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MILITARY JUSTICE

DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities

Accessible Version

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GAO Highlights

Highlights of GAO-20-648T, a testimony before the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives

Why GAO Did This Study

The Uniform Code of Military Justice (UCMJ) was established to provide a statutory framework that promotes fair administration of military justice. Every active-duty servicemember is subject to the UCMJ, with more than 258,000 individuals disciplined from fiscal years 2013-2017, out of more than 2.3 million unique active-duty servicemembers. A key principle of the UCMJ is that a fair and just system of military law can foster a highly disciplined force.

This statement provides information on 1) the collection of race and ethnicity information in the military services' databases, 2) the extent of racial disparities in investigations, disciplinary actions, and case outcomes in the military justice system, and 3) steps taken by DOD to study any identified disparities. This statement is based on GAO-19-344 issued on May 30, 2019. As part of that work, GAO analyzed data from the investigations, military justice, and personnel databases from the military services, including the Coast Guard, from fiscal years 2013-2017 and interviewed agency officials.

What GAO Recommends

GAO made 11 recommendations in prior work, including that the military services develop the capability to present consistent race and ethnicity data, and DOD and the Coast Guard include demographic information in military justice annual reports and evaluate the causes of disparities. DOD and the Coast Guard generally concurred. Progress has been made in addressing some of the recommendations. Continued attention is needed to ensure that the remainder of these recommendations are addressed.

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MILITARY JUSTICE

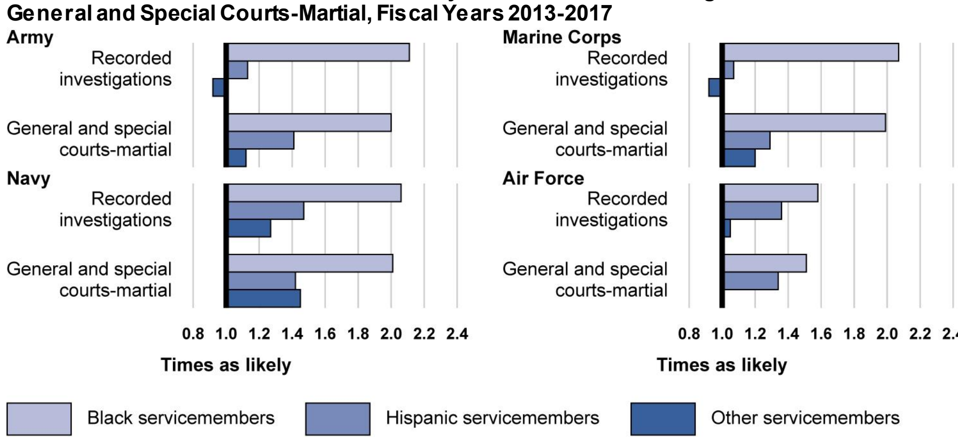
DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial Disparities

What GAO Found

In May 2019, GAO found that the military services did not collect consistent information about race and ethnicity in their investigations, military justice, and personnel databases. Thus, the military services are limited in their ability to identify disparities (i.e., instances in which a racial or ethnic group was overrepresented) in the military justice system. The military services were not required to, and thus did not, report demographic information that would provide greater visibility into potential disparities in their annual military justice reports.

GAO's analysis of available data identified disparities in how likely servicemembers of different races were to be subjects of investigations recorded in military criminal investigative organization databases and tried in general and special courts-martial in particular. For example, in three military services, Black servicemembers were about twice as likely as White servicemembers to be tried in general and special courts-martial. Racial disparities generally were not present in convictions or punishments. These findings show an association for disparities at particular stages of the military justice process, but are inconclusive regarding other stages. However, GAO's findings of racial disparities, taken alone, do not establish whether unlawful discrimination has occurred, as that is a legal determination that would involve other corroborating information and supporting statistics.

Likelihood That Servicemembers Were Subjects of Recorded Investigations and Tried in General and Special Courts-Martial, Fiscal Years 2013-2017



Source: GAO analysis of service investigation, military justice, and personnel data. | GAO-20-648T

Accessible Data for Likelihood That Servicemembers Were Subjects of Recorded Investigations and Tried in General and Special Courts-Martial, Fiscal Years 2013-2017

Military branch	Category	Racial category	Times as likely
Army	Recorded Investigations (RI)	Black (B)	2.11
Army	Recorded Investigations (RI)	Hispanic (H)	1.13

Military branch	Category	Racial category	Times as likely
Army	Recorded Investigations (RI)	Other (O)	0.92
Army	General and special courts-martial (CM)	B	2.00
Army	General and special courts-martial (CM)	H	1.41
Army	General and special courts-martial (CM)	O	1.12
Navy	RI	B	2.06
Navy	RI	H	1.47
Navy	RI	O	1.27
Navy	CM	B	2.01
Navy	CM	H	1.42
Navy	CM	O	1.45
Marine Corps	RI	B	2.07
Marine Corps	RI	H	1.07
Marine Corps	RI	O	0.92
Marine Corps	CM	B	1.99
Marine Corps	CM	H	1.29
Marine Corps	CM	O	1.20
Air Force	RI	B	1.58
Air Force	RI	H	1.36
Air Force	RI	O	1.05
Air Force	CM	B	1.51
Air Force	CM	H	1.34
Air Force	CM	O	1.01

Note: These analyses, taken alone, should not be used to make conclusions about the presence of unlawful discrimination. These multivariate regression analysis results estimate whether a racial group is more likely or less likely to be the subject of an investigation or a trial in general or special courts-martial after controlling for race, gender, rank, and education, and in the Air Force, years of service. GAO made all racial comparisons to White servicemembers, and grouped individuals of Hispanic ethnicity together, regardless of race. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

The Department of Defense (DOD) has taken some steps to study disparities but has not comprehensively evaluated the causes of racial disparities in the military justice system. Doing so would better position DOD to identify actions to address disparities and to help ensure the military justice system is fair and just.

Madam Chairwoman Speier, Ranking Member Kelly, and the Members of the Subcommittee:

Thank you for providing me with the opportunity to discuss GAO's findings and recommendations about racial disparities in the military justice system.[1] Recent events, such as the killings of Ahmaud Arbery and George Floyd, have raised public awareness and activism about racial bias. Although those cases did not involve military personnel, these concerns about racial bias carry over to the military justice system. The

[1]For purposes of this statement, we use the term disparities to describe instances in which a racial group was overrepresented among the servicemembers who were investigated or disciplined for violations of the Uniform Code of Military Justice (UCMJ).

Uniform Code of Military Justice (UCMJ) was established to provide the statutory framework of the military criminal justice system.[2] The UCMJ contains articles that punish traditional crimes such as unlawful drug use and assault as well as unique military offenses including desertion, failure to obey orders or regulations, and misbehavior before the enemy, among others. The Military Justice Review Group elaborated on the purpose of the UCMJ, stating that its current structure and practice 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 both members of the armed forces and by the American public.[3] Every active-duty servicemember of the Army, the Navy, the Marine Corps, the Air Force, and the Coast Guard is subject to the UCMJ, with more than 258,000 individuals disciplined from fiscal years 2013-2017, out of more than 2.3 million unique active-duty servicemembers.

In response to a provision in House Report 115-200, accompanying a bill for the National Defense Authorization Act for Fiscal Year 2018, in May 2019, we issued a report that focused on differences in information the military services collect about the race and gender of servicemembers convicted of violations of the UCMJ as well as the extent that disparities may exist in the military justice system.[4] My statement today is based on that report and addresses (1) the collection of race and ethnicity information in the military services' investigations, military justice, and personnel databases, (2) the extent of racial disparities in investigations, disciplinary actions, and case outcomes in the military justice system, and (3) steps taken by DOD and the military services to study any identified disparities. Our full report also discusses reporting of data that provides visibility into disparities challenges in other areas, such as gender disparities and collection of gender information.

For our May 2019 report, to assess the collection of race and ethnicity information in the military services' investigations, military justice, and personnel databases, we interviewed agency officials and reviewed

[2] 10 U.S.C. §§801-946a.

[3] Military Justice Review Group, *Report of the Military Justice Review Group Part I: UCMJ Recommendations*, at 16 (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.

[4] GAO, *Military Justice: DOD and the Coast Guard Need to Improve Their Capabilities to Assess Racial and Gender Disparities,* GAO-19-344 (Washington, D.C.: May 30, 2019). In this report, we made 11 recommendations intended to help DOD and the Coast Guard improve their capabilities to assess racial and gender disparities.

service guidance, user manuals, and other documentation. Our review identified the types of data officials are required to collect and to maintain, as well as internal procedures the military services follow to input information about race and ethnicity into these databases. We analyzed the data we received from the investigations, military justice, and personnel databases to determine the completeness of the race and ethnicity information recorded in each of the databases.

To assess the extent of racial disparities in investigations, disciplinary actions, and case outcomes in the military justice system, we analyzed military justice actions initiated and recorded in each military service's investigations, military justice, and personnel databases between fiscal years 2013 through 2017—the most recent data available at the time of our review. To prepare the data for our analyses and to help ensure that we had consistent profiles for the race and ethnicity of servicemembers, we merged records using unique identifiers, such as a social security number or a DOD employee identification number, that were common among a particular military service's databases. Based on discussions with service officials, we treated the personnel databases as the authoritative sources for servicemembers' demographic and administrative data.

In addition, as part of our data preparation, we consolidated the various race and ethnicity values in the service personnel databases to the five groups for race and the two groups for ethnicity established by Office of Management and Budget (OMB) standards.[5] When military service personnel databases included different or additional possible options for race and ethnicity than the groups established by the OMB standards, we consolidated the options in accordance with the definitions for each race and ethnicity option listed in the OMB standards. We grouped individuals of Hispanic ethnicity together, regardless of their racial identification, so that we could compare those of Hispanic ethnicity to other racial groups. Throughout this statement, we refer to the combined race and ethnicity values as race.

[5]Office 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). In 2016, the Office of Management and Budget issued a proposed revision to the standards. See *Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity*, 81 Fed. Reg. 67,398 (Sept. 30, 2016). As of June 2020, the Office of Management and Budget had not issued the revised standards.

We conducted multivariate regression analyses to test the association between servicemember characteristics, such as race and ethnicity, and the odds of a military justice action. Our multivariate regression analyses controlled for attributes such as race, gender, rank, years of service, and education. We conducted data reliability assessments on the datasets we received from the databases in our review. We examined the documentation related to the databases, conducted electronic tests on the data we received, and discussed data reliability with database managers. We found the variables we ultimately reported on to be sufficiently reliable for the purposes of our analysis.

Our analyses of these data, taken alone, do not establish whether unlawful discrimination has occurred, as that is a legal determination that would involve other corroborating information along with supporting statistics. Further, we did not identify the causes of any racial disparities, and the results of our work alone should not be used to make conclusions about the military justice process.

To assess the extent to which disparities in the military justice system had been studied by DOD, we conducted a literature review, reviewed prior GAO reports, and asked DOD and service officials to identify publications relevant to disparities in military justice. We reviewed those publications that assessed racial, ethnic, or gender disparities among servicemembers in the military justice system. More detailed information on our objectives, scope, and methodology for our prior work can be found in the issued report.[6]

We conducted the work on which this statement is based 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

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

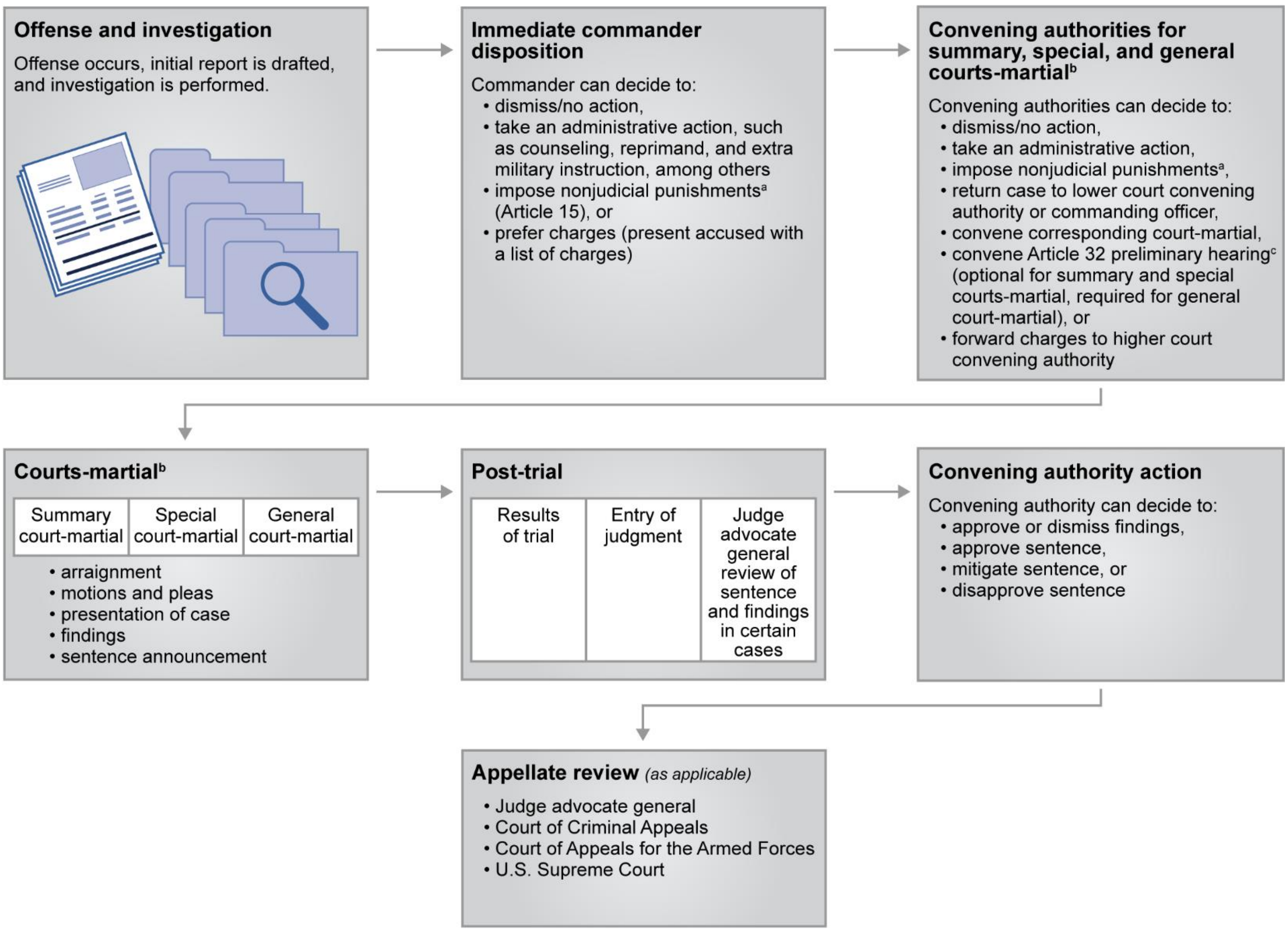
[6] GAO-19-344.

to adjudicate UCMJ violations. Each of these types of military courts respectively is intended to deal with progressively more serious offenses, and each court-martial type may adjudicate more severe maximum punishments as prescribed under the UCMJ.[7] In addition, an accused servicemember can receive nonjudicial punishment under Article 15 of the UCMJ, by which a commander can punish a servicemember without going through the court-martial process.

There are several steps in the discipline of a servicemember who allegedly commits a crime under the UCMJ, which are summarized in figure 1 below.

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

Figure 1: Overview of the Typical Military Justice Process



Source: GAO analysis of the Rules for Courts-Martial and Manual for Courts-Martial. | GAO-20-648T

[a]Nonjudicial punishments are used to discipline minor offenses committed by enlisted servicemembers or officers.

[b]Summary courts-martial are a non-criminal forum used to adjudicate noncapital offenses committed by enlisted servicemembers. Special courts-martial are used to adjudicate any noncapital and some capital offenses committed by enlisted servicemembers or officers. General courts-martial are used to adjudicate any offenses committed by enlisted servicemembers or officers, including capital offenses. A capital offense means an offense for which death is an authorized punishment under the UCMJ and the *Manual for Courts-Martial*.

[c]A preliminary hearing is required before referral of charges to a general court-martial, unless waived by the accused, and is intended to determine issues such as whether there is probable cause to believe that the accused committed the offense charged.

The military justice process begins once an offense is alleged and an initial report is made, typically to law enforcement, an investigative entity, or the suspect's chain of command. The commanding officer, law enforcement, or a military criminal investigative organization (MCIO) will conduct an inquiry or investigation into the accusation and gather all reasonably available evidence. Investigations are recorded in MCIO databases when a servicemember is the subject of a criminal allegation; for the purposes of our report, we say the servicemember had a "recorded investigation" to describe these cases.[8] Following an investigation, the first step toward initiation of a court-martial is when the accused is presented with a list of charges signed by the accuser under oath, which is called preferral of charges. After charges are preferred, the charges are forwarded to an officer with sufficient legal authority to convene a court-martial, also known as the "convening authority." The convening authority in receipt of preferred charges may, among other actions, refer the case to its own court or forward the case to a superior commander for disposition. Once referred to a general or special court-martial, an accused servicemember may be tried by a military judge alone or by a military judge with a military jury. In summary courts-martial, a single commissioned officer who is not a military judge adjudicates minor offenses and a sentence. Convictions at the general and special court-martial level are subject to a post-trial process and may be appealed to higher courts in cases where the sentence reaches a certain threshold.

The military justice system, like the civilian criminal justice system, provides avenues for accused servicemembers to raise allegations of discrimination, improprieties in investigations, improprieties in disposition, and improprieties in the selection of the military jury at the court-martial proceeding, before a judge and on appellate review.

The Military Services Do Not Collect, Maintain, and Report Consistent Information about Race

[8]Investigations are recorded in the MCIO databases when a servicemember is the subject of a criminal allegation; for purposes of this report, we say the servicemember had a "recorded investigation" to describe these cases. To conduct our analyses, we used data from the databases used by the Army's Criminal Investigation Command, which included cases investigated by military police and Criminal Investigation Command; by the Navy and Marine Corps Naval Criminal Investigative Service, which included cases investigated by the Naval Criminal Investigative Service and military police; by the Air Force's Office of Special Investigations, which included only Office of Special Investigations cases; and by the Coast Guard Investigative Service, which included only Coast Guard Investigative Service cases.

and Ethnicity, Limiting the Ability to Assess Data to Identify Any Disparities

The Military Services Do Not Collect and Maintain Consistent Data for Race and Ethnicity

The military services do not collect and maintain consistent information regarding race and ethnicity in their investigations, military justice, and personnel databases. Specifically, the number of potential responses for race and ethnicity within the 15 databases across the military services ranges from 5 to 32 options for race and 2 to 25 options for ethnicity, which can complicate cross-service assessments. For example, the Army's personnel database maintains 6 options for race and 23 options for ethnicity,[9] whereas the Coast Guard's personnel database maintains 7 options for race and 3 for ethnicity.[10] Table 1 below summarizes how the databases used by the military services vary in how the servicemember's race is entered and the number of potential race options.

Table 1: Collection of Data on Servicemembers' Race in Military Services' Investigations, Military Justice, and Personnel Databases

Service	Database	Entry method (race information)	Number of potential race options (race information)
Army	Army Law Enforcement Reporting and Tracking System (I)	Manual input (drop down)	8 options
Army	Military Justice Online (MJ)	Auto-populated from Total Army Personnel Database	6 options
Army	Army Courts-Martial Information System (MJ)	Manual input (drop down)	8 options
Army	Total Army Personnel Database (P)	Manual input (drop down)	6 options

[9]The six options for race available within the Army's personnel database include American Indian or Alaska Native, Asian/Pacific Islander, Black, Other, Unknown, and White. The options for ethnicity include Aleut, Chinese, Cuban, Eskimo, Filipino, Guamanian, Indian, Japanese, Korean, Latin American with Hispanic Descent, Melanesian, Mexican, Micronesian, None, Other, Other Asian Descent, Other Hispanic Descent, Other Pacific Island Descent, Polynesian, Puerto Rican, United States/Canadian Indian Tribes, Unknown, and Vietnamese.

[10]The options for race in the Coast Guard's personnel database include American Indian/Alaska Native, Asian, Black or African American, Declined to Respond, Native Hawaiian/Pacific Islander, White, and every potential mixed racial group from the provided races. Additionally, this database has three options for ethnicity: declined to respond, Hispanic or Latino, and Not Hispanic or Latino.

Service	Database	Entry method (race information)	Number of potential race options (race information)
Navy and Marine Corps Shared	Consolidated Law Enforcement Operations Center (I)	Manual input (drop down)	6 options
Navy	Case Management System (MJ)	Manual input (drop down)	7 options
Navy	Navy Personnel Database (P)	Manual input (drop down)	32 options
Marine Corps	Case Management System (MJ)	Manual input (drop down)	7 options
Marine Corp	Marine Corps Total Force System (P)	Manual input (drop down)	6 options
Air Force	Investigative Information Management System (I)	Auto-populated from Defense Enrollment Eligibility Reporting System	7 options
Air Force	Automated Military Justice Analysis and Management System (MJ)	Auto-populated from Military Personnel Data System	5 options
Air Force	Military Personnel Data System (P)	Manual input (drop down)	7 options
Coast Guard	Field Activity Case Tracking System (I)	Manual input (drop down)	6 options
Coast Guard	Law Manager (MJ)	N/A; does not track race	N/A; does not track race
Coast Guard	Direct Access (P)	Manual input (drop down)	7 options

Legend: (I)=investigations database; (MJ)=military justice database; (P)=personnel database; N/A=not available

Source: GAO analysis of each military service's investigations, military justice, and personnel database information. | GAO-20-648T

Table 2 shows that the military services' databases also vary in how information about servicemembers' ethnicity is entered into the databases and the number of potential ethnicity options that are collected.

Table 2: Collection of Data on Servicemembers' Ethnicity in Military Services' Investigations, Military Justice, and Personnel Databases

Service	Database	Entry method (Ethnicity information)	Number of potential ethnicity options (Ethnicity information)
Army	Army Law Enforcement Reporting and Tracking System (I)	Manual input (drop down)	3 options
Army	Military Justice Online (MJ)	N/A; collected as part of race field	N/A
Army	Army Courts-Martial Information System (MJ)	N/A; collected as part of race field	N/A
Army	Total Army Personnel Database (P)	Manual input (drop down)	23 options
Navy and Marine Corps Shared	Consolidated Law Enforcement Operations Center (I)	Manual input (drop down)	3 options
Navy	Case Management System (MJ)	N/A; collected as part of race field	N/A
Navy	Navy Personnel Database (P)	Manual input (drop down)	23 options
Marine Corps	Case Management System (MJ)	N/A; collected as part of race field	N/A
Marine Corps	Marine Corps Total Force System (P)	Manual input (drop down)	25 options
Air Force	Investigative Information Management System (I)	Manual input (drop down)	3 options
Air Force	Automated Military Justice Analysis and Management System (MJ)	Auto-populated from Military Personnel Data System	3 options
Air Force	Military Personnel Data System (P)	Manual input (drop down)	23 options
Coast Guard	Field Activity Case Tracking System (I)	Manual input (drop down)	2 options
Coast Guard	Law Manager (MJ)	N/A; does not track ethnicity	N/A
Coast Guard	Direct Access (P)	Manual input (drop down)	3 options

Legend: (I)=Investigations database; (MJ)=military justice database; (P)=personnel database; N/A=not available

Source: GAO analysis of each military service's investigations, military justice, and personnel database information. | GAO-20-648T

Although the data collected and maintained was not consistent within and across the military services, each of the military services' databases maintained race and ethnicity data for at least 99 percent of the servicemembers, with the exception of the Coast Guard.[11] The Coast Guard did not track information about race or ethnicity in its military justice database, Law Manager.[12] Coast Guard officials stated that this is because Law Manager was designed to determine the status of court-

[11]According to officials from all of the military services, the information about race and ethnicity in their databases is self-reported by individual servicemembers, and there is no way to verify whether the reported information is accurate.

[12]The military services differ regarding whether their databases require the collection of information about race and ethnicity.

martial cases, and captures attributes that are needed to generate relevant UCMJ documents, such as court pleadings. Demographic information such as race and ethnicity is not included in these official documents, so this information is not input into Law Manager. Further, four of the databases we reviewed—including both of the Army's military justice databases, and the Navy and the Marine Corps' military justice databases—collect information on race and ethnicity in a combined data field as shown in table 2 above, whereas the other databases collect and maintain race and ethnicity information in two separate fields. These inconsistencies limit the military services' ability to collectively or comparatively assess these demographic data to identify any racial or ethnic disparities in the military justice system within and across the services.[13]

Recommendations to collect and maintain race and ethnicity information in investigations and personnel databases. To address these inconsistencies, in our May 2019 report, we made four separate recommendations to each of the military departments and to the Secretary of Homeland Security for the Coast Guard. We recommended that these entities develop the capability to present servicemembers' race and ethnicity data in their investigations and personnel databases using the same categories of race and ethnicity established in the uniform standards for the military justice databases that were issued in December 2018.[14] As part of these uniform standards, the military services were directed to collect data related to race and ethnicity in their military justice databases, to collect race and ethnicity data in separate data fields, and to standardize the reporting of the data into categories identified in the

[13]We were able to analyze data across the investigations, military justice, and personnel databases by merging data from these databases, but this took multiple, detailed steps and would not be an efficient approach for routine analyses.

[14]On December 17, 2018, the General Counsel of the Department of Defense issued the uniform standards and criteria required by article 140a of the Military Justice Act of 2016. Military Justice Act of 2016, passed as part of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 §§5001-5542 (Dec. 23, 2016).

standards.[15] However, DOD applied these December 2018 standards only to the military justice databases and not to the investigations and personnel databases. DOD officials stated that the investigations and personnel databases do not fall under the charter of the DOD General Counsel, which issued the standards for the military justice databases.

DOD and the Department of Homeland Security (DHS) concurred with these four recommendations. As of October 2019, officials from each of the military departments said that they were working to implement the uniform standards for race and ethnicity and the ability to aggregate the data, and they expected to implement these categories in December 2020. Similarly, as of May 2019, the Coast Guard expected to implement such modifications by September 2020.

The Military Services Have Not Consistently Reported Data That Provides Visibility about Racial Disparities

Although some military services report demographic information about the subjects of military justice actions internally, the military services have not externally reported data that provides visibility into, or would enable an analysis of, the extent of racial or ethnic disparities in the military justice system. Officials from all of the military services told us that they compile internal quarterly or monthly staff judge advocate reports, which include the total number of each type of court-martial handled by their legal offices and of nonjudicial punishments. According to military service officials, the Air Force and the Army reports include demographic information about servicemembers involved in these cases, such as the total number of each type of case broken out by the subject's race and ethnicity. However, the Navy, Marine Corps, and Coast Guard reports do not include this demographic information, and there was no requirement to do so at the time of our May 2019 report.

[15]The standards provide that the military services may have their military justice databases capture expanded ethnic or racial categories; however, for reporting purposes, expanded categories will aggregate to those categories listed in the standards. For race, the military services will choose from six designations: (1) American Indian/Alaska Native, (2) Asian, (3) Black or African American, (4) Native Hawaiian or Other Pacific Islander, (5) White, or (6) Other. For ethnicity, the services will choose from two options: (1) Hispanic or Latino, or (2) Not Hispanic or Latino. These categories are consistent with the OMB standards for collecting and presenting such data. The military services are to implement the Secretary's direction no later than December 23, 2020.

Regarding external reporting, the UCMJ directs the Court of Appeals for the Armed Forces, the Judge Advocates General, and the Staff Judge Advocate to the Commandant of the Marine Corps to submit annual reports on the military justice system to the Congressional Armed Services Committees, the Secretary of Defense, the secretaries of the military departments, and the Secretary of Homeland Security.[16] These reports are to include information on the number and status of pending cases handled in the preceding fiscal year, among other information. The annual reports include the total number of cases each military service handled for each type of court-martial and for nonjudicial punishments. However, prior to our review, these annual reports did not include demographic information about servicemembers who experienced a military justice action, such as breakdowns by race, because the reporting requirement did not direct the military services to include such information.

Recommendation to require military services to include data about race and ethnicity in annual reports about military justice actions. In our May 2019 report, we recommended that the Joint Service Committee on Military Justice, which is responsible for reviewing the UCMJ annually, consider an amendment to the UCMJ's annual military justice reporting requirements to require the military services to include demographic information, including race and ethnicity, for all types of courts-martial. DOD concurred with this recommendation.[17]

According to a memorandum from the Joint Service Committee on Military Justice, in September 2019 the committee proposed an action item as part of its annual review. Specifically, the committee was considering an amendment to the UCMJ's annual military justice reporting

[16]The reporting requirement for information about the number and status of pending cases is in UCMJ Article 146a, and requires different reports from each of the military services. The Military Justice Act of 2016 amended this reporting requirement as of June 8, 2018. The previous requirement, which had been in UCMJ Article 146 required one combined annual report. The Judge Advocates General and the Staff Judge Advocate to the Commandant of the Marine Corps are the senior officials within each military service responsible for the overall supervision and administration of military justice within their respective services.

[17]The Joint Service Committee on Military Justice is a committee comprised of representatives from each service's legal office, and is responsible for reviewing the *Manual for Courts-Martial* and the UCMJ on an annual basis. DOD Instruction 5500.17, *Role and Responsibilities of the Joint Service Committee on Military Justice (JSC)* (Feb. 21, 2018).

requirements to require the military services to include demographic information, including race and ethnicity, for all types of courts-martial. However, in December 2019, the National Defense Authorization Act for Fiscal Year 2020 included a provision directing the Secretary of Defense to include data on race, ethnicity, and gender in the annual military justice reports.[18] We believe that this statutory change meets the intent of our recommendation. By requiring the military services to report this information, servicemembers and the public will have greater visibility into potential disparities, which will help build confidence that DOD is committed to a military justice system that is fair and just.

DOD Has Not Identified When Disparities Should Be Examined Further

DOD has not issued guidance that establishes criteria to specify when any data indicating possible racial or ethnic disparities in the investigations, trials, or outcomes of cases in the military justice system should be further reviewed, and to describe what steps should be taken to conduct such a review if it were needed. While equal employment opportunity enforcement is a very different context than the military justice system, other federal agencies have developed such criteria in the equal employment opportunity context that can indicate when disparities should be examined further. For example, the Department of Justice, the Department of Labor, the Equal Employment Opportunity Commission, and the Office of Personnel Management use a “four-fifths” test to determine when differences between subgroups in the selection rates for hiring, promotion, or other employment decisions are significant.[19] These criteria, though inexact, provide an example of the type of criteria that DOD could consider using as a basis for determining when disparities among racial groups in the military justice process could require further review or analysis.

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[18]Pub. L. No. 116-92, §540I(b)(1) (Dec. 20, 2019).

[19]According to the Equal Employment Opportunity Commission, under the four-fifths test, a selection rate for any race, sex, or ethnic group that is less than four-fifths or 80 percent of the rate for the group with the highest selection rate will be regarded as substantially different. This is considered a rule of thumb and not a legal definition, but is considered a practical means of keeping the attention of enforcement agencies on discrepancies. It establishes a numerical basis for drawing an initial inference and requiring additional information. Equal Employment Opportunity Commission, *Uniform Guidelines on Employee Selection Procedures*, 44 Fed. Reg. 11,996 (Mar. 2, 1979).

Recommendation to issue guidance to establish criteria that determines when racial and ethnic disparities should be reviewed. In our May 2019 report, we recommended that the Secretary of Defense, in collaboration with the Secretaries of the military departments and the Secretary of Homeland Security, 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.[20] In commenting on a draft of our report, 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 our report was issued.

In October 2019, DOD officials said that the department was exploring the feasibility of conducting relevant research to inform implementation of this recommendation. At that time, they estimated that this research might be concluded in March 2021. In December 2019, the National Defense Authorization Act for Fiscal Year 2020 included a provision directing the Secretary of Defense to issue guidance consistent with our recommendation.[21] DOD was directed to commence or carry out these activities by June 2020. We believe that issuing guidance that establishes criteria for determining when data indicating possible racial disparities in the investigations, trials, or outcomes of cases in the military justice system should be further examined, and describes the steps that should be taken to conduct such further examination, would better position DOD and the services to monitor the military justice system to help ensure that it is fair and just, a key principle of the UCMJ.

Racial Disparities Exist in Military Justice Investigations, Disciplinary Actions, and Case Outcomes

Racial disparities exist in investigations, disciplinary actions, and punishment of servicemembers in the military justice system. Our analysis of available data from fiscal years 2013 through 2017, which controlled for attributes such as race, gender, rank, education, and years

[20] GAO-19-344.

[21] Pub. L. No. 116-92, §540I(b)(2).

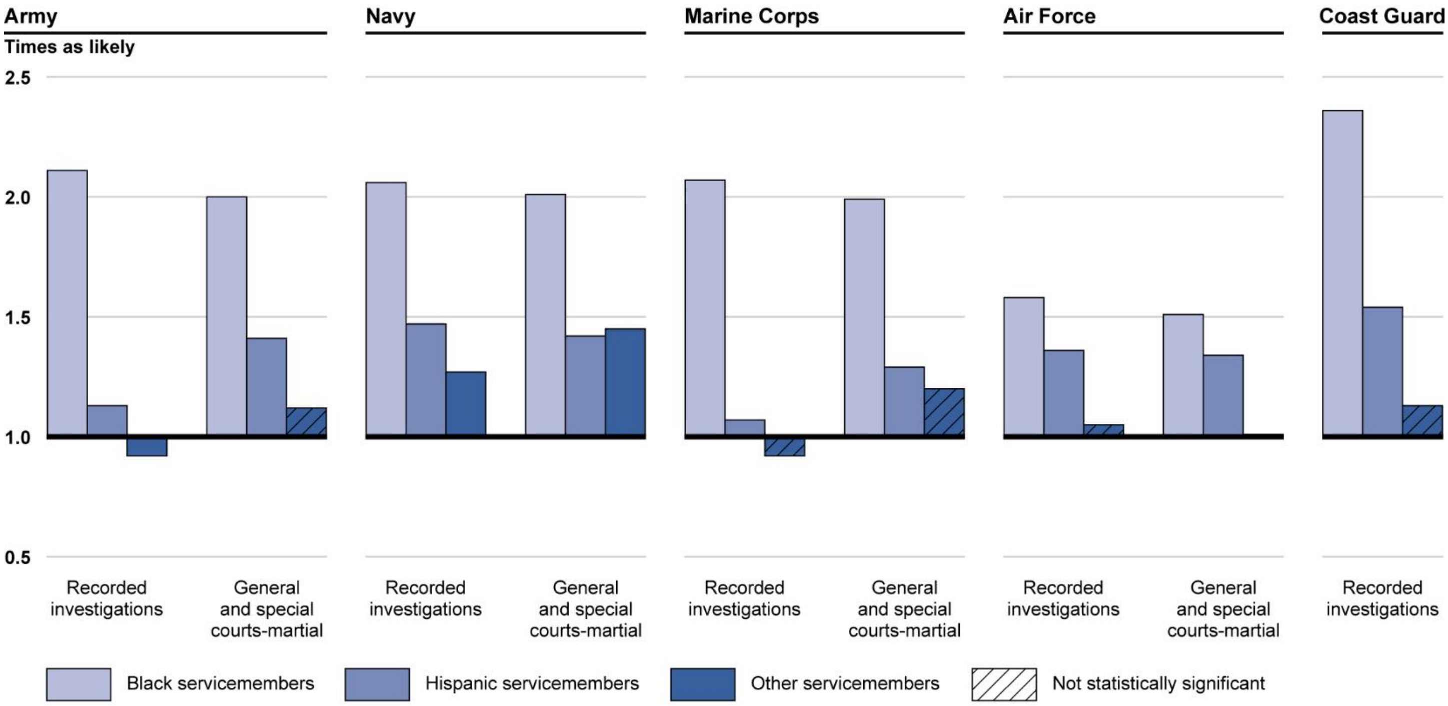
of service, found racial disparities were more likely in actions that first brought servicemembers into the military justice system, but we identified fewer statistically significant racial disparities in case outcomes—convictions and punishment severity.[22]

Black and Hispanic Servicemembers Were More Likely to Be Subjects of Recorded Investigations and Tried in General and Special Courts-Martial

Black and Hispanic servicemembers were more likely than White servicemembers to be the subjects of recorded investigations in all of the military services, and were more likely to be tried in general and special courts-martial in the Army, the Navy, the Marine Corps, and the Air Force, as shown in figure 2 below. We could not analyze Coast Guard cases due to the small number of general and special courts-martial adjudicated in the Coast Guard from fiscal years 2013 through 2017.

[22]Our findings of racial disparities, taken alone, do not establish whether unlawful discrimination has occurred, as that is a legal determination that would involve other corroborating information along with supporting statistics. We conducted multivariate regression analyses, which analyzed the degree to which one racial group was more likely or less likely than another racial group to be the subject of recorded investigations while controlling for race, gender, rank, and education. In the Air Force, we also controlled for years of service among the lower enlisted ranks (E1-E4) at the request of Air Force officials. In the Army, we could not control for education, but we were able to control for age. A multivariate regression analysis examines several variables simultaneously to estimate whether each of these variables are more likely or less likely to be associated with a certain outcome. A multivariate regression analysis allows us to test the association between a servicemember's race and the odds of a particular military justice action, while holding other servicemember attributes, such as rank, education, and gender, constant. For the purposes of consistency, in our multivariate regression analyses, we made all racial comparisons with White servicemembers as the reference category. For purposes of this report, we use the term "likelihood" when discussing the odds ratios from the results of our regression analyses. Odds ratios that are statistically significant and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be subject to a particular military justice action. See Appendix I of GAO-19-344 for a more detailed explanation of how we conducted our multivariate regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendix II of GAO-19-344 for the summary statistics and bivariate regression analyses for the racial groups in each of the services, and Appendixes IV through VIII for the demographic breakdowns of the modeled attributes in each of the military services.

Figure 2: Likelihood of Recorded Investigations for Alleged Uniform Code of Military Justice Violations and Trial in General and Special Courts-Martial, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017



Source: GAO analysis of service investigation, military justice, and personnel data. | GAO-20-648T

Accessible Data for Figure 2: Likelihood of Recorded Investigations for Alleged Uniform Code of Military Justice Violations and Trial in General and Special Courts-Martial, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017

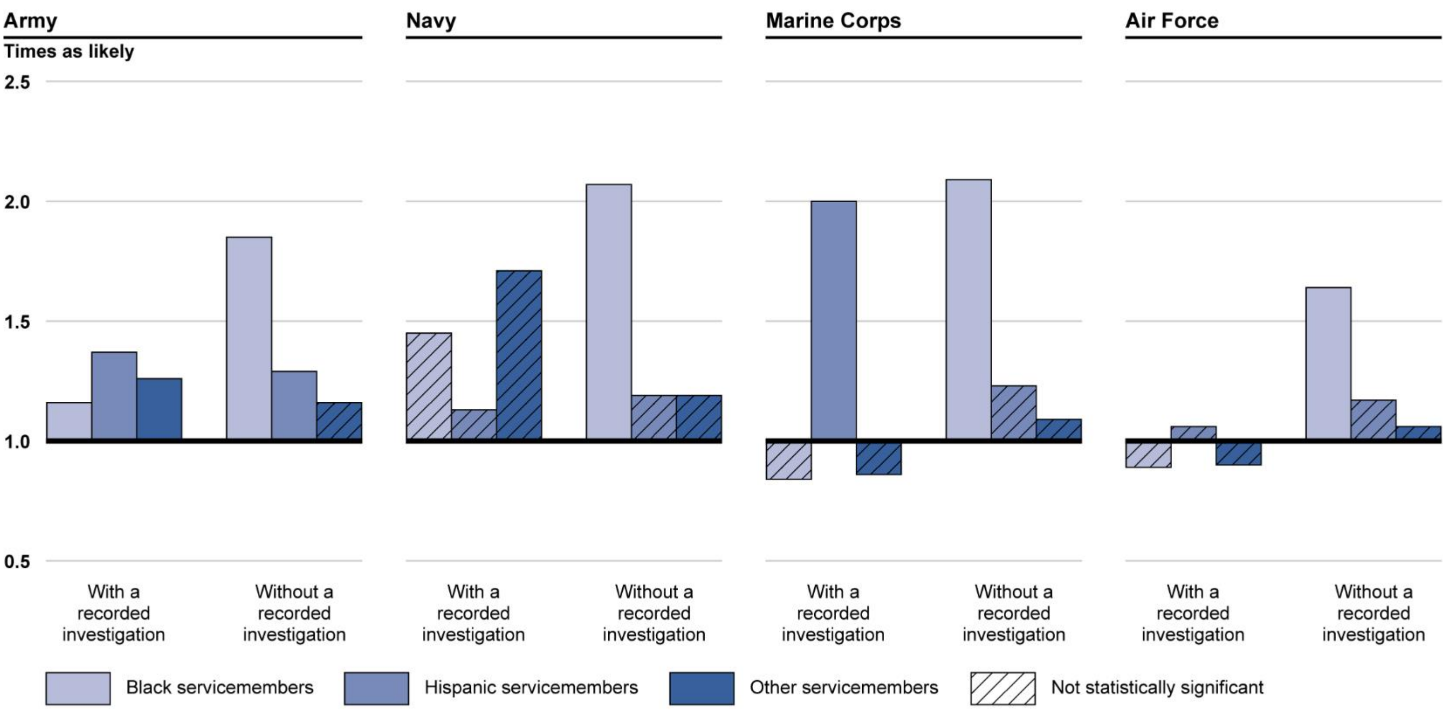
Military branch	Category	Racial category	Times as likely
Army	Recorded Investigations (RI)	Black (B)	2.11
Army	Recorded Investigations (RI)	Hispanic (H)	1.13
Army	Recorded Investigations (RI)	Other (O)	0.92
Army	General and special courts-martial (CM)	B	2.00
Army	General and special courts-martial (CM)	H	1.41
Army	General and special courts-martial (CM)	O	1.12
Navy	RI	B	2.06
Navy	RI	H	1.47
Navy	RI	O	1.27
Navy	CM	B	2.01
Navy	CM	H	1.42

Military branch	Category	Racial category	Times as likely
Navy	CM	O	1.45
Marine Corps	RI	B	2.07
Marine Corps	RI	H	1.07
Marine Corps	RI	O	0.92
Marine Corps	CM	B	1.99
Marine Corps	CM	H	1.29
Marine Corps	CM	O	1.20
Air Force	RI	B	1.58
Air Force	RI	H	1.36
Air Force	RI	O	1.05
Air Force	CM	B	1.51
Air Force	CM	H	1.34
Air Force	CM	O	1.01
Coast Guard	CM	B	2.36
Coast Guard	CM	H	1.54
Coast Guard	CM	O	1.13

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlawful discrimination. These partial multivariate regression analysis results demonstrate the degree to which a racial group is more likely or less likely than the reference category to be the subject of an investigation recorded in the services' military criminal investigative organizations databases for alleged violations of the Uniform Code of Military Justice, or to be tried in general and special courts-martial, after controlling for race, gender, rank, and education. We also controlled for years of service among the lower enlisted ranks (E1-E4) in the Air Force. In the Army, we could not control for education, but we were able to control for age. We made all racial comparisons with White servicemembers as the reference category. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be the subject of a recorded investigation or to be tried in general or special courts-martial. Not statistically significant means that we could not conclude there was an association between race and the likelihood of a recorded investigation or a trial in general and special courts-martial. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

When separating general and special court-martial cases into those that either were or were not preceded by an investigation recorded in an MCIO database, we found fewer statistically significant racial disparities in most of the military services in general and special courts-martial that were preceded by a recorded investigation.[23] However, as shown in figure 3 below, statistically significant racial disparities were also present in general and special courts-martial that did not follow a recorded investigation in all military services included in this analysis, which would include cases where the investigation was performed by the servicemember's command.

Figure 3: Likelihood of Trial in General and Special Courts-Martial Following a Recorded Investigation and without a Recorded Investigation, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017



Source: GAO analysis of service investigation, military justice, and personnel data. | GAO-20-648T

[23]Investigations are recorded in the MCIO databases when a servicemember is the subject of a criminal allegation made by another; for purposes of this report, we say the servicemember had a "recorded investigation" to describe these cases. For additional explanation of the databases we used to analyze investigations, please see appendix I in GAO-19-344. As discussed in figure 3 of GAO-19-344, the majority of general and special courts-martial, ranging from 53 percent to 74 percent, had a recorded investigation, while the remaining general and special courts-martial cases, ranging from 26 percent to 47 percent, would have been investigated by other sources, such as local civilian law enforcement, command investigations, or in the case of the Air Force, their military law enforcement forces.

Accessible Data for Figure 3: Likelihood of Trial in General and Special Courts-Martial Following a Recorded Investigation and without a Recorded Investigation, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017

Military branch	Category	Racial category	Times as likely
Army	With investigation (With I)	Black (B)	1.16
Army	With investigation (With I)	Hispanic (H)	1.37
Army	With investigation (With I)	Other (O)	1.26
Army	Without investigation (W/O I)	B	1.85
Army	Without investigation (W/O I)	H	1.29
Army	Without investigation (W/O I)	O	1.16
Navy	With I	B	1.45
Navy	With I	H	1.13
Navy	With I	O	1.71
Navy	W/O I	B	2.07
Navy	W/O I	H	1.19
Navy	W/O I	O	1.19
Marine Corps	With I	B	0.84
Marine Corps	With I	H	2.00
Marine Corps	With I	O	0.86
Marine Corps	W/O I	B	2.09
Marine Corps	W/O I	H	1.23
Marine Corps	W/O I	O	1.09
Air Force	With I	B	0.89
Air Force	With I	H	1.06
Air Force	With I	O	0.90
Air Force	W/O I	B	1.64
Air Force	W/O I	H	1.17
Air Force	W/O I	O	1.06

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlawful discrimination. These partial multivariate regression analysis results demonstrate the degree to which a racial group is more likely or less likely than the reference category to be tried in general and special courts-martial following an investigation recorded in the services' military criminal investigative organizations databases and without an investigation recorded in the services' military criminal investigative organizations databases, after controlling for race, gender, rank, and education. We also controlled for years of service among the lower enlisted ranks (E1-E4) in the Air Force. In the Army, we could not control for education, but we were able to control for age and investigative entity. In the Navy and the Marine Corps, we also controlled for type of offense, investigative entity, and composition of the deciding panel. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be tried in general and special courts-martial following a recorded investigation and without a recorded investigation. Not statistically significant means that we could not conclude there was an association between race and the likelihood of trial in general and special courts-martial following a recorded investigation and without a recorded investigation. We made all racial comparisons with White servicemembers as the reference category. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

Specifically, as shown in figure 3 above, we found that:

General and special courts-martial following a recorded investigation. Black, Hispanic, and servicemembers in the Other race category in the Army, and Hispanic servicemembers in the Marine Corps were more likely than White servicemembers to be tried in general and special courts-martial following a recorded investigation, after controlling for other attributes.[24] We generally found fewer statistically significant differences compared to the results of our analyses for all special and general courts martial.

General and special courts-martial without a recorded investigation. Black servicemembers in all of the military services were more likely than White servicemembers to be tried in general and special courts-martial without a recorded investigation after controlling for other attributes. These differences were consistent with the differences we identified for general and special courts-martial overall, as shown in figure 2 above. Hispanic servicemembers in the Army were more likely than White servicemembers to be tried in general and special courts-martial without a recorded investigation, but we found no statistically significant differences in the likelihood of Hispanic servicemembers to be tried in general and special courts-martial without a recorded investigation in the Marine Corps, the Navy, or the Air Force.

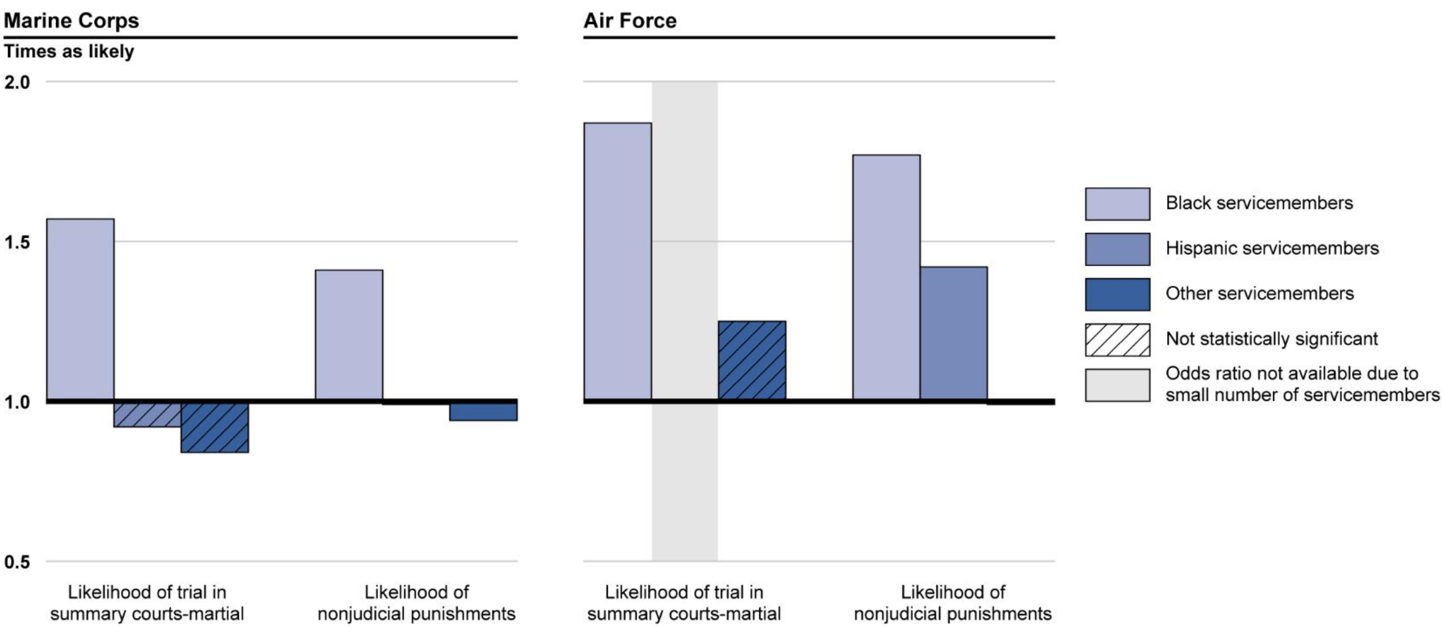
Black Servicemembers Were More Likely to Be Subject to Summary Courts-Martial and Nonjudicial Punishment in

[24]We conducted multivariate regression analyses, which analyzed the degree to which one racial or ethnic group was more likely or less likely than another racial or ethnic group to be tried in general and special courts-martial that followed a recorded investigation while controlling for race, gender, rank, and education. In the Air Force, we also controlled for years of service among the lower enlisted ranks (E1-E4). In the Army, we could not control for education, but we were able to control for age. A multivariate regression analysis examines several variables to estimate whether each of these variables are more likely or less likely to be associated with a certain outcome. See Appendix I of GAO-19-344 for a more detailed explanation of how we conducted our multivariate regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendixes II through VI of GAO-19-344 for the demographic breakdowns of the modeled attributes in each of the military services.

the Air Force and Marine Corps, and the Other Services Lack Data

Black servicemembers were more likely than White servicemembers to be tried in summary courts-martial and to be subjects of nonjudicial punishment in the Air Force and the Marine Corps, as shown in figure 4. The Army and the Navy did not maintain complete summary court-martial or nonjudicial punishment data, and the Coast Guard had too few summary courts-martial for us to analyze, and did not maintain complete nonjudicial punishment data.

Figure 4: Likelihood of Trial in Summary Courts-Martial and Nonjudicial Punishments in the Air Force and the Marine Corps, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017



Source: GAO analysis of service military justice and personnel data. | GAO-20-648T

Accessible Data for Figure 4: Likelihood of Trial in Summary Courts-Martial and Nonjudicial Punishments in the Air Force and the Marine Corps, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017

Military branch	Category	Racial category	Times as likely
Marine Corps	Trial	Black (B)	1.57
Marine Corps	Trial	Hispanic (H)	0.92
Marine Corps	Trial	Other (O)	0.84
Marine Corps	Punish	B	1.41
Marine Corps	Punish	H	0.99

Military branch	Category	Racial category	Times as likely
Marine Corps	Punish	O	0.94
Air Force	Trial	B	1.87
Air Force	Trial	H	0.00
Air Force	Trial	O	1.25
Air Force	Punish	B	1.77
Air Force	Punish	H	1.42
Air Force	Punish	O	0.99

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlawful discrimination. These partial multivariate regression analysis results demonstrate the degree to which a racial group is more likely or less likely than the reference category to be tried in summary courts-martial or subject to nonjudicial punishments after controlling for race, gender, rank, and education. We also controlled for years of service among the lower enlisted ranks (E1-E4) in the Air Force. We made all racial comparisons with White servicemembers as the reference category. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be subject to trial in summary courts-martial or nonjudicial punishment. Not statistically significant means that we could not conclude there was an association between race and the likelihood of trial in summary courts-martial or nonjudicial punishment. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

We could not determine whether disparities existed among servicemembers tried in summary courts-martial or subject to nonjudicial punishments in the Army and the Navy because the Army and the Navy did not collect complete summary courts-martial or nonjudicial punishment data in their investigations, military justice, or personnel databases. Specifically, as part of our data reliability checks, we identified the total number of summary courts-martial that the Army and the Navy reported in the Court of Appeals for the Armed Forces annual reports for fiscal years 2013 through 2017, and compared these totals to the number of cases we identified in their military justice databases.[25] While our comparisons are not exact, due to differences in the dates we used to count the number of cases, we found that approximately 60 percent of the Army's reported summary courts-martial cases and less than 50 percent

[25]According to Army and Navy officials, the total numbers of summary courts-martial included in the Court of Appeals for the Armed Forces annual reports are taken from their internal monthly and quarterly staff judge advocate reports that were discussed earlier in this report.

of the Navy's reported summary courts-martial cases were included in their military justice databases.[26]

The absence of complete summary court-martial data in the military justice databases of the Army and the Navy limits these services' visibility into any disparities that may exist among servicemembers involved in these types of military justice proceedings. On December 17, 2018, the General Counsel of the Department of Defense issued the uniform standards and criteria required by article 140a of the Military Justice Act of 2016.[27] As part of these uniform standards, the military services were directed to collect certain information about all cases in their military justice databases, which a DOD official said includes summary court-martial cases. The DOD General Counsel directed that military services are to implement the Secretary's direction no later than December 23, 2020.

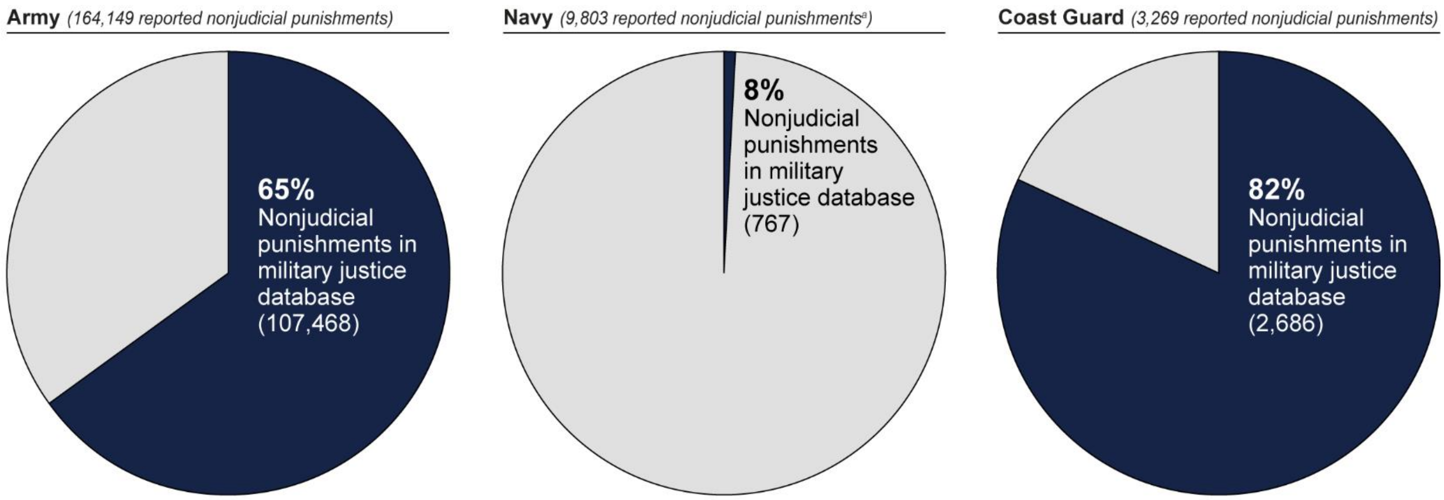
Similarly, we identified the total number of nonjudicial punishments that the Army, the Navy, and the Coast Guard reported in the Court of Appeals for the Armed Forces annual reports for fiscal years 2013 through 2017, and compared these totals to the number of cases we identified in their military justice and personnel databases.[28] As shown in figure 5 below, we found that 65 percent of the Army's reported nonjudicial punishments, 8 percent of the Navy's reported nonjudicial punishments, and 82 percent of the Coast Guard's reported nonjudicial punishments were recorded in their military justice databases.

[26]We could not compare the total number of cases that we identified in the military justice databases precisely against the reported number of cases because we counted cases based on the date of preferral, whereas the cases reported in the Court of Appeals for the Armed Forces annual report are based on the judgment date. However, we combined the total number of cases over a 5-year period, which made differences in which particular fiscal year a case was counted less important for these purposes. We found that while the total number of cases were different, the totals we computed provided a basis for comparison that allowed us to confirm that the military justice databases did not have complete data about summary courts-martial, as Army and Navy officials had told us.

[27]Military Justice Act of 2016, passed as part of the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328 §§5001-5542 (Dec. 23, 2016).

[28]Nonjudicial punishments are reported as a combined total for the Navy and the Marine Corps in the Court of Appeals for the Armed Forces annual reports. As a result, to calculate this reported figure for the Navy, we subtracted the number of Marine Corps nonjudicial punishment cases that we had identified in the Marine Corps personnel database from the reported totals.

Figure 5: Army, Navy, and Coast Guard Reported Nonjudicial Punishments Compared to Nonjudicial Punishments in Military Justice Databases, Fiscal Years 2013–2017



Source: GAO analysis of Court of Appeals for the Armed Forces annual reports for fiscal years 2013-2017 and Army, Navy, and Coast Guard military justice databases. | GAO-20-648T

Note: Nonjudicial punishments are reported as a combined number for the Navy and the Marine Corps in the Court of Appeals for the Armed Forces annual reports.

[a]To calculate this reported figure for the Navy, we subtracted the number of Marine Corps nonjudicial punishment cases we identified in the Marine Corps personnel database from the reported totals.

Recommendation to include benefits and drawbacks of collecting and maintaining complete information for nonjudicial punishment. In our May 2019 report, we made separate recommendations to the Army, the Navy, and the Coast Guard to consider the feasibility, to include the benefits and drawbacks, of collecting and maintaining complete information for all nonjudicial punishment cases in one of the military service's databases, such as information on the servicemembers' race, ethnicity, gender, offense, and punishment imposed. DOD and DHS concurred with these recommendations. As of October 2019, Army and Navy officials said that they were developing the capability to collect data on race, ethnicity, gender, offense and punishment imposed for nonjudicial punishments. They expected to complete this action in December 2020. As of May 2019, the Coast Guard stated that it would consider the feasibility of collecting and maintaining complete information for all nonjudicial punishments cases through a military justice and personnel work group. The estimated completion date for this action had not been determined at that time.

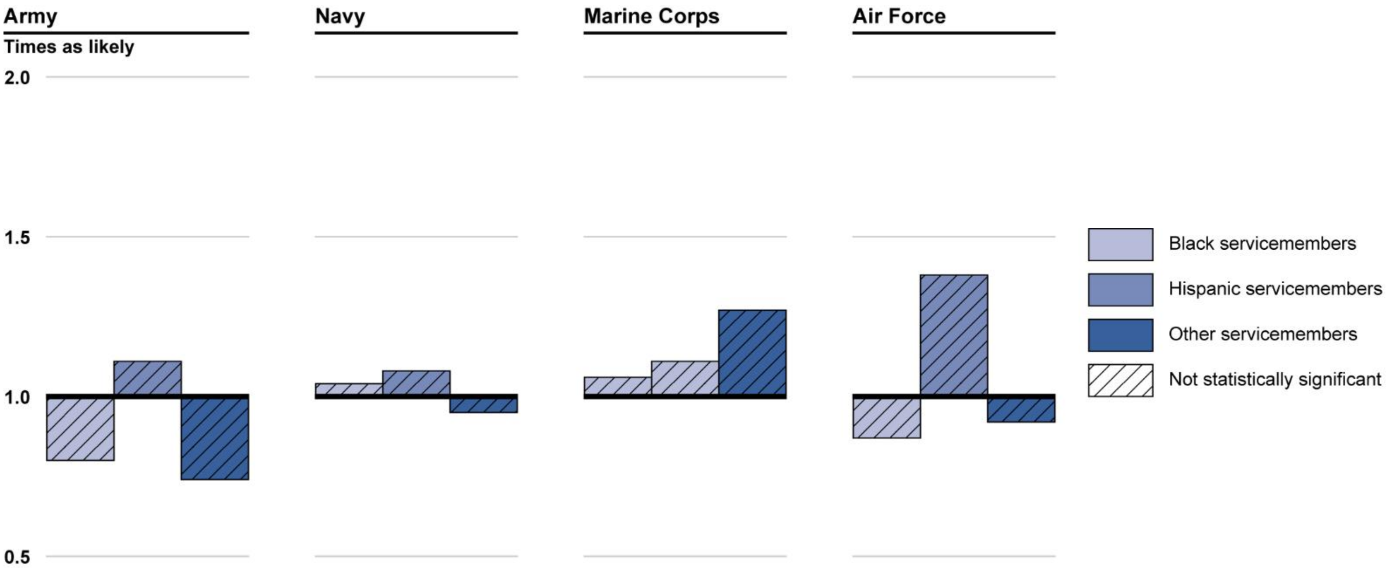
Few Statistically Significant Racial Disparities Exist in Likelihood of Conviction or Severity of Punishment, but

the Coast Guard Does Not Collect and Maintain Complete Data

We identified fewer statistically significant racial disparities in case outcomes—convictions and punishment severity. Among the servicemembers convicted in general and special courts-martials, we found no statistically significant differences regarding the likelihood of conviction among racial groups in the Army, the Navy, the Marine Corps, and the Air Force, while controlling for other attributes, as shown in figure 6 below.[29]

[29]We conducted multivariate regression analyses, which analyzed the degree to which one racial group was more likely or less likely than another racial group to be convicted in general and special courts-martial, while controlling for race, gender, education, rank, and offense type. In the Air Force, we also controlled for years of service among the lower enlisted ranks (E1-E4) and composition of the deciding panel. In the Army, we could not control for education, but we were able to control for age and composition of the deciding panel. A multivariate regression analysis examines several variables simultaneously to estimate whether each of these variables are more likely or less likely to be associated with a certain outcome. Not identifying any statistically significant findings means that we could not conclude there was an association between race and the likelihood of an outcome, in this case, conviction in general and special courts-martial. See Appendix I of GAO-19-344 for a more detailed explanation of how we conducted our multivariate regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendix II of GAO-19-344 for the summary statistics and bivariate regression analyses for the racial groups in each of the services, and see Appendixes IV through VII for the demographic breakdowns of the modeled attributes in each of the military services.

Figure 6: Likelihood of Conviction in General and Special Courts-Martial, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017



Source: GAO analysis of service military justice and personnel data. | GAO-20-648T

Accessible Data for Figure 6: Likelihood of Conviction in General and Special Courts-Martial, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017

Military branch	Racial category	Times as likely
Army	Black (B)	0.80
Army	Hispanic (H)	1.11
Army	Other (O)	0.74
Navy	B	1.04
Navy	H	1.08
Navy	O	0.95
Marine Corps	B	1.06
Marine Corps	H	1.11
Marine Corps	O	1.27
Air Force	B	0.87
Air Force	H	1.38
Air Force	O	0.92

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlaw ful discrimination. These partial multivariate regression analysis results demonstrate the degree to w hich a racial group is more likely or less likely than the reference category to be convicted in general and special courts-martial after controlling for race, gender, rank, education, and offense type. We also controlled for years of service among the low er enlisted ranks (E1-E4) and composition of the deciding panel in the Air Force. In the Army, we could not control for education, but we were able to control for age and composition of the deciding panel. We made all racial comparisons with White servicemembers as the reference category. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or lower than 1.00 indicate that individuals with that characteristic are more likely or less likely, respectively, to be convicted in general and special courts-martial. Not statistically significant means that we could not conclude there was an association between race and the likelihood of conviction in general and special courts-martial. The Other race category includes individuals who identified as American Indian/Alaska Native, Asian, Native Hawaiian/Other Pacific Islander, and multiple races.

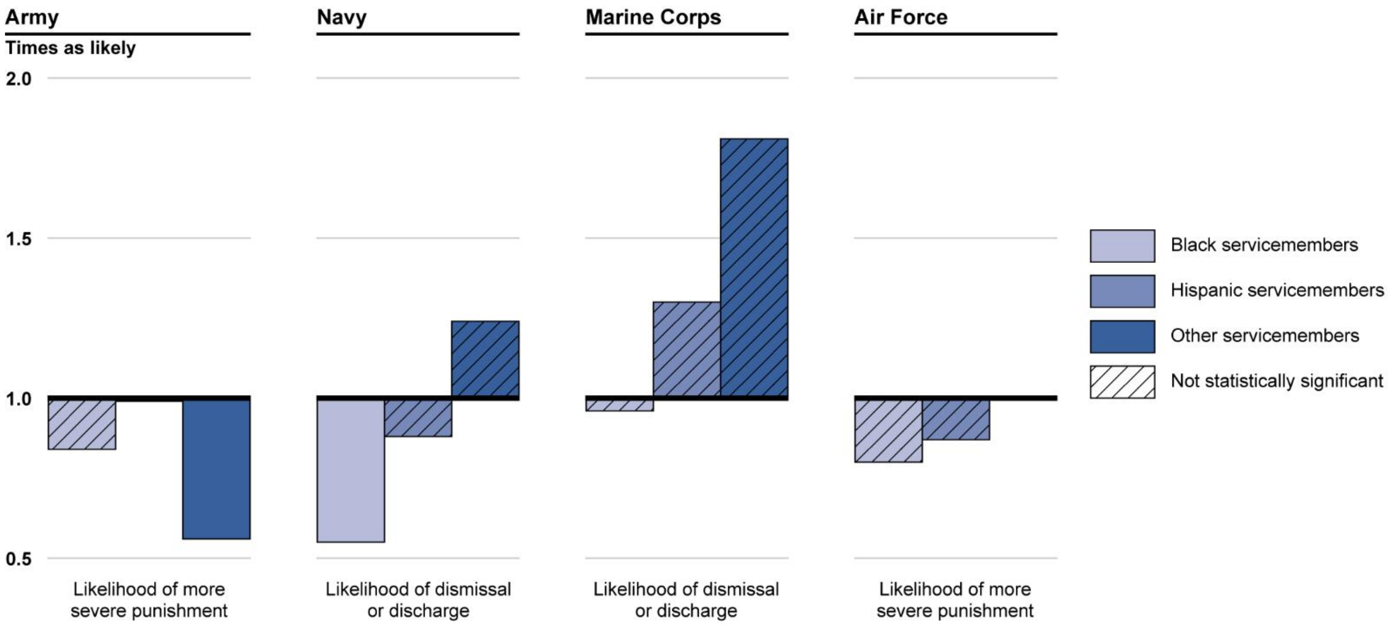
In the military services that maintained complete punishment data—the Army, the Navy, the Marine Corps, and the Air Force—we found that minority servicemembers were either less likely to receive a more severe punishment in general and special courts-martial compared to White servicemembers, or there were no statistically significant differences in punishments among racial groups.[30] Specifically, as shown in figure 7, Black servicemembers were less likely to receive a more severe punishment in general and special courts-martial compared to White servicemembers in the Navy, but there was no statistically significant difference for Black servicemembers in the Marine Corps, the Army, and the Air Force.[31] Additionally, there were no statistically significant

[30]Not identifying any statistically significant findings means that we could not conclude there was an association between race and the likelihood of an outcome, in this case, punishment severity.

[31]To assess punishment severity in the Navy and the Marine Corps, we conducted multivariate regression analyses to analyze the degree to which one racial or ethnic group was more likely or less likely than another group to receive a more severe punishment in general and special courts-martial while controlling for race, gender, education, rank, and offense type. A multivariate regression analysis examines several variables simultaneously to estimate whether each of these variables are more likely or less likely to be associated with a certain outcome. See Appendix I in GAO-19-344 for a more detailed explanation of how we conducted our multivariate regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendix II of that report for the summary statistics and bivariate regression analyses for the racial groups in each of the services, and see Appendixes V and VI for the demographic breakdowns of the modeled attributes in the Navy and the Marine Corps. To assess punishment severity in the Army and the Air Force, we conducted ordered logistic regression analyses to analyze the degree to which one racial or ethnic group was more likely or less likely than another group to receive a more severe outcome in general and special courts-martial, while controlling for race, gender, education, rank, composition of the deciding panel, and offense type. In the Air Force, we controlled for years of service among the lower enlisted ranks (E1-E4). In the Army, we could not control for education, but we were able to control for age. Using the three punishment groups listed in table 8 in Appendix I of GAO-19-344, based on discussions with service officials, we determined that a sentence resulting in a dismissal or discharge was the most severe punishment outcome. An ordered logistic regression is an extension of the logistic regression model that applies to dependent variables where there are more than two response categories. See Appendix I in GAO-19-344 for a more detailed explanation of how we conducted our ordered logistic regression analysis, and a full explanation of the attributes we used in each service model. In addition, see Appendixes IV and VII for the demographic breakdowns of the modeled attributes in the Army and the Air Force.

differences for Hispanic servicemembers in the Navy, the Marine Corps, the Army, or the Air Force.

Figure 7: Likelihood of Dismissal or Discharge in General and Special Courts-Martial in the Navy and Marine Corps, and of More Severe Punishment in the Army and the Air Force, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017



Source: GAO analysis of service military justice and personnel data. | GAO-20-648T

Accessible Data for Figure 7: Likelihood of Dismissal or Discharge in General and Special Courts-Martial in the Navy and Marine Corps, and of More Severe Punishment in the Army and the Air Force, by Race After Controlling for Selected Attributes, Fiscal Years 2013–2017

Military branch	Racial category	Times as likely
Army	Black (B)	0.84
Army	Hispanic (H)	0.99
Army	Other (O)	0.56
Navy	B	0.55
Navy	H	0.88
Navy	O	1.24
Marine Corps	B	0.96
Marine Corps	H	1.30
Marine Corps	O	1.81
Air Force	B	0.80
Air Force	H	0.87

Military branch	Racial category	Times as likely
Air Force	O	1.00

Note: The information presented in this figure, taken alone, should not be used to make conclusions about the presence or absence of unlaw ful discrimination. These partial multivariate regression analysis results for the Navy and the Marine Corps demonstrate the degree to w hich a racial group is more likely or less likely than the reference category to be to be dismissed or discharged after conviction in general and special courts-martial after controlling for race, gender, rank, education, and offense type. These partial ordered logistic regression analysis results for the Army and the Air Force demonstrate the degree to w hich a racial group is more likely or less likely than the reference category to receive a more severe punishment after conviction in general and special courts -martial after controlling for race, gender, offense type, and composition of the deciding panel. We also controlled for education and years of service among the low er enlisted ranks (E1-E4) in the Air Force. In the Army, w e also controlled for age and rank. We made all racial comparisons w ith White servicemembers as the reference category. Odds ratios that are statistically significant (p-value < 0.05) and greater than 1.00 or low er than 1.00 indicate that individuals w ith that characteristic are more likely or less likely, respectively, to be dismissed or discharged after conviction in general and special courts-martial, or receive a more severe or less severe punishment, respectively, than the reference category. Not statistically significant means that w e could not conclude there w as an association betw een race and the likelihood of dismissal or discharge, or receive a more severe punishment, after conviction in general and special courts-martial. Punishment severity in the Air Force, ordered from most to least severe, was (3) any type of dismissal or discharge (regardless of any confinement); (2) confinement w ithout dismissal or discharge, and (1) all other possible sentencing options. In the Army, it w as (3) any type of dismissal or discharge or confinement of more than 2 years, (2) confinement of less than 2 years w ithout dismissal or discharge, and (1) all other possible sentencing options. The Other race category includes individuals w ho identified as American Indian/Alaska Native, Asian, Native Haw aiian/Other Pacific Islander, and multiple races.

We could not determine disparities in case outcomes—convictions and punishment severity—in the Coast Guard's general and special courts-martial for fiscal years 2013 through 2017 because the Coast Guard did not collect and maintain complete conviction and punishment data in its military justice database.[32] Specifically, 16 percent of all Coast Guard cases were missing conviction and punishment data. When broken down by court-martial type, 20 percent of general court-martial cases, 15 percent of special court-martial cases, and 4 percent of summary court-martial cases were missing conviction and punishment data. Coast Guard officials acknowledged that incomplete conviction and punishment data entry is a consistent problem. They said that data entry had improved recently. On December 17, 2018, the General Counsel of the Department of Defense issued the uniform standards and criteria required by article 140a of the Military Justice Act of 2016.[33] As part of these uniform

[32]Although we could not analyze Coast Guard cases due to the small number of general and special courts-martial adjudicated in the Coast Guard from fiscal years 2013 through 2017, case outcomes could potentially be analyzed in the Coast Guard using a longer period of time than that used in our review.

[33]The Coast Guard is a voting member of the Joint Service Committee on Military Justice, and according to Coast Guard officials, they participated in the Joint Service Committee's subcommittee that developed the recommendations leading to the issuance of these standards. A Coast Guard official told us that they consider these standards to be binding on the Coast Guard.

standards, the military services were directed to collect information about the findings for each offense charged, and the sentence or punishment imposed. The DOD General Counsel directed that the military services are to implement the Secretary's direction no later than December 23, 2020.

DOD and the Military Services Have Conducted Some Assessments of Military Justice Disparities, but Have Not Studied the Causes of Disparities

DOD and the military services have taken some steps to study racial disparities in the military justice system over the last several decades, but they have not comprehensively studied the causes of any disparities. We previously reported in 1995 on DOD studies on discrimination and equal opportunity, and found DOD and the military services conducted seven reviews of racial disparities in discipline rates between 1974 and 1993.[34] Since our 1995 report through 2016, DOD and military service assessments of military justice disparities have been limited. Officials in the Office of Diversity, Equity and Inclusion noted DOD has not conducted any department-wide assessments of racial disparities in military justice during this period. The military services' diversity offices also were not able to identify any service-specific reviews of disparities in military justice.

However, DOD has conducted climate surveys to address servicemembers' perceptions of bias. In addition, the military services have some initiatives to examine and address disparities in military justice. For example, the Air Force routinely analyzes military justice data using a rates-per-thousand analysis to identify whether certain demographic groups are tried by courts-martial or subject to nonjudicial

[34]GAO/NSIAD-95-103. For example, studies conducted in the 1970s and 1980s showed no disparities in discipline rates between Black and White servicemembers and found no evidence that minority groups received courts-martial or nonjudicial punishment out of proportion to certain types of violations. Studies published by the Navy and the Defense Equal Opportunity Management Institute in the 1990s found that Black servicemembers were overrepresented in the populations of servicemembers receiving judicial and nonjudicial punishments. See Appendix I of GAO/NSIAD-95-103 for a summary of each of the studies' findings and recommendations.

punishments at higher rates than others.[35] These Air Force analyses found that Black servicemembers were more likely than White servicemembers to be subject to courts-martial and nonjudicial punishments from fiscal years 2013 through 2017, which is consistent with what we found.[36] However, the other services do not routinely conduct such analyses.

Officials from DOD and the military services acknowledged that they do not know the cause of the racial disparities that have been identified in the military justice system. This is because they have not conducted a comprehensive evaluation to identify potential causes of these disparities and make recommendations about any appropriate corrective actions to remediate the cause(s) of the disparities.

Recommendation to identify causes of racial disparities in the military justice system. In our May 2019 report, we recommended that the Secretary of Defense, in collaboration with the Secretaries of the military services 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. 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.

In October 2019, DOD officials said that the department was exploring the feasibility of conducting a research project to delve into the differences in military justice data to inform implementation of this recommendation. At that time, they estimated that this research might be concluded in March 2021. In December 2019, the National Defense Authorization Act for Fiscal Year 2020 included a provision directing the Secretary of Defense to conduct an evaluation consistent with our recommendation.[37] DOD was directed to commence or carry out these activities by June 2020. We

[35]A rates-per-thousand analysis computes the number of servicemembers within a demographic group that are subject to a particular military justice action, divided by the total number of servicemembers of that demographic group, multiplied by 1,000.

[36]In addition, in 2017, the Air Force assembled a working group called the Disciplinary Actions Analysis Team to examine the barriers certain demographic groups face to career success, including barriers to training opportunities, promotion, and retention. The working group was in the early stages of organizing and had not published any findings or recommendations for service leadership at the time our May 2019 report was issued.

[37]Pub. L. No. 116-92, §540I(b)(3).

believe that conducting a comprehensive analysis into the causes of disparities in the military justice system, would better position DOD and the military services to identify actions to address disparities, and thus help ensure that the military justice system is fair and just, a key principle of the UCMJ.

In conclusion, our analysis of available data identified racial disparities in all of the military services for servicemembers with recorded investigations, and for four of the military services for trials in special and general courts-martial, but these disparities generally were not present in the convictions or punishments of cases. These findings show an association for disparities at particular stages of the military justice process, but are inconclusive regarding other stages for the period covered by our analysis. However, our findings of racial disparities, taken alone, do not establish whether unlawful discrimination has occurred, as that is a legal determination that would involve other corroborating information along with supporting statistics. The absence of complete nonjudicial punishment data in the Army, the Navy, and the Coast Guard limits their visibility into the vast majority of legal punishments imposed on servicemembers under the UCMJ every year. Without such data, these three military services will remain limited in their ability to assess or identify disparities among populations subject to this type of punishment.

Our May 2019 report included several recommendations with specific actions that can be taken to better position DOD and the military services to identify and address disparities, such as (1) developing the capability to present race and ethnicity data from the military services' personnel and investigations databases using the same categories as the military justice databases; (2) establishing criteria to determine when possible disparities among racial or ethnic groups should be further reviewed, and describing the steps that should be taken in such a review; and, importantly, (3) conducting a comprehensive evaluation of the causes of these disparities and taking steps to address them. To help build confidence that DOD is committed to a military justice system that is fair and just, and for the system of military law to be recognized as fair and just by both members of the armed forces and by the American public, DOD and the military services need to take actions to address these recommendations.

Madam Chairwoman Speier, Ranking Member Kelly, and Members of the Subcommittee, this completes my prepared statement. I would be pleased to respond to any questions that you or other Members of the Subcommittee may have at this time.

GAO Contact and Staff Acknowledgments

If you or your staff have any questions about this testimony, please contact Brenda S. Farrell, Director, Defense Capabilities and Management, who may be reached at (202) 512-3604 or farrellb@gao.gov. In addition, contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this statement. GAO staff who made key contributions to this testimony are Kimberly C. Seay, Assistant Director; Christopher Allison; Renee S. Brown; Vincent M. Buquicchio; Christopher Gezon; Won (Danny) Lee; Serena C. Lo; Dae B. Park; Samuel J. Portnow; and Clarice Ransom.

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