, a preferred penetrative sexual offense charge against the subject was less likely when

- The victim complexity factor of a potential motive to fabricate was present and the victim provided inconsistent statements.

Factors Influencing Likelihood of Conviction for Penetrative Sexual Offense

Finding 129: In the 235 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject that resulted in a verdict at trial on that offense, the case was more likely to result in a conviction for the penetrative offense when

- The victim was a civilian who was not a military spouse.
- The victim complexity factors of potential motive to fabricate, inconsistent statements, and evidence contradicting the victim's statement(s) were not present.
- The subject confessed.
- The subject did not use alcohol.
- The victim was not represented by counsel.

Directive 9 to Case Review Subcommittee: The CRSC examine factors that may contribute to the relationship between conviction and acquittal rates and the victim's representation by counsel.

Factors Influencing Likelihood of Victim Participation in Military Justice Process

Finding 130: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, victims were more likely to participate in the military justice process when

- The victim or a victim-authorized representative reported the penetrative sexual offense.
- The victim was a Service member.
- The investigation used pretextual communication.
- A SAFE was performed.
- DNA evidence in the case was analyzed.
- The victim was represented by counsel.

- The victim complexity factors of inconsistent statements and contradictory evidence existed.
- The subject complexity factors of inconsistent statements, collateral misconduct, and evidence that could be admitted under Military Rules of Evidence (M.R.E.) 413 (similar crimes in sexual offense cases) and/or 404(b) (crimes, wrongs, or other acts) were present.
- The subject had behavioral health concerns.
- The subject's memory was impaired.
- The subject confessed.
- The victim reported being impaired.
- The victim used alcohol.
- The victim suffered memory loss/loss of consciousness.
- The subject used alcohol.
- The subject suffered memory loss/loss of consciousness.
- The victim was represented by counsel.
- A judge advocate found the evidence sufficient to establish probable cause to believe that the subject committed a penetrative sexual offense for indexing purposes.

Finding 131: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, victims were less likely to participate in the military justice process when

- The victim was the civilian spouse of a Service member.

Patterns of Relationships with Respect to Preferral of an Adult Penetrative Sexual Offense Charge

Finding 132: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, the following patterns of relationships emerged from the multivariate model with respect to preferral of a penetrative sexual offense charge:

- When a judge advocate opined there was probable cause to believe that the subject committed the penetrative sexual offense, there was a greater likelihood that the case resulted in preferred penetrative sexual offense charges, compared either to cases with no judge advocate opinion or to cases in which a judge advocate determined there was not probable cause to believe the subject committed the offense. Judge advocates issued opinions regarding probable cause for the purposes of submitting the subject's fingerprints and DNA to federal databases.
- When the victim participated in the investigation, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the victim was represented by counsel, it was more likely that the case resulted in a penetrative sexual offense charge.
- When any DNA evidence in the case was analyzed, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the subject used force or threatened the use of force against the victim, it was more likely that the case resulted in a preferred penetrative sexual offense charge.

- When the victim reported impairment, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When there was evidence of at least one victim complexity factor, it was less likely that the case resulted in a preferred penetrative sexual offense charge.
- When there was evidence of at least one subject complexity factor, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the subject confessed to the offense, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- Air Force cases were more likely to result in preferred penetrative sexual offense charges than were cases in the Army, Marine Corps, and Navy, controlling for other case and individual characteristics included in the model.
- The identity of the individual reporting the incident to law enforcement was statistically significant when the Military Service branch variables were included in the model and Coast Guard cases were excluded. Cases were less likely to result in preferred penetrative sexual offense charges when the command or a third party reported the incident to law enforcement than when the victim or a victim-authorized representative reported the incident to law enforcement.

Patterns of Relationships with Respect to Conviction or Acquittal on the Adult Penetrative Sexual Offense

Finding 133: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, the following patterns of relationships emerged from the multivariate model with respect to conviction or acquittal for the penetrative sexual offense:

- The chances of conviction were lower than the chances of acquittal when the victim had legal representation.
- When there was evidence of at least one victim complexity factor, the accused was more likely to be acquitted of the penetrative sexual offense than convicted of the offense.
- When the subject confessed to the penetrative sexual offense, it was more likely that they would be convicted of that offense than acquitted.
- The Military Service branch was unrelated to the likelihood of conviction for the penetrative sexual offense.

Patterns of Relationships with Respect to Victim Participation in the Military Justice Process

Finding 134: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, the following patterns of relationships emerged from the multivariate model with respect to the victim's decision to participate or not to participate in the military justice process:

- The victim was more likely to participate in the military justice process when any of the following variables existed:
 - The investigation used pretextual communication(s).
 - DNA evidence was analyzed.
 - The victim was an active duty Service member.
 - The subject used alcohol.

- There was evidence of at least one subject complexity factor (subject lack of memory, subject inconsistent statements, subject contradictory evidence, subject M.R.E. 413 or 404(b) evidence, subject collateral misconduct, and subject other misconduct).
- The victim was physically injured.
- There were behavioral health concerns about the subject.
- The subject confessed to the penetrative sexual offense.
- The chances of victim participation were lower when a third party or command reported the incident than when the victim or a victim-authorized representative reported the incident.
- The second model revealed significant differences across the Service branches regarding the likelihood that the victim would participate in the military justice system to pursue a penetrative sexual offense allegation.
 - Victims were more likely to participate in the military justice process when the Army investigated the case, compared to the Air Force or Marine Corps.
 - Similarly, a victim in the Navy was more likely to participate than one in the Air Force or Marine Corps.

I. INTRODUCTION

A. *DAC-IPAD Establishment and Mission*

The Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (DAC-IPAD) was established by the Secretary of Defense in February 2016 pursuant to section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015, as amended.⁴² The mission of the DAC-IPAD is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.⁴³ In order to provide that advice, the DAC-IPAD is directed to review, on an ongoing basis, cases involving allegations of sexual misconduct.⁴⁴

The DAC-IPAD’s authorizing legislation required the Secretary of Defense to select as members up to 20 civilians with experience in investigating, prosecuting, and defending against allegations of sexual offenses.⁴⁵ In January 2017, the Secretary of Defense appointed 16 members to the DAC-IPAD representing a broad range of perspectives and experience related to sexual assault both within and outside the military.⁴⁶ Currently, there are 15 members serving on the DAC-IPAD.⁴⁷ These members have spent decades working in their fields of expertise, which include

- Civilian sexual assault investigation and forensics
- Civilian and military sexual assault prosecution
- Civilian and military sexual assault defense
- Federal and state court systems
- Military command
- Criminology
- Academic disciplines and legal policy
- Crime victims’ rights

B. *Overview of the Case Review Project*

In accordance with the DAC-IPAD’s statutory case review mandate, a Case Review Subcommittee (CRSC), composed of seven DAC-IPAD members, was created and directed to individually review military sexual assault cases.⁴⁸ The CRSC

⁴² FY15 NDAA, *supra* note 1.

⁴³ *Id.* at § 546 (c)(1).

⁴⁴ *Id.* at § 546(c)(2).

⁴⁵ *Id.* at § 546.

⁴⁶ See Appendix C for a list and short biographies of the DAC-IPAD members.

⁴⁷ DAC-IPAD Member Keith Harrison, Associate Dean and Professor of Law, Savannah Law School passed away in August 2018 and his position on the Committee remains vacant.

⁴⁸ The CRSC is chaired by retired Marine Corps Brigadier General James R. Schwenk. The other members of the subcommittee are Ms. Martha S. Bashford (the DAC-IPAD Chair), Ms. Kathleen B. Cannon, Ms. Jennifer Gentile Long, Mr. James P. Markey, Dr. Cassia C. Spohn, and Ms. Meghan A. Tokash.

members brought to the case review project decades of experience in military justice, federal and state criminal law and procedure (both as prosecutors and defense counsel), investigations of sexual assault complaints, and criminology with particular experience and expertise in the collection and analysis of data regarding prosecutorial decision making in sexual assault cases.

Tasked by Congress with a broad mandate to review cases, the CRSC chose to focus its attention in this project on the investigative stage of the sexual offense disciplinary process: that is, the period from the initial report of a sexual offense to a military criminal investigative organization (MCIO) through the initial disposition decision of the authorized commander—known as the “initial disposition authority.”⁴⁹ Further, in order to focus on the most serious offenses, the CRSC limited its review to penetrative sexual offenses only: rape and sexual assault, in violation of Article 120, Uniform Code of Military Justice (UCMJ); forcible sodomy, in violation of Article 125, UCMJ; and attempts to commit those offenses, in violation of Article 80, UCMJ.⁵⁰ The DAC-IPAD found it important to evaluate penetrative sexual offenses separately because these cases typically involve the most serious sexual crimes and often result in different outcomes than do the sexual contact cases.

To complete this project, from February 2018 through February 2020 the seven CRSC members and DAC-IPAD professional staff reviewed the military criminal investigative files for 1,904 reported adult penetrative sexual offenses. For those cases that resulted in preferred penetrative sexual offense charges, CRSC members and professional staff reviewed additional documentation relating to the court-martial process. The 1,904 cases reviewed encompass every investigation conducted by the Services’ MCIOs closed between October 1, 2016, and September 30, 2017, involving an allegation that a Service member on active duty at the time of the incident committed a penetrative sexual offense against an adult victim.⁵¹

CRSC members and professional staff accomplished four main tasks during their hours-long review of each investigative file and other documents provided, as they undertook both objective data gathering and subjective assessments of the evidence contained in the materials provided for review.

- First, for each case, reviewers recorded numerous points of objective data about the cases.
- Second, for each case, reviewers subjectively assessed whether the victim’s statement(s), if any, contained sufficient evidence to establish probable cause to believe that the subject of the investigation committed a penetrative sexual offense.
- Third, for each case, reviewers subjectively assessed whether the initial disposition authority’s decision to prefer a penetrative sexual offense charge or to take no action in the case was reasonable.⁵²

49 2012 Withholding Memorandum, *supra* note 5.

50 *Id.* The National Defense Authorization Act for Fiscal Year 2014 mandated that only a general court-martial has jurisdiction to try a penetrative sex offense and requires that a person found guilty of a penetrative sexual offense receive a sentence including a dismissal or a dishonorable discharge. National Defense Authorization Act for Fiscal Year 2014, Pub. L. 113-66, § 1705, 127 Stat. 672 (2013) [FY14 NDAA]. *See also* DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES ANNUAL REPORT 16–17 (Mar. 2018) [DAC-IPAD SECOND ANNUAL REPORT], *available at* https://dacipad.whs.mil/images/Public/08-Reports/DACIPAD_Report_02_Final_20180330_Web_Amended.pdf (defining “penetrative sexual offense” for purposes of the case review project).

51 The FY14 NDAA mandated that every commander who receives a report of a sex-related offense involving a member of the Armed Forces in the chain of command of such officer must immediately refer the report to the appropriate MCIO. FY14 NDAA, *supra* note 50, § 1742.

52 The initial disposition authority’s decision may be to prefer charges against the subject of the investigation for a penetrative sexual offense, thereby initiating a criminal justice proceeding; to impose nonjudicial punishment; to take some type of adverse administrative action for the penetrative sexual offense; or to take no action at all on the penetrative sexual offense. In those cases in which the initial disposition authority took no action on the penetrative sexual offense, the command may have taken adverse action against the subject of the investigation for a non-penetrative sexual or other offense supported by the evidence, such as underage drinking or assault consummated by a battery; however, in analyzing such cases, the CRSC focused only on the initial disposition of the penetrative sexual offense.

- Fourth and finally, in those cases resulting in preferred penetrative sexual offense charges, reviewers subjectively assessed the evidence contained in the materials provided for review, focusing specifically on whether the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed a penetrative sexual offense and whether the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on that offense.

As is true of other civilian studies of decision making in sexual assault cases,⁵³ the CRSC's review and analysis of initial disposition decisions were limited to documents and other materials contained in the investigative materials—in this instance, those provided by the MCIOs and, for cases resulting in a preferred penetrative sexual offense charge, pretrial and trial materials provided by the Military Service judge advocate organizations. The CRSC did not have access to—and thus did not consider—any additional evidence or information outside of these materials that may have been developed and available to trial or defense counsel, victims' counsel, staff judge advocates, or convening authorities.

This report provides the comprehensive statistical data collected by the CRSC from all of the investigative cases reviewed involving a Service member investigated by an MCIO for an allegation of a penetrative sexual offense against an adult victim that were closed in FY17.⁵⁴ Specifically, this report provides

- descriptive data by Military Service collected from 1,904 penetrative sexual offense investigations closed in fiscal year 2017;
- additional subjective determinations, based on the CRSC members' expertise, on command and convening authority decisions.
- statistical analyses of case factors that may be predictive of whether a penetrative sexual offense charge is preferred or no action is taken on that offense;
- statistical analyses of case factors that result in conviction or acquittal on the penetrative sexual offense charge; and
- statistical analyses of case factors that may be predictive of whether a victim chooses to participate in the criminal justice process.

Section I of this report discusses the objectives and scope of the case review project, including the CRSC's evaluation of an initial random sample of 164 cases and the DAC-IPAD's preliminary assessment based on this random sample. This assessment was originally reported in the Committee's March 2019 Third Annual Report. Section I also summarizes the DAC-IPAD's non-empirical findings and observations after completion of its review of the complete universe of nearly 2,000 penetrative sexual offense cases closed in FY17; these findings and observations were originally published in the DAC-IPAD's March 2020 Fourth Annual Report.

Section II of the report describes the CRSC's methodology for the case review and data collection project, including the objectives of the subjective and empirical data analysis. Section III discusses the initial disposition authorities' decisions regarding penetrative sexual offenses and the final data for cases closed in FY17, including the decision to take no action

53 See Melissa S. Morabito, Linda M. Williams, & April Pattavina, *Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Attrition in the U.S.* (2019); Bruce Fredrick & Don Stemen, *The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making* (2012); Cassia Spohn & Katharine Tellis, *Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with Los Angeles Police Department, the Los Angeles Sheriff's Department and the Los Angeles County District Attorney's Office* (2012).

54 A total of 2,055 cases meeting the Committee's review criteria were reported in the Committee's Third and Fourth Annual Reports. The Committee subsequently excluded an additional 151 cases discovered during the review process that did not meet the review criteria. At the completion of the project the total number of cases reviewed was 1,904. See *infra* Section II Methodology for additional discussion of the case selection process.

on the offense, to prefer a penetrative sexual offense charge, or to take administrative or nonjudicial action on the offense. Section IV contains the DAC-IPAD's assessment of the "reasonableness" of these initial disposition authority decisions either to prefer a penetrative sexual offense charge or to take no action against the Service member subject on that offense. Section IV also includes discussion and analysis of factors that may influence such decisions. Section V provides an assessment of the strength of the evidence reviewed in those cases resulting in a preferred penetrative sexual offense charge. Finally, Section VI presents the comprehensive statistical data collected for the complete universe of penetrative sexual offense cases closed in FY17, including bivariate and multivariate analyses identifying relationships and patterns in the data.

In this report, the DAC-IPAD both affirms its previous findings and recommendations related to its case review project published in its March 2019 and March 2020 reports and presents an additional recommendation, 47 findings, and 9 directives for further study. In the future, the DAC-IPAD will focus on those issues identified in this report and in earlier reports for further study and assessment and will make additional findings and recommendations, as appropriate.

C. Developing the Objectives and Scope of the Case Review Project

To begin this project and to gauge the volume of sexual offense cases processed by the military justice system each year, in October 2017 the DAC-IPAD submitted a request for information (RFI) to the Military Services' MCIOs (including the Coast Guard) asking that they provide the DAC-IPAD with the total number of cases that met four criteria: (1) closed in fiscal year 2017 (2) involving a complaint of a penetrative or contact sexual offense (3) with an adult victim (4) against a military subject on active duty at the time of the incident.⁵⁵

The RFI also sought additional descriptive details about each case involving a penetrative sexual offense. Specific data requested for each of these cases included

- The Service branch of the subject(s);
- The status of the victim (civilian or Service member);
- The date the case was closed;
- The type of penetrative sexual offense reported; and
- The case disposition, both as reflected in the Service MCIO case management systems and as submitted by the MCIOs for FBI crime data reporting purposes.⁵⁶

The Service MCIO responses indicated that while more than 6,000 adult sexual offense cases were closed by the MCIOs in FY17, only about 2,000 of those cases involved penetrative sexual offense complaints made against a Service member

55 See DAC-IPAD THIRD ANNUAL REPORT, *supra* note 8, at APPENDIX E-1. A case is considered "closed," in this context, after a completed MCIO investigation has been submitted to a commander to make an initial disposition decision and any action taken by the convening authority is complete and documentation of the outcome has been provided to the MCIO. *Id.* As previously noted, the Committee defined a "penetrative sexual offense" as a complaint of rape or sexual assault, in violation of Article 120, UCMJ; forcible sodomy, in violation of Article 125, UCMJ; and any attempt to commit such offenses, in violation of Article 80, UCMJ. *Id.* 10 U.S.C. § 920(b) (Article 120(b), UCMJ) defines "child" as an individual under the age of 16; therefore, the Committee defined an adult victim as one who is at least 16 years old. See DAC-IPAD RFI Set 5 at § III (Oct. 30, 2017), *available at* https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_Set5_20171030_Web.pdf. See also DAC-IPAD SECOND ANNUAL REPORT, *supra* note 50, at 16–17.

56 DAC-IPAD RFI Set 5, *supra* note 55, at § IV. The RFI requested the MCIOs to provide the commander's decision with respect to the penetrative sexual offense allegation, including whether no action was taken and/or the case was unfounded, for all FY17 penetrative sexual offense investigations with a military subject and adult victim closed between October 1, 2016, and September 30, 2017 (regardless of the date the allegation was made or the investigation opened).

involving an adult victim.⁵⁷ The individual case data provided by the MCIOs also revealed that more than 70% of penetrative sexual offense investigations closed in FY17 did not result in a preferred penetrative sexual offense charge.⁵⁸

As a result of this initial review of data demonstrating that only about 30% of penetrative sexual offense investigations closed in FY17 resulted in preferred penetrative sexual offense charges against a Service member, the CRSC decided to study whether there may be a systemic problem with how the Military Services handle these cases. The CRSC determined that the “reasonableness” of these prosecutorial decisions would be a primary focus of its case review project. In particular, the CRSC evaluated whether the decision to prefer a penetrative sexual offense charge or to take no action against the subject for that offense was a reasonable exercise of the initial disposition authority’s discretion—that is, even if the reviewer might have made a different decision, the CRSC members judged the initial disposition authority’s decision to fall within the range of appropriate outcomes. After considerable discussion about how to evaluate such a subjective question, the CRSC members decided that each reviewer would draw on their individual expertise to determine reasonableness, based solely on the evidence provided in the investigative case files and other available pretrial documents.

In addition—for the first time in a study of decision making in military sexual assault investigations—reviewers evaluated the materials provided in cases resulting in a preferred penetrative sexual offense charge against the subject by determining whether they met two evidentiary standards: first, whether the evidence established probable cause to believe that the subject committed a penetrative sexual offense; and second, whether the admissible evidence was sufficient to obtain and sustain a conviction on the penetrative sexual offense. Probable cause is a well-known legal standard, defined as evidence sufficient to cause a reasonable person to believe that a crime was committed and the subject committed it. An assessment of whether the evidence is sufficient to obtain and sustain a conviction is a policy requirement of the Department of Justice with respect to federal prosecutions, and it is also a key consideration in state prosecution decisions.

In March 2018, after spending two months reviewing individual investigative case files to gain a hands-on perspective concerning investigations of alleged adult penetrative sexual offenses, the CRSC identified the following five additional objectives for its case review project:

- Compile descriptive case data regarding the facts of the cases reviewed.
- Review practices for documenting a commander’s disposition decision in penetrative sexual assault cases in which a Service member is the subject.
- Review MCIO practices for submitting fingerprints and case disposition information to federal databases and for documenting cases as unfounded.
- Examine predictive factors for case outcomes.⁵⁹
- Examine investigative files for issues involving the discretion afforded to military investigators and the duration of investigations.⁶⁰

⁵⁷ See DAC-IPAD THIRD ANNUAL REPORT, *supra* note 8, at APPENDIX H-1.

⁵⁸ *Id.*

⁵⁹ DAC-IPAD SECOND ANNUAL REPORT, *supra* note 50, at 22.

⁶⁰ Additional information and analysis concerning the length of penetrative sexual offense investigations, disposition decisions, and resulting proceedings will be included in a future DAC-IPAD report.

D. Preliminary Assessment of Random Sample – March 2019

In its March 2019 Third Annual Report, the DAC-IPAD published a preliminary assessment of the case review project derived from CRSC members' review and analysis of a random selection from the 1,904 penetrative sexual offense cases closed in FY17.⁶¹ CRSC members and professional staff reviewed and analyzed 164 case files selected from the entire case list, proportionately weighted by case disposition, as designated by the MCIOs and by the Military Service of the subject.⁶² The CRSC's initial assessment of these 164 cases was further informed by the public testimony received by the DAC-IPAD in 2018 from civilian and military investigators, military prosecutors, military defense counsel, and military victims' counsel, and by over 25 hours of Committee and Subcommittee deliberations on these issues.⁶³

Significantly, the CRSC's initial review of the 164 cases indicated that commanders' initial disposition decisions of whether to prefer a penetrative sexual offense charge were reasonable in the overwhelming majority (95%) of cases.⁶⁴ This finding challenged the narrative that the military did not take sexual assault seriously, as some media reports have alleged.⁶⁵ Following this initial finding, the CRSC undertook a more comprehensive review to discover whether the result would be the same after it analyzed all of the FY17 case files. This report provides the results of the complete review of all 1,904 case files and reaches the same conclusion.

The DAC-IPAD expressed a concern in its March 2019 report that the materials within the investigative case files—and specifically the documentation of command disposition decisions—varied widely across the Military Services, were frequently incomplete, and often contained inaccurate or conflicting information with respect to case outcomes.⁶⁶ The DAC-IPAD highlighted this finding not only because it made reviewing and analyzing the investigative case files more difficult, but also because it has implications for current and former Service members about whom erroneous information may be contained in federal criminal history databases that are routinely accessed by law enforcement, employers in some situations, and others.

Based on the random sample of 164 case reviews, the DAC-IPAD made three initial recommendations in its March 2019 Report. First, that the Secretary of Defense develop a uniform form for command action with a standard set of options for documenting command disposition decisions and the rationale for such decisions. Second, that the disposition decision options reflect uniform legal and investigatory terminology and standards across the Services and accurately reflect command action source documents. Third, that the Secretary of Defense provide uniform guidance to the Military Services regarding the submission of final disposition information to federal databases for sexual offense cases in which, after fingerprints have been submitted, the command took no action, or took action only for an offense other than a sexual offense.⁶⁷

61 See DAC-IPAD THIRD ANNUAL REPORT, *supra* note 8. See *infra* Section II on Case Review Methodology for a more detailed discussion of the cases selected for review.

62 DAC-IPAD SECOND ANNUAL REPORT, *supra* note 50, at 24. See also DAC-IPAD THIRD ANNUAL REPORT, *supra* note 8, at 24. The DoD Office of Inspector General provided guidance on selecting the random sample of 164 cases for the Committee members' initial review.

63 DAC-IPAD THIRD ANNUAL REPORT, *supra* note 8, at 22.

64 *Id.* at 28–31. Of the 164 random sample cases, commanders chose to prefer a penetrative sexual offense charge in 42 cases (27%) and chose not to prefer a penetrative sexual offense charge in the remaining 122 cases (74%). *Id.* Specifically, the Committee found the command's decision to prefer charges reasonable in 40 of 42 cases (95%) and found the command's decision not to prefer charges reasonable in 115 of 122 cases (94%). *Id.*

65 See, e.g., THE INVISIBLE WAR (Chain Camera Pictures 2012); Craig Whitlock, *How the Military Handles Sexual Assault Behind Closed Doors*, WASH. POST, Sept. 30, 2017; Robert Draper, *The Military's Rough Justice on Sexual Assault*, N.Y. TIMES, Nov. 26, 2014.

66 DAC-IPAD THIRD ANNUAL REPORT, *supra* note 8, at 43–59.

67 *Id.* at 5–6.

As of July 2020, the Department of Defense has not responded to the DAC-IPAD's three initial case review recommendations. However, subsequent to the DAC-IPAD's recommendations, Congress included a provision in the National Defense Authorization Act for Fiscal Year 2019 requiring the Secretary of Defense to develop a uniform command action form,⁶⁸ and the Department of Defense revised their fingerprint reporting requirements.⁶⁹

E. Non-empirical Case Review Findings and Observations – March 2020

In February 2020, the CRSC members and professional staff completed their two-year intensive review of 1,904 investigative case files provided by the MCIOs for adult penetrative sexual offense cases closed in FY17. In its March 2020 Fourth Annual Report, the DAC-IPAD published three broad findings based on the CRSC members' observations after the case reviews were complete but pending the results of the comprehensive statistical data analysis.⁷⁰

One of the findings in the March 2020 report was that the statements of adult sexual offense victims taken by military criminal investigators as well as the investigator notes found in the case files often lacked sufficient detail and follow-up questioning, making it difficult to assess whether the disposition decision in the case was reasonable.⁷¹ The DAC-IPAD recognized that the limitations in these victims' statements may have resulted from efforts by military investigators to implement more victim-centered investigation techniques. However, the DAC-IPAD emphasized its concern that the lack of documentation in the investigative files of victim-provided details or of victims' responses to contradictions in the evidence left unresolved important questions, the answers to which could affect a convening authority's initial disposition decision.

In its second finding, the DAC-IPAD affirmed a concern first raised after its initial review of the 164 random sample cases: that military investigators need discretion to pursue the specific investigatory steps relevant to each case, rather than being required to follow the one-size-fits-all investigative approach typically seen in the case files reviewed.⁷² The DAC-IPAD observed that the military investigations in general were comprehensive; however, members noted that valuable time and resources were frequently expended to gather information irrelevant to the case at hand, including extensive interviews of co-workers, previous chains of command, family, and friends of both the victim and subject who were neither involved in the alleged incident nor otherwise aware of it.

Finally, the DAC-IPAD found that the command routinely imposed adverse actions and legal holds on subjects immediately after an allegation of a penetrative sexual offense—often permanently and negatively affecting the subject's career and personal life—irrespective of whether the allegation was ultimately determined to warrant preferral of charges or imposition of other adverse action against the subject, or even whether the evidence established probable cause to believe that the subject had committed any criminal offense.⁷³ The DAC-IPAD expressed concern that because the majority of penetrative sexual offense allegations appropriately do not result in the preferral of charges or other

68 See John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636, § 535 (2019).

69 See DEP'T OF DEF. INSTR. 5505.11, FINGERPRINT REPORTING REQUIREMENTS, § 2.2 (c)–(d) (Oct. 31, 2019), available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/550511p.pdf>. The revision requires commanders and directors to provide law enforcement with all disposition data within 5 business days, including decisions to take no action and any administrative, nonjudicial punishment, or judicial action resulting from the investigation, and to facilitate proper reporting of the dispositions for criminal indexing.

70 See DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 21–28.

71 *Id.* at 22–24.

72 *Id.* at 24–26.

73 *Id.* at 26–28.

adverse action, taking such actions immediately may be premature and may often do permanent harm to the lives and reputations of Service members who are the subjects of these investigations.⁷⁴

In addition to these three broad findings, the March 2020 report identified nine specific issues that the DAC-IPAD plans to study further in the following months:⁷⁵

- The requirement that the convening authority's disposition of charges should be made in the interest of "justice and discipline";
- The weight given by convening authorities to victims' preference as to the disposition of the case;
- The nature of the legal advice provided to initial disposition authorities;
- The identification and documentation of the factors most significant to convening authorities in the Article 33, UCMJ, disposition guidance;
- The usefulness to convening authorities of the Article 32, UCMJ, preliminary hearing officer's report;
- The impact on the disposition decision of a determination at the Article 32, UCMJ, preliminary hearing that the evidence was not sufficient to establish probable cause to believe that the accused committed a penetrative sexual offense;
- The sufficiency of probable cause as a minimum standard for referral of a case to trial by court-martial;
- The usefulness of documentation by legal advisors of the sufficiency of the admissible evidence in a case to obtain and sustain a conviction; and
- The usefulness to convening authorities of requiring staff judge advocates to provide the reasoning supporting their legal conclusions in their written Article 34, UCMJ, pretrial advice.

⁷⁴ *Id.* at 27.

⁷⁵ *Id.* at 28–42.

II. CASE REVIEW PROJECT METHODOLOGY

A. Case Data Provided by the MCIOs

Once the MCIOs provided the DAC-IPAD with responses to the October 2017 RFI, the staff determined that some of the data provided were beyond the scope of the request. For example, the MCIOs included cases involving victims under the age of 16 or non–Service member subjects. These cases were excluded from the project. The staff also excluded cases in which the subject was from a different branch of Service than the investigating MCIO, because those cases were most likely transferred to the subject’s branch for a full investigation. In addition, the staff excluded cases in which the subject was a member of the Reserves or National Guard not on active duty at the time of the offense, cases in which the military lacked jurisdiction at the time of disposition, and cases in which a civilian authority was prosecuting the Service member.⁷⁶ If an investigation involved multiple subjects or victims, the CRSC counted the investigation with respect to each subject or victim as a separate “case” for purposes of the CRSC review.⁷⁷ For example, an investigative file with one subject and three victims was counted as three cases; an investigative file with two subjects and one victim was counted as two cases; and so on.

The resulting list initially included 2,055 cases. However, as the in-depth reviews of the case files proceeded, reviewers discovered additional cases that did not meet the CRSC review criteria, as well as cases involving multiple subjects or victims. Table II.1 shows how taking these factors into account reduced the total number reviewed to 1,904 cases.

TABLE II.1. PENETRATIVE SEXUAL OFFENSE CASES CLOSED IN FY 2017 INVOLVING ADULT VICTIMS AND SERVICE MEMBER SUBJECTS IDENTIFIED FOR REVIEW AFTER EXCLUSIONS AND ADJUSTMENTS (N=1,904)

	PSO Cases Identified from MCIO Lists (FY 2017)	Cases Excluded for Not Meeting Committee Criteria	Adjustments for Cases with Multiple Subject–Victim Combinations	Total Cases Reviewed
Army	914	93	N/A*	821
Marine Corps	289	29	3	263
Navy	400	22	9	387
Air Force	423	49	28	403**
Coast Guard	29	2	3	30
Total	2,055	195	43	1,904

* The Army accounted for multiple subject–victim cases in its response to the RFI.

** One additional Air Force case was reviewed that was not included in the Air Force’s RFI response.

⁷⁶ See DAC-IPAD Annual Report March 2018, *supra* note 8, at 17. The staff also initially excluded cases in which the MCIOs designated the subject as retired; however, reviewers realized during the course of the case reviews that some of the remaining investigations still included Service members who were retired at the time of the investigation. Ultimately, the CRSC determined they would review these cases since the case files were provided to the Committee. The retired status of these subjects is noted in the database. Retired service members remain subject to the UCMJ and can be tried by court-martial for offenses committed while on active duty or in retired status. See 10 U.S.C. § 802(a)(4) (Article 2(a)(4), UCMJ) (2019).

⁷⁷ In their case lists, the MCIOs included a separate entry for each subject in an investigation. Therefore, if one investigation had multiple subjects, the case was indicated multiple times on the case list for each separate subject. However, during the course of the reviews, the reviewers realized that some cases that had not been designated as multi-subject by the MCIOs in the case lists still involved multiple subjects.

B. Case Data Collection and Review Process

At the DAC-IPAD's request, the MCIOs provided the CRSC members and professional staff with copies of the unredacted investigative files for review at the DAC-IPAD office in Arlington, Virginia.⁷⁸ These files were made available either in paper or electronic form. They typically contained the complete report of investigation; verbatim written statements from key witnesses; written summaries of oral and written statements made by the complainant, the subject, and other witnesses; a description of the crime scene; evidentiary photographs; digital evidence; forensic laboratory test results; agent notes; and, in some cases, video recordings of interviews.⁷⁹ Most investigative files also included summaries of the command's initial disposition decision and the final outcome of any disciplinary or legal proceedings. In addition, some of the investigative files contained documentation of subject fingerprints, probable cause determinations, and legal memoranda from a judge advocate. Because investigative case files contain personal and sensitive information, all files provided by the MCIOs were carefully safeguarded as required by law and Department of Defense (DoD) policy.⁸⁰ All cases were reviewed on-site, and the CRSC members traveled to the DAC-IPAD office for this review.

For cases involving one or more preferred penetrative sexual offense charges, reviewers not only examined the contents of the investigative file but also reviewed relevant case documents retrieved from the DAC-IPAD's sexual assault case adjudication database.⁸¹ These documents included the charge sheet, report of the Article 32, UCMJ, preliminary hearing officer, the staff judge advocate's Article 34, UCMJ, pretrial advice and the general court-martial convening authority's decision on referral, and the Report of Result of Trial, which indicated whether the penetrative sexual offense was tried to verdict and, if so, whether the accused was found guilty or not guilty of that offense.

Before the review commenced, the CRSC created a comprehensive data collection checklist to record key pieces of information about each case. The checklist documented two types of information—facts stated in the investigative files and reviewers' subjective assessments of certain aspects of the case—for a total of 231 data points recorded for every case.⁸² During the case review process, if reviewers had questions concerning contradictory or ambiguous information, the staff requested clarification from the Military Services to be sure the information was recorded correctly. The DAC-IPAD professional staff entered all of the case information on each checklist into a secure electronic database. The data extracted from the database were reviewed for accuracy.

The CRSC members reviewed a total of 329 of the 1,904 cases, including those in the initial random sample; the DAC-IPAD professional staff reviewed all 1,904 cases. In reviewing the cases, the staff members—many of whom have served as judge advocates, some for decades, with experience as military prosecutors, defense counsel, and military trial and appellate judges—drew on their collective military and civilian criminal justice experience.

Once the CRSC began reviewing the actual case files in February 2018, reviewers discovered that the process of reviewing and collecting data from investigative files was extremely time-intensive. Not all investigative files included the same documents and the content varied across the Military Services. For example, each Military Service documents command

78 Case files were provided to the DAC-IPAD in paper copies, on CD-ROMs, on external hard drives, or by other secure electronic method.

79 Given its time constraints, the CRSC elected not to review all video recordings provided.

80 DEP'T. OF DEF. DIR. 5400.11, DoD PRIVACY PROGRAM (Oct. 29, 2014), *available at* <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/540011p.pdf>, *superseded by* DEP'T. OF DEF. INSTR. 5400.11, DoD PRIVACY AND CIVIL LIBERTIES PROGRAMS (Jan. 29, 2019), *available at* <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/540011p.pdf>.

81 The DAC-IPAD's case adjudication database records case documents for all penetrative and contact sexual offense cases involving adult victims and Service member subjects in cases for which charges (for any offense) were preferred.

82 *See* Appendix H for the complete list of items documented for every MCIO case file reviewed by the Committee and staff.

disposition decisions differently. Command disposition documentation also was often missing from the investigative files provided to the CRSC and had to be specifically requested from the Service MCIOs.

Each reviewer might need several hours to complete a thorough examination of a case that did not result in a preferred penetrative sexual offense charge. The most time-consuming cases to review were those in which multiple subjects or victims were involved or which resulted in a preferred penetrative sexual offense charge. In addition, the process of requesting, physically inventorying, collecting, maintaining, and returning case files and missing documents added considerably to the time required to complete the case reviews.

C. Subjective and Empirical Data Analysis

CRSC members organized their review of each investigative file around two key objectives—a subjective analysis and an empirical analysis. The subjective analysis focused on the reasonableness of commanders' initial disposition decisions. Specifically, reviewers assessed the reasonableness of a commander's decision whether to prefer a penetrative sexual offense charge or to take no action on that offense.⁸³ In addition, in all cases that resulted in a preferred penetrative sexual offense charge, reviewers assessed (1) whether the evidence in the materials reviewed was sufficient to establish probable cause to believe that the subject committed a penetrative sexual offense and (2) whether the admissible evidence in the materials reviewed was sufficient to obtain and sustain a conviction on the penetrative sexual offense. The results of these subjective assessments are found in Parts IV and V of this report.

The CRSC also conducted empirical analyses focused on case and investigation characteristics and on the relationships between these characteristics and case outcomes, in particular

- Evaluating descriptive data for each Military Service in order to better understand characteristics of penetrative sexual offense cases in the military, including characteristics of the victims, subjects, offenses, and investigations;
- Conducting bivariate and multivariate analyses for each individual Military Service and for the Military Services combined⁸⁴ in order to better understand differences between cases that resulted in a preferred penetrative sexual offense charge and cases in which the initial disposition authority took no action for the penetrative sexual offense;
- Conducting bivariate and multivariate analyses for each individual Military Service and for the Military Services combined in order to illuminate differences between cases in which victims participated in the investigation and cases in which victims declined to participate; and
- Conducting bivariate and multivariate analyses to better understand which case characteristics affected the outcome of cases tried to verdict (either conviction or acquittal). Given the number of convictions, the analyses for case outcomes were conducted only for the combined Military Services.

The bivariate and multivariate analyses were prepared by a professional criminologist and statistician retained by the DAC-IPAD, Dr. William Wells.⁸⁵ Before conducting these analyses, the DAC-IPAD staff, with assistance from Dr. Wells,

⁸³ See *supra* note 32 addressing the 51 administrative action and nonjudicial punishment cases that were not assessed for reasonableness.

⁸⁴ Service-specific bivariate or multivariate analysis for the Coast Guard is not included because the number of cases from which to draw data was too low for meaningful assessment. A descriptive analysis of the Coast Guard cases is included, and the Coast Guard is also included in the overall bivariate and multivariate analysis.

⁸⁵ Dr. William Wells is a professor and department chair in the Department of Criminal Justice and Criminology at Sam Houston State University. He also serves as Research Director for the Law Enforcement Management Institute of Texas. Dr. Wells's Military Service-specific analyses are located in Appendix F.

reviewed the data from each Military Service to identify anomalies and ensure that data were entered accurately into the database. The results of Dr. Wells's empirical analysis are found in Part VI and in Appendix F of this report.

III. INITIAL DISPOSITION AUTHORITY DECISIONS FOR ADULT PENETRATIVE SEXUAL OFFENSE CASES CLOSED IN FY 2017

A. Background and Methodology for Classifying Disposition Decisions

Drawing on the CRSC members' discussions during their strategic planning sessions and on their analysis of the Military Services' responses to the RFIs, the CRSC decided to categorize the investigative files according to the initial disposition authority's decision for the penetrative sexual offense, as outlined by R.C.M. 306(c) and R.C.M. 307.⁸⁶ In identifying a case's disposition, the CRSC focused specifically on the commander's action with respect to the penetrative sexual offense, dividing cases into three disposition categories.

The first disposition category described in this report comprises those cases in which the command took no action with respect to the penetrative sexual offense. "No action" is an authorized disposition under R.C.M. 306(c): it means that the allegation was investigated by the relevant MCIO, a report of investigation was completed and submitted to the initial disposition authority, and they decided not to take any administrative, nonjudicial, or judicial action for that offense. If a report of a penetrative sexual offense was investigated and the initial disposition authority took no action on the alleged penetrative sexual offense but instead took adverse action for another non-penetrative sexual or non-sexual offense, the case was still categorized as a "no action" case.

The second disposition category includes those cases in which the initial disposition authority took adverse administrative action or imposed nonjudicial punishment (NJP) for the penetrative sexual offense pursuant to R.C.M. 306(c) without preferring charges for that offense. This category is identified in Table III.1 as "administrative action/NJP." The third disposition category consists of those cases that resulted in preferred penetrative sexual offense charges pursuant to R.C.M. 307.⁸⁷

The reviewers discovered that the case disposition information provided by the MCIOs in their response to the RFI regarding the numbers and outcomes of penetrative sexual offense cases frequently did not reflect the disposition of the penetrative sexual offense. Instead, the investigative file indicated that the adverse action imposed was for a different, usually lesser, offense. With few exceptions, the MCIO's description of case dispositions for the alleged penetrative sexual offense as "administrative action" or "nonjudicial punishment" in reality was an adverse action imposed on the subject for an offense supported by evidence in the investigative file for something other than the penetrative sexual offense, such as sexual contact, assault, underage drinking, adultery, or fraternization. For this reason, most of the cases that were originally identified by the MCIOs as "administrative action" or "nonjudicial punishment" were recategorized by reviewers to align with the actual disposition of the penetrative sexual offense.

86 See DAC-IPAD SECOND ANNUAL REPORT, *supra* note 50, at 23. Disposition options are outlined in R.C.M. 306(c) of the Manual for Courts-Martial; they include no action, administrative action, nonjudicial punishment, and the dismissing or forwarding of preferred charges. 2016 MCM, *supra* note 13, R.C.M. 306(c). The preferral of charges is outlined in R.C.M. 307. *Id.* at R.C.M. 307.

87 See DAC-IPAD SECOND ANNUAL REPORT, *supra* note 50, at 23. See also 2016 MCM, *supra* note 13, R.C.M. 307.

B. Initial Disposition Authority Decisions

The CRSC collected data on the commander’s initial disposition decision for each of the 1,904 cases reviewed that involved a penetrative sexual offense allegation with an adult victim against a Service member and closed in FY17. Table III.1 reflects the commander’s initial disposition decisions for each Military Service. The data indicate that across the Military Services, 70.2% of the 1,904 FY17 penetrative sexual offense investigations resulted in “no action” being taken by the initial disposition authority for that offense. A penetrative sexual offense charge was preferred against the subject of the investigation in 27.2% of the 1,904 cases. The initial disposition authority took adverse administrative action—including administrative separations and letters of reprimand—or imposed nonjudicial punishment based on the penetrative sexual offense in 51 (2.7%) of 1,904 cases.

TABLE III.1. INITIAL DISPOSITION AUTHORITY DECISIONS IN CASES CLOSED IN FY 2017 INVOLVING A PENETRATIVE SEXUAL OFFENSE ALLEGATION BY AN ADULT VICTIM AGAINST A SERVICE MEMBER

	No Action		Administrative Action/NJP		Preferred	
	n	%	n	%	n	%
Army (N=821)	597	72.7	19	2.3	205	25.0
Marine Corps (N=263)	190	72.2	4	1.5	69	26.2
Navy (N=387)	277	71.6	21	5.4	89	23.0
Air Force (N=403)	256	63.5	7	1.7	140	34.7
Coast Guard (N=30)	16	53.3	0	0.0	14	46.7
Total (N=1,904)	1,336	70.2	51	2.7	517	27.2

Note: Percentages do not equal 100% due to rounding.

Finding 88: In the 1,904 cases reviewed by the Case Review Subcommittee (CRSC) involving a military criminal investigation of a penetrative sexual offense alleged to have been committed by an active duty Service member against an adult victim,

- 1,336 (70.2%) of the cases, resulted in the initial disposition authority taking no administrative, nonjudicial, or judicial action against the subject for the penetrative sexual offense;
- 517 (27.2%) of the cases, resulted in preferred penetrative sexual offense charges; and
- 51 (2.7%) of the cases, resulted in adverse administrative action or nonjudicial punishment for the penetrative sexual offense.

C. Post-preferred Command and Convening Authority Dispositions

As shown in Table III.2, of the 517 cases closed in FY17 across all of the Military Services that resulted in a preferred adult penetrative sexual offense charge, a total of 235 cases (45.5%) resulted in a verdict at trial on the penetrative sexual offense —either a conviction or an acquittal on that offense; 144 (61.3%) resulted in an acquittal and 91 (38.7%) resulted in a conviction for the penetrative sexual offense. The conviction cases include those in which the subject

pleaded guilty to the penetrative sexual offense.⁸⁸ The remaining 282 (54.5%) did not go to trial but resulted instead in an administrative separation, a discharge in lieu of trial by court-martial, or other dismissal of the penetrative sexual offense—either outright or as required by a pretrial agreement entered into by the convening authority and the accused Service member.⁸⁹

TABLE III.2. POST-PREFERRAL DISPOSITION REGARDING THE ADULT PENETRATIVE SEXUAL OFFENSE FOR CASES CLOSED IN FY 2017

	Conviction		Acquittal		Administrative Separation		Discharge in Lieu of Court-Martial		Dismissed Outright or with Pretrial Agreement	
	n	%	n	%	n	%	n	%	n	%
Army (N=205)	42	20.5	52	25.4	1	0.5	50	24.4	60	29.3
Marine Corps (N=69)	11	15.9	15	21.7	1	1.4	1	1.4	41	59.4
Navy (N=89)	15	16.9	25	28.1	6	6.7	6	6.7	37	41.6
Air Force (N=140)	18	12.9	50	35.7	3	2.1	26	18.6	43	30.7
Coast Guard (N=14)	5	35.7	2	14.3	0	0.0	0	0.0	7	50.0
Total (N=517)	91	17.6	144	27.9	11	2.1	83	16.1	188	36.4

Note: Percentages do not equal 100% due to rounding.

Note: A case is considered “dismissed” if a penetrative sexual offense charge was preferred but the charge did not result in a verdict, whether referred or not.

In 282 cases in which the penetrative sexual offense charge was dismissed, convening authorities followed several different courses of action, as shown in the latter three columns of Table III.2. In 11 (2.1%) of the 517 cases with a preferred penetrative sexual offense charge, the convening authority dismissed the penetrative sexual offense charge and the command administratively separated the accused for the penetrative sexual offense.⁹⁰ In these cases, reviewers observed that sometimes the convening authority dismissed the penetrative sexual offense charge after the victim declined to further participate in a prosecution or expressed support for the alternative action. Administrative separations for misconduct may result in an accused being separated with either a general discharge under honorable conditions or an other than honorable discharge.⁹¹

88 In 9.4% of cases with a court-martial result, the conviction was based on a guilty plea to a penetrative sexual offense.

89 When a convening authority decides not to pursue a preferred charge, they can terminate the pending charge by dismissing it prior to referral in accordance with R.C.M. 401(c) or post-referral in accordance with R.C.M. 907. 2016 MCM, *supra* note 13, R.C.M. 401(c), 907. When the convening authority elects to approve an administrative separation, including a separation in lieu of trial by general court-martial, they take the administrative action instead of electing to continue pursuing the preferred charge. *See infra* notes 90–95 and accompanying text for a more complete discussion of actions available to commanders and convening authorities that are alternatives to continuing to pursue a trial by court-martial.

90 Cases were categorized as post-preferral administrative separations when the command initiated administrative separation action against the accused for a penetrative sexual offense, regardless of whether the administrative separation action resulted in separation. In some cases, administrative separation proceedings resulted in recommendations that the accused be retained in military service.

91 AIR FORCE INSTR. 36-3208, ADMINISTRATIVE SEPARATION OF AIRMEN (July 1, 2020), §§ 1.18, 3.6, 5H; AIR FORCE INSTR. 36-3207, SEPARATING COMMISSIONED OFFICERS (July 9, 2004, Incorporating Through Change 6, Oct. 18, 2011); NAVY MILITARY PERSONNEL MANUAL (MILPERSMAN) (Aug. 22, 2002), §§ 1910-138, 1910-140, 1910-142, 1920-190; ARMY REG. 635-200, ACTIVE DUTY ENLISTED ADMINISTRATIVE SEPARATIONS (Dec. 19, 2016), Chapter 3; ARMY REG. 600-8-24, OFFICER TRANSFERS AND DISCHARGES (Feb. 8, 2020), ¶ 1-23; COMDTINST M1000.4, MILITARY SEPARATIONS MANUAL (Aug. 2018), Ch. 1A-1B.

In 83 (16.1%) of the 517 cases with a preferred penetrative sexual offense charge, the convening authority dismissed the penetrative sexual offense charge in exchange for a discharge in lieu of trial by general court-martial. Discharge in lieu of a court-martial is a type of pretrial diversion unique to the military: it allows an accused enlisted Service member or officer to be discharged from military service, often with an other than honorable discharge, in exchange for dismissal of the charges. While there are some differences among the Services, generally the accused must initiate the request for discharge in lieu of court-martial anytime after preferral or referral of charges and admit guilt to one or more of the charged offenses, or to a lesser included offense of one of the charged offenses that authorizes as punishment a bad-conduct or dishonorable discharge or a dismissal, and agree to be separated as a result of that conduct.⁹² In these cases, the accused is often charged with offenses in addition to the penetrative sexual offense charge, and the accused may need to specify the conduct to which they are admitting guilt. Officers facing trial by general court-martial submit to the Secretary of their Military Department a request to resign in lieu of trial by general court-martial.⁹³ When the request is approved, by either the special or general court-martial convening authority (for enlisted personnel) or the Military Department Secretary (for officers), all charges are dismissed and the accused is generally separated with a less than honorable discharge and may be barred from future military service.⁹⁴

Finally, in 188 (36.4%) of the 517 cases with a preferred penetrative sexual offense charge, the convening authority dismissed the penetrative sexual offense charge either outright or as part of a pretrial agreement.⁹⁵ For example, in some of the cases, the special court-martial convening authority dismissed the penetrative sexual offense charge following the Article 32, UCMJ, preliminary hearing, in accordance with the preliminary hearing officer's recommendation. In other cases, the general court-martial convening authority referred the penetrative sexual offense charge to trial by general court-martial and then later withdrew and dismissed it.⁹⁶

Reviewers observed that the terms of pretrial agreements varied widely among these cases. Some included agreements by the military judge to dismiss the penetrative sexual offense charge after acceptance of pleas of guilty to lesser or different offenses than the charged penetrative sexual offense⁹⁷ and a limitation on the sentence that could be imposed for the offense to which the accused pled guilty. Some provided for referral of lesser charges to a lower court-martial level (such as a special court-martial or summary court-martial) in exchange for a guilty plea to those offenses at the lower forum. Some included agreements not to refer the charge to trial by court-martial, and instead to administer nonjudicial punishment for a lesser charge. In many cases involving nonjudicial punishment, the accused would admit guilt to a non-penetrative sexual offense, followed by a waiver of an administrative separation board and subsequent less than honorable discharge.

The accused benefits from such agreements involving dismissal of the penetrative sexual offense charge by avoiding conviction for that offense, which requires registration as a sex offender. The government benefits because such

92 AIR FORCE INSTR. 36-3208, *supra* note 91, at Ch. 4; AIR FORCE INSTR. 36-3207, *supra* note 91, Section 2C; MILPERSMAN, *supra* note 91, §§ 1910-106, 1920-190, 1920-210; ARMY REG. 635-200, *supra* note 91, at Ch. 10; ARMY REG. 600-8-24, *supra* note 91, ¶ 3-9; COMDTINST M1000.4, *supra* note 91, at Chs. 1A-1B.

93 AIR FORCE INSTR. 36-3207, *supra* note 91, § 2C; MILPERSMAN, *supra* note 91, §§ 1920-190, 1920-210; ARMY REG. 600-8-24, *supra* note 91, ¶ 3-9; COMDTINST M1000.4, *supra* note 91, at Ch. 1A.

94 See *infra* Table V.6 and accompanying text for additional data on administrative separations in lieu of courts-martial.

95 See 2016 MCM, *supra* note 13, R.C.M. 401(c). See also *id.* at R.C.M. 401(c)(1) (Discussion), R.C.M. 306(c)(1) (Discussion). Dismissal after preferral does not bar later disposition of the offense. See *id.* at R.C.M. 604. Charges that have been referred to court-martial may be withdrawn and dismissed at any time before announcement of findings. See *id.* at R.C.M. 705(b)(2).

96 These dismissals may be with prejudice, but in most cases are without prejudice, meaning that the accused is still subject to prosecution for the offense in the future if, for example, they violate the pretrial agreement. The accused also could be subject to future prosecution if the dismissal was due to evidentiary issues and then additional admissible evidence later comes to light. See *id.* at R.C.M. 604. See also *id.* at R.C.M. 907(a) (Discussion).

97 See generally *id.* at R.C.M. 705. In many cases the pretrial agreements allowed for the plea of guilty to different offenses such as adultery, fraternization, underage drinking, assault consummated by a battery, or violation of an order or regulation.

agreements often respect the victim's preference regarding the outcome of their case. In addition, the agreements hold the accused accountable for their misconduct even when evidentiary difficulties would complicate prosecution of the penetrative sexual offense in a contested trial by court-martial.

Finding 89: Of the 517 adult-victim cases closed in FY17 resulting in preferred penetrative sexual offense charges against the Service member,

- 235 (45.5%) of the cases, resulted in a verdict at trial on the penetrative sexual offense;
- 11 (2.1%) of the cases, resulted in the accused receiving an administrative separation for the penetrative sexual offense;
- 83 (16.1%) of the cases, resulted in the accused receiving a discharge in lieu of court-martial for the penetrative sexual offense; and
- 188 (36.4%) of the cases, resulted in dismissal of the penetrative sexual offense either outright or pursuant to a pretrial agreement.

Finding 90: Of the 235 adult-victim cases closed in FY17 resulting in preferred penetrative sexual offense charges with a verdict at trial on that offense,

- 144 (61.3%) of the cases, resulted in an acquittal for the penetrative sexual offense; and
- 91 (38.7%) of the cases, resulted in a conviction for the penetrative sexual offense.

IV. REASONABLENESS OF INITIAL DISPOSITION AUTHORITY DECISIONS REGARDING WHETHER TO PREFER AN ADULT PENETRATIVE SEXUAL OFFENSE CHARGE OR TO TAKE NO ACTION AGAINST THE SUBJECT ON THAT OFFENSE

A. Background for Assessing the Reasonableness of Disposition Decisions

Over the past decade, the military has been criticized for taking insufficient action against Service members accused of sexual offenses.⁹⁸ Reflecting this concern, in 2014 and the years since, the United States Senate has considered legislation to remove court-martial disposition authority from commanders in sexual offense cases and give that authority to military prosecutors instead.⁹⁹ Such a legal change would require a dramatic and unprecedented restructuring of the military justice process. But until now, there has never been a comprehensive or systematic analysis of individual military sexual offense cases for the specific purpose of determining whether commanders and convening authorities are making appropriate disposition decisions, or if, indeed, there is a systemic problem in how they exercise this discretion.

The Judicial Proceedings Panel (JPP), a predecessor panel to the DAC-IPAD, was directed by Congress in 2013 to conduct this type of detailed analysis.¹⁰⁰ However, that panel quickly discovered that reliable data on sexual offense case dispositions and sentencing across the Military Services were not available from the Department of Defense. Without reliable data or access to investigative case files, and thus unable to review the facts and evidence in individual cases, the JPP determined that it could not make qualitative assessments of military sexual offense cases.¹⁰¹ Therefore, the DAC-IPAD, which Congress specifically directed to look at individual cases, followed up on the previous congressional directive to the JPP and undertook this comprehensive review of sexual offense investigative files in order to evaluate the reasonableness of command and convening authority disposition decisions in penetrative sexual offense cases.

98 *See supra* note 65.

99 *See* Military Justice Improvement Act of 2013, S. Res. 1752, 113th Cong. § 2(a) (2013). Congress directed the Response Systems to Adult Sexual Assault Crimes Panel (RSP) to make “an assessment of the impact, if any, that removing from the chain of command any disposition authority regarding charges preferred under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), would have on overall reporting and prosecution of sexual assault cases.” FY14 NDAA, *supra* note 50, § 1731(a)(1)(A). The RSP recommended that Congress not adopt the Military Justice Improvement Act to modify the authority vested in convening authorities to refer sexual assault charges to courts-martial. *See* REPORT OF THE RESPONSE SYSTEMS TO ADULT SEXUAL ASSAULT CRIMES PANEL 2, 22 (June 2014) *available at* http://responsesystemspanel.whs.mil/public/docs/Reports/00_Final/RSP_Report_Final_20140627.pdf. *See also* FY20 NDAA, *supra* note 1, § 540F (directing the Secretary of Defense to submit a report “on the feasibility and advisability of an alternative military justice system in which determinations as to whether to prefer or refer charges for trial by court-martial for any offense [under the UCMJ for which the maximum punishment authorized includes confinement for more than one year] is made by a judge advocate in grade O-6 or higher who has significant experience in criminal litigation and is outside of the chain of command of the member subject to the charges”).

100 *See* National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632, § 576(d)(2) (2013) (tasking the JPP with assessing the appropriateness and consistency of case dispositions, outcomes, and punishments).

101 JUDICIAL PROCEEDINGS PANEL REPORT ON STATISTICAL DATA REGARDING MILITARY ADJUDICATION OF SEXUAL ASSAULT OFFENSES 27 (Apr. 2016) [JPP REPORT ON STATISTICAL DATA], *available at* http://jpp.whs.mil/public/docs/08-Panel_Reports/05_JPP_StatData_MilAdjud_SexAsslt_Report_Final_20160419.pdf (“Without knowing more about the facts of individual cases, the JPP cannot assess the appropriateness of case disposition decisions. Specific factors in each case, including the nature of the offenses, any mitigating or extenuating circumstances, the willingness of a victim to testify, and the strength of available evidence, affect disposition decisions. It is neither possible nor appropriate to make collective assessments based solely on the general nature of charges and the forum for disposition.”).

The CRSC drew on its members' extensive collective expertise in sexual offense case investigation and adjudication to assess whether, from an investigatory and legal standpoint, commanders are systemically exercising their authority to dispose of sexual offenses appropriately under the UCMJ, particularly when the initial disposition authority declines to prefer charges for an alleged penetrative sexual offense and instead takes no action on that offense. While such assessments are inherently subjective, the collective judgment of experienced civilian prosecutors and defense counsel provides an important way to gauge the fairness of the military's criminal justice system with respect to how these cases are handled.

In making its assessment, the CRSC cannot and do not relitigate or second-guess any single case or decision. CRSC members recognize that they are not in a position to identify any individual case as having rightly or wrongly resulted in the referral or non-referral of a penetrative sexual offense charge, because there are many variables that cannot be gleaned from a review of an investigative file alone. However, on the basis of the CRSC's review of 1,904 individual case files, the CRSC members did develop a sense of whether commanders charged with making referral decisions in penetrative sexual offense cases were doing so in a manner consistent with the CRSC members' own experience and judgment. In addition, the reviewers could identify any concerning patterns regarding the initial disposition authority's decision making in penetrative sexual offense cases.

B. Methodology for Assessing the Reasonableness of Disposition Decisions

As explained in Section II.B, CRSC members and DAC-IPAD professional legal staff personally reviewed each of the 1,904 investigative cases closed in FY17. In assessing the "reasonableness" of the disposition decision in individual cases—that is, whether the disposition decision was within an appropriate zone of discretion—the members and staff were informed by their diverse perspectives and extensive expertise in criminal law.

The CRSC members recognized that what is "reasonable" to one person may not be "reasonable" to another. Therefore, every investigative case file in which a DAC-IPAD professional staff member determined that the command's initial disposition decision was not supported by the evidence reviewed in the investigative file was reviewed two more times—by a CRSC member and by a DAC-IPAD staff attorney. Each reviewer made an independent assessment based on the same facts and recorded their individual comments and opinions. For the subjective questions of reasonableness, probable cause, and whether the admissible evidence was sufficient to obtain and sustain a conviction, only the determination made by the CRSC member was recorded in such cases.

In the 1,336 cases in which the investigation of a penetrative sexual offense complaint resulted in no action taken for that offense, the reviewers evaluated whether the decision was reasonable. Reviewers did not assess whether they would have reached a different conclusion in a specific case; reviewers assessed whether the decision regarding the penetrative sexual offense, based on all of the evidence reviewed in the investigative file, was within the range of appropriate outcomes.

In the 517 cases in which the investigation resulted in a preferred penetrative sexual offense charge, the reviewers assessed whether the decision to prefer charges and initiate a criminal justice proceeding was reasonably supported by the evidence reviewed in the investigative file.

The CRSC determined that the materials provided for review did not include sufficient information to allow a meaningful review of the reasonableness of post-referral actions, such as discharge in lieu of court-martial, dismissal of charges either outright or as part of a pretrial agreement, referral of charges to trial by court-martial, or entrance into a pretrial agreement. It therefore decided not to report reviewer assessments of the reasonableness of post-referral actions. Thus, for this project, the CRSC focused on whether the penetrative sexual offense charge was supported by evidence sufficient to establish probable cause to believe that the accused committed that offense, and whether the admissible evidence was sufficient to obtain and sustain a conviction on the penetrative sexual offense charge. Section V of this report presents those findings.

C. Reasonableness of Initial Disposition Authority’s Decision to Take No Action Against the Subject on the Adult Penetrative Sexual Offense Allegation

In 1,336 of the 1,904 cases reviewed that were closed in FY17, the initial disposition authority took no action against the subject for the alleged penetrative sexual offense. Table IV.1 provides the CRSC’s determinations of reasonableness in these cases for each Military Service. As explained earlier in the report, “no action” is an authorized disposition under R.C.M. 306(c): it means that the allegation was investigated by the relevant MCIO, a report of investigation was completed and submitted to the initial disposition authority, and they decided not to take any administrative, nonjudicial, or judicial action for that offense.

The CRSC determined that the initial disposition authority’s decision to take no action against the subject for a penetrative sexual offense was reasonable in 1,316 (98.5%) of the 1,336 no action cases. With very few exceptions, the CRSC determined that in these cases, the materials in the investigative file provided for review supported a determination that the commander had acted within a permissible zone of discretion in the disposition decision for the penetrative sexual offense.

TABLE IV.1. REASONABLENESS OF INITIAL DISPOSITION AUTHORITY’S DECISION TO TAKE NO ACTION AGAINST THE SUBJECT ON THE ADULT PENETRATIVE SEXUAL OFFENSE ALLEGATION

	Reasonable to Take No Action?			
	Yes		No	
	n	%	n	%
Army (N=597)	588	98.5	9	1.5
Marine Corps (N=190)	184	96.8	6	3.2
Navy (N=277)	272	98.2	5	1.8
Air Force (N=256)	256	100.0	0	0.0
Coast Guard (N=160)	16	100.0	0	0.0
Total (N=1,336)	1,316	98.5	20	1.5

Finding 91: The initial disposition authority’s decision to take no administrative, nonjudicial, or judicial action against a Service member for an alleged penetrative sexual offense was reasonable in 1,316 (98.5%) of 1,336 of the adult-victim cases closed in FY17.

D. Reasonableness of Initial Disposition Authority’s Decision in Cases Resulting in a Preferred Adult Penetrative Sexual Offense Charge

In 517 (27.2%) of the 1,904 cases reviewed that were closed in FY17, a penetrative sexual offense charge was preferred against the subject of the investigation. Table IV.2 provides the CRSC’s reasonableness determinations for each Military Service in the 517 cases resulting in a preferred penetrative sexual offense charge. The CRSC determined that the decision to prefer a penetrative sexual offense charge was reasonable in 486 (94.0%) of the 517 cases. The CRSC determined that overall, in the overwhelming majority of these cases, the material reviewed in the investigative file supported a determination that the commander acted within a permissible zone of discretion in the disposition decision for the penetrative sexual offense.

**TABLE IV.2. REASONABLENESS OF INITIAL DISPOSITION AUTHORITY'S DECISION IN CASES RESULTING
IN A PREFERRED ADULT PENETRATIVE SEXUAL OFFENSE CHARGE**

	Reasonable to Prefer?			
	Yes		No	
	n	%	n	%
Army (N=205)	200	97.6	5	2.4
Marine Corps (N=69)	66	95.7	3	4.3
Navy (N=89)	80	89.9	9	10.1
Air Force (N=140)	126	90.0	14	10.0
Coast Guard (N=15)	14	100.0	0	0.0
Total (N=517)	486	94.0	31	6.0

Notably, while the CRSC found that the decision to prefer a penetrative sexual offense charge was reasonable in nearly every case in the Army, Marine Corps, and Coast Guard, reviewers found that in 10% of Navy and Air Force cases, the decision to prefer a penetrative sexual offense charge was not reasonable, based on the case materials provided for review. Though there may be evidence and information that was not contained in the materials provided for review, these data raise the question of what legal analysis judge advocates provided to commanders making their initial disposition decisions pursuant to R.C.M 306(c).¹⁰²

In the military justice system, preferral of charges is a significant step in initiating criminal proceedings against a Service member.¹⁰³ The standard to prefer charges is set forth in Article 30, UCMJ: the individual swearing to the charges must attest that they have personal knowledge of, or have investigated, the matters set forth in the charges, and that the matters set forth in the charges are true to the best of their knowledge and belief.¹⁰⁴ The decision to prefer charges does not require a consideration of the higher burden imposed by the legal standards for referral to a court-martial (probable cause) or conviction at court-martial (proof beyond a reasonable doubt).¹⁰⁵

All reviewers considered the Article 30, UCMJ, standard for preferring charges when they assessed the reasonableness of the initial disposition authority's decision. In addition, reviewers also considered the availability and admissibility of

102 See also DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 34–35 (“While judge advocates often provided investigators advice on probable cause for submission of fingerprints and DNA to federal databases, it is unclear what, if any, advice on appropriate disposition factors, including advice on probable cause, judge advocates provided to the initial disposition authority.”).

103 REPORT OF THE MILITARY JUSTICE REVIEW GROUP, PART I: UCMJ RECOMMENDATIONS 296 (Dec. 22, 2015) [MJRG REPORT], available at <https://ogc.osd.mil/mjrg.html> (“Military charging practice under Article 30(a) and R.C.M. 307 combines aspects of the civilian complaint under Fed. R. Crim. P. 3 and the indictment or information under Fed. R. Crim. P. 7. . . . And like the indictment in federal civilian practice, preferral of charges under Article 30(a) formally initiates a criminal matter against an accused, putting the accused on notice of potential prosecution, and generally triggering his right to counsel under service regulations. In other ways, however, charges and specifications under Article 30(a) and R.C.M. 307 function more like the complaint under Fed. R. Crim. P. 3. . . . Also like the complaint, preferred charges and specifications alone are not sufficient to bring an accused to trial. In both systems, a second step is needed: the referral of charges to a court-martial under Article 34, and the filing of the information or indictment with a federal district court under Fed. R. Crim. P. 7.”).

104 10 U.S.C. § 830(c) (Article 30(c), UCMJ) (2019). Although the DAC-IPAD reviewed cases under the version of Article 30 in effect in 2016, the Military Justice Act of 2016 amended Article 30 to clarify “the language and organization of Article 30 in the context of current practice and related statutory provisions, with no substantive changes.” MJRG REPORT, *supra* note 103, at 291. Compare 10 U.S.C. § 830 (Article 30, UCMJ) (2016) with 10 U.S.C. § 830 (Article 30, UCMJ) (2019).

105 2016 MCM, *supra* note 13, R.C.M. 601(d) (noting that the convening authority may refer a specification if there is probable cause). See also *id.* at R.C.M. 918(c) (“A finding of guilty of any offense may be reached only when the factfinder is satisfied that guilt has been proved beyond a reasonable doubt.”).

evidence, the willingness of the victim to testify, and the other factors set forth in the Discussion to Rule for Courts-Martial 306(b), which was the applicable guidance at the time, that commanders should have considered when determining how to dispose of criminal allegations—including by preferring charges, when appropriate.¹⁰⁶

All reviewers applied their experience and backgrounds when assessing whether, in each case, it was reasonable to prefer a penetrative sexual offense charge. Reviewers stated that though in some cases the decision to prefer charges was reasonable and within the zone of commander discretion, they themselves—given the evidence contained in the investigative file—might have decided otherwise. Regardless of the particular lens through which they assessed the cases, reviewers determined that the decision to prefer a penetrative sexual offense charge was reasonable in 94.0% of cases.

In this context, it is important to note that on January 1, 2019, the new Article 33, UCMJ, Disposition Guidance (Appendix 2.1) replaced the R.C.M. 306(b) factors.¹⁰⁷ Appendix 2.1 identifies factors that a commander or convening authority “should consider, in consultation with a judge advocate,” in order to determine whether the “interests of justice and discipline are served by trial by court-martial or other disposition in a case.”¹⁰⁸ One factor is “whether admissible evidence will likely be sufficient to obtain and sustain a conviction in a trial by court-martial[.]” Although Appendix 2.1 provides more specific guidance on assessing the strength of admissible evidence when making a preferral decision than did the Discussion to R.C.M. 306(b), commanders are not required to consider the factors it identifies; and if they do consider those factors, the weight to be afforded any factor is discretionary. The impacts, if any, of the newly implemented Article 33 guidance on preferral decisions should continue to be evaluated.¹⁰⁹

Finding 92: The decision to prefer a penetrative sexual offense charge was reasonable in 486 (94.0%) of the 517 adult-victim cases closed in FY17.

Directive 1 to Policy Subcommittee: The Policy Subcommittee review and assess how the Military Services have implemented the Article 33, UCMJ, Disposition Guidance with regard to penetrative sexual offense allegations. In particular, the Policy Subcommittee examine the uniformity of training on the Article 33 guidance across the Military Services, the content and quality of judge advocates’ advice to commanders regarding the sufficiency of admissible evidence to obtain and sustain a conviction, and the documentation of disposition decisions by commanders and convening authorities. The Policy Subcommittee consider policy changes to require mandatory consideration of the sufficiency of admissible evidence to obtain and sustain a conviction on the charged offense as part of the initial disposition decision.

106 *Id.* at R.C.M. 306(b) (Discussion).

107 2019 MCM, *supra* note 6, App. 2.1. *See also* DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 30–33, for a fuller discussion of Article 33, UCMJ, Disposition Guidance and R.C.M. 306, including a factor comparison chart. The review conducted by the CRSC applied the guidance on the availability and admissibility of evidence as set forth in the Discussion to R.C.M. 306, in effect at the time, and not those in the Article 33 Guidance, which took effect on January 1, 2019.

108 2019 MCM, *supra* note 6, App. 2.1.

109 DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 43. As discussed in the Fourth Annual Report, the Acting General Counsel of the Department of Defense requested the DAC-IPAD to review and assess the Article 33 case disposition guidance. The DAC-IPAD agreed and tasked the Policy Working Group to complete the review. This review was based on Recommendation 57 from the Committee’s predecessor panel, the Judicial Proceedings Panel. *See* JUDICIAL PROCEEDINGS PANEL REPORT ON PANEL CONCERNS REGARDING THE FAIR ADMINISTRATION OF MILITARY JUSTICE IN SEXUAL ASSAULT CASES 9 (Sept. 2017) [JPP REPORT ON FAIR ADMINISTRATION OF MILITARY JUSTICE], *available at* https://jpp.whs.mil/public/docs/08-Panel_Reports/10_JPP_Concerns_Fair_MJ_Report_Final_20170915.pdf. *See also* Service Criminal Law/Military Justice Division Combined Responses to DAC-IPAD Request for Information Set 11 (May 15, 2019) [RFI 11], ¶ B, Questions 1, 3, and 4, *available at* https://dacipad.whs.mil/images/Public/07-RFIs/DACIPAD_RFI_Set11_20190515_Questions_Answers_20191204.pdf. Some Services stated that the Article 33 guidance is modeled after existing policies and practices and generally the factors were already being considered in disposition decisions.

E. Factors Influencing an Initial Disposition Authority's Decision Regarding Whether to Prefer an Adult Penetrative Sexual Offense Charge or to Take No Action Against the Subject on That Offense

The CRSC's analysis of the question of whether the initial disposition authority's decision with regard to the penetrative sexual offense allegation was reasonable was based on the facts and evidence in each unique case. However, the CRSC identified two relevant factors that may have influenced a commander's decision regarding adverse action: whether the victim participated in the investigation and whether the victim's statement(s) standing alone alleged facts that established probable cause to believe that the subject committed a penetrative sexual offense.

Victim Participation

The first factor the CRSC identified that may affect the initial disposition decision is whether the victim declined to participate in the investigation. Table IV.3 provides the data on victim participation for each Military Service in cases closed in FY17 that did not result in a preferred penetrative sexual offense charge against the subject.

In those cases in which the initial disposition authority's decision was to take no action regarding the alleged penetrative sexual offense, victims participated in 61.8% (826 of 1336) of the investigations from the reporting of the penetrative sexual offense to the MCIO through initial disposition of the allegations.¹¹⁰ Victims declined to participate in 38.2% (510 of 1336) of those cases. The CRSC also noted the stage at which victims in 510 cases declined to participate:

- In 11.0% (56) of these cases, the victim declined to participate at the reporting stage;¹¹¹
- In 79.8% (407) of these cases, the victim declined to participate during the investigation stage;
- In 7.0% (36) of these cases, the victim declined to participate at the initial disposition decision stage;¹¹² and
- In 2.2% (11) of these cases, the materials indicated that the victim declined to participate but the timing of that declination was unclear.

In general, the case files included little documentation regarding the reasons for the victim's decision not to participate in the investigation or prosecution of the alleged penetrative sexual offense. Even when a special victims' counsel or victims' legal counsel (SVC/VLC) provided a memorandum for the case file, the victim's rationale was rarely included.

110 Reviewers recorded that the victim declined to participate in the investigation of the alleged penetrative sexual offense if evidence in the case file indicated the victim's decision. This evidence ranged from a memorandum from the SVC/VLC to either the command or the MCIO indicating the victim's decision to decline to participate, to a note in the file made by the investigator.

111 A victim was determined to have declined to participate in the reporting stage either when a third party reported the penetrative sexual offense allegation and the victim thereafter declined to cooperate in the investigation, or when the victim reported to law enforcement that a penetrative sexual offense occurred but thereafter declined to provide any additional information about the alleged offense.

112 The 36 cases at the initial disposition stage included 22 cases that reviewers identified as declination at court-martial due to material indicating the victim would not testify.

TABLE IV.3. VICTIM PARTICIPATION IN CASES RESULTING IN NO ACTION AGAINST THE SUBJECT ON THE ADULT PENETRATIVE SEXUAL OFFENSE ALLEGATION

	Did Victim Participate?			
	Yes		No	
	n	%	n	%
Army (N=597)	396	66.3	201	33.7
Marine Corps (N=190)	95	50.0	95	0.5
Navy (N=277)	194	70.0	83	30.0
Air Force (N=256)	132	51.6	124	48.4
Coast Guard (N=16)	9	56.3	7	43.8
Total (N=1,336)	826	61.8	510	38.2

Victims' Statements

The second factor the CRSC identified that may affect the initial disposition decision is whether the victim's statement to law enforcement established probable cause to believe that the subject committed a penetrative sexual offense. For each case reviewed, the reviewers assessed whether the victim's statement(s) to law enforcement, standing alone, provided probable cause to believe that the subject committed a penetrative sexual offense. In reaching their decisions regarding this question, reviewers considered whether the victim's statement(s) addressed the elements of the alleged offense and thereby established a reasonable belief that the penetrative sexual offense occurred and the subject committed it.

The data show that victims provide statements to law enforcement in 96.4% of cases. However, victims' statements established probable cause to believe that the subject committed a penetrative sexual offense in 57.9% of these cases and did not establish probable cause in 41.3% (in 0.7% of them the information was not available).

In addition, Table IV.4 shows for each Military Service the number of cases, out of the 1,336 reviewed that resulted in no action against the subject on the penetrative sexual offense allegation, in which the victim made a statement to law enforcement and how often those statements established probable cause to believe that the subject committed a penetrative sexual offense. Of the 1,270 "no action" cases in which the victim provided a statement to law enforcement, the victim's statement(s) alone established probable cause to believe that the subject committed a penetrative sexual offense in 46.9% (596) of those cases, and the victim's statements did not establish probable cause in 52.5% (667) of those cases. In 0.6% of the cases the information was not available. By comparison, as shown in Table IV.5, of 515 cases in which the victim made a statement and the investigation resulted in a preferred penetrative sexual offense charge, the victim's statement established probable cause in 83.1% (428) of the cases. Further, in only two cases in which the victim did not provide a statement to law enforcement did the investigation result in a preferred penetrative sexual offense charge against the subject. No other case without a statement from the victim resulted in a preferred penetrative sexual offense charge (see Table IV.5).

TABLE IV.4. THE VICTIM'S STATEMENT AND PROBABLE CAUSE IN CASES RESULTING IN NO ACTION AGAINST THE SUBJECT ON THE ADULT PENETRATIVE SEXUAL OFFENSE ALLEGATION

	Did Victim Provide Statement?				If Yes, Did Victim's Statement Establish Probable Cause?					
	Yes		No		Yes		No		Unknown	
	n	%	n	%	n	%	n	%	n	%
Army (N=597)	566	94.8	31	5.2	243	42.9	323	57.1	0	0.0
Marine Corps (N=190)	185	97.4	5	2.6	106	57.3	76	41.1	3	1.6
Navy (N=277)	267	96.4	10	3.6	141	52.8	126	47.2	0	0.0
Air Force (N=256)	236	92.2	20	7.8	96	40.7	136	57.6	4	1.7
Coast Guard (N=16)	16	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Total (N=1,336)	1,270	95.1	66	4.9	596	46.9	667	52.5	7	0.6

Table IV.5 shows, for each Military Service, the number of cases resulting in a preferred penetrative sexual offense charge in which victims made statements to law enforcement and those statements established probable cause to believe that the subject committed a penetrative sexual offense. Reviewers determined that out of the 515 cases that resulted in a preferred penetrative sexual offense charge in which the victim made a statement to law enforcement, in 83.1% (428) the victim's statement(s) alone established probable cause to believe that the subject committed the penetrative sexual offense, and in 15.7% (81) the victim's statements did not establish probable cause. In 1.2% (6) of the cases the information was not available.

TABLE IV.5. THE VICTIM'S STATEMENT AND PROBABLE CAUSE IN CASES RESULTING IN A PREFERRED ADULT PENETRATIVE SEXUAL OFFENSE CHARGE

	Did Victim Provide Statement?				If Yes, Did Victim's Statement Establish Probable Cause?					
	Yes		No		Yes		No		Unknown	
	n	%	n	%	n	%	n	%	n	%
Army (N=205)	205	100.0	0	0.0	179	87.3	25	12.2	1	0.5
Marine Corps (N=69)	69	100.0	0	0.0	56	81.2	12	17.4	1	1.4
Navy (N=89)	88	98.9	1	1.1	67	76.1	20	22.7	1	1.1
Air Force (N=140)	140	100.0	0	0.0	115	82.1	22	15.7	3	2.1
Coast Guard (N=14)	13	92.9	1	7.1	11	84.6	2	15.4	0	0.0
Total (N=517)	515	99.6	2	0.4	428	83.1	81	15.7	6	1.2

In cases in which the victim had only partial or no memory of the incident, their statement(s) alone may not establish either the elements of a penetrative sexual offense or the evidentiary strength to prove the allegation. In such cases, other evidence is required, such as the subject's statement, digital or forensic evidence, and witness statements. Likewise, even when a victim's statement establishes probable cause to believe that the subject committed a penetrative sexual offense, other evidence may convincingly contradict the victim's account, with the result that the totality of the evidence does not establish probable cause. In such cases preferring a penetrative sexual offense charge is not a viable or reasonable disposition option.

In its 2020 Fourth Annual Report, the DAC-IPAD found that "[s]tatements of sexual assault victims taken by military criminal investigators often lacked sufficient detail and appropriate follow-up questioning by the investigator. The lack of

detail and follow-up questioning in these statements made it difficult to properly assess an appropriate disposition for the case.”¹¹³ The DAC-IPAD determined that the CRSC should continue to assess these issues.¹¹⁴

Finding 93: The victim declined to participate in the military justice process at some point after the initial unrestricted report of the alleged penetrative offense,

- 510 (38.2%) of the 1,336 adult-victim cases closed in FY17 in which the initial disposition authority took no action against the Service member subject for an alleged penetrative sexual offense; and
- 54 (10.4%) of the 517 adult-victim cases resulting in a preferred penetrative sexual offense charge against the Service member.

Finding 94: The victim’s statement alone established probable cause to believe that the subject committed an adult penetrative sexual offense,

- 596 (46.9%) of the 1,270 cases closed in FY17 in which the victim provided a statement to law enforcement and the initial disposition authority took no action against the Service member subject for the alleged penetrative sexual offense; and
- 428 (83.1%) of the 515 cases in which the victim provided a statement to law enforcement and that resulted in a preferred penetrative sexual offense charge against the Service member.

Finding 95: The victim’s statement alone did not establish probable cause to believe that the subject committed an adult penetrative sexual offense,

- 667 (52.5%) of the 1,270 cases closed in FY17 in which the victim provided a statement to law enforcement and the initial disposition authority took no action against the Service member subject for the alleged penetrative sexual offense; and
- 81 (15.7%) of the 515 cases in which the victim provided a statement to law enforcement and that resulted in a preferred penetrative sexual offense charge against the Service member.

Directive 2 to Case Review Subcommittee: The CRSC conduct a review of a random sample of MCIO investigations of penetrative sexual offenses within five years, to further assess the quality of investigations and the progress made in light of statutory and regulatory modifications as well as implementation of previous DAC-IPAD recommendations.

Directive 3 to Case Review Subcommittee: In light of the Committee’s determination that 41.3% of victim statements to law enforcement do not establish probable cause that the subject committed the alleged penetrative sexual offense, the CRSC continue to review and assess such statements in order to examine the factors that may contribute to this result, and make appropriate findings and recommendations.

113 See DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 24.

114 *Id.*

V. ASSESSING THE STRENGTH OF THE EVIDENCE IN CASES RESULTING IN A PREFERRED ADULT PENETRATIVE SEXUAL OFFENSE CHARGE

A. Background

The DAC-IPAD is not unique in its approach to analyzing prosecutorial decisions and the attrition of sexual assault cases within the criminal justice system. Within the past decade, several civilian studies have attempted to measure and understand the legal, evidentiary, and case characteristics that may predict arrest or prosecution in sexual assault cases following a criminal complaint.¹¹⁵ These civilian studies on prosecutorial decision making in sexual assault cases found that the strength of the evidence is the “primary motivator” for prosecutors deciding to arrest and charge a suspect.¹¹⁶

As a result, in this comprehensive review of military cases resulting in a preferred penetrative sexual offense charge, the CRSC analyzed whether the materials provided for review met two important evidentiary standards: first, whether the materials established probable cause to believe that the accused committed a penetrative sexual offense; and second, whether the materials contained sufficient admissible evidence to obtain and sustain a conviction on the penetrative sexual offense beyond a reasonable doubt. The CRSC chose to analyze these two evidentiary standards because they are the ones used by participants in civilian justice systems when exercising discretion in criminal justice matters. In the civilian system, probable cause to believe that an individual committed a crime is required to make an arrest.¹¹⁷ Likewise, in the federal civilian system, a grand jury or a magistrate judge must find probable cause in order for a case to proceed to a felony trial, unless the defendant waives that requirement.¹¹⁸ In addition, the *Justice Manual* of the U.S. Department of Justice (DOJ) (formerly the U.S. Attorney’s Manual)—which contains DOJ policies and procedures and provides internal DOJ guidance—states that “both as a matter of fundamental fairness and in the interest of the efficient administration of justice, no prosecution should be initiated against any person unless the attorney for the government believes that the admissible evidence is sufficient to obtain and sustain a guilty verdict by an unbiased trier of fact.”¹¹⁹

Similarly, under military law, a probable cause analysis of the evidence is required before referral of a charge to trial by general court-martial. The Article 32, UCMJ, preliminary hearing officer makes a probable cause determination and a recommendation on case disposition.¹²⁰ The Article 32 preliminary hearing officer’s probable cause determination is

115 Morabito et al., *supra* note 53; Spohn & Tellis, *supra* note 53.

116 Fredrick & Stemen, *supra* note 53.

117 See generally *Wong Sun v. United States*, 371 U.S. 471, 479 (1963) (stating that arrests are based on probable cause).

118 Constitutional standards require that before felony charges are initiated, an indictment must be returned by a grand jury. Such indictment connotes a finding of probable cause. See, e.g., *United States ex rel. Kassin v. Mulligan*, 295 U.S. 396, 400 (1935) (stating that an indictment “fulfills the constitutional requirement (Amendment V), establishes probable cause (Amendment IV) and is itself authority to bring the accused to trial.”). These constitutional requirements can be satisfied by a preliminary hearing or analogous procedure as long as the same standards are met. See *Hurtado v. California*, 110 U.S. 516 (1884); see also *Cooksey v. Delo*, 94 F.3d 1214, 1217 (8th Cir. 1996) (“[T]he Due Process Clause still requires some form of pretrial screening such as the preliminary hearing available to Hurtado. Under that procedure, a magistrate was required to conduct a hearing to determine whether there was probable cause to believe that the accused had committed the crime charged. Thus, while the Due Process Clause does not require indictment by a grand jury, it clearly requires some pretrial screening of criminal charges.”).

119 U.S. Dep’t of Justice, *Justice Manual* § 9-27.220 (Grounds for Commencing or Declining Prosecution) (Comment) (Feb. 2018 update).

120 10 U.S.C. § 832(c) (Article 32(c), UCMJ) (2019); see also 10 U.S.C. § 832(c) (Article 32(c), UCMJ) (2014) (version of the statute in effect during the time period of the investigative files reviewed); 10 U.S.C. § 834(a)(1)(B) (Article 34(a)(1)(B), UCMJ) (2019).

non-binding, unlike the magistrate’s determination in the civilian system.¹²¹ Another probable cause analysis is contained in the staff judge advocate’s pretrial advice under Article 34, UCMJ. Absent a determination by the staff judge advocate that the evidence establishes probable cause to believe that the accused committed the charged offense, the convening authority cannot refer the charge to trial by a general court-martial.¹²²

Unlike in federal criminal practice, in the military justice system an assessment of whether the admissible evidence is sufficient to obtain and sustain a conviction is currently not required by law, regulation, or policy. However, under the Military Justice Act of 2016, convening authorities, commanders, staff judge advocates, and judge advocates now should consider the discretionary factors set forth in Appendix 2.1, pursuant to Article 33, UCMJ (Disposition Guidance). Section 2.1(h) includes “whether admissible evidence will likely be sufficient to obtain and sustain a conviction in a trial by court-martial.”¹²³

B. Analysis of Legal Standards for Initial Disposition Authority Decisions in Cases Resulting in a Preferred Adult Penetrative Sexual Offense Charge

TABLE V.1. PREFERRED CASES: ASSESSMENT OF PROBABLE CAUSE AND SUFFICIENCY OF THE EVIDENCE TO OBTAIN AND SUSTAIN A CONVICTION

	Disposition: Preferred		Did Case Materials Establish Probable Cause?						Were Case Materials Sufficient to Obtain a Conviction?					
			Yes		No		Unknown		Yes		No		Unknown	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=821)	205	25.0	190	92.7	14	6.8	1	0.5	135	65.9	69	33.7	1	0.5
Marine Corps (N=263)	69	26.2	57	82.6	12	17.4	0	0.0	38	55.1	31	44.9	0	0.0
Navy (N=387)	89	23.0	77	86.5	12	13.5	0	0.0	51	57.3	38	42.7	0	0.0
Air Force (N=403)	140	34.7	111	79.3	28	20.0	1	0.7	65	46.4	73	52.1	2	1.4
Coast Guard (N=30)	14	46.7	11	78.6	2	14.3	1	7.1	11	78.6	2	14.3	1	7.1
Total (N=1,904)	517	27.2	446	86.3	68	13.2	3	0.6	300	58.0	213	41.2	4	0.8

Reviewers determined that in 446 (86.3%) of the 517 cases resulting in a preferred penetrative sexual offense charge, the evidence in the materials provided for review was sufficient to establish probable cause to believe that the accused committed the charged offense. Conversely, reviewers determined that in 68 (13.2%) of the 517 preferred cases, the evidence was insufficient to establish probable cause to believe that the accused committed the charged offense.

In addition, reviewers determined that in 300 (58.0%) of the 517 preferred cases, the materials provided for review contained sufficient admissible evidence to obtain and sustain a conviction on the penetrative sexual offense. Reviewers determined that in 213 (41.2%) of the 517 preferred cases, the admissible evidence was not sufficient to obtain and sustain a conviction on the charged offense.

121 See 10 U.S.C. § 834(a)(1)(B) (Article 34(a)(1)(B), UCMJ) (2019); see also 10 U.S.C. § 832(a)(2) (Article 32(a)(2), UCMJ) (2014); 2016 MCM, *supra* note 13, R.C.M. 406(b)(2) (Discussion) (in effect during the time period covered by the investigative files reviewed) (“The standard of proof to be applied in R.C.M. 406(b)(2) is probable cause.”).

122 See 10 U.S.C. § 834(a)(1)(B) (Article 34(a)(1)(B), UCMJ) (2019).

123 See 2019 MCM, *supra* note 6, App. 2.1. Compare with DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 34 (observing that the Article 33 (non-binding) Disposition Guidance may not give appropriate weight to the sufficiency-of-the-evidence factor).

The CRSC members are concerned by these data, particularly given the negative impacts of an investigation and referral of charges on an accused Service member.¹²⁴

In 68 of the 517 cases resulting in a preferred penetrative sexual offense charge, reviewers found the evidence in the materials provided for review was insufficient to establish probable cause that the accused committed the charged offense; they also concluded that in 40 of these cases, it was nonetheless reasonable for the commander to prefer a penetrative sexual offense charge. Many of the 40 cases involved military discipline or other complicating factors, such as a subject who was senior in grade, a relationship between a senior and a subordinate, a prior sexual relationship between the subject and victim, collateral or other misconduct by the subject.¹²⁵ In addition, in many of these 40 cases, reviewers noted that the question of whether the evidence was sufficient to establish probable cause to believe that the subject committed a penetrative sexual offense was so close that reasonable minds could reach different conclusions.¹²⁶ However, such borderline cases rarely contain sufficient admissible evidence to obtain and sustain a conviction on the penetrative sexual offense.¹²⁷

Finding 96: Of the 517 adult-victim cases closed in FY17 resulting in a preferred penetrative sexual offense charge against a Service member,

- 446 (86.3%) of the cases, the evidence in the materials reviewed established probable cause to believe that the accused committed the penetrative sexual offense. In 68 (13.2%) of these cases, the evidence in the materials reviewed did not establish probable cause to believe that the accused committed the penetrative sexual offense; and
- 300 (58.0%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction for the penetrative sexual offense. In 213 (41.2%) of these cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction for the penetrative sexual offense.

124 See DAC-IPAD FOURTH ANNUAL REPORT, *supra* note 8, at 27. See also *Transcript of DAC-IPAD Public Meeting* 136 (Feb. 14, 2020) (comment of Colonel (Ret.) Wes Moore, U.S. Air Force) (stating that there are costs for the victim and the accused in prosecuting a court-martial, including that “[a]irmen facing court-martial are among our highest suicide risks”).

125 Of those 40 cases:

- 21 cases involved prior consensual sexual contact, penetration, or communication between the subject and victim; 8 of these 21 were spouses, intimate partners, or former spouses.
- 22 of the cases involved noncommissioned officers or officers with grades ranging from E-5 to E-8 to O-3.
- 18 cases involved subjects with grades E-4 and below.
- 8 cases involved co-workers and 4 involved victims who were subordinates of the subject; 3 of the 4 cases involving a subordinate victim went to verdict at a general court-martial for the penetrative sexual offense, and all 3 cases resulted in acquittal of the accused on the penetrative sexual offense.
- 27 cases resulted in command action against the subject for an offense other than the penetrative sexual offense.

126 An Article 32, UCMJ, preliminary hearing was held in 34 of the 40 cases and waived in 2 cases, and the materials provided for review did not contain Article 32 information in 4 cases. Of the 34 cases in which an Article 32 preliminary hearing was conducted, the Article 32 preliminary hearing officer determined that in 22 cases (65%) the evidence was not sufficient to establish probable cause to believe that the accused committed the penetrative sexual offense; in 12 cases (35%), it was sufficient. The preliminary hearing officer recommended the penetrative sexual offense charge not be referred to trial by general court-martial in 24 cases and recommended such referral in the remaining 10 cases.

127 Reviewers determined that the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction in all 40 cases. Of the 40 cases, the penetrative sexual offense charge was dismissed without referral in 18 cases and dismissed after referral to trial by general court-martial in 12 cases. The penetrative sexual offense charge was tried to verdict in 10 cases, resulting in one conviction which was overturned on appeal for insufficient evidence.

**TABLE V.2. PREFERRED CASES RESULTING IN VERDICT ON THE ADULT PENETRATIVE SEXUAL OFFENSE:
ASSESSMENT OF PROBABLE CAUSE AND SUFFICIENCY OF THE EVIDENCE TO OBTAIN AND SUSTAIN A CONVICTION**

	Preferred: Verdict		Did Case Materials Establish Probable Cause?				Were Case Materials Sufficient to Obtain and Sustain a Conviction?			
			Yes		No		Yes		No	
	n	%	n	%	n	%	n	%	n	%
Army (N=205)	94	45.9	89	94.7	5	5.3	70	74.5	24	25.5
Marine Corps (N=69)	26	37.7	24	92.3	2	7.7	19	73.1	7	26.9
Navy (N=89)	40	44.9	35	87.5	5	12.5	27	67.5	13	32.5
Air Force (N=140)	68	48.6	55	80.9	13	19.1	39	57.4	29	42.6
Coast Guard (N=14)	7	50.0	7	100.0	0	0.0	7	100.0	0	0.0
Total (N=517)	235	45.5	210	89.4	25	10.6	162	68.9	73	31.1

The data in Table V.2 show that in 89.4% (210 of 235) of cases including a penetrative sexual offense charge that were tried to verdict, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense; the government obtained a conviction on the penetrative sexual offense charge in 42.9% (90 of 210) of these cases (see Table V.4). In 10.6% (25 of 235) of cases including a penetrative sexual offense charge that were tried to verdict, the evidence in the materials reviewed was not sufficient to establish probable cause; the government obtained a conviction on the penetrative sexual offense charge in 4.0% (1 of 25) of these cases (Table V.4). This one conviction was later overturned for factual insufficiency.

In 68.9% (162 of 235) of these cases across the Services, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense; the government obtained a conviction on the penetrative sexual offense charge in 54.9% (89 of 162) of these cases (see Table V.4). In 31.1% (73 of 235) of these cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on the charged offense; the government obtained a conviction on the penetrative sexual offense charge in 2.7% (2 of 73) of these cases (see Table V.4). In one of the two cases that resulted in a conviction, the conviction was later overturned for factual insufficiency.¹²⁸

The data in Table V.2 reinforce testimony and other information provided to the DAC-IPAD concerning the Services' different considerations and philosophies regarding prosecution. In the RFI responses provided to the DAC-IPAD, military justice officials in all Services told the DAC-IPAD that when making their recommendations on the referral of sexual offenses to general court-martial convening authorities, they considered the overall strength of the evidence: that

128 This same case is in the total pool of all 91 cases in which there was a conviction. For this one case, the evidence in the materials reviewed was not sufficient to establish probable cause and did not contain sufficient admissible evidence to obtain and sustain a conviction on the charged offense. See Table V.4.

is, whether there was sufficient admissible evidence to obtain and sustain a conviction on a charged penetrative sexual offense.¹²⁹ But a military justice official from the Air Force told the DAC-IPAD that it realized it “is the outlier on this because we work at the probable cause standard, and the referral standard, and take into consideration the wants of the victim. And when we evaluate whether or not that probable cause standard has been met, and we have a cooperating victim we choose to go forward.”¹³⁰ Notwithstanding the Air Force representations, in 19.1% of Air Force cases with a penetrative sexual offense charge tried to verdict, the evidence in the materials reviewed was not sufficient to establish probable cause to believe that the accused committed the charged offense (see Table V.2).

The data in Table V.2 show that the Air Force has the highest percentage of cases with a penetrative sexual offense charge tried to verdict that fail to meet both the standard of probable cause (19.1% of cases) and the standard of sufficient admissible evidence to obtain and sustain a conviction (42.6% of cases). The Air Force is not alone, however. By way of comparison, in all other Services except the Coast Guard, in 25.5% to 32.5% of cases including a penetrative sexual offense charge tried to verdict, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

The difference between the minimal evidentiary threshold of probable cause and the beyond a reasonable doubt standard needed to obtain a conviction at trial is significant. In addressing whether consideration is given to the sufficiency of admissible evidence to obtain and sustain a conviction and the weight to afford that factor, the Services’ military justice officials stated that when making their recommendations on the referral of sexual offenses to general court-martial convening authorities, they place equal or greater weight on factors such as victim preference for trial, safety of the community, and the criminal history of the accused.¹³¹

Finding 97: Of the 235 cases tried to verdict on the adult penetrative sexual offense charge,

- 210 (89.4%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense. The government obtained a conviction on the penetrative sexual offense in 90 (42.9%) of these cases; and
- 25 (10.6%) of the cases, the evidence in the materials reviewed was not sufficient to establish probable cause to believe that the accused committed the charged offense. The government obtained a conviction on the penetrative sexual offense in 1 (4.0%) of these cases, and this conviction was overturned on appeal because the evidence was factually insufficient.

129 See RFI Set 11, *supra* note 109, ¶ B, Questions 1, 4. Specifically, the Air Force stated in its RFI response that

[i]n cases where the standard of proof is met and the evidence supports the charges, the Air Force typically prefers and refers charges to a general court-martial. The standard for referral of charges under RCM 307 is merely that the person preferring charges (1) has personal knowledge of, or has investigated, the matters set forth in the charges and specifications, and (2) the matters set forth in the charges and specifications are true to the best of the knowledge and belief of the signer. Further, the standard for referral of charges under RCM 601(d) is probable cause. While not part of the standard for referral, in fashioning pretrial advice, an SJA must consider the Air Force Standards for Criminal Justice, which deem it unprofessional conduct for a trial counsel to proceed on criminal charges that lack sufficient evidence to support a conviction.

See Air Force Military Justice Division Chief Response to RFI Set 11, *supra* note 109, ¶ B, Question 4a. See also *Transcript of DAC-IPAD Public Meeting* 107 (Aug. 23, 2019) (testimony of Captain Vasilios Tasikas, U.S. Coast Guard, Chief, Office of Military Justice); *id.* at 108 (testimony of Lieutenant Colonel Adam M. King, U.S. Marine Corps, Military Justice Branch Head, U.S. Marine Corps Judge Advocate Division); *id.* at 109–10 (testimony of Captain Robert Monahan, U.S. Navy, Deputy Assistant Judge Advocate General (Criminal Law) and Director, Office of the Judge Advocate General’s Criminal Law Policy Division); *id.* at 111–12 (testimony of Colonel Patrick Pflaum, U.S. Army, Chief, Criminal Law Division).

130 See also *Transcript of DAC-IPAD Public Meeting* 105 (Aug. 23, 2019) (testimony of Julie Colonel Pitvorec, U.S. Air Force, Chief, U.S. Air Force Government Trial and Appellate Counsel Division).

131 RFI Set 11, *supra* note 109, ¶ B, Question 4.

Finding 98: Of the 235 cases tried to verdict on the adult penetrative sexual offense charge,

- 162 (68.9%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on that offense. The government obtained a conviction on the penetrative sexual offense in 89 (54.9%) of these cases; and
- 73 (31.1%) of these cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on that offense. The government obtained a conviction on the penetrative sexual offense in 2 (2.7%) of these cases. In one of the two cases that resulted in a conviction, the conviction was later overturned on appeal because the evidence was factually insufficient.

Finding 99: In all Services except the Coast Guard, in 25.5% to 32.5% of cases including an adult penetrative sexual offense charge tried to verdict, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

Finding 100: While all Services report that they consider whether there is sufficient admissible evidence to obtain and sustain a conviction on the charged penetrative sexual offense, in military prosecutions, unlike in federal civilian prosecutions, there is no policy requirement to do so before either prefferal or referral.

Finding 101: The requirements and practical application of Articles 32 and 34, UCMJ, and their associated Rules for Courts-Martial did not prevent referral and trial by general court-martial of adult penetrative sexual offense charges in the absence of sufficient admissible evidence to obtain and sustain a conviction, to the great detriment of the accused, the victim, and the military justice system.

Finding 102: The data clearly indicate that no adult penetrative sexual offense charge should be referred to trial by general court-martial without sufficient admissible evidence to obtain and sustain a conviction on the charged offense, and Article 34, UCMJ, should incorporate this requirement.

**TABLE V.3. CASES RESULTING IN ACQUITTAL ON THE ADULT PENETRATIVE SEXUAL OFFENSE,
ASSESSMENT OF SUFFICIENCY OF THE EVIDENCE TO OBTAIN AND SUSTAIN A CONVICTION**

	Verdict: Acquitted		Did Case Materials Establish Probable Cause?				Were Case Materials Sufficient to Obtain and Sustain a Conviction?			
			Yes		No		Yes		No	
	n	%	n	%	n	%	n	%	n	%
Army (N=94)	52	55.3	47	90.4	5	9.6	29	55.8	23	44.2
Marine Corps (N=26)	15	57.7	13	86.7	2	13.3	8	53.3	7	46.7
Navy (N=40)	25	62.5	20	80.0	5	20.0	12	48.0	13	52.0
Air Force (N=68)	50	73.5	38	76.0	12	24.0	22	44.0	28	56.0
Coast Guard (N=7)	2	28.6	2	100.0	0	0.0	2	100.0	0	0.0
Total (N=235)	144	61.3	120	83.3	24	16.7	73	50.7	71	49.3

**TABLE V.4. CASES RESULTING IN CONVICTION ON THE ADULT PENETRATIVE SEXUAL OFFENSE,
ASSESSMENT OF SUFFICIENCY OF THE EVIDENCE TO OBTAIN AND SUSTAIN A CONVICTION**

	Verdict: Convicted		Did Case Materials Establish Probable Cause?				Were Case Materials Sufficient to Obtain and Sustain a Conviction?			
			Yes		No		Yes		No	
	n	%	n	%	n	%	n	%	n	%
Army (N=94)	42	44.7	42	100.0	0	0.0	41	97.6	1	2.4
Marine Corps (N=26)	11	42.3	11	100.0	0	0.0	11	100.0	0	0.0
Navy (N=40)	15	37.5	15	100.0	0	0.0	15	100.0	0	0.0
Air Force (N=68)	18	26.5	17	94.4	1	5.6	17	94.4	1	5.6
Coast Guard (N=7)	5	71.4	5	100.0	0	0.0	5	100.0	0	0.0
Total (N=235)	91	38.7	90	98.9	1	1.1	89	97.8	2	2.2

* In Tables V.3 and V.4, N represents the number of cases that are referred to trial and result in either a verdict or a finding entered pursuant to a guilty plea on the adult penetrative sexual offense.

The data in Tables V.3 and V.4 indicate that a prosecutorial assessment that there is sufficient admissible evidence to obtain and sustain a conviction is a significant factor predicting conviction on a penetrative sexual offense charge. In 97.8% of cases resulting in conviction on a penetrative sexual offense charge, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense. However, in 50.7% of cases resulting in acquittal on a penetrative sexual offense charge, the materials reviewed also contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

The question before the CRSC reviewers was whether the materials contained sufficient admissible evidence to obtain and sustain a conviction on the charged penetrative sexual offense. Notably, reviewers were not asked to assess the different question of whether conviction on that offense was likely or probable. In other words, reviewers evaluated whether sufficient admissible evidence to obtain a conviction was *present* in the investigative files, such that if the evidence was admitted at trial, proof beyond a reasonable doubt was an achievable result.

This mode of analysis took into account the experienced view of CRSC members that “hard cases” could and should proceed to trial when there was sufficient evidence to support the conclusion that proof beyond a reasonable doubt was achievable; it did not focus on whether conviction on the penetrative sexual offense charge was the probable result—whether the case was a definite “winner.” Accordingly, some verdicts of not guilty on the penetrative sexual offense charges were expected as a natural and acceptable consequence of trying tough and unpredictable cases.

The CRSC determined that the materials reviewed contained sufficient admissible evidence to obtain a conviction on the charged offense in 50.7% of cases resulting in acquittal on a penetrative sexual offense charge. The data also demonstrate that the materials reviewed did not contain sufficient evidence to obtain and sustain a conviction in 49.3% of cases resulting in acquittal on the penetrative sexual offense. These statistics have disturbing implications for both the accused and the victim, whose lives and futures are permanently affected by the process.

Examined in this light—and with the recognition that in difficult cases, reasonable minds can reach different conclusions—these data warrant further study. These data raise the issues of why cases lacking sufficient admissible evidence to obtain and sustain a conviction are being referred to trial by general court-martial and why cases with sufficient admissible evidence to obtain and sustain a conviction are resulting in acquittals. Further assessment should consider whether there are common characteristics that might help explain the conviction and acquittal rates for these offenses.

Finding 103: Of the 91 cases closed in FY17 resulting in a conviction for an adult penetrative sexual offense,

- 90 (98.9%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense; and
- 89 (97.8%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

Finding 104: Of the 144 cases closed in FY17 resulting in an acquittal for the adult penetrative sexual offense,

- 120 (83.3%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense; and
- 73 (50.7%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

Finding 105: The decision to refer to trial by general court-martial an adult penetrative sexual offense charge that lacks sufficient admissible evidence to obtain and sustain a conviction directly contributes to the 61.3% acquittal rate for these offenses.

Directive 4 to Case Review Subcommittee: The Committee recognizes that not all cases with sufficient admissible evidence to obtain a conviction will, in fact, result in a verdict of guilty. Moreover, this assessment was made in the absence of any evidence presented by the defense at trial. However, in light of the data demonstrating that in just over half (50.7%) of cases resulting in acquittal on a penetrative sexual offense charge, the materials reviewed contained sufficient admissible evidence to obtain a conviction on the charged offense and in 49.3% of cases such evidence was not present, the CRSC should consider if there are common characteristics in the cases that might help explain the conviction and acquittal rates for these offenses. Part of the CRSC’s assessment and consideration of these matters should involve observation of courts-martial. These data raise the issues of why cases lacking sufficient admissible evidence to obtain and sustain a conviction are being referred and why cases with sufficient admissible evidence to obtain and sustain a conviction are resulting in acquittals.

TABLE V.5. PREFERRED CASES THAT DID NOT GO TO VERDICT: ASSESSMENT OF PROBABLE CAUSE AND SUFFICIENCY OF THE EVIDENCE TO OBTAIN AND SUSTAIN A CONVICTION

	Preferred: No Verdict		Did Case Materials Establish Probable Cause?						Were Case Materials Sufficient to Obtain and Sustain a Conviction?					
			Yes		No		Unknown		Yes		No		Unknown	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=205)	111	54.1	101	91.0	9	8.1	1	0.9	65	58.6	45	40.5	1	0.9
Marine Corps (N=69)	43	62.3	33	76.7	10	23.3	0	0.0	19	44.2	24	55.8	0	0.0
Navy (N=89)	49	55.1	42	85.7	7	14.3	0	0.0	24	49.0	25	51.0	0	0.0
Air Force (N=140)	72	51.4	56	77.8	15	20.8	1	1.4	26	36.1	44	61.1	2	2.8
Coast Guard (N=14)	7	50.0	4	57.1	2	28.6	1	14.3	4	57.1	2	28.6	1	14.3
Total (N=517)	282	54.5	236	83.7	43	15.2	3	1.1	138	48.9	140	49.6	4	1.4

The data in Table V.5 show that over half of the cases (54.5%) resulting in a preferred penetrative sexual offense charge were not tried to verdict on that offense. In those cases, the penetrative sexual offense charge was dismissed outright,

dismissed as a result of an administrative separation, dismissed as a result of a discharge in lieu of a court-martial, or dismissed pursuant to a pretrial agreement for a non-penetrative sexual offense or other non-sexual offense.

In 43 (15.2%) of the 282 cases including a preferred penetrative sexual offense charge that were not tried to verdict, the evidence in the materials reviewed was not sufficient to establish probable cause to believe that the accused committed the charged offense. In 140 (49.6%) of such cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on the charged offense. Given the large percentage of preferred cases that did not meet the standards of probable cause and/or did not contain sufficient admissible evidence to obtain and sustain a conviction, dismissal of the penetrative sexual offense charge may be appropriate in these cases.

However, in 138 (48.9%) of the 282 cases that were not tried to verdict on the penetrative sexual offense, there was sufficient admissible evidence to obtain and sustain a conviction on the charge. The DAC-IPAD did not have access to materials outside of the investigative files to assess why convening authorities chose not to proceed to trial by court-martial on the penetrative sexual offense in these cases.

Finding 106: Of the 282 cases closed in FY17 resulting in no verdict on the preferred adult penetrative sexual offense charge,

- 236 (83.7%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged offense. In 43 (15.2%) cases, the evidence was not sufficient to establish probable cause to believe the accused committed the charged penetrative sexual offense; and
- 138 (48.9%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the penetrative sexual offense. In 140 (49.6%) cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction.

**TABLE V.6. PREFERRED CASES RESULTING IN DISCHARGE IN LIEU OF COURT-MARTIAL
OR ADMINISTRATIVE SEPARATION: ASSESSMENT OF PROBABLE CAUSE AND SUFFICIENCY OF
THE EVIDENCE TO OBTAIN AND SUSTAIN A CONVICTION**

	Preferred: DILCOM/ Admin. Separation		Did Case Materials Establish Probable Cause?						Were Case Materials Sufficient to Obtain and Sustain a Conviction?					
			Yes		No		Unknown		Yes		No		Unknown	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=205)	51	24.9	47	92.2	3	5.9	1	2.0	31	60.8	19	37.3	1	2.0
Marine Corps (N=69)	2	2.9	2	100.0	0	0.0	0	0.0	2	100.0	0	0.0	0	0.0
Navy (N=89)	12	13.5	11	91.7	1	8.3	0	0.0	9	75.0	3	25.0	0	0.0
Air Force (N=140)	29	20.7	27	93.1	2	6.9	0	0.0	17	58.6	11	37.9	1	3.4
Coast Guard (N=14)	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Total (N=517)	94	18.2	87	92.6	6	6.4	1	1.1	59	62.8	33	35.1	2	2.1

Table V.6 records the CRSC members' assessment of cases that resulted in military-specific alternate dispositions—specifically, discharges in lieu of trial by general court-martial and administrative separations. As described in Section III.C of this report, these are both pretrial diversions in the military in which, in exchange for separation from the service (in many cases with an other than honorable discharge), the charges against the accused are dismissed.

In 83 of these cases, the general court-martial convening authority approved a discharge in lieu of court-martial, and in 11 of these cases, the accused was otherwise administratively separated. (see Table III.2). In 59 (62.8%) of the 94 cases in which a penetrative sexual offense charge was preferred and a discharge in lieu of a court-martial or administrative separation was approved, reviewers determined that there was sufficient admissible evidence to obtain and sustain a conviction.¹³²

Finding 107: In 94 (18.2%) of 517 cases resulting in a preferred adult penetrative sexual offense charge, the general court-martial convening authority approved the accused's request for a discharge in lieu of trial by general court-martial or the accused was otherwise subjected to an administrative separation action.

- 87 (92.6%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe that the accused committed the charged adult penetrative sexual offense. In 6 (6.4%) of these cases, the evidence in the materials reviewed was not sufficient to establish probable cause to believe that the accused committed the charged penetrative sexual offense.
- 59 (62.8%) of the cases, the materials reviewed contained sufficient admissible evidence to obtain and sustain a conviction on the charged offense. In 33 (35.1%) of these cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

TABLE V.7. PREFERRED CASES, ADULT PENETRATIVE SEXUAL OFFENSE DISMISSED OUTRIGHT OR AS PART OF A PRETRIAL AGREEMENT: ASSESSMENT OF PROBABLE CAUSE AND SUFFICIENCY OF THE EVIDENCE TO OBTAIN AND SUSTAIN A CONVICTION

	Preferred: Dismissed		Did Case Materials Establish Probable Cause?						Were Case Materials Sufficient to Obtain and Sustain a Conviction?					
			Yes		No		Unknown		Yes		No		Unknown	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=205)	60	29.3	54	90.0	6	10.0	0	0.0	34	56.7	26	43.3	0	0.0
Marine Corps (N=69)	41	59.4	32	78.0	9	22.0	0	0.0	17	41.5	24	58.5	0	0.0
Navy (N=89)	37	41.6	31	83.8	6	16.2	0	0.0	15	40.5	22	59.5	0	0.0
Air Force (N=140)	43	30.7	29	67.4	13	30.2	1	2.3	9	20.9	33	76.7	1	2.3
Coast Guard (N=14)	7	50.0	4	57.1	2	28.6	1	14.3	4	57.1	2	28.6	1	14.3
Total (N=517)	188	36.4	150	79.8	36	19.1	2	1.1	79	42.0	107	56.9	2	1.1

Data shown in Table V.7 capture the two main ways in which the penetrative sexual offense charge was dismissed after preferal in 188 of 517 cases. First, the military judge may have dismissed the penetrative sexual offense charge as part of a pretrial agreement in which the accused agreed to plead guilty to other offenses. Second, the convening authority may have dismissed the charge either prior to or after referral of the charge to general court-martial; the rationale for dismissal in this manner may or may not have been apparent from the case materials provided for review.¹³³

¹³² See *supra* Table III.2 (Post-preferred Disposition Regarding the Adult Penetrative Sexual Offense for Cases Closed in FY17) for a more detailed breakdown of administrative separations and discharges in lieu of court-martial.

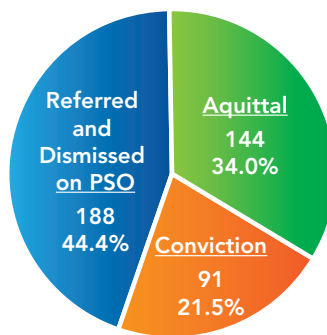
¹³³ It was not possible, using the CRSC database, to categorize the rationale for dismissing the penetrative sexual offense charge—whether the dismissal was part of a pretrial agreement, was due to insufficient evidence or lack of victim cooperation, or was attributable to other reasons. For more information on dismissal actions and guilty pleas, see DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES COURT-MARTIAL ADJUDICATION DATA REPORT 19–32 (Nov. 2019), available at https://dacipad.whs.mil/images/Public/08-Reports/05_DACIPAD_Data_Report_20191125_Final_Web.pdf.

Finding 108: Of the 188 cases closed in FY17 resulting in dismissal outright or as part of a pretrial agreement of the adult penetrative sexual offense charge,

- 150 (79.8%) of the cases, the evidence in the materials reviewed was sufficient to establish probable cause to believe the accused committed the charged offense. In 36 cases (19.1%), the evidence was not sufficient to establish probable cause to believe the accused committed the charged adult penetrative sexual offense; and
- 107 (56.9%) of the cases, the materials reviewed did not contain sufficient admissible evidence to obtain and sustain a conviction. In 79 cases (42.0%), there was sufficient admissible evidence to obtain and sustain a conviction on the adult penetrative sexual offense.

TABLE V.8. POST-REFERRAL OUTCOMES IN CASES WITH ADULT PENETRATIVE SEXUAL OFFENSES REFERRED TO TRIAL BY GENERAL COURT-MARTIAL CLOSED IN FY 2017

	Referred		Acquittal		Conviction		Referred and Dismissed on PSO	
	n	%	n	%	n	%	n	%
Army (N=205)	181	88.3	52	28.7	42	23.2	87	48.1
Marine Corps (N=69)	48	69.6	15	31.3	11	22.9	22	45.8
Navy (N=89)	74	83.1	25	33.8	15	20.3	34	45.9
Air Force (N=140)	107	76.4	50	46.7	18	16.8	39	36.4
Coast Guard (N=14)	13	92.9	2	15.4	5	38.5	6	46.2
Total (N=517)	423	81.8	144	34.0	91	21.5	188	44.4



In 517 cases, charges were preferred for the penetrative sexual offense (Table V.1). A general court-martial convening authority referred the penetrative sexual offense charges to trial by general court-martial in 423 (81.8%) of the preferred cases and did not refer the penetrative sexual offense charges to trial by general court-martial in 94 (18.2%) of the preferred cases. Out of the 423 cases that were referred to trial by general court-martial, the penetrative sexual offense charges were dismissed in 188 cases (44.4%) and tried to verdict in 235 cases (55.6%). The cases tried to verdict resulted in 144 acquittals (34.0%) and 91 convictions (21.5%) on the charged penetrative sexual offense. The CRSC is concerned that such a large percentage of penetrative sexual offense charges were dismissed after referral to trial by general court-martial.

The CRSC identified several factors that could explain why penetrative sexual offense charges were dismissed after referral in so many cases, including a victim expressing support for an alternative action, a victim declining to participate in a court-martial, and evidentiary issues that may arise in the case. The CRSC is aware that general court-martial convening

authorities may feel pressure to refer penetrative sexual offense charges to trial by general court-martial because of the statutory requirement that a decision not to refer these offenses receive higher review.¹³⁴ No such higher level review is required when the general court-martial convening authority dismisses a penetrative sexual offense charge after referral of the charge to trial by general court-martial. Likewise, there is no statutorily required higher review when a penetrative sexual offense charge is dismissed prior to reaching the general court-martial convening authority—for example, when the special court-martial convening authority dismisses the penetrative sexual offense charge in accordance with the recommendation of the Article 32, UCMJ, preliminary hearing officer.

Finding 109: Of the 517 cases closed in FY17 resulting in the preferral of charges against a Service member for an adult penetrative sexual offense,

- 94 (18.2%) of the cases, the adult penetrative sexual offense was not referred to trial by general court-martial;
- 423 (81.8%) of the cases, the adult penetrative sexual offense was referred to trial by general court-martial;
 - 235 (55.6%) of the 423 cases, the trial resulted in a verdict on the adult penetrative sexual offense: 144 (34.0%) were acquittals and 91 (21.5%) were convictions; and
 - 188 (44.4%) of the 423 cases, referred to trial by general court-martial, the adult penetrative sexual offense charge was dismissed after referral.

Directive 5 to Case Review Subcommittee: The CRSC review and assess the reasons for post-referral dismissals of penetrative sexual offenses in light of the significant impacts that the accused, victim, and command have already experienced by this point in the military justice process, and make appropriate findings and recommendations.

In light of the data and discussion in Sections III and IV of this report, the DAC-IPAD believes that the material reviewed provided sufficient information to determine whether there is a systemic problem with how the Military Services handle these cases.

Finding 110: The review of 1,904 adult penetrative sexual offense investigative case files closed in FY17 reveals that there is not a systemic problem with the initial disposition authority's decision either to prefer an adult penetrative sexual offense charge or to take no action against the subject for that offense.

Finding 111: The review of 1,904 adult penetrative sexual offense investigative cases files closed in FY17 reveals, however, that there is a systemic problem with the referral of penetrative sexual offense charges to trial by general court-martial when there is not sufficient admissible evidence to obtain and sustain a conviction on the charged offense.

DAC-IPAD Recommendation 32: Congress amend Article 34, UCMJ, to require the staff judge advocate to advise the convening authority in writing that there is sufficient admissible evidence to obtain and sustain a conviction on a charged offense before a convening authority may refer a charge and its specification to trial by general court-martial.

¹³⁴ See JPP REPORT ON FAIR ADMINISTRATION OF MILITARY JUSTICE, *supra* note 109, at 10; *see also id.* at Appendix A: SUBCOMMITTEE OF THE JUDICIAL PROCEEDINGS PANEL REPORT ON BARRIERS TO THE FAIR ADMINISTRATION OF MILITARY JUSTICE SEXUAL ASSAULT CASES. *See also* FY14 NDAA, *supra* note 50, § 1744; FY15 NDAA, *supra* note 1, § 541 (requiring review of certain decisions not to refer cases involving sexual offense charges by either a higher general court-martial convening authority or by the Service Secretary, depending on the circumstances). The requirement for higher level review applies only to cases in which charges have been preferred and for which the staff judge advocate has provided the convening authority with pretrial advice under Article 34, UCMJ.

VI. DATA ANALYSIS OF ADULT PENETRATIVE SEXUAL OFFENSE INVESTIGATIVE CASES CLOSED IN FY 2017

The CRSC reviewed 1,904 penetrative sexual offense investigative case files and created a database to record 231 data points in each case. With the assistance of Dr. William Wells, the CRSC performed an analysis of selected data points to study which factors influence three selected outcomes: a decision to prefer a penetrative sexual offense charge, the result of trial (acquittal or conviction), and a victim's decision to decline to participate in the criminal justice process.

The data below represent results across all Services. Service-specific results are found in Appendix F. Each data section includes a methodology for gathering the data together with an explanation of the analysis of the data if applicable. The data collected are represented in the following three ways:

- Descriptive data,
- Bivariate relationships among three dependent variables, and
- Multivariate models for three dependent variables.

The three sections of data build on each other for analyses. The first set of data provides basic descriptive statistics for each of the Services, which are then combined for overall DoD-wide analysis.¹³⁵ The descriptive data present each variable and how frequently those characteristics exist in the cases examined. The descriptive data can be described as univariate, because one variable at a time is examined. The second set of data provides bivariate analyses to assess the relationship among three outcome variables: the decision to prefer a penetrative sexual offense charge, the result of trial (acquittal versus conviction),¹³⁶ and the victim's participation in the investigation. By focusing on these three outcomes, the bivariate analyses can reveal how they are related to other case characteristics. Finally, the examination of multivariate relationships is the last and most advanced step in the analyses. The multivariate models build on the bivariate models by taking into account all of the interrelationships that exist between the outcome variable and the independent variables, using a technique called "logistic regression." The advantage of logistic regression is that it accounts for how multiple predictor variables are related to one another and to an outcome variable, making possible a better understanding of the relationships between one predictor variable and that outcome.

A. Descriptive Data

This section provides an overview of the characteristics of the subject and victim that were recorded from the 1,904 penetrative sexual offense cases, including gender, race, and age.¹³⁷ In addition, this section describes more complex information that was captured about the investigations, such as evidentiary factors relevant to criminal investigations and prosecutions, alcohol and drug use by the subject and victim, as well as background information relevant to the reasons why certain data was collected. In the following tables and charts, percentages may not total 100, owing to rounding errors.

135 Due to the small number of Coast Guard cases, no bivariate and multivariate analysis was completed on Coast Guard data. The Coast Guard case data are included in the overall DoD analysis. The Coast Guard descriptive data are found in Appendix F.

136 Because of the small number of acquittals in each individual Service, bivariate and multivariate analyses for convictions versus acquittals are based only on Service-wide data.

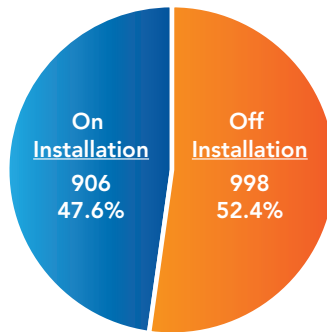
137 The descriptive data in this section of the report may vary slightly from the data reported in Appendix F. These discrepancies occurred because cases with missing data points were not necessarily included in the bivariate or multivariate analyses. In addition, the data in this report incorporate updates that were made in the database after the criminologist performed the bivariate and multivariate analyses.

*Demographic Data*¹³⁸

TABLE VI.1. LOCATION OF OFFENSE (ON OR OFF INSTALLATION)

	On Installation		Off Installation ^a	
	n	%	n	%
Army (N=821)	441	53.7	380	46.3
Marine Corps (N=263)	144	54.8	119	45.2
Navy (N=387)	134	34.6	253	65.4
Air Force (N=403)	178	44.2	225	55.8
Coast Guard (N=30)	9	30.0	21	70.0
Total (N=1,904)	906	47.6	998	52.4

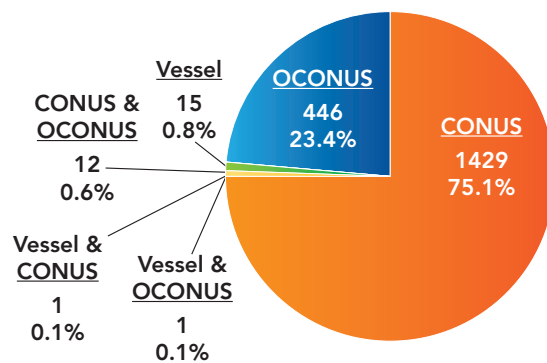
a Civilian law enforcement was involved in 448 off-installation investigations (44.9%); out of those cases, in 310 (31%) it was the lead investigative agency. None of these cases were prosecuted by civilian authorities.



138 See U.S. DEP'T OF DEF., 2017 DEMOGRAPHICS: PROFILE OF THE MILITARY COMMUNITY (2017) [2017 DEMOGRAPHICS REPORT], available at <https://download.militaryonesource.mil/12038/MOS/Reports/2017-demographics-report.pdf>.

TABLE VI.2. LOCATION OF OFFENSE (WITHIN OR OUTSIDE THE CONTINENTAL UNITED STATES)

	CONUS		OCONUS		CONUS & OCONUS		Vessel		Vessel & CONUS		Vessel & OCONUS	
	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=821)	603	73.4	210	25.6	8	1.0	0	0.0	0	0.0	0	0.0
Marine Corps (N=263)	208	79.1	53	20.2	1	0.4	1	0.4	0	0.0	0	0.0
Navy (N=387)	280	72.4	93	24.0	1	0.3	11	2.8	1	0.3	1	0.3
Air Force (N=403)	312	77.4	89	22.1	2	0.5	0	0.0	0	0.0	0	0.0
Coast Guard (N=30)	26	86.7	1	3.3	0	0.0	3	10.0	0	0.0	0	0.0
Total (N=1,904)	1429	75.1	446	23.4	12	0.6	15	0.8	1	0.1	1	0.1



Reviewers identified whether each reported penetrative sexual offense occurred on or off a military installation.¹³⁹ Slightly more than half (52.4%) of the reported penetrative sexual offenses occurred in off-installation locations.

Reviewers also classified whether the offense occurred in the continental United States (CONUS),¹⁴⁰ outside the continental United States (OCONUS), or on a vessel.¹⁴¹ The majority of assaults (75.1%) occurred in CONUS; roughly a quarter (23.4%) were OCONUS. Four cases occurred in areas defined as a deployed location.¹⁴²

Finding 112: In 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 998 (52.4%) of the cases, occurred in off-installation locations;
- 1,429 (75.1%) of the cases, occurred in the continental United States;
- 446 (23.4%) of the cases, occurred outside of the continental United States;
- 15 (0.8%) of the cases, occurred on a vessel;
- 4 (0.2%) of the cases, occurred in deployed locations (Afghanistan or Iraq); and
- 14 (0.7%) of the cases, involved incidents that occurred in more than one of these locations.

139 Offenses that occurred in privatized housing were considered “off” installation. Cases in which multiple offenses occurred both on installation and off installation were categorized as off installation in order to capture the involvement of civilian law enforcement.

140 “CONUS” is defined as United States territory, including the adjacent territorial waters, in the portion of North America between Canada and Mexico. It does not include Alaska or Hawaii.

141 Some cases involved multiple offenses between the same subject and victim within CONUS, OCONUS, and/or on a vessel.

142 “Deployed location” was defined as Iraq or Afghanistan.

TABLE VI.3. GENDER OF SUBJECT

	Male		Female	
	n	%	n	%
Army (N=821)	799	97.3	22	2.7
Marine Corps (N=263)	261	99.2	2	0.8
Navy (N=387)	379	97.9	8	2.1
Air Force (N=403)	392	97.3	11	2.7
Coast Guard (N=30)	29	96.7	1	3.3
Total (N=1,904)	1,860	97.7	44	2.3

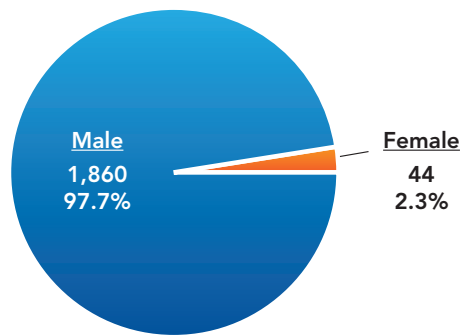
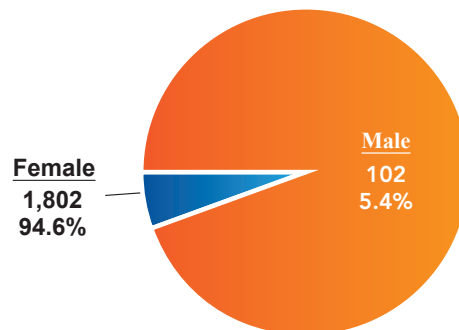


TABLE VI.4. GENDER OF VICTIM

	Male		Female	
	n	%	n	%
Army (N=821)	47	5.7	774	94.3
Marine Corps (N=263)	12	4.6	251	95.4
Navy (N=387)	21	5.4	366	94.6
Air Force (N=403)	21	5.2	382	94.8
Coast Guard (N=30)	1	3.3	29	96.7
Total (N=1,904)	102	5.4	1,802	94.6



The vast majority of penetrative sexual offense reports were by female victims involving male subjects.

TABLE VI.5. GRADE OF SUBJECT AT THE TIME OF THE OFFENSE

	Enlisted		Officer		Unknown	
	n	%	n	%	n	%
Army (N=821)	760	92.6	61	7.4	0	0.0
Marine Corps (N=263)	254	96.6	9	3.4	0	0.0
Navy (N=387)	361	93.3	26	6.7	0	0.0
Air Force (N=403)	370	91.8	30	7.4	3	0.7
Coast Guard (N=30)	26	86.7	4	13.3	0	0.0
Total (N=1,904)	1,771	93.0	130	6.8	3	0.2

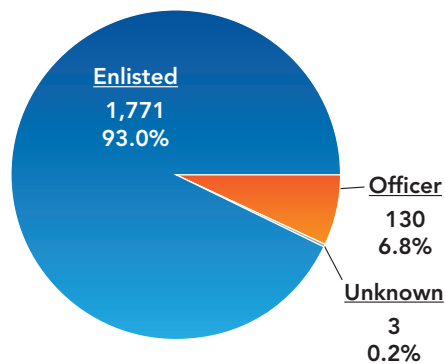


TABLE VI.6. PAY GRADE OF ENLISTED SUBJECTS

	E-1		E-2		E-3		E-4		E-5		E-6		E-7		E-8		E-9	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=760)	42	5.5	72	9.5	151	19.9	220	28.9	125	16.4	82	10.8	52	6.8	13	1.7	3	0.4
Marine Corps (N=254)	6	2.4	28	11.0	79	31.1	59	23.2	53	20.9	17	6.7	9	3.5	3	1.2	0	0.0
Navy (N=361 ^a)	9	2.5	28	7.8	84	23.3	91	25.2	83	23.0	37	10.2	22	6.1	5	1.4	1	0.3
Air Force (N=370 ^b)	9	2.4	11	3.0	91	24.6	116	31.4	78	21.1	42	11.4	17	4.6	2	0.5	0	0.0
Coast Guard (N=26 ^c)	1	3.8	1	3.8	8	30.8	7	26.9	3	11.5	3	11.5	1	3.8	0	0.0	0	0.0
Total (N=1,771)	67	3.8	140	7.9	413	23.3	493	27.8	342	19.3	181	10.2	101	5.7	23	1.3	4	0.2

- a In 1 case, the pay grade of the subject is unknown.
- b In 4 cases, the pay grade of the subject is unknown.
- c In 2 cases, the pay grade of the subject is unknown.

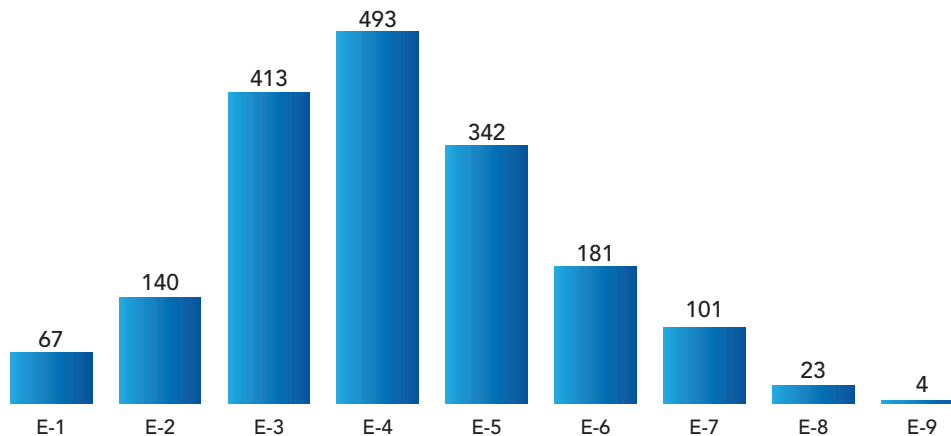
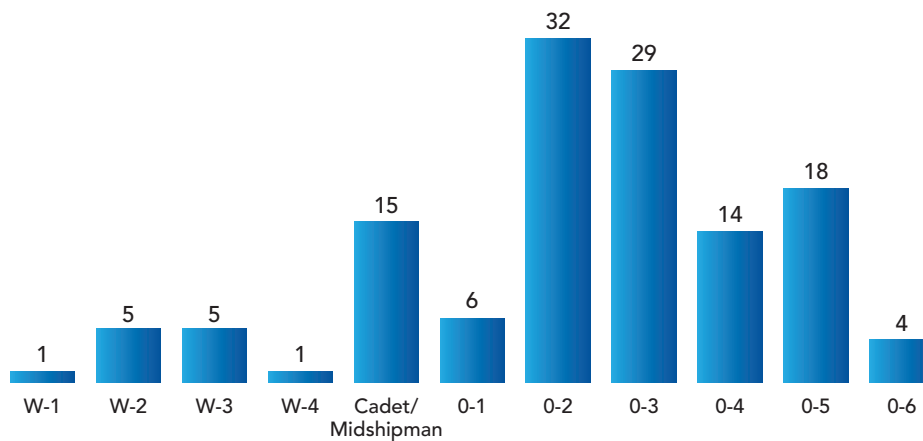


TABLE VI.7. PAY GRADE OF OFFICER SUBJECTS

	W-1		W-2		W-3		W-4		Cadet/ Midshipman		O-1		O-2		O-3		O-4		O-5		O-6	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=61)	0	0.0	5	8.2	4	6.6	1	1.6	2	3.3	4	6.6	14	23.0	16	26.2	7	11.5	8	13.1	0	0.0
Marine Corps (N=9)	1	11.1	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	33.3	2	22.2	0	0.0	1	11.1	2	22.2
Navy (N=26)	0	0.0	0	0.0	1	3.8	0	0.0	4	15.4	1	3.8	9	34.6	7	26.9	1	3.8	3	11.5	0	0.0
Air Force (N=30)	0	0.0	0	0.0	0	0.0	0	0.0	6	20.0	1	3.3	5	16.7	4	13.3	6	20.0	6	20.0	2	6.7
Coast Guard (N=4)	0	0.0	0	0.0	0	0.0	0	0.0	3	75.0	0	0.0	1	25.0	0	0.0	0	0.0	0	0.0	0	0.0
Total (N=130)	1	0.8	5	3.8	5	3.5	1	0.8	15	11.5	6	4.6	32	24.6	29	22.3	14	10.8	18	13.8	4	3.1



The vast majority of subjects were enlisted personnel (93.0%), rather than officers (6.8%). The majority of enlisted cases (82.1%) involved subjects with a pay grade of E-5 or lower. Over one-quarter of enlisted subjects (27.8%) were E-4 personnel. The age of subjects—whether enlisted or officer—ranged from 18 to 58, and their mean age was 25.5 years old.¹⁴³

Finding 113: In 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 1,860 (97.7%) of the subjects, were male and 44 (2.3%) were female;
- 1,771 (93.0%) of the subjects, were enlisted Service members, 130 (6.8%) were officers, and 3 (0.2%) were of unknown military pay grade;
- 1,455 (82.1%) of the subjects, were in the pay grade of E-5 or lower;
- 493 (27.8%) of the subjects, were in the pay grade of E-4; and
- Subjects ranged in age from 18 to 58, with a mean age of 25.5 years old.

143 See Appendix F.

TABLE VI.8. VICTIM STATUS AT THE TIME OF OFFENSE

	Enlisted		Officer		Civilian- Not DoD Spouse		Civilian- DoD Spouse		Unknown Grade in Military Service	
	n	%	n	%	n	%	n	%	n	%
Army (N=821)	386	47.0	19	2.3	202	24.6	214	26.1	0	0.0
Marine Corps (N=263)	145	55.1	3	1.1	56	21.3	59	22.4	0	0.0
Navy (N=387)	245	63.3	8	2.1	69	17.8	65	16.8	0	0.0
Air Force (N=403)	218	54.1	14	3.5	76	18.9	91	22.6	4	1.0
Coast Guard (N=30)	10	33.3	4	13.3	10	33.3	6	20.0	0	0.0
Total (N=1,904)	1,004	52.7	48	2.5	413	21.7	435	22.8	4	0.2

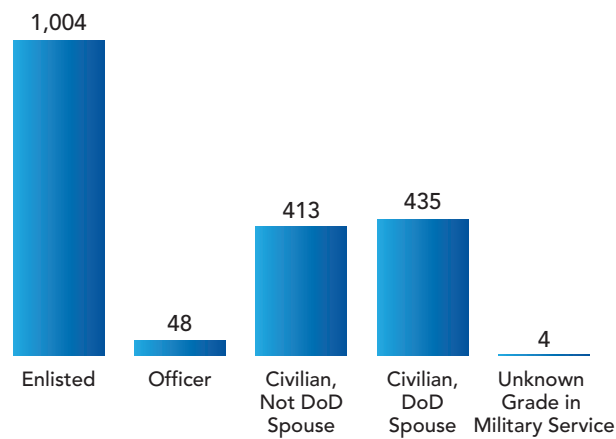


TABLE VI.9. PAY GRADE OF ENLISTED VICTIMS

	E-1		E-2		E-3		E-4		E-5		E-6		E-7		E-8		E-9	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=386 ^a)	24	6.2	91	23.6	123	31.9	116	30.1	19	4.9	9	2.3	3	0.8	0	0.0	0	0.0
Marine Corps (N=145 ^b)	4	2.8	34	23.4	68	46.9	22	15.2	15	10.3	0	0.0	1	0.7	0	0.0	0	0.0
Navy (N=245 ^c)	16	6.5	33	13.5	90	36.7	48	19.6	45	18.4	6	2.4	3	1.2	1	0.4	0	0.0
Air Force (N=218 ^d)	7	3.2	21	9.6	98	45.0	48	22.0	22	10.1	10	4.6	5	2.3	1	0.5	0	0.0
Coast Guard (N=10)	0	0.0	0	0.0	4	40.0	2	20.0	3	30.0	1	10.0	0	0.0	0	0.0	0	0.0
Total (N=1,004)	51	5.1	179	17.8	383	38.1	236	23.5	104	10.4	26	2.6	12	1.2	2	0.2	0	0.0

- a In 1 case, the pay grade of the victim is unknown.
- b In 1 case, the pay grade of the victim is unknown.
- c In 3 cases, the pay grade of the victim is unknown.
- d In 6 cases, the pay grade of the victim is unknown.

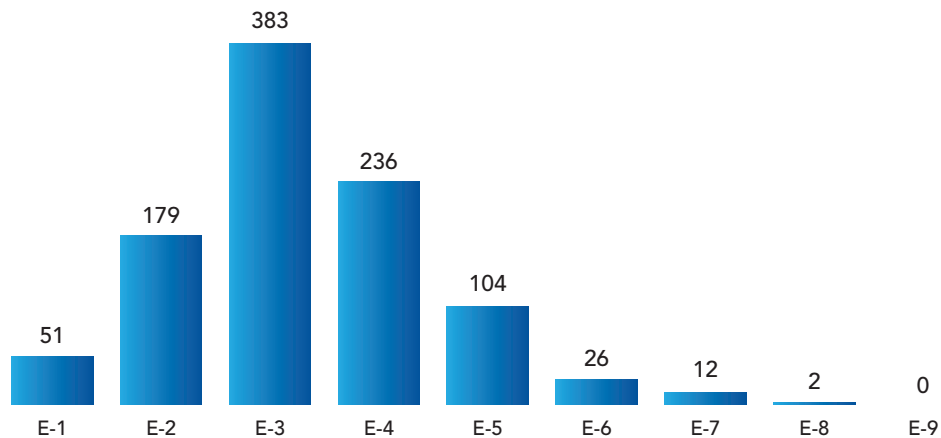
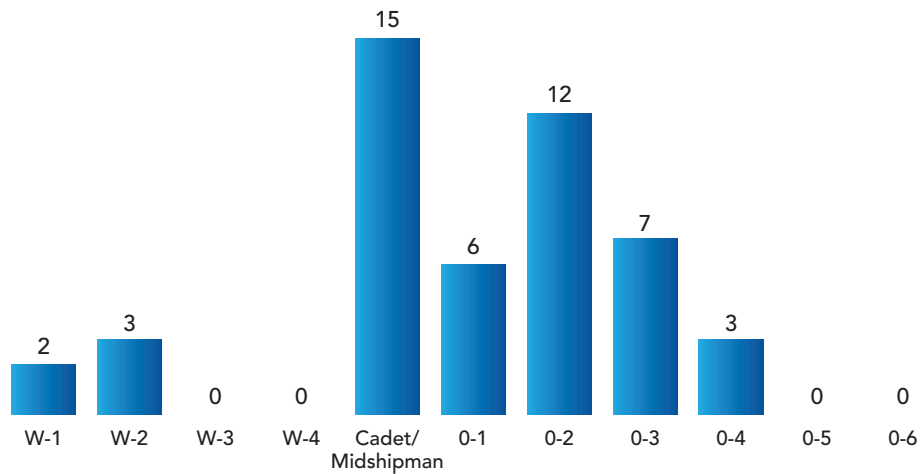


TABLE VI.10. PAY GRADE OF OFFICER VICTIMS

	W-1		W-2		W-3		W-4		Cadet/ Midshipman		O-1		O-2		O-3		O-4		O-5		O-6	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=19)	1	5.3	2	10.5	0	0.0	0	0.0	3	15.8	3	15.8	5	26.3	4	21.1	1	5.3	0	0.0	0	0.0
Marine Corps (N=3)	1	33.3	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	2	66.7	0	0.0	0	0.0	0	0.0	0	0.0
Navy (N=8)	0	0.0	0	0.0	0	0.0	0	0.0	4	50.0	2	25.0	0	0.0	0	0.0	2	25.0	0	0.0	0	0.0
Air Force (N=14)	0	0.0	0	0.0	0	0.0	0	0.0	6	42.9	0	0.0	5	35.7	3	21.4	0	0.0	0	0.0	0	0.0
Coast Guard (N=4)	0	0.0	1	25.0	0	0.0	0	0.0	2	50.0	1	25.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0
Total (N=48)	2	4.2	3	6.3	0	0.0	0	0.0	15	31.3	6	12.5	12	25.0	7	14.6	3	6.3	0	0.0	0	0.0



Unlike subjects, who were all active duty Service members at the time of the offense, 55.4% of victims were Service members. The majority of Service member victims (95.1%) were enlisted, while only 4.5% of Service member victims were officers. Of the victims who were enlisted, most (94.9%) were in the pay grade of E-5 or below. The age of victims—whether military or civilian—ranged from 16 to 60, and their mean age was 23.6 years old.¹⁴⁴

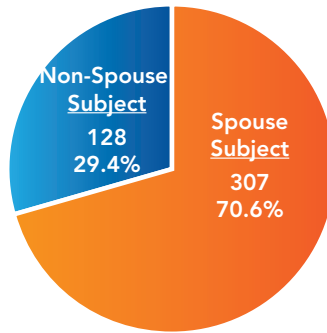
Civilians accounted for almost half of all victims (44.5%). Civilians who were married to Service members were further characterized as DoD spouses.¹⁴⁵

TABLE VI.11. MILITARY CIVILIAN SPOUSE VICTIMS AND NUMBER OF SPOUSE SUBJECTS

	Spouse Subject		Non-Spouse Subject	
	n	%	n	%
Army (N=214)	134	62.6	80	37.4
Marine Corps (N=59)	41	69.5	18	30.5
Navy (N=65)	50	76.9	15	23.1
Air Force (N=91)	77	84.6	14	15.4
Coast Guard (N=6)	5	83.3	1	16.7
Total (N=435)	307	70.6	128	29.4

¹⁴⁴ See Appendix F.

¹⁴⁵ Reviewers determined the status of the victim based on their status at the time of offense. If a victim had the dual status of being a Service member and being married to a Service member, they were categorized as military (not “DoD spouse”) in Table VI.8. In Table VI.14, a Service member victim married to the subject is categorized as “spouse” or former spouse. In 53 cases, the victim was both a Service member and the spouse of a Service member subject.



Military civilian spouse victims accounted for 22.8% of all victims. In 70.6% of those cases, the victim was married to the subject.

Finding 114: In 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 1,802 (94.6%) of the victims, were female and 102 (5.4%) were male;
- 1,056 (55.5%) of the victims, were Service members;
 - of those, 1,004 (95.1%) were enlisted Service members, 48 (4.5%) were officers, and 4 (0.4%) were Service members of unknown pay grade;
 - 953 (94.9%) enlisted Service member victims were in the pay grade of E-5 or lower;
 - 15 (31.3%) of the 48 officer victims were cadets/midshipmen, and 25 (52.1%) were in the pay grade of O-1 through O-3;
- 413 (21.7%) of the victims, were civilians (and not military spouses);
- 435 (22.8%) of the victims, were civilian military spouses;
 - 307 (70.6%) of the cases, the victim was married to the Service member subject; 128 (29.4%) of the cases, the subject was not the victim’s spouse; and
- Victims ranged in age from 16 to 60, with a mean age of 23.6 years old.

TABLE VI.12. RACE OF SUBJECT

	White		Black or African American		Asian		Native Hawaiian or Other Pacific Islander		American Indian or Alaska Native		Other		Unknown	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=821)	504	61.4	259	31.5	17	2.1	9	1.1	3	0.4	9	1.1	20	2.4
Marine Corps (N=263)	205	77.9	46	17.5	3	1.1	2	0.8	3	1.1	3	1.1	1	0.4
Navy (N=387)	246	63.6	112	28.9	16	4.1	3	0.8	2	0.5	4	1.0	4	1.0
Air Force (N=403)	285	70.7	77	19.1	9	2.2	7	1.7	1	0.2	1	0.2	23	5.7
Coast Guard (N=30)	26	86.7	1	3.3	0	0.0	1	3.3	0	0.0	0	0.0	2	6.7
Total (N=1,904)	1,266	66.5	495	26.0	45	2.4	22	1.2	9	0.5	17	0.9	50	2.6

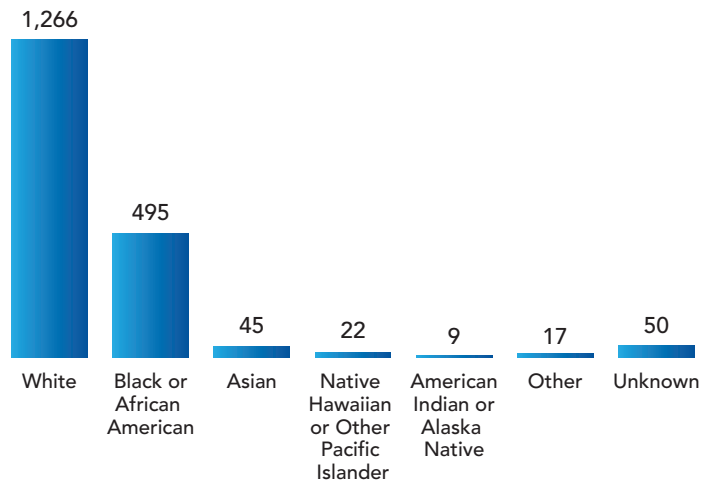
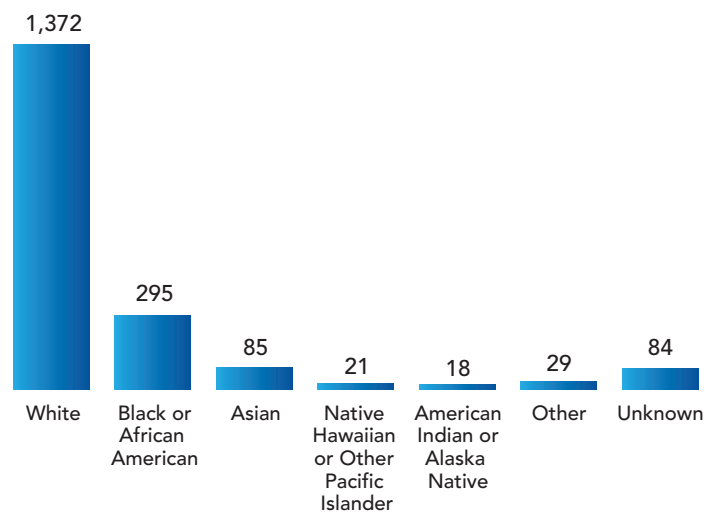


TABLE VI.13. RACE OF VICTIM

	White		Black or African American		Asian		Native Hawaiian or Other Pacific Islander		American Indian or Alaska Native		Other		Unknown	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=821)	582	70.9	153	18.6	30	3.7	15	1.8	9	1.1	19	2.3	13	1.6
Marine Corps (N=263)	221	84.0	22	8.4	7	2.7	1	0.4	4	1.5	3	1.1	5	1.9
Navy (N=387)	260	67.2	73	18.9	36	9.3	2	0.5	3	0.8	4	1.0	9	2.3
Air Force (N=403)	287	71.2	45	11.2	12	3.0	3	0.7	1	0.2	3	0.7	52	12.9
Coast Guard (N=30)	22	73.3	2	6.7	0	0.0	0	0.0	1	3.3	0	0.0	5	16.7
Total (N=1,904)	1,372	72.1	295	15.5	85	4.5	21	1.1	18	0.9	29	1.5	84	4.4



The Committee had difficulty assessing the subject's and victim's ethnicity, largely because information in the investigative case files was often incomplete and because the Services record this information differently, if at all. Initially, DAC-IPAD staff assumed that both race and ethnicity, across the Services, would be captured in the section on the first page of the investigative file where the subject's and victim's identifying information is located (commonly referred to as the "title block"). However, as reviewers examined the investigative files, it became apparent that the title block did not include ethnicity.¹⁴⁶ As a result, to determine ethnicity and sometimes race reviewers relied on other documents in the investigative file, such as a prior arrest report, the interview data sheet, or the FBI fingerprint card.¹⁴⁷ Given these challenges, this report discusses race but not ethnicity.

According to the information in the investigations, the majority of both subjects (66.5%) and victims (72.1%) were recorded as White. About one-quarter of subjects (26.0%) were recorded as Black, and 15.5% of victims were recorded as Black.¹⁴⁸

In 2019, the U.S. Government Accountability Office issued an in-depth report on race in the military justice system. One of its findings was that the Military Services "do not collect and maintain consistent information regarding race and ethnicity in their investigations."¹⁴⁹ Based on its review of investigations closed in FY17, the DAC-IPAD concurs with that assessment; however, it is also aware that the Services have taken steps to consistently report race and ethnicity pursuant to Article 140a, UCMJ, and to the Secretary of Defense's directive that the Services track race and ethnicity, in accordance with the Office of Management and Budget's Statistical Policy Directive No. 15.¹⁵⁰

146 Information about race and ethnicity was not included in the MCIOs' physical files, but potentially may be located in MCIO databases. The DAC-IPAD did not have access to those databases.

147 The review of MCIO investigative files revealed that CID and NCIS record only race—not ethnicity—in the title block. The Air Force does not list either race or ethnicity in the title block unless race is a necessary element of the crime itself. The Coast Guard does not include race or ethnicity in its demographic section of the investigative file. Some reviewers recorded race only if it was documented in the title block, while others relied on more specific documentation in the investigative file listing ethnicity. As a result, information on ethnicity was not recorded consistently.

148 2017 DEMOGRAPHICS REPORT, *supra* note 139, at 23. This report indicates that in 2017 the active duty force was 68.7% White and 17.3% Black or African American. The latter figure, taken together with the Committee's finding that in 26.0% of cases the subject was Black or African American, may suggest that Blacks are disproportionately affected by allegations of sexual offenses at the investigative stage. However, across Services, the data indicate that the race of the subject is not related to the decision to prefer a penetrative sexual offense charge. See Appendix F for Service-specific data. In addition, cases involving White victims were more likely to be preferred than cases involving a non-White victim. See Table VI.40. Furthermore, although the race of the victim had statistical significance in the bivariate analysis, when other variables were introduced, race was not significant in the multivariate analysis. The race of the victim or subject was not related to court-martial outcomes.

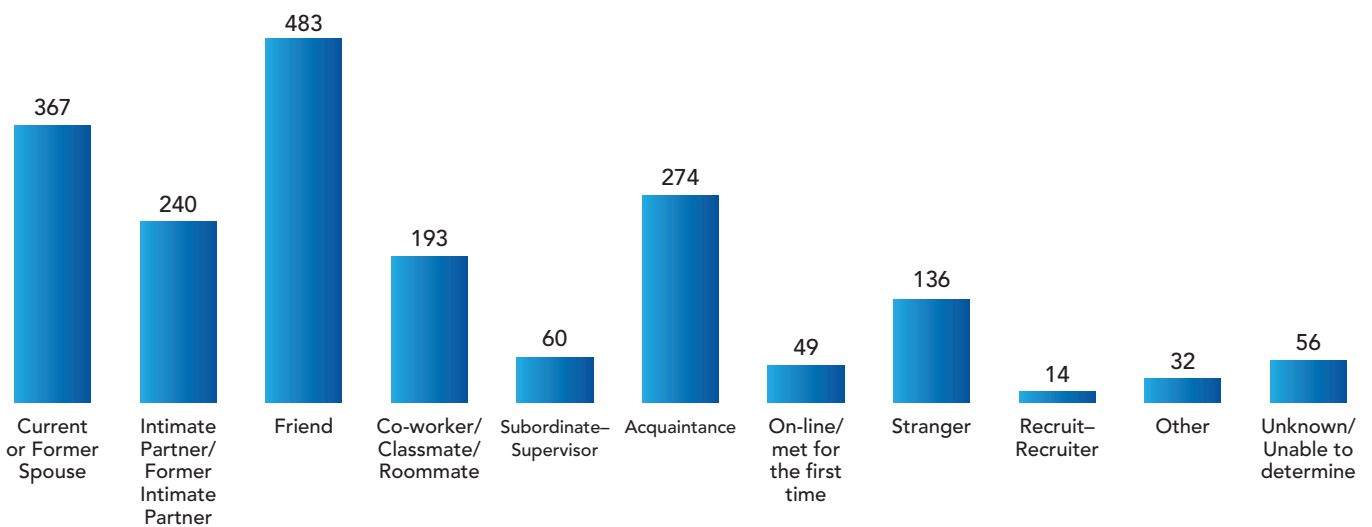
149 U.S. GOVERNMENT ACCOUNTABILITY OFFICE, DOD AND THE COAST GUARD NEED TO IMPROVE THEIR CAPABILITIES TO ASSESS RACIAL DISPARITIES 7 (June 2020), available at <https://www.gao.gov/assets/710/707582.pdf>.

150 10 U.S.C. § 940a (2019) (Article 140a, UCMJ).

TABLE VI.14. RELATIONSHIP BETWEEN VICTIM AND SUBJECT

Relationship Between Victim and Subject	Army (N=821)		Marine Corps (N=263)		Navy (N=387)		Air Force (N=403)		Coast Guard (N=30)		Total (N=1904)	
	n	%	n	%	n	%	n	%	n	%	n	%
Current or Former Spouse	156	19.0	57	21.7	55	14.2	94	23.3	5	16.7	367	19.3
Intimate Partner/ Former Intimate Partner	96	11.7	32	12.2	53	13.7	52	12.9	7	23.3	240	12.6
Friend	185	22.5	77	29.3	107	27.6	109	27.0	5	16.7	483	25.4
Co-worker/ Classmate/ Roommate	69	8.4	24	9.1	52	13.4	44	10.9	4	13.3	193	10.1
Subordinate–Supervisor	27	3.3	7	2.7	12	3.1	14	3.5	0	0.0	60	3.2
Acquaintance	129	15.7	35	13.3	60	15.5	46	11.4	4	13.3	274	14.4
On-line/met for the first time	24	2.9	4	1.5	9	2.3	12	3.0	0	0.0	49	2.6
Stranger	81	9.9	15	5.7	18	4.7	18	4.5	4	13.3	136	7.1
Recruit–Recruiter	9	1.1	3	1.1	2	0.5	0	0.0	0	0.0	14	0.7
Other	19	2.3	3	1.1	5	1.3	4	1.0	0	0.0	32	1.7
Unknown/Unable to determine	26	3.2	6	2.3	14	3.6	10	2.5	1	3.3	56	2.9

Note: A full explanation of the relationship descriptors and methodology can be found at Appendix F. The closest relationship described by the victim—either as explicitly expressed in the victim’s statement or as deduced by the reviewers from the investigative case file materials—was analyzed.

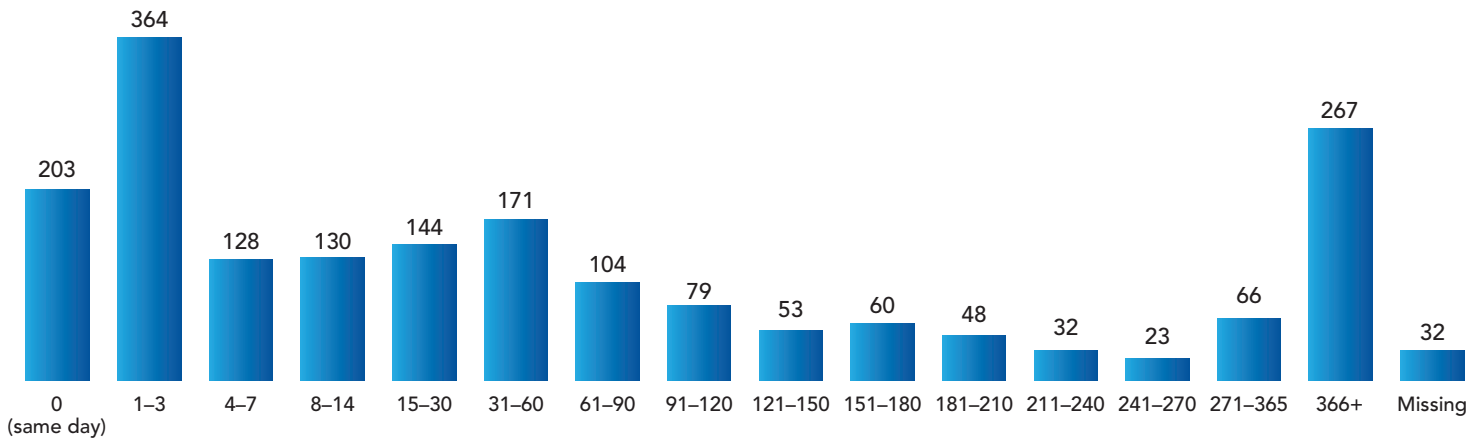


Reviewers recorded the relationship between the subject and victim, based on the victim’s statement and perspective.¹⁵¹ The largest category was “friend” (25.4%). Generally, victims described Service members whom they knew in the context of work or through other Service members as “friends.” The second largest category was “current or former spouse” (19.3%),¹⁵² followed by “acquaintance” (14.4%) and “intimate partner” (12.6%).¹⁵³ Subordinate–supervisor or recruit–recruiter relationships were very rare in cases involving penetrative sexual offense allegations, appearing in only 3.9% of the cases reviewed.¹⁵⁴ The relationship category “online / met for the first time” applied to cases in which a victim and subject met online and may have had a virtual relationship before meeting in person.

Finding 115: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 483 (25.4%) of the cases, the victim and subject were classified as “friends”;
- 367 (19.3%) of the cases, the victim and subject were current or former spouses;
- 274 (14.4%) of the cases, the victim and subject were acquaintances;
- 240 (12.6%) of the cases, the victim and subject were intimate partners;
- 74 (3.2%) of the cases, the victim and subject were subordinate–supervisor or recruit–recruiter; and
- 49 (2.6%) of the cases, the victim and subject met online and may have had a virtual relationship before meeting in person.

FIGURE 1. NUMBER OF DAYS BETWEEN OFFENSE AND REPORT TO AUTHORITIES



151 If the victim did not provide a description of the relationship and the reviewer could not determine the relationship by other means, it was categorized as “unknown.”

152 The figures for “spouse” here differ from those in Table VI.8. Service members who were married to Service members were assigned to the category “enlisted” or “officer” in Table VI.8; in Table VI.14, they were categorized by their relationship with the subject.

153 Reviewers categorized relationships as “intimate partner” based on their judgment of information contained in the victim’s statement; this category includes boyfriends, girlfriends, and others with whom the victim engaged or formerly engaged in an intimate or sexual relationship.

154 In all cases involving subordinate–supervisor relationships, the victim is the subordinate. Similarly, in all cases involving recruiter–recruit relationships, the victim is the recruit.

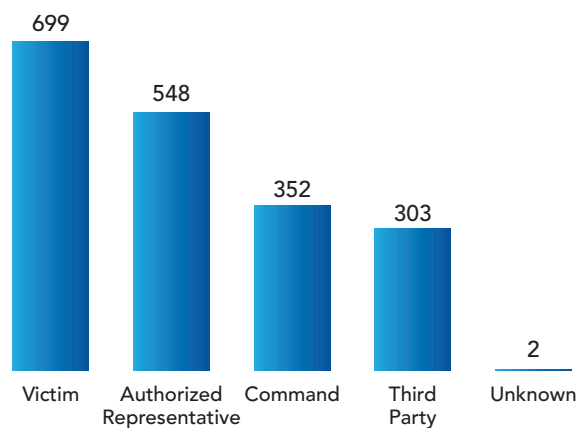
This data review project included an analysis of the amount of time that elapsed between the date of incident and the date of its report to military law enforcement by either the victim or another party.¹⁵⁵

There were some significant variances across the Military Services as to the number of days between the penetrative sexual offense and the date it was reported by the victim to the MCIOs. However, Military Service-wide results show that 37.1% of all cases are reported within seven days of the incident.

The DAC-IPAD's predecessor, the JPP, recognized the possibility of some correlation between the promptness with which a sexual offense was reported to law enforcement and the likelihood that a case would be prosecuted and tried to verdict; however, the JPP did not further analyze the timing of the report.¹⁵⁶ After aggregating all reports made within seven days of the incident, the DAC-IPAD compared cases in which an initial disposition authority decided to take no action on a penetrative sexual offense allegation and those in which it decided to prefer an adult penetrative sexual offense charge.¹⁵⁷ It found that cases reported within seven days of the incident were more likely to result in a preferred adult penetrative sexual offense charge.

TABLE VI.15. PERSON REPORTING TO LAW ENFORCEMENT

	Victim		Authorized Representative		Command		Third Party		Unknown	
	n	%	n	%	n	%	n	%	n	%
Army (N=821)	298	36.3	248	30.2	133	16.2	142	17.3	0	0.0
Marine Corps (N=263)	121	46.0	69	26.2	54	20.5	19	7.2	0	0.0
Navy (N=387)	153	39.5	104	26.9	77	19.9	53	13.7	0	0.0
Air Force (N=403)	114	28.3	122	30.3	86	21.3	79	19.6	2	0.5
Coast Guard (N=30)	13	43.3	5	16.7	2	6.7	10	33.3	0	0.0
Total (N=1,904)	699	36.7	548	28.8	352	18.5	303	15.9	2	0.1



155 For cases involving multiple offenses or an estimated date range, reviewers recorded the date of the most recent occurrence. For cases in which a victim could provide only a month, reviewers recorded the date as the last day of that month. The date of the report to authorities is the date that an MCIO was notified. If a case was previously reported to a civilian agency, that date was not recorded for purposes of this analysis.

156 See JPP REPORT ON STATISTICAL DATA, *supra* note 101, at 16.

157 See Appendix F.

Reviewers recorded information about the person who reported the penetrative sexual offense to a law enforcement agency, whether that was a federal or state authority, the military police, or an MCIO. Unlike in civilian jurisdictions, which almost always require a victim to make a sexual offense allegation directly to law enforcement in order to initiate an investigation,¹⁵⁸ in the military, individuals other than the victim can report an offense to law enforcement. These individuals may be a victim-authorized representative, a commander or a command representative such as a noncommissioned officer (NCO), or a third party, who either witnessed the incident or events surrounding it or heard about the incident from the victim or another person.¹⁵⁹ Commanders and NCOs in the victim's chain of command are mandatory reporters of sexual offenses; that is, they are required to alert the MCIO if they learn of a sexual assault allegedly committed by a service member, even if the victim does not want to participate in a criminal investigation.¹⁶⁰ Such required reporting also occurs if an individual other than the victim—such as the victim's friend—informs a commander or NCO of the sexual assault.

In the cases reviewed, victims reported the penetrative sexual offense allegation to law enforcement in 36.7% of cases. The command reported the allegation to law enforcement in 18.5% of cases. A victim-authorized representative reported the allegation to law enforcement in 28.8% of cases. Finally, a third party reported the allegation to law enforcement in 15.9% of cases.

Finding 116: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 699 (36.7%) of the cases, the victims reported the allegation to law enforcement;
- 352 (18.5%) of the cases, the command reported the allegation to law enforcement;
- 548 (28.8%) of the cases, victim-authorized representative reported the allegation to law enforcement; and
- 303 (15.9%) of the cases, third party reported the allegation to law enforcement.

158 *Transcript of DAC-IPAD Public Meeting 118–24* (Oct. 19, 2018).

159 Victim-authorized reports are made by sexual assault response coordinators, victim advocates, special victims' counsel, victims' legal counsel, and any other representative or agent of a victim.

160 DEP'T OF DEF. INSTR. 5505.18, INVESTIGATION OF ADULT SEXUAL ASSAULT IN THE DEPARTMENT OF DEFENSE, ¶ 1.2 (Mar. 22, 2017, Incorporating Change 2, Effective Jan. 31, 2019). *See also* FY14 NDAA, *supra* note 50, § 1742 (mandating that every commander who receives a report of a sex-related offense involving a member of the Armed Forces in the chain of command of such officer immediately refer the report to the appropriate MCIO).

Evidence

Reviewers recorded relevant physical evidence in investigations, such as whether force was used or threatened by the subject, whether the victim sustained an injury, whether a sexual assault forensic examination (SAFE) was performed, and whether DNA evidence was tested. In addition, reviewers recorded information about the presence of witnesses and about any pretextual communications between the subject and the victim. Pretextual communications are attempts to solicit incriminating statements from the suspect using social media, telephone recordings, text, or email.

TABLE VI.16. USE OR THREAT OF FORCE AGAINST THE VICTIM

	Use/Threat of Force			
	Yes		No	
	n	%	n	%
Army (N=821)	111	13.5	710	86.5
Marine Corps (N=263)	34	12.9	229	87.1
Navy (N=387)	64	16.5	323	83.5
Air Force (N=403)	71	17.6	332	82.4
Coast Guard (N=30)	8	26.7	22	73.3
Total (N=1,904)	288	15.1	1,616	84.9

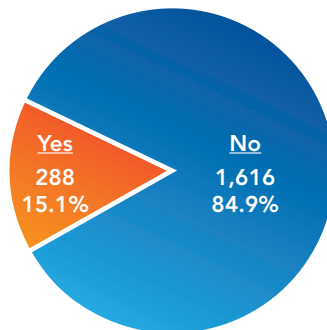
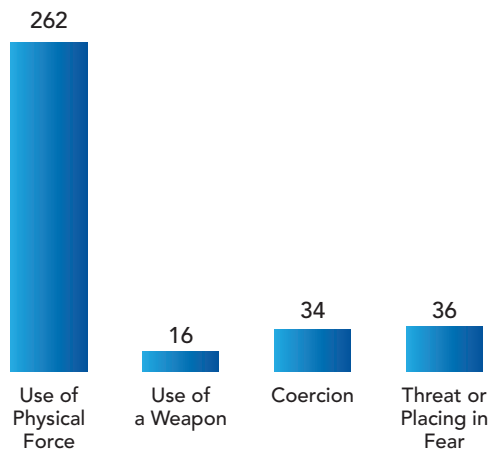


TABLE VI.17. TYPE OF FORCE OR THREAT

	Type of Force/Threat ^a							
	Use of Physical Force		Use of a Weapon		Coercion		Threat or Placing in Fear	
	n	%	n	%	n	%	n	%
Army (N=821)	104	12.7	7	0.9	11	1.3	12	1.5
Marine Corps (N=263)	28	10.6	2	0.8	6	2.3	6	2.3
Navy (N=387)	57	14.7	6	1.6	7	1.8	4	1.0
Air Force (N=403)	66	16.4	1	0.2	8	2.0	11	2.7
Coast Guard (N=30)	7	23.3	0	0.0	2	6.7	3	10.0
Total (N=1,904)	262	13.8	16	0.8	34	1.8	36	1.9

a These categories are not mutually exclusive.



In assessing the penetrative sexual offense, reviewers noted cases in which the victim or another witness described the use of a verbal threat or physical force with or without a weapon.¹⁶¹ Reviewers recorded the type of force or threat of force for each victim; a single victim might report more than one type. The use of physical force or threat of force was recorded in 15.1% of all investigations reviewed.¹⁶² The most common type of force used was physical, which was recorded in 13.8% of cases.

161 In order to be guilty of rape, the government must prove a sexual act plus, *inter alia*, unlawful force or threatening or placing “that other person in fear that any person will be subjected to death, grievous bodily harm, or kidnapping.” In order to be guilty of sexual assault, the government must prove a sexual act plus, *inter alia*, “threatening or placing that other person in fear.” 10 U.S.C. § 920 (Article 120, UCMJ) (2019).

162 The infrequency of physical force or threat of force and coercion, along with the lack of victim impairment in almost half the cases (*see* Table VI.31), raises the question of what nonconsensual element is present in those cases. Dr. Wells, the DAC-IPAD’s criminologist, will isolate those cases for the Committee’s analysis in a future report.

Finding 117: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 288 (15.1%) of the cases, involved the use of physical force, coercion, or the threat of force.
 - 262 (13.8%) of the cases, involved physical force;
 - 16 (0.8%) of the cases, involved a weapon;
 - 34 (1.8%) of the cases, involved coercion; and
 - 36 (1.9%) of the cases, involved a threat and/or placing the victim in fear.
- 1616 (84.9%) of the cases, did not involve physical force, coercion, or the threat of force.

TABLE VI.18. PHYSICAL INJURIES TO THE VICTIM

	Physical Injuries to Victim			
	Yes		No	
	n	%	n	%
Army (N=821)	110	13.4	711	86.6
Marine Corps (N=263)	56	21.3	207	78.7
Navy (N=387)	70	18.1	317	81.9
Air Force (N=403)	45	11.2	358	88.8
Coast Guard (N=30)	6	20.0	24	80.0
Total (N=1,904)	287	15.1	1,617	84.9

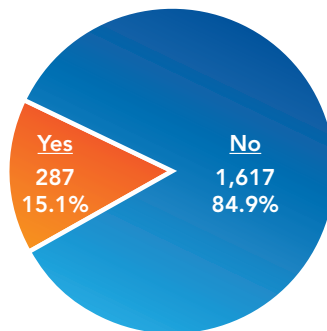
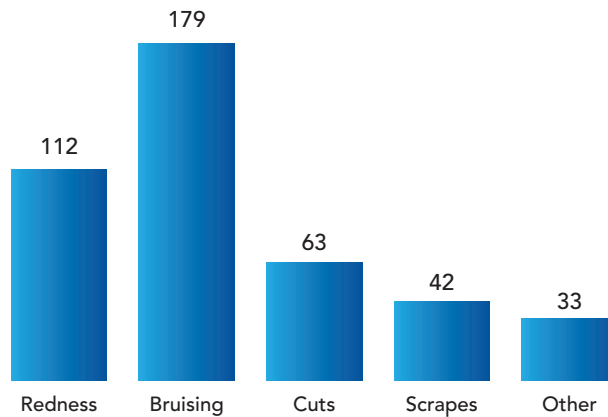


TABLE VI.19. TYPES OF PHYSICAL INJURIES

	Type of Physical Injuries ^a									
	Redness		Bruising		Cuts		Scrapes		Other	
	n	%	n	%	n	%	n	%	n	%
Army (N=821)	40	4.9	82	10.0	28	3.4	15	1.8	11	1.3
Marine Corps (N=263)	23	8.7	28	10.6	15	5.7	13	4.9	8	3.0
Navy (N=387)	23	5.9	43	11.1	14	3.6	9	2.3	9	2.3
Air Force (N=403)	22	5.5	22	5.5	5	1.2	5	1.2	3	0.7
Coast Guard (N=30)	4	13.3	4	13.3	1	3.3	0	0.0	2	6.7
Total (N=1,904)	112	5.9	179	9.4	63	3.3	42	2.2	33	1.7

a These categories are not mutually exclusive.



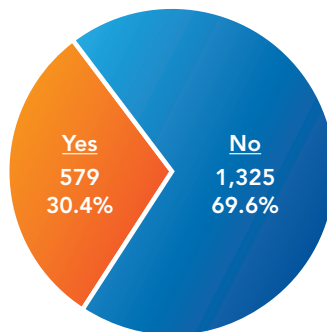
Reviewers recorded whether the victim reported a physical injury, even if no medical record, witness statement, or photograph documented such an injury. In some cases, multiple injuries were recorded for one victim. Physical injuries were recorded in 15.1% of cases reviewed. Bruising and redness (generally a skin irritation that may be caused by friction) were the most common types of injuries that victims reported.

Finding 118: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 287 (15.1%) of the cases, involved physical injuries reported by the victim.
- The most common injuries reported were bruising and/or redness, which occurred in 179 (9.4%) and 112 (5.9%) of the cases, respectively.

TABLE VI.20. SEXUAL ASSAULT FORENSIC EXAMINATION PERFORMED ON VICTIM

	SAFE Performed on Victim			
	Yes		No	
	n	%	n	%
Army (N=821)	247	30.1	574	69.9
Marine Corps (N=263)	101	38.4	162	61.6
Navy (N=387)	131	33.9	256	66.1
Air Force (N=403)	95	23.6	308	76.4
Coast Guard (N=30)	5	16.7	25	83.3
Total (N=1,904)	579	30.4	1,325	69.6



Sexual assault forensic examinations (SAFEs) are administered to victims of sexual offenses by health care providers in order to collect and document medical forensic evidence; they include a medical forensic history, physical examination, collection of evidence, and biological and physical findings.¹⁶³ SAFEs are not mandatory, and victims may decline them while still receiving medical treatment and post-traumatic care.

Reviewers were able to determine whether a SAFE was performed on the victim if a SAFE report was included in the case file, or if other materials in the file indicated the completion of an exam. Reviewers observed that 30.4% of victims underwent a SAFE.

In cases in which a SAFE was performed, 74.8% of the exams were done within two days of the offense. Medical guidelines recommend performing a SAFE within seven days of the offense,¹⁶⁴ but most reports of sexual offenses occur after that period (Figure 1). This timing may help explain why less than half of victims are receiving SAFEs.

163 DEP'T OF DEF. INSTR. 6310.09, HEALTH CARE MANAGEMENT FOR PATIENTS ASSOCIATED WITH A SEXUAL ASSAULT, Glossary (May 7, 2019).

164 DD FORM 2911, DoD SEXUAL ASSAULT FORENSIC EXAMINATION (SAFE) REPORT (Sept. 2015).

TABLE VI.21. DAYS BETWEEN SEXUAL ASSAULT AND SAFE

If SAFE Performed, Number of Days between Offense and Victim SAFE ^a	Army (N=247)		Marine Corps (N=101)		Navy (N=131)		Air Force (N=95)		Coast Guard (N=5)		Total (N=579)	
	n	%	n	%	n	%	n	%	n	%	n	%
0 (same day)	84	34.0	32	31.7	49	37.4	30	31.6	3	60.0	198	34.2
1	75	30.4	26	25.7	31	23.7	27	28.4	0	0.0	159	27.5
2	38	15.4	13	12.9	12	9.2	13	13.7	0	0.0	76	13.1
3	14	5.7	10	9.9	7	5.3	6	6.3	0	0.0	37	6.4
4	6	2.4	6	5.9	7	5.3	5	5.3	1	20.0	25	4.3
5	2	0.8	3	3.0	4	3.1	2	2.1	0	0.0	11	1.9
6	2	0.8	1	1.0	1	0.8	0	0.0	0	0.0	4	0.7
7	1	0.4	3	3.0	3	2.3	1	1.1	0	0.0	8	1.4
8 - 14	6	2.4	2	2.0	4	3.1	1	1.1	0	0.0	13	2.2
14+	9	3.6	5	5.0	3	2.3	4	4.2	0	0.0	21	3.6

a In 27 cases, the date of the SAFE could not be calculated.

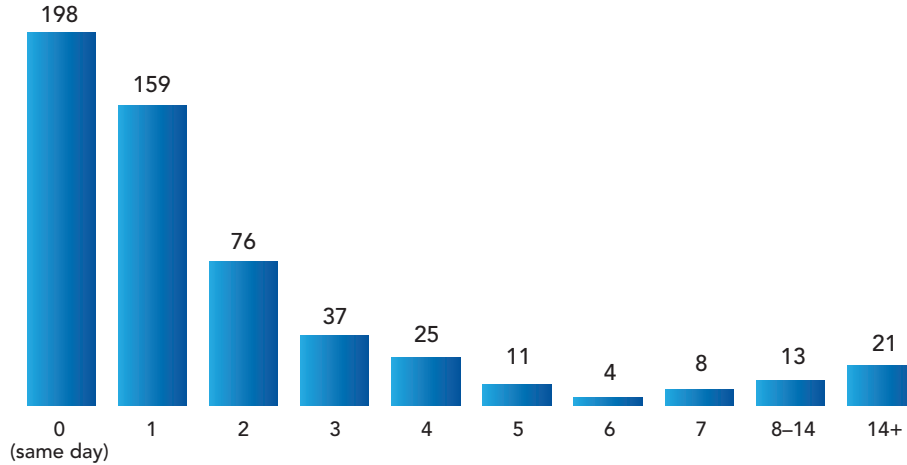
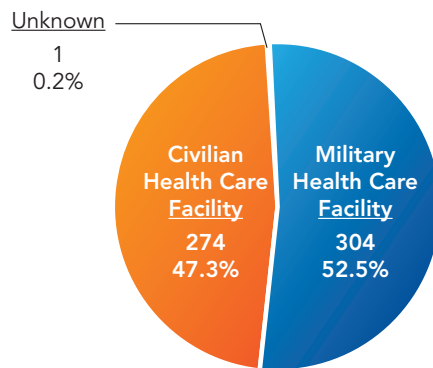


TABLE VI.22. LOCATION OF SAFE

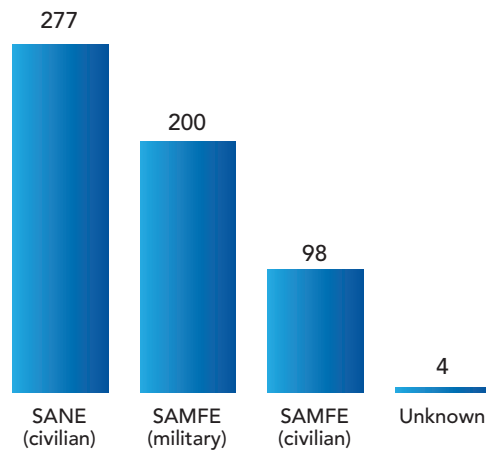
	Victim SAFE Location					
	Civilian Health Care Facility		Military Health Care Facility		Unknown	
	n	%	n	%	n	%
Army (N=247)	120	48.6	127	51.4	0	0.0
Marine Corps (N=101)	37	36.6	64	63.4	0	0.0
Navy (N=131)	44	33.6	86	65.6	1	0.8
Air Force (N=95)	69	72.6	26	27.4	0	0.0
Coast Guard (N=5)	4	80.0	1	20.0	0	0.0
Total (N=579)	274	47.3	304	52.5	1	0.2



In cases in which a SAFE was performed, 47.3% of the exams took place at a civilian health care facility, and 52.5% of the exams took place at a military health care facility.

TABLE VI.23. VICTIM SAFE PROVIDER

	Victim SAFE Provider							
	SANE (civilian)		SAMFE (military)		SAMFE (civilian)		Unknown	
	n	%	n	%	n	%	n	%
Army (N=247)	122	49.4	58	23.5	64	25.9	3	1.2
Marine Corps (N=101)	39	38.6	45	44.6	17	16.8	0	0.0
Navy (N=131)	43	32.8	77	58.8	10	7.6	1	0.8
Air Force (N=95)	69	72.6	20	21.1	6	6.3	0	0.0
Coast Guard (N=5)	4	80.0	0	0.0	1	20.0	0	0.0
Total (N=579)	277	47.8	200	34.5	98	16.9	4	0.7



The type of personnel providing the examination varies depending on the location of the SAFE. DoD providers who are authorized to provide SAFEs are called sexual assault medical forensic examiners (SAMFEs).¹⁶⁵ SAMFEs, who can be either civilians or military personnel, must be trained, certified health care providers who have specialized education and clinical preparation in the medical forensic care of victims.¹⁶⁶ In civilian medical facilities, personnel who perform SAFEs are known as sexual assault nurse examiners (SANEs). SANEs are generally registered or advanced practice nurses; certification requirements vary across the states.¹⁶⁷

The SAFE was provided by a SANE in 47.8% of cases, by a military SAMFE in 34.5% of cases, and by a civilian SAMFE in 16.9% of cases.

165 OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE HEALTH AFFAIRS, REPORT REQUIRED BY THE CARL LEVIN AND HOWARD P. “BUCK” MCKEON NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015, SECTION 539: REPORT ON THE TRAINING AND QUALIFICATIONS OF SEXUAL ASSAULT FORENSIC EXAMINERS (June 2015).

166 DEP’T OF DEF. INSTR. 6310.09, *supra* note 164, at 12. This DoDI requires that SAMFEs be trained to provide sexual assault patient care in accordance with Department of Justice training standards, complete training through the DoD inter-Service SAMFE training program or other DoD-approved organization, and be credentialed by their Service or other DoD agency to perform SAFEs within the military health system. *See also* U.S. DEPT. OF JUSTICE. OFFICE ON VIOLENCE AGAINST WOMEN, A NATIONAL PROTOCOL FOR SEXUAL ASSAULT MEDICAL FORENSIC EXAMINATIONS (Apr. 2013).

167 INTERNATIONAL ASSOCIATION OF FORENSIC NURSES, <https://www.forensicnurses.org/page/aboutSANE> (accessed Sept. 27, 2020).

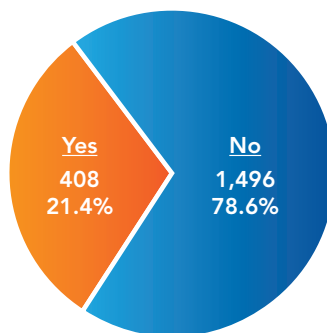
Finding 119: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- SAFE exams were performed in 579 (30.4%) cases.
 - 470 (81.2%) of the exams, were performed within three days of the sexual assault;
 - 274 (47.3%) of the exams, took place at a civilian health care facility;
 - 304 (52.5%) of the exams, took place at a military health care facility;
 - 277 (47.8%) of the exams, were performed by a SANE;
 - 200 (34.5%) of the exams, were performed by a military SAMFE; and
 - 98 (16.9%) of the exams, were performed by a civilian SAMFE.

TABLE VI.24. DNA EVIDENCE TESTED

	DNA Evidence Tested ^a			
	Yes		No	
	n	%	n	%
Army (N=821)	162	19.7	659	80.3
Marine Corps (N=263)	73	27.8	190	72.2
Navy (N=387)	74	19.1	313	80.9
Air Force (N=403)	95	23.6	308	76.4
Coast Guard (N=30)	4	13.3	26	86.7
Total (N=1,904)	408	21.4	1,496	78.6

a One reviewer did not address this question.



Reviewers recorded if the investigative file provided any indication that evidence was tested for DNA, regardless of the results of the DNA testing. Evidence that may be tested for DNA includes that collected as part of a SAFE or items collected at the crime scene, such as pieces of bedding or carpet. As is true of SAFE exams, the ability to test DNA is closely related to the timing of a reported offense. In addition, cases in which the act of penetration is not in dispute may be deemed not to merit DNA testing. Not all reviewers described the testing results, and many case files simply noted that DNA testing was being performed without including the results. Further, to meaningfully assess the impact of the

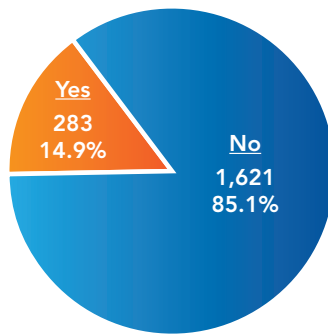
DNA testing results, much more information about the facts of each case would need to be analyzed. Reviewers recorded the presence of DNA testing in 21.4% of cases.

Finding 120: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, DNA testing occurred in 408 (21.4%) cases.

Directive 6 to Case Review Subcommittee: The CRSC examine the law, policy, and practices concerning sexual assault forensic examinations and DNA collection and testing in adult penetrative sexual offense cases and make appropriate findings and recommendations.

TABLE VI.25. WITNESSES TO THE PENETRATIVE SEXUAL OFFENSE

	Witnesses			
	Yes		No	
	n	%	n	%
Army (N=821)	130	15.8	691	84.2
Marine Corps (N=263)	45	17.1	218	82.9
Navy (N=387)	60	15.5	327	84.5
Air Force (N=403)	42	10.4	361	89.6
Coast Guard (N=30)	6	20.0	24	80.0
Total (N=1,904)	283	14.9	1,621	85.1

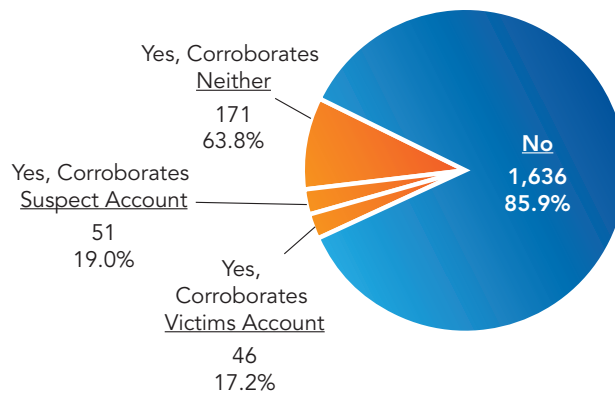


Reviewers recorded whether there was a witness to the penetrative sexual offense. Witnesses are individuals who saw or heard the incident, such as someone who was in the room, vehicle, or location when an alleged incident took place or another victim or subject in a multi-victim or multi-subject case. In 14.9% of cases, reviewers noted one or more witnesses to the incident.

Finding 121: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, there were one or more witnesses to the incident in 283 (14.9%) cases.

TABLE VI.26. PRETEXTUAL COMMUNICATION

	Pretextual Communication				If Yes,					
	Yes		No		Corroborates Victims Account		Corroborates Suspect Account		Corroborates Neither	
	n	%	n	%	n	%	n	%	n	%
Army (N=821)	101	12.3	720	87.7	16	15.8	20	19.8	65	64.4
Marine Corps (N=263)	32	12.2	231	87.8	7	21.9	10	31.3	15	46.9
Navy (N=387)	62	16.0	325	84.0	16	25.8	12	19.4	34	54.8
Air Force (N=403)	72	17.9	331	82.1	7	9.7	9	12.5	56	77.8
Coast Guard (N=30)	1	3.3	29	96.7	0	0.0	0	0.0	1	100.0
Total (N=1,904)	268	14.1	1,636	85.9	46	17.2	51	19.0	171	63.8



Reviewers recorded if the investigative file documented a pretextual communication between the victim and subject. As noted earlier in this section, pretextual communications are attempts to solicit incriminating statements from the suspect by social media, telephone recordings, text, or email. For example, a victim who may have been incapacitated might ask the subject why that subject engaged in sexual activity with them despite knowing they were “out of it” or had told the subject “no.” In 14.1% of cases reviewed, there was a pretextual communication documented.

Reviewers also made a subjective determination of whether the results of the pretextual communications corroborated the victim’s account, the subject’s account, or neither, based on the communication itself and other relevant facts in the file. In 17.2% of cases involving a pretextual communication the communication corroborated the victim’s account, in 19.0% of cases it corroborated the subject’s account, and in 63.8% of cases it did not corroborate either individual’s account.

Finding 122: In 268 (14.1%) of the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, there was a documented pretextual communication, and

- 171 (63.8%) of the cases, the communication did not corroborate either the victim’s or the subject’s account;
- 51 (19.0%) of the cases, the communication supported the subject’s account; and
- 46 (17.2%) of the cases, the communication supported the victim’s account.

Victim and Subject Complexity Factors

In addition to collecting background characteristics such as the age, race, and grade of the victim and subject, the CRSC recorded five other factors for the victim and subject:

- Loss of memory or consciousness
- Inconsistent statements
- Contradictory evidence
- Collateral misconduct
- Other misconduct

When recording this information, reviewers did not take into account whether the evidence would be admissible at trial based on the Military Rules of Evidence.

Reviewers also recorded whether the case file contained evidence of other sexual offenses or other misconduct that might be admissible under Military Rules of Evidence (M.R.E.) 413 and 404(b). In addition, reviewers recorded whether there was evidence that the victim had a potential motive to misrepresent the allegations that might be admissible under M.R.E. 608(c).¹⁶⁸

In presenting this information, the DAC-IPAD makes no value judgment on victims' behavior. Instead, the CRSC elected to record these factors—which other studies have called “credibility factors”¹⁶⁹—because of their potential impact on the commander's decision to prefer a penetrative sexual offense charge, the prosecutor's ability to obtain and sustain a conviction, and the defense counsel's ability to raise reasonable doubt.

Loss of Memory or Consciousness

Reviewers assessed whether a subject or victim suffered a loss of memory or consciousness that might affect their testimony at trial.¹⁷⁰ In order to make this assessment, reviewers relied on materials such as the subject's and victim's statements, other witnesses' statements, and medical documentation.¹⁷¹

Reviewers recorded a loss of memory or consciousness for the victim in 32.4% of all cases and a loss of memory or consciousness for the subject in less than 5% of all cases. The CRSC found that the majority of cases involving a loss of memory or consciousness also involved alcohol use.¹⁷²

Inconsistent Statements

Reviewers recorded inconsistent statements by either the subject or the victim that were relevant to the allegation of the penetrative sexual offense. For example, a subject might have provided a statement to the MCIO but told a different

168 See 2019 MCM, *supra* note 6, Mil. R. Evid. 404(b), 413, and 608. Under M.R.E. 608(c), impeachment of a witness based on bias, prejudice, or any motive to misrepresent is permitted either by examination of the witness or by the introduction of evidence.

169 See *supra* note 53.

170 Reviewers recorded the victim's description of their incapacitation on a separate section of the checklist. See Table VI.31.

171 The assessment of loss of memory or consciousness is different than the assessment of victim impairment.

172 See Tables VI.29 and VI.30.

version of the incident to a friend, whom law enforcement later interviewed. Inconsistent statements are admissible under certain circumstances at trial as evidence to challenge the credibility of the person testifying.¹⁷³ Inconsistent statements were recorded for subjects in 11.0% of the cases reviewed and for victims in 29.7% of cases reviewed.

Contradictory Evidence

Reviewers recorded the presence of evidence that contradicted either the subject's or victim's account of events. For example, a reviewer would note contradictory evidence if a subject denied a sexual encounter to law enforcement, but their DNA was found in the victim's body following a SAFE. Evidence that contradicted the subject's statements was recorded in 3.9% of cases, while evidence that contradicted the victim's statements was recorded in 13.3% of cases.

Victim's Motive to Lie

Reviewers recorded whether the case file contained evidence suggesting that the victim might have had a motive to lie about the allegations.¹⁷⁴ A victim's alleged motive to lie is relevant and constitutionally admissible evidence, supported by the right to cross-examine and confront witnesses at trial.¹⁷⁵ Reviewers recorded a motive to lie or misrepresent if they believed it would be an issue at some point during the criminal process. A motive to lie was recorded in 42.1% of cases.

Military Rules of Evidence 413 and 404(b)

Reviewers recorded any evidence potentially admissible under M.R.E. 404(b) and 413. Evidence of other misconduct generally is inadmissible under M.R.E. 404(b), which bars propensity evidence in criminal trials—that is, evidence supporting the argument that because the accused acted in a certain manner in the past, the finder of fact could infer that the accused acted similarly with regard to the charged offenses. However, M.R.E. 404(b) permits the admissibility of certain evidence of other crimes, wrongs, or acts committed by the accused for the purpose of “proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.”¹⁷⁶ M.R.E. 413, like its federal civilian counterpart, provides for the admissibility of propensity evidence when the accused has committed a prior sexual assault.¹⁷⁷

The vast majority of cases (87.8%) contained no indication that the subject had committed other sexual offenses and no evidence of other crimes or acts permissible under M.R.E. 404(b). In 12.2% of cases, reviewers noted that this type of evidence existed.

173 2016 MCM, *supra* note 13, Mil. R. Evid. 613(b).

174 Some reviewers deemed the allegation against a subject itself as a possible motive to lie, therefore always recording that the subject had a motive to lie, while other reviewers did not. Due to the discrepancy in capturing the subject's motive to lie, the data was viewed as inconsistent and unreliable.

175 *Olden v. Kentucky*, 488 U.S. 227, 231 (1998) (per curiam) (holding that “a criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness, and thereby to expose to the jury the facts from which jurors . . . could appropriately draw inferences relating to the reliability of the witness”). Under M.R.E. 608(c), extrinsic evidence of a motive to lie is admissible in addition to the right to cross-examine the witness about it. 2016 MCM, *supra* note 13, Mil. R. Evid. 608(c).

176 2016 MCM, *supra* note 13, Mil. R. Evid. 404(b). *See also* Fed. R. Evid. 413(a).

177 *Id.* at Mil. R. Evid. 413.

Collateral Misconduct

Reviewers recorded whether the case file presented any evidence of collateral misconduct by the victim or subject. Collateral misconduct is defined by DoD as “[v]ictim misconduct that might be in time, place, or circumstances associated with the victim’s sexual assault incident.”¹⁷⁸ Although this definition applies to victims only, exploring the collateral misconduct of the subject surrounding the penetrative sexual offense incident is also important to understanding the incident.¹⁷⁹

Reviewers noted that in 35.7% of cases a subject engaged in collateral misconduct, while in 26.4% of cases a victim engaged in collateral misconduct. Underage drinking accounted for 60.0% of the collateral misconduct recorded for victims and 28.4% of the collateral misconduct recorded for subjects. Other common types of collateral misconduct included adultery, fraternization, and other policy violations.

Other Misconduct

Reviewers also collected information on other misconduct committed by the victim or subject either before or after the penetrative sexual offense that was not connected to the offense. Subjects engaged in other misconduct in 24.7% of cases; victims, in 16.3% of cases. The misconduct varied in type and severity, ranging from curfew violations to attempted murder. Reviewers noted that in 10.0% of cases the subject engaged in domestic violence and in 27% of cases the subject engaged in some type of assault, including sexual assault. Additional examples of other misconduct included driving under the influence, theft, drug offenses, and prostitution.

TABLE VI.27. SUBJECT COMPLEXITY FACTORS^a

	Collateral Misconduct		Other Misconduct		Loss of Memory or Consciousness		413 and 404(b) Evidence		Inconsistent Statements		Contradictory Evidence	
	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=821)	312	38.0	156	19.0	29	3.5	84	10.2	101	12.3	27	3.3
Marine Corps (N=263)	96	36.5	85	32.3	20	7.6	27	10.3	24	9.1	10	3.8
Navy (N=387)	142	36.7	100	25.8	23	5.9	33	8.5	50	12.9	29	7.5
Air Force (N=403)	118	29.3	122	30.3	22	5.5	83	20.6	30	7.4	7	1.7
Coast Guard (N=30)	11	36.7	8	26.7	0	0.0	5	16.7	4	13.3	2	6.7
Total (N=1,904)	679	35.7	471	24.7	94	4.9	232	12.2	209	11.0	75	3.9

a For both Tables VI.27 and VI.28, the complexity factors are not mutually exclusive.

178 DEP’T OF DEF. INSTR. 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Glossary (Mar. 28, 2013, Incorporating Change 3, May 24, 2017).

179 The data recorded do not address whether adverse action was taken for the collateral misconduct.

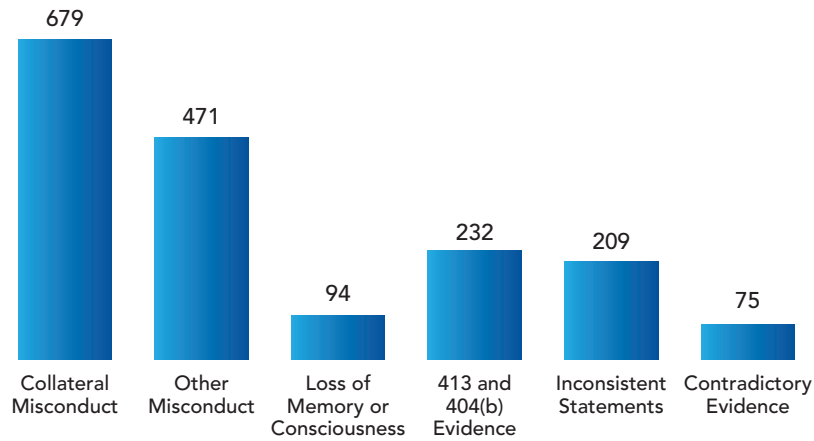
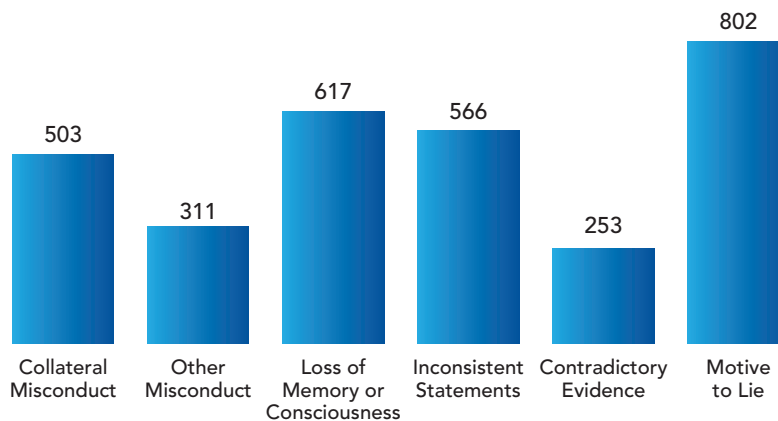


TABLE VI.28. VICTIM COMPLEXITY FACTORS

	Collateral Misconduct		Other Misconduct		Loss of Memory or Consciousness		Inconsistent Statements		Contradictory Evidence		Motive to Lie	
	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=821)	199	24.2	124	15.1	269	32.8	227	27.6	85	10.4	306	37.3
Marine Corps (N=263)	64	24.3	40	15.2	76	28.9	65	24.7	29	11.0	112	42.6
Navy (N=387)	135	34.9	65	16.8	134	34.6	120	31.0	69	17.8	187	48.3
Air Force (N=403)	97	24.1	77	19.1	128	31.8	148	36.7	69	17.1	183	45.4
Coast Guard (N=30)	8	26.7	5	16.7	10	33.3	6	20.0	1	3.3	14	46.7
Total (N=1,904)	503	26.4	311	16.3	617	32.4	566	29.7	253	13.3	802	42.1



Alcohol and Drug Use

TABLE VI.29. REPORTED ALCOHOL AND DRUG USE BY SUBJECT

	Alcohol Use				Drug Use			
	Yes		No		Yes		No	
	n	%	n	%	n	%	n	%
Army (N=821)	414	50.4	407	49.6	15	1.8	806	98.2
Marine Corps (N=263)	160	60.8	103	39.2	3	1.1	260	98.9
Navy (N=387 ^a)	244	63.0	142	36.7	7	1.8	379	97.9
Air Force (N=403)	218	54.1	185	45.9	5	1.2	398	98.8
Coast Guard (N=30)	20	66.7	10	33.3	1	3.3	29	96.7
Total (N=1,904)	1,056	55.5	847	44.5	31	1.6	1,872	98.3

a One reviewer did not address alcohol use or drug use.

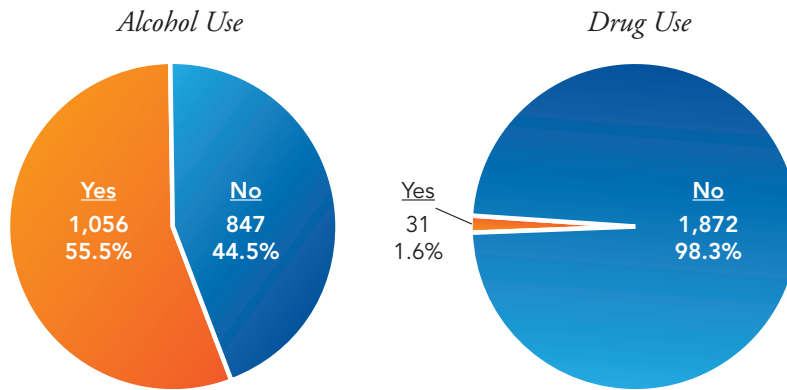
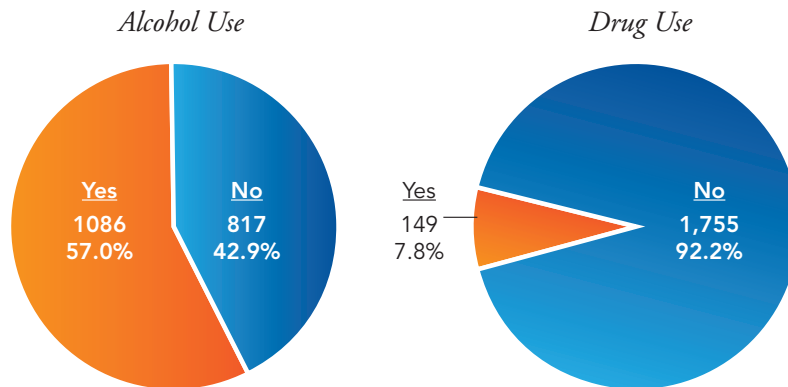


TABLE VI.30. REPORTED ALCOHOL AND DRUG USE BY VICTIM

	Alcohol Use				Drug Use			
	Yes		No		Yes		No	
	n	%	n	%	n	%	n	%
Army (N=821)	439	53.5	382	46.5	75	9.1	746	90.9
Marine Corps (N=263 ^a)	146	55.5	116	44.1	20	7.6	243	92.4
Navy (N=387)	247	63.8	140	36.2	21	5.4	366	94.6
Air Force (N=403)	233	57.8	170	42.2	33	8.2	370	91.8
Coast Guard (N=30)	21	70.0	9	30.0	0	0.0	30	100.0
Total (N=1,904)	1,086	57.0	817	42.9	149	7.8	1,755	92.2

a One reviewer did not address alcohol use or drug use.



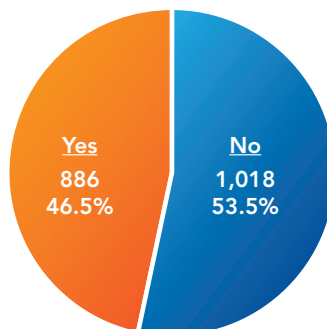
Reviewers recorded alcohol use by both the victim and the subject. Information about whether the victim and subject used alcohol was drawn from a number of sources, including statements by the subject, victim, or witnesses; information from the SAFE; and blood alcohol tests. Reviewers observed alcohol use by victims in 57.0% of cases and by subjects in 55.5% of cases.

Reviewers also recorded any indication of drug use by the subject or victim, including use of prescription drugs that may have resulted in incapacitation. Among the reported drugs were Percocet, Ambien, and Xanax. The data include drug use if the victim reported being drugged by the subject. Reviewers observed drug use by victims in 7.8% of cases and by subjects in 1.6% of cases.

TABLE VI.31. VICTIM IMPAIRMENT

Did Victim Report Being Impaired?

	Did Victim Report Being Impaired?			
	Yes		No	
	n	%	n	%
Army (N=821)	363	44.2	458	55.8
Marine Corps (N=263)	129	49.0	134	51.0
Navy (N=387)	185	47.8	202	52.2
Air Force (N=403)	196	48.6	207	51.4
Coast Guard (N=30)	13	43.3	17	56.7
Total (N=1,904)	886	46.5	1,018	53.5



Reviewers also recorded whether the victim reported being impaired. The reviewers reported the victim's own description of their state of impairment in one of several categories: "blacked-out," "unconscious," "partial memory," "no memory," "asleep," "passed-out," or "other."¹⁸⁰ Some victims used multiple terms to describe their level of incapacitation.¹⁸¹ Victims reported being impaired in nearly half of all cases reviewed (46.5%).

The issue of whether a victim was impaired at the time of the sexual offense was analyzed because impairment has significant implications in the military justice system.

First, alcohol or drug impairment can affect a victim's memory of the offense. The court-martial verdict may depend on the victim's level of impairment and its effect on the victim's memory of the event and ability to testify accurately about what happened. Expert witness testimony is often required in order to educate the factfinder regarding these impairment issues.¹⁸² Accordingly, whether a victim reported being impaired at the time of the incident was an important data point for reviewers to track and consider, especially in light of the prevalence of alcohol use in the cases reviewed.

Second, impairment is relevant to the question of whether a victim consented to the sexual act at issue. For example, the *Benchbook* instructions that military judges provide to members at courts-martial to explain the legal standards against which the members must assess the facts of the case specify that

- "A person cannot consent to sexual activity if that person is substantially incapable of appraising the nature of the sexual conduct at issue due to mental impairment or unconsciousness resulting from consumption of alcohol, drugs, a similar substance, or otherwise";¹⁸³
- "A sleeping, unconscious, or incompetent person cannot consent";
- "An 'incompetent person' is a person who lacks either the mental or physical ability to consent because he or she is: (1) asleep or unconscious; (2) impaired by a drug, intoxicant or other similar substance; or (3) suffering from a mental disease or defect or a physical disability"; and
- "A person is 'incapable of consenting' when (he/she) lacks the cognitive ability to appreciate the sexual conduct in question or the physical or mental ability to make or to communicate a decision about whether (he/she) agrees to the conduct."¹⁸⁴

Third, depending on the government's theory of criminal liability and how the sexual offense is charged, victim impairment may be a relevant factor in determining whether the offense was committed. Even though the 1,904 cases reviewed were closed in FY17, the date that the offense was committed determined which version of Article 120, UCMJ—the primary statute for prosecuting rape and sexual assault in the military—applied. Article 120 has been revised several times since 2007, with the most recent changes taking effect on January 1, 2019.¹⁸⁵ Despite the numerous changes

180 One reviewer reported that they substituted their own judgment, based on evidence available in the file, as to whether the victim was incapacitated.

181 In some cases, multiple reasons were provided for the impairment. To simplify the analysis, Dr. Wells created a single variable to measure impairment (see Appendix F). The cases were coded according to the greatest level of impairment described by the victim, even if the victim also used terms indicating a lower level of impairment. For example, if the victim stated they were both "passed out" and "blacked out," the case was coded as "passed out/unconscious/asleep." If the case indicated "passed out" or "unconscious" and "blacked out," "partial memory," then the case was coded as "passed out/unconscious/asleep." If the case indicated "blacked out," "partial memory," or "no memory" and "asleep," then the case was coded as "passed out/unconscious/asleep."

182 See, e.g., Mary Connell, *Expert Testimony in Sexual Assault Cases: Alcohol Intoxication and Memory*, 42–43 INT'L J.L. & PSYCHIATRY 98 (Sept.–Dec. 2015).

183 Military Judges' Benchbook, Dep't of Army Pamphlet 27-9 (Feb. 29, 2020), 533. This instruction applies to offenses occurring between 2007 and 2012.

184 *Id.* at 591, 592. These instructions apply to offenses occurring after June 2012.

185 For example, the 2007 version of Article 120, which was in effect from September 2007 to June 2012, defined rape to include the accused "administering to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar

to the statute, victim impairment—either by intoxication or otherwise—has continued to be a necessary consideration for investigators, attorneys, and commanders.

The 2012 version of Article 120, UCMJ, in effect from June 2012 to January 2019 and applicable to the majority of the cases reviewed, delineated four types of sexual offenses: rape, sexual assault, aggravated sexual contact, and abusive sexual contact.¹⁸⁶ Rape could be committed by administering the victim a drug, intoxicant, or other similar substance and thereby substantially impairing the ability of the victim to appraise or control conduct.¹⁸⁷ Sexual assault could be committed by a sexual act upon another person when the accused knew or reasonably should have known that the other person was “asleep, unconscious, or otherwise unaware that the sexual act is occurring,” or by “commit[ting] a sexual act upon another person when the other person is incapable of consenting to the sexual act due to impairment by any drug, intoxicant, or other similar substance, and that condition is known or reasonably should be known by the [accused].”¹⁸⁸ A person is “incapable of consenting” when he or she “lacks the cognitive ability to appreciate the sexual conduct in question or the physical or mental ability to make and to communicate a decision about whether he/she agrees to the conduct.”¹⁸⁹

The current version of Article 120, UCMJ, defines “incapable of consenting” as “incapable of appraising the nature of the conduct at issue; or physically incapable of declining participation in, or communicating unwillingness to engage in, the sexual act at issue.”¹⁹⁰

TABLE VI.32. DESCRIPTION FROM VICTIM ON LEVEL OF IMPAIRMENT

	Passed Out/ Unconscious/ Asleep		Blacked Out/ No Memory/ Partial Memory		Unknown/ Unclear	
	n	%	n	%	n	%
Army (N=363)	203	55.9	140	38.6	20	5.5
Marine Corps (N=129)	75	58.1	52	40.3	2	1.6
Navy (N=185)	87	47.0	89	48.1	9	4.9
Air Force (N=196)	105	53.6	79	40.3	12	6.1
Coast Guard (N=13)	7	53.8	6	46.2	0	0.0
Total (N=886)	477	53.8	366	41.3	43	4.9

substance and thereby substantially impairing the ability of that other person to appraise or control conduct.” Likewise, aggravated sexual assault was defined to include an accused “engag[ing] in a sexual act with another person of any age if that other person [was] substantially incapacitated or substantially incapable of— (A) appraising the nature of the sexual act; (B) declining participation in the sexual act; or (C) communicating unwillingness to engage in the sexual act.” 2019 MCM, *supra* note 6, App. 21, 21-1.

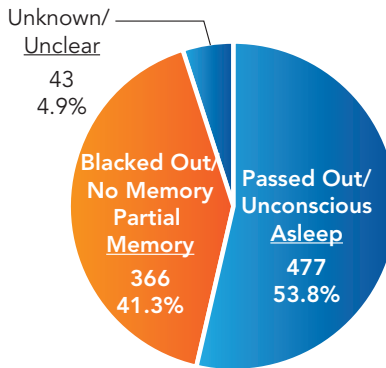
186 2019 MCM, *supra* note 6, App. 22, 22-1.

187 *Id.*

188 *Id.*

189 *United States v. Pease*, 74 M.J. 763 (N-M. Ct. Crim. App. 2015), *aff'd*, 75 M.J. 180 (C.A.A.F. 2016).

190 10 U.S.C. § 920(g)(8) (Article 120(g)(8), UCMJ) (2019).



Reviewers recorded the victim’s description of their degree of impairment.¹⁹¹ In 53.8% of cases, the victim stated that they were “passed out,” “unconscious,” or “asleep.” In 41.3% of cases, the victim described themselves as “blacked out,” having “no memory,” or having “partial memory.”

Finding 123: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, reviewers recorded “complexity” or “credibility” factors because of their potential impact on the decision to prefer a penetrative sexual offense charge, the prosecutor’s ability to obtain and sustain a conviction, and the defense counsel’s ability to raise reasonable doubt.

- 1,086 (57.0%) of the cases, involved alcohol use by a victim; 149 (7.8%) involved drug use.
- 1,056 (55.5%) of the cases, involved alcohol use by the subject; 31 (1.6%) involved drug use.
- 886 (46.5%) of the cases, involved victims who reported being impaired (blacked out, passed out, unconscious, asleep, partial or no memory) at the time of assault.¹⁹²
- 617 (32.4%) of the cases, involved a loss of memory or consciousness for the victim.¹⁹³
- 94 (4.9%) of the cases, involved a loss of memory or consciousness for the subject.
- 566 (29.7%) of the cases, involved inconsistent statements by victims.
- 209 (11.0%) of the cases, involved inconsistent statements by subjects.
- 253 (13.3%) of the cases, involved evidence that contradicted the victim’s statements.
- 75 (3.9%) of the cases, involved evidence that contradicted the subject’s statements.
- 802 (42.1%) of the cases, involved a possible motive for the victim to lie as noted by the case reviewers.
- 1,672 (87.8%) of the cases, contained no indication that the subject had committed other sexual offenses.
- 503 (26.4%) of the cases, contained evidence that a victim engaged in collateral misconduct. Underage drinking was the misconduct in 300 (60.0%) of the cases.
- 679 (35.7%) of the cases, contained evidence that a subject engaged in collateral misconduct.
- 311 (16.3%) of the cases, contained evidence of other misconduct committed by the victim not related to the sexual offense.

191 These data do not and cannot represent the actual level of impairment; they simply capture the nonscientific descriptions used by victims. For example, some victims may have described themselves as “blacked out” when they were actually “passed out.”

192 These data are based on the victims’ descriptions and are not mutually exclusive conditions.

193 These data are based on the reviewers’ judgments of the materials in the case file, as are data regarding the subject’s memory or loss of consciousness.

- 471 (24.7%) of the cases, contained evidence of other misconduct committed by the subject not related to the sexual offense.

Directive 7 to Case Review Subcommittee: The CRSC examine adult penetrative sexual offense cases in which the victim reported being impaired, in order to assess MCIO interview and investigative techniques utilized in such cases and make appropriate findings and recommendations.

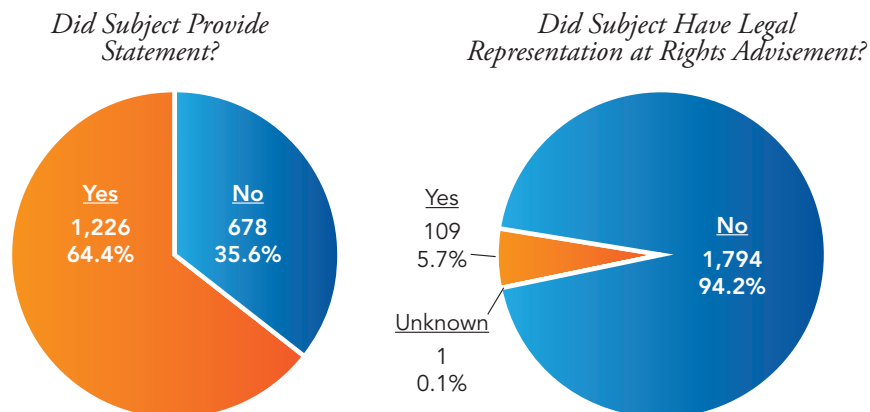
Directive 8 to Case Review Subcommittee: The CRSC examine adult penetrative sexual offense investigative files in which the victim reports both no impairment and no use of physical force or the threat of force, in order to further assess how the facts in these cases influence the initial disposition decision to prefer a penetrative sexual offense charge or take no action on that offense and, in cases resulting in a preferred penetrative sexual offense charge, how they influence the post-preferred outcomes for those offenses.

Statements and Representation

TABLE VI.33. SUBJECT STATEMENT AND LEGAL REPRESENTATION AT THE TIME OF RIGHTS ADVISEMENT^a

	Did Subject Provide Statement?				Did Subject Have Legal Representation at Rights Advisement?					
	Yes		No		Yes		No		Unknown	
	n	%	n	%	n	%	n	%	n	%
Army (N=821)	556	67.7	265	32.3	49	6.0	772	94.0	0	0.0
Marine Corps (N=263)	181	68.8	82	31.2	13	4.9	250	95.1	0	0.0
Navy (N=387)	274	70.8	113	29.2	10	2.6	377	97.4	0	0.0
Air Force (N=403)	196	48.6	207	51.4	35	8.7	367	91.1	1	0.2
Coast Guard (N=30)	19	63.3	11	36.7	2	6.7	28	93.3	0	0.0
Total (N=1,904)	1,226	64.4	678	35.6	109	5.7	1,794	94.2	1	0.1

a Reviewers recorded whether a subject was represented by counsel at the time of the rights advisement, which is a different question from whether the subject was represented by counsel at the time of the statement. They noted that most subjects who gave a statement did so after rights advisement and without a defense counsel present. Subjects are formally detailed defense counsel upon preferal of charges, in accordance with the Sixth Amendment, but can also be assigned defense counsel during the investigative stage.



Reviewers recorded whether the subject was interrogated by an MCIO or a civilian investigator. In the military, if a subject is interrogated, certain rights are triggered pursuant to the Constitution; Article 31, UCMJ; executive order; and case law. The MCIO must inform the subject of the nature of the accusation, the right to remain silent, the right to consult with counsel before and during interrogation, and the fact that any statement may be used against them in a trial by court-martial. In 64.4% of the cases reviewed, the subject gave a statement to law enforcement. Although most subjects gave a statement to law enforcement, in only 5.7% did the reviewers note that the subject was represented by a lawyer at the time they were advised of their rights. In 678 cases (35.6%), subjects invoked their right to remain silent and/or consult with an attorney.

TABLE VI.34. VICTIM STATEMENT AND VICTIM COUNSEL AT THE TIME OF STATEMENT

	Did Victim Provide Statement?				If Yes, Did Victim Have Legal Representation?			
	Yes		No		Yes		No	
	n	%	n	%	n	%	n	%
Army (N=821)	790	96.2	31	3.8	216	27.3	574	72.7
Marine Corps (N=263)	258	98.1	5	1.9	104	40.3	154	59.7
Navy (N=387)	377	97.4	10	2.6	127	33.7	250	66.3
Air Force (N=403)	382	94.8	21	5.2	88	23.0	294	77.0
Coast Guard (N=30)	29	96.7	1	3.3	11	37.9	18	62.1
Total (N=1,904)	1,836	96.4	68	3.6	546	29.7	1,290	70.3

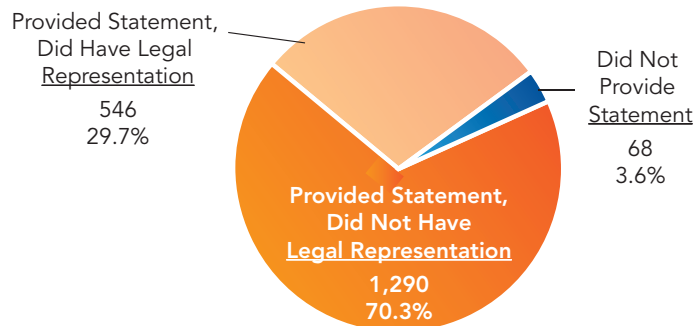
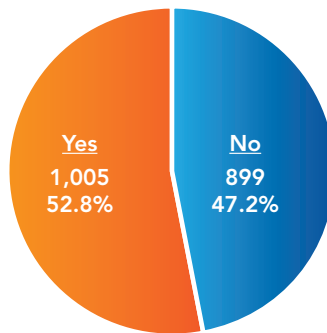


TABLE VI.35. VICTIM REPRESENTATION AT ANY TIME

	Did Victim Have Legal Representation?			
	Yes		No	
	n	%	n	%
Army (N=821)	384	46.8	437	53.2
Marine Corps (N=263)	146	55.5	117	44.5
Navy (N=387)	220	56.8	167	43.2
Air Force (N=403)	237	58.8	166	41.2
Coast Guard (N=30)	18	60.0	12	40.0
Total (N=1,904)	1,005	52.8	899	47.2

Did Victim Have Legal Representation?



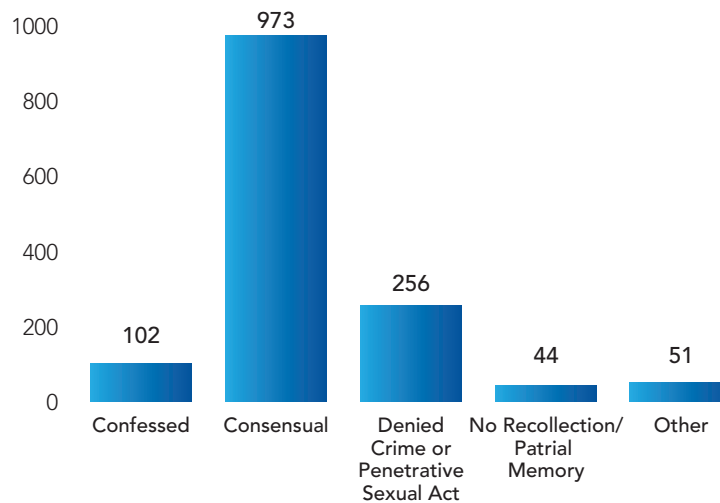
Reviewers recorded whether a victim provided a statement to an MCIO investigator or a civilian investigator and if they had counsel at the time the statement was made. Victims of alleged sex-related offenses are entitled to special victims’ counsel (the term used in the Army, Air Force, and Coast Guard) or victims’ legal counsel (the term used in the Navy and Marine Corps) if they are active duty Service members, retired Service members, or dependents of Service members.¹⁹⁴ Nearly all victims (96.4%) gave statements to law enforcement or MCIOs; of those who gave statements to law enforcement, 29.7% had counsel at the time of the statement.

Reviewers also recorded whether the victim had legal representation not just at the time of the statement but at any point in the investigation or pretrial process. Based on the investigative case file materials and court-martial documents, reviewers determined that victims had legal representation in 52.8% of cases reviewed.

¹⁹⁴ 10 U.S.C. § 1044(b)(6). Each Military Service has a process to approve exceptions to its eligibility policy. However, for purposes of this review, victims were categorized as military personnel, civilians, or DoD spouses, and only military personnel and DoD spouses were assumed to be eligible for SVC representation. Therefore, 78% of victims were eligible for SVC representation.

TABLE VI.36. SUBJECT'S STATEMENTS TO LAW ENFORCEMENT OR THIRD PARTIES

	Confessed		Consensual		Denied Crime or Penetrative Sexual Act		No Recollection/ Partial Memory		Other	
	n	%	n	%	n	%	n	%	n	%
Army (N=613)	54	8.8	415	67.7	122	19.9	8	1.3	14	2.3
Marine Corps (N=203)	16	7.9	138	68.0	31	15.3	10	4.9	8	3.9
Navy (N=302)	20	6.6	220	72.8	46	15.2	7	2.3	9	3.0
Air Force (N=288)	10	3.5	185	64.2	54	18.8	19	6.6	20	6.9
Coast Guard (N=20)	2	10.0	15	75.0	3	15.0	0	0.0	0	0.0
Total (N=1,426)	102	7.2	973	68.2	256	18.0	44	3.1	51	3.6



Reviewers recorded whether the subject made one or more statements about the alleged penetrative sexual offense to law enforcement or third parties, including the victim. Reviewers also described the subject’s statement(s). Some cases contained multiple subject statements.¹⁹⁵ In 68.2% of statements, the subject stated that the sexual activity was consensual. In 18.0% of statements, the subject denied that penetrative sexual activity occurred.¹⁹⁶ In 3.1% of statements, the subject stated that they had partial or no memory or recollection of the event. Subjects confessed to a penetrative sexual offense in 7.2% of cases.

Finding 124: In the 1,904 adult-victim cases closed in FY17 involving allegations of a penetrative sexual offense committed by a Service member subject,

195 See Appendix F. A hierarchy was established to code cases with multiple statements. Cases were coded as “confessed” if the subject confessed regardless if any other statement was made. The next code in the hierarchy— “consensual”—was used when the subject reported that the sexual activity was consensual (but did not confess). The third category in the hierarchy—“denied sexual activity”— was used when the subject offered multiple statements, but did not confess or report that the sexual activity was consensual. The fourth category—“no recollection / partial memory”—was used if the subject made a statement indicating only no recollection or partial memory. Finally, the last category—“other”—was used when the statement did not clearly fit into any of the previous categories.

196 This category includes subjects recorded as denying the penetrative sexual offense alleged or denying that any penetrative sexual activity occurred.

- 1,226 (64.4%) of the cases, the subject gave a statement to law enforcement;
- 109 (5.7%) of the cases, the subject was represented by a lawyer at the time they were advised of their rights;
- 44 (3.1%) of statements made to law enforcement or a third party, the subject stated that they had partial or no memory or recollection of the event; and
- 102 (7.2%) of the cases, the subject confessed to the penetrative sexual offense.

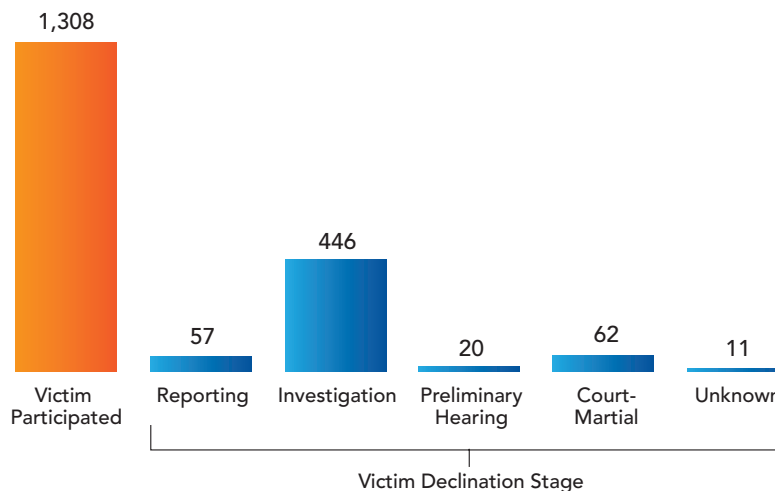
Finding 125: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject,

- 1,836 (96.4%) of the victims, gave statements to law enforcement or MCIOs;
- 546 (29.7%) of the victims, who gave statements were represented by a lawyer at the time of the statement; and
- 1,005 (52.8%) of all victims, were represented by a lawyer at some point in the process.

Victim Participation

TABLE VI.37. VICTIM PARTICIPATION IN AND DECLINATION OF INVESTIGATION AND PROSECUTION OF A PENETRATIVE SEXUAL OFFENSE

	Victim Participated				Victim Declination Stage									
	Yes		No		Reporting		Investigation		Preliminary Hearing		Court-Martial		Unknown	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Army (N=821)	596	72.6	225	27.4	18	8.0	187	83.1	5	2.2	15	6.7	0	0.0
Marine Corps (N=263)	157	59.7	106	40.3	6	5.7	73	68.9	8	7.5	15	14.2	4	3.8
Navy (N=387)	280	72.4	107	27.6	10	9.3	73	68.2	3	2.8	14	13.1	7	6.5
Air Force (N=403)	252	62.5	151	37.5	23	15.2	106	70.2	4	2.6	18	11.9	0	0.0
Coast Guard (N=30)	23	76.7	7	23.3	0	0.0	7	100.0	0	0.0	0	0.0	0	0.0
Total (N=1,904)	1,308	68.7	596	31.3	57	9.6	446	74.8	20	3.4	62	10.4	11	1.8



It is Department of Defense policy that a victim’s decision to decline to participate in an investigation or prosecution of a sexual offense should be “honored” by commanders, DoD law enforcement, and the victim’s chain of command, although the victim’s decision to decline to participate does not end the investigation into the alleged offense.¹⁹⁷ Reviewers recorded that a victim declined to participate if any evidence of that decision appeared in the investigative file or in additional documents for those cases resulting in a preferred penetrative sexual offense charge. Reviewers also recorded the stage of the process when the victim’s declination occurred. In investigative files the victim’s declination was generally indicated by either a letter from their SVC or a note from the investigator.

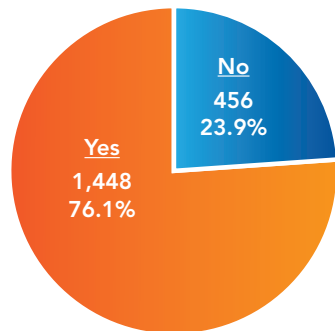
Cases in which the victim declined to participate by not providing any statement to law enforcement—usually following a third party’s report of a penetrative sexual offense—were categorized as declinations at the reporting stage. Cases in which the victim declined to participate after the law enforcement investigation was completed by indicating that they would not participate in a court-martial were categorized as declinations during the preliminary hearing stage.¹⁹⁸ Finally, cases in which the victim declined to participate after the preliminary hearing but prior to the court-martial were categorized as declinations at the court-martial stage. Court-martial declinations were usually supported by documentation from the victim or their SVC to the general court-martial convening authority.

TABLE VI.38. JUDGE ADVOCATE PROBABLE CAUSE DETERMINATION

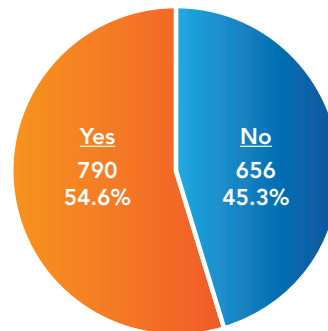
	Did a Judge Advocate Make a Probable Cause Determination?				If Yes, Did the Judge Advocate Find Probable Cause Exists?			
	Yes		No		Yes		No	
	n	%	n	%	n	%	n	%
Army (N=821)	786	95.7	35	4.3	380	48.3	406	51.7
Marine Corps (N=263 ^a)	164	62.4	99	37.6	102	62.2	61	37.2
Navy (N=387)	257	66.4	130	33.6	148	57.6	109	42.4
Air Force (N=403 ^b)	235	58.3	168	41.7	154	65.5	80	34.0
Coast Guard (N=30)	6	20.0	24	80.0	6	100.0	0	0.0
Total (N=1,904)	1,448	76.1	456	23.9	790	54.6	656	45.3

- a In one case, the probable cause determination was unknown.
- b In one case, the probable cause determination was unknown.

Did a Judge Advocate Make a Probable Cause Determination?



If Yes, Did the Judge Advocate Find Probable Cause Exists?



197 32 C.F.R. § 105.8(3)(i) (Reporting options and Sexual Assault Reporting Procedures). See also DEPT OF DEF. INSTR. 5505.18, *supra* note 161, ¶ 1.2(a).
198 In these cases, a victim may have given a statement to law enforcement, but a subsequent note or letter from the victim or their representative indicated that they would not participate further in the criminal justice process.

For most crimes in the UCMJ punishable by imprisonment, MCIOs are required to submit fingerprints and offender criminal history information to the Criminal Justice Information Services. This information must be submitted if there is a finding of probable cause to believe that the subject committed an offense and that offense is punishable by imprisonment.¹⁹⁹ In 2017, Department of Defense policy required that military law enforcement make a probable cause determination “in conjunction” with a judge advocate or other legal advisor.²⁰⁰

Reviewers found that if the investigative case file included a probable cause determination, it was completed by a judge advocate.²⁰¹ Accordingly, reviewers recorded whether the investigative file included a judge advocate’s opinion regarding the existence of probable cause to believe that the subject committed a penetrative sexual offense—and, if so, the content of the opinion. In total, 76.1% of cases included a judge advocate’s opinion on this question; in 54.6% of those cases, the judge advocate opined that the evidence established probable cause.

Finding 126: In 1,448 (76.1%) of the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, the materials reviewed included a judge advocate’s opinion on whether there was probable cause to believe that the Service member committed a penetrative sexual offense.

- 790 (54.6%) of the cases, the judge advocate opined that the evidence established probable cause to believe that the subject committed a penetrative sexual offense.

B. Bivariate Relationships

The descriptive data explained in the previous section provide information about the characteristics of the 1,904 investigations of penetrative sexual offenses. The second step in the CRSC’s analysis examines how two variables are related to one another.²⁰² The CRSC selected three dependent variables of interest to examine:

- The decision to prefer a penetrative sexual offense
- The results of courts-martial (acquittal versus conviction)
- The victim’s decision to participate or to decline to participate in the investigation and military justice process

Measuring bivariate relationships between case characteristics and the decision to prefer a penetrative sexual offense charge provides a more detailed understanding about the kinds of cases that are most likely to result in a preferred penetrative sexual offense charge. The case characteristics that may be related to the dependent variable (i.e., the decision to prefer) are referred to as “independent variables,” or “predictor variables.” The analyses measured bivariate relationships between case characteristics (independent variables) and two key outcome variables (dependent variables) for each Service: command decision to prefer or not to prefer a penetrative sexual offense charge and victim participation in military justice proceedings.²⁰³ When data from all Services are combined, a third dependent variable is added to the bivariate analysis: courts-martial results (conviction or acquittal).²⁰⁴

199 DEP’T OF DEF. INSTR. 5505.11, *supra* note 69, ¶ 1.2 (a probable cause determination by law enforcement no longer requires a consultation with a judge advocate or legal advisor).

200 DEP’T OF DEF. INSTR. 5505.11, FINGERPRINT REPORTING REQUIREMENTS, ¶ 3 (July 21, 2014). This policy was changed in the 2019 version of this instruction. *Supra* note 69.

201 With the exception of the Army, investigative case files did not routinely include a probable cause determination.

202 Extensive descriptions of bivariate relationships and analyses are available in Appendix F.

203 Service-specific results are available in Appendix F.

204 Because of the small number of courts-martial results for each individual Service, they could not be analyzed separately for each Service.

The tables and information provided below highlight the statistically significant bivariate variables for all the Services.²⁰⁵ For a consolidated portrayal by Service of bivariate relationships between case variables, consult Tables 8-13 through 8-16 of Appendix F.

1. Factors Influencing the Decision to Prefer a Penetrative Sexual Offense Charge Against the Subject

a. Reporting

There was no relationship between the identity of the individual who reported the penetrative sexual offense to law enforcement (e.g., victim or third party) and the decision to prefer a penetrative sexual offense charge against the subject. Cases in which the penetrative sexual offense was reported to law enforcement within seven days of the incident were more likely to result in preferral for that offense than cases in which the report occurred more than seven days after the incident.

TABLE VI.39. REPORTING TIMING – STATISTICALLY SIGNIFICANT

Report Made Within 7 days of PSO ($\chi^2 = 10.89, p < .05$)	No Action (n=1,336)	%	Preferred (n=517)	%
Yes	454	67.5	219	32.5
No	857	74.7	291	25.3

Demographic Data

Characteristics of the victim such as gender, age, military or civilian status, and relationship to the subject were not related to the decision to prefer a penetrative sexual offense charge. The victim’s military status (enlisted or officer) and the decision to prefer a penetrative sexual offense charge were related: cases involving officer victims were more likely to result in a preferred penetrative sexual offense charge (45.8%) than cases involving enlisted victims (29.0%). The victim’s race was also related to preferral, as cases involving a White victim were more likely to result in a preferred penetrative sexual offense charge than cases involving a non-White victim.

TABLE VI.40. DEMOGRAPHIC DATA – STATISTICALLY SIGNIFICANT

Victim Military Status ($\chi^2 = 6.18, p < .05$)	No Action (n=1,336)	%	Preferred (n=517)	%
Enlisted	692	71.0	283	29.0
Officer	26	54.2	22	45.8
Victim Race ($\chi^2 = 3.87, p .05$)				
White ^a	946	70.8	391	29.2
Non-White	329	75.6	106	24.4

a This category included Hispanic, Middle Eastern, and North African individuals.

205 See Appendix F for Service specific analysis.

Subject characteristics such as gender, age, race, and grade were not related to the decision to prefer a penetrative sexual offense charge.

b. Physical Evidentiary Considerations

- **Pretextual communications.** Cases were more likely to result in a preferred penetrative sexual offense charge against the subject in cases in which pretextual communication occurred and that communication corroborated the victim's account of the incident.
- **Physical injury and use or threatened use of force.** Cases were more likely to result in a preferred penetrative sexual offense charge when the victim reported physical injury and when the investigation revealed that the subject used or threatened to use force.
- **SAFE.** Cases were more likely to result in a preferred penetrative sexual offense charge when the victim agreed to undergo a SAFE (39.9% vs. 22.7%).
- **DNA.** Cases were more likely to result in a preferred penetrative sexual offense charge when there was forensic analysis of DNA. Approximately half of cases (50.5%) in which DNA was obtained and analyzed resulted in a penetrative sexual offense charge, compared to 21.6% of cases in which DNA was not analyzed.

TABLE VI.41. PHYSICAL EVIDENTIARY CONSIDERATIONS – STATISTICALLY SIGNIFICANT

	No Action (n=1,336)	%	Preferred (n=517)	%
Pretextual Communication Occurred ($\chi^2 = 11.91, p < .05$)				
Yes	165	63.2	96	36.8
No	1,171	73.6	421	26.4
Pretextual Communication Result ($\chi^2 = 8.84, p < .05$)				
Supports Victim Account	21	46.7	24	53.3
Supports Subject Account	38	76.0	12	24.0
Supports Neither Account	106	63.9	60	36.1
Victim Physical Injuries ($\chi^2 = 30.01, p < .05$)				
Yes	164	58.6	116	41.4
No	1,172	74.5	401	25.5
Threat or Use of Force ($\chi^2 = 58.64, p < .05$)				
Yes	147	53.1	130	46.9
No	1,189	75.4	387	24.6
Sexual Assault Exam Performed on Victim ($\chi^2 = 57.97, p < .05$)				
Yes	339	60.1	225	39.9
No	997	77.3	292	22.7
DNA Evidence Tested ($\chi^2 = 130.09, p < .05$)				
Yes	198	49.5	202	50.5
No	1,138	78.4	314	21.6

c. Victim and Subject Complexity Factors

Cases were less likely to result in a preferred penetrative sexual offense charge when there was evidence that victims had a potential motive to fabricate and when victims provided inconsistent statements about the incident. The victim’s memory loss, collateral misconduct, other misconduct, and behavioral health concerns were not associated with the likelihood of a preferred penetrative sexual offense charge against the subject.

TABLE VI.42. VICTIM COMPLEXITY FACTORS – STATISTICALLY SIGNIFICANT

	No Action (n=1,336)	%	Preferred (n=517)	%
Victim Motive to Lie ($\chi^2 = 15.13, p < .05$)				
Yes	598	76.9	180	23.1
No	738	68.7	337	31.3
Victim Inconsistent Statements ($\chi^2 = 15.26, p < .05$)				
Yes	431	78.4	119	21.6
No	905	69.5	398	30.5

Several factors about the subject were associated with an increased likelihood of a preferred penetrative sexual offense charge: memory loss, inconsistent statements, contradictory evidence, collateral and other forms of misconduct, behavioral health concerns, and evidence of other sex offenses and/or related misconduct.²⁰⁶ A preferred penetrative sexual offense charge was also more likely when the subject confessed to that offense.

TABLE VI.43. SUBJECT COMPLEXITY FACTORS – STATISTICALLY SIGNIFICANT

	No Action (n=1,336)	%	Preferred (n=517)	%
Subject Lack of Memory ($\chi^2 = 12.26, p < .05$)				
Yes	51	56.0	40	44.0
No	1,285	72.9	477	27.1
Subject Inconsistent Statements ($\chi^2 = 44.80, p < .05$)				
Yes	106	52.2	97	47.8
No	1,230	74.5	420	25.5
Subject Contradictory Evidence ($\chi^2 = 5.28, p < .05$)				
Yes	44	60.3	29	39.7
No	1,292	72.6	488	27.4
Subject Collateral Misconduct ($\chi^2 = 8.62, p < .05$)				
Yes	448	68.0	211	32.0
No	888	74.4	306	25.6
Subject Other Misconduct ($\chi^2 = 19.00, p < .05$)				
Yes	296	64.2	165	35.8
No	1,040	74.7	352	25.3

206 See *supra* notes 177–78 and accompanying text for further information about M.R.E. 404(b) and 413.

Subject 413 and 404(b) Evidence ($\chi^2 = 115.52, p < .05$)				
Yes	98	42.4	133	57.6
No	1238	76.3	384	23.7
Subject Behavioral Health Concerns Before or After Incident ($\chi^2 = 24.62, p < .05$)				
Yes	75	54.0	64	46.0
No	1,259	73.6	452	26.4
Subject Statement ($\chi^2 = 158.39, p < .05$)*				
Confessed	21	21.6	76	78.4
Consensual	738	78.0	208	22.0
Denied crime/sexual activity	192	76.2	60	23.8
No recollection/partial memory	21	47.7	23	52.3
Other	29	59.2	20	40.8

* The relationship is statistically significant when “confessed” is compared to all other subject statements and to no statements.

d. Impairment

Victim Awareness. The victim’s degree of impairment, based on the victim’s description, was related to the decision to prefer a penetrative sexual offense charge against the subject. Cases in which the victim reported being “passed out,” unconscious, or asleep during the incident were more likely to result in a preferred penetrative sexual offense charge than cases in which the victim reported that they were not impaired, were “blacked out,” or experienced partial memory loss.

When all categories of victim impairment are combined, there was a greater chance of a preferred penetrative sexual offense charge when the victim was impaired (32.7%) than when the victim was not impaired (24.0%).²⁰⁷

Victim Alcohol or Drug Use. The victim’s reported alcohol use was not associated with the decision to prefer a penetrative sexual offense charge, but the victim’s reported drug use was associated with the likelihood of a preferred penetrative sexual offense charge. Cases were more likely to result in a preferred penetrative sexual offense charge when the victim reportedly engaged in illegal or legal (e.g., Ambien) drug use prior to or during the incident (39.6%) than when the victim did not engage in illegal or legal drug use prior to or during the incident (26.9%).

TABLE VI.44. VICTIM IMPAIRMENT – STATISTICALLY SIGNIFICANT

Victim Impairment ($\chi^2 = 70.33, p < .05$)	No Action (n=1,336)	%	Preferred (n=517)	%
Not Impaired	754	76.0	238	24.0
Passed out/unconscious/asleep	265	57.2	198	42.8
Blacked out/memory loss	286	80.3	70	19.7
Victim Drug Use ($\chi^2 = 10.59, p < .05$)				
Yes	87	60.4	57	39.6
No	1,249	73.1	460	26.9

207 See Appendix F.

Subject Impairment and Drug Use. Cases were more likely to result in a preferred penetrative sexual offense charge when the subject used alcohol (30.7%) than when the subject did not use alcohol (24.3%). Preferral was also more likely when the subject engaged in illegal or legal (e.g., Ambien) drug use prior to or during the incident (44.8%) than when the subject did not engage in drug use (27.6%).²⁰⁸

TABLE VI.45. SUBJECT IMPAIRMENT – STATISTICALLY SIGNIFICANT

Subject Alcohol Use ($\chi^2 = 9.52, p < .05$)	No Action (n=1,336)	%	Preferred (n=517)	%
Yes	712	69.3	316	30.7
No	624	75.7	200	24.3
Subject Drug Use ($\chi^2 = 4.22, p < .05$)				
Yes	16	55.2	13	44.8
No	1,320	72.4	503	27.6

e. Victim Attorney Representation and Participation in Investigation

Cases were more likely to result in a preferred penetrative sexual offense charge when the victim participated in the investigation of the incident and when the victim was represented by an attorney, most often an SVC/VLC. In 35.9% of cases in which the victim participated in the investigation, the subject was charged with a penetrative sexual offense; in comparison, in 9.6% of cases in which the victim declined to participate in the investigation, the subject was charged with a penetrative sexual offense. As to victim legal representation, 34.0% of cases in which counsel represented the victim resulted in a preferred penetrative sexual offense charge and 21.1% of cases in which the victim was not represented by counsel resulted in a preferred penetrative sexual offense charge.

TABLE VI.46. VICTIM ATTORNEY REPRESENTATION AND PARTICIPATION IN INVESTIGATION – STATISTICALLY SIGNIFICANT

Victim Participation ($\chi^2 = 135.36, p < .05$)	No Action (n=1,336)	%	Preferred (n=517)	%
Yes	826	64.1	463	35.9
Declined ^a	510	90.4	54	9.6
Victim Attorney Representation ($\chi^2 = 38.34, p < .05$)				
Yes	644	66.0	332	34.0
No	692	78.9	185	21.1

^a Victim declinations could have occurred before or after preferral of a penetrative sexual offense charge. Over 84.4% of all victims declined to participate at the reporting or investigation stages.

208 Because of the small number of cases with subject drug use (n=13), the statistical test results may not be reliable.

f. Judge Advocate Probable Cause Determination for Indexing

A case was more likely to result in a preferred penetrative sexual offense charge when a judge advocate had determined there was probable cause that the subject committed a penetrative sexual offense for the purpose of indexing with the FBI.

TABLE VI.47. JUDGE ADVOCATE PROBABLE CAUSE DETERMINATION FOR INDEXING – STATISTICALLY SIGNIFICANT

Probable Cause ($\chi^2 = 469.24, p < .05$)	No Action (n=1,336)	%	Preferred (n=517)	%
No Determination Made	343	76.9	103	23.1
Probable Cause Existed	352	46.7	401	53.3
Probable Cause Did Not Exist	641	98.3	11	1.7

Finding 127: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, a preferred penetrative sexual offense charge against the subject was more likely when

- The report was made within seven days of the incident.
- The victim was an officer.
- The victim was White.
- Pretextual communication occurred and the pretextual communication supported the victim’s account of the incident.
- The victim reported physical injury and the report alleged that the subject used or threatened to use force.
- A SAFE was performed on the victim.
- DNA evidence was tested.
- One or more of the subject complexity factors of memory loss, inconsistent statements and contradictory evidence, collateral and other forms of misconduct, behavioral health concerns, and evidence of other sex offenses and/or related misconduct were present.
- The victim described being impaired.
- The victim used drugs.
- The subject used alcohol or drugs.
- The victim participated in the investigation.
- The victim was represented by counsel.
- A judge advocate made a finding that there was probable cause to believe that the subject committed a penetrative sexual offense for indexing purposes.

Finding 128: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, a preferred penetrative sexual offense charge against the subject was less likely when

- The victim complexity factor of a potential motive to fabricate was present and the victim provided inconsistent statements.

2. Factors Influencing Convictions and Acquittals

This section explores factors that are and are not related to a subject’s conviction or acquittal of a penetrative sexual offense. In 45.5% of cases involving a penetrative sexual offense charge, the subject was found guilty or not guilty of that offense (Table III.2). Guilty verdicts include those in which the accused entered a plea of guilty to the penetrative sexual offense.²⁰⁹ In the remaining 55.5% of cases, the penetrative sexual offense charge was not tried to verdict: that is, the charge was dismissed prior to trial, as part of a pretrial agreement, or during trial prior to verdict. In 38.7% of those cases tried to verdict, the accused was convicted of the penetrative sexual offense. Because of the small number of convictions in individual Services, only a DoD-wide analysis of the data could be completed.

a. Reporting

Court-martial results were not related either to the individual who reported the penetrative sexual offense to law enforcement (e.g., victim or third party) or to whether the report occurred within seven days of the incident.

b. Demographic Data

Characteristics of the victim and subject, including race, gender, and grade, were not associated with courts-martial outcomes. The average age of victims was lower in cases in which the accused was convicted of the penetrative sexual offense (22.9 years) than in those that ended in acquittal on that offense (24.5 years); the age of the subject was not a factor associated with court-martial outcomes.²¹⁰

c. Victim Status and Relationship Between Victim and Subject

While the reported relationship between the victim and subject was not related to court-martial outcomes, there was a correlation between the status of the victim and court-martial outcomes. In 51.7% of cases involving civilian non-DoD spouse victims, the accused was convicted of the penetrative sexual offense; in 35.5% of cases involving military victims, the accused was convicted of the penetrative sexual offense; and in 29.7% of cases involving civilian DoD spouse victims, the accused was convicted of the penetrative sexual offense.

TABLE VI.48. VICTIM STATUS AND RELATIONSHIP BETWEEN VICTIM AND SUBJECT – STATISTICALLY SIGNIFICANT

Victim Status ($\chi^2 = 6.10, p < .05$)	Acquitted (n=144)	%	Convicted (n=91)	%
Military	89	64.5	49	35.5
Civilian – Not DoD Spouse	29	48.3	31	51.7
Civilian – DoD Spouse	26	70.3	11	29.7
Subject Is Spouse/Former Spouse (NS)	19	70.4	8	29.6
Subject Is Not Spouse	7	70.0	3	30.0

209 There were 22 cases involving pretrial agreements in which the accused agreed to plead guilty to the penetrative sexual offense.

210 See Appendix F.

d. Physical Evidentiary Considerations

Physical evidentiary variables were not statistically related to court-martial outcomes.

e. Victim and Subject Complexity Factors

Three victim factors were related to court-martial results: potential motive to fabricate, inconsistent statements, and evidence contradicting the victim's statement(s). In 21.9% of cases including evidence of a victim's potential motive to fabricate, the accused was convicted of a penetrative sexual offense; in 46.3% of cases not including such evidence, the accused was convicted of that offense. Similarly, in 20.4% of cases including evidence indicating that the victim made inconsistent statements, the accused was convicted of a penetrative sexual offense; in 43.5% of cases not including such evidence, the accused was convicted of that offense. In 4.8% of cases including evidence that contradicted the victim's account of the incident, the accused was convicted of a penetrative sexual offense; in 42.1% of cases not including such evidence, the accused was convicted of that offense

Evidence of the victim's collateral misconduct or other forms of misconduct were not related to court-martial outcomes.

TABLE VI.49. VICTIM COMPLEXITY FACTORS – STATISTICALLY SIGNIFICANT

Victim Motive to Lie ($\chi^2 = 12.60, p < .05$)	Acquitted (n=144)	%	Convicted (n=91)	%
Yes	57	78.1	16	21.9
No	87	53.7	75	46.3
Victim Inconsistent Statements ($\chi^2 = 8.75, p < .05$)				
Yes	39	79.6	10	20.4
No	105	56.5	81	43.5
Victim Contradictory Evidence ($\chi^2 = 11.21, p < .05$)				
Yes	20	95.2	1	4.8
No	124	57.9	90	42.1

Only one subject factor was related to conviction for the penetrative sexual offense: confession. In 74.4% of cases in which the subject confessed, they were convicted of the penetrative sexual offense. Neither evidence of the subject's collateral and other misconduct nor the existence of evidence admissible under M.R.E. 413 (similar crimes in sexual offense cases) and 404(b) (crimes, wrongs, or other acts) evidence was related to conviction for the penetrative sexual offense.

TABLE VI.50. SUBJECT COMPLEXITY FACTORS – STATISTICALLY SIGNIFICANT

Subject Statement ($\chi^2 = 30.95, p < .05$) ^a	Acquitted (n=144)	%	Convicted (n=91)	%
Confessed	11	25.6	32	74.4
Consensual	62	74.7	21	25.3
Denied crime/sexual activity	18	64.3	10	35.7
No recollection/partial memory	8	72.7	3	27.3
Other	4	40.0	6	60.0

a The relationship is statistically significant when "confessed" is compared to all other subject statements and to no statements.

f. Impairment

The victim’s impairment, alcohol use, and drug use were not related to court-martial outcomes.

The subject’s alcohol use was related to conviction for the penetrative sexual offense: 48.3% of cases in which the subject did not use alcohol resulted in conviction for the penetrative sexual offense; 33.1% of cases in which the subject did use alcohol resulted in conviction for that offense.

TABLE VI.51. SUBJECT IMPAIRMENT – STATISTICALLY SIGNIFICANT

Suspect Alcohol Use ($\chi^2 = 5.37, p < .05$)	Acquitted (n=144)	%	Convicted (n=91)	%
Yes	97	66.9	48	33.1
No	46	51.7	43	48.3

g. Victim Legal Representation

Whether the victim was represented by counsel was related to conviction for the penetrative sexual offense: 53.8% of cases in which the victim was not represented by counsel resulted in conviction for the penetrative sexual offense; 28.9% of cases in which the victim was represented by counsel resulted in conviction for that offense.²¹¹

TABLE VI.52. VICTIM LEGAL REPRESENTATION – STATISTICALLY SIGNIFICANT

Victim Legal Representation ($\chi^2 = 14.67, p < .05$)	Acquitted (n=144)	%	Convicted (n=91)	%
Yes	101	71.1	41	28.9
No	43	46.2	50	53.8

Finding 129: In the 235 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject that resulted in a verdict at trial on that offense, the case was more likely to result in a conviction for the penetrative offense when

- The victim was a civilian who was not a military spouse.
- The victim complexity factors of potential motive to fabricate, inconsistent statements, and evidence contradicting the victim’s statement(s) were not present.
- The subject confessed.
- The subject did not use alcohol.
- The victim was not represented by counsel.

Directive 9 to Case Review Subcommittee: The CRSC examine factors that may contribute to the relationship between conviction and acquittal rates and the victim’s representation by counsel.

211 Reviewers recorded whether a victim was represented by counsel on the basis of any such indication in the investigative case file or pretrial or trial documents.

3. Factors Influencing Victim Participation in the Military Justice Process

Based on the review of investigative case files and, if available, court-martial documents, the CRSC found that victims declined to participate in 31.3% of the 1,904 cases. Declination occurred at different stages: the victim may have chosen not to participate in the investigation or later may have chosen not to testify at court-martial. Research suggests that a victim's cooperation is one of the most important factors in prosecutors' decision making.²¹² The reasons a victim may choose not to participate in the military justice criminal process (or all adverse actions) are often complex and vary with the individual victim.²¹³

The data below analyze factors related to a victim's decision either to participate or to decline to participate at some stage in the military justice process.²¹⁴ The analysis includes all 1,904 cases reviewed: in 1,308 cases, the victim agreed to participate in the military justice process; in 596 cases, the victim declined to participate at some point in the military justice process (Table VI.37).

a. Reporting

The victim's decision to participate or not to participate in the investigation and military justice process pertaining to a penetrative sexual offense allegation was related to which individual reported the incident to law enforcement. Victims were most likely to participate when either the victim (71.2%) or a victim-authorized representative (e.g., the sexual assault response coordinator; 70.8%) reported the offense.

TABLE VI.53. REPORTING INDIVIDUAL – STATISTICALLY SIGNIFICANT

Reporting Individual ($\chi^2 = 9.09, p < .05$)	Victim Declined (n=596)	%	Victim Participated (n=1,308)	%
Victim	201	28.8	498	71.2
Authorized Representative	160	29.2	388	70.8
Command	122	34.7	230	65.3
Third Party	111	36.6	192	63.4

b. Demographic Data

The victim's and subject's gender, race, and grade were not related to the victim's decision to participate or not to participate in the investigation and military justice process pertaining to a penetrative sexual offense allegation.

c. Victim Status and Relationship Between Victim and Subject

Military victims were most likely to participate in the investigation and military justice process pertaining to a penetrative sexual offense allegation (72.5%), and civilian DoD spouse victims were least likely to participate (61.8%).

212 Fred Butcher, PhD, Rachel Lovell, PhD, & Daniel Flanner, PhD, *Analysis of the Cuyahoga County's Procedures for Alleviating the Backlog of Sexual Assault Kits: Cuyahoga County Sexual Assault Kit (SAK) Pilot Project: Report on Victims* (Mar. 2016).

213 See Services' Responses to RFI Set 11, *supra* note 109, at Question 7.

214 In over 80% of the cases, the victim declined participation in the investigative stage. See Table VI.37.

TABLE VI.54. VICTIM STATUS AND RELATIONSHIP BETWEEN VICTIM AND SUBJECT – STATISTICALLY SIGNIFICANT

Victim Status ($\chi^2 = 18.05, p < .05$)	Victim Declined (n=596)	%	Victim Participated (n=1,308)	%
Military	290	27.5	766	72.5
Civilian – Not DoD Spouse	140	33.9	273	66.1
Civilian – DoD Spouse	166	38.2	269	61.8

d. Physical Evidentiary Considerations

The victim’s decision to participate or not to participate in the investigation and military justice process pertaining to a penetrative sexual offense allegation was not related to the following factors: presence or absence of witnesses to the incident, physical injuries to the victim, and the subject’s use or threatened use of physical force. The victim’s decision to participate or not to participate was related to law enforcement’s use of pretextual communications during the investigation: victims participated at higher rates in cases where pretextual communications were used as an investigative tool (82.5%) than in cases when they were not (66.4%). Finally, the victim’s decision to participate in the investigation and military justice process was more likely when any of the following factors were present in a case: a SAFE was performed; DNA evidence in the case was analyzed; or the victim was represented by counsel.

TABLE VI.55. PHYSICAL EVIDENTIARY CONSIDERATIONS – STATISTICALLY SIGNIFICANT

Pretextual Communication Occurred ($\chi^2 = 27.48, p < .05$)	Victim Declined (n=596)	%	Victim Participated (n=1,308)	%
Yes	47	17.5	221	82.5
No	549	33.6	1,087	66.4
Sexual Assault Exam Performed on Victim ($\chi^2 = 8.57, p < .05$)				
Yes	154	26.6	425	73.4
No	442	33.4	883	66.6
DNA Evidence Tested ($\chi^2 = 15.40, p < .05$)				
Yes	95	23.3	313	76.7
No	500	33.4	995	66.6

e. Victim and Subject Complexity Factors

Victims were more likely to participate in the investigation and military justice process pertaining to a penetrative sexual offense allegation when there was evidence that the victim made inconsistent statements about the incident (71.9%) than when there was no such evidence (67.3%), and when there was evidence that contradicted the victim's account of the incident (74.3%) than when there was no such evidence (67.8%).

TABLE VI.56. VICTIM COMPLEXITY FACTORS – STATISTICALLY SIGNIFICANT

Victim Inconsistent Statements ($\chi^2 = 3.86, p < .05$)	Victim Declined (n=596)	%	Victim Participated (n=1,308)	%
Yes	159	28.1	407	71.9
No	437	32.7	901	67.3
Victim Contradictory Evidence ($\chi^2 = 4.27, p < .05$)				
Yes	65	25.7	188	74.3
No	531	32.2	1,120	67.8

Victims were also more likely to participate in the investigation and military justice process pertaining to a penetrative sexual offense allegation when there was evidence that the subject made inconsistent statements about the incident (76.6%) than when there was no such evidence (68.1%), and when there was evidence the subject committed collateral misconduct (72.6%) than when there was no such evidence (66.5%). Victims were more likely to participate (79.7%) when there was evidence that could be admitted under M.R.E. 413 (similar crimes in sexual offense cases) and/or 404(b) (crimes, wrongs, or other acts) against the subject than when there was no such evidence (67.2%). Victims were also more likely to participate when there was evidence that the subject had behavioral health concerns (81.8%) than when there was no such evidence (67.7%). Finally, victims were most likely to participate when there was evidence that the subject stated their memory of the incident was impaired (79.9%) or the subject confessed to the penetrative sexual offense (84.3%).

TABLE VI.57. SUBJECT COMPLEXITY FACTORS – STATISTICALLY SIGNIFICANT

Subject Lack of Memory ($\chi^2 = 5.66, p < .05$)	Victim Declined (n=596)	%	Victim Participated (n=1,308)	%
Yes	19	20.2	75	79.8
No	577	31.9	1,233	68.1
Subject Inconsistent Statements ($\chi^2 = 6.74, p < .05$)				
Yes	49	23.4	160	76.6
No	547	32.3	1,148	67.7
Subject Collateral Misconduct ($\chi^2 = 7.50, p < .05$)				
Yes	186	27.4	493	72.6
No	410	33.5	815	66.5
Subject 413 and 404(b) Evidence ($\chi^2 = 14.99, p < .05$)				
Yes	47	20.3	185	79.7
No	549	32.8	1,123	67.2

Subject Behavioral Health Concerns Before or After Incident ($\chi^2 = 12.29, p < .05$)				
Yes	26	18.2	117	81.8
No	568	32.3	1,190	67.7
Subject Statement ($\chi^2 = 18.69, p < .05$) ^a				
Confessed	16	15.7	86	84.3
Consensual	318	32.7	655	67.3
Denied crime/sexual activity	78	30.5	178	69.5
No recollection/partial memory	6	13.6	38	86.4
Other	16	31.4	35	68.6

a The relationship was statistically significant when “confessed” was compared to all other subject statements and to no statements.

f. Impairment

Victims were more likely to participate in the investigation and military justice process pertaining to a penetrative sexual offense allegation when the victim reported that they were impaired in some way (passed out/unconscious/asleep or blacked out/memory loss) than when there was no reported impairment. Victims were also more likely to participate when the victim or others reported that the victim drank alcohol before or during the incident (72.6%) than when the victim or others reported that the victim did not drink alcohol (63.5%). Finally, victims were more likely to participate when the reviewers found there was evidence that the victim’s memory of the incident was impaired (76.5%) than when there was no such evidence (65.0%).

TABLE VI.58. VICTIM IMPAIRMENT – STATISTICALLY SIGNIFICANT

	Victim Declined (n = 596)		Victim Participated (n = 1308)	
Victim Impairment ($\chi^2 = 26.43, p < .05$)				
Not Impaired	367	36.1	651	63.9
Passed out/unconscious/asleep	110	23.1	367	76.9
Blacked out/memory loss	107	29.2	259	70.8
Victim Alcohol Use ($\chi^2 = 17.69, p < .05$)				
Yes	298	27.4	788	72.6
No	298	36.5	519	63.5
Victim Lack of Memory ($\chi^2 = 25.84, p < .05$)				
Yes	145	23.5	472	76.5
No	451	35.0	836	65.0

Victims were more likely to participate in the investigation and military justice process pertaining to a penetrative sexual offense allegation when the subject used alcohol during the incident (72.4%) than when the subject did not use alcohol (64.0%). Victims were also more likely to participate when there was evidence that the subject suffered memory loss or lost consciousness (79.8%) than where there was no such evidence (68.1%).

TABLE VI.59. SUBJECT IMPAIRMENT – STATISTICALLY SIGNIFICANT

Subject Alcohol Use ($\chi^2 = 15.61, p < .05$)	Victim Declined (n=596)	%	Victim Participated (n=1308)	%
Yes	291	27.6	765	72.4
No	305	36.0	542	64.0
Subject Lack of Memory ($\chi^2 = 5.66, p < .05$)				
Yes	19	20.2	75	79.8
No	577	31.9	1,233	68.1

g. Victim Legal Representation

Victims were more likely to participate in the investigation and military justice process pertaining to a penetrative sexual offense allegation when they were represented by counsel (71.4%) than when not represented by counsel (65.6%).

TABLE VI.60. VICTIM LEGAL REPRESENTATION – STATISTICALLY SIGNIFICANT

Victim Legal Representation (prior to trial) ($\chi^2 = 7.46, p < .05$)	Victim Declined (n=596)	%	Victim Participated (n=1308)	%
Yes	287	28.6	718	71.4
No	309	34.4	590	65.6

TABLE VI.61. JUDGE ADVOCATE PROBABLE CAUSE DETERMINATION FOR INDEXING – STATISTICALLY SIGNIFICANT

Probable Cause ^a ($\chi^2 = 13.76, p < .05$)	Victim Declined (n=596)	%	Victim Participated (n=1308)	%
No Determination Made	147	32.2	309	67.8
Probable Cause Existed	213	27.0	577	73.0
Probable Cause Did Not Exist	236	36.0	420	64.0

a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

Finding 130: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, victims were more likely to participate in the military justice process when

- The victim or a victim-authorized representative reported the penetrative sexual offense.
- The victim was a Service member.
- The investigation used pretextual communication.
- A SAFE was performed.
- DNA evidence in the case was analyzed.
- The victim was represented by counsel.

- The victim complexity factors of inconsistent statements and contradictory evidence existed.
- The subject complexity factors of inconsistent statements, collateral misconduct, and evidence that could be admitted under M.R.E. 413 (similar crimes in sexual offense cases) and/or 404(b) (crimes, wrongs, or other acts) were present.
- The subject had behavioral health concerns.
- The subject's memory was impaired.
- The subject confessed.
- The victim reported being impaired.
- The victim used alcohol.
- The victim suffered memory loss/loss of consciousness.
- The subject used alcohol.
- The subject suffered memory loss/loss of consciousness.
- The victim was represented by counsel.
- A judge advocate found the evidence sufficient to establish probable cause to believe that the subject committed a penetrative sexual offense for indexing purposes.

Finding 131: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, victims were less likely to participate in the military justice process when

- The victim was the civilian spouse of a Service member.

C. Multivariate Analysis

The final analysis of the data builds on the bivariate analyses by estimating relationships between one dependent variable—for example, the decision to prefer a penetrative sexual offense charge—and multiple case variables. Multivariate analyses expand on and improve bivariate analyses because the multivariate analyses recognize that several variables can be interrelated, including the dependent variable.

For example, assume that a dependent variable of interest is whether the case resulted in a preferred penetrative sexual offense charge in the case. It is reasonable to expect that a case is more likely to result in a penetrative sexual offense charge when the subject confesses to the crime and when the victim participates in the investigation. At the same time, a subject's confession may be related to victim participation. The subject may be more likely to confess when it is clear that the victim is actively participating in the investigation and is providing incriminating evidence against the subject. It is also reasonable to expect that a victim will be more likely to continue participating after a subject confesses to the crime. In this situation, all three variables are related to one another: the preferral decision, victim participation (yes or no), and subject confession (yes or no).

Multivariate models use mathematical formulas to consider the interrelationships between several independent variables (for example, the subject's confession and the victim's participation) and the dependent variable (for example, the decision

to prefer a penetrative sexual offense charge). The purpose of the analysis of the multivariate model is to isolate the relationship between a single independent variable and the dependent variable.²¹⁵

1. Decision to Prefer a Penetrative Sexual Offense Charge

The multivariate models were built by starting with independent variables that showed a significant bivariate relationship with the dependent variable; for example, the decision to prefer a penetrative sexual offense charge (the dependent variable) and victim participation in the investigation and the subject's confession to the offense (independent variables). Dr. Wells used the initial model's results and close relationships between two independent variables to refine the models. In addition, some independent variables were excluded if they contained too few cases across categories of the dependent variable (e.g., subject confession) to perform the analysis.²¹⁶

The multivariate analysis treated the decision to prefer a penetrative sexual offense charge or to take no action in the case as the dependent variable.²¹⁷ The first model did not include variables to control for Service branch and included cases from all Services. The second model introduced Service branch control variables but excluded Coast Guard cases because their number was so small. The reference category for the Service branch variables was the Army; in other words, the Air Force, Marine Corps, and Navy were compared to the Army. Estimates were generated by additional models that changed the reference Service branch so that the other branches could be compared.

The following patterns of relationships emerged from the multivariate model:

- When a judge advocate opined there was probable cause to believe that the subject committed the penetrative sexual offense, there was a greater likelihood that the case resulted in a preferred charge for that offense, compared to cases either with no judge advocate opinion or cases in which a judge advocate determined there was not probable cause to believe that the subject committed the penetrative sexual offense. Judge advocates issued opinions regarding probable cause for the purposes of submitting fingerprints and the subject's DNA to federal databases.
- When the victim participated in the investigation, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the victim was represented by counsel, it was more likely that the case resulted in a preferred penetrative sexual offense charge than when the victim was not represented by counsel.
- When any DNA evidence in the case was analyzed, it was more likely that the case resulted in a preferred penetrative sexual offense charge.²¹⁸

215 Further explanation of the multivariate analysis can be found at Appendix F.

216 One exception was measures of subject and victim complexity factors, which can be found in Tables V1.27 and V1.28. Several of these factors were related to the decision to prefer a penetrative sexual offense charge. In order to simplify the model, one binary variable was created that measured the existence of any of the six victim factors (yes or no) and one binary variable was created that measured the existence of any of the six suspect factors (yes or no). The victim factor variable measured whether any of the following six factors existed: victim lack of memory, victim inconsistent statements, victim contradictory evidence, victim motive to lie, victim collateral misconduct, and victim other misconduct. The subject factor variable measured whether any of the following six factors existed: subject lack of memory, subject inconsistent statements, subject contradictory evidence, subject M.R.E. 413 or 404(b) evidence, subject collateral misconduct, and subject other misconduct.

217 See Table 2-16a (Logistic Regression Models: Commander Decision to Prefer Cases or Take No Action) in Appendix F for additional data.

218 The DAC-IPAD recorded whether DNA testing occurred in a case, but did not further determine whether the DNA results were favorable or unfavorable to the prosecution or defense.

- When the subject used force or threatened the use of force against the victim, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the victim reported impairment it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When there was evidence of at least one victim complexity factor, it was less likely that the case resulted in a preferred penetrative sexual offense charge.
- When there was evidence of at least one subject complexity factor, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the subject confessed to the offense, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- Air Force cases were more likely to result in preferred penetrative sexual offense charges than were cases in the Army, Marine Corps, and Navy, controlling for other case and individual characteristics included in the model.
- The identity of the individual reporting the incident to law enforcement was statistically significant when the military Service branch variables were included in the model and Coast Guard cases were excluded. Cases were less likely to result in preferred penetrative sexual offense charges when the command or a third party reported the incident to law enforcement than when the victim or a victim-authorized representative reported the incident to law enforcement.²¹⁹

Finding 132: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, the following patterns of relationships emerged from the multivariate model with respect to preferal of a penetrative sexual offense charge:

- When a judge advocate opined there was probable cause to believe that the subject committed the penetrative sexual offense, there was a greater likelihood that the case resulted in preferred penetrative sexual offense charges, compared either to cases with no judge advocate opinion or to cases in which a judge advocate determined there was not probable cause to believe the subject committed the offense. Judge advocates issued opinions regarding probable cause for the purposes of submitting the subject's fingerprints and DNA to federal databases.
- When the victim participated in the investigation, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the victim was represented by counsel, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When any DNA evidence in the case was analyzed, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the subject used force or threatened the use of force against the victim, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the victim reported impairment, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When there was evidence of at least one victim complexity factor, it was less likely that the case resulted in a preferred penetrative sexual offense charge.

219 See Table 2-16a (Logistic Regression Models: Commander Decision to Prefer Cases or Take No Action) in Appendix F for additional data.

- When there was evidence of at least one subject complexity factor, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- When the subject confessed to the offense, it was more likely that the case resulted in a preferred penetrative sexual offense charge.
- Air Force cases were more likely to result in preferred penetrative sexual offense charges than were cases in the Army, Marine Corps, and Navy, controlling for other case and individual characteristics included in the model.
- The identity of the individual reporting the incident to law enforcement was statistically significant when the military Service branch variables were included in the model and Coast Guard cases were excluded. Cases were less likely to result in preferred penetrative sexual offense charges when the command or a third party reported the incident to law enforcement than when the victim or a victim-authorized representative reported the incident to law enforcement.

2. Convictions and Acquittals for the Penetrative Sexual Offense

There are two multivariate models that treated the court-martial result—conviction or acquittal on the penetrative sexual offense—as the dependent variable. The first model did not include variables to control for Service branch and included cases from all Service branches. The second model introduced Service branch control variables but excluded Coast Guard cases because their number was so small. The reference category for the Service branch variables was the Army: in other words, the Air Force, Marine Corps, and Navy were compared to the Army. Estimates generated by additional models changed the reference Service branch so that the other branches could be compared. The results were unchanged when Service branch control variables were entered into the model.

Few variables exhibited a statistically significant relationship with the likelihood of conviction.

While the data collection instrument (the checklist) recorded detailed information about the nature of the incident, characteristics of the victim and subject, and aspects of the investigation, it did not record information about the court-martial. Thus, the analysis does not include information about events during the court-martial proceeding, including rulings on the admissibility of evidence or defense evidence introduced at trial that was not in the investigative file, in the Article 32, UCMJ, preliminary hearing, or in other pretrial documents provided for review.

The following patterns of relationships emerged from the multivariate model:

- The chances of conviction were lower than the chances of acquittal when the victim had legal representation.
- When there was evidence of at least one victim complexity factor,²²⁰ it was more likely that the accused would be acquitted of the penetrative sexual offense than convicted of the offense.
- When the subject confessed to the penetrative sexual offense, it was more likely that they would be convicted of that offense than acquitted of the offense.
- The military Service branch was unrelated to the likelihood of conviction for the penetrative sexual offense.²²¹

²²⁰ The victim complexity factor variable measured whether any of the following factors existed: victim lack of memory, victim inconsistent statements, victim contradictory evidence, victim motive to lie, victim collateral misconduct, and victim other misconduct.

²²¹ See Table 2-16b (Logistic Regression Models: Acquittal or Conviction) in Appendix F for additional data.

Finding 133: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, the following patterns of relationships emerged from the multivariate model with respect to conviction or acquittal for the penetrative sexual offense:

- The chances of conviction were lower than the chances of acquittal when the victim had legal representation.
- When there was evidence of at least one victim complexity factor, the accused was more likely to be acquitted of the penetrative sexual offense than convicted of the offense.
- When the subject confessed to the penetrative sexual offense, it was more likely that they would be convicted of that offense than acquitted of the offense.
- The military Service branch was unrelated to the likelihood of conviction for the penetrative sexual offense.

3. Victim Participation in the Investigation and Military Justice Process

There are two multivariate models that treated victim participation as the dependent variable. The first model did not include variables to control for Service branch and included cases from all Service branches. The second model introduced Service branch control variables but excluded Coast Guard cases because their number was so small. The reference category for the Service branch variables was the Army: in other words, the Air Force, Marine Corps, and Navy were compared to the Army. Estimates were generated by additional models that changed the reference Service branch so that the other branches could be compared. The following patterns of relationships emerged from the multivariate model:

- The victim was more likely to participate in the military justice process when any of the following variables existed:
 - The investigation used pretextual communication(s).
 - DNA evidence was analyzed.
 - The victim was an active duty Service member.
 - The subject used alcohol.
 - There was evidence of at least one subject complexity factor.²²²
 - The victim was physically injured.
 - There were behavioral health concerns about the subject.
 - The subject confessed to the penetrative sexual offense.
- The chances of victim participation were lower when a third party or command reported the incident than when the victim or a victim-authorized representative reported the incident.
- The second model revealed significant differences among the Service branches regarding the likelihood that the victim would participate in the military justice system regarding a penetrative sexual offense allegation.
 - Victims were more likely to participate in the military justice process when the Army investigated the case, compared to the Air Force or Marine Corps.
 - Similarly, a victim in the Navy was more likely to participate than one in the Air Force or Marine Corps.²²³

²²² The subject complexity factor variable measured whether any of the following six factors existed: subject lack of memory, subject inconsistent statements, subject contradictory evidence, subject M.R.E. 413 or 404(b) evidence, subject collateral misconduct, and subject other misconduct.

²²³ See Table 2-16c (Logistic Regression Models: Victim Participation or Declination) in Appendix F for additional data.

Finding 134: In the 1,904 adult-victim cases closed in FY17 involving a penetrative sexual offense allegation against a Service member subject, the following patterns of relationships emerged from the multivariate model with respect to the victim's decision to participate or not to participate in the military justice process:

- The victim was more likely to participate in the military justice process when any of the following variables existed:
 - The investigation used pretextual communication(s).
 - DNA evidence was analyzed.
 - The victim was an active duty Service member.
 - The subject used alcohol.
 - There was evidence of at least one subject complexity factor (subject lack of memory, subject inconsistent statements, subject contradictory evidence, subject M.R.E. 413 or 404(b) evidence, subject collateral misconduct, and subject other misconduct).
 - The victim was physically injured.
 - There were behavioral health concerns about the subject.
 - The subject confessed to the penetrative sexual offense.
- The chances of victim participation were lower when a third party or command reported the incident than when the victim or a victim-authorized representative reported the incident.
- The second model revealed significant differences between the Service branches regarding the likelihood that the victim would participate in the military justice system to pursue a penetrative sexual offense allegation.
 - Victims were more likely to participate in the military justice process when the Army investigated the case, compared to the Air Force or Marine Corps.
 - Similarly, a victim in the Navy was more likely to participate than one in the Air Force or Marine Corps.

APPENDIX A. COMMITTEE AUTHORIZING STATUTE, AMENDMENTS, AND DUTIES

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2015

SECTION 546. DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES. (Public Law 113–291; 128 Stat. 3374; 10 U.S.C. 1561 note)

(a) ESTABLISHMENT REQUIRED.—

- (1) IN GENERAL.—The Secretary of Defense shall establish and maintain within the Department of Defense an advisory committee to be known as the “Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces” (in this section referred to as the “Advisory Committee”).
- (2) DEADLINE FOR ESTABLISHMENT.—The Secretary shall establish the Advisory Committee not later than 30 days before the termination date of the independent panel established by the Secretary under section 576(a) (2) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1758), known as the “judicial proceedings panel”.

(b) MEMBERSHIP.—The Advisory Committee shall consist of not more than 20 members, to be appointed by the Secretary of Defense, who have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Advisory Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as a member of the Advisory Committee.

(c) DUTIES.—

- (1) IN GENERAL.—The Advisory Committee shall advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
- (2) BASIS FOR PROVISION OF ADVICE.—For purposes of providing advice to the Secretary pursuant to this subsection, the Advisory Committee shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in paragraph (1).

(d) ANNUAL REPORTS.—Not later than March 30 each year, the Advisory Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and the House of Representatives a report describing the results of the activities of the Advisory Committee pursuant to this section during the preceding year.

(e) TERMINATION.—

- (1) IN GENERAL.—Except as provided in paragraph (2), the Advisory Committee shall terminate on the date that is five years after the date of the establishment of the Advisory Committee pursuant to subsection (a).
- (2) CONTINUATION.—The Secretary of Defense may continue the Advisory Committee after the termination date applicable under paragraph (1) if the Secretary determines that continuation of the Advisory Committee after that date is advisable and appropriate. If the Secretary determines to continue the Advisory Committee after

that date, the Secretary shall submit to the President and the congressional committees specified in subsection (d) a report describing the reasons for that determination and specifying the new termination date for the Advisory Committee.

- (f) DUE DATE FOR ANNUAL REPORT OF JUDICIAL PROCEEDINGS PANEL.—Section 576(c)(2)(B) of the National Defense Authorization Act for Fiscal Year 2013 (Public Law 112-239; 126 Stat. 1760) is amended by inserting “annually thereafter” after “reports”.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2016

SECTION 537. MODIFICATION OF DEADLINE FOR ESTABLISHMENT OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546(a)(2) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374; 10 U.S.C. 1561 note) is amended by striking “not later than” and all that follows and inserting “not later than 90 days after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.”.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2019

SEC. 533. AUTHORITIES OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note) is amended—

- (1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively; and
- (2) by inserting after subsection (c) the following new subsection (d):

“(d) AUTHORITIES.—

“(1) HEARINGS.—The Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the committee considers appropriate to carry out its duties under this section.

“(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request by the chair of the Advisory Committee, a department or agency of the Federal Government shall provide information that the Advisory Committee considers necessary to carry out its duties under this section. In carrying out this paragraph, the department or agency shall take steps to prevent the unauthorized disclosure of personally identifiable information.”.

SEC. 547. REPORT ON VICTIMS OF SEXUAL ASSAULT IN REPORTS OF MILITARY CRIMINAL INVESTIGATIVE ORGANIZATIONS.

- (a) REPORT.—Not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:
- (1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
 - (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
 - (3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).
- (b) COVERED INDIVIDUAL DEFINED.—In this section, the term “covered individual” means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2020

SEC. 535. EXTENSION OF DEFENSE ADVISORY COMMITTEE ON INVESTIGATION, PROSECUTION, AND DEFENSE OF SEXUAL ASSAULT IN THE ARMED FORCES.

Section 546(f)(1) of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (10 U.S.C. 1561 note) is amended by striking “five” and inserting “ten”.

Joint Explanatory Statement:

The conferees request the DAC-IPAD review, as appropriate, whether other justice programs (e.g., restorative justice programs, mediation) could be employed or modified to assist the victim of an alleged sexual assault or the alleged offender, particularly in cases in which the evidence in the victim’s case has been determined not to be sufficient to take judicial, non-judicial, or administrative action against the perpetrator of the alleged offense.

Further, the conferees recognize the importance of providing survivors of sexual assault an opportunity to provide a full and complete description of the impact of the assault on the survivor during court-martial sentencing hearings related to the offense. The conferees are concerned by reports that some military judges have interpreted Rule for Courts-Martial (RCM) 1001(c) too narrowly, limiting what survivors are permitted to say during sentencing hearings in ways that do not fully inform the court of the impact of the crime on the survivor.

Therefore, the conferees request that, on a one-time basis, or more frequently, as appropriate, and adjunct to its review of court-martial cases completed in any particular year, the DAC-IPAD assess whether military judges are according appropriate deference to victims of crimes who exercise their right to be heard under RCM 1001(c) at sentencing hearings, and appropriately permitting other witnesses to testify about the impact of the crime under RCM 1001.

SEC. 540I. ASSESSMENT OF RACIAL, ETHNIC, AND GENDER DISPARITIES IN THE MILITARY JUSTICE SYSTEM.

- (a) **IN GENERAL.**—The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Department of Defense to detect and address racial, ethnic, and gender disparities in the military justice system.
- (b) **SECRETARY OF DEFENSE AND RELATED ACTIVITIES.**—The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act:
- (1) For each court-martial carried out by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned—
 - (A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;
 - (B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.
 - (2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that—
 - (A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and
 - (B) describes how such a review should be conducted.
 - (3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall—
 - (A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities in the military justice system;
 - (B) take steps to address the causes of such disparities, as appropriate.
- (c) **DAC-IPAD ACTIVITIES.**—
- (1) **IN GENERAL.**—The activities described in this subsection are the following, to be conducted by the independent committee DAC-IPAD:
 - (A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year addressed.
 - (B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(2) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—Upon request by the chair of the committee, a department or agency of the Federal Government shall provide information that the committee considers necessary to conduct reviews and assessments required by paragraph (1), including military criminal investigative files, charge sheets, records of trial, and personnel records.

(B) HANDLING, STORAGE, AND RETURN.—The committee shall handle and store all records received and reviewed under this subsection in accordance with applicable privacy laws and Department of Defense policy, and shall return all records so received in a timely manner.

(3) REPORT.—Not later than one year after the date of the enactment of this Act, the committee shall submit to the Secretary of Defense, and to the Committees on Armed Services of the Senate and the House of representatives, a report setting forth the results of the reviews and assessments required by paragraph (1). The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.

(4) DEFINITIONS.—In this subsection:

(A) The term “independent committee DAC-IPAD” means the independent committee established by the Secretary of Defense under section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113–291; 128 Stat. 3374), commonly known as the “DAC-IPAD”.

(B) The term “case” means an unrestricted report of any penetrative sexual assault offense or contact sexual assault offense made against a member of the Armed Forces pursuant to Department of Defense Instruction 6495.02, including any unrestricted report involving a spouse or intimate partner for which an investigation has been opened by a criminal investigative organization.

(C) The term “completed”, with respect to a case, means that the case was tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings.

(D) The term “contact sexual assault offense” means aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit such offenses under the Uniform Code of Military Justice.

(E) The term “penetrative sexual assault offense” means rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit such offenses under the Uniform Code of Military Justice.

H. Rept. 116-120 on H.R. 2500

***TITLE V—MILITARY PERSONNEL POLICY
ITEMS OF SPECIAL INTEREST***

Appointment of Guardian ad Litem for Minor Victims

The committee is concerned for the welfare of minor, military dependents who are victims of an alleged sex-related offense. The committee acknowledges the Department of Defense's continued efforts to implement services in support of service members who are victims of sexual assault and further, to expand some of these services to dependents who are victims. However, the committee remains concerned that there is not an adequate mechanism within the military court-martial process to represent the best interests of minor victims following an alleged sex-related offense.

Therefore, not later than 180 days after the date of the enactment of this Act, the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces shall submit to the Committees on the Armed Services of the Senate and the House of Representatives a report that evaluates the need for, and the feasibility of, establishing a process under which a guardian ad litem may be appointed to represent the interests of a victim of an alleged sex-related offense (as that term is defined in section 1044e(g) of title 10, United States Code) who has not attained the age of 18 years.

APPENDIX B. COMMITTEE CHARTER AND BALANCE PLAN

Charter

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

1. Committee's Official Designation: The committee shall be known as the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces ("the Committee").
2. Authority: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 ("the FY 2015 NDAA") (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix) and 41 C.F.R. § 102-3.50(a), established this non-discretionary advisory committee.
3. Objectives and Scope of Activities: Pursuant to section 546(c)(1) of the FY 2015 NDAA, will advise the Secretary of Defense and the Deputy Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
4. Description of Duties: Pursuant to section 546(c)(2) and (d) of the FY 2015 NDAA, the Committee, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel for the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the Committee pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The Committee will review, on an ongoing basis, cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

Pursuant to Section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Committee, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

- (1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
- (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
- (3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

The term "covered individual" means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

Charter
Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

Pursuant to section 540I(c) of the of the National Defense Authorization Act for Fiscal Year 2020 (“the FY 2020 NDAA”) (Public Law 116-92), not later than December 20, 2020, the Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives a report setting forth:

- (1) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year assessed.
- (2) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.
- (3) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.

Pursuant to section 540K(d) of the FY 2020 NDAA, the Secretary of Defense shall consult with the Committee on a report to be submitted by the Secretary to the Committees on Armed Services of the Senate and House of Representatives not later than June 17, 2020, making findings and recommendations on the feasibility and advisability of a policy for the Department of Defense that would permit a victim of a sexual assault, that is or may be investigated as a result of a communication described in 540K(b), which victim is a member of the Armed Forces or an adult dependent of a member of the Armed Forces, to have the reporting on the sexual assault be treated as a restricted report without regard to the party initiating or receiving such communication.

5. Agency or Official to Whom the Committee Reports: The Committee will report to the Secretary and Deputy Secretary of Defense, through the GC DoD.
6. Support: The DoD, through the GC DoD, the Washington Headquarters Services, and the DoD Components, provides support for the Committee and ensures compliance with requirements of the FACA, the Government in the Sunshine Act of 1976 (“the Sunshine Act”) (5 U.S.C. § 552b), governing Federal statutes and regulations, and DoD policy and procedures.
7. Estimated Annual Operating Costs and Staff Years: The estimated annual operating costs, to include travel, meetings, and contract support, are approximately \$2,810,500. The estimated annual personnel cost to the DoD is 15.0 full-time equivalents.

Charter
Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

8. Designated Federal Officer: The Committee's Designated Federal Officer (DFO) shall be a full-time or permanent part-time DoD civilian officer or employee or member of the Armed Forces, designated in accordance with established DoD policy and procedures.

The Committee's DFO is required to attend all Committee and subcommittee meetings for the entire duration of each and every meeting. However, in the absence of the Committee's DFO, a properly approved Alternate DFO, duly designated to the Committee in accordance with DoD policy and procedures, shall attend the entire duration of all of the Committee or subcommittee meetings.

The DFO, or the Alternate DFO, approves and calls all Committee and subcommittee meetings; prepares and approves all meeting agendas; and adjourns any meeting when the DFO, or the Alternate DFO, determines adjournment to be in the public's interest or required by governing regulations or DoD policy and procedures.

9. Estimated Number and Frequency of Meetings: The Committee shall meet at the call of the Committee's DFO, in consultation with the Committee's Chair and the GC DoD. The Committee will meet at a minimum of once per year.
10. Duration The need for this advisory function is on a continuing basis; however, this charter is subject to renewal every two years.
11. Termination: In accordance with sections 546(e)(1) and (2) of the FY 2015 NDAA, as modified by section 535 of the FY 2020 NDAA, the Committee will terminate on February 28, 2026, ten years after the Committee was established, unless the Secretary of Defense determines that continuation of the Committee after that date is advisable and appropriate. If the Secretary of Defense determines to continue the Committee after that date, the Secretary of Defense will submit to the President and the Committees on Armed Services of the Senate and House of Representatives a report describing the reasons for that determination and specifying the new termination date for the Committee.
12. Membership and Designation: Pursuant to section 546(b) of the FY 2015 NDAA, the Committee will be composed of no more than 20 members. Committee members selected will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as members of the Committee.

The appointment of Committee members will be approved by the Secretary of Defense, the Deputy Secretary of Defense, or the Chief Management Office of the Department of Defense (CMO) ("the DoD Appointing Authorities"), for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member, unless approved by the DoD Appointing Authorities, may serve more than two consecutive terms of service on the Committee, to include its subcommittees, or serve on more than two DoD Federal advisory committees at one time.

Charter
Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

Committee members who are not full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members.

Committee members are appointed to provide advice on the basis of his or her best judgment without representing any particular points of view and in a manner that is free from conflict of interest.

The DoD Appointing Authorities shall appoint the Committee's Chair from among the membership previously approved, in accordance with DoD policy and procedures, for a one-to-two year term of service, with annual renewal, which shall not exceed the member's approved Committee appointment.

Except for reimbursement of official Committee-related travel and per diem, Committee members serve without compensation.

13. Subcommittees: The DoD, when necessary and consistent with the Committee's mission and DoD policy and procedures, may establish subcommittees, task forces, or working groups to support the Committee. Establishment of subcommittees shall be based upon a written determination, to include terms of reference, by the DoD Appointing Authorities or the GC DoD, as the DoD Sponsor. All subcommittees operate under the provisions of the FACA, the Sunshine Act, governing Federal statutes and regulations, and DoD policy and procedures.

Subcommittees shall not work independently of the Committee and shall report all their advice and recommendations solely to the Committee for its thorough discussion and deliberation at a properly noticed and open meeting, subject to the Sunshine Act. Subcommittees have no authority to make decisions or recommendations, verbally or in writing, on behalf of the Committee. No subcommittee nor any of its members may provide updates or report, verbally or in writing, directly to the DoD or to any Federal officers or employees. If a majority of Committee members are appointed to a particular subcommittee, then that subcommittee may be required to operate pursuant to the same FACA notice and openness requirements governing the Committee's operations.

Individual appointments to serve on these subcommittees shall be approved by the DoD Appointing Authorities for a term of service of one-to-four years, subject to annual renewals, in accordance with DoD policy and procedures. No member shall serve more than two consecutive terms of service on the subcommittee without prior approval from the DoD Appointing Authorities. Subcommittee members, who are not full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or

Charter
Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

members of the Armed Forces, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members.

The DoD Appointing Authorities shall appoint the subcommittee leadership from among the membership previously appointed to serve on the subcommittee in accordance with DoD policy and procedures, for a one-to-two year term of service, with annual renewal, which shall not exceed the member's approved term of service.

Each subcommittee member is appointed to provide advice on behalf of his or her best judgment without representing any particular point of view and in a manner that is free from conflicts of interest.

With the exception of reimbursement for travel and per diem as it pertains to official travel related to the Committee or its subcommittees, subcommittee members shall serve without compensation.

Currently, the GC DoD has approved three subcommittees to the Committee. All work performed by these subcommittee will be sent to the Committee for its thorough deliberation and discussion at a properly noticed and open meeting, subject to the Sunshine Act.

- 1) Case Review Subcommittee of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces—composed of not more than 15 members to assess and make recommendations related to the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its review of cases involving such allegations.
 - 2) Data Subcommittee of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces—composed of not more than 15 members to assess and make recommendations related to the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its collection and analysis of data from cases involving such allegations.
 - 3) Policy Subcommittee of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces—composed of not more than 15 members to assess and make recommendations related to the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its review of Department of Defense policies, Military Department policies, and Uniform Code of Military Justice provisions applicable to such allegations.
14. Recordkeeping: The records of the Committee and its subcommittees will be handled in accordance with Section 2, General Record Schedule 6.2, and governing DoD policies and

Charter
Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

procedures. These records will be available for public inspection and copying, subject to the Freedom of Information Act of 1966 (5 U.S.C. § 552, as amended).

15. Filing Date: February 16, 2020

Membership Balance Plan
 Defense Advisory Committee on Investigation, Prosecution, and Defense of
 Sexual Assault in the Armed Forces

Agency: Department of Defense (DoD)

1. Authority: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (“the FY 2015 NDAA”) (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix) and 41 C.F.R. § 102-3.50(a), established the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (“the Committee”), a non-discretionary advisory committee.
2. Mission/Function: The Committee, pursuant to section 546(c)(1) of the FY 2015 NDAA, will advise the Secretary of Defense and the Deputy Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

Pursuant to section 546(c)(2) and (d) of the FY 2015 NDAA, the Committee, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel for the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the Committee pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The Committee will review, on an ongoing basis, cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

Pursuant to Section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Committee, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

- (1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
- (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
- (3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

The term “covered individual” means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

Pursuant to section 540I(c) of the of the National Defense Authorization Act for Fiscal Year 2020 (“the FY 2020 NDAA”) (Public Law 116-92), not later than December 20, 2020, the Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives a report setting forth:

Membership Balance Plan
Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

- (1) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year assessed.
- (2) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.
- (3) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

The report shall include such recommendations for legislative or administrative action as the Committee considers appropriate in light of such results.

Pursuant to section 540K(d) of the FY 2020 NDAA, the Committee shall be consulted by the Secretary of Defense on a report to be submitted by the Secretary to the Committees on Armed Services of the Senate and House of Representatives not later than June 17, 2020, making findings and recommendations on the feasibility and advisability of a policy for the Department of Defense that would permit a victim of a sexual assault, that is or may be investigated as a result of a communication described in 540k(b), which victim is a member of the Armed Forces or an adult dependent of a member of the Armed Forces, to have the reporting on the sexual assault be treated as a restricted report without regard to the party initiating or receiving such communication.

3. Points of View: Pursuant to section 546(b) of the FY 2015 NDAA, the Committee will be composed of no more than 20 members. Committee members selected will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as members of the Committee.

Committee members, who are not full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109, to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members.

All Committee members are appointed to provide advice on the basis of their best judgment without representing any particular points of view and in a manner that is free from conflict of interest.

Membership Balance Plan
Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

4. Other Balance Factors: N/A
5. Candidate Identification Process: The DoD, in selecting potential candidates for the Committee, reviews the educational and professional credentials of individuals with extensive professional experience in the points of view described above. Potential candidates may be gathered and identified by the General Council of the Department of Defense (GC DoD) and the Committee's staff.

Once potential candidates are identified, the Committee's Designated Federal Officer (DFO), working with the various stakeholders to include senior DoD officers and employees, reviews the credentials of each individual and narrows the list of potential candidates before forwarding the list to the GC DoD for review. During his or her review, the GC DoD strives to achieve a balance between the professional credentials of the individuals and the near-term subject matters that shall be reviewed by the Committee to achieve expertise in points of view regarding anticipated topics.

Once the GC DoD has narrowed the list of candidates and before formal nomination to the DoD Appointing Authorities, the list of potential candidates undergoes a review by the DoD Office of General Counsel and the Office of the Advisory Committee Management Officer (ACMO) to ensure compliance with federal and DoD governance requirements, including compliance with the Committee's statute, charter, and membership balance plan. Following this review, the GC DoD forwards to the list of nominees to the ACMO for approval by the DoD Appointing Authorities.

Following approval by the DoD Appointing Authorities, the candidates are required to complete the necessary appointment paperwork, to include meeting ethics requirements stipulated by the Office of Government Ethics for advisory committee members.

All Committee appointments are for a one-to-four year term of service, with annual renewals. No member, unless approved in a policy deviation by the DoD Appointing Authorities, may serve more than two consecutive terms of service on the Committee, including its subcommittees, or serve on more than two DoD Federal Advisory committees at one time.

Committee membership vacancies will be filled in the same manner as described above. Individuals being considered for appointment to the Committee, or any subcommittee, may not participate in any Committee or subcommittee work until his or her appointment has been approved by the DoD Appointment Authorities and the individual concerned is on-boarded in accordance with DoD policy and procedures.

6. Subcommittee Balance: The DoD, when necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee.

Currently, the DoD has approved three subcommittees to the Committee. Subcommittee members must will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses.

Membership Balance Plan
Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

- 1) Case Review Subcommittee of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces—composed of not more than 15 members to assess and make recommendations related to the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its review of cases involving such allegations.
- 2) Data Subcommittee of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces—composed of not more than 15 members to assess and make recommendations related to the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its collection and analysis of data from cases involving such allegations.
- 3) Policy Subcommittee of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces—composed of not more than 15 members to assess and make recommendations related to the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its review of Department of Defense policies, Military Department policies, and Uniform Code of Military Justice provisions applicable to such allegations.

Individuals considered for appointment to any subcommittee of the Committee may come from members of the Committee or from new nominees, as recommended by the GC DoD and based upon the subject matters under consideration. Pursuant to DoD policy and procedures, the GC DoD shall follow the same procedures used for selecting and nominating individuals for appointment consideration by the DoD Appointing Authorities. Individuals being considered for appointment to any subcommittee of the Committee cannot participate in any Committee or subcommittee work until his or her appointment has been approved by the DoD Appointment Authorities, and the individual concerned is on-boarded according to DoD policy and procedures.

Subcommittee members shall be appointed for a term of service of one-to-four years, subject to annual renewals; however, no member shall serve more than two consecutive terms of service on the subcommittee, without prior approval by the Appointing Authorities. Subcommittee members, if not full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed pursuant to 41 C.F.R. § 10-3.130(a) to serve as RGE members.

7. Other: As nominees are considered for appointment to the Committee, the DoD adheres to the Office of Management and Budget's Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions (79 FR 47482; August 13, 2014) and the rules and regulations issued by the Office of Government Ethics.
8. Date Prepared: February 16, 2020

APPENDIX C. COMMITTEE MEMBERS

Ms. Martha S. Bashford, Chair



Martha Bashford was for 40 years the chief of the New York County District Attorney's Office Sex Crimes Unit, which was the first of its kind in the country. Previously she was co-chief of the Forensic Sciences/Cold Case Unit, where she examined unsolved homicide cases that might now be solvable through DNA analysis. Ms. Bashford was also co-chief of the DNA Cold Case Project, which used DNA technology to investigate and prosecute unsolved sexual assault cases. She indicted assailants identified through the FBI's Combined DNA Index System (CODIS) and obtained John Doe DNA profile indictments to stop the statute of limitations where no suspect had yet been identified. She is a Fellow in the American Academy of Forensic Sciences. Ms. Bashford graduated from Barnard College in 1976 (*summa cum laude*) and received her J.D. degree from Yale Law School in 1979. She is a Fellow in both the American College of Trial Lawyers and the American Academy of Forensic Sciences.

Major General Marcia M. Anderson, U.S. Army, Retired



Marcia Anderson was the Clerk of Court for the Bankruptcy Court–Western District of Wisconsin from 1998 to 2019, where she was responsible for the management of the budget and administration of bankruptcy cases for 44 counties in western Wisconsin. Major General Anderson retired in 2016 from a distinguished career in the U.S. Army Reserve after 36 years of service, which included serving as the Deputy Commanding General of the Army's Human Resources Command at Fort Knox, Kentucky. In 2011, she became the first African American woman in the history of the U.S. Army to achieve the rank of major general. Her service culminated with an assignment at the Pentagon as the Deputy Chief, Army Reserve (DCAR). As the DCAR, she represented the Chief, Army Reserve, and had oversight for the planning, programming, and resource management for the execution of an Army Reserve budget of \$8 billion that supported more than 225,000 Army Reserve soldiers, civilians, and their families. She is a graduate of the Rutgers University School of Law, the U.S. Army War College, and Creighton University.

The Honorable Leo I. Brisbois



Leo I. Brisbois has been a U.S. Magistrate Judge for the District of Minnesota chambered in Duluth, Minnesota, since 2010. Prior to his appointment to the bench, Judge Brisbois served as an Assistant Staff Judge Advocate, U.S. Army, from 1987 through 1998, both on active duty and then in the Reserves; his active duty service included work as a trial counsel and as an administrative law officer, both while serving in Germany. From 1991 to 2010, Judge Brisbois was in private practice with the Minneapolis, Minnesota, firm of Stich, Angell, Kreidler, Dodge & Unke, where his practice included all aspects of litigation and appeals involving the defense of civil claims in state and federal courts. Judge Brisbois has also previously served on the Civil Rules and Racial Fairness in the Courts advisory committees established by the Minnesota State Supreme Court, and he has served on the Minnesota Commission on Judicial Selection. From 2009 to 2010, Judge Brisbois was the first person of known Native American heritage to serve as President of the more than 16,000–member Minnesota State Bar Association.

Ms. Kathleen B. Cannon



Kathleen Cannon is a criminal defense attorney in Vista, California, specializing in serious felony and high-profile cases. Prior to entering private practice in 2011, Ms. Cannon was a public defender for over 30 years, in Los Angeles and San Diego Counties. Over the course of her career, Ms. Cannon supervised branch operations and training programs within the offices and handled thousands of criminal cases. She has completed hundreds of jury trials, including those involving violent sexual assault and capital murder with special circumstances. Since 1994, Ms. Cannon has taught trial advocacy as an adjunct professor of law at California Western School of Law in San Diego, and has been on the faculty of the National Institute of Trial Advocacy as a team leader and teacher. She is past-President and current Training Coordinator for the California Public Defenders' Association, providing educational seminars for criminal defense attorneys throughout the state of California. Ms. Cannon has lectured on battered women syndrome evidence at the Marine Corps World Wide Training Conference at Marine Corps Recruit Depot (MCRD), San Diego, and was a small-group facilitator for the Naval Justice School course "Defending Sexual Assault Cases" in San Diego. Ms. Cannon has received numerous awards, including Top Ten Criminal Defense Attorney in San Diego, Lawyer of the Year from the North County Bar Association, and Attorney of the Year from the San Diego County Public Defender's Office.

Ms. Margaret A. Garvin



Margaret "Meg" Garvin, M.A., J.D., is the executive director of the National Crime Victim Law Institute (NCVLI), where she has worked since 2003. She is also a clinical professor of law at Lewis & Clark Law School, where NCVLI is located. In 2014, Ms. Garvin was appointed to the Victims Advisory Group of the United States Sentencing Commission, and during 2013–14, she served on the Victim Services Subcommittee of the Response Systems to Adult Sexual Assault Crimes Panel of the U.S. Department of Defense. She has served as co-chair of the American Bar Association's Criminal Justice Section Victims Committee, as co-chair of the Oregon Attorney General's Crime Victims' Rights Task Force, and as a member of the Legislative & Public Policy Committee of the Oregon Attorney General's Sexual Assault Task Force. Ms. Garvin received the John W. Gillis Leadership Award from National Parents of Murdered Children in August 2015. Prior to joining NCVLI, Ms. Garvin practiced law in Minneapolis, Minnesota, and clerked for the Eighth Circuit Court of Appeals. She received her bachelor of arts degree from the University of Puget Sound, her master of arts degree in communication studies from the University of Iowa, and her J.D. from the University of Minnesota.

The Honorable Paul W. Grimm



Paul W. Grimm serves as a U.S. District Judge for the District of Maryland. Previously, he served as a U.S. Magistrate Judge and as Chief Magistrate Judge for the District of Maryland. In 2009, the Chief Justice of the United States appointed Judge Grimm to serve as a member of the Civil Rules Advisory Committee, where he served for six years and chaired the Discovery Subcommittee. Before his appointment to the court, Judge Grimm was in private practice for 13 years, handling commercial litigation. Prior to that, he served as an Assistant Attorney General for Maryland, an Assistant States Attorney for Baltimore County, Maryland, and an active duty and Reserve Army Judge Advocate General's Corps officer, retiring as a lieutenant colonel in 2001. Judge Grimm has served as an adjunct professor of law at the University of Maryland School of Law and at the University of Baltimore School of Law, and has published many articles on evidence and civil procedure.

Mr. A. J. Kramer

A. J. Kramer has been the Federal Public Defender for the District of Columbia since 1990. He was the Chief Assistant Federal Public Defender in Sacramento, California, from 1987 to 1990, and an Assistant Federal Public Defender in San Francisco, California, from 1980 to 1987. He was a law clerk for the Honorable Proctor Hug, Jr., U.S. Court of Appeals for the Ninth Circuit, Reno, Nevada, from 1979 to 1980. He received a B.A. from Stanford University in 1975, and a J.D. from Boalt Hall School of Law at the University of California at Berkeley in 1979. Mr. Kramer taught legal research and writing at Hastings Law School from 1983 to 1988. He is a permanent faculty member of the National Criminal Defense College in Macon, Georgia. He is a Fellow of the American College of Trial Lawyers and a member of the ABA Criminal Justice System Council. He was a member of the National Academy of Sciences Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement. He was a member of the Courts of the Judicial Conference of the United States' Advisory Committee on Evidence Rules from 2013 to 2019. In July 2019, he received the American Inns of Court Award for Professionalism for the D.C. Circuit. In December 2013, he received the Annice M. Wagner Pioneer Award from the Bar Association of the District of Columbia.

Ms. Jennifer Gentile Long

Jennifer Gentile Long (M.G.A., J.D.) is CEO and co-founder of AEquitas and an adjunct professor at Georgetown University Law School. She served as an Assistant District Attorney in Philadelphia specializing in sexual violence, child abuse, and intimate partner violence. She was a senior attorney and then Director of the National Center for the Prosecution of Violence Against Women at the American Prosecutors Research Institute. She publishes articles, delivers trainings, and provides expert case consultation on issues relevant to gender-based violence and human trafficking nationally and internationally. Ms. Long serves as an Advisory Committee member of the American Law Institute's Model Penal Code Revision to Sexual Assault and Related Laws and as an Editorial Board member of the Civic Research Institute for the Sexual Assault and Domestic Violence Reports. She graduated from Lehigh University and the University of Pennsylvania Law School and Fels School of Government.

Mr. James P. Markey

Jim Markey has over 30 years of law enforcement experience with the Phoenix Police Department. Serving in a variety of positions, Mr. Markey was recognized with more than 30 commendations and awards. For over 14 years he directly supervised the sexual assault unit, which is part of a multidisciplinary sexual assault response team co-located in the City of Phoenix Family Advocacy Center. Mr. Markey oversaw the investigation of more than 7,000 sexual assaults, including more than 150 serial rape cases. In 2000, he was able to secure Violence Against Women grant funding to design, develop, and supervise a first-of-its-kind sexual assault cold case team with the City of Phoenix. This team has been successful in reviewing nearly 4,000 unsolved sexual assault cases dating back over 25 years. For the past 15 years Mr. Markey has been a certified and nationally recognized trainer, delivering in-person and online webinar training for numerous criminal justice organizations on sexual assault investigations and response. Currently, he is employed with the Research Triangle Institute (RTI) located in Durham North as a Senior Law Enforcement Specialist. His work in the Applied Justice Research Unit includes assistance for the DOJ Bureau of Justice Assistance Sexual Assault Kit Initiative (SAKI), providing technical assistance and training to 54 SAKI grantees across the United States. He also developed and directs the SAKI – Sexual Assault Unit Assessment (SAUA) Team; this team has conducted independent and comprehensive reviews for four major police agencies, assessing a range of areas in their response to sexual assault. In addition to the DAC-IPAD, Mr. Markey currently serves as a member of the National Institute of Justice (NIJ) Sexual

Assault Forensic Evidence Reporting (SAFER) Working Group and Editorial Team, NIJ Cold Case Working Group, Arizona Commission on Victims in the Courts (COVIC), Arizona Forensic Science Advisory Committee, and Massage Envy Franchising's Safety Advisory Council. Jim continues to work as a trainer and facilitator in the area of sexual violence for the International Association of Chiefs of Police (IACP) and the International Association of College Law Enforcement Administrators (IACLEA).

Dr. Jenifer Markowitz



Jenifer Markowitz is a forensic nursing consultant who specializes in issues related to sexual assault, domestic violence, and strangulation, including medical-forensic examinations and professional education and curriculum development. In addition to teaching at workshops and conferences around the world, she provides expert testimony, case consultation, and technical assistance and develops training materials, resources, and publications. A forensic nurse examiner since 1995, Dr. Markowitz regularly serves as faculty and as an expert consultant for the Judge Advocate General's (JAG) Corps for the U.S. Army, Navy, Air Force, Marine Corps, and Coast Guard. Past national activities include working with the Army Surgeon General's office to develop a curriculum for sexual assault medical-forensic examiners working in military treatment facilities (subsequently adopted by the Navy and Air Force); with the U.S. Department of Justice Office on Violence Against Women (OVW) to develop a national protocol and training standards for sexual assault medical-forensic examinations; with the Peace Corps to assess the agency's multidisciplinary response to sexual assault; with the U.S. Department of Defense to revise the military's sexual assault evidence collection kit and corresponding documentation forms; and as an Advisory Board member for the National Sexual Violence Resource Center. In 2004, Dr. Markowitz was named a Distinguished Fellow of the International Association of Forensic Nurses (IAFN); in 2012, she served as IAFN's President.

Chief Master Sergeant of the Air Force Rodney J. McKinley, U.S. Air Force, Retired



Chief Master Sergeant of the Air Force Rodney J. McKinley represented the highest enlisted level of leadership and, as such, provided direction for the enlisted corps and represented their interests, as appropriate, to the American public and to those in all levels of government. He served as the personal advisor to the Chief of Staff and the Secretary of the Air Force on all issues regarding the welfare, readiness, morale, and proper utilization and progress of the enlisted force. Chief McKinley is the 15th chief master sergeant appointed to the highest noncommissioned officer position. His background includes various duties in medical and aircraft maintenance, and he served 10 years as a first sergeant. He also served as a command chief master sergeant at wing, numbered Air Force, and major command levels. He is currently the co-chair of the Air Force Retiree Council and frequently is a guest speaker at bases across the Air Force. He is an honors graduate of St. Leo College, Florida, and received his master's degree in human relations from the University of Oklahoma.

Brigadier General James A. Schwenk, U.S. Marine Corps, Retired



BGen Schwenk was commissioned as an infantry officer in the Marine Corps in 1970. After serving as a platoon commander and company commander, he attended law school at the Washington College of Law, American University, and became a judge advocate. As a judge advocate he served in the Office of the Secretary of Defense, the Office of the Secretary of the Navy, and Headquarters, Marine Corps; he served as Staff Judge Advocate for Marine Forces Atlantic, II Marine Expeditionary Force, Marine Corps Air Bases West, and several other commands; and he participated in several

hundred courts-martial and administrative discharge boards. He represented the Department of Defense on the television show *American Justice*, and represented the Marine Corps in a Mike Wallace segment on *60 Minutes*. He retired from the Marine Corps in 2000.

Upon retirement from the Marine Corps, BGen Schwenk joined the Office of the General Counsel of the Department of Defense as an associate deputy general counsel. He was a legal advisor in the Pentagon on 9/11, and he was the primary drafter from the Department of Defense of many of the emergency legal authorities used in Afghanistan, Iraq, the United States, and elsewhere since that date. He was the principal legal advisor for the repeal of “don’t ask, don’t tell,” for the provision of benefits to same-sex spouses of military personnel, in the review of the murders at Fort Hood in 2009, and on numerous DoD working groups in the area of military personnel policy. He worked extensively with the White House and Congress, and he retired in 2014 after 49 years of federal service.

Dr. Cassia C. Spohn



Cassia Spohn is a Regents Professor and Director of the School of Criminology and Criminal Justice at Arizona State University. She received a Ph.D. in political science from the University of Nebraska–Lincoln. Prior to joining the ASU faculty in 2006, she was a faculty member in the School of Criminology and Criminal Justice at the University of Nebraska at Omaha for 28 years. She is the author or co-author of eight books, including *Policing and Prosecuting Sexual Assault: Inside the Criminal Justice System* and *How Do Judges Decide? The Search for Fairness and Equity in Sentencing*. Her research interests include prosecutorial and judicial decision making; the intersections of race, ethnicity, crime, and justice; and sexual assault case processing decisions. In 2013, she received ASU’s Award for Leading Edge Research in the Social Sciences and was selected as a Fellow of the American Society of Criminology.

Ms. Meghan A. Tokash



Meghan Tokash is an Assistant United States Attorney (AUSA) at the U.S. Department of Justice serving the Western District of New York in the violent crimes unit. For eight years she served as a judge advocate in the U.S. Army Judge Advocate General's Corps, where she prosecuted a wide range of cases relating to homicide, rape, sexual assault, domestic violence, and child abuse. AUSA Tokash was selected by the Judge Advocate General of the U.S. Army to serve as one of 15 Special Victim Prosecutors; she worked in the Army's first Special Victim Unit at the Fort Hood Criminal Investigation Division Office and U.S. Army Europe/Central Command. Previously, AUSA Tokash served as an Army trial defense counsel and as a civilian victim-witness liaison officer for the Department of the Army. AUSA Tokash clerked for the United States Court of Appeals for the Armed Forces. She is a graduate of the Catholic University Columbus School of Law. She earned her master of laws degree in trial advocacy from the Beasley School of Law at Temple University, where at graduation she received the program's Faculty Award.

The Honorable Reggie B. Walton



Judge Walton was born in Donora, Pennsylvania. In 1971 he graduated from West Virginia State University, where he was a three-year letterman on the football team and played on the 1968 nationally ranked conference championship team. Judge Walton received his law degree from the American University, Washington College of Law, in 1974.

Judge Walton assumed his current position as a U.S. District Judge for the District of Columbia in 2001. He was also appointed by President George W. Bush in 2004 as the Chair of the National Prison Rape Elimination Commission, a commission created by Congress to identify methods to reduce prison rape. The U.S. Attorney General substantially adopted the Commission's recommendations for implementation in federal prisons; other federal, state, and local officials throughout the country are considering adopting the recommendations. U.S. Supreme Court Chief Justice William Rehnquist appointed Judge Walton in 2005 to the federal judiciary's Criminal Law Committee, on which he served until 2011. In 2007 Chief Justice John Roberts appointed Judge Walton to a seven-year term as a Judge of the U.S. Foreign Intelligence Surveillance Court, and he was subsequently appointed Presiding Judge in 2013. He completed his term on that court on May 18, 2014. Upon completion of his appointment to the Foreign Intelligence Surveillance Court, Judge Walton was appointed by Chief Justice Roberts to serve as a member of the Judicial Conference Committee on Court Administration and Case Management.

Judge Walton traveled to Russia in 1996 to instruct Russian judges on criminal law in a program funded by the U.S. Department of Justice and the American Bar Association's Central and East European Law Initiative Reform Project. He is also an instructor in Harvard Law School's Advocacy Workshop and a faculty member at the National Judicial College in Reno, Nevada.

APPENDIX D. COMMITTEE PROFESSIONAL STAFF

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APPENDIX E. COMMITTEE RECOMMENDATIONS TO DATE

DAC-IPAD Recommendation 1 – (March 2018) The Secretary of Defense, the Secretary of Homeland Security, and the Services take action to dispel the misperception of widespread abuse of the expedited transfer policy, including addressing the issue in the training of all military personnel.

DAC-IPAD Recommendation 2 – (March 2018) The Secretary of Defense and the Secretary of Homeland Security identify and track appropriate metrics to monitor the expedited transfer policy and any abuses of it.

DAC-IPAD Recommendation 3 – (March 2018) The DoD-level and Coast Guard equivalent Family Advocacy Program (FAP) policy include provisions for expedited transfer of active duty Service members who are victims of sexual assault similar to the expedited transfer provisions in the DoD Sexual Assault Prevention and Response (SAPR) policy and consistent with 10 U.S.C. § 673.

DAC-IPAD Recommendation 4 – (March 2018) The DoD-level military personnel assignments policy (DoD Instruction 1315.18) and Coast Guard equivalent include a requirement that assignments personnel or commanders coordinate with and keep SAPR and FAP personnel informed throughout the expedited transfer, safety transfer, and humanitarian/compassionate transfer assignment process when the transfer involves an allegation of sexual assault.

DAC-IPAD Recommendation 5 – (March 2019) In developing a uniform command action form in accordance with section 535 of the FY19 National Defense Authorization Act (NDAA), the Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should establish a standard set of options for documenting command disposition decisions and require the rationale for those decisions, including declinations to take action.

The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should ensure that the standard set of options for documenting command disposition decisions is based on recognized legal and investigatory terminology and standards that are uniformly defined across the Services and accurately reflect command action source documents.

DAC-IPAD Recommendation 6 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should require that judge advocates or civilian attorneys employed by the Services in a similar capacity provide advice to commanders in completing command disposition/action reports in order to make certain that the documentation of that decision is accurate and complete.

DAC-IPAD Recommendation 7 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) should provide uniform guidance to the Services regarding the submission of final disposition information to federal databases for sexual assault cases in which, after fingerprints have been submitted, the command took no action, or took action only for an offense other than sexual assault.

DAC-IPAD Recommendation 8 – (March 2019) The uniform standards and criteria developed to implement Article 140a, Uniform Code of Military Justice (UCMJ), should reflect the following best practices for case data collection:

- a. Collect all case data only from standardized source documents (legal and investigative documents) that are produced in the normal course of the military justice process, such as the initial report of investigation, the commander's report of disciplinary or administrative action, the charge sheet, the Article 32 report, and the Report of Result of Trial.

- b. Centralize document collection by mandating that all jurisdictions provide the same procedural documents to one military justice data office/organization within DoD.
- c. Develop one electronic database for the storage and analysis of standardized source documents, and locate that database in the centralized military justice data office/organization within DoD.
- d. Collect and analyze data quarterly to ensure that both historical data and analyses are as up-to-date as possible.
- e. Have data entered from source documents into the electronic database by one independent team of trained professionals whose full-time occupation is document analysis and data entry. This team should have expertise in the military justice process and in social science research methods, and should ensure that the data are audited at regular intervals.

DAC-IPAD Recommendation 9 – (March 2019) The source documents referenced in DAC-IPAD Recommendation 8 should contain uniformly defined content covering all data elements that DoD decides to collect to meet the requirements of Articles 140a and 146, UCMJ.

DAC-IPAD Recommendation 10 – (March 2019) The data produced pursuant to Article 140a, UCMJ, should serve as the primary source for the Military Justice Review Panel's periodic assessments of the military justice system, which are required by Article 146, UCMJ, and as the sole source of military justice data for all other organizations in DoD and for external entities.

DAC-IPAD Recommendation 11 – (March 2019) Article 140a, UCMJ, should be implemented so as to require collection of the following information with respect to allegations of both adult-victim and child-victim sexual offenses, within the meaning of Articles 120, 120b, and 125, UCMJ (10 U.S.C. §§ 920, 920b, and 925 (2016)):

- a. A summary of the initial complaint giving rise to a criminal investigation by a military criminal investigative organization (MCIO) concerning a military member who is subject to the UCMJ, and how the complaint became known to law enforcement;
- b. Whether an unrestricted report of sexual assault originated as a restricted report;
- c. Demographic data pertaining to each victim and accused, including race and sex;
- d. The nature of any relationship between the accused and the victim(s);
- e. The initial disposition decision under Rule for Court-Martial 306, including the decision to take no action, and the outcome of any administrative action, any disciplinary action, or any case in which one or more charges of sexual assault were preferred, through the completion of court-martial and appellate review;
- f. Whether a victim requested an expedited transfer or a transfer of the accused, and the result of that request;
- g. Whether a victim declined to participate at any point in the military justice process;
- h. Whether a defense counsel requested expert assistance on behalf of a military accused, whether those requests were approved by a convening authority or military judge, and whether the government availed itself of expert assistance; and
- i. The duration of each completed military criminal investigation, and any additional time taken to complete administrative or disciplinary action against the accused.

DAC-IPAD Recommendation 12 – (March 2019) The Services may retain their respective electronic case management systems for purposes of managing their military justice organizations, provided that

- a. The Services use the same uniform standards and definitions to refer to common procedures and substantive offenses in the Manual for Courts-Martial, as required by Article 140a; and
- b. The Services develop a plan to transition toward operating one uniform case management system across all of the Services, similar to the federal judiciary's Case Management/ Electronic Court Filing (CM/ECF) system.

DAC-IPAD Recommendation 13 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) expand the expedited transfer policy to include victims who file restricted reports of sexual assault. The victim's report would remain restricted and there would be no resulting investigation. The DAC-IPAD further recommends the following requirements:

- a. The decision authority in such cases should be an O-6 or flag officer at the Service headquarters organization in charge of military assignments, rather than the victim's commander.
- b. The victim's commander and senior enlisted leader, at both the gaining and losing installations, should be informed of the sexual assault and the fact that the victim has requested an expedited transfer—without being given the subject's identity or other facts of the case—thereby enabling them to appropriately advise the victim on career impacts of an expedited transfer request and ensure that the victim is receiving appropriate medical or mental health care.
- c. A sexual assault response coordinator, victim advocate, or special victims' counsel (SVC) / victims' legal counsel (VLC) must advise the victim of the potential consequences of filing a restricted report and requesting an expedited transfer, such as the subject not being held accountable for his or her actions and the absence of evidence should the victim later decide to unrestrict his or her report.

DAC-IPAD Recommendation 14 – (March 2019) The Secretary of Defense (in consultation with the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) establish a working group to review whether victims should have the option to request that further disclosure or investigation of a sexual assault report be restricted in situations in which the member has lost the ability to file a restricted report, whether because a third party has reported the sexual assault or because the member has disclosed the assault to a member of the chain of command or to military law enforcement. The working group's goal should be to find a feasible solution that would, in appropriate circumstances, allow the victim to request that the investigation be terminated. The working group should consider under what circumstances, such as in the interests of justice and safety, a case may merit further investigation regardless of the victim's wishes; it should also consider whether existing safeguards are sufficient to ensure that victims are not improperly pressured by the subject, or by others, to request that the investigation be terminated. This working group should consider developing such a policy with the following requirements:

- a. The victim be required to meet with an SVC or VLC before signing a statement requesting that the investigation be discontinued, so that the SVC or VLC can advise the victim of the potential consequences of closing the investigation.
- b. The investigative agent be required to obtain supervisory or MCIO headquarters-level approval to close a case in these circumstances.
- c. The MCIOs be aware of and take steps to mitigate a potential perception by third-party reporters that allegations are being ignored when they see that no investigation is taking place; such steps could include notifying the third-party reporter of the MCIO's decision to honor the victim's request.
- d. Cases in which the subject is in a position of authority over the victim be excluded from such a policy.
- e. If the MCIO terminates the investigation at the request of the victim, no adverse administrative or disciplinary action may be taken against the subject based solely on the reporting witness's allegation of sexual assault.

DAC-IPAD Recommendation 15 – (March 2019) The Secretary of Defense (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) revise the DoD expedited transfer policy (and the policy governing the Coast Guard with respect to expedited transfers) to include the following points:

- a. The primary goal of the DoD expedited transfer policy is to act in the best interests of the victim. Commanders should focus on that goal when they make decisions regarding such requests.
- b. The single, overriding purpose of the expedited transfer policy is to assist in the victim's mental, physical, and emotional recovery from the trauma of sexual assault. This purpose statement should be followed by examples of reasons why a victim might request an expedited transfer and how such a transfer would assist in a victim's recovery (e.g., proximity to the subject or to the site of the assault at the current location, ostracism or retaliation at the current location, proximity to a support network of family or friends at the requested location, and the victim's desire for a fresh start following the assault).
- c. The requirement that a commander determine that a report be credible is not aligned with the core purpose of the expedited transfer policy. It should be eliminated, and instead an addition should be made to the criteria that commanders must consider in making a decision on an expedited transfer request: "any evidence that the victim's report is not credible."

DAC-IPAD Recommendation 16 – (March 2019) Congress increase the amount of time allotted to a commander to process an expedited transfer request from 72 hours to no more than five workdays.

DAC-IPAD Recommendation 17 – (March 2019) The Services track and report the following data in order to best evaluate the expedited transfer program:

- a. Data on the number of expedited transfer requests by victims; the grade and job title of the requester; the sex and race of the requester; the origin installation; whether the requester was represented by an SVC/VLC; the requested transfer locations; the actual transfer locations; whether the transfer was permanent or temporary; the grade and title of the decision maker and appeal authority, if applicable; the dates of the sexual assault report, transfer request, approval or disapproval decision and appeal decision, and transfer; and the disposition of the sexual assault case, if final.
- b. Data on the number of accused transferred; the grade and job title of the accused; the sex and race of the accused; the origin installation; the transfer installation; the grade and title of the decision maker; the dates of the sexual assault report and transfer; whether the transfer was permanent or temporary; and the disposition of the sexual assault case, if final.
- c. Data on victim participation in investigation/prosecution before and after an expedited transfer.
- d. Data on the marital status (and/or number of dependents) of victims of sexual assault who request expedited transfers and accused Service members who are transferred under this program.
- e. Data on the type of sexual assault offense (penetrative or contact) reported by victims requesting expedited transfers.
- f. Data on Service retention rates for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.
- g. Data on the career progression for sexual assault victims who receive expedited transfers compared with sexual assault victims who do not receive expedited transfers and with other Service members of similar rank and years of service.

- h. Data on victim satisfaction with the expedited transfer program.
- i. Data on the expedited transfer request rate of Service members who make unrestricted reports of sexual assault.

DAC-IPAD Recommendation 18 – (March 2019) The Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) incorporate into policy, for those sexual assault victims who request it, an option to attend a transitional care program at a military medical facility, Wounded Warrior center, or other facility in order to allow those victims sufficient time and resources to heal from the trauma of sexual assault.

DAC-IPAD Recommendation 19 – (March 2020) The Department of Defense should publish a memorandum outlining sufficiently specific data collection requirements to ensure that the Military Services use uniform methods, definitions, and timelines when reporting data on collateral misconduct (or, where appropriate, the Department should submit a legislative proposal to Congress to amend section 547 [of the FY19 NDAA] by clarifying certain methods, definitions, and timelines). The methodology and definitions should incorporate the following principles:

a. Definition of “sexual offense”:

- The definition of “sexual offense” for purposes of reporting collateral misconduct should include
 - Both penetrative and non-penetrative violations of Article 120, UCMJ (either the current or a prior version, whichever is applicable at the time of the offense);
 - Violations of Article 125, UCMJ, for allegations of sodomy occurring prior to the 2019 version of the UCMJ; and
 - Attempts, conspiracies, and solicitations of all of the above.
- The definition of sexual offense should not include violations of Article 120b, UCMJ (Rape and sexual assault of a child); Article 120c, UCMJ (Other sexual misconduct); Article 130, UCMJ (Stalking); or previous versions of those statutory provisions.

b. Definition of “collateral misconduct”:

- Current DoD policy defines “collateral misconduct” as “[v]ictim misconduct that might be in time, place, or circumstance associated with the victim’s sexual offense incident.”¹
- However, a more specific definition of collateral misconduct is necessary for purposes of the section 547 reporting requirement. That recommended definition should read as follows: “Any misconduct by the victim that is potentially punishable under the UCMJ, committed close in time to or during the sexual offense, and directly related to the incident that formed the basis of the sexual offense allegation. The collateral misconduct must have been discovered as a direct result of the report of the sexual offense and/or the ensuing investigation into the sexual offense.”
- Collateral misconduct includes (but is not limited to) the following situations:
 - The victim was in an unprofessional or adulterous relationship with the accused at the time of the assault.²

1 Dep’t of Def. Instr. 6495.02, SEXUAL ASSAULT PREVENTION AND RESPONSE (SAPR) PROGRAM PROCEDURES, Glossary (March 28, 2013, Incorporating Change 3, May 24, 2017), 117.

2 For purposes of this report, an “unprofessional relationship” is a relationship between the victim and accused that violated law, regulation, or policy in place at the time of the assault.

- The victim was drinking underage or using illicit substances at the time of the assault.
- The victim was out past curfew, was at an off-limits establishment, or was violating barracks/dormitory/berthing policy at the time of the assault.
- To ensure consistency across the Military Services, collateral misconduct, for purposes of this report, should not include the following situations (the list is not exhaustive):
- The victim is under investigation or receiving disciplinary action for misconduct and subsequently makes a report of a sexual offense.
- The victim used illicit substances at some time after the assault, even if the use may be attributed to coping with trauma.
- The victim engaged in misconduct after reporting the sexual offense.
- The victim had previously engaged in an unprofessional or adulterous relationship with the subject, but had terminated the relationship prior to the assault.
- The victim engaged in misconduct that is not close in time to the sexual offense, even if it was reasonably foreseeable that such misconduct would be discovered during the course of the investigation (such as the victim engaging in an adulterous relationship with an individual other than the subject).
- The victim is suspected of making a false allegation of a sexual offense.
- The victim engaged in misconduct during the reporting or investigation of the sexual offense (such as making false official statements during the course of the investigation).

c. Methodology for identifying sexual offense cases and victims:

- To identify sexual offense cases and victims, all closed cases from the relevant time frame that list at least one of the above included sexual offenses as a crime that was investigated should be collected from the MCIOs.
- A case is labeled “closed” after a completed MCIO investigation has been submitted to a commander to make an initial disposition decision, any action taken by the commander has been completed, and documentation of the outcome has been provided to the MCIO.³
- Each Military Service should identify all of its Service member victims from all closed cases from the relevant time frame, even if the case was investigated by another Military Service’s MCIO.

d. Time frame for collection of data:

- The Military Services should report collateral misconduct data for the two most recent fiscal years preceding the report due date for which data are available. The data should be provided separately for each fiscal year and should include only closed cases as defined above. For example, the Department’s report due September 30, 2021, should include data for closed cases from fiscal years 2019 and 2020.

e. Definition of “covered individual”:

- Section 547 of the FY19 NDAA defines “covered individual” as “an individual who is identified as a victim of a sexual offense in the case files of a military criminal investigative organization.” This definition should be

3 This definition of “closed case” mirrors the definition used by the DAC-IPAD’s Case Review Working Group.

clarified as follows: “an individual identified in the case files of an MCIO as a victim of a sexual offense while in title 10 status.”

- For the purposes of this study, victims are those identified in cases closed during the applicable time frame.

f. Replacement of the term “accused”:

- Section 547 of the FY19 NDAA uses the phrase “accused of collateral misconduct.” To more accurately capture the frequency with which collateral misconduct is occurring, the term “accused of” should be replaced with the term “suspected of,” defined as follows: instances in which the MCIO’s investigation reveals facts and circumstances that would lead a reasonable person to believe that the victim committed an offense under the UCMJ.⁴
- Examples of a victim suspected of collateral misconduct include (but are not limited to) the following situations:
 - The victim disclosed engaging in conduct that could be a violation of the UCMJ (and was collateral to the offense).
 - Another witness in the investigation stated that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
 - The subject of the investigation stated that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
 - In the course of the sexual offense investigation, an analysis of the victim’s phone, urine, or blood reveals evidence that the victim engaged in conduct that could be a violation of the UCMJ (and was collateral to the offense).
- This definition of “suspected of” does not require referral of charges, a formal investigation, or disciplinary action against the victim for the collateral misconduct. However, if any of those actions has occurred regarding collateral misconduct, or if there is evidence of collateral misconduct from other sources available, such victims should also be categorized as suspected of collateral misconduct even if the MCIO case file does not contain the evidence of such misconduct.
 - For example, if in pretrial interviews the victim disclosed collateral misconduct, such a victim would be counted as suspected of collateral misconduct.

g. Definition of “adverse action”:

- The term “adverse action” applies to an officially documented command action that has been initiated against the victim in response to the collateral misconduct.
- Adverse actions required to be documented in collateral misconduct reports are limited to the following:
 - Letter of reprimand (or Military Service equivalent) or written record of individual counseling in official personnel file;
 - Imposition of nonjudicial punishment;

⁴ Cf. *United States v. Cohen*, 63 M.J. 45, 50 (C.A.A.F. 2006) (stating that determining whether a person is a “suspect” entitled to warnings under Article 31(b) prior to interrogation “is an objective question that is answered by considering all the facts and circumstances at the time of the interview to determine whether the military questioner believed or reasonably should have believed that the servicemember committed an offense”) (internal citations omitted).

- Preferral of charges; or
- Initiation of an involuntary administrative separation proceeding.
- The Committee recommends limiting the definition of adverse action to the above list for purposes of this reporting requirement to ensure consistency and accuracy across the Military Services in reporting and to avoid excessive infringement on victim privacy. The Committee recognizes the existence of other adverse administrative proceedings or actions that could lead to loss of special or incentive pay, administrative reduction of grade, loss of security clearance, bar to reenlistment, adverse performance evaluation (or Military Service equivalent), or reclassification.

h. Methodology for counting “number of instances”:

- Cases in which a victim is suspected of more than one type of collateral misconduct should be counted only once; where collateral misconduct is reported by type, it should be counted under the most serious type of potential misconduct (determined by UCMJ maximum punishment) or, if the victim received adverse action, under the most serious collateral misconduct identified in the adverse action.
- For cases in which a victim received more than one type of adverse action identified above, such as nonjudicial punishment and administrative separation, reporting should include both types of adverse action.

DAC-IPAD Recommendation 20 – (March 2020) Victims suspected of making false allegations of a sexual offense should not be counted as suspected of collateral misconduct.

DAC-IPAD Recommendation 21 – (March 2020) For purposes of the third statistical data element required by section 547, the Department of Defense should report not only the percentage of all Service member victims who are suspected of collateral misconduct but also the percentage of the Service member victims who are suspected of collateral misconduct and then receive an adverse action for the misconduct. These two sets of statistics would better inform policymakers about the frequency with which collateral misconduct is occurring and the likelihood of a victim’s receiving an adverse action for collateral misconduct once they are suspected of such misconduct.

DAC-IPAD Recommendation 22 – (March 2020) The Department of Defense should include in its report data on the number of collateral offenses that victims were suspected of by type of offense (using the methodology specified in section h of Recommendation 19) and the number and type of adverse actions taken for each of the offenses, if any. This additional information would aid policymakers in fully understanding and analyzing the issue of collateral misconduct and in preparing training and prevention programs.

DAC-IPAD Recommendation 23 – (March 2020) To facilitate production of the future collateral misconduct reports required by section 547, the Military Services should employ standardized internal documentation of sexual offense cases involving Service member victims suspected of engaging in collateral misconduct as defined for purposes of this reporting requirement.

DAC-IPAD Recommendation 24 – (June 2020) Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) enhance funding and training for SVCs/VLCs appointed to represent child victims, including authorization to hire civilian highly qualified experts (HQEs) with experience and expertise in representing child victims, including expertise in child development, within the SVC/VLC Programs.

DAC-IPAD Recommendation 25 – (June 2020) In conjunction with Recommendation 24, the Judge Advocates General of the Military Services including the Coast Guard and the Staff Judge Advocate to the Commandant of the Marine Corps develop a cadre of identifiable SVCs/VLCs who have specialized training, experience, and expertise in representing child victims of sex-related offenses by utilizing military personnel mechanisms such as Additional Skill Identifiers.

DAC-IPAD Recommendation 26 – (June 2020) The Department of Defense Office of the Inspector General and the Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) assess whether the MCIOs and FAPs currently are providing accurate and timely notification to child victims of their right to request SVC/VLC representation as soon as an allegation of a sexual offense is reported, and if necessary take corrective action.

DAC-IPAD Recommendation 27 – (June 2020) Congress amend 10 U.S.C. § 1044e to expand SVC/VLC eligibility to any child victim of a sex-related offense committed by an individual subject to the UCMJ.

DAC-IPAD Recommendation 28 – (June 2020) Congress amend the UCMJ to authorize the military judge to direct the appointment of an SVC/VLC for a child victim of a sex-related offense and/or of an independent best interest advocate to advise the military judge when they find that the child's interests are not otherwise adequately protected.

DAC-IPAD Recommendation 29 – (June 2020) The Secretary of Defense and the Secretaries of the Military Departments (and the Secretary of Homeland Security with respect to the Coast Guard when not operating as a service in the Navy) develop a child victim advocate capability within each of the Services to support certain child victims of sexual offenses. The child victim advocate should reside within the SVC/VLC Programs and work as part of the SVC/VLC team in order to ensure that the child's legal interests are fully represented and protected. The child victim advocate should have expertise in social work, child development, and family dynamics.

DAC-IPAD Recommendation 30 – (June 2020) Congress amend Article 6b, UCMJ, to require that any representative who assumes the rights of the victim shall act to protect the victim's interests; any such representative should be appointed as early as possible in the military justice process.

DAC-IPAD Recommendation 31 – (June 2020) Provided that the Department of Defense adopts and implements DAC-IPAD Recommendations 24–30, it is not advisable or necessary to establish a military guardian ad litem program within the Department of Defense for child victims of alleged sex-related offenses in courts-martial.

**APPENDIX F. INVESTIGATION OF ADULT PENETRATIVE
SEXUAL OFFENSE CASES CLOSED IN THE MILITARY
SERVICES DURING FISCAL YEAR 2017**

**Investigation of Adult Penetrative Sexual Offense Cases
Closed in the Military Services During Fiscal Year 2017**

**Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces**

**Dr. William Wells
August 14, 2020**

PART 1 Overview and Data Analysis Plan

The DAC-IPAD was interested in learning details about cases of penetrative sexual assaults reported to authorities and aspects of their investigation.¹ This information can identify opportunities for interventions and changes that can prevent sexual violence, improve investigations, increase the chances offenders will be held accountable, and enhance the healing process for survivors.² To learn about these reports of penetrative sexual assault and their investigation, DAC-IPAD staff collected investigation case files from the five Military Service branches and recorded detailed information about the cases on a data collection form. The data collection form is included in the Report on Investigative Case File Reviews for Military Penetrative Sexual Offense Cases Closed in Fiscal Year 2017, Appendix H (“Appendix H”).

The patterns of results are organized into seven sections in this report, one for the DoD-wide results (Part 2) and a section for each of the five Military Service branches (Parts 3–7). A final section (Part 8) includes tables that provide an overview of all patterns across the Service branches. The data analysis followed the same pattern for each Service branch:

- *Descriptive Statistics.* The first step in the analysis produces “descriptive statistics,” which summarize (i.e., describe) information about characteristics of the sexual assault incidents and their investigations. More specifically, the information presented in step one entails univariate statistics, because information is presented about each variable, separately. The univariate statistics provide information about the entire set of cases being studied, such as the number of cases from each Service branch, the number of cases involving intimate partners and other types of relationships, and the number and proportion of cases in which suspects confessed. Variables represent characteristics of incidents and investigations that have the ability to differ across the cases (i.e., they vary). For example, the age of the suspect is a variable, because the suspects’ ages will differ across cases. In other words, suspect age “varies” when the cases are compared. “Suspect confession” is also a variable, because some portion of cases will involve suspect confessions, and some will not. Additional variables include, for example, victim gender (male or female), victim–suspect relationship (stranger, spouse, friend, co-worker, etc.), and whether probable cause existed in the case (yes or no). The data collection instrument recorded information about numerous case variables (see Appendix H). The univariate statistics provide summary information about all of the cases in this study. Examining this information provides the opportunity to identify important characteristics in large numbers of cases that can point in directions for reforms or interventions and can identify existing strengths within the system.
- *Bivariate Relationships.* The second step in the analysis builds on the first step by examining the way two variables are “related” to one another. In this context, “relationship” refers to the way two variables are connected to one another. For instance,

¹ Any reference to penetrative sexual assault in this report encompasses the sexual offenses of rape and sexual assault in violation of Article 120, Uniform Code of Military Justice (UCMJ); forcible sodomy, in violation of Article 125, UCMJ; and attempts to commit those offenses, in violation of Article 80, UCMJ.

² The terms “victims” and “survivors” are used interchangeably throughout this report.

two variables of interest are “victim participation in the investigation (yes or no)” and the “commander’s decision to prefer the case or take no action.” When bivariate relationships are being measured, it is possible to compare the percentage of cases in which victims participated that were preferred and the percentage of cases in which victims did not participate that were preferred. Examining these patterns will reveal the existence of relationships, as is illustrated in the bivariate analyses throughout this report.

- To estimate bivariate relationships, it is common to select one, or a few, key dependent variables of interest to explore. Dependent variables are case outcomes or results. For example, one question might be about why certain cases are preferred and some are not. In this question, case preferral (yes or no) is the dependent variable. Measuring bivariate relationships between case characteristics and the commander’s decision to prefer the case, for example, will provide more detailed understandings about the kinds of cases that are most likely to be preferred. The case characteristics that may be related to the dependent variable (e.g., the commander’s decision) are referred to as independent variables, or predictor variables. The analyses measured bivariate relationships between case characteristics (independent variables) and two key outcome variables (dependent variables) for each Service branch: command decision to take action and victim participation in justice proceedings. A third dependent variable was added to the bivariate analysis when data from all Service branches were combined: court-martial results (conviction or acquittal). The court-martial results could not be analyzed for each Service branch separately because of the small numbers of court-martial results within each separate Service branch.
- All of the bivariate relationships measured in these analyses take the form of a cross-tabulations table (i.e., cross-tabs) because the variables have limited numbers of categories, such as gender (male and female), victim status (military or civilian), and existence of probable cause (yes or no). Cross-tabs present the numbers and percentages of cases that exist within the intersection of the categories of two variables, such as male military victims, male civilian victims, female military victims, and female civilian victims. In this example the two variables are gender (male – female) and victim status (military – civilian). These tables were presented throughout the results. Cases were excluded from cross-tabs when cases were missing data on either of the two variables presented in the table.
- Cross-tabs also provide the opportunity to test the statistical significance of the observed patterns. Statistical significance refers, in part, to a mathematical computation that allows for an understanding of the likelihood that the observed bivariate relationship occurred by chance or instead actually exists in the larger set of cases that have not been observed. In this study, data from only one year were examined, so the test of statistical significance allows for conclusions about a larger set of cases from other years. It is possible that by chance alone we observed a pattern of relationship between two variables that does not represent patterns outside of the year from which data were collected. A test of statistical significance allows us to understand this chance and draw conclusions about

whether an observed relationship is likely to be real rather than due to sources of error. The test of statistical significance reported in the cross-tab results here was based on a chi-square value (χ^2) and an associated probability value. Social science convention is to use probability values equal to or less than .05 as the threshold for identifying statistically significant relationships. If the probability associated with the chi-square statistic (χ^2) is equal to .05 or less than .05, then the relationship is reported to be statistically significant. Significant relationships were so denoted in the cross-tab results.

- *Multivariate Relationships.* The final analysis builds on the second stage by estimating relationships between one dependent variable of interest, such as the commander's decision to prefer the case (yes or no), and *multiple* independent variables, not just one. Multivariate analyses expand on and improve bivariate analyses because the multivariate analyses recognize that several variables can be interrelated, including the dependent variable. For example, assume that a dependent variable of interest is whether or not the commander preferred the case. It is reasonable to assume that cases are more likely to be preferred when the suspect confesses to committing the crime and when the victim in the case is participating in the investigation. At the same time, a suspect's confession may be related to victim participation. The suspect may be more likely to confess when it is clear that the victim is actively participating and providing incriminating evidence against the suspect. It is also reasonable to expect that a victim will be more likely to continue participating after a suspect confesses to the crime. In this situation all three variables are related to one another: the commander's decision (prefer or not), victim participation (yes or no), and suspect confession (yes or no). Multivariate models use mathematical formulas to consider the interrelationships between several independent variables and the dependent variable. The purpose is to isolate the relationship between a single independent variable and the dependent variable. The model isolates the relationship between each independent variable in the model and the dependent variable by separating out the relationships that exist between the other independent variables included in the model and their relationships with the dependent variable.
 - The multivariate models reported here are known as regression models. Grade school and middle school children are often taught about these types of models using measures such as rate of change, slope, and intercept. More specifically, the multivariate regression models utilized here are known as logistic regression models because the dependent variables are binary, or dichotomous. The outcome variables contain only two categories (i.e., they are dichotomous). The commander's decision can have two results: prefer the case or take no action. Similarly, the victim participation variable is measured with two categories: the victim participated or the victim declined. The third dependent variable measures the court-martial result with two categories: acquittal or conviction. When regression analysis is used with dichotomous dependent variables like these, logistic regression is the preferred technique. Cases are excluded from the multivariate analyses when the case is missing data on any of the variables included in the model.

- Like cross-tabs, multivariate logistic regression models involve tests of statistical significance. These tests help assess whether the patterns of relationships are likely to represent chance occurrences due to the sample that is being studied or are likely to represent relationships that probably exist in the broader population of cases outside of the year being studied. These statistically significant relationships were denoted in the results, and the conventional .05 threshold was used.
- Logistic regression models produce several values that provide an understanding of relationships. Three values were reported in the results. The first, known as the unstandardized regression coefficient (B), is used to report the nature of the relationship between the independent variable (e.g., probable cause: yes or no) and the dependent variable (e.g., commander decision: no action or preferred). The sign of the B coefficient will be positive or negative, which signifies the manner in which the relationship functions. For example, the sign associated with B may be positive (+) and indicate that there was a greater chance of preferral when probable cause existed than when probable cause did not exist. In more precise terms, the sign associated with B refers to a change in the likelihood that the value of the dependent variable will change from 0 to 1 when the value of the independent variable changes from 0 to 1. It is important to understand how the categories of the independent variables and the dependent variable are coded in terms of 0 and 1. The value of the B coefficient does not provide information about the relative strength of the relationship between an independent variable and the dependent variable. The second value is known as the standard error (SE) of the regression coefficient (B). The standard error measures the degree of variation associated with B and allows for a test of statistical significance. The standard error is best understood in relation to the value of B, so it is important to report and assess both. There is a greater chance of finding a statistically significant relationship when the value of SE is small in relation to the value of B. The third, and final, value reported is the odds ratio. The odds ratio provides information about the strength of the relationship between the independent variable and the dependent variable. When the value of B is positive, the odds ratio will be greater than 1.0. When the value of B is negative, the odds ratio will be less than 1.0. When the value of the odds ratio moves away from 1.0, this movement signifies a stronger relationship between the independent variable and the dependent variable.
- The measure used in logistic regression to test for the statistical significance of a relationship between one independent variable and the dependent variable is the Wald statistic. As is true of cross-tabs, statistical significance is assessed using the .05 threshold. If the probability associated with the Wald statistic is equal to .05 or less than .05 then the relationship is reported to be statistically significant. Significant relationships were denoted in the logistic regression results, but to prevent the tables from becoming excessively complex the Wald values were not reported.

- There are multiple ways of building logistic regression models; the preferred approach when not testing specific hypotheses is to generate simplified, rather than complex, models. The approach utilized here was to start by identifying the independent variables that showed a significant bivariate relationship with the dependent variable. An initial model was estimated by including the independent variables that were found to have a significant, bivariate relationship with the dependent variable. Models were reduced by removing independent variables that did not show a statistically significant relationship with the dependent variable and by removing independent variables that were closely related to one another (e.g., victim impairment and victim alcohol use). This approach is consistent with model building that places a value on simplicity. In addition, some independent variables were excluded if there were small numbers of cases in categories of the independent variable across categories of the dependent variable (e.g., suspect confession by command decision). The results of the simplified models were reported.

The results presented here were based on 1,904 cases, composed of 403 Air Force cases, 821 Army cases, 30 Coast Guard cases, 263 Marine Corps cases, and 387 Navy cases.

PART 2
DoD Results

The DoD case file data were analyzed to understand case characteristics and patterns of relationships between key variables. The analysis examined 1,904 cases from the five branches of Service. The first step in the analysis examined univariate statistics to understand the cases. The second step explored bivariate relationships between case and individual characteristics and three key outcome variables: command decision to take action, conviction or acquittal outcomes in court-martial cases, and victim participation in justice proceedings. The final analysis estimated multivariate models for the three dependent variables (command action, court-martial result, and victim participation).

UNIVARIATE STATISTICS: CASE CHARACTERISTICS

Table 2-1 presents information about the commanders' decisions and justice system outcomes for penetrative sexual assaults. The largest percentage of cases were in the Army (43.1%), followed by the Air Force (21.1%), Navy (20.3%), Marine Corps (13.8%), and Coast Guard (1.6%). Commanders did not take action in 70.2% of cases and preferred 27.2% of cases. Commanders frequently indicated that insufficient evidence (34.2%) and a lack of victim participation (22.6%) were reasons they did not take action. Based on the review of the investigative case files, commanders did not provide a reason for their no action decision in 29.6% of the no action cases. Administrative actions occurred in 2.7% of cases (n = 51). Over 80% of preferred cases were referred (422 of 517 preferred cases). Court-martial occurred in 235 cases, over half of referred cases (55.7%). Court-martial more commonly resulted in acquittal (61.3%) than in conviction (38.8%), and dismissal was the most common alternative disposition (66.7%), followed by discharge in lieu of court-martial (DILCOM, 29.4%).

TABLE 2-1. COMMAND ACTION DECISIONS AND COURT-MARTIAL RESULTS

	N	%
Service Branch		
Army	821	43.1
Air Force	403	21.1
Navy	387	20.3
Marine Corps	263	13.8
Coast Guard	30	1.6
Initial Command Action on Penetrative Sexual Assault		
No Command Action	1336	70.2
Preferred	517	27.2
Administrative Action	51	2.7
Reason Provided by Command for No Action ^{a b}		
Lack of Victim Participation	187	22.6
Insufficient Evidence	283	34.2
Unfounded	37	4.5
Prosecution Declined	24	2.9
No Probable Cause	25	3.0
No Reason Provided/Unknown	245	29.6

Other	27	3.3
Case Preferral/Referral (n = 517)		
Preferred Only	95	18.4
Preferred and Referred	422	81.6
Referred Cases with a Finding	235	55.7
Court-Martial Result (n = 235)		
Acquittal	144	61.3
Conviction for at Least One Penetrative Sexual Assault Charge – Court-Martial	69	29.4
Conviction for at Least One Penetrative Sexual Assault Charge – PTA at Court-Martial	22	9.4
Alternative Disposition (n = 282)		
Administrative Separation	11	3.9
Discharge in Lieu of Court-Martial	83	29.4
Dismissal	188	66.7

^a Army cases are excluded from these counts because the Army’s command reports sometimes did not address the penetrative sexual assault or contained language not recognized by reviewers. Reviewers also did not properly record the information in the Army’s command reports if they found a reason for closure from another source, making the data unreliable.

^b Multiple reasons were listed in 87 cases in which the command did not take action; these are included in the counts, resulting in a total count of 828. Percentages were computed using 828.

Table 2-2 describes cases in terms of incident location. Slightly more than one-half of the reported sexual assaults occurred in off-installation locations (52.4%), and three-quarters occurred in the continental United States (75.1%). It was rare for reported incidents to have occurred on vessels (1.0%). Four cases occurred in a deployed location (i.e., Iraq or Afghanistan).

TABLE 2-2. INCIDENT LOCATION

	N	%
Installation		
On Installation	906	47.6
Off Installation	998	52.4
Location of Incident		
CONUS	1429	75.1
OCONUS	446	23.4
CONUS and OCONUS	12	0.6
Vessel	15	0.8
Vessel and CONUS	1	0.1
Vessel and OCONUS	1	0.1
Deployment		
Deployed Location (Iraq or Afghanistan only)	4	0.2
Non-Deployed Location	1900	99.8

Table 2-3 summarizes information about the time between the incident and the report of the incident to authorities. In some cases, there were multiple dates listed for the date the incident occurred and a date range was captured on the data collection form. In these situations, the latest (most recent) incident date was used to compute the days between the incident and date of the report. In some cases, the date of the most recent incident occurred *after* the date the incident

was reported; these cases are categorized as “unknown.” When either of the two dates (i.e., date of the incident or date of the report to authorities) is not contained in the data, these cases are also categorized as “unknown.” The Service-specific reports provide information about the time between additional points in the investigation, but missing data and inconsistent data recording practices make it problematic to present combined, DoD-wide results for additional time variables.

Over one-third (36.5%) of cases were reported within 7 days of the incident, including 29.8% of cases that were reported within 3 days of the incident. Half of the cases were reported within 30 days of the incident (50.9%). The median number of days between the report and the incident was 26: that is, half of the cases were reported within 26 days and half of the cases were reported to authorities after 26 days.

TABLE 2-3. TIME BETWEEN KEY ACTIONS IN THE CASE

	N	%
Number of Days Between Offense and Report to Authorities		
0 (same day)	203	10.7
1 – 3	364	19.1
4 – 7	128	6.7
8 – 14	130	6.8
15 – 30	144	7.6
31 – 60	171	9.0
61 – 90	104	5.5
91 – 120	79	4.2
121 – 150	53	2.8
151 – 180	60	3.2
181 – 210	48	2.5
211 – 240	32	1.7
241 – 270	23	1.2
271 – 365	66	3.5
366 +	267	14.0
Unknown	32	1.7
Median number of days = 26		

Suspect characteristics are summarized in Table 2-4. A large majority of cases involved suspects who were enlisted (93.0%) and were at a pay grade of E-5 or lower (82.2%). Over one-quarter of suspects (27.8%) were E-4 personnel. Nearly one-half of officer suspects (46.9%) were O-2 or O-3. Nearly all suspects were male (97.7%) and 66.5% of suspects were White. Approximately one-quarter of suspects (26.0%) were African American. The White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African. The average age of suspects was 25.5 years.

TABLE 2-4. SUSPECT CHARACTERISTICS

	N	%
Suspect Grade at Time of Incident		
Enlisted	1771	93.0
Officer	130	6.8
Unknown	3	0.2

Suspect Pay Grade at Time of Incident		
Enlisted (n = 1,771)		
E-1	67	3.8
E-2	140	7.9
E-3	413	23.3
E-4	493	27.8
E-5	342	19.3
E-6	181	10.2
E-7	101	5.7
E-8	23	1.3
E-9	4	0.2
Unknown	7	0.4
Officer (n = 130)		
Cadet/Midshipman	15	11.5
O-1	6	4.6
O-2	32	24.6
O-3	29	22.3
O-4	14	10.8
O-5	18	13.8
O-6	4	3.1
W-1	1	0.8
W-2	5	3.8
W-3	5	3.8
W-4	1	0.8
Suspect Gender		
Male	1860	97.7
Female	44	2.3
Suspect Age ^a	Mean = 25.5; SD = 6.2; Range = 18 – 58	
Suspect Race		
White ^b	1266	66.5
Black or African American	495	26.0
Asian	45	2.4
Native Hawaiian or Other Pacific Islander	22	1.2
American Indian or Alaska Native	9	0.5
Other Race, Ethnicity, or Origin	17	0.9
Unknown	50	2.6

^a Fifty-six cases were missing data on the suspect's age.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

Table 2-5 presents information about suspects' drug and alcohol use during the time of the reported incident and about other suspect characteristics related to the investigation. Drug use during the reported offense was rare, but suspect alcohol use was common (55.5% of reported incidents). It was rare for a suspect to have any behavioral health concerns listed in the case files (7.5%). The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). At least one

of six suspect complexity factors existed in over half of the cases (60.1%). The most common suspect complexity factors were collateral misconduct at the time of the reported incident (35.7%) and other forms of misconduct (24.7%). Suspects' contradictory evidence and loss of memory or consciousness were not common.

TABLE 2-5. SUSPECT FACTORS

	N	%
Suspect Alcohol Use		
Yes	1056	55.5
No	847	44.5
Unknown	1	0.1
Suspect Drug Use		
Yes	31	1.6
No	1872	98.3
Unknown	1	0.1
Suspect Behavioral Health Concerns Before or After Incident		
Yes	143	7.5
No	1758	92.3
Unknown	3	0.2
Suspect Complexity Factors ^a		
Collateral Misconduct	679	35.7
Other Misconduct	471	24.7
Loss of Memory or Consciousness	94	4.9
413 and 404(b) Evidence	232	12.2
Inconsistent Statements	209	11.0
Contradictory Evidence	75	3.9
At Least One of the Six Factors Exists in the Case	1144	60.1

^a These categories were not mutually exclusive; multiple factors could have been present for a single suspect. Percentages were calculated based on the full set of 1,904 cases and do not sum to 100%.

Table 2-6 summarizes information about suspects' statements and legal representation. Suspects offered statements to law enforcement in 64.4% of cases, and suspects rarely had legal representation (5.7% of all cases) at the time of the interview. The data collection instrument recorded information from the case file about the content of suspect statements to law enforcement and third parties. The most common suspect statement was to indicate that the sexual contact was consensual (68.2%), followed by denying that the event was a crime or denying sexual contact (18.0%). Suspects confessed in 102 cases (7.2%).

TABLE 2-6. SUSPECT STATEMENTS AND REPRESENTATION

	N	%
Suspect Provided Statement to Law Enforcement		
Yes	1226	64.4
No	678	35.6
Suspect Had Legal Representation		
Yes	109	5.7
No	1794	94.1
Unknown	1	0.1
Suspect Statement to Third Parties or Law Enforcement ^a		

Confessed	102	7.2
Consensual	973	68.2
Denied Crime/Sexual Activity	256	18.0
No Recollection/Partial Memory	44	3.1
Other	51	3.6

^a Information about suspects' statements to law enforcement or third parties was available for 1,426 cases. Reports included information with multiple suspect statements in 118 cases. A hierarchy rule was used to code cases with multiple statements: Cases were coded as "confessed" if the suspect confessed and offered any other statement. The next code in the hierarchy was "consensual" and was used when the suspect reported that the sexual activity was consensual (but did not confess). The third category in the hierarchy was "denied crime or denied penetrative sexual activity" and was used when the suspect offered multiple statements but not "confessed" and not "consensual." The "no recollection/partial memory" category was used when only this statement was made. The last category was "other" and was used when the provided statement did not clearly fit into any of the previous categories.

Tables 2-7 and 2-8 present information about victims. Over half of victims were enlisted Service members (52.7%), while it was rare for a victim to be an officer (2.5%). Civilians represented 44.6% of all victims, and officers and enlisted personnel represented 55.3% of victims. Among the enlisted victims, 84.6% were E-4 or lower. The large majority of victims were female (94.6%), and the average victim age was 23.6. White victims comprised nearly three-quarters of the cases (72.1%), and African Americans represented 15.5% of victims. As was true of suspects, it is important to note that the White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African.

Table 2-7 also summarizes the relationships between victims and suspects. Stranger cases were relatively rare (7.1%) and friend relationships were most common (25.4%), followed by current or former spouses (19.3%) and acquaintances (14.4%). Recruit (victim)–recruiter (suspect) and supervisor (suspect)–subordinate (victim) relationships were not common (3.9%). Finally, Table 2-7 shows which individual reported the offense: the victim (36.7%), a victim-authorized representative (28.8%), command (18.5%), or a third party (15.9%).

TABLE 2-7. VICTIM CHARACTERISTICS

	N	%
Victim Status at Time of Incident		
Enlisted	1004	52.7
Officer	48	2.5
Civilian – Not DoD Spouse	413	21.7
Civilian – DoD Spouse	435	22.9
Suspect Is Spouse/Former Spouse	307	70.6
Suspect Is Not Spouse ^a	128	29.4
Unknown Grade	4	0.2
Victim Pay Grade at Time of Incident		
Enlisted (n = 1004)		
E-1	51	5.1
E-2	179	17.8
E-3	383	38.2
E-4	236	23.5
E-5	104	10.4
E-6	26	2.6
E-7	12	1.2
E-8	2	0.2

Unknown	11	1.1
Officer (n = 48)		
Cadet/Midshipman	15	31.3
O-1	6	12.5
O-2	12	25.0
O-3	7	14.6
O-4	3	6.3
W-1	2	4.2
W-2	3	6.3
Victim Gender		
Male	102	5.4
Female	1802	94.6
Victim Age ^b	Mean = 23.6; SD = 6.0; Range = 16 – 60	
Victim Race		
White ^c	1372	72.1
Black or African American	295	15.5
Asian	85	4.5
Native Hawaiian or Other Pacific Islander	21	1.1
American Indian or Alaska Native	18	1.0
Other Race, Ethnicity, or Origin	29	1.5
Unknown	84	4.4
Relationship to Suspect ^d		
Current or Former Spouse	367	19.3
Intimate Partner/Former Intimate Partner	240	12.6
Friend	483	25.4
Co-worker/Classmate/Roommate	193	10.1
Subordinate – Supervisor	60	3.2
Acquaintance	274	14.4
Online/Met for the First Time	49	2.6
Stranger	136	7.1
Recruit – Recruiter	14	0.7
Other	32	1.7
Unknown/Unable to Determine	56	2.9
Reporting Individual		
Victim	699	36.7
Victim-Authorized Representative	548	28.8
Command	352	18.5
Third Party	303	15.9
Unknown	2	0.1

^a This category includes all other types of relationships, including cases with unknown information about relationship.

^b Fifty-one cases were missing information about the victim's age.

^c This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^d The data analyzed here were based on the victim's reported relationship to the offender. See Appendix for more details about this variable.

Table 2-8 presents information about victims' drug and alcohol use and level of impairment during the time of the reported incident, in addition to other victim characteristics related to the

investigation. As was true of suspects, victim drug use was substantially less common than victim alcohol use (7.8% compared to 57.0%). Forty-seven percent of all victims reported some level of impairment during the offense. Victims who were impaired most often reported passing out, being unconscious, or being asleep (53.8%), followed by reporting some memory loss and/or blacking out (41.3%). The large majority of victims (82.8%) did not have any history of behavioral health concerns mentioned in the case files. The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). The data collection instrument also recorded information about victim’s statements or behaviors that may have been relevant during the investigation, and data show 42.1% had a motive to lie, 32.4% experienced some memory loss or were unconscious, 29.7 of victims provided inconsistent statements, and there was evidence of collateral victim misconduct in 26.4% of cases. Over three-quarters of cases (79.0%) involved a victim who was perceived to have at least one complexity factor.

TABLE 2-8. VICTIM FACTORS

	N	%
Victim Alcohol Use		
Yes	1086	57.0
No	817	42.9
Unknown	1	0.1
Victim Drug Use		
Yes	149	7.8
No	1755	92.2
Victim Reported Being Impaired		
Yes	886	46.5
No	1018	53.5
Nature of Victim Impairment ^a		
Passed Out/Unconscious/Asleep	477	53.8
Blacked Out/No Memory/Partial Memory	366	41.3
Unknown/unclear	43	4.9
Victim Behavioral Health Concerns Before or After Incident		
Yes	325	17.1
No	1577	82.8
Unknown	2	0.1
Victim Complexity Factors ^b		
Collateral Misconduct	503	26.4
Other Misconduct	311	16.3
Loss of Memory or Consciousness	617	32.4
Inconsistent Statements	566	29.7
Motive to Lie	802	42.1
Contradictory Evidence	253	13.3
At Least One of the Six Factors Exists in the Case	1505	79.0

^a Victims were impaired in 886 cases, including 43 cases in which the nature of impairment was not clear (e.g., “drugged,” “vision and perception were impaired,” “dizzy,” and “too much to drink”). Multiple reasons were provided for the nature of the impairment in 371 cases. To simplify the analyses of impairment reasons, a single variable was created to measure the reason for impairment. The categories for this variable are mutually exclusive. The “passed out/unconscious/asleep” category is considered to be the greatest level of impairment, followed by “blacked out/no memory/partial memory.” If the case indicated “passed out” or “unconscious” AND “blacked out” or “partial

memory,” then the case was coded as “passed out/unconscious/asleep.” If the case indicated “blacked out,” “partial memory,” or “no memory” AND “asleep,” then the case was coded as “passed out/unconscious/asleep.”

^b These categories were not mutually exclusive; multiple factors could have been present for a single victim.

Percentages were calculated based on the full set of 1,904 cases and do not sum to 100%.

Table 2-9 presents information about victim injuries and suspects’ use of force and threats. A suspect used or threatened to use force in 15.1% of cases; use of weapons was rare, occurring in 16 cases. Victims sustained injuries in 15.1% of cases. Bruising and redness were the most common victim injuries, but were still relatively rare. It was not common for there to be witnesses in the case (14.9%; see item 57 on the data collection form). Investigators collected pretextual communication evidence in 14.1% of cases, and most often the pretextual communication supported neither the victim’s nor the suspect’s account (63.8% of cases with pretextual communication).

TABLE 2-9. VICTIM INJURIES AND EVIDENCE

	N	%
Use/Threat of Force		
Yes	288	15.1
No	1616	84.9
Type of Force/Threat ^a		
Physical	262	13.8
Weapon	16	0.8
Coercion	34	1.8
Threat/Threat to Others	36	1.9
Physical Injuries to Victim ^b		
Yes	287	15.1
No	1617	84.9
Injuries ^c		
Redness	112	5.9
Bruising	179	9.4
Cuts	63	3.3
Scrapes	42	2.2
Witness to the Incident		
Yes	283	14.9
No	1621	85.1
Pretextual Communication		
Yes	268	14.1
Supports Victim Account	46	17.2
Supports Suspect Account	51	19.0
Supports Neither	171	63.8
No	1636	85.9

^a Categories were not mutually exclusive: cases could involve multiple types of force and threats.

^b Victim injury was based on self-reported information in the case files and SAFE reports.

^c Categories were not mutually exclusive: cases could involve multiple types of injuries.

Table 2-10 presents information about forensic evidence. A sexual assault forensic examination (SAFE) was performed for victims in 30.4% of the cases. When a SAFE was performed, 61.7% occurred within one day of the incident. Military medical facilities performed slightly more than half of SAFEs (52.5%) and nearly two-thirds (64.7%) of the exams were performed by civilian

professionals (DoD and non-DoD medical professionals). The measure of DNA testing indicates whether *any* DNA evidence from the case was tested. DNA evidence was tested in 21.4% of all cases.

TABLE 2-10. FORENSIC EVIDENCE

	N	%
SAFE Performed on Victim		
Yes	579	30.4
No	1325	69.6
Days Between Offense and Victim SAFE (n = 579)		
0 (same day)	198	34.2
1	159	27.5
2	76	13.1
3	37	6.4
4	25	4.3
5	11	1.9
6	4	0.7
7	8	1.4
8 – 14	13	2.3
15 +	21	3.6
Unknown	27	4.7
Victim SAFE Location (n = 579)		
Civilian Health Care Facility	274	47.3
Military Health Care Facility	304	52.5
Unknown	1	0.2
Victim SAFE Provider Type (n = 579)		
Civilian Provider	277	47.8
Military Examiner	200	34.5
DoD Civilian	98	16.9
Unknown	4	0.7
DNA Evidence Tested ^a		
Yes	408	21.4
No/Unknown	1496	78.6

^a The DNA testing variable measured *any* DNA evidence testing in the case, not only sexual assault kit evidence collected from the victim. One case was missing information about DNA evidence testing.

Victim participation is summarized in Table 2-11. Victims participated in 68.7% of cases and declined to participate in 31.3% of cases. Among the victims who declined, a large majority (84.4%) declined early in justice system processing (during investigation and reporting). Victims provided their input to commanders in 8.8% of all cases. Among the victims who provided input to commanders, it was common for victims to request administrative separation (20.2%) and court-martial (19.0%). A larger portion of victims (24.4%) provided input that did not fit into pre-established response categories, so these are listed in the category “other.” Victims were represented by attorneys during the investigation in slightly more than half of the cases (52.8%), and victims provided statements to law enforcement in nearly all cases (96.4%).

TABLE 2-11. VICTIM PARTICIPATION

	N	%
Victim Declination Recorded in File		
Victim Participated	1308	68.7
Victim Declined	596	31.3
Declination Stage		
Investigation	446	74.8
Reporting	57	9.6
Court-Martial	62	10.4
Preliminary Hearing	20	3.4
Unknown	11	1.9
Victim Input to Command or SJA		
No	1736	91.2
Yes	168	8.8
Input Provided to Command (n = 168)		
Pursue Administrative Separation	34	20.2
Supports DILCOM	15	8.9
Pursue Court-Martial	32	19.0
Take No Action	25	14.9
Nonjudicial Punishment/Administrative Actions	21	12.5
Other	41	24.4
Victim Attorney Representation (prior to trial)		
Yes	1005	52.8
No	899	47.2
Victim Provided Statement to Law Enforcement		
Yes	1836	96.4
No	68	3.6

Table 2-12 presents information about probable cause determinations. A judge advocate made a probable cause determination in approximately three-quarters of cases (76.1%); probable cause was determined to exist in 790 cases, representing 41.5% of all cases and 54.6% of cases in which a determination was made. In other words, when a judge advocate made a probable cause determination, probable cause was determined to *not* exist in 45.3% of cases. Judge advocates made probable cause determinations for purposes of indexing with the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC) criminal history database.

TABLE 2-12. PROBABLE CAUSE DETERMINATION

	N	%
Probable Cause Determination Made		
Yes	1448	76.1
No	456	23.9
Probable Cause Determination Result (n = 1448)		
Yes, Probable Cause Exists	790	54.6
Probable Cause Does Not Exist	656	45.3
Unknown	2	0.1

BIVARIATE RELATIONSHIPS

The second stage of the analysis estimated relationships between case characteristics and three important outcome variables: (1) the commander’s decision to prefer or to not take action, (2) court-martial acquittal or conviction results, and (3) the victim’s decision to participate or to decline. Cases that ended in some administrative action (n = 51; see Table 2-1) were excluded from the analyses described below that examined the preferral or no action outcome and the acquittal or conviction outcome.

COMMAND ACTION DEPENDENT VARIABLE: NO ACTION COMPARED TO PREFERRED

The patterns in Table 2-13a show there was no relationship between the command decision to prefer and whether the incident occurred on or off installation. Similarly, the command decision was not related to the identity of the reporting individual. Cases with a prompt report were more likely to be preferred than cases in which the report was made more than 7 days after the incident. The median number of days between the incident and the report to authorities was 31 days in no action cases and 14 days in preferred cases. In other words, half of the no action cases were reported within 31 days of the incident, and half of the no action cases were reported to authorities more than 31 days after the incident. Among the preferred cases, half were reported to authorities less than 14 days after the incident and half were reported to authorities more than 14 days after the incident. In addition, cases in which probable cause was determined to exist were most likely to be preferred. Cases were rarely preferred when probable cause did not exist (n = 11).

TABLE 2-13a. COMMAND ACTION DECISION: INCIDENT LOCATION AND REPORTING INFORMATION

	No Command Action (n = 1336)		Preferral (n = 517)	
	N	%	N	%
Incident Location (NS)				
On Installation	642	72.8	240	27.2
Off Installation	694	71.5	277	28.5
Reporting Individual (NS)				
Victim	475	69.3	210	30.7
Victim-Authorized Representative	382	71.7	151	28.3
Command	249	74.6	85	25.4
Third Party	229	76.6	70	23.4
Prompt Report (within 7 days) ($\chi^2 = 10.89$, p < .05)				
Yes	454	67.5	219	32.5
No	857	74.7	291	25.3
Number of Days Between Incident and Report to Authorities	Median = 31		Median = 14	
Probable Cause ^a ($\chi^2 = 469.24$, p < .05)				
No Determination Made	343	76.9	103	23.1
Probable Cause Existed	352	46.7	401	53.3

Probable Cause Did Not Exist	641	98.3	11	1.7
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^a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

Several evidentiary variables are related to the commander's decision to prefer cases (Table 2-13b). Commanders were more likely to prefer cases in which pretextual communication occurred, when the pretextual communication supported the victim's account, when the victim was physically injured, when the suspect used or threatened to use force, when the victim participated, when a SAFE was performed, when DNA was tested in the case, and when the victim had attorney representation during the investigation. To illustrate, approximately half of cases (50.5%) in which DNA was tested were preferred, compared to 21.6% of cases in which DNA was not tested. Similarly, less than 10% of cases in which the victim declined were preferred; 35.9% of cases with a participating victim were preferred.

TABLE 2-13b. COMMAND ACTION DECISION: EVIDENCE

	No Command Action (n = 1336)		Preferral (n = 517)	
	N	%	N	%
Witness to the Incident (NS)				
Yes	208	73.5	75	26.5
No	1128	71.8	442	28.2
Pretextual Communication Occurred ($\chi^2 = 11.91, p < .05$)				
Yes	165	63.2	96	36.8
No	1171	73.6	421	26.4
Pretextual Communication Result ($\chi^2 = 8.84, p < .05$)				
Supports Victim Account	21	46.7	24	53.3
Supports Suspect Account	38	76.0	12	24.0
Supports Neither Account	106	63.9	60	36.1
Victim Physical Injuries ($\chi^2 = 30.01, p < .05$)				
Yes	164	58.6	116	41.4
No	1172	74.5	401	25.5
Threat or Use of Force ($\chi^2 = 58.64, p < .05$)				
Yes	147	53.1	130	46.9
No	1189	75.4	387	24.6
Victim Participation ($\chi^2 = 135.36, p < .05$)				
Yes	826	64.1	463	35.9
Declined ^a	510	90.4	54	9.6
Sexual Assault Exam Performed on Victim ($\chi^2 = 57.97, p < .05$)				
Yes	339	60.1	225	39.9
No	997	77.3	292	22.7
DNA Evidence Tested ($\chi^2 = 130.09, p < .05$)				
Yes	198	49.5	202	50.5
No	1138	78.4	314	21.6
Victim Attorney Representation (prior to trial) ($\chi^2 = 38.34, p < .05$)				
Yes	644	66.0	332	34.0

No	692	78.9	185	21.1
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^aVictim declinations could have occurred before or after preferral. Table 2-11 shows that over 84.4% of all victims declined at the reporting or investigation stage.

Victim characteristics such as gender, age, military/civilian status, and relationship to the suspect were not related to the command decision. The relationship between victim race and the command decision reached statistical significance: the pattern shows nearly 30% of cases with White victims were preferred, compared to nearly 25% of cases with non-White victims. Victim grade and the command decision were related such that cases with officer victims were more likely to be preferred (45.8%) than cases with enlisted victims (29.0%).

TABLE 2-13c. COMMAND ACTION DECISION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	No Command Action (n = 1336)		Preferral (n = 517)	
	N	%	N	%
Victim Gender (NS)				
Female	1264	72.1	490	27.9
Male	72	72.7	27	27.3
Victim Race ($\chi^2 = 3.87, p \leq .05$)				
White ^a	946	70.8	391	29.2
Non-White	329	75.6	106	24.4
Victim Status at Time of Incident (NS)				
Military	722	70.3	305	29.7
Civilian – Not DoD Spouse	292	72.6	110	27.4
Civilian – DoD Spouse	322	75.9	102	24.1
Suspect Is Spouse/Former Spouse (NS)	224	74.9	75	25.1
Suspect Is Not Spouse	98	78.4	27	21.6
Victim Grade at Time of Incident ($\chi^2 = 6.18, p < .05$)				
Enlisted	692	71.0	283	29.0
Officer	26	54.2	22	45.8
Relationship Between Victim and Suspect ^b (NS)				
Supervisor – Subordinate	40	67.8	19	32.2
Recruit – Recruiter	7	50.0	7	50.0
Spouse/Former Spouse	269	75.4	88	24.6
Intimate Partner/Former Intimate Partner	168	72.7	63	27.3
Friend	326	69.1	146	30.9
Co-worker/Classmate/Roommate	142	74.7	48	25.3
Acquaintance	196	74.5	67	25.5
Stranger	86	63.7	49	36.3
Online/Met for the First Time	29	63.0	17	37.0
Other	24	75.0	8	25.0
Victim Age (NS)	(Mean = 23.6, SD = 6.1)		(Mean = 23.5, SD = 5.8)	

^aThis category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^bCases in the "unknown/unable to determine" category were excluded because of their small numbers.

Table 2-13d shows that several victim factors were related to the preferral decision (Table 2-13d). Victim impairment was related to the preferral decision, but the interpretation is not straightforward. Cases with a victim who passed out, was unconscious, or was asleep were more likely to be preferred than cases with a victim who was not impaired or was blacked out, or who experienced some memory loss. When all the categories of impairment were combined, there was a relationship between victim impairment and the commander's decision: there was a greater chance of preferral when the victim was impaired (32.7%) than when the victim was not impaired (24.0%). Victim alcohol use was not associated with the command decision, but victim drug use was associated with the preferral decision. Cases were more likely to be preferred when the victim used drugs prior to or during the incident (39.6%) than when the victim did not use drugs prior to or during the incident (25.9%). The data collection instrument measured the existence of several victim complexity factors and two were related to the command decision. Cases were less likely to be preferred when victims were perceived to have a motive to lie and when victims were perceived to have provided inconsistent statements. Victim memory loss, collateral misconduct, other forms of misconduct, and behavioral health concerns were not associated with the command decision to prefer the case. Cases were rarely preferred, in relation to other categories of consensual sexual contact, when the victim had consensual sexual contact with the suspect after the incident (10.7%).

TABLE 2-13d. COMMAND ACTION DECISION: VICTIM FACTORS

	No Command Action (n = 1336)		Preferral (n = 517)	
	N	%	N	%
Victim Impairment ($\chi^2 = 70.33, p < .05$)				
Not Impaired	754	76.0	238	24.0
Passed Out/Unconscious/Asleep	265	57.2	198	42.8
Blacked Out/Memory Loss	286	80.3	70	19.7
Victim Alcohol Use (NS)				
Yes	747	70.6	311	29.4
No	588	74.1	206	25.9
Victim Drug Use ($\chi^2 = 10.59, p < .05$)				
Yes	87	60.4	57	39.6
No	1249	73.1	460	26.9
Victim Lack of Memory (NS)				
Yes	416	69.6	182	30.4
No	920	73.3	335	26.7
Victim Motive to Lie ($\chi^2 = 15.13, p < .05$)				
Yes	598	76.9	180	23.1
No	738	68.7	337	31.3
Victim Inconsistent Statements ($\chi^2 = 15.26, p < .05$)				
Yes	431	78.4	119	21.6
No	905	69.5	398	30.5
Victim Contradictory Evidence (NS)				
Yes	184	74.5	63	25.5
No	1152	71.7	454	28.3
Victim Collateral Misconduct (NS)				

Yes	361	73.5	130	26.5
No	975	71.6	387	28.4
Victim Other Misconduct (NS)				
Yes	221	73.4	80	26.6
No	1115	71.8	437	28.2
Victim Behavioral Health Concerns Before or After Incident (NS)				
Yes	227	73.5	82	26.5
No	1107	71.8	435	28.2
Victim Consensual Sexual Contact with Suspect ($\chi^2 = 8.74, p < .05$)				
Yes – prior to incident	548	74.6	187	25.4
Yes – following incident	25	89.3	3	10.7
Yes – prior to and following incident	111	69.4	49	30.6
No	652	70.1	278	29.9

Several suspect characteristics were related to the preferral decision (Table 2-13e). Suspect race and suspect grade were not related to the command decision. Cases were more likely to be preferred when the suspect used alcohol (30.7%) than when the suspect did not use alcohol (24.3%). Cases were also more likely to be preferred when the suspect used drugs prior to or during the incident (44.8%) than when the suspect did not (27.6%). Because of the small number of cases with suspect drug use (n = 13), the statistical test results may not be reliable. Several suspect complexity factors were associated with an increased chance that the case was preferred: suspect memory loss, suspect’s inconsistent statements and contradictory evidence, suspect collateral and other forms of misconduct, the existence of suspect behavioral health concerns, and evidence of other sex offenses and/or related misconduct³ in the file. Cases were more likely to be preferred when suspects confessed.

TABLE 2-13e. COMMAND ACTION DECISION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	No Command Action (n = 1336)		Preferral (n = 517)	
	N	%	N	%
Suspect Race (NS)				
White ^a	887	71.9	347	28.1
Non-White	412	72.2	159	27.8
Suspect Grade at Time of Incident (NS)				
Officer	92	71.3	37	28.7
Enlisted	1241	72.1	480	27.9
Suspect Alcohol Use ($\chi^2 = 9.52, p < .05$)				
Yes	712	69.3	316	30.7
No	624	75.7	200	24.3
Suspect Drug Use ($\chi^2 = 4.22, p < .05$)				

³ Military Rules of Evidence (M.R.E.) 413 and 404(b), respectively, cover the admissibility of other sex offenses and related misconduct. M.R.E. 413 is similar to its Federal Rule counterpart. Its purpose is to provide for the liberal admissibility of character evidence when the accused has committed a prior sexual assault offense. M.R.E. 404(b) permits the admissibility of certain evidence of other crimes, wrongs, or acts committed by the accused for the purpose of proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Yes	16	55.2	13	44.8
No	1320	72.4	503	27.6
Suspect Lack of Memory ($\chi^2 = 12.26, p < .05$)				
Yes	51	56.0	40	44.0
No	1285	72.9	477	27.1
Suspect Inconsistent Statements ($\chi^2 = 44.80, p < .05$)				
Yes	106	52.2	97	47.8
No	1230	74.5	420	25.5
Suspect Contradictory Evidence ($\chi^2 = 5.28, p < .05$)				
Yes	44	60.3	29	39.7
No	1292	72.6	488	27.4
Suspect Collateral Misconduct ($\chi^2 = 8.62, p < .05$)				
Yes	448	68.0	211	32.0
No	888	74.4	306	25.6
Suspect Other Misconduct ($\chi^2 = 19.00, p < .05$)				
Yes	296	64.2	165	35.8
No	1040	74.7	352	25.3
Suspect 413 and 404(b) Evidence ($\chi^2 = 115.52, p < .05$)				
Yes	98	42.4	133	57.6
No	1238	76.3	384	23.7
Suspect Behavioral Health Concerns Before or After Incident ($\chi^2 = 24.62, p < .05$)				
Yes	75	54.0	64	46.0
No	1259	73.6	452	26.4
Suspect Statement ($\chi^2 = 158.39, p < .05$) ^b				
Confessed	21	21.6	76	78.4
Consensual	738	78.0	208	22.0
Denied Crime/Sexual Activity	192	76.2	60	23.8
No Recollection/Partial Memory	21	47.7	23	52.3
Other	29	59.2	20	40.8

^a This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^b The relationship was statistically significant when "confessed" was compared to all other suspect statements and to no statements.

COURT-MARTIAL RESULT: CONVICTION COMPARED TO ACQUITTAL

The analysis of court-martial outcomes includes convictions at trial and through pretrial agreements. In other words, the conviction category includes pretrial agreement convictions (n = 22) and contested trial convictions (n = 69). The conviction category includes three cases with multiple charges in which the accused was acquitted of some penetrative sexual assault charges but convicted of at least one charge of penetrative sexual assault. The patterns of statistical tests presented in Table 2-14a show that court-martial outcomes were not related to incident location

(measured as on or off installation), the identity of the individual who made the report, promptness of reporting, and the existence of probable cause.

TABLE 2-14a. COURT-MARTIAL OUTCOME: INCIDENT LOCATION AND REPORTING INFORMATION

	Acquitted (n = 144)		Convicted (n = 91)	
	N	%	N	%
Incident Location (NS)				
On Installation	63	62.4	38	37.6
Off Installation	81	60.4	53	39.6
Reporting Individual (NS)				
Victim	61	58.1	44	41.9
Victim-Authorized Representative	42	64.6	23	35.4
Command	24	68.6	11	31.4
Third Party	17	56.7	13	43.3
Prompt Report (within 7 days) (NS)				
Yes	56	55.4	45	44.6
No	87	66.4	44	33.6
Number of Days Between Incident and Report to Authorities	Median = 30		Median = 6	
Probable Cause ^a (NS)				
No Determination Made/ Probable Cause Did Not Exist ^b	33	70.2	14	29.8
Probable Cause Existed	111	59.0	77	41.0

^a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

^b The “no determination made” and “probable cause did not exist” categories are combined together because of low cell counts that resulted when these categories are treated separately. In addition, the substantive interest is in comparing cases in which probable cause exists to all other cases (no determination was made and/or it was determined that probable cause did not exist).

Similar to the patterns in Table 2-14a, evidentiary variables were not statistically related to court-martial outcomes (Table 2-14b). For instance, 36.7% of cases with pretextual communication ended in a conviction and 39.2% of cases without pretextual communication ended in a conviction. The statistical test for the relationship between court-martial outcome and victim participation was not meaningful. Only two cases in which the victim declined had a court-martial result suggesting that victim participation is an important variable that determined whether a case makes it to court-martial. Victim attorney representation during the investigation stages is related to the likelihood of conviction: 53.8% of cases in which the victim did *not* have attorney representation during the investigation ended in a conviction, compared to 28.9% of cases in which the victim had attorney representation during the investigation.

TABLE 2-14b. COURT-MARTIAL OUTCOME: EVIDENCE

	Acquitted (n = 144)		Convicted (n = 91)	
	N	%	N	%
Witness to the Incident (NS)				
Yes	21	65.6	11	34.4
No	123	60.6	80	39.4
Pretextual Communication Occurred (NS)				
Yes	31	63.3	18	36.7

No	113	60.8	73	39.2
Pretextual Communication Result (NS)				
Supports Victim Account	5	45.5	6	54.5
Supports Suspect Account	4	80.0	1	20.0
Supports Neither Account	22	66.7	11	33.3
Victim Physical Injuries (NS)				
Yes	33	61.1	21	38.9
No	111	61.3	70	38.7
Threat or Use of Force (NS)				
Yes	41	65.1	22	34.9
No	103	59.9	69	40.1
Victim Participation (NS)				
Yes	142	60.9	91	39.1
Declined	2	100	0	0
Sexual Assault Exam Performed on Victim (NS)				
Yes	61	56.0	48	44.0
No	83	65.9	43	34.1
DNA Evidence Tested (NS)				
Yes	61	58.1	44	41.9
No	83	63.8	47	36.2
Victim Attorney Representation (prior to trial) ($\chi^2 = 14.67, p < .05$)				
Yes	101	71.1	41	28.9
No	43	46.2	50	53.8

Victim characteristics including race, gender, and grade were not associated with court-martial outcomes (Table 2-14c). Similarly, victim–suspect relationship was not related to the outcome. Victim status was related to the outcome such that 51.7% of cases involving civilian, non-DoD spouse victims ended in a conviction, compared to 35.5% of cases involving military victims and 29.7% of cases involving civilian, DoD spouse victims. The average age of victims was lower in conviction cases (22.9 years) than in those that ended in acquittal (24.5 years).

TABLE 2-14c. COURT-MARTIAL OUTCOME: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	Acquitted (n = 144)		Convicted (n = 91)	
	N	%	N	%
Victim Gender (NS)				
Female	137	61.7	85	38.3
Male	7	53.8	6	46.2
Victim Race (NS)				
White ^a	112	64.0	63	36.0
Non-White	26	52.0	24	48.0
Victim Status at Time of Incident ($\chi^2 = 6.10, p < .05$)				
Military	89	64.5	49	35.5
Civilian – Not DoD Spouse	29	48.3	31	51.7
Civilian – DoD Spouse	26	70.3	11	29.7

Suspect Is Spouse/Former Spouse (NS)	19	70.4	8	26.9
Suspect Is Not Spouse	7	70.0	3	30.0
Victim Grade at Time of Incident (NS)				
Enlisted	81	65.3	43	34.7
Officer	8	57.1	6	42.9
Relationship Between Victim and Suspect ^b (NS)				
Supervisor – Subordinate	10	76.9	3	23.1
Spouse/Former Spouse	22	68.8	10	31.3
Intimate Partner/Former Intimate Partner	11	47.8	12	52.2
Friend	44	60.3	29	39.7
Co-worker/Classmate/Roommate	15	78.9	4	21.1
Acquaintance	17	58.6	12	41.4
Stranger	15	53.6	13	46.4
Victim Age (t = 1.95, p ≤ .05)		(Mean = 24.5, SD = 6.6)		(Mean = 22.9, SD = 5.8)

^a This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^b Cases in the "unknown/unable to determine," "other," "recruit – recruiter," and "online/met for the first time" categories were excluded because of their small numbers.

Table 2-14d shows that three victim factors were related to court-martial results. When victims were perceived to have a motive to lie, 21.9% of cases ended in conviction, compared to 46.3% of cases in which the victim was not perceived to have a motive to lie. Similarly, when victims were perceived to have made inconsistent statements, 20.4% of cases ended in conviction, compared to 43.5% of cases in which the victim was not perceived to have made inconsistent statements. One case in which the victim was perceived to have presented contradictory evidence ended in conviction, whereas 42.1% of cases in which the victim was not perceived to have presented contradictory evidence ended in conviction. Victim impairment, alcohol use, drug use, collateral misconduct, and other forms of misconduct were not related to the court-martial outcomes. A variable that combined the six victim complexity factors (lack of memory, motive to lie, inconsistent statements, contradictory evidence, collateral misconduct, and other misconduct) and measured whether any or none existed in the case was associated with the chances of a conviction result. Over half of the cases in which one or more of the six complexity factors existed ended in conviction (52.3%), while 33.5% of the cases in which none of the six complexity factors existed ended in conviction. The relationship between victim behavioral health concerns and court-martial outcomes approached statistical significance ($\chi^2 = 3.39, p = .07$). Cases were more likely to end in conviction when there were no indications in the case file of behavioral health concerns for the victim than when there were such indications in the case file.

TABLE 2-14d. COURT-MARTIAL OUTCOME: VICTIM FACTORS

	Acquitted (n = 144)		Convicted (n = 91)	
	N	%	N	%
Victim Impairment (NS)				
Not Impaired	57	58.8	40	41.2
Passed Out/Unconscious/Asleep	58	59.2	40	40.8
Blacked Out/Memory Loss	25	71.4	10	28.6
Victim Alcohol Use (NS)				

Yes	95	63.3	55	36.7
No	49	57.6	36	42.4
Victim Drug Use (NS)				
Yes	15	53.6	13	46.4
No	129	62.3	78	37.7
Victim Lack of Memory (NS)				
Yes	65	67.0	32	33.0
No	79	57.2	59	42.8
Victim Motive to Lie ($\chi^2 = 12.60, p < .05$)				
Yes	57	78.1	16	21.9
No	87	53.7	75	46.3
Victim Inconsistent Statements ($\chi^2 = 8.75, p < .05$)				
Yes	39	79.6	10	20.4
No	105	56.5	81	43.5
Victim Contradictory Evidence ($\chi^2 = 11.21, p < .05$)				
Yes	20	95.2	1	4.8
No	124	57.9	90	42.1
Victim Collateral Misconduct (NS)				
Yes	36	69.2	16	30.8
No	108	59.0	75	41.0
Victim Other Misconduct (NS)				
Yes	24	72.7	9	27.3
No	120	59.4	82	40.6
Victim Behavioral Health Concerns Before or After Incident (NS)				
Yes	25	75.8	8	24.2
No	119	58.9	83	41.1
Victim Consensual Sexual Contact with Suspect (NS)				
Yes – prior to incident	48	64.0	27	36.0
Yes – following incident	1	50.0	1	50.0
Yes – prior to and following incident	14	63.6	8	36.4
No	81	59.6	55	40.4

Few suspect characteristics and variables were related to court-martial outcomes (Table 2-14e). Suspect alcohol use was related to the case outcome such that 48.3% of cases in which the suspect did *not* use alcohol ended in conviction, compared to 33.1% of cases in which the suspect used alcohol. Cases were most likely to end in conviction when suspects confessed (74.4%). Other suspect variables that were measured were not related to convictions, including for example, suspect race and grade, suspect memory loss and collateral misconduct, and the existence of M.R.E. 413 and 404(b) evidence.

TABLE 2-14e. COURT-MARTIAL OUTCOME: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	Acquitted (n = 144)		Convicted (n = 91)	
	N	%	N	%

Suspect Race (NS)				
White ^a	94	61.8	58	38.2
Non-White	45	59.2	31	40.8
Suspect Grade at Time of Incident (NS)				
Officer	15	55.6	12	44.4
Enlisted	129	62.0	79	38.0
Suspect Alcohol Use ($\chi^2 = 5.37, p < .05$)				
Yes	97	66.9	48	33.1
No	46	51.7	43	48.3
Suspect Drug Use (NS)				
Yes	2	40.0	3	60.0
No	141	61.6	88	38.4
Suspect Lack of Memory (NS)				
Yes	17	73.9	6	26.1
No	127	59.9	85	40.1
Suspect Inconsistent Statements (NS)				
Yes	25	52.1	23	47.9
No	119	63.6	68	36.4
Suspect Contradictory Evidence (NS)				
Yes	10	52.6	9	47.4
No	134	62.0	82	38.0
Suspect Collateral Misconduct (NS)				
Yes	63	63.0	37	37.0
No	81	60.0	54	40.0
Suspect Other Misconduct (NS)				
Yes	49	62.0	30	38.0
No	95	60.9	61	39.1
Suspect 413 and 404(b) Evidence (NS)				
Yes	42	58.3	30	41.7
No	102	62.6	61	37.4
Suspect Behavioral Health Concerns Before or After Incident (NS)				
Yes	15	62.5	9	37.5
No	128	61.0	82	39.0
Suspect Statement ($\chi^2 = 30.95, p < .05$) ^b				
Confessed	11	25.6	32	74.4
Consensual	62	74.7	21	25.3
Denied Crime/Sexual Activity	18	64.3	10	35.7
No Recollection/Partial Memory	8	72.7	3	27.3
Other	4	40.0	6	60.0

^a This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services Reports' of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^b The relationship was statistically significant when "confessed" was compared to all other suspect statements and to no statements.

VICTIM PARTICIPATION DEPENDENT VARIABLE: VICTIM PARTICIPATED – VICTIM DECLINED

Table 2-15a shows that victim participation was similar when the incident occurred on installation (67.4%) and off installation (69.8%). A prompt report—that is, one made within one week—was not related to victim participation. Victim participation was related to the reporting individual such that participation was most likely when the victim reported the offense (71.2%) and when a victim-authorized representative reported the offense (70.8%). The median number of days between the incident and the report to authorities was similar among cases with a participating victim (27) and cases in which the victim declined to participate (25). Victim participation was associated with judge advocates’ probable cause determination: participation was least likely when probable cause was determined to not exist (64.0%) and most likely when probable cause was determined to exist (73.0%).

TABLE 2-15a. VICTIM PARTICIPATION: INCIDENT LOCATION AND REPORTING INFORMATION

	Victim Declined (n = 596)		Victim Participated (n = 1308)	
	N	%	N	%
Incident Location (NS)				
On Installation	295	32.6	611	67.4
Off Installation	301	30.2	697	69.8
Reporting Individual ($\chi^2 = 9.09, p < .05$)				
Victim	201	28.8	498	71.2
Victim-Authorized Representative	160	29.2	388	70.8
Command	122	34.7	230	65.3
Third Party	111	36.6	192	63.4
Prompt Report (within 7 days) (NS)				
Yes	221	31.8	474	68.2
No	359	30.5	818	69.5
Number of Days Between Incident and Report to Authorities	Median = 25		Median = 27	
Probable Cause ^a ($\chi^2 = 13.76, p < .05$)				
No Determination Made	147	32.2	309	67.8
Probable Cause Existed	213	27.0	577	73.0
Probable Cause Did Not Exist	236	36.0	420	64.0

^aJudge advocates made probable cause determinations for purposes of indexing with the FBI.

Table 2-15b presents patterns of relationships between evidentiary variables and victim participation. Victim participation was unrelated to the presence of witnesses, victim injuries, and suspect use or threat of force. Victim participation was related to pretextual communication: victim participation rates were higher in cases with pretextual communication (82.5%) than in cases when pretextual communication did not occur (66.4%). Victim participation was also greater in cases when a SAFE was performed, when any DNA evidence in the case was tested, and when a victim’s attorney was involved in the case.

TABLE 2-15b. VICTIM PARTICIPATION: EVIDENCE

	Victim Declined (n = 596)		Victim Participated (n = 1308)	
	N	%	N	%
Witness to the Incident (NS)				
Yes	81	28.6	202	71.4

No	515	31.8	1106	68.2
Pretextual Communication Occurred ($\chi^2 = 27.48, p < .05$)				
Yes	47	17.5	221	82.5
No	549	33.6	1087	66.4
Pretextual Communication Result (NS)				
Supports Victim Account	8	17.4	38	82.6
Supports Suspect Account	9	17.6	42	82.4
Supports Neither Account	30	17.5	141	82.5
Victim Physical Injuries (NS)				
Yes	77	26.8	210	73.2
No	519	32.1	1098	67.9
Threat or Use of Force (NS)				
Yes	87	30.2	201	69.8
No	509	31.5	1107	68.5
Sexual Assault Exam Performed on Victim ($\chi^2 = 8.57, p < .05$)				
Yes	154	26.6	425	73.4
No	442	33.4	883	66.6
DNA Evidence Tested ($\chi^2 = 15.40, p < .05$)				
Yes	95	23.3	313	76.7
No	500	33.4	995	66.6
Victim Attorney Representation (prior to trial) ($\chi^2 = 7.46, p < .05$)				
Yes	287	28.6	718	71.4
No	309	34.4	590	65.6

Table 2-15c presents patterns of relationships between victim participation and victims' demographic characteristics. Military victims were most likely to participate (72.5%) and civilian DoD spouse victims were least likely (61.8%). Similarly, victim participation rates were lowest when the victim was the spouse or former spouse of the suspect (59.5%). Victim gender, race, and grade were not related to victim participation in a statistically significant way.

TABLE 2-15c. VICTIM PARTICIPATION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	Victim Declined (n = 596)		Victim Participated (n = 1308)	
Victim Gender (NS)				
Female	569	31.6	1233	68.4
Male	27	26.5	75	73.5
Victim Race (NS)				
White ^a	412	30.0	960	70.0
Non-White	152	33.9	296	66.1
Victim Status at Time of Incident ($\chi^2 = 18.05, p < .05$)				
Military	290	27.5	766	72.5
Civilian – Not DoD Spouse	140	33.9	273	66.1
Civilian – DoD Spouse	166	38.2	269	61.8

Suspect Is Spouse/Former Spouse (NS)	125	40.7	182	59.3
Suspect Is Not Spouse	41	32.0	87	68.0
Victim Grade at Time of Incident (NS)				
Enlisted	279	27.8	725	72.2
Officer	9	18.8	39	81.3
Relationship Between Victim and Suspect ^b ($\chi^2 = 29.31, p < .05$)				
Supervisor – Subordinate	16	26.7	44	73.3
Recruit – Recruiter	2	14.3	12	85.7
Spouse/Former Spouse	145	39.6	222	60.5
Intimate Partner/Former Intimate Partner	71	29.6	169	70.4
Friend	138	28.6	345	71.4
Co-worker/Classmate/Roommate	39	20.2	154	79.8
Acquaintance	75	27.4	199	72.6
Stranger	45	33.1	91	66.9
Online/Met for the First Time	15	30.6	34	69.4
Other	12	37.5	20	62.5
Victim Age (NS)	(Mean = 23.3, SD = 5.9)	(Mean = 23.6, SD = 6.0)		

^a This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^b Cases in the "unknown/unable to determine" category were excluded because of their small numbers.

Table 2-15d shows that victim participation was related to several victim variables. Victim participation rates were greater when the victim was impaired in some way (passed out/unconscious/asleep or blacked out/memory loss) than when not impaired. Rates of victim participation were greater when the victim used alcohol before or during the incident (72.6%) than when the victim did not use alcohol (63.5%). Victim participation rates were also greater when information in the case file indicated that the victim suffered from memory loss (76.5%) than when no such memory loss was indicated (65.0%). Rates of victim participation were greater when there was evidence in the case to suggest that the victim offered inconsistent statements (71.9% compared to 67.3%) and when the victim presented contradictory evidence (74.3% compared to 67.8%). Other variables, including victim drug use, collateral misconduct, other forms of misconduct, perceived motive to lie, behavioral health concerns, and the different times of consensual sexual contact between the victim and suspect, were not related to victim participation.

TABLE 2-15d. VICTIM PARTICIPATION: VICTIM FACTORS

	Victim Declined (n = 596)		Victim Participated (n = 1308)	
Victim Impairment ($\chi^2 = 26.43, p < .05$)				
Not Impaired	367	36.1	651	63.9
Passed Out/Unconscious/Asleep	110	23.1	367	76.9
Blacked Out/Memory Loss	107	29.2	259	70.8
Victim Alcohol Use ($\chi^2 = 17.69, p < .05$)				
Yes	298	27.4	788	72.6
No	298	36.5	519	63.5
Victim Drug Use (NS)				
Yes	43	28.9	106	71.1

No	553	31.5	1202	68.5
Victim Lack of Memory ($\chi^2 = 25.84, p < .05$)				
Yes	145	23.5	472	76.5
No	451	35.0	836	65.0
Victim Motive to Lie (NS)				
Yes	249	31.0	553	69.0
No	347	31.5	755	68.5
Victim Inconsistent Statements ($\chi^2 = 3.86, p < .05$)				
Yes	159	28.1	407	71.9
No	437	32.7	901	67.3
Victim Contradictory Evidence ($\chi^2 = 4.27, p < .05$)				
Yes	65	25.7	188	74.3
No	531	32.2	1120	67.8
Victim Collateral Misconduct (NS)				
Yes	144	28.6	359	71.4
No	452	32.3	949	67.7
Victim Other Misconduct (NS)				
Yes	108	34.7	203	65.3
No	488	30.6	1105	69.4
Victim Behavioral Health Concerns Before or After Incident (NS)				
Yes	114	35.1	211	64.9
No	480	30.4	1097	69.6
Victim Consensual Sexual Contact with Suspect (NS)				
Yes – prior to incident	258	34.0	501	66.0
Yes – following incident	5	17.2	24	82.8
Yes – prior to and following incident	48	28.9	118	71.1
No	285	30.0	665	70.0

Several suspect-related variables were related to victim participation, including alcohol use, loss of memory/consciousness, suspect statements perceived to be inconsistent, suspect evidence perceived to be contradictory, suspect collateral misconduct, the existence of M.R.E. 413 and 404(b) evidence, suspect behavioral health concerns, and suspect statements to law enforcement and/or third parties (Table 2-15e). Rates of victim participation were greater when the suspect used alcohol during the incident (72.4%) than when the suspect did not use alcohol (64.0%). Rates of victim participation were greater when the suspect suffered from memory loss or loss of consciousness (79.8%) than in cases in which the suspect did not experience memory loss or loss of consciousness (68.1%). Victims were more likely to participate when the suspect made inconsistent statements (76.7%) than when the suspect did not provide inconsistent statements (67.7%), and when the suspect committed collateral misconduct (72.6%) than when the suspect did not commit collateral misconduct (66.5%). Victim participation was also greater when 413 or 404(b) evidence existed for the suspect (79.7% compared to 67.2%). Victim participation was greater in cases involving suspects with behavioral health concerns (81.8%) than in cases without those suspect behavioral health concerns (67.7%). Finally, the rates of victim participation were highest when the suspect made statements to suggest they sustained some memory loss (86.4%)

and when the suspect confessed (84.3%). Several suspect variables were unrelated to victim participation, including suspect race and grade, suspect drug use, presentation of contradictory evidence by the suspect, and other forms of suspect misconduct.

TABLE 2-15e. VICTIM PARTICIPATION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	Victim Declined (n = 596)		Victim Participated (n = 1308)	
Suspect Race (NS)				
White ^a	392	31.0	874	69.0
Non-White	191	32.5	397	67.5
Suspect Grade at Time of Incident (NS)				
Officer	34	26.2	96	73.8
Enlisted	560	31.6	1211	68.4
Suspect Alcohol Use ($\chi^2 = 15.61, p < .05$)				
Yes	291	27.6	765	72.4
No	305	36.0	542	64.0
Suspect Drug Use (NS)				
Yes	13	41.9	18	58.1
No	583	31.1	1289	68.9
Suspect Lack of Memory ($\chi^2 = 5.66, p < .05$)				
Yes	19	20.2	75	79.8
No	577	31.9	1233	68.1
Suspect Inconsistent Statements ($\chi^2 = 6.74, p < .05$)				
Yes	49	23.4	160	76.6
No	547	32.3	1148	67.7
Suspect Contradictory Evidence (NS)				
Yes	18	24.0	57	76.0
No	578	31.6	1251	68.4
Suspect Collateral Misconduct ($\chi^2 = 7.50, p < .05$)				
Yes	186	27.4	493	72.6
No	410	33.5	815	66.5
Suspect Other Misconduct (NS)				
Yes	136	28.9	335	71.1
No	460	32.1	973	67.9
Suspect 413 and 404(b) Evidence ($\chi^2 = 14.99, p < .05$)				
Yes	47	20.3	185	79.7
No	549	32.8	1123	67.2
Suspect Behavioral Health Concerns Before or After Incident ($\chi^2 = 12.29, p < .05$)				
Yes	26	18.2	117	81.8
No	568	32.3	1190	67.7
Suspect Statement ($\chi^2 = 18.69, p < .05$) ^b				
Confessed	16	15.7	86	84.3
Consensual	318	32.7	655	67.3

Denied Crime/Sexual Activity	78	30.5	178	69.5
No Recollection/Partial Memory	6	13.6	38	86.4
Other	16	31.4	35	68.6

^aThis category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^bThe relationship was statistically significant when "confessed" was compared to all other suspect statements and to no statements.

MULTIVARIATE RELATIONSHIPS

The models were built by starting with independent variables that showed a significant bivariate relationship with the dependent variable. The models were refined in light of results of the initial model and of close relationships between two independent variables. In addition, some independent variables were excluded if there were small numbers of cases in categories of the independent variable across categories of the dependent variable (e.g., suspect confession by command decision). One exception was measures of victim complexity factors and suspect complexity factors (Tables 2-13d and 2-13e). Several of these factors were related to the preferral decision. In order to simplify the model, one binary variable was created that measured the existence of any of the six victim complexity factors (yes or no) and one binary variable was created that measured the existence of any of the six suspect complexity factors (yes or no).⁴

Table 2-16a presents the results of two multivariate models that treated the commander decision to prefer the case or take no action in the case as the dependent variable. Fifty-one cases in which the commander took administrative action were excluded from this analysis. The first model did not include variables to control for Service branch and included cases from all Service branches. The second model introduced Service branch control variables, but excluded Coast Guard cases because their numbers were so small. The reference category for the Service branch variables was the Army; that is, the Air Force, Marine Corps, and Navy were compared to the Army. Estimates were generated by additional models that changed the reference Service branch so that the other branches could be compared. The results in models 1 and 2 show the effects of variables are stable when Service branch is controlled. The following patterns of relationships emerged from the multivariate model:

- When probable cause was determined to exist, as compared to cases without a probable cause determination and cases in which probable cause was determined to not exist, there was a greater likelihood the case was preferred. Judge advocates made probable cause determinations for the purposes of indexing with the FBI.
- A participating victim increased the chances of case preferral.
- When the victim had attorney representation during the investigation, the chances of preferral were greater than when the victim did not have attorney representation during the investigation.

⁴ The victim complexity factor variable measured whether any of the following six factors existed: victim lack of memory, victim inconsistent statements, victim contradictory evidence, victim motive to lie, victim collateral misconduct, and victim other misconduct. The suspect complexity factor variable measured whether any of the following six factors existed: suspect lack of memory, suspect inconsistent statements, suspect contradictory evidence, suspect M.R.E. 413 and 404(b) evidence, suspect collateral misconduct, and suspect other misconduct.

- When any DNA evidence in the case was tested, there was an increased chance that the case was preferred.
- When the offender used force or made threats of force, the chances of preferral were greater.
- Victim impairment was related to an increased chance of case preferral.
- When at least one victim complexity factor was perceived to exist, the chances of preferral were reduced.
- When at least one suspect complexity factor was perceived to exist, the chances of preferral were greater.
- The chances of preferral were greater in cases in which the suspect confessed.
- The chances of preferral were lower in cases in which the suspect used alcohol than in cases in which the suspect did not use alcohol. This relationship approached, but did not meet, statistical significance (using the $p \leq .05$ threshold).
- The second model revealed significant differences between the Service branches in terms of the chances of preferral.
 - Cases in the Air Force were more likely to be preferred than cases in the Army, Marine Corps, and Navy, controlling for the other case and individual characteristics included in the model.
- The reporting individual variable was statistically significant when the Military Service branch variables were included in the model and Coast Guard cases were excluded. Cases were less likely to be preferred when the incident was reported by command or a third party as compared to when the case was reported by the victim or a victim-authorized representative.

TABLE 2-16a. LOGISTIC REGRESSION MODELS: COMMANDER DECISION TO PREFER CASES OR TAKE NO ACTION

	Model 1: All Cases, No Service Branch Controls			Model 2: Excluded Coast Guard Cases, Included Service Branch Controls		
	B	SE	Exp(B)	B	SE	Exp(B)
Probable cause existed	2.06*	.14	7.84	2.31*	.15	10.04
Victim participated	1.70*	.18	5.47	1.84*	.19	6.27
Victim attorney representation (prior to trial)	.70*	.14	2.02	.64*	.14	1.90
DNA evidence tested	1.10*	.15	3.01	1.12*	.16	3.05
Threat or use of force occurred	.96*	.18	2.62	.89*	.18	2.43
Victim impaired	.46*	.16	1.59	.45*	.16	1.56
At least one victim complexity factor existed	-.72*	.18	.49	-.80*	.18	.45
At least one suspect complexity factor existed	.70*	.15	2.02	.74*	.15	2.09
Suspect confessed	1.58*	.28	4.85	1.82*	.30	6.19
Suspect used alcohol	-.29**	.15	.75	-.29**	.16	.75
Command or third party reported incident	-	-	-	-.41*	.15	.67
Air Force	-	-	-	1.21*	.18	3.35
Navy	-	-	-	.12	.19	1.13
Marine Corps	-	-	-	.41**	.22	1.51
	* p < .05; ** p < .10 Model $\chi^2 = 747.81$, df = 10, p < .05			* p < .05; ** p < .10 Model $\chi^2 = 801.20$, df = 14, p < .05		

Table 2-16b presents the results of multivariate models that treated the trial result—conviction or acquittal—as the dependent variable. These models included only cases that ended in a conviction or an acquittal. The table summarizes the results of two models. The first model did not include variables to control for Service branch and included cases from all Service branches. The second model introduced Service branch control variables but excluded Coast Guard cases because their numbers were so small. The reference category for the Service branch variables was the Army: that is, the Air Force, Marine Corps, and Navy were compared to the Army. Estimates were generated by additional models that changed the reference Service branch so that the other branches could be compared. The results were unchanged when Service branch control variables were entered into the model, indicating that the relationships are stable and reliable. Few variables exhibited a statistically significant relationship with the likelihood of conviction. It is important to note that the data collection instrument recorded information about the nature of the incident, characteristics of victims and suspects and their behaviors, and aspects of the investigation. The data collection instrument did not record information about legal proceedings after the investigation. Thus, the analysis did not include information about events during the trial.

- The chances of conviction were lower than the chances of acquittal when the victim had attorney representation during the investigation.
- The chances of conviction were lower than the chances of acquittal when at least one of the victim complexity factors was perceived to exist.
- The chances of conviction were greater than the chances of acquittal when the suspect confessed during the investigation.
- The Military Service branch was unrelated to the chances of conviction. In other words, there were no differences between the branches in terms of the chances of conviction.

TABLE 2-16b. LOGISTIC REGRESSION MODELS: ACQUITTAL OR CONVICTION

	Model 1: All Cases, No Service Branch Controls			Model 2: Excluded Coast Guard Cases, Included Service Branch Controls		
	B	SE	Exp(B)	B	SE	Exp(B)
Victim attorney representation (prior to trial)	-1.01*	.30	.37	-1.03*	.31	.36
At least one victim complexity factor existed	-.68*	.32	.51	-.67*	.33	.51
Suspect confessed	1.86*	.40	6.42	1.89*	.41	6.65
Air Force	-	-	-	-.51	.38	.60
Navy	-	-	-	-.11	.43	.89
Marine Corps	-	-	-	-.18	.51	.84
	* p < .05 Model $\chi^2 = 45.04$, df = 3, p < .05			* p < .05 Model $\chi^2 = 49.59$, df = 6, p < .05		

Table 2-16c presents the results of multivariate models that treated victim participation as the dependent variable. The table summarizes the results of two models. The first model did not include variables to control for Service branch and included cases from all Service branches. The second model introduced Service branch control variables but excluded Coast Guard cases because their numbers were so small. The reference category for the Service branch variables was the Army; that is, the Air Force, Marine Corps, and Navy were compared to the Army. Comparing the results across models 1 and 2 shows the effects of variables are stable and reliable when Service branch is controlled. Estimates were generated by additional models that changed the reference Service branch so that the other branches could be compared.

- The chances of victim participation were greater when
 - Pretextual communication occurred
 - DNA evidence was tested
 - The victim was an active duty Service member
 - The suspect used alcohol
 - At least one suspect complexity factor was perceived to exist
 - The victim was physically injured
 - There were behavioral health concerns about the suspect
 - The suspect confessed
- The chances of victim participation were lower when a third party or command reported the incident than when the victim or a victim-authorized representative reported the incident.
- The second model revealed significant differences between the Service branches in terms of the chances of victim participation.
 - Victim participation was more likely in the Army as compared to the Air Force and Marine Corps
 - Similarly, victim participation was more likely in the Navy as compared to the Air Force and Marine Corps.

TABLE 2-16c. LOGISTIC REGRESSION: VICTIM PARTICIPATION OR DECLINATION

	Model 1: All Cases, No Service Branch Controls			Model 2: Excluded Coast Guard Cases, Included Service Branch Controls		
	B	SE	Exp(B)	B	SE	Exp(B)
Pretextual communication	.74*	.17	2.10	.78*	.18	2.18
DNA evidence tested	.34*	.14	1.41	.40*	.14	1.49
Victim status – military	.36*	.11	1.43	.39*	.11	1.48
Suspect used alcohol	.25*	.11	1.29	.24*	.11	1.27
At least one suspect complexity factor existed	.30*	.11	1.35	.32*	.11	1.38
Suspect behavioral health concerns existed	.76*	.23	2.14	.85*	.23	2.34
Suspect confessed	.75*	.28	2.11	.68*	.29	1.97
Command or third party reported incident	-.30*	.11	.74	-.30*	.11	.74
Air Force	-	-	-	-.56*	.14	.57
Navy	-	-	-	-.14	.14	.87
Marine Corps	-	-	-	-.76*	.16	.47
	Model $\chi^2 = 103.51$, df = 8, p < .05 * p < .05			Model $\chi^2 = 132.10$, df = 11, p < .05 * p < .05		

PART 3
Air Force Results

The Air Force case file data were analyzed to understand case characteristics and patterns of relationships between key variables. The analysis examined 403 Air Force cases. The first step in the analysis examined univariate statistics to understand the set of cases. The second step explored bivariate relationships between case and individual characteristics and two key outcome variables: command decision to take action and victim participation in justice proceedings. The final analysis estimated multivariate models for the two dependent variables (command action and victim participation).

UNIVARIATE STATISTICS: AIR FORCE CASE CHARACTERISTICS

Table 3-1 presents information about the commanders' decisions in Air Force cases and justice system outcomes for penetrative sexual assaults. The commander did not take action in 63.5% of cases and preferred 34.7% of cases. Administrative actions occurred in a small percentage of cases (n = 7, 1.7%). Six cases entailed administrative separation and one case entailed a letter of reprimand. Within the investigative case file, commanders did not document a reason for not taking action in 51.3% of the no action cases. The lack of victim participation was a common reason (22.5%) provided by commanders for not taking action in the case, followed by insufficient evidence (11.8%). Of the 140 cases that commanders preferred, over three-quarters (76.6%) were also referred; about a quarter (23.4%) were not referred. Court-martial occurred in 68 of the 107 referred cases (63.6%) and alternative dispositions, such as discharges, occurred in 72 of the 140 preferred cases (51.4%). Court-martial most commonly resulted in acquittal (73.5%), and dismissal was the most common alternative disposition (59.7%).

TABLE 3-1. COMMAND ACTION DECISIONS AND COURT-MARTIAL RESULTS

	N	%
Initial Command Action on Penetrative Sexual Assault		
No Command Action	256	63.5
Preferral	140	34.7
Administrative Action	7	1.7
Reason Provided by Command for No Action ^a		
Lack of Victim Participation	61	22.5
Insufficient Evidence	32	11.8
Unfounded	10	3.7
Prosecution Declined	8	3.0
No Probable Cause	8	3.0
No Reason Provided/Unknown	139	51.3
Other	13	4.8
Case Preferral/Referral (n = 140)		
Preferred Only	33	23.4
Preferred and Referred	107	76.6
Referred Cases with a Finding	68	63.6
Court-Martial Result (n = 68)		
Acquittal	50	73.5

Conviction for at Least One Penetrative Sexual Assault Charge – Court-Martial	11	16.2
Conviction for at Least One Penetrative Sexual Assault Charge – PTA at Court-Martial	7	10.3
Alternative Disposition (n = 72)		
Administrative Separation	3	4.2
Discharge in Lieu of Court-Martial	26	36.1
Dismissal	43	59.7

^a Two reasons were listed in 15 cases in which the command did not take action; these are included in the counts, resulting in a total count of 271. Percentages were computed using 271.

Table 3-2 summarizes information about the incident location. Slightly more than half of the reported sexual assaults occurred off installation (55.8%), and over three-quarters occurred in the continental United States (77.4%). No Air Force cases occurred in a deployed location (i.e., Iraq or Afghanistan).

TABLE 3-2. INCIDENT LOCATION

	N	%
Installation		
On Installation	178	44.2
Off Installation	225	55.8
Location of Incident		
CONUS	312	77.4
OCONUS	89	22.1
CONUS and OCONUS	2	0.5
Vessel	0	0
Vessel and CONUS	0	0
Vessel and OCONUS	0	0
Deployment		
Deployed Location (Iraq or Afghanistan only)	0	0
Non-Deployed Location	403	100.0

Table 3-3 summarizes information about the time between key events in the cases, including the times between the offense, the report to authorities, MCIO final report, and the command decision in preferred cases. The data collection form captured information about the dates of these key events, and the number of days between them was computed. In some cases, there were multiple dates listed for the date the incident occurred and a date range was captured on the data collection form. In these situations, the latest (most recent) incident date was used to compute the days between the incident and key events (i.e., date of report and decision dates). When one of the dates used in the calculations was missing, computations were not possible; these cases are therefore categorized as “unknown.” In addition, when the date of one event should have logically occurred after the date of another event but the dates show the reverse (e.g., the date of the commander’s decision occurred *before* the date the incident was reported, or the date the MCIO closed the case occurred *before* the date the incident was reported to authorities), these cases are categorized as “unknown.” This latter categorization rule was also used when a range of dates was provided for the date of the incident and the most recent incident date occurred *after* the date the incident was reported (i.e., these cases are categorized as “unknown”). The number of days to the command decision when the commander decided to take

no action in the case is not computed, because 17.6% of these cases (n = 45) were missing data on the date of the commander's decision.

Nearly one-third (29.5%) of cases were reported within 7 days of the incident, including 23.3% of cases that were reported within 3 days of the incident. In addition, 40.7% of the Air Force cases were reported within 30 days of the incident. The median number of days between the report and the incident was 62, indicating that half of the Air Force cases were reported within 62 days and half of the cases were reported to authorities after 62 days.

A relatively small percentage of cases (11.1%) received a final MCIO report within 60 days of the report to authorities; 52.6% of cases received a final MCIO report within 4 months of the date the incident was reported to authorities. The median number of days between the report to authorities and the MCIO final report was 114 days; half of the cases received a final MCIO report in fewer than 114 days after the date of the report to authorities.

There was insufficient information available to calculate the number of days between the decision to prefer the case and the MCIO final report in 22.1% of the cases. Over one-third of the preferred cases (39.3%) were preferred within 3 months of the MCIO final report. The median number of days between the MCIO final report and the decision to prefer the case was 90 days.

Among the set of no action cases, 52.3% of cases were closed by the MCIO more than one year after the incident was reported to authorities. A relatively low percentage of no action cases (11.8%) were closed by the MCIO within six months of the report to authorities. The median number of days between the report to authorities and the MCIO case closure date was 380 days; half of the no action cases were closed by the MCIO report in more than 380 days after the date the offense was reported to authorities.

Finally, Table 3-3 shows that, among preferred cases, 16.5% were preferred within 4 months of the date on which the incident was reported to authorities and 42.9% were preferred within 6 months. The median number of days between the decision to prefer and the date on which the incident was reported to authorities was 194.

TABLE 3-3. TIME BETWEEN KEY ACTIONS IN THE CASE

	N	%
Number of Days Between Offense and Report to Authorities		
0 (same day)	32	7.9
1 – 3	62	15.4
4 – 7	25	6.2
8 – 14	23	5.7
15 – 30	22	5.5
31 – 60	30	7.4
61 – 90	22	5.5
91 – 120	15	3.7
121 – 150	14	3.5
151 – 180	11	2.7
181 – 210	22	5.5
211 – 240	11	2.7

REPORT ON INVESTIGATIVE CASE FILE REVIEWS FOR MILITARY ADULT
PENETRATIVE SEXUAL OFFENSE CASES CLOSED IN FISCAL YEAR 2017

241 – 270	4	1.0
271 – 365	18	4.5
366 +	78	19.4
Unknown	14	3.5
Median number of days = 62		
Number of Days Between Report to Authorities and MCIO Final Report		
1 – 3	5	1.2
4 – 7	2	0.5
8 – 14	1	0.3
15 – 30	5	1.2
31 – 60	32	7.9
61 – 90	109	27.1
91 – 120	58	14.4
121 – 150	59	14.6
151 – 180	29	7.2
181 – 210	20	5.0
211 – 240	19	4.7
241 – 270	8	2.0
271 – 365	14	3.5
366 +	36	8.9
Unknown	6	1.5
Median number of days = 114		
Number of Days Between MCIO Final Report and Command Decision in Preferred Cases (n = 140)		
1 – 3	0	0
4 – 7	2	1.4
8 – 14	5	3.6
15 – 30	15	10.7
31 – 60	13	9.3
61 – 90	20	14.3
91 – 120	17	12.1
121 – 150	10	9.2
151 – 180	7	7.1
181 – 210	5	3.6
211 – 240	4	2.9
241 – 270	4	2.9
271 – 365	0	0
366 +	7	5.0
Unknown	31	22.1
Median number of days = 90		
Number of Days Between Report to Authorities and MCIO Closure of the Case in No Action Cases (n = 256)		
0 – 60	0	0
61 – 120	4	1.6
121 – 180	26	10.2
181 – 240	26	10.2

241 – 300	38	14.8
301 – 360	28	10.9
361 +	134	52.3
Median number of days = 380		
Number of Days Between Report to Authorities and Command Decision in Preferred Cases (n = 140)		
0 – 60	4	2.9
61 – 120	19	13.6
121 – 180	37	26.4
181 – 240	29	20.7
241 – 300	18	12.9
301 – 360	12	8.6
361 +	21	15.0
Median number of days = 194		

Suspect characteristics are summarized in Table 3-4. A large majority of cases involved suspects who were enlisted (91.8%) and with a pay grade of E-5 or lower (82.4%). Nearly one-third of suspects (31.3%) were E-4 personnel. One in five officer suspects was a cadet or midshipman. Nearly all suspects were male (97.3%), and 70.7% of suspects were White. Slightly less than 20% of suspects were African American. The White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African. The average age of suspects was 25.5 years.

TABLE 3-4. SUSPECT CHARACTERISTICS

	N	%
Suspect Grade at Time of Incident		
Enlisted	370	91.8
Officer	30	7.4
Unknown	3	0.7
Suspect Pay Grade at Time of Incident		
Enlisted (n = 370)		
E-1	9	2.4
E-2	11	3.0
E-3	91	24.6
E-4	116	31.3
E-5	78	21.1
E-6	42	11.4
E-7	17	4.6
E-8	2	0.5
Unknown	4	1.1
Officer (n = 30)		
Cadet/Midshipman	6	20.0
O-1	1	3.3
O-2	5	16.7
O-3	4	13.3
O-4	6	20.0
O-5	6	20.0
O-6	2	6.7

Suspect Gender		
Male	392	97.3
Female	11	2.7
Suspect Age	Mean = 25.5; SD = 5.7; Range = 18 – 54	
Suspect Race ^a		
White ^b	285	70.7
Black or African American	77	19.1
Asian	9	2.2
Native Hawaiian or Other Pacific Islander	7	1.7
American Indian or Alaska Native	1	0.2
Other Race, Ethnicity, or Origin	1	0.2
Unknown	23	5.7

^a AFOSI uses the Investigative Information Management System (I2MS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed did not report race or ethnicity in the title section of the investigation. Reviewers recorded race and ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

Table 3-5 presents information about suspects' drug and alcohol use during the time of the incident and about other suspect characteristics related to the investigation. Drug use during the incident was rare, but suspect alcohol use was common (54.1% of incidents). It was not common for a suspect to have any behavioral health concerns listed in the case files (11.7%). The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). At least one of six suspect complexity factors existed in over half of the cases (59.1%). The most common suspect complexity factors were collateral misconduct at the time of the incident (29.3%) and other forms of misconduct (30.3%). Suspects' inconsistent statements, contradictory evidence, and loss of consciousness were not common.

TABLE 3-5. SUSPECT FACTORS

	N	%
Suspect Alcohol Use		
Yes	218	54.1
No	185	45.9
Suspect Drug Use		
Yes	5	1.2
No	398	98.8
Suspect Behavioral Health Concerns Before or After Incident		
Yes	47	11.7
No	354	87.8
Unknown	2	0.5
Suspect Complexity Factors ^a		
Collateral Misconduct	118	29.3
Other Misconduct	122	30.3
Loss of Memory or Consciousness	22	5.5

413 and 404(b) Evidence	83	20.6
Inconsistent Statements	30	7.4
Contradictory Evidence	7	1.7
At Least One of the Six Factors Exists in the Case	238	59.1

^a These categories were not mutually exclusive; multiple factors could have been present for a single suspect. Percentages were calculated based on the full set of 403 cases and do not sum to 100%.

Table 3-6 summarizes information about suspects' statements and legal representation. Suspects offered statements to law enforcement in fewer than half of cases (48.6%), and suspects rarely had legal representation (8.7%) at the time of the interview. The data collection instrument recorded information from the case file about the content of suspect statements to law enforcement and third parties. The most common suspect statement was to indicate that the sexual contact was consensual (64.2%), followed by denying that the event was a crime or denying the sexual contact (18.8%). Suspects confessed in 10 cases.

TABLE 3-6. SUSPECT STATEMENTS AND REPRESENTATION

	N	%
Suspect Provided Statement to Law Enforcement		
Yes	196	48.6
No	207	51.4
Suspect Had Legal Representation		
Yes	35	8.7
No	367	91.1
Unknown	1	0.2
Suspect Statement to Third Parties or Law Enforcement ^a		
Confessed	10	3.5
Consensual	185	64.2
Denied Crime/Sexual Activity	54	18.8
No Recollection/Partial Memory	19	6.6
Other	20	6.9

^a Reports included information with multiple suspect statements in 15 cases. A hierarchy rule was used to code cases with multiple statements: Cases were coded as "confessed" if the suspect confessed and offered any other statement. The next code in the hierarchy was "consensual" and was used when the suspect reported that the sexual activity was consensual (but did not confess). The third category in the hierarchy was "denied crime or denied penetrative sexual activity" and was used when the suspect offered multiple statements but not "confessed" and not "consensual." The "no recollection/partial memory" category was used when only this statement was made. The last category was "other" and was used when the provided statement did not clearly fit into any of the previous categories. Information about suspects' statements was available for 288 cases.

Tables 3-7 and 3-8 present information about victims. Approximately half of the cases involved victims who were enlisted, while it was rare for a victim to be an officer (3.5% of all victims). Civilians represented 41.4% of all victims and military personnel represented 57.6% of victims. Among the enlisted victims, most were E-3 or lower (57.8%). The large majority of victims were female (94.8%) and the average victim age was 23.8. In a pattern similar to that seen among suspects, White victims comprised 71.2% of the sample; African Americans represented 11.2% of victims. Again, it is important to note that the White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African.

Table 3-7 also summarizes the relationships between victims and suspects. Stranger cases were rare (4.5%) and friend relationships were most common (27.0%), followed by current or former

spouses (23.3%) and intimate or former intimate partners (12.9%). Recruit (victim)–recruiter (suspect) and supervisor (suspect)–subordinate (victim) relationships were not common among Air Force cases (3.5%). Finally, Table 3-7 shows which individuals reported the incident: a victim-authorized representative (30.3%), the victim (28.3%), command (21.3%), or a third party (19.6%).

TABLE 3-7. VICTIM CHARACTERISTICS

	N	%
Victim Status at Time of Incident		
Enlisted	218	54.1
Officer	14	3.5
Civilian – Not DoD Spouse	76	18.9
Civilian – DoD Spouse	91	22.2
Suspect Is Spouse/Former Spouse	77	84.6
Suspect Is Not Spouse ^a	14	15.4
Unknown Grade	4	1.0
Victim Pay Grade at Time of Incident		
Enlisted (n = 218)		
E-1	7	3.2
E-2	21	9.6
E-3	98	45.0
E-4	48	22.0
E-5	22	10.1
E-6	10	4.6
E-7	5	2.3
E-8	1	0.5
Unknown	6	2.8
Officer (n = 14)		
Cadet/Midshipman	6	42.9
O-2	5	35.7
O-3	3	21.4
Victim Gender		
Male	21	5.2
Female	382	94.8
Victim Age	Mean = 23.8; SD = 5.6; Range = 16 – 48	
Victim Race^b		
White ^c	287	71.2
Black or African American	45	11.2
Asian	12	3.0
Native Hawaiian or Other Pacific Islander	3	0.7
American Indian or Alaska Native	1	0.2
Other Race, Ethnicity, or Origin	3	0.7
Unknown	52	12.9
Relationship to Suspect^d		
Current or Former Spouse	94	23.3
Intimate Partner/Former Intimate Partner	52	12.9

Friend	109	27.0
Co-worker/Classmate/Roommate	44	10.9
Subordinate – Supervisor	14	3.5
Acquaintance	46	11.4
Online/Met for the First Time	12	3.0
Stranger	18	4.5
Recruit – Recruiter	0	0
Other	4	1.0
Unknown/Unable to Determine	10	2.5
Reporting Individual		
Victim	114	28.3
Victim-Authorized Representative	122	30.3
Command	86	21.3
Third Party	79	19.6
Unknown	2	0.5

^a This category includes all other types of relationships, including those with missing data and those in which the nature of the relationship could not be determined.

^b AFOSI uses the Investigative Information Management System (I2MS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed did not report race or ethnicity in the title section of the investigation. Reviewers recorded race and ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^c This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^d The data analyzed here were based on the victim's reported relationship to the suspect. See Appendix for more details about this variable.

Table 3-8 presents information about victims' drug and alcohol use and level of impairment during the time of the incident, in addition to other victim characteristics related to the investigation. As was seen in suspect variables, victim drug use was substantially less common than victim alcohol use (8.2% compared to 57.8%). Nearly half of all victims reported some level of impairment during the offense (48.6%). Victims most often reported passing out, being unconscious, or being asleep (53.6%), followed by reporting some memory loss and/or blacking out (40.3%). Nearly one-quarter of victims (22.8%) had some history of a behavioral health concern listed in the case files. The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). The data collection instrument also recorded information about victim's statements or behaviors that may have been relevant during the investigation, and data show 45.4% had a motive to lie, 36.7% of victims provided inconsistent statements, 31.8% experienced some memory loss or were unconscious, and there was evidence of collateral victim misconduct in 24.1% of cases.

TABLE 3-8. VICTIM FACTORS

	N	%
Victim Alcohol Use		
Yes	233	57.8
No	170	42.2
Victim Drug Use		
Yes	33	8.2

No	370	91.8
Victim Reported Being Impaired		
Yes	196	48.6
No	207	51.4
Nature of Victim Impairment ^a		
Passed Out/Unconscious/Asleep	105	53.6
Blacked Out/No Memory/Partial Memory	79	40.3
Unknown	12	6.1
Victim Behavioral Health Concerns Before or After Incident		
Yes	92	22.8
No	309	76.7
Unknown	2	0.5
Victim Complexity Factors ^b		
Collateral Misconduct	97	24.1
Other Misconduct	77	19.1
Loss of Memory or Consciousness	128	31.8
Inconsistent Statements	148	36.7
Motive to Lie	183	45.4
Contradictory Evidence	69	17.1
At Least One of the Six Factors Exists in the Case	335	83.1

^a Victims were impaired in 196 cases, including 12 cases in which the nature of impairment was not clear (e.g., “drugged”). Multiple reasons were provided for the nature of impairment in 75 cases. To simplify the analyses of impairment reasons, a single variable was created to measure the reason for impairment. The categories for this variable are mutually exclusive. The “passed out/unconscious/asleep” category is considered to be the greatest level of impairment, followed by “blacked out/no memory/partial memory.” If the case indicated “passed out” or “unconscious” AND “blacked out” or “partial memory,” then the case was coded as “passed out/unconscious/asleep.” If the case indicated “blacked out,” “partial memory,” or “no memory” AND “asleep,” then the case was coded as “passed out/unconscious/asleep.”

^b These categories were not mutually exclusive; multiple factors could have been present for a single victim. Percentages were calculated based on the full set of 403 cases and do not sum to 100%.

Table 3-9 presents information about victim injuries and suspects’ use of force and threats. A suspect used or threatened to use force in 17.6% of cases; use of weapons was rare, occurring in only one case. Victims sustained injuries in 11.1% of cases. Redness and bruising were the most common victim injuries, but were still relatively rare. It was not common for there to be witnesses in the case (see item 57 on the data collection form). Investigators collected pretextual communication evidence in 18.1% of cases, and the most common result of the pretextual communication was to support neither the victim’s nor the suspect’s account (77.8%).

TABLE 3-9. VICTIM INJURIES AND EVIDENCE

	N	%
Use/Threat of Force		
Yes	71	17.6
No	332	82.4
Type of Force/Threat ^a		
Physical	66	16.4
Weapon	1	0.2
Coercion	8	2.0
Threat/Threat to Others	11	2.7
Physical Injuries to Victim ^b		

Yes	45	11.1
No	358	88.8
Injuries^c		
Redness	22	5.5
Bruising	22	5.5
Cuts	5	1.2
Scrapes	5	1.2
Witness to the Incident		
Yes	42	10.4
No	361	89.6
Pretextual Communication		
Yes	72	18.1
Supports Victim Account	7	9.7
Supports Suspect Account	9	12.5
Supports Neither	56	77.8
No	331	82.1

^a Categories were not mutually exclusive; cases could involve multiple types of force and threats.

^b Victim injury was based on self-reported or recorded information in the case files and in SAFE reports.

^c Categories were not mutually exclusive; cases could involve multiple types of injuries.

Table 3-10 presents information about forensic evidence in Air Force cases. A sexual assault forensic examination (SAFE) was performed on victims in less than one-quarter of the cases (23.6%). When a SAFE was performed, over half (60.0%) occurred within one day of the incident. Civilian medical facilities performed more SAFEs (72.6%) than did military facilities (27.4%). Military forensic medical examiners performed the majority of the 26 exams at military health care facilities (76.9%). The measure of DNA testing indicates whether *any* DNA evidence from the case was tested. DNA evidence was tested in 23.6% of cases.

TABLE 3-10. FORENSIC EVIDENCE

	N	%
SAFE Performed on Victim		
Yes	95	23.6
No	308	76.4
Days Between Offense and Victim SAFE (n = 95)		
0 (same day)	30	31.6
1	27	28.4
2	13	13.7
3	6	6.3
4	5	5.3
5	2	2.1
6	0	0
7	1	1.1
8 – 14	1	1.1
15 +	4	4.2
Unknown	6	6.3
Victim SAFE Location (n = 95)		
Civilian Health Care Facility	69	72.6
Military Health Care Facility	26	27.4
Victim SAFE Provider Type (n = 95)		

Civilian Provider	69	72.6
Military Examiner	20	21.1
DoD Civilian	6	6.3
DNA Evidence Tested ^a		
Yes	95	23.6
No/Unknown	308	76.4

^aThe DNA testing variable measured *any* DNA evidence testing in the case, not only sexual assault kit evidence collected from the victim.

Victim participation is summarized in Table 3-11. Victims participated in 62.5% of Air Force cases and declined in 37.5% of cases. Among the victims who declined, a large majority (85.4%) declined early in justice system processing (during investigation and reporting). Victims provided their input to commanders in 19.1% of cases. Victims offered different input, including 20.8% who requested administrative separation, 16.9% who supported discharge in lieu of court-martial, 15.6% who requested court-martial, and 14.3% who requested no command action. Victims were represented by attorneys during the investigation in over half of the cases (58.8%), and victims provided statements to law enforcement in nearly all cases (94.8%).

TABLE 3-11. VICTIM PARTICIPATION

	N	%
Victim Declination Recorded in File		
Victim Participated	252	62.5
Victim Declined	151	37.5
Declination Stage		
Investigation	106	70.2
Reporting	23	15.2
Court-Martial	18	11.9
Preliminary Hearing	4	2.7
Victim Input to Command or SJA		
No	326	80.9
Yes	77	19.1
Input Provided to Command (n = 77)		
Pursue Administrative Separation	16	20.8
Supports DILCOM	13	16.9
Pursue Court-Martial	12	15.6
Take No Action	11	14.3
Nonjudicial Punishment/Administrative Actions	8	10.4
Other	17	22.1
Victim Attorney Representation (prior to trial)		
Yes	237	58.8
No	166	41.2
Victim Provided Statement to Law Enforcement		
Yes	382	94.8
No	21	5.2

A judge advocate made a probable cause determination in over half of all cases (58.3%) and probable cause was determined to exist in 154 cases, representing 38.2% of all cases and 65.5%

of cases in which a determination was made (Table 3-12). Judge advocates made probable cause determinations for purposes of indexing with the FBI’s NCIC criminal history database.

TABLE 3-12. PROBABLE CAUSE DETERMINATION BY A JUDGE ADVOCATE

	N	%
Probable Cause Determination Made		
Yes	235	58.3
No	168	41.7
Probable Cause Determination Result (n = 235)		
Yes, Probable Cause Exists	154	65.5
Probable Cause Does Not Exist	80	34.0
Unknown	1	0.4

BIVARIATE RELATIONSHIPS

The second stage of the analysis estimated relationships between case characteristics and two important outcome variables: (1) the commander’s decision to prefer or to not take action and (2) the victim’s decision to participate or to decline. Because of the small number of convictions (n = 18), it was not possible to compare no action cases to cases that ended in a conviction or to compare acquittals to convictions. A DoD-wide analysis that combines all Service branches will examine differences between cases that end in acquittal and cases that end in a conviction. Cases that ended in some administrative action (n = 7) were excluded from the analysis that examined preferal and no action outcomes.

COMMAND ACTION DEPENDENT VARIABLE: NO ACTION COMPARED TO PREFERAL

The patterns in Table 3-13a show there was no relationship between the preferal decision and the incident location, the identity of the individual who reported the incident to authorities, and whether the report was made promptly (i.e., within one week). The median number of days between the incident and the report to authorities was shorter in preferred cases (54.5 days) than in no action cases (70.5 days). In addition, cases in which probable cause was determined to exist were most likely to be preferred.

TABLE 3-13a. COMMAND ACTION DECISION: INCIDENT LOCATION AND REPORTING INFORMATION

	No Command Action (n = 256)		Preferal (n = 140)	
	N	%	N	%
Incident Location (NS)				
On Installation	114	64.8	62	35.2
Off Installation	142	64.5	78	35.5
Reporting Individual (NS)				
Victim	72	64.3	40	35.7
Victim-Authorized Representative	74	61.7	46	38.3
Command	49	58.3	35	41.7
Third Party	60	76.9	18	23.1

Prompt Report (within 7 days) (NS)				
Yes	68	59.6	46	40.4
No	178	66.4	90	33.6
Number of Days Between Incident and Report to Authorities	Median = 70.5		Median = 54.5	
Probable Cause ^a ($\chi^2 = 66.06, p < .05$)				
No Determination Made	115	68.9	52	31.1
Probable Cause Existed	64	43.2	84	56.8
Probable Cause Did Not Exist	77	96.3	3	3.8

^a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

Several evidentiary variables are related to preferral outcomes (Table 3-13b). Cases were more likely to be preferred when pretextual communication occurred (47.9%) than when no pretextual communication occurred (32.6%). When victims were injured and when suspects used or threatened to use force, the chances of case preferral were greater than when victims were not injured and when suspects did not use or threaten to use force. Victim participation, compared to declination, also increased the likelihood that the case would be preferred. Nearly half of the cases with a participating victim (47.2%) were preferred, compared to 15.1% of cases in which the victim declined. Finally, the performance of a SAFE exam, DNA testing, and victim attorney representation during the investigation were all associated with increased chances that the case would be preferred.

TABLE 3-13b. COMMAND ACTION DECISION: EVIDENCE

	No Command Action (n = 256)		Preferral (n = 140)	
Witness to the Incident (NS)				
Yes	24	57.1	18	42.9
No	232	65.5	122	34.5
Pretextual Communication Occurred ($\chi^2 = 5.95, p < .05$)				
Yes	37	52.1	34	47.9
No	219	67.4	106	32.6
Pretextual Communication Result (NS)				
Supports Victim Account	1	14.3	6	85.6
Supports Suspect Account	6	66.7	3	33.3
Supports Neither Account	30	54.5	25	45.5
Victim Physical Injuries ($\chi^2 = 9.98, p < .05$)				
Yes	19	43.2	25	56.8
No	237	67.3	115	32.7
Threat or Use of Force ($\chi^2 = 22.60, p < .05$)				
Yes	28	40.0	42	60.0
No	228	69.9	98	30.1
Victim Participation ($\chi^2 = 41.64, p < .05$)				
Yes	132	52.8	118	47.2
Declined ^a	124	84.9	22	15.1
Sexual Assault Exam Performed on Victim ($\chi^2 = 15.98, p < .05$)				
Yes	44	47.3	49	52.7

No	212	70.0	91	30.0
DNA Evidence Tested ($\chi^2 = 19.66, p < .05$)				
Yes	43	45.7	51	54.3
No	213	70.8	88	29.2
Victim Attorney Representation (prior to trial) ($\chi^2 = 16.98, p < .05$)				
Yes	132	56.4	102	43.6
No	124	76.5	38	23.5

^a Victim declinations could have occurred before or after preferral. Table 3-11 shows that over 85% of all victims declined at the reporting or investigation stage.

Victim characteristics such as gender, race, and age, were not related to the preferral decision (Table 3-13c). The relationship between victim grade and the command decision approached, but did not reach, statistical significance ($p = .06$). Stranger cases (64.7%) and those involving the victim as a subordinate and the suspect as the supervisor (57.1%) were most likely to be preferred; cases involving acquaintances were least likely to be preferred (26.7%). Because the number of cases with officer victims was small, the statistical test of significance may not be reliable.

TABLE 3-13c. COMMAND ACTION DECISION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	No Command Action (n = 256)		Preferral (n = 140)	
Victim Gender (NS)				
Female	243	64.6	133	35.4
Male	13	65.0	7	35.0
Victim Race ^a (NS)				
White ^b	181	64.2	101	35.8
Non-White	39	61.9	24	38.1
Victim Status at Time of Incident (NS)				
Military	144	62.3	87	37.7
Civilian – Not DoD Spouse	48	64.9	26	35.1
Civilian – DoD Spouse	64	70.3	27	29.7
Suspect Is Spouse/Former Spouse (NS)	52	67.5	25	32.5
Suspect Is Not Spouse	12	85.7	2	14.3
Victim Grade at Time of Incident ($\chi^2 = 3.65, p = .06$)				
Enlisted	128	60.1	85	39.9
Officer	12	85.7	2	14.3
Relationship Between Victim and Suspect ^c (12.61, $p \leq .05$)				
Supervisor – Subordinate	6	42.9	8	57.1
Spouse/Former Spouse	61	65.6	32	34.4
Intimate Partner/Former Intimate Partner	29	56.9	22	43.1
Friend	73	68.2	34	31.8
Co-worker/Classmate/Roommate	29	65.9	15	34.1
Acquaintance	33	73.3	12	26.7
Stranger	6	35.3	11	64.7
Victim Age (NS)	(Mean = 23.9, SD = 5.9)		(Mean = 23.6, SD = 5.0)	

^a AFOSI uses the Investigative Information Management System (I2MS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed did not report race or ethnicity in the title section of the investigation. Reviewers recorded race and ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The "other relationship," "online/met for the first time," and "recruiter – recruit" categories were excluded because of their small numbers; the "unknown/unable to determine" category was also excluded from this analysis.

Victim factors, in general, were not related to the preferral decision (Table 3-13d). Victim impairment was related to the preferral decision, but the interpretation is not straightforward. Cases with a victim who passed out, was unconscious, or was asleep were more likely to be preferred than cases with a victim who was not impaired or was blacked out or experienced some memory loss. When all the categories of impairment were combined, there was a relationship between victim impairment and the commander's decision: there was a greater chance of preferral when the victim was impaired (42.8%) than when the victim was not impaired (28.4%). The relationship between victim memory loss and the command decision approached statistical significance ($p = .06$). Cases were more likely to be preferred when victims suffered from memory loss (41.9%) than when they did not suffer from some memory loss (32.4%).

TABLE 3-13d. COMMAND ACTION DECISION: VICTIM FACTORS

	No Command Action (n = 256)		Preferral (n = 140)	
Victim Impairment ($\chi^2 = 21.46, p < .05$)				
Not Impaired	146	71.6	58	28.4
Passed Out/Unconscious/Asleep	47	46.1	55	53.9
Blacked Out/Memory Loss	56	71.8	22	28.2
Victim Alcohol Use (NS)				
Yes	145	63.3	84	36.7
No	111	66.5	56	33.5
Victim Drug Use (NS)				
Yes	18	54.5	15	45.5
No	238	65.6	125	34.4
Victim Lack of Memory ($\chi^2 = 3.42, p = .06$)				
Yes	72	58.1	52	41.9
No	184	67.6	88	32.4
Victim Motive to Lie (NS)				
Yes	119	66.1	61	33.9
No	137	63.4	79	36.6
Victim Inconsistent Statements (NS)				
Yes	98	67.6	47	32.4
No	158	62.9	93	37.1
Victim Contradictory Evidence (NS)				
Yes	45	65.2	24	34.8
No	211	64.5	116	35.5
Victim Collateral Misconduct (NS)				
Yes	65	68.4	30	31.6
No	191	63.5	110	36.5
Victim Other Misconduct (NS)				

Yes	54	72.0	21	28.0
No	202	62.9	119	37.1
Victim Behavioral Health Concerns Before or After Incident (NS)				
Yes	64	71.1	26	28.9
No	190	62.5	114	37.5
Victim Consensual Sexual Contact with Suspect (NS)				
Yes – prior to incident	118	64.1	66	35.9
Yes – following incident	4	80.0	1	20.0
Yes – prior to and following incident	27	57.4	20	42.6
No	107	66.9	53	33.1

Unlike victim characteristics, several suspect characteristics were related to the preferral decision (Table 3-13e). Similar to the pattern among victims, preferral was more likely when the suspect was enlisted at the time of the offense (37.2%) than when the suspect was an officer at the time of the offense (16.7%). Cases were more likely to be preferred when the suspect used alcohol (40.2%) than when the suspect did not use alcohol (29.7%). Several suspect complexity factors were associated with an increased chance that the case was preferred: suspect memory loss, suspect’s inconsistent statements and contradictory evidence, suspect collateral misconduct, the existence of suspect behavioral health concerns, and evidence of other sex offenses and/or related misconduct⁵ in the file. Suspects confessed in 10 cases, and all of those cases were preferred.

TABLE 3-13e. COMMAND ACTION DECISION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	No Command Action (n = 256)		Preferred (n = 140)	
Suspect Race ^a (NS)				
White ^b	179	63.5	103	36.5
Non-White	62	67.4	30	32.6
Suspect Grade at Time of Incident ($\chi^2 = 5.09$; $p < .05$)				
Officer	25	83.3	5	16.7
Enlisted	228	62.8	135	37.2
Suspect Alcohol Use ($\chi^2 = 4.76$; $p < .05$)				
Yes	128	59.8	86	40.2
No	128	70.3	54	29.7
Suspect Drug Use (NS)				
Yes	3	75.0	1	25.0
No	253	64.5	139	35.5
Suspect Lack of Memory ($\chi^2 = 16.18$, $p < .05$)				
Yes	5	23.8	16	76.2

⁵ Military Rules of Evidence (M.R.E.) 413 and 404(b), respectively, cover the admissibility of other sex offenses and related misconduct. M.R.E. 413 is similar to its Federal Rule counterpart. Its purpose is to provide for the liberal admissibility of character evidence when the accused has committed a prior sexual assault offense. M.R.E. 404(b) permits the admissibility of certain evidence of other crimes, wrongs, or acts committed by the accused for the purpose of proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

No	251	66.9	124	33.1
Suspect Inconsistent Statements ($\chi^2 = 13.93$, $p < .05$)				
Yes	10	33.3	20	66.7
No	246	67.2	120	32.8
Suspect Contradictory Evidence ($\chi^2 = 11.14$, $p < .05$)				
Yes	0	0	6	100
No	256	65.6	134	34.4
Suspect Collateral Misconduct ($\chi^2 = 7.67$, $p < .05$)				
Yes	63	54.3	53	45.7
No	193	68.9	87	31.1
Suspect Other Misconduct ($\chi^2 = 3.52$, $p = .06$)				
Yes	70	57.9	51	42.1
No	186	67.6	89	32.4
Suspect 413 and 404(b) Evidence ($\chi^2 = 24.32$, $p < .05$)				
Yes	34	41.5	48	58.5
No	222	70.7	92	29.3
Suspect Behavioral Health Concerns Before or After Incident ($\chi^2 = 7.26$, $p < .05$)				
Yes	22	44.8	25	53.2
No	232	66.9	115	33.1
Suspect Statement ($\chi^2 = 32.00$, $p < .05$)				
Confessed	0	0	10	100
Consensual	130	71.0	53	29.0
Denied Crime/Sexual Activity	32	60.4	21	39.6
No Recollection/Partial Memory	6	31.6	13	68.4
Other	9	47.4	10	52.6

^a AFOSI uses the Investigative Information Management System (I2MS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed did not report race or ethnicity in the title section of the investigation. Reviewers recorded race and ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

VICTIM PARTICIPATION DEPENDENT VARIABLE: VICTIM PARTICIPATED – VICTIM DECLINED

Table 3-14a shows that victim participation was similar when the incident occurred on installation (60.1%) and off installation (64.4%). Similarly, victim participation was not related to the identity of the person who reported the incident to authorities. The median number of days between the incident and the report to authorities was similar among cases with a participating victim (62) and cases in which the victim declined to participate (59). Victim participation was associated with judge advocates' probable cause determination: participation was more likely in cases in which a probable cause determination was made and when probable cause was determined to exist than when probable cause did not exist.

TABLE 3-14a. VICTIM PARTICIPATION OR DECLINATION: INCIDENT LOCATION AND REPORTING INFORMATION

	Victim Declined (n = 151)		Victim Participated (n = 252)	
	N	%	N	%
Incident Location (NS)				
On Installation	71	39.9	107	60.1
Off Installation	80	35.6	145	64.4
Reporting Individual (NS)				
Victim	41	36.0	73	64.0
Victim-Authorized Representative	44	36.1	78	63.9
Command	27	31.4	59	68.6
Third Party	37	46.8	42	53.2
Prompt Report (within 7 days) (NS)				
Yes	45	37.8	74	62.2
No	98	36.3	172	63.7
Number of Days Between Incident and Report to Authorities	Median = 59		Median = 62	
Probable Cause ^a ($\chi^2 = 9.57, p < .05$)				
No Determination Made	58	34.5	110	65.5
Probable Cause Existed	51	33.1	103	66.9
Probable Cause Did Not Exist	42	52.5	38	47.5

^a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

Table 3-14b presents patterns of relationships between evidentiary variables and victim participation. Victim participation is related to pretextual communication: victim participation rates were higher in cases with pretextual communication (81.9%) than in cases when pretextual communication did not occur (58.3%). Victim participation was also greater in cases when any DNA evidence in the case was tested (73.7%) than when DNA evidence was not tested (59.3%). Victim participation was unrelated to the presence of witnesses, the results of pretextual communication, and whether the victim was represented by an attorney during the investigation. The tests of statistical significance show victim injuries, suspect's use or threat of force, and the performance of a victim SAFE were not associated with victim participation, but the patterns of relationships suggest that victim participation rates were greater in cases when the victim was injured than in cases when the victim was not injured, greater in cases when the suspect used or threatened force, and greater in cases when the victim received a SAFE.

TABLE 3-14b. VICTIM PARTICIPATION OR DECLINATION: EVIDENCE

	Victim Declined (n = 151)		Victim Participated (n = 252)	
	N	%	N	%
Witness to the Incident (NS)				
Yes	14	33.3	28	66.7
No	137	38.1	224	62.0
Pretextual Communication Occurred ($\chi^2 = 14.10, p < .05$)				
Yes	13	18.1	59	81.9
No	138	41.7	193	58.3

Pretextual Communication Result (NS)				
Supports Victim Account	1	14.3	6	85.7
Supports Suspect Account	0	0	9	100
Supports Neither Account	12	21.4	44	78.6
Victim Physical Injuries (NS)				
Yes	13	28.9	32	71.1
No	138	38.5	220	61.5
Threat or Use of Force (NS)				
Yes	21	29.6	50	70.4
No	130	39.2	202	60.8
Sexual Assault Exam Performed on Victim (NS)				
Yes	28	29.5	67	70.5
No	123	39.9	185	60.1
DNA Evidence Tested ($\chi^2 = 6.43, p < .05$)				
Yes	25	26.3	70	73.7
No	125	40.7	182	59.3
Victim Attorney Representation (prior to trial) (NS)				
Yes	90	38.0	147	62.0
No	61	36.7	105	63.3

Table 3-14c presents patterns of relationships between victim participation and victims' demographic characteristics. The patterns of relationships in Table 3-14c were not statistically significant, suggesting that rates of victim participation were similar across victim gender, race, military status and grade, age, and relationships between victims and suspects.

TABLE 3-14c. VICTIM PARTICIPATION OR DECLINATION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	Victim Declined (n = 151)		Victim Participated (n = 252)	
Victim Gender (NS)				
Female	140	36.6	242	63.4
Males	11	52.4	10	47.6
Victim Race ^a (NS)				
White ^b	105	36.6	182	63.4
Non-White	24	37.5	40	62.5
Victim Status at Time of Incident (NS)				
Military	86	36.4	150	63.6
Civilian – Not DoD Spouse	28	36.8	48	63.2
Civilian – DoD Spouse	37	40.7	54	59.3
Suspect Is Spouse/Former Spouse (NS)				
Suspect Is Spouse	31	40.3	46	59.7
Suspect Is Not Spouse	6	42.9	8	57.1
Victim Grade at Time of Incident (NS)				
Enlisted	79	36.2	139	63.8
Officer	5	35.7	9	64.3
Relationship Between Victim and Suspect ^c (NS)				

Supervisor – Subordinate	4	28.6	10	71.4
Spouse/Former Spouse	36	38.3	58	61.7
Intimate Partner/Former Intimate Partner	18	34.6	34	65.4
Friend	38	34.9	71	65.1
Co-worker/Classmate/Roommate	12	27.3	32	72.7
Acquaintance	18	39.1	28	60.9
Stranger	9	50.0	9	50.0
Victim Age (NS)	(Mean = 23.1, SD = 5.3)		(Mean = 24.2, SD = 5.7)	

^a AFOSI uses the Investigative Information Management System (I2MS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed did not report race or ethnicity in the title section of the investigation. Reviewers recorded race and ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services’ Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The “other relationship,” “online/met for the first time,” and “recruiter – recruit” categories were excluded because of their small numbers; the “unknown/unable to determine” category was also excluded from this analysis.

Victim participation is related to four indicators of victim behavior during the incident and to the ability to recall information (Table 3-14d). Rates of victim participation were greater when the victim used alcohol during the incident (68.2%) than when the victim did not use alcohol (54.7%), and when the victim used drugs during the incident (78.8%) than when the victim did not use drugs (61.1%). Similarly, victim participation rates were greater when the victim was impaired (passed out/unconscious/asleep or blacked out/memory loss) than when not impaired (71.2% compared to 55.1%). Victim participation rates were also greater when there was information in the case file that indicated the victim suffered from memory loss (74.2%) than when the case file did not indicate the victim suffered from some memory loss (57.1%). Victim complexity factors, including a motive to lie, inconsistent statements, and contradictory evidence, were not statistically related to victim participation. Similarly, victim collateral and other victim misconduct, victim behavior health concerns, and victim consensual sexual contact with the suspect were not related to rates of victim participation.

TABLE 3-14d. VICTIM PARTICIPATION OR DECLINATION: VICTIM FACTORS

	Victim Declined (n = 151)		Victim Participated (n = 252)	
Victim Impairment ($\chi^2 = 12.53, p < .05$)				
Not Impaired	93	44.9	114	55.1
Passed Out/Unconscious/Asleep	26	24.8	79	75.2
Blacked Out/Memory Loss	27	34.2	52	65.8
Victim Alcohol Use ($\chi^2 = 7.68, p < .05$)				
Yes	74	31.8	159	68.2
No	77	45.3	93	54.7
Victim Drug Use ($\chi^2 = 4.05, p < .05$)				
Yes	7	21.2	26	78.8
No	144	38.9	226	61.1
Victim Lack of Memory ($\chi^2 = 10.94, p < .05$)				
Yes	33	25.8	95	74.2
No	118	42.9	157	57.1
Victim Motive to Lie (NS)				

Yes	65	35.5	118	64.5
No	86	39.1	134	60.9
Victim Inconsistent Statements (NS)				
Yes	48	32.4	100	67.6
No	103	40.4	152	59.6
Victim Contradictory Evidence (NS)				
Yes	21	30.4	48	69.6
No	130	38.9	204	61.1
Victim Collateral Misconduct (NS)				
Yes	40	41.2	57	58.8
No	111	36.3	195	63.7
Victim Other Misconduct (NS)				
Yes	29	37.7	48	62.3
No	122	37.4	204	62.6
Victim Behavioral Health Concerns Before or After Incident (NS)				
Yes	38	41.3	54	58.7
No	111	35.9	198	64.1
Victim Consensual Sexual Contact with Suspect (NS)				
Yes – prior to incident	68	36.6	118	63.4
Yes – following incident	1	20.0	4	80.0
Yes – prior to and following incident	21	44.7	26	55.3
No	61	37.0	104	63.0

Several suspect-related variables were related to victim participation, including alcohol use, lack of memory, suspect behavioral health concerns, the existence of M.R.E. 413 and 404(b) evidence, and suspect statements to law enforcement and/or third parties (Table 3-14e). Rates of victim participation were greater when the suspect used alcohol during the incident (69.3%) than when the suspect did not use alcohol (54.6%). Victim participation was also more likely in cases in which the suspect suffered from memory loss (86.4%) than when the suspect did not suffer from memory loss (61.2%). Victim participation was greater when 413 or 404(b) evidence existed for the suspect (78.3% compared to 58.4%) and was greater when there were behavioral health concerns about the suspect (85.1% compared to 59.9%). The rates of victim participation were lowest when the suspect claimed that sexual contact was consensual (56.8%) or denied the crime or sexual contact (64.8%). Victims participated in nearly all cases in which the suspect confessed (90.0%). Several suspect variables were not associated with victim participation, including suspect race and grade, suspect drug use, suspect collateral and other misconduct, contradictory evidence, and suspect’s inconsistent statements.

TABLE 3-14e. VICTIM PARTICIPATION OR DECLINATION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	Victim Declined (n = 151)		Victim Participated (n = 252)	
Suspect Race ^a (NS)				
White ^b	106	37.2	179	62.8
Non-White	40	42.1	55	57.9
Suspect Grade at Time of Incident (NS)				

Officer	11	36.7	19	63.3
Enlisted	138	37.3	232	62.7
Suspect Alcohol Use ($\chi^2 = 9.19$; $p < .05$)				
Yes	67	30.7	151	69.3
No	84	45.4	101	54.6
Suspect Drug Use (NS)				
Yes	2	40.0	3	60.0
No	149	37.4	249	62.6
Suspect Lack of Memory ($\chi^2 = 5.64$, $p < .05$)				
Yes	3	13.6	19	86.4
No	148	38.8	233	61.2
Suspect Inconsistent Statements (NS)				
Yes	9	30.0	21	70.0
No	142	38.1	231	61.9
Suspect Contradictory Evidence (NS)				
Yes	2	28.6	5	71.4
No	149	37.6	247	62.4
Suspect Collateral Misconduct (NS)				
Yes	40	33.9	78	66.1
No	111	38.9	174	61.1
Suspect Other Misconduct (NS)				
Yes	39	32.0	83	68.0
No	112	39.9	169	60.1
Suspect 413 and 404(b) Evidence ($\chi^2 = 11.11$, $p < .05$)				
Yes	18	21.7	65	78.3
No	133	41.6	187	58.4
Suspect Behavioral Health Concerns Before or After Incident ($\chi^2 = 11.30$, $p < .05$)				
Yes	7	14.9	40	85.1
No	142	40.1	212	59.9
Suspect Statement ($\chi^2 = 14.14$, $p < .05$)				
Confessed	1	10.0	9	90.0
Consensual	80	43.2	105	56.8
Denied Crime/Sexual Activity	19	35.2	35	64.8
No Recollection/Partial memory	3	15.8	16	84.2
Other	3	15.0	17	85.0

^a AFOSI uses the Investigative Information Management System (I2MS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed did not report race or ethnicity in the title section of the investigation. Reviewers recorded race and ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

MULTIVARIATE ANALYSIS

The multivariate models were built by starting with independent variables that showed a significant bivariate relationship with the dependent variable. The models were refined in light of results of the initial model and of close relationships between two independent variables. In addition, some independent variables were excluded if there were small numbers of cases in categories of the independent variable across categories of the dependent variable (e.g., suspect confession by command decision). Several of the suspect complexity factors were related to the preferral decision (Table 3-13e). In order to simplify the model, one binary variable was created that measured the existence of any of the six suspect complexity factors (yes or no).⁶

Table 3-15a presents the results of this final multivariate model that treated the commander decision to prefer the case or take no action in the case as the dependent variable. Seven cases in which the commander took administrative action were excluded from this analysis. The following patterns of relationships emerged from the multivariate model:

- When probable cause was determined to exist, as compared to cases without a probable cause determination and cases in which probable cause was determined to not exist, there was a greater likelihood the case would be preferred. Judge advocates made probable cause determinations for the purposes of indexing with the FBI.
- A participating victim increased the chances of case preferral.
- When the victim was represented by an attorney, prior to trial, there was a greater likelihood of preferral.
- When any DNA evidence in the case was tested, there was an increased chance that the case would be preferred.
- When the offender used force or made threats of force, the chances of preferral were greater.
- When at least one of the suspect complexity factors was perceived to exist, the chances of preferral were greater than if none of the suspect complexity factors was perceived to exist.

TABLE 3-15a. LOGISTIC REGRESSION: COMMANDER DECISION TO PREFER CASES OR TAKE NO ACTION

	B	SE	Exp(B)
Probable cause exists	1.53*	.27	4.60
Victim participated	1.63*	.31	5.12
Victim attorney representation (prior to trial)	1.18*	.29	3.24
DNA evidence tested	.85*	.30	2.33
Victim impaired	.69*	.28	1.99
Threat or use of force occurred	1.62*	.34	5.03
At least one suspect complexity factor existed	.82*	.28	2.27

*p < .05

⁶ The victim complexity factor variable measured whether any of the following six factors existed: victim lack of memory, victim inconsistent statements, victim contradictory evidence, victim motive to lie, victim collateral misconduct, and victim other misconduct. The suspect complexity factor variable measured whether any of the following six factors existed: suspect lack of memory, suspect inconsistent statements, suspect contradictory evidence, suspect M.R.E. 413 and 404(b) evidence, suspect collateral misconduct, and suspect other misconduct.

Model $\chi^2 = 154.01$, $df = 7$, $p < .05$

Table 3-15b presents the results of a multivariate model that treated victim participation or declination as the dependent variable. Few variables exhibited a statistically significant relationship with the victim participation variable.

- Pretextual communication was associated with a greater chance of victim participation.
- Victim memory loss/loss of consciousness during the incident was associated with an increased chance of victim participation.
- Suspect alcohol use was related to an increased chance of victim participation.
- The existence of a suspect behavioral health concern, either before or after the incident, was associated with an increased chance of victim participation.
- Suspect M.R.E. 413 and 404(b) evidence was associated with a greater likelihood of victim participation.

TABLE 3-15b. LOGISTIC REGRESSION: VICTIM PARTICIPATION OR DECLINATION

	B	SE	Exp(B)
Pretextual communication	1.30*	.34	3.67
Victim memory loss/loss of consciousness	.67*	.26	1.95
Suspect consumed alcohol	.52*	.23	1.69
Suspect behavioral health concerns	1.34*	.44	3.83
Suspect 413 and 404(b) evidence	.96*	.31	2.60

* $p < .05$

Model $\chi^2 = 56.29$, $df = 5$, $p < .05$

PART 4
Army Results

The Army case file data were analyzed to understand case characteristics and patterns of relationships between key variables. The analysis examined 821 Army cases. The first step in the analysis examined univariate statistics to understand the Army cases. The second step explored bivariate relationships between case and individual characteristics and two key outcome variables: command decision to take action and victim participation in justice proceedings. The final analysis estimated multivariate models for the two dependent variables (command action and victim participation).

UNIVARIATE STATISTICS: ARMY CASE CHARACTERISTICS

Table 4-1 presents information about the commanders’ decisions in Army cases and justice system outcomes for penetrative sexual assaults. The commander did not take action in 72.7% of cases and preferred 25.0% of cases. Administrative actions occurred in 2.3% of cases (n = 19). Fourteen of these 19 cases ended in administrative separation. Court-martial occurred in 94 of the 181 referred cases (51.9%), and alternative dispositions, such as discharges, occurred in 111 of the 205 preferred cases (54.1%). Court-martial more commonly resulted in acquittal (55.3%) than conviction (44.7%) and dismissal was the most common alternative disposition (54.1%), followed by discharge in lieu of court-martial (45.0%).

TABLE 4-1. COMMAND ACTION DECISIONS AND COURT-MARTIAL RESULTS

	N	%
Initial Command Action on Penetrative Sexual Assault		
No Command Action	597	72.7
Preferred	205	25.0
Administrative Action ^a	19	2.3
Case Preferral/Referral (n = 205)		
Preferred Only	24	11.7
Preferred and Referred	181	88.3
Referred Cases with a Finding	94	51.9
Court-Martial Result (n = 94)		
Acquittal	52	55.3
Conviction for at Least One Penetrative Sexual Assault Charge – Court-Martial	37	39.4
Conviction for at Least One Penetrative Sexual Assault Charge – PTA at Court-Martial	5	5.3
Alternative Disposition (n = 111)		
Administrative Separation	1	0.9
Discharge in Lieu of Court-Martial	50	45.0
Dismissal	60	54.1

^a This category included 14 administrative separations, 4 cases of other administrative action, and 1 case of nonjudicial punishment.

Table 4-2 describes Army cases in terms of incident location. Over one-half of the reported sexual assaults occurred on installation (53.7%), and nearly three-quarters occurred in the

continental United States (73.4%). Three cases occurred in a deployed location (i.e., Iraq or Afghanistan).

TABLE 4-2. INCIDENT LOCATION

	N	%
Installation		
On Installation	441	53.7
Off Installation	380	46.3
Location of Incident		
CONUS	603	73.4
OCONUS	210	25.6
CONUS and OCONUS	8	1.0
Vessel	0	0
Vessel and CONUS	0	0
Vessel and OCONUS	0	0
Deployment		
Deployed Location (Iraq or Afghanistan only)	3	0.4
Non-Deployed Location	818	99.6

Table 4-3 summarizes information about the time between key events in the cases, including the times between the offense, the report to authorities, MCIO case closure, and the command decision in preferred cases. The data collection form captured information about the dates of these key events, and the number of days between them was computed. In some cases, there were multiple dates listed for the date the incident occurred and a date range was captured on the data collection form. In these situations, the latest (most recent) incident date was used to compute the days between the incident and key events (i.e., date of report and decision dates). When one of the dates used in the calculations was missing, computations were not possible; these cases therefore are categorized as “unknown.” In addition, when the date of one event should have logically occurred after the date of another event but the dates show the reverse (e.g., the date of the commander’s decision occurred *before* the date the incident was reported, or the date the MCIO closed the case occurred *before* the date the incident was reported to authorities), these cases are categorized as “unknown.” This latter categorization rule was also used when a range of dates was provided for the date of the incident and the most recent incident date occurred *after* the date the incident was reported (i.e., these cases are categorized as “unknown”).

Over one-third (39.0%) of cases were reported within 7 days of the incident, including 32.5% of cases that were reported within 3 days of the incident. Over half of the Army cases were reported within 30 days of the incident (54.8%). The median number of days between the report and the incident was 17, indicating that half of the Army cases were reported within 17 days and half of the cases were reported to authorities after 17 days.

Over one-half of no action cases (51.1%) were closed by the MCIO within 6 months of the date the offense was reported to authorities. The median number of days between the report to authorities and the MCIO case closure date was 177.5 days; half of the no action cases were closed by the MCIO report in fewer than 177.5 days after the date the offense was reported to authorities.

Finally, Table 4-3 shows that among preferred cases, 20.1% were preferred within 4 months of the date on which the incident was reported to authorities and 34.3% were preferred within 6 months. The median number of days between the date of the decision to prefer and the date on which the incident was reported to authorities was 256.

TABLE 4-3. TIME BETWEEN KEY ACTIONS IN THE CASE

	N	%
Number of Days Between Offense and Report to Authorities		
0 (same day)	109	13.3
1 – 3	158	19.2
4 – 7	53	6.5
8 – 14	62	7.6
15 – 30	67	8.2
31 – 60	77	9.4
61 – 90	48	5.9
91 – 120	34	4.1
121 – 150	21	2.6
151 – 180	23	2.8
181 – 210	11	1.3
211 – 240	12	1.5
241 – 270	11	1.3
271 – 365	18	2.2
366 +	106	12.9
Unknown	11	1.3
Median number of days = 17		
Days Between Report to Authorities and MCIO Closure of the Case in No Action Cases (n = 597)		
0 – 60	77	12.9
61 – 120	106	17.8
121 – 180	122	20.4
181 – 240	111	18.6
241 – 300	64	10.7
301 – 360	44	7.4
361 +	72	12.1
Unknown	1	0.2
Median number of days = 177.5		
Number of Days Between Report to Authorities and Command Decision in Preferred Cases (n = 205)		
0 – 60	12	5.9
61 – 120	29	14.2
121 – 180	29	14.2
181 – 240	27	13.2
241 – 300	21	10.2
301 – 360	22	10.7
361 +	61	29.8
Unknown	4	2.0
Median number of days = 256		

Suspect characteristics are summarized in Table 4-4. A large majority of cases involved suspects who were enlisted (92.6%) with a pay grade of E-5 or lower (80.2%). Over one-quarter of suspects (28.9%) were E-4 personnel. Nearly one-half of officer suspects (49.2%) were O-2 or O-3. Nearly all suspects were male (97.3%) and 61.4% of suspects were White. Nearly one-third of suspects (31.5%) were African American. The White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African. The average age of suspects was 25.9 years.

TABLE 4-4. SUSPECT CHARACTERISTICS

	N	%
Suspect Grade at Time of Incident		
Enlisted	760	92.6
Officer	61	7.4
Suspect Pay Grade at Time of Incident		
Enlisted (n = 760)		
E-1	42	5.5
E-2	72	9.5
E-3	151	19.9
E-4	220	28.9
E-5	125	16.4
E-6	82	10.8
E-7	52	6.8
E-8	13	1.7
E-9	3	0.4
Officer (n = 61)		
Cadet/Midshipman	2	3.3
O-1	4	6.6
O-2	14	23.0
O-3	16	26.2
O-4	7	11.5
O-5	8	13.1
W-2	5	8.2
W-3	4	6.6
W-4	1	1.6
Suspect Gender		
Male	799	97.3
Female	22	2.7
Suspect Age	Mean = 25.9; SD = 6.6; Range = 18 – 53	
Suspect Race ^a		
White ^b	504	61.4
Black or African American	259	31.5
Asian	17	2.1
Native Hawaiian or Other Pacific Islander	9	1.1
American Indian or Alaska Native	3	0.4
Other Race, Ethnicity, or Origin	9	1.1
Unknown	20	2.4

^a CID uses the Army Law Enforcement Reporting and Tracking System Database Center (ALERTS) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but not ethnicity. Reviewers recorded ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

Table 4-5 presents information about suspects' drug and alcohol use during the time of the incident and about other suspect characteristics related to the investigation. Drug use during the incident was rare but suspect alcohol use was common (50.4% of incidents). It was rare for a suspect to have any behavioral health concerns listed in the case files (6.0%). The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). At least one of six suspect complexity factors existed in over half of the cases (58.1%). The most common suspect complexity factors were collateral misconduct at the time of the incident (38.0%) and other forms of misconduct (19.0%). Suspect's contradictory evidence, loss of consciousness, and inconsistent statements were not common.

TABLE 4-5. SUSPECT FACTORS

	N	%
Suspect Alcohol Use		
Yes	414	50.4
No	407	49.6
Suspect Drug Use		
Yes	15	1.8
No	806	98.2
Suspect Behavioral Health Concerns Before or After Incident		
Yes	49	6.0
No	772	94.0
Suspect Complexity Factors ^a		
Collateral Misconduct	312	38.0
Other Misconduct	156	19.0
Loss of Memory or Consciousness	29	3.5
413 and 404(b) Evidence	84	10.2
Inconsistent Statements	101	12.3
Contradictory Evidence	27	3.3
At Least One of the Six Factors Exists in the Case	477	58.1

^a These categories were not mutually exclusive; multiple factors could have been present for a single suspect. Percentages were calculated based on the full set of 821 cases and do not sum to 100%.

Table 4-6 summarizes information about suspects' statements and legal representation. Suspects offered statements to law enforcement in 67.7% of cases and suspects rarely had legal representation (6.0%) at the time of the interview. The data collection instrument recorded information from the case file about the content of suspect statements to law enforcement and third parties. The most common suspect statement was to indicate that the sexual contact was consensual (67.7%), followed by denying that the event was a crime or denying the sexual contact (19.9%). Suspects confessed in 54 cases (8.8%).

TABLE 4-6. SUSPECT STATEMENTS AND REPRESENTATION

	N	%
Suspect Provided Statement to Law Enforcement		
Yes	556	67.7
No	265	32.3
Suspect Had Legal Representation		
Yes	49	6.0
No	772	94.0
Suspect Statement to Third Parties or Law Enforcement ^a		
Confessed	54	8.8
Consensual	415	67.7
Denied Crime/Sexual Activity	122	19.9
No Recollection/Partial Memory	8	1.3
Other	14	2.3

^a Reports included information with multiple suspect statements in 57 cases. A hierarchy rule was used to code cases with multiple statements: Cases were coded as “confessed” if the suspect confessed and offered any other statement. The next code in the hierarchy was “consensual” and was used when the suspect reported that the sexual activity was consensual (but did not confess). The third category in the hierarchy was “denied crime or denied penetrative sexual activity” and was used when the suspect offered multiple statements but not “confessed” and not “consensual.” The “no recollection/partial memory” category was used when only this statement was made. The last category was “other” and was used when the provided statement did not clearly fit into any of the previous categories. Information about suspects’ statements was available for 613 cases.

Tables 4-7 and 4-8 present information about victims. Forty-seven percent of victims were enlisted Service members, while it was rare for a victim to be an officer (2.3%). Civilians represented 50.7% of all victims and military personnel represented 49.3% of victims. Among the enlisted victims, 91.8% were E-4 or lower. The large majority of victims were female (94.3%) and the average victim age was 23.7. White victims comprised 70.9% of the sample and African Americans represented 18.6% of victims. As was true of suspects, it is important to note that the White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African.

Table 4-7 also summarizes the relationships between victims and suspects. Stranger cases were relatively rare (9.9%) and friend relationships were most common (22.5%), followed by current or former spouses (19.0%) and acquaintances (15.7%). Recruit (victim)–recruiter (suspect) and supervisor (suspect)–subordinate (victim) relationships were not common among Army cases (4.4%). Finally, Table 4-7 shows which individuals reported the incident: the victim (36.3%), a victim-authorized representative (30.2%), a third party (17.3%), or command (16.2%).

TABLE 4-7. VICTIM CHARACTERISTICS

	N	%
Victim Status at Time of Incident		
Enlisted	386	47.0
Officer	19	2.3
Civilian – Not DoD Spouse	202	24.6
Civilian – DoD Spouse	214	26.1
Suspect Is Spouse/Former Spouse	134	62.6
Suspect Is Not Spouse ^a	80	37.4
Victim Pay Grade at Time of Incident		
Enlisted (n = 386)		

REPORT ON INVESTIGATIVE CASE FILE REVIEWS FOR MILITARY ADULT
PENETRATIVE SEXUAL OFFENSE CASES CLOSED IN FISCAL YEAR 2017

E-1	24	6.2
E-2	91	23.6
E-3	123	31.9
E-4	116	30.1
E-5	19	4.9
E-6	9	2.3
E-7	3	0.8
Unknown	1	0.3
Officer (n = 19)		
Cadet/Midshipman	3	15.8
O-1	3	15.8
O-2	5	26.3
O-3	4	21.1
O-4	1	5.3
W-1	1	5.3
W-2	2	10.5
Victim Gender		
Male	47	5.7
Female	774	94.3
Victim Age	Mean = 23.7; SD = 6.5; Range = 16 – 60	
Victim Race ^b		
White ^c	582	70.9
Black or African American	153	18.6
Asian	30	3.7
Native Hawaiian or Other Pacific Islander	15	1.8
American Indian or Alaska Native	9	1.1
Other Race, Ethnicity, or Origin	19	2.3
Unknown	13	1.6
Relationship to Suspect ^d		
Current or Former Spouse	156	19.0
Intimate Partner/Former Intimate Partner	96	11.7
Friend	185	22.5
Co-worker/Classmate/Roommate	69	8.4
Subordinate – Supervisor	27	3.3
Acquaintance	129	15.7
Online/Met for the First Time	24	2.9
Stranger	81	9.9
Recruit – Recruiter	9	1.1
Other	19	2.3
Unknown/Unable to Determine	26	3.2
Reporting Individual		
Victim	298	36.3
Victim-Authorized Representative	248	30.2
Command	133	16.2
Third Party	142	17.3

^a This category includes all other types of relationships, including those cases for which data are missing and those in which the nature of the relationship could not be determined.

^b CID uses the Army Law Enforcement Reporting and Tracking System Database Center (ALERTS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed reported race in the title section of the investigation, but not ethnicity. Reviewers recorded ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^c This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^d The data analyzed here were based on the victim's reported relationship to the suspect. See Appendix for more details about this variable.

Table 4-8 presents information about victims' drug and alcohol use and level of impairment during the time of the incident, in addition to other victim characteristics related to the investigation. As was true of suspect variables, victim drug use was substantially less common than victim alcohol use (9.1% compared to 53.5%). Forty-four percent of all victims reported some level of impairment during the offense. Victims who were impaired most often reported passing out, being unconscious, or being asleep (55.9%), followed by reporting some memory loss and/or blacking out (38.6%). The large majority of victims (86.8%) did not have any history of behavioral health concerns listed in the case files. The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). The data collection instrument also recorded information about victim's statements or behaviors that may have been relevant during the investigation, and data show 37.3% had a motive to lie, 32.8% experienced some memory loss or were unconscious, 27.6% of victims provided inconsistent statements, and there was evidence of collateral victim misconduct in 24.2% percent of cases. Approximately three-quarters of cases (74.5%) involved a victim who was perceived to have at least one complexity factor.

TABLE 4-8. VICTIM FACTORS

	N	%
Victim Alcohol Use		
Yes	439	53.5
No	382	46.5
Victim Drug Use		
Yes	75	9.1
No	746	90.9
Victim Reported Being Impaired		
Yes	363	44.2
No	458	55.8
Nature of Victim Impairment ^a		
Passed Out/Unconscious/Asleep	203	55.9
Blacked Out/No Memory/Partial Memory	140	38.6
Unknown ^b	20	5.5
Victim Behavioral Health Concerns Before or After Incident		
Yes	108	13.2
No	713	86.8
Victim Complexity Factors ^c		
Collateral Misconduct	199	24.2
Other Misconduct	124	15.1
Loss of Memory or Consciousness	269	32.8
Inconsistent Statements	227	27.6

Motive to Lie	306	37.3
Contradictory Evidence	85	10.4
At Least One of the Six Factors Exists in the Case	612	74.5

^a Victims were impaired in 363 cases, including 20 cases in which the nature of impairment was not clear (e.g., “drugged,” “vision and perception were impaired,” and “in and out”). Multiple reasons were provided for the nature of impairment in 160 cases. To simplify the analyses of impairment reasons, a single variable was created to measure the reason for impairment. The categories for this variable are mutually exclusive. The “passed out/unconscious/asleep” category is considered to be the greatest level of impairment, followed by “blacked out/no memory/partial memory.” If the case indicated “passed out” or “unconscious” AND “blacked out” or “partial memory,” then the case was coded as “passed out/unconscious/asleep.” If the case indicated “blacked out,” “partial memory,” or “no memory” AND “asleep,” then the case was coded as “passed out/unconscious/asleep.”

^b This category included 20 cases in which the nature of impairment was not clear.

^c These categories were not mutually exclusive; multiple factors could have been present for a single victim.

Percentages were calculated based on the full set of 821 cases and do not sum to 100%.

Table 4-9 presents information about victim injuries and suspects’ use of force and threats. A suspect used or threatened to use force in 13.5% of cases; use of weapons was rare, occurring in seven cases. Victims sustained injuries in 13.4% of cases. Bruising and redness were the most common victim injuries, but were still relatively rare. It was not common for there to be witnesses in the case (15.8%; see item 57 on the data collection form). Investigators collected pretextual communication evidence in 12.3% of cases, and the most common result of the pretextual communication was to support neither the victim’s nor the suspect’s account.

TABLE 4-9. VICTIM INJURIES AND EVIDENCE

	N	%
Use/Threat of Force		
Yes	111	13.5
No	710	86.5
Type of Force/Threat ^a		
Physical	104	12.7
Weapon	7	0.9
Coercion	11	1.3
Threat/Threat to Others	12	1.5
Physical Injuries to Victim ^b		
Yes	110	13.4
No	711	86.6
Injuries ^c		
Redness	40	4.9
Bruising	82	10.0
Cuts	28	3.4
Scrapes	15	1.8
Witness to the Incident		
Yes	130	15.8
No	691	84.2
Pretextual Communication		
Yes	101	12.3
Supports Victim Account	16	15.8
Supports Suspect Account	20	19.8
Supports Neither	65	64.4
No	720	87.7

^a Categories were not mutually exclusive; cases could involve multiple types of force and threats.

^b Victim injury was based on self-reported or recorded information in the case files and SAFE reports.

^c Categories were not mutually exclusive; cases could involve multiple types of injuries.

Table 4-10 presents information about forensic evidence in Army cases. A sexual assault forensic examination (SAFE) was performed on victims in 30.1% of the cases. When a SAFE was performed, 64.4% occurred within one day of the incident. Military and civilian medical facilities performed nearly the same number of SAFEs, and half of the exams were performed by military and DoD civilian medical professionals. The measure of DNA testing indicates whether *any* DNA evidence from the case was tested. DNA evidence was tested in 19.7% of all Army cases.

TABLE 4-10. FORENSIC EVIDENCE

	N	%
SAFE Performed on Victim		
Yes	247	30.1
No	574	69.9
Days Between Offense and Victim SAFE (n = 247)		
0 (same day)	84	34.0
1	75	30.4
2	38	15.4
3	14	5.7
4	6	2.4
5	2	0.8
6	2	0.8
7	1	0.4
8 – 14	6	2.4
15 +	9	3.6
Unknown	10	4.1
Victim SAFE Location (n = 247)		
Civilian Health Care Facility	120	48.6
Military Health Care Facility	127	51.4
Victim SAFE Provider Type (n = 247)		
Civilian Provider	122	49.4
Military Examiner	58	23.5
DoD Civilian	64	25.9
Unknown	3	1.2
DNA Evidence Tested ^a		
Yes	162	19.7
No/Unknown	659	80.3

^a The DNA testing variable measured *any* DNA evidence testing in the case, not only sexual assault kit evidence collected from the victim.

Victim participation is summarized in Table 4-11. Victims participated in 72.6% of Army cases and declined in 27.4% of cases. Among the victims who declined, a large majority (91.1%) declined early in justice system processing (during investigation and reporting). Victims rarely provided their input to commanders (2.8% of all cases). Over half of victims (52.2%) who provided input requested administrative separation. Victims were represented by attorneys during the investigation in slightly less than half of the cases (46.8%), and victims provided statements to law enforcement in nearly all cases (96.2%).

TABLE 4-11. VICTIM PARTICIPATION

	N	%
Victim Declination Recorded in File		
Victim Participated	596	72.6
Victim Declined	225	27.4
Declination Stage		
Investigation	187	83.1
Reporting	18	8.0
Court-Martial	15	6.7
Preliminary Hearing	5	2.2
Victim Input to Command or SJA		
No	798	97.2
Yes	23	2.8
Input Provided to Command (n = 23)		
Pursue Administrative Separation	12	52.2
Supports DILCOM	2	8.7
Pursue Court-Martial	0	0
Take No Action	1	4.3
Nonjudicial Punishment/Administrative Actions	1	4.3
Other	7	30.4
Victim Attorney Representation (prior to trial)		
Yes	384	46.8
No	437	53.2
Victim Provided Statement to Law Enforcement		
Yes	790	96.2
No	31	3.8

Table 4-12 presents information about probable cause determinations. A judge advocate made a probable cause determination, for purposes of indexing with the FBI’s NCIC criminal history database, in nearly all Army cases (95.7%), and probable cause was determined to exist in 380 cases, representing 46.3% of all cases and 48.3% of cases in which a determination was made.

TABLE 4-12. PROBABLE CAUSE DETERMINATION

	N	%
Probable Cause Determination Made		
Yes	786	95.7
No	35	4.3
Probable Cause Determination Result (n = 786)		
Yes, Probable Cause Exists	380	48.3
Probable Cause Does Not Exist	406	51.7

BIVARIATE RELATIONSHIPS

The second stage of the analysis estimated relationships between case characteristics and two important outcome variables: (1) the commander’s decision to prefer or to not take action and (2) the victim’s decision to participate or to decline. These comparisons are consistent with analyses performed for the other Service branches. A DoD-wide analysis that combines all Service

branches will examine differences between cases that end in acquittal and cases that end in a conviction. Cases that ended in some administrative action (n = 19) were excluded from the analyses described below that examined preferral and no action outcomes.

COMMAND ACTION DEPENDENT VARIABLE: NO ACTION COMPARED TO PREFERRED

The patterns in Table 4-13a show there was no relationship between the preferral decision and whether the report was made promptly (i.e., within one week). The median number of days between the incident and the report to authorities was shorter in preferred cases (11 days) compared to no action cases (21 days). Cases were least likely to be preferred when a third party or command made the report; cases were most likely to be preferred when the victim reported. Cases in which probable cause was determined to exist were most likely to be preferred. Cases were rarely preferred when probable cause was not determined to exist (n = 5).

TABLE 4-13a. COMMAND ACTION DECISION: INCIDENT LOCATION AND REPORTING INFORMATION

	No Command Action (n = 597)		Preferral (n = 205)	
	N	%	N	%
Incident Location (NS)				
On Installation	324	75.5	105	24.5
Off Installation	273	73.2	100	26.8
Reporting Individual ($\chi^2 = 8.60, p < .5$)				
Victim	205	69.7	89	30.3
Victim-Authorized Representative	178	73.6	64	26.4
Command	101	80.8	24	19.2
Third Party	113	80.1	28	19.9
Prompt Report (within 7 days) (NS)				
Yes	221	70.8	91	29.2
No	367	76.6	112	23.4
Number of Days Between Incident and Report to Authorities	Median = 21		Median = 11	
Probable Cause ^a ($\chi^2 = 309.4, p < .05$)				
No Determination Made	31	88.6	4	11.4
Probable Cause Existed	161	44.6	200	55.4
Probable Cause Did Not Exist	405	99.8	1	0.2

^aJudge advocates made probable cause determinations for purposes of indexing with the FBI.

Several evidentiary variables are related to preferral outcomes (Table 4-13b). Cases were more likely to be preferred when pretextual communication occurred (38.0%) than when no pretextual communication occurred (23.8%). When victims were injured and when suspects used or threatened to use force, the chances of case preferral were greater than when victims were not injured and when suspects did not use or threaten to use force. Victim participation, compared to declination, also increased the likelihood that the case would be preferred. Nearly one-third of the cases with a participating victim (32.9%) were preferred, compared to 5.2% of cases in which the victim declined. Finally, the performance of a SAFE exam, DNA testing, and victim attorney

representation during the investigation were all associated with increased chances that the case would be preferred.

TABLE 4-13b. COMMAND ACTION DECISION: EVIDENCE

	No Command Action (n = 597)		Preferral (n = 205)	
Witness to the Incident (NS)				
Yes	94	72.3	36	27.7
No	503	74.9	169	25.1
Pretextual Communication Occurred ($\chi^2 = 9.29, p < .05$)				
Yes	62	62.0	38	38.0
No	535	76.2	167	23.8
Pretextual Communication Result (NS)				
Supports Victim Account	6	37.5	10	62.5
Supports Suspect Account	14	70.0	6	30.0
Supports Neither Account	42	65.6	22	34.4
Victim Physical Injuries ($\chi^2 = 27.35, p < .05$)				
Yes	59	54.1	50	45.9
No	538	77.6	155	22.4
Threat or Use of Force ($\chi^2 = 17.01, p < .05$)				
Yes	63	58.3	45	41.7
No	534	76.9	160	23.1
Victim Participation ($\chi^2 = 62.86, p < .05$)				
Yes	396	67.1	194	32.9
Declined ^a	201	94.8	11	5.2
Sexual Assault Exam Performed on Victim ($\chi^2 = 28.26, p < .05$)				
Yes	150	62.0	92	38.0
No	447	79.8	113	20.2
DNA Evidence Tested ($\chi^2 = 61.76, p < .05$)				
Yes	79	50.0	79	50.0
No	518	80.4	126	19.6
Victim Attorney Representation (prior to trial) ($\chi^2 = 12.91, p < .05$)				
Yes	257	68.5	118	31.5
No	340	79.6	87	20.4

^a Victim declinations could have occurred before or after preferral. Table 4-11 shows that over 90% of all victims declined at the reporting or investigation stage.

Victim characteristics such as gender, age, military/civilian status, and relationship to the suspect, were not related to the preferral decision (Table 4-13c). Victim race and the command decision were related: cases with White victims were more likely to be preferred (27.9%) than cases with non-White victims (19.0%). Victim grade and the command decision were also related such that cases with officer victims were more likely to be preferred; but because of the small number of cases with officer victims, the statistical test of significance may not be reliable.

TABLE 4-13c. COMMAND ACTION DECISION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	No Command Action (n = 597)		Preferral (n = 205)	
Victim Gender (NS)				
Female	565	74.7	191	25.3
Male	32	69.6	14	30.4
Victim Race ^a ($\chi^2 = 6.71, p < .05$)				
White ^b	410	72.1	159	27.9
Non-White	179	81.0	42	19.0
Victim Status at Time of Incident (NS)				
Military	288	72.7	108	27.3
Civilian – Not DoD Spouse	147	74.2	51	25.8
Civilian – DoD Spouse	162	77.9	46	22.1
Suspect Is Spouse/Former Spouse (NS)	100	76.9	30	23.1
Suspect Is Not Spouse	62	79.5	16	20.5
Victim Grade at Time of Incident ($\chi^2 = 4.06, p < .05$)				
Enlisted	278	73.7	99	26.3
Officer	10	52.6	9	47.4
Relationship between Victim and Suspect ^c (NS)				
Supervisor – Subordinate	22	81.5	5	18.5
Spouse/Former Spouse	118	78.1	33	21.9
Intimate Partner/Former Intimate Partner	66	71.0	27	29.0
Friend	130	72.2	50	27.8
Co-worker/Classmate/Roommate	54	79.4	14	20.6
Acquaintance	91	72.2	35	27.8
Stranger	61	75.3	20	24.7
Online/Met for the First Time	15	65.2	8	34.8
Other	15	78.9	4	21.1
Victim Age (NS)	(Mean = 23.8, SD = 6.5)		(Mean = 23.5, SD = 6.6)	

^a CID uses the Army Law Enforcement Reporting and Tracking System Database Center (ALERTS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed reported race in the title section of the investigation, but not ethnicity. Reviewers recorded ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c Cases in the "recruiter – recruit" category were excluded because of their small numbers. Cases in the "unknown/unable to determine" category were also excluded.

Table 4-13d shows that several victim factors were related to the preferral decision. Victim impairment was related to the preferral decision, but the interpretation is not straightforward. Cases with a victim who passed out, was unconscious, or was asleep were more likely to be preferred than cases with a victim who was not impaired or who was blacked out, or experienced some memory loss. When all the categories of impairment were combined, there was a relationship between victim impairment and the commander's decision: there was a greater

chance of preferral when the victim was impaired (30.3%) than when the victim was not impaired (22.0%). Victim alcohol use was not associated with the command decision but victim drug use was associated with the preferral decision. Cases were more likely to be preferred when the victim used drugs prior to or during the incident (44.4%) than when the victim did not use drugs prior to or during the incident (23.7%). The data collection instrument measured the existence of several victim complexity factors and three were related to the command decision. Cases were less likely to be preferred when victims were perceived to have a motive to lie, when victims provided inconsistent statements, or when there was contradictory evidence. Victim memory loss, collateral misconduct, other forms of misconduct, behavioral health concerns, and consensual sex with the suspect were not associated with the command decision to prefer the case.

TABLE 4-13d. COMMAND ACTION DECISION: VICTIM FACTORS

	No Command Action (n = 597)		Preferral (n = 205)	
Victim Impairment ($\chi^2 = 32.93, p < .05$)				
Not Impaired	350	78.0	99	22.0
Passed Out/Unconscious/Asleep	118	59.6	80	40.4
Blacked Out/Memory Loss	114	84.4	21	15.6
Victim Alcohol Use (NS)				
Yes	309	72.4	118	27.6
No	288	76.8	87	23.2
Victim Drug Use ($\chi^2 = 14.82, p < .05$)				
Yes	40	55.6	32	44.4
No	557	76.3	173	23.7
Victim Lack of Memory (NS)				
Yes	194	74.3	67	25.7
No	403	74.5	138	25.5
Victim Motive to Lie ($\chi^2 = 4.16, p < .05$)				
Yes	234	78.5	64	21.5
No	363	72.0	141	28.0
Victim Inconsistent Statements ($\chi^2 = 10.58, p < .05$)				
Yes	184	82.5	39	17.5
No	413	71.3	166	28.7
Victim Contradictory Evidence ($\chi^2 = 3.88, p \leq .05$)				
Yes	70	83.3	14	16.7
No	527	73.4	191	26.6
Victim Collateral Misconduct (NS)				
Yes	140	71.4	56	28.6
No	457	75.4	149	24.6
Victim Other Misconduct (NS)				
Yes	88	73.3	32	26.7
No	509	74.6	173	25.4
Victim Behavioral Health Concerns Before or After Incident (NS)				
Yes	73	70.9	30	29.1

No	524	75.0	175	25.0
Victim Consensual Sexual Contact with Suspect (NS)				
Yes – prior to incident	232	78.1	65	21.9
Yes – following incident	12	85.7	2	14.3
Yes – prior to and following incident	43	69.4	19	30.6
No	310	72.3	119	27.7

Several suspect characteristics were related to the preferral decision (Table 4-13e). Cases were more likely to be preferred when the suspect used alcohol (29.3%) than when the suspect did not use alcohol (21.8%). Cases were also more likely to be preferred when the suspect used drugs prior to or during the incident (66.7%) than when the suspect did not (24.8%). Because of the small number of cases with suspect drug use (n = 10), the statistical test results may not be reliable. Several suspect complexity factors were associated with an increased chance that the case was preferred: suspect memory loss, suspect’s inconsistent statements, suspect collateral and others forms of misconduct, the existence of suspect behavioral health concerns, and evidence of other sex offenses and/or related misconduct⁷ in the file. Cases were more likely to be preferred when suspects confessed.

TABLE 4-13e. COMMAND ACTION DECISION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	No Command Action (n = 597)		Preferral (n = 205)	
Suspect Race ^a (NS)				
White ^b	367	74.4	126	25.6
Non-White	215	74.1	75	25.9
Suspect Grade at Time of Incident (NS)				
Officer	45	73.8	16	26.2
Enlisted	552	74.5	189	25.5
Suspect Alcohol Use ($\chi^2 = 5.89, p < .05$)				
Yes	285	70.7	118	29.3
No	312	78.2	87	21.8
Suspect Drug Use ($\chi^2 = 13.57, p < .05$)				
Yes	5	33.3	10	66.7
No	592	75.2	195	24.8
Suspect Lack of Memory ($\chi^2 = 4.56, p < .05$)				
Yes	16	57.1	12	42.9
No	581	75.1	193	24.9
Suspect Inconsistent Statements ($\chi^2 = 26.94, p < .05$)				
Yes	53	53.5	46	46.5
No	544	77.4	159	22.6
Suspect Contradictory Evidence (NS)				

⁷ Military Rules of Evidence (M.R.E.) 413 and 404(b), respectively, cover the admissibility of other sex offenses and related misconduct. M.R.E. 413 is similar to its Federal Rule counterpart. Its purpose is to provide for the liberal admissibility of character evidence when the accused has committed a prior sexual assault offense. M.R.E. 404(b) permits the admissibility of certain evidence of other crimes, wrongs, or acts committed by the accused for the purpose of proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Yes	17	63.0	10	37.0
No	580	74.8	195	25.2
Suspect Collateral Misconduct ($\chi^2 = 6.74, p < .05$)				
Yes	210	69.3	93	30.7
No	387	77.6	112	22.4
Suspect Other Misconduct ($\chi^2 = 17.32, p < .05$)				
Yes	93	61.2	59	38.8
No	504	77.5	146	22.5
Suspect 413 and 404(b) Evidence ($\chi^2 = 38.69, p < .05$)				
Yes	39	46.4	45	53.6
No	558	77.7	160	22.3
Suspect Behavioral Health Concerns Before or After Incident ($\chi^2 = 18.16, p < .05$)				
Yes	22	47.8	24	52.2
No	575	76.1	181	23.9
Suspect Statement ($\chi^2 = 83.67, p < .05$) ^c				
Confessed	12	23.5	39	76.5
Consensual	316	78.0	89	22.0
Denied Crime/Sexual Activity	103	85.1	18	14.9
No Recollection/Partial Memory	4	50.0	4	50.0
Other	7	53.8	6	46.2

^a CID uses the Army Law Enforcement Reporting and Tracking System Database Center (ALERTS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed reported race in the title section of the investigation, but not ethnicity. Reviewers recorded ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The relationship was statistically significant when "confessed" was compared to all other suspect statements and to no statements.

VICTIM PARTICIPATION DEPENDENT VARIABLE: VICTIM PARTICIPATED – VICTIM DECLINED

Table 4-14a shows that victim participation was similar when the incident occurred on installation (72.1%) and off installation (73.2%). A prompt report—one made within one week—was not related to victim participation. Victim participation was related to the reporting individual such that participation was most likely when a victim-authorized representative reported the offense (79.0%) and when the victim reported the offense (72.8%). The median number of days between the incident and the report to authorities was similar among cases with a participating victim (17) and cases in which the victim declined to participate (19). Victim participation was associated with judge advocates' probable cause determination: participation was least likely when probable cause was determined to not exist.

TABLE 4-14a. VICTIM PARTICIPATION: INCIDENT LOCATION AND REPORTING INFORMATION

	Victim Declined (n = 225)		Victim Participated (n = 596)	
	N	%	N	%
Incident Location (NS)				
On Installation	123	27.9	318	72.1
Off Installation	102	26.8	278	73.2
Reporting Individual ($\chi^2 = 10.40, p < .05$)				
Victim	81	27.2	217	72.8
Victim-Authorized Representative	52	21.0	196	79.0
Command	46	34.6	87	65.4
Third Party	46	32.4	96	67.6
Prompt Report (within 7 days) (NS)				
Yes	138	28.2	352	71.8
No	84	26.3	236	73.8
Number of Days Between Incident and Report to Authorities	Median = 19		Median = 17	
Probable Cause ^a ($\chi^2 = 7.74, p < .05$)				
No Determination Made	5	14.3	30	85.7
Probable Cause Existed	93	24.5	287	75.5
Probable Cause Did Not Exist	127	31.3	279	68.7

^a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

Table 4-14b presents patterns of relationships between evidentiary variables and victim participation. Victim participation was unrelated to the presence of witnesses and to suspect use or threat of force. Victim participation was related to pretextual communication: victim participation rates were higher in cases with pretextual communication (87.1%) than in cases when pretextual communication did not occur (70.6%). Victims were also more likely to participate when they sustained injuries (81.8%) than when they did not sustain injuries (71.2%). Victim participation was also greater in cases when a SAFE was performed, when any DNA evidence in the case was tested, and when a victim's attorney was involved in the case during the investigation.

TABLE 4-14b. VICTIM PARTICIPATION: EVIDENCE

	Victim Declined (n = 225)		Victim Participated (n = 596)	
	N	%	N	%
Witness to the Incident (NS)				
Yes	33	25.4	97	74.6
No	192	27.8	499	72.2
Pretextual Communication Occurred ($\chi^2 = 12.23, p < .05$)				
Yes	13	12.9	88	87.1
No	212	29.4	508	70.6
Pretextual Communication Result (NS)				
Supports Victim Account	3	18.8	13	81.3
Supports Suspect Account	2	10.0	18	90.0
Supports Neither Account	8	12.3	57	87.7

Victim Physical Injuries ($\chi^2 = 5.43, p < .05$)				
Yes	20	18.2	90	81.8
No	205	28.8	506	71.2
Threat or Use of Force (NS)				
Yes	30	27.0	81	73.0
No	195	27.5	515	72.5
Sexual Assault Exam Performed on Victim ($\chi^2 = 4.69, p < .05$)				
Yes	55	22.3	192	77.7
No	170	29.6	404	70.4
DNA Evidence Tested ($\chi^2 = 6.94, p < .05$)				
Yes	31	19.1	131	80.9
No	194	29.4	465	70.6
Victim Attorney Representation (prior to trial) ($\chi^2 = 4.99, p < .05$)				
Yes	91	23.7	293	76.3
No	134	30.7	303	69.3

Table 4-14c presents patterns of relationships between victim participation and victims' demographic characteristics. Male victims were more likely to participate (91.5%) than female victims (71.4%), and military victims were more likely to participate than civilian victims (77.0% compared to 68.3%). Among the set of civilian DoD spouse victims, participation was more likely when the suspect was not the spouse (76.3%) than when the suspect was the spouse (62.7%). Similar patterns existed for the victim–suspect relationship such that rates of victim participation were among the lowest when the victim was the spouse or former spouse of the suspect (63.5%). Victim race was not related to victim participation in a statistically significant way, but the test of significance approached significance ($p = .07$) and the pattern showed that a greater percentage of White victims participated (74.6%) than non-White victims (68.1%).

TABLE 4-14c. VICTIM PARTICIPATION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	Victim Declined (n = 225)		Victim Participated (n = 596)	
Victim Gender ($\chi^2 = 8.95, p < .05$)				
Female	221	28.6	553	71.4
Male	4	8.5	43	91.5
Victim Race ^a (NS)				
White ^b	148	25.4	434	74.6
Non-White	72	31.9	154	68.1
Victim Status at Time of Incident ($\chi^2 = 7.99, p < .05$)				
Military	93	23.0	312	77.0
Civilian – Not DoD Spouse	63	31.2	139	68.8
Civilian – DoD Spouse	69	32.2	145	67.8
Suspect Is Spouse/Former Spouse ($\chi^2 = 4.22, p < .05$)	50	37.3	84	62.7
Suspect Is Not Spouse	19	23.8	61	76.3
Victim Grade at Time of Incident (NS)				

Enlisted	90	23.3	296	76.7
Officer	3	15.8	16	84.2
Relationship Between Victim and Suspect ^c ($\chi^2 = 22.62, p < .05$)				
Supervisor – Subordinate	8	29.6	19	70.4
Spouse/Former Spouse	57	36.5	99	63.5
Intimate Partner/Former Intimate Partner	23	24.0	73	76.0
Friend	38	20.5	147	79.5
Co-worker/Classmate/Roommate	10	14.5	59	85.5
Acquaintance	31	24.0	98	76.0
Stranger	24	29.6	57	70.4
Online/Met for the First Time	5	20.8	19	79.2
Other	9	47.4	10	52.6
Victim Age (NS)	(Mean = 23.8, SD = 6.7)		(Mean = 23.6, SD = 6.4)	

^a CID uses the Army Law Enforcement Reporting and Tracking System Database Center (ALERTS) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but not ethnicity. Reviewers recorded ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c Cases in the "recruiter – recruit" category were excluded because of their small numbers. Cases in the "unknown/unable to determine" category were also excluded.

Table 4-14d shows that victim participation was related to five victim variables. Victim participation rates were greater when the victim was impaired in some way (passed out/unconscious/asleep or blacked out/memory loss) than when not impaired. Rates of victim participation were greater when the victim used alcohol before or during the incident (76.8%) than when the victim did not use alcohol (67.8%). Victim participation rates were also greater when information in the case file indicated the victim suffered from memory loss (77.3%) than when the case file did not indicate the victim suffered from some memory loss (70.3%). Victims who engaged in collateral misconduct during the incident were more likely to participate (79.4%) than those who did not engage in collateral misconduct (70.4%). Three victim complexity factors, including a motive to lie, inconsistent statements, and contradictory evidence, were not statistically related to victim participation. Similarly, other forms of victim misconduct and victim consensual sexual contact with the suspect were not related to rates of victim participation. Victim behavioral health concerns were related to victim participation such that victims who did not experience behavioral health concerns before or after the incident were more likely to participate (73.8% compared to 64.8%).

TABLE 4-14d. VICTIM PARTICIPATION: VICTIM FACTORS

	Victim Declined (n = 225)		Victim Participated (n = 596)	
Victim Impairment ($\chi^2 = 7.96, p < .05$)				
Not Impaired	144	31.4	314	68.6
Passed Out/Unconscious/Asleep	45	22.2	158	77.8
Blacked Out/Memory Loss	32	22.9	108	77.1
Victim Alcohol Use ($\chi^2 = 8.25, p < .05$)				
Yes	102	23.2	337	76.8
No	123	32.2	259	67.8

Victim Drug Use (NS)				
Yes	17	22.7	58	77.3
No	208	27.9	538	72.0
Victim Lack of Memory ($\chi^2 = 4.50, p < .05$)				
Yes	61	22.7	208	77.3
No	164	29.7	388	70.3
Victim Motive to Lie (NS)				
Yes	81	26.5	225	73.5
No	144	28.0	371	72.0
Victim Inconsistent Statements (NS)				
Yes	54	23.8	173	76.2
No	171	28.8	423	71.2
Victim Contradictory Evidence (NS)				
Yes	17	20.0	68	80.0
No	208	28.3	528	71.7
Victim Collateral Misconduct ($\chi^2 = 6.11, p < .05$)				
Yes	41	20.6	158	79.4
No	184	29.6	438	70.4
Victim Other Misconduct (NS)				
Yes	41	33.1	83	66.9
No	184	26.4	513	73.6
Victim Behavioral Health Concerns Before or After Incident ($\chi^2 = 3.78, p \leq .05$)				
Yes	38	35.2	70	64.8
No	187	26.2	526	73.8
Victim Consensual Sexual Contact with Suspect (NS)				
Yes – prior to incident	91	29.9	213	70.1
Yes – following incident	2	13.3	13	86.7
Yes – prior to and following incident	12	18.8	52	81.3
No	120	27.4	318	72.6

Several suspect-related variables were related to victim participation, including alcohol use, inconsistent statements, collateral misconduct, the existence of M.R.E. 413 and 404(b) evidence, and suspect statements to law enforcement and/or third parties (Table 4-14e). Rates of victim participation were greater when the suspect used alcohol during the incident (76.3%) than when the suspect did not use alcohol (68.8%). Victims were more likely to participate when the suspect made inconsistent statements (82.2%) than when the suspect did not provide inconsistent statements (71.3%), and when the suspect committed collateral misconduct (76.9%) than when the suspect did not commit collateral misconduct (69.9%). Victim participation was also greater when 413 or 404(b) evidence existed for the suspect (84.5% compared to 71.2%). The rates of victim participation were lowest when the suspect denied sexual conduct or denied committing a crime (67.2%). When cases with suspect confessions were compared to cases without a suspect confession, the pattern shows victim participation was more likely when the suspect confessed (87.0% compared to 72.1%). Several suspect variables were unrelated to victim participation, including suspect race and grade, suspect drug use, suspect memory loss, presentation of

contradictory evidence by the suspect, suspect's behavioral health concerns, and suspect's other forms of misconduct.

TABLE 4-14e. VICTIM PARTICIPATION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	Victim Declined (n = 225)		Victim Participated (n = 596)	
Suspect Race ^a (NS)				
White ^b	137	27.2	367	72.8
Non-White	84	28.3	213	71.7
Suspect Grade at Time of Incident (NS)				
Officer	13	21.3	48	78.7
Enlisted	212	27.9	548	72.1
Suspect Alcohol Use ($\chi^2 = 5.85, p < .05$)				
Yes	98	23.7	316	76.3
No	127	31.2	280	68.8
Suspect Drug Use (NS)				
Yes	5	33.3	10	66.7
No	220	27.3	586	72.7
Suspect Lack of Memory (NS)				
Yes	4	13.8	25	86.2
No	221	27.9	571	72.0
Suspect Inconsistent Statements ($\chi^2 = 5.32, p < .05$)				
Yes	18	17.8	83	82.2
No	207	28.7	513	71.3
Suspect Contradictory Evidence (NS)				
Yes	6	22.2	21	77.8
No	219	27.6	575	72.4
Suspect Collateral Misconduct ($\chi^2 = 4.74, p < .05$)				
Yes	72	23.1	240	76.9
No	153	30.1	356	69.9
Suspect Other Misconduct (NS)				
Yes	38	24.4	118	75.6
No	187	28.1	478	71.9
Suspect 413 and 404(b) Evidence ($\chi^2 = 6.69, p < .05$)				
Yes	13	15.5	71	84.5
No	212	28.8	525	71.2
Suspect Behavioral Health Concerns Before or After Incident (NS)				
Yes	8	16.3	41	83.7
No	217	28.1	555	71.9
Suspect Statement ($\chi^2 = 9.52, p \leq .05$) ^c				
Confessed	7	13.0	47	87.0
Consensual	113	27.2	302	72.8
Denied Crime/Sexual Activity	40	32.8	82	67.2

No Recollection/Partial Memory	1	12.5	7	87.5
Other	2	14.3	12	85.7

^a CID uses the Army Law Enforcement Reporting and Tracking System Database Center (ALERTS) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but not ethnicity. Reviewers recorded ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The relationship was statistically significant when "confessed" was compared to all other suspect statements and to no statements. Victims participated in 87.0% of cases in which the suspect confessed compared to 72.1% of cases that lacked a confession.

MULTIVARIATE ANALYSIS

The models were built by starting with independent variables that showed a significant bivariate relationship with the dependent variable. The models were refined in light of results of the initial model and of close relationships between two independent variables. In addition, some independent variables were excluded if they appeared in only small numbers of cases across categories of the dependent variable (e.g., probable cause by command decision, suspect drug use). Several victim and suspect complexity factors were related to the preferral decision. In order to simplify the model, one binary variable was created that measured the existence of any of the six victim complexity factors (yes or no) and one binary variable was created that measured the existence of any of the six suspect complexity factors (yes or no).⁸

Table 4-15a presents the results of this final multivariate model that treated the commander decision to prefer the case or take no action in the case as the dependent variable. Cases in which the commander took administrative action were excluded from this analysis. Table 4-13a above showed there was a close relationship between the commander's decision and the existence of probable cause. Yet it was a rare event for a case to be preferred without probable cause (n = 5), so it is important to note that this variable was excluded from the model building process. Nineteen cases in which the commander took administrative action also were excluded from this analysis.

The following patterns of relationships emerged from the multivariate model results in Table 4-15a:

- A participating victim increased the chances a case would be preferred.
- When the victim sustained injuries the chances of preferral were greater.
- When the victim had attorney representation prior to trial, the chances of preferral were greater.
- When DNA evidence was tested, the chances a case would be preferred increased.
- The likelihood of preferral was greater when the suspect confessed than when the suspect made other statements or did not make any statements at all.

⁸ The victim complexity factor variable measured whether any of the following six factors existed: victim lack of memory, victim inconsistent statements, victim contradictory evidence, victim motive to lie, victim collateral misconduct, and victim other misconduct. The suspect complexity factor variable measured whether any of the following six factors existed: suspect lack of memory, suspect inconsistent statements, suspect contradictory evidence, suspect M.R.E. 413 and 404(b) evidence, suspect collateral misconduct, and suspect other misconduct.

- The likelihood of preferral was lower when at least one of the six victim complexity factors existed in the case than when no victim complexity factors existed.
- The likelihood of preferral was greater when at least one of the six suspect complexity factors existed in the case than when no suspect complexity factors existed.
- The chances of case preferral were lower when the incident was reported by a third party or by command than when a victim or victim-authorized representative reported the offense.

TABLE 4-15a. LOGISTIC REGRESSION: COMMANDER DECISION TO PREFER CASES OR TAKE NO ACTION

	B	SE	Exp(B)
Victim participated	2.13*	.35	8.42
Victim physically injured	.77*	.25	2.16
Victim attorney representation (prior to trial)	.56*	.20	1.75
DNA evidence tested	1.49*	.22	4.45
Suspect confessed	2.10*	.38	8.12
At least one of six victim complexity factors existed	-1.07*	.23	.34
At least one of six suspect complexity factors existed	1.00*	.22	2.72
Command or third party reported incident	-.47*	.22	.62

*p < .05

Model $\chi^2 = 236.79$, df = 8, p < .05

Table 4-15b presents the results of a multivariate model that treated victim participation as the dependent variable.

- The chances of victim participation were greater when
 - pretextual communication occurred
 - the victim was physically injured
 - the victim was an active duty Service member
 - the victim was impaired in some way
 - the suspect confessed
- The chances of victim participation were lower when the case file indicated that the victim suffered from some behavioral health concerns.
- The chances of victim participation were lower when a third party or command reported the incident than when the victim or a victim-authorized representative reported the incident.

TABLE 4-15b. LOGISTIC REGRESSION: VICTIM PARTICIPATION OR DECLINATION

	B	SE	Exp(B)
Pretextual communication	.92*	.31	2.51
Victim physically injured	.59*	.27	1.81
Victim status – military	.33*	.16	1.39
Victim impaired	.39*	.17	1.47
Victim behavioral health concerns	-.46*	.23	.63
Command or third party reported incident	-.35*	.17	.70

Suspect confessed	.81*	.42	2.25
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* p ≤ .05

Model $\chi^2 = 45.57, df = 7, p < .05$

PART 5
Coast Guard Results

The Coast Guard case file data were analyzed to understand case characteristics and patterns of relationships between key variables. The analysis examined 30 Coast Guard cases. The analysis is somewhat limited because of the small number of cases. The results presented below describe the set of cases in terms of key characteristics. Because of the small number of cases, the analysis did not estimate bivariate or multivariate relationships between case characteristics.

UNIVARIATE STATISTICS: COAST GUARD CASE CHARACTERISTICS

Table 5-1 presents information about the commanders' decisions in Coast Guard cases and justice system outcomes for penetrative sexual assaults. The commander did not take action in approximately half of cases (53.3%) and preferred 46.7% of cases. Nearly all preferred cases were referred. Five of seven cases that went to court-martial ended in a conviction for at least one penetrative sexual offense. Acquittals were less common than convictions. All alternative dispositions involved case dismissal.

TABLE 5-1. COMMAND ACTION DECISIONS AND COURT-MARTIAL RESULTS

	N	%
Initial Command Action on Penetrative Sexual Assault		
No Command Action	16	53.3
Preferred	14	46.7
Administrative Action	0	0
Reason Provided by Command for No Action ^a		
Lack of Victim Participation	5	27.8
Insufficient Evidence	2	11.1
Unfounded	2	11.1
Prosecution Declined	0	0
No Probable Cause	0	0
No Reason Provided/Unknown	9	50.0
Other	0	0
Case Preferral/Referral (n = 14)		
Preferred Only	1	7.1
Preferred and Referred	13	92.9
Referred Cases with a Finding	7	53.8
Court-Martial Result (n = 7)		
Acquittal	2	28.6
Conviction for at Least One Penetrative Sexual Assault Charge – Court-Martial	5	71.4
Conviction for at Least One Penetrative Sexual Assault Charge – PTA at Court-Martial	0	0
Alternative Disposition (n = 7)		
Administrative Separation	0	0
Discharge in Lieu of Court-Martial	0	0
Dismissal	7	100

^a Multiple reasons were listed in 2 cases in which the command did not take action; these are included in the counts, resulting in a total count of 18. Percentages were computed using 18.

Table 5-2 presents information about the location of Coast Guard incidents. Seventy percent occurred off installation and a large majority (86.7%) occurred in the continental United States; 10% occurred on a vessel. No Coast Guard cases occurred in a deployed location.

TABLE 5-2. INCIDENT LOCATION

	N	%
Installation		
On Installation	9	30.0
Off Installation	21	70.0
Location of Incident		
CONUS	26	86.7
OCONUS	1	3.3
CONUS and OCONUS	0	0
Vessel	3	10.0
Vessel and CONUS	0	0
Vessel and OCONUS	0	0
Deployment		
Deployed Location (Iraq or Afghanistan only)	0	0
Non-Deployed Location	30	100

Table 5-3 summarizes information about the time between the offense date and the report to authorities. Twenty percent of cases were reported within three days of the incident and approximately 40% of cases were reported within one month of the incident. Thirty percent of Coast Guard cases were reported more than one year after the incident.

TABLE 5-3. TIME BETWEEN KEY ACTIONS IN THE CASE

	N	%
Number of Days Between Offense and Report to Authorities		
0 (same day)	0	0
1 – 3	6	20.0
4 – 7	2	6.7
8 – 14	2	6.7
15 – 30	2	6.7
31 – 60	0	0
61 – 90	0	0
91 – 120	2	6.7
121 – 150	1	3.3
151 – 180	2	6.7
181 – 210	1	3.3
211 – 240	0	0
241 – 270	1	3.3
271 – 365	2	6.7
366 +	9	30.0
Median number of days = 150		

Suspect characteristics are summarized in Table 5-4. A large majority of cases involved suspects who were enlisted (86.7%) and with a pay grade of E-5 or lower (77.0%). Nearly one-third of suspects (30.8%) were E-3 personnel. Four cases involved suspects who were officers and three

of those were cadets or midshipman. Nearly all suspects were male (96.7%) and 86.7% of suspects were White. The White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African. The average age of suspects was 25.1 years.

TABLE 5-4. SUSPECT CHARACTERISTICS

	N	%
Suspect Grade at Time of Incident		
Enlisted	26	86.7
Officer	4	13.3
Suspect Pay Grade at Time of Incident		
Enlisted (n = 26)		
E-1	1	3.9
E-2	1	3.9
E-3	8	30.8
E-4	7	26.9
E-5	3	11.5
E-6	3	11.5
E-7	1	3.9
Unknown	2	7.7
Officer (n = 4)		
Cadet/Midshipman	3	75.0
O-2	1	25.0
Suspect Gender		
Male	29	96.7
Female	1	3.3
Suspect Age	Mean = 25.1; SD = 4.3; Range = 20 – 36	
Suspect Race ^a		
White ^b	26	86.7
Black or African American	1	3.3
Asian	0	0
Native Hawaiian or Other Pacific Islander	1	3.3
American Indian or Alaska Native	0	0
Other Race, Ethnicity, or Origin	0	0
Unknown	2	6.7

^a CGIS uses the Field Activity Case Tracking System (FACTS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed did not report race or ethnicity in the title section of the report. Reviewers recorded race and ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

Table 5-5 presents information about suspects' drug and alcohol use during the time of the incident and about other suspect characteristics related to the investigation. Suspect alcohol use was more common (66.7%) than suspect drug use (3.3%). It was rare for a suspect to have any behavioral health concerns listed in the case files (6.7%). The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). The most common suspect complexity factors

were collateral misconduct at the time of the incident (36.7%) and other forms of misconduct (26.7%). Suspects' loss of consciousness/memory and contradictory evidence were not common. At least one of six suspect complexity factors existed in two-thirds of the cases (66.7%).

TABLE 5-5. SUSPECT FACTORS

	N	%
Suspect Alcohol Use		
Yes	20	66.7
No	10	33.3
Suspect Drug Use		
Yes	1	3.3
No	29	96.7
Suspect Behavioral Health Concerns Before or After Incident		
Yes	2	6.7
No	28	93.3
Suspect Complexity Factors ^a		
Collateral Misconduct	11	36.7
Other Misconduct	8	26.7
Loss of Memory or Consciousness	0	0
413 and 404(b) Evidence	5	16.7
Inconsistent Statements	4	13.3
Contradictory Evidence	2	6.7
At Least One of the Six Factors Exists in the Case	20	66.7

^aThese categories were not mutually exclusive; multiple factors could have been present for a single suspect. Percentages were calculated based on the full set of 30 cases and do not sum to 100%.

Table 5-6 summarizes information about Coast Guard cases in terms of suspects' statements and legal representation. Suspects offered statements to law enforcement in 63.3% of cases and suspects rarely had legal representation at the time of interview (6.7%). The data collection instrument recorded information from the case file about the content of suspects' statements to law enforcement and third parties. The most common suspect statement was to indicate that the sexual contact was consensual (75.0%), followed by denying that the event was a crime or denying the sexual contact (15.0%). Suspects confessed in two cases (10.0%).

TABLE 5-6. SUSPECT STATEMENTS AND REPRESENTATION

	N	%
Suspect Provided Statement to Law Enforcement		
Yes	19	63.3
No	11	36.7
Suspect Had Legal Representation		
Yes	2	6.7
No	28	93.3
Suspect Statement to Third Parties or Law Enforcement ^a		
Confessed	2	10.0
Consensual	15	75.0
Denied Crime/Sexual Activity	3	15.0
No Recollection/Partial Memory	0	0
Other	0	0

^aInformation about suspects' statements to law enforcement or third parties was available for 20 cases.

Tables 5-7 and 5-8 present information about victims. One-third of victims were enlisted Service members while it was less common for a victim to be an officer (13.3%). Civilians represented over half (53.3%) of all victims and military personnel represented 46.6% of victims. Among the enlisted victims, 90.0% were E-5 or lower. The large majority of victims were female (96.7%) and the average victim age was 22.4. White victims comprised nearly three-quarters (73.3%) of the sample. As was true of suspects, it is important to note that the White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African.

Table 5-7 also summarizes the relationships between victims and suspects. Intimate partner and former intimate partner relationships were most common (23.3%), followed by current or former spouses (16.7%) and friends (16.7%). Co-workers, acquaintances, and stranger relationships all occurred with the same frequency (13.3%). Recruit (victim)–recruiter (suspect) and supervisor (suspect)–subordinate (victim) relationships did not occur in this sample of Coast Guard cases. Finally, Table 5-7 shows which individuals reported the incident: the victim (43.3%), a third party (33.3%), a victim-authorized representative (16.7%), or command (6.7%).

TABLE 5-7. VICTIM CHARACTERISTICS

	N	%
Victim Status at Time of Incident		
Enlisted	10	33.3
Officer	4	13.3
Civilian – Not DoD Spouse	10	33.3
Civilian – DoD Spouse	6	20.0
Suspect Is Spouse/Former Spouse	5	83.3
Suspect Is Not Spouse	1	16.7
Victim Pay Grade at Time of Incident		
Enlisted (n = 10)		
E-3	4	40.0
E-4	2	20.0
E-5	3	30.0
E-6	1	10.0
Officer (n = 4)		
Cadet/Midshipman	2	50.0
O-1	1	25.0
W-2	1	25.0
Victim Gender		
Male	1	3.3
Female	29	96.7
Victim Age	Mean = 22.4; SD = 4.1; Range = 17 – 30	
Victim Race^a		
White ^b	22	73.3
Black or African American	2	6.7
Asian	0	0
Native Hawaiian or Other Pacific Islander	0	0
American Indian or Alaska Native	1	3.3
Other Race, Ethnicity, or Origin	0	0

Unknown	5	16.7
Relationship to Suspect^c		
Current or Former Spouse	5	16.7
Intimate Partner/Former Intimate Partner	7	23.3
Friend	5	16.7
Co-worker/Classmate/Roommate	4	13.3
Subordinate – Supervisor	0	0
Acquaintance	4	13.3
Online/Met for the First Time	0	0
Stranger	4	13.3
Recruit – Recruiter	0	0
Other	1	3.3
Reporting Individual		
Victim	13	43.3
Victim-Authorized Representative	5	16.7
Command	2	6.7
Third Party	10	33.3

^a CGIS uses the Field Activity Case Tracking System (FACTS) to capture information related to investigations, including race and ethnicity. The investigative case files reviewed did not report race or ethnicity in the title section of the report. Reviewers recorded race and ethnicity from other documents within the investigative file. However, to maintain consistency across the Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The data analyzed here were based on the victim's reported relationship to the suspect. See Appendix for more details about this variable.

Table 5-8 presents information about victims' drug and alcohol use and level of impairment during the time of the incident, in addition to other victim characteristics related to the investigation. As was true of suspect variables, alcohol use was fairly common (70.0%), and victim drug use was nonexistent in this sample. Forty-three percent of victims reported some level of impairment during the offense. Victims who were impaired most often reported passing out, being unconscious, or being asleep (53.8%). The large majority of victims (83.3%) did not have any history of behavioral health concerns listed in the case files. The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). The data collection instrument also recorded information about victim's statements or behaviors that may have been relevant during the investigation, and data show that nearly half (46.7%) had a motive to lie, 33.3% experienced some memory loss or were unconscious, 26.7% of victims engaged in some form of collateral misconduct, and 20.0% made inconsistent statements. Eighty-seven percent of cases involved a victim who was perceived to have at least one of the six victim complexity factors.

TABLE 5-8. VICTIM FACTORS

	N	%
Victim Alcohol Use		
Yes	21	70.0
No	9	30.0
Victim Drug Use		
Yes	0	0

No	30	100
Victim Reported Being Impaired		
Yes	13	43.3
No	17	56.7
Nature of Victim Impairment^a		
Passed Out/Unconscious/Asleep	7	53.8
Blacked Out/No Memory/Partial Memory	6	46.2
Victim Behavioral Health Concerns Before or After Incident		
Yes	5	16.7
No	25	83.3
Victim Complexity Factors^b		
Collateral Misconduct	8	26.7
Other Misconduct	5	16.7
Loss of Memory or Consciousness	10	33.3
Inconsistent Statements	6	20.0
Motive to Lie	14	46.7
Contradictory Evidence	1	3.3
At Least One of the Six Factors Exists in the Case	26	86.7

^a Multiple reasons were provided for the nature of impairment in four cases. To simplify the analyses of impairment reasons, a single variable was created to measure the reason for impairment. The categories for this variable are mutually exclusive. The “passed out/unconscious/asleep” category is considered to be the greatest level of impairment, followed by “blacked out/no memory/partial memory.” If the case indicated “passed out” or “unconscious” AND “blacked out” or “partial memory,” then the case was coded as “passed out/unconscious/asleep.” If the case indicated “blacked out,” “partial memory,” or “no memory” AND “asleep,” then the case was coded as “passed out/unconscious/asleep.”

^b These categories were not mutually exclusive; multiple factors could have been present for a single victim. Percentages were calculated based on the full set of 30 cases and do not sum to 100%.

Table 5-9 presents information about victim injuries and suspects’ use of force and threats. A suspect used or threatened to use force in 26.7% of cases; when suspects used or threatened force it was most often physical (23.3%). Victims sustained injuries in 20.0% of cases. Bruising and redness were the most common victim injuries, but were still relatively rare. Witnesses existed in 20% of cases (see item 57 on the data collection form), and pretextual communication occurred in only one case.

TABLE 5-9. VICTIM INJURIES AND EVIDENCE

	N	%
Use/Threat of Force		
Yes	8	26.7
No	22	73.3
Type of Force/Threat^a		
Physical	7	23.3
Weapon	0	0
Coercion	2	6.7
Threat/Threat to Others	3	10.0
Physical Injuries to Victim^b		
Yes	6	20.0
No	24	80.0
Injuries^c		
Redness	4	13.3

Bruising	4	13.3
Cuts	1	3.5
Scrapes	0	0
Witness to the Incident		
Yes	6	20.0
No	24	80.0
Pretextual Communication		
Yes	1	3.3
Supports Victim Account	0	0
Supports Suspect Account	0	0
Supports Neither	1	100
No	29	96.7

^a Categories were not mutually exclusive; cases could involve multiple types of force and threats.

^b Victim injury was based on self-reported or recorded information in the case files and SAFE reports.

^c Categories were not mutually exclusive; cases could involve multiple types of injuries.

Table 5-10 presents information about forensic evidence in Coast Guard cases. A sexual assault forensic examination (SAFE) was performed for five victims (16.7%). When a SAFE was performed, it was performed on the same day as the offense in three cases. Civilian medical facilities performed four of the five SAFEs and all were performed by a civilian or DoD civilian medical professional. The measure of DNA testing indicates whether *any* DNA evidence from the case was tested. DNA evidence was tested in four cases (13.3% of all Coast Guard cases).

TABLE 5-10. FORENSIC EVIDENCE

	N	%
SAFE Performed on Victim		
Yes	5	16.7
No	25	83.3
Days Between Offense and Victim SAFE (n = 5)		
0 (same day)	3	60.0
1	0	0
2	0	0
3	0	0
4	1	20.0
5	0	0
6	0	0
7	0	0
8 – 14	0	0
15 +	0	0
Unknown	1	20.0
Victim SAFE Location (n = 5)		
Civilian Health Care Facility	4	80.0
Military Health Care Facility	1	20.0
Victim SAFE Provider Type (n = 5)		
Civilian Provider	4	80.0
Military Examiner	0	0
DoD Civilian	1	20.0
DNA Evidence Tested ^a		
Yes	4	13.3

No/Unknown	26	86.7
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^a The DNA testing variable measured *any* DNA evidence testing in the case, not only sexual assault kit evidence collected from the victim.

Victim participation is summarized in Table 5-11. Victims participated in 76.7% of Coast Guard case investigations and declined in 23.3% of cases. All of the victims who declined did so at the investigation stage. Victims rarely provided their input to commanders (n = 2, 6.7% of all cases). Both victims who provided input requested court-martial. Victims were represented by attorneys during the investigation in over half of the cases (60.0%), and victims provided statements to law enforcement in nearly all cases (n = 29, 96.7%).

TABLE 5-11. VICTIM PARTICIPATION

	N	%
Victim Declination Recorded in File		
Victim Participated	23	76.7
Victim Declined	7	23.3
Declination Stage		
Investigation	7	100
Reporting	0	0
Court-Martial	0	0
Preliminary Hearing	0	0
Victim Input to Command or SJA		
No	28	93.3
Yes	2	6.7
Input Provided to Command (n = 2)		
Pursue Administrative Separation	0	0
Supports DILCOM	0	0
Pursue Court-Martial	2	100
Take No Action	0	0
Nonjudicial Punishment/Administrative Actions	0	0
Other	0	0
Victim Attorney Representation (prior to trial)		
Yes	18	60.0
No	12	40.0
Victim Provided Statement to Law Enforcement		
Yes	29	96.7
No	1	3.3

Table 5-12 presents information about probable cause determinations. Judge advocates made probable cause determinations for purposes of indexing with the FBI's NCIC criminal history database. A judge advocate did not make a probable cause determination in 80.0% of cases (n = 24). In all cases with a determination, the judge advocate determined that probable cause existed.

TABLE 5-12. PROBABLE CAUSE DETERMINATION

	N	%
Probable Cause Determination Made		
Yes	6	20.0
No	24	80.0

Probable Cause Determination Result (n = 6)		
Yes, Probable Cause Exists	6	100
Probable Cause Does Not Exist	0	0

PART 6
Marine Corps Results

The Marine Corps case file data were analyzed to understand case characteristics and patterns of relationships between key variables. The analysis examined 263 Marine Corps cases. The first step in the analysis examined univariate statistics to understand the cases. The second step explored bivariate relationships between case and individual characteristics and two key outcome variables: command decision to take action and victim participation in justice proceedings. The final analysis estimated multivariate models for the two dependent variables (command action and victim participation).

UNIVARIATE STATISTICS: MARINE CORPS CASE CHARACTERISTICS

Table 6-1 presents information about the commanders' decisions in Marine Corps cases and justice system outcomes. The commander did not take action in 72.2% of cases and preferred 26.2% of cases. Administrative actions occurred in a small percentage of cases (n = 4, 1.5%). These four cases entailed administrative separation. Commanders did not document a reason for not taking action in 11.1% of the no action cases. Insufficient evidence was the most common reason (56.0%) commanders provided for not taking action in the case, followed by a lack of victim participation (27.1%). Of the 69 cases that commanders preferred, 69.6% were also referred; slightly less than one-third (30.4%) were not referred. Court-martial occurred in 26 of the 48 referred cases (54.2%) and alternative dispositions, such as discharges, occurred in 43 of the 69 preferred cases (62.3%). Court-martial more commonly resulted in acquittal (57.7%) than conviction (42.3%), and dismissal was the most common alternative disposition (95.3%).

TABLE 6-1. COMMAND ACTION DECISIONS AND COURT-MARTIAL RESULTS

	N	%
Initial Command Action on Penetrative Sexual Assault		
No Command Action	190	72.2
Preferred	69	26.2
Administrative Action ^a	4	1.5
Reason Provided by Command for No Action ^b		
Lack of Victim Participation	61	27.1
Insufficient Evidence	126	56.0
Unfounded	7	3.1
Prosecution Declined	4	1.8
No Probable Cause	2	0.9
No Reason Provided/Unknown	25	11.1
Other	0	0
Case Preferral/Referral (n = 69)		
Preferred Only	21	30.4
Preferred and Referred	48	69.6
Referred Cases with a Finding	26	54.2
Court-Martial Result (n = 26)		
Acquittal	15	57.7
Conviction for at Least One Penetrative Sexual Assault Charge – Court-Martial	4	15.4

Conviction for at Least One Penetrative Sexual Assault Charge – PTA at Court-Martial	7	26.9
Alternative Disposition (n = 43)		
Administrative Separation	1	2.3
Discharge in Lieu of Court-Martial	1	2.3
Dismissal	41	95.3

^aThis category included nonjudicial punishment.

^bMultiple reasons were listed in 34 cases in which the command did not take action; these are included in the counts, resulting in a total count of 225. Percentages were computed using 225.

Table 6-2 describes Marine Corps cases in terms of incident location. Slightly more than half of the reported sexual assaults occurred on installation (54.8%), and over three-quarters occurred in the continental United States (79.1%). No cases occurred in a deployed location (i.e., Iraq or Afghanistan).

TABLE 6-2. INCIDENT LOCATION

	N	%
Installation		
On Installation	144	54.8
Off Installation	119	45.2
Location of Incident		
CONUS	208	79.1
OCONUS	53	20.2
CONUS and OCONUS	1	0.4
Vessel	1	0.4
Vessel and CONUS	0	0
Vessel and OCONUS	0	0
Deployment		
Deployed Location (Iraq or Afghanistan only)	0	0
Non-Deployed Location	263	100

Table 6-3 summarizes information about the time between key events in the cases, including the times between the offense, the report to authorities, MCIO final report, and the command decision in preferred cases. The data collection form captured information about the dates of these key events and the number of days between them was computed. In some cases, there were multiple dates listed for the date the incident occurred and a date range was captured on the data collection form. In these situations, the latest (most recent) incident date was used to compute the days between the incident and key events (i.e., date of report and decision dates). When one of the dates used in the calculations was missing, computations were not possible; these cases therefore are categorized as “unknown.” In addition, when the date of one event should have logically occurred after the date of another event but the dates show the reverse (e.g., the date of the commander’s decision occurred *before* the date the incident was reported, or the date the MCIO closed the case occurred *before* the date the incident was reported to authorities), these cases are categorized as “unknown.” This latter categorization rule was also used when a range of dates was provided for the date of the incident and the most recent incident date occurred *after* the date the incident was reported (i.e., these cases are categorized as “unknown”). The number of days between key points in the case and commanders’ decisions were divided by no action (n = 190) and preferred cases (n = 69) to identify time differences between cases with these

different commanders' decisions. The patterns described below show that it took longer for commanders to decide to take no action than to prefer cases.

Nearly half (46.3%) of cases were reported within 7 days of the incident, including 37.6% of cases that were reported within 3 days of the incident. In addition, 57.7% of Marine Corps cases were reported within 30 days of the incident. The median number of days between the report and the incident was 11, indicating that half of the Marine Corps cases were reported to authorities within 11 days and half of the cases were reported after 11 days.

A small percentage of cases (11.9%) received a final MCIO report within 60 days of the report to authorities; 19.8% of cases received a final MCIO report between 2 and 3 months after the date the incident was reported to authorities. The median number of days between the report to authorities and the MCIO final report was 155 days; half of the cases received a final MCIO report in fewer than 155 days after the date of the report to authorities.

Nearly one-third of the cases (32.0%) were preferred within 3 months of the MCIO final report; the number of days between the MCIO final report and the decision to prefer could not be calculated in 42% of cases because the information necessary for the calculations was not available. The median number of days between the MCIO final report and the decision to prefer the case was less than three months (70 days); half of the cases were preferred fewer than 70 days after the MCIO final report.

Also among preferred cases, 15.9% were preferred within 2 months of the date on which the incident was reported to authorities and 44.9% were preferred within 6 months. The median number of days between the decision to prefer and the date on which the incident was reported to authorities was 196.5.

Among no action cases, 35.3% were decided within 3 months of the MCIO final report. The median number of days between the MCIO final report and the decision to take no action in the case was approximately three and a half months (107 days); decisions in half of these cases were made fewer than 107 days after the MCIO final report. Also among no action cases, 10.6% were decided within 4 months of the date on which the incident was reported to authorities and nearly one-quarter (24.3%) were decided within 6 months. The median number of days between the decision to take no action and the date on which the incident was reported to authorities was 239; half of the no action cases were decided in fewer than 239 days and half were decided in more than 239 days.

TABLE 6-3. TIME BETWEEN KEY ACTIONS IN THE CASE

	N	%
Number of Days Between Offense and Report to Authorities		
0 (same day)	30	11.4
1 – 3	69	26.2
4 – 7	23	8.7
8 – 14	12	4.6
15 – 30	18	6.8
31 – 60	23	8.7
61 – 90	16	6.1

REPORT ON INVESTIGATIVE CASE FILE REVIEWS FOR MILITARY ADULT
PENETRATIVE SEXUAL OFFENSE CASES CLOSED IN FISCAL YEAR 2017

91 – 120	10	3.8
121 – 150	7	2.7
151 – 180	9	3.4
181 – 210	6	2.3
211 – 240	1	0.3
241 – 270	2	0.7
271 – 365	11	4.2
366 +	23	8.7
Unknown	3	1.1
Median number of days = 11		
Number of Days Between Report to Authorities and MCIO Final Report		
0 (same day)	1	0.4
1 – 3	0	0
4 – 7	0	0
8 – 14	2	0.8
15 – 30	7	2.7
31 – 60	21	8.0
61 – 90	31	11.8
91 – 120	27	10.3
121 – 150	31	11.8
151 – 180	32	12.2
181 – 210	22	8.4
211 – 240	15	5.7
241 – 270	14	5.3
271 – 365	25	9.5
366 +	23	8.7
Unknown	12	4.6
Median number of days = 155		
Number of Days Between MCIO Final Report and Command Decision in Preferred Cases (n = 69)		
0 (same day)	1	1.5
1 – 3	0	0
4 – 7	1	1.5
8 – 14	2	2.9
15 – 30	4	5.8
31 – 60	8	11.6
61 – 90	6	8.7
91 – 120	3	4.4
121 – 150	2	2.9
151 – 180	5	7.3
181 – 210	4	5.8
211 – 240	1	1.5
241 – 270	3	4.4
271 – 365	0	0
366 +	0	0
Unknown	29	42.0
Median number of days = 70		

Number of Days Between Report to Authorities and Command Decision in Preferred Cases (n = 69)		
0 – 60	11	15.9
61 – 120	10	14.5
121 – 180	10	14.5
181 – 240	7	10.1
241 – 300	10	14.5
301 – 360	8	11.6
361 +	12	17.4
Unknown	1	1.5
Median number of days = 196.5		
Number of Days Between MCIO Final Report and Command Decision in No Action Cases (n = 190)		
0 (same day)	4	2.1
1 – 3	1	0.5
4 – 7	2	1.1
8 – 14	4	2.1
15 – 30	17	9.0
31 – 60	19	10.0
61 – 90	20	10.5
91 – 120	20	10.5
121 – 150	25	13.2
151 – 180	16	8.4
181 – 210	13	6.8
211 – 240	5	2.6
241 – 270	8	4.2
271 – 365	2	1.1
366 +	3	1.6
Unknown	31	16.3
Median number of days = 107		
Number of Days Between Report to Authorities and Command Decision in No Action Cases (n = 190)		
0 – 60	3	1.6
61 – 120	17	9.0
121 – 180	26	13.7
181 – 240	43	22.6
241 – 300	27	14.2
301 – 360	20	10.5
361 +	37	19.5
Unknown	17	9.0
Median number of days = 239		

Table 6-4 describes the suspect characteristics in Marine Corps cases. A large majority of cases involved suspects who were enlisted (96.6%) and with a pay grade of E-5 or lower (88.6%). Nearly one-third of suspects (31.1%) were E-3 personnel. Nearly all suspects were male (99.2%), and 77.9% of suspects were White. Fewer than 20% of suspects were African

American. The White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African. The average age of suspects was 23.8 years.

TABLE 6-4. SUSPECT CHARACTERISTICS

	N	%
Suspect Grade at Time of Incident		
Enlisted	254	96.6
Officer	9	3.4
Suspect Pay Grade at Time of Incident		
Enlisted (n = 254)		
E-1	6	2.4
E-2	28	11.0
E-3	79	31.1
E-4	59	23.2
E-5	53	20.9
E-6	17	6.7
E-7	9	3.5
E-8	3	1.2
Officer (n = 9)		
O-2	3	33.3
O-3	2	22.2
O-5	1	11.1
O-6	2	22.2
W-1	1	11.1
Suspect Gender		
Male	261	99.2
Female	2	0.8
Suspect Age	Mean = 23.8; SD = 5.3; Range = 18 – 56	
Suspect Race ^a		
White ^b	205	77.9
Black or African American	46	17.5
Asian	3	1.1
Native Hawaiian or Other Pacific Islander	2	0.8
American Indian or Alaska Native	3	1.1
Other Race, Ethnicity, or Origin ^c	3	1.1
Unknown	1	0.4

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c Persons categorized as "mixed" in NCIS investigations were included in this category.

Table 6-5 presents information about suspects' drug and alcohol use during the time of the incident and about other suspect characteristics related to the investigation. Drug use during the incident was rare, but suspect alcohol use was common (60.8% of incidents). It was uncommon

for a suspect to have any behavioral health concerns listed in the case files (8.0%). The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). At least one of six suspect complexity factors existed in 64.6% of the cases. The most common suspect complexity factors were collateral misconduct at the time of the incident (36.5%), other forms of misconduct (32.3%), and the presence of M.R.E. 413 or 404(b) evidence (10.3%). Suspects' inconsistent statements, contradictory evidence, and loss of memory or consciousness were less common.

TABLE 6-5. SUSPECT FACTORS

	N	%
Suspect Alcohol Use		
Yes	160	60.8
No	103	39.2
Suspect Drug Use		
Yes	3	1.1
No	260	98.9
Suspect Behavioral Health Concerns Before or After Incident		
Yes	21	8.0
No	242	92.0
Suspect Complexity Factors ^a		
Collateral Misconduct	96	36.5
Other Misconduct	85	32.3
Loss of Memory or Consciousness	20	7.6
413 and 404(b) Evidence	27	10.3
Inconsistent Statements	24	9.1
Contradictory Evidence	10	3.8
At Least One of the Six Factors Exists in the Case	170	64.6

^a These categories were not mutually exclusive; multiple factors could have been present for a single suspect. Percentages were calculated based on the full set of 263 cases and do not sum to 100%.

Table 6-6 summarizes information about suspects' statements and legal representation. It was common for suspects to make statements to law enforcement (68.8%); suspects rarely had legal representation (4.9%) at the time of the interview. The data collection instrument recorded information from the case file about the content of suspect statements to law enforcement and third parties. The most common suspect statement was to indicate that the sexual contact was consensual (52.5%), followed by denying that the event was a crime or denying sexual contact (11.8%). Suspects confessed in 16 cases (6.1%).

TABLE 6-6. SUSPECT STATEMENTS AND REPRESENTATION

	N	%
Suspect Provided Statement to Law Enforcement		
Yes	181	68.8
No	82	31.2
Suspect Had Legal Representation		
Yes	13	4.9
No	250	95.1
Suspect Statement to Third Parties or Law Enforcement ^a		

Confessed	16	6.1
Consensual	138	52.5
Denied Crime/Sexual Activity	31	11.8
No Recollection/Partial Memory	10	3.8
Other	8	3.0

^a Reports included information with multiple suspect statements in 19 cases. A hierarchy rule was used to code cases with multiple statements: Cases were coded as “confessed” if the suspect confessed and offered any other statement. The next code in the hierarchy was “consensual” and was used when the suspect reported that the sexual activity was consensual (but did not confess). The third category in the hierarchy was “denied crime or denied penetrative sexual activity” and was used when the suspect offered multiple statements but not “confessed” and not “consensual.” The “no recollection/partial memory” category was used when only this statement was made. The last category was “other” and was used when the provided statement did not clearly fit into any of the previous categories. Information about suspects’ statements was available for 203 cases.

Tables 6-7 and 6-8 present information about victims. Over half of the cases involved victims who were enlisted (55.1%) and it was rare for a victim to be an officer (1.1%). Civilians represented 43.7% of all victims and military personnel represented 56.2% of victims. Among the enlisted victims, a large majority were E-3 or lower (73.2%). The large majority of victims were female (95.4%) and the average victim age was 22.6. In a pattern similar to that seen among suspects, White victims comprised a large portion of victims in the sample (84.0%). African Americans represented 8.4% of victims. As was true of suspects, it is important to note that the White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African.

Table 6-7 also summarizes the relationships between victims and suspects. Stranger cases were not common (5.7%) and friend relationships were most common (29.3%), followed by current or former spouses (21.7%), acquaintances (13.3%), and current or former intimate partners (12.2%). Recruit (victim)–recruiter (suspect) and supervisor (suspect)–subordinate (victim) relationships were not common among Marine Corps cases (n = 10). Finally, Table 6-7 describes the individuals who reported the incident. Victims reported 46.0% of the cases, followed by a victim-authorized representative (26.2%), command (20.5%), or a third party (7.2%).

TABLE 6-7. VICTIM CHARACTERISTICS

	N	%
Victim Status at Time of Incident		
Enlisted	145	55.1
Officer	3	1.1
Civilian – Not DoD Spouse	56	21.3
Civilian – DoD Spouse	59	22.4
Suspect Is Spouse/Former Spouse	41	69.5
Suspect Is Not Spouse	18	30.5
Victim Pay Grade at Time of Incident		
Enlisted (n = 145)		
E-1	4	2.8
E-2	34	23.5
E-3	68	46.9
E-4	22	15.2
E-5	15	10.3
E-7	1	0.7
Unknown	1	0.7

Officer (n = 3)		
O-2	2	66.7
W-1	1	33.3
Victim Gender		
Male	12	4.6
Female	251	95.4
Victim Age	Mean = 22.6; SD = 5.2; Range = 16 – 49	
Victim Race ^a		
White ^b	221	84.0
Black or African American	22	8.4
Asian	7	2.7
Native Hawaiian or Other Pacific Islander	1	0.4
American Indian or Alaska Native	4	1.5
Other Race, Ethnicity, or Origin ^c	3	1.1
Unknown	5	1.9
Relationship to Suspect ^d		
Current or Former Spouse	57	21.7
Intimate Partner/Former Intimate Partner	32	12.2
Friend	77	29.3
Co-worker/Classmate/Roommate	24	9.1
Subordinate – Supervisor	7	2.7
Acquaintance	35	13.3
Online/Met for the First Time	4	1.5
Stranger	15	5.7
Recruit – Recruiter	3	1.1
Other	3	1.1
Unknown/Unable to Determine	6	2.3
Reporting Individual		
Victim	121	46.0
Victim-Authorized Representative	69	26.2
Command	54	20.5
Third Party	19	7.2

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c Persons categorized as "mixed" in NCIS investigations were included in this category.

^d The data analyzed here were based on the victim's reported relationship to the suspect. See Appendix for more details about this variable.

Table 6-8 presents information about victims' drug and alcohol use and level of impairment during the time of the incident, in addition to other victim characteristics related to the investigation. As was true of suspect variables, victim drug use was substantially less common than victim alcohol use (7.6% compared to 55.5%). Nearly half of all victims reported some level of impairment during the offense (49.0%). The most common forms of victim impairment were categorized as passed out/unconscious/asleep (58.1%). The large majority of victims

(82.9%) did not have any history of behavioral health concerns listed in the case files. The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). The data collection instrument also recorded information about victim’s statements or behaviors that may have been relevant during the investigation, and data show 42.6% of victims had a motive to lie, 28.9% experienced some memory loss or were unconscious, 24.7% provided inconsistent statements, and there was evidence of collateral victim misconduct in 24.3% of cases. At least one of the victim complexity factors was present in 79.8% of the cases.

TABLE 6-8. VICTIM FACTORS

	N	%
Victim Alcohol Use		
Yes	146	55.5
No	116	44.1
Unknown	1	0.4
Victim Drug Use		
Yes	20	7.6
No	243	92.4
Victim Reported being Impaired		
Yes	129	49.0
No	134	51.0
Nature of Victim Impairment ^a		
Passed Out/Unconscious/Asleep	75	58.1
Blacked Out/No Memory/Partial Memory	52	40.3
Unknown ^b	2	1.6
Victim Behavioral Health Concerns Before or After Incident		
Yes	45	17.1
No	218	82.9
Victim Complexity Factors ^b		
Collateral Misconduct	64	24.3
Other Misconduct	40	15.2
Loss of Memory or Consciousness	76	28.9
Inconsistent Statements	65	24.7
Motive to Lie	112	42.6
Contradictory Evidence	29	11.0
At Least One of the Six Factors Exists in the Case	210	79.8

^a Victims were impaired in 129 cases, including 2 cases in which the nature of impairment was not clear (e.g., “too drunk”). Multiple reasons were provided for the nature of impairment in 65 cases. To simplify the analyses of impairment reasons, a single variable was created to measure the reason for impairment. The categories for this variable are mutually exclusive. The “passed out/unconscious/asleep” category is considered to be the greatest level of impairment, followed by “blacked out/no memory/partial memory.” If the case indicated “passed out” or “unconscious” AND “blacked out” or “partial memory,” then the case was coded as “passed out/unconscious/asleep.” If the case indicated “blacked out,” “partial memory,” or “no memory” AND “asleep,” then the case was coded as “passed out/unconscious/asleep.”

^b These categories were not mutually exclusive; multiple factors could have been present for a single victim. Percentages were calculated based on the full set of 263 cases and do not sum to 100%.

Table 6-9 presents information about victim injuries and suspects’ use of force and threats. A suspect used or threatened to use force in 12.9% of cases; use of weapons was rare, occurring in

only two cases. Victims sustained injuries in 21.3% of cases. Bruising (10.6%) and redness (8.7%) were the most common victim injuries. Witnesses existed in 17.1% of cases (see item 57 on the data collection form). Investigators collected pretextual communication evidence in 12.2% of cases, and the most common result of the pretextual communication was to support neither the victim’s nor the suspect’s account (46.9% of cases in which pretextual communication occurred).

TABLE 6-9. VICTIM INJURIES AND EVIDENCE

	N	%
Use/Threat of Force		
Yes	34	12.9
No	229	87.1
Type of Force/Threat ^a		
Physical	28	10.6
Weapon	2	0.8
Coercion	6	2.3
Threat/Threat to Others	6	2.3
Physical Injuries to Victim ^b		
Yes	56	21.3
No	207	78.7
Injuries ^c		
Redness	23	8.7
Bruising	28	10.6
Cuts	15	5.7
Scrapes	13	4.9
Witness to the Incident		
Yes	45	17.1
No	218	82.9
Pretextual Communication		
Yes	32	12.2
Supports Victim Account	7	21.9
Supports Suspect Account	10	31.3
Supports Neither	15	46.9
No	231	87.8

^a Categories were not mutually exclusive; cases could involve multiple types of force and threats.

^b Victim injury was based on self-reported or recorded information in the case files and SAFE reports.

^c Categories were not mutually exclusive; cases could involve multiple types of injuries.

Table 6-10 presents information about forensic evidence in Marine Corps cases. A sexual assault forensic examination (SAFE) was performed on victims in 38.4% of cases. When a SAFE was performed, over half (57.4%) occurred within one day of the incident. Military health care facilities performed more SAFEs (n = 64, 63.4%) than civilian facilities (n = 37, 36.6%). Military forensic medical examiners performed the majority of exams (n = 45, 44.6%). The measure of DNA testing indicates whether *any* DNA evidence from the case was tested. DNA evidence was tested in 27.8% of cases.

TABLE 6-10. FORENSIC EVIDENCE

	N	%
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SAFE Performed on Victim		
Yes	101	38.4
No	162	61.6
Days Between Offense and Victim SAFE (n = 101)		
0 (same day)	32	31.7
1	26	25.7
2	13	12.9
3	10	10.0
4	6	5.9
5	3	3.0
6	1	1.0
7	3	3.0
8 – 14	2	2.0
15 +	5	5.0
Victim SAFE Location (n = 101)		
Civilian Health Care Facility	37	36.6
Military Health Care Facility	64	63.4
Victim SAFE Provider Type (n = 101)		
Civilian Provider	39	38.6
Military Examiner	45	44.6
DoD Civilian	17	16.8
DNA Evidence Tested ^a		
Yes	73	27.8
No/Unknown	190	72.2

^a The DNA testing variable measured *any* DNA evidence testing in the case, not only sexual assault kit evidence collected from the victim.

Victim participation is summarized in Table 6-11. Victims participated in 59.7% of Marine Corps cases and declined in 40.3% of cases. Among the victims who declined, nearly three-quarters (74.6%) declined early in the justice system processing (during investigation and reporting). Victims provided their input to commanders in 15.6% of cases. The nature of victim input was diverse: equal numbers requested no action (n = 9, 22.0%) and a court-martial (n = 9, 22.0%), 19.5% requested nonjudicial punishment/administrative action, and 12.2% requested administrative separation. Victims were represented by attorneys during the investigation in over half of the cases (55.5%), and victims provided statements to law enforcement in nearly all cases (98.1%).

TABLE 6-11. VICTIM PARTICIPATION

	N	%
Victim Declination Recorded in File		
Victim Participated	157	59.7
Victim Declined	106	40.3
Declination Stage		
Investigation	73	68.9
Reporting	6	5.7
Court-Martial	15	14.2
Preliminary Hearing	8	7.5
Unknown	4	3.8
Victim Input to Command or SJA		

No	222	84.4
Yes	41	15.6
Input Provided to Command (n = 41)		
Pursue Administrative Separation	5	12.2
Supports DILCOM	0	0
Pursue Court-Martial	9	22.0
Take No Action	9	22.0
Nonjudicial Punishment/Administrative Actions	8	19.5
Other	10	24.4
Victim Attorney Representation (prior to trial)		
Yes	146	55.5
No	117	44.5
Victim Provided Statement to Law Enforcement		
Yes	258	98.1
No	5	1.9

A judge advocate made a probable cause determination in over half of all cases (62.4%) and probable cause was determined to exist in 102 cases, representing 38.8% of all cases and 62.2% of cases in which a determination was made (Table 6-12). Judge advocates made probable cause determinations for purposes of indexing with the FBI’s NCIC criminal history database.

TABLE 6-12. PROBABLE CAUSE DETERMINATION MADE BY JUDGE ADVOCATE

	N	%
Probable Cause Determination Made		
Yes	164	62.4
No	99	37.6
Probable Cause Determination Result (n = 164)		
Yes, Probable Cause Exists	102	62.2
Probable Cause Does Not Exist	61	37.2
Unknown	1	0.6

BIVARIATE RELATIONSHIPS

The second stage of the analysis estimated relationships between case characteristics and two important outcome variables: (1) the commander’s decision to prefer or to not take action and (2) the victim’s decision to participate or to decline. Because of the small number of convictions (n = 11), it was not possible to compare no action cases to cases that ended in a conviction or to compare acquittals to convictions. A DoD-wide analysis that combines all Service branches will examine differences between cases that end in acquittal and cases that end in a conviction. Cases that ended in some administrative action (n = 4) were excluded from the analysis that examined preferral and no action outcomes.

**COMMAND ACTION DEPENDENT VARIABLE: NO ACTION COMPARED TO
 PREFERRAL**

The patterns in Table 6-13a show there was no relationship between the preferral decision and the incident location and the identity of the individual who reported the incident to authorities. Cases with prompt reports (i.e., within one week) were more likely to be preferred (32.2%) than cases without a prompt report (21.5%). The median number of days between the incident and the report to authorities was shorter in preferred cases (3 days) compared to no action cases (19.5 days). In addition, cases in which probable cause was determined to exist were most likely to be preferred; half of cases in which probable cause was determined to exist were preferred.

TABLE 6-13a. COMMAND ACTION DECISION: INCIDENT LOCATION AND REPORTING INFORMATION

	No Command Action (n = 190)		Preferral (n = 69)	
	N	%	N	%
Incident Location (NS)				
On Installation	105	73.4	38	26.6
Off Installation	85	73.3	31	26.7
Reporting Individual (NS)				
Victim	84	70.0	36	30.0
Victim-Authorized Representative	47	70.1	20	29.9
Command	44	83.0	9	17.0
Third Party	15	78.9	4	21.1
Prompt Report (within 7 days) ($\chi^2 = 3.78, p = .05$)				
Yes	82	67.8	39	32.2
No	106	78.5	29	21.5
Number of Days Between Incident and Report to Authorities	Median = 19.5		Median = 3	
Probable Cause ^a ($\chi^2 = 49.17, p < .05$)				
No Determination Made	82	84.5	15	15.5
Probable Cause Existed	50	50.0	50	50.0
Probable Cause Did Not Exist	58	95.1	3	4.9

^a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

Several evidentiary variables were related to preferral outcomes (Table 6-13b). When suspects used or threatened to use force, the chances of case preferral were greater than when suspects did not use or threaten to use force. Victim participation, compared to declinations, also increased the chances that the case would be preferred. Over one-third of cases with a participating victim (39.1%) were preferred, compared to 7.8% of cases in which the victim declined. Finally, the performance of a SAFE exam, DNA testing, and victim attorney representation during the investigation were all associated with an increased chance that the case would be preferred. The variables that were not associated with the chances of a case being preferred included the presence of witnesses, pretextual communication and communication results, and victim physical injuries.

TABLE 6-13b. COMMAND ACTION DECISION: EVIDENCE

	No Command Action (n = 190)	Preferral (n = 69)

Witness to the Incident (NS)				
Yes	37	82.2	8	17.8
No	153	71.5	61	28.5
Pretextual Communication Occurred (NS)				
Yes	24	75.0	8	25.0
No	166	73.1	61	26.9
Pretextual Communication Result (NS)				
Supports Victim Account	5	71.4	2	28.6
Supports Suspect Account	9	90.0	1	10.0
Supports Neither Account	10	66.7	5	33.3
Victim Physical Injuries (NS)				
Yes	39	70.9	16	29.1
No	151	74.0	53	26.0
Threat or Use of Force ($\chi^2 = 7.65, p < .05$)				
Yes	17	53.1	15	46.9
No	173	76.2	54	23.8
Victim Participation ($\chi^2 = 31.17, p < .05$)				
Yes	95	60.9	61	39.1
Declined ^a	95	92.2	8	7.8
Sexual Assault Exam Performed on Victim ($\chi^2 = 12.73, p < .05$)				
Yes	61	61.0	39	39.0
No	129	81.1	30	18.9
DNA Evidence Tested ($\chi^2 = 16.17, p < .05$)				
Yes	40	55.6	32	44.4
No	150	80.2	37	19.8
Victim Attorney Representation (prior to trial) ($\chi^2 = 3.81, p \leq .05$)				
Yes	98	68.5	45	31.5
No	92	79.3	24	20.7

^a Victim declinations could have occurred before or after preferral. Table 6-11 shows that nearly 75% of all victims declined at the reporting or investigation stages.

Victim characteristics, such as gender, race, age, and relationship to the suspect, were not related to the preferral decision (Table 6-13c). It is important to note that the sample included a small number of cases (n = 3) with victims who were officers, so this pattern may not be a reliable result. Despite the small number of stranger cases, 7 out of 15 stranger cases were preferred (46.7%).

TABLE 6-13c. COMMAND ACTION DECISION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	No Command Action (n = 190)		Preferral (n = 69)	
Victim Gender (NS)				
Female	181	73.3	66	26.7
Males	9	75.0	3	25.0
Victim Race ^a (NS)				
White ^b	158	72.1	61	27.9

Non-White	28	77.8	8	22.2
Victim Status at Time of Incident (NS)				
Military	108	74.0	38	26.0
Civilian – Not DoD Spouse	41	74.5	14	25.5
Civilian – DoD Spouse	41	70.7	17	29.3
Suspect Is Spouse/Former Spouse (NS)	30	75.0	10	25.0
Suspect Is Not Spouse	11	61.1	7	38.9
Victim Grade at Time of Incident (NS)				
Enlisted	106	74.1	37	25.9
Officer	2	66.7	1	33.3
Relationship Between Victim and Suspect ^c (NS)				
Supervisor – Subordinate	5	83.3	1	16.7
Spouse/Former Spouse	43	76.8	13	23.2
Intimate Partner/Former Intimate Partner	24	77.4	7	22.6
Friend	53	68.8	24	31.2
Co-worker/Classmate/Roommate	18	75.0	6	25.0
Acquaintance	29	82.9	6	17.1
Stranger	8	53.3	7	46.7
Victim Age (NS)	(Mean = 22.5, SD = 5.2)		(Mean = 22.9, SD = 5.5)	

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The "other relationship," "online/met for the first time," and "recruiter – recruit" categories were excluded because of their small numbers; the "unknown/unable to determine" category was also excluded from this analysis.

Victim factors, in general, were not related to the preferral decision (Table 6-13d). When all the categories of impairment were combined together there was no statistically significant relationship between victim impairment and the commander's decision. Victim motive to lie was related to the decision to prefer: cases were less likely to be preferred when victim had a motive to lie (20.0%) than when this motive did not exist in the case (31.5%). Victim alcohol use, drug use, memory loss, inconsistent statements, contradictory evidence, collateral and other misconduct, behavioral health concerns, and consensual sexual contact with the suspect were all unrelated to the commander's preferral decision.

TABLE 6-13d. COMMAND ACTION DECISION: VICTIM FACTORS

	No Command Action (n = 190)		Preferral (n = 69)	
Victim Impairment (NS)				
Not Impaired	101	76.5	31	23.5
Passed Out/Unconscious/Asleep	48	64.9	26	35.1
Blacked Out/Memory Loss	39	76.5	12	23.5
Victim Alcohol Use (NS)				
Yes	105	72.4	40	27.6
No	84	74.3	29	25.7
Victim Drug Use (NS)				

Yes	13	65.0	7	35.0
No	177	74.1	62	25.9
Victim Lack of Memory (NS)				
Yes	53	69.7	23	30.3
No	137	74.9	46	25.1
Victim Motive to Lie ($\chi^2 = 4.32, p < .05$)				
Yes	88	80.0	22	20.0
No	102	68.5	47	31.5
Victim Inconsistent Statements (NS)				
Yes	50	76.9	15	23.1
No	140	72.2	54	27.8
Victim Contradictory Evidence (NS)				
Yes	23	79.3	6	20.7
No	167	72.6	63	27.4
Victim Collateral Misconduct (NS)				
Yes	50	79.4	13	20.6
No	140	71.4	56	28.6
Victim Other Misconduct (NS)				
Yes	28	71.8	11	28.2
No	162	73.6	58	26.4
Victim Behavioral Health Concerns Before or After Incident (NS)				
Yes	28	63.6	16	36.4
No	162	75.3	53	24.7
Victim Consensual Sexual Contact with Suspect (NS)				
Yes – prior to incident	84	77.8	24	22.2
Yes – following incident	1	100	0	0
Yes – prior to and following incident	13	68.4	6	31.6
No	92	70.2	39	29.8

Like victim characteristics, suspect characteristics were unrelated to the preferral decision (Table 6-13e). Only two suspect variables were related to the commanders' decision to prefer a case: the existence of M.R.E. 413 or 404(b) evidence and suspects' statements to third parties. Cases were more likely to be preferred when 413 or 404(b) evidence⁹ existed for a suspect (55.6%) than when this evidence did not exist (23.3%). Commanders preferred 80.0% of Marine Corps cases in which a suspect confessed, preferred 17.4% of cases in which a suspect claimed the sexual contact was consensual, and preferred 32.3% of cases in which the suspect denied contact or denied committing the crime.

TABLE 6-13e. COMMAND ACTION DECISION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

⁹ Military Rules of Evidence (M.R.E.) 413 and 404(b), respectively, cover the admissibility of other sex offenses and related misconduct. M.R.E. 413 is similar to its Federal Rule counterpart. Its purpose is to provide for the liberal admissibility of character evidence when the accused has committed a prior sexual assault offense. M.R.E. 404(b) permits the admissibility of certain evidence of other crimes, wrongs, or acts committed by the accused for the purpose of proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

	No Command Action (n = 190)		Preferral (n = 69)	
Suspect Race^a (NS)				
White ^b	143	71.1	58	28.9
Non-White	46	80.7	11	19.3
Suspect Grade at Time of Incident (NS)				
Officer	6	75.0	2	25.0
Enlisted	184	73.3	67	26.7
Suspect Alcohol Use (NS)				
Yes	118	74.2	41	25.8
No	72	72.0	28	28.0
Suspect Drug Use (NS)				
Yes	3	100	0	0
No	187	73.0	69	27.0
Suspect Lack of Memory (NS)				
Yes	14	70.0	6	30.0
No	176	73.6	63	26.4
Suspect Inconsistent Statements (NS)				
Yes	16	66.7	8	33.3
No	174	74.0	61	26.0
Suspect Contradictory Evidence (NS)				
Yes	9	90.0	1	10.0
No	181	72.7	68	27.3
Suspect Collateral Misconduct (NS)				
Yes	71	75.5	23	24.5
No	119	72.1	46	27.9
Suspect Other Misconduct (NS)				
Yes	62	73.8	22	26.2
No	128	73.1	47	26.9
Suspect 413 and 404(b) Evidence ($\chi^2 = 12.90$, p < .05)				
Yes	12	44.4	15	55.6
No	178	76.7	54	23.3
Suspect Behavioral Health Concerns Before or After Incident (NS)				
Yes	15	71.4	6	28.6
No	175	73.5	63	26.5
Suspect Statement ($\chi^2 = 29.89$, p < .05)^c				
Confessed	3	20.0	12	80.0
Consensual	114	82.6	24	17.4
Denied Crime/Sexual Activity	21	67.7	10	32.3
No Recollection/Partial Memory	6	60.0	4	40.0
Other	6	75.0	2	40.0

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The relationship remains statistically significant when the “other” suspect statement case is excluded from the analysis.

VICTIM PARTICIPATION DEPENDENT VARIABLE: VICTIM PARTICIPATED – VICTIM DECLINED

Table 6-14a shows that victim participation was similar when the incident occurred on installation (58.3%) and off installation (61.3%). Similarly, victim participation was not related to the type of person who reported the incident to authorities. The median number of days between the incident and the report to authorities was similar among cases with a participating victim (12) and cases in which the victim declined to participate (10.5). Victim participation was associated with judge advocates’ probable cause determination: participation was more likely in cases in which probable cause existed compared to when no determination was made and compared to when probable cause did not exist.

TABLE 6-14a. VICTIM PARTICIPATION: INCIDENT LOCATION AND REPORTING INFORMATION

	Victim Declined (n = 106)		Victim Participated (n = 157)	
	N	%	N	%
Incident Location (NS)				
On Installation	60	41.7	84	58.3
Off Installation	46	38.7	73	61.3
Reporting Individual (NS)				
Victim	44	36.4	77	63.6
Victim-Authorized Representative	29	42.0	40	58.0
Command	26	48.1	28	51.9
Third Party	7	36.8	12	63.2
Prompt Report (within 7 days) (NS)				
Yes	49	40.2	73	59.8
No	55	39.9	83	60.1
Number of Days Between Incident and Report to Authorities	Median = 10.5		Median = 12	
Probable Cause ^a ($\chi^2 = 15.54, p < .05$)				
No Determination Made	39	39.4	60	60.6
Probable Cause Existed	30	29.4	72	70.6
Probable Cause Did Not Exist	37	60.7	24	39.3

^a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

Table 6-14b presents patterns of relationships between evidentiary variables and victim participation. Rates of victim participation were similar across the categories of these variables. For example, rate of victim participation were nearly identical when witnesses existed (60.0%) and when they did not (59.6%). Rates of participation were unrelated to pretextual communication, the results of pretextual communication, victim injuries, suspect’s use and threats of force, victim SAFE, DNA testing, and attorney representation during the investigation. Despite the lack of statistical relationships, the patterns of relationships suggested that victim participation rates were greater in cases in which the victim was injured than in cases in which

the victim was not injured, greater in cases in which DNA was tested, and greater in cases with a victim who was represented by an attorney during the investigation.

TABLE 6-14b. VICTIM PARTICIPATION: EVIDENCE

	Victim Declined (n = 106)		Victim Participated (n = 157)	
Witness to the Incident (NS)				
Yes	18	40.0	27	60.0
No	88	40.4	130	59.6
Pretextual Communication Occurred (NS)				
Yes	10	31.3	22	68.8
No	96	41.6	135	58.4
Pretextual Communication Result (NS)				
Supports Victim Account	1	14.3	6	85.7
Supports Suspect Account	5	50.0	5	50.0
Supports Neither Account	4	26.7	11	73.3
Victim Physical Injuries (NS)				
Yes	19	33.9	37	66.1
No	87	42.0	120	58.0
Threat or Use of Force (NS)				
Yes	13	38.2	21	61.8
No	93	40.6	136	59.4
Sexual Assault Exam Performed on Victim (NS)				
Yes	38	37.6	63	62.4
No	68	42.0	94	58.0
DNA Evidence Tested (NS)				
Yes	24	32.9	49	67.1
No	82	43.2	108	56.8
Victim Attorney Representation (prior to trial) (NS)				
Yes	52	35.6	94	64.4
No	54	46.2	63	53.8

Table 6-14c presents patterns of relationships between victim participation and victims' demographic characteristics. The patterns of relationships in Table 6-14c were, overall, not statistically significant, suggesting that rates of victim participation were similar across victim gender, military status and grade, and age, as well as relationships between victims and suspects. Victim race was associated with victim participation such that 63.3% of White victims participated and 37.8% of non-White victims participated. Although not statistically significant, female victims were more likely to participate than male victims (60.2% compared to 50.0%).

TABLE 6-14c. VICTIM PARTICIPATION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	Victim Declined (n = 106)		Victim Participated (n = 157)	
Victim Gender (NS)				
Female	100	39.8	151	60.2

Males	6	50.0	6	50.0
Victim Race ^a ($\chi^2 = 8.57, p < .05$)				
White ^b	81	36.7	140	63.3
Non-White	23	62.2	14	37.8
Victim Status at Time of Incident (NS)				
Military	56	37.8	92	62.2
Civilian – Not DoD Spouse	24	42.9	32	57.1
Civilian – DoD Spouse	26	44.1	33	55.9
Suspect Is Spouse/Former Spouse (NS)	18	43.9	23	56.1
Suspect Is Not Spouse	8	44.4	10	55.6
Victim Grade at Time of Incident (NS)				
Enlisted	56	38.6	89	61.4
Officer	0	0	3	100
Relationship Between Victim and Suspect ^c (NS)				
Supervisor – Subordinate	2	28.6	5	71.4
Spouse/Former Spouse	25	43.9	32	56.1
Intimate Partner/Former Intimate Partner	14	43.8	18	56.3
Friend	35	45.5	42	54.5
Co-worker/Classmate/Roommate	8	33.3	16	66.7
Acquaintance	13	37.1	22	62.9
Stranger	4	26.7	11	73.3
Victim Age (NS)	(Mean = 22.4, SD = 4.9)		(Mean = 22.7, SD = 5.4)	

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The "other relationship," "online/met for the first time," and "recruiter – recruit" categories were excluded because of their small numbers; the "unknown/unable to determine" category was also excluded from this analysis.

Table 6-14d shows that few victim-related variables were associated with the likelihood the victim participated. Victim participation rates were similar whether or not victims provided inconsistent statements, presented contradictory evidence, engaged in collateral misconduct and other misconduct, and had consensual sexual contact with the suspect. Victim lack of memory was associated with a greater chance of victim participation (71.1%) than when no memory loss was sustained by the victim (55.1%). Although the difference was not statistically significant, victim participation was more likely when the victim had behavioral health concerns (71.1%) than when these concerns did not exist (57.3%). Similarly, the relationship between victim motive to lie and participation was not statistically significant, but participation rates were greater when the victim did not have a motive to lie (62.9%) than when the motive to lie existed (55.4%).

TABLE 6-14d. VICTIM PARTICIPATION: VICTIM FACTORS

	Victim Declined (n = 106)		Victim Participated (n = 157)	
Victim Impairment (NS)				
Not Impaired	59	44.0	75	56.0

Passed Out/Unconscious/Asleep	22	29.3	53	70.7
Blacked Out/Memory Loss	24	46.2	28	53.8
Victim Alcohol Use (NS)				
Yes	53	36.6	93	63.7
No	53	45.7	63	54.3
Victim Drug Use (NS)				
Yes	11	55.0	9	45.0
No	95	39.1	148	60.9
Victim Lack of Memory ($\chi^2 = 5.73, p < .05$)				
Yes	22	28.9	54	71.1
No	84	44.9	103	55.1
Victim Motive to Lie (NS)				
Yes	50	44.6	62	55.4
No	56	37.1	95	62.9
Victim Inconsistent Statements (NS)				
Yes	25	38.5	40	61.5
No	81	40.9	117	59.1
Victim Contradictory Evidence (NS)				
Yes	12	41.4	17	58.6
No	94	40.2	140	59.8
Victim Collateral Misconduct (NS)				
Yes	25	39.1	39	60.9
No	81	40.7	118	59.3
Victim Other Misconduct (NS)				
Yes	18	45.0	22	55.0
No	88	39.5	135	60.5
Victim Behavioral Health Concerns Before or After Incident (NS)				
Yes	13	28.9	32	71.1
No	93	42.7	125	57.3
Victim Consensual Sexual Contact with Suspect (NS)				
Yes – prior to incident	46	41.8	64	58.2
Yes – following incident	0	0	1	100
Yes – prior to and following incident	8	42.1	11	57.9
No	52	39.1	81	60.9

Three suspect-related variables were related to victim participation: suspect behavioral health concerns, suspect misconduct other than collateral misconduct, and suspect statements to law enforcement and/or third parties (Table 6-14e). Victim participation was more likely when the suspect had a history of misconduct, other than collateral misconduct (68.2% compared to 55.6%). Victim participation was also more likely when the suspect experienced behavioral health concerns (81.0%) than when the suspect did not experience these concerns (57.9%). Victim participation was most likely to have occurred when the suspect confessed (87.5%) and when the suspect reported to third parties or law enforcement that they suffered from at least some memory loss (80.8%) about the incident. Suspect race, grade, alcohol use, drug use, and several suspect complexity factors were not related to victim participation. The patterns suggest that victim participation was related to suspect complexity factors. For example, despite the lack

of statistical significance, victim participation was greater when the suspect engaged in collateral misconduct (65.5%) than when the suspect did not engage in collateral misconduct (56.3%).

TABLE 6-14e. VICTIM PARTICIPATION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	Victim Declined (n = 106)		Victim Participated (n = 157)	
Suspect Race ^a (NS)				
White ^b	81	39.5	124	60.5
Non-White	25	43.9	32	56.1
Suspect Grade at Time of Incident (NS)				
Officer	3	33.3	6	66.7
Enlisted	103	40.6	151	59.4
Suspect Alcohol Use (NS)				
Yes	61	38.1	99	61.9
No	45	43.7	58	56.3
Suspect Drug Use (NS)				
Yes	2	66.7	1	33.3
No	104	40.0	156	60.0
Suspect Lack of Memory (NS)				
Yes	7	35.0	13	65.0
No	99	40.7	144	59.3
Suspect Inconsistent Statements (NS)				
Yes	10	41.7	14	58.3
No	96	40.2	143	59.8
Suspect Contradictory Evidence (NS)				
Yes	3	30.0	7	70.0
No	103	40.7	150	59.3
Suspect Collateral Misconduct (NS)				
Yes	33	34.4	63	65.6
No	73	43.7	94	56.3
Suspect Other Misconduct ($\chi^2 = 3.81, p \leq .05$)				
Yes	27	31.8	58	68.2
No	79	44.4	99	55.6
Suspect 413 and 404(b) Evidence (NS)				
Yes	11	40.7	16	59.3
No	95	40.3	141	59.7
Suspect Behavioral Health Concerns Before or After Incident ($\chi^2 = 4.29, p < .05$)				
Yes	4	19.0	17	81.0
No	102	42.1	140	57.9
Suspect Statement ($\chi^2 = 11.26, p < .05$) ^c				
Confessed	2	12.5	14	87.5
Consensual	59	42.8	79	57.2
Denied Crime/Sexual Activity	12	38.7	19	61.3
No Recollection/Partial Memory	2	20.0	8	80.8
Other	6	75	2	25.0

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The relationship was statistically significant when "confessed" was compared to all other suspect statements and to no statements.

MULTIVARIATE ANALYSIS

The models were built by starting with independent variables that showed a significant bivariate relationship with the dependent variable. The models were refined in light of results of the initial model and of close relationships between two independent variables. In addition, some independent variables were excluded if there were small numbers of cases in categories of the independent variable across categories of the dependent variable (e.g., suspect confession by command decision).

Table 6-15a presents the results of this final multivariate model that treated the commander decision to prefer the case or take no action in the case as the dependent variable. Four cases in which the commander took administrative action were excluded from this analysis. The following patterns of relationships emerged from the multivariate model:

- When probable cause was determined to exist, as compared to cases without a probable cause determination and cases in which probable cause was determined to not exist, there was a greater likelihood that the case would be preferred. Judge advocates made probable cause determinations for the purposes of indexing with the FBI.
- A participating victim increased the chances of case preferral.
- When any DNA evidence in the case was tested, there was an increased chance that the case would be preferred.
- When the offender used force or made threats of force, the chances of preferral were greater.
- The presence of suspect M.R.E. 413 or 404(b) evidence was related to an increased chance of case preferral.

TABLE 6-15a. LOGISTIC REGRESSION: COMMANDER DECISION TO PREFER CASES OR TAKE NO ACTION

	B	SE	Exp(B)
Probable cause exists	1.89*	.36	6.59
Victim participated	2.01*	.46	7.49
DNA evidence tested	.98*	.37	2.66
Threat or use of force occurred	1.07*	.49	2.92
Suspect 413 and 404(b) evidence	1.85*	.54	6.34

* p < .05

Model $\chi^2 = 97.05$, df = 5, p < .05

Table 6-15b presents the results of a multivariate model that treated victim participation as the dependent variable. Few variables exhibited a statistically significant relationship with likelihood of victim participation (see Tables 6-14a to 6-14e):

- The existence of probable cause, in contrast to cases in which no probable cause determination was made and when probable was determined to not exist, was associated with greater chances of victim participation. Judge advocates made probable cause determinations for the purposes of indexing with the FBI.
- Non-White victims were less likely to participate during investigations than White victims.
- Suspect behavioral health concerns were related to victim participation such that victim participation was greater when suspect behavioral health concerns existed.
- When victims experienced memory loss about the incident or loss of consciousness during the incident, the chance of victim participation was greater.

TABLE 6-15b. LOGISTIC REGRESSION: VICTIM PARTICIPATION OR DECLINATION

	B	SE	Exp(B)
Probable cause existed	.86*	.28	2.36
Victim was non-White	-1.09*	.39	.34
Suspect behavioral health concerns	1.17*	.58	3.21
Victim loss of memory/consciousness	.82*	.31	2.27

* p < .05

Model $\chi^2 = 29.80$, df = 4, p < .05

PART 7 Navy Results

The Navy case file data were analyzed to understand case characteristics and patterns of relationships between key variables. The analysis examined 387 Navy cases. The first step in the analysis examined univariate statistics to understand the cases. The second step explored bivariate relationships between case and individual characteristics and two key outcome variables: command decision to take action and victim participation in justice proceedings. The final analysis estimated multivariate models for the two dependent variables (command action and victim participation).

UNIVARIATE STATISTICS: NAVY CASE CHARACTERISTICS

Table 7-1 presents information about the commanders' decisions in Navy cases and justice system outcomes for penetrative sexual assaults. The commander did not take action in 71.6% of cases and preferred 23.0% of cases. Administrative actions occurred in 5.4% of cases (n = 21). Twenty of these 21 cases entailed administrative separation and 1 involved a letter of reprimand. Within the investigative case file, commanders did not document a reason for taking no action in 22.9% of the no action cases. Insufficient evidence was the most common reason (39.2%) provided by commanders for not taking action in the case, followed by a lack of victim participation (19.1%). Of the 89 cases that commanders preferred, 82.0% were referred; 18.0% were not referred. Court-martial occurred in 40 of the 73 referred cases (54.8%), and alternative dispositions, such as discharges, occurred in 49 of the 89 preferred cases (55.1%). Acquittals were more common results of court-martial (62.5%) than convictions (37.5%), and case dismissals were the most common alternative dispositions (75.5%).

TABLE 7-1. COMMAND ACTION DECISIONS AND COURT-MARTIAL RESULTS

	N	%
Initial Command Action on Penetrative Sexual Assault		
No Command Action	277	71.6
Preferred	89	23.0
Administrative Action ^a	21	5.4
Reason for Provided by Command for No Command Action ^b		
Lack of Victim Participation	60	19.1
Insufficient Evidence	123	39.2
Unfounded	18	5.7
Prosecution Declined	12	3.8
No Probable Cause	15	4.8
No Reason Provided/Unknown	72	22.9
Other	14	4.5
Case Preferral/Referral (n = 89)		
Preferred Only	16	18.0
Preferred and Referred	73	82.0
Referred Cases with a Finding	40	54.8
Court-Martial Result (n = 40)		
Acquittal	25	62.5
Conviction for at Least One Penetrative Sexual Assault Charge – Court-	12	30.0

Martial		
Conviction for at Least One Penetrative Sexual Assault Charge – PTA at Court-Martial	3	7.5
Alternative Disposition (n = 49)		
Administrative Separation	6	12.2
Discharge in Lieu of Court-Martial	6	12.2
Dismissal	37	75.5

^a This category included 1 letter of reprimand and 20 administrative separations.

^b Multiple reasons were listed in 36 cases in which the command did not take action; these are included in the counts, resulting in a total count of 314. Percentages were computed using 314.

Table 7-2 describes Navy cases in terms of incident location. Approximately one-third of the reported sexual assaults occurred on installation (34.6%), and nearly three-quarters occurred in the continental United States (72.4%). One case occurred in a deployed location (i.e., Iraq or Afghanistan).

TABLE 7-2. INCIDENT LOCATION

	N	%
Installation		
On Installation	134	34.6
Off Installation	253	65.4
Location of Incident		
CONUS	280	72.4
OCONUS	93	24.0
CONUS and OCONUS	1	0.3
Vessel	11	2.8
Vessel and CONUS	1	0.3
Vessel and OCONUS	1	0.3
Deployment		
Deployed Location (Iraq or Afghanistan only)	1	0.3
Non-Deployed Location	386	99.7

Table 7-3 summarizes information about the time between key events in the cases, including the times between the offense, the report to authorities, MCIO final report, and the command decision in preferred cases. The data collection form captured information about the dates of these key events, and the number of days between them was computed. In some cases, there were multiple dates listed for the date the incident occurred and a date range was captured on the data collection form. In these situations, the latest (most recent) incident date was used to compute the days between the incident and key events (i.e., date of report and decision dates). When one of the dates used in the calculations was missing, computations were not possible; these cases therefore are categorized as “unknown.” In addition, when the date of one event should have logically occurred after the date of another event but the dates show the reverse (e.g., the date of the commander’s decision occurred *before* the date the incident was reported, or the date the MCIO closed the case occurred *before* the date the incident was reported to authorities), these cases are categorized as “unknown.” This latter categorization rule was also used when a range of dates was provided for the date of the incident and the most recent incident date occurred *after* the date the incident was reported (i.e., these cases are categorized as “unknown”). The number of days between key points in the case and commanders’ decisions are

separated into no action (n = 277) and preferred cases (n = 89) to identify time differences between cases with these different commanders' decisions. The patterns described below show that it took longer for commanders to prefer cases than to take no action.

Approximately one-third (32.6%) of cases were reported within 7 days of the incident, including 26.1% of cases that were reported within 3 days of the incident. About 13% of Navy cases were reported more than one year after the incident. The median number of days between the report and the incident was 30, indicating that half of the Navy cases were reported to authorities within 30 days and half of the cases were reported after 30 days.

A relatively small percentage of cases (12.1%) received a final MCIO report within 60 days of the report to authorities; 36.1% of cases received a final MCIO report within 4 months of the date the incident was reported to authorities. The median number of days between the report to authorities and the MCIO final report was 145 days; half of the cases received a final MCIO report in fewer than 145 days after the date of the report to authorities.

Nearly one-quarter of the cases (24.6%) were preferred within 3 months of the MCIO final report. The median number of days between the MCIO final report and the decision to prefer the case was about 4 months (120.5 days); half of the cases were preferred fewer than 120.5 days after the MCIO final report.

Also among preferred cases, 7.8% were preferred within 120 days (4 months) of the date on which the incident was reported to authorities and 21.3% were preferred within 180 days (6 months). The median number of days between the decision to prefer and the date on which the incident was reported to authorities was 328.

Among no action cases, 37.6% were decided within 3 months of the MCIO final report. The median number of days between the MCIO final report and the decision to take no action in the case was approximately three months (99.5 days); half of the no action cases were decided fewer than 99.5 days after the MCIO final report. Also among no action cases, 5.1% were decided within 4 months of the date on which the incident was reported to authorities, and 18.5% were decided within 6 months. The median number of days between the decision to take no action and the date on which the incident was reported to authorities was 259; half of the no action cases were decided in fewer than 259 days and half were decided in more than 259 days.

TABLE 7-3. TIME BETWEEN KEY ACTIONS IN THE CASE

	N	%
Number of Days Between Offense and Report to Authorities		
0 (same day)	32	8.3
1 – 3	69	17.8
4 – 7	25	6.5
8 – 14	31	8.0
15 – 30	35	9.0
31 – 60	41	10.6
61 – 90	18	4.7
91 – 120	18	4.7
121 – 150	10	2.6

APPENDIX F. INVESTIGATION OF ADULT PENETRATIVE SEXUAL OFFENSE
 CASES CLOSED IN THE MILITARY SERVICES DURING FISCAL YEAR 2017

151 – 180	15	3.9
181 – 210	8	2.1
211 – 240	8	2.1
241 – 270	5	1.3
271 – 365	17	4.4
366 +	51	13.2
Unknown	4	1.0
Median number of days = 30		
Number of Days Between Report to Authorities and MCIO Final Report		
0 (same day)	0	0
1 – 3	0	0
4 – 7	0	0
8 – 14	1	0.3
15 – 30	11	2.8
31 – 60	35	9.0
61 – 90	46	11.9
91 – 120	47	12.1
121 – 150	49	12.7
151 – 180	34	8.8
181 – 210	26	6.7
211 – 240	25	6.5
241 – 270	13	3.4
271 – 365	40	10.3
366 +	39	10.1
Unknown	21	5.4
Median number of days = 145		
Number of Days Between MCIO Final Report and Command Decision in Preferred Cases (n = 89)		
0 (same day)	1	1.1
1 – 3	1	1.1
4 – 7	1	1.1
8 – 14	1	1.1
15 – 30	4	4.5
31 – 60	9	10.1
61 – 90	5	5.6
91 – 120	11	12.4
121 – 150	7	7.9
151 – 180	5	5.6
181 – 210	2	2.3
211 – 240	9	10.1
241 – 270	2	2.3
271 – 365	4	4.5
366 +	4	4.5
Unknown	23	25.8
Median number of days = 120.5		

Number of Days Between Report to Authorities and Command Decision in Preferred Cases (n = 89)		
0 – 60	2	2.2
61 – 120	5	5.6
121 – 180	12	13.5
181 – 240	14	15.7
241 – 300	11	12.4
301 – 360	12	13.5
361 +	33	37.1
Median number of days = 328		
Number of Days Between MCIO Final Report and Command Decision in No Action Cases (n = 277)		
0 (same day)	0	0
1 – 3	1	0.4
4 – 7	4	1.4
8 – 14	6	2.2
15 – 30	16	5.8
31 – 60	33	11.9
61 – 90	44	15.9
91 – 120	30	10.8
121 – 150	20	7.2
151 – 180	18	6.5
181 – 210	13	4.7
211 – 240	12	4.3
241 – 270	7	2.5
271 – 365	15	5.4
366 +	3	1.1
Unknown	55	19.9
Median number of days = 99.5		
Number of Days Between Report to Authorities and Command Decision in No Action Cases (n = 277)		
0 – 60	0	0
61 – 120	14	5.1
121 – 180	37	13.4
181 – 240	55	19.9
241 – 300	41	14.8
301 – 360	24	8.7
361 +	66	23.8
Unknown	40	14.4
Median number of days = 259		

Table 7-4 describes the suspect characteristics in Navy cases. A large majority of cases involved suspects who were enlisted (93.3%) and with a pay grade of E-5 or lower (81.8%). Close to three-quarters of suspects (71.5%) were E-3, E-4, or E-5 personnel. Among officers, the most common pay grades were O-2 (34.6%) and O-3 (26.9%). Nearly all suspects were male (97.9%) and 63.6% of suspects were White. Over one-quarter of suspects were African American

(28.9%). The White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African. The average age of suspects was 25.8 years.

TABLE 7-4. SUSPECT CHARACTERISTICS

	N	%
Suspect Grade at Time of Incident		
Enlisted	361	93.3
Officer	26	6.7
Suspect Pay Grade at Time of Incident		
Enlisted (n = 361)		
E-1	9	2.5
E-2	28	7.8
E-3	84	23.3
E-4	91	25.2
E-5	83	23.0
E-6	37	10.3
E-7	22	6.1
E-8	5	1.4
E-9	1	0.3
Unknown	1	0.3
Officer (n = 26)		
Cadet/Midshipman	4	15.4
O-1	1	3.8
O-2	9	34.6
O-3	7	26.9
O-4	1	3.8
O-5	3	11.5
W-3	1	3.8
Suspect Gender		
Male	379	97.9
Female	8	2.1
Suspect Age	Mean = 25.8; SD = 6.3; Range = 18 – 58	
Suspect Race ^a		
White ^b	246	63.6
Black or African American	112	28.9
Asian	16	4.1
Native Hawaiian or Other Pacific Islander	3	0.8
American Indian or Alaska Native	2	0.5
Other Race, Ethnicity, or Origin ^c	4	1.0
Unknown	4	1.0

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c Persons categorized as "mixed" in NCIS investigations were included in this category.

Table 7-5 presents information about suspects’ drug and alcohol use during the time of the incident and about other suspect characteristics related to the investigation. Drug use during the incident was rare, but suspect alcohol use was common (63.1% of incidents). It was rare for a suspect to have any behavioral health concerns listed in the case files (6.2%). The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). At least one of six suspect complexity factors existed in 61.8% of the cases. The most common suspect complexity factors were collateral misconduct at the time of the incident (36.7%), other forms of misconduct (25.8%), and inconsistent statements (12.9%). Contradictory evidence, loss of memory or consciousness, and the existence of M.R.E. 413 or 404(b) evidence were less common.

TABLE 7-5. SUSPECT FACTORS

	N	%
Suspect Alcohol Use		
Yes	244	63.1
No	142	36.7
Unknown	1	0.3
Suspect Drug Use		
Yes	7	1.8
No	379	97.9
Unknown	1	0.3
Suspect Behavioral Health Concerns Before or After Incident		
Yes	24	6.2
No	362	93.5
Unknown	1	0.3
Suspect Complexity Factors ^a		
Collateral Misconduct	142	36.7
Other Misconduct	100	25.8
Loss of Memory or Consciousness	23	5.9
413 and 404(b) Evidence	33	8.5
Inconsistent Statements	50	12.9
Contradictory Evidence	29	7.5
At Least One of the Six Factors Exists in the Case	239	61.8

^a These categories are not mutually exclusive; multiple factors can be present for a single suspect. Percentages are calculated based on the full set of 387 cases and do not sum to 100%.

Table 7-6 summarizes information about suspects’ statements and legal representation. It was common for suspects to make statements to law enforcement (70.8%); suspects rarely had legal representation (2.6%) at the time of the interview. The data collection instrument recorded information from the case file about the content of suspect statements to law enforcement and third parties. The most common suspect statement was to indicate that the sexual contact was consensual (72.8%), followed by denying that the event was a crime or denying sexual contact (15.2%). Suspects confessed in 20 cases (6.6%).

TABLE 7-6. SUSPECT STATEMENTS AND REPRESENTATION

	N	%
Suspect Provided Statement to Law Enforcement		
Yes	274	70.8
No	113	29.2
Suspect Had Legal Representation		
Yes	10	2.6
No	377	97.4
Suspect Statement to Third Parties or Law Enforcement ^a		
Confessed	20	6.6
Consensual	220	72.8
Denied Crime/Sexual Activity	46	15.2
No Recollection/Partial Memory	7	2.3
Other	9	3.0

^a Reports included information with multiple suspect statements in 27 cases. A hierarchy rule was used to code cases with multiple statements: Cases were coded as “confessed” if the suspect confessed and offered any other statement. The next code in the hierarchy was “consensual” and was used when the suspect reported that the sexual activity was consensual (but did not confess). The third category in the hierarchy was “denied crime or denied penetrative sexual activity” and was used when the suspect offered multiple statements but not “confessed” and not “consensual.” The “no recollection/partial memory” category was used when only this statement was made. The last category was “other” and was used when the provided statement did not clearly fit into any other the previous categories. Information about suspects’ statements was available for 302 cases.

Tables 7-7 and 7-8 present information about victims. Close to two-thirds of the cases involved victims who were enlisted (63.3%), and it was rare for a victim to be an officer (2.1%). Civilians represented 34.6% of all victims and military personnel represented 65.4% of victims. Among the enlisted victims, a large majority were E-4 or lower (76.3%). The large majority of victims were female (94.6%) and the average victim age was 23.7. In a pattern similar to that seen among suspects, White victims comprised a majority of victims in the sample (67.2%). African Americans represented 18.9% of victims. As was true of suspects, it is important to note that the White category included individuals in the following groups: White, Hispanic, Middle Eastern, and North African.

Table 7-7 also summarizes the relationships between victims and suspects. Stranger cases were not common (4.7%) and friend relationships were most common (27.6%), followed by acquaintances (15.5%), current or former spouses (14.2%), current or former intimate partners (13.7%), and co-worker/classmate/roommate (13.4%). Recruit (victim)–recruiter (suspect) and supervisor (suspect)–subordinate (victim) relationships were not common among Navy cases (n = 14). Finally, Table 7-7 describes the individuals who reported the incident. Victims reported 39.5% of the cases, followed by a victim-authorized representative (26.9%), command (19.9%), or a third party (13.7%).

TABLE 7-7. VICTIM CHARACTERISTICS

	N	%
Victim Status at Time of Incident		
Enlisted	245	63.3
Officer	8	2.1
Civilian – Not DoD Spouse	69	17.8
Civilian – DoD Spouse	65	16.8

Suspect is Spouse/Former Spouse	50	76.9
Suspect is not Spouse	15	23.1
Victim Pay Grade at Time of Incident		
Enlisted (n = 245)		
E-1	16	6.5
E-2	33	13.5
E-3	90	36.7
E-4	48	19.6
E-5	45	18.4
E-6	6	2.5
E-7	3	1.2
E-8	1	0.4
Unknown	3	1.2
Officer (n = 8)		
Cadet/Midshipman	4	50.0
O-1	2	25.0
O-4	2	25.0
Victim Gender		
Male	21	5.4
Female	366	94.6
Victim Age	Mean = 23.7; SD = 5.8; Range = 16 – 51	
Victim Race ^a		
White ^b	260	67.2
Black or African American	73	18.9
Asian	36	9.3
Native Hawaiian or Other Pacific Islander	2	0.5
American Indian or Alaska Native	3	0.8
Other Race, Ethnicity, or Origin ^c	4	1.0
Unknown	9	2.3
Relationship to Suspect ^d		
Current or Former Spouse	55	14.2
Intimate Partner/Former Intimate Partner	53	13.7
Friend	107	27.6
Co-worker/Classmate/Roommate	52	13.4
Subordinate – Supervisor	12	3.1
Acquaintance	60	15.5
Online/Met for the First Time	9	2.3
Stranger	18	4.7
Recruit – Recruiter	2	0.5
Other	5	1.3
Unknown/Unable to Determine	14	3.6
Reporting Individual		
Victim	153	39.5
Victim-Authorized Representative	104	26.9
Command	77	19.9
Third Party	53	13.7

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c Persons categorized as "mixed" in NCIS investigations were included in this category.

^d The data analyzed here were based on the victim's reported relationship to the suspect. See Appendix for more details about this variable.

Table 7-8 presents information about victims' drug and alcohol use and level of impairment during the time of the incident, in addition to other victim characteristics related to the investigation. As was true of suspect variables, victim drug use was substantially less common than victim alcohol use (5.4% compared to 63.8%). Nearly half of all victims reported some level of impairment during the offense (47.8%). Among those victims who were impaired, some memory loss and/or blacking out represented the most common form of impairment (48.1%), followed by the victim passing out or experiencing unconsciousness (47.0%). The large majority of victims (80.6%) did not have any history of behavioral health concerns listed in the case files. The data collection form captured information about behavioral health concerns before and after the incident, including, for instance, indications of inpatient treatment, outpatient treatment, traumatic brain injury, and alcohol and drug treatment (see Appendix H). The data collection instrument also recorded information about victim's statements or behaviors that may have been relevant during the investigation, and data show that 48.3% had a motive to lie, there was evidence of collateral victim misconduct in 34.9% of cases, 34.6% experienced some memory loss or were unconscious, and 31.0% of victims provided inconsistent statements. At least one of the victim complexity factors was present in 83.2% of the cases.

TABLE 7-8. VICTIM FACTORS

	N	%
Victim Alcohol Use		
Yes	247	63.8
No	140	36.2
Victim Drug Use		
Yes	21	5.4
No	366	94.6
Victim Reported Being Impaired		
Yes	185	47.8
No	202	52.2
Nature of Victim Impairment ^a		
Passed Out/Unconscious/Asleep	87	47.0
Blacked Out/No Memory/Partial Memory	89	48.1
Unknown	9	4.9
Victim Behavioral Health Concerns Before or After Incident		
Yes	75	19.4
No	312	80.6
Victim Complexity Factors ^b		
Collateral Misconduct	135	34.9
Other Misconduct	65	16.8
Loss of Memory or Consciousness	134	34.6

Inconsistent Statements	120	31.0
Motive to Lie	187	48.3
Contradictory Evidence	69	17.8
At Least One of the Six Factors Exists in the Case	322	83.2

^aVictims were impaired in 185 cases, including 9 cases in which the nature of impairment was not clear (e.g., “drugged,” “extremely drowsy,” “transient state,” and “victim was drunk and her reactions were slow”). Multiple reasons were provided for the nature of impairment in 71 cases. To simplify the analyses of impairment reasons, a single variable was created to measure the reason for impairment. The categories for this variable are mutually exclusive. The “passed out/unconscious/asleep” category is considered to be the greatest level of impairment, followed by “blacked out/no memory/partial memory.” If the case indicated “passed out” or “unconscious” AND “blacked out” or “partial memory,” then the case was coded as “passed out/unconscious/asleep.” If the case indicated “blacked out,” “partial memory,” or “no memory” AND “asleep,” then the case was coded as “passed out/unconscious/asleep.”

^bThese categories were not mutually exclusive; multiple factors could have been present for a single victim. Percentages were calculated based on the full set of 387 cases and do not sum to 100%.

Table 7-9 presents information about victim injuries and suspects’ use of force and threats. A suspect used or threatened to use force in 16.5% of cases; physical force was most common and weapon use was rare, occurring in only six cases. Victims sustained injuries in 18.1% of cases. Bruising (11.1%) and redness (5.9%) were the most common victim injuries. Witnesses existed in 15.5% of cases (see item 57 on the data collection form). Investigators collected pretextual communication evidence in 16.0% of cases, and the most common result of the pretextual communication was to support neither the victim’s nor the suspect’s account (54.8% of cases in which pretextual communication occurred).

TABLE 7-9. VICTIM INJURIES AND EVIDENCE

	N	%
Use/Threat of Force		
Yes	64	16.5
No	323	83.5
Type of Force/Threat ^a		
Physical	57	14.7
Weapon	6	1.6
Coercion	7	1.8
Threat/Threat to Others	4	1.0
Physical Injuries to Victim ^b		
Yes	70	18.1
No	317	81.9
Injuries ^c		
Redness	23	5.9
Bruising	43	11.1
Cuts	14	3.6
Scrapes	9	2.3
Witness to the Incident		
Yes	60	15.5
No	327	84.5
Pretextual Communication		
Yes	62	16.0
Supports Victim Account	16	25.8
Supports Suspect Account	12	19.4
Supports Neither	34	54.8

No	325	84.0
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^a Categories were not mutually exclusive; cases could involve multiple types of force and threats.

^b Victim injury was based on self-reported or recorded information in the case files and SAFE reports.

^c Categories were not mutually exclusive; cases could involve multiple types of injuries.

Table 7-10 presents information about forensic evidence in Navy cases. A sexual assault forensic examination (SAFE) was performed on victims in 33.9% of cases. When a SAFE was performed, nearly two-thirds (61.1%) occurred within one day of the incident. Military health care facilities performed more SAFEs (n = 86, 65.7%) than civilian facilities (n = 44, 33.6%). Military forensic medical examiners performed the majority of exams (n = 77, 58.8%). The measure of DNA testing indicates whether *any* DNA evidence from the case was tested. DNA evidence was tested in 19.1% of cases.

TABLE 7-10. FORENSIC EVIDENCE

	N	%
SAFE Performed on Victim		
Yes	131	33.9
No	256	66.1
Days Between Offense and Victim SAFE (n = 131)		
0 (same day)	49	37.4
1	31	23.7
2	12	9.2
3	7	5.3
4	7	5.3
5	4	3.1
6	1	0.8
7	3	2.3
8 – 14	4	3.1
15 +	3	2.3
Unknown	10	7.6
Victim SAFE Location (n = 131)		
Civilian Health Care Facility	44	33.6
Military Health Care Facility	86	65.7
Unknown	1	0.8
Victim SAFE Provider Type (n = 131)		
Civilian Provider	43	32.8
Military Examiner	77	58.8
DoD Civilian	10	7.6
Unknown	1	1.1
DNA Evidence Tested ^a		
Yes	74	19.1
No/Unknown	313	80.9

^a The DNA testing variable measured *any* DNA evidence testing in the case, not only sexual assault kit evidence collected from the victim.

Victim participation is summarized in Table 7-11. Victims participated in 72.4% of Navy cases and declined in 27.6% of cases. Among the victims who declined, more than three-quarters (77.5%) declined early in justice system processing (during investigation and reporting). Victims provided their input to commanders in a relatively small number of cases (n = 25, 6.5%). Victims

provided different forms of input, including nine who requested a court-martial (36.0%) and equal numbers who requested no action (n = 4, 16.0%) and who requested nonjudicial punishment/administrative action (n = 4, 16.0%). Victims were represented by attorneys during the investigation in over half of the cases (56.8%), and victims provided statements to law enforcement in nearly all cases (97.4%).

TABLE 7-11. VICTIM PARTICIPATION

	N	%
Victim Declination Recorded in File		
Victim Participated	280	72.4
Victim Declined	107	27.6
Declination Stage		
Investigation	73	68.2
Reporting	10	9.3
Court-Martial	14	13.1
Preliminary Hearing	3	2.8
Unknown	7	6.5
Victim Input to Command or SJA		
No	362	93.5
Yes	25	6.5
Input Provided to Command (n = 25)		
Pursue Administrative Separation	1	4.0
Supports DILCOM	0	0
Pursue Court-Martial	9	36.0
Take No Action	4	16.0
Nonjudicial Punishment/Administrative Actions	4	16.0
Other	7	28.0
Victim Attorney Representation (prior to trial)		
Yes	220	56.8
No	167	43.2
Victim Provided Statement to Law Enforcement		
Yes	377	97.4
No	10	2.6

Table 7-12 shows that a judge advocate made a probable cause determination in two-thirds of all cases (66.4%) and probable cause was determined to exist in 148 cases, representing 38.2% of all cases and 57.6% of cases in which a determination was made. Judge advocates made probable cause determinations for purposes of indexing with the FBI's NCIC criminal history database.

TABLE 7-12. PROBABLE CAUSE DETERMINATION

	N	%
Probable Cause Determination Made		
Yes	257	66.4
No	130	33.6
Probable Cause Determination Result (n = 257)		
Yes, Probable Cause Exists	148	57.6
Probable Cause Does Not Exist	109	42.4

BIVARIATE RELATIONSHIPS

The second stage of the analysis estimated relationships between case characteristics and two important outcome variables: (1) the commander’s decision to prefer or to not take action and (2) the victim’s decision to participate or to decline. Because of the small number of convictions (n = 15), it was not possible to compare no action cases to cases that ended in a conviction or to compare acquittals to convictions. A DoD-wide analysis that combines all Service branches will examine differences between cases that end in acquittal and cases that end in a conviction. Cases that ended in some administrative action (n = 21) were excluded from the analysis that examined preferral and no action outcomes.

COMMAND ACTION DEPENDENT VARIABLE: NO ACTION COMPARED TO PREFERRED

The patterns in Table 7-13a show that the preferral decision was not related to the incident location or the identity of the individual who reported the incident to authorities. Cases with prompt reports (i.e., within one week) were more likely to be preferred (33.9%) than cases without a prompt report (20.1%). The median number of days between the incident and the report to authorities was shorter in preferred cases (12 days) than in no action cases (38 days). In addition, cases in which probable cause was determined to exist were most likely to be preferred (45.7%). The difference in rates of preferral between cases with probable cause and all other cases was statistically significant (45.7% compared to 27.6%). Similarly, the likelihood of preferral was greater when a no probable cause determination was made (17.9%) than when a determination of no probable cause was made (3.8%); this relationship is statistically significant.

TABLE 7-13a. COMMAND ACTION DECISION: INCIDENT LOCATION AND REPORTING INFORMATION

	No Command Action (n = 277)		Preferral (n = 89)	
	N	%	N	%
Incident Location (NS)				
On Installation	94	75.2	31	24.8
Off Installation	183	75.9	58	24.1
Reporting Individual (NS)				
Victim	109	74.7	37	25.3
Victim-Authorized Representative	79	79.8	20	20.2
Command	54	77.1	16	22.9
Third Party	35	68.6	16	31.4
Prompt Report (within 7 days) ($\chi^2 = 8.19, p < .05$)				
Yes	78	66.1	40	33.9
No	195	79.9	49	20.1
Number of Days Between Incident and Report to Authorities	Median = 38		Median = 12	
Probable Cause ^a ($\chi^2 = 60.89, p < .05$)				

No Determination Made	101	82.1	22	17.9
Probable Cause Existed	75	54.3	63	45.7
Probable Cause Did Not Exist	101	96.2	4	3.8

^a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

Several evidentiary variables were related to preferral outcomes (Table 7-13b). A case was more likely to be preferred when the victim sustained some injuries than when the victim was not injured (34.8% compared to 22.0%). When suspects used or threatened to use force, the chances of case preferral were greater (39.0%) than when suspects did not use or threaten to use force (21.5%). Victim participation, compared to declinations, also increased the chances the case would be preferred. Over one-quarter of cases with a participating victim (28.1%) were preferred compared to 13.5% of cases in which the victim declined. Finally, cases were more likely to be preferred when a SAFE exam was performed on the victim, when DNA testing occurred, and when the victim was represented by an attorney during the investigation. The variables that were not associated with the chances of a case being preferred included the presence of witnesses, pretextual communication, and communication results.

TABLE 7-13b. COMMAND ACTION DECISION: EVIDENCE

	No Command Action (n = 277)		Preferral (n = 89)	
Witness to the Incident (NS)				
Yes	50	83.3	10	16.7
No	227	74.2	79	25.8
Pretextual Communication Occurred (NS)				
Yes	41	71.9	16	28.1
No	236	76.4	73	23.6
Pretextual Communication Result (NS)				
Supports Victim Account	9	60.0	6	40.0
Supports Suspect Account	9	81.8	2	18.2
Supports Neither Account	23	74.2	8	25.8
Victim Physical Injuries ($\chi^2 = 4.85, p < .05$)				
Yes	43	65.2	23	34.8
No	234	78.0	66	22.0
Threat or Use of Force ($\chi^2 = 8.22, p < .05$)				
Yes	36	61.0	23	39.0
No	241	78.5	66	21.5
Victim Participation ($\chi^2 = 8.21, p < .05$)				
Yes	194	71.9	76	28.1
Declined ^a	83	86.5	13	13.5
Sexual Assault Exam Performed on Victim ($\chi^2 = 9.30, p < .05$)				
Yes	82	66.1	42	33.9
No	195	80.6	47	19.4
DNA Evidence Tested ($\chi^2 = 35.69, p < .05$)				
Yes	35	48.6	37	51.4
No	242	82.3	52	17.7
Victim Attorney Representation (prior to trial) ($\chi^2 = 3.77, p \leq .05$)				

Yes	148	71.8	58	28.2
No	129	80.6	31	19.4

^a Victim declinations could have occurred before or after preferral. Table 7-11 shows that 77.5% of all victims declined at the reporting or investigation stage.

Victim characteristics such as gender, race, age, and victim status were not related to the preferral decision (Table 7-13c). Cases with victims who were officers were more likely to be preferred than cases with victims who were enlisted. It is important to note that the sample included a small number of cases with victims who were officers (n = 8), so this pattern may not be a reliable result. Despite the small number of stranger cases (n = 18), eight stranger cases were preferred (44.4%). Cases involving supervisors and subordinates were next most likely to be preferred (41.7%), followed by cases involving friends (35.0%). Cases involving spouses and former spouses and those involving intimate partners and former intimate partners were least likely to be preferred (15.4% and 8.2%, respectively). The statistical relationship is driven by comparisons between the relationship types with the highest preferral rates (strangers, supervisor-subordinates, and friends) and the relationship types with the lowest preferral rates (intimate partners/former intimate partners, spouses/former spouses, and co-workers/classmates/roommates).

TABLE 7-13c. COMMAND ACTION DECISION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	No Command Action (n = 277)		Preferral (n = 89)	
Victim Gender (NS)				
Female	260	75.1	86	24.9
Male	17	85.0	3	15.0
Victim Race ^a (NS)				
White ^b	185	75.5	60	24.5
Non-White	83	74.1	29	25.9
Victim Status at Time of Incident (NS)				
Military	174	72.5	66	27.5
Civilian – Not DoD Spouse	52	80.0	13	20.0
Civilian – DoD Spouse	51	83.6	10	16.4
Suspect Is Spouse/Former Spouse (NS)	39	83.0	8	17.0
Suspect Is Not Spouse	12	85.7	1	14.3
Victim Grade at Time of Incident ($\chi^2 = 35.69$, p < .05)				
Enlisted	173	74.6	59	25.4
Officer	1	12.5	7	87.5
Relationship Between Victim and Suspect ^c ($\chi^2 = 21.53$, p < .05)				
Supervisor – Subordinate	7	58.3	5	41.7
Spouse/Former Spouse	44	84.6	8	15.4
Intimate Partner/Former Intimate Partner	45	91.8	4	8.2
Friend	67	65.0	36	35.0
Co-worker/Classmate/Roommate	40	80.0	10	20.0
Acquaintance	40	75.5	13	24.5
Stranger	10	55.6	8	44.4

Victim Age (NS)	(Mean = 28.2, SD = 7.4)	(Mean = 27.2, SD = 7.3)
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^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The "other relationship," "online/met for the first time," and "recruiter – recruit" categories were excluded because of their small numbers; the "unknown/unable to determine" category was also excluded from this analysis.

Five victim-related variables were related to the preferral decision (Table 7-13d). Victim motive to lie and inconsistent statements were related to the decision to prefer. Cases were less likely to be preferred when the victim had a motive to lie (16.5%) than when this motive did not exist in the case (31.6%) and cases were less likely to be preferred when the victim provided inconsistent statements (13.5%) than when the victim did not make inconsistent statements (29.0%). Similarly, victim behavior health concerns were associated with a reduced chance of preferral (13.4% compared to 26.8%). Consensual sexual contact between the victim and suspect was related to the commander's decision. Cases with a victim who did not have consensual sexual contact with the suspect were more likely to be preferred (30.3%) than cases with victims who had consensual sexual contact with suspects at any time (17.5%); this difference was statistically significant. Victim impairment was related to the preferral decision such that cases with a victim who blacked out and/or sustained memory loss was least likely to be preferred. When all the categories of impairment were combined together, the relationship between impairment and the command decision was not statistically significant. Victim alcohol use, memory loss, and collateral and other misconduct were statistically unrelated to the commander's decision to prefer the case.

TABLE 7-13d. COMMAND ACTION DECISION: VICTIM FACTORS

	No Command Action (n = 277)		Preferral (n = 89)	
Victim Impairment ($\chi^2 = 17.51, p < .05$)				
Not Impaired	146	76.8	44	23.2
Passed Out/Unconscious/Asleep	49	59.8	33	40.2
Blacked Out/Memory loss	75	87.2	11	12.8
Victim Alcohol Use (NS)				
Yes	177	75.0	59	25.0
No	100	76.9	30	23.1
Victim Drug Use (NS)				
Yes	16	84.2	3	15.8
No	261	75.2	86	24.8
Victim Lack of Memory (NS)				
Yes	94	74.0	33	26.0
No	183	76.6	56	23.4
Victim Motive to Lie ($\chi^2 = 11.32, p < .05$)				
Yes	147	83.5	29	16.5
No	130	68.4	60	31.6
Victim Inconsistent Statements ($\chi^2 = 10.10, p < .05$)				
Yes	96	86.5	15	13.5

No	181	71.0	74	29.0
Victim Contradictory Evidence (NS)				
Yes	46	71.9	18	28.1
No	231	76.5	71	23.5
Victim Collateral Misconduct (NS)				
Yes	101	78.3	28	21.7
No	176	74.3	61	25.7
Victim Other Misconduct (NS)				
Yes	50	80.6	12	19.4
No	227	74.7	77	25.3
Victim Behavioral Health Concerns Before or After Incident ($\chi^2 = 5.28, p < .05$)				
Yes	58	86.6	9	13.4
No	219	73.2	80	26.8
Victim Consensual Sexual Contact with Suspect ($\chi^2 = 11.94, p < .05$)				
Yes – prior to incident	106	79.1	28	20.9
Yes – following incident	8	100	0	0
Yes – prior to and following incident	27	93.1	2	6.9
No	136	69.7	59	30.3

Like victim characteristics, some suspect characteristics were related to the preferral decision (Table 7-13e). The relationships between four suspect variables and the commander’s decision to prefer a case were statistically significant: suspect race, suspect’s inconsistent statements, suspect’s statements to third parties, and evidence of other sex offenses and/or related misconduct¹⁰ in the file. Preferral was more likely when suspects were non-White (32.3%) than White (20.3%). Preferral was also more likely when the suspect made inconsistent statements (41.3%) than when the suspect did not make inconsistent statements (21.9%). Cases were more likely to be preferred when M.R.E. 413 or 404(b) evidence existed for a suspect (60.6%) compared to when this evidence did not exist (20.7%). Commanders preferred 73.7% of Navy cases in which a suspect confessed, preferred 28.6% of cases in which the suspect did not recall the event or reported some memory loss, and preferred 22.7% of cases in which the suspect denied contact or denied committing the crime. Cases were least likely to be preferred when the suspect reported that the sexual contact was consensual.

TABLE 7-13e. COMMAND ACTION DECISION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	No Command Action (n = 277)		Preferral (n = 89)	
Suspect Race ^a ($\chi^2 = 6.52, p < .05$)				
White ^b	185	79.7	47	20.3
Non-White	88	67.7	42	32.3
Suspect Grade at Time of Incident (NS)				

¹⁰ Military Rules of Evidence (M.R.E.) 413 and 404(b), respectively, cover the admissibility of other sex offenses and related misconduct. M.R.E. 413 is similar to its Federal Rule counterpart. Its purpose is to provide for the liberal admissibility of character evidence when the accused has committed a prior sexual assault offense. M.R.E. 404(b) permits the admissibility of certain evidence of other crimes, wrongs, or acts committed by the accused for the purpose of proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Officer	16	61.5	10	38.5
Enlisted	261	76.8	79	23.2
Suspect Alcohol Use (NS)				
Yes	171	73.7	61	26.3
No	106	79.7	27	20.3
Suspect Drug Use (NS)				
Yes	5	83.3	1	16.7
No	272	75.8	87	24.2
Suspect Lack of Memory (NS)				
Yes	16	72.7	6	27.3
No	261	75.9	83	24.1
Suspect Inconsistent Statements ($\chi^2 = 8.25$, $p < .05$)				
Yes	27	58.7	19	41.3
No	250	78.1	70	21.9
Suspect Contradictory Evidence (NS)				
Yes	18	64.3	10	35.7
No	259	76.6	79	23.4
Suspect Collateral Misconduct (NS)				
Yes	98	72.6	37	27.4
No	179	77.5	52	22.5
Suspect Other Misconduct (NS)				
Yes	68	70.8	28	29.2
No	209	77.4	61	22.6
Suspect 413 and 404(b) Evidence ($\chi^2 = 25.95$, $p < .05$)				
Yes	13	39.4	20	60.6
No	264	79.3	69	20.7
Suspect Behavioral Health Concerns Before or After Incident (NS)				
Yes	16	69.6	7	30.4
No	261	76.3	81	23.7
Suspect Statement ($\chi^2 = 30.63$, $p < .05$) ^c				
Confessed	5	26.3	14	73.7
Consensual	168	82.0	37	18.0
Denied Crime/Sexual Activity	34	77.3	10	22.7
No Recollection/Partial Memory	5	71.4	2	28.6
Other	7	77.8	2	22.2

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The relationship was statistically significant when "confessed" was compared to all other suspect statements and to no statements.

VICTIM PARTICIPATION DEPENDENT VARIABLE: VICTIM PARTICIPATED – VICTIM DECLINED

Table 7-14a shows that victim participation was similar when the incident occurred on installation (70.1%) and off installation (73.5%). Similarly, victim participation was not related to the type of person who reported the incident to authorities. Victim participation was not associated with the judge advocates’ probable cause determination and the probable cause finding. The median number of days between the incident and the report to authorities was greater among cases with a participating victim (34) than cases in which the victim declined to participate (14).

TABLE 7-14a. VICTIM PARTICIPATION: INCIDENT LOCATION AND REPORTING INFORMATION

	Victim Declined (n = 107)		Victim Participated (n = 280)	
	N	%	N	%
Incident Location (NS)				
On Installation	40	29.9	94	70.1
Off Installation	67	26.5	186	73.5
Reporting Individual (NS)				
Victim	34	22.2	119	77.8
Victim-Authorized Representative	33	31.7	71	68.3
Command	22	28.6	55	71.4
Third Party	18	34.0	35	66.0
Prompt Report (within 7 days) (NS)				
Yes	41	32.5	85	67.5
No	63	24.5	194	75.5
Number of Days Between Incident and Report to Authorities	Median = 14		Median = 34	
Probable Cause ^a (NS)				
No Determination Made	39	30.0	91	70.0
Probable Cause Existed	30	27.5	79	72.5
Probable Cause Did Not Exist	38	25.7	110	74.3

^a Judge advocates made probable cause determinations for purposes of indexing with the FBI.

Table 7-14b presents patterns of relationships between evidentiary variables and victim participation. Rates of victim participation were similar across the categories of all but one of these variables. For example, rates of victim participation were nearly identical when witnesses existed (73.3%) and when they did not (72.2%). Rates of participation were unrelated to pretextual communication, the outcome of pretextual communication, victim injuries, suspects use and threats of force, victim SAFE, and DNA testing. Despite the lack of statistical relationships, the patterns of relationships suggested that victim participation rates were greater in cases when the victim was not injured than in cases in which the victim was injured, greater in cases in which a SAFE was performed on the victim, and greater when DNA was tested. The relationship between attorney representation during the investigation and victim participation was statistically significant: victim participation was more likely with attorney representation (76.8%) than without attorney representation (66.5%).

TABLE 7-14b. VICTIM PARTICIPATION: EVIDENCE

	Victim Declined (n = 107)		Victim Participated (n = 280)	
Witness to the Incident (NS)				
Yes	16	26.7	44	73.3
No	91	27.8	236	72.2
Pretextual Communication Occurred (NS)				
Yes	11	17.7	51	82.3
No	96	29.5	229	70.5
Pretextual Communication Result (NS)				
Supports Victim Account	3	18.8	13	81.3
Supports Suspect Account	2	16.7	10	83.3
Supports Neither Account	6	17.6	28	82.4
Victim Physical Injuries (NS)				
Yes	24	34.3	46	65.7
No	83	26.2	234	73.8
Threat or Use of Force (NS)				
Yes	21	32.8	43	67.2
No	86	26.6	237	73.4
Sexual Assault Exam Performed on Victim (NS)				
Yes	33	25.2	98	74.8
No	74	28.9	182	71.1
DNA Evidence Tested (NS)				
Yes	15	20.3	59	79.7
No	92	29.4	221	70.6
Victim Attorney Representation (prior to trial) ($\chi^2 = 5.09, p < .05$)				
Yes	51	23.3	169	76.8
No	56	33.5	111	66.5

Table 7-14c presents patterns of relationships between victim participation and victims’ demographic characteristics. Many of the patterns of relationships in Table 7-14c were not statistically significant, suggesting that rates of victim participation were similar across victim gender, race, grade, and age. Victims who were officers were more likely to participate than enlisted victims, but the small number of cases made the statistical test unreliable. Victim status was associated with victim participation: military victims were most likely to participate, followed by civilian victims who were not DoD spouses, and then civilian victims who were DoD spouses. The difference in victim participation rates between military victims (79.1%) and both civilian categories (66.7% and 52.3%) was statistically significant. Finally, the victim–suspect relationship was also related to victim participation. Victim participation rates were lowest in cases of spouses and former spouses (54.5%) and strangers (55.6%); rates were highest in cases involving supervisors and subordinates (83.3%) and acquaintances (80.0%). The statistically significant relationship was driven by the rate of participation among current and former spouses (54.5%); the difference between spouses and former spouses and each other relationship type, except strangers (55.6%), was statistically significant.

TABLE 7-14c. VICTIM PARTICIPATION: VICTIM DEMOGRAPHIC CHARACTERISTICS AND RELATIONSHIP TO SUSPECT

	Victim Declined (n = 107)		Victim Participated (n = 280)	
Victim Gender (NS)				
Female	101	27.6	265	72.4
Male	6	28.6	15	71.4
Victim Race ^a (NS)				
White ^b	74	28.5	186	71.5
Non-White	33	28.0	85	72.0
Victim Status at Time of Incident ($\chi^2 = 19.85$, p < .05)				
Military	53	20.9	200	79.1
Civilian – Not DoD Spouse	23	33.3	46	66.7
Civilian – DoD Spouse	31	47.7	34	52.3
Suspect Is Spouse/Former Spouse (NS)	24	48.0	26	52.0
Suspect Is Not Spouse	7	46.7	8	53.3
Victim Grade at Time of Incident (NS)				
Enlisted	52	21.2	193	78.8
Officer	1	12.5	7	87.5
Relationship Between Victim and Suspect ^c ($\chi^2 = 17.77$, p < .05)				
Supervisor – Subordinate	2	16.7	10	83.3
Spouse/Former Spouse	25	45.5	30	54.5
Intimate Partner/Former Intimate Partner	14	26.4	39	73.6
Friend	25	23.4	82	76.6
Co-worker/Classmate/Roommate	9	17.3	43	82.7
Acquaintance	12	20.0	48	80.0
Stranger	8	44.4	10	55.6
Victim Age (NS)	(Mean = 23.6, SD = 5.7)		(Mean = 23.7, SD = 5.8)	

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

^c The "other relationship," "online/met for the first time," and "recruiter – recruit" categories were excluded because of their small numbers; the "unknown/unable to determine" category was also excluded from this analysis.

Table 7-14d shows that few victim-related variables were associated with the likelihood the victim participated. For example, rates of participation were similar when victims used and did not use alcohol and when victims engaged in collateral misconduct and when they did not. Victim lack of memory was associated with a greater chance of victim participation (78.4%) than when the victim did not sustain some memory loss (69.2%).

TABLE 7-14d. VICTIM PARTICIPATION: VICTIM FACTORS

	Victim Declined (n = 107)		Victim Participated (n = 280)	
Victim Impairment (NS)				

Not Impaired	64	31.7	138	68.3
Passed Out/Unconscious/Asleep	17	19.5	70	80.5
Blacked Out/Memory Loss	24	27.0	65	73.0
Victim Alcohol Use (NS)				
Yes	67	27.1	180	72.9
No	40	28.6	100	71.4
Victim Drug Use (NS)				
Yes	8	38.1	13	61.9
No	99	27.0	267	73.0
Victim Lack of Memory ($\chi^2 = 3.70, p \leq .05$)				
Yes	29	21.6	105	78.4
No	78	30.8	175	69.2
Victim Motive to Lie (NS)				
Yes	47	25.1	140	74.9
No	60	30.0	140	70.0
Victim Inconsistent Statements (NS)				
Yes	31	25.8	89	74.2
No	76	28.5	191	71.5
Victim Contradictory Evidence (NS)				
Yes	15	21.7	54	78.3
No	92	28.9	226	71.1
Victim Collateral Misconduct (NS)				
Yes	37	27.4	98	72.6
No	70	27.8	182	72.2
Victim Other Misconduct (NS)				
Yes	20	30.8	45	69.2
No	87	27.0	235	73.0
Victim Behavioral Health Concerns Before or After Incident (NS)				
Yes	23	30.7	52	69.3
No	84	26.9	228	73.1
Victim Consensual Sexual Contact with Suspect (NS)				
Yes – prior to incident	49	33.3	98	66.7
Yes – following incident	2	25.0	6	75.0
Yes – prior to and following incident	6	18.2	27	81.8
No	50	25.1	149	74.9

Overall, suspect variables were not statistically associated with the likelihood of victim participation (Table 7-14e). Suspect race, grade, alcohol use, drug use, suspect complexity factors, suspect behavioral health concerns, and suspect confessions were not related to victim participation.

TABLE 7-14e. VICTIM PARTICIPATION: SUSPECT DEMOGRAPHIC CHARACTERISTICS AND SUSPECT FACTORS

	Victim Declined (n = 107)		Victim Participated (n = 280)	
Suspect Race ^a (NS)				
White ^b	64	26.0	182	74.0
Non-White	41	29.9	96	70.1
Suspect Grade at Time of Incident (NS)				
Officer	7	26.9	19	73.1
Enlisted	100	27.7	261	72.3
Suspect Alcohol Use (NS)				
Yes	64	26.2	180	73.8
No	43	30.3	99	69.7
Suspect Drug Use (NS)				
Yes	4	57.1	3	42.9
No	103	27.2	276	72.8
Suspect Lack of Memory (NS)				
Yes	5	21.7	18	78.3
No	102	28.0	262	72.0
Suspect Inconsistent Statements (NS)				
Yes	12	24.0	38	76.0
No	95	28.2	242	71.8
Suspect Contradictory Evidence (NS)				
Yes	7	24.1	22	75.9
No	100	27.9	258	72.1
Suspect Collateral Misconduct (NS)				
Yes	39	27.5	103	72.5
No	68	27.8	177	72.2
Suspect Other Misconduct (NS)				
Yes	29	29.0	71	71.0
No	78	27.2	209	72.8
Suspect 413 and 404(b) Evidence (NS)				
Yes	5	15.2	28	84.8
No	102	28.8	252	71.2
Suspect Behavioral Health Concerns Before or After Incident (NS)				
Yes	7	29.2	17	70.8
No	100	27.6	262	72.4
Suspect Statement ($\chi^2 = 9.79, p < .05$) ^c				
Confessed	6	30.0	14	70.0
Consensual	61	27.7	159	72.3
Denied Crime/Sexual Activity	7	15.2	39	84.8
No Recollection/Partial Memory	0	0	7	100
Other	5	55.6	4	44.4

^a NCIS uses the Consolidated Law Enforcement Operations Center (CLEOC) to capture information related to investigations, including race and ethnicity. The reviewed investigative case files reported race in the title section of the investigation, but ethnicity was captured only in the electronic portion of CLEOC. Because reviewers had access only to the investigations and not to CLEOC, and to maintain consistency across Services, only race was analyzed.

^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.
^c The relationship was not statistically significant when "confessed" was compared to all other suspect statements and to no statements.

MULTIVARIATE ANALYSIS

The models were built by starting with independent variables that showed a significant bivariate relationship with the dependent variable. The models were refined based on results of the initial model and of close relationships between two independent variables. In addition, some independent variables were excluded if there were small numbers of cases in categories of the independent variable across categories of the dependent variable (e.g., suspect confession by command decision).

Table 7-15a presents the results of this final multivariate model that treated the commander decision to prefer the case or take no action in the case as the dependent variable. Twenty-one cases in which the commander took administrative action were excluded from this analysis. The following patterns of relationships emerged from the multivariate model:

- When probable cause was determined to exist, as compared to cases without a probable cause determination and cases in which probable cause was determined to not exist, there was a greater likelihood that the case would be preferred. Judge advocates made probable cause determinations for purposes of indexing with the FBI.
- A participating victim increased the chances that a case would be preferred.
- When DNA evidence was tested, the chances that a case would be preferred increased.
- When the victim sustained injuries, the chances of preferral were greater.
- One suspect complexity factor was related to case preferral. The likelihood of preferral was greater when suspect 413 and 404(b) evidence existed in the case compared to when this evidence did not exist.
- The likelihood of preferral was greater when the suspect confessed than when the suspect made other statements or did not make any statements at all.
- The likelihood of preferral was lower when behavioral health concerns existed for the victim compared to when these concerns did not exist.
- Suspect race was not associated with the likelihood of preferral.

TABLE 7-15a. LOGISTIC REGRESSION: COMMANDER DECISION TO PREFER CASES OR TAKE NO ACTION

	B	SE	Exp(B)
Probable cause exists	1.43*	.31	4.18
Victim participated	.76*	.39	2.14
DNA evidence tested	1.13*	.34	3.09
Victim physical injuries	.81*	.38	2.24
Suspect 413 and 404(b) evidence	2.02*	.44	7.55
Suspect race (White or non-White)	.50	.31	1.65
Suspect confessed	2.83*	.62	16.87
Victim behavioral health concerns	-1.06*	.50	.35

* p ≤ .05

Model $\chi^2 = 121.70$, $df = 8$, $p < .05$

Table 7-15b presents the results of a multivariate model that treated victim participation as the dependent variable. An alternative model was estimated that replaced the stranger relationship variable with a variable that indicated whether the relationship was spouse/former spouse or any other type of relationship, and the substantive pattern of results was unchanged. Only one variable exhibited a statistically significant relationship with likelihood of victim participation in Navy cases (see Tables 7-14a to 7-14e):

- The chances of victim participation were greater when the victim was an active Service member than when the victim was a civilian.

TABLE 7-15b. LOGISTIC REGRESSION: VICTIM PARTICIPATION OR DECLINATION

	B	SE	Exp(B)
Victim attorney representation (prior to trial)	.12	.26	1.12
Victim memory loss/loss of consciousness	.25	.27	1.28
Victim status – military	.81*	.27	2.24
Victim and offender are strangers	-.73	.51	.48

* $p < .05$

Model $\chi^2 = 19.01$, $df = 4$, $p < .05$

PART 8
Summary of Results

TABLE 8-1. COMMAND ACTION DECISIONS AND COURT-MARTIAL RESULTS

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Initial Command Action on Penetrative Sexual Assault												
No Command Action	597	72.7	256	63.5	16	53.3	277	71.6	190	72.2	1336	70.2
Preferred	205	25.0	140	34.7	14	46.7	89	23.0	69	26.2	517	27.2
Administrative Action	19	2.3	7	1.7	0	0	21	5.4	4	1.5	51	2.7
Reason Provided by Command for No Action ^a												
Lack of Victim Participation	N/A	N/A	61	22.5	5	27.8	60	19.1	61	27.1	187	22.6
Insufficient Evidence	N/A	N/A	32	11.8	2	11.1	123	39.2	126	56.0	283	34.2
Unfounded	N/A	N/A	10	3.7	2	11.1	18	5.7	7	3.1	37	4.5
Prosecution Declined	N/A	N/A	8	3.0	0	0	12	3.8	4	1.8	24	2.9
No Probable Cause	N/A	N/A	8	3.0	0	0	15	4.8	2	0.9	25	3.0
No Reason Provided/Unknown	N/A	N/A	139	51.3	9	50.0	72	22.9	25	11.1	245	29.6
Other	N/A	N/A	13	4.8	0	0	14	4.5	0	0	27	3.3
Case Referral/Referral												
Preferred Only	24	11.7	33	23.4	1	7.1	16	18.0	21	30.4	95	18.4
Preferred and Referred	181	88.3	107	76.6	13	92.9	73	82.0	48	69.6	422	81.6
Referred Cases with a Finding	94	51.9	68	63.6	7	53.8	40	54.8	26	54.2	235	55.7
Court-Martial Results												
Acquittal	52	55.3	50	73.5	2	28.6	25	62.5	15	57.7	144	61.3
Conviction for at Least One Penetrative Sexual Assault Charge – Court-Martial	37	39.4	11	16.2	5	71.4	12	30.0	4	15.4	69	29.4
Conviction for at Least One Penetrative Sexual Assault Charge – PTA at Court-Martial	5	5.3	7	10.3	0	0	3	7.5	7	26.9	22	9.4
Alternative Disposition												
Administrative Separation	1	0.9	3	4.2	0	0	6	12.2	1	2.3	11	3.9
Discharge in Lieu of Court-Martial	50	45.0	26	36.1	0	0	6	12.2	1	2.3	83	29.4

Dismissal	60	54.1	43	59.7	7	100	37	75.5	41	95.3	188	66.7
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^a Multiple reasons were listed in some cases in which the command did not take action. All reasons listed are included in the counts. Percentages are computed based on the total number of reasons reported.

TABLE 8-2. INCIDENT LOCATION

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Installation												
On Installation	441	53.7	178	44.2	9	30.0	134	34.6	144	54.8	906	47.6
Off Installation	380	46.3	225	55.8	21	70.0	253	65.4	119	45.2	998	52.4
Location of Incident												
CONUS	603	73.4	312	77.4	26	86.7	280	72.4	208	79.1	1429	75.1
OCONUS	210	25.6	89	22.1	1	3.3	93	24.0	53	20.2	446	23.4
CONUS and OCONUS	8	1.0	2	0.5	0	0	1	0.3	1	0.4	12	0.6
Vessel	0	0	0	0	3	10.0	11	2.8	1	0.4	15	0.8
Vessel and CONUS	0	0	0	0	0	0	1	0.3	0	0	1	0.1
Vessel and OCONUS	0	0	0	0	0	0	1	0.3	0	0	1	0.1
Deployment												
Deployed Location (Iraq or Afghanistan only)	3	0.4	0	0	0	0	1	0.3	0	0	4	0.2
Non-Deployed Location	818	99.6	403	100	30	100	386	99.7	263	100	1900	99.8

TABLE 8-3. TIME BETWEEN KEY ACTIONS IN THE CASE

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Number of Days Between Offense and Report to Authorities												
0 (same day)	109	13.3	32	7.9	0	0	32	8.3	30	11.4	203	10.7
1 – 3	158	19.2	62	15.4	6	20.0	69	17.8	69	26.2	364	19.1
4 – 7	53	6.5	25	6.2	2	6.7	25	6.5	23	8.7	128	6.7
8 – 14	62	7.6	23	5.7	2	6.7	31	8.0	12	4.6	130	6.8
15 – 30	67	8.2	22	5.5	2	6.7	35	9.0	18	6.8	144	7.6
31 – 60	77	9.4	30	7.4	0	0	41	10.6	23	8.7	171	9.0
61 – 90	48	5.9	22	5.5	0	0	18	4.7	16	6.1	104	5.5

91 – 120	34	4.1	15	3.7	2	6.7	18	4.7	10	3.8	79	4.2
121 – 150	21	2.6	14	3.5	1	3.3	10	2.6	7	2.7	53	2.8
151 – 180	23	2.8	11	2.7	2	6.7	15	3.9	9	3.4	60	3.2
181 – 210	11	1.3	22	5.5	1	3.3	8	2.1	6	2.3	48	2.5
211 – 240	12	1.5	11	2.7	0	0	8	2.1	1	.3	32	1.7
241 – 270	11	1.3	4	1.0	1	3.3	5	1.3	2	.7	23	1.2
271 – 365	18	2.2	18	4.5	2	6.7	17	4.4	11	4.2	66	3.5
366 +	106	12.9	78	19.4	9	30.0	51	13.2	23	8.7	267	14.0
Unknown	11	1.3	14	3.5	0	0	4	1.0	3	1.1	32	1.7
Median number of days	17		62		150		30		11		26	

TABLE 8-4. SUSPECT CHARACTERISTICS

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Suspect Grade at Time of Incident												
Enlisted	760	92.6	370	91.8	26	86.7	361	93.3	254	96.6	1771	93.0
Officer	61	7.4	30	7.4	4	13.3	26	6.7	9	3.4	130	6.8
Unknown	0	0	3	0.7	0	0	0	0	0	0	3	0.2
Suspect Pay Grade at Time of Incident												
Enlisted												
E-1	42	5.5	9	2.4	1	3.9	9	2.5	6	2.4	67	3.8
E-2	72	9.5	11	3.0	1	3.9	28	7.8	28	11.0	140	7.9
E-3	151	19.9	91	24.6	8	30.8	84	23.3	79	31.1	413	23.3
E-4	220	28.9	116	31.3	7	26.9	91	25.2	59	23.2	493	27.8
E-5	125	16.4	78	21.1	3	11.5	83	23.0	53	20.9	342	19.3
E-6	82	10.8	42	11.4	3	11.5	37	10.3	17	6.7	181	10.2
E-7	52	6.8	17	4.6	1	3.9	22	6.1	9	3.5	101	5.7
E-8	13	1.7	2	0.5	0	0	5	1.4	3	1.2	23	1.3
E-9	3	0.4	0	0	0	0	1	0.3	0	0	4	0.2
Unknown	0	0	4	1.1	2	7.7	1	0.3	0	0	7	0.4
Officer												
Cadet/Midshipman	2	3.3	6	20.0	3	75.0	4	15.4	0	0	15	11.5
O-1	4	6.6	1	3.3	0	0	1	3.8	0	0	6	4.6
O-2	14	23.0	5	16.7	1	25.0	9	34.6	3	33.3	32	24.6

O-3	16	26.2	4	13.3	0	0	7	26.9	2	22.2	29	22.3
O-4	7	11.5	6	20.0	0	0	1	3.8	0	0	14	10.8
O-5	8	13.1	6	20.0	0	0	3	11.5	1	11.1	18	13.8
O-6	0	0	2	6.7	0	0	0	0	2	22.2	4	3.1
W-1	0	0	0	0	0	0	0	0	1	11.1	1	0.8
W-2	5	8.2	0	0	0	0	0	0	0	0	5	3.8
W-3	4	6.6	0	0	0	0	1	3.8	0	0	5	3.8
W-4	1	1.6	0	0	0	0	0	0	0	0	1	0.8
Suspect Sex												
Male	799	97.3	392	97.3	29	96.7	379	97.9	261	99.2	1860	97.7
Female	22	2.7	11	2.7	1	3.3	8	2.1	2	.8	44	2.3
Suspect Age												
		Mean = 25.9; SD = 6.6; Range = 18 – 53		Mean = 25.5; SD = 5.7; Range = 18 – 54		Mean = 25.1; SD = 4.3; Range = 20 – 36		Mean = 25.8; SD = 6.3; Range = 18 – 58		Mean = 23.8; SD = 5.3; Range = 18 – 56		Mean = 25.5; SD = 6.2; Range = 18 – 58
Suspect Race												
White ^a	504	61.4	285	70.7	26	86.7	246	63.6	205	77.9	1266	66.5
Black or African American	259	31.5	77	19.1	1	3.3	112	28.9	46	17.5	495	26.0
Asian	17	2.1	9	2.2	0	0	16	4.1	3	1.1	45	2.4
Native Hawaiian or Other Pacific Islander	9	1.1	7	1.7	1	3.3	3	0.8	2	0.8	22	1.2
American Indian or Alaska Native	3	0.4	1	0.2	0	0	2	0.5	3	1.1	9	0.5
Other Race, Ethnicity, or Origin	9	1.1	1	0.2	0	0	4	1.0	3	1.1	17	0.9
Unknown	20	2.4	23	5.7	2	6.7	4	1.0	1	0.4	50	2.6

^a This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.

TABLE 8-5. SUSPECT FACTORS

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Suspect Alcohol Use												
Yes	414	50.4	218	54.1	20	66.7	244	63.1	160	60.8	1056	55.5
No	407	49.6	185	45.9	10	33.3	142	36.7	103	39.2	847	44.5
Unknown	0	0	0	0	0	0	1	0.3	0	0	1	0.1
Suspect Drug Use												

	15	1.8	5	1.2	1	3.3	7	1.8	3	1.1	31	1.6
Yes	806	98.2	398	98.8	29	96.7	379	97.9	260	98.9	1872	98.3
No	0	0	0	0	0	0	1	0.3	0	0	1	0.1
Unknown												
Suspect Behavioral Health Concerns Before or After Incident												
Yes	49	6.0	47	11.7	2	6.7	24	6.2	21	8.0	143	7.5
No	772	94.0	354	87.8	28	93.3	362	93.5	242	92.0	1758	92.3
Unknown	0	0	2	0.5	0	0	1	0.3	0	0	3	0.2
Suspect Complexity Factors ^a												
Collateral Misconduct	312	38.0	118	29.3	11	36.7	142	36.7	96	36.5	679	35.7
Other Misconduct	156	19.0	122	30.3	8	26.7	100	25.8	85	32.3	471	24.7
Loss of Memory or Consciousness	29	3.5	22	5.5	0	0	23	5.9	20	7.6	94	4.9
413 and 404(b) Evidence	84	10.2	83	20.6	5	16.7	33	8.5	27	10.3	232	12.2
Inconsistent Statements	101	12.3	30	7.4	4	13.3	50	12.9	24	9.1	209	11.0
Contradictory Evidence	27	3.3	7	1.7	2	6.7	29	7.5	10	3.8	75	3.9
At Least One of the Six Suspect Complexity Factors Exists in the Case	477	58.1	238	59.1	20	66.7	239	61.8	170	64.6	1144	60.1

^a These categories are not mutually exclusive; multiple factors can be present for a single suspect.

TABLE 8-6. SUSPECT STATEMENTS AND REPRESENTATION

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Suspect Provided Statement to Law Enforcement												
Yes	556	67.7	196	48.6	19	63.3	274	70.8	181	68.8	1226	64.4
No	265	32.3	207	51.4	11	36.7	113	29.2	82	31.2	678	35.6
Suspect Had Legal Representation												
Yes	49	6.0	35	8.7	2	6.7	10	2.6	13	4.9	109	5.7
No	772	94.0	367	91.1	28	93.3	377	97.4	250	95.1	1794	94.1
Unknown	0	0	1	0.2	0	0	0	0	0	0	1	0.1
Suspect Statement to Third Parties or Law Enforcement ^a												
Confessed	54	8.8	10	3.5	2	10.0	20	6.6	16	7.9	102	7.2
Consensual	415	67.7	185	64.2	15	75.0	220	72.8	138	68.0	973	68.2
Denied Crime/Sexual Activity	122	19.9	54	18.8	3	15.0	46	15.2	31	15.3	256	18.0

No Recollection/Partial Memory	8	1.3	19	6.6	0	0	7	2.3	10	4.9	44	3.1
Other	14	2.3	20	6.9	0	0	9	3.0	8	3.9	51	3.6

^a Reports included information with multiple suspect statements. A hierarchy rule was used to code cases with multiple statements: Cases were coded as “confessed” if the suspect confessed and offered any other statement. The next code in the hierarchy is “consensual” and is used when the suspect reported that the sexual activity was consensual (but did not confess). The third category in the hierarchy is “denied sexual activity” and is used when the suspect offered multiple statements but not “confessed” and not “consensual.” The “no recollection / partial memory” category is used when only this statement was made. The last category is “other” and is used when the provided statement does not clearly fit into any of the previous categories.

TABLE 8-7. VICTIM CHARACTERISTICS

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Victim Status at Time of Incident												
Enlisted	386	47.0	218	54.1	10	33.3	245	63.3	145	55.1	1004	52.7
Officer	19	2.3	14	3.5	4	13.3	8	2.1	3	1.1	48	2.5
Civilian – Not DoD Spouse	202	24.6	76	18.9	10	33.3	69	17.8	56	21.3	413	21.7
Civilian – DoD Spouse	214	26.1	91	22.2	6	20.0	65	16.8	59	22.4	435	22.9
Suspect Is Spouse/Former Spouse	134	62.6	77	84.6	5	83.3	50	76.9	41	69.5	307	70.6
Suspect Is Not Spouse ^a	80	37.4	14	15.4	1	16.7	15	23.1	18	30.5	128	29.4
Unknown Grade	0	0	4	1.0	0	0	0	0	0	0	4	0.2
Victim Pay Grade at Time of Incident												
Enlisted												
E-1	24	6.2	7	3.2	0	0	16	6.5	4	2.8	51	5.1
E-2	91	23.6	21	9.6	0	0	33	13.5	34	23.5	179	17.8
E-3	123	31.9	98	45.0	4	40.0	90	36.7	68	46.9	383	38.2
E-4	116	30.1	48	22.0	2	20.0	48	19.6	22	15.2	236	23.5
E-5	19	4.9	22	10.1	3	30.0	45	18.4	15	10.3	104	10.4
E-6	9	2.3	10	4.6	1	10.0	6	2.5	0	0	26	2.6
E-7	3	0.8	5	2.3	0	0	3	1.2	1	0.7	12	1.2
E-8	0	0	1	0.5	0	0	1	0.4	0	0	2	0.2
Unknown	1	0.3	6	2.8	0	0	3	1.2	1	0.7	11	1.1
Officer												
Cadet/Midshipman	3	15.8	6	42.9	2	50.0	4	50.0	0	0	15	31.3
O-1	3	15.8	0	0	1	25.0	2	25.0	0	0	6	12.5
O-2	5	26.3	5	35.7	0	0	0	0	2	66.7	12	25.0
O-3	4	21.1	3	21.4	0	0	0	0	0	0	7	14.6

O-4	1	5.3	0	0	0	0	0	0	0	2	25.0	0	0	3	6.3	
W-1	1	5.3	0	0	0	0	0	0	0	0	0	1	33.3	2	4.2	
W-2	2	10.5	0	0	1	25.0	0	0	0	0	0	0	0	3	6.3	
Victim Sex																
Male	47	5.7	21	5.2	1	3.3	21	5.4	12	21	5.4	12	4.6	102	5.4	
Female	774	94.3	382	94.8	29	96.7	366	94.6	251	366	94.6	251	95.4	1802	94.6	
Victim Age		Mean = 23.7; SD = 6.5; Range = 16 – 60	Mean = 23.8; SD = 5.6; Range = 16 – 48	Mean = 22.4; SD = 4.1; Range = 17 – 30	Mean = 23.7; SD = 5.8; Range = 16 – 51	Mean = 22.6; SD = 5.2; Range = 16 – 49	Mean = 23.6; SD = 6.0; Range = 16 – 60									
Victim Race																
White ^b	582	70.9	287	71.2	22	73.3	260	67.2	221	260	67.2	221	84.0	1372	72.1	
Black or African American	153	18.6	45	11.2	2	6.7	73	18.9	22	73	18.9	22	8.4	295	15.5	
Asian	30	3.7	12	3.0	0	0	36	9.3	7	36	9.3	7	2.7	85	4.5	
Native Hawaiian or Other Pacific Islander	15	1.8	3	0.7	0	0	2	0.5	1	2	0.5	1	0.4	21	1.1	
American Indian or Alaska Native	9	1.1	1	0.2	1	3.3	3	0.8	4	3	0.8	4	1.5	18	1.0	
Other Race, Ethnicity, or Origin	19	2.3	3	0.7	0	0	4	1.0	3	4	1.0	3	1.1	29	1.5	
Unknown	13	1.6	52	12.9	5	16.7	9	2.3	5	9	2.3	5	1.9	84	4.4	
Relationship to Suspect ^c																
Current or Former Spouse	156	19.0	94	23.3	5	16.7	55	14.2	57	55	14.2	57	21.7	367	19.3	
Intimate Partner/Former Intimate Partner	96	11.7	52	12.9	7	23.3	53	13.7	32	53	13.7	32	12.2	240	12.6	
Friend	185	22.5	109	27.0	5	16.7	107	27.6	77	107	27.6	77	29.3	483	25.4	
Co-worker/classmate/roommate	69	8.4	44	10.9	4	13.3	52	13.4	24	52	13.4	24	9.1	193	10.1	
Subordinate – Supervisor	27	3.3	14	3.5	0	0	12	3.1	7	12	3.1	7	2.7	60	3.2	
Acquaintance	129	15.7	46	11.4	4	13.3	60	15.5	35	60	15.5	35	13.3	274	14.4	
Online/Met for the First Time	24	2.9	12	3.0	0	0	9	2.3	4	9	2.3	4	1.5	49	2.6	
Stranger	81	9.9	18	4.5	4	13.3	18	4.7	15	18	4.7	15	5.7	136	7.1	
Recruit – Recruiter	9	1.1	0	0	0	0	2	.5	3	2	.5	3	1.1	14	0.7	
Other	19	2.3	4	1.0	0	0	5	1.3	3	5	1.3	3	1.1	32	1.7	
Unknown/unable to determine	26	3.2	10	2.5	1	3.3	14	3.6	6	14	3.6	6	2.3	56	2.9	
Reporting Individual																
Victim	298	36.3	114	28.3	13	43.3	153	39.5	121	153	39.5	121	46.0	699	36.7	
Victim-Authorized Representative	248	30.2	122	30.3	5	16.7	104	26.9	69	104	26.9	69	26.2	548	28.8	
Command	133	16.2	86	21.3	2	6.7	77	19.9	54	77	19.9	54	20.5	352	18.5	
Third Party	142	17.3	79	19.6	10	33.3	53	13.7	19	53	13.7	19	7.2	303	15.9	

Unknown	0		0		2		0.5		0		0		0		0		0		0.1		
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	
Victim Alcohol Use																					
Yes	439	53.5	233	57.8	21	70.0	247	63.8	146	55.5	1086	57.0									
No	382	46.5	170	42.2	9	30.0	140	36.2	116	44.1	817	42.9									
Unknown	0	0	0	0	0	0	0	0	1	0.4	1	0.1									
Victim Drug Use																					
Yes	75	9.1	33	8.2	0	0	21	5.4	20	7.6	149	7.8									
No	746	90.9	370	91.8	30	100	366	94.6	243	92.4	1755	92.2									
Victim Reported Being Impaired																					
Yes	363	44.2	196	48.6	13	43.3	185	47.8	129	49.0	886	46.5									
No	458	55.8	207	51.4	17	56.7	202	52.2	134	51.0	1018	53.5									
Nature of Victim Impairment ^a																					
Passed Out/Unconscious/Asleep	203	55.9	105	53.6	7	53.8	87	47.0	75	58.1	477	53.8									
Blacked Out/No Memory/Partial Memory	140	38.6	79	40.3	6	46.2	89	48.1	52	40.3	366	41.3									
Unknown ^b	20	5.5	12	6.1	0	0	9	4.9	2	1.6	43	4.9									
Victim Behavioral Health Concerns Before or After Incident																					
Yes	108	13.2	92	22.8	5	16.7	75	19.4	45	17.1	325	17.1									
No	713	86.8	309	76.7	25	83.3	312	80.6	218	82.9	1577	82.8									
Unknown	0	0	2	0.5	0	0	0	0	0	0	2	0.1									
Victim Complexity Factors ^c																					
Collateral Misconduct	199	24.2	97	24.1	8	26.7	135	34.9	64	24.3	503	26.4									
Other Misconduct	124	15.1	77	19.1	5	16.7	65	16.8	40	15.2	311	16.3									
Loss of Memory or Consciousness	269	32.8	128	31.8	10	33.3	134	34.6	76	28.9	617	32.4									
Inconsistent Statements	227	27.6	148	36.7	6	20.0	120	31.0	65	24.7	566	29.7									
Motive to Lie	306	37.3	183	45.4	14	46.7	187	48.3	112	42.6	802	42.1									
Contradictory Evidence	85	10.4	69	17.1	1	3.3	69	17.8	29	11.0	253	13.3									

^a This category includes all other types of relationships, including those cases for which data are missing and those in which the nature of the relationship could not be determined.
^b This category included Hispanic, Middle Eastern, and North African individuals. This decision was made because individuals recorded race and ethnicity inconsistently based on the Services' Reports of Investigation. In order to avoid missing data problems, cases reported only as Hispanic and with no other race identifier were categorized as White.
^c The data analyzed here are based on the victim's reported relationship to the offender. See Appendix for more details about this variable.

TABLE 8-8. VICTIM FACTORS

At Least One of the Six Factors Exists in the Case	612		74.5		335		83.1		26		86.7		322		83.2		210		79.8		1505		79.0	
	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%	n	%
Use/Threat of Force																								
Yes	111	13.5	71	17.6	8	26.7	64	16.5	34	12.9	288	15.1												
No	710	86.5	332	82.4	22	73.3	323	83.5	229	87.1	1616	84.9												
Type of Force/Threat ^a																								
Physical	104	12.7	66	16.4	7	23.3	57	14.7	28	10.6	262	13.8												
Weapon	7	0.9	1	0.2	0	0	6	1.6	2	0.8	16	0.8												
Coercion	11	1.3	8	2.0	2	6.7	7	1.8	6	2.3	34	1.8												
Threat/Threat to Others	12	1.5	11	2.7	3	10.0	4	1.0	6	2.3	36	1.9												
Physical Injuries to Victim ^b																								
Yes	110	13.4	45	11.2	6	20.0	70	18.1	56	21.3	287	15.1												
No	711	86.6	358	88.8	24	80.0	317	81.9	207	78.7	1617	84.9												
Injuries ^c																								
Redness	40	4.9	22	5.5	4	13.3	23	5.9	23	8.7	112	5.9												
Bruising	82	10.0	22	5.5	4	13.3	43	11.1	28	10.6	179	9.4												
Cuts	28	3.4	5	1.2	1	3.5	14	3.6	15	5.7	63	3.3												
Scrapes	15	1.8	5	1.2	0	0	9	2.3	13	4.9	42	2.2												
Witness to the Incident																								
Yes	130	15.8	42	10.4	6	20.0	60	15.5	45	17.1	283	14.9												
No	691	84.2	361	89.6	24	80.0	327	84.5	218	82.9	1621	85.1												
Pretextual Communication																								
Yes	101	12.3	72	17.9	1	3.3	62	16.0	32	12.2	268	14.1												
Supports Victim Account	16	15.8	7	9.7	0	0	16	25.8	7	21.9	46	17.2												

^a Multiple reasons were provided for the nature of impairment in some cases. To simplify the analyses of impairment reasons, a single variable was created to measure the reason for impairment. The categories for this variable are mutually exclusive. The “passed out / unconscious” category is considered to be the greatest level of impairment, followed by “blacked out / no memory / partial memory,” and “asleep.” If the case indicated “passed out” or “unconscious” AND “blacked out” or “partial memory,” or “asleep,” then the case was coded as “passed out / unconscious.” If the case indicated “blacked out,” “partial memory,” or “no memory” AND “asleep,” then the case was coded as “blacked out / no memory / partial memory loss.”

^b This category includes cases in which the victim reported to have been “drugged” but no additional details about the extent of impairment are available.

^c These categories are not mutually exclusive; multiple factors can be present for a single victim.

TABLE 8-9. VICTIM INJURIES AND EVIDENCE

Supports Suspect Account	20	19.8	9	12.5	0	0	12	19.4	10	31.3	51	19.0
Supports Neither	65	64.4	56	77.8	1	100	34	54.8	15	46.9	171	63.8
No	720	87.7	331	82.1	29	96.7	325	84.0	231	87.8	1636	85.9

^a Categories were not mutually exclusive; cases could involve multiple types of force and threats.

^b Victim injury was based on self-reported information in the case files and SAFE reports.

^c Categories were not mutually exclusive; cases could involve multiple types of injuries.

TABLE 8-10. FORENSIC EVIDENCE

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
SAFE Performed on Victim												
Yes	247	30.1	95	23.6	5	16.7	131	33.9	101	38.4	579	30.4
No	574	69.9	308	76.4	25	83.3	256	66.1	162	61.6	1325	69.6
Days Between Offense and Victim SAFE												
0 (same day)	84	34.0	30	31.6	3	60.0	49	37.4	32	31.7	198	34.2
1	75	30.4	27	28.4	0	0	31	23.7	26	25.7	159	27.5
2	38	15.4	13	13.7	0	0	12	9.2	13	12.9	76	13.1
3	14	5.7	6	6.3	0	0	7	5.3	10	10.0	37	6.4
4	6	2.4	5	5.3	1	20.0	7	5.3	6	5.9	25	4.3
5	2	0.8	2	2.1	0	0	4	3.1	3	3.0	11	1.9
6	2	0.8	0	0	0	0	1	0.8	1	1.0	4	0.7
7	1	0.4	1	1.1	0	0	3	2.3	3	3.0	8	1.4
8-14	6	2.4	1	1.1	0	0	4	3.1	2	2.0	13	2.3
15+	9	3.6	4	4.2	0	0	3	2.3	5	5.0	21	3.6
Unknown	10	4.1	6	6.3	1	20.0	10	7.6	0	0	27	4.7
Victim SAFE Location												
Civilian Health Care Facility	120	48.6	69	72.6	4	80.0	44	33.6	37	36.6	274	47.3
Military Health Care Facility	127	51.4	26	27.4	1	20.0	86	65.7	64	63.4	304	52.5
Unknown	0	0	0	0	0	0	1	0.8	0	0	1	0.2
Victim SAFE Provider Type												
Civilian Provider	122	49.4	69	72.6	4	80.0	43	32.8	39	38.6	277	47.8
Military Examiner	58	23.5	20	21.1	0	0	77	58.8	45	44.6	200	34.5
DoD Civilian	64	25.9	6	6.3	1	20.0	10	7.6	17	16.8	98	16.9
Unknown	3	1.2	0	0	0	0	1	1.1	0	0	4	0.7
DNA Evidence Tested ^a												

Yes	162	19.7	95	23.6	4	13.3	74	19.1	73	27.8	408	21.4
No/Unknown	659	80.3	308	76.4	26	86.7	313	80.9	190	72.7	1496	78.6

^aThe DNA testing variable measures *any* DNA evidence testing in the case, not only sexual assault kit evidence collected from the victim.

TABLE 8-11. VICTIM PARTICIPATION

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Victim Declination Recorded in File												
Victim Participated	596	72.6	252	62.4	23	76.7	280	72.4	157	59.7	1308	68.7
Victim Declined	225	27.4	151	37.6	7	23.3	107	27.6	106	40.3	596	31.3
Declination Stage												
Investigation	187	83.1	106	70.2	7	100	73	68.2	73	68.9	446	74.8
Reporting	18	8.0	23	15.2	0	0	10	9.3	6	5.7	57	9.6
Court-Martial	15	6.7	18	11.9	0	0	14	13.1	15	14.2	62	10.4
Preliminary Hearing	5	2.2	4	2.7	0	0	3	2.8	8	7.5	20	3.4
Unknown	0	0	0	0	0	0	7	6.5	4	3.8	11	1.9
Victim Input to Command or SJA												
No	798	97.2	326	80.9	28	93.3	362	93.5	222	84.4	1736	91.2
Yes	23	2.8	77	19.1	2	6.7	25	6.5	41	15.6	168	8.8
Input Provided to Command												
Pursue Administrative Separation	12	52.2	16	20.8	0	0	1	4.0	5	12.2	34	20.2
Supports DILCOM	2	8.7	13	16.9	0	0	0	0	0	0	15	8.9
Pursue Court-Martial	0	0	12	15.6	2	100	9	36.0	9	22.0	32	19.0
Take No Action	1	4.3	11	14.3	0	0	4	16.0	9	22.0	25	14.9
Nonjudicial Punishment/Administrative Actions	1	4.3	8	10.4	0	0	4	16.0	8	19.5	21	12.5
Other	7	30.4	17	22.1	0	0	7	28.0	10	24.4	41	24.4
Victim Attorney Representation (prior to trial)												
Yes	384	46.8	237	58.8	18	60.0	220	56.8	146	55.5	1005	52.8
No	437	53.2	166	41.2	12	40.0	167	43.2	117	44.5	899	47.2
Victim Provided Statement to Law Enforcement												
Yes	790	96.2	382	94.8	29	96.7	377	97.4	258	98.1	1836	96.4
No	31	3.8	21	5.2	1	3.3	10	2.6	5	1.9	68	3.6

TABLE 8-12. PROBABLE CAUSE DETERMINATION BY A JUDGE ADVOCATE

	Army		Air Force		Coast Guard		Navy		Marine Corps		DoD Total	
	n	%	n	%	n	%	n	%	n	%	n	%
Probable Cause Determination Made												
Yes	786	95.7	235	58.3	6	20.0	257	66.4	164	62.4	1448	76.1
No	35	4.3	168	41.7	24	80.0	130	33.6	99	37.6	456	23.9
Probable Cause Determination Result												
Yes, Probable Cause Exists	380	48.3	154	65.5	6	100	148	57.6	102	62.2	790	54.6
Probable Cause Does Not Exist	406	51.7	80	34.0	0	0	109	42.4	61	37.2	656	45.3
Unknown	0	0	1	0.4	0	0	0	0	1	0.6	2	0.1

TABLE 8-13. SUMMARY OF STATISTICALLY SIGNIFICANT BIVARIATE RELATIONSHIPS BETWEEN CASE VARIABLES AND THE NO ACTION – PREFERRAL DECISION

	Army		Air Force		Navy		Marine Corps		DoD Total	
	*	*	*	*	*	*	*	*	*	*
Probable cause existed	*	*	*	*	*	*	*	*	*	*
Victim participated	*	*	*	*	*	*	*	*	*	*
Threat or use of force	*	*	*	*	*	*	*	*	*	*
Sexual assault exam performed on victim	*	*	*	*	*	*	*	*	*	*
DNA evidence tested	*	*	*	*	*	*	*	*	*	*
Victim attorney representation (prior to trial)	*	*	*	*	*	*	*	*	*	*
Suspect 413 and 404(b) evidence	*	*	*	*	*	*	*	*	*	*
Suspect confessed	*	*	*	*	*	*	*	*	*	*
Victim motive to lie	*	*	*	*	*	*	*	*	*	*
Victim physical injuries	*	*	*	*	*	*	*	*	*	*
Victim impairment	*	*	*	*	*	*	*	*	*	*
Suspect inconsistent statements	*	*	*	*	*	*	*	*	*	*
Victim grade at time of incident	*	*	*	*	*	*	*	*	*	*
Victim inconsistent statements	*	*	*	*	*	*	*	*	*	*
Prompt report (within 7 days)	*	*	*	*	*	*	*	*	*	*
Pretextual communication occurred	*	*	*	*	*	*	*	*	*	*
Suspect lack of memory	*	*	*	*	*	*	*	*	*	*

Suspect collateral misconduct	*	*	*	*	*
Suspect behavioral health concerns	*	*	*	*	*
Suspect alcohol use	*	*	*	*	*
Victim drug use	*	*	*	*	*
Victim consensual sexual contact with suspect	*	*	*	*	*
Suspect drug use	*	*	*	*	*
Suspect contradictory evidence	*	*	*	*	*
Suspect other misconduct	*	*	*	*	*
Relationship between victim and suspect	*	*	*	*	*
Reporting individual	*	*	*	*	*
Pretextual communication result	*	*	*	*	*
Victim race	*	*	*	*	*
Victim contradictory evidence	*	*	*	*	*
Victim behavioral health concerns	*	*	*	*	*
Suspect race	*	*	*	*	*
Suspect grade at time of incident	*	*	*	*	*

* indicates a statistically significant relationship using $p \leq .05$.

TABLE 8-14. SUMMARY OF STATISTICALLY SIGNIFICANT MULTIVARIATE RELATIONSHIPS BETWEEN CASE VARIABLES AND THE NO ACTION – PREFERRAL DECISION

	Army	Air Force	Navy	Marine Corps	DoD Total
DNA evidence tested	+	+	+	+	+
Victim participated	+	+	+	+	+
Probable cause existed		+	+	+	+
Victim attorney representation	+	+	+		+
Threat or use of force occurred		+		+	+
Suspect confessed	+		+		+
At least one suspect complexity factor existed	+	+			+
Victim physical injuries	+		+		+
Victim impaired		+			+

At least one victim complexity factor existed	-								
Suspect 413 and 404(b) evidence								+	
Command or third party reported incident	-								-
Suspect alcohol use									
Victim behavioral health concerns								-	

+ indicates that the presence of this case characteristic was associated with a statistically significant increased chance the case was preferred.

- indicates that the presence of this case characteristic was associated with a statistically significant reduced chance the case was preferred.

TABLE 8-15. SUMMARY OF STATISTICALLY SIGNIFICANT BIVARIATE RELATIONSHIPS BETWEEN CASE VARIABLES AND VICTIM PARTICIPATION

	Army	Air Force	Navy	Marine Corps	DoD Total
Victim memory loss/loss of consciousness	*	*	*	*	*
Suspect confessed	*	*	*	*	*
Probable cause existed	*	*		*	*
Victim attorney representation	*		*		*
Pretexual communication occurred	*	*			*
DNA evidence tested	*	*			*
Victim impairment	*	*			*
Victim alcohol use	*	*			*
Victim status (military or civilian DoD spouse or civilian not DoD spouse)	*		*		*
Relationship between victim and suspect	*		*		*
Suspect alcohol use	*	*			*
Suspect 413 and 404(b) evidence	*	*			*
Suspect behavioral health concerns		*		*	*
Sexual assault exam performed on victim	*				*
Reporting individual	*				*
Suspect inconsistent statements	*				*
Suspect collateral misconduct	*				*
Suspect lack of memory		*			*

Victim physical injuries	*								
Victim gender	*								
Victim race							*		
Victim inconsistent statements								*	
Victim contradictory evidence								*	
Victim drug use		*							
Victim collateral misconduct	*								
Victim behavioral health concerns	*							*	
Suspect other misconduct								*	

* indicates a statistically significant relationship using $p \leq .05$.

TABLE 8-16. SUMMARY OF STATISTICALLY SIGNIFICANT MULTIVARIATE RELATIONSHIPS BETWEEN CASE VARIABLES AND VICTIM PARTICIPATION

	Army	Air Force	Navy	Marine Corps	DoD Total
Pretextual communication occurred	+	+			+
Victim status – military	+		+		+
Suspect behavioral health concerns		+		+	+
Suspect confessed	+				+
Victim memory loss/loss of consciousness		+		+	
Suspect alcohol use		+			+
Command or third party reported incident	-				-
DNA evidence tested					+
At least one suspect complexity factor existed					+
Probable cause existed				+	
Suspect 413 and 404(b) evidence		+			
Victim was non-White				-	
Victim physically injured	+				
Victim impaired	+				
Victim behavioral health concerns	-				

+ indicates that the presence of this case characteristic was associated with a statistically significant increased chance the victim participated.

- indicates that the presence of this case characteristic was associated with a statistically significant reduced chance the victim participated.

Appendix

Victim-Suspect Relationship Variable

Measuring the relationship between victims and suspects is more challenging than it may appear at first glance. In some situations, it may not be clear whether two people are friends or acquaintances or whether neighbors are friends or strangers. When researchers measure the relationship between a victim and a suspect or an offender, the information contained in police reports is typically coded. This coding was done with the case file data. The data analyzed here pertain to the victim's reported relationship to the offender.

The case file data showed that in some cases multiple relationship categories were recorded (e.g., co-worker and friend). A hierarchy rule was used to code the closest relationship when more than one type of relationship was reported in the data file, with one exception. There was special interest in examining supervisor (suspect)–subordinate (victim) and recruit (victim)–recruiter (suspect) relationships when the victim was a subordinate/recruit, so this was the relationship category that overrode other stated relationships. For instance, a case that involved former intimate partners in a supervisor (suspect)–subordinate (victim) relationship was coded as supervisor–subordinate. In addition, there was special interest in examining spouse and ex-spouse cases, so this relationship category was separated out from the intimate partner category. All other cases were coded according to the closest relationship category. For example, if the data in a case indicated “friend/acquaintance,” the case was coded as “friend.” If a case indicated “co-worker/friend,” the case was coded as “friend.” If a case indicated “co-worker/acquaintance,” the case was coded as “co-worker.” If a case indicated “intimate partner/friend,” the case was coded as “intimate partner.” The “intimate partner” category included boyfriends, girlfriends, ex-boyfriends and ex-girlfriends, and people engaged to be married; the “spouse” category included current and former spouses.

APPENDIX G. LIST OF TABLES AND FIGURE

Table II.1. Penetrative Sexual Offense Cases Closed in FY 2017 Involving Adult Victims and Service Member Subjects Identified for Review After Exclusions and Adjustments (N=1,904).....	33
Table III.1. Initial Disposition Authority Decisions in Cases Closed in FY 2017 Involving a Penetrative Sexual Offense Allegation by an Adult Victim Against a Service Member	38
Table III.2. Post-preferral Disposition Regarding the Adult Penetrative Sexual Offense for Cases Closed in FY 2017 ...	39
Table IV.1. Reasonableness of Initial Disposition Authority’s Decision to Take No Action Against the Subject on the Adult Penetrative Sexual Offense Allegation	45
Table IV.2. Reasonableness of Initial Disposition Authority’s Decision in Cases Resulting in a Preferred Adult Penetrative Sexual Offense Charge	46
Table IV.3. Victim Participation in Cases Resulting in No Action Against the Subject on the Adult Penetrative Sexual Offense Allegation	49
Table IV.4. The Victim’s Statement and Probable Cause in Cases Resulting in No Action Against the Subject on the Adult Penetrative Sexual Offense Allegation	50
Table IV.5. The Victim’s Statement and Probable Cause in Cases Resulting in a Preferred Adult Penetrative Sexual Offense Charge	50
Table V.1. Preferred Cases: Assessment of Probable Cause and Sufficiency of the Evidence to Obtain and Sustain a Conviction	54
Table V.2. Preferred Cases Resulting in Verdict on the Adult Penetrative Sexual Offense: Assessment of Probable Cause and Sufficiency of the Evidence to Obtain and Sustain a Conviction.....	56
Table V.3. Cases Resulting in Acquittal on the Adult Penetrative Sexual Offense, Assessment of Sufficiency of the Evidence to Obtain and Sustain a Conviction.....	58
Table V.4. Cases Resulting in Conviction on the Adult Penetrative Sexual Offense, Assessment of Sufficiency of the Evidence to Obtain and Sustain a Conviction.....	59
Table V.5. Preferred Cases That Did Not Go to Verdict: Assessment of Probable Cause and Sufficiency of the Evidence to Obtain and Sustain a Conviction.....	60
Table V.6. Preferred Cases Resulting in Discharge in Lieu of Court-Martial or Administrative Separation: Assessment of Probable Cause and Sufficiency of the Evidence to Obtain and Sustain a Conviction.....	61
Table V.7. Preferred Cases, Adult Penetrative Sexual Offense Dismissed Outright or as Part of a Pretrial Agreement: Assessment of Probable Cause and Sufficiency of the Evidence to Obtain and Sustain a Conviction	62
Table V.8. Post-referral Outcomes in Cases with Adult Penetrative Sexual Offenses Referred to Trial by General Court-Martial Closed in FY 2017	63

Table VI.1. Location of Offense (On or Off Installation)	66
Table VI.2. Location of Offense (Within or Outside the Continental United States).....	67
Table VI.3. Gender of Subject	68
Table VI.4. Gender of Victim	68
Table VI.5. Grade of Subject at the Time of the Offense	69
Table VI.6. Pay Grade of Enlisted Subjects.....	69
Table VI.7. Pay Grade of Officer Subjects	70
Table VI.8. Victim Status at the Time of Offense	71
Table VI.9. Pay Grade of Enlisted Victims.....	72
Table VI.10. Pay Grade of Officer Victims	72
Table VI.11. Military Civilian Spouse Victims and Number of Spouse Subjects	73
Table VI.12. Race of Subject	74
Table VI.13. Race of Victim	75
Table VI.14. Relationship Between Victim and Subject	77
Figure 1. Number of Days Between Offense and Report to Authorities	78
Table VI.15. Person Reporting to Law Enforcement	79
Table VI.16. Use or Threat of Force Against the Victim	81
Table VI.17. Type of Force or Threat	82
Table VI.18. Physical Injuries to the Victim	83
Table VI.19. Types of Physical Injuries	84
Table VI.20. Sexual Assault Forensic Examination Performed on Victim	85
Table VI.21. Days Between Sexual Assault and SAFE.....	86
Table VI.22. Location of SAFE	87
Table VI.23. Victim SAFE Provider	88
Table VI.24. DNA Evidence Tested.....	89
Table VI.25. Witnesses to the Penetrative Sexual Assault	90
Table VI.26. Pretextual Communication	91
Table VI.27. Subject Complexity Factors ^a	94

Table VI.28. Victim Complexity Factors	95
Table VI.29. Reported Alcohol and Drug Use by Subject	96
Table VI.30. Reported Alcohol and Drug Use by Victim.....	96
Table VI.31. Victim Impairment	97
Table VI.32. Description from Victim on Level of Impairment	99
Table VI.33. Subject Statement and Legal Representation at the Time of Rights Advisement ^a	101
Table VI.34. Victim Statement and Victim Counsel at the Time of Statement	102
Table VI.35. Victim Representation at Any Time	103
Table VI.36. Subject's Statements to Law Enforcement or Third Parties	104
Table VI.37. Victim Participation in and Declination of Investigation and Prosecution of a Penetrative Sexual Offense	105
Table VI.38. Judge Advocate Probable Cause Determination	106
Table VI.39. Reporting Timing – Statistically Significant	108
Table VI.40. Demographic Data – Statistically Significant	108
Table VI.41. Physical Evidentiary Considerations – Statistically Significant.....	109
Table VI.42. Victim Complexity Factors – Statistically Significant	110
Table VI.43. Subject Complexity Factors – Statistically Significant.....	110
Table VI.44. Victim Impairment – Statistically Significant	111
Table VI.45. Subject Impairment – Statistically Significant	112
Table VI.46. Victim Attorney Representation and Participation in Investigation – Statistically Significant	112
Table VI.47. Judge Advocate Probable Cause Determination for Indexing – Statistically Significant	113
Table VI.48. Victim Status and Relationship Between Victim and Subject – Statistically Significant	114
Table VI.49. Victim Complexity Factors – Statistically Significant	115
Table VI.50. Subject Complexity Factors – Statistically Significant.....	115
Table VI.51. Subject Impairment – Statistically Significant	116
Table VI.52. Victim Legal Representation – Statistically Significant	116
Table VI.53. Reporting Individual – Statistically Significant.....	117
Table VI.54. Victim Status and Relationship Between Victim and Subject – Statistically Significant	118

Table VI.55. Physical Evidentiary Considerations – Statistically Significant.....	118
Table VI.56. Victim Complexity Factors – Statistically Significant	119
Table VI.57. Subject Complexity Factors – Statistically Significant.....	119
Table VI.58. Victim Impairment – Statistically Significant	120
Table VI.59. Subject Impairment – Statistically Significant	121
Table VI.60. Victim Legal Representation – Statistically Significant	121
Table VI.61. Judge Advocate Probable Cause Determination for Indexing – Statistically Significant	121

APPENDIX H. DATA COLLECTION INSTRUMENT

Sexual Assault Case Review	
DAC-IPAD Control Number: _____ Date _____	
Reviewed by: _____	
Report	
1. MCIO Case Report Number	
2. MCIO Office	
3. Civilian Investigative Agency Involvement	Incident Occurred On / Off Military Installation Civilian Agency Involved: Yes / No Agency Name: _____ Civilian Lead: Yes / No Civilian Prosecution: Yes / No Comments:
4. All Sexual Assault Offense(s) Reported	
5. Date(s) of Occurrence(s)	
6. Date Reported to MCIO *(Delayed Report = More than 48 Hours after Incident)	Date: _____ If delayed report, was a reason provided? Yes / No / N/A Comments:
7. Was Report Originally Restricted	Yes / No / N/A Date restricted report made: _____

DAC-IPAD Control Number: _____

<p>8. Date MCIIO Report Finalized</p> <p>8a. Date MCIIO Case Closed</p>	<p>Date: _____ (Report Finalized)</p> <p>Date: _____ (Case Closed)</p> <p>Comments:</p>																		
<p>9. Reporting Person</p> <p>*(To Law Enforcement)</p>	<p>Relationship:</p> <p><input type="checkbox"/> Victim</p> <p><input type="checkbox"/> Victim Authorized Representative (SARC, SVC/VLC, FAP)</p> <p><input type="checkbox"/> Reported by Command</p> <p><input type="checkbox"/> Third Party _____</p>																		
<p>10. Location of Incident</p> <p>*(Installation/City/State/Country)</p>																			
<p>11. Location Type</p> <p>*(Check all that apply)</p>	<p>CONUS / OCONUS / Vessel</p> <p>Deployed Location: Yes / No</p> <table border="0"> <tr> <td><input type="checkbox"/> Barracks/Dormitory</td> <td><input type="checkbox"/> School</td> </tr> <tr> <td><input type="checkbox"/> On installation housing</td> <td><input type="checkbox"/> Church/Chapel</td> </tr> <tr> <td><input type="checkbox"/> Private residence</td> <td><input type="checkbox"/> Park/Beach</td> </tr> <tr> <td><input type="checkbox"/> Office/Workplace</td> <td><input type="checkbox"/> Wooded/Open area</td> </tr> <tr> <td><input type="checkbox"/> Vehicle</td> <td><input type="checkbox"/> Swimming pool</td> </tr> <tr> <td><input type="checkbox"/> Hotel/Motel</td> <td><input type="checkbox"/> Daycare/CDC</td> </tr> <tr> <td><input type="checkbox"/> Club</td> <td><input type="checkbox"/> Retail store</td> </tr> <tr> <td><input type="checkbox"/> Medical/Hospital</td> <td><input type="checkbox"/> Other _____</td> </tr> <tr> <td><input type="checkbox"/> Unknown</td> <td></td> </tr> </table>	<input type="checkbox"/> Barracks/Dormitory	<input type="checkbox"/> School	<input type="checkbox"/> On installation housing	<input type="checkbox"/> Church/Chapel	<input type="checkbox"/> Private residence	<input type="checkbox"/> Park/Beach	<input type="checkbox"/> Office/Workplace	<input type="checkbox"/> Wooded/Open area	<input type="checkbox"/> Vehicle	<input type="checkbox"/> Swimming pool	<input type="checkbox"/> Hotel/Motel	<input type="checkbox"/> Daycare/CDC	<input type="checkbox"/> Club	<input type="checkbox"/> Retail store	<input type="checkbox"/> Medical/Hospital	<input type="checkbox"/> Other _____	<input type="checkbox"/> Unknown	
<input type="checkbox"/> Barracks/Dormitory	<input type="checkbox"/> School																		
<input type="checkbox"/> On installation housing	<input type="checkbox"/> Church/Chapel																		
<input type="checkbox"/> Private residence	<input type="checkbox"/> Park/Beach																		
<input type="checkbox"/> Office/Workplace	<input type="checkbox"/> Wooded/Open area																		
<input type="checkbox"/> Vehicle	<input type="checkbox"/> Swimming pool																		
<input type="checkbox"/> Hotel/Motel	<input type="checkbox"/> Daycare/CDC																		
<input type="checkbox"/> Club	<input type="checkbox"/> Retail store																		
<input type="checkbox"/> Medical/Hospital	<input type="checkbox"/> Other _____																		
<input type="checkbox"/> Unknown																			

Overall Comments/Summary on Reporting:

DAC-IPAD Control Number: _____

Subject	
Name (Last, First, Middle, Suffix) _____	
12. Number of Subjects	_____ (separate checklist for each subject)
13. Status, Grade, & Branch of Service at Time of Incident	<input type="checkbox"/> Active Duty <input type="checkbox"/> Reserves <input type="checkbox"/> National Guard (Pay Grade): _____ Service <input type="checkbox"/> Army <input type="checkbox"/> Air Force <input type="checkbox"/> Navy <input type="checkbox"/> Marine Corps <input type="checkbox"/> Coast Guard
14. Subject Status at Time Investigation Initiated (If different from time of incident)	N/A DoD Contractor <input type="checkbox"/> DoD Civilian Civilian <input type="checkbox"/> Reserve National Guard <input type="checkbox"/> Retiree
15. Assigned Command at Time of Incident	
16. Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
17. Date of Birth and SSN (Last Six Only)	
18. Race and Ethnicity of Subject	<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Hispanic, Latino, or Spanish origin <input type="checkbox"/> Middle Eastern or North African <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> Some other race, ethnicity, or origin <input type="checkbox"/> Unknown
19. Relationship to Victim(s) *(Per Subject)	<input type="checkbox"/> Not Provided <input type="checkbox"/> Stranger <input type="checkbox"/> Acquaintance <input type="checkbox"/> Friend <input type="checkbox"/> Roommate <input type="checkbox"/> Supervisor <input type="checkbox"/> Subordinate <input type="checkbox"/> Co-Worker <input type="checkbox"/> Intimate Partner <input type="checkbox"/> Former Intimate Partner <input type="checkbox"/> Spouse <input type="checkbox"/> Former Spouse <input type="checkbox"/> Boyfriend/Girlfriend <input type="checkbox"/> Family Member (other than spouse) <input type="checkbox"/> Doctor <input type="checkbox"/> Patient <input type="checkbox"/> Classmate <input type="checkbox"/> Other _____

DAC-IPAD Control Number: _____

<p>20. Subject Statement to Law Enforcement</p> <p>*(Check all that apply)</p>	<p>Yes / No</p> <p>Date: _____ (Invoked and/or statement)</p> <p><input type="checkbox"/> None (Invoked right to remain silent)</p> <p><input type="checkbox"/> Verbal Statement</p> <p><input type="checkbox"/> Written Statement</p> <p><input type="checkbox"/> Recorded Statement (audio/visual)</p> <p><input type="checkbox"/> Multiple Statements to law enforcement? Number _____</p>
<p>21. Was Subject Represented by Counsel at Rights Advisement?</p>	<p>Yes / No</p> <p>Comments:</p>
<p>22. Subject Statement to Other than Law Enforcement (Oral, Written, Digital)</p> <p>*(Check all that apply and comment on each)</p>	<p>Yes / No</p> <p><input type="checkbox"/> Command</p> <p><input type="checkbox"/> Co-Worker</p> <p><input type="checkbox"/> Spouse</p> <p><input type="checkbox"/> Boyfriend</p> <p><input type="checkbox"/> Girlfriend</p> <p><input type="checkbox"/> Friend</p> <p><input type="checkbox"/> Victim</p> <p><input type="checkbox"/> Other</p> <p>Comments:</p>
<p>23. Subject's General Description of Incident in His/Her Statement(s)</p> <p>*(Check all that apply)</p>	<p><input type="checkbox"/> N/A</p> <p><input type="checkbox"/> Denies sexual activity</p> <p><input type="checkbox"/> Confessed to crime</p> <p><input type="checkbox"/> Denies being the offender/Mistaken identity</p> <p><input type="checkbox"/> Other _____</p> <p><input type="checkbox"/> Act was consensual</p> <p><input type="checkbox"/> No recollection</p> <p><input type="checkbox"/> Partial recollection</p>

DAC-IPAD Control Number: _____

<p>24. Sexual Interaction with Victim</p>	<ul style="list-style-type: none"> <input type="checkbox"/> N/A <input type="checkbox"/> None <input type="checkbox"/> Prior consensual sexual contact <input type="checkbox"/> Prior consensual penetrative acts <input type="checkbox"/> Consensual sexual acts directly preceding the allegation of rape/sexual assault <input type="checkbox"/> Consensual sexual acts after the allegation of rape/sexual assault <input type="checkbox"/> Communications of a sexual nature preceding incident (including sexting, flirting, nude photos) <input type="checkbox"/> Communications of a sexual nature following incident (including sexting, flirting, nude photos) <p>Comments:</p>
<p>25. Subject Consume Alcohol/Drugs at Time of Incident?</p>	<p>Alcohol: Yes / No</p> <p>Basis (check all that apply):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Self-Admission <input type="checkbox"/> Witness statement <input type="checkbox"/> Victim(s) statement <input type="checkbox"/> Other _____ <p>Drugs: Yes / No</p> <p>Basis (check all that apply):</p> <ul style="list-style-type: none"> <input type="checkbox"/> Self-Admission <input type="checkbox"/> Witness statement <input type="checkbox"/> Victim(s) statement <input type="checkbox"/> Other _____ <p>Comments:</p> <p>Drug/Alcohol Test: Yes / No</p> <p>Results:</p>

DAC-IPAD Control Number: _____

<p>26. Factors Affecting Subject Reliability/Credibility</p> <p>*(Check all that apply)</p>	<ul style="list-style-type: none"> <input type="checkbox"/> None in file <input type="checkbox"/> Collateral misconduct (Underage drinking, fraternization, conduct unbecoming, drug use, adultery, other _____) <input type="checkbox"/> Contradictory evidence <input type="checkbox"/> Inconsistent statements <input type="checkbox"/> Other misconduct (specify)_____ <input type="checkbox"/> Reported loss of consciousness <input type="checkbox"/> Reported loss of memory <input type="checkbox"/> M.R.E. 413 evidence (committed other sexual offense) <input type="checkbox"/> M.R.E. 404(b) evidence (evidence of other crimes, wrongs or acts to prove motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident) <input type="checkbox"/> Corroboration (Physical tangible evidence, witness, medical evidence) <input type="checkbox"/> Reputation for or opinion on truthfulness or untruthfulness <input type="checkbox"/> Motive to lie <input type="checkbox"/> Other _____ <p>Comments:</p>
<p>27. Behavioral Health Issues Regarding Subject</p>	<p>Yes / No</p> <p>Before Incident</p> <ul style="list-style-type: none"> <input type="checkbox"/> Inpatient Treatment <input type="checkbox"/> Outpatient Treatment <input type="checkbox"/> Post-Traumatic Stress Disorder <input type="checkbox"/> Traumatic Brain Injury <input type="checkbox"/> Drug Treatment <input type="checkbox"/> Alcohol Treatment <input type="checkbox"/> Other <p>After Incident</p> <ul style="list-style-type: none"> <input type="checkbox"/> Inpatient Treatment <input type="checkbox"/> Outpatient Treatment <input type="checkbox"/> Post-Traumatic Stress Disorder <input type="checkbox"/> Traumatic Brain Injury <input type="checkbox"/> Drug Treatment <input type="checkbox"/> Alcohol Treatment <input type="checkbox"/> Other

DAC-IPAD Control Number: _____

27. Continued	Comments:
----------------------	-----------

Overall Comments/Summary on Subject:

DAC-IPAD Control Number: _____

Victim	
Name (Last, First, Middle, Suffix) _____	
28. Number of Victim(s)	_____ (separate checklist for each victim)
29. Status, Grade, & Branch of Service at Time of Incident (DoD Spouse = Spouse of Suspect & other DoD Spouses)	<input type="checkbox"/> Active Duty <input type="checkbox"/> Reserves <input type="checkbox"/> National Guard (Pay Grade): _____ Service <input type="checkbox"/> Army <input type="checkbox"/> Air Force <input type="checkbox"/> Navy <input type="checkbox"/> Marine Corps <input type="checkbox"/> Coast Guard <input type="checkbox"/> DoD Spouse <input type="checkbox"/> Civilian <input type="checkbox"/> Other Family Member <input type="checkbox"/> Foreign National <input type="checkbox"/> DoD Civilian <input type="checkbox"/> Other _____ <input type="checkbox"/> DoD Contractor
30. Gender	<input type="checkbox"/> Male <input type="checkbox"/> Female
31. Date of Birth	
32. Race and Ethnicity	<input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Hispanic, Latino, or Spanish origin <input type="checkbox"/> Middle Eastern or North African <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White <input type="checkbox"/> Some other race, ethnicity, or origin <input type="checkbox"/> Unknown
33. Relationship to Subject *(Per Victim)	<input type="checkbox"/> Not Provided <input type="checkbox"/> Stranger <input type="checkbox"/> Acquaintance <input type="checkbox"/> Friend <input type="checkbox"/> Roommate <input type="checkbox"/> Supervisor <input type="checkbox"/> Subordinate <input type="checkbox"/> Co-Worker <input type="checkbox"/> Intimate Partner <input type="checkbox"/> Former Intimate Partner <input type="checkbox"/> Spouse <input type="checkbox"/> Former Spouse <input type="checkbox"/> Boyfriend/Girlfriend <input type="checkbox"/> Family Member (other than spouse) <input type="checkbox"/> Doctor <input type="checkbox"/> Patient <input type="checkbox"/> Classmate <input type="checkbox"/> Other _____

DAC-IPAD Control Number: _____

<p>34. Sexual Interaction with Subject</p>	<ul style="list-style-type: none"> <input type="checkbox"/> N/A <input type="checkbox"/> None <input type="checkbox"/> Prior consensual sexual contact <input type="checkbox"/> Prior consensual penetrative acts <input type="checkbox"/> Consensual sexual acts directly preceding the allegation of rape/sexual assault <input type="checkbox"/> Consensual sexual acts after the allegation of rape/sexual assault <input type="checkbox"/> Communications of a sexual nature preceding incident (including sexting, flirting, nude photos) <input type="checkbox"/> Communications of a sexual nature following incident (including sexting, flirting, nude photos) <p>Comments:</p>
<p>35. Evidence of Sexual Behavior or Predisposition (M.R.E. 412)</p>	<p>Specific instances to prove someone other than subject was the source of semen, injury, or other physical evidence</p> <p>Evidence of specific instances of sexual behavior with the subject to show consent</p> <p>Constitutionally required</p> <p>None reported</p> <p>Comments:</p>
<p>36. Prior Allegation of Sexual Assault by Victim</p>	<p>Yes / No</p> <p>If yes, annotate case number(s) if available: _____</p> <p>Comments:</p>
<p>37. Victim Statement to Law Enforcement</p> <p>*(Check all that apply)</p>	<p>Yes / No</p> <p>If yes, date: _____</p> <ul style="list-style-type: none"> <input type="checkbox"/> None provided <input type="checkbox"/> Verbal statement <input type="checkbox"/> Written statement <input type="checkbox"/> Recorded statement (audio/visual) <input type="checkbox"/> Multiple statements to law enforcement? Number _____

DAC-IPAD Control Number: _____

<p>38. Circumstances of Statement to Law Enforcement</p> <p>*(Check all that apply)</p>	<p><input type="checkbox"/> N/A</p> <p><input type="checkbox"/> SVC/VLC present</p> <p><input type="checkbox"/> Other person present _____</p> <p><input type="checkbox"/> Joint statement with military and civilian law enforcement</p> <p><input type="checkbox"/> Statement taken immediately, within 48 hours of report</p> <p><input type="checkbox"/> Statement taken after 48 hours of report</p>
<p>39. Did Statement to Law Enforcement Establish Probable Cause Offense Occurred?</p>	<p>Yes / No / N/A</p>
<p>40. Victim Statement to Other than Law Enforcement (Oral, Written, Digital)</p> <p>*(Check all that apply and comment on each)</p>	<p>Yes / No</p> <p>Command</p> <p>Co-worker</p> <p>Spouse</p> <p>Boyfriend</p> <p>Girlfriend</p> <p>Friend</p> <p>Suspect</p> <p>SANE</p> <p>SARC</p> <p>FAP</p> <p>Other</p> <p>Comments:</p>
<p>41. Did Victim Participate in the Investigation?</p>	<p>Yes / Declined</p> <p>If victim declined, at what stage of the process did they stop cooperating?</p> <p><input type="checkbox"/> Reporting <input type="checkbox"/> Investigation</p> <p><input type="checkbox"/> Preliminary Hearing <input type="checkbox"/> Court-Martial</p> <p><input type="checkbox"/> Other _____</p> <p>Comments:</p>

DAC-IPAD Control Number: _____

<p>42. Did Victim Provide Input to the Command/SJA?</p>	<p>Yes / No</p> <p>What type of input?</p> <p><input type="checkbox"/> Pursue courts-martial <input type="checkbox"/> Pursue non-judicial punishment</p> <p><input type="checkbox"/> Pursue counseling statement <input type="checkbox"/> Pursue administrative separation</p> <p><input type="checkbox"/> Other administrative action <input type="checkbox"/> Take no action</p> <p><input type="checkbox"/> Refer to civilian court/authority</p> <p><input type="checkbox"/> Other _____</p>
<p>43. SVC/VLC Representation?</p>	<p>Yes / No / N/A</p> <p>SVC/VLC present at time of statement? Yes / No / N/A</p> <p>Date of Notice of Representation _____</p>
<p>44. Did Victim Request Expedited Transfer?</p>	<p>Yes / No / N/A</p> <p>If yes, was it approved: Yes / No</p> <p>Date: _____</p>
<p>45. Victim Consume Alcohol/Drugs at Time of Incident?</p>	<p>Alcohol: Yes / No</p> <p>Basis (check all that apply):</p> <p><input type="checkbox"/> Self-Admission <input type="checkbox"/> Subject(s) statement</p> <p><input type="checkbox"/> Witness statement <input type="checkbox"/> Other _____</p> <p>Drugs: Yes / No</p> <p>Basis (check all that apply):</p> <p><input type="checkbox"/> Self-Admission <input type="checkbox"/> Subject(s) statement</p> <p><input type="checkbox"/> Witness statement <input type="checkbox"/> Other _____</p> <p>Comments:</p> <p>Drug/Alcohol Test: Yes / No</p> <p>Results:</p>

DAC-IPAD Control Number: _____

<p>46. Did Victim Report Being Incapacitated?</p>	<p>Yes / No</p> <p><input type="checkbox"/> Blacked-out <input type="checkbox"/> Asleep <input type="checkbox"/> Unconscious <input type="checkbox"/> Passed-out <input type="checkbox"/> Partial memory <input type="checkbox"/> Drugged <input type="checkbox"/> No memory <input type="checkbox"/> Other</p> <p>Comments:</p>
<p>47. Factors Affecting Victim Reliability/Credibility</p> <p>*(Check all that apply)</p>	<p><input type="checkbox"/> None in file <input type="checkbox"/> Collateral misconduct (Underage drinking, fraternization, conduct unbecoming, drug use, adultery, other _____) <input type="checkbox"/> Contradictory evidence <input type="checkbox"/> Inconsistent statements <input type="checkbox"/> Other misconduct (specify) _____ <input type="checkbox"/> Reported loss of consciousness <input type="checkbox"/> Reported loss of memory <input type="checkbox"/> Corroboration (Physical tangible evidence, witness, medical evidence) <input type="checkbox"/> Reputation for or opinion on truthfulness or untruthfulness <input type="checkbox"/> Motive to lie <input type="checkbox"/> Other _____</p> <p>Comments:</p>
<p>48. Behavioral Health Issues Regarding Victim</p>	<p>Yes / No</p> <p>Before Incident</p> <p><input type="checkbox"/> Inpatient Treatment <input type="checkbox"/> Outpatient Treatment <input type="checkbox"/> Post-Traumatic Stress Disorder <input type="checkbox"/> Traumatic Brain Injury <input type="checkbox"/> Drug Treatment <input type="checkbox"/> Alcohol Treatment <input type="checkbox"/> Other</p>

DAC-IPAD Control Number: _____

48. Continued	<p>After Incident</p> <ul style="list-style-type: none"> <input type="checkbox"/> Inpatient Treatment <input type="checkbox"/> Outpatient Treatment <input type="checkbox"/> Post-Traumatic Stress Disorder <input type="checkbox"/> Traumatic Brain Injury <input type="checkbox"/> Drug Treatment <input type="checkbox"/> Alcohol Treatment <input type="checkbox"/> Other <p>Comments:</p>
----------------------	---

Overall Comments/Summary on Victim:

DAC-IPAD Control Number: _____

Evidence	
49. Victim Sexual Assault Kit Collected?	Yes / No Date collected: _____ Date testing completed: _____
50. Location of Victim Sexual Assault Exam	<input type="checkbox"/> Military Health Care Facility <input type="checkbox"/> Civilian Health Care Facility <input type="checkbox"/> N/A
51. Who Conducted the Victim's Sexual Assault Exam?	<input type="checkbox"/> Military Examiner <input type="checkbox"/> DoD Civilian <input type="checkbox"/> Civilian Provider <input type="checkbox"/> N/A
52. Subject Sexual Assault Kit Collected?	Yes / No Date collected: _____ Date testing completed: _____
53. Location of Subject Sexual Assault Exam	<input type="checkbox"/> Military Health Care Facility <input type="checkbox"/> Civilian Health Care Facility <input type="checkbox"/> N/A
54. Who Conducted the Subject's Sexual Assault Exam?	<input type="checkbox"/> Military Examiner <input type="checkbox"/> DoD Civilian <input type="checkbox"/> Civilian Provider <input type="checkbox"/> N/A
55. DNA <u>Results</u> *(Both Subject & Victim)	Yes / No Comments:

DAC-IPAD Control Number: _____

<p>56. Evidence of Use/Threat of Force</p> <p>*(Based on totality of file)</p>	<p>Yes / No</p> <p><input type="checkbox"/> Physical <input type="checkbox"/> Weapon</p> <p><input type="checkbox"/> Coercion <input type="checkbox"/> Threat</p> <p><input type="checkbox"/> Threat to Others</p> <p>Physical injury – Yes / No</p> <p><input type="checkbox"/> Bruising <input type="checkbox"/> Cuts</p> <p><input type="checkbox"/> Broken bones <input type="checkbox"/> Redness</p> <p><input type="checkbox"/> Scrapes</p> <p>Comments:</p>
<p>57. Eyewitness(es) to Sexual Activity</p>	<p>Yes / No</p> <p>Number of witnesses: 1--5 / 6--10 /</p> <p>11+ Comments:</p>
<p>58. Third-Party Witness(es)</p> <p>*(To events or statements before, during, or after the assault)</p>	<p>Yes / No</p> <p>Number of witnesses: 1--5 / 6--10 /</p> <p>11+ Comments:</p>
<p>59. Electronic Evidence</p>	<p>Yes / No</p> <p><input type="checkbox"/> Victim <input type="checkbox"/> Subject <input type="checkbox"/> Witness</p> <p> o Cell phone o Cell phone o Cell phone</p> <p> o Computer o Computer o Computer</p> <p> o Social media o Social media o Social media</p> <p> o Other o Other o Other</p> <p>Comments:</p>

DAC-IPAD Control Number: _____

60. Other Evidence	Yes / No Comments:
61. Pretext Communication	Yes / No Type: <input type="checkbox"/> Phone call <input type="checkbox"/> Text message <input type="checkbox"/> Email <input type="checkbox"/> In person <input type="checkbox"/> Other Results: Supports Victim's Account Supports Subject's Account Neither Comments:

Overall comments/Summary on evidence:

DAC-IPAD Control Number: _____

Case Information	
62. Investigator Bias	<input type="checkbox"/> No indication of bias <input type="checkbox"/> Bias against victim <input type="checkbox"/> Bias against suspect
63. Commander Disposition *(Check all that apply)	<input type="checkbox"/> Action Taken Date: _____ <input type="checkbox"/> Preferral <input type="checkbox"/> Non-judicial punishment <input type="checkbox"/> Civilian authority <input type="checkbox"/> Other administrative action <input type="checkbox"/> Separation o Administrative o Resignation/Discharge in lieu of court-martial o Other Separation _____ <input type="checkbox"/> Other _____ <input type="checkbox"/> No Action Taken Date: _____ <input type="checkbox"/> No Reason Provided <input type="checkbox"/> Unfounded o Baseless o False o Not specified <input type="checkbox"/> Prosecution declined <input type="checkbox"/> Insufficient evidence <input type="checkbox"/> Victim uncooperative <input type="checkbox"/> Lack of jurisdiction <input type="checkbox"/> No probable cause <input type="checkbox"/> Other _____ <input type="checkbox"/> None Provided Comments:
64. Any Legal Memoranda Pertaining to Investigation/Disposition	<input type="checkbox"/> None provided <input type="checkbox"/> Judge Advocate explanation _____ o Probable Cause Yes / No <input type="checkbox"/> Prosecution Memorandum o Probable Cause Yes / No <input type="checkbox"/> Other _____ Comments:

DAC-IPAD Control Number: _____

<p>65. Probable Cause Determination per DoDI 5505.11 and 5505.14 (FBI and CODIS Submissions)</p>	<p>Yes / No</p> <p><input type="checkbox"/> Probable cause <input type="checkbox"/> No probable cause</p> <p>Comments:</p>
<p>66. Commander Action Taken for Collateral Misconduct</p>	<p>Suspect: Yes / No</p> <p>Comments:</p> <p>Victim: Yes / No / N/A</p> <p>Comments:</p>
<p>**67. Is the Command Action Decision Reasonable Based on the Totality of the Investigative File?</p>	<p>Yes / No</p> <p>Comments:</p>

****The reasonableness decision applies to the type of case being reviewed. In “no action taken” cases – Is the Commander’s decision to take “No Action” on the penetrative sexual assault offense reasonable? In “preferred” cases – Is the Commander’s decision to “Prefer” on the penetrative sexual assault offense reasonable?**

Additional Comments:

DAC-IPAD Control Number: _____

Preferral	
68. Post-Preferral Documents	<p>Article 32 Report: Yes/ No</p> <p>Preliminary Hearing Officer find probable cause on the penetrative offense: Yes / No</p> <p>Comments:</p> <p>SJA Advice: Yes / No</p> <p>Comments:</p>
69. <u>Based on the Totality of the Investigative File:</u>	
Was There Probable Cause to Believe an Offense Was Committed and the Accused Committed It?	<p>Yes / No</p> <p>Comments:</p>
Was There Sufficient Admissible Evidence Beyond a Reasonable Doubt to Obtain and Sustain a Conviction?	<p>Yes / No</p> <p>Comments:</p>

DAC-IPAD Control Number: _____

**Is the Ultimate Command Action Decision Reasonable?	Yes / No Comments:
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****The reasonableness decision applies after preferral. Is the ultimate decision to refer to courts-martial, accept a plea, dismiss SA offenses, offer Administrative Separation, Non-judicial Punishment, or some other administrative action on non-SA offenses reasonable?**

Additional Comments:

DAC-IPAD Control Number: _____

Staff Only	
70. Case Clearance Classification	MCIO DIBRS / NIBRS Classification: <input type="checkbox"/> Unfounded <input type="checkbox"/> Arrest or equivalent <input type="checkbox"/> Death of offender <input type="checkbox"/> Prosecution declined <input type="checkbox"/> Extradition declined <input type="checkbox"/> Juvenile <input type="checkbox"/> Victim declined to cooperate <input type="checkbox"/> Case not cleared <input type="checkbox"/> Referred for Court-Martial <input type="checkbox"/> Non-judicial punishment (Article 15) <input type="checkbox"/> Not Applicable
71. Is DIBRS/NIBRS Closure Listed by MCIO Consistent with Action Taken Reported by MCIO?	Yes / No Comments:

Additional Comments:

APPENDIX I. LEGISLATIVE PROPOSAL FOR AMENDMENT TO ARTICLE 34, UCMJ

SEC. XXX. CERTAIN ADVICE TO CONVENING AUTHORITY BEFORE REFERRAL FOR TRIAL.

Paragraph (1) of subsection (a) of section 834 of title 10, United States Code (article 34 of the Uniform Code of Military Justice), is amended by striking subparagraph (B) and inserting the following new subparagraph:

“(B) there is sufficient admissible evidence to obtain and sustain a conviction on the offense charged; and”.

Proposal for Conforming Amendments to Rules for Courts-Martial:

Rule 406. Pretrial advice

Subsection (b)(2) is amended to delete “Conclusion with respect to whether there is probable cause to believe that the accused committed the offense charged in the specification;” and insert “Conclusion with respect to whether there is sufficient admissible evidence to obtain and sustain a conviction on the offense charged in the specification; and”

Rule 601. Referral

Subsection (d)(1) is amended as follows: “*Basis for referral.* A case may not be referred to a general or special court-martial except in compliance with paragraph (d)(2) or (d)(3) of this rule. A case may not be referred to a summary or special court-martial except if the convening authority finds or is advised by a judge advocate that there is probable cause to believe that an offense triable by a court-martial has been committed and that the accused committed it, and that the specification alleges an offense. The finding may be based on hearsay in whole or in part. The convening authority or judge advocate may consider information from any source and shall not be limited to the information reviewed by any previous authority. The convening authority or judge advocate shall not be required before charges are referred to resolve legal issues, including objections to evidence, which may arise at trial.”

The Discussion to Subsection (d)(2) is amended as follows:

Compliance with R.C.M. 405 includes the opportunity for the accused to waive the preliminary hearing. See R.C.M. 405.

A specification under a charge may not be referred to a general court-martial unless the advice of the staff judge advocate concludes that the specification alleges an offense under the UCMJ, there is sufficient admissible evidence to obtain and sustain a conviction on the offense charged, and a court-martial would have jurisdiction over the accused and the offense. See Article 34 and R.C.M. 406.

APPENDIX J. COMMITTEE PUBLIC MEETINGS, PREPARATORY SESSIONS, AND PRESENTERS

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 4</p> <p>October 19–20, 2017</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Perspective of a Sexual Assault Victim</p> <ul style="list-style-type: none"> • Senior Airman Hannah Stolberg, U.S. Air Force (Retired) <p>Briefing on the Department of Defense (DoD) and Military Services’ Expedited Transfer Policies</p> <ul style="list-style-type: none"> • Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S. Department of Defense • Ms. Diana Rangoussis, Senior Legislative and Policy Advisor, Sexual Assault Prevention and Response Office, U.S. Department of Defense • Mr. Paul Rosen, Director, U.S. Navy Sexual Assault Prevention and Response Branch • Ms. Gail Reed, Policy and Plans Program Specialist, U.S. Marine Corps Sexual Assault Prevention and Response • Colonel Melanie A. Prince, U.S. Air Force, Division Chief, Interpersonal Self-Directed Violence Response Division • Lieutenant Amanda Styles, U.S. Coast Guard, Central Assignment Coordinator, Personnel Service Center Enlisted Personnel Management Division <p>Service Special Victims’ Counsel/Victims’ Legal Counsel (SVC/VLC) Perspectives on the Expedited Transfer Policy and SVC/VLC Program</p> <ul style="list-style-type: none"> • Major Simone Jack, U.S. Army, former Special Victims’ Counsel • Lieutenant Commander Clair Huffstetler, U.S. Navy, Victims’ Legal Counsel • Major Jessica Martz, U.S. Marine Corps, Deputy Officer-in-Charge, Victims’ Legal Counsel Organization • Captain Brittany Tedford, U.S. Air Force, Special Victims’ Counsel • Commander Paul Markland, U.S. Coast Guard, Special Victims’ Counsel

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 4</p> <p>(Continued)</p>	<p>Company/Squadron or Service Equivalent-level Commander and Senior Enlisted Advisor Perspectives on Sexual Assault Military Justice Training and Sexual Assault Response Training</p> <ul style="list-style-type: none"> • Lieutenant Colonel Erin Miller, U.S. Army, former Commander of the 101st Airborne Division, Fort Campbell • Commander Chad Livingston, U.S. Navy, Deputy Director Financial Policy and Systems, Office of the Assistant Secretary of the Navy, Financial Management and Comptroller • Lieutenant Colonel Jennifer Nash, U.S. Marine Corps, Commanding Officer, 7th Engineer Support Battalion • Sergeant Major Stennent Rey, U.S. Marine Corps, Senior Enlisted Advisor, 7th Engineer Support Battalion • Major Christopher Seamans, U.S. Air Force, Commander, 69th Maintenance Squadron • Senior Master Sergeant Terry Zannella, U.S. Air Force, First Sergeant, 69th Maintenance Squadron • Commander Jonathan Carter, U.S. Coast Guard, Commanding Officer, Coast Guard Cutter Legare • Chief Petty Officer Matthew Lee, U.S. Coast Guard, Command Chief, Coast Guard Cutter Legare <p>Special Court Martial Convening Authority Perspectives on Sexual Assault Military Justice Training</p> <ul style="list-style-type: none"> • Colonel Erik Gilbert, U.S. Army, Chief of Staff to the Director, Joint Future Force Development, Joint Staff • Captain John Bushey, U.S. Navy, Commander, Naval Installations Command, Director of Public Safety • Colonel Kevin Stewart, U.S. Marine Corps, Executive Assistant to the Deputy Commandant, Installation and Logistics • Colonel Ty Neuman, U.S. Air Force, Commander, 2nd Bomb Wing, Barksdale Air Force Base • Captain Brett Millican, U.S. Coast Guard, Commanding Officer, U.S. Coast Guard Base Boston <p>Update from DAC-IPAD Case Review Subcommittee</p>

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 5</p> <p>January 19, 2018</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Department of Defense, Data Brief on Expedited Transfers</p> <ul style="list-style-type: none"> • Dr. Nathan Galbreath, Deputy Director, Sexual Assault Prevention and Response Office, U.S. Department of Defense <p>Policy Subcommittee Presentation and Committee Deliberations on the Department of Defense Expedited Transfer Policy</p> <p>Data Subcommittee Presentation and Committee Deliberations on Fiscal Years 2012–2016 Sexual Assault Case Adjudication Data</p> <p>Case Review Subcommittee Group Presentation and Committee Deliberations on the Case Review Strategic Plan and Methodology</p>
<p>DAC-IPAD PUBLIC MEETING 6</p> <p>March 9, 2018</p> <p>Telephonic Meeting</p> <p>Public Access: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Committee Review of and Final Deliberations on March 2018 DAC-IPAD Report</p>
<p>DAC-IPAD PUBLIC MEETING 7</p> <p>April 20, 2018</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Best Practices for Case Management and Data Collection in Civilian Criminal Courts</p> <ul style="list-style-type: none"> • Mr. Glenn Schmitt, Director, Office of Research and Data, U.S. Sentencing Commission • Mr. Wendell Skidgel, Electronic Public Access Staff, Administrative Office of the U.S. Courts • Ms. Margaret Sheehan McCaleb, Project Director, Next Generation CM/ECF, Case Management Systems Office, Administrative Office of the U.S. Courts

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 7</p> <p>(Continued)</p>	<p>Updates for the Committee from the Case Review, Data, and Policy Subcommittees</p> <p>U.S. Department of Justice, Bureau of Justice Statistics Data Collection Methodology and Current Capabilities of the Military Services’ Case Management and Data Collection Programs</p> <ul style="list-style-type: none"> • Dr. Allen Beck, Senior Statistical Advisor, Bureau of Justice Statistics, U.S. Department of Justice • Lieutenant Colonel Jason Coats, U.S. Army, Operations Branch Chief, Criminal Law Division, Office of the Judge Advocate General • Captain Michael Luken, U.S. Navy, Director, U.S. Navy Trial Counsel Assistance Program • Major Jesse Schweig, U.S. Marine Corps, Trial Counsel Assistance Program, Judge Advocate Division – Military Justice • Major Noel Horton, U.S. Air Force, Executive Officer, Air Force Judiciary Directorate, Air Force Legal Operations Agency • Mr. Stephen McCleary, U.S. Coast Guard, Senior Military Justice Counsel, Office of Military Justice, Washington, DC
<p>DAC-IPAD PUBLIC MEETING 8</p> <p>July 20, 2018</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Military Services’ Perspectives on Best Practices for Implementing Article 140a, UCMJ, <i>Case management; data collection and accessibility</i></p> <ul style="list-style-type: none"> • U.S. Army • U.S. Navy • U.S. Marine Corps • U.S. Air Force • U.S. Coast Guard <p>Presentation by DAC-IPAD Policy Subcommittee Members and Deliberations on Best Practices for Implementing Article 140a, UCMJ, <i>Case management; data collection and accessibility</i></p> <p>Deliberations on Best Practices for Implementing Article 140a, UCMJ, <i>Case management; data collection and accessibility</i></p> <p>Updates from the Staff Director, Data Subcommittee, and Case Review Subcommittees</p>

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 10</p> <p>October 19, 2018</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Effects of Sexual Assault Investigations on Accused Service Members</p> <p>Perspectives of Civilian Sexual Assault Investigators</p> <p>Case Review Subcommittee Presentation and Committee Deliberations on Initial Findings and Recommendations Related to Sexual Assault Investigative Case File Reviews</p> <p>Committee Deliberations on Expedited Transfer – Final Assessment</p> <p>Briefing and Committee Deliberations on Judicial Proceedings Panel Recommendations Related to Articles 32, 33, and 34 of the Uniform Code of Military Justice Referred to the DAC-IPAD for Examination</p> <p>Briefing and Committee Deliberations on Fiscal Year 2019 NDAA Required Collateral Misconduct Study</p> <p>Data Subcommittee Update</p>
<p>DAC-IPAD PUBLIC MEETING 11</p> <p>January 25, 2019</p> <p>Doubletree by Hilton Crystal City 300 Army Navy Drive Arlington, Virginia</p>	<p>Panel: Effects of Sexual Assault Investigations on Accused Service Members</p> <ul style="list-style-type: none"> • Lieutenant Colonel (Retired) Joseph “Jay” Morse, USA • Colonel (Retired) Doug James, USAF • Colonel (Retired) David “Wil” Riggins, USA <p>Data Subcommittee Presentation of Sexual Assault Court-Martial Data</p> <p>Case Review Subcommittee Presentation of Investigative Case File Review Data</p> <p>Committee Deliberations on March 2019 Draft Report</p>
<p>DAC-IPAD PUBLIC MEETING 12</p> <p>February 22, 2019</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Committee Deliberations on the DAC-IPAD March 2019 Draft Annual Report</p>

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 13</p> <p>August 23, 2019</p> <p>Doubletree by Hilton Crystal City 300 Army Navy Drive Arlington, Virginia</p>	<p>DAC-IPAD Data Subcommittee Presentation of Conviction and Acquittal Rates and Overview of the Draft Department of Defense <i>Report on Allegations of Collateral Misconduct Against Individuals Identified as the Victim of Sexual Assault in the Case Files of a Military Criminal Investigative Organization</i></p> <p>DAC-IPAD Member Question and Answer Session Regarding the Draft Department of Defense <i>Report on Allegations of Collateral Misconduct Against Individuals Identified as the Victim of Sexual Assault in the Case Files of a Military Criminal Investigative Organization</i></p> <ul style="list-style-type: none"> • Lieutenant Colonel Adam Kazin, U.S. Army, Policy Branch Chief, Criminal Law Division, Office of the Judge Advocate General • Lieutenant James Kraemer, U.S. Navy, Head of the Sexual Assault Prevention and Response Policy Branch, Criminal Law Division, Office of the Judge Advocate General • Major Paul Ervasti, U.S. Marine Corps, Judge Advocate, Military Justice Policy and Legislation Officer, Military Justice Branch, Judge Advocate Division • Lieutenant Colonel Jane M. Male, U.S. Air Force, Deputy of the Military Justice Division, Air Force Legal Operations Agency • Lieutenant Adam Miller, U.S. Coast Guard, Legal Intern, Office of Military Justice <p>Panel 1: Perspectives of Services' Military Justice Division Chiefs Regarding Conviction and Acquittal Rates, the Case Adjudication Process, and Victim Declination in the Military Justice Process</p> <ul style="list-style-type: none"> • Colonel Patrick Pflaum, U.S. Army, Chief, Criminal Law Division • Captain Robert P. Monahan Jr., U.S. Navy, Deputy Assistant Judge Advocate General (Criminal Law) and Director, Office of the Judge Advocate General's Criminal Law Policy Division • Lieutenant Colonel Adam M. King, U.S. Marine Corps, Military Justice Branch Head, U.S. Marine Corps Judge Advocate Division • Colonel Julie Pitvorec, U.S. Air Force, Chief, U.S. Air Force Government Trial and Appellate Counsel Division • Captain Vasilios Tasikas, U.S. Coast Guard, Chief, Office of Military Justice

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 13</p> <p>(Continued)</p>	<p>Panel 2: Perspectives of Services’ Special Victims’ Counsel / Victims’ Legal Counsel Program Managers Regarding Conviction and Acquittal Rates, the Case Adjudication Process, and Victim Declination in the Military Justice Process</p> <ul style="list-style-type: none"> • Colonel Lance Hamilton, U.S. Army, Program Manager, Special Victims’ Counsel Program • Captain Lisa B. Sullivan, U.S. Navy, Chief of Staff, Victims’ Legal Counsel Program • Lieutenant Colonel William J. Schrantz, U.S. Marine Corps, Officer-in-Charge, Victims’ Legal Counsel Organization, Judge Advocate Division, HQMC • Colonel Jennifer Clay, U.S. Air Force, Chief, Special Victims’ Counsel Division • Ms. Christa A. Specht, U.S. Coast Guard, Chief, Office of Member Advocacy Division <p>Panel 3: Perspectives of Services’ Trial Defense Service Organization Chiefs Regarding Conviction and Acquittal Rates, the Case Adjudication Process, and Victim Declination in the Military Justice Process</p> <ul style="list-style-type: none"> • Colonel Roseanne Bennett, U.S. Army, Chief, Trial Defense Service • Commander Stuart T. Kirkby, U.S. Navy, Director, Defense Counsel Assistance Program • Colonel Valerie Danyluk, U.S. Marine Corps, Chief Defense Counsel • Colonel Christopher Morgan, U.S. Air Force, Chief, Trial Defense Division, Air Force Legal Operations, Joint Base Andrews • Commander Shanell King, U.S. Coast Guard, Chief of Defense Services <p>Case Review Subcommittee Status Update</p> <p>Data Subcommittee Presentation of 2018 Case Adjudication Data Report Plan</p> <p>Committee Deliberations on Department of Defense <i>Report on Allegations of Collateral Misconduct Against Individuals Identified as the Victim of Sexual Assault in the Case Files of a Military Criminal Investigative Organization</i>; Presenter Testimony; Services’ Written Responses to DAC-IPAD Questions Regarding Conviction and Acquittal Rates, the Case Adjudication Process, and Victim Declination; DAC-IPAD Future Planning</p>

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 15</p> <p>November 15, 2019</p> <p>Doubletree by Hilton Crystal City 300 Army Navy Drive Arlington, Virginia</p>	<p>Protect Our Defenders’ Perspective on Military Sexual Assault Prosecutions and Sentencing</p> <ul style="list-style-type: none"> • Mr. Don Christensen, President, Protect Our Defenders <p>Committee Final Deliberations and Vote on the DAC-IPAD’s Sexual Assault Case Adjudication Report for Fiscal Years 2015–2018</p> <p>Case Review Subcommittee Presentation and Deliberations</p> <p>Article 32/Referral Subcommittee Presentation</p> <p>Committee Deliberations Regarding the Service’s Responses to DAC-IPAD Request for Information (RFI) Set 11 and Testimony from the August 23, 2019, DAC-IPAD Public Meeting</p> <p>Collateral Misconduct Report Status Update</p> <p>2020 Military Installation Site Visit Update</p> <p>Court-Martial Observations Update</p>
<p>DAC-IPAD PUBLIC MEETING 16</p> <p>February 14, 2020</p> <p>The Westin Arlington Gateway Hotel 801 N. Glebe Road Arlington, Virginia</p>	<p>Military Judges’ Perspectives Regarding the Military Justice System and Military Sexual Assault Cases—including Conviction and Acquittal Rates</p> <ul style="list-style-type: none"> • Colonel (Ret) Andrew Glass, U.S. Army • Colonel (Ret) Jeffery Nance, U.S. Army • Captain (Ret) Bethany L. Payton-O’Brien, U.S. Navy • Colonel (Ret) J. Wesley (Wes) Moore, U.S. Air Force <p>Committee Deliberations on the Military Judges’ Testimony</p> <p>Committee Final Deliberations on the DAC-IPAD’s Draft Fourth Annual Report Chapter 1 – Sexual Assault Case Review Project Observations; and Case Review Subcommittee Update</p> <p>Committee Final Deliberations on the DAC-IPAD’s Draft Fourth Annual Report Chapter 2 – Article 32, UCMJ, Preliminary Hearings and the Convening Authority’s Disposition Decision; and Policy Subcommittee Update</p> <p>Committee Final Deliberations on the DAC-IPAD’s Draft Fourth Annual Report Chapter 3 – Case Adjudication Data; Chapter 4 –Collateral Misconduct; and Committee Vote on Complete Report</p> <p>2020 Military Installation Site Visit and Members Attending Sexual Assault Courts-Martial Update</p> <p>2020 National Defense Authorization Act Presentation and Discussion</p>

DAC-IPAD PUBLIC MEETINGS	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>DAC-IPAD PUBLIC MEETING 17</p> <p>May 15, 2020</p> <p>Telephonic Meeting</p> <p>Public Access: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>DAC-IPAD Staff Presentation to Committee, Committee Deliberations, and Committee Vote on the Draft DAC-IPAD Report on the Feasibility and Advisability of Establishing a Process Under Which a Guardian Ad Litem May Be Appointed to Represent the Interest of a Victim of an Alleged Sex-Related Offense Who Has Not Attained the Age of 18 Years</p> <p>Committee Deliberation and Vote on the DAC-IPAD Response to the Department of Defense Report on Preservation of Restricted Report Option for Adult Sexual Assault Victims</p> <p>Policy Subcommittee Status Update</p> <p>Case Review Subcommittee Status Update</p> <p>Data Subcommittee Status Update</p>
<p>DAC-IPAD PUBLIC MEETING 18</p> <p>August 21, 2020</p> <p>Telephonic Meeting</p> <p>Public Access: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>DAC-IPAD Staff Presentation to Committee, Committee Deliberations, and Committee Vote on the Draft <i>Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i></p> <p>Status of the Committee’s Review and Assessment of Racial and Ethnic Disparities in the Investigation, Prosecution, and Conviction of Service Members for Sexual Offenses Involving Adult Victims Within the Military Justice System as Required by Section 540I of the National Defense Authorization Act for Fiscal Year 2020</p> <p>Policy Subcommittee Status Update</p>

CASE REVIEW SUBCOMMITTEE MEETINGS	
SESSION DATE AND LOCATION	TOPICS AND PRESENTERS
<p>Case Review Subcommittee Preparatory Session 1</p> <p>July 21, 2017</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Familiarization and logistics meeting</p>
<p>Case Review Subcommittee Preparatory Session 2</p> <p>July 21–22, 2017</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>U.S. Army Criminal Investigation Command case orientation and review of selected files</p>
<p>Case Review Subcommittee Preparatory Session 3</p> <p>September 21–22, 2017</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Military criminal investigative organization case file orientation and review of selected files and judicial documents</p>
<p>Case Review Subcommittee Preparatory Session 4</p> <p>September 25–26, 2017</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Military criminal investigative organization case file orientation and review of selected files and judicial documents</p>

CASE REVIEW SUBCOMMITTEE MEETINGS	
SESSION DATE AND LOCATION	TOPICS AND PRESENTERS
<p>Case Review Subcommittee Preparatory Session 5</p> <p>October 19, 2017</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Military criminal investigative organization case file orientation and review of selected files and judicial documents</p> <ul style="list-style-type: none"> • Ms. T. L. Williams, Chief, Policy Branch, U.S. Army Criminal Investigation Command • Mr. Bryce Miller, Family and Sexual Violence Division, Naval Criminal Investigative Service Headquarters • Special Agent Jennifer Hackett, Action Officer, Sexual Assault, U.S. Air Force Office of the Special Investigations <p>Discussion of findings based on preliminary case reviews</p>
<p>Case Review Subcommittee Preparatory Session 6</p> <p>December 12, 2017</p> <p>Telephonic Session: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Discussion of case review protocols</p>
<p>Case Review Subcommittee Preparatory Session 7</p> <p>January 18, 2018</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Strategic planning session to complete the case reviews</p>
<p>Case Review Subcommittee Preparatory Session 8</p> <p>March 6, 2018</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Perspectives of Service Prosecutors Regarding Sexual Assault Investigations</p> <ul style="list-style-type: none"> • Lieutenant Colonel Rebecca Farrell, USA, Special Victim Prosecutor, U.S. Army • Lieutenant Commander Christopher Deerwester, USN, Senior Trial Counsel, U.S. Navy • Major Clare Hodge III, USMC, Deputy Branch Head, Military Justice Branch, U.S. Marine Corps

CASE REVIEW SUBCOMMITTEE MEETINGS	
SESSION DATE AND LOCATION	TOPICS AND PRESENTERS
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 8</p> <p style="text-align: center;">(Continued)</p>	<ul style="list-style-type: none"> • Colonel Christopher Brown, USAF, Chief, Military Justice Division, U.S. Air Force • Colonel Matthew Jarreau, USAF, Staff Judge Advocate, U.S. Air Force • Commander Cassie Kitchen, USCG, Chief, Military Justice and Command Advice, U.S. Coast Guard <p>Perspectives of Military Investigators Regarding Sexual Assault Investigations</p> <ul style="list-style-type: none"> • Special Agent Clarence Joubert III, Supervisory Special Agent and Program Manager for the Special Victim Unit, U.S. Army • Special Agent Lisa Medrano, Chief, Special Victim Team, U.S. Army • Mr. Robert Diederichsen, Program Management Analyst, U.S. Navy • Special Agent Stephanie Winters, Family and Sexual Violence Investigator, U.S. Navy • Special Agent Ernest Slatinsky, Chief of Quality Assessments, U.S. Air Force • Special Agent Marta Sivert, Chief, Violent Crimes, U.S. Air Force • Special Agent Barry Buck, Family and Sexual Violence Investigator, U.S. Coast Guard <p>Perspectives of Defense Counsel Regarding Sexual Assault Investigations</p> <ul style="list-style-type: none"> • Major Jamal Rhinehardt, USA, Senior Defense Counsel, U.S. Army • Commander Chad Temple, USN, Director, Defense Counsel Assistance Program, U.S. Navy • Major John Boyer, USMC, Senior Defense Counsel, U.S. Marine Corps • Major Marquita Ricks, USAF, Senior Defense Counsel, U.S. Air Force • Commander Shanell King, USCG, Senior Defense Counsel, U.S. Coast Guard <p>Deliberations on Potential April Presentations</p>
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 9</p> <p style="text-align: center;">April 19, 2018</p> <p style="text-align: center;">One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Status Update on Case Review Project</p> <p>Discussion on Plan for 2019 Report</p> <p>Discussion on Briefing to the DAC-IPAD for April 20, 2018, Meeting</p> <p>Case Closure Disposition Categories Discussion</p>

CASE REVIEW SUBCOMMITTEE MEETINGS	
SESSION DATE AND LOCATION	TOPICS AND PRESENTERS
<p>Case Review Subcommittee Preparatory Session 10</p> <p>July 19, 2018</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Status Update on Case Review Project</p> <p>Discussion on Plan for 2019 Report</p> <p>Discussion on Briefing to the DAC-IPAD for April 20, 2018, Meeting</p> <p>Case Closure Disposition Categories Discussion</p>
<p>Case Review Subcommittee Preparatory Session 11</p> <p>July 25, 2018</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Briefings on the FBI National Incident-Based Reporting System (NIBRS) and the Department of Defense Incident-Based Reporting System (DIBRS)</p> <ul style="list-style-type: none"> • Mr. Darrin A. Paul, Criminal Justice Information Services (CJIS) Division, Crime Statistics Management Unit, Federal Bureau of Investigation (FBI) • Mr. Scott E. Myers, CJIS Division, Crime Statistics Management Unit, FBI • Mr. Michael S. Wise, CJIS Division, Crime Statistics Management Unit, FBI • Ms. Shelley Verdejo, Director, Law Enforcement Policy, Office of the Under Secretary for Intelligence, U.S. Department of Defense
<p>Case Review Subcommittee Preparatory Session 12</p> <p>October 18, 2018</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Subcommittee Review of Proposed Findings and Recommendations for Presentation to DAC-IPAD at October 19, 2018, Public Meeting</p>
<p>Case Review Subcommittee Preparatory Session 13</p> <p>August 22, 2019</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Briefing from the staff and the DAC-IPAD criminologist on data results from the Air Force investigative case file reviews.</p> <p>Subcommittee discussion on data presentation and next phase planning.</p> <p>Discussion on questions for the August 23, 2019, DAC-IPAD meeting speakers.</p>

CASE REVIEW SUBCOMMITTEE MEETINGS	
SESSION DATE AND LOCATION	TOPICS AND PRESENTERS
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 14</p> <p style="text-align: center;">October 15, 2019</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Subcommittee discussion on proposed observations from case reviews.</p>
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 15</p> <p style="text-align: center;">October 30, 2019</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Subcommittee discussion on proposed findings, observations, and recommendations from case reviews.</p>
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 16</p> <p style="text-align: center;">November 14, 2019</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Subcommittee discussion on proposed findings, observations, and recommendations from case reviews.</p>
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 17</p> <p style="text-align: center;">February 13, 2020</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Briefing from the staff and the DAC-IPAD criminologist on the data results from the Air Force, Navy, and Marine Corps investigative file reviews.</p> <p>Discussion on various data analyses for inclusion in the data report and timeline for completion.</p>

CASE REVIEW SUBCOMMITTEE MEETINGS	
SESSION DATE AND LOCATION	TOPICS AND PRESENTERS
<p>Case Review Subcommittee Preparatory Session 18</p> <p>May 22, 2020</p> <p>Telephonic Session: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Case Review Subcommittee review of proposed findings, directives, and recommendations based on data for presentation to the Committee.</p>
<p>Case Review Subcommittee Preparatory Session 19</p> <p>May 29, 2020</p> <p>Telephonic Session: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Case Review Subcommittee review of proposed findings, directives, and recommendations based on data for presentation to the Committee.</p>
<p>Case Review Subcommittee Preparatory Session 20</p> <p>June 26, 2020</p> <p>Telephonic Session: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Case Review Subcommittee review of proposed findings, directives, and recommendations based on data for presentation to the Committee.</p>

CASE REVIEW SUBCOMMITTEE MEETINGS	
SESSION DATE AND LOCATION	TOPICS AND PRESENTERS
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 21</p> <p style="text-align: center;">July 10, 2020</p> <p>Telephonic Session: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Briefing from the DAC-IPAD criminologist, Dr. William Wells, on data results.</p> <p>Case Review Subcommittee review of proposed findings and directives based on data for presentation to the Committee.</p>
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 22</p> <p style="text-align: center;">July 17, 2020</p> <p>Telephonic Session: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Case Review Subcommittee review of proposed findings, directives, and recommendations based on data for presentation to the Committee.</p>
<p style="text-align: center;">Case Review Subcommittee Preparatory Session 23</p> <p style="text-align: center;">July 31, 2020</p> <p>Telephonic Session: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Case Review Subcommittee discussion on proposed future data analyses for further study and presentation to the Committee.</p> <p>Case Review Subcommittee review of proposed findings, directives, and recommendations based on data for presentation to the Committee.</p>

DAC-IPAD PREPARATORY SESSION	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>Committee Preparatory Session</p> <p>January 24, 2019</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Presentation of DAC-IPAD Case Adjudication and Case Review Statistical Data by the Staff Criminologist, Dr. William Wells, and Review of Draft 1.0 of 2019 Annual Report</p>
<p>Committee Preparatory Session</p> <p>November 14, 2019</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Updates from the Case Review Subcommittee</p>
<p>Committee Preparatory Session</p> <p>February 13, 2020</p> <p>One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Update from the Case Review Subcommittee</p> <p>Committee Review of Member Edits to Draft Fourth Annual Report</p>
<p>Committee Preparatory Session</p> <p>May 14, 2020</p> <p>Telephonic Session: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p>Committee Review of the Draft DAC-IPAD Report on the Feasibility and Advisability of Establishing a Process Under Which a Guardian Ad Litem May Be Appointed to Represent the Interest of a Victim of an Alleged Sex-Related Offense Who Has Not Attained the Age of 18 Years; and Review of the Report on Preservation of Restricted Report Option for Adult Sexual Assault Victims</p> <p>Member Review of Read-Ahead Materials</p>

DAC-IPAD PREPARATORY SESSION	
MEETING DATE AND LOCATION	TOPICS AND PRESENTERS
<p>Committee Preparatory Session</p> <p>August 20, 2020</p> <p>Telephonic Session: One Liberty Center 875 N. Randolph Street Arlington, Virginia</p>	<p><i>Committee Review of the Draft DAC-IPAD Report on Investigative Case File Reviews for Military Adult Penetrative Sexual Offense Cases Closed in Fiscal Year 2017</i></p>

APPENDIX K. ACRONYMS AND ABBREVIATIONS

AFOSI	Air Force Office of Special Investigations
C.F.R.	Code of Federal Regulations
CGIS	Coast Guard Investigative Service
CID	U.S. Army Criminal Investigation Command
CONUS	continental United States
CRSC	Case Review Subcommittee
DAC-IPAD	Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces
DFO	Designated Federal Officer
DIBRS	Defense Incident-Based Reporting System
DILCOM	discharge in lieu of court-martial
DNA	deoxyribonucleic acid
DoD	Department of Defense
DoDI	Department of Defense Instruction
DOJ	Department of Justice
FACA	Federal Advisory Committee Act
FAP	Family Advocacy Program
FBI	Federal Bureau of Investigation
FY	fiscal year
GC DoD	General Counsel for the Department of Defense
JAG	judge advocate general
JPP	Judicial Proceedings Panel (Judicial Proceedings Since 2012 Amendments Panel)
MCIO	military criminal investigative organization
MCM	Manual for Courts-Martial
M.R.E.	Military Rules of Evidence
NCIS	Naval Criminal Investigative Service
NCO	noncommissioned officer

NCIC	National Crime Information Center
NDAA	National Defense Authorization Act
NIBRS	National Incident-Based Reporting System
NJP	nonjudicial punishment
NS	not significant
OCONUS	outside continental United States
PSO	penetrative sexual offense
PTA	pretrial agreement
R.C.M.	Rule or Rules for Courts-Martial
RFI	request for information
RGE	regular government employee
RSP	Response Systems to Adult Sexual Assault Crimes Panel
SAFE	sexual assault forensic examination
SAMFE	sexual assault medical forensic examiner
SANE	sexual assault nurse examiners
SAPR	Sexual Assault Prevention and Response
SARC	sexual assault response coordinator
SGE	special government employee
SJA	staff judge advocate
SVC	special victims' counsel
UCMJ	Uniform Code of Military Justice
USA	United States Army
USAF	United States Air Force
U.S.C.	United States Code
USCG	United States Coast Guard
USMC	United States Marine Corps
USN	United States Navy
VLC	victims' legal counsel

APPENDIX L. SOURCES CONSULTED

1. Legislative Sources

a. Enacted Statutes

5 U.S.C. App. §§ 1–16 (Federal Advisory Committee Act)

10 U.S.C. §§ 801–946 (Uniform Code of Military Justice) (2016)

10 U.S.C. §§ 801–946a (Uniform Code of Military Justice) (2019)

10 U.S.C. § 1044 (Legal Assistance)

National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632 (2013)

National Defense Authorization Act for Fiscal Year 2014, Pub. L. No. 113-66, 127 Stat. 672 (2013)

Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, 128 Stat. 3292, 3374 (2014)

National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016)

National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91, 131 Stat. 1283 (2017)

John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, 132 Stat. 1636 (2018)

National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, 133 Stat. 1198 (2019)

b. Proposed Legislation

Military Justice Improvement Act of 2013, S. Res. 1752, 113th Cong. (2013)

2. Judicial Decisions

a. Supreme Court

Hurtado v. California, 110 U.S. 516 (1884)

Olden v. Kentucky, 488 U.S. 227 (1998)

United States ex rel. Kassin v. Mulligan, 295 U.S. 396 (1935)

Wong Sun v. United States, 371 U.S. 471 (1963)

b. Federal Courts of Appeal

Cooksey v. Delo, 94 F.3d 1214 (8th Cir. 1996)

c. Military Courts of Criminal Appeals

United States v. Pease, 74 M.J. 763 (N-M. Ct. Crim. App. 2015)

3. Rules and Regulations

a. Executive Orders

Manual for Courts-Martial, United States (2016 edition)

Manual for Courts-Martial, United States (2019 edition)

b. Code of Federal Regulations

32 C.F.R. § 105.8 (Reporting options and Sexual Assault Reporting Procedures)

c. Department of Defense

Department of Defense Directive 5400.11, *DoD Privacy Program* (October 29, 2014)

Department of Defense Form 2911, *DoD Sexual Assault Forensic Examination (SAFE) Report* (September 2015)

Department of Defense Instruction 5400.11, *DoD Privacy and Civil Liberties Programs* (January 29, 2019)

Department of Defense Instruction 5505.11, *Fingerprint Reporting Requirements* (July 21, 2014)

Department of Defense Instruction 5505.11, *Fingerprint Reporting Requirements* (October 31, 2019)

Department of Defense Instruction 5505.18, *Investigation of Adult Sexual Assault in the Department of Defense* (March 22, 2017, Incorporating Change 2, Effective January 31, 2019)

Department of Defense Instruction 5505.19, *Establishment of Special Victim Investigation and Prosecution (SVIP) Capability within the Military Criminal Investigative Organizations (MCIOs)* (February 3, 2015) (Incorporating Change 2, March 23, 2017)

Department of Defense Instruction 6310.09, *Health Care Management for Patients Associated with a Sexual Assault* (May 7, 2019)

Department of Defense Instruction 6495.02, *Sexual Assault Prevention and Response (SAPR) Program Procedures* (March 28, 2013) (Incorporating Change 3, May 24, 2017)

d. Services

Air Force Instruction 36-3207, *Separating Commissioned Officers* (July 9, 2004, Incorporating Through Change 6, October 18, 2011)

Air Force Instruction 36-3208, *Administrative Separation of Airmen* (July 1, 2020)

Army Regulation 600-8-24, *Officer Transfers and Discharges* (February 8, 2020)

Army Regulation 635-200, *Active Duty Enlisted Administrative Separations* (December 19, 2016)

COMDTINST M1000.4, *Military Separations Manual* (August 2018)

Navy Military Personnel Manual (MILPERSMAN) (August 22, 2002)

4. Meetings and Hearings

a. Public Meetings of the DAC-IPAD

Transcript of DAC-IPAD Public Meeting (October 19, 2018)

Transcript of DAC-IPAD Public Meeting (August 23, 2019)

Transcript of DAC-IPAD Public Meeting (February 14, 2020)

5. Military and Civilian Federal Policy

a. Department of Defense

Memorandum from the Secretary of Defense on Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases (April 20, 2012)

Military Judges' Benchbook, Dep't of Army Pamphlet 27-9 (February 29, 2020)

b. Department of Justice

U.S. Department of Justice, *Justice Manual*

6. Official Reports

a. DoD and DoD Agency Reports

Department of Defense, *2017 Demographics: Profile of the Military Community*

Military Justice Review Group, *Report of the Military Justice Review Group, Part I: UCMJ Recommendations* (December 22, 2015)

Office of the Assistant Secretary of Defense Health Affairs, *Report Required by the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015, Section 539: Report on the Training and Qualifications of Sexual Assault Forensic Examiners* (June 2015)

b. Other Government Reports

Department of Justice, Office on Violence Against Women, *A National Protocol for Sexual Assault Medical Forensic Examinations* (April 2013)

Government Accountability Office, *DoD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities* (June 2020)

c. Response Systems to Adult Sexual Assault Crimes Panel Report

Response Systems Panel, *Report of the Response Systems to Adult Sexual Assault Crimes Panel* (June 2014)

d. Judicial Proceedings Panel Reports

Judicial Proceedings Panel, *Report on Statistical Data Regarding Military Adjudication of Sexual Assault Offenses* (April 2016)

Subcommittee of the Judicial Proceedings Panel, *Report on Barriers to the Fair Administration of Military Justice in Sexual Assault Cases* (May 2017)

Judicial Proceedings Panel, *Report on Panel Concerns Regarding the Fair Administration of Military Justice in Sexual Assault Cases* (September 2017)

e. Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces Reports

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, *Annual Report* (March 2018)

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, *Third Annual Report* (March 2019)

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, *Court-Martial Adjudication Data Report* (November 2019)

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces, *Fourth Annual Report* (March 2020)

7. DAC-IPAD Requests for Information and Responses

Military Services' Responses to DAC-IPAD Request for Information Set 5 (October 11, 2017)

Military Services' Responses to DAC-IPAD Request for Information Set 11 (May 15, 2019)

8. Scholarly Articles

Fred Butcher, PhD, Rachel Lovell, PhD, & Daniel Flanner, PhD, *Analysis of the Cuyahoga County's Procedures for Alleviating the Backlog of Sexual Assault Kits: Cuyahoga County Sexual Assault Kit (SAK) Pilot Project: Report on Victims* (March 2016)

Mary Connell, *Expert Testimony in Sexual Assault Cases: Alcohol Intoxication and Memory*, 42–43 *International Journal of Law & Psychiatry* 98(September–December 2015)

Bruce Fredrick & Don Stemen, *The Anatomy of Discretion: An Analysis of Prosecutorial Decision Making* (2012)

Melissa S. Morabito, Linda M. Williams, April Pattavina, *Decision Making in Sexual Assault Cases: Replication Research on Sexual Violence Attrition in the U.S.* (2019)

Cassia Spohn & Katharine Tellis, *Policing and Prosecuting Sexual Assault in Los Angeles City and County: A Collaborative Study in Partnership with Los Angeles Police Department, the Los Angeles Sheriff's Department and the Los Angeles County District Attorney's Office* (2012)

9. News Articles

Robert Draper, "The Military's Rough Justice on Sexual Assault," *New York Times* (November 26, 2014)

Craig Whitlock, "How the Military Handles Sexual Assault Behind Closed Doors," *Washington Post* (September 30, 2017)

10. Other Media

International Association of Forensic Nurses, <https://www.forensicnurses.org/page/aboutSANE>

THE INVISIBLE WAR (Chain Camera Pictures 2012)

