

MIDLANT Legal Compass

Guiding Warfighters through Legal and Ethical Waters

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Reporting Requirements, Brig Time, and How to Keep Your Money.

This edition of the Legal Compass discusses the new sexual assault reporting requirements; the administrative consequences of one of your Sailors serving 31 day adjudged confinement in the brig, which could be a return to your command; and practice tips to recover monies lost by careless destruction of command property and to avoid check fraud. For the most up-to-date guidance and advice, contact your local RLSO MIDLANT Command Services Office.

As always, we end with our courts-martial and Board of Inquiry results. This gives you a snapshot of the cases that were completed this quarter and their results. For questions about these cases, please contact the trial department and SJA, Commander Navy Region Mid-Atlantic (CNRMA), respectively.

If there are ever topics you are interested in us covering or seeking additional information, please contact our Legal Compass Editor, the Command Services Department Head, LCDR Cheryl Ausband.

Very Respectfully,
 /s/
 David G. Wilson
 CAPT, JAGC, USN
 Commanding Officer, RLSO MIDLANT

The primary mission of Region Legal Service Office Mid-Atlantic (RLSO MIDLANT) is to provide prosecution, command services, and legal assistance support to eligible commands and persons in support of Fleet operational readiness.

The *MIDLANT Legal Compass* is a periodic newsletter published by the RLSO MIDLANT Command Services Department.



CO Sexual Assault Reporting Requirements

LCDR Adam Yost, JAGC, USN, Station Judge Advocate, NAS Oceana

Over the past several years, there have been many changes to the procedures for reporting sexual assault allegations in the Navy. This article summarizes commanding officer reporting requirements following an initial unrestricted¹ report of sexual assault.

As an initial matter, command operational reporting utilizing OPNAV 3100.6J is required for all incidents where the *alleged victim or offender is active duty, a dependent, or a Reservist on active duty*. It is also required for incidents involving civilians who are sexually assaulted on property under Department of Navy Jurisdiction. In general, the victim’s command will initiate all OPREP reporting on the incident. The exception to this rule applies in situations where the commander owns the accused, and the victim is not in the military. In those cases, the accused’s command should initiate OPREP reporting requirements. The first decision is the type of SITREP (between NAVY UNIT and NAVY BLUE) to send, which depends on the type of the report. The below box summarizes what situations require either a UNIT SITREP OR NAVY BLUE message. For situations where a NAVY BLUE message is appropriate, the command should send a voice report within five minutes of hearing about the allegation (sixty minutes for a UNIT SITREP), with a follow-on electronic SITREP message within the hour for either type of report. Commands should send SITREP updates every thirty days thereafter, until either the allegation’s disposition or the victim’s transfer to another command. In cases where a victim is transferring, commanders should ensure a closeout SITREP indicating the victim’s transfer to another command is annotated, and should list as an addressee the victim’s gaining command. In addition, commands gaining a victim, either via expedited transfer or normal PCS, should take up SITREP reporting requirements and include all previous commands of the victim in the addressee list until disposition of the allegation.

The facts of the case at hand dictate whether the first report should be a SITREP or NAVY BLUE message.

NAVY UNIT SITREP	NAVY BLUE
<p>Sexual assault <u>other than rape and forcible sodomy</u>, and <i>attempts</i> to commit these offenses.</p> <p><i>Sexual assault defined:</i> Intentional sexual contact, characterized by use of force, threats, intimidation, abuse of authority, or when the victim does not or cannot consent. For Unit SITREP purposes, sexual assault includes but is not limited unwanted sexual contact that is aggravated, abusive, or wrongful (to include unwanted and inappropriate sexual contact), or attempts to commit these acts. <i>Consult OPNAVINST F3100.6J, Appendix B, paragraph 5.e for more.</i></p>	<p>Rape: force or attempt to force an individual to perform or receive sexual intercourse, oral sex, anal sex, anal or vaginal penetration against one’s will or without one’s consent. Includes “aggravated sexual assault”</p> <p>- OR -</p> <p>Sexual assault <u>if media attention</u>: any unwanted or offensive touching of a sexual nature, attempted touching of the genitalia, breasts, or buttocks. This includes being made to sexually touch those areas or any other unwanted sexual contact.</p>

Different reporting requirements must be fulfilled within the hours, days and weeks following a report.

The next reporting requirement is known as the first flag report. This report is required to be made in person to the first flag officer in the victim's chain of command within thirty days of the initial allegation. The substance of this report should focus on how the allegation has affected the command climate and any other issues the CO deems appropriate.

While the investigation is ongoing, COs should take care to attend all SACMG meetings and ensure the victim is briefed personally with case updates until resolution. It is also advisable for commanding officers of both the victim and the accused to stay in contact with NCIS and the local RLSO trial shop during the course of the investigation.

While not addressed specifically in this article, COs should be mindful as well of their obligation to offer expedited transfers to all unrestricted victim reports of sexual assault immediately after receiving the allegation. Additionally, COs need to be aware of their requirement to complete a NAVPERS sexual assault disposition report (NAVPERS 1752/1) within two days of disposition of the case where: (1) they are the CO of the accused (status of the victim does not matter) or (2) they are the CO of the victim and the accused is not in the military.

While sexual assault reporting has many moving parts, by following the above guidance, COs can ensure both the rights of victims and accused are protected while providing the necessary information to Navy leadership. COs are encouraged to contact their servicing SJA if they have questions about sexual assault reporting procedures or requirements.

¹ This article analyzes the procedures for reporting unrestricted reports of sexual assault only. Commanders should not release OPREP messages relating to restricted reports of sexual assault, or attempt to inquire into or investigate what member of the command made a restricted report.

31 is Not a Magic Number

By LCDR John F. Butler, JAGC, USNR, a MilJus Litigation Qualified Specialist II

A Sailor's misconduct is burdensome on commanders for a number of reasons. Aside from wreaking havoc on good order and discipline, misconduct affects the mission and staffing requirements. Convening Authorities often consent to court-martial agreements that promote justice, accountability, expediency, and an opportunity to quickly rid a problem sailor from their rolls. Many believe that court-martial sentences in excess of 30 days confinement will facilitate this intent, but they are mistaken. Thirty-one is not a magic number.

The Navy Personnel Command is in the process of promulgating an update to Military Personnel Manual (MILPERSMAN) sections 1640-060 and 1640-070. In coordination with NAVADMIN 244/14, these policies communicate (although not well – hence the impending updated versions) the orders process for enlisted members subject to court-martial sentences. They establish a distinction between Temporary Additional Duty (TEMADD)(orders for 30 days or less) and Temporary Duty (TEMDU)(orders in excess of 30 days), which will be of no consequence in the future when the changes gets implemented as all orders will be considered Temporary Duty (TDY).

MILPERSMAN 1640-060 establishes the following policy:

When an enlisted member has been sentenced to confinement for 30 days or less, or was sentenced to confinement for 31 days or more, but **has less than 31 days remaining after sentence is adjusted by application of credits** (administrative, judicial, good conduct time, earned time, etc.), and was not awarded an unsuspended punitive discharge or dismissal; member shall be transferred temporary additional duty (TEMADD) to the designated confinement facility.

Put simply, if the sailor does not receive a punitive discharge and serves less than 31 actual days in confinement, that sailor still belongs to the command.

Commands and practitioners should consider the effects of SECNAVINST 1640.9C Enclosure 1, which is the Navy Corrections Manual. Chapter 9 Section 2 (9201) discusses the mechanics for Good Conduct Time (GCT) and Earned Time (ET). A Sailor will receive five days GCT credit for every month they serve and one day of ET credit per month (sentences 0-6 months get one day per month; see paragraph 2.(i)(1)(e)(3) for ET on sentences in excess of 6 months). To further complicate matters, confinement facility commanders can either “bump up or down” the ET, which means that the one day per month credit could theoretically become two.

The bottom line is this: if a Sailor does not receive a punitive discharge, they must have an adjudged sentence of 37 days or more to ensure that they obtain orders away from the command (37 days – 5 GCT – 1 ET = 31 days confinement). With many nuances in play, it is best to consider agreements that cap confinement at forty days or more if commands want assurances that they can replace their troubled sailors with those that can contribute to the mission. Just remember, 31 days is not a magic number!

*Good time in
the Brig might
mean a trouble
Sailor will
come back to
your command.*

Affirmative Claims Overview

By Andrea Cassem, Tort Claims Unit Managing Attorney

INFORM AND EDUCATE

If a command owns any government property that was damaged or destroyed within the past three years, there may be an opportunity for the Navy to recover the costs for repairing the damage caused by a third party. For DoN, this is done by Code 15's Tort Claims Unit (TCU) in Norfolk, Virginia. Under the the Federal Claims Collection Act (31 U.S.C. §3711), the U.S. Government may assert a claim against a tortfeasor who damages or destroys government property by asserting an affirmative claim. Per 10 U.S.C. § 2782, ***any funds collected for damage to real property*** (including land and property attached to the land, such as buildings, fences, gates, etc.) ***are to be returned to the account of the command that would repair or replace the property*** (i.e., the command that owned the damaged real property). Additionally, the TCU may also be able to assert a claim for non-real property. In such cases, the monies collected would go to the General Treasury vice the command. The most common affirmative claim we see is damage to a motor vehicle; there are special rules concerning affirmative motor vehicle claims so if you encounter one, you should contact the TCU for guidance.

INVESTIGATE

Affirmative claims don't file themselves. To assert an affirmative claim, the TCU must be provided with the required facts in order to attempt to recover from the tortfeasor. Accordingly, a litigation-report investigation conducted in accordance with Chapter II of the JAGMAN should be used to investigate all incidents or events that may potentially result in an affirmative claim. ***If the investigation is conducted for the purpose of asserting a potential affirmative claim on behalf of the DON, language highlighting that purpose should be included on the cover page of the investigation, in the endorsement, or in the email/letter forwarding the investigation to Code 15.***

ALTERNATIVES TO AFFIRMATIVE CLAIMS

In some cases, the command may not be able to wait for the affirmative claims process to provide reimbursement before they make repairs; rather, they may need to repair the damaged property immediately. In such cases, "repair or replacement in kind" is a practical mechanism that a command should consider (especially in those instances where the damaged Government property is a motor vehicle). This mechanism is outside of the "claims" process and can be tricky to apply correctly so it is strongly suggested that the TCU be consulted before discussing "repair or replacement in kind" with a tortfeasor.

Sometimes a Sailor may be held accountable to reimburse a command for damage to its property.

If you have any questions about the information in this email, including whether an affirmative claim or the “Repair or Replacement in Kind” is appropriate in a specific incident, please contact the TCU Managing Attorneys, Andrea Cassem or Stephanie Corbin, to discuss. They can be reached at 757-341-4541 and 757-341-4557, respectively or 757-341-4583.

How You Can Stop Check Fraud Now

By Dwain Alexander, Legal Assistance Attorney

Far too often servicemembers trying to find extra money fall prey to check fraud scams. Even when the servicemember tries to protect herself from check fraud she can be misled by quick access to funds deposited in her account. When servicemembers become victims of check fraud, it impacts more than just their bank account. Financial issues directly impact the family, morale, mission focus, and mission readiness of the servicemember. The below story illustrates the problem and identifies ways you and your financial institution can help stop check scams.

Seaman Smith was the victim of check fraud that cost her a car. She received PCS orders to the West Coast and wanted to sell her vehicle. She listed it on-line and was contacted by an out of state buyer (On-line transaction with an unknown source). On June 14, SN Smith negotiated the sale of her vehicle to the buyer. SN Smith was aware of check fraud scams and contacted her financial institution for guidance on how to receive payment, as well as when it was safe to deliver her vehicle. She was informed that the payment could be made over phone.

On June 15, SN Smith initiated a three way phone call between buyer, herself, and her financial institution. The buyer conveyed her account information to the financial institution over the phone. The deposit of \$15,000.00 was received as a check drawn on the buyer’s account. Later that day SN Smith called the financial institution to confirm that the payment was received. She was informed that it was received, but it would take 24 hours to process the deposit. (“Process deposit” does not mean verify that the check is valid)

On June 16, the account reflected that the deposit was pending. On June 17, the funds were in her account, loan was paid in full and the difference between the loan balance and the sales price was in her savings account. **(The funds were available in two days, but not actually deposited)** On June 18, SN Smith again checked her account to verify that the funds were still in the bank. Believing that the money had cleared, she delivered her vehicle to the buyer.

How to avoid a common check scam: know when clear means good to go.

Work with your financial institution, because you will be the one left on the hook.

On June 19, the financial institution notified SN Smith that the check was dishonored and they removed the funds from her accounts. **(Determination of invalid deposit after four days)** The buyer/thief received a free vehicle that is now listed on his facebook page for sale.

What steps could SN Smith take to prevent this from happening? She needed more information from her financial institution. She needed to know that the check had not cleared and that she was responsible for the funds if it did not clear.

The availability of funds from check deposits is regulated by the Expedited Funds Availability Act and the Federal Reserve Board, Regulation CC. The laws govern how soon funds must be made available - ***not*** *how soon checks must clear or what notification must be provided to the consumer on the status of the check*. Under the regulations consumers are allowed access to funds deposited in their account as soon as possible which usually means one or two business days. That is how the scammers get away with grand theft. They motivate the victim to quickly access the cash available in the account. It can take up to 30 days for a check to clear, although, the status of the check is often known within 5 to 10 business days. Under the law your bank has no liability when a deposited check does not clear. Your bank has a legal right to recover the money from you, their account holder. **(No risk to the financial institution)**

There are exceptions for certain checks that can provide protections for servicemembers and consumers. **“Non-local”** checks from another Federal Reserve Region, **“large deposits”** in excess of \$5,000.00, and checks with **“doubtful collectability”** can all be held. Holding the check allows additional time for processing and protects the servicemember from fraud. Under the Federal Reserve guidelines, access to the full amount of the buyers deposit in SN Smith’s transaction could have been delayed for up to 16 days. If the law is suspicious of these types of transactions, you should be too.

Simple steps that will protect you from being a victim of check fraud.

1. Ask to review your financial institutions fund availability policy for check deposits.
2. Remember “available funds” does not mean an “actual deposit” into your account.
3. Ask your financial institution to notify you when a check has been paid by the issuing institution.
4. Remember that if the check does not clear you are responsible for the funds withdrawn.
5. Ask what protections your financial institution provides for fraud.
6. Remember, time is on your side, wait until your financial institution states in writing that the deposit has cleared.
7. Ask your financial institution to place a hold on deposits from unknown or unfamiliar sources.

Legal Assistance: If your Sailors are in need of personal advice services, you should direct them to the RLSO MIDLANT Legal Assistance Department. For example, do they need a will? Are they going through a divorce and need general advice? Are they in a dispute with their landlord?

RLSO MIDLANT (Hampton Roads) Legal Assistance Service Hours:

If one of your Sailors needs legal assistance advice in the Hampton Roads area, direct them to the Legal Assistance Department onboard Naval Station Norfolk, located in Building A-50, 9620 Maryland Ave., Suite 100. Below are LA Department's hours of operation:

Powers of Attorney and Notary Services Walk-ins:

Mon – Thurs, 0800-1530

Will Walk-ins:

Mon, 0800-1100 & 1300-1530

Family Law:

Tues 0740-1100 & Thurs 0740-1100

Appointments for all other legal issues:

Made through the appointment line (757-341-4491)

Mon, 1000-1300

If your command is deploying, the Legal Assistance Department can send attorneys to your command to do will intakes and executions on-site (20 or more personnel). If you would like to organize a will workshop in the Hampton Roads area, please contact the Will Visit Coordinator at RLSOMIDLANTWillRequests@navy.mil. For Pre-deployment briefs, please contact LT Greg Gianoni at 757-341-4484.

RLSO MIDLANT (Northeast Locations) Legal Assistance Service

Hours: If your Sailor requires legal assistance in the Northeast AOR, please contact Legal Assistance office at the respective detachment office for their hours of operation:

Groton: (860) 694-3741

Newport: (401) 841-3766

Earle/Lakehurst: (732) 866-2066

Command Services: Attorneys in the Command Services Department provide legal advice and support to commands and command representatives (i.e. legal officers) that do not have an assigned Staff Judge Advocate (SJA). Covered areas include investigations, NJPs and other disciplinary proceedings, administrative separation boards, and ethics. To speak with an attorney in Norfolk's Command Services Department, please call 757-444-1266.

If your command is located in the Northeast AOR, please see the complete listing of SJAs on page 12.

RLSO MIDLANT Adjudged Court-Martial Sentences January – March 2015

General Courts-Martial

In Norfolk, VA an E-7 plead guilty to failure to obey a lawful general order, wrongfully soliciting another service member to disobey a lawful general order, false official statement, and making a false claim. On 22 January 2015, the military judge sentenced confinement for 165 days, reduction to E-2, and a bad conduct discharge.

In Norfolk, VA an E-1 plead guilty to assault consummated by battery and obstructing justice. On 26 January 2015, the military judge sentenced 180 days confinement and a fine of \$500.00.

In Norfolk, VA an E-4 plead guilty to failure to obey a lawful general order. On 29 January 2015, the military judge sentenced 5 months confinement, reduction to E-1, and total forfeitures of all pay and allowances for 5 months.

In Norfolk, VA an E-5 was tried for three specifications for committing a sexual act upon another service member. On 12 February 2015, the military judge returned a verdict of not guilty.

In Norfolk, VA an O-6 plead guilty to two specifications of failure to obey a lawful general order. On 3 March 2015, the military judge sentenced 30 days confinement and forfeiture of \$1500 for 12 months.

In Norfolk, VA an E-4 plead guilty to attempting to commit a sexual act on a service member, failure to obey a lawful general order, and five specifications of committing a sexual act upon a service member. On 6 March 2015, the military judge sentenced 19 years confinement, total forfeitures of all pay and allowances, reduction to E-1 and a dishonorable discharge.

In Norfolk, VA an E-6 was found guilty of failure to obey a lawful general order and committing a sexual act upon a civilian. On 19 March 2015, a panel of members with enlisted representation sentenced 60 days confinement, reduction to E-3 and a reprimand.

In Norfolk, VA an E-4 was tried for four specifications for committing a sexual act upon another service member. On 20 March 2015, a panel of members returned a verdict of not guilty.

Special Courts-Martial

In Norfolk, VA an E-5 plead guilty to willfully damaging nonmilitary property, willfully burning the property of another service member, and two specifications of assault consummated by battery. On 12 February 2015, the military judge sentenced 5 months confinement and reduction to E-3.

In Norfolk, VA an E-5 plead guilty to two specifications of stealing nonmilitary property and three specifications of uttering checks without sufficient funds. On 20 February 2015, the military judge sentenced 11 months confinement, forfeiture of 2/3 pay for 11 months, reduction to E-1, and a bad conduct discharge.

In Norfolk, VA an E-9 was found guilty of 5 specification of failure to obey a lawful general order. On 28 February 2015, a panel of members with enlisted representation sentenced 89 days confinement, forfeiture of \$2062 for 3 months, and reduction to E-5.

In Norfolk, VA an E-3 plead guilty to two specifications of wrongfully and without authority wearing an unauthorized ribbon. On 11 March 2015, the military judge sentenced 45 days confinement, forfeiture of 1/2 months pay for 2 months, and reduction to E-1.

In Norfolk, VA an E-5 plead guilty to two specifications of dereliction of duty and two specifications of larceny of military property. On 12 March 2015, the military judge sentenced 120 days confinement, reduction to E-4, and a bad conduct discharge.

In Norfolk, VA an E-5 was tried for wrongfully using a controlled substance. On 26 March 2015, a panel of members returned a verdict of not guilty.

In Groton, CT an E-4 plead guilty on divers occasions to assaulting spouse by pushing spouse against a wall and adultery. On 31 May 2015, the military judge sentenced reduction in rate to E-1, confinement for 9 (nine) months, and a Bad Conduct Discharge.

RLSO MIDLANT Board of Inquiry Results January – March 2015

During a board held on 7 Jan 2015 an O-4, USN was ordered to show cause for retention due to misconduct Article 92, 120(d), 128, and 133. The board found that the member did commit sexual harassment. The board recommended that the member be retained on active duty.

During a board held on 16 Jan 2015 an O-3, USN, was ordered to show cause for retention due to substandard performance of duty. The board found that the member failed to conform to prescribed standards of dress, weight, personal appearance, or military deportment. The board recommended the member be retained on active duty.

During a board held on 23 Jan 2015 an O-5, USN, was ordered to show cause for retention due to misconduct under Article 92 (two specifications). The board found that the member did commit fraternization. The board recommended that the member be separated from active duty with a General characterization of service.

During a board held on 11 Feb 2015 an O-3, USN, was ordered to show cause for retention due to substandard performance of duty. The board found that the member failed to conform to prescribed standards of dress, weight, personal appearance, or military deportment. The board recommended the member be separated with an Honorable characterization of service.

During a board held on 24 Feb 2015 an O-5, USN, was ordered to show cause for retention due to misconduct under Article 92 (two specifications) and 133 (two specifications). The board found that the member did fail to obey such order or regulation and did commit fraternization. The board recommended that the member be separated from active duty with an Honorable characterization of service.

During a board held on 25 Feb 2015 an O-4, USN, was ordered to show cause for retention due to misconduct under Article 92. The board found that the member did commit sexual harassment. The board recommended that the member be separated from active duty with a General characterization of service.

During a board held on 17 Mar 2015 an O-3, USN, was ordered to show cause for retention due to substandard performance of duty. The board found that the member did not fail to conform to prescribed standards of dress, weight, personal appearance, or military deportment.

During a board held on 25 Feb 2015 an O-3, USN, was ordered to show cause for retention due to misconduct under Article 92 and 133. The board found that the member did commit sexual harassment. The board recommended that the member be separated from active duty with a General characterization of service.

During a board held on 25 Mar 2015 an O-3, USN, was ordered to show cause for retention due to misconduct under Article 92, 133 and 134. The board found that the member did not commit sexual harassment or adultery. The board recommended that the member be retained on active duty.

During a board held on 26 Mar 2015 a CW03, USN, was ordered to show cause for retention due to misconduct under Article 92 and 133. The board found that the member did commit sexual harassment or fraternization. The board recommended that the member be retained on active duty.

RLSO MIDLANT
COMMAND SERVICES TEAM

HAMPTON ROADS AOR

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(757-444-1266)

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RLSO Mid-Atlantic welcomes suggestions for articles and recommendations for improvement. For addition to the RLSO Legal Compass distribution list or to make suggestions or recommendations, please email:

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