

United States Department of Justice

Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022)

Section 1204(a) Report -
Closing the Law Enforcement Consent Loophole Act of 2022

For Fiscal Year 2023
(October 1, 2022 – September 30, 2023)

March 15, 2024

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Overview

Congress enacted the Closing the Law Enforcement Consent Loophole Act of 2022 (Act) as Title XII of the Violence Against Women Act Reauthorization Act of 2022 (VAWA 2022).¹ The Act recognizes that the inherent power imbalance between individuals in custody or detained by law enforcement prevents truly consensual sexual activity. It created a new offense prohibiting federal law enforcement officers from knowingly engaging in sexual acts with individuals who are in custody, under supervision, or in detention, and it supports state and local officials in passing similar laws. It also requires the Department of Justice (Department) to report annually to Congress on the number of allegations that a government actor committed sexual misconduct while acting under color of law and the investigative outcomes of reported allegations. This is the report for Fiscal Year 2023.

Closing the Law Enforcement Consent Loophole Act of 2022

Section 1202 of VAWA 2022 creates a new offense at 18 U.S.C. § 2243(c) prohibiting a federal law enforcement officer, acting in their capacity as such, from knowingly engaging in a sexual act with an individual who is under arrest, under supervision, in detention, or in federal custody. A violation of 18 U.S.C. § 2243(c) carries a statutory maximum penalty of up to 15 years imprisonment. Importantly, consent is not a defense to prosecution.

Section 1202 of VAWA 2022 also created 18 U.S.C. § 250, a penalty statute for civil rights offenses involving sexual misconduct. Although this statute applies to all offenses in Chapter 13 of Title 18, it will often be used in connection with violations of 18 U.S.C. § 242 – which criminalizes the willful deprivation of rights under color of law – where sexual assault is the underlying constitutional deprivation. 18 U.S.C § 250 provides a graduated penalty structure depending on the nature of the sexual misconduct, with maximum sentences ranging from two years to life in prison.

Section 1203(a) of VAWA 2022 authorizes the Department to provide grants to states that have passed laws (1) making it “a criminal offense for any person acting under color of [State] law . . . to knowingly engage in a sexual act with an individual who is under arrest, in detention, or otherwise in the actual custody of any law enforcement officer,” and (2) prohibiting the use of consent as a defense to such an offense. VAWA 2022 authorizes annual appropriations of \$5 million for these incentive grants but, to date, Congress has not appropriated funds to implement section 1203, so the Department has not awarded any grants under this provision.

Section 1203(b) of VAWA 2022 requires grant recipients to report certain information to the Department. Because there are not yet any grant recipients, the Department does not have any information to report under section 1203(b).

¹ Violence Against Women Act Reauthorization Act of 2022, Pub. L. 117-103, 136 Stat. 49 (2022).

Section 1204(a) of VAWA 2022 directs the Department to issue a report:

- (a) REPORT BY ATTORNEY GENERAL. —Not later than 1 year after the date of enactment of this Act, and each year thereafter, the Attorney General shall submit to Congress and make publicly available on the Department of Justice website a report containing—
 - (1) the information required to be reported to the Attorney General under section 1203(b); and
 - (2) information on—
 - (A) the number of reports made, during the previous year, to Federal law enforcement agencies regarding persons engaging in a sexual act while acting under color of law; and
 - (B) the disposition of each case in which sexual misconduct by a person acting under color of law was reported.

Section 1204(a) of VAWA 2022 Report (1204(a) Report)

Definitions

For purposes of this 1204(a) Report:

“Federal law enforcement agencies” includes any federal agency with the authority to investigate crimes or employing individuals with: federal arrest authority; the authority to detain or incarcerate individuals for violations of criminal or administrative law; or authorization to carry a firearm. As discussed further below, offices of Inspectors General (IGs) overseeing federal agencies that meet this definition, or that themselves meet this definition, were queried regarding reports of sexual misconduct.

“Sexual misconduct” encompasses two categories as defined in 18 U.S.C. § 2246: (1) sexual acts, as defined under 18 U.S.C. § 2246(2), generally encompasses acts of penetration (with fingers, penis, object), oral sex, and intentional touching of someone under 16 years of age, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person and (2) sexual contact, as defined under 18 U.S.C. § 2246(3), generally encompasses touching, grabbing, and fondling, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

“Persons” are government actors (federal employees, contractors, and task force officers, and may include grantees, subcontractors, subgrantees, and other direct and indirect recipients of federal funds) who committed sexual misconduct during the course of their duties or by using the cloak of their government authority. It can include, but is not limited to, law enforcement officers, healthcare professionals, teachers, prosecutors, administrative law judges, or agency inspectors.

“Act under color of law” is to use one’s government authority to facilitate misconduct, whether it be on-duty or off-duty.

“Disposition” is reported as the investigative outcome following a report of sexual misconduct under color of law to a federal law enforcement agency.

Data

The 1204(a) Report includes data regarding reports of sexual misconduct to federal law enforcement agencies and the investigative outcomes of those reports from October 1, 2022, through the end of Fiscal Year (FY) 2023 (September 30, 2023). Following the appropriation of funding for the grants authorized by section 1203(a) of VAWA 2022, the Department would anticipate making incentive grants and receiving reports from recipients under section 1203(b) of VAWA 2022 for inclusion in future 1204(a) Reports.

Data regarding reports of sexual misconduct made to law enforcement agencies and investigative outcomes for this 1204(a) Report were provided by the Federal Bureau of Investigation (FBI) and the federal IG community.

The FBI has jurisdiction to investigate all allegations of misconduct committed under color of law, which includes government actors in federal, state, local, and Tribal government. IGs investigate federal government actors, including employees, contractors, and task force officers at their respective agencies. Reports of sexual misconduct by federal government actors should generally have been reported to FBI, the relevant IG, or both.

Table 1 lists allegations received by FBI and the investigative outcomes of those reports. The FBI received 62 allegations of sexual misconduct by a government actor under color of law. The majority of those were alleged to have been committed by non-federal actors. About one-third of the allegations against federal actors were referred for prosecution. Approximately one of six allegations against non-federal actors were referred for prosecution.

Table 1
Allegations of Sexual Misconduct Under Color of Law
Reported to the FBI from October 1, 2022 to September 30, 2023

	Allegations	Federal Actor	Non-Federal Actor
Total Allegations	62	14	48
<i>Referred to Prosecuting Entity</i>	13	5	8
<i>Closed Without Referral</i>	13	2	11
<i>Investigation Ongoing</i>	36	7	29

Sixty federal IGs serving 61 agencies² responded to the Department's request for information and meet the definition of law enforcement agency for the purposes of the 1204(a) Report.^{3 4} Five IGs did not provide data in this reporting cycle.⁵

² One IG serves both the Federal Reserve Board and the Consumer Financial Protection Bureau.

³ IGs were designated as law enforcement agencies based on self-reported responses to Department inquiries.

⁴ The Department of Defense (DoD) was not asked to provide data for this report because DoD IG does not collect this data for the entire DoD. Allegations of sexual misconduct regarding DoD active duty and civilian employees can be made in a variety of ways that would not be reported to the DoD OIG. Additionally, DoD reports data on sexual misconduct involving members of the armed forces in its Department of Defense Annual Report on Sexual Assault in the Military online at <https://www.sapr.mil/reports>.

⁵ The IGs serving the following five agencies did not report in this cycle: Corporation for Public Broadcasting, Defense Intelligence Agency, U.S. House of Representatives, U.S. National Archives and Records Administration, and Pension Benefit Guaranty Corporation.

**Agencies of Federal IGs Responding to Department
1204(a) Report Request for Information**

U.S. Ability One Commission	U.S. International Development Finance Corporation (DFC)
U.S. Agency for International Development	U.S. Department of Justice (Department or DOJ)
U.S. Department of Agriculture (USDA)	U.S. Department of Labor (Labor)
AmeriCorps	Legal Services Corporation (LSC)
Amtrak/National Railroad Passenger Corporation (Amtrak)	Library of Congress (LoC)
Appalachian Regional Commission (ARC)	National Aeronautics and Space Administration (NASA)
Architect of the Capitol	National Credit Union Administration (NCUA)
United States Capitol Police	National Endowment for the Arts (NEA)
Central Intelligence Agency (CIA)	National Labor Relations Board (NLRB)
U.S. Department of Commerce (Commerce)	National Reconnaissance Office (NRO)
Commodity Futures Trading Commission (CFTC)	U.S. National Science Foundation (NSF)
Consumer Financial Protection Bureau (CFPB)	National Security Agency (NSA)
Denali Commission	U.S. Nuclear Regulatory Commission (NRC)
U.S. Department of Education (ED)	U.S. Office of Personnel Management (OPM)
U.S. Department of Energy (DoE)	Peace Corps
U.S. Environmental Protection Agency (EPA)	U.S. Postal Service (USPS)
U.S. Equal Employment Opportunity Commission (EEOC)	U.S. Railroad Retirement Board (RRB)
Export-Import Bank of the United States (EXIM)	U.S. Securities and Exchange Commission (SEC)
Federal Communications Commission (FCC)	U.S. Small Business Administration (SBA)
Federal Deposit Insurance Corporation (FDIC)	Smithsonian Institution
Federal Housing Finance Agency (FHFA)	U.S. Social Security Administration (SSA)
Federal Reserve Board	Special Inspector General for Afghanistan Reconstruction (SIGAR)
Federal Trade Commission (FTC)	Special Inspector General for Pandemic Recovery (SIGPR)
U.S. General Services Administration (GSA)	Special Inspector General for the Troubled Asset Relief Program (SIGTARP)
U.S. Government Accountability Office (GAO)	U.S. Department of State (State)
U.S. Government Publishing Office (GPO)	Tennessee Valley Authority (TVA)
U.S. Department of Health and Human Services (HHS)	U.S. Department of Transportation (DoT)
U.S. Department of Homeland Security (DHS)	U.S. Department of the Treasury (Treasury)
U.S. Department of Housing and Urban Development (HUD)	U.S. Treasury Inspector General for Tax Administration (TIGTA)
Office of the Director of National Intelligence (ODNI) ⁶	U.S. Department of Veterans Affairs (VA)
U.S. Department of the Interior (DOI)	

⁶ The inspector general serving the ODNI is the Office of the Inspector General of the Intelligence Community (IC IG).

Table 2 lists allegations received by non-Department federal IGs and the investigative outcomes of those reports.⁷ Eleven IGs reported receiving 371 allegations of sexual misconduct by a federal actor (employee, contractor, or task force member) under color of law. Forty-eight IGs serving 49 agencies reported zero allegations of sexual misconduct.⁸

Table 2
Allegations of Sexual Misconduct Under Color of Law
Reported to Federal IGs from October 1, 2022 to September 30, 2023

Agency	Complaints Received	Referred for Prosecution	Referred to Internal Affairs/OPR	Closed Without Referral	Investigation Ongoing
USAID	4	0	0	4	0
USDA	6	3	2 ⁹	0	1
HHS	4	4	N/A ¹⁰	0	0
DHS	252	2	240	10	0
DOI	19	0	10	7	2
Peace Corps	5	0	4	1	0
SEC	1	0	1	0	1
Transportation	1	0	0	1	0
Treasury	1	1	0	0	0
TIGTA	10	3	7	0	0
VA	68	5	1	52	10

Table 3 lists allegations of sexual misconduct by a Department actor received by the Department’s Office of the Inspector General (DOJ OIG) and the investigative outcomes of those reports.¹¹ In FY 2023, DOJ OIG received 482 complaints in which one or more of the subjects were alleged to have engaged in criminal sexual misconduct.

⁷ Data from one of the 60 IGs is not included in Table 2. The Department’s IG is reported separately in Table 3.

⁸ The IGs serving the following 49 agencies reported zero complaints or allegations: U.S. Ability One Commission, AmeriCorps, Amtrak, ARC, Architect of the Capitol, United States Capitol Police, CIA, Commerce, CFTC, CFPB, Denali Commission, ED, DoE, EPA, EEOC, EXIM, FCC, FDIC, FHFA, Federal Reserve Board, FTC, GSA, GAO, GPO, HUD, DFC, Labor, LSC, LoC, NASA, NCUA, NEA, NLRB, NRO, NSF, NSA, NRC, ODNI, OPM, USPS, RRB, SBA, Smithsonian Institution, SSA, SIGAR, SIGPR, SIGTARP, State, and TVA.

⁹ USDA OIG explains that the USDA OIG Hotline operates using the following standardized process: when a complaint is referred to OIG Investigations or Audit and that entity declines to open an inquiry, the complaint is referred to the USDA OIG Agency Liaison Officer (ALO) within the specific USDA sub agency. This party is the established party within each agency with whom OIG corresponds (including sending and receiving allegations). Sometimes, the ALO is within an internal compliance or regulatory branch of the agency and other times the ALO is in the Human Resources Employee and Labor Relations Branch. In one of the two instances referred to an internal component, the subject retired in lieu of being fired.

¹⁰ HHS OIG is the internal component within HHS that investigates all allegations of employee misconduct. It does not refer allegations to another component.

¹¹ DOJ OIG data includes all allegations of sexual misconduct reported to DOJ OIG during the covered time period. The data may involve task force officers, contractors, grantees, subcontractors, subgrantees, and other direct and indirect recipients of federal funds. For example, allegations in Table 3 associated with OJP, which is a grant-making component, may involve allegations against employees of entities that receive grants from OJP or subgrants from OJP grantees, rather than OJP employees.

DOJ OIG has multiple categories of investigative outcomes that are consolidated into four areas for the purpose of the 1204(a) Report.

- **Investigation:** Complaints that are opened as DOJ OIG investigations.
- **Monitored Referral:** Complaints that are referred to a Department component’s office of professional responsibility or internal affairs office, or its equivalent, to conduct an investigation of the allegations and forward a report of its completed investigation to DOJ OIG for review. Generally, monitored referrals are used for components that have an internal affairs or professional responsibility office, or its equivalent.
- **Management Review:** Complaints that do not warrant handling as a DOJ OIG investigation or monitored referral but constitute matters that the component should either be aware of or act on.
- **Miscellaneous:** This category includes: (1) allegations that have been consolidated with another complaint that was already recorded and classified in the DOJ OIG’s case management system, because the allegation or a substantially related allegation was previously reported to the DOJ OIG through a different source; (2) allegations that lack sufficient basis or detail to warrant any follow-up by either the DOJ OIG or any Department component; and (3) complaints that had not been assigned a disposition as of the end of the reporting period (FY 2023).

Table 3
Allegations of Sexual Misconduct Under Color of Law
Reported to DOJ OIG from October 1, 2022 – September 30, 2023

Component	Complaints Received	Investigation	Monitored Referral	Management Review	Miscellaneous
All DOJ	482	28	108	239	107
<i>ATF</i>	3	0	1	2	0
<i>BOP</i>	430	20	97	212	101
<i>DEA</i>	7	1	2	3	1
<i>FBI</i>	16	3	5	3	5
<i>OJP</i>	1	0	0	1	0
<i>TAX</i>	1	0	0	1	0
<i>USMS</i>	24	4	3	17	0

There were 34 DOJ OIG investigations in which the DOJ OIG referred allegations of criminal sexual misconduct to federal or state prosecutors in FY 2023.¹²

¹² The DOJ OIG referrals of allegations to prosecutors identified in this report do not necessarily arise from the complaints received by the DOJ OIG in FY 2023 (i.e., the referrals to prosecutors may arise from allegations received by the DOJ OIG during an earlier period).

Prosecutorial Information

As noted above, the FBI and federal IGs are the primary investigative entities that respond to allegations of sexual misconduct committed by federal government actors under color of law. Department prosecutors at the Civil Rights Division and United States Attorneys' Offices receive allegations of sexual misconduct committed by federal, state, local, or Tribal government actors from investigative law enforcement entities, media reports, civil attorneys, nonprofit organizations, and sometimes, directly from victims. Department prosecutors evaluate these allegations for potential federal prosecution. The process of evaluation often includes additional investigative efforts.

Allegations of sexual misconduct under color of law are typically charged under 18 U.S.C. § 242. 18 U.S.C. § 242 criminalizes willful constitutional deprivations committed under color of law that include a range of conduct. Such conduct includes unwanted sexual acts and sexual contact, but it also includes excessive force, deliberate indifference to medical needs, failure to keep from harm, and other constitutional violations.

In addition to charges under 18 U.S.C. § 242, federal law enforcement officers who knowingly engage in sexual acts with those in their custody, under their supervision, or in detention can also be charged with violating 18 U.S.C. § 2243(c). Unlike for violations of 18 U.S.C. § 242, consent is not a defense for violations of 18 U.S.C. § 2243(c).

18 U.S.C. § 2243(c) was enacted as part of VAWA 2022 and went into effect on October 1, 2022. In order to bring a prosecution under this statute, the alleged criminal conduct needs to have occurred after that date. The Department did not initiate any prosecutions under this statute during the relevant reporting period.