



April 2024

MILITARY JUSTICE

Quality Data Needed to Improve Oversight of Navy and Marine Corps Disciplinary Measures

Accessible Version

GAO Highlights

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Highlights of [GAO-24-106652](#), a report to the Committee on Armed Services, House of Representatives

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Quality Data Needed to Improve Oversight of Navy and Marine Corps Disciplinary Measures

Why GAO Did This Study

The Navy and the Marine Corps impose nonjudicial punishment as a disciplinary measure for minor offenses. A service member's career can be stigmatized by a record of nonjudicial punishment, which can lead to involuntary separation with less than an honorable discharge, according to Navy and Marine Corps officials.

House Report 117-397 includes a provision for GAO to review the Department of the Navy's use of the vessel exception and policies related to nonjudicial punishment. Among other things, this report 1) describes Navy and Marine Corps guidance for using the vessel exception, and 2) assesses the extent to which the Navy and the Marine Corps report quality data for oversight of the vessel exception.

GAO analyzed guidance, policies, and data; interviewed relevant officials; and conducted one site visit onboard a vessel at sea.

What GAO Recommends

GAO is making two recommendations to improve oversight of the vessel exception, specifically that the Navy and the Marine Corps each establish a time frame for automating processes to collect and maintain quality nonjudicial punishment data in respective personnel databases and then implement these automated processes. The Department of Defense concurred with GAO's recommendations.

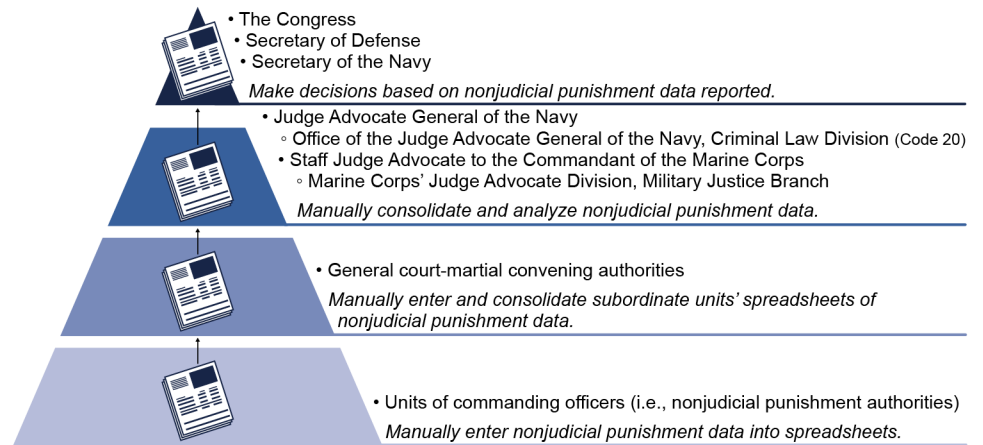
What GAO Found

Nonjudicial punishment, such as forfeiture of pay or a reduction in grade, is a tool to deter misconduct, maintain discipline, and improve performance without going through the court-martial process. Service members onboard a vessel at sea cannot refuse nonjudicial punishment and demand a trial by court-martial when a commanding officer uses the vessel exception. The Navy and the Marine Corps are refining guidance on the use of the vessel exception for nonjudicial punishment and plan to evaluate policy changes as new guidance is issued. For example, in November 2023, the Department of the Navy issued guidance that restricts use of the vessel exception when a ship is undergoing maintenance and is not operational. With these ongoing efforts, the

Department of the Navy is on track to improve oversight of nonjudicial punishment and the use of the vessel exception.

The Navy and the Marine Corps have processes in place to report nonjudicial punishment data. However, GAO found, and Navy and Marine Corps officials acknowledged, that the accuracy and completeness of nonjudicial punishment data are limited due to human error and lack of automated processes. The Navy planned to use an automated system by October 2022 to collect nonjudicial punishment data but did not meet this goal due to funding constraints, according to Navy officials. Further, although the Navy issued a revised policy that clarifies reporting on the use of the vessel exception in January 2024, the policy does not address data quality issues stemming from the manual compilation of data. Without establishing a time frame to automate the collection and maintenance of quality nonjudicial punishment data and then implementing these automated processes, the Navy, the Marine Corps, and Congress may be hindered in their ability to provide sufficient oversight of nonjudicial punishment and the use of the vessel exception. Such oversight would include the use of quality data to analyze trends in military justice processes and to measure the effectiveness of discipline-related initiatives.

Navy and Marine Corps Process for Reporting Nonjudicial Punishment Data, as of January 2024



Source: GAO analysis of JAG Instruction 5800.9F and Navy and Marine Corps information; GAO (images). | GAO-24-106652

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April 18, 2024

The Honorable Mike Rogers
Chairman
The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

Navy and Marine Corps commanding officers can impose nonjudicial punishment under Article 15 of the *Uniform Code of Military Justice* to deter misconduct, maintain discipline, and encourage service members to improve their performance whether ashore or onboard a vessel.¹ Service members who are attached to or embarked in a vessel do not have the right to refuse nonjudicial punishment and demand trial by military court-martial when the vessel exception is used.² Such punishment is intended as a minor disciplinary action. However, a record of nonjudicial punishment can stigmatize a service member's career and lead to an involuntary separation with a less than honorable discharge, according to

¹10 U.S.C. §§ 801-946a. The *Uniform Code of Military Justice* provides the statutory framework of the military justice system and establishes the complete code of military criminal law. It also outlines the jurisdiction and basic procedure of the military justice system and provides the legal framework for conducting investigations and prosecutions of allegations of misconduct by service members. The jurisdiction of the *Uniform Code of Military Justice* extends to all places and applies to all active-duty service members. This jurisdiction applies to other individuals as well, such as members of the National Guard or reserves who are performing active-duty service; retired service members who are entitled to pay or are receiving hospitalization in a military hospital; prisoners of war in custody of the armed forces; persons serving with or accompanying the armed forces in the field in time of declared war or contingency operations, such as contractors; and members of organizations such as the National Oceanic and Atmospheric Administration and the Public Health Service when assigned to and serving with the armed forces.

²See 10 U.S.C. § 815. The Navy recently revised its guidance to define the term "attached to or embarked in a vessel" as a person who is assigned or attached via written or oral orders, either permanent or temporary, to a vessel; is aboard for passage; or is assigned or attached to an embarked staff, unit, detachment, squadron, team, air group, or other regular organized body. The determination of whether a person is attached to or embarked in a vessel is based on the totality of the circumstances, and commanding officers are prohibited from applying the vessel exception when the vessel is not operational. Department of the Navy, JAG Instruction 5800.7G CH-2, section 0108a, *Manual of the Judge Advocate General* (Dec. 1, 2023) (hereafter referred to as *JAGMAN*). A military court-martial is a legal proceeding where courts try a member of the military for offenses against military law. Courts-martial are governed by the provisions of the *Uniform Code of Military Justice*, except as otherwise provided by statute.

Navy and Marine Corps officials. See text box below for a list of key concepts used in this report.

Key Concepts Used in This Report

Nonjudicial Punishment Proceeding: A nonjudicial punishment proceeding refers to the procedure authorized by Article 15 of the *Uniform Code of Military Justice*. This procedure can be referred to in many ways, including “Article 15”; “Captain’s Mast” in the Navy; or “Office Hours” in the Marine Corps.

Nonjudicial Punishment: Nonjudicial punishment is a term that describes the punishment imposed at the conclusion of an Article 15 of the *Uniform Code of Military Justice* proceeding. Nonjudicial punishment is a disciplinary measure more serious than administrative corrective measures such as counseling, admonition, and reprimand, but less serious than trial by court-martial.

Vessel Exception: The vessel exception to Article 15 of the *Uniform Code of Military Justice*, 10 U.S. Code § 815, provides that “[E]xcept in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the armed forces under this article if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment.” As a result, service members who are “attached to or embarked in a vessel” do not have the right to refuse nonjudicial punishment and demand trial by court-martial.

Source: GAO analysis of *Manual for Courts-Martial United States* (2024 Edition); and Department of the Navy, JAG Instruction 5800.7G CH-2, *Manual of the Judge Advocate General* (Dec. 1, 2023). | GAO-24-106652

The Military Justice Act of 2016 enacted significant reforms to the *Uniform Code of Military Justice*, with most of its provisions taking effect on January 1, 2019.³ These reforms included changes to military justice data collection and accessibility efforts as well as limitations on the types of punishments permitted for nonjudicial punishment.⁴ Consequently, there is continuing congressional interest in commanding officers’ authority and service members’ rights under the statutory framework of the *Uniform Code of Military Justice*, including when imposing nonjudicial punishment and using the vessel exception.

House Report 117-397, accompanying a bill for the National Defense Authorization Act for Fiscal Year 2023, included a provision for us to review the Department of the Navy’s use of the vessel exception and policies related to legal review of nonjudicial punishment.⁵ Our report (1)

³Military Justice Act of 2016, passed as part of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, §§ 5001-5542 (2016).

⁴Specifically, section 5504 of the Military Justice Act of 2016 directed the Secretary of Defense to prescribe uniform standards and criteria pertaining to case management, data collection, and accessibility of information in the military justice system. Pub. L. No. 114-328, § 5504 (*codified* at 10 U.S.C. § 940a). Moreover, section 5141 of this act removes the authority to restrict a service member’s diet to bread and water or to diminish rations during confinement as a potential nonjudicial punishment.

⁵H.R. Rep. No. 117-397, at 147-148 (2022).

describes Navy and Marine Corps guidance for use of the vessel exception when imposing nonjudicial punishment, (2) assesses the extent to which the Navy and the Marine Corps report quality data on nonjudicial punishment to provide oversight of the vessel exception, and (3) describes how Navy and Marine Corps Judge Advocates are involved in the nonjudicial punishment process, including to conduct legal reviews and consult with accused service members.⁶

For our first objective, we reviewed and analyzed relevant Department of the Navy and military service-level guidance on the use of the vessel exception when imposing nonjudicial punishment, including overarching policies on nonjudicial punishment and the use of the vessel exception.⁷

For our second objective, we reviewed Department of the Navy- and Marine Corps-specific guidance on the collection and use of nonjudicial punishment data captured in spreadsheets from fiscal year 2021 through fiscal year 2023, the most recent and consistently captured data available

⁶For the purposes of this report, we included the Navy and the Marine Corps within the scope of our work in reviewing the Department of the Navy's nonjudicial punishment and vessel exception efforts. As a result, when we refer to the "Department of the Navy," this includes both the Navy and the Marine Corps military services because they are components of the Department of the Navy. However, when we refer to the "Navy," we are referring specifically to the individual military service. Also, we did not include the Coast Guard within our scope because the Coast Guard is part of the Department of Homeland Security, except when operating as part of the Department of the Navy under section 103 of title 14, United States Code.

⁷Department of the Navy, ALNAV 091/23, *Updated Policies Governing Article 15, the Uniform Code of Military Justice Proceedings* (Nov. 8, 2023); JAGMAN; USN/USMC *Commander's Quick Reference Legal Handbook (QUICKMAN)* (August 2022); and Marine Corps, Legal Support and Administration Manual, MCO 5800.16 – V15, *Officer Misconduct and Substandard Performance of Duty* (Aug. 8, 2018). The other guidance we reviewed are the Department of the Navy, Criminal Law Division (Code 20) Sidebar, *Vessel Exception Policy Changes* (November 2023); Department of the Navy, Code 20 Sidebar, *Nonjudicial Punishment and the "Vessel Exception"* (July 2021); Office of the Chief of Naval Operations Instruction 3000.15A, *Optimized Fleet Response Plan* (Nov. 10, 2014); and Naval Military Personnel Manual 1306-802, *Surface Ships Undergoing Construction and Conversion* (Aug. 22, 2020).

at the time of our review.⁸ We assessed the information we obtained on reporting nonjudicial punishment data against criteria in JAGINST 5800.9F on the collection and maintenance of accurate and timely statistical information.⁹ We also determined that the control environment component of the *Standards for Internal Control in the Federal Government* was significant to assess the extent to which the Navy and the Marine Corps report quality data on nonjudicial punishment to provide oversight of the vessel exception.¹⁰

We assessed the reliability of the nonjudicial punishment data captured in spreadsheets from fiscal year 2021 through fiscal year 2023 by analyzing Navy and Marine Corps nonjudicial punishment data aggregated from submissions, to include the use of the vessel exception, and by interviewing Navy and Marine Corps officials to determine how data is collected, analyzed, and reported and to obtain their perspectives on any associated limitations as well as efforts to address these limitations. We found that data elements for reporting the number of nonjudicial punishments, including those where the vessel exception was used, were not sufficiently reliable or of undetermined reliability. As a result, we did not report numbers of nonjudicial punishments imposed or vessel exception uses. The limitations of these data elements and their effects are discussed in this report.

For our third objective, we reviewed and analyzed Navy- and Marine Corps-specific guidance on the involvement of Judge Advocates in the nonjudicial punishment process, including to conduct legal reviews and

⁸This nonjudicial punishment data is captured within the *Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report*. Department of the Navy, Office of the Judge Advocate General, JAG Instruction 5800.9F, *Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR)* (Jan. 27, 2024); JAG Instruction 5800.9F, *Enclosure 1: Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report Submission Spreadsheet* (Jan. 27, 2024); and JAG Instruction 5800.9F, *Enclosure 2: Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report Instructions* (Jan. 27, 2024). We also reviewed Article 146a, *Uniform Code of Military Justice*, which requires the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to provide an annual report to the Armed Services Committees, the Secretary of Defense, and the Secretary of the Navy on military justice actions conducted in the previous year, and section 540I of the National Defense Authorization Act for Fiscal Year 2020, which requires the Secretary of the Navy to record the race, ethnicity, and gender of the victim and the accused for each court-martial conducted. See Pub. L. No. 116-92, § 540I (2019).

⁹JAGINST 5800.9F.

¹⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 10, 2014).

consult with accused service members.¹¹ See appendix I for our full scope and methodology, including a list of organizations we contacted over the course of this review.

In support of all three objectives, we interviewed officials from Navy and Marine Corps components with responsibilities for developing policy or overseeing military justice matters related to nonjudicial punishment efforts.¹² Additionally, to obtain perspectives on the use of the vessel exception when service members are ashore or attached to or embarked in a vessel, we conducted 12 individual semi-structured interviews with a nongeneralizable sample of Navy and Marine Corps commanding officers and 13 individual interviews and seven group discussions with a nongeneralizable sample of Judge Advocates—military attorneys—or legal officers.¹³ We also conducted one site visit at Newport News Shipbuilding, Virginia, and onboard a vessel at sea. Because we did not use a statistically representative sampling method, the officials' perspectives are used to provide illustrative examples and are nongeneralizable.

We conducted this performance audit from February 2023 to April 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

¹¹ALNAV 091/23; *JAGMAN*; *USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN)*; and MCO 5800.16 – V15. The other guidance we reviewed are the Department of the Navy, Criminal Law Division (Code 20) Sidebar, *Vessel Exception Policy Changes* (November 2023); and Department of the Navy, Code 20 Sidebar, *Nonjudicial Punishment and the "Vessel Exception"* (July 2021).

¹²Specifically, we spoke with officials from the Navy Judge Advocate General's Corps, Navy Personnel Command, the Marine Corps' Judge Advocate Division, and the Marine Corps Manpower and Reserve Affairs Manpower Information Systems Branch.

¹³The term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command under section 801 of title 10, United States Code.

Background

Overview of the Military Justice System

According to the *Manual for Courts-Martial*, the purpose of military law is to strengthen the national security of the United States by promoting justice, deterring misconduct, facilitating appropriate accountability, assisting in maintaining good order and discipline in the armed forces, and promoting efficiency and effectiveness in the military establishment.¹⁴ The military justice system has rules, proceedings, and consequences that are different from the rights and obligations in the civilian criminal court system.¹⁵ In addition to articles that punish traditional crimes, such as unlawful drug use and assault, the *Uniform Code of Military Justice* includes unique military offenses such as desertion, failure to obey orders or regulations, and misbehavior before the enemy. These unique military offenses are specifically proscribed in the military context because of their deleterious effect on morale and mission accomplishment.

Courts-Martial and Nonjudicial Punishment

In creating the military justice system, Congress established three types of military courts, called courts-martial: summary, special, and general,

¹⁴The President has implemented the *Uniform Code of Military Justice* through the *Manual for Courts-Martial*, which became effective on May 31, 1951, and was initially prescribed by Executive Order 10214. Exec. Order No. 10214, *Prescribing the Manual for Courts-Martial*, United States, 1951, 16 Fed. Reg. 1303 (Feb. 8, 1951). On July 28, 2023, Executive Order 14103 amended the *Manual for Courts-Martial*. Exec. Order No. 14103, *2023 Amendments to the Manual for Courts-Martial*, United States, 88 Fed. Reg. 50535 (July 28, 2023). The *Manual for Courts-Martial* contains the Rules for Courts-Martial, the Military Rules of Evidence, and the *Uniform Code of Military Justice*. Each military service may supplement the *Manual for Courts-Martial* with its own guidance to meet the service's needs when authorized to do so by the President.

¹⁵Article III of the Constitution of the United States governs the federal judiciary but does not give it any explicit role in the military. Military courts, referred to as courts-martial, are not considered to be Article III courts and thus are not subject to all of the rules that apply in federal courts. For example, the U.S. Constitution specifically exempts military members accused of a crime from the Fifth Amendment right to a grand jury indictment, from which the Supreme Court has inferred that there is no right to a civil jury in courts-martial. See *Johnson v. Sayre*, 158 U.S. 109, 114 (1895). Military courts are established pursuant to Article I of the U.S. Constitution and as a result are of limited jurisdiction.

each of which is conducted by a convening authority.¹⁶ Each of these types, respectively, is intended to deal with progressively more serious offenses, and each court-martial type may adjudicate more severe maximum punishments as prescribed under the *Uniform Code of Military Justice*.¹⁷ In addition, an accused service member can receive nonjudicial punishment under Article 15 of the *Uniform Code of Military Justice*, by which an authorized commanding officer—nonjudicial punishment authority—can punish a service member without going through the court-martial process.¹⁸ The following provides an overview of nonjudicial punishment in the Navy and the Marine Corps:

- **Purpose.** To provide commanding officers with an essential and prompt means of maintaining good order and discipline and to promote positive behavior changes in service members without the stigma of a court-martial conviction by disciplining minor offenses committed by enlisted service members or officers.
- **Right to consult with defense counsel.** Accused is entitled to consult with defense counsel when operationally feasible.
- **Right to demand a court-martial.** Accused may demand a court-martial in lieu of nonjudicial punishment unless the vessel exception applies.
- **Decided by.** Commanding officer.
- **Maximum possible punishments.** Maximum punishments range widely depending on the grade of both the commanding officer imposing the punishment and of the service member being punished. For example:
 - **Officer.** Reprimand, restrictions with or without suspension from duty for up to 30 days, arrest in quarters for up to 30 days, forfeiture of one-half month's pay for 2 months, etc.
 - **Enlisted.** Reprimand, restrictions with or without suspension from duty for up to 60 days, correctional custody for up to 30 days,

¹⁶A convening authority is an officer empowered to convene general, special, or summary courts-martial pursuant to Rule for Court-Martial 504 of the *Manual for Courts-Martial* and section 0120 of the *JAGMAN*.

¹⁷In addition to the maximum punishments that may be adjudicated by each type of court-martial, various relevant executive orders prescribe a maximum punishment for each offense.

¹⁸A nonjudicial punishment authority is an officer authorized to impose nonjudicial punishment pursuant to paragraph 2 of Part V of the *Manual for Courts-Martial* and section 0106 of the *JAGMAN*.

forfeiture of one-half month's pay for 2 months, reduction in grade, extra duties for up to 45 days, etc.¹⁹

- **Right to appeal.** Accused is entitled to appeal a nonjudicial punishment.²⁰

Department of the Navy Roles and Responsibilities for Nonjudicial Punishment

Various organizations across the Department of the Navy play a role in overseeing and implementing the department's military justice matters related to nonjudicial punishment in the Navy and the Marine Corps.

- **Navy**
 - Office of the Judge Advocate General of the Navy, Criminal Law Division (Code 20) (hereafter referred to as the Navy's Code 20). Oversees all aspects of military justice policy within the Department of the Navy, under the Judge Advocate General's Corps, to include nonjudicial punishment matters.
 - Defense Service Office. Under the Judge Advocate General's Corps, provides legal representation to military service members for Administrative Separation Boards, Boards of Inquiry, and Courts-Martial, in addition to providing advice to service members on defense-related topics such as nonjudicial punishment.
 - Navy Personnel Command. Supports the needs of the Navy, under the Secretary of the Navy and the Chief of Naval Operations, by maintaining information that affects personnel systems and functions in the fleet, including some nonjudicial punishment data.
- **Marine Corps**
 - Marine Corps' Judge Advocate Division, Military Justice Branch (hereafter referred to as the Marine Corps' Military Justice Branch). Under the Staff Judge Advocate to the Commandant of the Marine Corps and Deputy Director of Military Justice and

¹⁹Prior to changes effective on January 1, 2019, under the Military Justice Act of 2016, one possible nonjudicial punishment was diminished rations of bread and water for 3 days or less, if onboard a vessel. Pub. L. No. 114-328, § 5141 (2016).

²⁰According to section 0117 of the *JAGMAN*, a general court-martial convening authority has the appellate authority over commanding officers awarding nonjudicial punishment.

Community Development, provides advice on military justice policy and legislation, to include nonjudicial punishment matters.

- Defense Services Organization. Under the Staff Judge Advocate to the Commandant of the Marine Corps and Chief Defense Counsel of the Marine Corps, provides defense counsel services to marines worldwide, including consultations for those facing nonjudicial punishment.
- Marine Corps Manpower and Reserve Affairs, Manpower Information Systems Division. Provides staff assistance to plan, develop, control, integrate, and enhance manpower information systems for both garrison and expeditionary environments and manages functions related to personnel administration and nonjudicial punishment data.

Prior GAO Work on Nonjudicial Punishment and Related Recommendations

Our recent prior work on nonjudicial punishment matters highlighted concerns about the collection and reporting of related data as well as the assessment of racial and gender disparities, among other matters. Specifically, in May 2019, we issued a report on this information and found, among other things, that the military services did not collect and maintain consistent information about race and ethnicity in their investigations, military justice, and personnel databases, which limited their ability to identify disparities.²¹ As a result of our findings, we made 11 recommendations, including one to the Navy to consider the feasibility of collecting and maintaining complete information for all nonjudicial punishment cases, with which the Navy concurred. In August 2021, we reported that the Navy had implemented this recommendation aimed at improving its ability to collect and maintain complete nonjudicial

²¹GAO, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities*, [GAO-19-344](#) (Washington, D.C.: May 30, 2019). The scope of our review included all five military services as of May 2019: the Army, the Marine Corps, the Navy, the Air Force, and the Coast Guard. Although the Coast Guard is part of the Department of Homeland Security, the Coast Guard is a military service and a branch of the armed forces at all times. We did not include the Space Force in our scope as it was established in December 2019, after the issuance of our report.

punishment data.²² For details on the status of all 11 recommendations as of February 2024, see appendix II.

Navy and Marine Corps Are Refining Vessel Exception Guidance and Plan to Evaluate Its Implementation

Navy and Marine Corps Are Refining Guidance on the Use of the Vessel Exception

The Navy and the Marine Corps are in the process of refining guidance to address the use of the vessel exception. In September 2022, the Department of the Navy began a review of the use of the vessel exception in response to congressional interest and as part of its periodic internal review processes, according to Navy officials. As a result of this review, on November 8, 2023, the Department of the Navy issued authoritative guidance in an All Navy Message entitled, *Updated Policies Governing Article 15, the Uniform Code of Military Justice Proceedings*.²³ The department issued the updated guidance to clarify the definition of when a vessel is operational to ensure consistent use of the vessel exception. This guidance restricts the use of the vessel exception during the maintenance and modernization phase when a ship is not operational and describes how nonjudicial punishment ensures the ability to maintain good order and discipline.

In addition, the Department of the Navy's All Navy Message includes direction to the Judge Advocate General of the Navy to reflect policy changes within the *Manual of the Judge Advocate General* (referred to as *JAGMAN*).²⁴ As a result, an update to the *JAGMAN* was issued on December 1, 2023, with revisions reflecting the policy changes outlined in

²²For additional details, see GAO, *Military Justice: DOD and Coast Guard Improved Collection and Reporting of Demographic and Nonjudicial Punishment Data, but Need to Study Causes of Disparities*, [GAO-21-105000](#) (Washington, D.C.: Aug. 30, 2021). Also, see GAO, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities*, [GAO-20-648T](#) (Washington, D.C.: June 16, 2020).

²³ALNAV 091/23.

²⁴*JAGMAN*. The Department of the Navy's prior version of the manual was issued in February 2022. The *JAGMAN* contains regulations to implement and supplement the *Manual for Courts-Martial*, to include regulations and procedures relating to nonjudicial punishment.

the All Navy Message. The department also revised its Code 20 Sidebar guidance in November 2023, to address the vessel exception policy changes outlined in the All Navy Message. The revised sidebar serves as a reference guide for Judge Advocates. This sidebar includes key considerations for using the vessel exception, such as:

- a list of frequently asked questions with responses;
- scripts for notifying an accused service member of their rights when the vessel exception is and is not used; and
- a decision flow chart that includes multiple questions for applying a totality of the circumstances test to help determine the use of the vessel exception, as shown in appendix III.²⁵

Furthermore, officials from the Navy's Code 20 told us they plan to issue a revised version of other existing guidance on nonjudicial punishment. Specifically, these officials plan to revise the *USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN)*.²⁶ Last issued in August 2022, the *QUICKMAN* provides procedural information to assist commanding officers with legal matters within their command, such as nonjudicial punishment. The Navy plans to revise the *QUICKMAN* by summer 2024, according to officials from the Navy's Code 20.

Navy and Marine Corps Plan to Evaluate the Implementation of Its New Policies

While the Department of the Navy has taken steps to refine guidance for the use of the vessel exception, it also recognizes the need to evaluate the implementation of new requirements in its All Navy Message and *JAGMAN*.²⁷ Specifically, officials from the Navy's Code 20 and the Marine Corps' Military Justice Branch acknowledged that they have room for improvement in ensuring that commanding officers are using the vessel exception fairly, consistently, and justly in accordance with the new requirements in the *JAGMAN*. These requirements state that, for

²⁵Department of the Navy, Criminal Law Division (Code 20) Sidebar, *Vessel Exception Policy Changes* (November 2023). To review the original graphic as it appears in this sidebar, see appendix III. The Navy's Office of the Judge Advocate General issued a Code 20 Sidebar in July 2021, which also provided guidance on the use of the vessel exception. Department of the Navy, Code 20 Sidebar, *Nonjudicial Punishment and the "Vessel Exception"* (July 2021).

²⁶*USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN)*.

²⁷ALNAV 091/23 and *JAGMAN*.

example, commanding officers “with personnel attached to or embarked in a vessel are prohibited from applying Article 15’s vessel exception when the vessel is not operational.” For these purposes, a vessel is considered not operational when, per the Optimized Fleet Response Plan, the vessel is:

- in the maintenance and modernization phase,
- in a precommissioning status, or
- otherwise designated as not operational by a higher authority.²⁸

The Department of the Navy plans to evaluate the implementation of its new policies, but Navy officials are still deliberating on the timeframe for initiating and frequency of such evaluations, according to officials from the Navy’s Code 20. Additionally, these officials plan to review quarterly nonjudicial punishment data to evaluate how the Navy’s and the Marine Corps’ use of the vessel exception when imposing nonjudicial punishment is affected by the new policies in the All Navy Message, *JAGMAN*, and subsequent related guidance updates.

With these ongoing efforts, the Department of the Navy is on track to conduct oversight of nonjudicial punishment, to include the use of the vessel exception. Effective implementation of these efforts is important because of the perspectives we obtained from Navy and Marine Corps officials we interviewed. Prior to the issuance of the All Navy Message, Navy and Marine Corps officials we interviewed shared their perspectives about the appropriate use of the vessel exception and potential outcomes from policy changes:

- **Appropriate use of the vessel exception.** Eleven of 12 commanding officers we interviewed stated that the vessel exception has a positive effect on maintaining good order and discipline, but perspectives

²⁸The Department of the Navy’s *Optimized Fleet Response Plan* is an operational framework with several phases (i.e., maintenance and modernization; training; and sustainment) designed to optimize the return on training and maintenance investments, maintain sailor quality of service, and ensure units and forces are certified in defined, progressive levels of employable and deployable capability. The maintenance phase is the optimal period for vessel repairs, upgrades, force reconstitution, and platform modernization in shipyards, lasting from 6 to 16 months. As a result, time available for training and operations at sea is compressed. OPNAVINST 3000.15A; *see also* Commander, U.S. Fleet Forces Command Instruction 3000.15B/Commander, U.S. Pacific Fleet Instruction 3000.15B/Commander, U.S. Naval Forces Europe/Africa Instruction 3000.15, *Optimized Fleet Response Plan* (Oct. 20, 2020). The precommissioning period involves new construction or conversion of vessels and is not equipped to handle excessive personnel-related administrative burdens. MILPERSMAN 1306-802.

differed on the appropriate use of the vessel exception. For example, one commanding officer we spoke with said that the vessel exception should be available during the maintenance phase because this is when most nonjudicial punishments occur. This is partly due to the change of duties, operational tempo, and boredom service members experience while ashore, resulting in misconduct being more rampant while a ship is in the maintenance phase, according to this same commanding officer. Additionally, another commanding officer interviewed said that the vessel exception should apply to ships with precommissioned units because they can become operational at any moment. The commanding officer stated that officers would lose their ability to use nonjudicial punishment as a tool to shape behavior and, therefore, command their units if a service member refuses nonjudicial punishment.

However, we also heard from a commanding officer who said using the vessel exception during the maintenance phase would go against the spirit and intent of the exception. This is because the vessel exception was created for when a ship was operational and there are no alternatives to nonjudicial punishment, according to the same commanding officer.

- **Potential outcomes from policy changes.** Perspectives differ on what potential outcomes would result from the change to the vessel exception policy in the All Navy Message on nonjudicial punishment. For example, one commanding officer we spoke with stated that there are no advantages to restricting the use of the vessel exception, and another commanding officer said that he did not know how good order and discipline could be maintained without the vessel exception. In contrast, Marine Corps' Military Justice Branch officials said that the All Navy Message on nonjudicial punishment would have minimal effect on the Marine Corps' ability to maintain good order and discipline.

Better Data Quality Could Help Improve Navy and Marine Corps Oversight of the Vessel Exception

Navy and Marine Corps Have Taken Steps to Report Nonjudicial Punishment Data

The Navy and the Marine Corps have processes in place to report nonjudicial punishment data. Specifically:

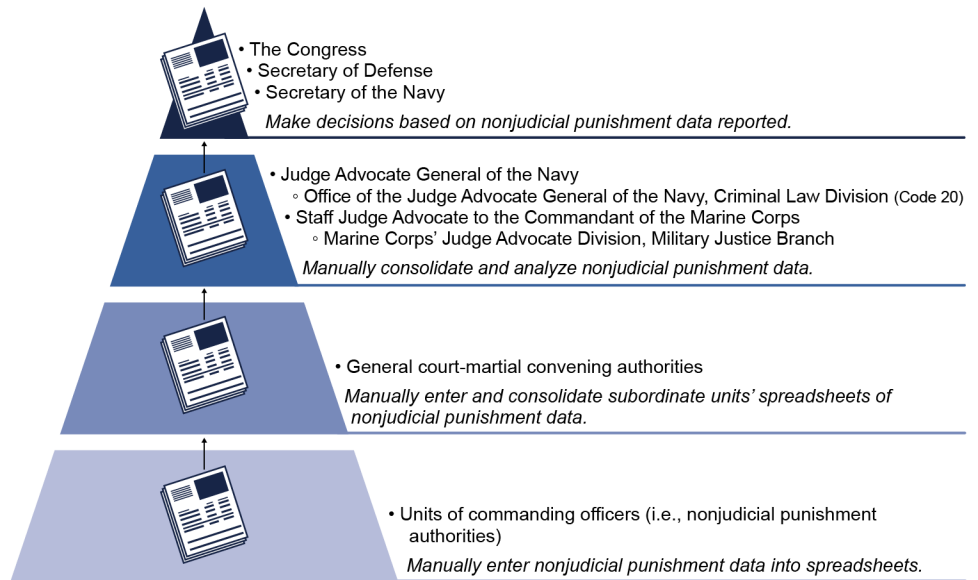
- **Data collection.** The Navy and the Marine Corps collect data from each of their units and consolidate the data into their respective centralized spreadsheets.
- **Data analysis.** Using internal procedures, officials from the Navy's Code 20 and the Marine Corps' Military Justice Branch stated they review their consolidated data spreadsheets for consistency and standardization (i.e., quality assurance process). For example, these officials said they coordinate internally, including with general court-martial convening authorities, to obtain missing data and then analyze it to identify information such as the total number of nonjudicial punishments, including a break down by demographics (e.g., race, gender, ethnicity).²⁹
- **Data reporting.** Following the review and analysis of nonjudicial punishment data, the Navy and the Marine Corps report the results of their analysis to senior leaders and Congress in response to a statutory requirement.³⁰ Officials from the Navy's Code 20 told us that they also include data on the use of the vessel exception in this reporting.

²⁹According to JAGINST 5800.9F, every quarter, all general court-martial convening authorities must submit a consolidated report of the results of every nonjudicial punishment proceeding and summary court-martial they and every subordinate nonjudicial punishment authority and court-martial convening authority conducted.

³⁰Article 146a, *Uniform Code of Military Justice* requires the Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to provide an annual report to the Armed Services Committees, the Secretary of Defense, and the Secretary of the Navy on military justice actions conducted in the previous year. Section 540I of the National Defense Authorization Act for Fiscal Year 2020 requires the Secretary of the Navy to record the race, ethnicity, and gender of the victim and the accused for each court-martial conducted. See Pub. L. No. 116-92, § 540I (2019).

Officials from the Navy’s Code 20 and the Marine Corps’ Military Justice Branch stated their manual data collection, analysis, and reporting efforts are used to determine requirements for funding and legal personnel and to inform senior leaders and Congress on the number of nonjudicial punishments, among other things, to make decisions, as shown in figure 1.

Figure 1: Navy and Marine Corps Process for Reporting Nonjudicial Punishment Data, as of January 2024



Source: GAO analysis of JAG Instruction 5800.9F and Navy and Marine Corps information; GAO (images). | GAO-24-106652

On January 27, 2024, the Department of Navy issued a revised policy and accompanying enclosures on reporting nonjudicial punishment data, JAGINST 5800.9F, to align with the *JAGMAN* issued in December 2023.³¹ JAGINST 5800.9F clarifies reporting on the use of the vessel exception. Specifically, this guidance includes instructions that explicitly require a response to whether the vessel exception was applied to a nonjudicial punishment proceeding, along with whether the accused service member was attached to or embarked in a vessel. Officials from the Navy’s Code 20 stated that the issuance of JAGINST 5800.9F will help the Navy and

³¹Department of the Navy, Office of the Judge Advocate General, JAG Instruction 5800.9F, *Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR)* (Jan. 27, 2024); JAG Instruction 5800.9F, *Enclosure 1: Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report Submission Spreadsheet* (Jan. 27, 2024); and JAG Instruction 5800.9F, *Enclosure 2: Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report Instructions* (Jan. 27, 2024).

the Marine Corps report more appropriate, accurate, and complete information on the vessel exception.

As part of their reporting efforts, the Navy and the Marine Corps rely on various guidance and practices, including JAGINST 5800.9F and its accompanying enclosures, as shown in table 1 below.³²

Table 1: Navy and Marine Corps Guidance and Practices for Reporting Nonjudicial Punishment Data, as of January 2024

Guidance and practices	Navy	Marine Corps
Data collection and consolidation guidance	Refer to JAGINST 5800.9F and its accompanying enclosures ^a	Refer to JAGINST 5800.9F and its accompanying enclosures ^a
Data collection and consolidation practices	<p>Manual</p> <ul style="list-style-type: none"> Use a spreadsheet to collect and consolidate nonjudicial punishment data, to include the number of nonjudicial punishments imposed, the alleged offenses, the types of punishment received, and whether the accused service member was attached to or embarked in a vessel, along with whether the vessel exception was applied to a nonjudicial punishment proceeding <p>Automated</p> <ul style="list-style-type: none"> None 	<p>Manual</p> <ul style="list-style-type: none"> Use a spreadsheet to collect and consolidate nonjudicial punishment data, to include the number of nonjudicial punishments imposed, the alleged offenses, the types of punishment received, and whether the accused service member was attached to or embarked in a vessel, along with whether the vessel exception was applied to a nonjudicial punishment proceeding <p>Automated</p> <ul style="list-style-type: none"> Use a database for the collection and consolidation of nonjudicial punishment data, to include the number of nonjudicial punishments imposed^b
Quality assurance guidance	Refers to written internal standard operating procedures to review quality of data ^c	Does not have written internal standard operating procedures to refer to when reviewing quality of data
Quality assurance practices	Review data for accuracy and completeness once received from units	Review data for completeness once received from units
Data reported	<p>Manual</p> <ul style="list-style-type: none"> Use the consolidated spreadsheet as the source of nonjudicial punishment data <p>Automated</p> <ul style="list-style-type: none"> None 	<p>Manual</p> <ul style="list-style-type: none"> Use the consolidated spreadsheet to cross-reference nonjudicial punishment data maintained in the database <p>Automated</p> <ul style="list-style-type: none"> Use the database as the source of nonjudicial punishment data

Source: GAO analysis of Navy and Marine Corps information. | GAO-24-106652

³²JAGINST 5800.9F, *Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR)*; JAGINST 5800.9F, *Enclosure 1*; and JAG Instruction 5800.9F, *Enclosure 2*.

^aJAGINST 5800.9F, *Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR)*; JAGINST 5800.9F, *Enclosure 1*; and JAGINST 5800.9F, *Enclosure 2*.

^bThe Marine Corps uses the Marine Corps Total Force System to collect and consolidate some nonjudicial punishment data, among other things.

^cDepartment of the Navy, *OJAG Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR) Standard Operating Procedures* (January 2023).

Navy and Marine Corps Lack Quality Data for Oversight of the Vessel Exception

While the issuance of JAGINST 5800.9F clarified guidance for the reporting of data on the use of the vessel exception, it does not resolve data quality concerns stemming from the manual efforts involved in reporting nonjudicial punishment data. Officials from the Navy's Code 20 and the Marine Corps' Military Justice Branch stated that they are not fully confident in the quality of the data collected for oversight of the vessel exception. These officials also questioned the accuracy and completeness of their nonjudicial punishment data due to human error.

Prior to the issuance of JAGINST 5800.9F, Navy and Marine Corps officials raised concerns about the manual entry of nonjudicial punishment data, stating it is susceptible to human error. For example, when units submit nonjudicial punishment data, they sometimes input data incorrectly. This includes responding to a "Yes or No" question on whether an "accused service member was attached to or embarked in a vessel" with something other than the "Yes" or "No" response options provided, such as with: "Attached," "CONUS," "None," or the name of a vessel. Such values also make it difficult to know whether the vessel exception was used in each proceeding.

Furthermore, the consolidation, quality assurance, analysis, and reporting of data involve manual efforts with many opportunities for mistakes to occur, according to the Navy's Code 20 officials. These officials and officials from Navy Personnel Command explained they have not yet made the transition from capturing nonjudicial punishment data manually in a spreadsheet, meant to be an interim solution, to capturing Navy data

in its personnel database as part of a permanent solution.³³ Additionally, while the Marine Corps captures some nonjudicial punishment data within its personnel database, to include the number of proceedings and accused service members' demographic information, it does not collect information on whether the vessel exception was used, according to Marine Corps officials. As a result, the Navy and the Marine Corps continue to rely upon hundreds of individuals across their units to manually submit and aggregate quality nonjudicial punishment data that is appropriate, complete, and accurate.

JAGINST 5800.9F states that the collection and maintenance of accurate and timely statistical information allows the Department of the Navy to analyze trends in criminal activity and military justice processes and measure the efficiency of personnel and the effectiveness of discipline-related initiatives.³⁴ Additionally, *Standards for Internal Control in the Federal Government* states that the oversight body should oversee the entity's internal control system, to include the remediation of deficiencies, for example, by providing direction to management on appropriate time frames for correcting these deficiencies.³⁵ However, the Navy and the Marine Corps have not established a time frame for automating their processes to collect and maintain quality nonjudicial punishment data in their personnel databases. Establishing such a time frame would support the Navy's and the Marine Corps' efforts to implement the automation of their nonjudicial punishment data processes.

Officials from the Navy's Code 20 said they identify errors in the nonjudicial punishment data as they conduct their reviews for quality assurance. While these officials correct the errors to the extent practicable during the 60 days immediately after a quarterly reporting period has ended, they acknowledge that not all errors are corrected because they do not have the time or personnel to do so. Officials from the Marine Corps' Military Justice Branch told us that capturing complete

³³In our recent prior work, we recommended that the Department of the Navy consider the feasibility of collecting and maintaining complete information for all nonjudicial punishment cases in one of the Navy's databases. The department concurred with this recommendation and issued JAGINST 5800.9E and, subsequently, JAGINST 5800.9F, requiring the Navy to collect and report this information. According to Navy officials, they expected to begin collecting this information in their personnel database by October 31, 2022, but they have not met this goal. For additional details on our work, see: [GAO-21-105000](#), [GAO-20-648T](#), and [GAO-19-344](#).

³⁴JAGINST 5800.9F.

³⁵[GAO-14-704G](#).

nonjudicial punishment data is challenging, but they address this issue by following up with their units for additional data.

In addition, Navy Personnel Command officials stated that the current process does not provide real-time visibility demanded in the current environment because it is manual, labor-intensive, and dependent on working with hard copies of personnel files. Officials from the Navy's Code 20 added that the manual collection of nonjudicial punishment data in a spreadsheet is filling the gap to collect quality data, including data on when the vessel exception is used, in the absence of the automated system that the Navy expected to begin using by October 2022. According to officials from the Navy's Code 20 and Navy Personnel Command, there is no current funding to expand the collection of data, to include nonjudicial punishment and use of the vessel exception, in an automated system.

An automated system would reduce the amount of personnel involved in the process for reporting nonjudicial punishment data and, therefore, limit the possibility of human errors, according to officials from the Navy's Code 20. Furthermore, officials from the Marine Corps' Military Justice Branch acknowledged the need to automate their processes to collect and maintain complete nonjudicial punishment data, to include the use of the vessel exception. These Navy and Marine Corps officials, however, did not cite a time frame for automating data collection processes.

Without establishing a time frame for automating their processes to collect and maintain quality nonjudicial punishment data in their respective personnel databases and then implementing these automated processes, the Navy and the Marine Corps are limited in their ability to analyze trends in criminal activity and military justice processes and measure the efficiency and effectiveness of discipline-related initiatives. Further, the Navy, the Marine Corps, and Congress are not well-positioned to provide effective oversight of the vessel exception without quality data.

Judge Advocates Generally Review Proposed Nonjudicial Punishments and Consult with Accused Service Members

Navy and Marine Corps officials we interviewed stated that Judge Advocates generally review proposed nonjudicial punishments and consult with accused service members.

Judge Advocates generally review proposed nonjudicial punishments, according to commanding officers and Judge Advocates we interviewed. Ten of the 12 commanding officers we interviewed stated they have Judge Advocates conduct reviews of proposed nonjudicial punishments 100 percent of the time. The other two of the 12 commanding officers we interviewed stated they have Judge Advocates conduct reviews of proposed nonjudicial punishments more than 50 percent of the time. While these commanding officers generally follow this practice, they are not required to do so.³⁶ As a result, Navy and Marine Corps commanding officers and Judge Advocates we interviewed described varying processes for conducting such reviews. For example, commanding officers may or may not discuss proposed nonjudicial punishments with a Judge Advocate to obtain advice on the:

- Authority to adjudicate a nonjudicial punishment proceeding;
- Appropriate legal imposition of a nonjudicial punishment based on whether the alleged offense meets the charge, the severity of the alleged offense, and the standard of proof;
- Appropriate legal use of the vessel exception (e.g., considering a vessel's operational status); and
- Punishments that could be applied, to include a reduction in pay or rank.

All 12 Navy and Marine Corps commanding officers we interviewed stated that not involving Judge Advocates in the legal reviews of nonjudicial punishments could or would lead to negative consequences. These could include incorrectly charging a service member with an offense, increasing

³⁶Navy and Marine Corps guidance we reviewed—to include *JAGMAN*, *USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN)*, and MCO 5800.16 – V15—does not require the legal review of proposed nonjudicial punishments, to include those where the vessel exception is used.

the chances of a nonjudicial punishment being overturned on appeal, or a commanding officer losing credibility with their unit and leadership. One commanding officer we spoke with said that without consulting with a Judge Advocate, commanding officers would not have the most current guidance for imposing nonjudicial punishment, and the command could be at high risk for maintaining good order and discipline.

Moreover, when we conducted a group discussion with Judge Advocates from the Marine Corps Defense Services Organization, they stated that a marine should be able to request that their nonjudicial punishment be reviewed by someone with knowledge of the law. The Judge Advocates who participated in this discussion group told us that even when a marine does something that is punishable, the nonjudicial punishment paperwork is often incorrect because it cites the wrong charge. For example, for some drug offenses if the charge is wrong it can have significant repercussions, such as not being allowed to have a firearm. A legal review would make the process better for everyone, according to Judge Advocates from the Marine Corps Defense Services Organization that participated in our group discussion.

Officials from the Navy's Code 20 stated that during the deliberation process, and as the updated policies governing nonjudicial punishment developed, one provision under consideration was to require commanding officers to consult with legal personnel prior to the imposition of nonjudicial punishment, to include those cases where the vessel exception is used. Ultimately, the final policy in the revised

Perspectives of Navy and Marine Corps Officials

Prior to the issuance of the All Navy Message on nonjudicial punishment on November 8, 2023, and the revised *JAGMAN* on December 1, 2023, Navy and Marine Corps officials stated that:

- Some reasons for commanding officers allowing accused service members to consult with defense counsel included their belief that it was the accused's right or because it was the fair or right thing to do. However, when given the opportunity to consult with defense counsel, accused service members declined to do so more than half of the time, according to six of 12 commanding officers we interviewed. This was the case because, for example, the accused service members knew they did something wrong and wanted to accept responsibility for their offense as expeditiously as possible.
- In a group discussion with Judge Advocates from the Marine Corps Defense Service Organization, they stated that they had not seen a command preventing defense counsel consultation. Some junior marines have a lack of understanding of rights to seek defense counsel prior to accepting nonjudicial punishment. They added that it was common for junior marines to say, post-nonjudicial punishment, that they did not realize they could speak with defense counsel beforehand.

Source: GAO interviews with Navy and Marine Corps officials. | GAO-24-106652

JAGMAN did not reflect this draft provision. These officials did note, however, that all service members found guilty at nonjudicial punishment, including those where a commanding officer uses the vessel exception, have the right of appeal, including on the grounds that the vessel exception was used improperly.³⁷

Accused service members are generally allowed to consult with defense counsel, according to commanding officers we interviewed.

Eleven of the 12 Navy and Marine Corps commanding officers we interviewed stated they allow accused service members to consult with defense counsel 100 percent of the time. This practice is in alignment with the November 2023 All Navy Message and December 2023 revision to the *JAGMAN*, which include requirements that the accused service member shall have:

- An opportunity to consult with military defense counsel before imposing nonjudicial punishment when operationally feasible and when such consultation can occur via any appropriate means of communication within a reasonable amount of time.
- A right to consult with defense counsel concerning available opportunities to appeal and whether such opportunities should be pursued.³⁸

With the ongoing efforts to require the involvement of Judge Advocates in the nonjudicial punishment process, the Department of the Navy acknowledges that the fair and consistent administration of justice for those subject to nonjudicial punishment protects service member rights while ensuring the maintenance of good order and discipline.

Conclusions

The Navy and the Marine Corps impose nonjudicial punishment, such as extra duties, forfeiture of pay, or a reduction in grade as a minor disciplinary action for service members to deter misconduct, maintain

³⁷If a service member appeals their nonjudicial punishment, a general court-martial convening authority has the appellate authority over the commanding officer awarding nonjudicial punishment, according to section 0117 of the *JAGMAN*.

³⁸ALNAV 091/23 and *JAGMAN*. In addition, the Navy's Code 20 guidance we reviewed also addressed the ability of service members to consult with defense counsel. Department of the Navy, Criminal Law Division (Code 20) Sidebar, *Vessel Exception Policy Changes* (November 2023); and Department of the Navy, Code 20 Sidebar, *Nonjudicial Punishment and the "Vessel Exception"* (July 2021).

discipline, and improve performance. However, a service member can be stigmatized by a record of nonjudicial punishment, which can lead to an involuntary separation with a less than honorable discharge, according to Navy and Marine Corps officials.

The Department of the Navy's efforts to refine and evaluate guidance as well as involve Judge Advocates in the nonjudicial punishment process are steps in the right direction to improve oversight of the use of the vessel exception. However, while the Navy and the Marine Corps have processes in place to report nonjudicial punishment data, they lack quality data to conduct oversight of the vessel exception. Specifically, we found, and Navy and Marine Corps officials acknowledged, that the accuracy and completeness of nonjudicial punishment data is limited due to human error and lack of automated processes. Without establishing a time frame to automate the collection and maintenance of quality nonjudicial punishment data, including the use of the vessel exception, and then implementing these automated processes, the Navy and the Marine Corps will be limited in their ability to analyze trends in criminal activity and military justice processes and measure the efficiency and effectiveness of discipline-related initiatives. This could hinder the ability of the Navy, the Marine Corps, and Congress to provide sufficient oversight of nonjudicial punishment and the use of the vessel exception.

Recommendations for Executive Action

We are making the following two recommendations to the Department of Defense:

The Secretary of the Navy should ensure that the Chief of Naval Operations establishes a time frame for automating the Navy's process to collect and maintain quality nonjudicial punishment data in its personnel database and then implements this automated process.
(Recommendation 1)

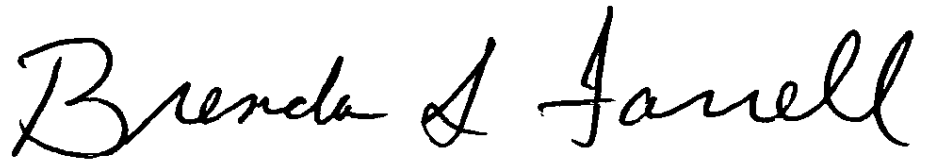
The Secretary of the Navy should ensure that the Commandant of the Marine Corps establishes a time frame for automating the Marine Corps' process to collect and maintain quality nonjudicial punishment data in its personnel database and then implements this automated process.
(Recommendation 2)

Agency Comments

We provided a draft of this report to the Department of Defense for review and comment. In its written comments, reproduced in appendix IV, the Department of Defense concurred with both of our recommendations. The Department of Defense also provided technical comments, which we incorporated into the report as appropriate.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, the Secretary of the Navy, the Chief of Naval Operations, the Commandant of the Marine Corps, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov>.

If you or your staff have any questions concerning this report, please contact me at 202-512-3604 or FarrellB@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.



Brenda S. Farrell
Director, Defense Capabilities and Management

Appendix I: Scope and Methodology

To describe Navy and Marine Corps guidance for use of the vessel exception when imposing nonjudicial punishment, we reviewed and analyzed relevant guidance. This guidance includes overarching Department of the Navy policies on nonjudicial punishments and the use of the vessel exception. Specifically, we reviewed the All Navy Message on nonjudicial punishment, *Manual of the Judge Advocate General* (referred to as *JAGMAN*), *USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN)*, and Legal Support and Administration Manual, among others.¹

To evaluate the extent to which the Navy and the Marine Corps report quality data on nonjudicial punishment to provide oversight of the vessel exception, we reviewed Navy- and Marine Corps-specific guidance on the collection and use of nonjudicial punishment data captured in spreadsheets from fiscal year 2021 through fiscal year 2023, the most recent and consistently captured data available at the time of our review. Specifically, we reviewed JAGINST 5800.9F, *Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR)* and its

¹Department of the Navy, ALNAV 091/23, *Updated Policies Governing Article 15, the Uniform Code of Military Justice Proceedings* (Nov. 8, 2023); JAG Instruction 5800.7G CH-2, *Manual of the Judge Advocate General* (Dec. 1, 2023); *USN/USMC Commander's Quick Reference Legal Handbook (QUICKMAN)* (August 2022); and Marine Corps, Legal Support and Administration Manual, MCO 5800.16 – V15, *Officer Misconduct and Substandard Performance of Duty* (Aug. 8, 2018). The other guidance we reviewed are the Department of the Navy, Criminal Law Division (Code 20) Sidebar, *Vessel Exception Policy Changes* (November 2023); Department of the Navy, Code 20 Sidebar, *Nonjudicial Punishment and the "Vessel Exception"* (July 2021); Office of the Chief of Naval Operations Instruction 3000.15A, *Optimized Fleet Response Plan* (Nov. 10, 2014); and Naval Military Personnel Manual 1306-802, *Surface Ships Undergoing Construction and Conversion* (Aug. 22, 2020).

accompanying enclosures, among other policy and legislative requirements.²

We also assessed the reliability of the nonjudicial punishment data captured in spreadsheets from fiscal year 2021 through fiscal year 2023 by analyzing Navy and Marine Corps nonjudicial punishment data aggregated from submissions, to include the use of the vessel exception, and by interviewing Navy and Marine Corps officials to determine how data is collected, analyzed, and reported and to obtain their perspectives on any associated limitations as well as efforts to address these limitations. We found that data elements for reporting the number of nonjudicial punishments, including those where the vessel exception was used, were not sufficiently reliable or of undetermined reliability. Specifically:

- The subset of Navy and Marine Corps aggregated nonjudicial punishment data provided to us was not sufficiently reliable to calculate the number of nonjudicial punishments or applications of the vessel exception due to the limitations in accuracy, completeness, and appropriateness of the data.
- The Navy and the Marine Corps' reported counts of nonjudicial punishments and applications of the vessel exception are of undetermined reliability to report approximate numbers or include as contextual background within our report to provide a general idea for the number of nonjudicial punishments and applications of the vessel exception. This is because the Navy and the Marine Corps did not provide us with the entire universe of their respective data sets due to privacy concerns, and the data that was provided was limited to an unknown extent due to issues in accuracy, completeness, and appropriateness discussed in the prior bullet.

²Department of the Navy, Office of the Judge Advocate General, JAG Instruction 5800.9F, *Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report (QCAR)* (Jan. 27, 2024); JAG Instruction 5800.9F, *Enclosure 1: Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report Submission Spreadsheet* (Jan. 27, 2024); and JAG Instruction 5800.9F, *Enclosure 2: Quarterly Criminal Activity, Disciplinary Infractions and Courts-Martial Report Instructions* (Jan. 27, 2024). We also reviewed Article 146a, *Uniform Code of Military Justice*, which requires the Judge Advocate of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps to provide an annual report to the Congress, the Secretary of Defense, and the Secretary of the Navy on military justice actions conducted in the previous year, and section 540I of the National Defense Authorization Act for Fiscal Year 2020, which requires the Secretary of the Navy to record the race, ethnicity, and gender of the victim and the accused for each court-martial conducted. See Pub. L. No. 116-92, § 540I (2019).

As a result, we did not report numbers of nonjudicial punishments imposed or vessel exception uses. The limitations of these data elements and their effects are discussed in this report.

To describe how Navy and Marine Corps Judge Advocates—military attorneys—are involved in the nonjudicial punishment process, including to conduct legal reviews and consult with accused service members, we reviewed and analyzed Navy- and Marine Corps-specific guidance on the involvement of Judge Advocates in the nonjudicial punishment process, including to conduct legal reviews and consult with accused service members. Specifically, we reviewed the All Navy Message on nonjudicial punishment, *JAGMAN*, *USN/USMC Commander’s Quick Reference Legal Handbook (QUICKMAN)*, and Legal Support Administration Manual, among others.³

In support of all three objectives, we identified existing definitions of terms, including “vessel exception.” We interviewed officials from Navy and Marine Corps components with responsibilities for developing policy or overseeing military justice matters, to include the collection of nonjudicial punishment data within their military services’ personnel databases. Specifically, we spoke with officials from the Navy’s Office of the Judge Advocate General, Code 20; Navy Personnel Command; the Marine Corps’ Judge Advocate Division, Military Justice Branch; and the Marine Corps Manpower and Reserve Affairs Manpower Information Systems Division.

Additionally, to obtain perspectives on the use of the vessel exception when service members are ashore or attached to or embarked in a vessel, we conducted:

- Semi-structured interviews telephonically with a nongeneralizable sample of 12 Navy and Marine Corps commanding officers for their

³ALNAV 091/23; *JAGMAN*; *USN/USMC Commander’s Quick Reference Legal Handbook (QUICKMAN)*; and MCO 5800.16 – V15. The other guidance we reviewed are the Department of the Navy, Criminal Law Division (Code 20) Sidebar, *Vessel Exception Policy Changes* (November 2023); and Department of the Navy, Code 20 Sidebar, *Nonjudicial Punishment and the “Vessel Exception”* (July 2021).

insights on determining whether to use the vessel exception, among other considerations.⁴

- **Data source.** We randomly selected a sample of military units to find individuals for these interviews from the Navy and the Marine Corps' nonjudicial punishment data we received. We used the most recent data available at the time of our selection to provide a higher likelihood of speaking with a commanding officer who is currently at the same command where the nonjudicial punishment was imposed.⁵
- **Random sampling selection.** We used a random number generator to produce 171 numbers—90 for the Navy and 81 for the Marine Corps—to be used to select rows of specific nonjudicial punishment proceedings within spreadsheets that maintain the Navy and the Marine Corps' nonjudicial punishment data. We reviewed the proceedings within these selected spreadsheet rows to ensure there was a mix of commands, locations, types of offenses, use of the vessel exception, and case results. We sent our selection of random proceedings to our Navy and Marine Corps points of contact for them to provide us the corresponding contact information for the commanding officer who imposed a nonjudicial punishment.
- **Screening and recruitment.** Once we received contact information for the Navy and Marine Corps proceedings we randomly selected, the engagement team sent screening emails to commanding officers requesting to schedule a semi-structured interview. To screen and recruit prospective interviewees, we asked them to confirm their name, grade, and if they had to determine whether or not to use the vessel exception in the last 3 years. We also noted that we would not use their name or similar

⁴We included within our scope different grades of Navy and Marine Corps commanding officers—ranging from O-5 to O-7—because of the leadership roles these individuals have, to include the authority to impose nonjudicial punishment on an accused service member with the use of the vessel exception. *JAGMAN*. The term “grade” means a step or degree, in a graduated scale of office or military rank that is established as a grade by law or regulation. 10 U.S.C. § 101. Officer grades range from O-1 to O-10, with O-1 being the lowest ranking grade and O-10 being the highest-ranking grade. For example, in the Navy, an O-5 is a Commander; an O-6 is a Captain; and an O-7 is a Rear Admiral Lower Half. In the Marine Corps, an O-5 is a Lieutenant Colonel; an O-6 is a Colonel; and an O-7 is a Brigadier General. See DOD, “U.S. Military Rank Insignia” (Washington, D.C.), accessed Jan. 12, 2024. <https://www.defense.gov/Resources/Insignia/>.

⁵Specifically, we randomly selected our Navy cases from fiscal year 2023, quarter 1 (i.e., October 2022 through December 2022) and our Marine Corps cases from fiscal year 2023, quarter 2 (i.e., January 2023 through March 2023).

identifying information in the report to encourage candid responses in the telephonic interviews.

- **Question development and pretesting.** We used a standard set of questions for these semi-structured interviews and asked probing questions throughout the discussion to clarify the meaning of statements made or to obtain illustrative examples as we deemed necessary. Prior to interviewing participants, we pretested the interview protocols with a total of four current or former Navy and Marine Corps officials who have experience as a commanding officer or a Judge Advocate with the nonjudicial punishment process and the vessel exception. We used the pretests to determine whether: (1) the questions were clear, (2) the terms used were precise, (3) participants were able to provide information that we were seeking, and (4) the questions were unbiased. We made changes to the content and format of the interview protocols based on the results of our pretesting.
- **Semi-structured interviews.** To ensure consistent implementation of the interview protocols across interviewees, two analysts performed the following tasks for all 12 semi-structured interviews:
 - The first analyst conducted the 1- to 2-hour telephonic interviews using the standard set of questions developed, and
 - The second analyst captured notes electronically in Microsoft Word forms for the interviews, and we did not audio record the interviews.
- **Analyses.** To aggregate and analyze the results of the semi-structured interviews, we electronically extracted data from the Word forms into an Excel spreadsheet to conduct qualitative and quantitative analyses.
 - **Qualitative analysis.** We analyzed the interviews to identify examples and anecdotes, if any, representative of the interviewees' comments.
 - **Quantitative analysis.** Two independent analysts coded the contents of each of the interviews to determine the number of interviews that contained any statements about the themes we identified. Any disagreements between the coders were resolved through discussion. We specify the number of commanding officers out of a total of 12 who expressed various statements related to these themes.

- Thirteen individual interviews and seven group discussions conducted telephonically using questions modified for each interview group from the commanding officers' standard set of questions as follow:
 - Telephonic interviews with a nongeneralizable sample of 12 Navy and Marine Corps Judge Advocates or legal officers to obtain their perspectives on the support provided to commanding officers by conducting legal reviews, or, in the case of a legal officer, by providing advice.⁶ We identified these Judge Advocates and legal officers by requesting contact information from the commanding officers recruited to participate in our semi-structured interviews. Specifically, we requested the name, email address, and phone number of the Judge Advocate or legal officer that the recruited commanding officer would consult with when imposing nonjudicial punishment. Once we received the requested contact information, we sent screening emails to these individuals requesting to schedule a 1- to 2-hour interview. To screen and recruit prospective interviewees, we asked them to confirm their name and experience consulting on nonjudicial punishment matters. We also noted that we would not use their name or similar identifying information in the report to encourage candid responses in the telephonic interviews.
 - Seven group discussions and one individual interview conducted telephonically with a nongeneralizable sample of Navy and Marine Corps Judge Advocates located within each region of the Defense Service Office and Defense Services Organization to obtain their perspectives on the consultations they conduct with accused service members subject to nonjudicial punishment, including when the vessel exception is used. We randomly selected the offices and Judge Advocates to interview and ensured we had at least one branch office from each of the Navy and the Marine Corps' four respective regions, as well as a mix of both domestic and international branch offices.⁷ To screen and recruit

⁶Commanding officers who took part in our semi-structured interviews identified these interviewees. If a commanding officer who participated in our semi-structured interviews did not have a Judge Advocate assigned to their unit, we interviewed the legal officer who they would consult with on military justice matters, to include nonjudicial punishments. Article 1 of the *Uniform Code of Military Justice*, 10 U.S. Code § 801 provides that the term "legal officer" means any commissioned officer of the Navy, Marine Corps, or Coast Guard designated to perform legal duties for a command. Legal officers are not judge advocates and are typically assigned this role as a collateral duty.

⁷The Navy's four Defense Service Office regions are: North, Pacific, Southeast, and West. The Marine Corps' four Defense Services Organization regions are: Eastern, National Capital, Pacific, and Western.

prospective interviewees, we asked them to confirm their name, and experience consulting on nonjudicial punishment matters. We also noted that we would not use their name or similar identifying information in the report to encourage candid responses in the telephonic group discussions and interview. The 1- to 2-hour telephonic group discussions and interview were moderated by the same analyst to ensure consistency. A total of 35 Judge Advocates participated in the group discussions, which ranged from two to eight participants, and one Judge Advocate participated in the single interview. We analyzed the group discussions and interview to identify examples and anecdotes, if any, representative of the participants' comments.

- One site visit to interview Navy commanding officers, Judge Advocates, and legal officers at Newport News Shipbuilding, Virginia, and onboard a vessel at sea that we selected based on geographic location and the proximity to our headquarters in Washington, D.C.

Because we did not select Navy and Marine Corps commanding officers, Judge Advocates, and legal officers using a statistically representative sampling method, the officials' perspectives are nongeneralizable, and therefore, their nonjudicial punishment processes, to include the use of the vessel exception, cannot be projected across the Department of the Navy. While the information obtained was not generalizable, we present this information from Navy and Marine Corps officials to provide illustrative examples.

We assessed the information we obtained on reporting nonjudicial punishment data against criteria in JAGINST 5800.9F on the collection and maintenance of accurate and timely statistical information.⁸ We also determined that the control environment component of the *Standards for Internal Control in the Federal Government* was significant to assess the extent to which the Navy and the Marine Corps report quality data on nonjudicial punishment to provide oversight of the vessel exception.⁹ This component focuses on the actions the oversight body takes to provide input for the remediation of deficiencies to identify Navy and Marine Corps actions associated with reporting quality data on nonjudicial punishment to provide oversight of the vessel exception.

⁸JAGINST 5800.9F.

⁹[GAO-14-704G](#).

We also interviewed officials and, where appropriate, obtained documentation from the organizations listed below.

Department of Defense

- Office of the Director of Administration and Management
- Office of the General Counsel
- Office of Inspector General
 - Office of Readiness and Global Operations
 - Office of Diversity and Inclusion and Extremism in the Military

Navy

- Office of the Judge Advocate General of the Navy
 - Criminal Law Division (Code 20)
- Defense Service Office
 - Defense Counsel Assistance Program
- Navy Personnel Command
 - Bureau of Naval Personnel
- Navy's Office of Military Equal Opportunity
- Naval Air Force Atlantic
- Naval Submarine Force Atlantic

U.S. Marine Corps

- Judge Advocate Division, Military Justice Branch
- Marine Corps Directorate of Analytics & Performance Optimization
- Manpower and Reserve Affairs
 - Manpower Information Systems Division
- Defense Services Organization
- Marine Corps Military Equal Opportunity Office

We conducted this performance audit from February 2023 to April 2024 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain

sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Status of GAO Recommendations to Address Racial and Gender Disparities

In May 2019, we issued a report that addressed the assessment of racial and gender disparities in the military justice system.¹ Among other things, we found that the military services did not collect and maintain consistent information about race and ethnicity in their investigations, military justice, and personnel databases. This limited their ability to identify disparities, including in nonjudicial punishment cases. As a result of our findings, we made 11 recommendations.² The military services had implemented eight of our 11 recommendations aimed at improving their ability to collect and report consistent demographic and nonjudicial punishment data as of February 2024, shown in figure 2.

¹GAO, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities*, [GAO-19-344](#) (Washington, D.C.: May 30, 2019). The scope of our review included the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard but not the Space Force, established in December 2019.

²[GAO-19-344](#). For additional details, also see GAO, *Military Justice: DOD and Coast Guard Improved Collection and Reporting of Demographic and Nonjudicial Punishment Data, but Need to Study Causes of Disparities*, [GAO-21-105000](#) (Washington, D.C.: Aug. 30, 2021); and *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities*, [GAO-20-648T](#) (Washington, D.C.: June 16, 2020).

Appendix II: Status of GAO Recommendations to Address Racial and Gender Disparities

Figure 2: Status of Department of Defense and Coast Guard Actions on 11 GAO Recommendations to Address Racial and Gender Disparities, as of February 2024

Recommendation	Implementing agency	Implemented?
1 Coast Guard modify its military justice database to query and report on gender information	Coast Guard	✓
2 Army develop the capability to present race and ethnicity data in its investigations and personnel databases using the categories established for the military justice databases	Army	✓
3 Air Force develop the capability to present race and ethnicity data in its investigations and personnel databases using the categories established for the military justice databases	Air Force	✗
4 Navy develop the capability to present race and ethnicity data in its investigations and personnel databases using the categories established for the military justice databases	Navy	✓
5 Coast Guard develop the capability to present race and ethnicity data in its investigations and personnel databases using the categories established for the military justice databases	Coast Guard	✓
6 Secretary of Defense consider an amendment to annual military justice reporting requirements to require the military services to include demographic information	Department of Defense	✓
7 Secretary of Defense issue guidance that establishes criteria to specify when possible demographic disparities in the military justice process should be further reviewed, and that describes the steps to conduct such a review	Department of Defense	✗
8 Army consider the feasibility of collecting and maintaining complete information for all nonjudicial punishment cases	Army	✓
9 Navy consider the feasibility of collecting and maintaining complete information for all nonjudicial punishment cases	Navy	✓
10 Coast Guard consider the feasibility of collecting and maintaining complete information for all nonjudicial punishment cases	Coast Guard	✓
11 Secretary of Defense conduct an evaluation to identify the causes of any disparities in the military justice system, and take steps to address them as appropriate	Department of Defense	✗

Source: GAO analysis of Department of Defense and Coast Guard information. | GAO-24-106652

Note: For the report and its recommendations, see GAO, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities*, GAO-19-344 (Washington, D.C.: May 30, 2019).

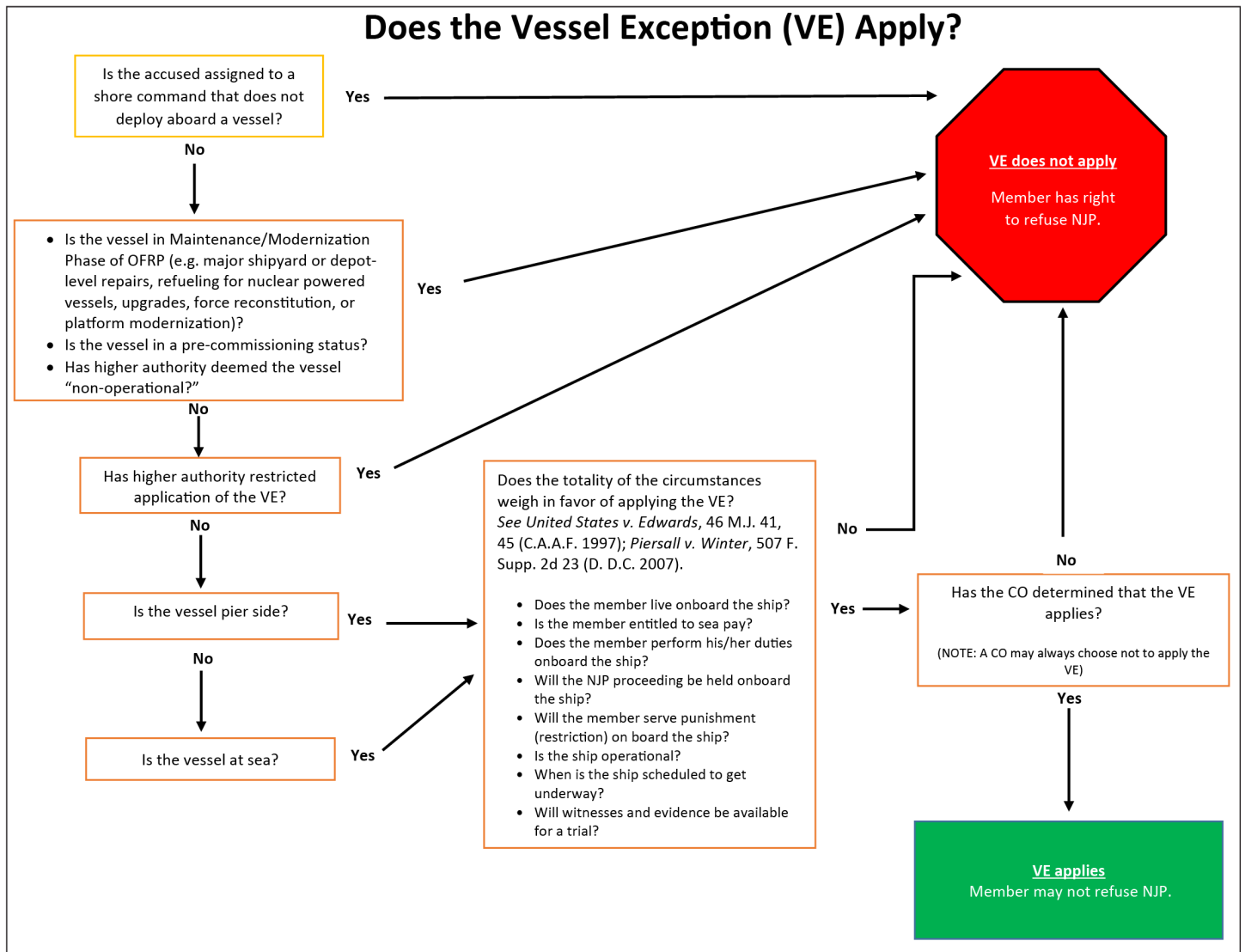
Appendix III: Department of the Navy Guidance for Determining the Use of the Vessel Exception, as of November 2023

The Office of the Judge Advocate General of the Navy, Criminal Law Division (Code 20) revised sidebar guidance in November 2023.¹ This sidebar serves as a reference guide for Judge Advocates and includes a decision flow chart for determining the use of the vessel exception, as shown in figure 3.

¹Department of the Navy, Criminal Law Division (Code 20) Sidebar, *Vessel Exception Policy Changes* (November 2023).

**Appendix III: Department of the Navy Guidance
for Determining the Use of the Vessel
Exception, as of November 2023**

Figure 3: Department of the Navy Decision Flow Chart for Determining the Use of the Vessel Exception, as of November 2023



Source: Department of the Navy, Criminal Law Division (Code 20) Sidebar, *Vessel Exception Policy Changes* (November 2023); Department of the Navy (photo). | GAO-24-106652

Note: This graphic is directly from the Department of the Navy guidance, and the following abbreviations are: commanding officer (CO); nonjudicial punishment (NJP); Optimized Fleet Response Plan (OFRP); and vessel exception (VE).

Appendix IV: Comments from the Department of Defense

Appendix IV: Comments from the Department
of Defense



THE ASSISTANT SECRETARY OF THE NAVY
(MANPOWER AND RESERVE AFFAIRS)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

MAR 28 2024

Ms. Brenda S. Farrell
Director, Defense Capabilities Management
U.S. Government Accountability Office
441 G Street, NW
Washington DC 20548

Dear Ms. Farrell,

This is the Department of Defense (DoD) response to the GAO Draft Report GAO-24-106652, "MILITARY JUSTICE: Quality Data Needed to Improve Oversight of Navy and Marine Corps Disciplinary Measures," dated March 8, 2024 (GAO Code 106652).

Attached is DoD's response to the subject report. My point of contact is CAPT Dominic Antenucci, JAGC, USN. CAPT Antenucci can be reached at dominic.j.antenucci.mil@us.navy.mil or by phone at (703)-697-1311.

Sincerely,

A handwritten signature in black ink, reading "Robert D. Hogue".

Robert D. Hogue
Principal Deputy

Enclosure
As stated

GAO DRAFT REPORT DATED MARCH 8, 2024
GAO-24-106652 (GAO CODE 106652)

“MILITARY JUSTICE: Quality Data Needed to Improve Oversight of Navy and Marine
Corps Disciplinary Measures.”

DEPARTMENT OF DEFENSE COMMENTS TO THE GAO RECOMMENDATIONS

The Department of Defense commends GAO for its analysis. The Navy and Marine Corps remain committed to ensuring that the military justice system is transparent, fair, and effective. To do so, the Navy and Marine Corps recognize the importance of accurate data collection as a tool to identify and analyze trends in the military justice process, including nonjudicial punishment. The GAO’s findings with respect to data collection are consistent with recommendations of the Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems (IRT). The IRT’s recommendations have been approved by DoD, and implementation planning is underway. Implementation of the Department’s response to each of the IRT’s recommendations, including the development of automated data collection systems for military justice, remains contingent on funding for these critical tools.

RECOMMENDATION 1: The Secretary of the Navy should ensure that the Chief of Naval Operations establishes a time frame for automating the Navy’s process to collect and maintain quality non-judicial punishment data in its personnel database and then implements this automated process.

DoD RESPONSE: Concur.

RECOMMENDATION 2: The Secretary of the Navy should ensure that the Commandant of the Marine Corps establishes a time frame for automating the Marine Corps’ process to collect and maintain quality nonjudicial punishment data in its personnel database and then implements this automated process.

DoD RESPONSE: Concur.

Accessible Text for Appendix IV: Comments from the Department of Defense

MAR 28 2024

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441 G Street, NW
Washington DC 20548

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Robert D. Hogue
Principal Deputy

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DoD RESPONSE: Concur.

RECOMMENDATION 2: The Secretary of the Navy should ensure that the Commandant of the Marine Corps establishes a time frame for automating the Marine Corps' process to collect and maintain quality nonjudicial punishment data in its personnel database and then implements this automated process.

DoD RESPONSE: Concur.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Brenda S. Farrell, 202-512-3604 or FarrellB@gao.gov

Staff Acknowledgments

In addition to the contact named above, key contributors to this report were Gina R. Hoffman (Assistant Director), Yecenia Camarillo (Analyst in Charge), Tracy Barnes, Amie Lesser, David Linch, Brian Noyes, Clarice Ransom, Michael Silver, Pamela Snedden, Theo Voudouris, and Jiajun Zou.

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Military Justice: DOD and Coast Guard Improved Collection and Reporting of Demographic and Nonjudicial Punishment Data, but Need to Study Causes of Disparities. [GAO-21-105000](#). Washington, D.C.: August 30, 2021.

Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities. [GAO-20-648T](#). Washington, D.C.: June 16, 2020.

Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities. [GAO-19-344](#). Washington, D.C.: May 30, 2019.

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