



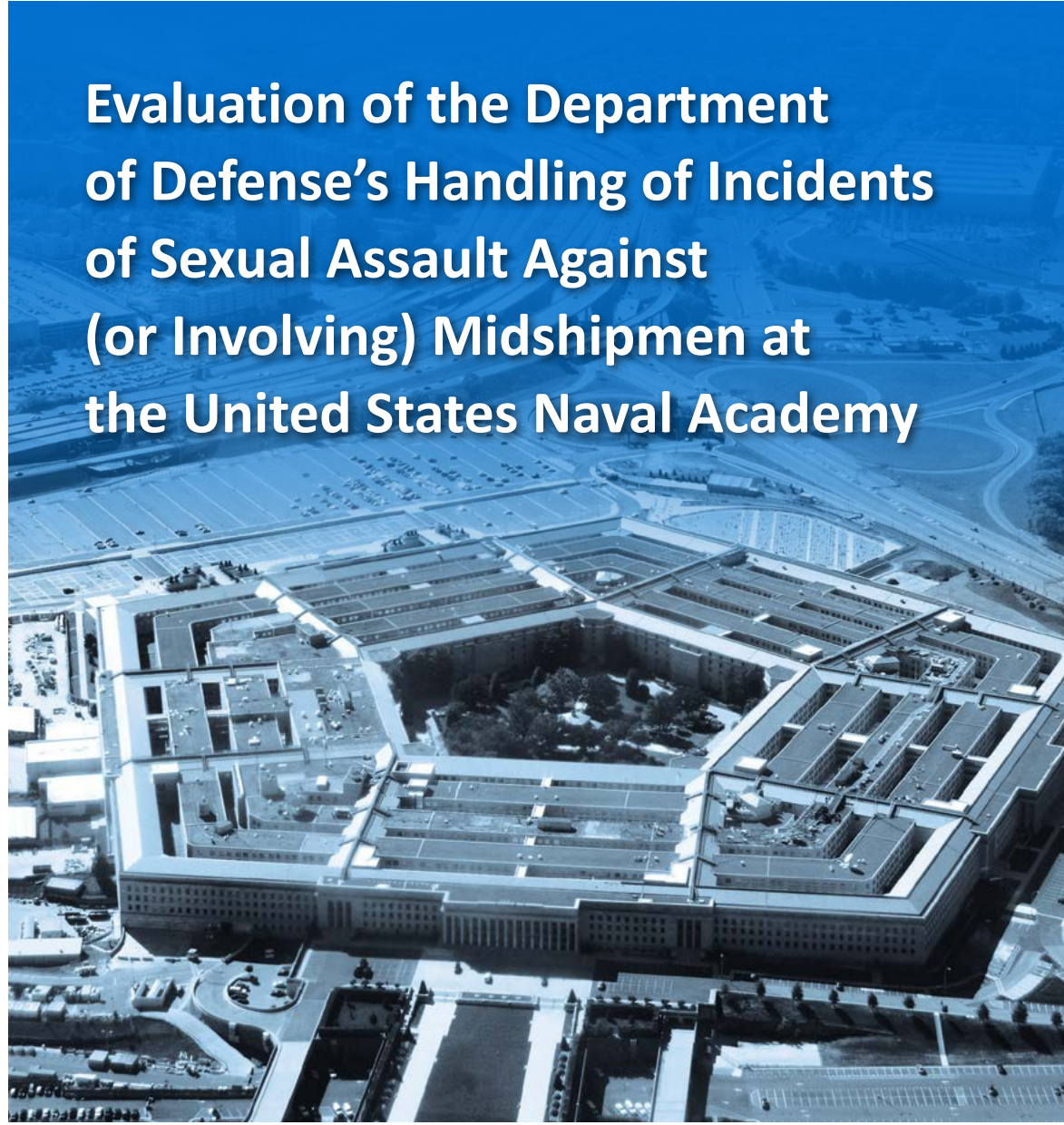
INSPECTOR GENERAL

U.S. Department of Defense

MAY 17, 2021



Evaluation of the Department of Defense's Handling of Incidents of Sexual Assault Against (or Involving) Midshipmen at the United States Naval Academy



INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





Results in Brief

Evaluation of the Department of Defense's Handling of Incidents of Sexual Assault Against (or Involving) Midshipmen at the United States Naval Academy

May 17, 2021

Objective

The objectives of this evaluation were to determine whether:

- United States Naval Academy (USNA) Sexual Assault Prevention and Response (SAPR) Office personnel provided SAPR services to midshipmen-victims of sexual assault as required by DoD and Navy policy;
- United States Naval Criminal Investigative Service (NCIS) agents investigated reports of sexual assaults involving midshipmen-victims in accordance with DoD, Navy, and NCIS policy;
- USNA commanders and decision makers retaliated against midshipmen-victims by separating them from the USNA for reporting sexual assault; and
- the Under Secretary of Defense for Personnel and Readiness (USD[P&R]) annually reported the correct number of midshipmen-victim reports of sexual assaults to Congress.

Background

The purpose of the USNA SAPR program at Annapolis, Maryland, is to provide a 24-hour-a-day, 7-day-a-week sexual assault response capability to support midshipmen-victims of sexual assault. Additionally, USNA SAPR personnel are required to provide crisis intervention to midshipmen-victims, inform midshipmen-victims of their reporting options, refer midshipmen-victims to victim support services, and provide on-going support to midshipmen-victims of sexual assault.

In addition, the Secretary of Defense is

Background (cont'd)

required to submit reports to Congress related to sexual assaults in the military, including the number of sexual assaults that occur at the Military Service Academies each year.

Findings

Based on our evaluation, we made the following determinations.

- USNA SAPR Office personnel provided SAPR services to midshipmen-victims of sexual assault and victim support services were available to midshipmen-victims of sexual assault at the USNA, as required by DoD and Navy policy. However, we determined that USNA SAPR personnel did not have a process or system to document “contacts and consults” with midshipmen-victims who chose not to make an official report of sexual assault or a means to document any resulting referrals to victim support services.
- NCIS agents responded to and investigated reports of sexual assault in accordance with DoD, Navy, and NCIS policy.
- USNA commanders and decision makers did not retaliate against the three midshipmen-victims who departed the USNA during the scope of our evaluation by separating them from the Navy for reporting their sexual assaults.
- Midshipmen-victim reports of sexual assault were accurately reported to Congress as required by Public Law 109-364.

Recommendations

In DoDIG Report No. DODIG-2019-125, “Evaluation of the DoD’s Handling of Incidents of Sexual Assault Against (or Involving) Cadets at the United States Air Force Academy,” September 30, 2019, we made a recommendation to the DoD Sexual Assault Prevention and Response Office (SAPRO) Director to develop and institute a process that documents



Results in Brief

Evaluation of the Department of Defense's Handling of Incidents of Sexual Assault Against (or Involving) Midshipmen at the United States Naval Academy

Recommendations (cont'd)

consults or contacts with victims of sexual assault and any resulting referrals to victim support services if those contacts do not result in an official report of sexual assault. In response to that recommendation, the DoD SAPRO Director agreed to develop a process that documents consults and contacts with victims of sexual assault and any resulting referrals to victim support services if those contacts do not result in an official report of sexual assault. We reiterated that recommendation in Report No. DODIG-2020-073, "Evaluation of the DoD's Handling of Incidents of Sexual Assault Against (or Involving) Cadets at the United States Military Academy." On October 16, 2020, DoD SAPRO issued an update to the Defense Sexual Assault Incident Database (DSAID) that allow Sexual Assault Response Coordinators to document SAPR-related inquiries, made by "victims or non-victims" who choose not to make an official report of sexual assault. For the remainder of Fiscal Year (FY) 2021, DoD SAPRO will collect feedback on the update, with the expectation that documenting SAPR-related inquiries will be a requirement starting FY 2022 (October 1, 2021). Given the pending policy release, we did not make additional recommendations concerning SAPR-related inquiries in this report. This update to the DSAID resolved this recommendation in Report No. DODIG-2019-125.

In the same report, we also recommended that the DoD SAPRO Director include a data field in the DSAID to record the reason that reports of sexual assault are archived. The DoD SAPRO Director agreed to update the database to include a data field to record the reason that reports of sexual assault were archived. On October 16, 2020, DoD SAPRO issued an update to the DSAID allowing DSAID administrators to document the reasons for a DSAID record being archived. This update to the DSAID resolved the recommendation made in Report No. DODIG-2019-125.

Management Comments and Our Response

We did not make any recommendations; therefore, we did not require management comments. We provided a discussion draft of this report to the DoD Sexual Assault Prevention and Response Office, the United States Naval Academy, and the Naval Criminal Investigative Service. DoD SAPRO officials concurred with our report and provided minor editorial comments, which we addressed. The United States Naval Academy and Naval Criminal Investigative Service personnel responded to the discussion draft report with no comments.



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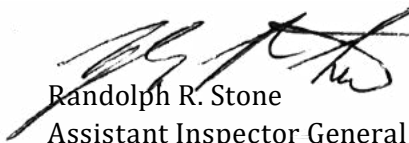
May 17, 2021

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS
DIRECTOR, DEPARTMENT OF DEFENSE SEXUAL ASSAULT
PREVENTION AND RESPONSE OFFICE
INSPECTOR GENERAL, DEPARTMENT OF THE NAVY
SUPERINTENDENT, UNITED STATES NAVAL ACADEMY
DIRECTOR, NAVAL CRIMINAL INVESTIGATIVE SERVICE

SUBJECT: Evaluation of the Department of Defense's Handling of Incidents of Sexual Assault
Against (or Involving) Midshipmen at the United States Naval Academy
(Report No. DODIG-2021-085)

This final report provides the results of the DoD Office of Inspector General's evaluation. We did not make any recommendations; therefore, we do not require management comments. We provided a discussion draft of this report to the DoD Sexual Assault Prevention and Response Office, the United States Naval Academy, and the Naval Criminal Investigative Service. DoD SAPRO officials concurred with our report and provided minor editorial comments, which we addressed. The United States Naval Academy and Naval Criminal Investigative Service personnel responded to the discussion draft report with no comments. We conducted this evaluation from June 2020 through May 2021, in accordance with the "Quality Standards for Inspections and Evaluations," published in January 2012 by the Council of the Inspectors General on Integrity and Efficiency.

We appreciate the cooperation and assistance received during the evaluation.


Randolph R. Stone
Assistant Inspector General for Evaluations of
Space, Intelligence, Engineering, and Oversight

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Introduction

Objective

The objectives of this evaluation were to determine whether:

- United States Naval Academy (USNA) Sexual Assault Prevention and Response (SAPR) Office personnel provided SAPR services to midshipmen-victims of sexual assault, as required by DoD and Navy policy;
- Naval Criminal Investigative Service (NCIS) agents investigated reports of sexual assaults involving midshipmen-victims in accordance with DoD, Navy, and NCIS policy;
- USNA commanders and decision makers retaliated against midshipmen-victims by separating them from the USNA for reporting sexual assault; and
- the Under Secretary of Defense for Personnel and Readiness (USD[P&R]) annually reported the correct number of midshipmen-victim reports of sexual assaults to Congress.

Media and Congressional Attention to Sexual Assault at the United States Air Force Academy

A CBS News “This Morning” investigation into the United States Air Force Academy (USAFA) Sexual Assault Prevention and Response (SAPR) Program reported in December 2017 that more than a dozen current and former USAFA cadets stated that they were retaliated against by their commanders and peers after reporting a sexual assault. During the CBS broadcast, the former USAFA Sexual Assault Response Coordinator (SARC) highlighted two specific reports of sexual assault in December 2014 and January 2015. The former USAFA SARC stated that USAFA leadership tried to cover up the reports and that investigations were prematurely closed because investigators did not believe the cadet-victims.

On December 13, 2017, a U.S. Senator sent a letter requesting that the DoD Office of Inspector General (DoD OIG) evaluate the DoD’s response to reports of sexual assault, including the response of the USAFA SAPR personnel, investigating agents, and the command. On January 3, 2018, two additional U.S. Senators also requested that the DoD OIG evaluate the DoD’s response to reports of sexual assault and the confidence level in the numbers of sexual assaults that were reported to Congress.

In response to the media reports and congressional requests, the DoD OIG initiated an evaluation on all the Service Academies' responses to reports of sexual assault. The evaluation of the DoD's handling of incidents of sexual assault against (or involving) cadets at the USAFA was the first evaluation of the Military Service Academies. The DoD OIG published the results of that evaluation in Report No. DoDIG-2019-125 on September 30, 2019.¹ The evaluation of the DoD's handling of incidents of sexual assault against (or involving) cadets at the US Military Academy (USMA) was the second evaluation of the Military Service Academies. The DoD OIG published the results of that evaluation in Report No. DODIG-2020-073 on March 24, 2020.² This report identifies the results of the evaluation of the DoD's handling of incidents of sexual assault against (or involving) midshipmen at the USNA.

Background

In February 2004, the Secretary of Defense directed the USD(P&R) to review the DoD's sexual assault policies and programs in the Military Departments. The DoD established the Care for Victims of Sexual Assaults Task Force, led by the Deputy Assistant Secretary of Defense (Force Health, Protection, and Readiness). In April 2004, the Task Force issued the Task Force report on care for victims of sexual assault, which included numerous recommendations for changes to increase prevention, promote reporting, enhance the quality and support provide to victims, and improve accountability for offender actions. One of these recommendations was to "[e]stablish a single point of accountability for all sexual assault policy matters within the [DoD],"³ and this led to the establishment of the Joint Task Force for Sexual Assault Prevention and Response in October 2004.

The Joint Task Force for Sexual Assault Prevention and Response "focused its initial efforts on developing a new DoD-wide sexual assault policy that incorporated recommendations established in the Task Force Report on Care for Victims of Sexual Assault," as well as in Public Law 108-375.⁴ Section 577 of this act directed the DoD to establish a sexual assault policy by January 1, 2005. The Joint Task Force eventually became what is known today as the DoD Sexual Assault Prevention and Response Office (SAPRO).

¹ Report No. DoDIG-2019-125, "Evaluation of the DoD's Handling of Incidents of Sexual Assault Against (or Involving) Cadets at the United States Air Force Academy," September 30, 2019.

² Report No. DoDIG-2020-073, "Evaluation of the DoD's Handling of Incidents of Sexual Assault Against (or Involving) Cadets at the United States Military Academy," March 24, 2020.

³ DoD Report, "Task Force Report on Care of Victims of Sexual Assault," April 2004.

⁴ <https://www.sapr.mil/mission-history>. Public Law 108-375, "Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005," October 28, 2004.

Public Law 108-375 Established the DoD SAPR Program

Public Law 108-375, section 577, established the DoD's SAPR program and the requirement for DoD SAPR policy. Specifically, the law requires the DoD to develop a uniform definition of sexual assault, as well as sexual assault policy that addresses:

- prevention measures,
- education and training on prevention and response,
- investigation of complaints by command and law enforcement personnel,
- medical treatment of victims,
- confidential reporting of incidents,
- victim advocacy and intervention,
- oversight by commanders of administrative and disciplinary actions in response to substantiated incidents of sexual assault,
- disposition of victims of sexual assault, including review by appropriate authority of administrative separation actions involving victims of sexual assault,
- disposition of members of the Armed Forces accused of sexual assault,
- liaison and collaboration with civilian agencies on the provision of services to victims of sexual assault, and
- uniform collection of data on the incidence of sexual assaults and on disciplinary actions taken in substantiated cases of sexual assault.

DoD SAPR Policy

DoD Directive 6495.01

As required by section 577 of Public Law 108-375, USD(P&R) published DoD Directive (DoDD) 6495.01, which defines sexual assault and establishes policy to prevent sexual assault, provide support to victims, and increase reporting and accountability.⁵

According to DoDD 6495.01, sexual assault is:

[i]ntentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. The term includes a broad category of sexual offenses consisting of the following specific UCMJ [Uniform Code of Military Justice] offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these offenses.

⁵ DoDD 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," January 23, 2012, (Incorporating Change 3, April 11, 2017).

DoDD 6495.01 establishes unrestricted and restricted sexual assault reporting options for Military Service members and their dependents who are 18 years old or older. Unrestricted sexual assault reports require command notification and initiation of an investigation by military criminal investigative organizations (MCIOs). A restricted sexual assault report does not trigger an official investigation unless an exception applies, such as the need to prevent or minimize a serious and imminent threat to the health or safety of the victim or another. For a restricted report, “the command is notified that ‘an alleged sexual assault’ occurred, but is not given the victim’s name or other personally identifying information.”⁶ Both unrestricted and restricted reports provide the victim an opportunity for immediate, in-person SAPR services and access to applicable victim support services.⁷ Both reporting options give the victim access to the same level of assistance and support through the SAPRO and the victim support services on the installation.

DoD Instruction 6495.02

As required by section 577 of Public Law 108-375 and DoDD 6495.01, USD(P&R) published DoD Instruction (DoDI) 6495.02, which “assigns responsibilities and provides guidance and procedures for the DoD SAPR program.”⁸ Furthermore, DoDI 6495.02 establishes minimum SAPR program standards, SAPR training requirements, and SAPR reporting requirements for the “Department of Defense Annual Report on Sexual Assault in the Military” and the “Department of Defense Annual Report on Sexual Harassment and Violence at the Military Service Academies.” DoDI 6495.02 also assigns the responsibility for the implementation of the SAPR program to installation commanders, supervisors, and managers at all levels.

⁶ DoDD 6495.01 states that unrestricted sexual assault reporting is “[a] process that an individual covered by this policy uses to disclose, without requesting confidentiality or Restricted Reporting, that he or she is the victim of a sexual assault. Under these circumstances, the victim’s report provided to healthcare personnel, the SARC, a SAPR Victim Advocate, command authorities, or other persons is reported to law enforcement and may be used to initiate the official investigative process.” DoDD 6495.01 also states that the restricted reporting option “allows sexual assault victims to confidentially disclose the assault to specified individuals (i.e., SARC, SAPR Victim Advocate, or healthcare personnel), and receive medical treatment, including emergency care, counseling, and assignment of a SARC and SAPR Victim Advocate, without triggering an official investigation.”

⁷ For this evaluation, we define victim support services as medical services, counseling services, law enforcement services, and legal services.

⁸ DoDI 6495.02, “Sexual Assault Prevention and Response (SAPR) Program Procedures,” March 28, 2013, (Incorporating Change 3, May 24, 2017).

DoD Instruction 6495.03

As required by section 584 of Public Law 112-81, USD(P&R) published DoDI 6495.03, which “establishes policy, assigns responsibilities, and prescribes procedures for the implementation, management, and oversight” of the Defense Sexual Assault Advocate Certification Program (D-SAACP).⁹ This training and certification program standardizes sexual assault prevention and response to victims and professionalized victim advocacy roles. The policy mandates that all qualified SAPR personnel certify that they will follow a Code of Professional Ethics.¹⁰

Navy SAPR Policy

To implement DoD SAPR policy, the Navy established its SAPR policy in Office of the Chief of Naval Operations Instruction (OPNAVINST) 1752.1C.¹¹ According to OPNAVINST 1752.1C, the Navy SAPR Program “reinforces the Navy’s stance that sexual assault is a criminal act incompatible with Navy core values, high standards of professionalism, and personal discipline.”

The policy further states that the SAPR program includes “(1) Effective education and training, (2) a 24 hour and 7 days per week (24/7) response capability to ensure victim support, (3) worldwide reporting procedures, and (4) appropriate accountability.”

The policy aids in the prevention of sexual assault throughout the Navy by providing support to victims, defining requirements, and assigning responsibility for implementation of the Navy SAPR Program to all levels of commanders, supervisors, and managers.

DoD Sexual Assault Investigation Policy

To establish standards for the investigation of adult sexual assault within the DoD, the DoD OIG published DoDI 5505.18.¹² DoDI 5505.18 directs the agents of MCIOs to “initiate a criminal investigation in response to all allegations of adult sexual assault ... of which they become aware that occur within their jurisdiction”¹³

⁹ Public Law 112-81, “National Defense Authorization Act (NDAA) for Fiscal Year 2012,” December 31, 2011. DoDI 6495.03, “Defense Sexual Assault Advocate Certification Program,” September 10, 2015.

¹⁰ Section 584(c)(1) of Public Law 112-81, “National Defense Authorization Act for Fiscal Year 2012,” December 31, 2011, required “the Secretary of Defense [to] . . . establish a professional and uniform training and certification program for Sexual Assault Response Coordinators . . . and Sexual Assault Victim Advocates.”

¹¹ OPNAVINST 1752.1C, “Navy Sexual Assault Prevention and Response (SAPR) Program,” August 13, 2015.

¹² DoDI 5505.18, “Investigation of Adult Sexual Assault in the Department of Defense,” March 22, 2017, (Incorporating Change 1, February 13, 2018).

¹³ According to DoDI 5505.18, “Investigation of Adult Sexual Assault in the Department of Defense,” March 22, 2017, (Incorporating Change 1, February 13, 2018), MCIOs include the U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

DoDI 5505.18 further requires MCIO agents to conduct a formal interview of the victim and thoroughly investigate all adult sexual assault investigations assumed by an MCIO.

Navy Sexual Assault Investigation Policy

To implement DoD sexual assault investigation policy, the Navy published Secretary of the Navy Instruction (SECNAVINST) 5430.107A, which states the “NCIS [Naval Criminal Investigative Service] is a civilian Federal law enforcement agency that protects and defends the DON [Department of the Navy] against ... major criminal offenses ...” and directs the NCIS Director to “[i]nitiate, conduct, and direct independent criminal investigations and associated operations and activities regardless of command authorization.” SECNAVINST 5430.107A defines major criminal offenses as those that are “punishable under the UCMJ, or similarly framed Federal, state, local, or foreign statute, by confinement for a term of more than one year.” The instruction also specifies that “NCIS civilian special agents have investigative responsibility for all crimes punishable under the UCMJ by confinement of more than one year” According to UCMJ Article 120, rape and sexual assault carry a maximum punishment by confinement of more than one year.¹⁴

In compliance with SECNAVINST 1752.4C, NCIS established criminal investigation policies and procedures for investigating incidents of sexual assault including NCIS 3, Chapter 34 (N3-C34). N3-C34 states “NCIS has the responsibility to conduct investigations of major criminal offenses within the Department of the Navy (DON), to include all reported incidents of sexual assault.”¹⁵

¹⁴ SECNAVINST 5430.107A, “Mission and Functions of the Naval Criminal Investigative Service,” June 19, 2019.

¹⁵ NCIS 3, Chapter 34, “Sex Offenses (Category 8),” December 4, 2017. NCIS routinely updates NCIS regulations in order to keep the policies current. We considered each edition that was in effect during our evaluation scope period.

Finding A

USNA SAPR Personnel Provided SAPR Services to Midshipmen-Victims, and Midshipman-Victim Support Services Were Available to Midshipmen-Victims at the USNA, as Required by DoD and Navy Policy

We determined that from June 1, 2017, through May 31, 2020, the USNA commanders and SAPR personnel at the United States Naval Academy, Annapolis, Maryland, provided SAPR services and midshipman-victim support services to midshipmen-victims, as required by DoD and Navy policy. Specifically, we found that USNA SAPR personnel informed midshipmen-victims, who filed an official report of sexual assault, of their options for reporting sexual assault.¹⁶ Furthermore, we determined that midshipman-victim support services required by DoD and Navy policy were available to midshipmen-victims and that USNA SAPR personnel referred midshipmen-victims to the midshipman-victim support services at the USNA, as required.

However, we determined that USNA SAPR personnel did not have a process to document consultations and contacts with midshipmen-victims of sexual assault. We also determined USNA SAPR personnel did not have a means to document any victim support service referrals when a midshipman-victim did not file an official report of sexual assault. USNA SAPR personnel told us that they did not document consultations and contacts due to privacy concerns and midshipman-victim confidentiality. However, a process to track consults and contacts would more thoroughly document the assistance provided by USNA SAPR personnel to these midshipmen-victims. Additionally, a process to track consults and contacts would result in a more complete understanding of the universe of sexual assaults that were reported and the full level of services requested within the USNA.

On October 16, 2020, DoD SAPRO issued an update to the Defense Sexual Assault Incident Database (DSAID) allowing SARCs to document SAPR-related inquiries, made by “victims or non-victims,” who choose not to make an official report of

¹⁶ According to DoDI 6495.02, Sexual Assault Prevention and Response (SAPR) services are “[s]ervices provided by a SARC and SAPR [victim advocate].” For this evaluation, midshipman-victim support services include medical services, counseling services, law enforcement services, and legal assistance. According to DoDI 6495.02, unrestricted reporting triggers an investigation; however, limited law enforcement services are provided to victims who choose the restricted reporting option. For example, a DoD law enforcement or MCIO representative collect and store the Sexual Assault Forensic Examination kits of midshipmen-victims who choose the restricted reporting option to give them the choice to later convert their restricted report of sexual assault to an unrestricted report of sexual assault if the midshipman-victim chooses to do so.

sexual assault. Documenting SAPR-related inquiries will be a DSAID collection requirement starting FY 2022 (October 1, 2021); therefore we did not make additional recommendations concerning SAPR related inquiries in this report.

DoD and Navy Requirements to Provide SAPR Services

As discussed in the Background section of this report, DoDI 6495.02 “assigns responsibilities and provides guidance for the procedures of the [DoD] SAPR Program.” SECNAVINST 1752.4C delineates Navy policy and procedures for the Navy SAPR program. According to DoDI 6495.02 and SECNAVINST 1752.4C, when a midshipman-victim is sexually assaulted he or she may make either an unrestricted or a restricted report.¹⁷ Both unrestricted and restricted reports provide the midshipman-victim an opportunity for immediate, in-person SAPR services.

However, according to DoDI 6495.02 and SECNAVINST 1752.4C, a midshipman-victim can choose to keep his or her sexual assault confidential and not participate in the SAPR program.¹⁸ For example, a midshipman-victim can disclose a sexual assault to their military mental health or medical healthcare provider, military chaplain, or military attorney, but decline to meet with SAPR personnel and officially report the sexual assault.¹⁹ Unless an exception exists, these professionals must keep the disclosure confidential.²⁰ Likewise, an adult sexual assault victim can disclose a sexual assault to SAPR personnel, but decline to officially report the sexual assault. The adult sexual assault victim’s decision to not officially report the sexual assault does not preclude him or her from obtaining assistance through the SAPR office or victim support services.

¹⁷ According to DoDI 6495.02 and SECNAVINST 1752.4C, a restricted report is a reporting option that allows USNA midshipman sexual assault victims to confidentially disclose the assault to SAPR personnel or healthcare personnel, and receive healthcare treatment, including emergency care, counseling, and assignment of SAPR personnel, without prompting a criminal investigation. Commanders are made aware of generalities of restricted reports to help the commander better understand the prevalence of sexual violence on the installation; however, the information they receive is masked to protect the victim’s privacy.

¹⁸ The policies and procedures contained in DoDD 6495.01 and DoDI 6495.02 apply to only covered adult sexual assault victims as defined by DoDD 6495.01. Different policies and procedures exist for adults victimized by a current or former intimate partner with whom the victim has shared a domicile, current or former spouse, or a person with whom the victim shares a child in common and do not apply to the category of victims identified in this evaluation (DoDI 6400.06, “Domestic Abuse Involving DoD Military and Certain Affiliated Personnel,” August 21, 2007, (Incorporating Change 4, May 26, 2017).

¹⁹ Communications between a patient and military medical providers are protected from disclosure, with few exceptions, according to DoDI 6025.27, “Medical Ethics in the Military Health System,” November 8, 2017; DoDI 6025.18, “Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Compliance in DoD Health Care Programs,” March 13, 2019; and DoDI 6495.02. Communications between a patient and military mental health providers are protected from disclosure, with few exceptions, according to Military Rules of Evidence Rule 513. Communications between military chaplains and their parishioners may be protected from disclosure according to Military Rules of Evidence Rule 503. Communications between attorneys and their clients are protected from disclosure, with few exceptions, according to Military Rules of Evidence Rule 502. Communications between an adult sexual assault victim and SAPR personnel are protected from disclosure, with few exceptions, according to DoDI 6495.02 and Military Rule of Evidence Rule 514.

²⁰ According to DoDI 6495.02, an example of an exception is when it is “necessary to prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person.” Additionally, according to SECNAVINST 1730.7E, “Religious Ministry within the Department of the Navy,” March 11, 2019, privilege communication is “always presumed to exist unless explicitly waived by the authorized user.”

The Sexual Assault Prevention and Response Office

DoDI 6495.02 requires the installation commander to develop guidelines to establish a 24-hour-a-day, 7-day-a-week sexual assault response capability; USNA SAPR personnel told us that the installation SAPR Office (SAPRO) serves as this response capability. SAPRO consists of SARCs and victim advocates (VAs) who provide crisis intervention, make victim support service referrals, and explain the options for reporting sexual assault. SARCs are the single point of contact to coordinate sexual assault victim support response within their area of responsibility. SARCs supervise the VAs who provide non-clinical crisis intervention and on-going support to sexual assault victims. SARCs and VAs are collectively referred to in this report as SAPR personnel.

The USNA SAPRO Program Manager (PM) leads the Naval Academy's SAPR personnel that consists of two full-time civilian SARCs; two, full-time civilian VAs, and one, full-time civilian Director of Sexual Harassment and Assault Prevention Education (SHAPE) training. USNA SAPR personnel told us that SARCs and VAs comprise the response side of SAPR and primarily interact with USNA midshipmen-victims.

SECNAVINST 1752.4C specifies that the SARC "tracks the services provided to a victim of sexual assault from the initial report through final disposition and resolution." The SARC also "coordinates medical treatment, including emergency care, for victims of sexual assault." The SARC assists the installation commander in institutionalizing an environment of dignity and respect within the military installation.

Before assignment as a SARC or VA, SAPR personnel are required to obtain a certification through the D-SAACP.²¹ To obtain this certification, SAPR personnel must complete training on foundational topics, such as advocacy, the role of a victim advocate, cultural sensitivity, ethics, and the criminal justice system. SAPR personnel must obtain a minimum of 40 hours of specialized training approved by the D-SAACP. SAPR personnel must also sign a code of ethics pledge, undergo a background investigation, and obtain two recommendation letters prior to obtaining the D-SAACP certification.²²

²¹ Section 584(c), "Training and Certification," of Public Law 112-81, "The National Defense Authorization Act [NDAA] for Fiscal Year 2012, December 31, 2011, requires the DoD to establish a training and certification program for SAPR personnel. To meet this requirement, and to standardize sexual assault response to victims and professionalize victim advocacy roles, the DoD established the D-SAACP in DoDI 6495.03.

²² The National Organization for Victim Assistance Code of Professional Ethics for Victim Assistance Providers states "[v]ictims of crime and the criminal justice system expect every Victim Assistance Provider, paid or volunteer[,] to act with integrity, to treat all victims and survivors of crime—their clients—with dignity and compassion, and to uphold principles of justice for accused and accuser alike."

Furthermore, SAPR personnel must obtain 32 hours of continuing education every 2 years to maintain the D-SAACP certification. We validated that USNA SAPR personnel completed the specialized training required for D-SAACP certification or re-certification.

DoDI 6495.02 requires SAPR personnel to inform victims of their reporting options and provide victim advocacy. In addition, DoDI 6400.07, requires SAPR personnel to “focus on the victim and ... respond, protect, and care for the victim ... until the victim no longer requires [SAPR] services.”²³ It is the SAPR personnel who are responsible for explaining victim support services to victims and providing referrals, if the victim requests them. Victim support services include medical, counseling, law enforcement, and legal services. Lastly, DoDI 6400.07 requires SAPR personnel to respect the victims’ right to make their own decisions about the services they want to receive and state that using victim support services is voluntary.

DD Form 2910

The Victim Reporting Preference Statement, DD Form 2910, is a standardized form used by SAPR personnel and the victim to document elements of the sexual assault response and reporting process. According to DoDI 6495.02, the DD Form 2910 is a record of the victim’s decision to make either a restricted or unrestricted report of sexual assault. When completing the DD Form 2910, section 1.a., the victim acknowledges that he or she had the opportunity to talk with SAPR personnel before selecting a reporting option. In addition, the victim acknowledges that SAPR personnel explained the services that are available to them. The victim voluntarily signs the DD Form 2910 and then the SARC or VA signs it to certify that he or she informed the victim of his or her reporting options and the available victim support services.

When the DD Form 2910 is signed by the victim and SAPR personnel, an official report of sexual assault is created, as described in DoDI 6495.02.²⁴ However, a victim can also make an official report of sexual assault to NCIS, which does not require the victim to sign a DD Form 2910. An official report of sexual assault to NCIS constitutes an unrestricted report and all victim support services, including SAPR services, are still available to victims. As previously stated, adult sexual assault victims may choose to keep their sexual assault confidential, even if they meet with SAPR personnel and do not participate in the SAPR program. For example, according to DoDI 6495.02, an adult sexual assault victim can

²³ DoDI 6400.07, “Standards for Victim Assistance Services in the Military Community,” November 25, 2013, (Incorporating Change 2, Effective July 6, 2018).

²⁴ The DD Form 2910 is used to document both a restricted and unrestricted report of sexual assault.

approach SAPR personnel to inquire about services and confidentially disclose they were sexually assaulted, without triggering an official report of sexual assault and without signing a DD Form 2910. In these instances, SAPR personnel provide the level of support requested by the adult sexual assault victim, which could include SAPR services and the services of a military medical or mental health facility, military chaplain, or military legal services. SAPR personnel do not report or disclose these interactions to commanders or law enforcement.

According to DoDI 6495.02, for restricted reports, the SAPR personnel must store a copy of the DD Forms 2910 and input information necessary for tracking reports of sexual assault in the Defense Sexual Assault Incident Database (DSAID). For unrestricted reports, SAPR personnel must upload a copy of the completed DD Form 2910 and input information necessary for tracking reports of sexual assault into the DSAID. The SAPR personnel also must maintain a copy of the unrestricted DD Forms 2910 in the SAPRO files.

The Defense Sexual Assault Incident Database

The DSAID is a centralized database for maintaining information about both restricted and unrestricted reports of sexual assault collected by the Military Services. DoD SAPR Office personnel maintain the DSAID and Military Service SAPR personnel input data. According to DoDI 6495.02, the DSAID includes information “about the nature of the assault, the victim, the alleged offender, investigative information, case outcomes in connection with the allegation, and other information necessary to fulfill reporting requirements,” such as services referred to and requested by the victim.

For restricted reports of sexual assault, SAPRO personnel do not enter the victim’s personally identifiable information into the DSAID; however, the basic sexual assault incident information is entered into the DSAID for tracking and reporting purposes. Furthermore, DoDI 6495.02 requires that SAPRO personnel “[m]aintain in DSAID an account of the services referred to and requested by the victim for all reported sexual assault incidents, from medical treatment through counseling, and from the time of the initial report of a sexual assault through the final case disposition or until the victim no longer desires services.” On October 16, 2020, DoD SAPRO issued an update to the DSAID allowing SARCs to document SAPR-related inquiries, made by “victims or non-victims,” who choose not to make an official report of sexual assault. In this update, DoD SAPRO also issued another DSAID update allowing DSAID administrators to document the reasons for a DSAID record

being archived.²⁵ DoD SAPRO is using FY 2021 to evaluate the DSAID update and gather feedback. DoD SAPRO is drafting policy requiring SAPR-related inquiries entry into the DSAID and plans to make SAPR-related inquiries entry in the DSAID a requirement starting in FY 2022 (October 1, 2021).

USNA SAPR Personnel Provided SAPR Services to Midshipmen-Victims and Midshipman-victim Support Services Were Available at the USNA

We determined that from June 1, 2017, through May 31, 2020, USNA commanders and SAPR personnel provided SAPR services and victim support services to midshipmen-victims who filed an official report of sexual assault, as required by DoD and Navy policy. We reviewed midshipman-victim DD Forms 2910 to determine whether midshipmen-victims acknowledged that USNA SAPR personnel informed them of their midshipman-victim's reporting options and explained available midshipman-victim support services. Additionally, we determined whether midshipman-victim support services were available at the USNA as required by DoD and Navy policy. To identify reports of sexual assault made by midshipmen-victims at the USNA, we obtained all DD Forms 2910 that were maintained at the USNA SAPR Office and an extract of DSAID records that listed all official reports of sexual assault with accompanying DD Forms 2910 from the USNA. From these records, we identified 86 official reports of sexual assault that midshipmen-victims made from June 1, 2017, through May 31, 2020.

To determine whether USNA SAPR personnel referred midshipmen-victims who filed an official report of sexual assault to support services, we reviewed DSAID records and interviewed former and current USNA SAPR personnel and victim legal counsels (VLCs) who represented midshipmen-victims.

USNA SAPR Personnel Informed Midshipmen-Victims of Their Reporting Options and Available Midshipman-Victim Support Services

We obtained the DD Forms 2910 for the 86 midshipmen-victims at the USNA that the DSAID identified as having made official reports of sexual assault from June 1, 2017, through May 31, 2020. For the 31 restricted reports and 55 unrestricted reports, we reviewed the DD Forms 2910 to determine whether midshipmen-victims acknowledged that USNA SAPR personnel informed them of their reporting options and explained available midshipman-victim support services.

²⁵ Archiving DSAID records is discussed in Finding D under in the section entitled "Defense Sexual Assault Incident Database."

We determined that all 86 midshipmen-victims signed the form indicating that they “had the opportunity to talk with [SAPR personnel] before selecting a reporting option.” Additionally, all 86 midshipmen-victims acknowledged on the DD Form 2910 that USNA SAPR personnel had informed them of their reporting options and explained the midshipman-victim support services available at the USNA.

During our evaluation, we did not interview USNA midshipmen-victims in order to respect the midshipmen-victims’ privacy and to ensure that midshipmen-victims were not unnecessarily re-victimized or further identified by this evaluation.

USNA SAPR Personnel “Consults and Contacts” With Midshipmen-Victims of Sexual Assault

As discussed in previous sections, adult sexual assault victims can meet with SAPR personnel to inquire about victim support services or disclose that they were sexually assaulted without officially reporting the sexual assault or completing a DD Form 2910. We refer to these meetings as consults and contacts.

We interviewed former and current USNA SAPR personnel who told us they did not have a formal process or system to capture consults and contacts or a means to document any resulting referrals of a midshipman-victim to support services. The USNA SAPRO PM told us that they do not document consults and contacts because of concern for the midshipmen-victims’ privacy. One USNA SAPR member also told us that SARCs and VA are trained not to document more information than required because “confidentiality trumps data metrics.”²⁶ DoDI 6495.02, Chg 3, Enclosure 4.1.c.3, dated May 24, 2017, states:

“[i]f a victim approaches a SARC, SAPR VA, or healthcare provider and begins to make a report, but then changes his or her mind and leaves without signing the DD Form 2910, the SARC, SAPR VA, or healthcare provider is not under any obligation or duty to inform investigators or commanders about this report and will not produce the report or disclose the communications surrounding the report. If commanders or law enforcement ask about the report, disclosures can only be made in accordance with exceptions to the MRE [Military Rules of Evidence] 514 or MRE 513 privilege, as applicable.”

In our prior report, Report No. DODIG-2019-125, we determined that the USAFA SARC did not have a process or system to document consults and contacts. In that report, we recommended that “the [DoD SAPRO] Director develop and institute a process that documents consults or contacts with victims of sexual assault and any

²⁶ On October 16, 2020, DoD SAPRO issued an update to the DSAID allowing SARCs to document SAPR-related inquiries, made by “victims or non-victims,” who choose not to make an official report of sexual assault.

resulting referrals to victim support services if those contacts do not result in an official report of sexual assault.” A process to document consults or contacts will provide commanders with a more accurate picture of the organizational climate and the potential number of occurrences of sexual assault. The process will also provide statistical data for the superintendents of the academies as well as leaders across the DoD.

The DoD SAPRO Director agreed with our recommendation, stating that DoD SAPRO would develop and institute a process that documents consults and contacts with victims of sexual assault and any resulting referrals to victim support services.²⁷

On October 16, 2020, DoD SAPRO issued an update to the Defense Sexual Assault Incident Database (DSAID) that allows SARCs to document SAPR-related inquiries, made by “victims or non-victims” who choose not to make an official report of sexual assault. DoD SAPRO told us that it is using FY 2021 to evaluate the DSAID update and gather feedback. DoD SAPRO is drafting policy requiring SAPR-related inquiries entry into the DSAID and plans to make SAPR-related inquiries entry in the DSAID a requirement starting in FY 2022 (October 1, 2021). Given the pending policy release, we did not make additional recommendations concerning SAPR-related inquiries in this report.

Midshipman-victim Support Services Available at the USNA

DoDI 6400.07 and DoDI 6495.02 collectively state that victim support services include medical services, counseling services, law enforcement services, and legal services. USNA and NCIS personnel told us that personnel assigned to the USNA, the Brigade of Midshipmen, and NCIS provide midshipman-victim support services. Additionally, the Midshipmen Development Center (MDC) Director told us that midshipmen-victims are provided midshipman-victim support services from private and public organizations located off the installation when the services are not available on the USNA.²⁸

Medical Services Provided to Midshipmen-Victims

USNA SAPR personnel told us that personnel at the Naval Health Clinic Annapolis (NHCA), Anne Arundel Medical Center, Mercy Medical Center, and Walter Reed National Military Medical Center in Bethesda, MD, provided medical services to midshipmen-victims.²⁹ The medical services offered

²⁷ *ibid*

²⁸ Such services may include criminal investigations when military law enforcement does not have investigative jurisdiction, sexual assault forensic examinations at local medical treatment facilities, and in-patient behavioral health care.

²⁹ Anne Arundel Medical Center is located at 2001 Medical Parkway, Annapolis, MD, and Mercy Medical Center is located at 301 St. Paul Place, Baltimore, MD.

to midshipmen-victims are confidential and include sexual assault forensic examinations, as well as testing for sexually transmitted diseases, pregnancy, and injuries that may have occurred during the sexual assault.³⁰

Counseling Services Provided to Midshipmen-Victims

USNA chaplains, personnel from the USNA's MDC and mental health professionals from the NHCA provided confidential counseling services to midshipmen-victims. A chaplain we interviewed told us that the Navy provides some USNA chaplains with training focused on aiding midshipmen-victims suffering from post-traumatic stress disorder (PTSD) or assisting midshipmen-victims who experience physical, mental, or spiritual trauma. Currently, the USNA has one trauma-trained chaplain. Additionally, five credentialed, licensed clinical psychologists and one registered dietitian nutritionist, assigned to the MDC, provide counseling services to midshipmen-victims of sexual assault at the USNA. MDC personnel have experience providing counseling on various topics including, but not limited to, cognitive-behavioral therapy, sports psychology, eating disorders, anger management, and healing from a complex trauma such as sexual assault. Midshipmen-victims can make same-day appointments or call for emergency support 24-hours-a-day, 7-days-a-week.³¹

Information provided to us by the MDC Director indicated that the NHCA also offers midshipmen-victims behavioral health services with a psychiatrist. The MDC Director further told us that MDC personnel refer midshipmen-victims who are in need of intensive treatment or prescription medication to the NHCA. If midshipmen-victims require further treatment beyond the capabilities of the USNA, then behavioral health services will refer midshipmen-victims to a civilian treatment facility off the installation, such as Strong Hope in Salt Lake City, Utah.³²

Law Enforcement Services Provided to Midshipmen-Victims

As discussed earlier in this report, a midshipman-victim can choose to make either a restricted or an unrestricted report of sexual assault. Unrestricted reports of sexual assault require an NCIS criminal investigation. The NCIS Resident Agency (NCISRA) Annapolis, includes agents who investigate all unrestricted reports of sexual assault at the USNA.

³⁰ According to DoDD 6495.01, sexual assault forensic examinations are used by healthcare professionals to find and collect evidence of a sexual assault.

³¹ The USNA Midshipmen Development Center maintains accreditation with the International Association of Counseling Services (IACS). IACS is a recognized accrediting organization for university and college counseling centers.

³² Strong Hope, Salt Lake Behavioral Health, 3802 South 700 East, Salt Lake City, UT 84106.

The NCIS agents that lead an investigation of sexual assault are required to be trained and certified for conducting sexual assault investigations.³³ DoDI 5505.18 and DoDI 5505.19 identify extensive training and certification requirements.³⁴ NCIS agents are required to be trained on sexual assault victims' rights, reporting options, and how to treat victims with dignity and respect. Furthermore, NCIS agents are required to be trained on the unique aspects of sexual assault investigations. This includes special investigative techniques for interviewing sexual assault victims, SAPR services, and legal procedures, such as contacting a victim legal counsel (VLC) before interviewing a victim. NCIS agents receive the specialized sexual assault investigation training during attendance of the Advanced Adult Sexual Assault Investigations Training Program.³⁵ We verified that each of the 33 NCIS adult sexual assault investigations involving midshipmen-victims at the USNA during our evaluation had one or more NCIS agents assigned to the investigation who completed the advanced training requirements.

Legal Services Provided to Midshipmen-Victims

VLCs provide legal services by representing midshipmen-victims at the USNA. VLCs are specially trained Military Service attorneys. VLCs are required to be trained on the unique aspects of sexual assaults in order to provide legal representation or consultation to midshipmen-victims through all victim assistance-related programs. This includes legal consultation related to the support provided by SAPR personnel, the military criminal justice process, and representing midshipmen-victims when necessary. Additionally, VLCs are trained to understand the impact of trauma and how it affects a sexual assault victim's behavior and the memory of a traumatic incident. We verified that the VLCs completed VLC specific training in support of representing midshipmen-victims at the USNA.³⁶

A VLC's ethical duty is to represent a victim of sexual assault, ensuring the victim's right to safety and privacy, as well as the right to be treated fairly during the investigative and legal phases of an unrestricted report of sexual

³³ Section 585(c) (codified at 10 U.S.C. §1561 note), "Inclusion in First Responder Training," of Public Law 112-81, "The National Defense Authorization Act (NDAA) for FY 2012," December 31, 2011, requires the Secretary of Defense to integrate sexual assault response training in initial and recurring training courses for MCIO investigators.

³⁴ DoDI 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). During this evaluation, we did not evaluate the type or level of training NCIS agents received prior to their assignment to the USNA.

³⁵ NCIS agents originally attended the U.S. Army Special Victims Capabilities Course from 2012-2014. In June 2014, NCIS announced the standup of the NCIS Advanced Adult Sexual Assault Investigations Training Program. As of January 2019, NCIS integrated all the Advanced Adult Sexual Assault Investigations Training Program curriculum into the NCIS Special Agent Basic Training Program.

³⁶ During this evaluation, we did not evaluate the type or level of training VLCs received prior to their assignments to the USNA.

assault. VLCs represent sexual assault victims at law enforcement interviews, trial and defense counsel interviews, pre-trial hearings, and trial proceedings. If a midshipman-victim has a concern related to victim support services, the VLC addresses the concern directly with the midshipman-victim support service, for the midshipman-victim. Furthermore, conversations between the VLC and midshipman-victim are protected from disclosure to others by attorney-client privilege. Although VLCs primarily support sexual assault victims who choose unrestricted reporting, VLCs can counsel victims who choose restricted reporting. VLCs represent midshipmen-victims until the assistance is no longer needed or the Navy Judge Advocate General or a supervisory attorney terminates the attorney-client relationship for good cause. For example, termination of the relationship for good cause may occur if an attorney's "client persists in a course of action involving the [attorney's] services that the [attorney] reasonably believes is criminal or fraudulent." The relationship may also be terminated if "the client insists upon taking action that the [attorney] considers repugnant or imprudent."³⁷

Additionally, legal services are provided to midshipmen-victims by the Region Legal Service Office (RLSO) Naval District Washington (NDW), specifically the Special Victim Investigation and Prosecution (SVIP) Trial Counsel (TC). The role of the SVIP TC is to provide a comprehensive explanation of the military justice process and to consult with midshipmen-victims on specific victim rights. For example, the SVIP TC may consult with the midshipman-victim to determine the midshipman-victim's willingness to participate in a court-martial. For midshipmen-victims who have VLC representation, the VLCs may also provide the midshipmen-victims with a thorough explanation of the military justice process, and the SVIP TC may consult with the VLCs about the midshipmen-victims' specific rights.

USNA SAPR Personnel Referred Midshipmen-Victims to Victim Support Services

We evaluated DSAID records to determine whether USNA SAPR personnel referred midshipmen-victims who officially reported a sexual assault to victim support services. For each DSAID case, USNA SAPR personnel recorded the referrals requested by midshipmen-victims that they made to victim support services. Table 1 depicts the number of referrals recorded in the DSAID for the midshipmen-victims who chose to use SAPR or victim support services.

³⁷ Judge Advocate General Instruction (JAGINST) 5803.1E, "Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General," January 20, 2015.

We analyzed the recorded referrals and determined that 86 of the 86 (100 percent) midshipmen-victims requested referrals to a victim advocate or at least one victim support service. For example, as reflected in Table 1, we determined that 56 referrals for law enforcement services were made for the midshipmen-victims. We also determined that 69 referrals for legal services were made for midshipmen-victims. The referral information recorded in the DSAID by SAPR personnel only accounted for the services provided to midshipmen-victims of which SAPR personnel were aware.

Our analysis of the DSAID information also determined that 7 of 86 sexual assault incidents entered into the system were opened with a limited information status.³⁸ In each of these incidents, midshipmen-victims declined victim support services other than law enforcement investigations.

Table 1. Number of Referrals Recorded in the DSAID by USNA SAPR Personnel for the Midshipmen-Victims Who Chose to Use SAPR or Victims Support Services

APY	Sexual Assault Reports	Medical	Counseling*	Law Enforcement	Legal Services	Victim Advocate	Total Referrals
2017-2018	25	6	21	16	19	21	83
2018-2019	31	16	28	19	26	28	117
2019-2020	30	13	24	21	24	24	106
Total	86	35	73	56	69	73	306

*Of the 86 midshipmen-victims, 69 midshipmen-victims were referred to behavioral health and a chaplain or were referred more than once to either type of counselor.

Interviews of USNA SAPR Personnel

In addition to evaluating the DD Forms 2910 and the DSAID cases, we interviewed former and current USNA SAPR personnel who provided SAPR services to midshipmen-victims who were assigned to the USNA between June 1, 2017, and May 31, 2020. The following subsections discuss the interview questions and USNA SAPR personnel's responses.

³⁸ According to the DSAID User Manual, v4.12, incidents are entered into the DSAID with an "Open with Limited Information Status" when information about an incident is not available. This can occur if a victim refuses or declines services, victim declines to participate in the investigative process, a local law enforcement agency refuses to provide victim information, or the victim of a reported incident was a civilian and the subject was a Service member.

USNA SAPR Personnel Interaction With Midshipmen-Victims

We asked USNA SAPR personnel to describe their interaction with midshipmen-victims. USNA SAPR personnel told us that when a midshipman contacts USNA SAPR personnel to inquire about SAPR services, USNA SAPR personnel will meet with the midshipman to explain the sexual assault reporting options and all of the available midshipman-victim support services. Midshipmen are not forced to do or say anything and only provide information when they are ready to do so. SAPR personnel further told us that, when a midshipman-victim requests a support service, SAPR personnel will make the arrangements with the service provider for the midshipman-victim.

Additionally, SAPR personnel told us that they often walk or drive the midshipman-victim to appointments. SAPR personnel will also make transportation arrangements based on the desires of the midshipman-victim and location of the service provider. SAPR personnel also told us that they do not have a dedicated Government-owned vehicle and must source transportation with the USNA motor pool. Sometimes SAPR personnel will use privately owned vehicles to transport midshipmen-victims to medical facilities off the USNA grounds. USNA leadership told us they were aware of the situation and are working to resolve the problem.

SAPR personnel also told us that they provide emotional support to midshipmen-victims, such as being available to listen to their personal and academic concerns and accompanying midshipmen-victims to interviews and midshipman-victim support services.

USNA SAPR Personnel Frequency of Contact With Midshipmen-Victims

We asked USNA SAPR personnel to describe the frequency of their contact with midshipmen-victims. USNA SAPR personnel told us the USNA SAPR goal was to contact midshipmen-victims at least once a month. USNA SAPR personnel further told us that each midshipman-victim establishes the frequency and contact method and that some midshipmen-victims request more or less frequent contact. Some midshipmen-victims prefer to communicate only in person, by e-mail, or through text messaging. SAPR personnel also told us that some midshipmen-victims require more care than others and depends on a particular midshipman-victim's emotional status. An additional factor would be the midshipman-victim's desire to speak with someone from the USNA SAPR office.

USNA SAPR Personnel Interaction with Midshipman-Victim Support Service Personnel

We asked USNA SAPR personnel to describe their interaction with the midshipman-victim support service personnel. USNA SAPR personnel told us that they have a close and positive working relationship with each of the midshipman-victim support service providers. Providers described the strength of relationships between support service providers as “the strength of the SAPR program.” Additionally, SAPR personnel told us that they regularly meet with the support service providers and that all the providers know each other, as well as what services each can offer the midshipmen-victims.

The SAPRO PM also created the Midshipman Affairs Team (MAT). The MAT is a student affairs organization with the goal of avoiding training saturation and identifying holes within USNA programs. MAT senior leaders meet monthly to identify trends and needs across all disciplines at the USNA. The MAT focuses on destructive behavior areas, such as suicide, alcohol misuse, sexual harassment, sexual assault, discrimination, and intimate partner violence. If the MAT identifies a problem, a Prevention Working Group (PWG) develops a prevention plan for the USNA. The MAT generated two products including an anonymous sexual harassment reporting form and logic models. The SAPRO PM also told us the goal of the new products was to push concepts of prevention, and noted “good prevention strengthens response.”

In addition, we interviewed personnel assigned to the MDC, NHCA, and the NCISRA Annapolis, who all described positive working relationships with the USNA SAPR personnel and other service providers. The USNA Chief of Staff told us the close interaction between the midshipman-victim and all of the care components is what makes the victims care system work at the USNA. He also told us that the SAPR team members are there to help the midshipman-victim and provide numerous avenues for counseling and proper care.

In another example, an MDC neuropsychologist stated that he was impressed with the USNA SAPRO staff and that they are “high quality people.” He further told us the MDC operates with an “open door” policy where midshipmen-victims can self-refer to the MDC or report to the SAPRO. In both cases, MDC and SAPRO personnel ensure the midshipman-victim was aware of available services and would then refer midshipman-victim to MDC or SAPRO respectively as the midshipman-victim requested the support. No formal process was in place to refer a midshipman-victim from the MDC to the SAPRO; the MDC staff stated that they simply walked the midshipman-victim to the SAPRO.

We interviewed a senior USNA chaplain, who told us that he and eight subordinate chaplains provide support for the USNA including midshipmen-victims. The chaplain told us he and the other chaplains have a good working relationship with all service providers, he was not aware of any complaints about them, and noted chaplains worked most closely with the MDC for counseling services. The chaplain also told us that he had nearly daily contact with the USNA Chief of Staff and weekly contact with the USNA Superintendent. He also told us since the USNA embeds chaplains within the Brigade of Midshipmen, chaplains are often the first point of contact for midshipmen-victims. The embedded chaplains serve as a “safe place” due to a chaplain’s absolute confidentiality.

USNA SAPR personnel told us the SAPRO had the strongest connection with the Chaplain Corps and that the chaplains share information the midshipmen-victims permit. SARCs have a direct line of communication to the Superintendent and constantly communicate with the VLC. USNA SAPR personnel told us in addition to chaplains, SAPR GUIDEs are also an initial first point of contact for midshipmen-victims.³⁹

We interviewed the VLCs, who told us “[t]he USNA has a very good standard and the SAPRO tracks services and midshipmen-victims very well.” The VLCs told us that they interacted with USNA SAPR personnel almost daily to support midshipmen-victims and provide input for training events when needed. SAPRO personnel told us that they always encouraged midshipmen-victims making unrestricted reports to meet with a VLC. One victim advocate told us the VLC was “responsive” and another told us that the VLC’s interaction with midshipmen-victims was “extremely positive,” and that the VLC put the “victim[s] at ease.”

Interviews of Navy Victims’ Legal Counsel

VLCs represent victims of sexual assault and provide victims a means of confidential communication that is protected by attorney-client privilege. According to the Navy Victims’ Legal Counsel Program Manual, “[VLCs] are trained, certified, and qualified attorneys who provide support, assistance, advice, and advocacy for Navy victims of sexual assault offenses throughout the [investigative and military justice] process.” We interviewed VLCs who represented midshipmen-victims at the USNA between June 1, 2017, through May 31, 2020, about USNA SAPR services and midshipman-victim support services that their midshipmen-clients chose to use.⁴⁰

³⁹ GUIDE is an acronym standing for Guidance, Understanding, Information, Direction, Education. GUIDEs are SAPRO vetted and trained midshipmen peers who are familiar with sexual assault reporting options and support services. GUIDEs are not mandatory reporters and are not obligated to report incidents of sexual assault to law enforcement personnel.

⁴⁰ For the purpose of this report, the term midshipman-client is used to describe a midshipman-victim represented by a VLC.

VLCs Described Their Midshipmen-Clients' Experience With Medical Services

We asked the VLCs to describe their midshipmen-clients' experiences with the USNA medical services provided by the NHCA, Anne Arundel Medical Center, Mercy Medical Center, and Walter Reed National Military Medical Center. VLCs told us that midshipmen-clients' use of medical services was situational and the VLCs only knew about midshipmen-clients accessing medical services when the midshipmen-clients told the VLCs. For those midshipmen-clients who accessed medical services, one VLC told us none of their midshipmen clients provided negative feedback and the other VLC did not have any feedback from midshipmen-clients. The same VLCs told us that none of the VLCs ever addressed concerns with the medical services for a midshipman-client.

VLCs Described Their Midshipmen-Clients' Experience With Counseling Services

We asked VLCs to describe their midshipmen-clients' interactions with counseling services provided by the USNA Chaplains, MDC, and NHCA. The VLCs told us the midshipmen-clients found the MDC "incredibly helpful" and that the midshipmen-clients appreciated the availability of the MDC.

We asked VLCs to describe how they knew their midshipmen-clients used counseling services. The VLCs told us that their knowledge came directly from the midshipmen-clients. The VLCs also told us that they did not track whether midshipmen-clients sought counseling services and would only coordinate assistance when midshipmen-clients requested help.

We also asked VLCs whether midshipmen-clients expressed any concerns with the counseling services they received. The VLCs told us the midshipmen-clients only reported positive experiences. The VLCs also told us that the only concern midshipmen-clients had about seeking counseling services was whether the services or treatment would interfere with commissioning and active duty career field placement.⁴¹

⁴¹ Medical and counseling personnel told us MDC counseling services afford a midshipman-victim the opportunity to seek counseling and keep counseling records from a midshipman-victim's official, service related medical records; however, counseling services sought at the NHCA or those requiring prescription medications were included in a midshipman-victim's medical records.

VLCs Described Their Midshipmen-Clients' Experience With Law Enforcement Services

We asked the VLCs to describe their interactions with law enforcement services. One VLC told us that her interactions with law enforcement personnel were generally good and told us the outcome of interactions was “all personality driven.” The VLCs told us of two incidents where NCIS agents did not follow-up on investigative leads and an agent did not recognize when a midshipman-client needed a break from the interview. The VLCs indicated these concerns were isolated occurrences and were resolved through discussions with the Supervisory Special Agent assigned to the USNA NCIS Office.

We also asked the VLCs to describe any feedback from their midshipmen-clients concerning law enforcement services provided by the USNA NCIS office. One VLC told us the only complaint from midshipmen-clients about law enforcement services pertained to the NCIS requirement for a victim to complete a Victim Preference Statement electing not to participate in an investigation. The VLC often refused to support NCIS if NCIS only wanted contact with a midshipman-client for signing a Victim Preference Statement after a midshipman-client declined participation and signature.

We asked VLCs to describe how they knew their midshipmen-clients used law enforcement services. The VLCs told us they knew their midshipmen-clients used law enforcement services because the VLCs attended NCIS interviews of their midshipmen-clients. The VLCs would not attend the interviews if the VLC was unaware of the interview or if the midshipman-client prohibited attendance. The VLCs also told us that they were also present during, or aware of, case updates provided by the Special Victim Prosecutor and NCIS agents.

VLCs Described Their Midshipmen-Clients' Experience With Legal Services

In addition to the VLCs, the current and former Special Victim Investigation and Prosecution (SVIP) Trial Counsel (TC) assigned to the Naval District Washington (NDW) Region Legal Service Office (RLSO) told us that they also interacted with midshipmen-victims during investigation related legal proceedings. We asked VLCs to describe their midshipmen-clients' interactions with the SVIP TCs and NDW RLSO. The VLCs told us that midshipmen-clients found the legal services helpful due to the open communication and compassion displayed by the legal staff. One VLC noted a great working relationship with the USNA and NDW RLSO legal teams.

We also asked VLCs whether midshipmen-clients expressed any concerns with the legal services provided by the NDW RLSO and the SVIP TC. The VLCs told us that, overall, the midshipmen-victims who worked with NDW-RLSO and SVIP TCs were satisfied with legal services. One VLC told us the most common midshipman-client frustration with legal services was how slow the process was to decide on a case. The VLC told us midshipmen-clients understood the process but were not always satisfied with its timeliness.

USNA SAPR Personnel Provided SAPR Training to USNA Midshipmen

We determined that from June 1, 2017, through May 31, 2020, USNA SAPR personnel provided initial and annual SAPR training, as required by DoD policy. SAPR personnel also provided Sexual Harassment and Assault Prevention Education (SHAPE) training to USNA midshipmen, which complimented SAPR training. SHAPE emphasized the SAPR material with the goal of increasing awareness and enhancing bystander intervention skills through discussions about sexual harassment and sexual assault.

DoDI 6495.02 requires that USNA midshipmen be provided sexual assault prevention training within 14 days of their arrival at the USNA and annually thereafter. The policy specifies the training must include, “a brief history of the problem of sexual assault in the Military Services, a definition of sexual assault, information relating to reporting a sexual assault, victims’ rights, and dismissal and dishonorable discharge for offenders.”

We reviewed the initial and annual SAPR refresher training slides, as well as SHAPE and Capstone materials and determined that the training met DoDI 6495.02 requirements. Additionally, USNA SAPR personnel told us that they believed SAPR training was effective based on unsolicited, anecdotal feedback, an observation of “positive culture improvement,” midshipmen bringing in friends to report sexual assault, and more midshipmen volunteering for peer educator positions.

We interviewed USNA SAPR personnel who told us when midshipmen arrive for “Plebe Summer” every midshipman receives initial SAPR training within 14 days of arrival.⁴² The USNA SAPRO PM told us that during Induction Day, the SAPR personnel greet all incoming freshmen midshipmen and later provide freshmen

⁴² A “Plebe” is slang for a midshipman who is in his/her freshman year at the USNA; thus, “Plebe Summer” is the summer before a USNA’s midshipman’s freshman year. USNA SAPR personnel provide USNA midshipmen initial sexual assault training during the Plebe Summer after they arrive at the USNA that addresses sexual assault awareness, prevention, victim support, and encouragement for victims to come forward and hold perpetrators accountable. The returning USNA midshipmen receive similar annual refresher sexual assault training after arriving back at USNA each subsequent year and before leaving for breaks. We reviewed recent initial and refresher SAPR training material presented to the USNA midshipmen and determined the material included information describing sexual assault and reporting options.

midshipmen initial SAPR training with an entry survey.⁴³ The USNA SAPRO PM also told us that USNA SAPR personnel developed entry surveys to evaluate the current training and modify future training curriculum.

USNA SAPR personnel told us that all midshipmen attend SAPR training at the start of the fall and spring semesters and before they depart for summer cruises with the Navy fleet. SAPR personnel told us that SHAPE training is specific to a midshipman's year group and is developmental training focused on prevention and response. Peer educators work with Active Duty Military advisors, called fleet mentors, to deliver the SHAPE training modules in small groups. SAPR personnel told us that, in total, freshmen midshipmen receive four sessions, sophomore midshipmen receive two sessions, and junior midshipmen receive two sessions of SHAPE training before transitioning to Capstone training during the senior year.⁴⁴

The SAPRO PM told us that the Leadership Education and Development (LEAD) program is responsible for tracking and delivering Capstone training. LEAD personnel told us that Capstone training is a two-day course and the culmination of SHAPE. The USNA schedules groups of five to seven midshipmen, which explore problems related to sexual harassment and assault and discuss a variety of case studies. LEAD personnel also told us that the USNA senior staff or USNA alumni moderate the discussions of case studies.

To stress the importance of SAPR training at the USNA, the SAPRO PM told us the USNA Superintendent individually discussed SAPR problems with midshipmen. The SAPRO PM told us these "Supt Chats" were over a lunch of about 45 minutes with an audience of approximately 70 midshipmen. The Superintendent determined the order of classes and spoke with the senior, freshman, sophomore, and junior classes respectively.

Conclusion

DoDI 6495.02 requires the Military Services to establish a sexual assault response capability. In the Navy, OPNAVINST 1752.1C requires installation commanders to establish a sexual assault response capability at their installations. At the USNA, the USNA Superintendent established a sexual assault response capability, which was implemented by the USNA SAPR Office.

⁴³ Induction Day or "I" Day is the first day of Plebe Summer and traditionally begins in late June or early July. USNA freshmen take the Oath of Office and officially become midshipmen.

⁴⁴ USNA SAPRO PM consolidated SHAPE training tracking under the SAPR Training Director. The USNA completed over 96 percent of SHAPE training. Over half of the missing 4 percent of SHAPE training was due to coronavirus disease-2019 (COVID-19) restrictions and the USNA's decision not to return midshipmen to campus following Spring Break in 2020. Other annotated reasons for missed training were midshipmen being in abroad status, fleet status, and attending athletic events.

DoD and Navy policies require SAPR personnel to inform midshipmen-victims of their reporting options and available midshipman-victim support services. Furthermore, DoDI 6400.07 and DoDI 6495.02 state that victim support services include medical services, counseling services, law enforcement services, and legal services. We determined that the USNA provided SAPR services and midshipman-victim support services as required by DoD and Navy policy. We found that USNA SAPR personnel offered SAPR services and sexual assault reporting options as required by DoD and Navy policy to the 86 midshipmen-victims who officially reported sexual assaults. The USNA SAPR personnel documented the referrals of 86 of the 86 midshipmen-victims to a SAPR victim advocate or to other midshipman-victim support services as required by DoDI 6400.07 and DoDI 6495.02. Additionally, we determined that USNA midshipmen received initial and annual refresher SAPR training, and the training included the required content in accordance with DoD policy.

However, we determined that USNA SAPR personnel did not document consults or contacts with victims of sexual assault and any resulting referrals to victim support services if those contacts did not result in an official report of sexual assault. This was consistent with our finding in Report No. DODIG-2019-125. In that report, we recommended the DoD SAPRO Director develop and institute a process that documents consults or contacts with victims of sexual assault and any resulting referrals to victim support services if those contacts do not result in an official report of sexual assault. A process to document consults or contacts provides commanders with a more accurate picture of the organizational climate and the potential number of occurrences of sexual assault. The process provides statistical data for the Superintendents of the Academies, as well as leaders across the DoD.

The DoD SAPRO Director agreed with our recommendation in Report No. DODIG-2019-125, stating that DoD SAPRO would develop and institute a process that documents consults and contacts with victims of sexual assault and any resulting referrals to victim support services. DoD SAPRO issued a DSAID update on October 16, 2020, allowing SARCs to document SAPR-related inquiries made by “victims or non-victims” who choose not to make an official report of sexual assault. DoD SAPRO is using FY 2021 to evaluate the DSAID update and gather feedback. DoD SAPRO is drafting policy requiring SAPR-related inquiries entry into the DSAID and plans to make SAPR-related inquiries entry in the DSAID a requirement starting in FY 2022 (October 1, 2021). This update to the DSAID resolved the recommendation made in Report No. DODIG-2019-125.

Finding B

NCIS Responded To, and Investigated, Reports of Sexual Assault in Accordance With DoD and Navy Policy

We evaluated 33 NCIS adult sexual assault investigations involving midshipmen-victims at the USNA that were opened on or after June 1, 2017, and closed on or before May 31, 2020.

We found that NCIS agents investigated reported sexual assaults, in accordance with DoD, Navy, and NCIS policy. We concluded that, for the 33 unrestricted reports of sexual assault, NCIS agents:

- initiated appropriate criminal investigations based on credible information;
- conducted appropriate interviews;
- collected, maintained, and examined all available physical and forensic evidence; and
- closed sexual assault investigations when logical leads were exhausted, according to DoD and NCIS policy.

DoD, Navy, and NCIS Requirements for Conducting Investigations of Sexual Assault

The DoD has established criminal investigative policy to ensure consistent and thorough sexual assault investigations across the DoD. The policy seeks to ensure that law enforcement personnel thoroughly investigate reports of sexual assaults. NCIS policy states that NCIS will “initiate investigations of all reported allegations of adult sexual assault, abusive sexual contact, and attempts, of which they become aware, that occur within their jurisdiction regardless of the severity of the allegation,” and “investigations will be timely, thorough, and comply with [DoD Instructions].”⁴⁵ NCIS policy also requires investigating agents have requisite training; treat victims and witnesses with dignity; conduct interviews; collect and preserve evidence; and provide accurate documentation to maintain the legal integrity of the investigation.

⁴⁵ NCIS 3, Chapter 34, “Sex Offenses (Category 8),” December 4, 2017

DoDI 5505.18 states that MCIOs will “initiate a criminal investigation in response to all allegations of adult sexual assault ... of which they become aware that occur within their jurisdiction”⁴⁶ DoDI 5505.18 assigns MCIO responsibilities for managing investigations of sexual assaults with adult victims and requires that all adult sexual assault investigations are conducted thoroughly. It also states that only MCIO agents will conduct the formal interview of a victim and document investigative activity.

In addition to DoDI 5505.18, the Navy assigns criminal investigative responsibility to NCIS through SECNAVINST 5430.107A and 1752.4C. According to these policies, NCIS is responsible for initiating independent investigations for all unrestricted reports of sexual assault. NCIS is also responsible for preserving evidence and chain of custody for restricted reports of sexual assault.

NCIS maintains its own set of policies, manuals, and handbooks, which provide investigative and administrative guidance to NCIS personnel. N3-C34 standardizes investigative practices for NCIS personnel and requires sufficiency for sexual assault investigations across the NCIS enterprise.⁴⁷ For example, it includes guidance for investigative topics such as scene examinations, interview planning considerations, and evidence handling procedures. NCIS Policy Document 17-01 (Gen Admin 11C-0012) and NCIS 1, Chapter 45 (N1-C45), provide guidance on case file reviews and steps to take to close an investigation. These policies require the NCIS leadership to review case files and provide guidance to case agents throughout the life cycle of all investigations. This process ensures thoroughness and timeliness of the investigations. NCIS Policy Document 17-01 specifies that supervisory reviews of the investigations should be accomplished on a 30-60-60 day timeline. NCIS N1-45 also requires agents actively pursue criminal investigations until all logical and practical investigative leads are exhausted and documented.⁴⁸

⁴⁶ The allegation(s) must be based on credible information that a crime has occurred. DoDI 5505.07, “Titling and Indexing in Criminal Investigations,” February 28, 2018, defines credible information as “[i]nformation disclosed or obtained by a criminal investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to lead a trained criminal investigator to presume that the fact or facts in question are true.” The DoD routinely updates instructions order to keep the policy current. We considered each edition that was in effect during our evaluation scope period.

⁴⁷ NCIS 3, Chapter 34, “Sex Offenses (Category 8),” December 4, 2017.

⁴⁸ NCIS 3, Chapter 34, “Sex Offenses (Category 8),” December 4, 2017, directs “incident” titling of cases for actions that are committed outside NCIS jurisdiction, non-criminal events, or minor criminal offenses not typically investigated by NCIS.

Evaluation of NCIS' Investigations

NCIS Investigations of Unrestricted Reports of Sexual Assault

We evaluated all 33 NCIS unrestricted sexual assault investigations with midshipmen-victims at the USNA that were opened on or after June 1, 2017, and closed on or before May 31, 2020. Our goal was to determine whether NCIS conducted and completed the investigations as required by DoD and NCIS policy. We evaluated the investigative case files of each of the 33 unrestricted sexual assault investigations and compared them to the requirements in DoD and Navy policies for conducting sexual assault investigations. We evaluated each of the 33 NCIS investigative case files to determine whether NCIS agents initiated investigations of sexual assault; interviewed victims and all appropriate witnesses; responded to all identified crime scenes; and collected, maintained, and examined physical and forensic evidence. Additionally, we verified that NCIS did not close the adult sexual assault investigations until all logical investigative leads were exhausted.

Based on our investigative case file reviews, we determined that NCIS initiated sexual assault investigations once they were notified of a sexual assault. Additionally, the NCIS agents either interviewed the midshipman-victim who reported a sexual assault or they interviewed a second party who had reasonable knowledge to believe that a sexual assault may have occurred.⁴⁹

Furthermore, we determined that the NCIS agents also interviewed appropriate witnesses and alleged offenders to help prove or disprove that a crime occurred. We further determined that NCIS agents conducted additional interviews to obtain more information or to clarify any inconsistencies. We also found that in some of the witness interviews, the interviewee provided the NCIS agents enough information to prompt the NCIS agents to conduct additional logical investigative steps. We did not identify any interviews that appeared cursory or incomplete based on the circumstances and information available to the NCIS agents at the time.

⁴⁹ Midshipmen-victims reporting sexual assault incidents are not obligated to speak with law enforcement or participate in the investigative process. For investigations involving midshipmen-victims who do not wish to cooperate, NCIS must still thoroughly investigate all sexual assault allegations. A few of these investigative activities include interviewing witnesses, collecting evidence, and documenting the crime scene.

We determined that the NCIS agents responded to all identified crime scenes and collected, maintained, and examined physical and forensic evidence to establish what may have taken place during the reported sexual assault. For example, NCIS agents collected bodily fluid samples from one scene and took photographs of nine other scenes. Once the NCIS agents collected the bodily fluid samples, they submitted them to the Defense Forensic Science Center for analysis.⁵⁰

In our evaluation of the 33 investigations, we found the length of time for the investigations ranged from one day to 19 months and averaged approximately five months. We found that one of the 33 investigations involved the agents collecting physical and digital media evidence that was later submitted for forensic examination. The physical evidence forensic examination took 46 days and the digital media evidence forensic examination took 26 days to complete.

Subject Fingerprint and Deoxyribonucleic Acid Submissions

During our evaluation of the 33 investigations, we found that NCIS agents submitted all subject fingerprint records to the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division, as required by DoDI 5505.11.⁵¹ We also found that NCIS agents did not submit subject deoxyribonucleic acid (DNA) in 1 of the 33 investigations to the FBI Combined DNA Index System (CODIS) as required by DoDI 5505.14.⁵² After we notified NCIS of the error, it investigated and determined the CODIS kit went missing while in transit to the Defense Forensic Science Center.⁵³

⁵⁰ According to the U.S. Army Criminal Investigation Command, on November 13, 2013, “the U.S. Army Criminal Investigation Laboratory, [was redesignated] the Defense Forensic Science Center.” “The Defense Forensic Science Center’s mission is to provide full-service forensic support (traditional, expeditionary and reachback) to Army and [DoD] entities worldwide; to provide specialized forensic training and research capabilities; [to] serve as executive agent for the DoD Convicted Offender DNA Databasing Program; and to provide forensic support to other Federal departments and agencies when appropriate.” The U.S. Army Criminal Investigation Laboratory, the Forensic Exploitation Directorate, and the Office of Quality Initiatives and Training make up the Defense Forensic Science Center. NCIS 3, Chapter 34, “Sex Offenses (Category 8),” December 4, 2017, directs the U.S. Army Criminal Investigation Laboratory use for evidence, forensic examination.

⁵¹ DoDI 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” July 21, 2014 (Incorporating Change 2, March 30, 2017), requires DoD law enforcement to collect and submit offender criminal history information, using the FD-249, “Arrest and Institution Fingerprint Card,” to the FBI through the collection and submission of fingerprints and final disposition reports to the FBI Criminal Justice Information Services Division.

⁵² DoDI 5505.14, “Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations, Law Enforcement, Corrections, and Commanders,” December 22, 2015 (Incorporating Change 1, March 9, 2017), requires DoD law enforcement to collect a DNA sample on any service member investigated for a qualifying offense. It also requires the DoD law enforcement to forward the DNA samples to the Defense Forensic Science Center for entry into the FBI CODIS.

⁵³ A CODIS kit is collected during the booking process which includes collecting fingerprints and other identifying information. A CODIS kit is not used to collect physical evidence of a crime that is currently being investigated. The missing CODIS kit in this investigation did not impact or impede the outcome of the investigation. Although a review of the NCIS investigative file identified the CODIS kit number used to collect the DNA sample for this investigation, we cannot validate the collection nor submission of the sample because it was never received by the DSFC. Due to the investigation ultimately resulting in no judicial or non-judicial action, DoDI 5505.14 does not require NCIS to follow-up to collect and resubmit the DNA sample now.

Conclusion

We concluded that NCIS agents complied with DoD and NCIS policy in the 33 investigations we evaluated. We determined that for all 33 investigations, NCIS agents initiated appropriate investigations, conducted interviews, collected physical and forensic evidence, and closed investigations when all logical investigative leads were exhausted.

Finding C

USNA Commanders and Decision Makers Did Not Retaliate Against Midshipmen-Victims by Separating Them From the USNA for Reporting Sexual Assault

We evaluated the personnel and midshipmen records for three midshipmen-victims that officially reported a sexual assault who were separated from the USNA from June 1, 2017, through May 31, 2020. Our goal was to determine whether the separations were retaliation against the midshipmen-victims for officially reporting a sexual assault.

We concluded that USNA commanders and decision makers did not retaliate against the three midshipmen-victims for reporting a sexual assault. The separations were also conducted in accordance with DoD and Navy policy. We found that there were sufficient and well-documented reasons for the separations, which substantiated that the separations were not retaliation for reporting sexual assaults.

To determine whether USNA commanders and decision makers retaliated against midshipmen-victims by separating them for reporting a sexual assault, we evaluated all personnel and midshipmen records related to the separations of the three midshipmen-victims. We searched for allegations of reprisal reports with Navy and DoD Inspectors General, and we interviewed attorneys assigned as Navy victims' legal counsel.

USNA Requirements for Separations

DoD, Navy, and USNA instructions and policies provide guidance for the separation and discharge of midshipmen who fail to meet USNA standards.⁵⁴ Midshipmen are separated when the Secretary of the Navy (SECNAV) or the Secretary's designee determines that a midshipman is not qualified for commissioning or that commissioning the midshipman is not in the best interest of the Navy.

SECNAVINST 1531.4A states voluntary unqualified and qualified resignation are two options available to a midshipman to leave the USNA. Also, "midshipmen who have preferred charges against them may also submit a request to resign [to] escape court-martial ... [and] be separated with Other than Honorable characterization of service." The SECNAV, Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)), or the USNA Superintendent approves resignations. The ASN (M&RA) and the USNA Superintendent may involuntarily separate a midshipman when a midshipman fails to meet military, academic, or physical fitness standards or fails to accept a commission. Furthermore, midshipmen may be involuntarily separated from the USNA if the midshipman is "found fit for duty, but ... not be medically recommended for commissioning." Medical fitness for commissioning occurs at a Physical Examination Board.⁵⁵

Midshipman Separation Process

The midshipman separation process requires significant input from USNA commanders and decision makers, as well as a legal review. Authority to separate a midshipman from the USNA depends on the surrounding circumstances and the type of resignation or separation. When a midshipman requests a qualified

⁵⁴ DoDI 1322.22, "Service Academies," September 24, 2015;
SECNAVINST 1531.4A, "U.S. Naval Academy Midshipmen Disenrollment," November 28, 2018;
SECNAVINST 1850.4E, "Department of the Navy Disability Evaluation Manual," April 30, 2002;
Navy Military Personnel Manual (MILPERSMAN) 1531-020, "Disposition of Midshipmen Disenrolled from the Naval Academy," April 21, 2006;
United States Naval Academy Instruction (USNAINST) 1610.6, "U.S. Naval Academy Midshipmen Disenrollment Procedures for Cases Involving Unsatisfactory Conduct," June 19, 2012;
USNAINST 6130.1C, "Processing Midshipmen Medical Evaluation Boards and Commissioning Decisions," July 30, 2019;
USNAINST 5420.24G, "Policies and Procedures Governing the Academic Board," January 5, 2010;
Commandant of Midshipmen Instruction (COMDTMIDNINST) 1610.2J, "Administrative Performance and Conduct System," August 13, 2019;
COMDTMIDNINST 1920.1H, "Midshipmen Voluntary Resignation, Involuntary Separation, and Qualified Resignation Procedures," June 24, 2018;
The DoD, Navy, and USNA routinely update regulations to keep the policies current. We considered each edition that was in effect during our evaluation scope period.

⁵⁵ SECNAVINST 1920.6D, "Administrative Separation of Officer," July 24, 2019, defines a qualified resignation as "the tendering officer acknowledges upon submission that the characterization of service is subject to the discretion of the Secretary." SECNAVINST 1920.6D defines an unqualified resignation as one in "which the only characterization of service allowed is Honorable."

resignation from the USNA, but has a service obligation from prior service or from attendance at the USNA, the SECNAV is the separation authority. The SECNAV is also the separation authority for midshipmen who request voluntary resignations but have active duty or reimbursement obligations due to received educational benefits. The ASN (M&RA) handles all other voluntary and qualified resignations of midshipmen including those with obligations due to received educational benefits. The ASN (M&RA) is also the approval authority for involuntary separations of midshipmen who have prior service obligations greater than 12 months and/or incurred obligations due to received educational benefits.

Reasons for involuntary separation from the USNA include insufficient aptitude, academic deficiency, unsatisfactory conduct, or physical education deficiency. The USNA Superintendent is the delegated authority to separate midshipmen who do not fall into the previous categories which includes involuntarily separating midshipmen who do not have service commitments.

Academic deficiency results from either course failure, inadequate level of performance, inadequate progress toward graduation, failure to meet graduation requirements, or failure to remove academic probation, and includes physical programs. A midshipman with academic deficiency faces an Academic Board that recommends a course of action to the Commandant of Midshipmen.

When a midshipman is found to be deficient in the academic, military, or physical programs, the Academic Board or the Commandant of Midshipmen, as appropriate, may recommend to the USNA Superintendent that a midshipman be separated, readmitted to another class, or kept under specified conditions.⁵⁶ For problems concerning conduct, midshipmen face a Midshipman Discharge Board (MDB) that evaluates the charges. The USNA Superintendent has the final say in on all decisions.

Midshipman Medical Leave of Absence Program

We interviewed military and civilian personnel assigned to the USNA offices responsible for making recommendations to separate midshipmen to gain an understanding of the leadership and due process support that USNA commanders and decision makers offered midshipmen-victims. The Commandant of Midshipmen told us USNA commanders and decision makers immediately address any concerns related to retaliation and that the USNA commanders and decision makers work to “[create] a positive climate emphasizing dignity and respect.”

⁵⁶ The Academic Board may decide to retain a deficient midshipman in the best interest of the Navy but can stipulate certain retention conditions. These conditions include maintaining a specified ranking, taking and passing certain courses a subsequent regular semester, taking and passing summer courses, or reducing the number of required courses during a semester. When a midshipman’s academic achievement is weak despite superior effort, and the midshipman demonstrated evidence of high military performance, the Academic Board may retain the midshipman, and allow a summer or one additional regular fall semester (beyond the normal eight) to complete graduation requirements.

Midshipmen-victims who reported an unrestricted sexual assault may request a leave of absence from the USNA since “sexual assault victims often experience significant physical and psychological effects ... [that] can severely interfere with a midshipman’s ability to focus on his or her academic, professional, physical, and military duties.” To protect midshipmen-victims from unjust separation, USNA commanders and decision makers use a leave of absence to allow midshipmen-victims time to heal. A leave of absence allows a midshipman to temporarily leave the USNA for a period of time, generally not exceeding one year. The expectation is that the midshipman will return to the USNA, after resolving the issue, and complete USNA graduation and Navy commissioning requirements.⁵⁷ The Commandant of Midshipmen further told us if a midshipman-victim left the USNA for one full year, then the midshipman-victim would typically roll back one class year, but the USNA determined class placement on a case by case basis. The purpose of a leave of absence was to afford the midshipman-victim an opportunity to recover and focus on well-being before returning prepared to handle the USNA’s training requirements.

The Brigade Medical Officer told us that when a midshipman-victim does not want to convert a restricted report to an unrestricted report, but had academic problems associated with sexual trauma, the USNA Brigade Medical Officer can initiate a medical board to provide context for the academic decline and preclude educational cost recoupment. The Brigade Medical Officer also told us that another benefit of a leave of absence is that a midshipman-victim keeps Tricare benefits while on a leave of absence, while the Navy medically evaluates the midshipman-victim.

USNA Behavioral and Mental Health Services for Midshipmen-Victims

USNA personnel told us that USNA personnel offer midshipmen-victims assistance through victim support services, such as the Midshipmen Development Center (MDC) and Naval Health Clinic Annapolis (NHCA). At the USNA, the MDC and the NHCA are separate resources available to midshipmen that provide counseling and mental health treatment services. USNA personnel also told us that a midshipman’s treatment by NHCA personnel becomes part of the midshipman’s medical record while treatment by MDC personnel does not.

⁵⁷ Similar leave programs exist at the USAFA and USMA. As reported in DODIG-2019-125, the USAFA has a program called the Cadet Turnback Program that allows a USAFA cadet, who encountered a temporary hardship, to temporarily leave the USAFA, resolve issues, and return to the USAFA to complete USAFA graduation and Air Force commissioning requirements. As we reported in Report No. DODIG-2020-073, the USMA has a cadet Medical Leave of Absence Program that allows a cadet to temporarily leave the USMA, resolve issues, and later return to the USMA to complete graduation and Army commissioning requirements.

The MDC's mission is "to promote and enhance the adjustment, well-being, and professional development of Midshipmen through psychological and nutritional counseling services to Midshipmen, and through consultation and training." The MDC Director told us that the MDC functions much like a university or college counseling center.⁵⁸ Clinical psychologists assigned to the MDC provide counseling services to all midshipmen, including midshipmen-victims of sexual assault.

MDC personnel told us that, like other USNA victim support services, the MDC would refer a midshipman-victim to SAPRO if the midshipman-victim desired. The MDC Director told us that MDC psychologists will personally escort a midshipman-victim to SAPRO when requested, but no formal process exists or is in place. MDC personnel also told us that midshipmen voluntarily go to the MDC, and that midshipmen receive "non-medical sessions and primarily psychotherapy" at the MDC. USNA personnel told us that the MDC also provides group therapy sessions when resources are available. The MDC Director told us that MDC personnel will refer a midshipman-victim to the NHCA when a midshipman-victim requires assistance that falls outside the scope of care of the MDC.

The NHCA promotes "... compassionate and comprehensive care ... improved coping, social or interpersonal skills, relieved psychological symptoms, resolved performance [problems] at work or school" and is staffed by psychologists, substance abuse counselors, and psychiatric technicians. USNA personnel told us that the NHCA treats midshipmen-victims who are beyond the capability of the MDC, such as when a midshipman-victim requires prescription medication to help with emotional and behavioral problems, or when a midshipman-victim requires more intensive behavioral health treatment offered at an off-installation, civilian facility.

According to DoDI 6490.08, Service members are able to voluntarily receive mental health care with a presumption by the healthcare providers that they are not to notify the Service member's commander unless the presumption is overcome by required notification criteria.⁵⁹ Such required notification criteria includes concern that a Service member may cause harm to self, harm to others, or harm to a military operational mission. Commander notification is also required when a Service member is placed in inpatient care or discharged from inpatient care. According to DoDI 6490.04, if "[c]ommanders ... in good faith believe a subordinate Service member may require a mental health evaluation are authorized to direct

⁵⁸ The MDC is accredited by the International Association of Counseling Services, the recognized accrediting organization for university and college counseling centers.

⁵⁹ DoDI 6490.08, "Command Notification Requirements to Dispel Stigma in Providing Mental Health Care to Service Members," August 17, 2011.

an evaluation ...”⁶⁰ However, the policy specifies that “[n]o one may refer a Service member for a [mental health evaluation] as a reprisal for making or preparing a lawful [protected] communication ...”⁶¹

DoDI 6490.04 also states that mental healthcare providers will advise a Service member’s “commander or supervisor of any duty limitations or recommendations for monitoring or additional evaluation ...” The policy also specifies that the providers will make “recommendations for treatment [or] referral of the Service member to a Medical Evaluation Board [MEB] for processing through the Disability Evaluation System” in accordance with DoDI 1332.18.⁶²

The Disability Evaluation System ensures that the Navy fully evaluates a midshipman-victim to determine suitability for active duty service through the MEB process. Navy instructions and manuals establish the processes and considerations when a Service member’s suitability for continued service is questioned.⁶³ A DoD medical care provider initiates the MEB process by referring the case to the MEB. After a physical examination, medical officers on the MEB review the case to determine whether the midshipman’s medical condition meets medical retention standards. The MEB officers make a recommendation to the Physical Evaluation Board whether the midshipman should be returned to duty. The Physical Evaluation Board determines a service member’s fitness to perform military duties and makes the final determination to keep, separate, or retire the midshipman. In some instances, a Physical Evaluation Board’s determination may result in the midshipman being placed on the temporary disability retired list or given a permanent disability retirement.

Evaluation of Midshipmen-Victims’ Separations

To determine if USNA commanders and decision makers retaliated against any midshipmen-victims by separating them after reporting a sexual assault, we evaluated all personnel and midshipmen records related to the separations of midshipmen-victims.

⁶⁰ DoDI 6490.04, “Mental Health Evaluations of Members of the Military Services,” March 4, 2013.

⁶¹ Protected communication is partially defined in DoD Directive 7050.06, “Military Whistleblower Protection,” April 17, 2015, as “[a]ny communication in which a Service member communicates information that he or she reasonably believes evidences: [a] violation of law or regulation including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct . . . [w]hen made to [a]ny other person or organization designated pursuant to regulations or other established administrative procedures to receive such communications.”

⁶² DoDI 1332.18, “Disability Evaluation System (DES),” August 5, 2014 (Incorporating Change 1, May 17, 2018).

⁶³ SECNAVINST 1850.4F, “Department of the Navy Disability Evaluation System,” June 27, 2019;

SECNAV M-1850.1, “Disability Evaluation System Manual,” September 23, 2019;

The Navy routinely updates regulations to keep the policies current. We considered each edition that was in effect during our evaluation scope period.

To identify the midshipmen-victims who were separated after making a report of sexual assault, we identified midshipmen-victims who officially reported a sexual assault to USNA SAPR personnel or NCIS. We then compared those records to records maintained by the USNA Registrar's Office. From this, we identified three midshipmen-victims who were separated from the USNA after reporting sexual assaults.

One Separated Midshipman-Victim Made a Restricted Report

A restricted report of sexual assault is one of the two report types available to victims who report sexual assault through SAPR personnel. A restricted report allows SAPR personnel to provide the victim immediate, in-person support just like victims who use the unrestricted reporting option. A restricted report prevents SAPR personnel from notifying the command or NCIS and shields the victim's identity from commanders and law enforcement. A restricted report may become an unrestricted report if the identity of the victim is compromised by either the victim or a third party, or if the victim proactively chooses to convert a restricted report to an unrestricted report.

We found that one of the three midshipmen-victims made a restricted report before separation from the UNSA. The following is a description of the circumstances of the separation, but is intentionally brief to protect the midshipman-victim's identity.

Midshipman Victim #1 (MV1)

We reviewed the separation record of MV1, which included MV1's separation documents, academic performance transcripts, and military performance transcripts. MV1's separation file contained a history of substandard academic performance before and after MV1 filed a restricted report of sexual assault. Approximately one semester after filing a restricted report, MV1 was placed on academic probation for continued substandard academic performance. MV1's separation file also contained conduct and honor code offenses that occurred before and after MV1 filed a restricted report of sexual assault. MV1 voluntarily resigned from the USNA instead of administrative action due to an academic honor code violation that occurred after being placed on academic probation. The USNA Superintendent approved MV1's qualified resignation and granted MV1 an honorable discharge from the U.S. Navy. We found no indication in MV1's record that USNA commanders and decision makers knew of the restricted report of sexual assault.⁶⁴

⁶⁴ COMDTMIDNINST 1920.1H, 24 Jul 18, 4c. Qualified resignations may be submitted when a midshipman who has an alleged violation of the Brigade of Midshipmen Honor Concept or the Administrative Performance and Conduct System, admits the substantial truth of the allegation(s), and elects to resign rather than allow administrative action to be taken regarding the allegation(s). Qualified Resignations may result in a General (Under Honorable Conditions) Discharge, which is a less favorable discharge than an Honorable Discharge. A General (Under Honorable Conditions) Discharge may adversely affect a midshipman's rights to certain government entitlements or employment.

Two Separated Midshipmen-Victims Made Unrestricted Reports

An unrestricted report of sexual assault is the second of the two reporting types available to victims who report sexual assault through USNA SAPR personnel. We found that two of the three midshipmen-victims made unrestricted reports of sexual assault. Unrestricted reports provide the victim immediate, in-person support. Unrestricted reports also require notifications to the commander and NCIS. The notifications usually result in a criminal investigation, monitoring of a civilian criminal investigation, or a law enforcement referral from NCIS if the reported sexual assault happened before the midshipman entering the USNA. The following are descriptions of the circumstances for each of these separations. The information provided is brief to protect the midshipmen-victims' identities.

Midshipman Victim #2 (MV2)

We reviewed the separation record of MV2, which included MV2's separation documents, academic performance transcripts, military performance transcripts, and leave of absence requests. MV2's separation file contained both conduct and honor code offenses that occurred before MV2 reported being sexually assaulted. MV2's separation file did not contain a history of substandard academic performance. After MV2 filed an unrestricted report of sexual assault, and following another honor offense, MV2 was granted a leave of absence from the USNA, and later referred to a medical evaluation board (MEB). MV2 learned of the pending MEB and requested permission to graduate from the USNA, but not commission as a Naval Officer. The USNA Superintendent granted MV2's request and MV2 was subsequently medically discharged from the Navy. The Secretary of the Navy granted MV2 a 50 percent temporary disability retirement.

We found MV2 did not file a retaliation complaint with USNA leadership, USNA IG, or the Naval IG; however, MV2 filed a complaint of retaliation with the DoD Hotline. DoD OIG Whistleblower Reprisal Investigations (WRI) evaluated the reprisal allegations MV2 made and closed the complaint without investigation. In our evaluation of the available separation documents, the DoD OIG WRI complaint, and the NCIS investigation file, we found no documentation that indicated the separation action was retaliation against MV2 for reporting a sexual assault.

Midshipman Victim #3 (MV3)

We reviewed the separation record of MV3, which included MV3's separation documents, academic performance transcripts, military performance transcripts, and leave of absence request. MV3's separation file did not contain any records of conduct or honor code offenses nor did the records contain a history of

substandard academic performance. MV3 requested, and was granted, a medical leave of absence before MV3 reported that MV3 was sexually assaulted. The Navy then awarded MV3 a medical discharge with the Secretary of the Navy granting a 30 percent temporary disability retirement.

Additionally, we found that MV3 did not file a retaliation complaint with USNA leadership, USNA IG, Naval IG, or the DoD OIG. In our evaluation of the available separation documents and the NCIS investigation file, we found no documentation that indicated the separation action was retaliation against MV3 for MV3 reporting a sexual assault.

Complaints of Reprisal

SECNAVINST 5430.57H directs the Naval Inspector General (NAVINSGEN) to “inspect, investigate, or inquire into any and all matters of importance to the Department of the Navy (DON) in order to maintain the highest level of public confidence.” The instruction further mandates that NAVINSGEN accomplish this mandate by “[providing] independent, objective, and professional inspections, assessments, inquiries, research and evaluation, investigations, oversight, and advice on any and all matter of importance to the DON.” The policy affords USNA midshipmen a method for submitting a complaint or allegation to a Naval IG concerning a matter of Navy interest. The USNA IG acts as the USNA Superintendent’s representative to “inquire into and report on any matter that affects the discipline or military efficiency of the [Department of the Navy].” Midshipmen may make a complaint of reprisal with the USNA IG, Department of the Naval IG, or with the DoD OIG through the Defense Hotline.

To determine whether any midshipmen made a complaint of reprisal in academic program years 2018 through 2020, we inquired with the USNA IG, NAVINSGEN, and DoD OIG WRI. As previously stated, we found one reprisal complaint made to DoD OIG WRI by a midshipman-victim during the evaluation period and it pertained to MV2.

Interviews With Navy Victims’ Legal Counsel

The VLC is a Military Service attorney who represents sexual assault victims. VLCs ensure that victims’ interests and rights are recognized and protected throughout all proceedings. VLCs provide victims with a wide range of services to address legal needs while maintaining a privileged attorney-client relationship with victims.⁶⁵

⁶⁵ JAGINST 5810.3A, “Navy Victims’ Legal Counsel Program Manual,” April 23, 2018.

We interviewed former and current VLCs who represented USNA midshipmen-victims from June 1, 2017, through May 31, 2020, to determine whether midshipmen-victims told their VLCs that they were retaliated against with separation. The VLCs told us that none of the midshipmen-victims reported to them that USNA commanders and decision makers retaliated against them by separating them from the USNA for reporting a sexual assault.

Conclusion

We concluded that the USNA commanders and decision makers did not separate the three midshipmen-victims because they made reports of sexual assault. We found that one of the three midshipmen-victims filed a restricted report of sexual assault in accordance with DoDD 6495.01. The USNA leadership honorably discharged the second midshipman-victim after granting a medical leave of absence following a report of sexual assault. This midshipman-victim later filed a reprisal complaint and DoD OIG/WRI evaluated and closed the allegation. The third midshipman-victim requested medical separation and was honorably discharged. Accordingly, we determined that the USNA commanders and decision makers separated midshipmen-victims in accordance with DoD and Navy policy.

Finding D

Midshipman-Victim Reports of Sexual Assault Were Accurately Reported to Congress As Required by Public Law 109-364

The Under Secretary of Defense for Personnel and Readiness (USD[P&R]) provided Congress two Annual Reports on Sexual Harassment and Violence at the Military Service Academies for the Academic Program Years (APY) 2018 and 2019.⁶⁶ These reports identified a total of 61 official reports of sexual assault made at the USNA during that period (56 of 61 were midshipmen-victims).⁶⁷

We determined that the USD(P&R) accurately reported to Congress the number of midshipman-victim reports of sexual assault made in the two APYs at the USNA as required by Public Law 109-364.⁶⁸

Requirements for the DoD's Annual Reports to Congress Related to Sexual Assault

At least two public laws require the Secretary of Defense to submit reports to Congress concerning sexual assaults in the military.

Annual Report on Sexual Harassment and Violence at the Military Service Academies

Public Law 109-364 requires the Secretary of Defense to submit annually to Congress a report that includes the number of sexual assaults that occur at the Military Service Academies.⁶⁹ DoDI 6495.02 implements this law and requires the USD(P&R) to submit annual reports on sexual harassment and violence to Congress.

⁶⁶ During the evaluation, we reviewed the annual reports on Sexual Harassment and Violence at the Military Service Academies for APYs 2018 and 2019. The annual report for APY 2020 is not due to be published until sometime in 2021.

⁶⁷ According to "Appendix D: Statistical Data on Sexual Assault and Sexual Harassment," for the most recent "Annual Report on Sexual Harassment and Violence at the Military Service Academies for Academic Program Year (APY) 2018-2019," USD(P&R) reports data captured for "Restricted and Unrestricted Reports of sexual assault involving cadets, midshipmen, or prep school students . . . as victims and/or subjects" at the Military Service Academies in the annual reports of Sexual Harassment and Violence at the Military Service Academies.

⁶⁸ Public Law 109-364, "John Warner National Defense Authorization Act of Fiscal Year 2007," section 532, "Revision and Clarification of Requirements with Respect to Surveys and Reports Concerning Sexual Harassment and Sexual Violence at the Service Academies," October 17, 2006.

⁶⁹ According to DoDI 1322.22, "Service Academies," September 24, 2015, the Military Service Academies include the U.S. Military Academy, U.S. Naval Academy, and the U.S. Air Force Academy.

As a result, each year the USD(P&R) provides Congress the “Department of Defense Annual Report on Sexual Harassment and Violence at the Military Service Academies.” In the report, the USD(P&R) identifies the number of official reports of sexual assault at the Military Service Academies and the disciplinary actions taken in substantiated cases.

Annual Report on Sexual Assault in the Military

Public Law 111-383 requires the Secretary of Defense to submit annually to Congress a report that includes the number of sexual assaults committed against and by members of the Armed Forces that were reported to military officials.⁷⁰ DoDI 6495.02 implements this law and requires the USD(P&R) to submit annual reports to Congress about sexual assault in the military.

As a result, each year the USD(P&R) provides Congress the “Department of Defense Annual Report on Sexual Assault in the Military.” In the report, the USD(P&R) identifies the number of official reports of sexual assault in the military and the disciplinary actions taken in substantiated cases of sexual assault.

Defense Sexual Assault Incident Database

The DSAID is a centralized database that collects and maintains information on sexual assaults involving Armed Forces members.⁷¹ DoD SAPRO personnel maintain the DSAID and Military Service SAPRO personnel input victim data into the database. DoD SAPRO uses the DSAID to account for the number of official reports of sexual assault that are included in the “Department of Defense Annual Report on Sexual Harassment and Violence at the Military Service Academies.”⁷² DoD SAPRO told us that the DSAID Program Administrators can archive DSAID reports and archiving a report in the DSAID does not delete the report from the DSAID. The DSAID keeps the report and associated details, but does not allow the report of sexual assault to be included in the number of reports of sexual assault provided to Congress. Our review of the DSAID indicated that only one archived record was associated to the USNA for this evaluation and it pertained to a record created in error. Based on this analysis, and on our interviews of USNA SAPR personnel, we determined that deleting and archiving DSAID records was not a common practice at the USNA.

⁷⁰ Public Law 111-383, “Ike Skelton National Defense Authorization Act of Fiscal Year 2011,” section 1631, “Annual Report Regarding Sexual Assaults Involving Members of the Armed Forces and Improvement to Sexual Assault Prevention and Response Program,” January 7, 2011.

⁷¹ <http://www.sapr.mil/dsaid-overview>.

⁷² Public Law 110-417, “Duncan Hunter National Defense Authorization Act for Fiscal Year 2009,” section 563, “Implementation of information database on sexual assault incidents in the Armed Forces,” October 14, 2008, requires the DoD to “implement a centralized, case-level database for the collection . . . and maintenance of information regarding sexual assaults involving a member of the Armed Forces”

Conclusion

We determined that the USD(P&R) accurately reported to Congress the number of midshipman-victim official reports of sexual assault made in APYs 2018 and 2019.

USNA SAPRO personnel told us that no process was in place to archive records at the USNA. We noted a similar finding at the USAFA, in Report No. DODIG-2019-125, that there was not a process in place that required or enabled DSAID administrators to document the reason that reports of sexual assault were archived in DSAID.

In that report, the DoD SAPRO Director agreed with the recommendation to update the database to include a field to record the reason that reports of sexual assault were archived. On October 16, 2020, DoD SAPRO issued an update to the DSAID that now allows DSAID administrators to document the reasons for a DSAID record being archived. DoD SAPRO is using FY 2021 to evaluate the DSAID update and gather feedback. DoD SAPRO is drafting policy that will require DSAID administrators to document the reasons for a DSAID record being archived and plans to make documenting the reasons a requirement starting in FY 2022 (October 1, 2021). This update to the DSAID resolved the recommendation made in Report No. DODIG-2019-125.

Appendix A

Scope and Methodology

We conducted this evaluation from May 2019 through May 2021 in accordance with the “Quality Standards for Inspection and Evaluation,” published in January 2012 by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that we adequately plan the evaluation to ensure that objectives are met and that we perform the evaluation to obtain sufficient, competent, and relevant evidence to support the findings, conclusions, and recommendations. We believe that the evidence obtained was sufficient, competent, and relevant to lead a reasonable person to sustain the findings and conclusions.

We reviewed several reports related to sexual assaults at the Military Service Academies. For example, we read “The Report of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy,” June 17, 2003, prepared by the Air Force Office of General Counsel; the “Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy,” September 22, 2003, commonly referred to as the “Fowler Report”; the “Task Force Report on Care for Victims of Sexual Assault,” April 2004; and the “Report of the Defense Task Force on Sexual Harassment & Violence at the Military Service Academies,” June 30, 2005.

We also reviewed GAO, DoD OIG, and other investigative and audit reports related to sexual violence at the academies to gain a perspective of the USNA’s history associated with sexual violence. We reviewed DoD, Navy, NCIS, and USNA policies, which included strategic plans concerning the prevention of and response to sexual assaults. See Appendix B for prior coverage of sexual violence, the SAPR program, and separation actions in the DoD within the last 5 years of this report.

During the evaluation, we obtained, reviewed, and analyzed documents from the USD(P&R), DoD Family Advocacy Program, Naval IG, USNA, and NCIS, such as internal and external inspection reports, historical minutes from oversight entities, separation transaction records, and investigative case files. We also evaluated sexual assault incident data in the Defense Sexual Assault Incident Database (DSAID), allied SAPR documentation, survey results, and annual reports to Congress. Lastly, we conducted interviews with current and former members of the USNA and NCIS staffs.

Evaluation of the USNA SAPR Office SAPR Services

To determine whether USNA SAPR personnel provided SAPR services to midshipmen-victims, we identified the specific criteria for USNA SAPR personnel to comply with SAPR policy. Specifically, DoDI 6495.02 and SECNAVINST 1752.4C require SAPR personnel to offer victims a victim advocate, inform victims about the available victim support services and offer the victims referrals to those services, and help facilitate those referrals if the victim chooses the support.

We identified our population of midshipmen-victims who made unrestricted or restricted reports of sexual assault from June 1, 2017, through May 31, 2020. We analyzed the data in the DSAID, compared it to DD Forms 2910 completed by midshipmen-victims, and identified 86 midshipmen-victim reports of sexual assault within our scope. As a precaution, we instituted additional internal controls to protect victim privacy, as well as the integrity of the information and overall DoD SAPR program, particularly concerning restricted reports. We then identified and analyzed the data in the DSAID and information on the DD Forms 2910 to determine whether the midshipmen-victims were offered a USNA victim advocate. Specifically, we identified in the DSAID where USNA SAPR personnel documented a referral to a USNA victim advocate. We also used the DSAID and DD Forms 2910 to determine if USNA SAPR personnel informed midshipmen-victims about the available USNA midshipman-victim support services and if USNA SAPR personnel referred midshipmen-victims to the USNA midshipman-victim support services they chose to accept. Specifically, we identified where the midshipman-victim initialed and signed the DD Forms 2910 acknowledging receipt of the information and we identified in the DSAID where USNA SAPR personnel documented the specific referrals each midshipman-victim chose to accept.

To determine whether USNA SAPR personnel helped facilitate the referral that midshipmen-victims chose to accept, we interviewed USNA SAPR personnel who provided SAPR services and victims' legal counsels (VLCs) who represented and provided legal services to our population of midshipmen-victims. Specifically, we asked USNA SAPR personnel to explain how they provided SAPR services and how they informed midshipmen-victims about midshipman-victim support services. We also asked USNA SAPR personnel whether they offered midshipmen-victims referrals to midshipman-victim support services and if they helped facilitate the referrals that midshipmen-victims chose to accept. Additionally, we asked the VLCs about their observations of USNA SAPR personnel and their midshipmen-clients' experiences with USNA SAPR personnel and the USNA midshipman-victim support services. We also asked the VLCs whether their midshipmen-clients complained about USNA SAPR personnel, the SAPR service, or the USNA midshipman-victim support services they chose to use.

Evaluation of NCIS Law Enforcement Services (Investigations)

To determine whether NCIS agents investigated reports of sexual assaults involving midshipmen-victims according to policy, we identified the specific criteria for NCIS agents to comply with DoD, Navy, and NCIS investigation policy. Specifically, DoDI 5505.18 directs NCIS agents to initiate a criminal investigation in response to all allegations of adult sexual assault of which they become aware within their jurisdiction. Furthermore, NCIS agents are required to investigate all adult sexual assault investigations thoroughly and in compliance with all related policies. In addition to DoD investigation policy, we used various NCIS general and sexual assault investigation policies to evaluate NCIS' performance.

We requested that NCIS provide us with a list of all midshipman-victim sexual assault investigations opened on or after June 1, 2017, and completed on or before May 31, 2020, to determine whether NCIS completed investigations as required by DoD, Navy, and NCIS policy. We then validated the list of midshipman-victim sexual assault investigations that NCIS sent to us. We excluded any investigations that did not meet the criteria for our evaluation. For example, we excluded investigations where action taken against a subject was not completed by May 31, 2020. We identified 33 midshipman-victim sexual assault investigations within the criteria of this evaluation.

We developed a sexual assault investigation evaluation protocol based on DoD, Navy, and NCIS policies and procedures. The evaluation protocol addressed, in detail, the investigative steps that are essential to complete a thorough sexual assault investigation. This process ensures compliance with policies that were in effect during the life of the investigation. For data collection efficiency and standardization, a relational database was created with the protocol questions that was used by our evaluators for each of the 33 midshipman-victim sexual assault investigations reviewed. We also used our professional judgement to evaluate the thoroughness of each midshipman-victim sexual assault investigation. Our evaluators reviewed one investigation as a group to ensure our evaluators assessed each case file in a uniform manner. We also performed quality control reviews of each individual case file evaluation to safeguard the integrity of our testing. Lastly, we used the database to generate results of our evaluations to establish sufficient evidence to support our findings.

Evaluation of USNA Separations

To determine whether USNA commanders and decision makers retaliated against midshipmen-victims by separating them from the USNA for reporting sexual assault, we identified the specific criteria that USNA admissions and personnel staff use to comply with midshipmen separation policy. DoD, Navy, and USNA

instructions and policies provide procedural guidance for separation and discharge of midshipmen who fail to meet USNA standards.⁷³ We used these policies to evaluate the performance of the USNA admissions and personnel staff that process midshipmen-victims for separation.

We requested the USNA provide us with a list of all midshipmen who were separated from the USNA from June 1, 2017, through May 31, 2020. The USNA provided the requested list that contained basic information about the midshipmen who were separated from the USNA during the period. We cross-referenced the list with the DSAID and DD Forms 2910 information to identify our population of midshipmen-victims who were separated from the USNA. As a precaution, we instituted additional internal controls to protect victim privacy, as well as the integrity of the information and overall DoD SAPR program, particularly the restricted reports. We identified three midshipmen-victims who made either a restricted or unrestricted report of sexual assault and who were later separated from the USNA. We excluded all the other midshipmen who did not meet the criteria for our evaluation.

Using the Navy separation policy, we examined the personnel separation records of each of the three midshipmen-victims and evaluated whether each separation action conformed to policy. Our evaluation criteria included the grounds for separation, initiating official, leadership review process, legal review report, separating midshipman's response, and separation approval authority. We specifically examined the records for valid separation justification.

⁷³ DoDI 1322.22, "Service Academies," September 24, 2015;
SECNAVINST 1531.4A, "U.S. Naval Academy Midshipmen Disenrollment," November 28, 2018;
SECNAVINST 1850.4E, "Department of the Navy Disability Evaluation Manual," April 30, 2002;
Navy Military Personnel Manual (MILPERSMAN) 1531-020, "Disposition of Midshipmen Disenrolled from the Naval Academy," April 21, 2006;
United States Naval Academy Instruction (USNAINST) 1610.6, "U.S. Naval Academy Midshipmen Disenrollment Procedures for Cases Involving Unsatisfactory Conduct," June 19, 2012;
USNAINST 6130.1C, "Processing Midshipmen Medical Evaluation Boards and Commissioning Decisions," July 30, 2019;
USNAINST 5420.24G, "Policies and Procedures Governing the Academic Board," January 5, 2010;
Commandant of Midshipmen Instruction (COMDTMIDNINST) 1610.2J, "Administrative Performance and Conduct System," August 13, 2019;
COMDTMIDNINST 1920.1H, "Midshipmen Voluntary Resignation, Involuntary Separation, and Qualified Resignation Procedures," June 24, 2018;
The DoD, Navy, and USNA routinely update regulations to keep the policies current. We considered each edition that was in effect during our evaluation scope period.

Evaluation of the Annual USD(P&R) Reports to Congress

To determine whether the USD(P&R) annually reported the correct number of midshipman-victim reports of sexual assaults to Congress, we identified the specific criteria for USD(P&R) to comply with DoD SAPR policy. Specifically, Public Law 109-364 requires the Secretary of Defense to submit annually to Congress a report that includes the number of sexual assaults that occur at the Military Service Academies. DoDI 6495.02 implements this law and requires the USD(P&R) to submit annual reports on sexual harassment and violence to Congress. Although the report contains reports of sexual assault by other members of the community, we focused specifically on midshipmen-victims during our evaluation.

We coordinated with DoD SAPRO and obtained data extracts from the DSAID for all USNA sexual assault incident records entered into the database from June 1, 2017, through May 31, 2020, including all archived records that were not reported to Congress. We also coordinated with the DoD Family Advocacy Program Associate Director who informed us that no USNA midshipman-victim sexual assault incidences were included with information provided to Congress by the DoD Family Advocacy Program.

After examining the archived records and ruling out the possibility that midshipman-victim sexual assault incidents were reported separately to Congress by the DoD Family Advocacy Program, we analyzed the DSAID data provided to us and compared it with the information reported to Congress. In analyzing the DSAID information, we filtered the data only on incidents with midshipmen-victims and then only on those reported from June 1, 2017, through May 31, 2020, to determine if the number of incidents recorded in the DSAID matched the numbers reported to Congress.

Use of Computer-Processed Data

We used computer-processed data to perform this evaluation. Specifically, we relied on data from the following systems: the DSAID, the Federal Bureau of Investigation (FBI) Criminal Justice Information Services Division database, and the FBI combined deoxyribonucleic acid index system (CODIS). With the DSAID, we compared the DSAID data to DD forms 2910 and other physical documentation and determined that the DSAID was reliable for this report. We did not verify the reliability of the FBI systems.

Appendix B

Prior Coverage

During the last 5 years, the GAO and the DoD Office of Inspector General (DoD OIG) issued six reports about SAPR, personnel separations, or sexual assault investigations in the DoD.

GAO

Report No. GAO-17-99, “Military Personnel: DoD Has Processes for Operating and Managing Its Sexual Assault Incident Database,” January 10, 2017

The GAO studied the DoD’s Defense Sexual Assault Incident Database (DSAID) to determine the current status of its implementation and steps the DoD has taken to help standardize DSAID’s use. The GAO found that the DoD took “several steps to standardize DSAID’s use through the development of (1) policies, processes, and procedures for using the system; (2) training for system users; and (3) processes for monitoring the completeness of data.” DoD officials planned to spend approximately \$8.5 million to implement modifications to DSAID in FYs 2017 and 2018 to address these challenges. Additionally, the GAO found that the DoD had management controls in place to make changes to the database.

Report No. GAO-15-266, “Defense Health Care: Better Tracking and Oversight Needed of Service Member Separations for Non-Disability Mental Conditions,” February 13, 2015

The GAO found that the DoD and the “Army, Navy, and Marine Corps” could not “identify the number of enlisted service members separated for non-disability mental conditions—mental conditions that are not considered service-related disabilities. For most non-disability mental condition separations, these services use the broad separation code, ‘condition, not a disability,’ which mixes non-disability mental conditions with non-disability physical conditions, such as obesity, making it difficult to distinguish one type of condition from the other. In contrast, the Air Force is able to identify such service members because it uses all five of the separation codes specific to non-disability mental conditions.”

DoD OIG

Report No. DODIG-2019-125, "Evaluation of the DoD's Handling of Incidents of Sexual Assault Against (or Involving) Cadets at the United States Air Force Academy," September 30, 2019

The DoD OIG evaluated the DoD's handling of incidents of sexual assault against (or involving) cadets at the United States Air Force Academy (USAFA) as the first in a series of evaluations of the Military Service Academies. The evaluation objectives were comparable to the objectives of this evaluation of incidents at the USMA. The DoD OIG found "USAFA SAPR personnel provided SAPR services to cadet-victims and victim support services were available to cadet-victims at the USAFA as required by DoD and Air Force policy. However, [the DoD OIG] determined that the USAFA SARC did not have a process to document 'contacts and consults' with cadet-victims who chose not to make an official report of sexual assault or a means to document any resulting referrals to victim support services." The DoD OIG also found the Air Force Office of Special Investigations "agents generally responded to and investigated reports of sexual assault in accordance with DoD and Air Force policy." The DoD OIG further found that the "USAFA commanders and decision makers did not retaliate against cadet-victims by disenrolling them from the USAFA for reporting sexual assault. Furthermore, [the DoD OIG] determined that 11 cadet-victim reports of sexual assaults that were made to the USAFA Family Advocacy Program (FAP) were not reported to Congress as required by Public Law 109-364." Lastly, the DoD OIG "identified 24 sexual assaults [incidents reported] from January 1, 2015, through December 31, 2017, that were not reported to Congress."

Report No. DODIG-2020-073, "Evaluation of the DoD's Handling of Incidents of Sexual Assault Against (or Involving) Cadets at the United States Military Academy," March 24, 2020

The DoD OIG evaluated the DoD's handling of incidents of sexual assault against (or involving) cadets at the United States Military Academy (USMA) as the second in a series of evaluations of the Military Service Academies. The evaluation objectives were comparable to the objectives of this evaluation of incidents at the USNA. The DoD OIG found "USMA SHARP personnel provided SHARP services to cadet-victims of sexual assault and victim support services were available to cadet-victims of sexual assault at the USMA as required by DoD and Army policy. However, DoD OIG determined that USMA SHARP personnel did not have a process or system to document 'contacts and consults' with cadet-victims who chose not to make an official report

of sexual assault or a means to document any resulting referrals to victim support services.” The DoD OIG also found the Criminal Investigation Division “agents generally responded to and investigated reports of sexual assault in accordance with DoD and Army policy.” The DoD OIG further found that the “USMA commanders and decision makers did not retaliate against cadet-victims by separating them from the USMA for reporting sexual assault.” Furthermore, the DoD OIG determined “cadet-victim reports of sexual assault were accurately reported to Congress as required by Public Law 109-364. Lastly, [DoD OIG] determined that the Army Defense Sexual Assault Incident Database Program Administrator archived reports of sexual assault. However, a process was not in place to document the reason that reports were archived in the Defense Sexual Assault Incident Database.”

Report No. DODIG-2017-054, “Evaluation of Military Criminal Investigative Organizations’ Adult Sexual Assault Investigations,” February 14, 2017

The DoD OIG “evaluated 378 Military Criminal Investigative Organizations’ (MCIO) adult sexual assault investigations opened on or after January 1, 2014, and completed on or before December 31, 2015, to determine whether the MCIOs completed investigations as required by DoD, Military Service, and MCIO guidance.” The DoD OIG found “only 2 of the 378 cases (0.5 percent) we reviewed had significant deficiencies that we believed likely adversely impacted the outcome of the investigations.” The DoD OIG “compared these results to our previous two evaluations, conducted in 2015 (Report No. DODIG-2015-094) and 2013 (Report No. DODIG-2013-091). In 2015, the DoD OIG returned 4 of 536 (0.7 percent) cases for significant deficiencies and in 2013 we returned 56 of 501 cases (11.2 percent) for significant deficiencies.” “Overall, the number of cases with significant and minor deficiencies remained low, although the percentage of cases with administrative deficiencies increased.”

Report No. DODIG-2015-094, “Evaluation of Military Criminal Investigative Organizations’ Adult Sexual Assault Investigations,” March 24, 2015

The DoD OIG “evaluated 536 Military Criminal Investigative Organization (MCIO) investigations of sexual assaults with adult victims opened on or after January 1, 2012, and completed in 2013 to determine whether the MCIOs completed investigations as required by DoD, Military Service, and MCIO guidance.” “A total of 532 of 536 MCIO investigations (99 percent) met investigative standards. This reflects a 10-percent improvement compared to findings in our previous evaluation of MCIO adult sexual

assault investigations, as reported in DODIG-2013-091.” The DoD OIG “returned 4 of 536 cases (1 percent) with significant deficiencies to the MCIOs for corrective action. This reflects an improvement from 56 of 501 cases (11 percent) returned in our previous evaluation, as reported in DODIG-2013-091.” “A total of 318 of the 536 cases had no deficiencies, and 85 cases had minor investigative deficiencies that did not impact the outcome of the investigation. The remaining 129 cases had only administrative deficiencies.”

DoD SAPR Office

During the last 5 years, the DoD SAPR Office has issued five reports about the SAPR programs at the Military Service Academies.

Report No. APY 2018-2019, “Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2018-2019”
January 30, 2020

DoD SAPRO reported that the cadets and midshipmen “[tended] not to intervene except in the most obvious situations, and live in cultures of sexually harassing behavior and alcohol misuse.” Additionally, DoD SAPRO reported that “the number of sexual assault reports increased, consistent with the Department’s policy to encourage reporting. However, a reporting rate cannot be determined as a prevalence survey was not conducted.” DoD SAPRO also reported that “students remain hesitant to report sexual assault, fearing negative social, academic, and career impacts.” The report indicated “leadership quality [varied], from healthy proactive approaches to endorsing toxic behaviors or being apathetic to sexual assault and harassment.” Report participants noted a “general lack of faith in cadet and midshipman peer leadership.”

Report No. APY 2017-2018, “Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2017-2018”
January 17, 2019

DoD SAPRO reported that the academies were “executing the plans they provided to the Department to address alcohol consumption, sexual assault prevention, academy culture, and sexual assault and sexual harassment reporting. These plans were mostly in place by September 2018 for the start of classes.” Additionally, DoD SAPRO reported it had found that “Academy leadership are diligently executing plans to reinvigorate prevention, improve reporting, enhance a culture of respect, and promote a disciplined force.”

Report No. APY 2016-2017, "Department of Defense Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2016-2017," January 22, 2018

DoD SAPRO reported that the academies' leaders were committed "to meeting victim response, healthcare, investigative, and military justice requirements identified in policy and law." DoD SAPRO told us that the USMA complied with DoD "policies that govern sexual assault and sexual harassment prevention, victim assistance and advocacy, investigation, accountability, and assessment." DoD SAPRO commended the USMA for contracting "an independent organization with expertise" in sexual assault prevention to assess USMA's prevention activities. DoD SAPRO reported that it reviewed the organization's assessment and found it was informative and research-based.

Report No. APY 2015-2016, "Department of Defense Annual Report on Sexual Harassment and Violence at the Military Service Academies, Academic Program Year 2015-2016," January 18, 2017

DoD SAPRO reported that the USMA continued "to make clear and demonstrable progress in supporting cadets and midshipmen who report sexual assault and ... provided substantial evidence that victim response, healthcare, investigative, and military justice resources worked well in response to sexual assault." DoD SAPRO also reported that the USMA continued "to field well-organized and well-functioning sexual assault response systems and ensured full staffing, training, and certification of [SAPR] personnel."

Acronyms and Abbreviations

APY	Academic Program Year
DD Form	Department of Defense Form
DNA	Deoxyribonucleic Acid
DoD OIG	Department of Defense Office of Inspector General
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
D-SAACP	Defense Sexual Assault Advocate Certification Program
DSAID	Defense Sexual Assault Incident Database
FBI	Federal Bureau of Investigation
HIPAA	Health Insurance Portability and Accountability Act
IG	Inspector General
JAG	Judge Advocate General
MCIO	Military Criminal Investigative Organization
MEB	Medical Evaluation Board
NDAA	National Defense Authorization Act
NHCA	Naval Health Clinic Annapolis
OIG	Office of Inspector General
PM	Program Manager
SAPR	Sexual Assault Prevention and Response
SAPRO	Sexual Assault Prevention and Response Office
SHARP	Sexual Harassment/Assault Response and Prevention
SVIP	Special Victim Investigation and Prosecution
TC	Trial Counsel
USAFA	United States Air Force Academy
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
USMA	United States Military Academy
VLC	Victims' Legal Counsel



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