



May 2024

MILITARY JUSTICE

Increased Oversight, Data Collection, and Analysis Could Aid Assessment of Racial Disparities

GAO Highlights

Highlights of [GAO-24-106386](#), a report to congressional committees

Why GAO Did This Study

The Military Justice Review Group reported in 2015 that the Uniform Code of Military Justice embodies a single overarching principle: military law can foster a highly disciplined force if it is fair and just.

The National Defense Authorization Act for Fiscal Year 2022 includes a provision for GAO to compare the military departments' reports to Congress on racial and ethnic disparity to reports assessing racial and ethnic disparity in civilian criminal justice systems in the U.S.

This report assesses the extent to which the military departments' reports (1) include required elements as defined in the statute; (2) enable a DOD-wide assessment of racial and ethnic disparities in the military justice system; and (3) are comparable to studies assessing racial and ethnic disparity in the U.S. civilian criminal justice system. GAO assessed the military departments' reports against the required elements; reviewed 27 selected studies published since 2018 on disparities in civilian justice systems; reviewed DOD and military department guidance and reports; and interviewed cognizant military department officials.

What GAO Recommends

GAO is making six recommendations, including that DOD improve data collection and analysis, designate an office to oversee related efforts, and comprehensively assess the military justice process to identify all areas of possible disparity, among other things. DOD generally concurred with the recommendations.

View [GAO-24-106386](#). For more information, contact Cathleen A. Berrick at (202) 512-3404 or berrickc@gao.gov.

May 2024

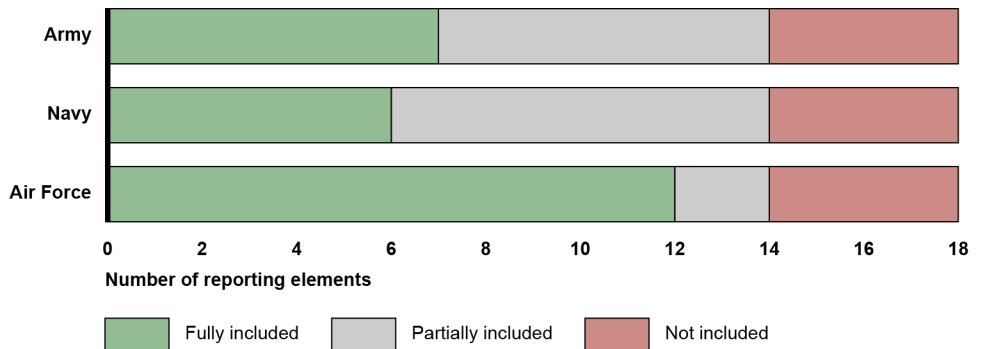
MILITARY JUSTICE

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What GAO Found

The Departments of the Army, Navy and Air Force varied in the extent to which they included 18 statutorily required elements in their reports on racial and ethnic disparities in their military justice and discipline processes and personnel policies. These elements related to items such as investigations, court-martial panel selection, and sentencing, as well as data on accession, retention, and promotion rates. Each military department at least partially included 14 of the 18 elements but did not include others due to data limitations or because they were deemed less relevant in the military context according to officials (see figure).

Inclusion of Elements in Military Department Racial Disparity Reports as Required by the National Defense Authorization Act for Fiscal Year 2022



Source: GAO analysis of military department information. | GAO-24-106386

Several issues limited the usefulness of the military departments' reports—and may limit the usefulness of future reports—in assessing racial and ethnic disparities in the military justice system. Specifically:

- The departments do not centrally collect and maintain data for some segments of the military justice process such as commander-directed investigations, which are subject to commander discretion and could result in serious disciplinary action. Without a standardized process to collect and maintain such data, the Department of Defense (DOD) will lack visibility over areas that may contribute to disparities.
- The departments differ in how they capture, analyze, and present data on racial and ethnic disparities, which precludes a comparison of results. Without DOD-level oversight to coordinate these varying efforts, the department may lack the visibility needed to achieve the cultural change required to address such complex issues.

In reviewing selected studies on civilian criminal justice systems, GAO identified assessments of disparities in jury selection and sentencing that are not currently included in the military's reports on racial disparities in the military justice system. By comprehensively assessing the military justice and discipline process to identify all areas where racial and ethnic disparities may exist, DOD could maximize its ability to identify and address the root causes of disparities and reinforce the department's commitment to a fair and equitable justice system.

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Abbreviations

CDI	Commander-Directed Investigation
DOD	Department of Defense
HEARD	Holistic Evaluation and Assessment of Racial Disparity
IRT	Internal Review Team
NDA	National Defense Authorization Act
ODEI	Office for Diversity, Equity, and Inclusion
OMB	Office of Management and Budget
REDCAT	Racial and Ethnic Designation Categories
UCMJ	Uniform Code of Military Justice

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May 23, 2024

The Honorable Jack Reed
Chairman
The Honorable Roger Wicker
Ranking Member
Committee on Armed Services
United States Senate

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

The Uniform Code of Military Justice (UCMJ), first enacted in 1950, provides the framework of the military justice system, establishes the complete code of military criminal law, and provides the legal framework for conducting investigations and prosecutions of allegations of misconduct by service members.¹ According to the Manual for Courts-Martial, the purpose of military law is to, among other things, promote efficiency and effectiveness in the military establishment and thereby strengthen the national security of the United States.² Further, the Military Justice Review Group has stated that the UCMJ embodies a single overarching principle: a system of military law can foster a highly disciplined force if it is fair and just, and is recognized as such by members of the armed forces and by the American public.³

¹10 U.S.C. §§ 801-946a.

²The President has implemented the UCMJ through the *Manual for Courts-Martial*, which became effective on May 31, 1951, and was initially prescribed by Executive Order 10214 (Feb. 8, 1951). The manual contains, among other things, the Rules for Courts-Martial, the Military Rules of Evidence, and the UCMJ. 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.

³Military Justice Review Group, *Report of the Military Justice Review Group Part I: UCMJ Recommendations* (Dec. 22, 2015). The Military Justice Review Group was established at the direction of the Secretary of Defense to conduct a comprehensive review of the UCMJ and the military justice system.

However, we reported in 2019 that racial and ethnic disparities exist in some stages of the military justice process, such as investigations and court-martial trials.⁴ In 2022, the Deputy Secretary of Defense established the Internal Review Team on Racial Disparities in the Military Justice System (IRT).⁵ The IRT found that significant racial disparities exist across the investigative and military justice systems. It also found that inadequate protections exist for service members subject to investigative processes, adverse administrative actions, and non-judicial punishment.⁶ Given that approximately one-third of active-duty service members identified as a member of a racial minority group (historically disadvantaged racial and ethnic groups) in 2022, ensuring that the military justice system is fair and just is key to accomplishing the principles of the UCMJ.⁷

Section 549F of the National Defense Authorization Act (NDAA) for Fiscal Year 2022 required the military departments to assess and report to Congress on racial and ethnic disparity in military justice and discipline processes and military personnel policies.⁸ The military departments

⁴GAO, *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).

⁵Deputy Secretary of Defense Memorandum, *Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems* (May 3, 2022).

⁶Department of Defense, *Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems* (Aug. 31, 2022).

⁷We use the term “historically disadvantaged racial and ethnic groups,” hereafter referred to as “historically disadvantaged groups,” to refer to racial and ethnic minority groups. The Department of Defense (DOD) defines racial minority groups to include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Multi-racial, and Unknown. Members who self-report as White make up the highest percentage of active-duty members, about 69 percent. DOD tracks ethnicity separately from race, with two ethnicity categories: Hispanic or Latino and Not Hispanic or Latino. Service members self-report both their race and ethnicity. Approximately 18 percent of active-duty service members identified as Hispanic or Latino in 2022, while about 82 percent identified as not Hispanic or Latino. Department of Defense, *2022 Demographics: Profile of the Military Community* (2022).

⁸Pub. L. No. 117-81, § 549F (2021). Section 549F of the NDAA for Fiscal Year 2022 defines “military justice and discipline processes” to refer to all facets of the military justice system, including investigation, the use of administrative separations and other administrative sanctions, non-judicial punishment, panel selection, pre-trial confinement, the use of solitary confinement, dispositions of courts-martial, sentencing, and post-trial processes. The section defines “military personnel policies” to include accession rates and policies, retention rates and policies, promotion rates, assignments, professional military education selection and policies, and career opportunity for minority members of the Armed Forces. Further, the section defines “minority populations” to include Black, Hispanic, Asian/Pacific Islander, American Indian, and Alaska Native populations.

submitted their reports in 2023. Further, the same section included a provision for GAO to submit a report comparing the military department assessments on racial and ethnic disparity to reports assessing racial and ethnic disparity in civilian criminal justice systems in the United States. This report assesses the extent to which the military departments' reports on racial and ethnic disparity in military justice and discipline processes and military personnel policies (1) include all reporting elements as defined in section 549F of the NDAA for Fiscal Year 2022; (2) enable a DOD-wide assessment of racial and ethnic disparities in the military justice system; and (3) are comparable to existing studies assessing racial and ethnic disparity in civilian criminal justice systems in the United States.

For our first objective, we reviewed the relevant statute to identify required reporting elements. Using a data collection instrument, we completed a two-analyst review of each of the military departments' reports to determine the extent to which it included the required reporting elements identified.⁹ We determined the extent to which each department included, partially included, or did not include each required element in its racial disparity report. We also interviewed cognizant military department officials with responsibilities for aspects of military justice, investigative, and discipline processes.

For our second objective, we reviewed the military departments' racial disparity reports, as well as other military department and Department of Defense (DOD) reports related to military justice. Further, we interviewed cognizant DOD and military department officials responsible for aspects

⁹Department of the Army, *Fiscal Year 2022 National Defense Authorization Act, Section 549F Department of the Army's Report to Congress on Racial Disparity in Military Justice and Discipline Processes and Military Personnel Policies* (Feb. 23, 2023); Department of the Navy, *Fiscal Year 2022 National Defense Authorization Act, Section 549F Department of the Navy's Report to Congress on Racial Disparity in Military Justice and Discipline Processes and Military Personnel Policies* (Oct. 2023); and Department of the Air Force, *Department of the Air Force Independent Racial Disparity Review* (Aug. 2023). The Department of the Navy report included data and information related to both the Navy and the Marine Corps, and the Department of the Air Force report similarly included data and information related to both the Air Force and the Space Force. To assess the extent to which required elements were included in each military department report, one analyst first reviewed the reports and determined whether each element was fully included, partially included, or not included. A second analyst then reviewed the report and the first analyst's assessment and determined whether they agreed. The two analysts then met to discuss and reconcile any discrepancies in their reviews. If they were unable to reach consensus on any point, a third analyst reviewed the reports and made a final determination. For additional information about our review of the reports for required elements, see appendix I.

of military justice and discipline processes as well as data collection, maintenance, analysis, and reporting related to military justice and discipline. We also interviewed cognizant officials with responsibilities for identifying and addressing racial and ethnic disparities. We compared the information gathered from the interviews and document reviews against *Standards for Internal Control in the Federal Government* related to management's use of quality information, standardized processes, and information systems, as well as the assignment of oversight responsibilities and coordination of activities across the organization.¹⁰

For our third objective, we conducted a literature search to identify studies from scholarly journals published between 2018 and 2023 on racial and ethnic disparities in civilian justice systems in the United States.¹¹ We reviewed the study abstracts to identify those most likely to be relevant to our review, and then used a data collection instrument to review fully those studies to identify those with sufficiently described methodologies and approaches. We compared the studies to the military departments' racial disparity reports to identify areas of similarity and difference in analyses conducted to identify disparities. For example, we identified segments of civilian justice systems assessed for disparities in the studies that were similar to segments of the military justice system included in the military departments' reports. This approach resulted in 27 studies that we included in our review. We also interviewed DOD and military department officials to understand the reasons for differences in analyses. We compared the information gathered from interviews, our assessment of the military departments' racial disparity reports, and our literature search with *Standards for Internal Control in the Federal Government* related to data and quality information and best practices for managing and assessing federal efforts identified by our prior work.¹² For additional information on our objectives, scope, and methodology, see appendix I.

¹⁰GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014); and *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996).

¹¹Our literature search included studies of federal, state, and municipal justice systems. We did not include studies pertaining to Tribal and juvenile justice systems, as they would not be as comparable to the military justice system.

¹²[GAO-14-704G](#); and GAO, *Evidence-Based Policymaking: Practices to Help Manage and Assess the Results of Federal Efforts*, [GAO-23-105460](#) (July 12, 2023).

We conducted this performance audit from November 2022 to May 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.

Background

Overview of Military Justice System

According to a 2015 report ordered by the Secretary of Defense and issued by the Military Justice Review Group, the military justice system is designed to ensure discipline and order in the armed forces, since crimes committed by service members have the potential to destroy the bonds of trust, seriously damage unit cohesion, and compromise military operations.¹³ The purposes of military law are to promote justice; to deter misconduct; to facilitate appropriate accountability; to assist in maintaining good order and discipline in the armed forces; to promote efficiency and effectiveness in the military establishment; and thereby to strengthen the national security of the United States. The military operates a modern criminal justice system that recognizes and protects the rights of the victims of alleged offenses and those accused of offenses. However, in May 2022, the Deputy Secretary of Defense stated that racial disparities in the investigative and military justice systems have long been an issue, and DOD subsequently reported that such disparities can impact unit cohesion and service member perceptions of fairness and trust in the system.¹⁴

The continuous evolution of the military justice system has progressed through statutes, executive orders, regulations, and judicial interpretations. One such statute is the UCMJ, which extends to all places and applies to all active-duty service members.¹⁵ In creating the military justice system, Congress established three types of court-martial—the

¹³Military Justice Review Group, *UCMJ Recommendations*.

¹⁴Department of Defense, *Internal Review Team Report*; and Deputy Secretary of Defense Memorandum, *Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems* (May 3, 2022).

¹⁵UCMJ jurisdiction also applies to retired service members who are entitled to pay, and to certain other individuals, but such jurisdiction is rarely invoked, and not a significant source of military justice practice.

term for a military criminal court—which differ in procedures and possible punishment that can be handed out. The three types of military courts-martial are: (1) summary court-martial; (2) special court-martial; and (3) general court-martial.¹⁶

Each type of court-martial is intended to deal with progressively more serious offenses, and each court-martial type may adjudicate more severe maximum punishments as prescribed under the UCMJ. Military law may also be carried out through other forums, including (1) courts of inquiry, which investigate matters to make findings of fact but do not express opinions or make recommendations unless requested by the convening authority;¹⁷ (2) military commissions, which are a form of military tribunal convened to try individuals for unlawful conduct associated with war; and (3) nonjudicial punishment proceedings, which are disciplinary proceedings where the process is initiated and punishments are imposed by a commanding officer in addition to, or in lieu of, admonition or reprimand to address minor offenses.¹⁸

Over the past decade, the military justice system has undergone a number of reforms. For example, the Military Justice Act of 2016 enacted significant reforms to the UCMJ, most of which became effective on January 1, 2019.¹⁹ These reforms included changes such as limitations on the types of punishment permitted with non-judicial punishments;²⁰

¹⁶10 U.S.C. § 816 (Art. 16, UCMJ). The function of a summary court-martial is to adjudicate minor offenses under a simple procedure, while special and general courts-martial adjudicate more serious offenses and can impose more severe punishments.

¹⁷10 U.S.C. § 935 (Art. 135, UCMJ).

¹⁸10 U.S.C. § 815 (Art. 15, UCMJ).

¹⁹Military Justice Act of 2016, passed as part of the NDAA for Fiscal Year 2017, Pub. L. No. 114-328, §§5001-5542 (Dec. 23, 2016).

²⁰For example, section 5141 of the Military Justice Act of 2016 removes the authority to restrict a servicemember's diet to bread and water or to diminish rations during confinement as a potential non-judicial punishment.

changes to the required size of the panel, or jury, in a court-martial;²¹ and changes to what judicial outcomes are subject to automatic appeal.²²

In addition to the reforms impacting the disciplinary process, the Military Justice Act of 2016 also directed changes to military justice data collection and accessibility. Specifically, section 5504 of the act 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.²³ On December 17, 2018, the DOD General Counsel issued uniform standards and criteria, which directed that each military justice case processing and management system be capable of collecting uniform data concerning race and ethnicity.²⁴

Further, the NDAA for Fiscal Year 2022 amended the UCMJ to remove the decision-making authority to prosecute certain cases from military commanders and place it with an independent special trial counsel.²⁵ Special trial counsel in the Army, the Navy, the Marine Corps, and the Air Force will represent the United States in the investigation and prosecution of cases involving 13 covered offenses. Covered offenses include murder, rape and sexual assault, kidnapping, domestic violence, stalking, and child pornography, among others.²⁶ DOD announced full operational

²¹The number of panel members, or jurors, required for special courts-martial, general courts-martial with noncapital offenses, and general courts-martial with capital offenses were set at 4, 8, and 12 members, respectively. A capital offense means an offense for which death is an authorized punishment under the UCMJ and the *Manual for Courts-Martial*. A capital offense may be referred to special-court martial if and only if a mandatory punishment is not prescribed that is beyond the punitive power of a special court-martial.

²²Where the sentence does not also include death, dismissal, dishonorable discharge, or a bad conduct discharge, automatic appellate review is now limited to those cases that result in a sentence of confinement of 2 years or more, instead of the previous 1-year minimum confinement requirement.

²³Pub. L. No. 114-328, § 5504 (*codified* at 10 U.S.C. §940a). This section is also known as Article 140a of the UCMJ.

²⁴General Counsel of the Department of Defense Memorandum, *Uniform Standards and Criteria Required by Article 140a, Uniform Code of Military Justice (UCMJ)* (Dec. 17, 2018).

²⁵NDAA for Fiscal Year 2022, Pub. L. No. 117-81, § 531 (Dec. 27, 2021).

²⁶Public Law 117-81, § 533(2) (*codified* at 10 USC § 801(17)).

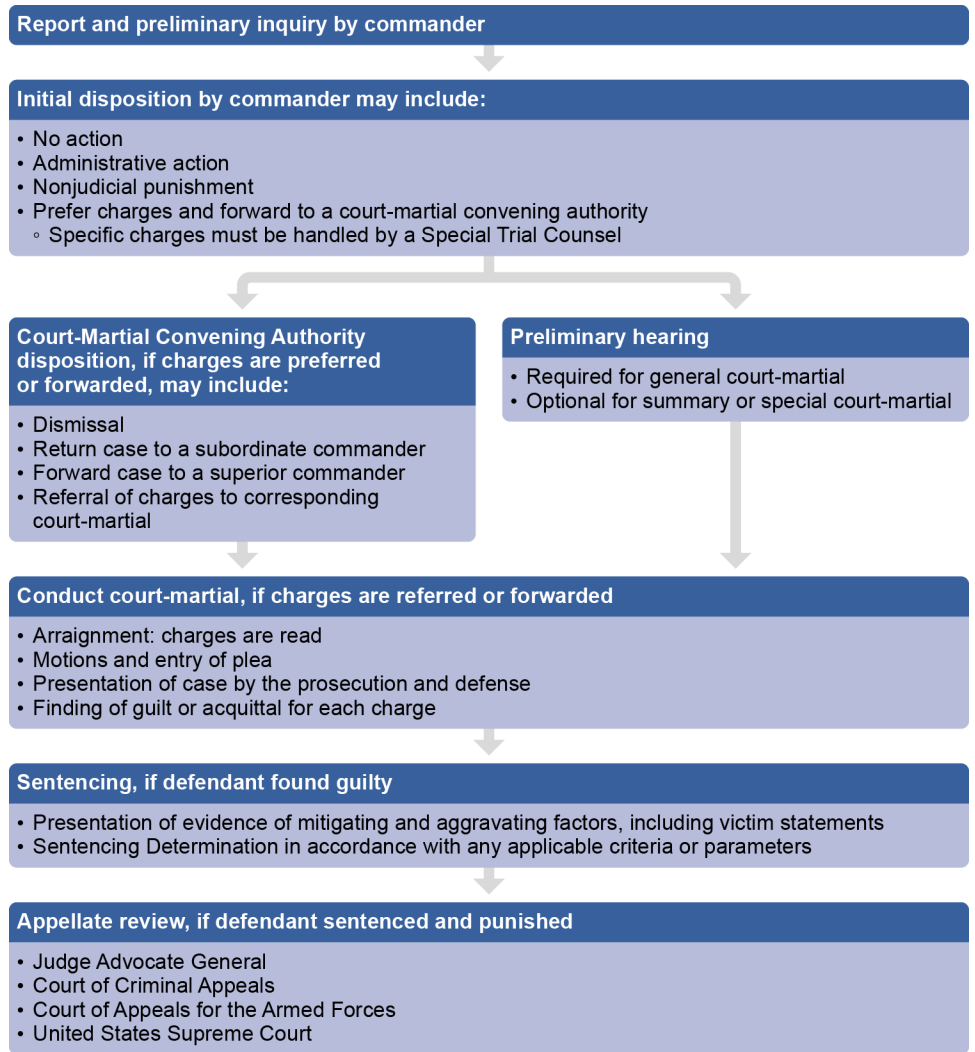
capability of the services' Offices of Special Trial Counsel in December 2023.²⁷

Overview of Military Justice and Discipline Processes

Section 549F of the NDAA for Fiscal Year 2022 defines military justice and discipline processes to include investigations; administrative separations and other administrative sanctions; non-judicial punishment; panel selection; pre-trial restraint or solitary confinement; dispositions of courts-martial; sentencing; and post-trial processes. See figure 1.

²⁷For more information on the Office of the Special Trial Counsel see GAO, *Military Justice: Actions Needed to Help Ensure Success of Judge Advocate Career Reforms*, [GAO-24-106165](#) (Washington, D.C.: May 2, 2024).

Figure 1: General Overview of the Military Justice and Discipline Process



Source: GAO analysis of Department of Defense information. | GAO-24-106386

Note: The National Defense Authorization Act for Fiscal Year 2022 amended the UCMJ to remove the decision-making authority to prosecute certain cases from military commanders and place it with independent special trial counsel in each of the military services. Special trial counsel will be responsible for decisions regarding the investigation and prosecution of cases involving 13 covered offenses. In such cases, the special trial counsel will make the initial disposition decisions, rather than the convening authority. Covered offenses include murder, rape and sexual assault, kidnapping, domestic violence, stalking, and child pornography, among others. DOD announced full operational capability of the services' Offices of Special Trial Counsel in December 2023.

- **Investigations:** This action is a preliminary inquiry into the charges or suspected offenses of a service member by an immediate

commander or other appropriate law enforcement agent or investigative authority.

- **Administrative separations and other administrative actions:** Administrative separation from military service for misconduct applies to service members who have violated the standards, practices, or codes of military law or conduct in some substantive way but whose case does not warrant a full court-martial. Other administrative action may include administrative sanctions such as letters of counseling, admonishment, and reprimand, discussed later in this report.
- **Non-judicial punishment:** This type of punishment refers to discipline given to a service member for minor offenses such as reporting late for duty, minor larceny, or disorderly conduct. The service member's commanding officer usually determines whether an offense was committed and, if so, an appropriate punishment, in non-judicial punishment proceedings.²⁸ Permitted punishments are less severe in the non-judicial punishment forum than at court-martial.
- **Court-martial panel selection:** Panel selection refers to the detailing by the appropriate level convening authority of members to serve on a court-martial panel—the military equivalent of a jury—for the trial of a defendant.
- **Pre-trial restraint and confinement, including solitary confinement:** Service members may be restricted in their movements, usually for a defined length of time and under certain stated terms as a result of non-judicial punishment, as part of a court-martial sentence, or, less frequently, while awaiting trial by court-martial. Non-judicial punishment may include very brief periods of restriction to certain limits, arrest in quarters, correctional custody, or confinement. A court-martial can include confinement for longer periods, up to and including for life, with the maximum depending upon the type of court-martial and the offenses committed. Finally, a service member may be held in pre-trial confinement when there is probable cause that the person has committed an offense under the UCMJ, it is likely that the individual would flee or commit serious criminal misconduct, and lesser forms of restraint, i.e., restriction, are inadequate. Solitary confinement occurs when a prisoner is placed in a cell away from other prisoners, with limited contact with others.

²⁸In April 2024, we issued a report on disciplinary actions, including non-judicial punishment, in the Navy and Marine Corps. See GAO, *Military Justice: Quality Data Needed to Improve Oversight of Navy and Marine Corps Disciplinary Measures*, [GAO-24-106652](#) (Washington, D.C.: Apr. 18, 2024).

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- **Dispositions of courts-martial:** The disposition of a court-martial is the stated outcome of the trial with any finding of guilt or acquittal for each charge noted.
 - **Sentencing:** Once an accused service member is convicted at a court-martial, the parties present their cases on sentencing, and then the members of the court-martial or the military judge determine an appropriate punishment. Depending on the nature and severity of the crime, and the type of court-martial hearing the case, a variety of possible punishments exist, including confinement, punitive discharge from the military, reduction in rank, forfeiture of pay and allowances, and even death in the most serious cases. In summary courts-martial, a single commissioned officer who is not a military judge adjudicates minor offenses and a sentence. A summary court-martial is not a criminal forum, and a finding of guilty at a summary court-martial is not a criminal conviction. Any sentence imposed on the convicted service member will be announced promptly after it has been determined.
 - **Post-trial processes, including appeals:** Various actions take place after an accused service member is convicted at a court-martial. These actions include post-trial motions filed to, for example, set aside one or more findings because of alleged legal insufficiency of evidence or to correct a computational, technical, or other clear error in the sentence. Additionally, certain convictions may be appealed to higher courts in cases where the sentence reaches a certain threshold. However, some cases that do not qualify for appellate review will receive a review by a judge advocate to, among other things, determine that the court had jurisdiction and that the sentence was lawful. Some cases may then be further reviewed by the Court of Appeals for the Armed Forces as well as by the U.S. Supreme Court at their discretion.

Overview of Relevant Military Personnel Policies

Section 549F of the NDAA for Fiscal Year 2022 defines military personnel policies to include accession rates and policies, retention rates and policies, promotion rates, assignments, professional military education selection and policies, and career opportunity for minority members of the armed forces.²⁹ The Office of the Deputy Assistant Secretary of Defense for Military Personnel Policy supports the Under Secretary of Defense for

²⁹Professional military education and career opportunities for minority members of the armed forces are broad policy categories. While we do not define them in this background section, we assess later in the report if the military departments' reports included an analysis of these categories.

Personnel and Readiness by overseeing the development of military personnel policies that address recruiting, accession, retention, and personnel management, among other things.

- **Accession:** Accession refers to the process by which applicants for military service are evaluated and approved for enlistment and commission. Prior to accession, applicants are evaluated based on eligibility criteria outlined by DOD. The Secretaries of each military department may grant accession waivers to applicants who do not meet the enlistment or commission eligibility criteria.
- **Retention:** Retention generally refers to military personnel voluntarily choosing to stay in the military after their obligated term of service has ended. Retention can be incentivized through various means including compensation, quality-of-life initiatives, dedicated career counselors, and reenlistment bonuses.³⁰
- **Promotion:** Generally, promotion is the competitive system by which military enlisted service members and officers are selected for service at the next higher grade. Promotions occur at specific times during a service member's career, and due to fewer positions at the higher grades, there is a decreasing likelihood of promotion the further one progresses.
- **Assignments:** Assignment refers to the process by which the military departments give service members their jobs. The process for assignment differs by branch.

Overview of Race and Ethnicity Reporting Standards

The Office of Management and Budget (OMB) has established standards for collecting, maintaining, and presenting data on race and ethnicity for

³⁰For more information on retention, see GAO, *National Security Snapshot: DOD Active-Duty Recruitment and Retention Challenges*, [GAO-23-106551](#) (Mar. 2023).

all federal reporting purposes.³¹ These standards were developed in cooperation with federal agencies to provide consistent data on race and ethnicity throughout the federal government. OMB standards in effect at the time of our review establish the following five categories of race:

- **American Indian or Alaska Native:** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
- **Asian:** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- **Black or African American:** A person having origins in any of the black racial groups in Africa.
- **Native Hawaiian or Other Pacific Islander:** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- **White:** A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

The OMB standards also establish two categories of ethnicity:

- **Hispanic or Latino:** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
- **Not Hispanic or Latino:** A person not having the above attributes.

³¹Office of Management and Budget, *Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity*, 62 Fed. Reg. 58,782 (Oct. 30, 1997). While these were the OMB standards in effect when the military departments collected the data and produced their racial disparity reports and when we conducted the bulk of our audit work, in March 2024 the OMB issued revised standards for classification of federal data on race and ethnicity. Among other things, the revised standards include the combination of race and ethnicity into a single question with the ability for respondents to select multiple options, the addition of “Middle Eastern or North African” as a new minimum reporting category distinct from the “White” category, as well as revisions to the “White” category definition accordingly. Agencies are required to submit an Action Plan on Race and Ethnicity Data within 18 months of publication of the revised standards and are required to fully implement the revised standards within 5 years of publication. Office of Management and Budget, *Revisions to OMB’s Statistical Policy Directive No. 15: Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity*, 89 Fed. Reg. 22,182 (Mar. 29, 2024). References to the OMB standards in this report are to those issued in 1997 and current during the time of DOD’s and GAO’s reviews.

In addition to defining race and ethnicity for federal administrative reporting and record-keeping requirements, OMB standards provide two methods for federal agencies to follow regarding the collection of data on race and ethnicity.

1. Separate questions shall be used for collecting information about race and ethnicity wherever feasible. In this case, there are five categories of race noted above which individuals can select, and individuals can identify with more than one category of race. In addition to race, individuals can select one of the two ethnicity categories above.
2. If necessary, a single question or combined format can be used to collect information about race and ethnicity, where the following categories are provided for individuals: American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, Native Hawaiian or Other Pacific Islander, and White. In this instance, individuals can also select more than one category.

Related GAO and DOD Reviews of Racial and Ethnic Issues within the Military Justice System

In May 2019, we reported that the military services (including the Coast Guard which is under the Department of Homeland Security) did not consistently report data that provides visibility into disparities in the military justice system and that DOD had not identified when disparities should be examined further.³² In addition, we reported that DOD lacked guidance to establish criteria to specify when data indicating possible racial, ethnic, or gender disparities in the military justice system should be further reviewed and how such a review should be conducted. We also reported that racial and gender disparities existed in military justice investigations, disciplinary actions, and case outcomes but had not been comprehensively studied to identify causes. We made 11 recommendations to the Department of Homeland Security, DOD, and the military services to address these issues, and DOD generally concurred with our recommendations. As of February 2024, nine of the recommendations from our report had been addressed and closed as implemented. Specifically, DOD and the military services have implemented recommendations related to tracking and reporting race, ethnicity, and gender data consistently, and tracking non-judicial punishment data.

³²GAO, *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 two recommendations that have not yet been implemented are that the Secretary of Defense (1) issue guidance that establishes criteria to specify when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed, and that describes the steps that should be taken to conduct such a review and (2) in collaboration with the Secretaries of the military departments and the Secretary of Homeland Security, conduct an evaluation to identify the causes of any disparities in the military justice system, and take steps to address the causes of these disparities as appropriate.³³ Though the recommendations have not been fully implemented, DOD has taken steps towards addressing them. For example, DOD officials stated in August 2023 that they had commissioned a study from the Center for Naval Analyses to further identify disparities in the military justice system. Officials expect to use these data to develop and issue appropriate policies on racial, ethnic, and gender disparities in the military justice system, and to identify the causes of any disparities and steps to take to address those causes.

In May 2022, the Deputy Secretary of Defense established the IRT to identify the root causes of racial disparities in DOD's investigative and military justice systems and provide actionable recommendations to address them. The IRT report contained 17 recommendations addressing training and education, service member protections, and oversight and transparency issues.³⁴ The report was initially presented to the Deputy Secretary in August 2022 and was published publicly in June 2023.

Additionally, in June 2023, the DOD Inspector General released a report addressing the extent to which the military services were collecting uniform demographic data specific to race and ethnicity in accordance with the Military Justice Act requirements included in the NDAA for Fiscal Year 2017.³⁵ The report contained four recommendations directed to the Under Secretary of Defense for Personnel and Readiness: (1) establish and define demographic categories; (2) require consistent use of these

³³This recommendation has been designated as a priority recommendation. Priority recommendations are those that warrant priority attention from heads of agencies because their implementation could save large amounts of money; improve congressional and/or executive branch decision-making on major issues; eliminate mismanagement, fraud, and abuse; or ensure that programs comply with laws and funds are legally spent, among other benefits.

³⁴Department of Defense, *Internal Review Team Report*.

³⁵Department of Defense Inspector General, *Evaluation of the Collection of Demographic Data in the Military Justice System* (June 7, 2023).

demographic categories; (3) determine the need for a single military justice system database to be used by all military services; and if so, (4) develop and implement such a database.³⁶

Finally, the military departments are each required to submit reports to Congress annually on racial, ethnic, and sex demographics in the military justice system during the preceding year. Specifically, section 549G of the NDAA for Fiscal Year 2022 directed the military departments to submit annual reports to the Secretary of Defense detailing the numbers of reported offenses, administrative actions, non-judicial punishment, and court-martial outcomes, among other things, disaggregated by race, ethnicity, sex, and rank. The Secretary of Defense is required to consolidate and submit these reports to Congress.³⁷

Overview of Civilian Criminal Justice System in the United States

While military service members are normally subject to laws and punishments under the UCMJ, there are times when civilian courts also have jurisdiction over crimes committed by service members. This can happen when a service member commits a crime outside of a military installation.³⁸ Further, studies have found that racial and ethnic disparities exist in civilian justice systems as well, as discussed later in this report. According to a Congressional Research Service paper, in the civilian criminal law system some basic objectives are to (1) discover the truth in order to punish the guilty proportionately with their crimes, (2) acquit the innocent without unnecessary delay or expense, and (3) prevent and deter further crime, thereby providing for public order.³⁹ Further, the Congressional Research Service reported that while the military justice system shares these objectives in part, it also serves to enhance discipline throughout the armed forces, serving the overall objective of providing an effective national defense.

Municipalities, states, and the federal government have laws making certain acts illegal, and each jurisdiction is responsible for setting punishment for committing those crimes. Each state has its own court

³⁶For additional information on related reports and previous recommendations regarding racial and ethnic disparities and discrimination issues within the military, see appendix II.

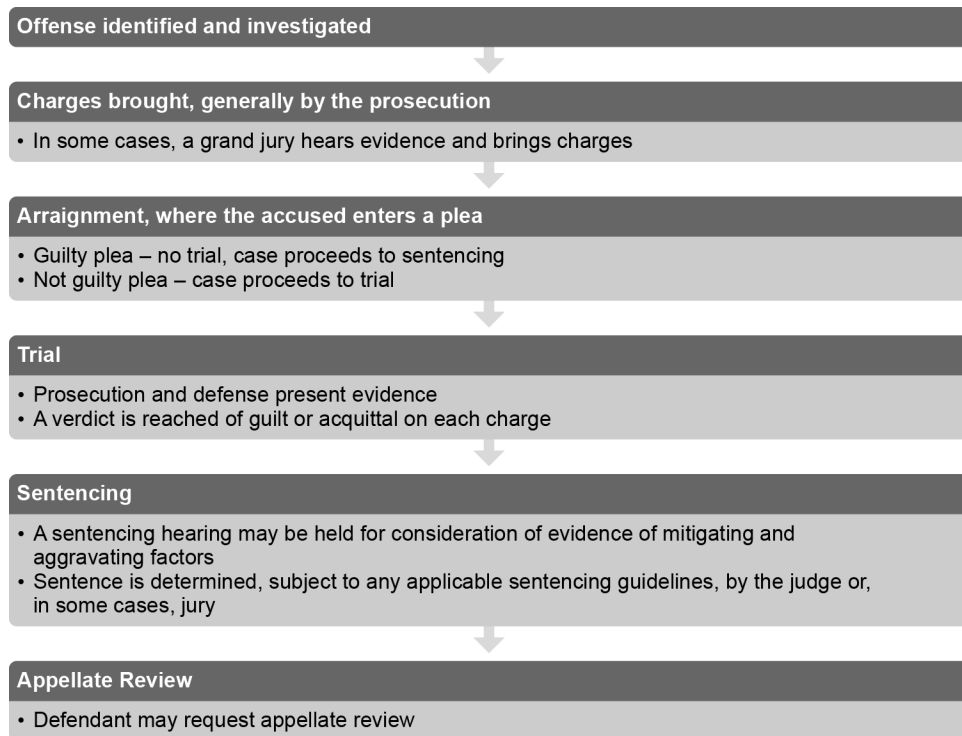
³⁷Pub. L. No. 117-81, § 549G (2021), (*codified at* 10 U.S.C. § 486).

³⁸In the case of sex-related offenses committed in the United States, a victim may express a preference that a civilian court with jurisdiction over the offense have primary prosecutive jurisdiction.

³⁹Congressional Research Service, *Military Courts-Martial Under the Military Justice Act of 2016* (Aug. 28, 2020).

system and set of rules for handling criminal cases. State cases are brought by state prosecutors or district attorneys while federal cases are brought by U.S. Attorneys. Aspects of the process vary from one jurisdiction to another and may depend upon the facts and circumstances of a case. See figure 2 and the bulleted text below it for a general overview of steps in the federal and state criminal processes.

Figure 2: Criminal Justice System Process



Source: GAO analysis of Department of Justice information. | GAO-24-106386

- **Entry into the criminal justice system: investigations.** Federal and state governments have agencies whose criminal investigators collect and provide evidence when a crime is reported or observed. Part of the investigation may involve a search warrant. Arrests also require probable cause and often occur after police have gotten an arrest warrant from a judge. Depending on the specific facts of the case, the first step may be an arrest. If police officers have probable cause to arrest a suspect (for example, witnessing the suspect commit a crime), they will make an arrest.

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- **Prosecution and pretrial services: charging, information, and indictment.** In federal jurisdictions, after prosecutors study the information from the investigators, the prosecutor decides whether to present the case to a grand jury for potential felonies. However, states are not required to charge by use of a grand jury, although many do so, and for cases not requiring an indictment, states often use information instead. After the defendant is charged, the defendant can hire an attorney or use a public defender to help defend against the charges being brought.
 - **Adjudication: arraignment and trial.** Once an indictment or information has been filed with the trial court, the defendant is scheduled for an arraignment hearing. At the arraignment, the defendant is informed of the charges, advised of the rights of criminal defendants, and asked to enter a plea to the charges. If the defendant pleads guilty, the judge may accept or reject the plea. If the plea is accepted, no trial is held, and the defendant is sentenced at this proceeding or at a later date. If the defendant pleads not guilty or not guilty by reason of insanity, a date is set for the trial. A person accused of a serious crime is guaranteed a trial by jury. However, the accused may ask for a bench trial where the judge, rather than a jury, serves as the finder of fact. In both instances the prosecution and defense present evidence by questioning witnesses while the judge decides on issues of law. The trial results in acquittal or conviction on the original charges or on lesser included offenses.
 - **Post trial actions: sentencing and appeals.** After a conviction, a sentence is imposed. In most cases the judge decides on the sentence, but in some jurisdictions the sentence is decided by the jury, particularly for capital offenses. In many jurisdictions, the law mandates that anyone convicted of certain types of offenses serve a prison term. Most jurisdictions permit the judge to set the sentence length within certain limits, but some have determinate sentencing laws that stipulate a specific sentence length that must be served and cannot be altered. After the trial, a defendant may request appellate review of the conviction or sentence. In some cases, appeals of convictions are a matter of right; in other cases, appeals may be subject to the discretion of the appellate court.

Military Departments' Racial Disparity Reports Addressed Required Elements to Varying Degrees

The Military Departments Were Required by Statute to Submit Reports Related to Their Assessment of Racial Disparities

Section 549F of the NDAA for Fiscal Year 2022 required the Secretary of each military department to assess racial disparity in their military justice and discipline processes and military personnel policies, as they pertain to minority populations. The military departments were required to submit a report to the House and Senate Armed Services Committees detailing the results of the assessment along with any recommendations for changes. Further, the statute described the military justice and discipline processes and military personnel policies required to be included in the assessments as comprising 18 different such processes and policies. We refer to these—listed in table 1—as required elements that the military departments were to cover in their respective assessments.

Table 1: Required Elements for Military Departments' Assessments of Racial Disparity in Military Justice and Discipline Processes and Military Personnel Policies Pertaining to Minority Populations

Military Justice and Discipline Processes	Military Personnel Policies
Investigations	Accession rates ^a
Administrative separation and other administrative sanctions	Accession policies ^a
Non-judicial punishment	Retention rates
Panel selection	Retention policies
Pre-trial confinement	Promotion rates
Solitary confinement	Assignments
Dispositions of courts-martial	Professional military education selection
Sentencing	Professional military education policies
Post-trial processes	Career opportunity for minority members

Source: GAO analysis of Section 549F, National Defense Authorization Act for Fiscal Year 2022. | GAO-24-106386

^aAccession refers to the process by which applicants for military service are evaluated and approved for enlistment and commission. Prior to accession, applicants are evaluated based on eligibility criteria outlined by the Department of Defense. The Secretaries of each military department may grant accession waivers to applicants who do not meet the enlistment or commission eligibility criteria.

The Military Departments' Reports Included Some Required Elements, but Excluded Others They Deemed Less Relevant to a Military Context

The military departments varied in the extent to which they included in their reports the 18 elements required as part of the assessment by the statute, as shown in table 2.

Table 2: Extent to Which the Military Departments Included the 18 Elements in Their Reports on Racial and Ethnic Disparity in Military Justice and Discipline Processes and Military Personnel Policies

Reporting Element	Army	Navy	Air Force
Military Justice and Discipline Processes			
Investigations	●	●	●
Administrative separation and other administrative sanctions	◐	◐	●
Non-judicial punishment	●	●	●
Panel selection	○	○	○
Pre-Trial confinement	○	●	●
Solitary confinement	○	◐	●
Dispositions of courts-martial	●	●	●
Sentencing	◐	○	○
Post-trial processes	●	○	◐
Military Personnel Policies			
Accession rates	●	●	●
Accession policies	●	◐	◐
Retention rates	◐	●	●
Retention policies	◐	◐	○
Promotion rates	◐	◐	●
Assignments	◐	◐	●
Professional military education selection	◐	◐	●
Professional military education policies	●	○	●
Career opportunity for minority members	○	◐	○

Source: GAO analysis of DOD data. | GAO-24-106386

Note: Elements that are fully included are indicated by a full circle (●); partially included are indicated by a half circle (◐); and not included are indicated by an open circle (○). We determined a required reporting element was “fully included” if the element is discussed along with all relevant data or other information; “partially included” if the element is discussed or mentioned with some, but not all, relevant data or other supporting information included; and “not included” if the element is mentioned only in the context of explaining why it is not included or there is no mention of the element at all. Section 549F of the National Defense Authorization Act for Fiscal Year 2022 required the military departments to provide information detailing the results of an assessment of racial disparity in military justice and discipline processes and military personnel policies. The act provided definitions of these processes and policies that included a list of 18 elements against which we assessed the military departments' reports.

For example, as shown above, the Departments of the Army, the Navy, and the Air Force each at least partially included information regarding 14 of the 18 elements defined in the NDAA for Fiscal Year 2022 in their racial disparity reports. More specifically, the Army's report fully included seven elements, the Navy's report fully included six elements, and the Air Force's report fully included 12 elements. Of the elements that were fully included, information related to four was present in all three department's reports: investigations; non-judicial punishments; dispositions of courts-martial; and accession rates.

As shown in the table above, we also found that the military departments did not include some of the required elements. For example, the Army, the Navy, and the Air Force did not include information regarding panel selection for court-martial proceedings, which is further discussed later in this report. However, the remaining three elements missing from each department's report varied.

In some cases, a military department considered some elements as less relevant to their processes and therefore did not include information related to those elements in their reports. For example, Army officials said they did not include data on pre-trial confinements in their report because they typically use other means, such as restricting alleged offenders to base, to detain a defendant prior to the start of their court case. As a result, officials stated that data on pre-trial confinement is too limited to be significant.

We also found that some elements were omitted due to data and analysis limitations. For example, the Navy report did not include any information related to post-trial processes as it stated that the Department of the Navy does not have a mechanism to assess racial disparity in post-trial processing. Further, for the time frame covered, the Air Force report stated that there were limited quantifiable methods to assess disparity in court-martial sentencing. Specifically, it stated that available data were not sufficiently complete to accurately assess the impact of racial disparity in sentencing. Similarly, none of the military departments included an assessment of panel selection in their reports, as discussed later in this report.

Finally, the NDAA for Fiscal Year 2022 stated that the military departments should include in their reports any recommendations for statutory or regulatory changes deemed necessary. According to our assessment of the military departments' reports, only the Army provided recommendations, while the Navy and the Air Force both reported that

they were not requesting any statutory or DOD policy changes at this time. The Army's 12 recommendations address issues across areas within military justice and discipline as well as military personnel policies. For example, the Army recommended exploring the feasibility and advisability of including race and ethnicity demographic data in a variety of official reports and conducting periodic and ongoing reviews to recruit, retain, and promote a more racially diverse corps of personnel, particularly in senior positions. Additionally, other recommendations include improvements to the assignment process and expanding equal opportunity training content.⁴⁰

Several Issues Limit the Usefulness of the Military Departments' Racial Disparity Reports

Several issues limit the usefulness of the military departments' reports on racial and ethnic disparities both in assessing their military justice processes individually and across DOD as a whole. Specifically, the military departments do not track and maintain data for some segments of the military justice process. Further, the military departments differ in how they capture, analyze, and present data on racial and ethnic disparities.

Limited Data Hinders Assessment of Disparities in Some Military Justice Processes

Data limitations hinder the military departments' and DOD's visibility over and ability to respond to requests for information on segments of the military justice process that could provide important context about racial and ethnic disparities in military justice and discipline processes. Specifically, the military departments lack accessible data to fully assess and report on four distinct segments of the military justice process: (1) administrative sanctions; (2) investigations; (3) post-trial appeals; and (4) court-martial panel selection.

⁴⁰The Army submitted its 2022 *Holistic Evaluation and Assessment of Racial Disparity in Military Justice* (HEARD) to satisfy its statutory requirement to assess and report on racial disparities in military justice and discipline and conducted new analysis to satisfy the statutory requirement regarding military personnel policies. As a result, recommendations stemming from the HEARD study predate submission of the Army's final racial disparity report. In September 2022, the Secretary of the Army directed actions to address these recommendations, including establishing a working group to assess existing race and ethnicity reporting requirements and directing the Inspector General to assess existing Equal Opportunity training. Army officials told us that while they have taken some steps in relation to these recommendations, they are waiting for direction from DOD regarding the 2023 IRT recommendations before implementing any additional changes. For additional information on existing GAO and DOD recommendations related to racial and ethnic disparity in the military justice system, along with GAO recommendations to address legal training for commanders and organizational climate issues at the military service academies, see appendix II.

Administrative Sanctions

As noted previously, the NDAA for Fiscal Year 2022 required each military department to assess racial disparity in 18 elements of military justice and discipline processes and military personnel policies, including administrative separations and other administrative sanctions, and to provide a detailed report on the results. Each department's racial disparity report included data on administrative separations, and the Air Force's report also included data on administrative sanctions.⁴¹ However, Army and Navy officials stated that they did not include data on administrative sanctions in their racial disparity reports because they do not have a process for centrally collecting and maintaining such data to allow for reporting when needed.

Administrative sanctions are corrective actions that a commander may use to address service member misconduct. Such sanctions include letters of counseling, letters of admonishment, and letters of reprimand. According to military department officials, administrative sanctions are largely imposed at the discretion of first-line supervisors and while they are generally considered to be non-punitive, they can impact a service member's promotion opportunities, among other things.

Army officials stated that they generally recommend that staff judge advocates, who advise commanders on legal matters, informally collect administrative sanction data for their commands, and that this practice is also taught in required pre-command courses. Further, these officials stated that they have received anecdotal feedback from staff judge advocates that such data are key in that they enable commanders to identify potential racial and ethnic disparities in their use of administrative sanctions. Staff judge advocates also shared that it is important to track all administrative sanctions—rather than just the most serious ones—as it provides a more complete picture of any disparities that may exist.

Investigations

The NDAA for Fiscal Year 2022 also required the military departments to include data on investigations in their assessments. While each military department's report included data on law enforcement investigations, satisfying the statutory requirement, they did not include data on other investigations, such as commander-directed investigations (CDIs). According to military department officials, CDIs are conducted at the

⁴¹According to military department officials, they refer to these sanctions as administrative actions, as they are designed to be rehabilitative in nature rather than punitive. We refer to them as sanctions in line with section 549F of the NDAA for Fiscal Year 2022.

discretion of commanders and can result in serious disciplinary action, such as non-judicial punishment.

Army officials stated that they do not collect and centrally track data on some investigations—including CDIs—that result in any command response less severe than non-judicial punishment. Air Force and Navy officials stated that CDIs are also not centrally tracked in their respective departments.

Appeals

The military departments do not fully track the data needed to assess and report on racial and ethnic disparities in appeals—a key post-trial process—filed by service members convicted in a military court in a manner that is easily accessible. For example, Navy officials stated that they do not track the bases upon which appeals are filed or granted. Similarly, while the Air Force and the Army do track the bases for appeals, officials stated that they do not specifically collect data to identify appeals based on race or ethnicity, such as appeals based on alleged racial bias. The Air Force and the Army collect some easily accessible data on appeals, such as the race and ethnicity of service members who request and are granted appellate relief. However, data on the bases upon which appeals are filed or granted are not easily accessible for analysis. Specifically, Army officials stated that collecting and reporting some appeals data in the department’s racial disparities report was a labor-intensive process that involved reserve personnel manually reviewing documentation to identify any appeals based on alleged racial bias. Air Force officials stated that assessing their appeals data would require a similar labor-intensive process.

Court-Martial Panel Selection

The military departments do not systematically collect and maintain data on the race and ethnicity of service members selected to serve on court-martial panels—the military equivalent of juries. Therefore, they did not include an assessment of panels in their racial disparity reports. According to Article 25 of the UCMJ, a court-martial convening authority shall consider the age, education, training, rank, experience, length of service, and judicial temperament of service members when selecting those best qualified to serve on panels.⁴² The UCMJ does not identify race or ethnicity as a factor to consider when selecting panel members. As such, military department officials stated they do not track these demographics for service members detailed to panels.

⁴²10 U.S.C. § 825.

In December 2023, the Defense Advisory Committee on the Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (Defense Advisory Committee) presented initial results from a study of panel selection for criminal sexual assault cases in the Army.⁴³ The initial results from this study indicated little to no variation in panel selection rates for non-White and White service members. However, Defense Advisory Committee officials noted that the lack of transparency regarding the demographic data of panel members has led to a broad perception that court-martial panels suffer from racial and ethnic disparity.

Additionally, officials noted that this perception may in turn lead to a lack of trust in the unbiased nature of the military criminal justice system. Defense Advisory Committee officials noted that the military services have not conducted any prior studies of the demographics of court-martial panels. Further, they stated that the current study has only examined sexual assault cases within the Army to date and that, while the study will eventually include the other military services, there are no plans to include an assessment of other types of criminal cases. As a result, findings may differ in a similar study that includes all military criminal cases and the other branches of the military.

DOD's IRT report also found deficiencies in the data collected and maintained by the military departments. Specifically, the IRT reported that only the Air Force tracks administrative sanctions; that the military departments do not track some investigations, including CDIs; and that the departments' reporting formats and content differ when reporting data on appeals. The IRT reported that these omissions preclude analysis of all outcomes, as well as direct comparisons and meaningful analysis of investigations across the military services. Further, the IRT reported that its ability to conduct a root cause analysis of racial disparities was hindered by a lack of data, among other things. Specifically, the IRT reported that without the ability to track cases and demographic data in all phases of the investigative and military justice processes, DOD is left with aggregate numbers showing disparities but little insight into their origins.⁴⁴

In response, the IRT recommended that DOD improve and standardize data collection and develop processes and policies for timely analysis and

⁴³The Defense Advisory Committee study will examine panel selection across all the military services but to date has only collected and analyzed initial data from the Army.

⁴⁴Department of Defense, *Internal Review Team Report*.

reporting of data.⁴⁵ While DOD has taken some steps towards implementing the IRT's recommendations, such as assigning offices of responsibility for each recommendation, it currently does not have a clear plan or timeline for implementing the recommendations. Further, the IRT report did not address the lack of data on the race and ethnicity of court-martial panels. As a result, it is unclear whether these efforts will ensure that administrative sanctions, CDIs, appeals, and court-martial panel selection data are tracked and maintained.

Standards for Internal Control in the Federal Government states that management should use quality information—that is, information that is complete and accessible, among other things—to achieve objectives, such as a fair and just military justice system in accordance with the UCMJ. Specifically, management should obtain relevant data from reliable sources and process such data into quality information for use in achieving objectives.⁴⁶ Additionally, our prior work has shown that organizations striving to meet program goals must have information systems in place to meet the need for fast, reliable, and accurate information.⁴⁷

Military department officials stated that they are not able to consistently assess and report on racial disparities in some areas because they do not have a standardized process to collect and maintain certain data—especially those maintained at the unit level—in a centralized, easily accessible manner to allow for reporting when needed. Such data include administrative sanctions in the case of the Army and the Navy, and CDIs, appeals data, and panel selection data across the military departments.

Army and Navy officials acknowledged the importance of data on administrative sanctions, but Army officials stated that tracking administrative sanctions would require the development of a database to maintain such data, which would be expensive to implement. Military department officials also stated that tracking data on processes such as administrative sanctions and CDIs is difficult due to their decentralized nature. However, the Air Force regularly tracks and reports administrative sanctions data using excel spreadsheets—thus demonstrating that there are other, less expensive means of managing such data. The

⁴⁵Department of Defense, *Internal Review Team Report*.

⁴⁶[GAO-14-704G](#).

⁴⁷[GAO/GGD-96-118](#).

discretionary nature of administrative sanctions and CDIs and their potential effect on a service member's career underscores the importance and relevance of such data in an assessment of racial disparity in military justice processes.

Incorporating data on the bases upon which appeals are filed and granted along with the race and ethnicity of panel members could provide useful insights into racial and ethnic disparity in military justice processes. Military justice officials stated that recent case law prohibits convening authorities from considering race and ethnicity when selecting court-martial panel members, which would necessarily limit their ability to collect and maintain relevant data. However, the military departments could collect this information in a way that is sufficiently separated from the trial process. For example, the military departments could include a unique identifier, such as a DOD identification number tied to personnel records, on the panel selection forms. Additionally, this issue has been studied before, as evidenced by the Defense Advisory Committee report. The data in that study were collected and documented in a way that, though labor-intensive and not feasible for the military departments to replicate on a regular basis, does demonstrate that such information can be collected in a manner that is sufficiently separated from the selection process to avoid consideration of race and ethnicity in panel selection.⁴⁸

Without a standardized process to collect and centrally maintain data on administrative sanctions, CDIs, appeals, and court-martial panels, the military departments and DOD are unable to address future requests for such information and lack visibility over these areas, which is needed to identify disparities. Further, the military departments may miss opportunities to identify sources of racial disparities and assure their commitment to a fair and just military justice system.

⁴⁸Defense Advisory Committee officials stated that the collection process for race and ethnicity data in court-martial panels was time-consuming and labor-intensive. Because the military departments do not maintain demographic data on panel members in any centralized military database, officials told us that they had to identify the names of panel members from a combination of convening orders, trial source documents, and trial audio recordings. Once officials had the names of panel members, they worked with the relevant military service offices that track service member demographic data to identify the individual's race, ethnicity, and gender. Officials stated that this process was time-consuming since trial documentation and audio recordings do not include unique identifiers, such as panel members' social security numbers or DOD identification numbers. As a result, these officials stated that they had to ensure they matched the name with the correct individual by using other clues, such as the time period and location of the trial in comparison with service members' prior assignments.

Other Inconsistencies in the Military Departments' Reports Limit their Usefulness

We also identified several other inconsistencies within and among the military departments' reports that could impede decision-makers' understanding of racial disparities that exist within the departments individually and across DOD as a whole. Specifically, the military departments' inconsistent use of race and ethnicity categories, disparate data analyses, and variability in report content limit the extent to which their reports provide a useful assessment of racial disparities in military justice processes across the department.

Inconsistent data. As previously discussed, OMB Directive 15 established minimum standard race and ethnicity categories that all federal agencies are required to use. However, race and ethnicity data in the military departments' racial disparity reports did not consistently adhere to OMB's categories. Specifically, OMB's guidance established five minimum categories for data on race: (1) American Indian or Alaska Native, (2) Asian, (3) Black or African American, (4) Native Hawaiian or Other Pacific Islander, and (5) White. The guidance also established two minimum categories for data on ethnicity: (1) Hispanic or Latino, and (2) Not Hispanic or Latino.⁴⁹

In 2018, the DOD General Counsel issued guidance requiring each military service to implement standards to ensure the collection of uniform data as it relates to military justice, consistent with the race and ethnicity requirements established by OMB, along with an "other" race category. Further, DOD's guidance stated that while the military services may opt to include more race and ethnicity categories than those listed in the standards, expanded categories must aggregate to the standard categories established by OMB for reporting purposes.⁵⁰

Despite this OMB and DOD guidance, the race and ethnicity categories used in the Departments of the Army's and the Navy's racial disparity reports are not consistent with OMB standards. For example, the Army's report combined the two distinct categories of "Asian" and "Native

⁴⁹Office of Management and Budget (OMB), *Revisions to Standards for Federal Data on Race and Ethnicity*. While these standards were in effect when the military departments collected the data and produced their racial disparity reports and when we conducted our audit work, as previously discussed, OMB issued revised standards in March 2024 along with requirements for agencies to implement the revised standards within 5 years of publication. See OMB, *Revisions to OMB's Statistical Policy Directive No. 15*. References to the OMB standards in this report are to those issued in 1997 and current during the time of DOD's and GAO's reviews.

⁵⁰DOD OGC Memorandum, *Uniform Standards and Criteria*.

Hawaiian or Other Pacific Islander” specified by OMB into the single category “Asian or Pacific Islander.” In 2019, we reported that the military services did not have the ability to present race and ethnicity data using the categories established by OMB and recommended that they take steps to develop this capability. In response, Army officials stated that they modified their personnel database to present data in the OMB-specified categories.⁵¹ According to Army officials, data in its racial disparities report are from fiscal years 2017 through 2019 and were collected before the database was modified.⁵² However, these officials stated that any future reports would include race and ethnicity categories that are aligned with those established by OMB. For example, such future reports could include the military departments’ required annual military justice reports, which are to include race and ethnicity data, as discussed previously.

The Department of the Navy’s report similarly used modified race and ethnicity categories, despite previously providing us with evidence that they had aligned their categories with OMB’s standards to address our 2019 recommendation.⁵³ For example, most of the military justice data in the Navy’s report included the additional categories of “other” and “unknown,” but Navy officials with responsibilities for coordinating the report’s data did not know how these categories were defined or which individuals fell into them.

Additionally, the Navy and the Marine Corps used different race and ethnicity categories, despite both services’ data being included in the same report. For example, Navy accessions data combined the “Asian” category with “Native Hawaiian or Other Pacific islander,” whereas Marine Corps officer assignments data omitted the “Native Hawaiian or Other Pacific Islander” category altogether.⁵⁴ Further, Navy court-martial data in the report included both “other” and “unknown” as race and ethnicity

⁵¹GAO-19-344; and 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).

⁵²The Army submitted its 2022 *Holistic Evaluation and Assessment of Racial Disparity in Military Justice* (HEARD) to satisfy the statutory requirement to assess and report on racial disparities in military justice and discipline processes. As a result, military justice and discipline data in its racial disparities report were more dated than that in the other military departments’ reports.

⁵³GAO-19-344 and GAO-21-105000.

⁵⁴Marine Corps officials stated that the service began tracking “Native Hawaiian or Other Pacific Islander” officer assignments data in the middle of fiscal year 2022.

categories, while Marine Corps data in the same section only included the “other” category.

In addition to diverging from OMB standards, some race and ethnicity data presented in the Navy and the Air Force reports may not be consistent with how it is documented in service members’ official records. For example, Marine Corps officials stated that race and ethnicity data pertaining to pre-trial confinement are entered into their database based on a form completed by service members upon intake at a correctional facility.⁵⁵ As a result, the Marine Corps cannot be certain that the race and ethnicity data of a service member in this database is consistent with what is documented in their official personnel record, thus hindering the Department of the Navy’s ability to conduct a reliable assessment of racial and ethnic disparities across military justice processes. Similarly, Air Force officials stated that, while race and ethnicity categories are standardized for most data presented, administrative sanctions data are entered into spreadsheets at the unit level by individuals at each command and therefore they cannot be sure it is consistent with the category documented in the service member’s official record.

Disparate analyses. The extent to which the military departments’ reports included analyses of data to identify racial and ethnic disparities differs, making it impossible to identify the extent to which such issues exist across the department. As previously noted, the NDAA for Fiscal Year 2022 directed the military departments to assess and report on racial and ethnic disparities in military justice and discipline processes. Each military department’s report presents data on various military justice and discipline processes, but only the Army and the Air Force reports clearly use these data to assess and identify racial disparities—the primary purpose of the requirement.

For example, the Army and the Air Force discussed their assessments of data within the required elements to identify indicators of disparity, while the Navy did not. Specifically, the Army and the Air Force reported that they found indicators of racial disparities in various phases of the military justice process, such as criminal investigations and administrative

⁵⁵DOD Instruction 1325.07 directs Military Correctional Facilities to use DD Form 2710, which includes a section for the prisoner to self-select their race and ethnicity, to facilitate processing of prisoners. The instruction does not indicate the extent to which the form is to be used to enter prisoner information into existing databases. DOD Instruction 1325.07, *Administration of Military Correctional Facilities and Clemency and Parole Authority* (Mar. 11, 2013) (Incorporating Change 4, Aug. 19, 2020).

separations. However, the Navy's report does not include a discussion of indicators of racial or ethnic disparities, which is characteristic of an assessment, despite presenting data that suggest such issues may exist. Notably, data in the Navy's report suggest that Black or African American service members were overrepresented in administrative separations for fiscal years 2021 and 2022 relative to department demographics. Specifically, Black or African American service members accounted for nearly 25 percent of separations each year, while comprising about 17 percent of the Navy's force during the same time frame.

Although the Navy included these data in its report, it does not explicitly acknowledge the demographic differences evident in those administratively separated, nor does it draw other conclusions that would suggest it comprehensively assessed data to understand how race and ethnicity is represented in its military justice processes. Navy officials disagreed with our assertion that their report did not include an assessment of racial disparities. They said that they believe the data speaks for itself and clearly identifies any existing issues. However, the publication of data alone does not provide conclusions derived from a systematic examination of information collected that is characteristic of an assessment.⁵⁶

Variability in report content. While section 549F of the NDAA for Fiscal Year 2022 was not prescriptive about the format and scope of the military departments' racial disparity reports, the content of the reports varies substantially. As a result, the reports do not establish a common basis from which decisionmakers can draw comparisons about racial disparities in military justice processes across DOD. For example, although not an indicator of a report's quality, the length of each department's report provides a simple demonstration of their considerable variation in content. Specifically, the Army's report has 197 pages and the Air Force's report has 491 pages, including earlier related reports as appendixes, while the Navy's report is considerably shorter at a total of 32 pages.⁵⁷

⁵⁶GAO, *Performance Measurement and Evaluation: Definitions and Relationships*, [GAO-11-646SP](#) (May 2011); and [GAO-23-105460](#).

⁵⁷Since the Army and the Air Force had done previous relevant work in this area, their reports included additional information stemming from earlier work to provide context, while the Navy did not include such previous work. Information submitted in response to section 549F of the NDAA for Fiscal Year 2022 in the three reports ranged between 32 and 148 pages.

We also identified substantive differences in the content of each military department's report. For example, when reporting data on investigations, the Army included all law enforcement investigations that were determined to be founded—that is, a judge advocate opined that there was sufficient evidence to establish probable cause for the offense—or were still open for distinct categories: all crimes, all crimes less traffic violations, and five specific categories of crimes, such as violent felony crimes, drug use, and domestic violence and simple assault. The Navy presented data on all investigations opened by five distinct law enforcement offices across the Navy and the Marine Corps, with data aggregated into four specific categories of crimes—fraud, property, persons, and sex crimes—aggregated into a single table. In contrast, the Air Force included data for all investigations opened by the Office of Special Investigations, regardless of the category of crime.

In addition, the military departments each differed in the scope of their racial disparity reports, including reporting on varied time frames and populations. Specifically, the Army's report includes data on military justice and discipline processes from fiscal years 2017 through 2019, and in the case of investigations, from fiscal years 2012 through 2019. In contrast, the Navy's report includes data from fiscal years 2021 through 2022, and the Air Force's report includes data from calendar years 2017 through 2021. In addition, the Navy's report included active-duty and reserve component service members for both the Navy and the Marine Corps, while the Army's and the Air Force's reports focused on active-duty service members.

Standards for Internal Control in the Federal Government states that an entity should determine an oversight structure and select an oversight body to oversee operations and make oversight decisions to achieve objectives, among other things. Further, the oversight body is responsible for overseeing the remediation of deficiencies and providing direction related to correcting these deficiencies.⁵⁸ In addition, our prior work has found that agencies should coordinate and integrate activities across internal organizations contributing to achieving agency goals. Further, we have found that a key factor in achieving organizational goals is promoting accountability by assigning responsibility for those goals and related activities. Such responsibility can include improving the availability and quality of evidence, such as data, so that it can be used effectively for

⁵⁸[GAO-14-704G](#).

decision-making and using evidence to assess progress in achieving goals.⁵⁹

However, the military departments have been left to individually interpret how to collect, document, assess, and report on data related to racial disparities in their respective services due to the absence of department-level oversight and guidance to coordinate the various offices involved and data sources required. The DOD Inspector General also noted this in its 2023 report on the collection of demographic data in the military justice system. Specifically, it found that the military services use inconsistent demographic data categories in their respective military justice systems and may be unable to report consistent and comparable demographic data.⁶⁰ As a result, any related reports lack consistency and therefore do not enable an assessment of racial disparities across the department.

According to military department officials, each department independently decided what to include in their reports because—outside the mandated reporting elements—there was no statutory or DOD requirement to follow a particular format or to coordinate with one another to develop the reports. Such coordination was lacking for two primary reasons. First, there is no designated DOD-wide oversight office responsible for coordinating the military departments' assessment and reporting of racial and ethnic disparities in military justice and discipline processes. Second, DOD has not established standard terminology and reporting categories, analyses, and reporting format and content to be used by the military departments when assessing and reporting on racial and ethnic disparity in military justice and discipline processes.

DOD officials stated that the military departments are responsible for oversight and coordination of issues related to racial and ethnic disparity in military justice processes within their own departments, and that there is no department-level office responsible for oversight of issues related to racial and ethnic disparity writ large. However, a designated oversight entity at the department level could have been in a position to alleviate the issues we identified, including ensuring that the departments used standard terminology and reporting categories, analyses, and reporting format.

⁵⁹[GAO-23-105460](#).

⁶⁰DOD Inspector General, *Evaluation of the Collection of Demographic Data in the Military Justice System*.

The designation of an oversight entity at the department level is key to the effective coordination of DOD-wide efforts and helping to ensure consistency in the military departments' approaches to tracking, assessing, and reporting on racial and ethnic disparity in the military justice process, to the extent possible. Without such an office responsible for overseeing and coordinating the military departments' assessment of racial and ethnic disparities in military justice and discipline processes, including establishing standard terminology and reporting categories, analyses, and reporting format and content to be used in any future assessments, the department will lack the visibility needed to achieve the cultural change required by such complex issues.

Selected Studies Highlight Disparities in Civilian Criminal Justice Systems and Indicate Areas for Additional Assessment in the Military Justice System

In reviewing 27 relevant studies on civilian criminal justice systems in the United States published between 2018 and 2023, we identified similarities with the military's 2023 reports to Congress on racial and ethnic disparity as well as differences that suggest areas for further analysis.⁶¹ Our review of the 27 relevant studies identified similarities, such as the existence of racial and ethnic disparities in comparable segments of the civilian and military justice systems. However, we also identified differences, such as an assessment of sentencing data that was included in some of the civilian studies but not in the military departments' racial disparity reports to Congress.

Selected Studies Highlight Similarities in Assessments of Racial Disparity in Civilian and Military Justice Systems

Selected studies in our literature review highlight racial and ethnic disparities in segments of civilian justice systems that correlate to disparities found in similar segments of the military justice system. The civilian studies and the Army's and the Air Force's reports similarly identified racial and ethnic disparities in criminal investigations. Specifically, of the 27 selected studies we reviewed on disparities in civilian criminal justice systems, five found racial and ethnic disparities

⁶¹Our literature search to identify relevant studies was not comprehensive of the body of work related to racial disparity in civilian criminal justice systems in the United States but was used to identify selected studies relevant to our review. Further, our assessment focused on identifying similarities and differences in topics of study, types of data or information analyzed, and whether the studies suggested the presence or absence of disparities in the areas studied. Our assessment did not evaluate the validity of the studies' methods or results. For more information on the methodology for our literature search and analysis, see appendix I. For a full list of the 27 articles identified, see appendix III.

associated with various aspects of criminal investigations (i.e., traffic stops, arrests, charges). For example, one study from 2022 found that Black or African American drivers experienced traffic stops more often than Whites, concluding that racial biases may influence these investigatory stops.⁶² Another 2022 study found that Black or African American and Hispanic or Latino suspects faced drug charges that were more severe than their White counterparts and that this disparity persisted from the investigation through conviction phases of the cases the authors studied.⁶³

Similarly, the Army's and the Air Force's racial disparity reports identified potential racial and ethnic disparities in criminal investigations. Specifically, the Army and the Air Force both found that Black or African American service members were overrepresented in military criminal investigations compared to service members in other racial and ethnic categories. Additionally, the Air Force found that Black or African American, American Indian or Alaska Native, and Hispanic or Latino service members were more likely to be subjects of criminal investigations by their Office of Special Investigations than White Not Hispanic or Latino servicemembers. As noted previously, the Navy's report did not include a discussion of indicators of racial and ethnic disparities, though it presented data that indicate such disparities may exist.⁶⁴

In addition, the civilian studies and the Army's report comparably addressed how the biases of discretionary actors, such as attorneys, law enforcement officers, and judges, may contribute to racial and ethnic disparities in the justice process. Specifically, six of the 27 civilian studies we reviewed addressed how unconscious and conscious biases may influence the decisions made by these discretionary actors. For example,

⁶²Stelter, Marleen, Essien, Iniobong, Sander, Carsten, and Degner, Juliane, "Racial Bias in Police Traffic Stops: White Residents' County-Level Prejudice and Stereotypes Are Related to Disproportionate Stopping of Black Drivers," *Psychological Science*, vol. 33, no. 4 (2022): 483-496.

⁶³Johnson, Oshea, Marisa Omori, and Nick Petersen. "Racial-Ethnic Disparities in Police and Prosecutorial Drug Charging: Analyzing Organizational Overlap in Charging Patterns at Arrest, Filing, and Conviction." *Journal of Research in Crime and Delinquency*, vol. 60, no. 2 (2022): 255-99.

⁶⁴Our analysis of the Navy's investigation data showed that investigation data were aggregated across the Navy and the Marine Corps, while demographic data did not aggregate the two services. As a result, we found the data to be unreliable for comparison and analysis.

a 2018 study found White defendants were generally more likely to have their initial charges reduced at a prosecutor’s discretion than Black or African American defendants.⁶⁵ Further, a 2018 study found that Black or African American defendants were more likely to have monetary bail, which is assigned at the discretion of judges, set at rates higher than those given to White defendants.⁶⁶

The Army’s and the Air Force’s reports likewise identified the generally subjective nature of the decisions made by discretionary actors, such as commanders, victims, criminal investigators, and judge advocates as potentially contributing to racial and ethnic disparities in the military justice system. For example, the Army and the Air Force found that Black or African American service members were overrepresented among recipients of non-judicial punishments—a type of discipline given at the discretion of commanders—compared to department-wide demographics. Additionally, the Air Force found that American Indians or Alaska Natives were the most likely demographic group to face non-judicial punishment when compared to their relative population size. The Navy presented data suggesting that Black or African American service members were similarly overrepresented in non-judicial punishments compared to department demographics, although the Navy did not describe its assessment of that data in its report.⁶⁷

Differences in Civilian and Military Racial Disparity Assessments Could Identify Further Areas for Review

The selected studies also assessed aspects of the civilian justice system for disparities that were not assessed by the military departments. These aspects include jury selection—which correlates to court-martial panel selection in the military justice system—and sentencing.

Jury and Panel Selection

Five of the 27 civilian studies we identified assessed racial and ethnic disparity in jury selection and found that such disparities can be

⁶⁵Berdej6, Carlos. “Criminalizing Race: Racial Disparities in Plea-Bargaining.” *Boston College Law Review*, vol. 59, no. 4 (2018): 1187-1249.

⁶⁶Arnold, David H., Will Dobbie, and Crystal Yang. “Racial Bias in Bail Decisions.” *The Quarterly Journal of Economics*, vol. 133, no.4 (2018): 1885–1932.

⁶⁷GAO did not analyze Marine Corps data because the “Other” demographic category was not consistently defined across the data. As a result, we determined that these data were unreliable for analysis.

associated with trial outcomes and jury and community members' faith in the criminal justice system.

For example:

- A 2022 study found that jurors from predominantly White zip codes were overrepresented in criminal trials and jurors from predominantly Black or African American and Hispanic or Latino zip codes were underrepresented.⁶⁸ The study also found that Black defendants were more likely to be convicted and face longer sentences when their juries were selected from predominantly White neighborhoods.
- A 2023 study on the impact of racially biased exclusions of Black or African American jurors found that higher rates of exclusions of Black or African American jurors, even when race-neutral reasons were given, were correlated with participants reporting a negative perception of and diminished trust in the trial process and criminal justice system.⁶⁹

However, as discussed previously, the military departments do not collect or analyze data on the race and ethnicity of those selected to serve on court-martial panels—the military equivalent of juries. Court-martial panel selection and civilian jury selection processes share similarities and therefore may share a potential for disparities to exist. Notably, the selection of members for a civilian jury and for a court-martial panel share key steps, including the process for excusing potential jurors and panel members.⁷⁰ For example, challenging a potential juror or panel member is typically based on cause, but attorneys may also exercise a limited number of peremptory challenges to excuse a potential juror or panel member without providing a justification for the excusal unless challenged

⁶⁸Anwar, Shamena, Patrick Bayer, and Randi Hjalmarsson. "Unequal Jury Representation and Its Consequences." *The American Economic Review*, vol. 4, no. 2 (2022): 159–74.

⁶⁹Abramowitz, Kate, and Amy Bradfield Douglass. "Racial Bias in Jury Selection Hurts Mock Jurors, Not Just Defendants: Testing One Potential Intervention." *Law And Human Behavior*, vol. 47, no. 1 (2023): 153–68.

⁷⁰DOD officials noted that an important distinction between civilian juries and court-martial panels is that courts-martial do not require a unanimous vote to find the accused guilty or not guilty, while civilian juries do. As a result, analysis of court-martial panels may not necessarily correlate the race and ethnicity of a panel member with the vote to convict.

by opposing attorneys.⁷¹ Such challenges may be exercised based on an attorney's subjective criteria.

Army and Air Force officials told us they believe that sufficient protections exist to guard against disparities in panel selection. They cited minimum qualifications for panel members and the requirement to provide a reason—not based on race or ethnicity—for any members eliminated from a panel, other than peremptory challenges not objected to. However, studies of civilian populations we reviewed found that racial disparities in civilian juries persist, despite similar protections. Specifically, three studies we reviewed assessed disparities in juries in light of existing protections against excluding jurors for race-based reasons and found that such protections did not eliminate disparities in jury composition or the adverse impacts of such disparities.⁷²

Sentencing

Our review of selected civilian studies also found assessments of racial and ethnic disparities in sentencing, but similar analyses were not included in the military departments' reports. For example, four of the 27 studies we reviewed reported that racial and ethnic disparities exist within civilian criminal sentencing. Specifically, three of these studies assessed the association of factors such as sentencing guidelines on racial and ethnic disparities in sentences while controlling for a variety of relevant case characteristics that would contribute to the severity of sentences. Among other things, these studies found that, while racial and ethnic disparities persist in sentencing in some areas, interventions—such as implementing sentencing guidelines or reducing the severity of criminal punishments—may reduce or eliminate disparities by limiting the discretion judges and juries have in imposing sentences.

The Army's racial disparity report included some data on two categories of sentences: (1) punitive discharge and (2) confinements of 1 year or

⁷¹Peremptory challenges to remove a panel member may not be based on race or ethnicity, or gender, but either party in a court-martial may object to the use of a peremptory challenge on the belief that it was based on race, ethnicity, or sex.

⁷²DeCamp, Whitney, and Elise DeCamp. "It's Still about Race: Peremptory Challenge Use on Black Prospective Jurors." *Journal of Research in Crime and Delinquency*, vol. 57, no. 1 (2019): 3–30; Rose, Mary R., Raul S. Casarez, and Carmen Gutiérrez. "Jury Pool Underrepresentation in the Modern Era: Evidence from Federal Courts." *Journal of Empirical Legal Studies*, vol. 15, no.2 (2018): 378–405; and Flanagan, Francis X. "Race, Gender, and Juries: Evidence from North Carolina." *Journal of Law and Economics*, vol. 61, no. 2 (2018): 189–214.

more.⁷³ However, it did not include more specific data, such as other types of court-martial sentences or a more detailed breakdown of the length of confinement sentences. The report included analyses of racial and ethnic disparities in the two defined sentencing categories, including controlling for variables such as education, rank, and military occupational specialty. The Army's report, however, did not control for other variables that could impact sentencing severity, such as prior offenses or the number of charges. Neither the Navy nor the Air Force included data on or analyses of sentencing in their racial disparity reports.

Military department officials acknowledged that an assessment of sentencing would be useful but said that it is too complex to conduct, as sentences are impacted by a variety of factors that are unique to each case. For example, the Air Force's racial disparity report notes that when determining a sentence, courts-martial military judges and panels consider not only the offense committed but also the mitigating and aggravating factors unique to that case and the accused.⁷⁴ Such factors could include a history of prior misconduct, number of charged offenses, and victim impact that would not be reflected in the raw data and could obscure any racial and ethnic disparities in their analyses. The report further notes that without controlling for such variables, it is impossible to determine if any disparities are related to race and ethnicity rather than other factors, and disparities that exist may be obscured if other variables are not considered.

We recognize that the sentencing process can involve a complex interplay of multiple competing considerations that may be difficult to quantify. However, our review of selected civilian studies found that mitigating and aggravating factors unique to an individual case can be accounted for in an analysis of sentencing. For example, a 2019 study examined sentencing and demographic data of defendants in Alabama criminal cases before and after the implementation of sentencing

⁷³Army officials told us that they modeled their analysis of sentencing on one that GAO used in its 2019 report on racial and ethnic disparity in military justice. In that report, we analyzed three sentencing categories: (1) any type of dismissal or discharge or confinement of more than 2 years; (2) confinement of less than 2 years without dismissal or discharge; and (3) all other possible sentencing options. [GAO-19-344](#).

⁷⁴Section 539E of the NDAA for Fiscal Year 2022 amended the UCMJ to require military judges alone to determine sentences for convicted offenders in general and special courts-martial for any non-capital offense committed after December 27, 2023.

guidelines.⁷⁵ In the study, authors found that when controlling for case-specific factors similar to those cited by the Air Force's report, such as the number and seriousness of charged offenses, Black or African American defendants generally received harsher sentences than White defendants in the absence of sentencing guidelines.

In 2019, we identified the likelihood of a service member facing a more severe sentence while controlling for race and ethnicity. Specifically, service members who were members of a historically disadvantaged racial or ethnic group were either less likely to receive a more severe punishment in general and special courts-martial compared to White service members or there were no statistically significant differences in punishments among racial groups. However, this analysis did not control for the full range of punishments or relevant variables, including those identified in our review of civilian studies. For example, our analysis did not control for mitigating and aggravating factors such as prior misconduct and victim impact statements.⁷⁶ Additionally, the Army and the Air Force have conducted some work to identify disparities but have not conducted more complex analyses to determine the causes of disparities identified.

Standards for Internal Control in the Federal Government states that management should identify information requirements needed to achieve objectives and address risks. Further, management should process relevant data from reliable sources into quality information and should use such quality information to achieve objectives.⁷⁷ Our prior work has identified best practices for evidence-based policymaking, including that organizations should assess existing evidence and use the evidence they collect to, among other things, assess progress toward goals and to inform decisions. Evidence-building activities can help decision-makers obtain the evidence they need to understand and assess results and identify actions to improve them. The benefit of building a portfolio of evidence is fully realized when it is used to identify and correct problems.⁷⁸

⁷⁵Edwards, Griffin, Stephen Rushin, and Joseph Colquitt. "The Effects of Voluntary and Presumptive Sentencing Guidelines." *Texas Law Review*, vol. 98, no. 1 (2019): 1-66.

⁷⁶[GAO-19-344](#).

⁷⁷[GAO-14-704G](#).

⁷⁸[GAO-23-105460](#).

The absence of an assessment of panel selection and sentencing are two examples of potentially missed opportunities for DOD to identify and address racial and ethnic disparities in military justice processes. However, DOD does not know the extent of such missed opportunities because it has not comprehensively assessed the military justice and discipline process to identify all areas where racial and ethnic disparities may exist. The IRT attempted to conduct a comprehensive assessment of military justice and punishment systems by examining areas such as criminal investigations, the role of discretionary actors, and court-martial convictions. Similarly, the Army's racial disparity report attempted a comprehensive evaluation of racial and ethnic disparity across the Army's military justice and disciplinary system by examining similar areas as the IRT. However, Army officials told us that they determined which segments of their military justice system to include based on the available data and omitted those for which they lacked data. Given that these reports did not include an assessment of disparity in panel selection and sentencing, a more expansive assessment could yield additional valuable insights about factors contributing to disparities in the military justice process.

Military department officials acknowledged that there are areas of the military justice process that have not been assessed for racial and ethnic disparities, such as panel selection and sentencing. While the military departments may currently lack the data and technical expertise needed to comprehensively identify areas to assess for racial disparities and conduct the corresponding complex analyses, there are offices within DOD that do have this expertise, such as the Office of People Analytics. Specifically, officials with the Office of People Analytics confirmed that their office could be an appropriate resource to support such future analyses given adequate data.⁷⁹ Without a comprehensive assessment of the full military justice and discipline process, DOD does not know whether racial and ethnic disparities exist in some segments of the military justice system, including panel selection and sentencing. As a result, DOD may miss opportunities to address such disparities. Further, such an assessment would help DOD ensure that the military justice system is fair and just, a key principle of the UCMJ, and promote service member confidence in the military justice system.

⁷⁹The Office of People Analytics within DOD provides subject-matter expertise for scientific assessments and data analytics. The office administers scientific surveys across a variety of topics to better understand issues impacting members of the DOD community, though DOD officials noted that the office does not currently collect or maintain survey or administrative data related to the military justice system.

Conclusions

Despite multiple reports and related recommendations over the past several years, significant racial disparities persist in the military investigative and justice systems. In 2023, the IRT found that inadequate protections exist for service members subject to investigation, adverse administrative actions, and non-judicial punishment, undermining the department's expressed commitment to a fair and equitable justice system.

The military departments' racial disparity reports to Congress included required elements outlined in the statute to varying degrees.

Data challenges and limited coordination across the departments limit the usefulness of these reports to provide a robust understanding of the extent and nature of racial and ethnic disparities in the military justice system, writ large. For example, the military departments do not have a process in place to track and maintain data related to commander-directed investigations, and the Army and the Navy do not track administrative sanctions, both of which are subject to commanders' discretion and thus could be vulnerable to conscious or unconscious bias. Without standardized processes to track this information and other relevant data in a centralized and accessible manner, the military departments and DOD are unable to identify and address the root causes of disparities.

Similarly, a lack of oversight and coordination across the military departments and DOD undermines the usefulness of data that is collected and reported. For example, the military departments' racial disparity reports provided inconsistent race and ethnicity data, with the Army and Navy reporting data that were inconsistent with OMB and DOD standards. In addition, the military departments' reports varied considerably in the extent to which they included an analysis of existing data. For example, while the Army and the Air Force discussed their assessments of data within required reporting elements to identify indicators of disparity, the Navy did not include a discussion of factors that could indicate disparities, despite presenting data that suggest such issues may exist. Based on the Navy's report, we found that Black or African American service members were overrepresented in administrative separations for fiscal years 2021 and 2022 relative to department demographics, but the report does not address this. As a result of these inconsistencies, it is impossible to use these reports to assess, compare, and understand racial and ethnic disparities in military justice processes across DOD as a whole.

Existing studies indicate that racial and ethnic disparities also exist in civilian criminal justice systems in the United States and are not unique to the military justice system. However, such studies provide insights that could better inform DOD's efforts to address disparities in its own system, as they highlight areas where disparities may exist but are not currently assessed by DOD. For example, selected studies assessing racial and ethnic disparity in jury selection found that such disparities can lead to disparities in convictions and sentencing, as well as to undermining jury and community members' faith in the criminal justice system. Further, selected studies indicate that disparities may exist in sentencing severity, but DOD and the military departments did not include an assessment of sentences in their racial disparity reports. DOD and the military departments have not comprehensively assessed the military justice and discipline process to identify all areas where disparities may exist and, as such, have not fully assessed all areas of the process to identify disparities. Without such a comprehensive assessment, DOD cannot be certain that it has identified all areas of disparity and may be missing opportunities to address disparities that exist in its justice system.

Recommendations for Executive Action

We are making a total of six recommendations, including one to the Secretary of the Army, one to the Secretary of the Navy, one to the Secretary of the Air Force, and three to the Secretary of Defense. Specifically:

The Secretary of the Army should develop and implement a process to centrally collect and maintain accessible data—including race and ethnicity data—on administrative sanctions, all investigations including commander-directed investigations, appeals, and service members selected to serve on court-martial panels, to facilitate centralized visibility over, and, as necessary, the assessment and reporting of these data. (Recommendation 1)

The Secretary of the Navy should develop and implement a process to centrally collect and maintain accessible data—including race and ethnicity data—on administrative sanctions, all investigations including commander-directed investigations, appeals, and service members selected to serve on court-martial panels to facilitate centralized visibility over, and, as necessary, the assessment and reporting of these data. (Recommendation 2)

The Secretary of the Air Force should develop and implement a process to centrally collect and maintain accessible data—including race and ethnicity data—on all investigations including commander-directed

investigations, appeals, and service members selected to serve on court-martial panels to facilitate centralized visibility over, and, as necessary, the assessment and reporting of these data. (Recommendation 3)

The Secretary of Defense should ensure the Under Secretary of Defense for Personnel and Readiness designates a department-level office as the oversight entity responsible for coordinating the military departments' assessments of racial and ethnic disparities in military justice and discipline processes. (Recommendation 4)

The Secretary of Defense should ensure the department-level office designated to oversee coordination of the military departments' racial disparity assessments coordinates with the military departments to establish standard terminology and reporting categories, analyses, and reporting format and content to be used in future assessments of racial disparities in military justice and discipline processes. (Recommendation 5)

The Secretary of Defense should ensure that a department-level office is designated to coordinate with the military departments to comprehensively assess the military justice and discipline process to identify all areas where racial and ethnic disparities may exist, including in the selection of court-martial panels and sentencing, and the corresponding analyses to be conducted. (Recommendation 6)

Agency Comments and Our Evaluation

We provided a draft of this report to DOD for review and comment. In written comments, reproduced in appendix IV, DOD concurred with four recommendations and partially concurred with two recommendations. DOD also provided technical comments, which we incorporated as appropriate.

In its written comments, DOD partially concurred with recommendation 3. Specifically, DOD said that the Air Force agrees it should collect and maintain demographic data on court-martial members. However, the Air Force expressed concerns that such data may present unknown risks to maintaining the integrity of convictions and may require further review, given that convening authorities are specifically prohibited from considering demographic data regarding potential courts-martial members. We acknowledge that identification and consideration of risks in implementation of this aspect of the recommendation is important. However, as discussed earlier in this report, the military departments could collect data on the race and ethnicity of court-martial panel members in a way that is sufficiently separated from the trial process to

mitigate concerns about convening authorities improperly considering demographic factors. Our report also notes that the Defense Advisory Committee studied this issue with regard to sexual assault trials, demonstrating that collecting and analyzing such data is feasible. The Air Force may be able to leverage these and similar efforts in order to identify risks and the means to avoid or mitigate them. Therefore, we continue to believe that our recommendation is valid and will enable the military departments to better respond to future requests for such information, as well as identify and address the source of existing disparities.

In its comments, DOD also states that the Air Force Inspector General believes that collecting data on command-directed investigations is not feasible. Although DOD's comments do not specify what makes such data collection unfeasible, our report discusses Air Force efforts that are already under way to collect similar types of data. For example, the Air Force currently collects data on administrative sanctions, which are also determined and collected at the unit level. Similar to administrative sanctions, given the discretionary nature of command-directed investigations and their potential effect on a service member's career, we continue to believe that collecting and analyzing such data is key to identifying and addressing racial and ethnic disparity in the military justice and discipline process.

DOD also partially concurred with recommendation 6. Specifically, DOD states that a department-level office will be designated to serve as a resource for the military departments in assessing disparities but asserted that each military department is best positioned to conduct their own comprehensive analysis to identify all areas where disparities exist within their respective departments. However, as discussed in this report, such a comprehensive analysis would be complex and require controlling for all related variables, and the military departments may lack the technical expertise required for such an analysis. Our report further notes that the military departments' efforts to assess disparities to date have included inconsistent data, disparate analyses, and varied report content and scope. As a result, such assessments have limited usefulness in providing DOD with visibility of disparities across the department. Our recommendation is focused on the Secretary of Defense ensuring that there is a DOD-level office that can coordinate across the military departments to ensure a comprehensive and consistent assessment. Therefore, we believe our recommendation remains valid in that it will facilitate DOD's visibility of racial and ethnic disparities across the military justice system and better enable DOD to address such disparities comprehensively.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense, and the Secretaries of the Army, the Navy, and the Air Force. In addition, this report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or members of your staff have any questions regarding this report, please contact me at (202) 512-3404 or berrickc@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 significant contributions to this report are listed in appendix V.

A handwritten signature in black ink that reads "Cathleen A. Berrick". The signature is written in a cursive style with a large initial 'C'.

Cathleen A. Berrick
Managing Director, Defense Capabilities and Management

Appendix I: Objectives, Scope, and Methodology

This report assesses the extent to which the military departments' reports on racial and ethnic disparity in military justice and discipline processes and military personnel policies

(1) include all required elements as defined in Section 549F of the National Defense Authorization Act (NDAA) for Fiscal Year 2022;

(2) enable a DOD-wide assessment of racial and ethnic disparities in the military justice system; and

(3) are comparable to existing studies assessing racial and ethnic disparity in civilian criminal justice systems in the United States.

Our review included the reports produced by the Department of the Army, the Department of the Navy, and the Department of the Air Force in response to section 549F of the NDAA for Fiscal Year 2022.¹ The Department of the Navy report included data and information related to both the Navy and the Marine Corps, and the Department of the Air Force report similarly included data and information related to both the Air Force and the Space Force. The military departments' reports included active-duty personnel, and varied in the extent to which they included reserve personnel. Specifically, the Department of the Navy report included data and information related to reserve personnel, while the Air Force and the Army reports were limited to active-duty personnel. Further, the military departments' reports varied in the time frames for which they provided data; specifically, the Army's report generally included data from fiscal years 2017 through 2019, and in the case of investigations, from fiscal years 2012 through 2019. The Navy's report included data from fiscal years 2021 through 2022, and the Air Force's report included data from calendar years 2017 through 2021.

¹Department of the Army, *Fiscal Year 2022 National Defense Authorization Act, Section 549F Department of the Army's Report to Congress on Racial Disparity in Military Justice and Discipline Processes and Military Personnel Policies* (Feb. 23, 2023); Department of the Navy, *Fiscal Year 2022 National Defense Authorization Act, Section 549F Department of the Navy's Report to Congress on Racial Disparity in Military Justice and Discipline Processes and Military Personnel Policies* (Oct. 2023); and Department of the Air Force, *Department of the Air Force Independent Racial Disparity Review* (Aug. 2023).

Methods Used to Assess Military Department Reports for Inclusion of Required Elements and Usefulness for Facilitating Assessments of Disparities within the Military Justice System

For our first objective, to determine the extent to which each military department’s racial disparity report conformed to mandated requirements we first reviewed the relevant statute and determined that it required the military departments to submit reports that include (1) results of their assessments of racial disparity in military justice and discipline processes and military personnel policies, as they pertain to historically disadvantaged racial and ethnic groups;² and (2) recommendations for statutory or regulatory changes the Secretary concerned determines appropriate. Further, we identified the mandate definitions listed for “military justice/discipline processes” and “military personnel policies” as the elements required for inclusion in military department assessments. The definitions of “military justice,” “military discipline processes,” and “military personnel policies” include the following 18 sub-elements: investigation, the use of administrative separations and other administrative sanctions; non-judicial punishment; panel selection; pre-trial confinement; the use of solitary confinement; dispositions of courts-martial; sentencing; post-trial processes; accession rates and policies; retention rates and policies; promotion rates; assignments; professional military education selection and policies; and career opportunity for minority members of the armed forces.

Additionally, we interviewed Department of Defense (DOD) and military department officials with responsibilities for the mandated racial disparity reports, as well as those responsible for collecting, maintaining, and reporting data on the elements included in the reports, to identify any additional required elements directed by DOD or the military departments. DOD, Army, Air Force, and Navy officials stated that no additional direction was given regarding required elements, beyond those detailed in the statute language.

We determined the extent to which each department included, partially included, or did not include each required element in its racial disparity

²We use the term “historically disadvantaged racial and ethnic groups,” hereafter referred to as “historically disadvantaged groups,” to refer to racial and ethnic minority groups, as DOD defines them. DOD defines racial minority groups to include American Indian or Alaska Native, Asian, Black or African American, Native Hawaiian or Other Pacific Islander, Multi-racial, and Unknown. Members who self-report as White make up the highest percentage of active-duty members, about 69 percent. DOD tracks ethnicity separately from race, with two ethnicity categories: Hispanic or Latino and Not Hispanic or Latino. Service members self-report both their race and ethnicity. Approximately 18 percent of active-duty service members identified as Hispanic or Latino in 2021, while about 82 percent identified as not Hispanic or Latino. Department of Defense, *2022 Demographics: Profile of the Military Community* (2022).

report.³ Specifically, we developed a data collection instrument to record the results of our two-analyst review of each report. To assess the reports, one analyst reviewed each report and indicated their assessment of (1) how the military department defined the required elements for purposes of its report; (2) the extent to which the report included each required element as well as data related to the element and whether a disparity was found; and (3) any recommendations included in the report. A second analyst then reviewed the military department report and the responses entered by the first analyst and determined whether they agreed with the first analyst's assessment. For each assessment, both analysts determined whether each military department's report (a) fully included, (b) partially included, or (c) did not include each required element.

Because the military departments defined required elements differently and may or may not have listed all relevant limitations they faced in reporting on a required element, analysts exercised professional discretion in determining the extent to which a required element was included. For example, the Army's report noted the lack of data on traffic stops as a limitation for the required element "investigations." However, analysts determined that traffic stops do not necessarily represent investigations, so we characterized this element as "fully included" based on other data that was included on Army criminal investigations. However, for the required element "use of administrative separations and other administrative sanctions," the Army reported only on administrative separations and did not include data or other information on any other forms of administrative sanctions. As a result, analysts determined that this required element was "partially included."

If the second analyst disagreed with the first analyst's assessment or determined an item required additional discussion, the two analysts met and discussed any areas of disagreement and reached a final decision about how the item should be characterized in the data collection instrument. If the two analysts were unable to reach agreement, they consulted with a third analyst who made the determination. We determined a required element was "included" if all facets of the element were demonstrated in the report, "partially included" if some, but not all, facets were demonstrated, and "not included" if none of the facets of the

³Department of the Army, *Section 549F Department of the Army's Report to Congress on Racial Disparity*; Department of the Navy, *Section 549F Department of the Navy's Report to Congress on Racial Disparity*; and Department of the Air Force, *Department of the Air Force Independent Racial Disparity Review*.

element were demonstrated. We then compared the number of required elements that were included, partially included, and not included for each military department.

While we assessed the reports that each of the military departments submitted in accordance with the 2022 statute, the Army and the Air Force included additional prior research as part of their official report. For example, the Air Force included its December 2020 Independent Racial Disparity Review, its September 2021 Disparity Review, and an addendum it produced in November 2021.⁴ In discussion of some required elements, the departments referenced the included prior reports, including the data collected and analyzed for those projects. Because these were submitted in the same package as the currently required reports, analysts determined that these data and analyses could be considered part of their assessments for purposes of determining the extent to which an element was included. Analysts noted in the “notes” field of the data collection instrument what data and analyses were taken from prior reports, where relevant.

We also reviewed military department guidance and reports related to military justice and discipline, and racial and ethnic disparities. In addition, we interviewed cognizant military department officials responsible for producing the reports, as well as those responsible for aspects of military justice, investigative, and discipline processes. These interviews were conducted to better understand what was and was not included in the military departments’ reports and the reasons that specific elements were partially included or not included.

For our second objective, we reviewed each of the military departments’ required reports on racial and ethnic disparities within the military justice system as well as other military department and DOD reports on military justice. Additionally, we interviewed DOD officials to determine whether they used the military departments’ reports to conduct oversight of racial disparities in military justice and discipline processes. We also interviewed cognizant DOD and military department officials with responsibilities for data collection, maintenance, analysis, and reporting related to military justice and discipline processes. Specifically, we interviewed these officials to understand what data are collected and

⁴The Inspector General, Department of the Air Force, *Report of Inquiry (S8918P): Independent Racial Disparity Review* (Dec. 2020); *Report of Inquiry (S8918P): Disparity Review* (Sept. 2021); and *Report of Inquiry Addendum (S8918P): Disparity Review* (Nov. 2021).

maintained related to race and ethnicity for various segments of the military justice process, as well as the reasons that such data are not collected and maintained in a centralized manner in some cases. Further, we discussed the feasibility of collecting, maintaining, and analyzing data on segments of the military justice and discipline process that are not currently tracked.

We compared this information to GAO guidance for assessing management's use of quality information, standardized processes, and information systems to meet the need for fast, reliable, and accurate information as well as the assignment of oversight responsibilities and coordination of activities across the organization.⁵

Methods Used to Compare the Military Departments' Reports to Existing Studies Assessing Racial and Ethnic Disparity in Civilian Criminal Justice Systems in the United States

For objective three, we conducted a literature search to identify studies from scholarly journals published since 2018 on racial disparities in civilian justice systems in the United States.⁶ To identify existing studies, in March 2023, we conducted initial searches of various databases, such as ProQuest and EBSCO platforms along with Westlaw Edge Law Reviews and Journals. From these sources, we identified 125 studies. In May 2023, we conducted a second search to identify studies related to racial and ethnic disparities in juries in civilian justice systems, as we identified that this segment had been omitted from the original search. We identified 29 additional studies through this search, for a total of 154 studies. We reviewed the study titles and abstracts of these 154 studies to identify those that met one or more of the following criteria:

- (1) covered all of the required elements listed in the statute;
- (2) contained comparisons of racial and ethnic disparities between similarly defined elements of both the civilian and military justice systems;
- (3) contained assessments of a segment of the civilian justice system timeline that could be compared to a similar phase of the military justice system;

⁵GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: Sept. 2014) and *Executive Guide: Effectively Implementing the Government Performance and Results Act*, [GAO/GGD-96-118](#) (Washington, D.C.: June 1996).

⁶Our literature search included studies of federal, state, and municipal justice systems. We did not include studies pertaining to Tribal and juvenile justice systems, as they would not be as comparable to the military justice system.

(4) used national datasets or covered multiple geographic areas across the United States;

(5) contained similar topics, findings, or recommendations as covered in the military department reports;

(6) provided a potential tool or solution that could be applicable to the military departments; or,

(7) contained summaries or information on the similarities and differences in military and civilian justice systems and/or provided context or background on racial and ethnic disparity in military justice.

After applying these criteria, 39 studies met our selection criteria for a second round of detailed review. In the course of our detailed review of the studies, we identified two additional studies through citations that met our earlier criteria and were published during the same time frame as the originally identified articles. We added these to the data collection instrument, as well, for a total of 41 studies to be reviewed in greater depth.

To further assess the remaining 41 studies, we obtained the full text of each article and used a data collection instrument to identify those that were relevant to our third objective and also met specified criteria related to the transparency and reliability of their methods, data, and findings. Specifically, we assessed whether the study clearly defines the study goal or purpose, identifies the sources of data used, and describes the study methods and procedures in sufficient detail to allow GAO to use the studies to identify areas of similarity and difference between selected research conducted on civilian and military justice systems.

To determine the extent to which each study met these criteria, we conducted a two-analyst review. Specifically, one analyst reviewed the full text of the identified studies and indicated specific information such as the study's goals, purpose, objectives, and results, and the type of justice system covered, such as federal, state, tribal, etc. The analyst also reviewed the methodological information reported in the studies. The second analyst then verified the findings of the first analyst and indicated any comments for discussion or reconciliation as needed. The two analysts met to discuss any areas of disagreement and to reach consensus. If they were unable to reach consensus, a third analyst reviewed the study and made a final determination. This analysis resulted

in a final sample of 27 studies we used for our review. For a complete list of the 27 studies we reviewed, see appendix III.

We then assessed the studies for areas of comparability with the military departments' racial disparity reports. This assessment focused on identifying similarities and differences in topics of study, types of data or information analyzed, and whether the studies suggested the presence or absence of disparities in the areas studied. Our assessment did not evaluate the validity of the studies' methods or results. We also interviewed DOD and military department officials to understand the reasons for differences in analyses. We assessed these findings against *Standards for Internal Control in the Federal Government* related to data and quality information, as well as GAO-identified best practices for evidence-based policymaking.⁷

We met with a variety of officials from the federal agencies included in our review. Table 3 presents the agencies we contacted during our review to address our three objectives.

Table 3: Department of Defense Organizations Contacted by GAO

Organization	Offices contacted
Department of Defense	<ul style="list-style-type: none"> • Office for Diversity, Equity, and Inclusion • Office of People Analytics • Office of Military Personnel Policy • Office of General Counsel • Defense Advisory Committee on the Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces
Department of the Army	<ul style="list-style-type: none"> • Office of the Judge Advocate General • Office of the Provost Marshall General • U.S. Army G-1, Personnel • Army Equity and Inclusion Agency

⁷GAO-14-704G; and GAO, *Evidence-Based Policymaking: Practices to Help Manage and Assess the Results of Federal Efforts*, GAO-23-105460 (July 12, 2023).

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Organization	Offices contacted
Department of the Navy	<ul style="list-style-type: none"> • Navy Manpower and Reserve Affairs <ul style="list-style-type: none"> • Diversity, Equity, and Inclusion Program Office • Office of the Judge Advocate General • Office of Force Resiliency • U.S. Marine Corps: <ul style="list-style-type: none"> • Manpower and Reserve Affairs • Marine Corps Recruiting Command • Manpower Plans and Policy Division, Culture and Inclusion Branch • Judge Advocate Division, Military Law • Marine Corps Corrections
Department of the Air Force	<ul style="list-style-type: none"> • Office of the Judge Advocate General <ul style="list-style-type: none"> • Military Justice Division • Professional Development Directorate • Air Force A1–Manpower, Personnel and Services • Air Force Personnel Center • Office of Diversity and Inclusion

Source: GAO. | GAO-24-106386

We conducted this performance audit from November 2022 to May 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: Related Reports and Previous Recommendations Regarding Racial and Ethnic Disparities and Discrimination Issues

Since 2019, GAO, the Department of Defense (DOD), and the Department of the Army have issued the following reports, each containing recommendations to address racial and ethnic disparities within the military justice system, legal training for commanders, and organizational climate issues at the military service academies.

In 2019, GAO made 11 recommendations, including that the services develop the capability to present consistent race and ethnicity data, and DOD include demographic information in military justice annual reports and evaluate the causes of disparities in the military justice system. DOD generally concurred with GAO's recommendation.¹ See table 4 for details regarding the two recommendations that have not yet been fully implemented.

Table 4: Recommendations That Have Not Been Fully Implemented from GAO's 2019 Report on Racial and Gender Disparities in the Military Justice System

GAO report (recommendation number)	Agency	Recommendation	Actions to date
19-344 (7) ^a	DOD	The Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of Homeland Security, should issue guidance that establishes criteria to specify when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed, and that describes the steps that should be taken to conduct such a review.	DOD partially concurred with this recommendation, agreeing with the content, but requesting that we modify the recommendation to direct it to more appropriate entities. That change was made before the report was issued. As of March 2022, DOD had not issued guidance that would address this recommendation. Officials from DOD's Office for Diversity, Equity, and Inclusion (ODEI) said that they have been approved for funding to have the Center for Naval Analyses, a nonprofit research and analysis organization, conduct a study to further identify disparities in the military justice system. ODEI officials said that they plan to use the findings and recommendations from this study to develop criteria and steps that will be taken to conduct a review on disparities, as described in our recommendation. ODEI officials told us that the study was completed in July 2022. As of August 2023, DOD officials said that they were reviewing and analyzing the results of this study, and plan to use it along with other available data to develop appropriate policies on racial, ethnic, and gender disparities in the military justice system by May 2024. To fully implement this recommendation, DOD needs to use the results of its study to establish criteria specifying when data indicating possible racial, ethnic, or gender disparities in the military justice process

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).

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GAO report (recommendation number)	Agency	Recommendation	Actions to date
19-344 (11)	DOD	The Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of Homeland Security, should conduct an evaluation to identify the causes of any disparities in the military justice system, and take steps to address the causes of these disparities as appropriate.	<p>should be further reviewed, and issue guidance specifying this criteria and the steps that should be taken to conduct such a review, so that DOD and the military services are better positioned to monitor the military justice system and help ensure that it is fair and just.</p> <p>DOD partially concurred with this recommendation, agreeing with the content, but requesting that we modify the recommendation to direct it to more appropriate entities. We made that change before the report was issued. DOD's Office for Diversity, Equity, and Inclusion (ODEI) contracted with a federally funded research and development center to conduct a study, which ODEI officials said was completed in July 2022. According to ODEI officials, the multidisciplinary study team used a combination of qualitative and quantitative research methods to develop a comprehensive picture of military justice outcomes and make recommendations for data collection and policy formulation. ODEI officials said that they plan to use the findings and recommendations from this study to identify the causes of any disparities and steps to take to address those causes, as noted in our recommendation. As of August 2023, ODEI officials said that the Secretaries of the military departments expect to collaborate with the Department of Homeland Security to explore solutions to these disparities by June 2025. To fully implement GAO's recommendation, DOD should use the results of the study to take actions to address the causes of any disparities in the military justice system that have been identified, so that DOD, DHS, and the military services can help ensure that the military justice system is fair and just.</p>

Source: GAO analysis of [GAO-19-344](#). | GAO-24-106386

^aGAO, *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).

In July 2021, GAO reviewed the legal training commanders receive. As a result, GAO made 15 recommendations to help commanders operate in an increasingly complex legal and policy environment, to include that the services identify and address issues with training completion data; the Navy formalize its actions to expand its training; the Marine Corps require a mix of legal training; and the Army and the Air Force assess the continuum of legal training provided to commanders. DOD generally

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agreed with the recommendations.² See table 5 for details regarding the 10 recommendations that have not yet been fully implemented.

Table 5: Recommendations That Have Not Been Fully Implemented from GAO’s 2021 Report on Legal Training for Commanders

GAO report (recommendation number)	Agency	Recommendation	Actions to date
21-338 (1) ^a	Army	The Secretary of the Army should determine the reasons that the training completion data for Army Strategic Education Program-B in the system of record differs from the records maintained by the course providers; assess the underlying data issues that prevent an accurate assessment of Senior Officer Legal Orientation completion rates using only data from the system of record; and take steps to address those issues to ensure that training completion data are comprehensively and accurately collected and documented in the designated system of record.	As of August 2021, Army officials stated that the Army Human Resource Command would generate an accurate list of Army command positions, and the Army would ensure that policies accurately reflect required legal training for command. In addition, they said that the Army would ensure that attendance at specified command preparation courses that contain legal content is properly recorded in the system of records, the Army Training Resources and Requirements System. Finally, they stated that the Army would develop a systematic method to cross-check a representative sample of the training records of those in command with required legal training to ensure attendance is being enforced. The officials estimated that these actions would be completed by March 31, 2022. GAO followed up with DOD in June 2022, May 2023, and August 2023, but had not received an update as of September 2023. In February 2024, DOD noted that the Senior Leader Development Symposium and the Senior Officer Legal Orientation are managed using the Army Selection List and completion is recorded in the Army’s Training Requirements and Resource System. DOD further noted that these systems have been evaluated and are working properly and systematically with the Army Selection List being the selection system of record and the Army’s Training Requirements and Resource System being the training system of record. Specifically, DOD noted that attendance can be determined by comparing the two lists. DOD also provided a list of all commanders authorized and assigned as well as a 2017 copy of Army Regulation 350-1. While the information that DOD provided about documenting training indicates positive progress, no additional documentation was provided to demonstrate that the underlying data issues identified in GAO’s report were resolved and that data on commanders’ completion of these courses was accurately documented in the Army’s system of record. To fully implement GAO’s recommendation, the Army needs to determine the reasons for the discrepancies in the course completion data in the system of record

²GAO, *Military Training: The Services Need to Ensure That All Commanders Are Prepared for Their Legal Responsibilities*, [GAO-21-338](#) (Washington, D.C.: July 8, 2021).

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GAO report (recommendation number)	Agency	Recommendation	Actions to date
21-338 (6)	Navy	The Secretary of the Navy should ensure the Naval Justice School establishes and implements guidance for conducting Level 3 surveys of dedicated legal training on a continual basis.	<p>versus the course provider's records, address any issues identified to ensure the system of record includes complete and accurate information, and provide documentation of the actions taken.</p> <p>In September 2021, Navy officials said that they expected to establish and implement guidance for conducting Level 3 surveys by October 2023. GAO followed up with DOD in June 2022, May 2023, and August 2023, but had not received an update as of September 2023. In December 2023, the Navy provided documentation of surveys administered. However, it did not provide evidence that the guidance specified in our recommendation had been established and implemented. To fully implement GAO's recommendation, the Navy needs to issue guidance that includes the requirement for conducting Level 3 surveys of their dedicated legal training and provides details about implementation of this requirement.</p>
21-338 (7)	Air Force	The Secretary of the Air Force should ensure The Air Force Judge Advocate General's School establishes and implements guidance for conducting Level 3 surveys of dedicated legal training on a continual basis.	<p>As of August 2021, Air Force officials stated that in order to ensure the Air Force Judge Advocate General's School will establish and implement guidance for conducting Level 3 surveys of dedicated commander legal training on a continual basis, the school's guidance will require annual Level 3 evaluations conducted through two approaches: focus groups and electronic surveys. The officials estimated that these actions would be completed in June 2022. GAO followed up with DOD in June 2022, May 2023, and August 2023, but had not received an update as of September 2023. In December 2023, DOD provided documentation demonstrating that Air Force Judge Advocates conducted a Level 3 focus group in-person in Florida in Feb 22, targeting graduated Senior Officer Legal Orientation attendees stationed at Hurlburt Field and Eglin Air Force Base. The documentation also demonstrated that In Apr 23, Air Force Judge Advocates sent Level 3 surveys to attendees from fiscal years 21 and 22 (commanders who have been in command for approximately one year to one and a half years) for self-assessment. The Air Force noted that they continue to offer virtual Level 3 surveys until fiscal year 26 and will then offer another in-person focus group. They also noted that they reviewed the proposal to add a 360-degree feedback hybrid to the existing Level 3 survey process developed in 2021 and determined 360-degree feedback would not provide the intended outcome. These are positive steps to assess legal training. However, they do not provide evidence that guidance has been developed and implemented as specified in our recommendation. To fully implement GAO's recommendation, the Air Force needs to issue guidance that includes the requirement for conducting</p>

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GAO report (recommendation number)	Agency	Recommendation	Actions to date
21-338 (8)	Army	The Secretary of the Army should examine the need and feasibility of conducting Level 3 surveys or other higher-level techniques for assessing training for training with blocks of legal content that would allow for commanders to provide feedback about the course some period of time after assuming command.	<p>Level 3 surveys of their dedicated legal training and provides details about implementation of this requirement.</p> <p>As of August 2021, Army officials stated that The School for Command Preparation will incorporate questions on legal content into appropriate Kirkpatrick Level III surveys for the battalion and brigade pre-command courses. In addition, they said that The Judge Advocate General will examine the possibility of conducting focus groups of commanders at local installations to discuss the effectiveness of legal instruction prior to command. The officials estimated that these actions would be completed in March 2022. GAO followed up with DOD in June 2022, May 2023, and August 2023, but had not received an update as of September 2023. To fully implement GAO's recommendation, the Army needs to determine the need and feasibility of using Level 3 surveys or other assessment techniques such as focus groups to obtain feedback about its training with blocks of legal content (courses such as the battalion and brigade pre-command courses) and provide documentation of the actions taken.</p>
21-338 (10)	Navy	The Secretary of the Navy should examine the need and feasibility of conducting Level 3 surveys or other higher-level techniques for assessing training for Marine Corps training with blocks of legal content that would allow for commanders to provide feedback about the course some period of time after assuming command.	<p>As of August 2021, Marine Corps officials stated that Education Command will examine the need for and feasibility of conducting Level 3 surveys or other higher-level techniques for assessing training with blocks of legal content that would allow commanders to provide feedback about the course some period after assuming command. They noted that the Vice President for Academic Affairs at Marine Corps University is already investigating the implementation of additional survey tools at the Commandant's Commanders Course (also known as Cornerstone) to better capture feedback and will be prepared to provide findings and corrective actions taken. The officials estimated that these actions would be completed in June 2022. GAO followed up with DOD in June 2022, May 2023, and August 2023, but had not received an update as of September 2023. In January 2024, OSD's Office of General Counsel stated that Marine Corps University Institutional Research, Assessment and Planning continues to conduct Cornerstone Course Surveys (plus a Spouse survey) from which the feedback is used to make improvements for the next iteration. They also noted that the Lejeune Leadership Institute has determined that a Course Content Review Board would be an appropriate path forward to determine the efficacy of Legal and other classes at Cornerstone. The Institute intends to conduct an in-person Review Board in fiscal year 2024. The Board would include a review of Legal courses. Officials estimate that the recommendation will be addressed by</p>

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GAO report (recommendation number)	Agency	Recommendation	Actions to date
			September 30, 2024. To fully implement GAO's recommendation, the Marine Corps needs to determine the need and feasibility of using Level 3 surveys or other assessment techniques to obtain feedback about its training with blocks of legal content (courses such as Cornerstone), and provide documentation of the actions taken
21- 338 (11)	Air Force	The Secretary of the Air Force should examine the need and feasibility of conducting Level 3 surveys or other higher-level techniques for assessing training for training with blocks of legal content that would allow for commanders to provide feedback about the course some period of time after assuming command.	As of August 2021, Air Force officials stated that the Air Force Judge Advocate General's School will establish and implement guidance for conducting Level 3 surveys on a continual basis. They stated that the school's guidance will require annual Level 3 evaluations conducted through two approaches: focus groups and electronic surveys. The officials estimated that these actions would be completed in June 2022. GAO followed up with DOD in June 2022, May 2023, and August 2023, but had not received an update as of September 2023. In December 2023, DOD provided documentation demonstrating that Air Force Judge Advocates conducted a Level 3 focus group in-person in Florida in February 2022, targeting graduated Senior Officer Legal Orientation attendees stationed at Hurlburt Field and Eglin Air Force Base. The documentation also demonstrated that in April 2023, Air Force Judge Advocates sent Level 3 surveys to the attendees from fiscal years 2021 and 2022 (commanders who have been in command for approximately one year to one and a half years) for self-assessment. The Air Force noted that they continue to offer virtual Level 3 surveys until fiscal year 2026 and will then offer another in-person focus group. They also noted that they reviewed the proposal to add a 360-degree feedback hybrid to the existing Level 3 survey process developed in 2021 and determined 360-degree feedback would not provide the intended outcome. These are positive steps to assess legal training. However, they do not constitute the examination specified in our recommendation. To fully implement GAO's recommendation, the Air Force needs to determine the need and feasibility of using Level 3 surveys or other assessment techniques to obtain feedback about its training with blocks of legal content (courses provided through the Major Commands, such as the Air Combat Command Squadron Commanders Course, Air Education and Training Command Senior Leaders Conference, Air Force Materiel Command Squadron Leader Orientation, among others), and provide documentation of the actions taken.
21- 338 (12)	Navy	The Secretary of the Navy should develop policies and procedures that formalize the Navy's implementation of the legal course for junior officers	In August 2021, the Navy issued guidance that established a formal, milestone-based, Navy legal training continuum requirement for all officers in article 1301-907 of the Naval Military Personnel Manual. The

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GAO report (recommendation number)	Agency	Recommendation	Actions to date
		and the intermediate legal course for O-4 and senior O-3 grade officers and ensure the courses are provided to all officers.	<p>guidance provides that the legal training continuum provides milestone-based legal training with courses at the junior officer, intermediate leader, and senior leader milestones. As relevant to this recommendation, the guidance establishes legal training requirements that include the following: (1) all prospective commanding officers are required to attend the Naval Justice School's Senior Leader Legal Course; (2) the Naval Justice School shall offer a milestone online legal training course for junior officers or division officer equivalents to be implemented in training pipelines; and (3) an in-person half-day legal course for department head or equivalents to be implemented in training pipelines. Navy officials said that the online legal training course was available online in August 2021. As of April 2023, Navy officials expect the half-day legal course for all senior O-3s and O-4s to be available in October 2023, although they said that execution will be contingent upon sufficient personnel levels. The officials stated that personnel was requested for fiscal year 2023 but was deferred for reconsideration in fiscal year 2024. In December 2023, Navy officials stated that the Naval Justice School now provides a 4-hour in-person training called the Intermediate Leader Legal Course to mid-level leaders during their Department Head training pipeline. Officials further noted that in accordance with Naval Military Personnel Manual Section 1301-907, the Naval Justice School tailors this training to community training pipelines, delivers it at community-identified appropriate points, and communicates with the appropriate legal offices to ensure all are aware of the training requirement. The Naval Justice School also works with the community to identify the appropriate point in the training pipeline for the training. As of December 2023, the course had been implemented in 9 (7 fully implemented, 2 partially implemented) of 15 required communities. Officials stated that the Naval Justice School has requested the additional personnel required to support full implementation. These requests were not approved, and as a result the school does not currently have the personnel levels to provide this training to all department head-level USN officers. In December 2023, however, the intermediate course was given a Course Identification Number and Location and Course Data Processing Code in the Catalog of Navy Training Courses in order for the course to be reflected in students' records and provide better Navy-wide tracking of compliance with this requirement. The Navy currently estimates being able to address this recommendation by September 30, 2024. To fully implement GAO's recommendation, the Navy needs to implement the intermediate legal course for O-4 and senior O-3 grade</p>

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GAO report (recommendation number)	Agency	Recommendation	Actions to date
21-338 (13)	Navy	The Secretary of the Navy should require a comprehensive mix of legal training to be provided to all Marine Corps commanders throughout their careers.	<p>officers and provide documentation of the actions taken to do this.</p> <p>As of August 2021, Marine Corps officials stated that Training and Education Command, on behalf of the Commandant, will conduct a comprehensive review of legal training that is provided to all Marine Corps commanders, officers, and senior Non-Commissioned Officers throughout their careers. The officials estimated that these actions would be completed in June 2022. GAO followed up with DOD in June 2022, May 2023, and August 2023, but had not received an update as of September 2023. To fully implement GAO's recommendation, the Marine Corps needs to review the legal training that is provided to all Marine Corps commanders throughout their careers; identify the appropriate timing, amount, and mix of legal training that Marine Corps commanders should receive; issue guidance that describes the requirements for the legal training that it determined that commanders should receive; and provide documentation of the actions taken to do this.</p>
21-338 (14)	Army	The Secretary of the Army should comprehensively assess the entire continuum of legal training provided to commanders throughout their careers to help ensure that they are receiving legal training at the time, in the amount, and on the mix of topics needed to prepare them for the legal responsibilities of their positions.	<p>As of August 2021, Army officials stated that Training and Doctrine Command, supported by The Judge Advocate General's Legal Center and School, will compile a summary of all legal instruction provided in Professional Military Education courses and required command preparation courses. The Judge Advocate General will evaluate the timing, amount, and mix of topics to determine their appropriateness to the legal responsibilities of the level of command. Additionally, the Judge Advocate General will assist the Command to make appropriate updates to ensure the right topics are taught in the right amounts and that topics are taught consistently across all offerings of similar courses. The officials estimated that these actions would be completed in July 2022, to be implemented in fiscal year 2023. GAO followed up with DOD in June 2022, May 2023, and August 2023, but had not received an update as of September 2023. In February 2024, DOD noted that Army echelons at Brigade and above have significant training as noted in GAO's report and that such training continues. Further, DOD noted that The Army Judge Advocate General is also pursuing an initiative from the People First Task Force to expand Senior Officer Legal Orientation to Battalion Commanders and Command Sergeant Majors at Battalion and Brigade level and that the expansion will be piloted in fiscal year 2025 as the Army seeks to build out funding for the initiative. To conduct the review of legal education for echelons below Battalion Command, DOD noted that The Army Judge Advocate General invested in a dedicated Training</p>

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GAO report (recommendation number)	Agency	Recommendation	Actions to date
21-338 (15)	Air Force	The Secretary of the Air Force should comprehensively assess the entire continuum of legal training provided to commanders throughout their careers to help ensure that they are receiving legal training at the time, in the amount, and on the mix of topics needed to prepare them for the legal responsibilities of their positions.	<p>Officer who led a team that undertook a holistic review of legal training across the Army identifying several issues. According to the Army, that team found that training was not compliant with Article 137 of the UCMJ; that training neglected fundamental areas, particularly investigations; there was limited synchronization with instruction provided at Reserve Officer Training Corps; and that lessons were generally not at the proper learning level with no vignettes or limited practical application. Further, the Army Judge Advocate General directed that training aimed at eliminating bias be included where appropriate in consideration of the Independent Review Team on Racial Disparity in the Military Justice System. DOD also provided several slide decks for summaries about legal training provided by the Army. The information that DOD provided demonstrates positive progress by the Army toward addressing GAO's recommendation. However, documentation of the Army's review and how it ensured that commanders are receiving legal training at the time, in the amount, an on the mix of topics needed to prepare them for the legal responsibilities of their positions was not provided and is needed to complete the recommendation.</p> <p>As of April 2023, Air Force officials stated that they have developed an Air Force-wide mechanism to track and assess the informal and formal legal education and training provided to commanders. The officials said that as of January 2023, they standardized and centralized statutorily required commander legal training. This training is available in the Air Force's myLearning training platform and includes courses on the uniform code of military justice and commanders' roles in sexual assault cases. In addition, Air Force officials said that they developed a second training delivery mechanism in Microsoft Teams that identifies required training and allows commanders to independently access training modules. The mechanism in Teams also has channels that can be used to submit training feedback, and where legal offices can report training completion. In December 2023, DOD provided an update in which the Air Force reiterated that its Professional Development Directorate, in collaboration with the Military Justice and Discipline Directorate, had established a Department of Air Force-wide mechanism to track and assess the informal just-in-time and on-the-job legal training that commanders receive throughout their careers, in conjunction with formal legal education and training provided to commanders through Air University and the Air Force Judge Advocate General's School. While these steps will help improve the Air Force's deployment and monitoring of legal training for commanders, to fully implement</p>

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GAO report (recommendation number)	Agency	Recommendation	Actions to date
			GAO's recommendation, the Air Force needs to demonstrate that they have reviewed the legal training that is provided to all Air Force commanders throughout their careers and identified the appropriate timing, amount, and mix of legal training that Air Force commanders should receive, and provide documentation of the actions taken to do this.

Source: GAO analysis of [GAO-21-338](#). | GAO-24-106386

^aGAO, *Military Training: The Services Need to Ensure That All Commanders Are Prepared for Their Legal Responsibilities*, [GAO-21-338](#) (Washington, D.C.: July 8, 2021).

Additionally, in July 2022, GAO reviewed equal opportunity claims, climate surveys, and programs to address climate issues at the military service academies. As a result, GAO made seven recommendations to help DOD create an inclusive environment free from harassment and discrimination, including that DOD capture information on incidents not submitted through the complaint system and develop performance measures for actions aimed at improving climate. DOD agreed with the recommendations.³ See table 6 for details regarding the five recommendations that have not yet been fully implemented.

Table 6: Recommendations That Have Not Been Fully Implemented from GAO's 2022 Report on Organizational Climate at the Military Service Academies

GAO report (recommendation number)	Agency	Recommendation	Actions to date
22-105130 (1) ^a	Army	The Secretary of the Army should ensure that the Superintendent of the United States Military Academy develops a clear and consistent process to document and report alleged incidents of discrimination and harassment that are not submitted through the complaint processing system.	According to an update provided to GAO on December 1, 2022, the United States Military Academy has established a working group to determine data collection requirements for logging alleged incidents of discrimination and harassment that are not submitted through the complaint processing system and the use of an automated system to collect this information. The update states that this information would be used to inform the command of organizational climate issues. As of February 2024, we are continuing to monitor the actions taken to implement this recommendation.

³GAO, *Military Service Academies: Actions Needed to Better Assess Organizational Climate*, [GAO-22-105130](#) (Washington, D.C.: July 29, 2022).

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GAO report (recommendation number)	Agency	Recommendation	Actions to date
22-105130 (2)	Navy	The Secretary of the Navy should ensure that the Superintendent of the United States Naval Academy develops a clear and consistent process to document and report alleged incidents of discrimination and harassment that are not submitted through the complaint processing system.	According to an update provided to GAO on December 1, 2022, the United States Naval Academy is working to develop a tracker to document all alleged incidents of discrimination and harassment that are not submitted through the complaint processing system. The update states that the Academy will document and communicate formal policy on this tracker by March 1, 2023. As of February 2024, we are continuing to monitor the actions taken to implement this recommendation.
22-105130 (4)	Navy	The Secretary of the Navy should ensure that the Superintendent of the United States Naval Academy develops internal controls that ensure all military equal opportunity complaints are documented in such a way that they are readily available for examination.	According to an update provided to GAO on December 1, 2022, the United States Naval Academy is working to develop new processes to track all formal, informal, and anonymous complaints, including data sharing between key actors. The update further stated that the Academy plans to conduct monthly audits of official complaints. As of February 2024, we are continuing to monitor the actions taken to implement this recommendation.
22-105130 (5)	Army	The Secretary of the Army should ensure that the Superintendent of the United States Military Academy completes the development of performance measures for actions in its diversity, equity, and inclusion plan, and implements them, so that it can assess the effectiveness of its efforts to improve organizational climate.	According to an update provided to GAO on December 1, 2022, the United States Military Academy initiated a comprehensive planning effort to update its current Diversity, Inclusion, and Equal Opportunity Plan in July 2022. According to the update, this review will better align the existing plan with updated guidance from the White House, the Department of Defense, U.S. Army, and current expectations within higher education. As of February 2024, we are continuing to monitor the actions taken to implement this recommendation.
22-105130 (6)	Navy	The Secretary of the Navy should ensure that the Superintendent of the United States Naval Academy completes the development of performance measures for actions in its diversity, equity, and inclusion plan, and implements them, so that it can assess the effectiveness of its efforts to improve organizational climate.	According to an update provided to GAO on December 1, 2022, the United States Naval Academy is developing and implementing performance measures to assess the effectiveness of its Diversity and Inclusion Strategic Plan on improving its organizational climate. However, the update states that current staffing is insufficient to fully develop performance measures for all actions. The estimated implementation date for this corrective action is August 30, 2024. As of February 2024, we are continuing to monitor the actions taken to implement this recommendation.

Source: GAO analysis of [GAO-22-105130](#). | GAO-24-106386

⁹GAO, *Military Service Academies: Actions Needed to Better Assess Organizational Climate*, [GAO-22-105130](#) (Washington, D.C.: July 29, 2022).

In May 2022, the Deputy Secretary of Defense established an Internal Review Team (IRT) to address the root causes of racial disparities in DOD’s investigative and military justice systems and provide actionable recommendations that the Department can implement to improve policies, processes, and resources to address these disparities. The IRT initially

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presented its recommendations to the Deputy Secretary in August 2022, and its report was publicly released in June 2023.⁴ See table 7 for details regarding the recommendations made by the IRT and actions taken as of December 2023.

Table 7: List of Department of Defense (DOD) Recommendations from Its 2023 Internal Review Team (IRT) Report and Status of Actions Taken as of December 2023

Recommendation number	Category	Recommendation	Actions taken to date according to DOD
1 ^a	Training and Education	<p>Develop cultural core competencies to anchor training and education for officers, enlisted, and civilian personnel across their career life cycles and at all levels of the Department.</p> <p>Revised by the Executive Working Group to read:</p> <p>Create Leadership and Development Competency Model to anchor training and education for officers, enlisted, and civilian personnel across their career life cycles and at all levels in the Department.</p>	<p>Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Personnel and Readiness) as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.</p>
2	Training and Education	<p>Train and educate leaders at all levels to enhance their proficiency in talent management, improve their understanding of human behavior, and increase their acumen in interpersonal communications.</p> <p>Revised by the Executive Working Group to read:</p> <p>Train and educate leaders at all levels to enhance their proficiency in talent management, by improving their understanding of human behavior, and increasing their acumen in interpersonal communications.</p>	<p>Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Personnel and Readiness) as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.</p>

⁴Department of Defense, *Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems* (Aug. 31, 2022).

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Recommendation number	Category	Recommendation	Actions taken to date according to DOD
3	Training and Education	Establish and implement enhanced legal training and education tailored to Service members at all levels who make discretionary decisions, with a focus on first-line supervisors.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Personnel and Readiness) and the Military Departments as the offices with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.
4	Training and Education	Develop and mandate appropriate training for all military police investigators and for investigating officers who conduct command-directed investigations. Revised by the Executive Working Group to read: Develop and mandate appropriate training for all military police investigators who conduct criminal investigations and for investigating officers who conduct command-directed investigations.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Intelligence and Security) as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.
5	Service Member Protections	Adopt modern policing practices, such as the use of body-worn cameras and recording suspect interviews, to improve professionalism, oversight, and protections for officers and the public.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Intelligence and Security) as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.
6	Service Member Protections	Provide all Service members subject to nonjudicial punishment with a right to counsel. Revised by the Executive Working Group to read: Provide all Service members subject to nonjudicial punishment with a right to consult with counsel before the nonjudicial punishment proceeding occurs, subject to such exceptions as may be appropriate due to military exigencies. Provide all Service members upon whom nonjudicial punishment was imposed with a right to consult with counsel concerning available opportunities to appeal and whether such opportunities should be pursued.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the General Counsel as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.

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Recommendation number	Category	Recommendation	Actions taken to date according to DOD
7	Service Member Protections	<p>Update the “vessel exception,” and restrict its use to operationally necessary circumstances.</p> <p>Revised by the Executive Working Group to read:</p> <p>Promulgate updated policies to ensure application of the “vessel exception” to the right to refuse nonjudicial punishment comports with how courts have interpreted the provision to protect Service member rights and ensure the fair and consistent administration of justice.</p>	<p>Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the General Counsel as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.</p>
8	Service Member Protections	<p>Provide Service members with the right to legal representation at Summary Courts-Martial (SCM).</p>	<p>Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the General Counsel as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.</p>
9	Service Member Protections	<p>Prohibit a Commanding Officer in the Accused’s chain of command from serving as the Summary Court-Martial Officer.</p>	<p>Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the General Counsel as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.</p>
10	Service Member Protections	<p>Implement additional due process in the Administrative Separation proceedings of a Service member not otherwise entitled to a Separation Board.</p>	<p>Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Personnel and Readiness) as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.</p>

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Recommendation number	Category	Recommendation	Actions taken to date according to DOD
11	Service Member Protections	Add additional due process and access controls for titling, indexing, and expungement of information in the Defense Central Index of Investigations and the Department of Justice National Criminal Information Center and Interstate Identification Index.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Intelligence and Security) and the Office of the Inspector General as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.
12	Service Member Protections	Increase emphasis on compliance with Article 137, Uniform Code of Military Justice (UCMJ) which requires the explanation to Service members of certain punitive Articles of the UCMJ at various points in their career. Revised by the Executive Working Group to read: Increase emphasis on compliance with Article 137, Uniform Code of Military Justice (UCMJ), which requires the explanation to Service members of certain articles of the UCMJ at various points in their careers.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Personnel and Readiness) and the Military Departments as the offices with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.
13	Oversight and Transparency	Improve and standardize data collection across all phases of the investigative, administrative, and military justice systems, particularly at the initial intake stages.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Personnel and Readiness) as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.
14	Oversight and Transparency	Develop processes and policies for timely analysis and reporting of data to commanding officers and other key stakeholders.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Personnel and Readiness) as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.

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Recommendation number	Category	Recommendation	Actions taken to date according to DOD
15	Oversight and Transparency	Provide commanding officers with “detection tools” and expert assistance to address potential areas of disparity.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Personnel and Readiness) as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.
16	Oversight and Transparency	Establish a Principal Staff Assistant for Law Enforcement.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Under Secretary of Defense (Intelligence and Security) as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.
17	Oversight and Transparency	Institute appropriate oversight mechanisms to assess the impact of actions taken to ameliorate or eliminate racial disparities in law enforcement investigations, command inquiries, command-directed and other administrative investigations, adverse administrative actions, non-judicial punishment, and military justice actions.	Approved by the Deputy Secretary of Defense in December 2023 who at that time tasked the Office of the Inspector General as the office with primary responsibility to develop a plan of action and milestones, issue guidance, and initiate policy changes to facilitate implementation. Pending resource availability, the recommendation should reach full operational capability by fiscal year 2030.

Source: GAO analysis of Department of Defense information. | GAO-24-106386

³Department of Defense, *Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems* (August 31, 2022).

In June 2023, the DOD Inspector General released its report with the results of its evaluation about the extent to which the military services are collecting uniform demographic data specific to race and ethnicity in accordance with the Military Justice Act requirements included in the National Defense Authorization Act for Fiscal Year 2017, as defined by Office of Management and Budget (OMB) Statistical Policy Directive No.

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15.⁵ See table 8 for the Inspector General’s recommendations along with DOD’s actions.

Table 8: Department of Defense (DOD) Inspector General’s (IG) Recommendations from Its 2023 Report with DOD’s Actions

Recommendation number	Recommendation	DOD actions	Status of recommendation according to DOD Inspector General
1a ^a	The Under Secretary of Defense for Personnel and Readiness should establish and define demographic categories in service personnel and military justice system databases across all military services.	The Under Secretary of Defense for Personnel and Readiness partially agreed and stated that the military services can currently aggregate data to meet the minimum requirement of Office of Management and Budget (OMB) Statistical Policy Directive No. 15 and DOD Instruction 1020.05 to report disparities consistently. b The Under Secretary acknowledged that the military services have flexibility in collecting data at the level of granularity they require, while ensuring compliance with the minimum requirements. Rather than dictating the level of granularity to the military services, the Under Secretary states that the DOD will direct that they use existing standardized aggregated data elements for reporting for DOD-wide analyses. In addition, the DOD will ensure the military services comply with Defense Manpower Data Center database requirements specified in DODI 1336.05. c The DOD will also recommend the military services use the DMDC-standardized race/ethnicity data elements as the definitive source for analyzing military disparities for their annual reporting requirements instead of using individual military service data elements for race/ethnicity.	Comments from the Under Secretary partially addressed the recommendation; therefore, this recommendation is unresolved. We acknowledge the DOD will recommend the Service use the Defense Manpower Data Center (DMDC)-standardized race/ethnicity data elements for reporting requirements. However, those data elements align with the criteria set forth in DODI 1336.05, which does not align with the military justice system data requirements set forth in OMB Statistical Policy Directive No. 15 and DOD 1020.05. We request that the Under Secretary provide additional comments in response to the final report to describe how the DOD will ensure the Services are able to aggregate demographic data for Federal reporting requirements.

⁵Department of Defense, Office of the Inspector General, *Evaluation of the Collection of Demographic Data in the Military Justice System* (June 7, 2023).

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Recommendation number	Recommendation	DOD actions	Status of recommendation according to DOD Inspector General
1 ^b	The Under Secretary of Defense for Personnel and Readiness establish a process that requires consistent use of demographic categories in service personnel and military justice system databases across all military services.	The Under Secretary of Defense for Personnel and Readiness agreed with recommendation and stated it aligns with recent recommendations the DOD has agreed to and is working to implement from GAO 19-344 and new statutory requirements. GAO recommended the DOD develop the capability to present service members' race and ethnicity data in its investigations and personnel databases using the same categories of race and ethnicity established in the December 2018 uniform standards for the military justice databases. Section 547 of the National Defense Authorization Act (NDAA) for Fiscal Year 2022 required the development of consistent data elements for reporting. The DOD's guidance will be updated after OMB Statistical Policy No. 15 is revised.	Comments from the Under Secretary addressed the specifics of the recommendation; therefore, this recommendation is resolved, but will remain open. We will close this recommendation when the Under Secretary provides documentation supporting the development of consistent data elements for reporting based on the revised OMB Statistical Policy No. 15.
1 ^c	The Under Secretary of Defense for Personnel and Readiness should conduct a review to determine whether a single military justice system database for use by all military services would be beneficial.	The Under Secretary of Defense for Personnel and Readiness partially agreed that a standardized data repository for analyses is warranted but did not agree that a single military justice system case management database is warranted. As an alternative, the Under Secretary stated the DOD will create a single centralized Office of the Secretary of Defense-managed system to extract data and documents from the existing Armed Forces databases that maintain information on military justice matters pursuant to section 547 of the NDAA for Fiscal Year 2022 for analytic purposes. The DOD has also convened two working groups to create codebooks and data dictionaries to facilitate the aggregation of data from each Armed Forces system into a new umbrella system, with final products to be completed in the summer 2023 time frame.	Comments from the Under Secretary addressed the specifics of the recommendation; therefore, this recommendation is resolved, but will remain open. We will close this recommendation when the Under Secretary provides documentation demonstrating the centralized Office of the Secretary of Defense-managed system is able to extract data and documents for analytical purposes.

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Recommendation number	Recommendation	DOD actions	Status of recommendation according to DOD Inspector General
1 ^d	The Under Secretary of Defense for Personnel and Readiness should develop and implement a single military justice system database if found beneficial based on the review.	The Under Secretary of Defense for Personnel and Readiness partially agreed and stated that the DoD will implement the actions outlined in the response to Recommendation 1c.	Comments from the Under Secretary addressed the specifics of the recommendation; therefore, this recommendation is resolved, but will remain open. We will close this recommendation when the Under Secretary provides documentation demonstrating the single centralized Office of the Secretary of Defense-managed system is able to extra data and documents for analytical purposes.

Source: GAO analysis of Department of Defense information. | GAO-24-106386

^aDepartment of Defense Inspector General, *Evaluation of the Collection of Demographic Data in the Military Justice System* (June 7, 2023).

^bOffice of Management and Budget, *Office of Management and Budget's 1997 Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity (Statistical Policy Directive 15)*; Department of Defense Instruction 1020.05, *DOD Diversity and Inclusion Management Program* (Sept. 9, 2020).

^cDepartment of Defense Instruction 1336.05, *Automated Extract of Active Duty Military Personnel Records*, (July 28, 2009) (Incorporating Change 3, Aug. 26, 2021) (since cancelled and incorporated by Department of Defense Instruction 7730.68, *Uniformed Services Human Resources Information System* (Sept. 1, 2023)).

Lastly, section 549F of the National Defense Authorization Act (NDAA) for Fiscal Year 2022 required each of the Secretaries of the military departments conduct an assessment of racial disparity in military justice and discipline processes and military personnel policies, as they pertain to minority populations.⁶ Additionally, the law required each Secretary to submit a report detailing the results of their assessments together with recommendations for statutory or regulatory changes as the Secretary concerned determines appropriate. In response to this mandate, the Army submitted its report in February 2023, and it included 12 recommendations which address issues across areas within military justice as well as military personnel policies from its 2022 *Holistic Evaluation and Assessment of Racial Disparity in Military Justice*

⁶Pub. L. No. 117-81, § 549F (2021).

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(HEARD) report, used to satisfy the statute's reporting requirement.⁷ See table 9 for a list of these recommendations with any actions taken by the Department of the Army.⁸

⁷To satisfy the requirements set out in section 549F of the National Defense Authorization Act for Fiscal Year 2022, the Army submitted both a report it had completed previously (its *Holistic Evaluation and Assessment of Racial Disparity in Military Justice* (HEARD) report) and its newly completed materials developed in response to section 549F. As a result, recommendations stemming from the HEARD study predate submission of the Army's final racial disparity report. Department of the Army, *Report to Congress on Racial Disparity in Military Justice and Discipline Processes and Military Personnel Policies* (Feb. 23, 2023); and *Holistic Evaluation and Assessment of Racial Disparity in Military Justice* (Feb. 2022).

⁸The Navy and Air Force reports submitted in response to section 549F of the NDAA for Fiscal Year 2022 did not include any recommendations.

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Table 9: Department of the Army Recommendations from Its 2023 Report with Actions Taken

Recommendation number	Recommendation	Actions taken by the Army to date
1	<p>The Secretary of the Army should direct every staff section and command who provided data for the Holistic Evaluation and Assessment of Racial Disparity in Military Justice (HEARD)⁹ initial data collection effort to conduct a review of the feasibility and advisability of collecting additional data elements, including those identified as limitations in the HEARD data collection process, that would allow for a more comprehensive understanding of discretionary policies and actors in the system.</p>	<p>In September 2022, the Secretary of the Army directed the Assistant Secretary of the Army for Manpower and Reserve Affairs to identify additional data elements, including those identified as limitations in the HEARD data collection process, the collection of which would allow for a more comprehensive understanding of discretionary policies and actors in the system. Additionally, the Secretary of the Army directed the Assistant Secretary of the Army for Manpower and Reserve Affairs to create a working group to review current Racial and Ethnic Designation Category (REDCAT) data reporting requirements and make recommendations that enhance transparency and build trust. In March 2023, The Army’s Equity and Inclusion Agency established the REDCAT Working Group that consisted of members from multiple criminal justice agencies along with members from Army Personnel and Human Resources Command. In September 2023, the REDCAT Working Group provided its findings and next steps. It reported that the Army has made substantial progress toward collecting additional data items identified within the HEARD Report that will allow for a more comprehensive understanding of disparities in future HEARD iterations. The next step reported was to re-assess data limitations during subsequent HEARD reviews. In February 2024, an Army official told us that additional formal HEARD data collection has been paused due to the recommendations of the DOD Internal Review Team (IRT) recommendations related to oversight and transparency. The official also said that the data collection and dashboards recommended by the IRT would overlap, duplicate or even subsume additional data collection of HEARD. As such, the Army and the other Services will now be required to follow data collection under the direction of the Office of the Secretary of Defense according to the Army official.</p>

**Appendix II: Related Reports and Previous
Recommendations Regarding Racial and
Ethnic Disparities and Discrimination Issues**

Recommendation number	Recommendation	Actions taken by the Army to date
2	<p>The Assistant Secretary of the Army for Manpower and Reserve Affairs should review the racial and ethnic designation categories, not updated since 1990, to ensure compliance with Office of Management and Budget directives. The Assistant Secretary of the Army for Manpower and Reserve Affairs should further consider, in coordination with the Department of Defense and the other military services, expanded or additional categories to reflect the full diversity and experiences of the force.</p>	<p>In September 2022, the Secretary of the Army directed the Assistant Secretary of the Army for Manpower and Reserve Affairs to review Racial and Ethnic Designation Category (REDCAT) data to ensure compliance with OMB directives and to coordinate with DOD and the sister Services to determine if additional categories are required to reflect the full diversity and experiences of the forces. Additionally, the Secretary of the Army directed the Assistant Secretary of the Army for Manpower and Reserve Affairs to create a working group to review current REDCAT data reporting requirements and make recommendations that enhance transparency and build trust. In March 2023, a REDCAT Working Group was formed and consisted of members from multiple criminal justice agencies along with members from Army Personnel and Human Resources Command. In September 2023, the REDCAT Working Group presented its findings and next steps. It reported that the Army can report REDCAT data compliant with both Office of Management and Budget and DOD REDCAT reporting requirements through REDCAT identifiers in the Integrated Personnel and Pay System-Army. Additionally, the Army's REDCAT collection practices are also consistent with the sister Services. The next steps were reported to be (1) require all Army databases derive racial and ethnic designation categories data from its Integrated Personnel and Pay System-Army for consistent reporting and (2) provide a plan of action to connect any other Army databases to the Integrated Personnel and Pay System-Army in the HEARD annual review. In December 2023, the Army issued Military Personnel instructions that provide a uniform way to aggregate and report REDCAT data to agencies outside the Army in accordance with OMB Statistical Directive Policy Directive 15. In February 2024, an Army official told us that its Integrated Personnel and Pay System-Army allows soldiers to select from 34 race and ethnicity categories, while maintaining the ability to aggregate as required under the OMB 15 Directive. According to this official, this expanded set of categories allows Army leadership to understand more fully the diversity of the force and has been very well received in the field, according to this official</p>

**Appendix II: Related Reports and Previous
Recommendations Regarding Racial and
Ethnic Disparities and Discrimination Issues**

Recommendation number	Recommendation	Actions taken by the Army to date
3	<p>The Secretary of the Army direct every staff section and command who provided data for the HEARD initial data collection to address feasibility and advisability of including race and ethnicity demographic data in reports, including, but not limited to, the Article 146, Uniform Code of Military Justice (UCMJ), report, the Army Crime Report, the Annual Report to Congress on Sexual Assault in the Army, the Office of the Under Secretary Drug Demand Reduction Program Annual Statistical Report, and Annual Report on Child abuse and Neglect and Domestic Abuse in the Military.</p>	<p>In September 2022, the Secretary of the Army directed the Assistant Secretary of the Army for Manpower and Reserve Affairs to create a working group to review current REDCAT data reporting requirements and make recommendations that enhance transparency and build trust. In March 2023, a REDCAT Working Group was formed and consisted of members from multiple criminal justice agencies along with members from Army Personnel and Human Resources Command. In September 2023, the REDCAT Working Group reported its findings and the next steps associated with more transparent reporting. More specifically, it stated that by acknowledging the rich differences across ethnicities and not forcing Soldiers to pick a singular race and ethnicity, the current REDCAT categories within Integrated Personnel and Pay System–Army (IPPS-A) advance trust across the force. However, while positive, the current suite of selections is still insufficient to capture the full rich racial and ethnic diversity of the force. Therefore, the working group said that the Army should endorse efforts for the Department of Defense (DOD) and the Office of Management and Budget to expand REDCAT options and must be accompanied by updated reporting requirements that include new options for capturing the full racial and ethnicity of the force. It also stated that a next step would be to establish a REDCAT policy that provides guidance on how the Army should report these data to comply with reporting requirements and provide a process for identifying and updating policies, forms and other requirements. In February 2024, an Army official told us that an Army Directive is in final principal level staffing and a corresponding military personnel message was published in December 2023.</p>
4	<p>Equal Opportunity training at every level of professional military education for all Soldiers commensurate with the roles and responsibilities of those personnel. The Secretary of the Army should mandate appropriate Equal Opportunity training at every level of professional military education for military justice actors with emphasis on roles and both individual and collective responsibilities for identifying and addressing racial disparities. The Secretary of the Army should mandate that all HEARD staff sections implement appropriate Equal Opportunity training for all discretionary actors in the broadly defined military justice timeline identified in this report.</p>	<p>In September 2022, the Secretary of the Army directed the Department of the Army Inspector General to assess the implementation and effectiveness of current equal opportunity training at every level, to include all discretionary actors identified in the HEARD report. In February 2024, an Army official told us that the Inspector General report entitled “Department of the Army Inspector General Fiscal Year 2023 Equal Opportunity Training Inspection” is being staff through Army senior leaders to the Secretary. According to this official, the task has a suspense date of March 15, 2024, but the Secretary may take additional time if needed.</p>

**Appendix II: Related Reports and Previous
Recommendations Regarding Racial and
Ethnic Disparities and Discrimination Issues**

Recommendation number	Recommendation	Actions taken by the Army to date
5	The Secretary of the Army should direct annual reviews to assess progress in reducing disparities and measure effectiveness of changes to training, policy, programs, or process.	In September 2022, the Secretary of the Army directed pending the completion of the Office of the Secretary of Defense Internal Review Team Report that the Deputy Assistant Secretary of the Army for Diversity, Equity, and Inclusion oversee annual reviews to assess progress in reducing disparities and measure effectiveness of changes to training, policy, programs, or processes. In February 2024, an Army official told us that the DOD effort of the Internal Review Team (IRT), which included a review of the HEARD report, will now be the lead for future assessments and annual reviews.
6	The Secretary of the Army should direct that the Provost Marshall General, the Director of the Criminal Investigative Division, and The Judge Advocate General conduct periodic and ongoing reviews of efforts to recruit, retain, and promote a more racially diverse corps of personnel, particularly in senior positions and positions directly advising commanders.	In September 2022, the Secretary of the Army directed the Deputy Assistant Secretary of the Army for Diversity, Equity, and Inclusion to collect and consolidate semi-annual reports from the Provost Marshall General; Director, U.S. Army Criminal Investigation Command; and The Judge Advocate General regarding their efforts to recruit, retain, and promote a more racially diverse corps of personnel, particularly in senior positions and positions directly advising commanders. In February 2024, a senior Army official told us that the Army Judge Advocate General Corps developed a Strategic Plan to evaluate all personnel processes to determine where there may be opportunities to increase the demographic representation as well as retain the talent currently onboard. According to this official, the Army: (1) has developed training on implicit biases that is facilitated prior to all board processes from accession to assignments, (2) has developed a dozen different topical courses that have been deployed to increase awareness of other issues that impact the equity and inclusion of the force, and (3) is providing training at all of the professional military education courses taught at the Judge Advocate General Legal Center and School. Additionally, the official told us that (1) in the last 18 months the Army has trained over 5,000 personnel; (2) the Judge Advocate General Corps Recruiting office has expanded its reach to engage with populations that have not historically been tapped, and (3) the Army is in the process of hiring a Retention Manager to work on a newly formed Team and a Wellness Coordinator whose purpose is to provide strategic advice to the Judge Advocate General on all things to do with taking care of and developing people.
7	The Army should continue to recruit Soldiers across all demographics of our society to ensure a force that reflects the Nation we serve. Additional analysis is required to determine reason for a large drop in the White enlisted accession population.	In February 2024, an Army official told us that the Army has, and continues to, recruit all eligible candidates for military service throughout all its recruiting regions. The official also said that volunteerism and eligibility remain the utmost criteria for recruitment and ultimately, with the All-Volunteer Force, the Army's diversity reflects those individuals who are willing to serve, without regard to an individual's gender or race. Further, the official told us that the "large drop in the White enlisted accession population" is a multi-faceted and complex area requiring analysis over time to evaluate the cause and determine an appropriate way forward.

**Appendix II: Related Reports and Previous
Recommendations Regarding Racial and
Ethnic Disparities and Discrimination Issues**

Recommendation number	Recommendation	Actions taken by the Army to date
8	The Army should continue its current retention policies and continue to monitor for potential future racial discrepancies and continue to adapt reenlistment policies and incentives to ensure equity across all demographic groups.	In February 2024, an Army official told us that the Army’s retention policies remain the same across the board despite a person’s race, color, sex, (to include gender identity), national origin, religion, or sexual orientation per Army Regulation 600-20. Further, the official said that incentives to “Stay Army” are offered equally to everyone according to retention requirements. Additionally, the Office of the Deputy Chief of Staff, G-1, U.S. Army sponsored the RAND project entitled “Retention of Racial-Ethnic Minorities in the Regular Army.”
9	The Army should further study all personnel policies that affect Officer careers and promotion board proceedings that may inadvertently lead to racial disparity. Further examination of board proceedings, officer requirements for promotion, branch requirements to fill assignments at the next higher grade, etc. may be required to determine potential racial disparity in officer promotions.	In February 2024, an Army official told us that the Army participates in the Defense Advisory Committee on Diversity and Inclusion, which requires constant monitoring and random spot-checking of promotion policies to determine any racial disparity in officer promotions. The official also said that reports and meeting documents are available for review and that the Army Talent Management Task Force has a website that outlines the efforts they are taking to review and ensure equity in the promotion process: https://talent.army.mil/faq/ . Finally, the official stated that the Office of the Deputy Chief of Staff, G-1, U.S. Army sponsored the RAND project entitled “Retention of Racial-Ethnic Minorities in the Regular Army” which contains information on career progression and officer promotions.
10	Ongoing Army efforts to increase transparency in the assignment process should continue. The Assistant Secretary of the Army for Manpower and Reserve Affairs should direct an overview of transparency in the assignments process and consider the feasibility of a targeted research study or other mechanism to examine any potential racial disparities within the assignment process.	In February 2024, an Army official told us that the Army continues to utilize Army Talent Alignment Process, a regulated, market-style hiring system which gives officers more ownership over their careers and aligns their skills with performance and preference. According to this official, since its inception in 2018, the Army continues to monitor its success and within the Commanders Guide to the Army Talent Alignment Process, benefits of the system include transparency in the assignment process.
11	The Army should assess what data would be necessary to properly assess Professional Military Education opportunities and make a recommendation as to a feasible way to collect data, as required. These Professional Military Education opportunities include selection for Intermediate Level Education, resident course, Senior Service College, Training with Industry and various Fellowships.	In February 2024, an Army official told us that as there are many factors effecting a soldier’s selection for Professional Military Education, additional research and analysis is needed to assess what data would be necessary and feasible. According to this official, in accordance with Army Regulation 350-1, assignments to Army, Joint, and other services’ schools and colleges are monitored to ensure an order of precedence for attendance is maintained and the most highly qualified officers attend in the proper sequence of their career pattern.

Appendix II: Related Reports and Previous Recommendations Regarding Racial and Ethnic Disparities and Discrimination Issues

Recommendation number	Recommendation	Actions taken by the Army to date
12	The Army should review current outreach programs and identify additional advocacy groups that support diversity, equity and inclusion across all personnel policies and programs.	In February 2024, an Army official told us that the Army continues to execute a series of outreach and engagement events that support non-federal entities and affinity groups to promote Army access and opportunity to underserved and underrepresented communities. According to this official, in fiscal year 2023, the Army conducted exploratory efforts by attending the Society of American Indian Government Employees Symposium, Federal Asian Pacific American Council Leadership Training Program, and the Steve and Marjorie Harvey Foundation Camp for Young Men. Further, the official told us that the Army partners with these organizations and others to provide mentorship and “in-reach” to its personnel, and that the Army held its first Outreach and Engagement Planning Workshop in August of 2023, representing over 20 organizations.

Source: GAO analysis of Department of the Army information | GAO-24-106386

^aThe Army submitted its 2022 *Holistic Evaluation and Assessment of Racial Disparity in Military Justice* (HEARD) report to satisfy the requirement in section 549F of the National Defense Authorization Act for Fiscal Year 2022 to assess and report on racial disparity in military justice and discipline processes.

Appendix III: Selected Studies on Racial and Ethnic Disparities in Civilian Justice Systems in the United States

To inform our assessment of the extent to which the military departments' reports required by section 549F of the National Defense Authorization Act for Fiscal Year 2022 were comparable to existing studies on racial and ethnic disparities in civilian justice systems in the United States, we conducted a literature search. Specifically, we conducted initial searches of databases, such as ProQuest and EBSCO platforms along with Westlaw Edge law journals and reviews, and initially identified a total of 154 studies published between 2018 and May of 2023. We then reviewed the study titles and abstracts to identify those relevant to our objective question, resulting in 41 relevant studies. We further reviewed the full text of these studies to identify those that met specific methodological criteria. This resulted in a total of 27 articles we used to assess the comparability of the military departments' reports with existing studies on disparities in civilian justice systems.¹ See citations below for the 27 articles identified by our review.

Ekstrom, Pierce, Joel M. Le Forestier, and Calvin K. Lai, "Racial Demographics Explain the Link Between Racial Disparities in Traffic Stops and County-Level Racial Attitudes," *Psychological Science*, vol. 33, no. 4 (2022): 497-509.

Fielding-Miller, Rebecca, Hannah Cooper, Sharon Caslin, and Anita Raj, "The Interaction of Race and Gender as a Significant Driver of Racial Arrest Disparities for African American Men," *Journal of Urban Health*, vol. 97 (2020): 112-122.

Sheeran, Alyssa M., and Amanda J. Heideman, "The Effects of Race and Ethnicity on Admission, Graduation, and Recidivism in the Milwaukee County Adult Drug Treatment Court," *Social Sciences*, vol. 10 (2021): 261.

Johnson, Oshea, Marisa Omori, and Nick Petersen, "Racial-Ethnic Disparities in Police and Prosecutorial Drug Charging: Analyzing Organizational Overlap in Charging Patterns at Arrest, Filing, and Conviction," *Journal of Research in Crime & Delinquency*, vol. 60, no. 2 (2023): 255 - 299.

Kagawa, Rose, Christopher McCort, Julia Schleimer, Veronica Pear, Amanda Charbonneau, Shani Buggs, Garen Wintermute, and Hannah Laqueur, "Racial Bias and DUI Enforcement: Comparing Conviction

¹For more information on our methodology for reviewing these studies, see appendix I.

Rates with Frequency of Behavior,” *Criminology & Public Policy*, vol. 20 (2021): 645-663.

Lantz, Brendan and Cole Ward, “Disproportionately Punished, Yet Still Neglected: Variation in Official Police Responses to American Indian/Alaska Native Offending and Victimization,” *Journal of Research in Crime & Delinquency*, vol. 60, no. 1 (2023): 79-111.

Stelter, Marleen, Iniobong Essien, Carsten Sander, and Juliane Degner, “Racial Bias in Police Traffic Stops: White Residents’ County-Level Prejudice and Stereotypes Are Related to Disproportionate Stopping of Black Drivers,” *Psychological Science*, vol. 33, no. 4 (2022): 483-496.

Walter, Sheryl L., Erik Gonzalez-Mulé, Cristiano L. Guarana, Ernest H. O’Boyle Jr., Christopher M. Berry, and Timothy T. Baldwin, “The Race Discipline Gap: A Cautionary Note on Archival Measures of Behavioral Misconduct,” *Organizational Behavior & Human Decision Processes*, vol. 166 (2021): 166-178.

Berdejó, Carlos. “Criminalizing Race: Racial Disparities in Plea-Bargaining.” *Boston College Law Review*, vol. 59, no. 4 (2018): 1187-1249.

Gasperetti, Matthew A., “Crime and Punishment: An Empirical Study of the Effects of Racial Bias on Capital Sentencing Decisions,” *University of Miami Law Review*, vol. 76, no. 2 (2022): 525-611.

Abramowitz, Kate and Bradfield Douglass, Amy, “Racial Bias in Jury Selection Hurts Mock Jurors, Not Just Defendants: Testing One Potential Intervention,” *Law and Human Behavior*, vol. 47, no. 1 (2023): 153-168.

DeCamp, Whitney and Elise DeCamp, “It’s Still about Race: Peremptory Challenge Use on Black Prospective Jurors,” *Journal of Research in Crime & Delinquency*, vol. 57, no. 1 (2020): 3-30.

Rose, Mary R., Raul S. Casarez, and Carmen M. Gutierrez, “Jury Pool Underrepresentation in the Modern Era: Evidence from Federal Courts,” *Journal of Empirical Legal Studies*, vol. 15, no. 2 (2018): 378-405.

Flanagan, Francis X., “Race, Gender, and Juries: Evidence from North Carolina,” *Journal of Law and Economics*, vol. 61 (2018).

Appendix III: Selected Studies on Racial and Ethnic Disparities in Civilian Justice Systems in the United States

Anwar, Shamena, Patrick Bayer, and Randi Hjalmarsson. "Unequal Jury Representation and Its Consequences." *The American Economic Review*, vol. 4, no. 2 (2022): 159–174.

Gunderson, Anna, "Descriptive Representation and Prosecutorial Discretion: Race, Sex, and Carceral Disparities," *American Politics Research*, vol. 50, no. 6 (2022): 823-836.

Bull Kovera, Margaret, "Racial Disparities in the Criminal Justice System: Prevalence, Causes, and a Search for Solutions," *The Journal of Social Issues*, vol. 75, no. 4 (2019): 1139-1164.

Holmes Didwania, Stephanie, "Discretion and Disparity in Federal Detention," *Northwestern University Law Review*, vol. 115, no. 5 (2021).

Martinez, Brandon P., Nick Petersen, and Marisa Omori, "Time, Money, and Punishment: Institutional Racial-Ethnic Inequalities in Pretrial Detention and Case Outcomes," *Crime and Delinquency*, vol. 66, no. 6-7 (2020): 837-863.

MacDonald, John and Steven Raphael, "Effect of Scaling Back Punishment on Racial and Ethnic Disparities in Criminal Case Outcomes," *Criminology & Public Policy*, vol. 19 (2020): 1139-1164.

Kim, Jaeok and André Kiesel, "The Long Shadow of Police Racial Treatment: Racial Disparity in Criminal Justice Processing," *Public Administration Review*, vol. 78, no. 3 (2017): 422-431.

Mitchell, Ojmarrh, Shi Yan, and Daniela Oramas Mora, "Trends in Prison Sentences and Racial Disparities: 20-Years of Sentencing Under Florida's Criminal Punishment Code," *Journal of Research in Crime & Delinquency*, vol. 60, no. 2 (2023): 300-338.

Lofstrom, Magnus, Brandon Martin, and Steven Raphael, "The Effect of Sentencing Reform on Racial and Ethnic Disparities in Involvement with the Criminal Justice System: The Case of California's Proposition 47," *Criminology & Public Policy*, vol. 19, no. 4 (2020).

McConnell, Brendon. "Racial Sentencing Disparities and Differential Progression Through the Criminal Justice System: Evidence From Linked Federal and State Court Data." *arXiv* (2022).

**Appendix III: Selected Studies on Racial and
Ethnic Disparities in Civilian Justice Systems
in the United States**

Edwards, Griffin, Stephen Rushin, and Joseph Colquitt, "The Effects of Voluntary and Presumptive Sentencing Guidelines," *Texas Law Review*, vol. 98, no. 1 (2019): 1-66.

Pierson, Emma, Camelia Simoiu, Jan Overgoor, Sam Corbett-Davies, Daniel Jenson, Amy Shoemaker, Vignesh Ramachandran, Phoebe Barghouty, Cheryl Phillips, Ravi Shroff and Sharad Goel, "A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States," *Nature Human Behavior* (2020).

Arnold, David, Will Dobbie, and Crystal S. Yang. "Racial Bias in Bail Decisions." *The Quarterly Journal of Economics*, Vol. 133, no.4 (2018): 1885–1932.

Appendix IV: Comments from the Department of Defense



FORCE RESILIENCY

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

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

Dear Ms. Farrell:

Enclosed please find the Department of Defense (DoD) response to the Government Accountability Office (GAO) Draft Report GAO-24-106386, "MILITARY JUSTICE: Increased Oversight, Data Collection, and Analysis Could Aid Assessments of Racial Disparities" dated April 9, 2024 (GAO Code 106386).

My point of contact is Dr. Samantha Daniel who can be reached at samantha.m.daniel3.civ@mail.mil and phone 703-409-8612.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Hoyt", is written over a faint, larger signature.

Timothy V. Hoyt, Ph.D.
Deputy Director, Office of Force Resiliency

Enclosure(s):
As stated

GAO DRAFT REPORT DATED APRIL 9, 2024
GAO-24-106386 (GAO CODE 106386)

“MILITARY JUSTICE: INCREASED OVERSIGHT, DATA COLLECTION, AND
ANALYSIS COULD AID ASSESSMENTS OF RACIAL DISPARITIES”

DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATION

RECOMMENDATION 1: The Secretary of the Army should develop and implement a process to centrally collect and maintain accessible data—including race and ethnicity data—on administrative sanctions, all investigations including commander-directed investigations, appeals, and service members selected to serve on court-martial panels, to facilitate centralized visibility over, and, as necessary, the assessment and reporting of these data.

DoD RESPONSE: Concur. The Army will centrally collect and maintain standardized data elements for the military justice system, including assessment and reporting of these data, pending official guidance from the Office of the Secretary of Defense (OSD) and resourcing for implementation of the recommendations from the Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems (IRT).

RECOMMENDATION 2: The Secretary of the Navy should develop and implement a process to centrally collect and maintain accessible data—including race and ethnicity data—on administrative sanctions, all investigations including commander-directed investigations, appeals, and service members selected to serve on court-martial panels, to facilitate centralized visibility over, and, as necessary, the assessment and reporting of these data.

DoD RESPONSE: Concur. Implementation of the Department of Navy’s response and the other GAO recommendations in this report remain contingent on resourcing for these critical tools as well as OSD implementation guidance.

RECOMMENDATION 3: The Secretary of the Air Force should develop and implement a process to centrally collect and maintain accessible data—including race and ethnicity data—on administrative sanctions, all investigations including commander-directed investigations, appeals, and service members selected to serve on court-martial panels, to facilitate centralized visibility over, and, as necessary, the assessment and reporting of these data.

DoD RESPONSE: Partially concur. The Department of the Air Force (DAF) concurs with the recommendations related to collecting and maintaining accessible data related to the basis for courts-martial appeals. The DAF also concurs with the recommendation regarding collecting demographic data on court-martial members in that future iterations of the DAF’s case management system should allow for the collection of court member demographic data. However, this recommendation may require further review to ensure it does not run afoul of legal considerations. For example, convening authorities are specifically prohibited from considering demographic data regarding potential courts-martial members. See *United States v.*

Jeter, 81 M.J. 791 (CAAF 2023). Collecting these data to assess and analyze presents significant unknown risks to maintaining the integrity of convictions given this recent decision and the likely continued significant appellate practice related to this area of the law. For command directed investigations, the DAF non-concurs as the DAF Inspector General does not think this recommendation is feasible.

RECOMMENDATION 4: The Secretary of Defense should ensure the Under Secretary of Defense for Personnel and Readiness designates a department-level office as the oversight entity responsible for coordinating the military departments' assessments of racial and ethnic disparities in military justice and discipline processes.

DoD RESPONSE: Concur. USD(P&R) is revising policy to designate a department-level office responsible for coordinating and collecting the military departments' assessment of racial and ethnic demographics in military justice and discipline processes pursuant to Fiscal Year (FY) 2022 National Defense Authorization Act (NDAA) Section 549G required annual reports.

RECOMMENDATION 5: The Secretary of Defense should ensure the department-level office designated to oversee coordination of the military departments' racial disparity assessments coordinates with the military departments to establish standard terminology and reporting categories, analyses, and reporting format and content to be used in future assessments of racial disparities in military justice and discipline processes.

DoD RESPONSE: Concur. Pursuant to FY 2022 NDAA Section 547 and IRT Recommendation 13 as approved by the Deputy Secretary of Defense, the Department is actively working to create data dictionaries and elements for developing and implementing a centralized database in addition to creating guidance that will outline and define the required data elements that must be tracked in existing case management systems and fed into the DoD-wide centralized database.

RECOMMENDATION 6: The Secretary of Defense should ensure that a department-level office is designated to coordinate with the military departments to comprehensively assess the military justice and discipline process to identify all areas where racial and ethnic disparities may exist, including in the selection of court-martial panels and sentencing, and the corresponding analyses to be conducted.

DoD RESPONSE: Partially concur. An Office of Secretary of Defense-level office will be designated to serve as a resource for the Military Departments in assessing racial and ethnic disparities in the military justice system. Because each military department owns and operates its military justice and discipline process, they are best positioned to conduct their own comprehensive analysis to identify all areas where racial and ethnic disparities exist within their military department.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

Cathleen A. Berrick, (202) 512-3404 or berrickc@gao.gov

Staff Acknowledgments

In addition to the contact named above, Brenda S. Farrell (Director), Kimberly Mayo (Assistant Director), Angela Kaylor (Analyst in Charge), Nicole Ashby, Rebecca Beale, Vincent Buquicchio, Ben Etheridge, Christopher Gezon, Jackson Gode, Serena Lo, Matt Mitchell, and Pamela Snedden made significant contributions to this report.

Related GAO Products

Military Service Academies: Actions Needed to Better Assess Organizational Climate, [GAO-22-105130](#) (Washington, D.C.: July 29, 2022).

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Strategic Planning and External Liaison

Stephen J. Sanford, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548

